

Business & Contract Law



Week 2

PART 2: COMMERCIAL LAW

C/Entrepreneurial Aspects

10. Legal Company Forms

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10-1/ Distinctions: deciding on the legal form: business organizations, can be divided into two main types (*numerus clausus* on the types):

- *Physical persons that do NOT have a judicial personality:* sole proprietorship, simple company, collective company.
- *Moral persons that have a judicial personality:* partnerships, corporations, limited companies, co-operatives, associations and foundations.

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10-2/ Criteria

A Capital:

- The expenses of foundation
- The need of capital
- The compulsory minimum capital according to the legal shape
- The intensity of capital of the current commercial activity
- The needs of capital supposed for the next 3-5 years.

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- B Risk / responsibility: as a general rule, the more the risk of the company or the financial contribution is big, the more it is advised to opt for the limited company.

- C Independence: according to the legal shape, the margin of operation is restricted: it is thus a question of determining if the entrepreneur wishes to work only or with partners and if he prefers to integrate pure investors or partners who participate in his activity.

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- D Taxes: according to the shape of the company, company profit and assets are either separately imposed from their owners (moral persons) or together (physical persons); moral persons are taxed less than physical persons

- E Social Security: physical persons are not insured against unemployment, and the contribution to pensions is optional; on the other hand, in the case of limited companies, the director of a company is also considered as employed and thus included under social assurance

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Comparative charts:

<https://www.startups.ch/en/inform/details/forms/>

Guide:

http://www.whygeneva.ch/media/ecowhygeneva/files/guide_to_starting_a_business_in_ge_2015_ok_0.pdf

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10-3/ Legal Entities in Brief

1/ Sole proprietorship (*raison individuelle*)

Sources :

<http://www.admin.ch/ch/e/rs/220/a934.html>

<http://www.admin.ch/ch/e/rs/220/a945.html>

http://www.admin.ch/ch/f/rs/221_411/a36.html

Guides:

<http://www.justlanded.com/english/Switzerland/Switzerland-Guide/Business/Switzerland-Business-Registration>

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2/ Association (*association*)

Sources: CC art 60-79:

<http://www.admin.ch/ch/e/rs/210/a60.html>

Guide:

<http://www.cagi.ch/en/service-ong/modele-de-statuts.php>

see also foundations (CC art 80)

3/ Simple partnership (*société simple*)

Sources: CO art 530-551:

<http://www.admin.ch/ch/e/rs/220/a530.html>

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4/ General partnership (*société en nom collectif*)

Sources: CO art 552-593:

<http://www.admin.ch/ch/e/rs/220/a552.html>

5/ Limited partnership (*société en commandite simple*)

Sources: CO art 594-619:

<http://www.admin.ch/ch/e/rs/220/a594.html>

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6/ Corporations

1. Definition: it is a company that is formed with its own company name, whose capital is determined in advance, and divided in shares, and whose liability (debts) are guaranteed only by the company's assets.

<http://www.admin.ch/ch/e/rs/220/a620.html>

2. Capitalization: Min 100'000.- in shares – become valid only on registration

<http://www.admin.ch/ch/e/rs/220/a621.html>

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3. Shares: Issued to the bearer or holder

<http://www.admin.ch/ch/e/rs/220/a622.html>

4. Shareholders: Initially 3 shareholders; can be
Individuals or other companies

<http://www.admin.ch/ch/e/rs/220/a625.html>

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5. Articles of incorporation:

- Compulsory items

<http://www.admin.ch/ch/e/rs/220/a626.html>

- Optional items – are valid only if inserted into the statutes

<http://www.admin.ch/ch/e/rs/220/a627.html>

6. Deed of incorporation: the company is incorporated by the founders in an authentic (notarized) document

<http://www.admin.ch/ch/e/rs/220/a629.html>

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7. Registry of commerce: the company is registered at its domicile; must have an auditor

