

German-Israeli Chamber of Industry & Commerce

FAQ: Forming a company in Germany

What formalities do founders from Israel have to fulfil in Germany?

1. Be at least 18 years of age
2. Possess a valid photo identity card or passport
3. Obtain powers of attorney for the spouses of all founders of the company
4. Trade approval (if the industry of the business venture requires special approvals)
5. Assessment of the viability of the business idea (if applicable)

What is an apostille?

The “apostille” is a special form of notarial certification that is part of the international authentication process. The stamp of the apostille authority guarantees the authenticity of documents across national borders. It was created by the *Hague Convention on the Exemption from Legalization of Foreign Public Documents* during the Hague Conference on Private International Law (HCCH) and is only valid in countries that are part of it. This is why the authentication procedure is also called the “Hague Apostille”.

The application for the apostille must be made by the holder of the document in the document’s country of issue. Each member state of the Hague Convention determines which authorities are responsible for issuing the apostille. In Israel, the Ministry of Foreign Affairs or the Ministry of Justice is responsible for issuing apostilles.

Which documents require apostillation?

If shareholders are absent at the notary's appointment, they need an authorized representative to take their place. Authorization is granted via a power of attorney and entitles the representative to establish the company and appoint the managing director.

In order to guarantee the authenticity of the power of attorney, the document must be translated into German by an interpreter. Both documents must be signed by the principal (grantor) and the interpreter, and then certified by a notary public. It must then be apostilled in the shareholder's home country.

Do foreign founders need an entrance or residence permit?

As an EU citizen, you may stay in Germany for up to three months if you carry a valid identity card or passport. If you want to settle permanently in Germany, you must register with the responsible *Einwohnermeldeamt* (residents' registration office usually a *Bürgeramt*). Every EU citizen enjoys freedom of movement throughout the EU. Self-employed persons can set up their business in Germany without any problems.

Do the shareholders have to enter the country to set up the company?

No, the shareholders do not have to enter Germany. However, German authorities require a translated version of the power of attorney that has been apostilled in the shareholder's home country.

Does the managing director have to enter the country to set up the company?

No, but the absence drastically complicates the formation process. In order to set up a corporation, the notary needs the signature of the managing director for various documents such as registration in the commercial register (*Handelsregister*). Such documents cannot be signed by a proxy. If the managing director does not appear at the notary for the appointment, the documents must be sent abroad, certified by a notary and then apostilled. German authorities can only enter the company in the commercial register once the certified documents have been returned. Therefore, the absence of the managing director usually delays the formation process by several weeks. There are also considerable additional costs for shipping, translations, double notary fees and apostille fees.

Attending the notary appointment is therefore advantageous for several reasons and strongly recommended.

Do founders need an interpreter for the notary appointment?

Yes, if the German language skills of the shareholders and managing directors are not sufficient, an interpreter is compulsory. The commissioned notary decides whether an official interpreter must be engaged. In any case, the requirements should be discussed exactly with the notary's office before the appointment.

Do founders have to travel to Germany to open a business account?

Many traditional banks require a face-to-face meeting with at least the managing director, while others require all shareholders to be in attendance.

Alternatively, some banks now offer the option of opening business accounts from other EU countries digitally. For Israeli founders, opening an account online with a passport instead of an in-person bank appointment is possible at these digital banks.

Why do married founders need the authorization of their spouse?

The laws in Israel may differ from German law regarding the separation of property. For this reason, a number of factors must be taken into account when setting up a company.

If you live in Israel as a married couple, you have to check under which matrimonial property law the marriage exists. If, according to the law, a community of property regime exists, the assets which the spouse earns after the marriage automatically become the joint property of the married couple. Thus, there is a common right of administration and disposal and you need the consent of your spouse if you want to become a partner in a company.

What does a forming a company mean for matrimonial assets?

Under a community property regime, the spouse must become a partner in the new company, unless otherwise contractually agreed.

In terms of legal subtleties, advice from a specialist lawyer is generally recommended.

How can Israeli founders bypass the requirements of the property regime?

There are two possibilities to change the provisions of the matrimonial property regime:

1. The spouses can (retroactively) draw up a marriage contract (basically a prenuptial agreement) which contains a special provision specifically for the assets of the new company.

2. With the help of a marriage contract, the matrimonial property regime can be fundamentally changed into an Accrual System or Deferred Community Property regime (*Zugewinnngemeinschaft* in German). Within this type of regime, assets are divided and, if necessary, balanced only in the event of divorce. Thus, the assets of the respective spouses remain separate during the marriage, which subsequently removes the need for both spouses to become partners in the company.

Where must the registered office of the company be?

The official registered office must be in Germany. This office is entered in the *Handelsregister* (commercial register) and becomes open to public inspection.

The registered office decides which authorities are responsible for your company, i.e. *Registergericht* (register court), *Prozessgericht* (competent trial court), *Gewerbeamt* (trade office) and much more. Additional offices (i.e. administrative offices) do not have to be located in Germany.

Even if the administrative office (and principal place of business) of your company is not located in Germany, the German business address must always be used for public correspondence. The mail arriving there must be accepted and processed by an authorised representative.