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The Austrian GmbH

Essential Characteristics and Foundation

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1. Introduction

The GmbH (Gesellschaft mit beschränkter Haftung; limited liability company; LLC) is the most popular legal form of organization in Austria after the sole proprietorship.

One major reason for its popularity is, besides the advantage of limited liability, its huge range of possible fields of application, since there are not only LLCs with strong personalist elements, i.e. LLCs that highly resemble partnerships as regards their legal organization, but also LLCs that are organized similarly to public limited companies (PLC).

In addition, LLCs can be founded for almost any imaginable company object, except as provided otherwise in profession-related regulations.

This guideline gives entrepreneurs a brief overview of the essential characteristics of an LLC and on the other hand serves as an outline on practical steps for the foundation of an LLC.

Comprehensive and detailed expert advice however, cannot be replaced by this guideline.

2. Essential Characteristics of an LLC

The LLC is a legal entity vested with legal capacity and possessing separate legal personality. An LLC can therefore act as claimant or defendant, is capable of being owner of real estate or other assets, is able to employ staff and act as employer, is capable of taking up a loan etc.

Following the “principle of separation”, the LLC as legal person has to be clearly distinguished from its shareholders. The principle of separation is not only reflected in the strict separation of property of the LLC from the property of its shareholders but also in the ability of the LLC to conclude

(arm’s-length) transactions between shareholders (or Managing Directors) as well as in the absence of the ability of shareholders to make withdrawals.

The LLC’s capital raised by share capital (minimum € 35,000) serves as the company’s liability guarantee fund for its creditors.

The share capital is raised by the share capital contributions of the shareholders. If all shareholders pay-in their full share capital contributions they cannot be held personally liable for the liabilities of the LLC any longer. As long as not all shareholders have paid-in their full share capital contributions, the shareholders can be held liable for share capital contributions not paid-in by the other shareholders.

As such, the denomination of the LLC – limited liability company – might be misleading, since it is not the LLC whose liability is limited (the LLC on the contrary is unlimitedly liable with all its assets), but it is the shareholders that are not held liable if all share capital contributions have been fully paid-in.

The share capital serves as guarantee fund, since neither a shareholder nor a Managing Director – with a few exceptions – can be personally held liable with their personal assets by creditors of the LLC.

The share capital contributions mathematically stand for the share (business interest) held in the LLC. This company share allows the shareholders to exercise their right to vote and represents their property rights. If specific formal requirements are met (notarial deed) a share in an LLC can be transferred.

3. Advantages and Disadvantages of an LLC

3.1. Advantages

In comparison to sole proprietorships or partnerships, the LLC not only offers an advantage as regards liability – as demonstrated above – but also provides a tax advantage, as long as profits remain within the LLC and are not distributed. In such a case only corporate income tax of 25% is payable.

Another essential advantage of the LLC is that – compared with a public limited company – less administrative effort has to be invested, as a consequence of which founding an LLC as well as maintaining its business activities is less expensive.

3.2. Disadvantages

Compared with a sole proprietorship or partnership, however, the administrative effort to be invested in an LLC is much higher.

In addition mandatory provisions regarding preservation of capital have to be observed with the aim to protect the creditors.

From a tax point of view, it has to be considered that the losses of an LLC cannot be offset against (positive) revenues of the shareholders.

Another important disadvantage of the LLC is that – compared with the PLC – a share in an LLC can only be validly transferred if a notarial deed is erected; the transfer of shares in a PLC is however freely possible and can be carried out without having to observe such strict formal requirements.

4. Corporate Bodies of an LLC

4.1. General Information

The LLC, which is recognized by the law as subject of rights and duties, needs bodies to act for and on its behalf in order to confer rights and create obligations.

The corporate bodies of an LLC are the General Assembly, the Management Board (both bodies that are mandatory), the Supervisory Board (mandatory only under certain conditions, otherwise optional) as well as the Advisory Board (optional).

