

Company structures

Types of Business activity in Switzerland

A Swiss company or an industrial plant is subjected to the tax liability on profit and capital. The enterprise is taxed as its location or at the actual place of its economic affiliation. **Corporations** and Limited Companies are subjected to the tax liability as **legal entities**. The tax law **differentiates** the capital companies according to their purpose. It also depends on it, whether they are **taxed** to the **tidy** tariffs or **favoured for taxation**.

Corporations and Limited Companies

Basically two company structures are available for taking up an economic activity. Corporation (AG) and Limited Companies (GMBH). Both of these company structures indicate the following advantages:

- Limited liability and risk capital
- Easy assignability of the company interests
- Organized rights of representation
- Comparable legal structures, e.g. German limited company

Besides the **foundation** of a corporation or a limited company a **branch** of a foreign company may be registered in the Commercial Register or an unincorporated firm established without own legal entity.

Contract relations

Contract relations can be also established on purely **contractual basis**, e.g. based on agency and exclusive distribution right. The creative possibilities are very high. Swiss law knows only a **few mandatory provisions**.

The Corporation (AG)

Corporation

The corporation has its **own legal entity** with its own name (firm). It is a corporation with its capital (capital stock) consisting of shares. The shareholders (stockholders) exercise their rights as shareholder during the general meeting. The actual administration of the corporation is reserved by the administrative board and the managing directors (directors) appointed by the administrative board.

Capital stock, bearer shares or registered shares

A corporation must have a capital stock of at least **100'000 CHF**. The capital stock can be divided into **bearer** and/or **registered shares**. The nominal value of these shares must be at least 10 CHF. During incorporation at least 20 per cent of the nominal value must be paid for each share, however, altogether at least **50'000 CHF**.

Shares cannot be issued in case of **not fully paid up** capital stock and they will be held by the **trustee as semi-paid up shares**.

The **administrative board** of the Corporation always **holds one share** as proof of shareholder.

It is possible to issue a part of the capital stock as so-called participation certificates. Essentially, these are shares without voting rights.

For the **foundation** of a corporation at least **three shareholders** (natural or legal entities) are necessary whereby two of them may hold the shares in trust. To the extent the shareholders are natural persons, it is irrelevant from the company point of view whether they are Swiss nationals or foreigners. On the other hand, a foundation may be complicated if one or more pre-foundation shareholders are foreign companies. Therefore it is recommended to authorize natural persons for the foundation and to transfer the shares after foundation if necessary to foreign legal entities.

The Organs of the Corporation

The corporation consists of three bodies: the general meeting, the administrative board and the auditing department.

The **general meeting** is the **topmost body** of the company which decides in particular on the appointment and amendments of the status, approval of the annual accounts, appropriation of profit as well as the discharge of the management.

The **general meeting** must be held at least **once a year** (within six months upon expiry of the business year). Extraordinary General Meetings can at be convened any time by the administration board, shareholders, who hold at least 10 per cent of the capital stock or the auditing department.

The **majority** of the members of the **administrative board** must be resident in **Switzerland** and possess Swiss civil rights. An exception from this rule may be granted to the Holding company. In this case, at least one member of the administrative board authorized to represent must be resident in Switzerland. Only shareholders can be members of the administrative board. They can also hold shares in trust.

The administrative board is the **management body** of the corporation. It is legally entitled to non-assignable and non-deprivable tasks (e.g. top management of the company, determination of the organization, top supervision of persons responsible for the management, preparation of the business report etc.).

The administrative board is open to delegate within a scope of **organization regulations** the delegatable part of the management to individual members (delegated) or on third (directors, authorized signatories).

The **auditing department** has to check, if the accounting and the yearly account as well as the application to the general meeting regarding the appropriation of the balance sheet profit are in conformity with the law and the statutes.

The auditing department has to meet the demands regarding the competence and independence from the administration board and the majority of the shareholders. At least one auditor must be resident in Switzerland

In principle a company, i.e. the **name** of the **company** can be **chosen freely**.

It may have an imaginary or material designation. However, the company may not cause any deception and may not run counter to any public interests.

In case of a combination of the company with a material designation a connection with the object of the company must exist. It is recommended to have the company checked by the Commercial Register of the Kanton prior to the foundation.

