

PARTNERSHIPS

Switzerland



Partnerships

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Quick reference guide enabling side-by-side comparison of local insights into types and formation of partnerships; taxation, reporting, ownership and membership considerations; benefits, employment rights and partners' duties; leaving or dissolving the partnership; dispute resolution; and recent trends.

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TYPES AND FORMATION OF PARTNERSHIPS

Sources of partnership law

What is the statutory basis for partnerships, and partnership-like structures in your jurisdiction?
To what extent do these laws overlap or share features with company law?

The statutory basis for partnerships in Switzerland is the Code of Obligations (CO) with separate sets of provisions (titles) for each form of partnership. The Collective Investment Scheme Act (CISA) governs the limited partnership for collective investments. In addition, there are further acts and regulations that deal with Swiss partnerships in specific situations, such as the Act on Merger, Demerger, Transformation and Transfer of Assets, as well as the Ordinance on the Commercial Register.

These laws govern different topics related to partnerships and do not overlap. They are to be consulted in parallel. These laws also contain various provisions related to company law, with certain shared features.

Law stated - 23 June 2021

Types of partnerships

Identify the types of partnerships or other partnership-like structures permitted in your jurisdiction. What are they typically used for?

There are three main forms of partnership in Switzerland: the simple partnership, the general partnership and the limited partnership. In addition, there is also the limited partnership for collective investments, which is a sub-form of the limited partnership.

The simple partnership is a contractual relationship between two or more persons (physical persons or legal entities) to join forces to achieve a common goal. The simple partnership is often only created for a certain period of time (ie, until a specific project is achieved). An example often used when explaining the simple partnership is a building consortium that is dissolved once the construction project is finished.

The general partnership is a business entity set up and organised between two or more physical persons, if it is to operate a trading, manufacturing or other form of commercial business or not. It is a business form aimed at long-term projects and a brief analysis of the general partnerships registered in the commercial register shows that it is typically used by smaller, often local, businesses managed by two or more partners, such as local craftsmen and service providers (eg, accounting and law firms). According to the annual statistics of the Federal Commercial Registry, as at 1 January 2021 there were 11,238 general partnerships registered in Switzerland.

The limited partnership is a business entity in which at least one partner (the general partner) has unlimited liability and one or more partners (limited partners) have limited liability up to the amount of their respective contributions. The general partner must be a physical person, whereas the limited partner can either be a physical person or a legal entity. The limited partnership as a business form can be chosen where there is a need for further investors but without the wish to expand the management circle. Only the general partners are allowed to manage the partnership. According to the annual statistics of the Federal Commercial Registry, as at 1 January 2021, there were only 1,406 limited partnerships registered in Switzerland.

As its name indicates, the limited partnership for collective investment is a partnership whose sole object is collective investments. CISA contains provisions regarding, inter alia, the partners (it is interesting that only stock companies limited by shares with their registered office in Switzerland may be general partners), authorisation, partnership agreement, prospectus and commercial register information. The limited partnership for collective investment is a very specialist type of partnership and is not very frequently used in Switzerland. It will not be mentioned further in this

overview.

Law stated - 23 June 2021

Differences between types of partnership

What are the key differences between the various types of partnerships (and similar entities) available in the jurisdiction? Are partnerships treated as bodies of persons or bodies corporate?

The main differences between the simple partnership and the general and limited partnerships is that the simple partnership (as opposed to the general and the limited partnerships) cannot be registered in the commercial register, nor does it have a protected name. It cannot operate a commercial business, nor can it acquire any rights or incur liabilities under its own name, nor can it sue or be sued in court or be subject to debt collection proceedings. The rights and obligations always belong to the simple partners. All partners of a simple partnership have the right to manage the partnership, unless the management has been entrusted exclusively by partnership agreement or resolution to certain partners or third parties. The simple partners are jointly and severally liable for obligations entered into together or via representation of individual partners. The provisions regarding the simple partnership are often used and explicitly referred to when interpreting not clearly defined relationships of other legal entities. Further, a simple partnership is only deemed to exist if the partnership does not fulfil the distinctive legal criteria of any other form of partnership, in which case the other forms prevail.

The general partnership and the limited partnership must be registered in the commercial register. The general partnership and the limited partnership are free to choose their business name, subject to the general principles regarding the business names. The name must be clearly distinct from other business names of entities in any of these forms registered in Switzerland and include the indication of the business form in question. The accepted abbreviations for the general partnership are KIG (German) or SNC (French and Italian). The accepted abbreviations for the limited partnership are KmG (German), SCm (French) and SAc (Italian).

