

Doing Business in Switzerland Legal Aspects and Advantages

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Switzerland: A neutral, democratic und constitutional federation

- Location
 - Heart of Europe
- Neutrality
- Foundation
 - 1291: Federal Charter
 - 1848: Constitutional Democracy
 - 2000: New Federal Constitution

Legal System

- Constitution of Switzerland
 - Confederation
 - 26 Cantons
 - Local Authorities
- Direct Democracy
 - People: Initiative and Referendum
 - Parliaments: National- and Ständerat
 - Executive: Federal Council

Judicial System

- Cantonal Organisation and Jurisdiction
- Swiss Federal Supreme Court
- International Arbitration
 - Significance
 - Legal Basis: arts. 176 to 194 IPLA
 - Swiss Rules of International Arbitration of the Swiss Chambers of Commerce
 - Limited challenges of arbitral awards

Contract Law

- Swiss Code of Obligations as Legal Basis
 - Contract Law
 - Commercial Law
 - High degree of flexibility
- Freedom of Contract as Basic Principle:
 - Conclusion
 - Content
 - Partner
 - Form
 - Type

Employment Issues

- Flexible Labour Regulations / “Hire and Fire light”
 - Notice period
 - Improper time for notice
 - Abusive notice of termination
 - Sanction: Compensation
- Skilled, Entrepreneurial and Productive Workforce:
 - No statutory minimum wages
 - Relatively high salaries but low additional payroll costs
 - High working hours
 - Low absenteeism rate

Resident and Work Permit (1)

- Short-term residence permit (Permit L)
- Year-round residence permit (Permit B)
- Settlement permit (Permit C)
 - After five or ten years of continued residence
- Residence without gainful employment
- Tourist or visitors visa
 - Short business visits without employment in Switzerland

Resident and Work Permit (2)

- Premises for Workers from the European Union
 - No special limitations for nationals of old member states
 - Limited up to a certain ceiling for EU 10 nationals
- Premises for Workers from Third Countries
 - Qualified or specialized labour
 - No Swiss is willing or able to take the job
 - Exceptions:
 - Company executive transfers
 - Highly qualified specialist that are vital for fulfilment of special assignments
 - Certain sectors (e.g., tourism or healthcare)

Bilateral Agreements with the EU

- Bilateral Treaties I (since mid 2002)
 - Freedom of movement and residence
 - Reduction of technical barriers to trade
 - Air and land transport
 - Agriculture
 - Public procurement and participation in EU research programmes
- Bilateral Treaties II
 - Joining of the Dublin / Schengen Agreements
 - Fight against fraud
 - Taxation of savings and banking secrecy

Corporate Law

- Partnerships
- Legal Entities:
 - Unlimited duration
 - No liability for the owner
 - Auditing – opting out for small companies
 - Representation of the company by a Swiss resident
- Most commonly used Legal Entities:
 - Limited Liability Company (“GmbH” / “Sarl”)
 - Stock Corporation (“AG” / “SA”)

Incorporation of a Company

- Notarization
 - Resolution to incorporate / articles
- Subscription of Shares / Stake
 - Cash Payment
 - Contribution in Kind
- Auditors / board members / directors
- Assessment of Foundation Documents
- Registration in the Commercial Registry
- Formation Expenses
 - Approx. CHF 5'000 – 10'000

Limited Liability Company (GmbH)

- Capitalisation:
 - Minimum Capital: CHF 20'000.-
 - All money has to be paid in
- Personal duties of the owner:
 - Non-competition clause possible
 - Duty to be loyal
- BoD – assembly of owners – auditor
- Transfer of ownership
 - By written contract
 - Consent of the assembly of owners required
 - Ownership can not be traded at the stock market

Stock Corporation (AG)

- Capitalisation:
 - Minimum Capital: CHF 100'000.-
 - Thereof must at least CHF 50'000.- be paid in
- No personal duties for the owner
- BoD – Shareholder`s Meeting – Auditor
- Securisation of ownership
 - Bearer shares
 - Registered shares

Exit Options

- Dividend Payments; Profit Sharing
- Asset Transfer
- Merger
- Sale of shares
- Liquidation based on mutual decision

Opening a Bank Account

- Any adult or company: Swiss and foreigners
 - Right of banks to refuse
 - Obligation to refuse if criminal source is likely
- Identification
 - Persons by legal document and „face to face“
 - Legal entities by excerpt of Register of Commerce
- Establishing the identity of owner or the beneficial owner
- „Numbered“ Account
 - Basically the same as any other account
 - „Number“ limits internally the group of people who know the owner

Banking Secrecy

- For Swiss and Foreigners
- Restrictions:
 - Administrative law (e.g., in the course of supervision by SFBC; towards auditors)
 - Civil proceedings: if a bank is obliged to give testimony
 - Criminal investigation
- No cancellation by bilateral agreements with EU

Links

- Swiss Import Promotion Programme
<http://www.osec.ch/internet/osec/en/home.html>
- State Secretariat for Economic Affairs
<http://www.seco.admin.ch/index.html?lang=en>

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