

## **IHK- Leaflet:** Self-employed activity of non-EU aliens – Issue date: 31<sup>st</sup> December 2019

Aliens from a third country who wish to work self-employed in Germany need a residence permit to exercise a self-employed professional activity in accordance with § 21 of the Residence Act (AufenthG). Generally speaking, the Immigration Authority deals with all questions and take any decisions in relation with residence law!

Applicants living abroad are requested to address the local German diplomatic mission that is also the first point of contact for the application of a permit. Applicants living in Germany are requested to address the competent Immigration Authority that is in charge of applicant's domestic residence.

Self-employed persons within the meaning mentioned above are usually sole proprietors of a business and are either commercially active or work freelance, general partners in limited partnerships [KG], every partner in a commercial partnership [OHG] or in a non-trading partnership (GbR). The authorized representatives of legal entities such as managing directors of limited liability companies [GmbH] or board members in stock corporations [AG] as a matter of fact don't exercise a self-employed activity; however, based on their functions they are treated as if they were self-employed. Based on their functions also holders of a special statutory authority [Prokuristen] - regardless of the form of the business organization - and executives with a general power of attorney - are treated as if they were self-employed and not like a comparable dependent executive.

On the other hand, a self-employed activity shall already be assumed in the event that a shareholding in a company or a minority shareholding in a GmbH (limited liability company) have been acquired. If, however, the alien's share in the partnership/company would have a decisive influence on the passing or adoption of a resolution, then the Immigration Law qualifies aliens' professional activities as "comparable to self-employment". In this respect and in accordance with Immigration Law a majority shareholder must be treated as self-employed even without being employed as a managing director himself.

A residence permit to exercise a self-employed activity may be awarded in accordance with Section 21 para. 1 Immigration Act, if:-

- there is a commercial interest or a regional desire;
- the professional activity is expected to have a positive impact on the economy and
- the financing of the implementation is secured by equity or by a loan commitment.

The criteria for the assessment may be derived from Section 21 para. 1 sentence 2 AufenthG (Residence Act). The assessment of your documents (business plan plus any supplementary documents as indicated in the check list) aims to explore: -

- if your business idea is economically viable - is your business profitable?,
- which experiences did you encounter as an entrepreneur?,
- what is the amount of the capital spending?,
- which are the potential effects on employment and on apprenticeships within the region?  
and
- what is your businesses' potential contribution to innovation and research?

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Please see our checklist that has been prepared in addition to this leaflet.

A business plan cannot only help you to take the necessary steps to founding a company; it also offers oversight and reflection of the requirements to be met for the founding. In most cases, a business plan is also required when financial resources are needed, e.g. a loan from a bank.

On the day of the examinations of the scheduled activity the expert statutory bodies, the competent trade licensing offices, the professional associations under public law and the competent authorities in charge of the professional licensing of the Immigration Authority shall be asked to participate.

The competent Immigration Authority regularly involves IHK Darmstadt in the application procedure; in its expert opinion prepared for the Immigration Authority IHK will determine if the preconditions mentioned above were met or not. As this is an internal procedure of IHK and the Immigration Authority preliminary examinations cannot, however, be carried out upon aliens' request. It is in the sole discretion of the Immigration Authority to take the final decision.

Aliens aging 45 years or more may only be granted a residence permit if they dispose of a reasonable old age pension.

In order to prepare its expert opinion IHK Darmstadt requires comprehensive information that applicant is obliged **to submit to the Immigration Authority** in German upon aliens' application. Inter alia, the following information is requested: -

- a meaningful and comprehensive business plan,
- a financial planning as an annex to the business plan consisting of a private financing requirements plan, a capital and financing plan, a sales and profitability forecast and a corporate liquidity forecast,
- to provide the balance sheets respectively the economic evaluation [BWA] of the preceding three fiscal years upon takeover of an existing enterprise,
- CV plus any attachments,
- to furnish proof of the equity as well as of your language skills in German respectively in English,
- to furnish proof that all required authorizations in accordance with commercial law have been obtained,
- to furnish proof of the registration of the trade respectively submit the excerpt from the commercial register if the company has been founded already.

Please consult the attached checklist for any further details. Please feel free to make use of the online platform of IHK Darmstadt for the set-up of your business plan and your financial plan. It is free of charge. (<https://www.gruendungswerkstatt-hessen.de>)

### **Intergovernmental Reciprocal Arrangement (Section 21 para. 2 AufenthG) [Residence Act]**

In accordance with Sec. 21 para. 2 AufenthG a residence permit may be granted for a self-employed activity if privileges in accordance with international law are awarded under a reciprocal arrangement. As a matter of fact the verification of such international aspects are within the exclusive competence of the competent Immigration Authority and not within that of the IHK.

### **Foreign academics**

An alien who has successfully graduated from a state university or from a state-recognized university or from a comparable institution within the Federal Republic of Germany or who as a researcher or a scientist has obtained a residence permit in accordance with Section 18 or Section 20 AufenthG may be awarded a residence permit to carry out a self-employed activity deviating from the legal regulation set out in para. 1. It shall be pointed out that there must be a link between the intended self-employed activity and the acquired knowledge from university or from applicant's activity as a researcher or scientist.

This checklist is a service of IHK Darmstadt and has been set-up with utmost care. Please note, that it may thus only provide some hints and is by no means complete. IHK Darmstadt does not assume any liability for substantive accuracy.