The partners of a general partnership must be physical persons. They are responsible for the management and may individually represent the partnership, unless the representation power is limited to certain partners only. Such representation limitations must be registered in the commercial register to be valid towards third parties acting in good faith. The partners of a general partnership are jointly and severally liable with their entire (personal) assets for all obligations of the partnership. However, the liability of the individual partner is only of a subsidiary character as he or she is only liable for a partnership debt, even after he or she leaves the partnership, unless he or she has been declared bankrupt, the partnership has been dissolved or debt collection proceedings have been brought against the partnership unsuccessfully. The insolvency or bankruptcy of the general partnership does not automatically result in the bankruptcy of its partners.

The limited partners of a limited partnerships can be either physical persons or legal entities (eg, companies). The limited partners do not have the right to manage the partnership business, but have limited liability for the partnership obligations up to the amount of their contributions as indicated in the commercial register. The general partners of the limited partnerships are liable to the same extent as the partners of a general partnership (ie, jointly and severally but with the same subsidiary nature).

Law stated - 23 June 2021

Reasons for choosing a partnership structure

What are the typical reasons that businesses choose to operate through a partnership structure in your jurisdiction? Do any factors discourage adopting a partnership structure?

The typical reason for choosing the form of a partnership in Switzerland is mainly the easy setup with very few formal requirements. Further, no minimum capital requirements exist. There is also a large amount of flexibility in how to structure the inner workings of the partnership through the partnership agreement. Tax considerations may also play a role when choosing the partnership structure.

The strongest discouragement is certainly the joint and several liability of the partners (and of the general partners in the case of a limited partnership).

Even though the simple partnership is of great importance owing to its character as the basic form for all legal entities and different varieties of joint ventures (many simple partnerships most likely exist without the knowledge of their partners, both in the commercial as well as the non-commercial world), the clear trend in Switzerland has been and continues to be an organisation of lasting business ventures in the form of companies, particularly stock companies limited by shares and limited liability companies.

Law stated - 23 June 2021

Formation (formalities and bars to formation)

How are partnerships and the similar structures available in your jurisdiction formed?

The simple partnership is created by agreement between two or more persons (physical persons or legal entities) to join forces to achieve a common goal. The agreement does not have to be in written form.

The general partnership and the limited partnership are also based on a partnership agreement between the partners. The agreement does not necessarily need to be in writing, even though it is highly recommended. The partners are to a large extent free to choose the contents of the agreement, but it would typically include the name of the partnership, the purpose, the internal organisation, the representation rights as well as contribution duties and profit (or loss) sharing of the partners. In addition to the partnership agreement, the general partnership and the limited partnership must be registered in the commercial register. General partnerships and limited partnerships that do not operate a commercial business will only come into existence upon registration in the commercial register. The registration contains the name, the registered office and the address, the legal form, the date on which the partnership started, the purpose, the names and further details of the partners and of the persons with representation powers. In the case of a limited partnership, the registration further contains the contributions made by the limited partners and, if the contributions were made in kind, details and valuation regarding such contributions in kind.

There are no nationality or residence requirements regarding the partners. However, the activity as a self-employed person in Switzerland for foreign nationals requires a valid residence permit.

Law stated - 23 June 2021

REGULATION

Taxation

How are partnerships taxed?

Partnerships in Switzerland are taxed in a transparent manner (ie, the partners are taxed individually and not the partnership). The partners are deemed to be self-employed and are taxed accordingly. In general, there are no withholdings and the partners are responsible for the declaration and payment of social security contributions and tax.

Profits from a Swiss partnership that flow to partners based abroad are typically taxed at the place of business of the partnership (the permanent establishment principle). Assuming the place of business is in Switzerland, foreign-resident partners are deemed to have a permanent establishment in Switzerland. Switzerland has a large number of double

taxation treaties in place, which may play a role in an individual case concerning a foreign partner of a Swiss partnership.

As an exception to the general principle of transparency, the partnership may be subject to value added tax (VAT) obligations if certain criteria are met.

Law stated - 23 June 2021

Reporting and transparency requirements

To what extent must partnerships, LLPs and similar structures file accounts and other documents and information with a government agency?

