



Swiss legal and regulatory environment

Brief overview by David Perlotto and Olivier Cherpillod

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Doing business in Switzerland

Legal corporate environment



What is the appropriate type of business organization to establish business in Switzerland?

The answer to this question will of course depend upon the particular circumstances of the case at stake.



What is the appropriate type of business organization to establish business in Switzerland?

Innovate	Buy	Make	Sell	Management
R&D and Technology	Purchasing	Product Fabrication and Assembly	Marketing Strategy	Strategic Planning
Product Strategy and Design	Inbound Logistics	Packaging and Labeling	Advertising	Accounting and Controllershship
Manufacturing Process design	Equipment Procurement	Production Scheduling	Sales and Pricing	Treasury
		Inventory management	Order Processing	Legal and Regulatory Affairs
		Quality and cost Control	Distribution Activities	Administration
		Outbound Logistics	After Sales Service	



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Usually, both the establishment of a **branch** or the establishment of a **subsidiary** are feasible means.



What is the appropriate type of business organization to establish business in Switzerland?

Branch	Subsidiary
Satellite of the foreign parent company with no legal and separate entity	Totally independent legal entity
No equity requirement	Equity injection requirement
Parent company will be accounted liable for the Branch office's liabilities and activities	Liabilities of the subsidiary limited to its assets



How do I establish a branch? When is the establishment of a branch appropriate?

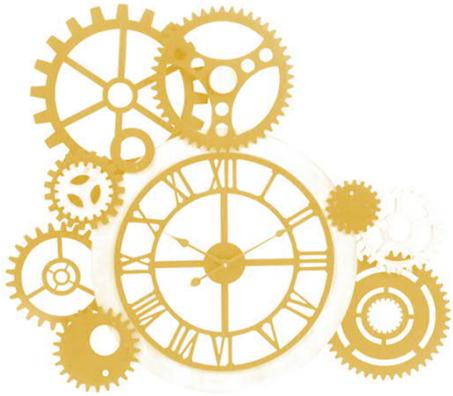
Legal formal requirements have to be met in order to enter the branch of a foreign company in the register of commerce.

1. proof of existence of the foreign company and of legal representatives
2. resolution of the board of directors pertaining to the establishment of the Swiss branch
3. appointment of a local branch manager:
 - NO** requirements as to nationality of the branch manager, but:
 - a. he/she has to reside permanently in Switzerland and
 - b. he/she needs to be granted authority to sign on behalf of the branch
4. formal application to the register of commerce (with legalisation and apostille)

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Swiss branches have been used in the past extensively by foreign multinationals for financing group operations.





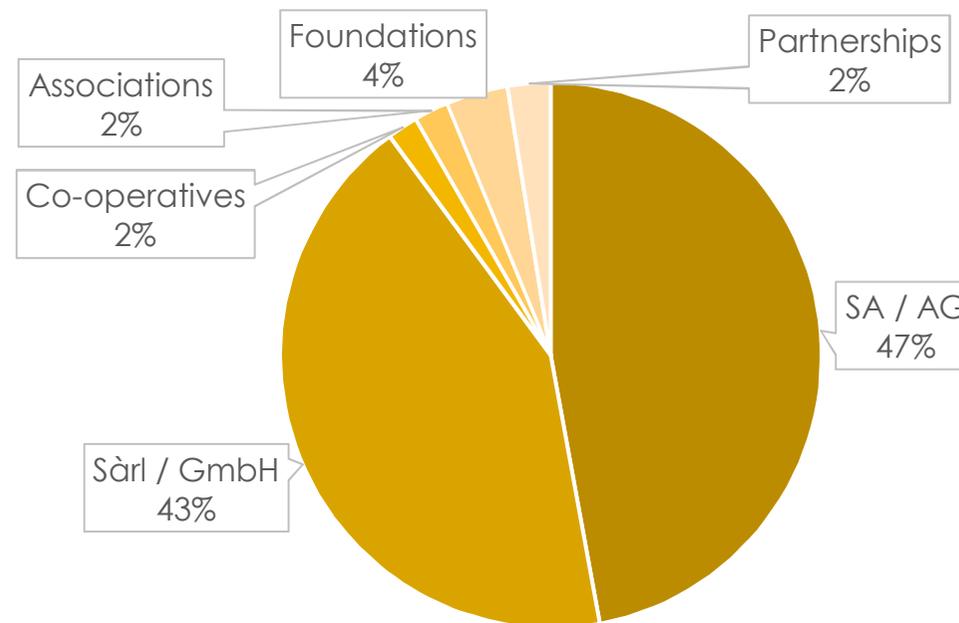
What are the types of legal entities available to establish a subsidiary?

