

The German Limited Liability Company

Rosengarten / Burmeister / Klein

9. Auflage 2020
ISBN 978-3-406-74919-3
C.H.BECK

schnell und portofrei erhältlich bei
[beck-shop.de](https://www.beck-shop.de)

Die Online-Fachbuchhandlung [beck-shop.de](https://www.beck-shop.de) steht für Kompetenz aus Tradition. Sie gründet auf über 250 Jahre juristische Fachbuch-Erfahrung durch die Verlage C.H.BECK und Franz Vahlen.

[beck-shop.de](https://www.beck-shop.de) hält Fachinformationen in allen gängigen Medienformaten bereit: über 12 Millionen Bücher, eBooks, Loseblattwerke, Zeitschriften, DVDs, Online-Datenbanken und Seminare. Besonders geschätzt wird [beck-shop.de](https://www.beck-shop.de) für sein umfassendes Spezialsortiment im Bereich Recht, Steuern und Wirtschaft mit rund 700.000 lieferbaren Fachbuchtiteln.

Index

Zahlen bedeuten Randnummern
References are to paragraphs (*paras*)

A

Accounting 273
– Large company 279
– Medium-sized company 281
– Small company 280
Actio pro socio 341 (82)
Acquisitions of own Shares 150
Acquisition of shares in good faith 142
AG 2
Aufgeld oder Agio (Surplus) 62
Amendment of the Articles 346
– Shareholder Resolution 347
Anhang (annex of notes) 277, 283
Application for Registration 69
– Formal requirements 73
Annex of Notes (*Anhang*) 277, 283
Annual accounts (*Jahresabschluss*) 277
– Adoption of the Annual Accounts by the Shareholders 294
– Review by the Supervisory Board 290
Annual profit (*Jahresüberschuss*) 299
Application for Registration 69
Appropriation of Profits 299
Arbeitsdirektor (Labour director) 214
Articles of Association 21
Auditing, 287
– Audit of large companies 287
– Medium-sized companies 287
Auflösung (Dissolution) 417
Aufsichtsrat (Supervisory Board) 251
Authentication (*Beglaubigung*) 24, 25
Authorized capital 376

B

Balance Sheet (*Bilanz*) 277
Balance sheet profit (*Bilanzgewinn*) 299
Beglaubigung (Authentication) 24, 25
Bilanz (Balance Sheet) 277
Bookkeeping 276
– Principles of proper accounting (*Grundsätze ordnungsgemäßer Buchführung und Bilanzierung*) 276
– Principles of proper bookkeeping (*Grundsätze ordnungsgemäßer Buchführung*) 276

Bruchteilsgemeinschaft (Community of owners by fractions) 148
Business Report (*Lagebericht*) 277, 286
Business Year 273
– “Incomplete” business year (*Rumpf-geschäftsjahr*) 274
By-laws (*Geschäftsordnung*) 313

C

Call option 114
Capital Reserves (*Kapitalrücklagen*) 62, 193
– Additional payments into the equity (*Zuzahlung in das Eigenkapital*) 193
Capital-replacing loans (*Kapital-ersetzende Darlehen*) 198
Capitalization 155
Cash Contributions 64
Combination of Shares (*Zusammenlegung*) 147
Commercial Register (*Handelsregister*) 70
Contents of Registration 79
– Electronic form 71
– Publication 80
– Register files (*Registerakten*) 72
– Role of the Court 77
Contributions in kind 63
Control and management rights (*Herrschaftsrechte*) 109
Corporate governance rules 240
Corporate Structure 203
Costs of formation (*Gründungskosten*) 87

D

Defective Incorporation 88
– Dissolution (*Auflösung*) 88
– Invalidation (*Nichtigerklärung*) 88
Differenzhaftung (Liability for Shortfall) 66
Dissolution of the Company 417
Division of Shares 146
Doctrine of ultra vires 231
Domicile (*Sitz*) 36
– Change 38
Drittelbeteiligungsgesetz (One-Third Co-Determination Act) 207
Duration 39

Durchgriffshaftung (Piercing the Corporate Veil) 200
Duty of Loyalty (*Treuepflicht*) 339