<http://www.admin.ch/ch/e/rs/220/a640.html>

8. Modification of statutes: only the AGM and the Board of Directors can amend the statutes as a notarized document

<http://www.admin.ch/ch/e/rs/220/a647.html>

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9. Share increase: increase of shares takes place through 3 procedures:

- Ordinary as decided by the AGM (CO art 650)
- Authorized by amending the statutes (CO art 651ff)
- Conditional by inserting the possibility to increase its shares in its statutes (CO art 653)

10. Share reduction: in case of financial difficulty the company can reduce its shares but not less than 100'000.
(CO art 732)

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11. Shareholder rights to profit and liquidation proceeds

<http://www.admin.ch/ch/e/rs/220/a660.html>

12. Reporting: the Board of Directors prepares a report for the AGM to take decisions on financial situation of the company (CO art 662-674)

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13. Dividends: can only be taken on the profits (equity) and not the shares

<http://www.admin.ch/ch/e/rs/220/a675.html>

14. Shareholder social rights:

- Taking part in the AGM
- Supervising the administration
- Call on for special audits – establish the origin of expenses
- Attack an AGM decision in court

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15. Administration: there are 3 administrative bodies:

- The AGM (CO art 698-706)
- The Board of Directors (CO art 707-726)
- The auditor (CO art 727-731)

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16. Causes for dissolution: the company is dissolved

- By virtue of its statutes
- By a decision of the AGM that is notarized
- Through bankruptcy
- By trial requested by 10% of the shareholders for just motives
- For other legal motives (e.g. merger, when the min capital share is not attained)

<http://www.admin.ch/ch/e/rs/220/a736.html>

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17. Responsibility

- Liability for mishandling shares, securities and founding statements (CO art 752)
- Liability for granting particular shareholder benefits, founding the company with incorrect statements, accepting share subscriptions from insolvent persons (CO art 753)
- Liability for negligence of administrator duties (CO art 754)
- Liability if negligent audits (CO art 755)
- Liability for damages to the company (CO art 756, 757)

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7/Limited Liability Company

1. Definition: it is a company with stated capital with a personal character formed by one or more persons or commercial companies. Its social capital is stated in the statutes. Its debts are guaranteed only by its social capital.

<http://www.admin.ch/ch/e/rs/220/a772.html>

<http://www.admin.ch/ch/e/rs/220/a794.html>

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2. Capitalization: min 20'000.- in 1 or more social parts –
become valid only on registration

<http://www.admin.ch/ch/e/rs/220/a773.html>

3. Shares: issued to a minimum of 100.-

<http://www.admin.ch/ch/e/rs/220/a774.html>

4. Shareholders: individuals or other companies

<http://www.admin.ch/ch/e/rs/220/a775.html>

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5. Articles of association:

- Compulsory items

<http://www.admin.ch/ch/e/rs/220/a776.html>

- Optional items – are valid only if inserted into the statutes

<http://www.admin.ch/ch/e/rs/220/a776a.html>

6. Certificate of incorporation: the company is incorporated by the founders in an authentic (notarized) document

<http://www.admin.ch/ch/e/rs/220/a777.html>

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7. Registry of commerce: the company is registered at its domicile

<http://www.admin.ch/ch/e/rs/220/a778.html>

8. Modification of statutes: only the AGM can amend the statutes as a notarized document

<http://www.admin.ch/ch/e/rs/220/a780.html>

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9. Share increase

<http://www.admin.ch/ch/e/rs/220/a781.html>

10. Share reduction

<http://www.admin.ch/ch/e/rs/220/a782.html>

11. Shareholders have financial and social rights:

- Social capital (CO 784-792)
- Additions to social capital (CO 795-797)
- Dividends (CO 798)
- Reporting (CO 801)

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12. Administration: *there are 3 administrative bodies:*

- The AG of associates (CO art 804-808)
- The Manager (CO art 809-817)
- The auditor (CO art 818)

13. Causes for dissolution: the company is dissolved

- By virtue of its statutes
- By a decision of the AG of associates
- Through bankruptcy
- For other legal motives

<http://www.admin.ch/ch/e/rs/220/a821.html>