

# The GmbH

A Guide to the German Limited Liability Company

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Klaus J. Müller

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# **The GmbH**

## **A Guide to the German Limited Liability Company**

by

Klaus J. Müller

3<sup>rd</sup> edition

2016





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## DIE FACHBUCHHANDLUNG

### The Author

Klaus J. Müller is a partner at SCHIEDERMAIR, a spin-off of a Magic Circle firm with a strong notarial practice. His fields of expertise are corporate and real estate law, and he is a certified commercial and corporate law specialist. He primarily notarizes M&A and real estate transactions, often involving cross-border elements, including related financing arrangements and securities. He also provides notarial services in general corporate matters, including designing, establishing, and changing group structures, with an emphasis on *GmbHs* and *GmbH & Co. KGs*.

Klaus J. Müller has published extensively on corporate law issues, in particular with regard to the *GmbH*. He served as an assistant lecturer at the Institute for Trade and Commercial Law of the University of Marburg (*Prof. Volker Beuthien*) from 1993 through 1995 before going into private practice. He studied law in Freiburg, Hamburg, and Lausanne and earned his law degrees from the University of Freiburg (1990) and from the Bar Exam Office of Hamburg (1993). He also holds a doctorate from the University of Marburg (1996) for a thesis on the liability of the purchaser of shares in a German *GmbH*. From 1996 through 2008 (since 2001 as a partner) he was with Mayer Brown LLP. He is a member of the Academic Advisory Board of the Frankfurt am Main Chamber of Notaries. JUVE lists him as one of the notaries to turn to in Frankfurt am Main.

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### **Preface to the third edition**

More than seven years have passed since the manuscript of the last edition of this book went to press. Needless to say, the law, being in constant flux, has seen more than a couple of changes in that time, predominantly because of new court rulings, but also because of amendments to statutes. Further, many of the novelties introduced by the *MoMiG*, the major legislative reform of the Limited Liability Companies Act in 2008 (see preface to the second edition below), have been a source both of intense debate by legal authors and of many court interpretations. Therefore, I have incorporated all relevant new statutes, statutory amendments and the more important case law developments of the past few years. I have also revised and, where warranted, adapted or rewritten the entire book. It now reflects, in all aspects, the state of the law as of August 2015.

As with the preceding editions, comments and suggestions by you, dear reader, are welcome!

Frankfurt am Main, September 2015

Klaus J. Müller

### **Preface to the second edition**

Much has happened in a short period of time. Before this book has seen its second anniversary, the legislature has revolutionized the role of commercial registers and notaries and introduced mandatory rules on electronic filings and publications. Further, the Transformation Act was amended significantly, in particular with regard to cross-border mergers. Cross-border mergers are now, for the first time, expressly permitted and regulated by a specific set of provisions.

Most importantly, the LLCA – by definition the principal statutory source of this book – has seen the biggest reform in the more than hundred years of its existence, second only in significance to the 1980 revision. This reform (put in place by the so-called *MoMiG*<sup>1</sup>) has fundamentally changed the law applicable to the *GmbH*. I have therefore completely reviewed, amended, and, to a considerable extent, rewritten this book.

Frankfurt am Main/Bad Homburg v. d. H., September 2008

Klaus J. Müller

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<sup>1</sup> *Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen* (Act on the Modernization of the Laws pertaining to the *GmbH* and on the Control of Misuses). The *MoMiG* was, when I finished my work on the present second edition of this book, only available in the draft form given to it by the German government on May 23, 2007 (*Regierungsentwurf*). This second edition has therefore been prepared on the assumption that the *MoMiG* will eventually come into existence in a form corresponding to the government bill of May 23, 2007.

### **Preface to the first edition**

The German limited liability company – the *GmbH* – is by far the most commonly used legal form in Germany. It is in particular of interest to those who want – apart from enjoying the benefit of limited liability – a legal form that can be flexibly structured. This book familiarizes the reader with the legal rules applicable to the *GmbH*. It should, however, not be considered to be a substitute for professional advice.

More than a decade's scholarly interest in, and practical experience with, the *GmbH* inspired me to write this book. In my practice, I have predominantly been confronted with the *GmbH* as an entity forming part of a larger group of companies. That is why I have placed the emphasis of the book on *GmbHs* that are held by corporate shareholders rather than by natural persons.

Many structures and concepts of the German legal system do not translate into an equivalent structure or concept of the Anglo-American legal system (and *vice versa*). It is therefore a demanding challenge to describe German legal concepts in the English language. I am fully aware of this challenge and have tried my best to avoid shortcomings or ambiguities in this regard. I have also attempted to state the law in clear and simple terms and hope the attempt has succeeded. Many thanks go to Mr. Benjamin Letzler, Harvard Law School, who thoroughly reviewed the manuscript and offered many valuable suggestions to make it more digestible for the non-German reader.

Frankfurt am Main/Bad Homburg v.d.H., August 2005

Klaus J. Müller

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