

Doing business in Switzerland

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OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

Switzerland has been in economic and political terms a very stable country with a sophisticated and well developed legal system for many years. More recently, the banking sector was affected by the pressure put on banking confidentiality by foreign governments.

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Switzerland has a statute-based civil law system. All law-making powers are reserved to the 26 cantons unless expressly delegated to the federal authorities (*Federal Constitution*).

Major legislative powers are federal, including:

- Civil and commercial law.
- Civil and criminal procedures.
- Important regulatory areas (such as financial institutions and competition law).

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Authorisations may be required in certain regulated areas such as:

- Banking.
- Insurance.
- Traffic.
- Real estate.
- Defence.
- The media.

Apart from these industries, there are no restrictions on foreign shareholders.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

Switzerland maintains on its own initiative, and through participation in international measures, sanctions and embargoes against other countries, individuals, businesses and other organisations. Official information on

these measures is available in partial form in English at https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html and in full in German at https://www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos.html.

Furthermore, certain export restrictions on certain goods such as war materials are in place.

5. Are there any exchange control or currency regulations?

Other than taxes, there are no controls on inward investment or the repatriation of profits and capital on disinvestments.

6. What grants or incentives are available to investors?

Incentives aimed exclusively at foreign investors are provided at a cantonal rather than federal level. Presently, the only significant incentives are tax holidays for up to ten years.

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

All internationally known business vehicles are available in Switzerland, including the share corporation, limited liability company, co-operative, partnership and joint venture. Trusts are not available but foundations can serve similar purposes.

The most common form of business vehicle used by foreign companies is a share corporation. The legal regime for the share corporation, including corporate governance, is very developed. However, limited liability companies are increasingly common as they are less regulated and because the "check-the-box" (entity classification election) rules apply to US parent companies.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation

An application must be submitted to the Commercial Register containing all of the following:

- The public deed of the founders' meeting.
- Publicly authenticated articles of association (articles).

- A certificate confirming the appointment of the board of directors (board) and the auditors.
- The nationality or domicile of the board members.
- Certified signatures of the persons authorised to sign for the company.

The registration process takes one to two weeks.

Commercial registers are cantonal and their websites regularly provide guidance on the registration process, for example for the Canton of Zurich in English at www.hra.zh.ch/internet/justiz_innere/hra/en/home.html.

Reporting requirements

The board must submit a business report at the annual shareholders' meeting, which includes:

- Annual financial statements.
- A management report, if applicable.
- Consolidated statements, if applicable.

Bookkeeping fees are CHF2,000 a year and auditors' fees are between CHF2,000 and CHF4,000 a year. For smaller companies, an audit is not mandatory.

A tax return must be filed for each business year. Special reporting requirements exist for regulated companies.

Share capital

A share corporation must have a minimum capital of CHF100,000, of which CHF50,000 must be paid up in cash or in kind. There is no maximum amount, but in any event at least 20% must be paid up.

Non-cash consideration

Payment in kind is permissible provided that both:

- A written report, verified by the auditor, is submitted to the notary public and the Commercial Register.
- The payment is disclosed in the articles and in the *Official Journal of Commerce*.

The same conditions apply to cash incorporation if the cash is used shortly afterwards to purchase assets from shareholders or third parties.

Rights attaching to shares

Restrictions on rights attaching to shares. The articles can provide for restrictions on the transfer of shares. At the same time as passing a resolution to increase share capital, shareholders can withdraw pre-emption rights for valid reasons (such as the takeover of the whole or part of an enterprise).

Automatic rights attaching to shares. The following rights are automatically attached to shares:

- Financial rights (in particular, the right to receive a dividend, proceeds on liquidation and pre-emption rights).
- Personal membership rights (in particular, the right to attend shareholders' meetings, voting rights and information rights).

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure

The board must consist of at least one member. The board can delegate corporate duties and powers to individual directors or third parties. However, the following duties cannot be delegated or taken away from the board by the shareholders:

- The establishment of the organisation.

- The appointment, removal and ultimate supervision of those entrusted with management and representation.
- The management of the company and the issuance of necessary management directives.
- The structuring of the accounting system, financial controls and financial planning.
- The preparation of the business report and shareholders' meetings.
- The notification of negative equity to a judge.

Management restrictions

There are no restrictions on foreign managers. However, one person (or, in the case of collective signature, two persons) entitled to represent the company must be resident in Switzerland.

