



ESTABLISHING AND MANAGING A COMPANY

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5.1 CORPORATE STRUCTURES

Economic freedom, which is guaranteed under the Swiss Constitution, allows anyone, including foreign nationals, to operate a business in Switzerland, to form a company or to hold an interest in one. No approval by the authorities, no membership of chambers of commerce or professional associations, and no annual reporting of operating figures are required to establish a business. However, foreign nationals must have both work and residence permits in order to conduct a business personally on a permanent basis.

Swiss law distinguishes between the following types of business entities: partnership-type unincorporated companies (sole proprietorship, limited partnership or general partnership) and capital-based incorporated companies (stock corporation or AG, limited liability company or GmbH). The “limited partnership for collective investment” (KKK) corresponds to the “limited partnership” form common in English-speaking countries. The legal form referred to as GmbH & Co. KG, which is common in Germany and Austria, does not exist in Switzerland. The appropriate form of business entity for a foreign company establishing a location in Switzerland depends on many factors, including the nature and time horizon of the business, general legal and tax conditions, and the strategic goals of management (headquarters, production facility, sales office, financial or service company, etc.). Companies and private individuals from foreign countries are allowed to determine the legal form that is right for their business. This requires careful evaluation, in which tax considerations play a crucial role. It is therefore advisable to engage an advisor or consultant familiar with the Swiss legal and tax system at an early stage in the process.

The following basic options are available for establishing a business in Switzerland:

- Forming an unincorporated or incorporated company
- Setting up a branch office
- Acquiring an existing company in Switzerland (either unincorporated or incorporated)
- Formation of a joint venture (unincorporated or incorporated company)
- Forming a strategic alliance with or without an equity interest

The most common choices for a foreign company located in Switzerland are subsidiaries (in the form of a stock corporation or limited liability company, i. e. an AG or GmbH) and branch offices. The newly created limited partnership for collective investment is also an attractive option for risk capital.

The following criteria are crucial when selecting the right form of business entity:

- Capital: organization or incorporation expenses, capital needed and minimum capital required
- Risk / liability: the higher the entrepreneurial risk or financial investment, the more advisable it is to select a limited liability form of company
- Independence: freedom of action may be restricted depending on the corporate structure
- Taxes: the business income and assets of the company and the owner are taxed either separately or together, depending on the corporate structure
- Social security: certain social insurance plans are obligatory, voluntary or non-existent, depending on the legal form

www.kmu.admin.ch
Official portal for SMEs
Languages: German, French, Italian

5.1.1 Stock Corporation (AG)

The stock corporation – Aktiengesellschaft (AG) in German, is the most important and most common type of corporate structure in Switzerland. In addition, it is often chosen by foreign companies as the legal form for their Swiss subsidiaries. The AG is a distinct legal entity (with its own legal personality), and its liability is limited to company assets. The share capital is determined in advance and subdivided into shares. The AG is an appropriate legal form not just for large companies but also for small and medium-sized businesses. It is the customary legal form for holding companies and financial enterprises.

A stock corporation can be founded by one or more individuals or legal entities; at least one person has to be a shareholder. The share capital must be at least CHF 100,000. In order to found a stock corporation at least CHF 50,000 must have been paid in, while the increase in stock capital to at least CHF 100,000 has to be paid in fully at a later date.

The AG's supreme body is the board of directors. It consists of one or more members, who are not required to be shareholders. There are no requirements regarding the nationality or legal residence of the directors. At least one member (of the board of directors or the executive board) authorized to represent the company must reside in Switzerland. The compensation paid to the members of an AG's board of directors varies widely depending on the industry, size of the company and sales revenue. The average fee in Switzerland for a member of the board of directors in companies with up to 1,000 employees is about CHF 25,500 per annum. The most common forms of compensation are annual lump-sum payments and reimbursement of expenses. On average the board of directors in this type of company consists of 3.6 people.

5.1.2 Limited Liability Company (GmbH)

A limited liability company (GmbH) is a separate business entity with its own legal personality. It can be formed by one or more individuals or commercial companies, and its stated capital (nominal capital) is specified in advance. Each shareholder has an interest in the nominal capital in the form of one or more nominal shares having a nominal value of at least CHF 100. The nominal capital must total at least CHF 20,000 and must be fully paid in. A nominal share can be easily transferred in writing. The owner of the invested capital must, however, be entered in the commercial register. Essentially all shareholders are entitled to joint management of the company; at least one of them must have their place of residence in Switzerland.

