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How to Start a Company in Switzerland?

The following is a brief discussion of the things you need to know if you are planning to start a company in Switzerland.

1. Registered Office and Domicile

An operating company should choose its registered office primarily on the basis of where it does business, and not on the tax burden. For example, if the company's registered office is in one canton but the company does business in another canton, a permanent establishment for tax purposes is created in the canton where the company does business. The following table provides an overview of the maximum tax burden (cantonal, municipal and direct federal tax) in selected cantons:

Registered Office of the company	Profit tax rate	Capital tax rate
Zurich, ZH	21,1%	0,2%
Zug, ZG	14,3%	0,1%
Freienbach, SZ	12,4%	0,1%
Lucerne, LU	12,3%	0,2%
Stans, NW	12,7%	0,01%
Geneva, GE	24,0%	0,4%
Lausanne, VD	14,0%	0,15%
Lugano, TI	19,7%	0,25%

The company needs a domicile (business address), which must be proven to the Commercial Register either in the form of a lease or sublease agreement, or, for a c/o business address, by means of a domicile acceptance statement.

2. Business Name and Other Distinguishing Marks

In addition to the essential content required by law, every business name may contain information that more closely describes the persons mentioned in the name, indicates the nature of the business or constitutes an invented term. The prerequisites are that the content of the business name must be truthful, cannot be misleading and must not be counter to the public interest (Art. 944 of the Swiss Code of Obligations [CO]). The business name must indicate the type of company: either an *Aktiengesellschaft* (AG), which is similar to a corporation in the US, or a *Gesellschaft mit beschränkter Haftung* (GmbH), which is similar to a limited liability company in the US, (Art. 950 CO). In addition, the name of every AG and every GmbH must be clearly distinct from the name of every other AG, GmbH or cooperative already registered in Switzerland (Art. 951 CO). A search for existing business names can be conducted at www.zefix.ch.

The business name serves to identify the company. Trademarks, on the other hand, identify goods and services. Trademarks may but need not be identical to the business name. Based on a trademark, the company can prohibit others to use an identical or confusingly similar name for the same goods or services. Trademark protection is geographically limited to the countries in which the trademark is registered. There are various forms of trademarks. The most common forms are word marks, combined word and figurative marks, and purely figu-

rative marks. In order to be registered, a trademark must not violate the law (i.e., it must not contain any words or images whose use is forbidden by law), and must not be descriptive or misleading. The owners of earlier trademarks can file an objection to the registration of new trademarks that are identical or similar to their trademarks thereby creating confusion. It is therefore advisable to conduct a trademark search before registering a trademark. The indication ® can only be used for trademarks whose registration in the Trademark Register has been approved by the Trademark Office (i.e., it cannot be used for trademarks whose registration is still pending). For more information, please see the checklist for trademark registrations. Other distinguishing marks, such as domains and names for social media accounts, can also be registered. These names are registered via private providers (domain registrars or platform providers) and like trademarks, they are allocated on a first come, first served basis. The allocation of names for social media accounts is also subject to the standard terms and conditions of each platform provider.

3. Types of Companies

The primary forms of companies for commercial activities are the Aktiengesellschaft or AG (corporation) and the Gesellschaft mit beschränkter Haftung or GmbH (limited liability company). Legally, the two types do not differ significantly. More capital must be invested to start an AG than to start a GmbH. That is why the GmbH used to be the form of choice for small businesses, but this is no longer always the case. There are particularly good reasons for an American company to choose the GmbH form for a subsidiary in Switzerland, because a GmbH can be selected to be transparent for fiscal purposes from an American tax perspective, which is not the case with an AG. The shareholders of an AG are not indicated in the Commercial Register, but those of a GmbH are. For a detailed description of the differences, please consult the checklist comparing Swiss AGs with Swiss GmbHs (<https://www.wengerviel.ch/en-us/publikationen?typ=checklist>).

4. Capital

In addition to the minimum capital requirements for each type of company, you must decide how much start capital a company will require. The start capital can be a mixture of equity capital (share capital, share premiums, contribution to the capital reserves) and debt capital (shareholder loan, convertible loans).

The share capital must be deposited to a blocked account at a Swiss bank before the company is

formed and will remain blocked until the Commercial Register extract is issued after the company has been formed. The blocked account can be organized by the founding notary, and usually minimal formal requirements for opening the account need to be observed. After incorporation, the company must open a regular bank account (complying with all formal requirements) and request the transfer of the monies from the blocked account. The blocked account is not available to serve as a regular bank account.

