

Legal 500

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Switzerland

Doing Business In

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Switzerland.

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Switzerland: Doing Business In

1. Is the system of law in your jurisdiction based on civil law, common law or something else?

Switzerland is a civil law jurisdiction governed by Federal, Cantonal and Communal laws.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

There are several legal forms for business enterprises but the ones that are used most frequently are the stock corporation (Aktiengesellschaft, AG/Ltd.) and the limited liability company (Gesellschaft mit beschränkter Haftung, GmbH/LLC). Both are companies limited by shares but with different share capital requirements and slight differences in the corporate structure. Also, please note that the shareholders (or quotaholders, as they may be called) of a limited liability company are publicly visible in the Commercial Register, whereas the shareholders in a stock corporation are not.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

They can, and they do not have to register unless they are carrying out a regulated business (such as, e.g. in the financial sector).

4. Are there any capital requirements to consider when establishing different entity types?

Yes, the minimum share capital for a stock corporation is CHF 100,000 and CHF 20,000 for a limited liability company.

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

Both stock corporation and limited liability company are established by a founders' meeting in front of a public

notary, with the founders resolving on the articles of association and subscribing the shares. The entities are then registered with the Commercial Register, whereupon they are validly incorporated. Investors frequently use both legal forms, depending on their individual preferences.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

A stock corporation is managed by the board of directors, which is elected by the shareholders, but the day-to-day management can be delegated to the management. The limited liability company is managed by the managing directors as elected by the quotaholders, but the day-to-day management can be delegated to the management. Decisions are taken by resolution at physical (or virtual) meetings or by way of circular decision.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

Both stock corporation and limited liability company need to have at least one authorized signatory (as registered in the Commercial Register) residing in Switzerland. If signature powers are collective, two signatories need to be Swiss residents. They do not have to be Swiss citizens. There are no requirements or restrictions for shareholders.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

Foreign entities may use agents or resellers in Switzerland without establishing a legal entity in Switzerland. Foreign companies may establish a branch office in Switzerland, which can be registered with the

Commercial Register. For this purpose, certain corporate documents of the foreign company have to be filed with the Commercial Register.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

There is a "Swiss Code of Best Practice for Corporate Governance" issued by economiesuisse. However, this code is not binding for Swiss companies.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

Mainly equity or debt: Investors can participate in financing rounds where they will receive shares against their investment, or they can grant loans to a company. As a hybrid instrument, convertible loans are also often used.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Dividends can be paid out provided that the legal requirements are met.

Generally, loans can be paid back in accordance with the loan agreement. However, repayment may be subject to legal restrictions in case of loans from shareholders or related parties. In this regard, the prohibition of the repayment of capital contributions (*Verbot der Einlagerückgewähr*) is particularly noteworthy.

The share capital must not be repaid.

12. Are specific voting requirements / percentages required for specific decisions?

There are specific requirements for certain decisions deemed important by the lawmaker. These require at least two-thirds of the votes represented at the shareholders' meeting and a majority of the nominal value of shares represented at the shareholders' meeting. Additional qualified quorums can be introduced or increased by way of the statutes resp. shareholders' meeting.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

The members of the board of directors of a stock corporation and the managing directors of a limited liability company are not subject to instructions by the shareholders except with regard to the implementation of such resolutions that are attributed to the competence of the general meeting by law or the articles of association. They may be subject to instructions by one or several shareholders due to individual agreements between these parties. However, they must always act in the best interest of the company even if instructed to the contrary or they will become liable to the company, the (other) shareholders and, as the case may be, the creditors of the company.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

Law protection rules mainly apply to the following occurrences:

- unlawful dismissal, that is generally speaking any abusive use of the employer's right to terminate employment
- discrimination against gender, disability, race, and age
- sexual harassment and mobbing at the workplace
- unfair working conditions for posted workers and other foreign workers
- minimum wages and other worker's rights under a collective bargaining agreement.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

In private companies, the process to dismiss an employee respecting the notice period is relatively simple and the grounds are at the discretion of the employer. However, any abusive use of the right to terminate employment may result in an unlawful dismissal that will oblige the employer to pay for compensation and a penalty payment.

Moreover, terminating employment with immediate effect

needs cause. In principle, there is cause if the continuation of employment would be unacceptable for the employer. The standards that a Swiss court will find justified cause for termination with immediate effect are, however, extremely high.

As to mass dismissals, statutory laws provide for a set of rules regarding the decision-making process of the employer, including a duty to inform and consult with employees, employees' representation, or labour unions as well as the cantonal office for economy and labour competent to take measures against the effects of a mass dismissal.