The GmbH is an attractive alternative to the stock corporation, in particular for small and medium-sized enterprises. Due to the fact that a board of directors is not required, the structural costs of a GmbH can be kept comparatively low. On the other hand this means that full responsibility is concentrated on the managing director. Depending on the size, there is only a limited auditing obligation. In addition the GmbH has the advantage of less share capital compared to an AG, but the disadvantage of the lack of anonymity: all shareholders, including those who join the company at a later date, are disclosed.

5.1.3 Branch Office

Instead of founding a subsidiary in Switzerland, a foreign company can also set up a branch office (which is the third most common corporate structure for foreign companies in Switzerland). These branch offices have a certain organizational and financial independence from the parent company. From a legal point of view the branch office is a part of the foreign company, although it can conclude contracts on its own behalf, perform transactions and also appear in court at its place of business as a plaintiff and defendant. As soon as a branch office is formed, it must be registered in the commercial register. As far as licensing, registration, taxation, and accounting records are concerned, a branch is treated like any Swiss company. In order for a foreign company to establish a branch office in Switzerland, it must have an authorized representative whose legal residence is in Switzerland.

5.1.4 Limited Partnership for Collective Investment

The limited partnership for collective investment (abbreviated as KkK in German) corresponds to the limited liability partnership (LLP) common in English-speaking countries. As an instrument for risk capital investment, this form of company is reserved exclusively for qualified investors. In contrast to the provisions of the Swiss Code of Obligations regarding limited partnerships, according to which the partner with unlimited liability must be an individual, the liable partner in a limited partnership for collective investment must be a corporation.

This legal form has existed in Switzerland since 2006. For investors and limited partners who want to establish a form of LLP it is an alternative to setting up their company in Luxembourg, Ireland or the Channel Islands (specifically Jersey and Guernsey). This has strengthened Switzerland's status as a financial center and created the conditions for an increase in professional services for specialized risk capital, private equity, and hedge fund managers in Switzerland.

Legal Forms at a Glance

(FIG. 16)

	SOLE PROPRIETORSHIP	GENERAL PARTNERSHIP	AG	GMBH	BRANCH OFFICE
Establishment/formation requirements	Commencement of independent economic activity with the aim of ongoing profit	Signing of a partnership agreement (no particular form). If no business activity is yet being carried out, the company comes into being when it is entered in the commercial register	Public authentication of formation, approval of the statutes, selection of the board of directors and (in the absence of dispensation under OR 727a II) the auditors, entry in commercial register	Public authentication of formation, approval of the statutes, if applicable appointment of management, representatives, and (in the absence of dispensation under OR 727a II) auditors, entry in commercial register	Entry in commercial register
Purpose	Small business, personal activity (e.g. artist)	Smaller, ongoing, mainly personal businesses	Suitable for almost all types of profit-oriented business	-Smaller, mainly personal businesses	Operation that is legally part of a larger company but has a certain amount of economic autonomy
Name	- Owner's last name (with or without first name) - Possible additions: type of activity, invented name	- Last name of at least one shareholder with wording indicating the partnership status - Possible additions: type of activity, invented name	- Any name (personal name, type of activity, invented name) - The legal form must be indicated in the company name	- Any name (personal name, type of activity, invented name) - The legal form must be indicated in the company name	- Same name as main company - Special additions permitted - If the main company is foreign: location of main company, location of branch office - Indication of legal form
Legal nature	Sole property of company owner	Unincorporated company	Legal entity	Legal entity	Legal entity
Entry in the commercial register	Commercial operations must be registered (otherwise registration is possible but not mandatory)	Commercial operations must be registered	Comes into existence upon entry in commercial register	Comes into existence upon entry in commercial register	Mandatory entry in commercial register
Founder	An individual is the sole proprietor	Two or more individuals	At least one shareholder (individual or legal entity)	At least one partner (individual or legal entity)	Main company
Bodies	None	Partners	- General shareholders' meeting - Board of directors (at least 1 member)	- General partners' meeting - Executive board (at least 1 member)	- Bodies of main company - Managed by own executives; authorized representative resident in Switzerland
Auditor	May be used	May be used	Yes, in the absence of dispensation under OR 727a II, depending on size – attainment of two of the three following parameters in two successive fiscal years: - total assets of CHF 20 million - sales of CHF 40 million - average headcount over the year of 250 employees or more		
Liability	- Unlimited liability of owner with personal assets	- Primary liability of company assets; subsidiary unlimited and joint liability of each partner with personal assets	- Sole liability of company assets; only obligation of shareholders to full payment of share capital	- Sole liability of company assets; facultative limited obligation to pay additional contributions as per statutes; liability only for additional contributions tied to own nominal shares	- Main company

