

## Federal Court of Justice (BGH) hands down landmark judgment concerning the legal nature of private law corporations - *Rechtsfähigkeit der GbR*

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[1] On January 29, 2001, the Second Senate of the Federal Court of Justice issued a landmark corporate law decision that recognized that "private law corporations" (*BGB-Gesellschaft* or *Gesellschaft bürgerlichen Rechts*, §§ 705 *et seq.* *German Civil Code*) may sue or be sued as a single entity. The decision established a radical novelty in light of the fact that *de iure* private law corporations remain private and consist of the aggregate of their individual members. This design differs from corporations. Private law corporations are often chosen as an organizational form by groups of lawyers, doctors or other self-governing professionals. Private law corporations are also often used by groups of companies cooperating on a specific, short-term project. The Federal Court of Justice has now declared that, when the private law corporation itself and not merely its members can be seen as an entity assuming its own rights and obligations, it is acceptable to seek to direct a legal claim against the private law corporation itself. This ruling is in contrast to prior interpretations of the law that required that a suit be brought against every member of the private law corporation.

[2] The FCJ has been moving in this direction with respect to private law corporations for some time. The Court has previously recognized the private law corporation's ability to join, as a single entity, other corporations. The Court has also recognized the private law corporation's ability to issue checks. The new decision, however, moves beyond such preliminary expressions of independence, embracing an economically informed understanding of the role that private law corporations play, especially in the context of complex networks involving a greater number of companies. Here, the Court has opened the avenue to bring this network, including private law corporations, under the authority of the courts.

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*For more information:*

Decision of the Bundesgerichtshof, January 29, 2001, - II ZR 331/00; not yet published.