

Doing Business in Switzerland

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Switzerland has a statute-based civil law system. All law-making powers are reserved to the 26 cantons unless expressly delegated to the federal authorities (*Federal Constitution*).

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Authorisations may be required in certain regulated areas such as:

- Banking.
- Insurance.
- Traffic.
- Real estate.
- Defence.
- The media.

3. Are there any exchange control or currency regulations?

Other than taxes, there are no controls on inward investment or the repatriation of profits and capital on disinvestments.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

Incentives are aimed at foreign investors and are provided at a cantonal rather than federal level. These include:

- Financial assistance with land or premises.

- Tax holidays for up to ten years.
- Cheap energy.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common form of business vehicle used by foreign companies is a share corporation. However, limited liability companies are increasingly common as they are less regulated and because the "check-the-box" rules apply to US parent companies.

- **Registration formalities.** An application must be submitted to the Commercial Register containing all of the following:
 - the public deed of the founders' meeting;
 - publicly authenticated articles of association (articles);

- a certificate confirming the appointment of the board of directors (board) and the auditors;
- the nationality or domicile of the board members;
- certified signatures of the persons authorised to sign for the company.

The registration process takes one to two weeks.

- **Share capital.** A share corporation must have a minimum capital of CHF100,000 (about US\$96,618), of which CHF50,000 (about US\$48,309) must be paid up in cash or in kind. There is no maximum amount, but in any event at least 20% must be paid up.
- **Non-cash consideration.** Payment in kind is permissible provided that both:
 - a written report, verified by the auditor, is submitted to the notary public and the Commercial Register;
 - the payment is disclosed in the articles and in the *Official Journal of Commerce*.

The same conditions apply to cash incorporation if the cash is used shortly afterwards to purchase assets from shareholders or third parties.

- **Rights attaching to shares.** The articles can provide for restrictions on the transfer of shares. At the same time as passing a resolution to increase share capital, shareholders can withdraw pre-emptive rights for valid reasons (such as the takeover of the whole or part of an enterprise) and participation rights.
- **Foreign shareholders.** There are no restrictions on foreign shareholders.
- **Management structure.** The board consists of at least one member. Only one person from the board or management must reside in Switzerland. The board can delegate corporate duties and powers to individual directors or third parties. However, the following duties cannot be delegated or taken away from the board by the shareholders:
 - the management of the company and the issue of necessary management directives;
 - the establishment of the organisation;
 - the structuring of the accounting system, financial controls and financial planning;
 - the appointment, removal and ultimate supervision of those entrusted with management and representation;
 - the preparation of the business report and shareholders' meetings;
 - the notification of negative equity to a judge.
- **Directors' liability.** Directors are personally responsible to the company, individual shareholders and the

companies' creditors for damages caused intentionally or negligently by default of their duties.

- **Parent company liability.** A parent company is not liable for the debts of its subsidiaries unless it has given a guarantee or qualifies as a shadow director.
- **Reporting requirements.** The board must submit a business report at the annual shareholders' meeting, which includes:
 - annual financial statements;
 - an annual report;
 - consolidated statements, if applicable.

Bookkeeping fees are CHF2,000 (about US\$1,932) a year and auditors' fees are between CHF2,000 and CHF4,000 (about US\$3,865) a year. For smaller companies, an audit is not mandatory.

EMPLOYEES

6. What are the main laws regulating employment relationships?

Employment relationships are regulated by collective bargaining agreements and the provisions of the Swiss Code of Obligations on employment contracts.

Employees can bring actions in the Swiss courts if either the:

- Employee ordinarily works in Switzerland.
- Employer is registered or domiciled in Switzerland.

The conflict of laws provisions limit the choice of law for employment contracts to laws of the jurisdiction where either:

- The work is performed.
- The employee or the employer is domiciled.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

Contracts do not need to be in writing unless they either:

- Relate to certain categories of employees, such as apprentices and travelling salesmen.
- Include provisions that are legally required to be in writing (such as non-compete).