The accounting and audit of a simple partnership depend on the partnership agreement and the requirements of the partners. There are no statutory duties in this regard as the simple partnership cannot operate a commercial business. At a minimum, the accounting is to be dealt with to secure proper accountability towards the partners who have been excluded from management. The partners must also comply with the duty of care, which may also entail certain accounting duties.

General partnerships and limited partnerships are subject to the provisions in the Code of Obligations (CO) regarding commercial accounting and financial reporting. Partnerships with less than 500,000 Swiss francs turnover may keep simplified accounts only showing income, expenditure and the asset position. General partnerships and limited partnerships have, furthermore, the duty to determine the profit or loss for each financial year and each partner's share thereof, based on annual statements. There is no statutory audit requirement for partnerships and no publication duty with regard to financials.

As mentioned further above, the simple partnership cannot be registered in the commercial register and there are no other registers concerning simple partnerships or the partners thereof. Partners of general partnerships and of limited partnerships are, however, registered in the commercial register, which is publicly available.

Law stated - 23 June 2021

Ownership and membership

Can anyone be a partner, and, if not, who can and cannot? Can bodies corporate or other partnerships own a partnership?

Partners of a simple partnership can either be physical persons or legal entities such as companies. General partnerships and limited partnerships can also be partners of a simple partnership.

Partners of a general partnership must be physical persons. Companies and partnerships cannot be partners of a general partnership.

The general partners of a limited partnership must be physical persons whereas the limited partners can be either physical persons or legal entities (eg, companies). General partnerships and limited partnerships can be limited partners, but not a simple partnership.

Law stated - 23 June 2021

Execution of documents

How do partnerships and LLPs execute documents? Must all partners sign? Can the partnership or LLP sign in its own name?

The partnership agreement or partnership resolutions are decisive regarding the execution powers. If the partnership agreement does not contain anything to the contrary, all partners of the simple partnership have the right to individually represent the partnership. However, every other partner authorised with the management has the right to object to any management action before it is carried out.

The partners of general partnerships also have the right to individually represent the partnership, unless the partnership agreement or partnership resolutions provide otherwise. Limitations to execution powers are common and can be inspected in the commercial register.

As a general rule, the affairs of a limited partnership are managed by the general partners. The representation powers of the general partners are the same as stipulated for the partners of a general partnership.

Law stated - 23 June 2021

BENEFITS, EMPLOYMENT RIGHTS AND PARTNERS' DUTIES

Remuneration and benefits

To what extent are partners free to agree how to share profits and what are the most common types of profit-sharing arrangements?

The partners are free to agree how to share profits and this is often one of the most important parts of the partnership agreement, which is typically kept confidential. Various remuneration systems exist, but many larger professional services firms have a mixed system of seniority (lockstep), origination of mandates and performed work elements, unless they follow the system of 'eat what you kill'. In the latter case, the sharing of costs becomes a central element in the partnership agreement as is the case for smaller cost-sharing partnerships.

If the partnership agreement does not contain any provisions regarding the profit and loss sharing, the law stipulates that each partner of a simple partnership or a general partnership has an equal share in profits and losses regardless of his contribution. In the case of a limited partnership, the court would determine the limited partners' share in profit at its discretion in the absence of relevant provisions in the partnership agreement, taking the facts of the individual case into consideration. The limited partner's participation in any loss is limited to the amount of his, her or its internally agreed contribution.

Unless otherwise stipulated in the relevant partnership agreement, the partners of general partnerships and of limited partnerships have a right to draw profit, interest and fees for the previous financial year from the partnership funds. If the partnership agreement allows it, interest and fees may also be drawn during the financial year. The interest rate on the partner's share of the capital is typically set out in the partnership agreement, but in the absence of such a provision the statutory rate is 4 per cent.

Partnerships have extensive flexibility when modelling their profit sharing and other benefits for the partners. However, such benefits do normally not extend to retirement benefits or payments directly from the partnerships that go beyond the (often beneficial) social security schemes of the external pension funds for the partners.

Law stated - 23 June 2021

Employment rights

To what extent are partners considered employees? Do they benefit from statutory employment rights?

Partners are generally considered self-employed and not employees, and do not, therefore, benefit from statutory employment rights.

Law stated - 23 June 2021

Partners' duties

Is there a statutory or common law concept of good faith among partners, and what are its implications? What are typical contractual duties between partners or owed by partners to their firms?