The share corporation (SA / AG) and the limited liability company (Sàrl / GmbH) are usually the type of legal entities best suited to meet requirement of foreign business interests. One of the reasons is that the liability of shareholders is limited to a certain amount.

Swiss law recognizes of course various forms of entities such as partnerships, co-operatives, associations or foundations.



What are the types of legal entities available to establish a subsidiary?



What are the main differences between a share corporation and a limited liability company?

	SA / AG	Sàrl / GmbH
Share capital	Min. CHF 100,000 (to be paid up to 20% but at least CHF 50,000)	Min. CHF 20,000
Type of shares	Bearer shares or registered shares Low level of formalities for transfer	Common shares Transfer requires registration into the register of commerce
Composition of the board of directors	Min. one director At least one director (or one officer) with authority to represent the company must be permanently residing in Switzerland	Min. one director (<i>gérant</i>) At least one director (or one officer) with authority to represent the company must be permanently residing in Switzerland
Resolution of shareholders	Only in the frame of a general meeting. Representation is possible	In addition to general meetings, resolutions can be taken by way of circular



How do I incorporate a subsidiary?

The establishment procedure of a subsidiary, be it a share corporation or a limited liability company, requires legal formalities and the intervening of a Swiss notary.

Steps for the incorporation are :

1. drafting of the articles of association (corporate object, purpose, etc.)
2. transferring of the share capital amount to a deposit account with a Swiss bank, where funds will be held until the company is registered
3. holding – before a Swiss notary - the founders' meeting for approval of the articles, for subscription of the shares and for appointment of the directors and auditors (if applicable)
4. formal application to the register of commerce



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Swiss Banks will review the business plan and identify Beneficial Owners prior to accepting opening the deposit account (even if current account is thereafter opened with another bank – incl. with a bank out-of-Switzerland)

THIS MAY DELAY THE PROCEDURE !



How do I manage my Swiss subsidiary? What are the legal requirements?

The provisions of Swiss corporate law require that the organization of both the share corporation and the limited liability company consists at least of:

1. The shareholders' meeting; and
2. The board of directors.

The shareholders' meeting is the supreme organ of the company. An annual general meeting shall be held within 6 months after the close of the business year. The shareholders vote the approval of the financial statements, elect directors and, if applicable, the auditors.

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The board of directors is responsible for managing the company and for preparing the company's annual report to the shareholders. The report shall contain the financial statements but also a report on the course of business and the financial status of the company.

Only INDIVIDUALS may be members of the board of directors.



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Election of auditors?

- mandatory as soon as 10 or more FTE on annual average;
- Limited review vs full audit depending on the size of the company



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Regulatory environment



Regulatory provisions are limited to specific industries

Therapeutic products and medical devices are subject to the monitoring and supervision of Swissmedic, the Swiss Agency for Therapeutic Products.



<https://www.swissmedic.ch/swissmedic/en/home.html>

Regulatory provisions are limited to specific industries

Financial sector is subject to monitoring and supervision of the Swiss Financial Market Supervisory Authority FINMA.



<https://www.finma.ch/en/>



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Regulatory environment

A hot topic:
Blockchain & ICOs

Legal framework is being improved rapidly to take into account new technology



- September 2017** Further to the increase of ICOs conducted in Switzerland, FINMA issued a Guidance on ICOs
- February 2018** FINMA published guidelines setting out how FINMA intends to apply financial market legislation to ICOs
- December 2018** Federal council issued a general report on the Swiss legal framework for distributed ledger technology and blockchain
- March 2019** Federal Council initiated consultation on improving framework conditions for blockchain/DLT

Changes contemplated in the consultation



- Code of obligations** electronic registration of rights, such as to increase legal certainty in the transfer of DLT-based assets
- Bankruptcy** segregation of cryptobased assets in case of bankruptcy to be expressly regulated
- Financial Sector** new authorization category for so-called “DLT trading facilities”, to be subject to AML (NOTE: small banking license already included in current legislation)
- Financial Sector** possibility to obtain a licence to operate an organised trading facility as a securities firm.

But also changes to AML ordinances (as part of the ongoing, separate revision of the AML Act).

Thank you!

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