In public law employment, a variety of public laws are applicable depending on the public authority that dismisses an employee. There are statutory laws with different set of rules on federal, cantonal, and communal level.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

The Labour Act (SR 822.11) and the Participation Act (SR 822.14) provide for the legal framework of employee representation. Employees of private companies that permanently employ 50 or more employees in Switzerland have a legal right to form an employee representation.

Information and participation rights include the fields of workers' health and safety, work schedules, the affiliation with a pension fund, the transfer of the business, and mass dismissals.

Labour Unions may deviate from the legal rights under the Participation Act upon entering into a collective bargaining agreement.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Switzerland's anti-bribery and anti-corruption system is primarily governed by Articles 102, 322^{ter} – 322^{decies} of the Swiss Criminal Code (SCC), which criminalize both active and passive bribery as well as the offer or acceptance of

an undue advantage by Swiss and foreign public officials and by actors in the private sector. Both individuals and legal entities can be held liable for corrupt actions and companies can even be punished for failing to take necessary and reasonable measures to prevent corruption. The SCC has extraterritorial reach, meaning it can apply to cases of corruption involving foreign public officials or foreign companies, provided the case has sufficient links to Switzerland to establish Swiss jurisdiction.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

The primary law governing economic crime in Switzerland is the Swiss Criminal Code (SCC), which includes provisions criminalizing a wide range of economic offenses. In addition to the SCC, other laws and regulations may apply to specific industries or activities.

Under certain circumstances, there might be an obligation in Switzerland to report money laundering and financing of terrorism to the Money Laundering Reporting Office Switzerland (MROS). Generally, such obligation applies to organizations and individuals operating in defined sectors of the Swiss economy such as banks, insurance companies, casinos and various other so called financial intermediaries.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

The Anti Money Laundering Act (AMLA) is Switzerland's primary legislation regarding money laundering and terrorist financing. The AMLA addresses financial intermediaries (see question 18) and commercial dealers accepting money in cash. The AMLA covers – *inter alia* – topics such as identification of the contractual party and the beneficial owner, documentation duties, reporting duties (see question 18), freezing obligations concerning reported assets and obligations to provide information to authorities etc. Other important matters are ruled by the Swiss Criminal Code (SCC) such as commitment of money laundering offences or insufficient diligence in financial transactions.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK

Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Switzerland mandates with Art. 964j et seqq. Code of Obligations (CO) due diligence requirements in the supply chain for enterprises, that import certain minerals and metals from conflict-affected areas or if enterprises offer products or services with suspected child labour. Various exemptions apply, especially for small and medium sized enterprises (SMEs). The due diligence requirements include annual reporting obligations and the introduction of a management system which documents the supply chain policy, provides traceability of the supply chain and identifies and assesses potential risks.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Financial statements have to be drawn annually in accordance with Swiss law and the applicable accounting standards. Depending on the type and size of company, the company will be subject to a regular audit or a limited audit and, if certain conditions are fulfilled, may waive any audit requirement (*opting out*). In any case, the responsibility for drawing the annual account lies with the board of directors/managing directors, and the annual accounts have to be approved by the general meeting of the shareholders. Except in the case of listed companies, the annual accounts are not available to the public.

22. Please detail any corporate / company secretarial annual compliance requirements?

The ordinary general meeting of the shareholders should be held within six months after the end of the fiscal year. However, there are no consequences or sanctions if this is not done in time, but the mandate of the members of the board of directors/ managing directors may expire if they are not re-elected in accordance with the articles of association.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

See above. The standard agenda items include (i) the acknowledgement and approval of the annual report, (ii) the appropriation of the annual profit/loss, (iii) the discharge of the members of the board of

directors/managing directors and (iv) their (re-)election and the (re-)election of auditors (if any).

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

Shareholders acquiring 25% or more of the share/nominal capital or voting rights of a stock corporation or limited liability company are required to notify their ultimate beneficial owner to the company (or the absence thereof). The company is obliged to internally record the beneficial owners so notified. Without notification, the rights related to the shares (voting rights, dividend rights etc.) cannot be exercised.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

In Switzerland, corporate income taxes (CIT) are levied on the profits realized by corporations and permanent establishments. The regular effective tax rate applicable to the profit before tax varies depending on the location of the business and amounts to 11.2% up to 22.8%. In addition, a capital tax is levied on the equity. The applicable capital tax rate depends on the place of domicile and the taxable equity of the corporation / permanent establishment and generally amounts to close to 0% to 0.5%. In principle, the taxable profit and equity are determined based on the financial statements produced in accordance with the Swiss obligation code, which allows for hidden reserves giving rise to several correction mechanisms in the Swiss tax law.

