

So you decided to join the class of the innovative – and temporarily – poor to become an entrepreneur? Jump the legal hurdles to kickstart? Maybe you are already right in the middle of German Paragraphendschungel (legal jungle) for starting a business in Germany?

## Starting a business in Germany after secretly having started one

Maybe you are already running a civil law partnership (GbR) without knowing it.

Since the Gesellschaft bürgerlichen Rechts (GbR) does not require a written contract, you and your partners may already have founded one by preparing the launch of your startup. The GbR is a type of company most people have founded without being aware of it: it is basically a joint venture with division of labor for a common goal. So if you car pool with your colleagues to work regularly and you split costs for gas, you founded a GbR. All of you contributed – even monetarily – to a common goal, getting to work and back for a substantial amount of time. Also, preparing vacations together or even doing your groceries with your roommates, makes you an established founder.

Likewise, before starting a business in Germany like a GmbH, lots of founders already enter business, buy material, develop a software and negotiate contracts for distribution or funding. This can all work out fine but there are two major risks that you take:

### 1. Liability

The GbR is a partnership which means it consists of people and to protect debtors these people have to be liable. In a GbR all partners are 100% liable for any claim unless individually agreed otherwise. This means, if your partner enters a contract for your “future” startup, you have to jump in with all of your money and more.

— UPDATE— The [Higher Court of Frankfurt](#) has recently found a GbR partner liable to pay damages for a wrongful advertisement that he himself had no part in drafting or announcing —UPDATE —

### 2. Tax on IP contributions

Careful, now it’s getting complicated: let’s say your GbR is developing a software over the course of a year and you file a patent to prevent theft. The software is a

breakthrough. Now you found a GmbH and contribute the patent as your Intellectual Property asset so you can use it. A year later your business skyrockets and an investor is willing to pay you 1 Mio. € for 10%. That's where the tax man eyes flash with dollar signs. Based on your sole real asset, the software patent, and the investor's offer they estimate your business' value at 10 Mio. € (10 x 1 Mio. €). They turn back time to when you founded the GmbH a year ago and linerally deduct your software's value to around 5 Mio. €. Since you were so generous as to contribute this worthy asset for free, the tax authorities regard it as a gift which has to be taxed at 20% which is why you owe 1 Mio. €

## How to we keep your 1 Mio. €?

1. get out of the partnership by starting a business in Germany: a limited liability company such as an GmbH or UG and that as soon as possible. The liability is limited to the nominal capital and your private property is safe from the debtors. Founding a company does not have to be complicated or expensive, as we will see later on.
2. as long as you are in the GbR-stage, do not register IP, publish it or monetize it. When the tax man comes knocking your door later on, you truthfully say that at the time of founding a GmbH, the IP had not been a malfunctioning beta version and not market-ready yet

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## Any Questions?

Then leave as a quick message under [hi@streiff-law.de](mailto:hi@streiff-law.de) or call as under +49 30 8597 6915

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