



## ADOPTION OF THE REVISION OF THE SWISS COMPANY LAW

**On June 19, 2020, the "major" revision of the Swiss law on stock corporations (Company Law) was approved by the Swiss Parliament. The target of the revision was to modernise the Swiss Company Law. The change in the law involves many reliefs, flexibility and simplifications. The following is a summary of the main changes.**

### Share capital and dividends

- The nominal value of a share can be less than CHF 0.01 as long as it exceeds the minimum of zero.
- The share capital can be accounted in foreign currency. Previously, the share capital was excluded.
- Interim dividends may be distributed from the profit of the current year. At the present time this is not accepted by some auditors.
- Distributions can be made from the capital reserves, i.e. from premium and other shareholder contributions in excess of the nominal value (harmonization with accounting rules).

### Capital spread and capital reductions

- Within the capital spread of +/- 50% of the share capital which is entered in the Commercial Register, the Board of Directors may increase or decrease the capital within a maximum period of five years.
- Creditor protection (notice to creditors and audit report) is provided for each capital reduction.
- The capital spread replaces the current authorized capital, which only permits capital increases and is valid for a maximum of two years.
- The transitional period for the authorized capital is 2 years after the new Company Law comes into force.
- The notice to creditors in the event of capital reductions will now only be published once instead of three times.
- In the case of a capital reduction, creditors can only demand the securing of their claims within 30 days instead of, as previously, the securing or satisfaction of claims within 3 months.
- The audit confirmation in the case of a capital reduction must also refer to the notice to creditors.
- The notice to creditors and the audit confirmation can be made before or after the General Meeting which decides the reduction of capital.

### Reorganisation law

- The Board of Directors monitors the liquidity of the company and, in case of illiquidity, has to take measures to ensure solvency and, if necessary, to take restructuring steps.



- If half of the capital is lost, the convocation of the General Meeting is no longer mandatory.
- In the event of over-indebtedness, the Board of Directors is no longer required to deposit the balance sheets with the court if, within 90 days of the audited interim financial statements, there are reasonable prospects of eliminating the over-indebtedness. It must be ensured that the creditors' claims are not put at additional risk.
- Subordinations must now also take account of interest receivables during the period of over-indebtedness.
- Deferral of bankruptcy is abolished, in the event of insolvency the inheritance proceedings remain.

### Shareholder rights

In the case of non-listed companies, the following new participation and control rights of shareholders apply:

- Shareholders holding at least 5% of the shares or voting rights may request that items be added to the agenda (previously 10% of the shares or CHF 1 million par value) and may inspect the books of account and correspondence without the authorization of the General Meeting if this is necessary to exercise their shareholder rights (previously no threshold).
- Shareholders holding at least 10% of the shares or voting rights may call an Extraordinary General Meeting (previously 10% of the shares), may at any time ask the Board of Directors questions which it must answer within 4 months (previously this was not permitted) and may request special investigations (previously 10% of the shares or CHF 2 million nominal value).

In the case of listed companies, the following new participation and control rights of shareholders apply:

- Shareholders holding 0.5% of the share capital or voting rights may request that items be added to the agenda (previously 10% of shares or CHF 1 million par value).
- Shareholders holding at least 5% of the shares or voting rights may convene an Extraordinary General Meeting (previously 10% of the shares), inspect the books of account and correspondence without the authorization of the General Meeting if this is necessary to exercise their shareholder rights (previously no threshold) and request special investigations (previously 10% of the shares or CHF 2 million nominal value).
- The delisting of shares now requires the approval of the Annual General Meeting with a two-thirds majority of the votes represented and half of the capital represented.

### General Meeting

- Virtual General Meetings are now permitted under certain conditions if this is provided in the statutes.
- Multi local general meetings and general meetings held at a foreign meeting place are also permitted if this is provided for in the statutes.
- Written or electronic resolutions of the General Meeting will be accepted in the future. They can be made by circular letter.



- Before the Ordinary General Meeting, the annual and audit reports no longer need to be physically available; it is sufficient if they are accessible electronically.
- Resolutions and election results for listed companies must be made available to shareholders electronically within 15 days, and for unlisted companies shareholders may request that the minutes be made available to them within 30 days.
- In the case of listed companies, an independent proxy holder must keep shareholders' instructions confidential until the General Meeting and may provide the company with general information no earlier than three days before the General Meeting.
- The General Meeting may now only dismiss the auditors for important reasons. The reasons must be disclosed in the notes to the financial statements.

#### Board of Directors

- Circulation resolutions are now permitted electronically and without signature.
- In case of conflicts of interest, the members of the Board of Directors and the Executive Board are obliged to inform the Board of Directors immediately and completely.
- The duties of the Board of Directors now include the filing of an application for a debt-restructuring moratorium and, in the case of listed companies, the preparation of a remuneration report.
- Members of the Board of Directors are obliged to reimburse unjustifiably received benefits.

#### Other important aspects

- In the case of major listed companies, each gender must be represented on the Board of Directors with at least 30% and on the Executive Board with 20%. If a company is unable to comply with this requirement, the reasons for and the measures taken for improvement must be disclosed.
- Transfer of the "Ordinance against Excessive Compensation in Public Companies (Minder Ordinance)" into the Swiss Code of Obligations.
- Statutes may contain an arbitration clause for disputes on corporate law matters.
- In accordance with EU Directive 2013/34 and 2013/50, raw materials companies that are active in the extraction of raw materials, must now publish a report on payments to government bodies in excess of CHF 100,000.

#### Entry into force

The referendum deadline expires on 8 October 2020. If this period remains unused, the revision of the Company Law will come into force in the second half of 2021 at the earliest. Once the revision comes into force, companies have two years to incorporate the changes in their statutes.



The revision of the Company Law will make Switzerland even more attractive as a business location. Resident companies should consider what advantages they can derive from the forthcoming revision of the Company Law and the resulting simplification and increase in flexibility. It is advisable to check their own statutes with regard to the changes at an early stage and to adapt them if necessary. Mandaris AG will be happy to help you with this.

Please do not hesitate to contact the author if you have any questions or queries.

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