The profits of businesses held by individuals (e.g. partnerships) are subject to individual income taxes on the level of said individuals and depending on the place of business are subject to a maximum tax rate of 20.4% to 46%. In addition, wealth taxes with again depending on the place of business of 0.1% to 1.0% apply.

Finally, Switzerland levies a VAT on the revenues at a normal tax rate of 7.7%. This rate will be increased to 8.1% as of the beginning of 2024. Reduced rates and exemptions apply to specific services and products.

26. Are there any particular incentive regimes that make your jurisdiction attractive to

businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

Depending on the cantons tax holiday regimes, IP box regimes and notional interest deductions on equity may apply. Furthermore, Switzerland does not tax capital gains on movable assets held as private asset. Consequently, given certain conditions are fulfilled employees may realize a tax-free capital gain on the sale of employee shares.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Switzerland levies a withholding tax on dividends of 35%. Furthermore, the same withholding tax rate is levied on interests paid on bonds. Due to the extensive double taxation treaties Switzerland has concluded, in many cases and given the relevant conditions are fulfilled, the effectively applicable withholding tax rate is reduced resulting in an effective withholding tax burden of down to 0% (corporations) or 10% – 15% (individuals).

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Switzerland levies issuance stamp duties on the issuance of equity of 1% and securities transfer taxes on the sale price of shares and bonds of 0.15% (Swiss securities) and 0.3% (non-Swiss securities). The securities transfer taxes are only levied in case a Swiss securities trader in accordance with the Swiss stamp duty act is involved.

Furthermore, some cantons apply a real estate transfer tax on the transfer of real estate and some cantons levy a special real estate gains tax on the gain realized in the sale of real estate by corporations, but exempt said gains from the regular corporate income tax.

29. Are there any public takeover rules?

Yes, for companies with registered office in Switzerland whose equity securities are listed in whole or in part in Switzerland, or for companies with registered office abroad whose equity securities are mainly listed (*hauptkotiert*) in whole or in part in Switzerland.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

Yes. Intended mergers must be notified to the Swiss Competition Commission before their implementation if certain statutory turnover thresholds are reached, namely if the involved undertakings together reported a turnover of at least CHF 2 billion, or a turnover in Switzerland of at least CHF 500 million; and at least two of the involved undertakings reported a turnover in Switzerland of at least CHF 100 million each.

31. Is there an obligation to negotiate in good faith?

Yes, this is a generally applicable legal concept under Swiss law.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

There is no protection in case of a share deal. In case of an acquisition of a business unit by way of an asset deal, the employer must inform the employees (or their representation, if any) of the reason for the transfer and its legal, economic and social consequences for the employees. Where measures affecting the employees are envisaged as a result of such transfer, the employees must be consulted before the relevant decisions are taken. The employment relationships pass by law to the acquirer as of the day of the transfer, unless the employee refuses such transfer, in which case the employment ends on expiry of the statutory notice period.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

So far there are only foreign investment restrictions in Switzerland with regard to the acquisition of residential real estate by foreigners (*Lex Koller*). However, a parliamentary motion has requested the establishment of

foreign investment control regulations. An amended draft (with a reduced scope compared to the preliminary draft) of a Federal foreign investment control act was issued end of 2023 and is currently being deliberated in Parliament. The law would subject foreign investments by (certain) foreign entities in (certain) Swiss businesses (e.g. companies running critical infrastructures) to an approval requirement. The law is not expected to come into force until 2025 at the earliest.

34. Does your jurisdiction have any exchange control requirements?

No.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

The most common Swiss legal entities (company limited by shares and limited liability company) are dissolved by a shareholders' or members' voluntary liquidation. The process starts with entering the dissolution of the company in the Commercial Register. The words "in liquidation" are added to the existing business name. Identified creditors must be informed by letter, while unidentifiable creditors need to be informed by public announcement in the Swiss Official Gazette of Commerce. By this letter or publication all creditors are requested to register their claims (call on creditors). Once the debts of the company have been discharged, its assets are distributed amongst the shareholders or members. Such distribution takes place a year after the call on creditors. However, this period can be reduced to three months if a licensed audit expert issues a respective report. On completion of the liquidation process the company applies for a deletion of the business name with the Commercial Register.

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