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Revision of L.L.C. (GmbH) legislation

Please note that the stipulations on the L.L.C. (GmbH) form were modified on January 1, 2008. The amendments affect the following points.

- Founding and maintaining a GmbH with only 1 person is now permitted. Until now at least 2 people were required.
- Equity share capital, which is at least CHF 20,000, has to be fully paid in. Until now it was possible to pay in only 50%. In-kind payments are still permitted as is payment in cash.
- There is no cap on equity share capital. Formerly, this was fixed at a maximum of CHF 2 million
- Paying in the equity share capital in full means partners are no longer liable jointly and severally, which is a major advantage.
- The obligation to transfer equity shares can be fulfilled simply by putting this in writing as can the transfer itself. No public act of signing is required.
- The requirement in the articles of association that other partners have to approve equity share transfer can be set aside.
- Ownership of a number of equity shares per member is now permitted. Until now each member could only have one share.
- Liability for further contributions and payments is now permitted up to double the face value and can be determined individually for each equity share.
- The accounting regulations are new in analogy to legislation on shareholding as is the obligation to draw up an annual report and an auditors report.
- The executive director(s) do not necessarily have to be members. Management of the company can be assigned to third parties.
- The company has to have a representative domiciled in Switzerland. Under the new stipulations the representative may also be a manager or a director.
- Auditing: regular auditing is only required for large GmbHs. Limited auditing is sufficient for most GmbHs. The audit may be dispensed with provided all members agree.

Further information can be found on the website of the Federal Department for Justice and Police www.ejpd.admin.ch and under www.gruenden.ch

Abbreviations used on the following pages

CR = Commercial Register OCR = Ordinance on the Commercial Register CO = Swiss Code of Obligations CC = Swiss Civil Code
SVA Zurich = Social Insurance Institute of the Canton of Zurich

Legal structures page 1 of 7	Sole enterprise	General partnership	Limited partnership	Joint stock company (Am. corp., GB. plc.)	Private limited liability company (L.L.C.)
Legislative basis	Not separately regulated by the Swiss CO, for further details see below	CO 552-593	CO 594-619	CO 620-763	CO 772-827
Main use	Small firms, activities carried out by sole persons (e.g. artist)	Small, permanent businesses centering on specific individuals	Special cases, e.g. small businesses centering on the activity of individuals but involving external investors	Suitable for all types of commercial companies	Small businesses centering on individuals
Legal status	Sole property of the firm's owner	Partnership	Partnership	Legal entity, incorporated body	Legal entity, incorporated body
Acknowledgement of self-employed status by the compensation fund	Required	Required	Required	No	No
Composition of the company name general limitations: the legislation forbids misrepresentation and protects the public interest CO 944	Family name of the proprietor with or without given name CO 944, 945 Other suffixes: business activity, imaginary designations	Family name of at least one partner with a suffix indicating the corporate relationship of the partners, or the family names of all partners. May not contain any other name than that of the owner CO 947 I, II, IV Other suffixes: business activity, imaginary designations CO 944	Family name of at least one partner with unlimited liability (general partner) with a suffix indicating the corporate relationship. May not contain any other name than that of the partner with sole liability CO 947 III, IV Limited partner must not be named, otherwise liability becomes unlimited. CO 607 Other suffixes: business activity, imaginary designations CO 944	Freely chosen by the firm (personal names, activity, imaginary designations) The legal form must be included in the company's name CO 944, 950	Freely chosen by the firm (personal names, activity, imaginary designations) The legal form must be included in the company's name CO 944, 950
Requirements for formation	Self-employment, economic activity as a means of permanent gainful employment	Signing of articles of partnership CO 552, informal, i.e. a general partnership can be created without any written agreement. If no commercial activity is pursued the partnership becomes a legal entity only when it is registered in the CR. CO 553	Signing of articles of partnership CO 594, informal, i.e. a general partnership can be created without any written agreement. If no commercial activity is pursued the partnership becomes a legal entity only when it is registered in the CR. CO 595	Public act of signing when the company is founded, adoption of articles of incorporation/association, appointment of a board of directors and (provided such are not dispensed with pursuant to CO 727a II) the auditors. Entry in the CR CO 629–635 a, 640, 643	Public act of signing when the company is founded, adoption of articles of incorporation/association, appointment of a board of management and representatives and (provided such are not dispensed with pursuant to CO 727a II) the auditors. Registration in the CR CO 777-779

