

Overview of legal forms

	Sole proprietorship*	General partnership*
Legal basis	No separate regulation in OR	OR 552 – 593
Main purpose	Small business, individual activities (eg, artist)	Permanent, highly individual business
Legal nature	Sole proprietorship	Business partnership
Company name general barrier: prohibition of deception and public interest OR 944	Name must include family name of owner with or without first name OR 945 If the firm contains other family names, it must be apparent which is the owner's family name. OR 945 II possible additions: activity, fantasy description OR 944	Free choice (personal name, activity, fantasy description – provided name is available; see checklist company foundation p. 74). OR 944 The legal form must be indicated in the company (admissible: 'Kollektivgesellschaft' or abbreviation 'KiG'). OR 947, 950
Formation through commercial trade, see comment 1, p 72	Start of self-directed permanent gainful economic activity.	Conclusion of a company agreement form-free; ie, the general partnership can originate without a written agreement. OR 552 If no trade based on business is operated, the general partnership is created only with an entry in the commercial register. OR 553
Entry in commercial register	Compulsory for company of a commercial nature with an annual turnover of CHF 100,000 or more HRegV 36	Compulsory for a commercial trade OR 552 II
Required number of owners or partners	One person is sole proprietor	Two or more persons are partners OR 552
Required capital	No restrictions	No restrictions Amount and share pursuant to OR 557 and 531

HRegV = Commercial register regulations OR = Swiss Code of Obligations

Limited partnership*	Limited liability company GmbH	Joint stock company AG
OR 554 – 619	OR 772 – 827	OR 620 – 763
Special cases; eg, smaller companies that carry out a highly individual activity involving external partners	Highly individual business	Suitable for almost all types of profit-oriented company
Business partnership	Legal entity, corporate body	Legal entity, corporate body
Free choice (personal name, activity, fantasy description – provided name is available; see checklist company foundation p. 74). OR 944 The legal form must be indicated in the company (admissible: ‘Kommanditgesellschaft’ or abbreviation ‘KmG’). OR 947, 950	Free choice (personal name, activity, fantasy description – provided name is available; see checklist company foundation p. 74). The legal form must be indicated in the company (admissible: ‘Gesellschaft mit beschränkter Haftung’ or abbreviation ‘GmbH’). OR 944, 950	Free choice (personal name, activity, fantasy description – provided name is available; see checklist company foundation p. 74). The legal form must be indicated in the company (admissible: ‘Aktiengesellschaft’ or abbreviation ‘AG’). OR 944, 950
Conclusion of a company agreement form-free; ie, the limited partnership can originate without a written agreement. OR 594 If no trade based on business is operated, the limited partnership is created only with an entry in the commercial register. OR 595	Notarisation of the incorporation, approval of the statutes, and, if applicable, determination of management and representation, and the auditor (unless a waiver pursuant to OR 727a II) . Entry in commercial register OR 777-779	Notarisation of the incorporation, approval of the statutes, and, if applicable, determination of management and representation, and the auditor (unless a waiver pursuant to OR 727a II) Entry in commercial register OR 629-643
Compulsory for a commercial trade OR 594 III	Created with entry in commercial register OR 779	Created with entry in commercial register OR 643
One person is an unlimited partner (general partner) and at least one person or legal entity or commercial company is a limited partner OR 594	At least one shareholder Shareholders may be individuals, legal entities or commercial companies. OR 775	At least one shareholder Shareholders may be individuals, legal entities or commercial companies. OR 625
No restrictions Amount and share pursuant to OR 557 and 598 The liability share of each limited partner must be entered in the commercial register OR Art 608, 609 and HRegV 41 (2) lit g	Compulsory, registered capital defined in the statutes, divided into ordinary shares with a minimum nominal value of CHF 100 OR 774 Min: CHF 20,000, fully paid in OR 773, 777c I	Compulsory, registered capital defined in the statutes, divided into ordinary shares with a minimum nominal value of CHF 0.01 OR 622 IV Min: CHF 100,000, of which CHF 50,000 must be fully paid in OR 621, 622, 632

* In the case of individuals, the compensation fund is required to recognise self-employment from the point of view of social insurance.
More information: www.gruenden.ch

