

# Company Records and Registers in Switzerland

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Practice notes | [Law stated as at 01-Jun-2023](#) | Switzerland

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A Practice Note outlining the requirements to keep and maintain registers and other records for private limited companies incorporated in Switzerland, including the share register and the register of beneficial owners, and the consequences of non-compliance.

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Swiss companies must generally keep and maintain certain registers and other records, such as a share register and register of beneficial owners. Failure to comply with this legal duty may result in civil and criminal liability for the members of the board of directors or managing officers of the company. It is therefore very important for members of the board of directors or managing officers to be aware of the different requirements in Switzerland to avoid any consequences of non-compliance.

This Note looks at the specific requirements to keep and regularly maintain registers and other records for private limited companies and the consequences of non-compliance with these requirements in Switzerland.

The two main forms of Swiss limited companies are the following:

- **Company limited by shares (Ltd)** (German: *Aktiengesellschaft* (AG); French: *Société Anonyme* (SA)). A company limited by shares is the company that is closest conceptually to a UK public limited company or a US corporation (see *Practice Note, Trading Vehicles: Overview (Switzerland): Company Limited by Shares (Ltd, AG or SA)*).
- **Limited liability company (LLC)** (German: *Gesellschaft mit beschränkter Haftung* (GmbH); French: *Société à responsabilité limitée* (Sarll)) An LLC is the company that is closest conceptually to a UK private limited company or a US limited liability company (see *Practice Note, Trading Vehicles: Overview (Switzerland): Limited Liability Company (LLC, GmbH, S à rl or Sagl)*).

(For more information on the various types of trading vehicles in Switzerland, see *Practice Note, Trading Vehicles: Overview (Switzerland)*.)

This Note focuses on the more common form of private limited companies in Switzerland, the company limited by shares (Ltd) and provides some additional information on the LLC. It also discusses the general requirements relating to the location and inspection of company registers and records under Swiss law. It does not cover other records such as tax and accounting (or financial) records or registers required under other legislation such as property beneficial ownership legislation and annual financial accounts.

## Mandatory Records and Registers for Private Companies in Switzerland

There are two main registers that private limited companies are obliged to keep under the *Swiss Code of Obligations* (CO):

- The share register under Article 686 of the CO.
- The register of beneficial owners under Article 697I of the CO.

If the respective criteria are met, a record of the uncertificated securities under Article 973c, paragraph 2 of the CO or a register under Article 6, paragraph 2 of the Federal Intermediated Securities Act must be kept. These latter two registers are not addressed in detail in this Note.

There is no mandatory register of minutes to be kept, but the minutes must be preserved for at least ten years (Article 958f, CO by analogy).

### Share Register

Under Swiss law, all companies limited by shares (Ltds) issuing registered shares must maintain a register of shareholders (share register) (Article 686, CO). Share registers of companies limited by shares are not public.

The share register must contain the following information:

- All registered shares.
- Names and addresses of the corresponding share owners and usufructuaries.

The law does not specify how the share register is to be formally kept. Nowadays, the share register is often kept electronically instead of in paper form. It must be updated on an ongoing basis and adapted to the current state of affairs of the company. It must be kept in a manner that can be accessed at any time in Switzerland (by persons who have the right of access (see

*Inspection of Registers*)). The documents on which an entry is based must be retained for ten years following the deletion of the owner or usufructuary from the share register (see *Retention Requirements*).

The share register is typically kept at the company's registered office and is subject to inspection by authorised parties, such as shareholders, auditors, or regulatory authorities. The responsibility for keeping the share register lies with the board of directors (Articles 716 et seq., CO).

It is important to note that Swiss law does not require the public registration of shareholders. Therefore, the share register never has to be filed with the commercial register and the identity of the shareholders remains anonymous to the public. The only exception are the names of the founders, which are publicly available in the founding documents filed with the respective commercial registry.

The share register is particularly important because it provides a record of the company's ownership structure and is used to determine who has the right to attend and vote at shareholders' meetings. The registration confers on the shareholder legitimacy as a shareholder in the internal relationship with the company. Therefore, in relation to the company, a person entered in the share register is regarded as a shareholder or as a usufructuary and thus entitled to assert shareholder rights, including voting rights, and to receive dividends. The company, for its part, is obliged and entitled to send the registered person all notices intended for shareholders and to permit them to exercise their shareholder rights.