Directors' and officers' liability

Directors and officers are personally responsible to the company, individual shareholders and the companies' creditors for damages caused intentionally or negligently by default of their duties.

Parent company liability

A parent company is not liable for the debts of its subsidiaries unless it has given a guarantee or qualifies as a shadow director.

EMPLOYMENT

Laws, contracts and permits

10. What are the main laws regulating employment relationships?

Employment relationships are regulated by collective bargaining agreements (if any) and the provisions of the Swiss Code of Obligations on employment contracts and the Labour Act.

Employees can bring actions in the Swiss courts if either the:

- Employee ordinarily works in Switzerland.
- Employee is domiciled in Switzerland.
- Employer is registered in Switzerland.

Conflict of laws provisions limit the choice of law for employment contracts to laws of the jurisdiction where either:

- The work is performed.
- The employee or the employer is domiciled.

These laws apply to both foreign employees working in Switzerland and Swiss employees working abroad if foreign laws allow for a choice of law in the employment agreement. The choice of foreign law will not be enforceable if it is seen to violate Swiss public order. For example, if there are very binding provisions of foreign law or punitive damages available for violations of contractual duties.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

Contracts do not need to be in writing unless they either:

- Relate to certain categories of employees, such as apprentices and travelling salesmen.
- Include provisions that are legally required to be in writing (such as non-compete clauses).

If the contract is concluded orally only, the employer must, within 30 days of the commencement date, inform the employee in writing of the:

- Name of the parties.
- Commencement date.
- Function of the employee.
- Salary.
- Weekly working time.

Provided the mandatory Swiss employment law provisions are adhered to, the following employment issues are likely to be governed by the employment agreement:

- Commencement and place of work.
- Remuneration.
- Working hours.
- Employees' general obligations.
- Incapacity.
- Holidays.
- Duration, termination and probation period.
- Intellectual property.
- Non-competition.
- Non-solicitation.
- Governing law.
- Jurisdiction.

12. Do foreign employees require work permits and/or residency permits?

EU member states (excluding Croatia) and EFTA nationals

Citizens from the following do not need to apply for a work and residency permit if they intend to work for less than three months in Switzerland:

- EU member states (excluding Croatia).
- European Free Trade Association (EFTA) member states.

A registration procedure applies. If working for more than three months, they must apply for a work and residency permit but are automatically entitled to it under the Agreement on the Free Movement of Persons EU-Switzerland (*see below, Other foreign nationals*).

Different permits are required depending on the term of employment:

- Less than three months: no permit required.
- More than three months: L permit (short-term permit) is required.
- Indefinite term: B permit (five-year term) is required.

Costs are imposed on an incremental basis.

Other foreign nationals

Employees from Croatia, as well as employees from non-EU and non-EFTA states, must in advance apply for a work and residency permit if they intend to work or provide services for more than eight days in the calendar year in Switzerland.

For Croatia, separate quotas apply and residence and work permits are restricted to a specific number of applicants from these states. The quotas are opened on a quarterly basis and awarded on the principle of first come, first served. It is not yet clear when the Agreement on the Free Movement of Persons will be extended to Croatia.

Work permits for non-EU nationals are subject to general quotas that apply to all non-EU states, and the employer must demonstrate that they have searched for potential employees in Switzerland and the EU, that the prospective employee is highly qualified, and that employment terms and conditions comply with Swiss standards. Some facilitation provisions exist for intra-group transfers.

The application procedure for non-EU nationals takes approximately six to eight weeks. The administrative costs for obtaining permits differ depending on the permit type, although they are generally around CHF500.

Termination and redundancy

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Businesses with more than 50 employees must elect a works council if requested to do so by 20% or more of the employees, and if the majority votes in favour of having a works council. The works council has participation rights in matters such as:

- Safety precautions.
- Sale of business by way of asset deal or merger transactions (but not share transactions).
- Mass redundancy (*see Question 15*).
- Affiliation to pension funds.

14. How is the termination of individual employment contracts regulated?

Employment contracts can be terminated either:

- With notice of dismissal (where the notice period depends on the length of the employment).
- Without notice for a valid reason (cause).

If an employer provides an abusive notice of dismissal, the employee is entitled to compensation of up to six months' wages. A dismissal is considered abusive if the employee is dismissed for reasons such as:

- Personal characteristics that are not related to the employment relationship or to work-related performance (for example, race, sexual orientation and age).
- To frustrate the ability to bring claims in relation to the employment relationship.

