

Corporate Brochure



OA LEGAL

SWISS INNOVATIVE LAW FIRM

Swiss corporate law overview

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Introduction

When you intent to set up a project in Switzerland, it is important to choose the legal structure that best suits your needs. In this brochure, OA Legal highlights some Swiss legal structures that could be suitable for your project.

If your goal is to set up a Swiss legal structure focused on profit but with limited entrepreneurial risks, Swiss corporate law provides for two different kinds of legal entities. On the one hand, the limited liability company and on the other hand, the company limited by shares. These two entities have a share capital.

Switzerland is usually a jurisdiction of choice for the establishment of charitable associations and foundations because Swiss law provides great freedom in terms of structure and governance. When choosing whether an association or a foundation would be best suited to your project, it is important to understand the differences between both legal structures.

Specific Note for Distributed Ledger Technology projects:

Which legal structure to choose?

Choosing the best legal structure for your project will depend on your project's goal, size and operations. When the DLT project has a main economical purpose (focused on profit), the most common legal structure when considering a capital company is a company limited by shares. In our view, such a legal structure is best suited for DLT projects, as these usually require significant capital requirements.

When the DLT project focuses more on an ideological / charitable purpose, for instance to create a blockchain infrastructure or allow the use of a specific protocol that requires open governance for mass adoption, you should consider the establishment of an association or a foundation.

SARL vs SA

Swiss limited liability company (SARL)

The Swiss limited liability company (SARL) is frequently used for family businesses or small and medium-sized enterprises. The entity is formed by at least one or more individuals or companies with a predetermined capital. Each partner participates by paying in a quote of the capital. The partner's liability is limited to the value of the quotes. The main advantages of the SARL are the low minimum capital requirement (CHF 20'000), a liability limited to the share capital and the possibility to transform the SARL to a company limited by shares (SA).

Swiss company limited by shares (SA)

A Swiss company limited by shares presents other advantages, in particular shareholders' liability limited to the share capital (CHF 100'000), owner's legal status that may be anonymous and the company shares, which are easily negotiable. The SA is a perfect legal structure for profit companies requiring a contribution of high capital.

	Legal structure	Incorporation conditions	Disclosure of the shareholders	Organization body
SARL	<ul style="list-style-type: none"> • Art. 772 of the Swiss Code of Obligations (SCO) • Partners can be one or more natural persons or legal entities 	<ul style="list-style-type: none"> • Prior to incorporation, an initial capital should be paid on an escrow account of a Swiss Bank • Capital of minimum CHF 20,000 - fully paid up and divided into quotes of at least 100 CHF each • Each partner participates in nominal capital by making at least one quote • Notarial deed • Minimum a manager should be domiciled in Switzerland 	Yes, names of partners are visible at the Commercial Register.	<ul style="list-style-type: none"> • General meeting of partners • Managing Directors • Auditors (ordinary / limited / opting out)
SA	<ul style="list-style-type: none"> • Article 620 of the Swiss Code of obligations (SCO). • Shareholders can be one or more natural persons or legal entities 	<ul style="list-style-type: none"> • Prior to incorporation, an initial capital should be paid on an escrow account of a Swiss Bank • Capital of CHF 100,000.- of which at least CHF 50,000.- must be paid in (50%) • Notarial deed • Minimum a director or a managor should be domiciled in Switzerland 	No, founders remain anonymous.	<ul style="list-style-type: none"> • Board of Directors • Shareholders meeting • Auditor (ordinary / limited / opting out)

Corporate law reform



On June 2020, the Swiss parliament finally approved a general corporate law reform after many years of discussions. The new corporate law provisions will probably enter into force in 2022. The new provisions aim at modernizing Swiss corporate regulations in order to give an answer to actual economic reality and needs.

The major issues of the new corporate law reform are the following:



Gender quota (comply or explain rule)



Modernisation of the general assembly



Improved shareholders rights and minority rights



Disclosure requirements for commodity companies



Corporate reorganization and insolvency



More flexible capital structure and dividends



Implementation of the provisions in the Ordinance Against Excessive Remuneration at Listed Companies (OaEC)

Please contact our corporate lawyers to identify the business opportunities this reform can hold for you and which changes your company's corporate governance needs to make to ensure compliance with the requirements in the new Swiss corporate legislation.



Gender quota (comply or explain rule)

Gender equality and gender representation are one of the most controversial improvements. A new “comply or explain rule” requires that at least 30 % of each gender should be represented on the board of directors and at least 20 of each gender should be represented on the executive board.

When the gender representation is less than the required percentage, reasons for such under-representation have to be set out in a report and measures should be taken to solve the problem.



Modernisation of the general assembly

The new law introduces a more flexible organization and a modernization & digitalisation of the share holders meetings. Virtual meetings and written or electronical share holders resolutions are made possible.

