

# Table of Contents

Preface .....	V
Table of Abbreviations .....	XIX

## Part 1: Introduction to Limited Liability Company Law and Stock Corporation Law

A. The Limited Liability Company .....	1
I. Introduction .....	1
1. The Significance of Limited Liability Companies in the German Business World .....	1
2. Structure and Corporate Bodies of the <i>GmbH</i> .....	1
II. Formation .....	2
1. Steps of Formation .....	2
a) Overview .....	2
b) Articles of Association .....	3
aa) Execution .....	3
bb) Shareholders .....	3
cc) Contents .....	4
c) Appointment of Managing Directors .....	5
d) The Raising of Capital (Cash Formation/Formation through Contributions in Kind) .....	5
aa) Cash Formation .....	5
bb) Formation through Contributions in Kind .....	5
e) Application with the Commercial Register .....	6
aa) General Requirements .....	6
bb) Special Requirements in Case of Contributions in Kind cc) Liability for False Information .....	7
f) Examination by the Register Court .....	8
g) Registration .....	9
2. Nominee Formation .....	9
3. Simplified Formation Proceedings .....	10
4. Formation of an Entrepreneur Company ( <i>UG</i> ) .....	10
5. Shelf Companies .....	11
6. Hidden Contributions in Kind .....	11
7. Pre-Registered Company .....	13
a) Legal Nature .....	13
b) Internal Relations .....	13
c) External Relations .....	13
d) Liability of the Company and the Shareholders .....	14
e) Liability of the Persons Acting .....	15
f) Principles regarding Defective Companies .....	15
8. Overview: The Formation of a <i>GmbH</i> .....	15

III. Legal Position of the Shareholders .....	17
1. Membership Rights and Membership Duties .....	17
2. Membership Rights .....	18
a) Distinction between Membership Rights and Special Rights .....	18
b) Right to Information and Right of Inspection .....	18
c) Shareholder Lawsuit .....	19
3. Membership Duties .....	19
a) Duty to Render Contributions .....	19
b) Ancillary Duties .....	21
c) Duty to Render Additional Contributions .....	21
d) Fiduciary Duty Pursuant to Corporate Law .....	22
e) Non-Compete Obligations .....	22
f) The Requirement of Equal Treatment .....	23
4. Liability of a Shareholder of a Limited Liability Company .....	23
a) Generally No Shareholder Liability .....	23
b) Contractual Shareholder Liability .....	23
c) Capital Preservation .....	23
d) Insolvency Law Liability .....	24
e) Destruction of the Economic Basis of the Company .....	24
f) Other Exemptions .....	25
5. Redemption of a Share .....	25
6. Withdrawal and Expulsion of a Shareholder .....	26
IV. Transfer of Shares .....	26
1. Disposal and Transfer of the Shares .....	26
2. Notarial Form .....	27
3. Restriction on Transferability .....	28
4. Shareholder List .....	28
V. Shareholder Meeting .....	28
1. Competence of the Shareholder Meeting .....	28
2. The Convening of a Shareholder Meeting .....	29
3. Proceedings of the Shareholder Meeting .....	30
4. Voting and Shareholder Resolutions .....	31
5. Exclusion of Voting Rights .....	32
6. Nullity of Shareholder Resolutions and Action to Set Aside Resolutions .....	32
7. Important (Minority) Shareholder Rights (Overview) .....	33
VI. Management of the Company .....	36
1. Management and Representation of the Company .....	36
a) Management by Managing Directors .....	36
b) Duties of the Managing Directors .....	36
c) Authority of the Managing Directors to Represent the Company .....	37
d) Restrictions in Internal Relations .....	38
2. Appointment and Dismissal of the Managing Directors .....	38
a) Personal Requirements for Appointment as Managing Director .....	38
b) Corporate Act of Appointment .....	40
c) Dismissal .....	40
3. Service Contracts with Managing Directors .....	41