If an employee is dismissed without notice and without a valid reason, the employer must compensate him with both:

- The salary that he would have earned had notice been given or had the fixed-term contract run for its full period.
- A lump sum of up to six months' wages.

A dismissal notice is automatically void if it is given during a mandatory protection period (for example, if an employee is incapacitated from work, or on maternity leave).

15. Are redundancies and mass layoffs regulated?

Mass layoffs can only be carried out after prior consultation with the employees or the works council and in collaboration with the competent labour authorities. Mass layoffs are defined as the dismissal of:

- At least ten employees by an employer with 20 to 100 employees.

- 10% of the work force by an employer with 100 to 300 employees.
- At least 30 employees by an employer with more than 300 employees.

In companies with more than 250 employees and where at least 30 of the employees will have their employment terminated, the employer is under a duty to negotiate a social plan.

An employee can, in certain cases, receive a redundancy payment (severance pay) if he both:

- Has worked for at least 20 years with that employer.
- Is more than 50 years old.

Entitlement to a redundancy payment also depends on what has been negotiated between the employer and employee. Other redundancy and severance payments are not specifically regulated.

TAX

Taxes on employment

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

An employee becomes tax resident and subject to unlimited taxation if he is either:

- Domiciled with the intent to stay permanently in Switzerland (resident in the country).
- Involved in gainful activity in Switzerland and staying there for more than 30 consecutive days, even if domiciled and taxable outside of Switzerland.
- Not involved in gainful activity in Switzerland, but staying there for more than 90 consecutive days.

An employee becomes subject to limited taxation if he is either:

- Physically working in Switzerland.
- A member of the board of directors or of the company management.
- Working on a ship or an aircraft operating in international traffic or in transportation on roads and is paid by a Swiss resident employer or the Swiss permanent establishment of a foreign employer.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

Tax resident employees

Tax resident employees must pay:

- **Federal and cantonal income tax.** This is payable on worldwide income from all sources (with exceptions such as capital gains on movable private assets and income from non-Swiss real estate). The federal and, in general, the cantonal rates, are progressive. The federal rate is between 0% and 11.5% and the cantonal rate ranges between 0% and about 34.7%. Federal and cantonal tax returns must be filed annually.
- **Cantonal net wealth tax.** This is payable on worldwide assets (except non-Swiss real estate and directly owned permanent establishments situated outside Switzerland) less liabilities. Usually a certain amount is tax free. Tax rates are generally progressive with a maximum of about 0.1% to 1%.
- **Social security contributions.** This includes old age and survivors' insurance, disability insurance and compensation for temporary loss of income insurance. This is at a total rate of 10.25% of gross salary (split 50:50 with the employer).

- **Pension plan contributions.** This is paid according to the specific pension fund regulations (usually split 50:50 with the employer). Rates depend on age, insured salary and pension fund plan.

- **Unemployment insurance contributions.** This is paid at a rate of 2.2% of gross salary up to CHF148,200 and 1% of gross salary above CHF148,200 (split 50:50 with the employer).

- **Non-occupational accident insurance premiums.** This is paid in accordance with the individual insurance contract, if not paid by the employer.

- **Social health insurance premiums.** This is paid in accordance with the individual insurance contract.

Non-tax resident employees

Non-tax residents must pay:

- **Federal and cantonal income tax.** This is levied on their Switzerland-source gross salary and is usually withheld and paid by the Swiss employer (source tax). Tax rates are generally progressive. Rates are about the same as for tax resident employees (*see above, Tax resident employees*).
- **Social security contributions.** *See above, Tax resident employees.*
- **Unemployment insurance contributions.** *See above, Tax resident employees.*

Exemptions can apply based on a double taxation treaty or a social security agreement between Switzerland and the employee's state of residence (*see Question 25*).

Employers

Employers must make contributions for the following:

- **Social security contributions.** *See Tax resident employees*, at the total rate of 10.25% of gross salary (split 50:50 with the employee).
- **Pension plan contributions.** This is paid according to the specific pension fund regulations (usually split 50:50 with the employee).
- **Unemployment insurance contributions.** This is paid at a rate of 2.2% of gross salary up to CHF148,200 and 1% of gross salary above CHF148,200 (split 50:50 with the employee).
- **Occupational and non-occupational accident insurance premiums.** This is paid in accordance with the individual insurance contract.
- **Family allowances contributions.** This is paid at a rate of 1.2% up to 4% of gross salary, depending on the canton.