When it is a listed company, the shareholders' instructions should be treated confidentially by the independent representative until the moment of the general assembly. Not earlier than three working days before the general assembly they are allowed to provide the company with information on the instructions received.



Improved shareholders rights and minority rights

Their rights are strengthened by lowering several thresholds to exercise the shareholders rights.

- Shareholders holding at least 10% of the share capital or votes in non-listed companies can address questions to the board of directors at any time, receiving the reply within 4 months.
- Shareholders holding 5% in the case of non-listed companies and minimum 0.5% of the share capital or votes in the case of listed companies may request that items be added to the agenda.
- The threshold for the right to convene an extraordinary general meeting will be lowered to 5% of the share capital or votes for listed companies.
- Shareholders who hold at least 5% of the share capital or votes may now also inspect the company's books and records without a shareholders vote, but only to the extent that this is necessary for the companies interest.



Disclosure requirements for commodity companies

In parallel with the EU Directive 2013/34 and EU Directive 2013/50, companies active in the exploitation of natural resources must disclose payment publicly when exceeding CHF 100,000- a year.

Corporate reorganization and insolvency

In addition to the current equity-related triggers on the balance sheet, liquidity becomes the center of attention when the company is in financial distress. As soon as the Board of Directors notices imminent illiquidity, they have to take measures to ensure liquidity and if necessary, take further restructuring measures.

When a company is over-indebted and its negative equity does not significantly increase within a reasonable period of time (at latest within 90 days of the audited accounts being available) then there is no need to file for bankruptcy in case there is a justified prospect of corporate restructuring.

More flexible capital structure and dividends

Those changes include :

- The share capital may be stated in a foreign currency (i.e. most important currency business);
- The nominal value of shares can be lower than < CHF 0.01 as long as it is higher than zero;
- The rules on (intended) acquisitions of assets are abolished;

- Companies are allowed to introduce capital band with a range between plus 50% and minus 50% of the registered share capital;
- Interim dividends can also be paid out of profits of the current financial year;
- The distribution of capital reserves is permitted within the idea to harmonise the regulation of reserves with accounting law.

Implementation of the provisions in the Ordinance Against Excessive Remuneration at Listed Companies (OaEC)

The new law replaces the OaEC. A big part of the provisions written in the OaEC are implemented in the new law to regulate excessive compensation of top-level executives. As for example:

- Incentive payments for taking up a new job position are only permissible if they compensate for a "demonstrated financial disadvantage" associated with the change of position;
- Prospective votes of the general assembly on variable remuneration remain allowed but now it is required to have an advisory vote on the remuneration report;
- When the non-competition clause is justified on business grounds and the compensation does not exceed the average annual compensation of the last three years then it is allowed to receive compensation for the prohibition of such clause.

Association vs Foundation

Switzerland is usually a jurisdiction of choice for the establishment of charitable associations and foundations because Swiss law provides great freedom in terms of structure and governance. When choosing whether an association or a foundation would be best suited to your project, it is important to understand the differences between both legal structures.

An **association** gathers its members (i.e. creates a community) in order to pursue a non-commercial purpose, more commonly named as an “idealistic” or “charitable” purpose. An association may be set up rapidly and has a more flexible and less costly structure in comparison to a foundation.

By contrast, a **foundation** is known for its capital and supervision by state authority. The main purpose of a foundation is the irrevocable endowment of assets to serve a specific purpose. For example: a foundation is generally preferred by make donations or to preserve a heritage or an ideology.

Both the association and the foundation may obtain a tax exemption if their goal may be considered by the tax authority as a charitable / public utility goal. To be tax exempted, they should included non –restitution clauses and a remuneration clause in case of dissolution. This has as a consequence that Physical personal or legal entities that make a donation (in cash or assets) to this association or foundation headquartered in Switzerland, may deduct the amount of the donation from their own tax declaration.

	Legal Structure	Purpose	Type of assets	Change of purpose or liquidation	Incorporation conditions
Association	<ul style="list-style-type: none"> Articles 60 to 79 Swiss Civil Code (SCC) 	<ul style="list-style-type: none"> May be determined freely within the limits of the Swiss legal framework (i.e. not impossible or immoral) Gather members with a common non profit (non commercial) goal 	<ul style="list-style-type: none"> Cash,real estate, etc. 	<ul style="list-style-type: none"> Purpose may be amended at any time by the general meeting of members Liquidation may be decided at any time by the general meeting of members 	<ul style="list-style-type: none"> Articles of association 2 members No capital
Foundation	<ul style="list-style-type: none"> Articles 80-89a Swiss Civil Code (SCC) 	<ul style="list-style-type: none"> May be determined freely within the limits of the Swiss legal framework (i.e. not impossible or immoral) Endowment of assets to serve a specific purpose 	<ul style="list-style-type: none"> Cash, shares, IP rights, art, real estate, etc. 	<ul style="list-style-type: none"> Amendment of purpose possible after 10 years if provided in articles of association with the approval of the supervisory authority The supervisory authority dissolves the foundation upon request of its board or by law under certain circumstances 	<ul style="list-style-type: none"> Public deed (notary) or testamentary disposition 1 or several founders Minimum capital +- CHF 50'000 Federal level Cantonal level varies e.g. Geneva: min. +- CHF 10'000. Articles of Association (notary)

