

# The German Limited Liability Company

An introduction to the Act on  
Limited Liability Companies with an English  
translation of the Act and samples of the  
relevant documentation

by

Dr. Joachim Rosengarten

Dr. Frank Burmeister

Dr. Martin Klein

beck-shop.de  
DIE FACHBUCHHANDLUNG

9<sup>th</sup> revised edition  
2020



# beck-shop.de

DIE FACHBUCHHANDLUNG

[www.beck.de](http://www.beck.de)

ISBN 978 3 406 74919 3

© 2020 Verlag C.H.Beck oHG  
Wilhelmstraße 9, 80801 München  
Druck: Kösel GmbH & Co. KG  
Am Buchweg 1, 87452 Altusried-Krugzell

Satz: Fotosatz Buck  
Zweikirchener Str. 7, 84036 Kumhausen  
Umschlaggestaltung: Druckerei C.H. Beck Nördlingen



[chbeck.de/nachhaltig](http://chbeck.de/nachhaltig)

Gedruckt auf säurefreiem, alterungsbeständigem Papier  
(hergestellt aus chlorfrei gebleichtem Zellstoff)

## Vorwort

Das Buch richtet sich vor allem an ausländische Juristen in Anwaltskanzleien, Unternehmen und Universitäten und soll ihnen das Verständnis der Rechtsform der GmbH und der für sie geltenden Rechtsgrundlagen erleichtern. Einer Einführung in das GmbH-Recht in englischer Sprache folgt in synoptischer Anordnung der Text des GmbH-Gesetzes mit englischer Übersetzung. Der dem Gesetzestext folgende umfangreiche Anhang soll die praktische Anschauung vertiefen. Er enthält, ebenfalls synoptisch angeordnet, in deutsch und englisch Muster eines Gesellschaftsvertrages und der sonstigen Gründungsdokumente einer GmbH sowie die Gliederung der Bilanz und der Gewinn- und Verlustrechnung einer GmbH und einen Auszug aus dem Handelsregister.

Wir freuen uns über Anregungen und Kritik von den Benutzern dieses Werkes.

Frankfurt am Main, Januar 2020

*Joachim Rosengarten  
Frank Burmeister  
Martin Klein*

  
**beck-shop.de**  
DIE FACHBUCHHANDLUNG

## Foreword

The book is directed mainly to foreign lawyers in law firms, companies and universities with the aim of facilitating their understanding of the legal form of the limited liability company (*GmbH*) and the legal provisions governing it. An English introduction to the law on limited liability companies is followed, synoptically arranged, by the Act on Limited Liability Companies (GmbH-Act) and its English translation. The Appendices following the text of the GmbH-Act are meant to give an impression of the practical implications involved. They contain, again synoptically arranged in German and English, samples of the articles of association and other formation documents of a GmbH, the classification of the balance sheet and profit and loss statement of the GmbH and an extract from the commercial register.

We look forwarding to receiving suggestions and critical comments from the users of this book.

Frankfurt am Main, January 2020

*Joachim Rosengarten*

*Frank Burmeister*

*Martin Klein*



**beck-shop.de**  
DIE FACHBUCHHANDLUNG

## Autoren

**Dr. Joachim Rosengarten**, Rechtsanwalt, hat an den Universitäten Hamburg und Lausanne (Schweiz) sowie an der University of California in Berkeley, School of Law (LL.M.) Jura studiert. Er ist Partner im Frankfurter Büro von HENGELER MUELLER und hat sich auf Unternehmenskäufe und Gesellschaftsrecht spezialisiert. Er ist als Rechtsanwalt in Frankfurt am Main zugelassen.

**Dr. Frank Burmeister**, Rechtsanwalt und Notar, hat an der Universität Hamburg Jura studiert und ein Jahr in London bei einer führenden britischen Anwaltskanzlei gearbeitet. Er ist Partner im Frankfurter Büro von HENGELER MUELLER und hat sich auf Unternehmenskäufe und Gesellschaftsrecht spezialisiert. Er ist als Rechtsanwalt in Frankfurt am Main und als deutscher Notar zugelassen.