4.2. General Assembly

The General Assembly (shareholders in their entirety) is the principal decision-making body of an LLC. This means that the shareholders can thus influence decisions made by other bodies of the LLC. For instance, the shareholders have the ultimate decisional authority over the Management Board.

The meetings of the General Assembly usually have to take place at the seat of the corporation. From a practical point of view, it is advisable to integrate a provision in the Articles of Association, allowing meetings of the General Assembly to be held in a different place.

Some business activities and fields of decision fall within the decision-making competence of the General Assembly.

These legal and statutory competences can be expanded in the Articles of Association or by Rules of Procedure. In practice, provisions may often be found stipulating that certain activities or transactions exceeding a

certain volume are only valid upon prior approval of the General Assembly.

The Regular Meeting of the General Assembly has to take place at least once a year. If necessary it may be convened more frequently.

Shareholders of an LLC do not necessarily have to be natural persons, corporations or partnerships can also act as shareholders of an LLC. Such companies are then represented in the General Assembly by their Managing Directors or shareholders.

Resolutions are not only passed at the General Assembly, but also by way of written circular resolution (which is frequently used in practice), if this type of decision-making is allowed for in the Articles of Association.

Most resolutions are adopted by a simple majority vote (50% of the votes cast plus one vote). Certain resolutions, such as on the alteration of the Articles of Association, are only taken by qualified majority vote (three-quarter majority).

Different majority criteria or a different shareholders' presence quorum can be provided for in the Articles of Association.

There is no obligation to make additional contributions to the share capital; such obligation may, however, be stipulated in the Articles of Association.

The duties of the General Assembly also include the appointment and dismissal as well as the discharge of Managing Directors. When Managing Directors are discharged from their responsibility they are generally exempt from any damage claims by the LLC.

Shareholders can only exceptionally be held personally liable, for example in the case of abuse of the LLC, of intermingling of the LLC's assets with the shareholders' personal assets and / or qualified undercapitalization. These cases however occur rather rarely.

The shareholder's obligation of paying-in the full capital contribution correlates with his rights to vote and his property rights. The property rights comprise, in general, the right to claim profit distributions as well as liquidation proceeds.

4.3. Management Board

It is the Management Board's duty to conduct the LLC's business internally as well as to represent the LLC externally.

Managing Directors can be shareholders or non-shareholders. Only natural persons with capacity to act can be appointed as Managing Director.

Shareholders can appoint one or more Managing Directors. Even people who do not have Austrian citizenship or who have their legal residence abroad can take over an office as Managing Director. From a practical point of view however, it might be advisable for the Managing Director to have his legal residence in Austria.

The external representative power in an LLC (e.g. to conclude contracts) can, for example, be regulated such that acts of representation are only valid on the approval of at least two Managing Directors. It would also be possible to provide the Managing Directors with sole or collective power of representation (approval of all Managing Directors is needed) or a "mixed"-type of representation (i.e. representation only together with a "Prokurist", i.e. someone having statutory proxy to act for the LLC).

The LLC is liable for damage caused to third parties by misconduct of its Managing Directors.

If a Managing Director is negligent, all Managing Directors can be held personally liable by the damaged third party besides the LLC. If, however, specific spheres of authority (e.g. finances, personnel etc.) are defined for each Managing Director, other Managing Directors can only exceptionally be held liable for the misconduct of a Managing Director in his sphere of authority.

If damages are inflicted on the LLC by misconduct of the Managing Directors, the Managing Directors have to hold the LLC harmless against such. If the Managing Directors are formally discharged, the Managing Directors are regularly discharged of their liability towards the LLC.

The employment relationship between Managing Director and LLC offers a large variety of different structuring options. The corporate relationship (corporate position as Managing Director) must be strictly differentiated from the employment relationship. A Managing Director for instance can be dismissed as Managing Director by shareholders' resolution although his employment relationship (as well as his contractual claim for salary) continues to exist.

A Managing Director who is also shareholder ("Managing Shareholder") can be corporately appointed within the Articles of Association or via shareholders' resolution.