## Register of Capital Contributions (LLC)

LLCs must keep a register of capital contributions. The rules on keeping the register of capital contributions are similar to the rules on keeping a share register (see *Share Register*).

The following information must be entered in the register of contributions:

- Names and addresses of the company members.
- Number, nominal value and, if applicable, class of capital contributions of each company member.
- Names and addresses of usufructuaries.
- Names and addresses of charge creditors.

An important difference is, however, that for LLC's the company members, together with the number and the nominal value of their capital contributions must be entered in the commercial register and are publicly accessible.

## Rectification of the Share Register

The company may, after hearing the person concerned, delete entries in the share register if they have been made as a result of false information provided by the share transferee. The share transferee must be informed immediately of the deletion. (Article 686a, CO.)

There is no court ruling required for this. This means that the person materially entitled to the shares may always demand from the company that the entry be corrected and that they be entered in the share register. The non-entitled person may request their deletion but cannot effect the entry of the person rightfully entitled to the shares.

Furthermore, regarding false data entries, it derives from Swiss data protection law that the data subject can demand that inaccurate data be corrected at any time (see *Data Protection and Company Records and Registers*).

## Register of Beneficial Owners

To fight money laundering activities, Swiss law requires companies limited by shares with beneficial owners to maintain a register of beneficial owners (Article 697l, paragraph 1, CO).

Any person who alone or by agreement with third parties acquires shares in a company whose participation rights are not listed on a stock exchange, and with that acquisition reaches or exceeds the threshold of 25% of the share capital or votes in the company, must notify the company in writing within one month. This notice must include the beneficial owner's first name and surname, and their address.

The company must keep a register of all beneficial owners that have been notified to the company and must keep it in a way that can be accessed in Switzerland at any time (see *Inspection of Registers*).

The entry in the register of beneficial owners first requires a notification from the share acquirer to the company under Article 697j of the CO. In principle, the register entry must be made immediately after receipt of the notification. This register entry is of particular importance, as rights of participation and property are suspended under Article 697m of the CO as long as a shareholder has not fulfilled their reporting obligation.

The information in the register of beneficial owners must be kept up to date and accurate. The register must be accessible to competent authorities, such as law enforcement and tax authorities.

Switzerland, however, currently does not have a central beneficial ownership register that is publicly accessible.

Limited liability companies must also keep a beneficial ownership register under similar circumstances and rules as companies limited by shares.

## Location of Registers

The registers required to be maintained by Swiss companies are typically kept at the company's registered office or place of business. The registers must be accessible to competent authorities. Swiss law does not require a filing to indicate where the registers are kept, but companies must be able to provide access to the registers on request by competent authorities.

The registers may be kept in electronic form, however, the company must ensure the consistency of electronic entries.

## Inspection of Registers

In Switzerland, certain individuals and entities (can) have the right to inspect a company's registers, including:

- Shareholders of the company with regard their own entries and entries of fellow shareholders insofar as this is necessary for the exercise of shareholder rights.
- Members of the board of directors.
- Auditors and liquidators of the company.
- Competent authorities.

The right to inspect the registers is generally free of charge. Third parties (such as creditors) generally have no inspection right.

## Data Protection and Company Records and Registers

The *EU General Data Protection Regulation ((EU) 2016/679)* (GDPR) came into effect on 25 May 2018. As Switzerland is not a member of the EU, it has its own data protection legislation, which is, however, largely aligned with that of the EU.

For more information on GDPR, see *Practice Note, General Data Protection Regulation (GDPR) Topic Index*.

Switzerland's data protection law is regulated by the Federal Act on Data Protection (FADP), which aims to protect the privacy rights of individuals by regulating any kind of collecting or processing of personal data. The FADP applies to all individuals and organisations that collect and process personal data, including private limited companies (Article 2, FADP).

Under the FADP, personal data constitutes any information that relates to an identified or identifiable person, such as their name, address, email address, or other identifying information. The law requires that personal data must only be processed lawfully. Processing must be carried out in good faith and must be proportionate. Furthermore, personal data may only be processed for the purpose that was stated when it was obtained, is evident from the circumstances, or is provided for by law.

If the consent of the data subject is required for the processing of personal data, this consent is only valid if it is given voluntarily by an appropriately informed data subject (Article 4, FADP).

The data must be accurate, complete, and up-to-date, and must be protected against unauthorised access, disclosure, or loss.