a)	Legal Nature of the Service Contract .....	41
b)	Parties to the Service Contract .....	41
c)	Form and Content of the Service Contract .....	42
d)	Termination of the Service Contract .....	43
4.	Liability of the Managing Director .....	44
a)	Prerequisites of the Liability of the Managing Director ....	44
b)	Consequences of the Liability of the Managing Director ...	45
c)	Third-Party Claims .....	46
VII.	Supervisory Board and Codetermination .....	46
1.	Overview .....	46
2.	The Optional Supervisory Board .....	47
3.	Advisory Board .....	47
4.	Supervisory Board according to One-Third Participation Act ..	48
5.	Supervisory Board according to Codetermination Act .....	48
VIII.	Financial System .....	50
1.	Bookkeeping and Accounting .....	50
a)	Overview .....	50
b)	Annual Financial Statements .....	51
c)	Preparation of the Annual Financial Statements .....	51
d)	Audit of the Annual Financial Statements .....	52
e)	Formal Approval of the Annual Financial Statements .....	53
2.	Allocation of the Annual Net Income .....	53
a)	Right to Participate in the Profits and Right to the Distri- bution of Profits .....	53
b)	Calculation .....	53
c)	Provisions of the Articles of Association .....	54
3.	The Maintenance of the Registered Share Capital .....	54
a)	Introduction .....	54
b)	Restrictions on Payments of Capital to Shareholders .....	55
c)	Exceptions to the Prohibition against Refunding of Contri- butions .....	57
d)	Acquisition of Company's Own Shares .....	57
e)	Shareholder Loans .....	58
4.	Increase of the Registered Share Capital .....	59
a)	Overview .....	59
b)	Ordinary Capital Increase .....	60
c)	Capital Increase from Company Resources .....	61
d)	Capital Increase from Authorized Capital .....	62
5.	Reduction of the Registered Share Capital .....	63
IX.	Dissolution and Liquidation of the Company .....	64
1.	Overview .....	64
2.	Dissolution and Grounds for Dissolution .....	64
3.	Liquidation .....	65
4.	Completion of Liquidation .....	66
X.	Limited Partnership with a <i>GmbH</i> as the Personally Liable Shareholder ( <i>GmbH &amp; Co. KG</i> ) .....	66
1.	Definition .....	66
2.	Legal Particularities .....	66
3.	The Legal Position of the General Partner <i>GmbH</i> .....	67
4.	Codetermination .....	68

<b>B. Stock Corporation</b> .....	68
I. Introduction .....	68
1. The Significance of AGs in the German Business World .....	68
2. Structure and Legal Bodies of the Company .....	69
II. Overview .....	69
1. The AG .....	69
2. The Share .....	70
a) Fraction of the Registered Share Capital .....	70
b) Right of Membership .....	71
c) Share Certificates .....	73
3. Other Securities Governed by Corporate Law .....	73
4. Protection of Shareholders in a Stock Corporation .....	73
III. Formation .....	74
1. Steps of Formation and Stages of the Company during the Formation Process .....	74
a) Overview .....	74
b) Subscription to Shares .....	75
c) Appointment of the Formation Bodies .....	76
d) Formation Report .....	76
e) Raising of the Registered Share Capital .....	76
f) Formation Audit .....	78
g) Application for Registration in the Commercial Register ...	79
h) Inspection by the Register Court .....	80
i) Registration and Notification .....	81
2. Post-Formation Acquisitions .....	81
3. The Pre-Registered Company .....	82
4. Defects Relating to Formation .....	82
5. Overview: The Formation of a Stock Corporation .....	84
IV. Legal Position of the Shareholders .....	86
1. Introduction .....	86
2. Membership Rights .....	86
a) Administrative Rights .....	87
b) Property Rights .....	87
c) Prohibition of Separation .....	87
d) Special Rights .....	88
e) Shareholders' Rights to File a Lawsuit .....	88
3. Membership Duties .....	89
a) The Duty to Pay Contributions .....	89
b) Ancillary Obligations .....	90
c) Fiduciary Duty .....	90
4. Principle of Equal Treatment .....	91
5. Change in Membership .....	92
a) Introduction .....	92
b) Sale and Transfer of Shares .....	92
aa) Transfer of Bearer Shares .....	92
bb) Transfer of Registered Shares .....	93
c) Peculiarities regarding Registered Shares .....	93
d) Restrictions on Transferability .....	93
e) Restricted Property Rights .....	94
f) Transfer by Way of Security .....	94