E

Einziehung (Redemption of Shares) 152
 Employee Co-Determination Acts 206
 – “Near-parity” co-determination 207
 – “One-third” co-determination 207
 – “Parity” co-determination 207
 – Co-Determination Act (*Mitbestimmungsgesetz*) 207
 – Coal and Steel Co-Determination Act (*Montanmitbestimmungsgesetz*) 207
 – One-Third Co-Determination Act (*Drittelbeteiligungsgesetz*) 207
 – Supplementary Coal and Steel Co-Determination Act (*Montanmitbestimmungs-Ergänzungsgesetz*) 207
 Electronic Register Act 2006 71
 Entrepreneur company (*Unternehmer-gesellschaft*) 96
Erbengemeinschaft (Undivided community of heirs) 148
Eröffnungsbilanz (Opening balance sheet) 277
 Exclusion of a Shareholder 407

F

Financial Statements 277
 – Disclosure 295
 Forfeiture of Shares 164
 – Liability of Fellow Shareholders 171
 – Liability of Predecessors 165
 Formation of a GmbH 16
 Founders 18

G

Geschäftsanteil (Share) 98
Geschäftsführer (Managing Directors) 41, 210
Geschäftsordnung (by-laws) 313
Gesellschaftsvertrag 21
Gesellschaft bürgerlichen Rechts (Non-commercial partnership) 148
Gewinnrücklagen (Profit reserves) 300
Gewinnvortrag (Profit carry forward) 299
Gleichbehandlungsgrundsatz (Principle of Equal Treatment) 343
Gewinn- und Verlustrechnung (Profit and loss statement) 277
 GmbH 5
 GmbH & Co. KG 477
 – General partner (*Komplementär*) 478
 – Limited partner (*Kommanditist*) 478

– Real property transfer tax 482
 – Tax treatment 480
 – Thin capitalization rules 481
 – GmbH-Act 7
 – Development of GmbH-Act 7
 – Statistical Data on the Growth of the GmbH 10
 Group business report (*Konzernlagebericht*) 286
 Group financial statements (*Konzernabschluss*) 286
 Group of companies (*Konzern*) 286
Grundsätze ordnungsgemäßer Buchführung (Principles of proper bookkeeping) 276
Grundsätze ordnungsgemäßer Buchführung und Bilanzierung (Principles of proper accounting) 276
Gründungskosten (Costs of formation) 87
Gütergemeinschaft (Marital regime of joint ownership of assets) 148

H

Handelsregister (Commercial Register) 70
Handlungsvollmacht (General power of representation) 256
Herrschaftsrechte (Control and management rights) 109
 Hidden Contribution in Kind (*Verdeckte Sacheinlage*) 60

I

Inheritance of Shares 145
 Instructions of Shareholders 250
 Invalidation of the Company (*Nichtig-erklärung*) 444
 Issuance of Shares below Stated Value 62
 – *Unterpariemission* 62

J

Jahresabschluss (Annual accounts) 277
Jahresüberschuss (Annual profit) 299
 Joint Holding of Shares 148
 – Community of owners by fractions (*Bruchteilsgemeinschaft*) 148
 – Marital regime of joint ownership (*Gütergemeinschaft*) 148
 – Non-commercial partnership (*Gesellschaft bürgerlichen Rechts*) 148
 – Undivided community of heirs (*Erbengemeinschaft*) 148

K

Kapitalrücklagen (Capital reserves) 62, 193
Kapitalersetzende Darlehen (Capital-replacing loans) 198
Kommanditist (Limited partner) 478
Komplementär (General partner) 478
Konzern (Group of companies) 286
Konzernabschluss (Group financial statements) 286
Konzernlagebericht (Group business report) 286

L

Labour director (*Arbeitsdirektor*) 214
Lagebericht (Business Report) 277, 286
Liability for Shortfall (*Differenzhaftung*) 66
Liability of Fellow Shareholders 171
Liability of Founders 89
– Assertion of Claims 93
– False Statements 90
– Joint and Several Liability 92
– Undue formation expenses 91
Liquidation 417, 433
– Books and records of the company 442
– Completion of Liquidation 441
Liquidation Proceeds 441
Liquidators 434
Loss carry forward (*Verlustvortrag*) 299
Loss of Share Capital 244