**Dr. Martin Klein**, Rechtsanwalt, hat an den Universitäten Bochum und Nordkirchen Jura studiert und ein Jahr in New York bei einer führenden amerikanischen Anwaltskanzlei gearbeitet. Er ist Steuerberater und Partner im Frankfurter Büro von HENGELER MUELLER, spezialisiert auf Steuer- und Gesellschaftsrecht. Er ist als Rechtsanwalt in Frankfurt am Main zugelassen.

**HENGELER MUELLER** ist eine der führenden Wirtschaftskanzleien in Deutschland. Sie bietet umfassende Beratung in einem breiten Spektrum des Wirtschaftsrechts. Die Dienstleistungen der Kanzlei konzentrieren sich traditionell auf Unternehmenskäufe, Gesellschaftsrecht, Private Equity sowie Bank-, Finanz- und Kapitalmarktrecht. HENGELER MUELLER verfügt jedoch auch über eine starke Praxis in diversen Spezialbereichen, insbesondere Restrukturierung, Wettbewerb, TMT, Steuern, geistiges Eigentum, Arbeitsrecht und Verwaltungsrecht sowie Rechtsstreitigkeiten und Schiedsverfahren. HENGELER MUELLER hat vier Büros in Deutschland: Berlin, Düsseldorf, Frankfurt am Main und München. Die Auslandsbüros des Unternehmens befinden sich in Brüssel und London.

## Authors

**Dr. Joachim Rosengarten**, *Rechtsanwalt*, has studied law at the Universities of Hamburg and Lausanne (Switzerland) as well as at the University of California at Berkeley, School of Law (LL.M.). He is a partner at the Frankfurt Office of HENGELER MUELLER and has specialized in mergers and acquisitions and corporate law. He is admitted to the Frankfurt Bar.

**Dr. Frank Burmeister**, *Rechtsanwalt und Notar*, has studied law at the University of Hamburg and spent one year in London working with a leading UK law firm. He is a partner at the Frankfurt Office of HENGELER MUELLER and has specialized in mergers and acquisitions and corporate law. He is admitted to the Frankfurt Bar and as a German notary.

**Dr. Martin Klein**, *Rechtsanwalt*, has studied law at the Universities of Bochum and Nordkirchen and spent one year in New York working with a leading US law firm. He is a certified tax consultant (*Steuerberater*) and partner in the Frankfurt Office of HENGELER MUELLER, specializing in tax and corporate law. He is admitted to the Frankfurt Bar.

**HENGELER MUELLER** is one of the leading corporate and commercial law firms in Germany. It provides comprehensive advice in a wide spectrum of business law. The firm's services have traditionally been centred on mergers and acquisitions, corporate law, private equity as well as banking, finance and capital markets, but HENGELER MUELLER has also strong practices in various specialized fields of law, notably restructuring, competition, TMT, tax, intellectual property, employment, and administrative law, as well as litigation and arbitration. HENGELER MUELLER has four offices in Germany: Berlin, Düsseldorf, Frankfurt and Munich. The firm's foreign offices are located in Brussels and London.

