

Philanthropy update

new regulation of associations under Swiss law

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Agenda

- a) **What is new in 2023?**
- b) **Obligation to register with the Commercial register**
- c) **Obligation to keep a list of members of the association**
- d) **Possibility of general meeting electronically or abroad**
- e) **Obligation to have at least one resident in Switzerland**
- f) **New regulation on the bankruptcy of associations**
- g) **New criminal sanctions**

What is new in 2023?

The context of the changes:

- 1) Corporate law reform in force on 1 January 2023
 - Use of **electronic media** for the general assembly and board meeting
 - New rules on **insolvency** and over-indebtedness (Art. 725 ff. CO)
- 2) Amendment of **foundations law** (Art. 80 ff. CC)
- 3) Amendment of the Anti-Money Laundering Act (AMLA, aka LBA)
 - The amendment of **associations law** was hidden in the AMLA
 - Pressure from GAFI, considering that associations could be used for money laundering
- 4) Preliminary draft of **trust law** for Switzerland on 12 January 2022
 - We are expecting the report on the consultation (*avant-projet*)



Also
impacts
associations

Obligation to register with the Commercial register

- Art. 61

¹ Once the articles of association have been ratified and the committee appointed, the association is eligible for entry in the commercial register.

² The association must be registered if it:

1. conducts a commercial operation in pursuit of its objects;
2. is subject to an audit requirement;
- 3.⁸³ primarily collects or distributes assets abroad, directly or indirectly, that are intended for charitable, religious, cultural, educational or social purposes.⁸⁴

^{2bis} The Federal Council shall issue the implementing provisions on the requirement to be entered in the commercial register.⁸⁵

^{2ter} It may exempt associations in accordance with paragraph 2 number 3 from the requirement to be registered in particular if they are exposed to a low risk of abuse for the purpose of money laundering or the financing of terrorism because of the amount, origin, purpose or intended use of the assets collected or distributed.⁸⁶

Option to register

New in 2023
Transition period of
18 months until
July 2024

Art. 90 ORC:
a) distribution below
100 kCHF
b) By a bank
c) One person
residing
Switzerland

Obligation to keep a list of members of the association

Civil code

-  **Ila. List of members**

-  **Art. 61a⁸⁸**

¹ Associations that must be entered in the commercial register shall keep a list of their members, including their first and surnames, business names and addresses.

² They shall keep the list so that it may be accessed at any time in Switzerland.

³ They shall retain the details of each member and any supporting documents for five years after the member has been removed from the list.

-  **Art. 69**

¹ The committee is entitled and obliged according to the powers that it is granted under the articles of association to manage and represent the association.

² Associations that must be entered in the commercial register must be able to be represented by a person who is domiciled in Switzerland. This person must have access to the list of members.⁹⁰



Obligation to have at least one person domiciled in Switzerland with power to represent the association

- Art. 69

¹ The committee is entitled and obliged according to the powers that it is granted under the articles of association to manage and represent the association.

² Associations that must be entered in the commercial register must be able to be represented by a person who is domiciled in Switzerland. This person must have access to the list of members.⁹⁰

- Similar to corporations
- Previously, the tax authorities required one person in Switzerland for the tax exemption
- Registration of all board members with the RC. Exception Art. 90 Para. 1 C ORC
= registration of **only one board member and one Swiss representative.**

Art. 92 Ordinance on the Commercial register (ORC)

k. ¹⁶⁹ pour les associations visées à l'art. 90, al. 1, let. a et b, les membres de la direction et les personnes habilitées à représenter l'association; pour les autres associations, au moins un membre de la direction et au moins une personne autorisée à représenter l'association et ayant son domicile en Suisse;

New accounting rules and regulation on the bankruptcy of associations

-  **2. Accounting**

-  **Art. 69a⁹¹**

The committee shall maintain the association's business ledgers. The provisions of the Code of Obligations⁹² on commercial bookkeeping and accounting apply *mutatis mutandis*.

-  **B^{bis}. Imminent insolvency and overindebtedness**

-  **Art. 69d⁹⁸**



For associations that require to be entered in the commercial register, the provisions of company law on imminent insolvency and on overindebtedness and on the revaluation of land, buildings and equity participations apply accordingly.



New criminal sanctions

Art. 153 of the Criminal code:

International breach of the obligation to apply for registration with the Commercial register.

-  **Fausse communications aux autorités chargées du registre du commerce**
-  **Art. 153**

Celui qui aura déterminé une autorité chargée du registre du commerce à procéder à l'inscription d'un fait contraire à la vérité ou lui aura tu un fait devant être inscrit sera puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

-  **Inobservation des obligations applicables aux associations**
-  **Art. 327b⁴³⁶**

Quiconque, intentionnellement, viole les obligations des associations prévues aux art. 61a et 69, al. 2, du code civil⁴³⁷ est puni d'une amende.

So what?

The changes increase the risk of liability for board members, in particular in case of insolvency.

1. Amend the statutes
2. Register with the commercial register
3. Find someone residing in Switzerland
4. Monitor cash flow

Questions?



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