Business vehicles

18. When is a business vehicle subject to tax in your jurisdiction?

Tax resident business

Legal entities are considered to be tax resident if they either:

- Are domiciled (registered) in Switzerland.
- Have their effective place of management in Switzerland.

Tax non-resident business

Tax non-resident companies are subject to taxation only on income from qualifying Swiss sources, such as a permanent establishment or real property in Switzerland. In addition, any brokerage in Swiss real property and the ownership of receivables guaranteed with Swiss real property can be subject to limited tax liability.

19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Profit tax

Profit tax is levied on net profit, not including profit attributed to a permanent establishment or real estate abroad. The federal tax rate is 7.83% of profits before tax. Cantonal rates vary and are often flat. The maximum effective (federal and cantonal) tax burden varies between 11.5% and 24.4% of profits before taxes.

Dividends and capital gains derived from qualifying participations are tax exempt under a participation relief scheme (*see Question 20*). Holding companies are exempt from cantonal profit taxes for all kinds of income. Swiss-domicile and mixed companies which predominantly do business outside of Switzerland benefit from a substantially reduced tax burden because only a very modest portion of foreign source income (between 5% and 25%) is taxable at the cantonal level. Therefore overall effective tax rates can be below 9%. A tax return must be filed for each business year.

Capital gains tax

There is no separate federal capital gains tax for companies. However, some cantons levy a special capital gains tax on the sale of real estate, rather than the cantonal profit tax. Tax rates are progressive and depend on the holding period. Non-real estate capital gains are part of ordinary income and are taxed accordingly (*see above, Profit tax*).

Capital tax

This cantonal tax is levied on a company's tax-adjusted net equity at the end of the accounting year concerned. Rates vary from 0.001% to 0.525%. Substantially reduced rates apply to holding companies and mixed companies (usually between 0.001% and 0.067%).

Withholding tax

If the debtor is a tax resident of Switzerland, a 35% withholding tax is levied on:

- Interest from bonds and other similar debt instruments.
- Profit distribution from legal entities (dividends).
- Profit distribution from investment funds.
- Interest on deposits with banks.

No tax is withheld on royalties or inter-company loans unless they are recharacterised as bonds or bank deposits or, if intra-group, as hidden dividend distributions.

The tax accrues on a quarterly basis for interest on deposits, and instruments similar to deposits with banks. It must be paid and declared within 30 days.

Stamp duty

Stamp duty is levied on:

- Issues of shares, at the rate of 1% of the consideration (at least the par value) provided the cumulated par value and additional contributions exceed CHF1 million. Exemptions are available for reorganisations.
- Shareholders' contributions, at the rate of 1%. Tax relief is possible in the case of debt restructuring.
- Issues of dividend-right certificates without par value, at CHF3 each.
- Transfers for a consideration of domestic or foreign securities and similar negotiable instruments if a Swiss securities dealer (that is, in particular, a domestic bank, securities broker or a corporation with more than CHF10 million balance sheet assets in taxable securities) is involved as a party or intermediary. This is levied at a rate of 0.15% for domestic and 0.3% for foreign securities (split between the parties). Exemptions apply to:
 - issuance of bonds by non-domestic debtors in foreign currency;

- transfers of foreign bonds to a foreign buyer or from a foreign seller;
 - money market papers;
 - reorganisations or restructurings; and
 - foreign banks and brokers and qualifying exempt investors.
- Insurance premiums, at the rate of 2.5% or 5%.

The tax must be declared and paid within 30 days after the taxable event or on a quarterly basis.

Value added tax (VAT)

VAT is levied at federal level on any:

- Domestic supply of goods and services for consideration.
- Procurement of services from abroad (usually reverse charge).
- Import of goods.

The standard tax rate is 8%. However, a special rate of 3.8% applies to the hotel and lodging industry, and a reduced rate of 2.5% applies to certain other goods and services, such as water, food or medication.

In general, VAT must be declared and paid quarterly or in specific cases monthly, twice-yearly or yearly.

Dividends, interest and IP royalties

20. How are the following taxed:

- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid

These are subject to a 35% withholding tax, which can be fully or partly refunded (or treaty relief at source may apply) under a double taxation treaty or the savings tax agreement between Switzerland and the EU (*see Question 25*).

