

INCORPORATION OF A COMPANY WITH LIMITED LIABILITY IN AUSTRIA

1. How to set up a company with limited liability in Austria:

Basically every legal entity or natural person (foreign or domestic) is allowed to incorporate a limited liability company ("Gesellschaft mit beschränkter Haftung" - GmbH) in Austria, as far as there are no legal or factual barriers in the way. So in short it basically can be said, that every legal entity or natural person who has a lawful resident or seat within the EEA (including Switzerland, Iceland, Norway and the United Kingdom) is allowed to incorporate a company with limited liability in Austria. For natural persons or legal entity who have their seat outside of the EEA, it can be said that the incorporation process usually takes longer.

2. How to set up a company with limited liability (GmbH) in Austria:

At least one shareholder (natural or legal entity) is needed to form a GmbH in Austria by establishing the articles of association in the form of a notarial deed before a notary public. In case the shareholders are not present in person, their representatives have to have a notarized power of attorney including an apostille de La Haye.

The articles of association at least must contain:

- + name and corporate seat of the company;
- + objects of the company;
- + the amount of the share capital;
- + the initial contribution of each shareholder.

3. Documents needed:

With respect to the shareholders and its representatives:

- a) if the shareholder is a natural person (i) a passport accepted in Austria and not expired (ii) a visa if necessary for the entry/stay in Austria
- b) if the shareholder is a legal entity (i) an actual, notarized and apostilled excerpt of the company register of the state of seat translated into German by a court appointed interpreter (ii) if there should be no equivalent to a company register in the state of seat (i.e. some states in the USA) (iii) a notarized and court appointed translation of a proof of the financial status including a list of the representatives including their representation power
- c) the legal representatives of the shareholder needs (i) proof of identity accepted in Austria (i.e. most valid passports) (ii) a notarized and apostilled special power of attorney proofing his representation

power to act on behalf of the entity or natural person and providing him the authority to incorporate a GmbH in Austria in the name of the represented shareholder

4. Incorporation:

The registration of the GmbH in the Commercial Register (*Firmenbuch*) constitutes the legal existence of the company. Once the GmbH-company has been established, it is possible that a shareholder transfers her/his share to the other shareholder, who then is the only shareholder of the GmbH. In such cases, the first shareholder often acts as a trustee of the other shareholder.

A founder or a shareholder can be an individual or a legal person, an Austrian or a foreign citizen or entity.

In the articles of association the founders determine the share capital of the company which may not be less than EUR 35.000,00. At least half of the stated share capital must be contributed in cash before registration in the commercial register. The rest may be paid later or at any time immediately upon request of the managing director(s). The contribution of every shareholder determines his interest in the company. The minimum contribution of a shareholder is EUR 70,00.

Contributions in kind are also possible, but at least half of the stated share capital has to be contributed in cash. After a formation audit a certified auditor describes the value of every contribution in kind. Assets, as opposed to cash contributions must be paid in full.

5. Obligatory Bodies:

The managing board is one of the two obligatory bodies of a GmbH and consists of one or more managing directors appointed by the shareholders. The managing directors act for and represent the GmbH, e. g. by concluding contracts, preparing annual reports and financial statements etc. The shareholders themselves may take on the functions of managers, but it is also possible to hire third parties. The appointment of managers can be revoked by the shareholders. Furthermore the managing board, is bound by the decisions of the shareholders.

The second obligatory body is the shareholders meeting, which is the main decision-making body of the company. It appoints the managing directors and the supervisory body, decides on changes of the articles of association and on the distribution of profits, approves the annual report and releases the managing directors and the supervisory board from their liability.

In general a supervisory board may be established if the shareholders wish to do so. In some cases a supervisory board must be appointed, e. g. the GmbH has more than 50 shareholders and the share capital exceeds EUR 70.000,00 or the company has more than 300 employees or runs a specific business.

6. Dissolution

According to Austrian Law a GmbH will be dissolved, inter alia,

- + after the passing of the time period for which it was established;
- + by shareholders resolution in form of a notarial deed;
- + by the decision of an administrative authority or the commercial court.

7. Timing and approximating costs for incorporation

The time is mostly depending on the procurement of all necessary documents in the necessary form. Also it depends on how many of those documents have to be translated into German. In general it can be said that as soon all documents were handed over to the court, incorporation usually is accomplished approximately within 2 to 3 weeks, if the court does not demand any additional information. Lastly for the incorporation of a company certain taxes and stamp fees are due with the notary and legal costs range between EUR 3.000,00 and EUR 5.500,00 also depending on complexity of the particular circumstances and the amount of persons involved.

Reference contact in Austria

Georg Karlbauer, LL.M.

karlbauer@eulaw.at

+43 (0) 662 62 45 00-0

