

NEWSLETTER – JANUARY 2023

CORPORATE LAW

Entry into force of revised Swiss corporate law

The revised corporate law provisions applicable to companies limited by shares entered into force on January 1, 2023. The revised provisions apply to newly incorporated companies as well as to existing companies. The revised law grants existing companies a two-years period to amend their articles of association (AoA) or any internal regulations. Among the many amendments of the Swiss corporate law, some require an update of the current AoA, and others allow for some flexibility which can be reflected in updated AoA. The present Newsletter aims at presenting the main amendments of the Swiss corporate law:

I. Capital and dividends

With respect to the share capital, the new Swiss corporate law has amended the following:

- The share capital may now be denominated in a **foreign currency** (GBP, USD, EUR or JPY) provided that it is freely convertible in CHF, it is the most significant currency in view of the company's activities, and it is used for accountancy purposes and to establish the financial statements.
- The **nominal value** of the shares shall be higher than zero. The requirement of a minimum nominal value of 1 cent has been removed.
- The rules regarding **capital contributions** at the company's foundation have been amended, in particular those applicable to contributions in kind.
- A **fluctuation margin/band of capital** may be introduced in the AoA, authorizing the board of directors to modify (increase and/or decrease) the company's share capital within predefined limits (fluctuation margin/band) within a maximum period of 5 years.
- With respect to the **statutory reserves**, shareholders shall assign 5% of the annual profit to the statutory reserves until, together with the statutory capital reserve, it reaches 50% of the share capital registered in the commercial register and 20% of the registered share capital for holding companies.

- The general meeting of shareholders (GM) may decide to establish **voluntary reserves**, provided that it is justified to ensure the long-term prosperity of the company, taking into account all shareholders' interests.
- Payment of **interim dividends** has now been formalised. The GM can decide to pay an interim dividend throughout the year based on interim financial statements.

II. Corporate governance and shareholders' rights

The revised law includes new provisions with respect to the GM and the shareholders' rights:

- Holding a **virtual GM** is allowed provided that a specific provision is included in the AoA and an independent representative of the shareholders is appointed by the board of directors. For unlisted companies, such appointment may be waived by the AoA.
- The use of **electronic means** in a GM is allowed provided that the identity of the participants is established, the oral contributions are directly transmitted, each participant can raise motions and take part in the debates, and the results of votes cannot be falsified.
- Holding a GM **abroad** is allowed provided that a specific provision is included in the AoA and an independent representative of the shareholders is appointed in the notice convening the GM,

unless the appointment of an independent representative is waived by all shareholders.

- The list of the GM **non-transferable powers** has been updated and now includes the rights to distribute interim dividends or to decide the reimbursement of the statutory capital reserve.
- The list of **important decisions** of the GM which require at least two-thirds of the votes attributed to the shares represented and a majority of the nominal value of the shares represented has been amended. It now includes introducing an arbitration clause in the AoA, waiving the appointment of an independent representative in a virtual GM or fixing the share capital in another currency.
- Thresholds for requesting a **GM to be convened** and an **item to be introduced** in the agenda have been amended. For unlisted companies, shareholders holding together at least 10% of the share capital or votes may request a GM to be convened and at least 5% of the share capital or votes may request an item or proposals to be placed on the agenda.
- Shareholders may in principle have their participation rights, in particular their right to

vote, exercised by a **representative** of their choice. A specific provision of the AoA may provide that a shareholder may only be represented by another shareholder at the GM.

III. Other amendments

Other amendments of the Swiss corporate law or new provisions are related to:

- The appointment of an **arbitration Court** to settle any dispute related to the company;
- **Imminent insolvency, loss of capital and overindebtedness**; and
- Some of the **legal actions** related to the company's operation.

IV. Transition period

The revised provisions apply to newly incorporated companies as of January 1, 2023, as well as to existing companies. The latter have a period of two years to update their AoA or any internal regulations. During this transition period, the current AoA and internal regulations will remain in force.

The content of this newsletter is of a general nature and can in no way be assimilated to a legal or tax opinion. If you wish to obtain an opinion on a particular situation, do not hesitate to contact one of the following lawyers:

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