

Ltd. or GmbH – What legal form fits better?

	GmbH	AG
	Act of establishment	
Founding members	Foundation by an individual possible --> legal entity or natural person (Art. 625 OR) as well as «other commercial companies» (compare title to Art. 552 ff. OR)	
Act of establishment	Entry in the commercial register has constitutive effect, i.e. creation only with entry in the commercial register	
Initial capital/ capital structure	<ul style="list-style-type: none"> Initial Capital: At least 20'000 CHF Minimum par value: 100.- CHF 	<ul style="list-style-type: none"> Initial Capital: At least 100'000 CHF Minimum par value: 1 centime
Payment in full (contribution of money or goods)	Initial contribution must be paid in full (Art. 777c Abs. 1 OR)	Partial payment possible: at least 20%, at a minimum CHF 50'000.- cash or contribution in kind (Art. 632 OR)
Capital market/ stock exchange	<ul style="list-style-type: none"> Ordinary shares cannot be traded like shares on capital markets Art. 781 Abs. 3 OR excludes a public offer for the subscription of the ordinary shares 	<ul style="list-style-type: none"> The AG is fundamentally designed to be capital market-oriented and its shares can be traded on the stock exchange. The form of the AG can thus enable companies to raise large amounts on the capital market.
	Membership	
Anonymity	<ul style="list-style-type: none"> Commercial register publicity (Art. 791 OR) Disclosure of each partner with name, hometown/nationality, place of residence and shareholding Any person acquiring more than 25% of the share capital or voting rights must notify the company within one month of the name and address of the beneficial owner (Art. 790a OR) 	<ul style="list-style-type: none"> No disclosure of shareholders in the commercial register In case of acquisition of at least 25% of the votes or the share capital, the beneficial owner must be reported to the AG (Art. 697j OR) For listed companies: Pursuant to Art. 120 Abs. 1 FinfraG a person whose shareholding reaches the threshold of 3%-66% of the voting rights is obliged to notify the company and the stock exchange on which the shares in question are listed. The public company must publish the notification. (Art. 124 FinfraG).
Duties of the partners/ shareholders	<ul style="list-style-type: none"> Obligation to pay the share capital If stipulated in the articles of association: Obligation to make additional contributions (Art. 795 	<ul style="list-style-type: none"> Principle: Exclusively pecuniary duty (Obligation to pay) In principle, the articles of association may not impose any

	<p>Abs. 1 OR) and payment of additional contributions</p> <ul style="list-style-type: none"> • Unlike in the AG, the partners of the GmbH are subject to a duty of loyalty (Art. 803 OR) • Prohibitions on competition can be introduced in the articles of association. (Art. 803 Abs. 2 OR) • Partners may only engage in activities that violate the duty of loyalty or a non-competition clause if all other partners agree in writing. (Art. 803 Abs. 3 OR) 	<p>duties of loyalty or cooperation on shareholders.</p> <ul style="list-style-type: none"> • Exceptionally, such obligations may be agreed among the shareholders by means of a shareholders' agreement.
<p>Right to information and review by partners/ shareholders</p>	<ul style="list-style-type: none"> • Participation in management • Participation in the general meeting • According to the legal order, the right to information and the right of inspection of the partner of a GmbH go further than that of shareholders of an AG. • Right to information on all matters of the company (Art. 802 OR; not limited to the general meeting) • unrestricted inspection of the books of account and records, provided that the company has foregone the services of the auditors (Art. 802 OR). • In contrast to the shareholder of an AG, the partner of a GmbH has a statutory right of withdrawal, which may be extended on a statutory basis (Art. 822 OR). 	<ul style="list-style-type: none"> • The shareholders have the right to inspect the Annual Report and the right to ask questions of the Board of Directors at the Annual General Meeting. • Since the shareholders are not subject to any duty of confidentiality, it is justified for the protection of the company's interests in secrecy that the shareholders only have a limited right to information and inspection.
<p style="text-align: center;">Transfer of share rights</p>		
<p>Change of ownership</p>	<ul style="list-style-type: none"> • Principle of statutory transfer restriction --> Transfer is more time-consuming than with an AG, as the general meeting must approve the transfer and every transfer of ordinary shares must be entered in the commercial register • General meeting of partners may refuse consent without giving reasons 	<p>Principle of free transferability --> Simple transfer possible, provided the shares are not subject to transfer restrictions</p>
<p style="text-align: center;">Liability</p>		

Liability	In the case of a GmbH, only the company's assets are liable (exceptions below).	Only the company's assets are liable for the AG's debts; in the event of bankruptcy, the shareholders lose no more than their share capital.
Margin call	<ul style="list-style-type: none"> • In the articles of association, the partners may be obliged to make additional payments. • The obligation to make additional payments may not exceed twice the nominal value of the ordinary share. (OR 795a). • Obligation to make additional payments in the event of withdrawal: If a partner leaves the company, the obligation to make additional payments, limited to the case of bankruptcy, continues for three years after the partner's deletion from the commercial register, unless it has been fulfilled by a legal successor. (Art. 795d Abs. 1 - 3 OR). 	<ul style="list-style-type: none"> • Agreement of a margin call not possible • Subsequent payment: If the share capital has not been fully paid up, the Board of Directors may demand the subsequent payment of contributions on shares that have not been fully paid up. (Art. 634a Abs. 1 OR).
Taxation		
Double taxation	<ul style="list-style-type: none"> • The taxation of the GmbH and the AG is based on the same principles. • As an independent legal entity, on the one hand the profit and the capital of the company must be taxed. • On the other hand, the partner/shareholder pays wealth tax on his shares and income tax on profit distributions (dividends). 	