

Swiss Corporate Law Reform: The Key Changes

Swiss Companies – Switzerland is an attractive jurisdiction for companies and a great location for individuals and for the provision of trust services.

By **Christine Breitler**, 18th September 2023

New Swiss Corporate Law

New Swiss corporate law came into force on 1 January 2023.

The transition period for Swiss companies to adapt their articles of association and regulations to the new corporate law is two years from when the new law came into force.

This Article details the main amendments to a company's articles of association to comply with the new legislation. This article covers non-listed corporations.

KEY CHANGES

Share Capital and Equity Distributions – Greater Flexibility

- **Foreign Currency**

Share capital may be denominated in an approved foreign currency (EUR, USD, GBP or JPY). This was already permitted for disclosure in the financial statements and is particularly relevant for Swiss subsidiaries of foreign groups.

- **Nominal Value**

The nominal value of shares can be any value greater than CHF 0, making unlimited splitting of shares possible.

- **Capital Band**

The concept of a “capital band” is introduced. It allows the Board of Directors to increase or decrease up to 50% of the share capital, over a period of five years.

- **Interim Dividend Payments**

The payment of dividends, from the profits for the current financial year, is explicitly permitted, when certain conditions are met.

Shareholders Meetings – Modernisation

Shareholder meetings can be held:

- a. By electronic means (virtual meeting), as long as certain conditions are met;
- a. Simultaneously in different locations;
- a. Outside Switzerland;
- a. In writing, by way of circular resolution, in ‘wet’ ink version or in electronic form.

Shareholders Rights – Strengthening

The threshold for placing items on the agenda and submitting motions is lowered to shareholders holding a minimum 5% of the shares.

Shareholders holding at least 10% of the shares or voting rights have the right to pose questions to the Board of Directors outside shareholder meetings and these questions must be answered within four months.

Shareholders holding at least 5% of the share capital or voting rights may inspect the company's books, subject to the company's legitimate confidentiality interests.

Board of Directors – Increasing Duties

The duties of the board of directors have been increased with regard to:

1. The holding of the general meetings of the shareholders.

The Board of Directors must ensure that meetings are properly conducted, when audiovisual means are used for Shareholder meetings:

- a. The identity of the participants must be established;

- a. Speeches, made at the general meetings must be broadcast live;

- a. Technical problems, if any, must be mentioned in the Minutes of the General Meeting, while shareholders remain responsible for their own hardware/software;

- a. The AGM Minutes and Notice have to include, in addition to the date and time, the form and place of the shareholder meeting.

o Monitoring of the solvency of companies.

Swiss legislation uses three warning thresholds for the board of directors to monitor and manage the financial situation of the company:

- a. Risk of insolvency;

a. Loss of capital;

a. Over-indebtedness.

An early warning system now requires the board of directors to closely monitor the solvency of the company and, if necessary, to act promptly.

In the situation of 'loss of capital,' a limited audit by a licensed auditor is required, even in the case of subordination of claims (at least at the stage of interpreting the seriousness of the claim).

Where there is well-founded concern about over-indebtedness, notification to the insolvency court can be deferred, if sufficient creditors agree to the subordination of their claims and if there is a reasonable prospect of restructuring within a short period (but no more than 90 days after the interim accounts have been audited), provided creditors' claims are not jeopardized by any such a deferral.

A deferral of bankruptcy is no longer possible; hence, the restructuring moratorium is the only court-sanctioned restructuring procedure.

o **Conflict of interest disclosure and measures.**

The law expressly provides, that members of the board of directors and the executive management, must inform the board of directors immediately and in full of any conflict of interest.

Additional Information

The Dixcart Office in Switzerland can provide a detailed understanding regarding Swiss corporations, their incorporation, management and administration. We can also detail the obligations that need to be met.

If you need further information and/or require guidance regarding completion of a Swiss corporate tax return, please get in touch: advice.switzerland@dixcart.com.