

# DOING BUSINESS

## — In Switzerland

● Three law professionals from meyerlustenberger, Switzerland, speak to Acquisition International about business in Switzerland, it's taxation strategy and what attracts foreign investment to the country.

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PLEASE DESCRIBE THE LEGAL REQUIREMENTS WHEN IT COMES TO SETTING UP A COMPANY IN SWITZERLAND?

In general, a company in Switzerland is established in the form of a corporation (Aktiengesellschaft; AG).

A corporation provides for a fixed capital stock (share capital) equal to the aggregate nominal value of all shares issued and its liability is limited to its assets. The shareholders are not personally liable for debts of the corporation. A corporation may be founded by one or more individuals or legal entities. Nominees may act as founders. In general, there are no restrictions under Swiss law as to the nationality or the domicile of the founders or the shareholders. However, special rules exist for real estate companies, which invest in residential real estates and for companies under specific supervisory regime such as banks, securities traders, et cetera. The statutory corporate bodies of a corporation are the shareholders' meeting, the board of directors and the auditors (opting-out option for small-sized companies available under certain conditions).

The shareholders' meeting is the supreme body of a corporation and has certain non-transferrable and non-delegable powers. The board of directors may consist of one or more members who are not necessarily shareholders. The corporation has to be represented by at least one person domiciled in Switzerland. If no person domiciled in Switzerland holds sole signature power, this so-called residential qualification must be fulfilled by multiple persons domiciled in Switzerland (at least two persons holding joint signature power by two). These persons may be members of the board or the management. The legal minimum capital for a corporation is CHF 100'000 (subject to specific legal requirements for companies running a business that needs specific authorisation, e.g. banks, security traders, fund managers of collective investment schemes). There is no legal maximum. The share capital has to be contributed in cash to a blocked account at a bank in Switzerland or, in kind. A contribution in kind requires a written contribution agreement; a contribution of real estate requires a public deed. The founders have to record the type, actual condition and the adequacy of its valuation in a written report. A licensed audit expert has to review the founders' report and to certify in writing that such report is complete and accurate. The contribution in kind must be disclosed in the articles of association and registered in the commercial register. Similar requirements apply in case of an acquisition of assets by the corporation from shareholders (or parties

related to them) in the course of its incorporation or immediately after its incorporation or if such acquisition is intended within a short period of time after its incorporation.

CAN YOU PLEASE DEFINE THE NATION'S TAXATION STRATEGY? HOW DOES THIS FACTOR INTO ATTRACTION OVERSEAS INVESTMENT?

Switzerland offers a very attractive tax regime with very cooperative and business-oriented authorities. Advance tax rulings are issued within weeks (in urgent cases within days). The Swiss government monitors competitiveness of the Swiss tax system on an ongoing basis and many projects that would result in an even more favorable tax system are ongoing (e.g. abolishment of stamp duties, reduction in tax rates etc.). The overall strategy results in low tax rates and tax laws that offer international groups of companies extensive flexibility with regard to tax planning (no CFC-regulations, no withholding tax on interest and royalties, etc.).

WHAT ARE THE LOGISTICS OF TRADING OFFSHORE AND WHAT MAKES SWITZERLAND STAND APART FROM OTHER OFFSHORE LOCATIONS?

Switzerland is characterized by prosperity and stability. Apart from having one of the highest per capita gross domestic products worldwide Switzerland has always been a stable country with inflation rates below 1% over the last few years and unemployment rates below 3%. Its location in the centre of Europe, a favourable tax regime, the high standard of living and the low crime rate make Switzerland an attractive place to live and work for expatriates. The Swiss economy is one of the most competitive worldwide.

There are no restrictions on inbound or outbound capital flows and the bilateral treaties with the European Union, inter alia, guarantee the free movement of people. For skilled non-EU employees employers may obtain at short notice work permits. Businesses in Switzerland further benefit from a motivated and highly skilled workforce which, as a result of the multicultural society, is typically fluent in multiple foreign languages. Swiss labour law is characterized by its flexibility. In particular, employment agreements may be terminated without giving reason by respecting the contractual or, to the extent there is no contractual agreement between employee and employer, the statutory notice period which lasts, depending on the duration of the employment, between one and three months. In case of mass dismissals certain additional requirements apply. This flexible regime allows companies to quickly adjust their workforce in case of crises. Strikes are hardly seen in Switzerland due to the traditional partnership between employers and employees (which resulted for various sectors of the economy in collective bargaining agreements) and, finally, Swiss labour law does not provide – with a few exemptions – for minimum wages.

WHAT FACTORS ARE ATTRACTING COMPANIES AND WEALTHY INDIVIDUALS TO SWITZERLAND? DOES YOUR JURISDICTION OFFER ANY INVESTMENT INCENTIVES?

Switzerland has always been a preferred location for international companies. Besides the very competitive tax regime, many international groups choose Switzerland as their preferred location for the following reasons:

- Excellent general infrastructure
- Public officials showing a high degree of flexibility and service-minded attitude
- Very efficient banking system with worldwide connections
- Excellent governmental and social stability including safety of residents
- Flexible labor law
- Continuously ranked world number 1 in the World Competitiveness Report published by the World Economic Forum.

The effective income tax rate for holding companies amounts to 7.83%. Dividend income is virtually tax exempt. Other attractive tax regimes for IP companies, financing and international trading activities as well as for principal companies are available that result in effective tax rates between 8 and 11%. Operating companies in other sectors pay income taxes at an overall effective tax rate of 12.6%-24%.

AS WE SLOWLY RECOVER FROM THE ECONOMIC DOWNTURN, DO YOU HAVE ANY PREDICTIONS FOR THE NEXT 12 MONTHS IN TERMS OF M&A ACTIVITY IN SWITZERLAND?

We expect M&A activity in Switzerland throughout 2012 to be modest. According to lately published Swiss market analysis, the unresolved political and financial issues in Europe, the overall uncertain macroeconomic conditions and the limited economic growth prospects are likely to cause further uncertainty in the market and consequently high volatility. Therefore, many companies are likely to wait for economic conditions to improve. In addition, banks are expected to reduce lending due to the turbulent market environment and recapitalization requirements for financial institutions and, thus, traditionally (highly) leveraged transactions of financial buyers are likely to remain rare in 2012.

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