The dismissal is effectuated by shareholders' resolution (simple majority), can however be limited to important grounds specified in the Articles of Association. A Managing Shareholder can further be granted a special right of participation in the management in the Articles of Association.

Such a Managing Shareholder can only be dismissed if important grounds can be established.

4.4. Supervisory Board

It is within the free discretion of the shareholders of an LLC to establish a Supervisory Board. If a certain size is reached, it is mandatory to have a Supervisory Board. Indicators are the number of employees, the amount of share capital and the number of shareholders.

The Supervisory Board primarily has to exercise a control function.

The Supervisory Board is composed of at least one-third of representatives of employees.

4.5. Advisory Board

An Advisory Board can be established as additional controlling, deliberative and/or decision-making body. The appointment of the members of the Advisory Board and the duties of the Advisory Board can be regulated according to the requirements of the shareholders.

Should the Advisory Board perform duties of the Supervisory Board, it must however be appointed as such. This is basically to prevent the employees' representatives being excluded from co-deciding within the Supervisory Board.

5. Mandatory Information on Business Papers and Websites

The LLC has to indicate its firm name (name of the LLC), its seat, the Register Court and the Companies' Register Number on all business papers and order forms addressed to a certain recipient, as well as on its website.

Should the LLC be in the state of liquidation, this circumstance also has to be mentioned.

6. Accounting and Auditing Regulations

As a corporation, the LLC is obliged to establish an annual statement, consisting at least of the balance sheet and the profit and loss account as well as of an appendix. LLCs of a larger size additionally have to draft a management report.

The annual statement is erected by the Management Board itself or by people instructed thereby and presented to the General Assembly for adoption at the regular meeting. The annual statement has to be adopted within eight months of the balance sheet date.

The annual statement (and management report) has to be submitted to the Companies' Register Court at the seat of the company within nine months after the balance sheet date at the latest. For small and medium-size LLC's there is some facilitation as regards publication (i.e. the possibility to summarize certain positions).

The annual statement of medium-size and large LLCs has to be audited by an independent auditor.

7. Basics in Tax Law

Initially it is the LLC that is subject to tax. Profits gained by the LLC are taxed with corporate tax (Körperschaftssteuer, KöSt) of 25%.

If the profits are distributed to the shareholders, capital gains tax (Kapitalertragssteuer, KESt) of an additional 25% accrues on the dividends. The LLC has to pay the capital gains tax to the competent tax authorities.

Thus, if all profits are distributed, a total tax rate of 43,75% applies.

If an LLC holds participations in another domestic corporation or in a corporation having its seat in the EEA and if the LLC draws profits (dividends) from this participation, such profits are not taxable (affiliation privilege). Only if profits are distributed to a natural person capital gains tax is due.

For further details on duties and taxes payable by an LLC in the course of its foundation see point "9.5. Foundation Costs and Duration", page 24.

8. Basics in Trade and Industry Law

The holder of a trade licence (if required at all) is the LLC. In order to guarantee compliance with all regulations under trade and industry law, a natural person („Industrial Managing Director“; Gewerberechtlicher Geschäftsführer) has to be appointed. This person has to fulfil the necessary personal requirements for receiving a trade licence.

The Industrial Managing Director does not necessarily have to be registered with the Companies' Register as corporately appointed Managing Director. A person who has the authority to act independently and self-responsibly already meets the requirements set out above.

If the LLC conducts a trade requiring a certificate of professional competence (Befähigungsnachweis) - for a list of trades see www.tirol.gv.at -, the Industrial Managing Director has to be a member of a body entitled to legal representation or has to be employed at least for 20 hours per week in a position with obligatory social security insurance.

9. Foundation of an LLC

9.1. General Information

The Foundation of an LLC can basically be divided into three phases: the pre-foundation phase („pre-foundation association”), the pre-incorporation phase (“pre-incorporation association”) and the phase of the already incorporated and existent LLC.

The LLC is established by conclusion of the Articles of Association or by Declaration of Formation (both executed in the form of a notarial deed).