	Sole proprietorship*	General partnership*
Provision of assets instead of money	Possible	Possible OR 557, 531
Organisations or bodies	None Accountant/auditor can be used	Partners Accountant/auditor can be used
Liability/ additional obligation subsidiary = in addition to the company's assets if they are exhausted	Unrestricted liability of owner with personal assets	Primary liability of the company's assets Subsidiary unlimited and joint liability of each partner with personal assets OR 568
Involvement of investors or third-party capital see comment 2, p.72	Very limited opportunities for debt financing (normally loans from family members or friends)	Through accession OR 569
Profit and loss transfer	Fully with owner	According to company agreement OR 557, 559 f.
Accounting law	It is compulsory to keep bookkeeping and accounting records if in the last financial year, sales revenue was ≥ CHF 500,000, Otherwise, only a record of income and expenditure and assets must be kept. OR 957–963b	It is compulsory to keep bookkeeping and accounting records if in the last financial year, sales revenue was ≥ CHF 500,000. Otherwise, only a record of income and expenditure and assets must be kept. OR 957 ff., 558
Taxation For more information, see www.gruenden.ch	Owner's total income and assets from business and private sector	Each partner's share of income and assets in the company, and private income and assets
Foundation costs (advice, notary, commercial register entry)	CHF 500 to CHF 2,500	CHF 2,500 to CHF 5,500
Management and representation	By the owner or any designated person	By each partner individually, unless otherwise regulated by resolution. However, at least one partner must be authorised to represent. Other signatories according to resolution OR 563, 566

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Limited partnership*	Limited liability company GmbH	Joint stock company AG
Possible OR 598, 557, 531	Possible, special procedure OR 777c II i. V. m. 628, 634	Possible, particular procedure OR 628, 634
Partners Auditors can be used	– Shareholders' meeting – Management (with at least one member) – Auditor if no waiver OR 727a II OR 804 ff.	– Shareholders' meeting – Board of Directors (with at least one member) – Auditor if no waiver OR 727a II OR 698 ff
Primary liability of the company's assets Subsidiary unlimited and joint liability of each general partner with personal assets OR 604 Subsidiary limited joint liability of each limited partner (liability of share) OR 608	Exclusive liability of the company's assets OR 794 Optional limited additional contribution liability according to the statutes Amount of the additional contribution liability associated with a pro rata share must be specified in the statutes and may not exceed twice the nominal value of the share capital Liability only for the additional capital contributions associated with the company's shares OR 795	Exclusive liability of the company's assets OR 620 I, II Shareholders required only to fully pay the share capital attributable to their shares (paid-up) OR 680
Through entry as a general partner or limited partner OR 612	Receipt of debt capital by GmbH only against personal liability of owner(s) OR 781	It is advisable to establish an AG if a lot of external capital has to be absorbed OR 650 ff.
According to company agreement OR 598, 601	Shareholders are entitled to a share of the profits according to the law and statutes OR 798, 801 i. V. m. 660 ff.	Shareholders are entitled to a share of the profits according to the law and statutes OR 660 ff.
It is compulsory to keep bookkeeping and accounting records if in the last financial year, sales revenue was ≥ CHF 500,000. Otherwise, only a record of income and expenditure and assets must be kept. OR 957 ff., 598 II i. V. m. 558	Yes OR 957 ff.	Yes OR 957 ff.
Each partner's share of income and assets in the company, and private income and assets	Company for profit and capital Shareholders for share of assets and profit distribution as income	Company for profit and capital Shareholders for share of assets and dividends as income
CHF 2,500 to CHF 5,500	from CHF 3,000	from CHF 3,000
Individually by each general partner, unless otherwise regulated by resolution. However, at least one general partner must be authorised to represent. Limited partners are neither entitled nor obliged to manage the business of the company. OR 600 I Other signatories according to resolution OR 599, 603/563	Management by all partners jointly, unless otherwise regulated by statute OR 809 I Each managing director is entitled to represent the company. Representation may deviate from the statutes, but at least one managing director must be authorised to represent. OR 814 f.	Management by the board of directors, unless delegated to an individual member of the board of directors or to a third party by the organisational regulations OR 716 b Representation by each director individually, if not delegated through statute, organisational regulation or a board of directors' resolution to individual board members or third parties OR 718 I, II At least one member of the board of directors must be authorised to represent OR 718 III

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	Sole proprietorship*	General partnership*
Transfer of membership (exit, employee participation, etc.) see comment 3, p. 72	No membership, whole or partial disposal of the business	By company agreement OR 557 I If no regulation in the company agreement, with the consent of all partners OR 557 II with reference to OR 542
Nationality and residence regulations Residence and work permit see comment 4, p. 72	It is not necessary for the owner to be domiciled in Switzerland.	It is not necessary for the partners to be domiciled in Switzerland.
Reporting obligations		
Directory and storage obligations		

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Comment

- 1 A self-employed economic activity that is geared towards permanent acquisition and which does not necessarily require profit making.
- 2 In addition to the legal forms of admission of external investors, contractual options that move between debt and equity also exist, such as convertible and warrant-linked loans or loans with a performance-related interest rate.