## Table of Contents

Vorwort .....	V
Foreword .....	VI
Autoren .....	VII
Authors .....	VIII
Abbreviations .....	XV
<b>First Part. Introduction to the Act on German Limited Liability Companies ..</b>	<b>1</b>
I. Nature and History of the GmbH .....	1
1. Differences between the AG and the GmbH .....	1
a) The AG .....	1
b) The GmbH .....	2
2. Development of the GmbH-Act .....	2
3. Statistical Data on the Growth of the GmbH .....	3
4. The Use of the GmbH in Corporate Transactions .....	4
II. Formation of a GmbH .....	6
1. Introduction to the Mechanics of Formation .....	6
2. Permissions Required for Certain Types of Business Activities ...	6
3. Number of Founders; One-Man GmbH; Shareholder Qualification .....	6
4. Articles of Association .....	7
5. Purpose; Name; Domicile and Duration .....	9
a) Purpose of the Company .....	9
b) Name of the Company .....	9
c) Domicile of the Company .....	11
d) Duration of the Company .....	11
6. Appointment of Managing Directors; Determination of their Power to Represent the Company .....	12
a) General .....	12
b) Number of Managing Directors .....	12
c) Qualification for the Position of Managing Director .....	12
aa) No Citizenship, Domicile or Residence Requirements ...	12
bb) Personal Reliability and Professional Qualification .....	13
cc) Conflicts of Interest .....	13
dd) Qualification Requirements in the Articles .....	13
d) Appointment of Managing Directors .....	13
e) Determination of the Power to Represent the Company .....	14
7. Share Capital .....	14
a) Minimum Share Capital .....	15
b) Subscription to Shares and Share Capital Contributions .....	15
c) Cash and Non-Cash Contributions .....	15
d) "Hidden" Contribution in Kind .....	16
e) Issuance of Shares below Stated Value not Permitted; Surplus .	16
f) Payment of Share Capital Contributions; Liability for Shortfall and Pre-Incorporation Losses .....	17

aa) Contributions in kind .....	17
bb) Cash Contributions .....	17
cc) Liability for Shortfall or Pre-Incorporation Losses .....	17
8. Registration and Publication .....	18
a) The Commercial Register .....	18
b) Application for Registration .....	19
c) Role of the Court in the Registration Process .....	20
d) Contents of the Registration .....	21
e) Publication of Registrations .....	21
9. Pre-Incorporation Status of the Company .....	22
a) Pre-Incorporation Company .....	22
b) Pre-Incorporation Rights and Liabilities .....	22
c) Accrual of Pre-Incorporation Rights and Liabilities to the GmbH .....	22
d) Pre-Incorporation Losses .....	22
10. Defective Incorporation .....	23
11. Liability of Founders and Other Persons .....	23
a) False Statements .....	23
b) Contributions or Formation Expenses which Cause Damage ..	24
c) Joint and Several Liability; Degree of Fault Required .....	24
d) Assertion of Claims; Statute of Limitations; Waiver and Com- promise .....	24
e) General Scope of Protection of Creditors and the Public .....	24
12. The “Entrepreneur Company” .....	25
III. Shares; Shareholder Rights and Obligations .....	26
1. Shares versus Share Capital Contributions .....	26
2. Stated Amount of Shares .....	26
3. No Share Certificate or Share Record Required .....	26
4. Shareholder Rights and Obligations .....	27
a) General .....	27
b) Shareholder Rights .....	28
aa) Rights Attaching to Shares; Personal Shareholder Rights .	28
bb) Property Rights; Control and Management Rights .....	28
cc) Preferential Rights or Shares, Special Privileges .....	29
c) Shareholder Obligations .....	30
aa) Obligations Adhering to Shares, Personal Shareholder Obligations .....	30
bb) Ancillary Obligations .....	31
5. Transfer and Inheritance of Shares .....	32
a) Transfer of Shares .....	32
aa) Contractual Commitment to Transfer or Acquire Shares .	32
bb) Transfer Agreement .....	33
cc) Transfer Restrictions and Formalities Imposed by the Articles .....	34
dd) Transfer Notification to the Commercial Register .....	34
ee) Good Faith Acquisition of Shares from a Registered Owner .....	35
b) Inheritance of Shares .....	35
6. Division of Shares; Combination of Shares .....	36
7. Joint Holding of Shares .....	36