The LLC however only comes into existence upon registration in the Companies' Register. From that time on, the LLC is vested with full legal capacity and is as such subject of rights and duties.

Until the corporation has fully come into existence, there are particularities as regards liability.

9.2. „Pre-Foundation Association“ (“Vorgründungsgesellschaft”)

9.2.1. Legal Form and Liability

The nascent LLC enters the state of „pre-foundation“ as soon as activities are carried out with the aim to found the LLC. For instance the drafting of the Articles of Association falls within this pre-foundation phase.

From a legal point of view the pre-foundation association is a civil law partnership (ABGB-company). Each shareholder is personally, jointly and unlimited liable with his personal assets for liabilities created in this phase.

Example: Three shareholders decide to found an LLC. For this purpose, they entrust a corporate consultant to draft a business concept. Should the three shareholders decide not to found the LLC anymore and should

one of the three shareholders not be able to settle his share in liability (drafting costs for the business concept), the other two shareholders have to take over his share in liability. Inter se, the shareholders having paid their share in liability are of course entitled to take recourse against the third shareholder and claim the pro-rata share of this liability paid.

Other business activities possibly leading to liability in the pre-foundation phase could for example be the conclusion of lease contracts for business premises as well as the purchase of office equipment for the nascent LLC.

Moreover, in the pre-foundation stage a company account is often opened with a bank institution. The account is registered in the name of the future LLC but with the supplement „in the course of incorporation“ (“in Gründung”).

9.2.2. Articles of Association

In the Articles of Association, essentially all rights and obligations of the shareholders are regulated as well as the organisation, the duties and authority of all the other bodies. They are the organisational foundations of the (future) activities of all parties involved in the LLC.

Accordingly, the Articles of Association need to deal with and foresee regulations not only for present but also future topics. Sufficient time should therefore be dedicated to a thorough drafting of the Articles of Association.

The Articles of Association have to be signed by the shareholders and executed in the form of a notarial deed; otherwise they are not valid.

Upon execution the LLC is formed. The LLC then enters the state of „pre-incorporation association“. The Articles of Association can only be

altered with a three-quarter majority vote unless the Articles of Association state otherwise.

There is also the possibility of founding an LLC as a single person („single-person LLC“, “Einmann-GmbH”). Instead of the Articles of Association a Declaration of Formation has to be drafted, which has to meet the same requirements in form (notarial deed) and content as the Articles of Association. The above information regarding the Articles of Association is therefore also valid for the Declaration of Formation.

The main points to be regulated in the Articles of Association are:

- Firm name and seat of the corporation
- Object of the corporation
- Amount of share capital and paid-in share capital contributions
- Allocation of voting power, decision-making by the General Assembly (activities requiring approval)
- Supervisory Board (internal organisation, activities requiring approval)
- Allocation of profits
- Appointment of Managing Directors (a shareholder being Managing Director)
- Transfer of company shares (e.g. approval, pre-emption right)
- Minority rights
- Exclusion and Termination

9.2.3. Firm Name and Seat of the company

The firm name is the name of the LLC and is mentioned in the Companies' Register.

All sorts of names (of persons, objects or fantasy names or combinations thereof), are allowed under the condition that they are suitable for identification of the company, have a distinctive character and are not misleading. If indicated, an expert opinion on the legitimacy of the requested denomination has to be included with the application for registration of the company at the Companies' Register.

The firm name has to contain the generally recognized addition, referring to the legal form of the LLC (“GmbH”, “GesmbH”, or similar).

9.2.4. Object of the Company

The object of the Company reflects the field(s) of activity and business of the LLC. It suffices, if the core business is substantiated specified in the Articles of Association. Additionally, an extension clause should be included in the Articles of Association. The advantage of such a clause is that should the LLC's activities expand, the Articles of Association need not be altered.

9.2.5. Share Capital and Share Capital Contribution

The LLC must have a minimum share capital of € 35,000 (Euros thirty-five thousand). The subscription of each of the shareholders must be at least € 70 (Euros seventy). Each shareholder only subscribes to one share capital contribution.