The company must be distinguishable from an already registered company.

The registered office of the company can be freely chosen within Switzerland. In case, if the statutory seat is not identical with the real administration of the company, it may be significant from the fiscal point of view. Usually it is not the formal registered office but the real place of the company administration (permanent establishment) which is decisive for the tax obligation.

Corporation stock

The acquisition of a stock corporation has the following high advantages:

- You can select between the different variants of the corporations.
- A completion can take place within 24 hours.
- The share capital is already fully deposited.
- Bank accounts are established.
- The administration board is available.
- A domiciliation is accomplished.
- The auditing department is assigned.
- The book keeping is secured.
- A registration within the Commercial Register is accomplished.
- Companies starting from the year 1907 (variable) are available and thus a flexible and anonymous solvency exists.

= **The ideal solution for the fast realization of the goals!**

Holding company

The taxation for the Holding company is highly favoured by the federation and the Kantons. A share deduction on the dividend profit is granted for companies which are involved in other companies with at least 20 % or 2 Mio. Capital stock. It concerns to a reduction of the owed tax in relation to the net dividend profit to the proceeds. The share deduction is granted on federation and Kanton level. Therefore the result is that federal tax is mostly not required for a Holding company. The Kantons **exempt Holding companies** from **all income taxes** (Holding privilege). The Holding company is accordingly not dependent on a share deduction. Finally each dividend and each profit from a sale and even interests proceeds are tax-free. A Holding exists, if 2/3 of the assets are participations or 2/3 of the proceeds are share proceeds.

Administrative Company

The Kantons grant high tax preferences to Administrative companies. The profit (and the capital) is taxed to a reduced rate of taxation. A condition is that the company does not exercise a (direct) business activity in Switzerland. A limited business activity to the extent of 20 % of the proceeds is however tolerated. The federation does not grant a profit tax easement to the administrative company. On Kanton level the administrative company pays a tax between 0 and 15 % on the tidy Kanton income tax. **The company** can be led by Swiss and **by foreigners**.

Branch of the corporation

For taxation the branch is an industrial plant which belongs to a natural or entity person with location abroad. It is accordingly only limited taxable for the economic affiliation to Switzerland. The branch of a foreign capital company or a foreign persons company is taxed in Switzerland like a capital company.

To be present as an industrial plant for taxation a **constant business mechanism** must exist which contributes on own calculation to the profit of the enterprise or is of technical importance. Swiss branches are only taxed for the accordingly domestic industrial plant proceeds. The elimination of the profit between the Headquarter and the industrial plant takes place usually supported by the book keeping of the branch.

Please request a noncommittal offer of a registered old or new corporation.

Limited Company (Swiss GMBH)

The Limited Company has, like the corporation, its own legal entity. It has high similarities with the Corporation so that reference can be made to the descriptions relating to the Corporation with regard to company, registered office and statutes. The Limited Company differs basically from the corporation through the fact that only two persons are required for foundation., the equity capital may not be less than 20'000 CHF and more than 2.0 million CHF and that contrary to the corporation one shareholder of the Limited Company may hold one equity share of any amount. In addition, unlike the shares of a corporation, the equity shares are only assignable under more difficult conditions.

For a corporation the only obligation of the shareholders is to pay up the capital stock. The statutes of Limited Companies may however provide other obligations, e.g. obligation to provide further cover by the shareholders.

Analogous to the corporation, **three organs** are provided for the limited company by law: The meeting of shareholders, the management and (facultative) an auditing department.

Appreciation

The statistic reveals that the corporation is by far the most popular company structure (Kanton Zug 01.01.1998: 12.353 corporations and 1.172 limited companies). The reasons for this are manifold. It is frequently stated that the corporation with higher capital conveys more creditworthiness and the limited company is not adequate for larger companies due to the limited transferability of the interests.

Advantages of the Limited Company:

- Less capital requirement
- Only two persons for foundation
- Establishment of further duties and responsibilities in the statutes
- No restricted foreigner provisions for the choice of directors. Only one director authorized to sign must have his residence in Switzerland. Directors must not be shareholders of the limited company.
- No appointment of independent auditors is necessary, it may however be voluntarily provided.

The limited company, due to its physically structured company structure (own legal entity) is also suitable for a later conversion into a corporation.