Source: State Secretariat for Economic Affairs (SECO), Swiss Code of Obligations (OR)

	SOLE PROPRIETORSHIP	GENERAL PARTNERSHIP	AG	GMBH	BRANCH OFFICE
Minimum capital	- No requirements	- No requirements	- Minimum CHF 100,000, minimum partial payment CHF 50,000	- Minimum CHF 20,000, fully paid	- No capital required (endowment capital of foreign parent company is sufficient)
Costs of consulting, establishment, notary	- CHF 700–1,200	- CHF 2,400–4,400	- From CHF 1,900 (electronic) - From CHF 7,000 (traditional) (see 5.4.3)	- From CHF 1,800 (electronic) - From CHF 7,000 (traditional) - (see 5.4.3)	- From CHF 1,000
Advantages	<ul style="list-style-type: none"> - Simple and low-cost formation process - Few formal requirements - Proprietor/partners can perform roles of corporate bodies - Double taxation of profit is avoided (only the proprietor's/partners' income is taxed because the company is not a legal entity) - Suitable for very small businesses 		<ul style="list-style-type: none"> - Limited liability and risk capital - Easier transferability of shares - Regulated representation rights - Foreigners can own all shares / nominal shares (but there must be at least one person resident in Switzerland who can handle all legal business) - Easy access to the capital market - Suitable for businesses with more capital - Swiss character of company 		<ul style="list-style-type: none"> - No separate capital required - Simpler and cheaper to set up than an incorporated company (no stamp duty or withholding tax on profit transfer) - Parent company can exert direct influence - Low tax burden - Tax exemption for Swiss profits in parent company's country under numerous double taxation agreements
Disadvantages	<ul style="list-style-type: none"> - Unlimited liability of proprietor/partners - Ownership interests difficult to transfer - Lack of anonymity; proprietor/partners must be listed by name in the commercial register - More difficult access to the capital market - Social insurance obligation 		<ul style="list-style-type: none"> - In some cases, double tax burden (taxation of company profit and dividends) - More complex and expensive formation process, professional advice recommended 		<ul style="list-style-type: none"> - Foreign parent company shares liability for branch office - Changing to a subsidiary later difficult from a tax point of view - No Swiss character
			- Amount of share capital	- Lower minimum capital	- No shareholder anonymity

Source: State Secretariat for Economic Affairs (SECO), Swiss Code of Obligations (OR)

“Establishing a company in Switzerland can be done quickly and easily.”

5.1.5 Sole Proprietorship

The individually owned enterprise – sole proprietorship or single-owner company – is the most popular corporate structure for small businesses. It exists legally whenever an individual conducts commercial activities alone or, in other words, operates a business or a company. The owner of the sole proprietorship bears the entrepreneurial risk and is liable for that risk with his or her entire private and business assets. On the other hand, the owner also has the sole power to determine business policy. If the business is successful, it can be easily transformed into a corporation. If it fails, liquidation is easier than for other legal forms. The sole proprietorship does not need to be registered in the commercial register unless annual sales exceed CHF 100,000.

5.1.6 General Partnership

If two or more individuals come together to operate a business under a joint name in accordance with standard commercial practice, this type of operation is called a general partnership. A general partnership is created by a partnership agreement between the participants. Since it (like a sole proprietorship) is not a distinct legal entity, it is not required to pay taxes. Taxes are paid by the individual partners. The partners have unlimited joint liability for any business debts or obligations of the partnership to the extent of their own assets. Entry in the commercial register is required.

5.1.7 Joint Venture

The joint venture is becoming more and more important as a form of partnership. It is not regulated by law and is an appropriate form for a joint activity with a Swiss partner. A joint venture is often operated as a joint investment in a newly formed corporation (a foreign supplier, for example, establishes a manufacturing or sales company together with the Swiss seller). Joint ventures can also be operated as an ordinary partnership in the case of small projects (e.g. a research project for a limited time period).

