

Übersetzung durch Jane Yager.

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Act on Partnership Companies of Members of Independent Professions

Partnership Companies Act

Act on Partnership Corporations of Members of Independent Professions of 25 July 1994 (Federal Law Gazette I, p. 1744), last amended by Article 7 of the Act of 22 December 2015 (Federal Law Gazette I, p. 2565)

The Act was passed by the Bundestag as Art. 1 of the Act of 25 July 1994 I 1744 (PartGSchG). It enters into force on 1 July 1995 pursuant to Art. 9, first sentence, of this Act. Insofar as provisions are included which authorise the issuing of statutory orders, Section 5 (2) enters into force under Art. 9, second sentence, of the Act of 25 July 1994 I 1744 in the version of Art. 5 (3) No. 2 of the Act of 6 June 1995 I 778 effective 1 May 1995.

Section 1

Conditions for Partnership

(1) The partnership shall be a company in which members of independent professions amalgamate for the pursuit of their professions. It shall not engage in commercial trade. Members of a partnership may only be natural persons.

(2) In general, independent professions provide personal, responsible and professionally independent services of an advanced nature in the interest of clients and the general public on the basis of special professional qualifications or creative talent. The practise of an independent profession within the meaning of this Act shall comprise the independent professional occupations of physicians, dentists, veterinary practitioners, non-medical practitioners, physiotherapists, midwives, massage therapists, psychologists, members of bar associations, patent agents, accountants, tax consultants, consultant economists and business economists, chartered accountants (attested auditors of books), tax agents, engineers, architects, trade chemists, pilots, professional independent experts, journalists, photo-journalists, interpreters, and similar professions, as well as academics, artists, writers, teachers and educators.

(3) The pursuit of a profession within a partnership may be prohibited by provisions regarding specific professions or may be made subject to further conditions.

(4) The provisions of the Civil Code on the company shall apply to the partnership except where otherwise prescribed by this Act.

Section 2

Name of the Partnership

(1) The name of the partnership must contain the name of at least one of the partners, the suffix "and partner(s)" and the occupational titles of all professions represented in the

partnership. The inclusion of given names is not required. The names of persons other than the partners must not be included in the names of the partnership.

(2) Section 18 (2), Sections 21 and 22 (1), Sections 23, 24, 30, and 31 (2), and Sections 32 and 37 of the Commercial Code shall apply mutatis mutandis; Section 24 (2) of the Commercial Code shall apply to the transformation of a partnership under civil law into a partnership.

Section 3 Partnership Agreement

(1) The partnership agreement requires the written form.

(2) The partnership agreement must contain

1. The name and seat of the partnership;
2. The name, given name, professional pursuit within the partnership, and domicile of every partner;
3. The subject matter of the partnership.

Section 4 Registration of the Partnership

(1) Section 106 (1) and Section 108, first sentence, of the Commercial Code shall apply mutatis mutandis to the registration of the partnership in the partnership register. The registration must contain the information specified in Section 3 (2), the birth date of each partner, and the power of representation of the partners. Any changes in this information are also to be registered for entry in the partnership register.

(2) The membership of each partner of the independent profession which he practises within the partnership is to be stated in the registration. The registry court shall take as a basis for registration the information provided by the partners unless it knows this information to be incorrect.

(3) The registration of a limited liability partnership under Section 8 (4) must be accompanied by an insurance certificate pursuant to Section 113 (2) of the insurance contract act (*Gesetz über den Versicherungsvertrag*).

Section 5 Content of the Register Entry, Applicable Provisions

(1) The entry in the register must contain the information specified in Section 3 (2), the birth date of each partner, and the power of representation of the partners.

(2) Sections 8, 8a, 9, 10 to 12, 13, 13d, 13h and 14-16 of the Commercial Code on the commercial register shall apply mutatis mutandis to the partnership registry and the registry law treatment of branch offices; there shall be no obligation to register a domestic business address.

Section 6 Legal Relationship of the Partners to One Another

(1) The partners shall perform their professional services in accordance with the applicable laws governing the respective profession.

(2) The partnership agreement may only exclude individual partners from conducting other business.

(3) In all other respects, the legal relationship of the partners to one another shall comply with the partnership agreement. Unless otherwise specified in the partnership agreement, Sections 110 to 116 (2) and Sections 117 to 119 of the Commercial Code shall apply mutatis mutandis.