The partners of a simple partnership have a duty of loyalty towards each other. This duty results from the non-competition clause set out in the law. Accordingly, no partner may conduct business to his or her advantage that would impair or defeat the purpose of the simple partnership. This non-competition clause may, however, be contractually waived by the partners.

The partners of a general partnership, on the other hand, are subject to a stricter non-competition clause compared to a simple partnership. Without the consent of the other partners, a general partner may neither conduct business in the business area of the general partnership for his or her own account nor for the account of third parties, nor participate in such an enterprise. However, the non-competition clause is limited to the business area of the partnership. Unless otherwise stipulated in the partnership agreement, the non-competition clause ends when a partner leaves the partnership.

The stricter non-competition clause also applies to limited partnerships.

Usually, partnership agreements stipulate that a partner may not compete for a period of two to three years after leaving the partnership. The reason for a time limit on the non-competition clauses is the protection of the personality of the leaving partner. A non-competition clause that could endanger the economic existence of the leaving partner would be null and void.

In addition, rights of access to information and control are regularly laid down in the partnership agreements as well as the procedure to be followed when a partner joins or leaves a partnership.

Law stated - 23 June 2021

ENTERING AND LEAVING THE PARTNERSHIP

Joining the partnership

How do prospective partners typically enter the partnership? Are there any formalities?

The joining of a new partner into a simple partnership requires the consent of all other partners. Since the partnership is a contractual union of persons, they are free to lay down formalities, such as quorums, in their partnership agreement regarding the admission of new partners. By joining the simple partnership as a new partner, the new partner acquires all the rights and obligations of a partner. On the other hand, the new partner is only liable for those debts that arise after his or her entry.

The entry of a new partner into a general partnership or a limited partnership is subject to the rules of a simple partnership, which means that, in principle, the consent of all partners is required. Furthermore, the admission of a new partner also requires publication in the commercial register to become legally effective in relation to third parties. A new partner is also liable for liabilities of the partnership arising before joining the partnership.

Law stated - 23 June 2021

Leaving the partnership

Can partners leave a firm without the agreement of the other partners, and must they serve a notice period? Will a partner receive back any capital invested, a share of the value of the partnership or any other payments on leaving? In what circumstances can a partner be required to leave a firm?

A partner in a simple partnership may resign on the basis of the relevant provisions in the partnership agreement or be excluded on the basis of a reason for exclusion agreed therein. As a result, the partner loses his or her share of the partnership's assets, which increases for the other partners. In return, the other partners owe the leaving partner a settlement in the amount of his or her participation, whereby a different contractual arrangement would be possible. The leaving partner continues to be liable for debts incurred by the simple partnership before he or she leaves the partnership.

A partner may also resign by giving notice if the partnership agreement provides for a termination option or if the partnership has been entered into for an indefinite period or for the lifetime of a partner. In the event of termination, a notice period of six months must be observed. Both the leaving and the termination generally lead to a dissolution of the simple partnership.

Contrary to the simple partnership, a partner of a general partnership can be excluded by court decision requested by all other partners if there is an important reason and this predominantly relates to the person to be excluded. The leaving partner – unless otherwise stipulated in the partnership agreement – is also entitled to a settlement in the amount of his participation. A leaving partner is generally liable for five further years for debts incurred by the partnership prior to his or her leaving.

In the event of bankruptcy of a general partner or if the partner's liquidation share is pledged, he or she may be excluded by the other partners and paid his or her share of the partnership's assets.

In the case of a limited partnership, the provisions relating to general partnerships apply.

Law stated - 23 June 2021

DISPUTES AND REDRESS

Recovering losses caused by partners

May partners sue for loss caused by another partner?

As the simple partnership is a legal community without its own legal personality, it cannot acquire any rights under its own name, nor can it enter into any obligations or sue and be sued in the courts. If the partners want to sue, they form a mandatory joinder (ie, they must file a lawsuit together). Since the simple partnership has no assets of its own that would be available to satisfy any damages, the individual partners are exclusively liable with their entire personal assets in unlimited amount for obligations entered into jointly in the name of the partnership. There is a relationship of solidarity between them. A creditor may, at his or her discretion, demand only partial or full payment of the debt from each partner. In the internal relationship, a partner who has been sued may pursue recourse against the other partners.

In the case of a simple partnership, there is no joint and several liability of the other partners for unlawful acts of a partner according to case law.