5.1.8 Ordinary Partnership

The ordinary partnership is a contractual association of several individuals or legal entities for a business purpose that is not required to be entered in the commercial register. Anonymity is preserved but each partner is jointly and personally liable for the joint project.

5.2 ACCOUNTING

The general accounting regulations in Switzerland are brief and to the point. The accounts required for the type and scope of business must be kept in an orderly manner and allow identification of business assets and of receivables and payables associated with business operations as well as operating results (profit or loss) in each business year. The law requires that the income statement (profit and loss account) and the balance sheet be drawn up annually according to generally accepted accounting principles and that they be complete, clear and easily understood. This means that the accounting system can be based on any internationally accepted standards (such as US-GAAP, IFRS or Swiss GAAP FER).

Corporations (AGs) must meet detailed minimum requirements concerning the structure of the annual financial statements in order to increase transparency. They must include, as a minimum, a balance sheet and an income statement with previous-year comparisons and explanatory notes. The annual financial statements of group companies must be consolidated in a single set of group financial statements if two of the following parameters are present in two successive fiscal years:

- Total assets of CHF 10 million
- Annual sales of CHF 20 million
- An average headcount over the year of 200 employees

5.3 AUDITING

Annual financial statements are audited for correctness and accuracy by people and companies, which have the required state license. Normally they are fiduciaries, fiduciary companies or auditing companies. The auditing obligation depends on the size and economic importance of the corporation (AG) or limited liability company (GmbH). Regular audits apply to companies that are required to prepare consolidated financial statements, or if two of the three parameters below are present in two successive fiscal years:

- Total assets of CHF 20 million
- Annual sales of CHF 40 million
- An average headcount over the year of 250 employees or more

If these conditions are not met, then the annual financial statements are only subject to a limited audit (questioning of management, appropriate detailed checks, analytical audit procedures, etc.). The audit may also be dispensed with entirely, subject to the approval of the shareholders, if the company has no more than an average of ten full-time positions over the year.

www.treuhandsuisse.ch
Swiss Fiduciary Association
Languages: German, English, French, Italian

www.treuhand-kammer.ch
Fiduciary Chamber
Languages: German, French

5.4 ESTABLISHING A COMPANY

5.4.1 Process

Parties who intend to establish a company in Switzerland can move more quickly from the planning stage to implementation if a clear and concrete business strategy has been worked out in advance. Once the decision to locate in Switzerland has been made, the economic development agency of the selected canton can help to coordinate the project locally until the start of operations. Banks, consulting companies, fiduciary companies and attorneys specializing in company law are also available to answer specific questions.

The formation of a company takes two to four weeks from the submission of required documents to the date when the company is considered legally established (when it has legal effect with respect to third parties). The time required can be less in simple cases and depending on the canton.

The State Secretariat for Economic Affairs provides an online desk for founding companies called “StartBiz”. With this eGovernment solution, sole proprietorships, limited liability companies, stock corporations, general partnerships and limited partnerships can register with OASI offices, VAT authorities and accident insurance companies.

It is also possible for sole proprietorships, general partnerships, and limited partnerships to be entered into the commercial register, so that the complete foundation of these companies can be carried out via “StartBiz”. Normally foreign companies in Switzerland are founded with the legal form of an incorporated company (GmbH or AG). Furthermore, the foundation of a stock corporation or a limited liability company (AG or GmbH) requires entry in the commercial register, which has to be done by a public notary (this can also be done online).

www.s-ge.com/company-foundation

Facts and figures on founding a company in Switzerland
Languages: German, English, French, Italian, Spanish, Portuguese, Russian, Chinese, Japanese

www.startbiz.ch

Electronic registration and creation of new companies
Languages: German, English, French, Italian

www.kmu.admin.ch > Practical knowledge > Creation of SMEs

Online public notary service for establishment of new companies (AG/GmbH)
Languages: German, French, Italian

www.startups.ch

Private platform for establishment of new companies
Languages: German, English, French, Italian

Process of Establishing a Company (AG, GmbH)

(FIG. 17)

