Founding partner liable to pay compensation even though a broker was used - Company Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London www.grprainer.com/en conclude: If an investor buys shares in an investment company, the founding limited partner is liable, even though he uses a broker. This is what the BGH ruled in a judgement of May 14, 2012 (File number: II ZR 69/12). The BGH explained that under section 278, German Civil Code (BGB), the founding partner has to accept responsibility for the conduct of an investment broker who is appointed through a distribution firm with which the company is collaborating. This also applies when sufficient information is already provided in the prospectus because the partner is responsible for providing information as a future contracting party of the investor. At least, according to the Court, that applies if the partner in question is also authorized to make important decisions for the company.

According to the BGH, the said liability for brokers must also be extended to sub-brokers. Sub-brokers are not employed and used by the company, but by the distributor. That would constitute an absolute liability for third parties, and it is irrelevant whether or not the partner himself has knowledge of the instructions or whether he is accepting and approving them. In the opinion of the BGH, it is only relevant whether or not the partner had to expect the employment of such a sub-broker.

The BGH stated that this also applies if the broker deviates from the information in the prospectus.

A Kommanditgesellschaft (KG) is a partnership which in legal terms can be compared with an Offene Handelsgesellschaft (General Partnership). The significant difference is that the KG has at least one general partner and at least one limited partner.

To establish a KG, a partnership agreement must be concluded. It is important that the interests and personal concerns of the founding partners are considered in the partnership agreement.

Thus, it can be an advantage to consult an experienced and competent lawyer when a company is founded, who helps to incorporate the interests of the partners in the contract and who can explain the multifaceted possibilities and potential difficulties.

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Anlage: Bild

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