Section 7 Effect in Relation to Third Parties, Legal Independence, Representation

- (1) The partnership shall take effect in relation to third parties upon their entry into the partnership register.
- (2) Section 124 of the Commercial Code shall apply mutatis mutandis.
- (3) The provisions of Section 125 (1) and Sections 126 and 127 of the Commercial Code shall apply mutatis mutandis to the representation of the partnership.
- (4) The partnership may be designated as an attorney for the action or as a legal representative. It shall act through its partners and representatives, in whose person the legally required conditions for the provision of legal services must be met for the individual case, and is equally as capable of appearing before a court as such persons. Only the person acting on behalf of the partnership shall be the defence counsel within the meaning of Sections 137 et seq. of the Code of Criminal Procedure.
- (5) Section 125a (1), first sentence, and (2) of the Commercial Code shall apply mutatis mutandis to the content of letters of the partnership, provided that in the case of a partnership with limited professional liability, the additional name within the meaning of Section 8 (4), third sentence, which has been selected by this partnership is also to be stated.

Section 8

Liability for Obligations of the Partnership

- (1) The partners shall, along with the assets of the partnership, be liable to the creditors as joint debtors for obligations of the partnership. Sections 129 and 130 of the Commercial Code shall apply mutatis mutandis.
- (2) If only some of the partners were involved in the processing of an assignment, only they shall be liable along with the partnership for professional malpractice in accordance with subsection (1), with the exception of processing jobs which are of subordinate importance.
- (3) The limitation of liability for claims arising from damages due to professional malpractice to a fixed maximum amount may be permitted by law for individual professions, only if at the same time an obligation for the partners or the partnership to hold professional liability insurance is substantiated.
- (4) If the partnership holds professional liability insurance which is stipulated by law for this purpose, only the company's assets shall be liable to the creditors for obligations of the partnership arising from damages due to professional malpractice. Section 113 (3) and Sections 114 to 124 of the insurance contract act shall apply mutatis mutandis. The name of the partnership must include the addition "with limited professional liability" (*mit beschränkter Berufshaftung*) or the abbreviation "mbB" or another generally understood abbreviation of this designation; instead of such additions to the name under Section 2 (1), first sentence, the name of the partnership with limited professional liability may contain the addition "Part" or "PartGG".

Section 9

Withdrawal of a Partner, Dissolution of the Partnership

- (1) Unless otherwise specified below, Sections 131 to 144 of the Commercial Code shall apply mutatis mutandis to the withdrawal of a partner and the dissolution of a partnership.
- (2) (Omitted)
- (3) If a partner loses the accreditation required for the independent profession which he practices in the partnership, he shall withdraw from the partnership upon losing this accreditation.
- (4) A share in a partnership may not be inherited. The partnership contract may, however, stipulate that it may be inherited by third parties who are partners within the meaning of Section 1 (1) and (2). Section 139 of the Commercial Code shall only apply insofar as the inheritor of the share is authorised to declare his withdrawal from the partnership.

Section 10

Liquidation of the Partnership, Continuing Liability

- (1) The provisions on the liquidation of the general partnership shall apply mutatis mutandis to the liquidation of the partnership.
- (2) The liability of partners for obligations of the partnership after the dissolution of the partnership or after the withdrawal of the partner shall be determined in accordance with Sections 159 and 160 of the Commercial Code.

Section 11 **Transitional Provisions**

- (1) Only partnerships under this Act may use the suffixes “partnership” or “and partner(s)”. Companies which include in their name such a designation as of the entry into force of this Act, without being partners within the meaning of this Act, may continue to use this designation until the end of a period of two years after the entry into force of this Act. After that deadline, they may only continue to use such a designation if their name includes a reference to another legal form in addition to the designation “partnership” or “and partner/s”.
- (2) The registration and entry in the register of the power of representation of the partners and the liquidators which corresponds to the normal legal case shall only be required if a provision of the partnership agreement on the power of representation which deviates from the normal legal case is registered and entered into the register or if for the first time the liquidators are registered and entered into the register. The court of registration may also undertake, ex officio, the entry of a power of representation which corresponds to the normal legal case. The registration and entry of the date of birth of already entered partners must take place only in the event of registration and entry regarding one of the partners.
- (3) The *Land* governments may prescribe by statutory order that registration and all or some documents may be submitted to the partnership registry inter alia in paper form until 31 December 2009. If a statutory order under the first sentence is issued, the provisions on the registration and submission of documents to the partnership register shall apply in the version current until the entry into force on 1 January 2007 of the act on electronic Commercial Registers, cooperative society registers and the Business Register (*Gesetz über elektronische Handelsregister und Genossenschaftsregister sowie das Unternehmensregister*) of 10 November 2006 (Federal Law Gazette I, p. 2553). The *Land* governments may transfer their authority under the first sentence by statutory order to the *Land* administrations of justice.