



## A New Life For The Swiss GmbH

The Swiss Parliament has enacted a new GmbH Law Act in December 2005 expected to come into force as of mid 2007. There is a variety of mandatory revisions which must be implemented in a Swiss GmbH's articles during a two year transitional period. This compulsory overhaul may also lead to a general review of a GmbH's articles in light of various new corporate law planning opportunities. In particular situations, one might even consider a transformation of an existing Swiss share corporation (AG) into a GmbH in order to benefit from certain corporate structures a GmbH can offer in comparison with an AG.

In the past, a Swiss GmbH's stated capital was limited to CHF 2 mio. which limitation shall now be abolished. It is foreseeable that a Swiss GmbH will no longer be the preferred corporate vehicle for smaller businesses only, but can be also used for running e.g. joint ventures or foreign-controlled subsidiaries of major sizes. Numerous shareholders' obligations – for instance to pay in additional share capital, to introduce rights of first refusal or transfer restrictions much stricter than the ones applicable to AGs, or to undergo non-compete covenants - can be incorporated into a GmbH's articles, which are in the case of an AG subject to a separate shareholder's agreement with no enforceability on the AG itself.

The new GmbH will also abolish a variety of burdensome corporate law formalities; amongst others the former requirement to have all transfers in GmbH-shares notarized what resulted in most cases in a revision of the articles as well. Such share transfers also required in the past qualified majorities which led in many constellations to the non-transferability of GmbH's shares

In line with EU-laws, a Swiss GmbH can now also be set-up by just one founder being the sole shareholder throughout the entire life of a GmbH. The new law no longer contains a joint and several liability of GmbH-shareholders who were in the past required to come up for unpaid share capital or for non-permitted share capital withdrawals by one or more co-shareholders.

The articles of a Swiss GmbH may also include a broad range of management decisions to be subject to previous approval by the GmbH's shareholders meeting such as important investment or divestiture decisions, the granting of credit facilities, or the institution or settling of legal proceedings, whereas such management decisions are part of the board's organisational regulations in an AG with sometimes limited enforceability as well.

The distribution of profits can be left entirely for the shareholders to decide. It can be allocated irrespective of a shareholders' capital contribution or made in accordance with other parameters which may be set out in the company's articles

GmbHs are now required to have mandatory auditors if its business gets a certain size (e.g. revenues of more than CHF 20 mio. in combination with balance sheet assets of more than CHF 10 mio.). GmbHs not reaching those ceilings are required to have auditors who perform at least a so-called review.

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