8. Acquisition of Its own Shares by the Company .....	37
9. Redemption of Shares .....	37
IV. Capitalization and Funding of the Company by its Shareholders ....	39
1. Share Capital .....	39
a) General .....	39
b) Ensurance of Full Payment of Share Capital Contributions ...	40
aa) General .....	40
bb) Forfeiture of Shares in Case of Default .....	40
cc) Liability of Predecessors for Payment .....	41
dd) Liability of Fellow Shareholders Following Public Auction	42
c) Preservation of the Share Capital .....	42
aa) General .....	42
bb) Prohibition Against Repayment of Share Capital .....	43
cc) Liability of Managing Directors for Violation of Capital	
Protection Rules .....	45
2. Supplementary Contributions .....	45
a) General .....	45
b) Due Date; Ownership of Claim for Payment .....	46
c) Repayment to Shareholders of Supplementary Contributions..	46
3. Additional Payments into the Equity in the Form of Capital	
Reserves .....	47
a) General .....	47
b) Procedure .....	47
c) Repayment to Shareholders of Additional Payments into the	
Equity .....	47
4. Shareholder Loans to the GmbH .....	47
a) General .....	47
b) Treatment of Shareholder Loans to the GmbH in Insolvency	
Proceedings .....	48
5. Piercing the Corporate Veil? .....	48
V. Corporate Structure; Managing Directors; Management and	
Representation; Supervisory Board .....	50
1. Corporate Structure .....	50
a) The Traditional Structure .....	50
b) The Impact of Employee Co-Determination Acts .....	50
2. Managing Directors; Management and Representation .....	51
a) Appointment of Managing Directors .....	51
b) Requirement of a Labour Director .....	51
c) Removal and Resignation of Managing Directors .....	52
aa) Removal .....	52
bb) Resignation .....	53
d) Service Agreements with Managing Directors .....	53
e) Representation of the Company .....	54
f) Internal Management Structure .....	55
g) Duties and Responsibilities of Managing Directors .....	56
aa) General .....	56
bb) General Obligation of Diligent Management .....	56
cc) Special Obligations Regarding Contribution and	
Preservation of Share Capital .....	57

dd) Special Obligations Arising from Loss of Share Capital, Overindebtedness and Insolvency .....	58
ee) Special Responsibilities Regarding Payment of Taxes and Social Insurance Contributions .....	58
ff) Compliance with Instructions of Shareholders .....	59
3. Supervisory Board .....	59
a) Optional or Mandatory Supervisory Board .....	59
b) Optional Supervisory Board .....	60
aa) Creation of a Supervisory Board .....	60
bb) Number of Members; Qualification; Conflicts of Interest ..	60
cc) Appointment .....	61
dd) Term of Office; Removal and Resignation .....	61
ee) Compensation .....	62
ff) Internal Organization .....	62
gg) Rights and Responsibilities of the Supervisory Board ....	63
hh) Power to Represent the Company vis-à-vis Managing Directors .....	64
ii) Duty of Diligence, Liability .....	64
c) Mandatory Supervisory Boards in Co-Determined Companies ..	64
VI. Business Year; Accounting and Auditing; Disclosure; Appropriation of Profits .....	66
1. Business Year .....	66
2. Accounting and Auditing; Disclosure .....	66
a) Proper Bookkeeping .....	66
b) Preparation of Financial Statements .....	67
c) Auditing .....	68
d) Review by the Supervisory Board .....	69
e) Submission of the Financial Statements to, and Adoption of the Annual Accounts by, the Shareholders .....	69
f) Disclosure .....	70
3. Appropriation of Profits .....	71
VII. Majority Governance; Shareholder Resolutions; Minority Protection .....	72
1. Majority Governance .....	72
2. Shareholder Resolutions .....	72
a) Matters Subject to Shareholder Resolution .....	72
aa) Adoption of Annual Accounts and Distribution of Profit ..	73
bb) Calling of Share Capital Contributions .....	73
cc) Repayment of Supplementary Contributions .....	73
dd) Division and Redemption of Shares .....	73
ee) Appointment, Removal and Discharge of Managing Directors .....	73
ff) Management Control .....	74
gg) Appointment of Holders of a Prokura or of a General Power of Representation .....	74
hh) Disputes with Managing Directors or Shareholders .....	74
b) Passing of Resolutions with or without Meetings .....	74
c) Shareholder Meetings .....	74
aa) Reasons for Calling Shareholder Meetings .....	74
bb) Competence to Call Meetings .....	75

