

# Overview of Legal Structures

|  | Sole Proprietorship*  | Kollektivgesellschaft*<br>(general partnership)  |
|--|---|--|
| <b>Legislative basis</b>   | Not regulated separately in the Swiss CO  | CO 552–593   |
| <b>Main use</b>  | Small firms, activities carried out by individuals (e.g. artists)   | Small, permanent businesses centering on specific individuals  |
| <b>Legal status</b>  | Sole property of the firm's owner   | Partnership  |
| <b>Composition of the company name</b><br>General restriction:<br>legislation prohibits misrepresentation and protects public interest<br>CO 944 | Family name of proprietor with or without first name<br>CO 944, 945<br>Permissible additions:<br>business activity, fantasy 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 include any other name than that/those of the partner/s.<br>CO 947 I, II, IV<br>Permissible additions:<br>business activity, fantasy designations.<br>CO 944 |
| <b>Formation through</b><br>business carried out in a commercial manner<br>See comment 1, page 20  | 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.<br>If no commercial activity is pursued the partnership becomes a legal entity only when it is registered in the CR.<br>CO 553   |
| <b>Registration in CR (commercial register)</b>  | Compulsory for businesses pursuing commercial aims that achieve an annual turnover of minimum CHF 100 000<br>OCR 36                       | Compulsory for businesses pursuing commercial aims<br>CO 552 II  |
| <b>Number of partners or members</b>   | 1 natural person is the sole proprietor   | 2 or more natural persons become partners<br>CO 552  |
| <b>Capital required</b>  | No stipulations   | No stipulations<br>Amount and partners' share as per contract<br>CO 557 and/or 531   |

CR = Commercial Register OCR = Ordinance on the Commercial Register CO = Swiss Code of Obligations  
BD = Board of Directors CC = Swiss Civil Code

| Kommanditgesellschaft*<br>(limited partnership)  | Gesellschaft mit beschränkter Haftung (GmbH)<br>(roughly equivalent to:<br>limited liability company)  | Aktiengesellschaft (AG)<br>(roughly equivalent to:<br>corporation or plc)   |
|--|--|---|
| CO 594–619   | CO 772–827   | CO 620–763  |
| Special cases, e.g. small businesses that carry out activities which are strongly individual-centered, with involvement of external investors  | Small, individual-centered businesses  | Suitable for virtually all types of commercial companies  |
| Partnership  | Legal entity, incorporated body  | Legal entity, incorporated body   |
| <p>Family name of at least 1 partner with unlimited liability (general partner) with a suffix indicating the corporate relationship. May not include any other name than that of the partner with unlimited liability. CO 947 III, IV.</p> <p>Limited partner may not be named; otherwise the liability of the limited partner becomes unlimited. CO 607</p> <p>Permissible additions: business activity, fantasy designations. CO 944</p> | <p>Free choice (personal names, activity, fantasy designations) → provided the name is still available. See checklist for setting up a company starting on page 23.</p> <p>The legal form must be indicated in the company's name. CO 944, 950</p>   | <p>Free choice of company name (personal names, activity, fantasy designations) provided the name is still available. See checklist for setting up a company starting on page 23.</p> <p>The legal form must be indicated in the company's name. OR 944, 950</p>                        |
| <p>Signing of articles of partnership, informal, i.e. a limited partnership can be established without any written agreement. CO 594</p> <p>If no commercial activity is pursued the partnership becomes a legal entity only when it is registered in CR. CO 595</p>   | <p>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 727 a II) the auditors.</p> <p>Registration in CR. CO 777–779</p> | <p>Public act of signing when the company is founded, adoption of articles of incorporation/association, appointment of a board of directors (BD) and (provided such are not dispensed with pursuant to CO 727a II) the auditors.</p> <p>Registration in CR. CO 629–635 a, 640, 643</p> |
| <p>Compulsory for businesses pursuing commercial aims CO 594 III</p>   | <p>Becomes a legal entity only once it is registered in the CR. CO 779</p>   | <p>Becomes a legal entity only once it is registered in the CR. CO 643</p>  |
| <p>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 partner) CO 594</p>  | <p>At least one shareholder</p> <p>Shareholders may be natural persons, legal entities or corporations CO 775</p>  | <p>At least one shareholder.</p> <p>Shareholders may be natural persons, legal entities or corporations. CO 625</p>   |
| <p>No stipulations.</p> <p>Amount and partners' share as per contract CO 598 and/or 557</p> <p>The partner's contribution of each limited partner must be registered in the CR CO 608, 609 and OCR 41 para.2 lit g</p>   | <p>Obligatory nominal capital, the level is defined in the articles of association, divided into capital shares each with a nominal value of at least CHF 100 CO 774</p> <p>Minimum: CHF 20 000. Each capital share must be fully paid up CO 777c I</p>                                      | <p>Obligatory capital, the level of which is defined in the articles of association, divided into shares each with a nominal value of at least CHF 0.01</p> <p>Minimum: CHF 100 000<br/>Minimum paid in: CHF 50 000<br/>CO 621, 622</p>   |