Provided the mandatory Swiss employment law provisions are adhered to, the following employment issues are likely to be governed by the employment agreement:

- Commencement and place of work.
- Remuneration.
- Working hours.
- Employees' general obligations.
- Incapacity.
- Holidays.
- Duration, termination and probation period.
- Intellectual property.
- Non-competition.
- Non-solicitation.
- Governing law.
- Jurisdiction.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Businesses with more than 50 employees must elect a works council if requested by 20% or more of the employees. The council has a participation right in matters such as:

- Safety precautions.
- Mass redundancy.
- Affiliation to pension funds.

9. How is the termination of individual employment contracts regulated?

Employment contracts can be terminated either:

- By regular notice of termination (whereby the notice period depends on the length of the employment).
- Without notice for a valid reason.

If an employer provides an abusive notice of termination, the employee is entitled to compensation of up to six months' wages. A termination is considered abusive in specified circumstances such as:

- For personal characteristics that are not related to the employment relationship or to work-related performance (for example, race, sexual orientation and age).
- To frustrate the ability to bring claims in relation to the employment relationship.

If an employee is dismissed without notice and without a valid reason, the employer must compensate him with both:

- The salary that he would have earned had notice been given or had the fixed-term contract run for its full period.
- A lump sum of up to six months' wages.

A notice is void if it is given during a mandatory protection period (for example, if an employee is ill, on maternity leave or has an accident).

10. Are redundancies/mass layoffs regulated? If so, please give details.

An employee may in certain cases receive a redundancy payment (severance pay) if both of the following apply:

- He has worked for at least 20 years with that employer.
- He is over 50 years of age.

Other redundancies and severance payments are not specifically regulated. Entitlement to a redundancy payment depends on what has been negotiated between the employer and employee.

Mass layoffs can only be carried out with prior consultation with the employees and in collaboration with the competent labour authorities.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Citizens from 17 EU member states (excluding the eight EU member states which joined on 1 May 2004) or European Free Trade Agreement (EFTA) member states do not need to apply for a work and residency permit if they intend to work for less than three months in Switzerland. If working for more than three months, they must apply for a work and residency permit but are entitled to it.

Citizens from the eight EU member states which joined on 1 May 2004 as well as citizens from non-EU and non-EFTA states must apply for a working and residency permit in any case. The costs for obtaining permits differ from canton to canton and it takes four to eight weeks to process.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

An employee becomes tax resident if he is resident in Switzerland. Residence is established if the employee intends to stay permanently at a given place.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
 - Non-tax resident employees?
 - Employers, in relation to their employees?
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Tax resident employees

Tax resident employees must pay:

- Income tax, which is payable on worldwide income from all sources. The federal and cantonal rates are progressive.
- Old age pension, at the rate of 10.1% of gross salary (split half with employer).
- Survivors' and disability insurance (together with employer and included in old age pension payments).
- Unemployment insurance, at the rate of 2% of gross salary (split half with employer).
- Non-occupational accident insurance, according to individual insurance contract premiums.
- Social health insurance, according to individual insurance contract premiums.

Non-tax resident employees

Foreign employees with a temporary residence permit are taxed at progressive federal and cantonal rates at source on gross salaries paid by the employer. Individuals who earn high salaries are subject to ordinary assessment like tax resident employees (*see above, Tax resident employees*).

A source tax is also levied on the income of the following non-resident foreign employees:

- Those employed for a short period.
- Those who commute from near the Swiss border.
- Those who hold a weekly residence permit.

Social security and insurance contributions basically follow those of tax resident employees (*see above, Tax resident employees*).

Employers

Employers must make contributions for the following:

- Old age pension, at the rate of 10.1% of the employee's gross salary (split half with employee).
- Survivors' and disability insurance (together with employee and included in old age pension payments).

- Unemployment insurance, at the rate of 2% of gross salary (split half with employee).
 - Occupational accident insurance, according to individual insurance contract premiums.
 - Family allowances, depending on the age of the employees' children.
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14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

Business entities (corporations) are tax resident if they are either:

- Registered in Switzerland.
 - Managed and controlled in Switzerland.
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15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Corporate income tax

Corporate income tax is levied on a resident company's worldwide profit, as far as not attributed to a permanent establishment or real estate abroad. However, the applicable rates are determined according to all worldwide income and capital. The federal tax rate is 8.5%. The cantonal rates are mostly progressive.