cc) Place of Meetings . . . . .	75
dd) Form and Notice of Call of Meetings; Announcement of Subject Matters of Meetings . . . . .	75
ee) Participation in Meetings . . . . .	75
ff) Quorum . . . . .	75
gg) Rules of Procedure, Chairman of the Meeting . . . . .	76
d) Minutes of Shareholder Meetings; Resolutions . . . . .	76
e) Majority Requirements; Voting Rights; Conflicts of Interest . . . . .	76
aa) Majority Requirements . . . . .	76
bb) Voting Rights . . . . .	76
cc) Conflicts of Interest . . . . .	77
f) Defective Resolutions . . . . .	77
3. Minority Protection; Duty of Loyalty; Principle of Equal Treatment . . . . .	78
a) Minority Protection . . . . .	78
b) Duty of Loyalty . . . . .	79
c) Principle of Equal Treatment . . . . .	80
VIII. Amendment of the Articles; Increase and Decrease of Share Capital . . . . .	81
1. Amendment of the Articles . . . . .	81
a) Shareholder Resolution . . . . .	81
b) Application for Registration . . . . .	82
c) Registration and Publication . . . . .	82
2. Share Capital Increase . . . . .	83
a) Increase by Contributions; Increase from Company Reserves . . . . .	83
b) Increase by Contributions . . . . .	83
aa) Shareholder Resolution . . . . .	83
bb) Subscription to Share Capital Contributions . . . . .	84
cc) Payment of Share Capital Contributions, Liability for Shortfall; Liability of Fellow Shareholders . . . . .	85
dd) Application for Registration . . . . .	86
ee) Registration . . . . .	86
ff) Authorized Capital . . . . .	86
c) Increase of Share Capital from Company Reserves . . . . .	87
aa) Reserves Available for Increases . . . . .	87
bb) Shareholder Resolution . . . . .	87
cc) Application for Registration . . . . .	88
dd) Registration and Publication . . . . .	89
3. Ordinary Share Capital Decrease . . . . .	89
a) Purpose of a Decrease . . . . .	89
b) Procedure . . . . .	89
aa) Shareholder Resolution . . . . .	89
bb) Publication of Shareholder Resolution; Satisfaction or Securing of Creditors . . . . .	90
cc) Application for Registration; One-Year Waiting Period . . . . .	90
dd) Registration and Publication . . . . .	90
4. Simplified Procedure for Share Capital Decrease . . . . .	91
IX. Shareholder Exclusion or Withdrawal; Dissolution and Liquidation of the Company; Invalidation . . . . .	93
1. General . . . . .	93
2. Exclusion of a Shareholder . . . . .	93