5. Governing Bodies

The board of directors of an AG or the management of a GmbH must consist of at least one person when the company is founded and also thereafter. At least one person with authority to sign for the company acting alone, or two people with authority to sign for the company acting jointly, and who reside in Switzerland, must be recorded in the Commercial Register.

There is no need to appoint an auditor as long as the company does not have more than 10 full-time positions on an average annual basis. An ordinary audit is required by law as soon as the company has reached a certain size (i.e., has met two of the following three criteria): (i) balance sheet total in excess of CHF 20 million, (ii) sales revenue in excess of CHF 40 million, (iii) more than 250 full-time positions on an average annual basis). Companies below this size can elect a limited audit.

6. Documents

Before you go to the notary's office to have the foundation of the company recorded, a number of other documents must be prepared, either by you or with the help of the notary. Please see the checklist for AGs and GmbHs at <https://www.wengerviel.ch/en-us/publikationen?typ=checklist>.

If the company has more than one shareholder upon foundation (or thereafter), you should consider whether a shareholders' agreement would be appropriate. Such agreements are commonly entered into and can provide for restrictions on sale and protection for minority shareholders and give a shareholder the right to appoint a member of the company's governing body. A shareholders' agreement can be entered into at any time without requiring a notarial deed.

7. Incorporation of the Company

The incorporation of the company must be recorded by means of a notarial deed. The founders can either appear in person before the notary or appoint the notary or the notary's clerk as a fiduci-

ary agent to do so on their behalf. At the founding assembly the articles of association/bylaws of the company are approved, the governing bodies are appointed (i.e., the board of directors and the auditors – if necessary – in an AG, and the management and the auditors – if necessary – in a GmbH), the domicile of the company is decided and the company is declared established.

The notarial office of Wenger & Vieli AG in Zug provides notarial services for companies (regardless of where the company has its registered office). Wenger & Vieli AG, Metallstrasse 9, 6300 Zug, Tel.: +41 58 958 58 58 (<https://www.wengervieli.ch/en-us/expertise/notariat>).

8. Registration in the Commercial Register

Once the company has been established, it must be registered in the Commercial Register. This is usually handled immediately following its foundation by the recording notary by submitting a Commercial Register application bearing the legally valid signatures of the board of directors of the AG or the management of the GmbH. It usually takes 7 to 10 days for the company to be recorded in the Commercial Register (including publication) after the application is filed. A shorter time span can be achieved by appropriate preparation and consultation with the Commercial Register.

The board of directors or the management cannot issue shares to the shareholders until the company is registered in the Commercial Register. Any shares that are issued prior to such registration are null and void.

9. Banking Relationship

Once a company has been established, you can submit a Commercial Register extract to the bank where the blocked account is held, instructing the bank to transfer the blocked funds to a business account of the company at a Swiss or foreign bank. Transfers from the blocked account can only be made to a business account of the company. Therefore, the company must first open a business account.

To open an account, you will need to fill in a large number of bank forms and have them signed for the company by authorized signatories. Great importance is attached to identifying the beneficial owners or the holders of a controlling interest. It will probably take up to four weeks to open a banking relationship for a newly established company. If foreign nationals (and especially US citizens) are among the beneficial owners or holders of a controlling interest and/or authorized signa-

tories of the company, this can lead to significant difficulties and delays.

10. Taxes

If the capital exceeds the exempt amount of CHF 1 million, a stamp tax of 1% of excess over this amount must be paid. In this case the issuance of equity securities must be declared on the appropriate form and the stamp tax paid to the Federal Tax Administration (FTA) within 30 days.

Upon commencement of business activities or entry in the Commercial Register, taxes are levied on the profit (cantonal, municipal and direct federal taxes) and the taxable equity (at the cantonal and municipal level). You should consider the different cantonal tax burdens when you decide where to locate your company.

Once the company starts doing business, as a rule it is subject to value added tax in Switzerland. VAT registration is made with the Federal Tax Administration. Companies with an annual sales revenue of less than CHF 100,000 are exempt from VAT obligations, whereby the worldwide turnover is taken into account. In general, it is advisable to register so that you can claim input tax.

11. Bookkeeping and Accounting

Legal entities are required to keep complete, accurate accounts in accordance with the Swiss Code of Obligations or a recognized standard. An annual report must be prepared containing the financial statements for the year. The company's books may be kept in CHF or in EUR (or in another foreign currency).

WTS Consulting Services AG is available to assist you with bookkeeping, accounting and trustee services. Contact WTS Consulting Services AG, Färberstrasse 6, 8008 Zürich, Tel.: +41 58 958 52 00, www.wts.ch.



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