

## **When is the obligation to compensate under a partnership agreement contrary to common practice? - Corporate Law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Dusseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London - [www.grprainer.com/en](http://www.grprainer.com/en) conclude: In its judgment of June 4, 2013 (File number: II ZR 207.10), the Federal Supreme Court (BGH) ruled that an obligation by a financially incapable partner to repay considerable sums based on the partnership agreement of a private company, which the other partner contributes and which go to the partner's husband who is acting in the interest of the company, is not contrary to common practice if the wife - due to her position as a partner - has an adequate financial interest in promoting the corporate purpose in connection with the payments.

In the opinion of the BGH, to decide whether provisions under a partnership agreement are contrary to common practice, it is necessary to take all the circumstances into account that were relevant when the agreement was signed.

A private company (called GbR or BBG) is the simplest form of partnership. A GbR is an association of individuals consisting of at least two partners who have the same purpose. If nothing else is mentioned in the partnership agreement, all partners are entitled to manage the company jointly. According to the BGH ruling, a GbR is a legally competent partnership and can therefore sue and be sued in court itself.

For a BGB there are few mandatory legal requirements, and it is up to its partners to give the company its form through a partnership agreement. Thus, there is no special form for a partnership agreement, and many GbR rules can be modified. It is precisely this flexibility that is its attraction, but on the other hand, also the danger when such a private company is established.

This applies even more when seen against the legal background that in addition to the company's assets, the partners of a BGB are liable for all the company's debts with their own personal property. Even though there is a possibility of internal recourse, an individual partner can initially be held liable by third parties who are creditors of the company.

A lawyer with experience in corporate law provides competent and comprehensive advice, making it possible to use the many different possibilities offered by a GbR to advantage.

A lawyer specializing in corporate law helps in the establishment of a GbR, with the partnership agreement, when there is a change of partners or when a company has to be dissolved.

<http://www.grprainer.com/en/BGB-Gesellschaft-GbR.html>

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Anlage: Bild

