

Corporate Law Reform as of 1st January 2023

The new Swiss corporate law will enter into force on January 1st, 2023. The key changes are greater flexibility for share capital and equity distributions, enhancement of shareholders' rights in terms of better corporate governance and modernization of shareholders' meetings. The following provides an overview of the main innovations from a practical point of view.



Share capital and nominal value

New companies may state their share capital in another currency than Swiss Francs. The chosen currency must be the most relevant currency to the company's activities. The Swiss Federal Council will publish a list of permitted currencies. For the sake of creditor protection, the share capital at a

company's incorporation cannot be lower than the equivalent of CHF 100'000.00. Existing companies may also change their currency by the end of a business year. In addition, the nominal value of shares may be set below the current minimum of CHF 0.01 at any amount higher than zero. Therefore, unlimited splitting of shares is now possible.

Intended acquisition of assets and repayment obligations

The specific rules regarding intended acquisition of assets (“beabsichtigte Sachübernahme”) are abolished. The new law provides further for a repayment obligation in case of an unfair advantage or disadvantage. An obligation to repay also affects shareholders, members of the board and people entrusted with the management if they – or any related parties – have unjustifiably received dividends, royalties, other profit shares, compensations, statutory capital reserves, statutory retained earnings or any other payment.

Capital band

A concept called “capital band” is introduced. It includes the statutory authorization of the board of directors to increase and/or reduce the share capital for a maximum period of five years. The upper and lower limits of the capital band may not exceed or fall below the share capital entered in the commercial register by more than 50%. The basic conditions must be stated in the company’s statutes. The implementation of the capital band offers companies more flexibility to increase and reduce their share capital. Company which are not audited do not have the possibility to reduce the capital within the capital band.

Interim dividend

The new law clarifies that the distribution of an Interim dividend is permitted. The distribution has to be resolved based on an interim financial statement, which generally needs to be audited. This condition is not applicable, if the company is not subject to an audit (so-called “opting-out”) or if all shareholders approve the distribution of the interim dividend. The dividend may also not jeopardize any claims of creditors.

Arbitration clause

The company’s articles of association may contain an arbitration clause regarding corporate disputes, which is binding on the company, its organs, members of the organs as well as shareholders. The seat of the arbitral tribunal must be in Switzerland.

Shareholders’ meeting

The new law permits virtual shareholders’ meetings. Decisions by the shareholders may also be made in writing, i.e. by circular resolution. Therefore, shareholders’ meetings may be held in several locations simultaneously. Virtual meetings however require a provision in the articles of association.

Companies that are registered in the commercial register at the time the new law comes into force and do not comply with the new provisions have a two-year transition period to adapt their regulations. Therefore, all companies are advised to review their constitutional documents, also to benefit from the increased flexibility and new instruments. We would be happy to support you in reviewing your firm’s compliance with the law regarding the amendments to the revised Swiss company law or all aspects of corporate governance. We look forward to hearing from you!

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