Shareholders' contributions may be paid-in in cash or made in kind or a combination of both.

If the value of the contribution in kind does not exceed half of the authorized share capital, a combination of contributions in kind as well as in cash is possible without any difficulty. At least half of the share capital however, then has to be subscribed in cash.

The subscription of more than half of the share capital in kind is only possible under specific conditions.

First, the assets to be contributed, the contributor as well as the nominal value of the share capital contribution granted in return have to be duly described in the Articles of Association.

Secondly, after execution of the Articles of Association the shareholders, the Management Board, the Supervisory Board – if existing – as well as a Formation Auditor have to draft formation and audit reports.

The following assets may constitute contributions in kind:

- Intangible assets (patent rights, trademark rights, transferable rental rights, copyrights etc.)
- Tangible (material) assets (real estate, machinery, utilities, cars etc.)
- (part of) businesses, entrepreneurial partnership interests, capital interests

Should a sole proprietorship as a whole be contributed to the LLC, a formation audit does not need to take place in certain circumstances. Especially in view of a possible company succession it is often cheaper to contribute one's company to the LLC and then surrender one's company shares.

From a tax-point of view this constellation is interesting, since the contribution of a company to an LLC usually involves tax privileges.

9.2.6. Allocation of Voting Power

The allocation of voting power is correlated with the contribution of capital. Allocation of voting power according to the „one man one vote princi-

ple“ (i.e. each shareholder has equal voting rights) is possible. Each shareholder however, has to have at least one vote.

Sometimes voting trust agreements (consortium agreements) are closed, obliging the shareholders to stick to a certain voting behaviour in the General Assembly.

9.2.7. Transfer of Company Shares

The free transferability of company shares may be subjected to certain conditions defined in the Articles of Association.

Very often the transfer of company shares of an LLC (e.g. by purchase or by way of inheritance upon the death of the shareholder etc.) is bound to prior approval by the remaining shareholders (restriction of transferability), and/or that the shareholder willing to sell his company share must offer them to the other shareholders first before transferring his company share to a third party (pre-emptive right).

9.2.8. Minority Rights

Shareholders holding a minority share in an LLC are protected by the law so that they are not discriminated against or disadvantaged.

For example, shareholders with a company share of 10% (ten percent) can call a Meeting of the General Assembly or file an application to the court asking for the appointment of auditors to carry out a special audit.

The so-called blocking minority is a negative minority right, meaning that shareholders with a company share of over 25% (i.e. at least 25% and one vote) are able to block alterations in the Articles of Association.

Provisions might be included in the Articles of Associations exceeding the extent of protection conferred by law, e.g. lowering the blocking minority from 25% plus one vote to a lesser percentage.

9.2.9. Termination

Contrary to the provisions regulating partnerships there is no ordinary right of termination provided by the law for LLCs. Therefore it is advisable to include provisions on termination in the Articles of Association.

Possible regulations could be such allowing the shareholders to withdraw from the company by the means of termination. Mostly such a termination right is connected with a pre-emptive right or a take-over obligation of the company share by the remaining shareholders, without dissolving the LLC.

Another alternative is that a shareholder is granted the right to dissolve the LLC by way of termination.

9.2.10. Practical Advice for Notarization

In the course of company foundation it is not only mandatory to erect the Articles of Association in the form of a notarial deed but there are also several documents (e.g. the application to the Companies' Register) that have to be notarized by Notary Public or the Court.

In order to save time and costs it is advisable to have the documents requiring mandatory notarisation notarized at the same time as the Articles of Association are executed.

9.3. Pre-Incorporation Association ("Vorgesellschaft")

9.3.1. Legal Form and Liability

The stage of "pre-incorporation" is reached on execution of the Articles of Association or Declaration of Formation and ends with the registration of the LLC in the Companies' Register.

