

HOW TO RUN A GMBH IN GERMANY

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The appointment of one or more managing directors (*Geschäftsführer*) as legal representatives of a (private) limited liability company (*Gesellschaft mit beschränkter Haftung*, "GmbH") governed by German law and their scope of power of authorisation is a key part of the formation of a GmbH. Before setting up your business in Germany, one of the most important questions to answer is who will be appointed as a managing director and what tasks are required to run the business. This article provides a brief overview of the key responsibilities of a managing director of a GmbH under German law and answers a few frequently asked questions on the topic. For further information on how to set up a GmbH in Germany, please refer to our article [How to set up a GmbH in Germany \(fast\)](#).

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LEGAL REQUIREMENTS

There are no requirements for any academic qualifications, skills or professional experience to become a managing director (*Geschäftsführer*) or perform their duties under German law. Any natural person with full legal capacity (i.e., generally aged 18+) may be a managing director of a GmbH, even one of its shareholders. In addition, newly appointed managing directors must certify that there are no circumstances conflicting with their appointment as a managing director under German law, and, in particular, that they have no prior conviction for fraudulent insolvency. The articles of association may, however, require additional qualifying criteria to appoint a managing director.

CEO, COO AND CFO FUNCTIONS

In many jurisdictions, the non-executive *board of directors* is the highest administrative body of a company, supervising executive management, deciding key issues and providing firmwide business guidelines. Under German corporate law, however, a GmbH generally follows a one-tier system where it is the managing director (*Geschäftsführer*) who manages the GmbH, runs its day-to-day business, whilst having significantly fewer supervisory functions. Although the managing director follows the instructions of the shareholders, they manage all functions of the company, including the CEO (Chief Executive Officer), COO (Chief Operations Officer) and CFO (Chief Financial Officer) of the GmbH.

REPRESENTATION OF THE COMPANY

The managing director represents the GmbH in all legal actions and matters concerning the company. If several managing directors are appointed, they generally represent and manage the company jointly, unless one of them is granted sole power of authorisation by shareholder agreement and pursuant to the company's articles of association. One of them may also be authorised to represent the company jointly with an authorised signatory (*Prokurist*).

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DAY-TO-DAY COMPANY OPERATIONS

A managing director is responsible for the general administration and the day-to-day-business of the GmbH to promote the purpose of the company, *inter alia*:

- negotiating and entering into contracts, including employment and lease agreements;
- reporting to the shareholders and supervisory board (if any);
- preparing, convening and attending shareholder meetings; and
- applications for registration with the commercial register (*Handelsregister*).

FINANCIAL AFFAIRS

A GmbH's managing director must always exercise the diligence expected of a prudent business person (*Sorgfalt eines ordentlichen Geschäftsmannes*) regarding company affairs and be aware of its financial situation. Amongst other requirements, the managing director of a GmbH is obliged to ensure that the company's accounts are properly kept. The acknowledgement of annual financial statements and distribution of profits is, however, reserved for shareholders. If annual financial statements are to be audited, the managing directors must submit them to shareholders together with the management report and auditor's report immediately after receipt of the latter. If the company has a supervisory board, its report on the results of the audit must also be submitted to shareholders without delay. Further, if the company becomes insolvent (*zahlungsunfähig*) or over-indebted (*überschuldet*), the managing director must file for insolvency without undue delay, but no later than three weeks after the company becomes insolvent or six weeks after it becomes over-indebted.

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LIMITATIONS OF UNLIMITED POWER OF AUTHORISATION

The authority of a managing director to represent their company *vis-à-vis* third parties is generally unlimited. Their obligations and rights may be restricted by the company's articles of association, management rules of procedure (*Geschäftsordnung für die Geschäftsführung*), internal group policies, service agreement with the managing director (if any), decisions or instructions of the shareholders or supervisory board (*Aufsichtsrat*) (in cases where a supervisory board has been appointed). It is common practice that articles of association and/or company management rules of procedure require approval by shareholders and/or supervisory board (so-called reserved matters). For example, a GmbH's articles of association may stipulate that managing directors may not conclude agreements with a value exceeding €100,000 per year on behalf of the company, unless shareholders have approved said transaction. Any limitations of the managing directors' power of authorisation are, however, generally only effective internally.

CHANGES TO MANAGEMENT

Any change of a managing director of a GmbH is made by shareholder resolution. Depending on the effective date of the change, the newly appointed or dismissed managing director will need to register the change with the commercial register. The application for registration must be notarially certified (*notariell beglaubigt*) and submitted electronically by the acting notary to the competent commercial register. The registration of the dismissal or appointment of a managing director of a GmbH is not a prerequisite for the legal effectiveness of said change.

FREQUENTLY ASKED QUESTIONS

Q: Can a non-German national be appointed a managing director of a GmbH?

A: German corporate law does not impose any requirements on the nationality of the managing director of a GmbH. It is commonly agreed that non-Germans can be appointed as managing directors even if they have their domicile (*Wohnsitz*) or habitual residence (*gewöhnlicher Aufenthaltsort*) outside of Germany. Further, it is generally accepted that German language skills are not required for appointment as managing director.

Q: Can a GmbH have more than one managing director with different competencies?

A: Where one or more managing directors are appointed, responsibilities can be divided up between them. However, any such division of responsibilities is not binding on third parties, who can rely on the unlimited power of representation and general responsibilities of managing directors under German law.

Q: Do GmbHs have supervisory boards (*Aufsichtsräte*)?

A: In general, having a supervisory board (*Aufsichtsrat*) is optional for a GmbH, unless its articles of association stipulate that one (as a mere internal body) must be appointed. However, in certain circumstances, setting up a supervisory board is mandatory under German law. For example, for a GmbH with 500+ employees pursuant to the German Third Participation Act (*Drittbeteiligungsgesetz*).

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