

## **The membership information rights of the limited partner**

German Federal Court of Justice (BGH) clarifies the scope of the extraordinary information claim of the limited partner pursuant to section 166 para. 3 German Commercial Code.

The extraordinary information right of the limited partner is to be differentiated from the right to review the annual financial statement and can also serve to verify the business activities of the general partner.

If the limited partner is entitled to an extraordinary claim to information against the partnership pursuant to section 166 para. 3 German Commercial Code (HGB), this extraordinary information claim may extend beyond the ordinary information right of the limited partner under section 166 para. 1 HGB which shall ensure the verifiability of the correctness of the annual financial statements and may provide an information claim concerning the general management of the general partner.

### **The information rights of the limited partner at a glance**

Control without information is unthinkable. If the limited partner in a limited partnership wants to control the management, he needs information about the partnership. For this purpose, he is entitled to the ordinary information right under section 166 (1) HGB. The ordinary information right enables the limited partner to request a copy of the annual financial statements and to examine them on the basis of access to the books and business documents of the partnership, and thus is related to - and restricted to - the annual financial statements. Whether this ordinary information right can or cannot be restricted is highly controversial. However, there is a consensus that the core of the limited partners' information and control rights must remain unaffected. The judicial enforcement is carried out by means of a performance suit before the ordinary courts.

If an important reason exists (e.g. in case of imminent damage to the partnership or the limited partners, or in case of a reasoned suspicion of incorrect management), the limited partner can rely on the extraordinary information right under section 166 (3) HGB. The enforcement of this right is subject to the procedural law in family matters and in matters of voluntary jurisdiction (FamFG), which offers a number of procedural advantages with the conceptual focus on the procedural acceleration, the principle of official investigation and the possibility of non-disclosure of the procedure. The scope and extent of the extraordinary information right and in particular which information may be concerned remained unclear in the past. Only a limited number of court decisions on this topic have been passed.

### **German Federal Court of Justice: Autonomy of the extraordinary information right**

In its decision of June 14, 2016 on file number II ZB 10/15, the German Federal Court of Justice (BGH) expressly stated that the extraordinary information claim of the limited partner under section 166 para. 3 HGB is independent and added to the ordinary information right under section 166 para. 1 HGB and is not restricted to the annual financial statements in terms of time or content. The extraordinary information right may also include, but is beyond, the claim for submission of a copy of the annual financial statement and access to appropriate books and business documents, if there is an important reason/good cause. The claim is only limited by the fact that the coveted information is appropriate and reasonable for the enforcement of partnership-compatible rights. Ultimately, a corrective weighing of the mutual interests is to take place.

### **Practical advise**

The extent of the extraordinary information right of § 166 (3) HGB, which at first glance is blurred, is to be welcomed, because it provides a wide scope for flexible implementation of an individual information requirement by the limited partner in order to control the management in practice. The procedural provisions of the FamFG ensure a speedy and adequately flexible procedure. The non-publicity of the proceedings allows the partnership to protect its confidentiality and secrecy interests.

Even in cases in which the information rights of the limited partner of a partnership are

reduced under the partnership agreement (which is legally possible), a judicial procedure may be considered due to the recent decision of the German Federal Court of Justice.

---

[www.deloitte-tax-news.de](http://www.deloitte-tax-news.de)

Diese Mandanteninformation enthält ausschließlich allgemeine Informationen, die nicht geeignet sind, den besonderen Umständen eines Einzelfalles gerecht zu werden. Sie hat nicht den Sinn, Grundlage für wirtschaftliche oder sonstige Entscheidungen jedweder Art zu sein. Sie stellt keine Beratung, Auskunft oder ein rechtsverbindliches Angebot dar und ist auch nicht geeignet, eine persönliche Beratung zu ersetzen. Sollte jemand Entscheidungen jedweder Art auf Inhalte dieser Mandanteninformation oder Teile davon stützen, handelt dieser ausschließlich auf eigenes Risiko. Deloitte GmbH übernimmt keinerlei Garantie oder Gewährleistung noch haftet sie in irgendeiner anderen Weise für den Inhalt dieser Mandanteninformation. Aus diesem Grunde empfehlen wir stets, eine persönliche Beratung einzuholen.

This client information exclusively contains general information not suitable for addressing the particular circumstances of any individual case. Its purpose is not to be used as a basis for commercial decisions or decisions of any other kind. This client information does neither constitute any advice nor any legally binding information or offer and shall not be deemed suitable for substituting personal advice under any circumstances. Should you base decisions of any kind on the contents of this client information or extracts therefrom, you act solely at your own risk. Deloitte GmbH will not assume any guarantee nor warranty and will not be liable in any other form for the content of this client information. Therefore, we always recommend to obtain personal advice.