g) Inheritance .....	94
V. Constitution of the AG .....	95
1. Introduction .....	95
2. Management Board .....	96
a) Management of the Company .....	96
b) Representation of the Company .....	98
c) Appointment of the Members of the Management Board ...	100
d) Chairman/Spokesman of the Management Board .....	102
e) Dismissal of Members of the Management Board .....	103
f) Service Contracts with Members of the Management Board	104
g) Rights and Duties of Members of the Management Board ..	106
h) Liability of Members of the Management Board .....	109
3. Supervisory Board .....	113
a) Introduction .....	113
b) Overview of the Statutory Supervisory Board Models .....	114
c) Gender Quota .....	115
d) Appointment and Dismissal of Members of the Supervisory Board .....	116
e) Responsibilities of the Supervisory Board .....	119
f) Supervisory Board Procedures .....	122
g) Supervisory Board Committees .....	124
h) Duties of Members of the Supervisory Board .....	125
i) Remuneration .....	126
j) Confidentiality Obligation .....	127
k) Liability of Members of the Supervisory Board .....	128
4. General Meeting .....	130
a) Introduction .....	130
b) Statutory Competency of the General Meeting .....	130
aa) Routine Matters .....	131
bb) Fundamental Decisions .....	132
cc) Resolutions on Matters relating to the Management of the Company .....	132
dd) Other Cases Regulated by Law .....	133
ee) Unwritten Competencies of the General Meeting .....	133
c) Convening of the General Meeting .....	134
d) The Course of the General Meeting .....	138
e) The Right to Information .....	140
f) Resolutions of the General Meeting and Voting .....	142
g) Provisions of the Articles of Association on Voting .....	143
h) Voting Right .....	143
i) Prohibition of Voting .....	144
j) Voting Agreements .....	145
k) Exercise of Voting Rights by Proxy .....	146
l) Proxy Voting Rights for Deposited Shares .....	147
5. Actions against Resolutions of the General Meeting .....	149
a) Overview .....	149
b) Nullity of Resolutions .....	151
aa) Overview .....	151
bb) Violation of Provisions relating to Form and Procedure	151
cc) Other Violations of Law .....	153

dd) Cured Defects . . . . .	154
c) Action to Set Aside a Resolution . . . . .	155
aa) Reasons for Setting Aside Resolutions . . . . .	155
bb) Procedure . . . . .	156
d) Release (Fast-track) Proceedings . . . . .	157
6. Overview: Important (Minority) Shareholder Rights . . . . .	158
7. Corporate Governance Code . . . . .	163
a) Development of Voluntary Codes of Governance Best Practices . . . . .	163
b) Is the German Corporate Governance Code Statutory Law? . . . . .	164
c) Major Content of the German Corporate Governance Code . . . . .	164
d) Level of Acceptance of the German Corporate Governance Code . . . . .	166
8. Impact of the Sarbanes-Oxley Act (SOA) on German Corporate Governance . . . . .	166
VI. Financial System . . . . .	167
1. The Registered Share Capital/The Principle of Capital Maintenance . . . . .	167
2. Appropriation of Profits . . . . .	169
a) Overview . . . . .	169
b) Creation of Reserves . . . . .	169
c) Appropriation of the Balance Sheet Profit . . . . .	170
d) Distribution of Profits . . . . .	170
e) Claim to the Profit . . . . .	170
3. Equity Financing . . . . .	171
a) Forms of Capital Increase . . . . .	171
b) Capital Increase against Contributions . . . . .	171
aa) Overview . . . . .	171
bb) Resolution on the Capital Increase . . . . .	171
aaa) General Requirements . . . . .	171
bbb) Resolution on the Capital Increase . . . . .	172
cc) Contributions in Kind . . . . .	173
dd) Subscription Right . . . . .	175
aaa) The Subscription Right . . . . .	175
bbb) Exclusion of Subscription Rights . . . . .	175
ccc) <i>De facto</i> Exclusion of Subscription Rights . . . . .	177
ddd) Indirect Subscription Right . . . . .	177
ee) Defects relating to the Adoption of the Resolution on the Capital Increase . . . . .	177
ff) Subscription . . . . .	177
gg) Application and Registration of the Resolution and the Implementation of the Capital Increase . . . . .	178
c) Contingent Capital Increase . . . . .	179
aa) General Requirements . . . . .	179
bb) Resolution on the Contingent Capital Increase . . . . .	179
cc) Subscription Rights . . . . .	180
dd) Effectiveness of the Contingent Capital Increase . . . . .	180
ee) Application, Registration and Announcement of the Issue of Shares . . . . .	181
d) Authorized Capital . . . . .	181