Capital gains tax

There is no separate federal capital gains tax for companies. However, some cantons levy a capital gains tax on the sale of real estate. Non-real estate capital gains are part of the ordinary income and are taxed accordingly.

Capital tax

This is a cantonal tax levied on the company's tax-adjusted net equity at the end of the accounting year concerned. Rates vary from between 0.1% and 1%.

Withholding tax

A 35% withholding tax is levied on the following:

- Dividends.
- Interest payable on company securities.
- Interest credited by a bank to its clients.

No tax is withheld on:

- Interest on accounts payable.
- Inter-company accounts.
- Straight mortgage interest.

Stamp duty

Stamp duty is levied on the following:

- Shares issued, at the rate of 1% of their value if par value is in excess of CHF1 million (about US\$966,184).
- Bonds, at the rate of between 0.06% and 0.12% for each year of their term.
- Insurance premiums, at the rate of 2.5% or 5%.

Exemptions are available for restructurings.

Value added tax (VAT)

VAT is levied at federal level on the sale of goods and services supplied in, or imported to, Switzerland. The standard tax rate is 7.6%. However, a special rate of 3.6% applies to accommodation and directly related supplemental services, and a reduced rate of 2.4% applies to certain other goods and services.

16. How are the activities of non-tax resident business vehicles taxed?

Non-resident companies are subject to taxation only for income from their qualifying Swiss sources such as a permanent establishment or real property in Switzerland. Also, any brokerage in Swiss real property and the ownership of receivables guaranteed with Swiss real property may be subject to limited tax liability.

17. Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
 - **Dividends received from foreign companies.**
 - **Interest paid to foreign corporate shareholders.**
 - **Intellectual property (IP) royalties paid to foreign corporate shareholders.**
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- **Dividends paid.** These are subject to a 35% withholding tax, which may be fully or partly refunded under a tax treaty.
 - **Dividends received.** These are taxed as ordinary income of the Swiss company. A participation exemption applies if the recipient holds either:
 - shares with a market value of at least CHF2 million (about US\$1.9 million) in the foreign company;
 - at least 20% of the share capital of the foreign company.
 - **Interest paid.** A withholding tax of 35% is levied on interest from the following:
 - banks;

- bonds, debentures and other written instruments of debt issued by a tax resident company;
- parts in collective investment schemes issued by or in connection with a tax resident vehicle.

Interest on commercial loans, including loans from foreign parent companies to Swiss subsidiaries, is not taxed.

- **IP royalties paid.** No withholding tax is payable on IP royalties.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

If the tax authorities consider a company to be thinly capitalised, the corporate income tax deductibility of interest may be challenged and also the capital tax base may be increased. The federal tax authorities have issued a circular with guidelines (*Circular No. 6 of 6 June 1997*).

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

The profits of a foreign subsidiary cannot be attributed to a Swiss parent, unless the tax authorities consider the effective management or control to be in Switzerland.

20. Are there any transfer pricing rules? If so, please give details.

Switzerland does not have statutory transfer pricing rules, but is a member of the Organisation for Economic Co-operation and Development (OECD) and generally follows the OECD principles. Inter-company charges must be at arm's length. Special guidelines apply concerning minimum and maximum interest on loans granted to or from shareholders or related parties.

21. How are imports and exports taxed?

Exports are not taxed. Imports are subject to import VAT levied by the Federal Customs Administration (*see Question 15*). Also, customs duties may be levied.

22. Is there a wide network of double tax treaties? If so, please give details.

Switzerland has double tax treaties with about 80 countries, including all OECD countries. A number of treaties are currently being renegotiated to conform to the present OECD standard.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

Agreements are unlawful if they restrict competition in a market for certain goods and services and cannot be justified on grounds of economic efficiency. Agreements eliminating competition altogether can never be justified. The following are presumed to eliminate competition:

- Horizontal agreements (agreements among competitors) regarding prices, quantities, or the allocation of territories or customers.
- Vertical agreements regarding fixed or minimum prices as well as distribution agreements with absolute territorial protection.

Practices that abuse a dominant position and prevent or hinder competitors are prohibited. Practices are considered abusive if they cannot be justified by legitimate business reasons.