Legal structures page 2 of 7	Sole enterprise	General partnership	Limited partnership	Joint stock company (Am. corp., GB. plc.)	Private limited liability company (L.L.C.)
Registration in the CR	Obligatory for businesses pursuing commercial aims Optional if no commercial aims are pursued	Obligatory for businesses pursuing commercial aims CO 552 II	Obligatory for businesses pursuing commercial aims CO 594 II	Becomes a legal entity when registered in the CR CO 643	Becomes a legal entity when registered in the CR CO 779
Number of partners or members	One natural person is the sole proprietor	Two or more natural persons become partners OR 552	At least one natural person with unlimited liability (general partner) and at least one natural person, legal entity or corporation that is a limited liability partner (limited liability shareholder) CO 594 II	At least one shareholder Shareholders may be natural persons, legal entities or corporations. After formation less shareholders are permitted, but theoretically such a corporation could be subject to a petition for judicial dissolution CO 625	At least one shareholder. Shareholders may be natural persons, legal entities or corporations. CO 775
Capital required	No stipulations	No stipulations Amount and partners' share as per contract CO 557 and/or 531	No stipulations Amount and partners' share as per contract CO 598 and/or 557 Each general partner's share must be registered in the CR CO 596 II subsec. 2	Obligatory capital, the level is defined in the articles of association, divided into shares each with a nominal value of at least 1 cent Minimum: CHF 100,000 Minimum paid in: CHF 50,000 CO 621, 622 optional: Participating receipts ("nonvoting shares") CO 656 a ff.	Obligatory nominal capital, as defined in the articles of association, divided into equity shares each with a nominal value of at least 100 francs CO 774 Minimum: CHF 20'000 All equity shares must be fully paid up. CO 777c I
In-kind payments instead of cash	Permitted	Permitted CO 557 / 531	Permitted CO 598 and/or 557	Permitted, special procedure CO 628 / 634	Permitted, special procedure CO 777 II in connection with 628 and 634

Legal structures page 3 of 7	Sole enterprise	General partnership	Limited partnership	Joint stock company (Am. corp., GB. plc.)	Private limited liability company (L.L.C.)
Creation of reserves	Optional	Optional	Optional	Creation of obligatory general (CO 671 ff.), special (CO 659 a II, 671 a; OR 670, 671 b), and statutory reserves (CO 672, 673); creation of reserves if resolved by the AGM of shareholders (CO 674 II, III)	Creation of obligatory general and special reserves as resolved by the members meeting. CO 801 in connection with 671 ff.
Organization and executive organs	No executive organs trustees / auditors may be appointed	Partners auditor may be appointed	Partners auditor may be appointed	<ul style="list-style-type: none"> • Annual General Meeting • Board of directors (a minimum of one member) • Auditor, if not dispensed with pursuant to CO 727 a II CO 698 ff.	<ul style="list-style-type: none"> • General meeting of members • Management (with a minimum of one member) • Auditor, if not dispensed with pursuant to CO 727a II CO 809 ff.
Liability / further contributions subsidiary = supplementary to company capital if this is exhausted	Unlimited liability of the proprietor with personal assets	Primary liability to the level of company capital Subsidiary joint and several unlimited liability of each partner with personal assets CO 568	Primary liability to the level of company capital Subsidiary joint and several unlimited liability of each general partner with personal assets CO 604 Subsidiary joint and several limited liability of each limited partner (liability limited to level of partnership capital) OR 608	Liability limited exclusively to the company's assets Each stockholder is obliged to pay in his quota of the share capital (payment under subscription) CO 630	Liability limited exclusively to the company's assets. CO 794 Optional limited liability to make further contributions according to the articles of association. Further contributions linked to each equity share that must be paid up are determined in the articles of association and may not exceed twice the nominal value of the ordinary shares. Liability only for further contributions linked to own share in equity. CO 795

Legal structures page 4 of 7	Sole enterprise	General partnership	Limited partnership	Joint stock company (Am. corp., GB. plc.)	Private limited liability company (L.L.C.)
Liability / further contributions subsidiary = supplementary to company capital if this is exhausted	Unlimited liability of the proprietor with personal assets	Primary liability to the level of company capital Subsidiary joint and several unlimited liability of each partner with personal assets CO 568	Primary liability to the level of company capital Subsidiary joint and several unlimited liability of each general partner with personal assets CO 604 Subsidiary joint and several limited liability of each limited partner (liability limited to level of partnership capital) OR 608	Liability limited exclusively to the company's assets Each stockholder is obliged to pay in his quota of the share capital (payment under subscription) CO 630	Liability limited exclusively to the company's assets. CO 794 Optional limited liability to make further contributions according to the articles of association. Further contributions linked to each equity share that must be paid up are determined in the articles of association and may not exceed twice the nominal value of the ordinary shares. Liability only for further contributions linked to own share in equity. CO 795
Growth using external capital (increase in share capital to gain new investors) see commentary 4	Only by creating a corporate structure (see right of page)	Admission of new partners CO 569	Admission of new general or limited partners CO 612	Various forms of capital increase possible by modifying articles CO 650 ff.	Increase of equity share capital by modifying articles OR 781
Use of profits and bearing losses	The proprietor alone	As stipulated in the articles of partnership CO 559 f.	As stipulated in the articles of partnership CO 601	Right to a share of net earnings as on the balance sheet as stipulated by legislation and the articles CO 660	Entitlement to share of balance sheet profits according to legislation and articles of association CO 798, 801 in connection with 660
Compulsory accounting requirement	If the firm is obliged to be registered in the CR CO 957, OCR 52 FF. (c.f. the foregoing)	If the firm is obliged to be registered in the CR CO 957-964	If the firm is obliged to be registered in the CR CO 957-964	Yes OR 957-964	Yes OR 957-964
Taxes For further information, see www.gruenden.ch	Proprietor, for entire income and assets from the business and private sector	Each partner for share of income and assets derived from the partnership as well as for private income and assets	Each partner for share of income and assets derived from the partnership as well as for private income and assets	Company for profit and capital Shareholders for shares as assets and dividends as income	Company for profit and capital Members for equity (assets) and distribution of profits (income)