The association GO! www.mikrokredite.ch enables financing of up to CHF 40,000 for all legal forms.
- 3 Exit: in all forms the business operation can be disposed of through the transfer of assets and liabilities. The takeover of assets or of the business of general partnerships, limited partnerships, limited liability companies, joint stock companies, cooperatives, associations, foundations and sole proprietorships registered in the commercial register is governed by the provisions of the Merger Regulation, OR 181 IV.

In other cases, OR 181 I, II and III (further liability of the transferor) must be observed. For the transition of employment relationships, see OR 333 ff.

Employee participation: options to the transfer of company shares (eg, equity) include, inter alia, agreements on bonuses and profit sharing.

- 4 In order to work, foreign nationals require a work permit and residence permit that authorises them to pursue their employment. Citizens from EU* / EFTA** member states require a valid residence permit (L or B EU/EFTA). First-time work permits for non-EU/EFTA nationals are possible, provided they are qualified workers or special reasons justify an exception. Further information: www.sem.admin.ch or cantonal contact points.

* EU-28 member states: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, UK.

According to Protocol III on the free movement of persons, specific maximum numbers and labour market regulations apply to Croatian nationals concerning access to employment from 2017 until the probable end of 2023.

** EFTA member states: Iceland, Liechtenstein, Norway, Switzerland.

Limited partnership*	Limited liability company GmbH	Joint stock company AG
By company agreement OR 598 I; if no regulation in the company contract, with the consent of all partners OR 598 II with reference to OR 557 and 542	Written transfer of shares OR 785 Unless stipulated otherwise by the statutes, approval by the shareholders' meeting (at least two thirds of the votes cast and an absolute majority of the total share capital with which a voting right is exercisable). OR 786, 808b I no. 4	Free, as long as there are no legal or statutory restrictions on transfer OR 684 ff.
It is not necessary for the partners to be domiciled in Switzerland	At least one managing director must be authorised to represent. The company must be represented by a person domiciled in Switzerland, who must be a managing director or a director. OR 814 II, III	At least one member of the board of directors must be authorised to represent. The company must be represented by a person domiciled in Switzerland, who must be a member of the board of directors or a director OR 718 III, IV
	Obligation to notify the beneficial owner if a share of more than 25% is acquired alone or in a joint arrangement with third parties. OR 790a	The acquisition of bearer shares must be reported to the company within one month. OR 697i Obligation to notify the beneficial owner if a share of more than 25% is acquired alone or in a joint arrangement with third parties. OR 697j
	Obligation to maintain a list of beneficially entitled persons. Ten-year retention period. Obligation to ensure access at all times in Switzerland. OR 790a i. V. m. OR 697I	Obligation to maintain a list of shareholders and beneficial owners. Ten-year retention period. Obligation to ensure access at all times in Switzerland OR 697I

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Notes on sole proprietorships

The sole proprietorship is the second most popular legal form in Switzerland (after GmbH). Small firms in the service sector (IT, hairdressers, practices, etc) and small tradespeople and retailers (painters and decorators, fashion shops, etc) usually have this legal form.

The assertion that one must establish a GmbH in order not to be personally liable should be taken with caution and should not be the sole reason to choose the legal form of GmbH. In practice, a founder of a GmbH or an AG is liable for capital borrowed from banks with their private assets. This is contractually regulated by the banks and is independent of the legal form. The decision on whether to take the form of a GmbH should depend on how many people are involved in the foundation or if it is indispensable for marketing purposes. If business does not go as planned, a sole proprietorship can be liquidated more easily.

Text approved by GO! www.mikrokredite.ch

Notes for boards of directors and managing directors

The board of directors of an AG and the managing directors of a GmbH are obliged to ensure proper organisation and management of the company. Violation of this agreement may result in personal liability. Therefore, ensure that you have regular access to the required information. Compare the operations with the business plan/budget and take over if something goes wrong.

Pay particular attention to the payment of AHV contributions, since a more stringent personal liability applies here. These duties and responsibilities may also include *de facto* bodies; that is, persons who are not formally directors or managing directors, but have a decisive influence on the management of the company.

Text approved by MSM Group AG, Winterthur

Notes on simple partnerships and general partnerships

The simple company is a legal entity and a partnership under Swiss law. According to OR 530, it is defined as a contractual association between two or more persons in order to reach a common purpose with joint forces or means. According to OR 530 (2), the simple partnership is also negatively defined as the form of business that arises when the conditions for all other forms of business are not fulfilled. If you "operate a trade, a manufacture or a trade of a commercial nature under a joint company" (OR 552), you become a partnership.

The general partnership lacks a legal identity and therefore the ability to act. The partners are primarily, unrestrictedly and solidly responsible for the debts of the company. Keep in mind that if you choose no other legal form and act jointly with others, you will become a simple partnership or a general partnership. Both can originate informally – that is, without a written contract – by mere action; for example, by means of a common name, joint stationery, or quotes and invoices issued on behalf of the partnership.

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