

# Public limited company – revised Swiss law

Summary of the main modifications

**Gestoval Société Fiduciaire SA**



# Introduction

- The revised Swiss law for public limited company (Ltd) was adopted on June 18, 2020 by the Federal Chambers.
- The aim of this change is to modernize the legal framework and guarantee more flexibility to businesses. This revision entails changes not only for public limited companies but also for other legal forms such as LLCs, associations and cooperatives for which the law of the Ltd is applicable by analogy.
- The effective date is January 1, 2023.
- In this document, we summarize the main changes and aim to help our partners to identify possible measures at an early stage.

# Equity, reserves and available earnings

Share capital	<ul style="list-style-type: none"> <li>- The nominal value has to be above zero, the obligation to have a minimal nominal value of 0.01 CHF has been removed.</li> <li>- The share capital can be set in foreign currency.</li> </ul>
Fluctuation margin	<ul style="list-style-type: none"> <li>- The authorized capital has been replaced by the fluctuation margin.</li> <li>- The Board of directors is authorized to increase or decrease the share capital</li> <li>- The limit of minimum CHF 100k has to be respected.</li> <li>- In case of decrease, the creditors protection has to be observed. An audit attestation is required.</li> </ul>
Legal reserve from profits	<ul style="list-style-type: none"> <li>- 5% of the annual profit has to be allocated to the legal reserve from profits until the sum of the legal reserves (reserve from capital and reserve from profit) reaches 50% of the share capital registered in the Commercial Register (20% for holding companies). The 2nd allocation (as per previous law) has been removed.</li> </ul>
Interim dividend	<ul style="list-style-type: none"> <li>- Interim dividends may be paid out of current year earnings. The General Assembly can decide on the basis of interim accounts. These accounts must be drawn up on the same basis and the same principles as those applied to the annual accounts. Most often, they must be verified by the auditors.</li> </ul>

# Shareholders rights and General Assembly

Call for a GA	<ul style="list-style-type: none"> <li>- 10% of share capital or votes.</li> <li>- 5% of share capital or votes for listed Ltds.</li> </ul>
GA meeting	<ul style="list-style-type: none"> <li>- Can be held in virtual form.</li> <li>- Electronic decisions of the AG are authorized.</li> <li>- The GA can be held in several places at the same time.</li> <li>- Held abroad possible if the articles of incorporation provide for it.</li> <li>- Possibility of replacing the GAM by decisions taken by circular, provided that no shareholder has requested a discussion on this subject.</li> </ul>
Convening the GA	<ul style="list-style-type: none"> <li>- At least 20 days before the GA.</li> <li>- The Board of Directors must communicate the following information:             <ul style="list-style-type: none"> <li>- date, time, form and place</li> <li>- objects and agenda</li> <li>- board proposals</li> <li>- any shareholders' proposals with a brief justification</li> </ul> </li> </ul>

# Responsibility of the Board of Directors

Threat of insolvency (art 725 CO)	<ul style="list-style-type: none"> <li>- In the event of a risk of insolvency, the Board of Directors must take measures aimed at guaranteeing the company's solvency.</li> </ul>
Capital loss (art 725a CO)	<ul style="list-style-type: none"> <li>- A company is in such a situation when its assets, after deducting losses, no longer cover half of the share capital, the legal reserve from capital and the legal reserve from profit. In such a case, the Board of Directors takes measures to put an end to it. If necessary, it takes other reorganization measures or possibly proposes them to the GA.</li> <li>- To absorb a capital loss, it is always authorized, as in the old law, to revalue the buildings and the participations.</li> <li>- If the company does not have a statutory auditor, the latest annual accounts must be subject to a limited statutory examination carried out by a licensed auditor before they can be approved by the GA. The Board of Directors must designate the licensed auditor.</li> </ul>

# Responsibility of the Board of Directors

## Over- indebtedness (art 725b CO)

- The revised law maintains the obligation for the Board of Directors to draw up interim accounts at the going concern value and at the liquidation value. It is possible to waive the establishment of interim accounts at liquidation values if the going concern assumption is accepted and the interim accounts established at going concern values do not show over-indebtedness. The establishment of intermediate accounts at liquidation value is sufficient when the continuation of the operation is no longer envisaged.
- The interim accounts must be audited by the statutory auditor. In the absence of a statutory auditor, the Board of Directors must appoint a licensed auditor.
- If the result is that the company is effectively over-indebted, the Board must notify the judge. The latter will then have to either declare the bankruptcy of the company, or proceed to a stay of execution. Postponement of bankruptcy will no longer be possible.
- However, the Board of Directors will not be required to inform the judge in two situations:
  - in case of sufficient loan subordination;
  - or when there are serious reasons to believe that the over-indebtedness can be eliminated within 90 days of the presentation of the audited interim accounts.

# Overview of Gestoval

Gestoval Société Fiduciaire SA (hereafter "Gestoval" or the "company") was founded in 1969 and is well implanted in the French speaking part of Switzerland, especially in the canton of Geneva. We bring a wide range of technical as well as practical experience. We work with our clients to help them identify and solve complex issues and we provide insights and a client's experience with pragmatism. Gestoval is a licensed audit firm from the Federal Audit Oversight Authority (FAOA) and is member of EXPERTsuisse, the Swiss professional body. Our company is submitted and complies with all quality, independence and ethical standards applicable in Switzerland, same as the big audit firms.

At international level, we collaborate with the group MSI Global Alliance, without any ownership relation nor dependence. For more information about MSI Global Alliance, please visit the website [www.msiglobal.org](http://www.msiglobal.org). We have missions in/for different countries such as France, UK, Canada, Singapore, Dubai, Panama, Malta.

With a number of around 20 professionals, our company is well positioned to offer excellence quality services in audit, accounting, tax, payroll, consulting and financial advisory.

## AUDIT



Gestoval is an audit firm licensed by the Federal Audit Oversight Authority (FAOA). We offer services in the following audit areas:

- Statutory auditor missions in relation with ordinary audits and Limited Statutory Examinations
- Special missions with particular professional qualifications when required by the Swiss Code of obligations
- Other audit missions and verifications

## TAX



For companies and individuals:

- Swiss tax advisory
- Tax planification
- Preparation of tax returns and tax decisions review
- Representation towards the tax authorities
- Assistance in terms of international agreements application to avoid the double taxation
- VAT advisory

## ACCOUNTING



- Bookkeeping
- Accounting advisory in terms of bookkeeping, closing accounts and establishing financial statements
- Preparing financial statements, statistical data, periodic statements
- Preparation of budgets, profitability examination

## EXPERTISE

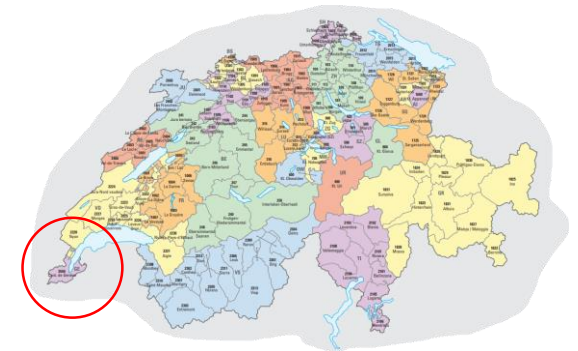


- Companies valuation
- Legal and arbitration expertise
- Structure organisation
- Financial accounting and analysis implementation
- Cost price calculation
- Budget controlling implementation

## PAYROLL



- Payroll management
- Social securities management
- Monthly payslips preparation
- Payroll accounting
- Yearly declaration to the social institutions



# Your contacts




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# Gestoval Société Fiduciaire SA

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