The pre-incorporation association is liable for the declarations executed by its Managing Directors as long as the declarations are executed in the name of the pre-incorporation association. The Managing Director acting on behalf of the company is also personally liable for such actions with his personal assets.

If the company is later registered in the Companies' Register, all transactions by the pre-incorporation association shall be deemed transactions on behalf of the LLC, without requiring any further action.

9.3.2. Appointment of Managing Directors

Insofar as the Managing Director(s) have not been corporately appointed within the Articles of Association, one or more Managing Directors are appointed by notarized shareholders' resolution.

Should a company's bank account not yet have been opened, the appointed Managing Directors shall open a bank account at a local bank institute (supplement: „in formation“).

9.3.3. Subscription of the Share Capital Contribution and Formation Audit

Upon application of registration to the Companies' Register at the latest each shareholder has to pay-in at least ¼ of his share capital contribu-

tion in cash, at least however € 70; in total at least half of the share capital has to be paid-in in cash onto the LLC's account.

The share capital has to be at the free disposal of the Managing Directors and shall not be limited or restricted by any counter-claims, a confirmation of which has to be provided by the bank.

This bank confirmation has to be enclosed with the application of registration to the Companies' Register. If the remaining half of the share capital is to be subscribed in share capital contributions in kind, these have to be effected immediately.

In the case of share capital contributions in kind, the shareholders have to draft a formation report, the appointed Managing Directors, the Supervisory Board – if existing – as well as the formation auditor appointed by the court however have to draft an audit report evaluating the value of the contributed assets.

Upon application to the Companies' Register at the latest, all assets immediately have to be placed at the free disposal of the Management Board if in-kind contributions are effected, a confirmation of which has to be provided by the Management Board.

9.3.4. Incorporation in the Companies' Register

All Managing Directors have to apply for registration of the LLC in the Companies' Register. The application of registration has to be notarized.

The Companies' Register is maintained by the Regional Courts (Landesgericht) as Companies' Register Courts. The competent Companies' Register Court is determined according to the seat of the LLC.

For registration in the Companies' Register the following specifications have to be made:

- Firm name and legal form (LLC)
- Seat
- Business address
- Optional: brief description of the branch of business
- Amount of share capital
- Balance sheet date (for the annual statement)
- Date of erection of the Articles of Association
- Name, date of birth, address of the Managing Directors (should procurators have been appointed by the General Assembly, their data also have to be indicated; type of representative power (sole-, collective or mixed power of representation)
- In the case of an optional or mandatory Supervisory Board: the data of the members of the Supervisory Board as well as its chairman and vice chairman have to be indicated
- Name, date of birth, address or companies' register number of the shareholders
- Share capital contribution subscribed by each shareholder as well as the amount already paid-in
- Confirmation by the Managing Directors that the paid-in share capital contributions are at their free disposal
- If a specific duration of the company has been agreed on, this also has to be mentioned

The following documents have to be enclosed with the application of registration to the Companies' Register:

- Articles of Association or Declaration of Formation executed in the form of a notarial deed
- Notarized Shareholders' Resolution on the appointment of the Managing Director(s)
- Notarized sample signature of the Managing Director(s) and Procurator(s), if any
- Declaration of the competent tax authority that corporation tax has been paid (Declaration of non objection); often the charges are, however, self-assessed by the Notary Public or Attorney and paid to the competent tax authority (Declaration of self-assessment)
- Confirmation of the bank that the paid-in capital is at the free disposal of the Managing Directors
- In the case of a Supervisory Board: Notarized resolution on the appointment of the Supervisory Board; followed by a notarized Supervisory Board's resolution on the appointment of a chairman and a vice chairman.

9.4. The Incorporated LLC

After verification and examination by the Register Court, the LLC is finally registered in the Companies' Register, if all requirements are fully met to the Court's satisfaction.

The LLC comes into existence upon registration in the Companies' Register. Although the LLC has reached full legal capacity, the activities regarding the formation of the LLC are, however, not yet concluded.

At this stage the LLC's trade has to be registered and the Industrial Managing Director has to be notified to the competent trade supervisory authority (if the company wishes to exercise a trade to be registered).