STEP	TIME REQUIRED IN WEEKS					
	1	2	3	4	5	6
Preliminary examination, registration, and approval of company (name)	■					
Preparation of necessary documents: corporate charter or articles of incorporation, statutes, application, etc.		■				
Payment of the company capital into a specified bank The payer must prove their identity. For foreigners it may be worth bringing references from Swiss partners			■	■		
Establishment and preparation of corporate charter or articles of association: statutes, auditor's declaration of acceptance, confirmation of a recognized bank that the share capital has been paid in and is at the free disposal of the company; if the company does not have its own offices after being formed: declaration of adoption of domicile			■	■		
Publication in official journal of the canton					■	
Entry of responsible person(s)/entities in the appropriate registers (commercial register, land register)						■
Registration as company liable to tax						■

5.4.2 Entry in the Commercial Register

The commercial register includes all commercial enterprises doing business in Switzerland. It specifies each company's extent of liability and its authorized representatives. Its central focus is its public disclosure role. Accordingly, the Central Business Names Index, Zefix, which is maintained online by the Federal Commercial Registry Office, is open to anyone for consultation and can also respond to inquiries as to whether a company name is available. All entries in and deletions from the commercial register are published in the Swiss Official Gazette of Commerce.

As a rule, any trading, manufacturing or other form of commercial enterprise is required to be registered in the commercial register. Registration guarantees that the company name is protected. It is only after registration in the commercial register that legal entities receive their own legal personality and status. The company or business name under which a commercial enterprise is operated can be freely chosen, as long as it complies with legal regulations. Stock corporations (AGs) and limited liability companies (GmbHs) must specify the legal form as part of the company name. If the company name of a general partnership does not list all partners by name, it must contain the last name of at least one partner along with wording that indicates the relationship between partners. The company name of a sole proprietorship must include the owner's last name but may not contain any additional wording indicating a relationship between partners or associates. Application for registration in the commercial register can be done electronically via the company formation portal for all legal company forms, provided that the applicable requirements are met.

www.zefix.ch
Central Business Names Index
Languages: German, English, French, Italian

www.shab.ch
Swiss Official Gazette of Commerce
Languages: German, English, French, Italian

5.4.3 Costs of Forming a Company

The costs for forming a stock corporation (for a limited liability company the fees and consulting costs are slightly lower) comprise various fees, the costs varying depending on whether the process is carried out traditionally or via an electronic platform operated by the SECO (see 5.4.1).

The purpose of the securities issue tax is the non-gratuitous or free foundation and increasing of the nominal value of participation rights. The tax is levied at 1% of the amount accruing to the company as consideration for the participation rights but at least 1% of the nominal value, with an exemption for the first CHF 1 million. This exemption applies generally to the formation of corporations and to capital increases up to CHF 1 million. Existing companies may therefore increase their capital to CHF 1 million without owing any securities issue tax.

Excluding the securities issue tax, the fixed formation costs therefore total CHF 6,000 to CHF 8,000 for the traditional process and approximately CHF 2,000 for the electronic process. For a small business that does not need to provide extensive documentation, the costs of formation are a maximum of CHF 2,000. The total costs for forming a company, including professional consulting fees, vary depending on the share capital. Establishing a corporation is more time-consuming and generally costs more than forming a partnership.

www.kmu.admin.ch > Practical knowledge > Creation of SMEs > Legal form
Costs of forming a company with different legal forms
Languages: German, French, Italian

Costs of Forming A Stock Corporation (AG)

(CHF)

(FIG. 18)

COSTS	TRADITIONAL	ELECTRONIC
Share capital	100,000	100,000
Consulting services (corporate charter or articles of association, taxes, commercial register, share certificates, establishment documents, founding assembly, etc.)	5,000 – 7,000	300 – 850
Commercial register fee	1,000	1,000
Certification fees	1,000	600
Securities issue tax	–	–
Total costs	7,000 – 9,000	1,900 – 2,450

Source: State Secretariat for Economic Affairs (SECO)

Costs of Forming A Limited Liability Company (GmbH)

(CHF)

(FIG. 19)

COSTS	TRADITIONAL	ELECTRONIC
Nominal capital	20,000	20,000
Consulting services (corporate charter or articles of association, taxes, commercial register, share certificates, establishment documents, founding assembly, etc. – depending on complexity)	4,000 – 6,000	200 – 550
Commercial register fee	1,000	1,000
Certification fees	1,000	600
Stamp duty	–	–
Total costs	6,000 – 8,000	1,800 – 2,150

Source: State Secretariat for Economic Affairs (SECO)