BLOG

MATTIG SUTER & PARTNER

info@mattig.ch
www.mattig.swiss

Stefan Getzmann
Master of Law
Rechtsanwalt und Urkundsperson
E-MAIL: stefan.getzmann@mattig.ch

At a glance: The reform of Swiss company law

© iStock.com/ NicoElNino

On 19 June 2020, the Swiss Parliament approved the reform of Swiss company law. The reform will come into force on 01 January 2023. The following article gives an overview of the most important changes.

Par value share

The par value of a share reflects its proportion of the total share capital of a Swiss company. Previously, the par value per share had to be at least 0.01 Swiss francs (one centime). With the reform, it only has to be higher than zero. This helps simplify share redenominations. Share capital may now be paid up in foreign currencies (USD, EUR, GBP or JPY) if that currency is essential for the company's business activity. If the share capital is denominated in a foreign currency, the company's bookkeeping and accounts must also be prepared in the same currency.

No more intended acquisition in kind

Under current Swiss company law, an intended acquisition in kind means that the company intends to pay its share capital (via incorporation or capital increase) by means of assets from a shareholder or a person related to the Company. A company's incorporation with an intended acquisition in kind is regarded as a qualified incorporation, meaning that an incorporation report and an audit report by a licensed audit expert are required, in addition to other incorporation documents. The acquisition in kind must also be disclosed in the Articles of Association ("AoA") and in the Commercial Register, stating the object and the consideration (this publicity is often undesirable).

With the law reform, an intended acquisition in kind no longer constitutes a qualified incorporation and does not have to be disclosed in the AoA.

Capital band

Shareholders at the Annual General Meeting ("AGM") or the Universal Meeting of Shareholders may now authorise the board of directors ("BoD") to change the share capital within a range (capital band) for a maximum period of five years. The upper limit of the capital band may not exceed the share capital entered in the Commercial Register by more than 50%. The lower limit of the capital band may not be more than 50% lower than the share capital entered in the Commercial Register.

Interim dividend

The interim dividend, controversial under current law, is now permitted if the company's AoA provide for it. Shareholders may vote at the AGM to pay an interim dividend based on audited interim financial statements. The audit may be waived if the company is not subject to an audit or if all shareholders agree to the payment of the interim dividend and the claims of creditors are not jeopardised thereby.

Shareholders' rights

The reform of Swiss company law strengthens the position of shareholders by lowering various thresholds, for example, for convening the AGM and adding items to the AGM agenda. In addition, shareholders representing 10% of the share capital or votes can now request information in writing from the BoD on the company's affairs at any time instead of only at the AGM.

General Meeting

The reform makes the conduct of the AGM and/or Universal Meeting more flexible and adapts it to new means of communication:

- Universal meetings may now be held via circular letter or in electronic form without complying with the provisions applicable to the convening of meetings;

- AGMs may also be held via circular letter or in electronic form without complying with the rules applicable to the convening of such meetings, unless a shareholder requests oral deliberation;
- AGMs may be held in different locations at the same time (and also abroad), provided that participant votes are transmitted directly in sound and vision to all meeting locations;
- If the Articles of Association provide, the AGM may also be held virtually, i.e., without a physical meeting place, but exclusively by electronic means, as long as shareholders can submit their votes directly ("direct-voting");
- Holding virtual AGMs has been possible since the start of the Covid-19 pandemic, and will remain so until the end of 2022.

For virtual AGMs from 2023 onwards, however, the company's AoA must be amended, which requires public notarisation, and can be done in 2022.

Board of directors

The board of directors may now pass its resolutions by electronic means (e.g., by e-mail). Virtual board meetings are now permitted as well. Minutes must be kept of the proceedings and resolutions, and must be signed by the chairperson and the keeper of the minutes.

With the reform, the limitation period for liability claims against members of the BoD (as well as founders and persons involved in the incorporation of the company) is reduced from five years to three years.

Restructuring

By law, the board of directors must now monitor the company's solvency and initiate restructuring measures in the event of impending insolvency. If there is half capital loss at the company, it is no longer mandatory to convene a reorganisation AGM.

The BoD may act with due haste and take measures to ensure solvency and restructure the company.

In the event of over-indebtedness, the BoD must notify the court within 90 days of the presentation of interim financial statements, as long as there is a reasonable prospect that the over-indebtedness can be remedied and the claims of creditors are not additionally jeopardised. This gives the company more time for restructuring and allows it to press ahead with these restructuring efforts while avoiding the unwanted publicity that generally accompanies notification of the court.

Subordinations of corporate creditors, which under current law already authorise the BoD to refrain from notifying the court, must now include the deferral of interest claims during the period of over-indebtedness.

Auditors

Shareholders at AGM may now only vote to dismiss the auditors for important reasons (unacceptability of the continuation of the mandate). Previously, the dismissal of the auditors at the AGM did not require any justification.

Tags: Rechtsberatung, Aktien, Recht, Vermögen, Statuten, Verwaltungsrat, Revision