Abuses of a dominant position as well as certain categories of unlawful agreements may be sanctioned with administrative fines of up to 10% of the party's previous three years' cumulative turnover in Switzerland.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
- **How protected.**
- **How enforced.**
- **Length of protection.**

Patents

- **Nature of right.** An invention or process can be patented if it is both:
 - novel (based on the state-of-the-art at the time of the application);
 - capable of industrial application.

A patent is not granted if an invention or process:

- violates human dignity and the dignity of animals, or is contrary to public interests or immoral;
- concerns a method of surgery, therapy or diagnosis applied to the human or an animal body; or

- seeks exclusive rights for plant or animal species or breeding procedures (unless it is a micro-biological procedure or product derived from it).

The right holder has the exclusive right to use, execute, offer for sale, sell, circulate and import the patented product.

- **How protected.** Applications for domestic patent registration are filed with the Federal Institute of Intellectual Property (FIIP).
- **How enforced.** Patent infringers can be prosecuted through both civil and penal proceedings. Criminal penalties include a monetary fine (the maximum fine is 360 daily rates at CHF3,000 (about US\$2,899)). The calculation is at the discretion of the competent authorities based on the default and economic means of the infringer. Criminal penalties can apply to natural persons and legal entities.
- **Length of protection.** Protection lasts for 20 years from the date of filing. This period is not renewable.

Trade marks

- **Nature of right.** The following can be registered as a trade mark provided they distinguish, or identify a source of, goods or services:
 - words, letters and numerals;
 - graphic depictions;
 - three-dimensional shapes;
 - combinations of any of the above.

The right holder has the exclusive right to identify the goods or services for which it is registered and use, offer for sale, sell, circulate and import the trade mark.

- **How protected.** Applications for registration must be filed with the FIIP.
- **How enforced.** This is the same as for patents (*see above, Patents*).
- **Length of protection.** Protection lasts for an initial period of ten years from the date of filing and can be renewed for further ten-year periods.

Registered designs

- **Nature of right.** To be registered, a design must be both:
 - for an object with a physical shape or form, which may be combined with colours;
 - novel (this is only investigated if it is disputed by third parties in court proceedings).

The right holder has the exclusive right to use, offer for sale, sell, circulate and import the design.

- **How protected.** An application for registration must be filed with the FIIP.

- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** Protection lasts for 25 years from the date of filing. This period is not renewable.

Copyright

- **Nature of right.** Literary, artistic and scientific works (including computer software) have copyright protection provided they are original, intellectual creations with a degree of individuality.

The right holder has the exclusive right to be recognised as the author of the work, produce, reproduce, offer for sale, recite, perform, broadcast and re-broadcast the works.

- **How protected.** Protection arises automatically.
- **How enforced.** This is the same as for patents (see above, *Patents*).
- **Length of protection.** Protection lasts for the life of the author, plus:
 - 50 years for computer software;
 - 70 years for all other copyrights.

Confidential information

- **Nature of right.** Confidential information is that which is confidential in nature and which was initially communicated in circumstances importing an obligation of confidence.

The right holder can file civil and/or criminal claims for breach of an obligation of confidence.
- **How protected.** Protection only arises through measures taken by the information holder, such as a confidentiality agreement. In certain circumstances, confidential information is protected by specific legal provisions.
- **How enforced.** Infringers of confidential information and/or confidentiality agreements can be prosecuted through both civil and criminal proceedings.
- **Length of protection.** There is no defined term for how long protection lasts.

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MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

- **Agency.** An agent must safeguard the interests of his principal and has a duty of secrecy (*Swiss Code of Obligations 1911*). On termination of an agreement, an agent is entitled to fair compensation if the principal substantially benefits, even after termination, from the business relations established with the acquired clientele.
- **Distribution.** There is no specific regulation.
- **Franchising.** There is no specific regulation.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

Switzerland has no specific e-commerce law. Electronic signatures are equivalent to an autographic signature if based on a qualified certificate of an authorised provider of a certification service.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

Data protection is governed by the federal Data Protection Statute 1992 and cantonal law. The statute applies to the processing of data of natural and legal persons by private persons and federal bodies. It grants protection against the infringement of personality rights.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

Producers and importers are strictly liable for consequential damage caused by defective products (*Product Liability Statute 1993*).