

Visa and residence permit for the founding of the company - investment in Germany in accordance with § 21 Residence Act

From the Immigration law

Nationals from non-EU countries need a visa to enter Germany. If the stay in Germany exceeds 90 days 90 days per half year or if dependent or independent employment is to be commenced, a residence permit or branch permit is required.

Entrepreneurs from non-EU countries, who manage the company in Germany as self-employed persons, have the possibility to apply residence permit for self-management in Germany according to the German Commercial Code. § 21 Residence Act.

Paragraph 21 of the Residence Act (AufenthG) is a discretionary standard which applies equally to foreigners who already operate a company abroad and want to move to Germany, as well as to start-ups who wish to enter Germany for this purpose or who already have a residence permit in Germany. Not only are company founders, individual entrepreneurs and freelancers, but also managing directors and legal representatives of partnerships and corporations, as long as they have corporate responsibility. This is in principle the case with members of a partnership (for example, OHG, KG, GbR). Legal persons (AG, Cooperative, Limited Partnership on shares) are represented by the Management Board, a GmbH is represented by the Managing Director. An enterprise participation of less than 50% only fulfills the prerequisite for the exercise of corporate responsibility if no co-owner holds a higher stake than the person concerned in the company. If this is not the case, the grant of an AE according to § 18 AufenthG combined with § 3 BeschV (Employment Regulations) to be examined. It is not sufficient if a shareholder of a legal person who is not a representative or managing director is required to obtain a residence permit pursuant to § 21. The person concerned must act independently. He is not a mere captain. At the very least, the managing director of the company has to intend and this intention has been proven - for example by a notarial signed preliminary contract.

Important:

The mere acquisition or possession of real estate does not lead to a right of residence. A residence permit as a self-employed acc. Section 21 of the Residence Act can only be obtained by a person who is an independent activity, e.g. As managing director of his own company. The managing director of a real estate company can also fulfill the statutory requirements of section 21 of the Residence Act. On the other hand, the pure possession or acquisition of real estate does not constitute an activity of self-employment.

The residence permit for self-employed persons is limited, usually up to three years. If the investment project has been successful (and success and livelihood continue to be ensured), an indefinite residence permit can be applied for after three years.

For the development of your entrepreneurial concept you can rely on **Mr. Jaberi's** many years of experience. The Jaberi firm will create a tailor-made concept based on your business idea and advise you throughout the process. Give us a call.