Thus, anyone who processes personal data must ensure that it is accurate. They must take all reasonable measures to ensure that data which is inaccurate or incomplete in relation to the purpose for which it was obtained or processed is corrected or destroyed. (Article 5, FADP.)

Consequently, the FADP requires data processors to take appropriate technical and organisational measures to protect the personal data from unauthorised processing (Article 7, FADP).

Individuals, in turn, have the right to access their personal data held by anyone who processes it and to request the correction or deletion of their data if it is inaccurate, incomplete, or no longer required for the processing purpose (Articles 8 and 5, paragraph 2, FADP).

## Retention Requirements

The share register and the register of beneficial owners must be kept for the whole duration of the company and for ten years after the deletion of the company in the commercial registry (Article 747, CO).

The documents on which an entry in the share register or notice of a beneficial owner are based must be retained for ten years following the deletion of the owner or usufructuary from the share register or register of beneficial owners (Articles 747, 686, paragraph 4, and 697m, paragraph 3, CO).

## Safeguarding Records and Registers

Under Swiss law, companies are required to keep and preserve records and registers in a way that they cannot be altered and, therefore, take adequate precautions to guard against the falsification of records and registers and to facilitate the discovery of any falsification should it occur.

Specifically, Article 957 et seq. of the CO requires companies to maintain an effective system of internal controls that ensures the accuracy and completeness of the accounting records. With regards to the share register and register of beneficial owners in particular, accessibility, correctness, and continuity must be ensured.

## Consequences of Non-Compliance

Under Swiss law, the penalties for non-compliance with the obligations related to company registers and records can include both civil and criminal liability.

### Civil Liability

If a company fails to keep or retain the required registers and records or if these documents are inaccurate or incomplete, the company or persons responsible (that is, members of the board of directors, managing officers and so on) may be held liable in civil court (Article 754, CO). This can result in financial penalties, damages, and the possibility of being held liable for any losses suffered by shareholders or third parties. For example, if a beneficiary suffers damage due to an omitted (or delayed) registration or de-registration into a share register, the company must pay damages unless it proves that it is not at fault.

Furthermore, according to Article 731b, paragraph 1, item 3 of the CO, the failure to maintain the share register or register of beneficial owners reported to the company in accordance with the regulations constitutes an organisational deficiency.

### Criminal Liability

The falsification or destruction of company registers and records can result in criminal liability of the persons responsible and in some cases the company itself. The penalties for these offences can include fines and imprisonment. The severity of the penalty depends on the nature and scope of the offense, as well as the intent of the person responsible. For example, any person who intentionally fails to keep a register of beneficial owners in accordance with the regulations or who violates the associated obligations under company law may be punished by a fine under Article 327a, lit. a and b of the *Swiss Penal Code* (PC). This also includes the incorrect keeping of the register and any violation of the duties to keep the documents on which the reports on the beneficial owners and the corresponding register entry are based; or the duty to ensure access to the register of beneficial owners.

If false facts are recorded in the list under Article 697I of the CO, under certain circumstances, the offence of falsification of documents in Article 251 of the PC may also be met, which is punishable by a monetary penalty or imprisonment.

In summary, the penalties for non-compliance with the obligations related to company registers and records under Swiss law can include both civil and criminal liability. It is therefore essential that companies take these obligations seriously and take appropriate measures to ensure compliance with the law.

## Annual Compliance Obligations

Under Swiss law, companies have several annual compliance obligations. These obligations may vary depending on the type and size of the company. Generally, the following non-exhaustive list includes the mandatory annual corporate compliance obligations applicable to all companies in Switzerland:

- **Annual financial statements.** All companies are required to prepare annual financial statements that comply with the CO (Articles 957 et seq., CO). These financial statements must be audited by a Swiss-certified auditor if the company meets certain criteria, such as a certain level of revenue or number of employees (Articles 727 et seq., CO).

- **Annual general meetings (AGM).** All companies are required to hold an AGM each year to approve, among other things, the annual financial statements (Article 699, paragraph 2, CO).

In addition, there is a requirement to keep accounting and financial records for at least ten years from the end of the financial year (Article 958f, CO). These records must be kept in a manner that allows for easy retrieval and inspection by the authorities.

The consequences of non-compliance with these annual compliance obligations can be severe. If a company fails to comply with the accounting and financial record-keeping requirements, it may be subject to fines, and in serious cases, the responsible individuals may be subject to criminal charges.

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