3. Shareholder Withdrawal from the Company .....	94
4. Dissolution and Liquidation of the Company .....	95
a) Cases of Dissolution .....	95
aa) By Expiration of the Term of the Company's Existence ...	95
bb) By Shareholder Resolution to Dissolve the Company .....	95
cc) By Decision of a Regional Court for Cause .....	95
dd) By Decision of an Administrative Court .....	95
ee) By the Institution of Insolvency Proceedings or the Denial of Institution due to Insufficient Assets .....	95
ff) By Court Decision Because of Defects in the Articles .....	95
gg) By Court Decision in Case of a Company without Assets ..	96
hh) By Virtue of Special Reasons in the Articles .....	96
b) Registration; Publication; Creditor Notification .....	96
c) Effect of Dissolution; Liquidation .....	97
d) Liquidation .....	97
aa) Appointment of Liquidators .....	97
bb) Power of Representation .....	98
cc) Registration and Publication .....	98
dd) Duties and Responsibilities .....	98
e) Completion of Liquidation .....	99
aa) Distribution of Liquidation Proceeds .....	99
bb) Continued Availability of Books and Records .....	99
cc) Registration in the Commercial Register and Expiration of the Company's Existence .....	99
5. Invalidation of the Company .....	100
X. Taxation of the GmbH .....	101
1. Corporate Income Tax .....	101
2. Trade Tax .....	103
3. Net Assets Tax .....	104
4. Capital Investment Tax; Capital Transfer Tax .....	104
5. Real Estate Transfer Tax .....	104
XI. GmbH & Co. KG .....	105
1. General Features .....	105
2. Tax treatment .....	105
a) Income Taxation .....	105
b) Thin Capitalization Rules .....	106
c) Real Property Transfer Tax .....	106
3. Popularity among Investors .....	106
<b>Second Part. Act on Limited Liability Companies .....</b>	<b>107</b>
Table of Contents .....	107
Act on Limited Liability Companies .....	110
<b>Third Part. Appendices .....</b>	<b>170</b>
Appendix A. Sample of Articles of Association of a GmbH .....	170
Appendix B. Samples of the Formation Documents of a GmbH .....	179
Appendix C. Extract from the Commercial Register .....	185
Appendix D. Classification of the Balance Sheet and the Profit and Loss Statement of a GmbH .....	188
<b>Index .....</b>	<b>191</b>

How to establish a provisional limited liability company in Germany. Although the minimum capital requirement for setting up a UG is smaller than that required for a GmbH, there is no option to found the company with contributions in kind (e.g. valuables such as real estate rather than cash). This means that the agreed minimum amount of capital must be fully paid in before the UG can be entered into the commercial register. Starting a business in Germany? Find the best legal form with our overview of German business structures like sole proprietorship, KG, OHG, GmbH, UG & AG. read more. German tax services & advisors in Germany. The German Limited Liability Company or "Gesellschaft mit beschränkter Haftung". The "Gesellschaft mit beschränkter Haftung" or as it is shortly called GmbH, is considered an equivalent to a limited liability company or German LLC, and is the most widely used corporate form in Germany. Another corporate form is the Aktiengesellschaft (AG). In Germany, the GmbH can be established relatively simple and quick. Shareholders may be either German residents or foreign, natural or legal persons. The following steps need to be taken into consideration before establishing a German Gm The concept of limited liability created by these laws inspired the legal establishment of the limited liability company form in other countries,[5] although the concept of a limited liability company already existed in the United Kingdom. Requirements of formation. Because a legal entity with liability limited to the contributed capital was regarded in the 19th century as something dangerous, German law has many restrictions unknown to common law systems. A number of business transactions have to be notarized, such as transfer of shares, issuing of stock, and amendments to the articles of association. Many of those measures have to be filed with the company registry where they are checked by special judges or other judicial officers. The concept of limited liability allows a private company to structure its business so that the owners are not personally liable for debts. Furthermore, shareholders are not liable either and only have their original investment at risk. Key Takeaways. Like most countries, Germany has two distinct categories for companies: publicly traded and privately held. 'AG' is an abbreviation for the German word Aktiengesellschaft, which literally translates to 'stock corporation' or 'shares corporation' in English. AG companies trade publicly on stock exchanges with the majority of companies trading on the DAX. Some of the largest German AG corporations include its automotive manufacturers: Volkswagen AG. Limited liability is ideal for entrepreneurs who want to protect their private assets while projecting a public image of legitimacy to their customers and business partners. One or more founders can form a GmbH, as regulated by legislation known as the GmbHG. The GmbHG allows the GmbH to have one or more shareholders that are a natural or legal person, i.e. a registered association (eingetragener Verein) or a stock corporation (Aktiengesellschaft). Limited legal responsibility: Shareholders are liable solely with the assets of the company (German article) while their private assets remain untouched. Opportunity to appoint a third-party manager (Fremdgeschäftsführer): Companies may appoint a managing director who is not a shareholder, and therefore avoid diluting shares.