As soon as the competent tax authorities are informed that the LLC is starting business operations, the LLC will receive a tax number as well as a VAT-registration number. The LLC will then also be allocated a contribution number by the social security office.

The appointment of the Managing Director(s) by shareholders' resolution or the corporate appointment of the Managing Director(s) within the Articles of Association is of purely functional nature. Therefore an employment contract must also be concluded between the Managing Director(s) and the LLC.

9.5. Formation Costs and Duration, Supporting Measures

The total costs of formation of an LLC generally amount to about 10% to 15% of the share capital. The costs mainly consist of the following components:

- Erection of the Articles of Association / Declaration of Formation
- Drafting of other Formation Documents (Application to Companies' Register, resolution on the appointment of the Managing Director(s) etc.)
- Fees for erection of a notarial deed or other notarization fees
- Other side agreements to be erected (trust agreement, consortium agreement etc.)
- Corporation tax: 1% of the paid-in share capital contribution
- Court fees for registration of the LLC: about € 300 (depending on the number of shareholders and Managing Directors)
- Other Consultancy Fees (e.g. attorney, tax advisor, corporate consultant)

If real estate is transferred in the course of the LLC's formation (e.g. from a shareholder to the LLC), land transfer tax is due. However, if certain requirements are met, there may be an exemption or reduction of land transfer tax.

Under the Companies' Promotion Act (Neugründungsförderungsgesetz, NeuFöG), some financial relief is granted if the shareholder (holding 50% of participation or more than 25% of participation as Managing Director) has not undertaken any comparable activities both at home or abroad in the last 15 years.

The following exemptions are granted for new-starters or in the case of business transfer:

- Exemption from stamp-duty and federal administrative tax directly related to start-up or business transfer
- Exemption from Companies' Register Fees
- Exemption from corporation tax

The following exemptions are only valid for start-ups:

- Exemption from registration fees to the cadastral register, if real estate is contributed to the company
- Exemption from land transfer tax if the contributed real estate is given as consideration for shareholder's rights
- Exemption from certain payroll fringe costs

In the case of business transfer there are the following exemptions:

- Exemption from land transfer tax if real estate worth up to € 75,000 is transferred

In order to receive financial support, the declaration of start-up of the company (Formular NeuFö1) or the declaration of business transfer

(Form NeuFö3) has to be submitted before or at the latest at the same time the benefits are claimed.

Basically, the duration of formation of the LLC is dependent on the duration of negotiations on the content of the Articles of Association, in particular on the amount of the share capital contributions to be subscribed, the allocation of voting power, the process of consenting on the appointment of one or more Managing Directors, etc..

Once the Articles of Association are concluded, it generally takes about two to four weeks until the LLC is finally registered.

10. Excursus: The Limited Partnership with Corporate General Partner (GmbH & Co. KG)

The limited partnership with corporate general partner is very popular in Austria, since this legal form combines some of the advantages of a partnership with those of a corporation.

As regards its nature, the limited partnership with corporate general partner is a partnership (limited partnership - LLP, Kommanditgesellschaft - KG), in which the LLC takes over the role of a personally liable shareholder and the other shareholder(s) (usually natural persons) are limited liable partners.

An LLP with corporate general partner therefore always consists of two corporate organisations: at least one LLC and an LLP.

The main advantage of the LLP with corporate general partner is that from a tax-point of view the loss of a limited partner may be offset against earnings of the LLP, whereas the liability of the limited partner is

limited with his liability contribution and only the LLC can be held fully liable.

It is also possible for only one natural person to be behind such an LLP with corporate general partner.

Besides the possible advantages of the LLP with corporate general partner there may however also be some disadvantages to be considered, such as an increased administrative effort caused by the existence of the two companies (the LLC and the LLP), as a consequence of which the suitability of this legal form should be thoroughly evaluated.

In depth legal analysis and assistance, not only in the fields of tax law, is therefore indispensable.

