

The Swiss Corporation (Ltd.) and Limited Liability Company (LLC)

Characteristics, Capital Requirements, Incorporation Procedure, Taxes

The Corporation (Ltd.) and Limited Liability Company (LLC) are the most popular legal forms of Swiss companies.

This document provides a brief overview on the main characteristics, capital requirements, incorporation procedures of the Swiss Corporation and Limited Liability Company, as well as basic information about the Swiss corporate income tax.

A. Characteristics

The main distinctions between the two legal entities are the following:

- a. A Ltd. requires a higher registered minimum capital than an LLC (see paragraph B)
- b. The only obligation of the shareholder of a Ltd. is to pay for the subscription of shares. Other obligations amongst the shareholders must be imposed by separate shareholders' agreements.

The articles of association (AoA) of a LLC may impose further obligations on its shareholders, such as the obligation for additional contribution and the obligation to provide incidental services. Furthermore the shareholders of a LLC must comply with fiduciary duties and non-competition clause, if provided by the AoA.

- c. A Ltd. (not listed at the Swiss Stock exchange) provides anonymity for its shareholders, whereas the shareholders of a LLC must be registered with the official company register (besides the general company information such as registered capital, domicile, directors and other signatories, also the name of shareholders of a LLC are available to the public.)
- d. If the AoA of a LLC do not provide otherwise, every shareholder is member of the management board, whereas a shareholder of a Ltd. does not have any executive responsibilities, if not elected as a member of the board of directors.

B. Registered Minimum Capital

a. Corporation (Ltd.)

The minimum capital of a Ltd. is **CHF 100'000**.

At the time of establishment at least 20% of the company's capital has to be paid in on a Swiss bank account. In any case, at least CHF 50'000 must be contributed. The capital is divided into shares with a minimum value of CHF 0.01 (1 cent).

b. Limited Liability Company (LLC)

The minimum capital of a LLC is **CHF 20'000**.

At the time of establishment, it has to be fully paid in on a Swiss bank account. The capital is divided into shares with a minimum value of CHF 100.

C. Standard Incorporation Procedure

If time is crucial, it is theoretically possible to establish a Ltd. or LLC within a few days. The procedure is clear, straight-forward and the authorities and banks generally co-operate well with the investor.

However, for preparing and collecting of documents, contacting bank, making bank transfer of the registered capital (note: registered capital must be paid in before the company's establishment and registration) in international cases we generally estimate **around 3-5 weeks for the establishment of a Ltd. or LLC**.

Please find below an overview of the basic steps for the establishment of a Ltd. and LLC:

- a) Drafting of the Incorporation Documents: Articles of Association, Public Deed of Incorporation, Agreement with resident Director, Declaration of Domicile and Agreement concerning Domicile (if required), two mandatory declarations ("Stampa" and "Lex Friedrich"), as well as Application to the Commercial Register;
- b) Legalization of Power of Attorney and Consent Statement to act as Director;
- c) Application for a bank confirmation concerning capital payment (blocked account);
- d) Arrangement of Incorporation Ceremony;
- e) Application for the Commercial Registration.

D. Corporate Income Taxes

In Switzerland taxes are imposed at three different levels: federal, cantonal and communal level.

The overall corporate income tax rate in Switzerland is around 19%. However, the effective tax rate depends on the domicile of your company. The **lowest overall corporate income tax rate in Switzerland is around 12 %**, as from 1st of January 2012.

Cantonal law provides various tax benefits to foreign companies:

- a. Most cantons ("Swiss provinces") provide certain *tax relief*, usually for up to 10 years. A prerequisite is that the newly established business is serving the economic interests of the canton, which in practice means that the new company must provide substantial benefits to the canton, in which it is situated.
- b. Swiss cantonal law provides advantageous tax rules regarding companies whose *income is mainly derived from activities outside of Switzerland* (so called Mixed Companies). Such status would reduce cantonal income taxes by 70 to 90%, depending on the location of the company.
- c. The holding company tax privilege is granted to companies whose primary purpose is the *holding of participations* (i.e. at least 2/3 of total assets consist of participations or at least 2/3 of the companies income is derived from financial participations), without having any active trade or business in Switzerland. The holding privilege results in the exemption of cantonal and communal corporate income tax.

Federal law provides the following tax benefits:

- a. A reduction of corporate income tax is granted in proportion of the net income from investment to the aggregate net profit of the company, if a holding company meets the following requirements: Participation is at least 10% of the registered capital of another capital company or participation having a minimum market value of CHF 1 million (approx. RMB 7 millions) and participations must be kept by the holding company for at least one year. This may lead to a total exemption from federal corporate income tax, if net income from the investment corresponds to the aggregate net profit.
- b. The *reduction on investments tax relief* also applies to Mixed Companies, if the aforementioned requirements are met.

(Please find our contact details on the next page.)

Should you have questions regarding the information provided in this document, please do not hesitate to contact our managing partner Dr. Paul Thaler (paul.thaler@wenfei.com).

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