



Corporate Newsletter Switzerland

Revision of the Swiss Stock Corporation Law

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The Swiss parliament has resolved several changes with respect to the Swiss stock corporation law ("Aktiengesellschaft, Société Anonyme"). The new regulations are expected to come into force in the second half of the year 2007. The changes shall make the joint stock companies more user-friendly. The most relevant changes are set out below:

Incorporation

The incorporation of the joint stock company will be simplified. According to the revision, a joint stock company can be incorporated by one or more natural or legal persons or any other commercial enterprise. The rule that there must be at least three founding shareholders has been stricken.

Acquisition of Assets

According to the current article 628 para. 2 Swiss Code of Obligations ("CO"), there is an (intended) acquisition of assets if the company - in the context of incorporation or an increase of capital - acquires assets from shareholders or third parties. In such circumstances, the company must stipulate in the articles of incorporation the object of the purchase and the consideration of the company. This information will also be published in the Commercial Register. The parliament has restricted the scope of the application of article 628 para. 2 CO and clarified that the disclosure requirements only apply if the assets are acquired from a shareholder or a person affiliated with a shareholder. In the future, the disclosure requirement will no longer apply to agreements entered into between the company and independent third parties.

Of a lesser relevance is the amendment of article 628 para. 4 CO, pursuant to which a company may delete the sections in the articles of incorporation concerning acquisition of assets prior to the expiration of the ten

year period, if the company definitively abstains from the acquisition of these assets.

Company Name

According to the new article 950 CO, every stock corporation must, in the future, refer to its legal form in its company name. Under the law in force, no reference to the type of corporation is required if the company name does not contain a family name.

Board of Directors

In the future, board members are no longer required to be shareholders of the company. The so called director's qualifying share will become redundant. In return, the new article 702a CO provides that the members of the board of directors are entitled to participate in the shareholders' meetings and to file motions. Further, the prerequisites regarding nationality and domicile with respect to the board members has been discarded. The existing article 708 CO has been deleted without substitution. Thus, in the future the board of directors can be composed entirely of persons who are not Swiss nationals and are not domiciled in Switzerland. However, the new article 718 para. 3 CO provides that the company must be represented by a person domiciled in Switzerland, whereby this requirement can be fulfilled by a member of the board of directors or an officer. If there is only one officer or director domiciled in Switzerland, he or she must have sole signature authority.

Self-contracting Agreements

According to the new article 718b CO, contracts between the company and its representatives must be drawn up in writing. This, however, does not apply to contracts in the ordinary course of business and if the value of the consideration by the company does not exceed CHF 1000.



Shareholders' Rights

According to the revised article 704 CO a qualified majority of at least two-thirds of the votes represented and the absolute majority of the par value of shares represented will be required for the liquidation of the company. So far this qualified majority was required for the dissolution of the company without liquidation, i.e. a merger but not for the straight forward liquidation. Thus, the dissolution with liquidation will be put on a par with the dissolution without liquidation.

Art. 692 para. 2 CO provided that each share must have at least one vote. This resulted in the awkward situation that even in case where a company has resolved to reduce its share capital to zero and to replenish it at the same time, the shareholders who did not subscribe to new shares maintained a voting right (so called "phantom shareholders"). The new article 732a CO provides now that in case of a reduction of the company's capital the previous membership rights of the shareholders shall perish and the shares shall be voided. In return, the former shareholders shall receive an inalienable right to subscribe to new shares at the occasion of the increase of the company capital. According to article 10 of the Transitional Provisions, the "phantom voting rights" which resulted from previous reductions of company capital shall perish as well, once the revised provision has come into force.

Modernizing Swiss Company and Accounting Legislation

In addition to the aforementioned revision of the stock corporation law, which has already been adopted and which shall likely come into effect in 2007, the Swiss company law is being comprehensively modernized. In particular, corporate governance shall be improved, new rules on capital structures and accounting and reporting requirements are planned to be introduced and the provisions governing shareholders' meetings are to be updated.

The preliminary draft particularly strengthens the position of shareholders as the owners of the company. Their rights to information are increased and in the case of privately held companies, the shareholders shall be entitled to be informed about the remuneration packages of the top management.

Furthermore, the threshold for the exercise of a variety of shareholders' rights shall be lowered. In addition, the right of banks to exercise the voting rights attached to stock they hold in custody, as well as the practice of shareholders being represented at shareholders' meetings by the company's own governing and executive bodies, will be abolished. In the future, it will be possible to appoint only independent persons as proxies.

Furthermore, the revised company law provides for a more flexible capital structure. The procedure for increasing and reducing share capital will become more flexible. By adopting a "capital band", the shareholders' meeting will be able to authorize the board of directors to increase or reduce share capital within the defined limits.

The present requirement for a certain minimum par value will also be relaxed, allowing a company to lower the par value of its stock as close to zero as it wishes. Bearer shares shall be abolished, which is in line with the international trend. However, it will still be possible to issue bearer participation certificates. Furthermore, the present rules restricting the aggregate participation capital to twice the level of the share capital will be discarded.

The regulations governing the shareholders' meetings shall also be revised. In the future, companies will be able to use electronic tools when preparing for and holding their shareholders' meetings. The preliminary draft also contains rules on holding shareholders' meetings abroad and at different venues.

Moreover, the preliminary draft provides for a comprehensive revision of Switzerland's outdated accounting and reporting legislation. It will create standard rules for all types of companies, although the respective requirements will vary depending on the economic significance of the company in question.

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David Känzig
Leena Kriegers

For further information, please contact:
David Känzig (d.kaenzig@thouvenin.com)
Leena Kriegers (l.kriegers@thouvenin.com)