

Checklist incorporation of limited liability company

1. Details of founders:

(please name all founders):

Family name:

First name:

Maiden name (if applicable):

Title (e.g. Dr.):

Profession:

Date of birth:

Place of residence:

Matrimonial property scheme:

E-Mail:

Phone/mobil:

If the founders are themselves a legal entity, please indicate company name, business address and competent commercial register:

2. Envisaged company name:

3. What is the business purpose of the company?

4. Where does the company have its legal seat and its business address?

5. Envisaged amount of the registered share capital (please note that minimum is € 25.000,00, except in case of a so-called "Mini-GmbH" where the minimum capital is € 1,00)

6. Which founders shall hold which portion of the registered share capital? (please note that the nominal amount of a share must be at least 1,00 € and must be divisible by € 1,00):

7. Who is to become managing director? (same information required as under 1. above to the founders):

7.1. Are managing directors entitled to represent the company alone, even if several managing directors are appointed? Or shall a managing director only be able to represent the company together with another managing director or a procurist?

7.2 Managing directors to be released from the statutory restrictions on self-dealing?

8. How is the registered share capital to be paid in?

a) by cash contribution or by contribution in kind?

b) the full amount immediately? Or only 50 % and the remainder later upon required by the managing directors (please note that in any event € 18.500,00 must be paid in immediately)?

9. Any restrictions on the shareholders right to dispose of their shares (e.g. only with consent of the other shareholders)?

10. Should the company have a supervisory board or an advisory board? If so, what is its role?

Checklist Incorporation of Limited Liability Company (GmbH)

Mandatory Sequence of Events for the Incorporation of a GmbH

1.

Determination of both the founders and their respective shareholdings, as well as of the managing directors (*Geschäftsführer*), the company name (“*Firma*”) and the corporate seat (“*Sitz*”). Discussion of these points and any other details with the notary. The notary will then produce a draft of the articles of association (*Gesellschaftsvertrag*), see checklist. Consultation of tax advisor to determine how the limited liability company is to be treated from a tax and social security point of view. It is useful to discuss the draft of the articles of association prepared by the notary with the tax advisor, possibly certain changes to be made.

2.

Possible and useful is to clarify with the competent Chamber of Industry and Commerce whether there are any concerns regarding the permissibility of the company name or the business purpose of the GmbH.

3.

After the incorporation has been notarized you will receive a certified copy of the formation deed from the notary. With this copy you will be able to open an account for the company at a bank or savings bank (*Sparkasse*), and only **thereafter** the payment of the share contributions may be made.

4.

Payment of the contributions as agreed by all founders into an account of the company in formation. **This can only happen after step 3 above.** The founders should permanently keep written evidence of the fact that they have effected the payment of the capital contribution. The capital contribution must remain untouched until registration of the company in the commercial register, except therefrom are only payments to settle the incorporation cost (invoice of the notary, court fees, publication fees) up to the maximum amount set out in the articles of association.

5.

Filing of application to the commercial register

The incorporation of the company must be filed for registration in the commercial register. The application will be drafted by the notary and must be signed by all managing directors in front of the notary who will certify the authenticity of the signatures. The application can already be signed upon incorporation of the company, but the notary will only submit the

application to the commercial register after the notary has been provided with evidence that all capital contributions have been paid in (e.g. by way of a corresponding bank statement).

6.

If necessary, certain public permits must be obtained in view of the business objective of the company (e.g. if the company is to operate a restaurant). This will not be checked by the commercial register in connection with the registration of the company, but is important for the company and its managing directors to be able to lawfully conduct the business.

Mandatory Statutory Rules under the Act on Limited Liability Companies (*GmbHG*)

The company comes into existence as a legal entity with limited liability only upon its registration in the commercial register. When this happens depends upon the point in time when the related application to the commercial register can be filed by the notary and how long it takes the court to effect the registration.

The notary can file the application only after all necessary declarations and documents have been provided to him by the parties. This includes – in the own interest of the participants – copies of all payment orders regarding the payment of the capital contributions into an account of the company in formation respectively a related confirmation by the bank.

At the time of filing the application the registered share capital must have been paid in. All reductions of the nominal share capital going beyond settling the incorporation cost as set out in the articles of association must at that point in time have been compensated by additional payments to the company in formation in order to avoid a risk of personal liability of the persons involved. Furthermore, the commercial register can reject the application for registration of the company if the value of the assets of the company, after taken into account any permitted reductions to settle the incorporation cost, is less than the nominal amount of the share capital set out in the articles of association. Moreover, in this case each founder will become personally liable for such shortfall of the actual value of the assets of the company from the nominal amount of the share capital (shortfall-liability or *Differenzhaftung*).

Consequently, it is the safest way to not touch the paid-in share capital until registration of the company has occurred, other than to settle invoices from the notary and the court or publication costs up to the amount set out in the articles of association. Such costs can be paid from the paid-in capital. [Anmerkung: Das Vorbelastungsverbot gibt es nicht mehr laut BGH] Anyone who acts on behalf of the company prior to its registration in the commercial register will be personally liable for any debts of the company so created until the company is registered in the commercial register, and without prejudice for any remaining shortfall-liability of the founders. In any event, until registration of the company in the commercial register, when acting on behalf of the company, the managing directors have to disclose that the company has not yet been registered by referring to it as company in formation (“*GmbH i.G.*”).

After registration of the company in the commercial register on all business letters the following information needs to be shown:

Name of company, corporate seat, competent court, registration number and the names of all managing directors (in certain cases additional information may be required).

E.g. “Gebr. Mohr GmbH, company seat in Taunusstein, local court of Wiesbaden, HRB 12345, managing director: Mr. John Smith”