

Formal Requirements for German GmbH Documentation (wholly-owned subsidiary of foreign parent company)

1. Register Applications

These are addressed to the competent “Amtsgericht” running the companies register. They can thus be identified by the address field containing “Amtsgericht” – “Registergericht”.

Such applications need to be signed by the (designated) “Geschäftsführer” (managing directors) of the German GmbH, notarised and apostilled. For the notarisation process, see our separate information “Notarisation of Documents in the USA”. The original documentation has to be mailed to the German notary.

2. Shareholders’ Resolutions

Shareholders’ Resolutions often concern changes in the companies’ management. Their heading usually is “Shareholders’ Resolution” or “Shareholders’ Meeting” (in German “Gesellschafterbeschluss” or “Gesellschafterversammlung”).

These resolutions need to be signed by an authorised representative of the parent company. No notarisation or apostille is required, copies or scans are sufficient.

However, the Amtsgericht might require proof for the power of representation of the signatory for the parent company, in particular if that signatory is not already known to the Amtsgericht from previous transactions. To avoid delays in the registration process, such proof can be filed in all cases as a matter of precaution. For details see below section 4.

3. Powers of Attorney

As a general rule, powers of attorney do not require a particular form, e.g. a signed copy / fax / scan is sufficient.

There are two major exceptions to this rule:

- a. The power of attorney comprises the formation of the company.
- b. The power of attorney comprises register applications.

In these scenarios, notarised and apostilled original documents are required, cf. section 1 above.

If a foreign company will be represented, in particular the parent company, a proof of representation is necessary, cf. section 4 below.

4. Proof of representation

Ideally, the power of representation of a given signatory for the parent company can be proven by an excerpt from a companies' register. Where this is not the case (in particular in Common Law jurisdictions as England/Wales and the USA), substitutes have to be used:

In the City of London, Scrivener Notaries issue certificates of representation for English and Welsh companies.

For other, in particular US companies, the only possible proof is a certificate of the Company Secretary. The Secretary should be a different person from the representative in question ("no self-certification") and confirm the powers of the latter as generally as possible, i.e. not limited to certain transactions or in any other way (e.g. day-to-day administration.) The Secretary's Certificate should contain a German translation to avoid later additional translations. It has to be notarised and apostilled, cf. section 1 above, and sent to the German notary as paper original.

5. Instructions for designated managing directors ("Geschäftsführer")

These are letters addressed to the designated managing directors individually by the German notary and can easily be identified thus (starting "Dear Mr / Ms ..."). They are required by German law to ensure proper information of the directors before they sign a register application (cf. section 1 above) containing certain representations about themselves.

These letters have to be countersigned by the respective director at the end and returned to the German notary (scan or fax suffices). No notarisation or apostille is required.

6. List of Shareholders (“Gesellschafterliste” or “Liste der Gesellschafter”)

These lists are normally required for the formation of the GmbH only. They contain a table with all shareholders and their numbered shares and have to be signed by all managing directors (“Geschäftsführer”) of the German GmbH.

No notarisation or apostille is required. Return by scan or fax is sufficient.

10 July 2017 – Notare Schemmann Ludewig