

SWISS STOCK CORPORATION VS. SWISS LIMITED LIABILITY COMPANY

Many entrepreneurs who intend to establish a business in Switzerland are faced with the question of which Swiss legal form best suits their needs.

To facilitate this decision, please find below a brief schedule comparing the Swiss Stock Corporation (limited by shares) to the Swiss Limited Liability Company. Taking into account the revision of the Swiss Corporate Law Reform which entered into force on 1 January 2023, this updated schedule identifies the fundamental criteria of each of these two somehow similar - yet substantially different - legal forms.

Stock Corporation

Limited Liability Company

Incorporation	<ul style="list-style-type: none"> • Public deed • At least 1 natural person or corporate entity as a founder • Entry in the commercial register is constitutive 	<ul style="list-style-type: none"> • Public deed • At least 1 natural person or corporate entity as a founder • Entry in the commercial register is constitutive
Share Capital	<ul style="list-style-type: none"> • Minimum: CHF 100'000 • Maximum: no limits 	<ul style="list-style-type: none"> • Minimum: CHF 20'000 • Maximum: no limits
Capital Structure	<ul style="list-style-type: none"> • Registered shares • Participation certificates (non-voting shares with nominal value) • Minimum nominal value per share: > CHF 0 • Share capital in foreign currency possible: GBP, EUR, USD and JPY 	<ul style="list-style-type: none"> • At least one share per shareholder • Minimum nominal value per share: > CHF 0 • Share capital in foreign currency possible: GBP, EUR, USD and JPY
Minimum Contribution (in cash or in kind)	<ul style="list-style-type: none"> • 20% of the total share capital, but at least CHF 50'000 	<ul style="list-style-type: none"> • 100 % of the share capital

Stock Corporation

Limited Liability Company

Duties of Shareholders

- Obligation to pay, i.e. obligation of the shareholder to pay the issue amount of the share(s) subscribed by him/her/it
- Obligation to notify the beneficial owner of the shares when acquiring at least 25% of the share capital or voting rights
- Possibility of introducing further contractual shareholder obligations through a shareholders' agreement

- Obligation to pay, i.e. obligation of the shareholder to pay the issue amount of the share(s) subscribed by him/her/it
- Obligation to notify the beneficial owner of the shares when acquiring at least 25% of the share capital or voting rights
- Personal duties of shareholders (e.g. fiduciary duty and non-competition clause)
- Possibility of introducing further contractual shareholder obligations through a shareholders' agreement

Transfer of Shareholder Rights

- Principle of free transferability
- Restrictions on transferability are possible for both registered shares and participation certificates (in the articles of association).
- Assignment of shares must be in written form

- Principle of statutory restricted transferability
- Consent of at least 2/3 of all shareholders present at the shareholders' meeting and an absolute majority of the entire share capital
- The shareholders' meeting may refuse consent without giving reasons
- Assignment of shares and assignment of obligations must be in written form
- Contract of assignment must name statutory rights and duties
- Transfer of shares must be registered in the commercial register

Organisation

- General meeting of shareholders
- Board of directors
- Auditors (opting out if all shareholders agree, the company has fewer than 10 full-time employees in a year on average and if a capital band for capital decrease has not been introduced)

- General meeting of shareholders
- Management
- Auditors (opting out if all shareholders agree and the company has fewer than 10 full-time employees in a year on average)

General Meeting of Shareholders

- Physical, virtual or hybrid general meeting of shareholders possible
- General meeting of shareholders by way of circular resolution possible

- Physical, virtual or hybrid general meeting of shareholders possible
- General meeting of shareholders by way of circular resolution possible

Management

- Board of directors
- Managing officers (optional)
- Members of the board of directors and managing officers do not necessarily have to be shareholders

- All shareholders together, or
- One or several individual shareholder(s) (optional), or
- Managing officers who are not shareholders at the same time (optional)



Stock Corporation



Limited Liability Company

Residence Requirements

- At least one board member, managing officer or signatory with sole signature power for the company (or two with joint signature power) must be a Swiss resident

- At least one managing officer, director or signatory with sole signature power for the company (or two with joint signature power) must be a Swiss resident