M

Majority Governance (*Mehrheitsherrschaft*) 302
Majority Requirements 327
– Conflicts of Interest 329
– Voting Rights 328
Management 204
Managing Directors (*Geschäftsführer*) 41, 204
– Appointment of Managing Directors 49, 211
– Diligence of an orderly businessman 240
– Doctrine of ultra vires 231
– Duties of Managing Directors 236
– Implied service agreement 224
– Internal limitation 232
– Internal Management Structure 233
– Obligation of Diligent Management 239
– Qualification for the Position of Managing Director 44
– removal for cause 221
– Removal of Managing Director 218
– Representation of the Company 228
– Resignation 223
– Responsibilities of Managing Directors 236
– Shareholder authority 205

Mehrheitsherrschaft (Majority Governance) 302
Merchants (*Kaufleute*) 27
Minority Protection 336
Mitbestimmungsgesetz (Co-Determination Act) 207
Montanmitbestimmungs-Ergänzungsgesetz (Supplementary Coal and Steel Co-Determination Act) 207
Montanmitbestimmungsgesetz (Coal and Steel Co-Determination Act) 207
– Principle of equal treatment (*Gleichbehandlungsgrundsatz*) 343

N

Nachschüsse (Supplementary contributions) 187
Name (*Firma*) 30
Nebenleistungspflichten (Ancillary obligations) 122
Nichtigerklärung (Invalidation of the Company) 444
Non-Cash Contributions (*Sacheinlagen*) 57
– “Contribution in kind” 57
Notary (*Notar*) 24, 25

O

One-Man GmbH 18
Opening balance sheet (*Eröffnungsbilanz*) 277
Option to purchase (call option) 114
Option to sell (put option) 114
Overindebtedness; Inability to Pay 245
– Lack of liquid funds (*Zahlungsunfähigkeit*) 245
– Petition to institute insolvency proceedings 245

P

Payment of Share Capital Contributions 155
– Full payment 160
Permission for business activities 17
Piercing the Corporate Veil (*Durchgriffshaftung*) 200
Power of representation 50
Pre-emptive right (*Vorkaufsrecht*) 125, 133
Pre-contract (*Vorvertrag*) 133
Pre-Incorporation Company (*Vorgesellschaft* or *Vor-GmbH*) 83
– Rights and Liabilities 84
Pre-Incorporation Status 82
Preferential rights (*Vorzugsrechte*) 110
– Property rights 114
– Control and management rights 115
Preferential shares (*Vorzugs Geschäftsanteile*) 111

Preservation of Share Capital 176
 – Loans to managing directors, key officers and employees 176
 – Repayment of share capital 176
 Principle of Equal Treatment (*Gleichbehandlungsgrundsatz*) 343
 Profit and loss statement (*Gewinn- und Verlustrechnung*) 277
 Profit carry forward (*Gewinnvortrag*) 299
 Profit reserves (*Gewinnrücklagen*) 300
Prokura 47
Prokurist 47 (note 58)
 Property rights (*Vermögensrechte*) 109
 Publication of registration 80
 Purpose 27

R

Recorded (*beurkundet*) 25
 Recording (*Beurkundung*) 24, 25
 Reform Act, 2008 9
Registerakten (Register files) 72
 Registration and Publication 69
 Repayment of Share Capital 177
 – “Payments” to Shareholders 179
 – “Upstream” guaranties 181
 – “Upstream” loan 180
 – Adequate consideration 180
 – Claim for Refund 182
 – Claim for reimbursement 183
 – Liability of Fellow Shareholders 183
 – Net assets (*Reinvermögen*) 178
 – Statute of Limitations 185
 – Waiver 185
 Representation 228
 Right of first refusal 133
 Rights Attaching to Shares 107
Rumpfgeschäftsjahr (“Incomplete” business year) 274

S

Sachgründungsbericht (Special report on non-cash contribution) 76
 Share (*Geschäftsanteil*) 98
 – Acquisition of own Shares 150
 Stated amount 99
 Share Capital (*Stammkapital*) 54, 157
 – Minimum Share Capital 55
 – Redemption of Shares (*Einziehung*) 152
 – Share capital contribution (*Stammeinlage*) 56, 98, 158
 – Subscription 56
 – Supplementary contributions 187
 – Cash Contributions 64
 Share Capital Decrease 387
 – Ordinary Share Capital Decrease 387

