

Limited Liability Company (GmbH)

What Does the Abbreviation "GmbH" Mean?

The abbreviation "GmbH" stands for "Gesellschaft mit beschränkter Haftung," which translates to "limited liability company." This is a common legal form for corporations in Germany, as well as in Austria and Switzerland. In a GmbH, shareholders are not personally liable with their private assets but only with their contributions to the company's share capital. This offers a degree of protection for shareholders in the event of financial difficulties or insolvency of the company.

What is a GmbH?

A GmbH, short for "Gesellschaft mit beschränkter Haftung," is a corporation and one of the most common legal forms for businesses in Germany, Austria, and Switzerland. It is characterized by the following features:

1. Limited Liability:

The liability of shareholders is limited to their contribution to the GmbH's share capital. This means that in the case of debts or insolvency, the shareholders' private assets are protected.

2. Share Capital:

A minimum share capital is required to establish a GmbH. In Germany, this minimum is 25,000 euros, with at least half (12,500 euros) needing to be contributed at the time of formation. The statutory minimum share capital of a GmbH is 25,000 euros, with the minimum share contribution per shareholder being 100 euros. The share capital can consist of cash and/or non-cash contributions. In the case of a cash contribution, at least a quarter of the contributions, but at least half of the statutory minimum share capital (12,500 euros), must be paid in at the time of registration in the commercial register. Shareholders are liable for the difference up to the amount of their contribution.

In practice, the cash contribution is typically made by opening a bank account for the GmbH, which is available for the company's use. Proof of the deposit, which must be provided to the register court, can be demonstrated by submitting a bank statement. If non-cash contributions are to be made—such as movable or immovable items, licenses, businesses, etc.—there are two special conditions:

First, the non-cash contribution must always be made in full.

Second, the value of the non-cash contribution must be evidenced in a report on the founding by non-cash contributions. If used items are contributed as non-cash

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contributions, the district court will generally require an expert opinion to verify the value. If only part of the share capital is contributed as non-cash contributions, the principles for cash contributions and non-cash contributions are combined.

3. Formation:

A GmbH is formed through a notarized partnership agreement (articles of association). At least one shareholder is required. The partnership agreement governs the internal relationships of the GmbH and specifies how the management and representation of the company are organized externally.

4. Management:

Management is carried out by one or more managing directors appointed by the shareholders. The managing directors represent the GmbH externally and conduct business according to the provisions of the partnership agreement and the shareholders' meeting. A managing director can only be a natural person who is fully capable of contracting. The shareholders appoint the managing directors, though it is also possible to appoint them via a provision in the partnership agreement. Foreigners can also serve as managing directors. If the management is primarily conducted from within Germany, attention must be paid to the required residence permit or work permit. The managing directors represent the GmbH externally. Managing directors must confirm in writing according to § 8 Abs. 3 GmbHG that no circumstances prevent their appointment (e.g., insolvency-related offenses or business prohibitions) and that they have been informed of their unlimited duty to disclose information to the court.

5. Shareholders' Meeting:

The shareholders' meeting is the supreme body of the GmbH and makes important decisions, such as amendments to the partnership agreement, the appointment and removal of managing directors, and the allocation of profits.

6. Accounting and Financial Statements:

A GmbH is required to maintain double-entry bookkeeping and prepare annual financial statements (balance sheet, profit, and loss statement).

The GmbH provides entrepreneurs with the opportunity to operate a business without risking their private assets. At the same time, the capital requirements and formal incorporation processes offer a certain level of credibility and stability.

7. Partnership Agreement

Unlike other corporate forms, such as the General Partnership (OHG) or the Limited Partnership (KG), a GmbH can only be established through a written agreement. The agreement must include legally required minimum information (company name, registered office, purpose of the company, amount of share capital, amount of each shareholder's contribution). Furthermore, the partnership agreement must be notarized.

8. Notarization and Commercial Register

Entry At this stage, a notary must be consulted, who will notarize the partnership agreement and certify the registration of the GmbH in the commercial register. It is often advisable to seek legal or notarial advice during the preparation of the partnership agreement and the application for entry in the commercial register. Typically, standardized contract texts prepared by the respective law firm are used. The notary sends the application to the competent district court, including the documents explicitly mentioned in § 8 GmbH-Gesetz. In case of doubt, the district court obtains an expert opinion from the competent chamber of commerce and industry and, if it is a craft enterprise, additionally from the chamber of crafts. Further institutions may also be involved, especially if special permits for business activities are required (e.g., Federal Financial Supervisory Authority, Federal Insurance Supervisory Authority, Medical Association).

If special permits are required for the business activities, especially trade permits, the permits should already be included in the application under § 8 Abs. 1 Ziffer 6 GmbH-Gesetz. On the other hand, issuing a permit for a legally non-existent person is not feasible. This problem is usually solved by the licensing authority announcing that the permit will be issued simultaneously with the entry in the commercial register.

If there are doubts during the review of the registration requirements, the competent district court will inform the applicant directly or through the notary and allow for corrections. If there are no reasons for rejecting the application, the entry in the commercial register is made.

From the time of entry in the commercial register, the GmbH legally exists. The limitation of liability to the company's assets only takes effect upon registration. During the formation phase, i.e., the time between notarization of the partnership agreement and registration in the commercial register, it is only a founding company

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(GmbH i. G.), for which the regulations of the GmbH law only apply partially. There is no limitation of liability as in the later GmbH. According to § 11 Abs. 2 GmbHG, all persons who have acted on behalf of the company are jointly and severally liable without limitation.

9. Business Registration

The duration of the registration process is heavily dependent on whether additional difficulties need to be resolved during the application process. Otherwise, about four to six weeks should be allowed from the time the registration documents are sent by the notary to the district court.

Furthermore, the GmbH is subject to the same notification obligations as any newly established business. After registration in the commercial register, a business registration must be submitted to the competent trade office according to § 14 Gewerbeordnung. If commercial activities are already being carried out during the formation phase, there is generally already a registration requirement at this time. The official form used for this purpose also includes copies for other notification processes, such as registration with the tax office and the competent professional association.

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