

Mehrsprachige Info

Pursuit of a Trade by Third-Country Citizens, Asylum Seekers and Stateless Persons in Austria - Aspects under Trade Law

Gewerbeausübung durch Drittstaatsangehörige, Asylanten und Staatenlose in Österreich - Gewerberechtliche Aspekte

Third-country citizens are citizens of states that belong neither to the European Union (EU) nor the European Economic Area (EEA) nor are citizens of Switzerland.

Requirements for the obtaining of a business licence in Austria by natural entities:

- Foreign natural entities may pursue a trade in the same way as Austrian citizens when this is established in **treaties**(reciprocal treatment) to this effect.

Such treaties are the Treaty establishing the European Community, the EEA Agreement between the European Community and its member states and Switzerland on the freedom of movement as well as the Europe Agreement with the Republic of Bosnia-Herzegovina in relation to the pursuit of a trade and the Friendship, Commerce and Consular Treaty between the Republic of Austria and the United States of America.

Attention: The citizenship of an EEA signatory state and a place of residence in an EEA signatory state are required for the following trades:

Temporary employment agency, employment service, chimney sweep and in the arms trade.

The citizenship of the Swiss Confederation and a place of residence in the Swiss Confederation are required for the following trade:

Arms trade:

- **Citizens of third countries** with which no such treaty has been concluded, persons, who have been granted asylum and stateless persons may pursue a trade (self-employed and dependent) in the same way as Austrian citizens when they are allowed to reside in Austria in accordance with the provisions of the law on settlement and the law on residence.

The aforementioned provisions applicable to certain trades regarding the citizenship of an EEA signatory state must be complied with.

- Third-country citizens who are not legally residing in Austria (initial applicants) require a residence permit allowing the pursuit of a trade for the legal pursuit of a trade in Austria.

Under the law on settlement and the law on residence, the person registering a business must prove that he is entitled to pursue a trade prior to being issued a residence permit. The certificate issued by the trade authority stating that all requirements for the pursuit of a trade are given with the exception of the residence permit is considered such a proof in this context. The trade authorities are obligated to issue such certificates.

- Family members of citizens of an EU member state or an EEA signatory state possessing the right of residence or the right of permanent residence in an EU member state or an EEA signatory state may pursue a trade in the same way as Austrian citizens, regardless of their citizenship. Family members can be:
 - Spouse or registered partner
 - the direct descendants of a citizen of an EU member state or an EEA signatory state as well as the spouse or registered partner who are under the age of 21 or are dependants of the spouse or partner.
 - the dependent direct relatives of a citizen of an EU member state or an EEA signatory state or his spouse or partner.

Requirements for a business licence in Austria for legal entities and other foreign legal entities:

Legal entities and other foreign legal entities who do not have their registered office or a branch in Austria may not pursue a trade unless stipulated otherwise in treaties.

Attention:

With regard to the cross-border rendering of services by companies and legal entities founded under the laws of an EEA signatory state that have their registered office in an EEA signatory state, or those founded under Swiss law that have their registered office in Switzerland, refer to the information leaflet "Rendering of services in Austria by entrepreneurs domiciled in an EU member state or EEA signatory state".

The pursuit of a trade by legal entities or other foreign legal entities does not require the founding of an Austrian company. The establishment of a branch in Austria to be registered in the Commercial Registry suffices.

The legal provisions of the foreign state in which the company has its registered office are authoritative for the lawful existence of the company.

Cross-border rendering of services by companies in Austria (by natural entities and other foreign legal entities) whose owners are not citizens of the EU, an EEA signatory state or Switzerland; or by companies or legal entities that have been founded under the law of an EEA signatory state or under Swiss law that have their registered office in an EEA signatory state or in Switzerland:

- The execution of commercial activities in Austria, which have been ordered, by service providers from member states of the WTO (World Trade Organization) Agreement:

The WTO Agreement constitutes the legal framework for the General Agreement on Trade in Services (GATS), which is based on the "most favourable" principle. The WTO Agreement has been implemented in Austria within the scope of the Austrian Trade Regulation Act (Gewerbeordnung).

Providers of services from the WTO member states may conduct commercial activities in Austria, which have been ordered, under the same conditions that Austrians are required to meet.

The Austrian schedule of commitments sets the extent to which providers of services can be active. According to the schedule of commitments, natural entities who want to provide services in Austria must be entities deployed by the legal entities, who

- may be deployed to Austria only temporarily — may take up residence only temporarily
- must be an employee or partner of the deploying legal entities for at least one year before entering Austria and must be
- executives (management position in the form of head of branches, monitoring of executive employees, hiring or firing of personnel)
- or else key persons (those having at their disposal extraordinary skills that are essential for the service, research institutions, technologies or management of the branch).

These tasks and functions refer principally to employment at a branch of a service provider.

Beside in-house deployed persons, representatives of service providers also have the right to enter Austria and be granted a limited residence permit of approximately 6 months in order to initiate the sales of services or conclude contracts on the sale of services. The rendering of the services themselves or immediate sales to the general public is not allowed.

- The performance of commercial activities in Austria, which have been ordered, by providers of services who **are not citizens of WTO member states:**

Foreign natural entities and other legal entities who are entitled to pursue a trade abroad, which, under Austrian law, is subject to the Austrian Trade Regulation Act, and who are citizens of a state that is not a member of the WTO Agreement, require the **equal legal footing** (by means of notification) by the state governor for the execution of commercial activities in Austria, which have been ordered. The equal footing must be granted if evidence is provided that the execution of the commercial activity is in the interest of the Austrian economy and is not adverse to other public interests.

An **economic interest** can be assumed when the service has a quality that is useful for the Austrian economy or, at a minimum, constitutes a local or regional enrichment.

Other public interests are predominantly those concerning the preservation of public peace, defence of the legal order, prevention of criminal acts or protection of health.

Among the group of states that are not members of the WTO, Bosnia and Montenegro are of special economic significance to Austria.

This information leaflet is a joint product of all Chambers of Commerce.

Note: Despite careful editing, no responsibility can be taken for the correctness of this information. Any liability of the Austrian Chambers of Commerce is excluded. The terms used for references to persons always apply to both genders!

Stand: 01.12.2015