



The MoPeG is here - What will change for partnerships in 2024

Dear reader,

The Act on the Modernization of Partnership Law (MoPeG) came into force on 1 January 2024. It brings with it numerous innovations and changes for partnerships (GbR, OHG, KG, GmbH & Co. KG, PartG). We are pleased to present the most important changes resulting from the MoPeG in our newsletter below:

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I. Reform of the GbR

After the provisions of the German Civil Code (BGB) relating to the GbR have undergone few to hardly any changes in the past (one hundred) years, the introduction of the MoPeG has now resulted in comprehensive changes to German partnership law. Essentially, sections 705 et seq. BGB were adapted and amended.

a. GbR with legal capacity and GbR without legal capacity

Since January 1, 2024, a distinction has been made between three different forms of the GbR: the non-legally capable "InternalGbR", the legally capable "ExternalGbR" and the newly created "eGbR". An ExternalGbR is one that is intended to participate in legal transactions according to the joint will of the partners.

In the past, it was only recognized in case law that a GbR has legal capacity. This goes back to the "ARGE Weißes Ross" decision by the Federal Court of Justice ("BGH") in 2001, in which it recognized the legal capacity of the ExternalGbR.

The introduction of the MoPeG has now codified in law that the GbR as such is independently able to acquire rights and also enter into liabilities. However, this is still subject to the condition that this corresponds to the common will of the partners.

As the ExternalGbR itself can enter into liabilities and is therefore itself the opposing party, it has unlimited liability for the GbR's liabilities with all of its assets. Enforcement against the GbR's assets requires a title directed against it. It also remains the case that the partners are also personally liable as joint and several debtors without limitation with their (private) assets. However, in order to be able to make a direct claim against the personally liable partners as joint and several debtors, an (additional) separate title against them is required.



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b. Company Register for the GbR from January 01, 2024

The local courts responsible for the commercial, cooperative and partnership registers now also keep the new company register.

However, there is no general obligation to register.

Entry in the new company register is only mandatory in certain cases, which can ultimately lead to a de facto obligation to register. If the GbR holds shares or is the owner of real estate and wishes to dispose of these assets, it must make an entry in the company register.

However, if it does not wish to dispose of these assets, the entry does not have to be made. If the GbR is entered in the company register, it must bear the suffix "eGbR". These companies are also free to choose a registered office, which may differ from the administrative office.

However, the legal capacity of the GbR is still not dependent on entry in the company register.

An entry in the company register can also be made voluntarily. As with the other public registers, the company register is open to public inspection and is protected by good faith. Voluntary registration therefore facilitates participation in business transactions and creates transparency, but also increases the administrative burden because the register must always be kept up to date.

If the partners have opted for the GbR partnership, the lack of external transparency may have been the decisive factor.

The prerequisite for entry in the company register is always a notarized registration of all shareholders. The information required for this is similar to that for the registration of other company forms, such as in the context of Section 7 Limited Liability Company Act ("GmbHG"), namely the registered office and address of the company as well as the names and place of residence of the shareholders.

It should also be noted that the eGbR cannot simply be removed from the company register or become a normal GbR again by deletion. Rather, a regular liquidation of the eGbR is required.

II. Adoption of resolutions and resolution deficiency law

Until now, the voting power in the context of passing resolutions was based on pro rata shares, subject to individually agreed provisions in the partnership agreement. This previously meant that each shareholder had one vote, regardless of the value of their shareholding. The introduction of the MoPeG reverses this principle. From now on, the amount of the respective shareholding will determine the voting power. If shareholders of a GbR wish to retain the old principle, the partnership agreement must therefore be amended.

The legislator is also codifying for the first time a right to pass resolutions for partnerships. In doing so, the legislator is attempting to avoid paralyzing states of limbo due to an unclear legal situation.

In terms of content, the law on defective resolutions for commercial partnerships, i.e. for OHGs or KGs, for example, is based on the differentiation between void and contestable shareholder resolutions already known from the German Stock Corporation Act. The nullity or contestation of a shareholder resolution can be enforced by filing an action for nullity or contestation with the competent district court. The action must be directed against the company and must be filed within three months.

A resolution is null and void if it violates mandatory law. When a resolution is void *ex tunc* in individual cases, i.e. void from the beginning, is left to case law. Nullity also occurs through a legally binding judgement following a successful action for annulment. A resolution can be contested if it violates the law or the partnership agreement. It remains to be seen whether and to what extent procedural errors affect the possibility of contestation.



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These principles can only be transferred to non-commercial business partnerships, such as GbRs or partnerships within in the meaning of the German Partnership Act (PartGG), by means of an explicit provision in the partnership agreement; the previous declaratory judgement model continues to apply. The invalidity of defective shareholder resolutions must still be asserted in the case of a GbR by means of a general declaratory action („*Allgemeine Feststellungsklage*“). The new law on defective resolutions in sections 110 et seq. HGB will probably also have an impact on GmbH law and should also serve as a model for corresponding provisions in partnership agreement for GbRs and partnerships.

III. Succession and retirement

With the entry into force of the MoPeG, the previous regulation of the BGB that the GbR is dissolved upon the death of a partner will also end, unless otherwise agreed in the partnership agreement. Instead, the death leads to the deceased partner leaving the company and their heirs receive a settlement. Even in other cases where a partner leaves the company, this no longer leads to the dissolution of the company, unless otherwise stipulated in the partnership agreement.

IV. Convertibility

The eGbR will become convertible through an amendment to the German Transformation Act. This brings the eGbR into line with other commercial partnerships, which are already convertible under the current legal situation. With this harmonization, the legislator is taking the next logical step resulting from the recognition of the legal capacity of the ExternalGbR and is opening up the law on convertibility accordingly. In particular, this creates the possibility of a change of form of a GbR to a corporation, e.g. to a GmbH.

A GbR without legal capacity cannot be part converted. However, it is possible to have the

application to the company register and the conversion agreement notarized in one appointment, as the GbR must only be capable of being converted at the time of registration.

V. Practical Advice

The entry into force of the MoPeG leads to comprehensive changes in partnership law. While on the one hand there will be more transparency and simplicity in business transactions, on the other hand new conditions and formal requirements must also be observed.

Due to the fact that there may be a de facto obligation to register, it may be necessary to act quickly, as the registry courts may only be able to react adequately and make entries with a time delay due to the expected large number of inquiries and applications.

A further de facto constraint may also arise from the fact that banks may in future require GbRs to be registered as customers due to internal compliance guidelines.

We will be happy to advise you and your company on any questions that arise in order to select the best possible design option for your company.

With best regards from Heidelberg

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