aa) General Requirements .....	181
bb) Authorization of the Management Board .....	182
cc) Contents and Limits of the Authorization .....	182
dd) Exclusion of Subscription Rights .....	183
ee) Implementation of the Capital Increase by the Management Board .....	184
ff) Subscription, Payment of the Contribution and Regis- tration of the Implementation of the Capital Increase ...	185
e) Capital Increase from Company Resources .....	185
aa) Overview .....	185
bb) Resolution on the Capital Increase .....	185
cc) Application, Registration and Effectiveness of the Capital Increase .....	185
dd) Entitlement of Shareholders to New Shares .....	186
4. The Capital Reduction .....	186
a) Forms of Capital Reduction .....	186
b) Ordinary Capital Reduction .....	187
c) Simplified Capital Reduction .....	187
d) Redemption of Shares .....	188
5. Debt Financing .....	188
a) Convertible Bonds and Warrant-Linked Bonds .....	188
aa) Contents and Economic Significance .....	188
bb) Resolution of the General Meeting and Issue of the Bonds .....	189
cc) Shareholders' Subscription Rights .....	190
dd) Rights arising from Convertible or Warrant-Linked Bonds .....	190
ee) Securing the Conversion or Option Right .....	190
ff) Special Forms .....	191
aaa) Naked Warrants .....	191
bbb) Stock Options .....	191
gg) Conversion and Option Rights for Bonds from Other Entities .....	192
b) Dividend Bonds .....	192
c) Jouissance Rights .....	193
VII. Dissolution and Liquidation of the Company .....	193
1. Dissolution and Grounds for Dissolution .....	193
a) Expiration of a Period of Time .....	193
b) Dissolution Resolution .....	193
c) Defect of the Articles of Association .....	193
d) Insolvency .....	194
e) Deletion Due to Lack of Assets .....	194
2. Declaration of Nullity by a Court upon Application .....	194
3. Liquidation .....	194
a) Liquidators .....	195
b) Duties of the Liquidators .....	195
c) Accounting .....	196
d) Completion of Liquidation .....	196
e) Continuation of a Dissolved Company .....	196

VIII. Accounting	197
1. Introduction	197
2. Annual Financial Statements	197
a) Preparation of the Annual Financial Statements	197
b) Audit of the Annual Financial Statements	198
c) Formal Approval of the Annual Financial Statements	200
d) Contestation of the Annual Financial Statements	200
3. Consolidated Financial Statements	201
a) Introduction	201
b) Obligation to draw up Consolidated Financial Statements	201
c) Content, Preparation and Approval of the Consolidated Financial Statements	202
IX. Group of Companies	202
1. Purpose of the Law	202
2. Legal Form of Affiliated Enterprises	203
3. Forms of Affiliation	203
a) Overview	203
b) Majority Ownership	205
c) Control	205
d) Group of Companies	205
e) Enterprise Agreements	206
aa) Profit and Loss Transfer Agreement	206
bb) Domination Agreement	207
cc) Other Enterprise Agreements	207
f) Integration of AGs	207
4. Consequences of Affiliation and Control	208
a) Affiliation	208
b) Control	208
c) Groups of Companies	210
d) <i>GmbH</i> Group of Companies	210
aa) Overview	210
bb) Contract-Based <i>GmbH</i> Group of Companies	211
e) <i>De facto GmbH</i> Group	212
f) Rules on the Conflict of Laws with respect to Groups of Companies	213
X. Listed Companies	213
1. Applicable Laws	213
2. Securities Trading Act	213
a) Insider Law	214
b) <i>Ad Hoc</i> Disclosure Requirements	215
c) Disclosure of Significant Shareholdings	216
d) Information regarding Shares and the Company	219
e) Financial Reports	219
3. Securities Acquisition and Takeover Act	219
4. Stock Exchange Act	222
5. Securities Prospectus Act	222
6. Provisions of the Stock Corporation Act	222
C. Taxation of German Limited Liability Companies and Stock Corporations	224
I. Income Taxes	224



1. Corporate Income Tax .....	224
2. Trade Tax .....	225
3. Dividend Distributions .....	225
II. Other Taxes .....	226
1. Value-Added Tax .....	226
2. Real Estate Transfer Tax .....	226

### Part 2: Relevant Statutes

<b>A. Limited Liability Company Act .....</b>	<b>227</b>
<b>B. Stock Corporation Act .....</b>	<b>296</b>

### List of Tables

Table 1: The Formation of a <i>GmbH</i> .....	15
Table 2: Important (Minority) Shareholder Rights of a <i>GmbH</i> .....	33
Table 3: The Formation of a Stock Corporation .....	84
Table 4: Important (Minority) Shareholder Rights on a <i>AG</i> .....	158
Table 5: Forms of Affiliation .....	204
<b>Appendix 1: Comparison between the Legal Forms of an <i>AG</i> and a <i>GmbH</i> .....</b>	<b>583</b>
<b>Appendix 2: Glossary .....</b>	<b>595</b>