Legal structures page 5 of 7	Sole enterprise	General partnership	Limited partnership	Joint stock company (Am. corp., GB. plc.)	Private limited liability company (L.L.C.)
Consultation costs, formation, notary	CHF 500 to 2,000	CHF 2,000 to 5,000	CHF 2,500 to 5,000	From CHF 4,000	From CHF 4,000
Entry in CR	CHF 120 CHF 20 per office CHF 30 per authorized signatory Usually CHF 10 to 150 for official fees, copying and extracts	CHF 240 CHF 20 per office CHF 30 per authorized signatory Usually CHF 10 to 150 for official fees, copying and extracts	CHF 240 CHF 20 per office CHF 30 per authorized signatory Usually CHF 10 to 150 for official fees, copying and extracts	CHF 600 CHF 20 per office CHF 30 per authorized signatory Usually CHF 10 to 150 for official fees, copying and extracts	CHF 600 CHF 20 per office CHF 30 per authorized signatory Usually CHF 10 to 150 for official fees, copying and extracts
Management and representation	By the proprietor and individuals he may appoint	By each partner in his own right, unless otherwise determined in a partnership resolution At least one partner must be authorized as a representative. Other authorized signatories according to partnership resolution CO 563	By each general partner in his own right, unless otherwise determined in a partnership resolution At least one partner must be authorized as a representative. Other authorized signatories according to partnership resolution CO 599, 603 / 563	Management by the entire board of directors provided such has not been assigned to individual board members or third parties in the rules for management CO 716b Representation by each director unless assigned to individual board members or others in the articles of association, the rules for management or by board resolution CO 718 I, II At least one board member must be authorized as a representative CO 718 III	Responsibility for manage- ment shared mutually by all shareholders unless otherwise determined in the articles of association. CO 809 Each shareholder is entitled to represent the company. In deviation from this other stipulations may be made in the articles, however at least one executive direc- tor must be appointed to represent the company. CO 814 f.
Transfer of membership (exit, employee shares, etc.) See comment 3)	No membership, for sale of business in whole or in part, see comment 3)	With the approval of all partners CO 557, 542	With the approval of all partners CO 958, 557, 542	Freely disposable, provided no restrictions exist in either the legislation or the articles CO 685 ff.	Transfer of equity shares by means of written notice CO 785 Approval of the annual general meeting of share- holders (at least two-thirds of all votes and the abso- lute majority of the total share capital with voting rights) unless otherwise determined in the articles of association CO 786, 808b I para. 4

Legal structures page 6 of 7	Sole enterprise	General partnership	Limited partnership	Joint stock company (Am. corp., GB. plc.)	Private limited liability company (L.L.C.)
Nationality and residency Both a residence permit and a labour permit are required to work in Switzerland. see comment 1)	see comment 1)	see comment 1)	see comment 1)	see comment 1) The company has to be represented by one individual domiciled in Switzerland. OR 718 IV	see comment 1) The company has to be represented by one individual domiciled in Switzerland. CO 814 III

Comments:

- 1) Before taking up employment foreign nationals require both a work permit and a residence permit entitling them to pursue gainful employment: Citizens of EU* / EFTA Member States** require a valid residence permit (L or B EU / EFTA). Citizens of non EU / EFTA states are only granted initial work permits as an exception provided such are indispensable specialists or if special reasons can be given justifying the exception. Further information www.arbeitsbewilligungen.zh.ch or the Canton of Zurich's hotline for labour permits, phone +41 (0)43 259 49 49, or various cantonal offices to be found at www.bfm.admin.ch.
 - * EU Member States: Belgium, Denmark, Germany, Estonia, Finland, France, Britain (United Kingdom), Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Austria, Poland, Portugal, Sweden, Slovakia, Slovenia, Spain, Czech Republic, Hungary, Cyprus
 - ** EFTA Member States: Iceland, Liechtenstein, Norway, Switzerland
- 2) Only applies to citizens of EU /EFTA states that were members of the EU or EFTA when the Bilateral Agreements were signed. The rules will only apply to citizens of states that join the EU or EFTA after the Bilateral Agreements were signed if Switzerland concludes an international agreement to this effect.
- 3) Exit: Sale of the business through transfer of assets and liabilities is permitted for all corporate structures. The conditions of the law on mergers (CO 181 IV) regulate takeovers of the assets or the business of general partnerships, limited partnerships, partnerships limited by shares, joint stock companies, limited-liability companies, cooperatives, associations and sole enterprises registered in the commercial register. In all other cases see CO 181I, II and II (Continued liability of the vendor). For information on transfer of employment relationships c.f. CO 333 Employee participation: Alternatives to transferring company equity (e.g. shares) are bonus contracts and participation in profits among others.
- 4) In addition to the possibilities provided under corporate law for acquiring external investors there are various contractual arrangements possible covering the range from external capital to equity capital, e.g. convertible loans, loans with a conversion option or a success-related interest rate.

Legal structures page 7 of 7	Sole enterprise	General partnership	Limited partnership	Joint stock company (Am. corp., GB. plc.)	Private limited liability company (L.L.C.)
Dissolution	Cessation of business	Dissolution among other reasons because of the following <ul style="list-style-type: none"> • Accomplishment of purpose • Adjudication in bankruptcy • Bankruptcy of a partner • Death of a partner, provided no succession agreement has been made with heirs • By agreement • Expiry of the agreed partnership period • Withdrawal of a partner, if no agreement is made to continue the partnership • Court order CO 574 / OR 545 Liquidation by an authorized partner, if no other agreement is made CO 582–590	Dissolution among other reasons because of the following <ul style="list-style-type: none"> • Accomplishment of purpose • Adjudication in bankruptcy • Bankruptcy of a partner • Death of a fully liable partner, provided no succession agreement has been made with heirs • By agreement • Expiry of the agreed partnership period • Withdrawal of a partner, if no agreement is made to continue the partnership • Court order CO 619, 574, 545 Liquidation by an authorized partner, if no other agreement is made CO 619, 582–590	Dissolution for one of the following reasons <ul style="list-style-type: none"> • Articles of association • Public resolution of the AGM of shareholders • Adjudication in bankruptcy • Court order • Other instances permitted by the legislation CO 736 Liquidation by the board of directors, if no other persons are stipulated in the articles or in an AGM resolution	Dissolution for one of the following reasons <ul style="list-style-type: none"> • Articles of association • Public resolution by the company • Adjudication in bankruptcy • Court order • Other instances permitted by the legislation CO 821 Liquidation by the executive directors provided this task is not assigned to others in the articles or in a resolution at the members' general meeting CO 821a I and/or 739-747

Simple partnership and general partnership / Information for board members and executive directors Article by the MSM Group, Winterthur www.msmsgroup.ch

A simple partnership is a community based on law and a partnership under Swiss law. Art. 530 of the Swiss Code of Obligations (CO) define is as a contractual association of two or more individuals to attain a mutual goal by means of mutual powers and funds. According to Art. 530 para. 2 CO the simple partnership is defined conversely as the form of corporation that arises if the conditions are not met for any other form of corporation. Individuals who "carry on trade, manufacturing or any other business according to commercial principles under a mutual firm" (Art. 552 CO) become a general partnership. The simple partnership is not a legal entity and therefore has no legal capacity. The partners are primarily liable joint and severally for the corporation's debts. Be aware that in that moment when you cannot decide for any other legal form and engage in business mutually with others you become part of either a simple partnership or a general partnership. Both may be informal, that is they come into existence without a written contract simply through mere activity performed. e.g. by representation with a mutual name, letterhead or by submitting quotations and invoices in the name of the association.

It is incumbent on members of the board of a joint stock company (AG) or the executive director of a limited liability company (GmbH) to supervise and manage the corporation according to the legislation. Breach of this obligation can lead to the office bearers being held personally liable. Make sure you have regular access to the required information and compare events continuously with the business plan / budget and intervene quickly when something goes wrong. Special care should be taken to pay the OASP contributions regularly because a more stringent level of personal liability is applied in respect of such contributions. The obligations and responsibilities referred to may also be incumbent on so-called de facto organs meaning persons who are not formal members of the board or executive directors but who may substantially influence management of the business.