A general partnership and a limited partnership, on the other hand, are capable of suing and being sued. The partnership assets are, therefore, primarily liable for partnership debts. If this is not sufficient to satisfy the creditors, all partners are liable in a subsidiary manner and with their entire personal assets. An exception to this is a limited partner of a limited partnership, who is only liable up to the amount of his or her contribution.

In the case of a general partnership and a limited partnership, the partnership is also liable for unlawful acts of a partner if the actions were carried out in the course of its business activities. Consequently, the individual partners are jointly and severally liable for such acts.

Law stated - 23 June 2021

Disputes

How are disputes among partners and between individual partners and the partnership itself typically handled?

The simple partnership has no legal personality. Accordingly, in the event of disputes (eg, as often in the case of calculating settlements in the event of leaving the partnership) between the partners or between a partner and the partnership, it may neither sue nor be sued. In the event of a dispute, the simple partners form a mandatory joinder. A plaintiff partner is obliged to bring an action against all other partners. Conversely, all other partners would have to bring an action against the defendant.

In contrast to simple partnerships, general partnerships and limited partnerships may acquire rights, assume obligations, sue and be sued in their own names. Accordingly, the general and the limited partnership can sue individual partners and also be sued by individual partners.

In the case of professional services partnerships, arbitration clauses are regularly agreed in the partnership agreements – whether in the case of simple partnerships or general partnerships – that submit disputes between the partners and between the partnership and individual partners to an arbitration tribunal or an arbitration body of a supervisory authority.

Law stated - 23 June 2021

DISSOLVING THE PARTNERSHIP

Dissolution

How are partnerships voluntarily dissolved?

A simple partnership is dissolved voluntarily (ie, not by a judgment of a court in cases of dissolution for good cause) in the following cases:

- where the purpose of the partnership has been achieved or become impossible to achieve;
- following the death of one of the partners, unless it was previously agreed that the partnership would continue with his or her heirs;
- where the share in the proceeds of liquidation of a partner is subject to compulsory sale or one of the partners is declared bankrupt or made subject to a general deputyship;
- by unanimous decision of the partners;
- on expiry of the period for which the partnership was established; or

- by notice of termination served by one of the partners, where this right was reserved in the partnership agreement or the partnership was established for an indefinite duration or for the lifetime of one of the partners.

In principle, the occurrence of such a reason for dissolution does not lead directly to the termination of the simple partnership. Only its purpose changes, consisting in the liquidation of the partnership. The procedure only ends upon liquidation of the joint assets, settlement of the debts and distribution of the surplus assets to the partners or coverage of the deficit by the partners. If one partner takes over all assets and liabilities by agreement and pays off the other partners, the cause for dissolution and end of the simple partnership exceptionally occurs without liquidation of the partnership.

If there is a reason for dissolution as listed above for the simple partnership or if bankruptcy proceedings are commenced against a general partner, this also leads to the dissolution of a general partnership, unless an agreement on its continued existence has been reached in advance in such a case. If a general partnership is dissolved, it must be liquidated in accordance with the statutory provisions, unless a different agreement has been reached among the general partners.

The same rules apply to the dissolution of a limited partnership. However, there is an exception in the event of the death of a limited partner. This does not result in the dissolution of the limited partnership. Furthermore, if a sole limited partner dies, the limited partnership is converted into a general partnership.

Law stated - 23 June 2021

UPDATE AND TRENDS

Emerging trends

Are there any emerging trends or hot topics in your jurisdiction?

No updates at this time.

Law stated - 23 June 2021

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Swiss Federal Council approved a comprehensive package of measures to deal with the economic consequences of the spread of covid-19. Today's basis of these measures is found in the federal law on the legal basis for ordinances of the Federal Council on the management of the covid-19 epidemic (Covid-19 Act). The aim of the financial (non-health related) measures, which are tackling various target groups, is to avoid redundancies, maintain employment, safeguard wages and provide support for the self-employed, such as partnerships. Furthermore, the measures implemented should be reversible once the recovery begins. Relevant in particular are the ordinance on hardship measures for companies in connection with the covid-19 epidemic (Covid-19 Hardship Measures Ordinance) and the ordinance on measures in the event of loss of earnings in connection with the coronavirus (covid-19) (Covid-19 Ordinance on Loss of Earnings). As the Covid-19 Act and the said ordinances are being completed, amended, and updated on a regular basis, it is strongly recommended to follow the developments and review the current state of the measures.

Jurisdictions

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