\* For natural persons, the self-employment activity must be recognized by the compensation fund pursuant to social insurance law. Further information is available at [www.gruenden.ch](http://www.gruenden.ch).

|  | Sole Proprietorship*  | Kollektivgesellschaft*<br>(general partnership)   |
|--|---|---|
| <b>In-kind payments</b>  | Permitted   | Permitted<br>CO 557/531   |
| <b>Organization and executive bodies</b>   | No executive bodies<br>Trustees/auditors may be appointed                 | Partners<br>Auditors may be appointed   |
| <b>Liability/further contributions</b><br>subsidiary = complementary to company capital if this is exhausted       | Unlimited liability of the proprietor with personal assets.               | Primary liability to the level of company capital<br>Subsidiary joint and several unlimited liability of each partner with personal assets<br>CO 568  |
| <b>Growth using external capital/investors</b><br>See comment 2, page 20   | Not suitable  | Admission of new partners<br>CO 569   |
| <b>Use of profit and bearing losses</b>  | The proprietor alone.   | As stipulated in the articles of partnership.<br>CO 559 et seq.   |
| <b>Compulsory accounting requirement</b>   | If the firm is obliged to register in the CR<br>CO 957, OCR 36            | If the partnership must be registered in the CR<br>CO 957–964   |
| <b>Taxation</b><br>Further information is available at <a href="http://www.gruenden.ch">www.gruenden.ch</a>        | Proprietor for entire income and assets from business and private sector. | Each partner for share of income and assets derived from the partnership as well as for private income and assets   |
| <b>Costs for setting up a company</b><br>(consultation, founding, notary, registration in the commercial register) | CHF 500 to 2500   | CHF 2500 to 5500  |
| <b>Company management and representation</b>   | By the proprietor and individuals he/she may appoint                      | By each partner in his/her own right, unless determined otherwise in a partnership resolution.<br>However, at least 1 partner must be authorized as a representative<br>Other authorized signatories according to partnership resolution<br>CO 563, 566 |

CR = Commercial Register OCR = Ordinance on the Commercial Register CO = Swiss Code of Obligations  
BD = Board of Directors CC = Swiss Civil Code

| Kommanditgesellschaft*<br>(limited partnership)   | Gesellschaft mit beschränkter Haftung (GmbH)<br>(roughly equivalent to:<br>limited liability company)  | Aktiengesellschaft (AG)<br>(roughly equivalent to:<br>corporation or plc)  |
|---|--|--|
| Permitted<br>CO 598 and/or 557, 531   | Permitted, special procedure<br>CO 777 II in conj. with 628 and 634  | Permitted, special procedure<br>CO 628, 634  |
| Partners<br>Auditors may be appointed   | <ul style="list-style-type: none"> <li>– General meeting of members</li> <li>– Management board (minimum 1 member)</li> <li>– Auditors if not dispensed with<br/>CO 727a II<br/>CO 809 et seq.</li> </ul>  | <ul style="list-style-type: none"> <li>– Annual general meeting</li> <li>– Board of directors (minimum 1 member)</li> <li>– Auditors if not dispensed with<br/>CO 727a II<br/>CO 698 et seq.</li> </ul>  |
| <p>Primary liability to the level of company capital.</p> <p>Subsidiary joint and several unlimited liability of each general partner with personal assets<br/>CO 604</p> <p>Subsidiary joint and several limited liability of each limited partner (liability limited to level of partnership capital)<br/>CO 608</p>  | <p>Liability limited exclusively to the company's assets.<br/>CO 794</p> <p>Optional limited liability to make further contributions according to the articles of association</p> <p>Further contributions linked to each capital share that must be paid up are determined in the articles of association and may not exceed twice the nominal value of the capital share.</p> <p>Liability only for further contributions linked to own capital share<br/>CO 795</p> | <p>Liability limited exclusively to the company's assets.</p> <p>Each stockholder is obliged to pay in his quota of the share capital (payment under subscription).<br/>CO 630</p>   |
| Admission of new general or limited partners<br>CO 612  | Increase of company capital by modifying articles of association<br>CO 781   | Various forms of capital increase possible by modifying articles of association<br>CO 650 et seq.  |
| As stipulated in the articles of partnership<br>CO 601  | Shareholders are entitled to share of balance sheet profits as stipulated by law and in the articles of association<br>CO 798, 801 in conjunction with 660   | Shareholders are entitled to a share of the balance sheet profit pursuant to the law and the articles of association<br>CO 660   |
| If the partnership must be registered in the CR<br>CO 957–964   | Yes<br>CO 957–964  | Yes<br>CO 957–964  |
| 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<br>Shareholders for capital share as assets and profit distributions as income  | Company for profit and capital<br>Shareholders for shares as assets and dividends as income  |
| CHF 2500 to 5500  | From CHF 3000  | From CHF 3000  |
| <p>By each general partner in his/her own right, unless determined otherwise in a partnership resolution</p> <p>However, at least 1 general partner must be authorized as a representative</p> <p>The limited partner has neither the right nor the duty of management<br/>CO 600 I</p> <p>Other authorized signatories according to partnership resolution<br/>CO 599, 603/563</p> | <p>Responsibility for management shared collectively by all shareholders unless determined otherwise in the articles of association<br/>CO 809</p> <p>Each manager is authorized to represent the company</p> <p>Other stipulations may be made in deviation of this in the articles of association; however at least one executive manager must be appointed to represent the company<br/>CO 814 et seq.</p>  | <p>Management by the entire board of directors provided such has not been assigned to individual board members or third parties in the organizational regulations<br/>CO 716 b</p> <p>Representation by each director individually unless assigned to individual board members or third parties in the articles of association, organizational regulations or by board resolution<br/>CO 718 I, II</p> <p>At least one board member must be authorized for representation<br/>CO 718 III</p> |