Liability

- Only the business assets

- Only the business assets, unless the articles of association explicitly provide for additional contributions of shareholders

Anonymity

- No public disclosure of shareholders in the commercial register

- Public disclosure of each shareholder with name, hometown/nationality, place of residence and shareholding in the commercial register

Stock Corporation

Limited Liability Company

	Advantage	Disadvantage	Advantage	Disadvantage
Initial Capital		<ul style="list-style-type: none"> CHF 100'000 	<ul style="list-style-type: none"> CHF 20'000 	
Minimum Contribution		<ul style="list-style-type: none"> At least 20% and at the same time at least CHF 50'000 	<ul style="list-style-type: none"> CHF 20'000 	
Capital Increase	<ul style="list-style-type: none"> Ordinary and conditional capital as well as capital band possible Capital band: authorization of the board of directors in the articles of association to increase or decrease the share capital within a given bandwidth 		<ul style="list-style-type: none"> Ordinary capital increase possible 	<ul style="list-style-type: none"> No conditional capital increase and no capital band possible
Duties of the Shareholders	<ul style="list-style-type: none"> Only duty to pay in capital contribution 		<ul style="list-style-type: none"> Non-compete possible (if provided for in the articles of association) 	<ul style="list-style-type: none"> Duty of loyalty of shareholders
Subsequent Financial Contribution of Shareholders	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Obligation to make additional financial contributions possible (if provided for in the articles of association) 	
Ancillary Duties for Shareholders	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Introduction of ancillary obligations possible, provided they are related to the company's purpose, to the maintenance of the company or to the preservation of the circle of shareholders (must be provided for in the articles of association) 	

Stock Corporation

Limited Liability Company

Right to Information and Inspection for Shareholders

Advantage	Disadvantage
<ul style="list-style-type: none"> • Right to inspect the ledgers and files and to information, requested to the board of directors both outside and at the general meeting of shareholders • Special investigation to clarify certain facts possible 	

Advantage	Disadvantage
<ul style="list-style-type: none"> • Without auditor: full information and inspection rights in the ledgers and files of the company • With auditor: information and inspection rights in the ledgers and files of the company only to the extent that a justified interest of shareholders exists • Possibility of a court order for information or inspection in the event of unjustified refusal 	

Transfer of Shareholder Rights

Advantage	Disadvantage
<ul style="list-style-type: none"> • Simple transfer of shares possible if no restrictions of transferability are provided for in the articles of association 	

Advantage	Disadvantage
	<ul style="list-style-type: none"> • Transfer is more time-consuming, as the shareholders' meeting must approve the transfer and every transfer of shares must be entered in the commercial register

Field of Application in Practice

Advantage	Disadvantage
<ul style="list-style-type: none"> • Big corporations • High number of shareholders • More investor-friendly company form due to the non-disclosure of the shareholder structure in the commercial register • Limitation of liability • Greater flexibility in execution of capital increase 	

Advantage	Disadvantage
<ul style="list-style-type: none"> • Duty of shareholders regarding subsequent contributions and ancillary duties • Limitation of liability • Smaller companies or large corporations with «Tick-the-Box» 	

Advantage	Disadvantage
	<ul style="list-style-type: none"> • Highly personal form of company • Suitable for a small number of shareholders • Investor-unfriendly company form due to the publicity of the shareholders in the commercial register • Lower flexibility in execution of capital increase

Stock Corporation

Limited Liability Company

Anonymity

Advantage

- Shareholders are not published in the commercial register

Disadvantage

Advantage

Disadvantage

- Shareholders are published in the commercial register



Michèle Joho-Menotti
Senior Associate
m.joho@wengervieli.ch
+41 58 958 58 04



Pharin Mos Wyler
Junior Lawyer
m.wyler@wengervieli.ch
+41 58 958 55 29

Wenger Vieli is your reliable partner in legal and tax matters. Not only do we pride ourselves on bringing outstanding professional skills, experience, and a sense of responsibility to the table, but we are also highly inquisitive! Where others see obstacles, we see opportunities, find solutions, and open up new horizons. We do this with pleasure. In