11. Key information on the LLC – Overview

- Firm name (name of the LLC)
 - freely selectable
 - not misleading, distinctiveness
 - addition “LLC” (“GmbH”) or similar
- Share capital
 - minimum of EUR 35,000
 - with cash contributions, at least half of the share capital has to be paid-in at once
 - with in-kind contributions company formation auditors may be established
- Object of the business
- Bodies
 - all activities permitted by law
 - General Assembly
 - Management Board
 - Supervisory Board (only with “large” LLCs)
 - Advisory Board (optional, advisory function)
- Management Board
 - one or more Managing Directors
 - with sole or collective power of representation
 - no legal residence in Austria necessary
 - appointment by shareholders’ resolution
 - corporate appointment within the Articles of Association only possible for shareholders
 - separate employment contract
- Formation Documents
 - Articles of Association or Declaration of Formation
 - application to the Companies’ Register (notarized, signed by all Managing Directors)
 - sample signature of all Managing Directors (notarized)
 - resolution on the appointment of the Managing Director(s)
 - declaration of no objection or declaration of self assessment
 - confirmation of payment of the share capital by the custodian bank
- Shareholder
 - all national or foreign, natural or legal

- persons
 - single-person-LLC allowed
- Taxation
 - foundation: 1% of tax
 - current taxes on profit: 25% corporate tax (Körperschaftsteuer, KöSt)
 - Distributions: 25% capital gains tax (Kapitalertragsteuer, KEST)
- Foundation Support
 - Companies' Promotion Act (Neugründungsförderungsgesetz)
 - prerequisites: no comparable activities of the shareholder in the last 15 years
 - supporting measures:
 - Exemption from charges
 - Exemption from corporation tax
 - Exemption from real estate transfer tax
 - Exemption from certain payroll fringe costs
- Formation costs
 - generally about 10% to 15% of the share capital (depending on consultancy expenses and size of the LLC)
 - costs:
 - contract erection costs
 - drafting of other documents (application to the Companies' Register etc.)
 - fees of the notary public (notarization and notarial deed)
 - corporation tax
 - charges (Companies' Register etc.)
 - other consultancy fees (tax advisor, attorney etc.)
 - land transfer tax
- Duration of Formation
 - 2 to 4 weeks (dependent on the competent Register Court) counting from availability of the Articles of Association and of other formation documents

Greiter Pegger Kofler & Partner

The law firm Greiter Pegger Kofler & Partners was founded by Dr. Josef Greiter in September 1897. Since then clients have been putting their trust in us.

Today we see ourselves as a modern service company based on sound tradition, with a team of specialists advising and representing clients in nearly every field of law.

Our team is made up of a skilled staff of about 30, 22 of them jurists including 11 experienced lawyers. One of our main fields is Corporate and Commercial Law, whereby we also represent numerous international clients.

A horizon reaching far beyond our own borders goes without saying. We have personal contact to a network of lawyers throughout the world and correspond in four languages: German, English, French and Italian.

We pass our wide experience and knowledge on in lectures, in particular at universities and colleges.

Our specialist fields of law include the following:

- Antitrust Law and Subsidies Law
- Architectural and Construction Law
- Banking and Capital Market Law
- Business Mediation
- Company Law
- Competition and Marketing Law (Unfair Competition Law)
- Constitutional Law and Administrative Law
- Contract Law (National and International)
- Corporate Transactions
- Distribution Law
- Energy and Telecommunication Law
- Enforcement of Foreign Judgements
- Environmental Law
- European Union Law
- IT Law
- Labour and Employment Law
- Land and Real Estate Law
- Law of Associations
- Law of successions and Wills
- Litigation
- Medical Law
- Mergers and Acquisitions
- Preparation for Negotiations
- Private Foundations
- Product Liability and Warranty
- Public Tenders Law (Public Procurement Law)
- Real Property Transactions
- Tax and Customs Law
- Tort Law and Personal Injury Compensation
- Trademark Law, Industrial Design Law, Patent Law and Copyright Law
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