



## Doing business in Germany

Info sheet regarding legal requirements for business start-ups or for registering a business in Germany

### 1. Who engages in a self-employed activity?

In accordance with Section 1 German Trade Regulation Act it is permitted in principle to engage in a business unless other regulations are violated against (e. g. German immigration laws).

Self-employed persons can be individuals or legal entities. In principle, a business activity is carried out in one's own name and on one's own account with the aim of deriving earnings from that activity. The self-employed activity has to be legal, regular, continued and sustained.

If the requirement of being self-employed only applies partially, the case can be that of fake self-employment. In that case a business registration is not possible.

### 2. What are the legal requirements for foreigners to set up a business in Germany?

Under the German immigration laws there are enormous differences with respect to the exercise of any self-employed activity which primarily stem from the foreigner's nationality and his or her legal status.

The following categories of foreigners have no problem:

- EU-nationals and their spouses;
- holders of a residence permit under the former or new laws which do not explicitly prohibit the setting up of a business operation; through a change of the legal requirements (upon application with the Aliens Registration Office) a business operation may be granted;
- foreigners from certain countries of origin are governed by international treaties which facilitate the access to a self-employed activity under less strict conditions. This applies to the following countries: Dominican Republic; Indonesia; Japan; the Philippines; Sri Lanka, Turkey and the United States of America.

Foreigners who do not fall under one of the aforementioned categories and who wish to set up a business operation, have to apply for a residence permit (for further details see 3.).

### 3. Who can obtain a residence permit to exercise a self-employed activity?

A foreigner may be granted a residence permit for the purpose of self-employment, if

1. an economic interest or a regional need applies,
2. the activity is expected to have positive effects on the economy and
3. personal capital on the part of the foreigner or a loan undertaking is available to realise the business idea.

The Aliens Registration Office may draw on the following criteria to examine each case on its own merits:

- viability of the business idea forming the basis of the application;
- the foreigner's entrepreneurial experience;
- the level of capital investment;
- the effects on the employment and training situation;
- the contribution towards innovation and research.

In order to assess the examination criteria, expert opinions are obtained from competent and professional bodies.

#### **4. What proof must applicants furnish?**

To process the application, if possible, the following documents ought to be submitted:

- detailed description of self-employed activity;
- proof of financing;
- proof of entrepreneurial experience (proof of professional training);
- number of anticipated employees;
- prognosis of intended development regarding self-employed activity;
- shareholders agreement, if applicable;
- business registration, if applicable;
- applicants aged over 45 need to provide, in addition, proof of an adequate retirement plan.

#### **5. What additional requirements must applicants meet in order to be granted a residence permit to exercise a self-employed activity?**

In addition to the special legal requirements, business people exercising a self-employed activity must fulfill additional requirements (in accordance with Section 5 German Immigration Act). They are:

- Secure livelihood including an adequate health insurance coverage (travel health insurance is not sufficient);
- adequate living space;
- no grounds for expulsion apply;
- adherence to the visa application procedure.

The residence permit is limited and restricted to the specified business activity. The limitation is usually a minimum of one year and a maximum of three years. The administrative fee for the issuance of a residence permit is 100 Euro, for more than one year 110 Euro.

Before the initial issuance of the residence permit, it is verified whether or not the applicant is legally entitled or obliged to attend a so-called integration course. If the applicant already has an adequate knowledge of the German language, he or she is entitled to attend the course of up to 600 lessons but he or she is not obliged to do so. If the applicant does not have sufficient German skills, he or she must attend an integration course. With the issuance of the residence permit, the foreigner is handed a certificate to register for the integration course. Integration courses are aimed at providing participants with adequate language proficiency. The orientation course is intended to give immigrants an understanding of the system of government and state administration in Germany, in particular the significance of the free and democratic order, the party system, Germany's federalist structure, the welfare system, equal rights, tolerance and religious freedom. The aim is to help immigrants find their way more easily within the new society. The integration courses are state-subsidized. Participants' contribution is only 1 Euro per lesson.

After an elapse of three years a discretionary extension as a settlement permit ("can") is permissible provided that the intended economic activity has been realized successfully and that the livelihood has been secured on that basis. It is also permissible to extend the residence permit.

#### **6. Regulations governing business people who wish to enter Germany with their families or who wish for them to join them at a later date**

A residence permit can be issued for spouses and minor children under the family reunion provisions if the livelihood is secure and if there is adequate living space. Children who have already completed the age of 16 should either have a command of the German language or if it appears on the basis of the child's education and way of life to date that he or she will be able to integrate into the way of life which prevails in the Federal Republic of Germany.