\* For natural persons, the self-employment activity must be recognized by the compensation fund pursuant to social insurance law. Further information is available at [www.gruenden.ch](http://www.gruenden.ch).

|  | Sole Proprietorship*  | Kollektivgesellschaft*<br>(general partnership)  |
|--|---|--|
| <b>Transfer of membership<br/>(exit, employee shares etc.)</b><br>See comment 3, page 20 | No membership, full or partial sale of business operations  | Pursuant to the partnership agreement (CO 557 I); if there are no provisions in the partnership agreement, then with the approval of all partners (CO 557 II with reference to CO 542) |
| <b>Nationality and residency</b><br>Residence and work permit<br>See comment 4, page 20  | The proprietor does not have to be domiciled in Switzerland | The partners do not have to be domiciled in Switzerland  |

CR = Commercial Register    OCR = Ordinance on the Commercial Register    CO = Swiss Code of Obligations  
 BD = Board of Directors    CC = Swiss Civil Code

### Information for board members and executive managers\*

It is incumbent on members of the board of an AG or the executive managers of a 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 Old Age and Survivors' Insurance (OASI/AHV) 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 bodies meaning persons who are not formal members of the board or executive managers but who may substantially influence management of the business.

### Information concerning simple partnerships and general partnerships\*

A simple partnership is a community based on law and a partnership under Swiss law. Pursuant to Art. 530 of the CO, it is defined as a contractual association of two or more individuals to attain a mutual goal by means of mutual efforts 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 jointly and severally for the partnership's debts. Be aware that the moment you do not 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.

\* These articles have been kindly provided by the MSM Group, Winterthur, [www.msmsgroup.ch](http://www.msmsgroup.ch).

| Kommanditgesellschaft*<br>(limited partnership)  | Gesellschaft mit beschränkter Haftung (GmbH)<br>(roughly equivalent to:<br>limited liability company)   | Aktiengesellschaft (AG)<br>(roughly equivalent to:<br>corporation or plc)                                     |
|--|---|---|
| Pursuant to the partnership agreement (CO 598 I); if there are no provisions in the partnership agreement, then with the approval of all partners. (CO 598 I with reference to CO 557 and 542) | Transfer of capital shares by way of written notice.<br>OR 785<br><br>Approval of the annual general meeting of shareholders (at least two-thirds of all represented votes and the absolute majority of the total company capital with voting rights) unless determined otherwise in the articles of association.<br>CO 786, 808b I subpara.4 | Freely disposable, provided no restrictions exist by law or in the articles of association.<br>CO 684 et seq. |
| The partners do not have to be domiciled in Switzerland  | The company must be represented by one person domiciled in Switzerland<br>CO 814 III  | The company must be represented by one person domiciled in Switzerland<br>CO 718 IV                           |

\* For natural persons, the self-employment activity must be recognized by the compensation fund pursuant to social insurance law. Further information is available at [www.gruenden.ch](http://www.gruenden.ch).

## Comments

- 1 An independent economic activity of an intended permanent nature that does not necessarily presuppose profit orientation.
- 2 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, e.g. convertible loans, loans with a conversion option or a success-related interest rate.
- 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, corporations/public limited companies, limited liability companies, cooperatives, associations, foundations and sole proprietorships registered in the commercial register. In all other cases see CO 181 I, II and III (continued liability of the transferor). For information on transfer of employment relationships cp. CO 333.  
  
*Employee participation:*  
Alternatives to transferring company equity (e.g. shares) are, inter alia, bonus contracts and participation in profits.
- 4 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 need 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 they are indispensable specialists or if special reasons can be given justifying the exception. Further information is available at: [www.bfm.admin.ch](http://www.bfm.admin.ch) or the accordant cantonal offices.

\* EU-25 member states: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain (United Kingdom), Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden

Temporary regulations apply to EU-2 citizens (EU-2 = Bulgaria and Romania)

\*\* EFTA member states: Iceland, Liechtenstein, Norway, Switzerland