– Purpose of the capital decrease 388
 – Simplified Procedure 401
 – Waiting period 394
 Share Capital Increase 357
 – Authorized capital 376
 – Increase by Contributions 357, 358
 – Increase from Company Reserves (*Rücklagen*) 357, 377
 – Preemptive Rights 364
 – Subscription 365
 Share certificates 101
 Share register 102
 Shareholder list 75, 102
 Shareholder Loans 196
 Shareholder Meetings 318
 – Form of Meetings 321
 – Minutes of Shareholder Meetings 325
 – Notice of Call of Meetings 321
 – Participation in Meetings 322
 – Place of Meetings 320
 – Quorum 323
 Shareholder Obligations 119
 – Ancillary obligations (*Nebenleistungspflichten*) 122, 124
 – Obligations Adhering to Shares 119
 – Personal Shareholder Obligations 119
 Shareholder Resolutions 306
 – Adoption of Annual Accounts 308
 – Appointment of Holders of General Power of Representation 314
 – Appointment of Holders of *Prokura* 314
 – Appointment of Managing Directors 312
 – Assertion of claims against Managing Directors 312
 – Calling of Share Capital Contributions 309
 – Defective Resolutions 331
 – Discharge of Managing Directors 312
 – Distribution of Profit 308
 – Division of Shares 311
 – Passage of Resolutions 317
 – Redemption of Shares 311
 – Removal of Managing Directors 312
 – Repayment of Supplementary Contributions 310
 Shareholder resolutions in a one-man GmbH 317
 Shareholder Rights 103, 107
 – Control and Management Rights (*Herrschaftsrechte*) 109
 – Personal Shareholder Rights 108
 – Preferential Rights (*Vorzugsrechte*) 111, 112
 – Rights Attaching to Shares 107
 Shareholder Rights and Obligations 103
 Shareholder Withdrawal 412
 Shares 89
 Shelf company (*Vorratsgesellschaft*) 95

Sondervorteile (Special privileges) 111
Special report on non-cash contribution
(*Sachgründungsbericht*) 76
Squeeze-out 15
Stammeinlage (Share capital contribution) 56,
98, 158
Stammkapital (Share Capital) 54, 157
Supervisory Board (*Aufsichtsrat*) 251
– Appointment 257
– Chairman 263
– Compensation 261
– Conflicts of interest 256
– Creation of a Supervisory Board 253
– Deputy chairman 263
– Duty of Diligence, Liability 269
– General power of representation
(*Handlungsvollmacht*) 256
– Internal Organization 262
– Management Supervision 265
– Members 255
– Optional Supervisory Board 251
– Removal 259
– Resignation 260
– Rights and Responsibilities 264
– Term of Office 258
Supplementary contributions (*Nachschüsse*)
187
– Repayment to Shareholders of
Supplementary Contributions 191
Surplus (*Aufgeld* oder *Agio*) 62

T

Taxation 448
– Capital gains 457
– Capital Investment Tax 475
– Capital Transfer Tax 475
– Corporate Income Tax (*Körperschaftsteuer*)
463
– Dividend withholding tax 462
– Income tax rate 463
– Net assets tax (*Vermögensteuer*) 474
– Real Property Transfer Tax (*Grund-
erwerbsteuer*) 476
– Solidarity tax 465
– Trade Tax 472

Thin capitalization rules 476
– Carve-out from stand-alone exception 471
– *De minimis* exception 471
– Escape Clause 471
– Stand-alone exception 471
Transfer of Shares 130
– Acquisition in good faith 142
– Completion of the transfer 136
– Contract of disposition (*Verfügungsgeschäft*)
130
– Contract of obligation (*Verpflichtungs-
geschäft*) 130
– Contractual Commitment 131
– Evidence of Ownership of Shares 144
– Formalities 140
Transfer Agreement 134
Transfer Notification 140
Transfer Restriction 137
Treuepflicht (Duty of Loyalty) 339

U

Unternehmergesellschaft (Entrepreneur
company) 96
Unterpariession 62
Up-stream loan 180

V

Verdeckte Sacheinlage (Hidden Contribution
in Kind) 60
Verlustvortrag (Loss carry forward) 299
Vermögensrechte (Property rights) 109
Vorgesellschaft oder *Vor-GmbH* (Pre-
Incorporation Company) 83
Vorkaufsrecht (Pre-emptive right) 125, 133
Vorratsgesellschaft (Shelf company) 95
Vorzugsgeschäftsanteile (Preferential shares)
111
Vorzugsrechte (Preferential rights) 111

Z

Zahlungsunfähigkeit (Lack of liquid funds) 245
Zusammenlegung (Combination of shares) 147
Zuzahlung in das Eigenkapital (Additional
payments into the equity) 193