	Registration with commercial register	Organization	Beneficiaries/ Members	Supervision government	Tax exemption
Association	<ul style="list-style-type: none">• No unless secondary commercial activities	<ul style="list-style-type: none">• Minimum:<ul style="list-style-type: none">· General Meeting· Board of Directors	<ul style="list-style-type: none">• Yes	<ul style="list-style-type: none">• No governmental supervision	<ul style="list-style-type: none">• Possible when goal is considered “charitable” or of “public utility”
Foundation	<ul style="list-style-type: none">• Yes, mandatory	<ul style="list-style-type: none">• Board of Trustees<ul style="list-style-type: none">• External Auditor (possibility to be waived: no solicit public funding, total balance sheet 2 years <200'000 CHF)	<ul style="list-style-type: none">• No	<ul style="list-style-type: none">• Supervision state authority: cantonal or federal level depending on the nature and scope of the Foundation’s purpose	<ul style="list-style-type: none">• Possible when goal is considered “charitable” or of “public utility”

Patent box and R&D costs deduction

There are a number of good reasons to choose Switzerland as a place of business and especially as a place to conduct Research & Development (R&D). To promote and support innovation, Switzerland offers tax incentives such as Patent Box and R&D costs deduction.

Patent box

Encouraging Research and Development at the stage of taxation of profits

The patent box is an instrument to encourage research and development in Switzerland in relation to patents. It allows companies who conduct R&D in Switzerland and generate patentable technology to obtain upon request a separate reduced taxation on cantonal level of the eligible income arising from patents and comparable rights (trademarks, designs and copyrights are not included) with a maximum of 90% discount.

Note: when entering the patent box, a tax statement of the expenses for R&D already exempt from tax for patents, comparable rights or products benefiting from the patent box is requested from the tax authority (including deductions for additional R&D). In fact, a company cannot benefit at the same time from a reduced taxation of profits from patents and comparable rights (patent box) and from a full deduction of R&D expenses (see below).

Research & Development costs deduction

Encouraging Research and Development at the stage of expenses

The R&D costs deduction is another instrument to promote research and development in Switzerland. Contrarily to the patent box, this incentive does not only concern patents and intervenes at the expenses stage. Upon request of the company, the cantons may authorize the deduction of R&D expenses incurred by the company in Switzerland, directly or through third parties, by an amount not exceeding 50% of the research expenditure and development justified by commercial use from his net taxable income.

Eligible companies are companies conducting scientific research and innovation based on science within the meaning of art. 2 of the Federal Act of 14 December 2012 on the encouragement of research and innovation. This definition includes R&D activities in a broad sense because it includes fundamental research, application-oriented research and science-based innovation.

The increased deduction is eligible for staff costs directly attributable to research and development, plus a supplement equal to 35% of these expenses, but up to the total expenses of the taxpayer; 80% of expenditure for research and development work billed by third parties.

Are you interested in knowing more about Patent Box or R&D super deduction costs? Please contact our Corporate specialists to help you understand this new tax incentive.

Protect your trademark

When establishing a legal structure in Switzerland, it is important not losing sight of the protection of the company's intellectual property rights and more specifically, the protection of your brand and logo.

According to Swiss law, a trademark is a sign capable of distinguishing the goods or services of one company from those of other companies. Trademarks may, in particular, be words, letters, numerals, figurative representations, three-dimensional shapes or combinations of such elements with each other or with colors. In order to be valid and strong, a trademark must comply with Swiss trademark law.

It is important to protect your trademark as it is valuable capital, making your company stand out from your competitors. If you want to protect your company's identity in Switzerland, you have to register the trademark in the Swiss trade mark register. It is possible to register a name (text) and logo separately or as a combined trademark. The trademark must be linked to a product and/or service (in which the company is active) in accordance with the International Classification List of Goods and Services (the Nice Classification). A trademark can be protected for several classes (of your choice). This registration gives the owner the exclusive right to use the trademark and protect it against the use of the identical sign for similar or identical goods or services for which the trademark is registered.

Upon registration of your trademark in Switzerland, you may also register the trademark internationally if you wish to obtain protection in other countries.

If you wish to obtain more information on the protection of your trademark, our Corporate specialists may assist you in every step of legal verifications and the registration process.

**For more information on how OA Legal can assist you,
please contact one of our corporate specialists.**



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