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Efficiency Gains for Swiss Group Companies under the Revised Swiss Corporate Law

Corporate, Securities, and Governance



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Key Points

- The revised law will foster the digitization of corporate housekeeping of Swiss group companies by streamlining the decision-making process at the board and shareholder level.
- New options, such as share capital in foreign currency, and certain clarifications, like interim dividends, may be utilized to better align Swiss subsidiaries with the group's financial structure.
- In most cases, modifications to the Swiss entities' articles and the board regulations are needed to unlock the full potential of the reform.

Revised Swiss corporate law in force as of January 1, 2023

On January 1, 2023, the revised Swiss corporate law will come into force and bring about considerable changes to the rules governing Swiss stock corporations (AG/SA/Ltd) and Swiss limited

liability companies (GmbH/Sàrl/LLC). This ACC Quick Overview sums up how these amendments may be used to enhance the efficiency and digitization of the corporate governance of Swiss group companies.

Digitization of corporate housekeeping

The revised law contains several tools aimed at streamlining the decision-making process in Swiss companies at the level of the general meeting of the shareholders and the board of directors. These modernizations are available to Swiss stock corporations and Swiss limited liability companies.

Until now, written resolutions were only admissible for the decisions of the board of directors. Under the amended Swiss corporate law, shareholders may take written circular resolutions as well, provided that no shareholder requests oral deliberation. Such written resolutions do not require a basis in the articles of association. This constitutes a significant simplification of corporate housekeeping (particularly for fully owned Swiss subsidiaries) as physical shareholders' meetings no longer need to be held. However, based on the somewhat ambiguous wording of the relevant provision of the Swiss Code of Obligations, it is debatable whether any form of text (for instance a plain email without signature) is sufficient for written shareholders' resolutions, or whether a wet-ink/qualified electronic signature is required. Considering the spirit of the modernized law, it would be desirable to have maximum flexibility in this respect. In this context, it is important to keep in mind that written resolutions that must be filed with the commercial register (such as e.g. resolutions regarding board elections) may arguably still need to be signed in wet-ink or by a qualified electronic signature recognized in Switzerland.

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In addition, the revised law introduces so-called virtual general meetings of shareholders by way of video or telephone conference. A virtual general meeting may adopt any shareholders' resolution, including resolutions requiring notarization, if all participants can directly communicate with each other through electronic means. As of 2023, virtual general meetings are only possible if this option is explicitly set forth in the company's articles of association (whereby the requirement of an independent proxy may be waived in the articles of non-listed entities). Such a basis in the articles will also be necessary in case a Swiss company wants to hold physical general meetings outside of Switzerland. If shareholders' meetings take place abroad, an independent proxy will be necessary unless – with respect to non-listed entities – all shareholders waive this requirement.

The amended law provides for increased flexibility with respect to corporate housekeeping matters and streamlines the related processes, through written shareholders' resolutions, board resolutions by email and virtual (or hybrid) shareholders' and board meetings.

At the board level, in essence, the same options apply. Under the current law, the board may pass resolutions in physical or virtual meetings or by circular resolutions. However, under the revised law, circular board resolutions may be passed without wet-ink signatures if the consent of each member can be verified in text form (unless the company's board regulations demand wet-ink signatures). This means that board resolutions by plain email are possible as from January 1, 2023.

In summary, the amended law provides for increased flexibility with respect to corporate housekeeping matters and streamlines the related processes, through written shareholders' resolutions, board resolutions by email and virtual (or hybrid) shareholders' and board meetings.

Share Capital in Selected Foreign Currencies

As an alternative to Swiss francs (CHF), the revised law will allow Swiss stock corporations and Swiss limited liability companies to denominate their share/quota capital in a foreign currency that is essential to their business activities. As of January 1, 2023, the permissible currencies are US Dollars, Euros, British Pounds, and Japanese Yen. If the share capital is denominated in one of these permissible foreign currencies, the bookkeeping and accounting must be done in the same currency. At the time of its establishment, the share capital in foreign currency needs to be at least equal in value to the minimum statutory capital requirement in Swiss francs (i.e., CHF 100,000 for the stock corporation and CHF 20,000 for the limited liability company). There is no requirement for a capital increase if the value of the capital in foreign currency would later fall below the Swiss francs statutory minimum amount due to exchange rate fluctuations (although such currency depreciations may limit the available headroom for capital reductions).

The revised law will allow Swiss stock corporations and Swiss limited liability companies to denominate their share/quota capital in a foreign currency that is essential to their business activities.

A later change of the currency of the share capital requires notarization of the respective resolutions of the general meeting and the board of directors. Such an amendment must be resolved with effect as of the beginning of a financial year, either with effect as of the beginning of the next financial year or retroactively with effect as of the beginning of the current financial year.

A denomination of the share capital in a foreign currency enables Swiss subsidiaries whose accounting and bookkeeping has already been conducted in a foreign currency to align the currency of the share capital with the currency of their accounting and bookkeeping and thus to avoid issues when converting currencies for purposes of certain corporate law matters. Such synchronization of the accounting currency and the share capital currency may serve to enhance the efficiency in running the company as key corporate law matters are calculated based on the share capital (e.g., the creation of reserves and the determination of capital loss and over-indebtedness).

Interim dividends

Another welcome feature of the reform is that the revised law explicitly allows interim dividends (i.e., dividends distributed from the profit generated in the current financial year). Under the new rules, interim dividends may be resolved by the general meeting of shareholders based on interim financial statements after the necessary allocations to the reserves have been made. The interim financial statements need to be audited by the company's auditors unless the company is neither subject to an ordinary audit nor a limited audit. The requirement to have the interim financial statements audited may be waived if all shareholders approve the interim dividend and the interim dividend does not jeopardize the claims of the company's creditors. It should be kept in mind, however, that the board must monitor the company's liquidity when suggesting dividends or other distributions to shareholders, although ultimately ordinary and interim dividends are resolved by the shareholders under Swiss law.

Interim dividends allow Swiss subsidiaries of groups of companies to more easily allocate liquidity within the group and distribute quarterly dividends to its (foreign) parent company.

Next steps

From an in-house counsel perspective, the reform is managed best through a step-by-step approach. First, the impacts of the amended law and potential efficiency gains for Swiss group companies should be assessed. Secondly, the corporate documents requiring modifications need to be identified. The new law does not oblige Swiss companies to immediately amend their articles of association. Instead, they are given a transition period of two years as of January 1, 2023, until December 31, 2024, during which provisions that are incompatible with the revised law remain valid. However, as described above, amendments to the company's articles are, among others, necessary for virtual general meetings, general meetings abroad, and a share capital in foreign currency.

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