Dividends received

These are taxed as ordinary income of the recipient Swiss company. A participation relief mechanism (generally of 100%) applies if the recipient holds either:

- Shares with a market value of at least CHF1 million in the foreign company.
- At least 10% of the share capital of the foreign company.
- An interest of at least 10% in the profit and reserves of the foreign company.

Interest paid

A withholding tax of 35% is levied on interest from the following:

- Deposits with a Swiss bank.
- Bonds, debentures and similar debt instruments issued by a tax resident.
- Parts in collective investment schemes issued by, or in connection with, a tax resident.

IP royalties paid

No withholding tax is payable on IP royalties.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Thin capitalisation is calculated on asset base. No fixed debt-to-equity ratio applies, but the minimum debt-to-equity ratio depends on the kind of assets held by the company. If the tax authorities consider a company to be thinly capitalised:

- Corporate income tax deductibility of interest owed to a related party may be denied.
- The capital tax base may be increased.
- Interest payments to a related party can be recharacterised as hidden dividend distributions that are subject to withholding tax (*see Question 19, Withholding tax*).

The federal tax authorities have issued a circular with guidelines (*Circular No. 6 of 6 June 1997*).

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Switzerland has no specific controlled foreign company rules. Foreign structures can be challenged under the arm's length principle or tax residency status.

23. Are there any transfer pricing rules?

Switzerland does not have statutory transfer pricing rules, but is a member of the Organisation for Economic Co-operation and Development (OECD) and generally follows the OECD principles. Inter-company charges must be at arm's length. Special guidelines apply concerning minimum and maximum interest rates on loans granted to or from shareholders or related parties.

Customs duties

24. How are imports and exports taxed?

Exports are exempt from Swiss VAT. Imports are subject to import VAT (*see Question 19, Value added tax (VAT)*). Customs duties may also be levied.

Double tax treaties

25. Is there a wide network of double tax treaties?

Switzerland has double tax treaties and tax information exchange agreements with more than 100 countries, including all OECD and EU countries, as well as China, Hong Kong, India, Indonesia, Israel, Kuwait, Malaysia, Russia, Singapore, South Africa and South Korea. The Swiss Government is working on expanding the treaty network further.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority

The Swiss Competition Commission (ComCo) is the Swiss competition authority. The ComCo's investigative body is the Secretariat of the Swiss Competition Commission. It examines suspected cartels and prepares decisions for submission to the ComCo to decide whether to implement them.

The ComCo's website is www.weko.admin.ch. The website contains general information on competition law rules and the authority. It also contains links to the relevant acts and regulations.

Restrictive agreements and practices

Agreements are unlawful if they restrict competition in a market for certain goods and services and cannot be justified on economic efficiency grounds. Agreements eliminating competition altogether are never justified. The following are presumed to eliminate competition:

- Horizontal agreements (agreements among competitors) regarding prices, quantities, or the allocation of territories or customers.
- Vertical agreements regarding fixed or minimum prices.
- Distribution agreements with absolute territorial protection.

Unlawful agreements that fall under these categories can be sanctioned with administrative fines of up to 10% of the party's previous three years' cumulative turnover in Switzerland. This applies to practices that have an effect in Switzerland, even if they originate in another country.

Unilateral conduct

Unilateral practices that abuse a dominant position and prevent or hinder competitors are prohibited. Practices are considered abusive if they cannot be justified by legitimate business reasons.

Abuse of a dominant position can be sanctioned with administrative fines of up to 10% of the party's previous three years' cumulative turnover in Switzerland. This applies to practices that have an effect in Switzerland, even if they originate in another country (*see below*).

Application for foreign entities

The Swiss Act on Cartels applies to all agreements or actions that have an effect in Switzerland (effects doctrine). Agreements made or actions occurring abroad can still be relevant under the Act on Cartels. For example, restrictions regarding the sale of products or provision of services into Switzerland in resale agreements outside of Switzerland (particularly in the EEA but also in the US) are within the scope of the Act on Cartels.

27. Are mergers and acquisitions subject to merger control?

A concentration (takeover, merger or formation of a joint venture) by two or more undertakings is subject to merger control if both of the following apply:

- The participating undertakings achieved, during the last business year, a combined worldwide turnover of at least CHF2 billion or a combined Swiss turnover of at least CHF500 million.
- At least two of the participating undertakings achieved, during the last business year, a Swiss turnover of at least CHF100 million each.

The location of the customer (that is where the goods are delivered and competition takes place) is relevant in relation to the geographic allocation of turnover. The place where the invoice is sent is not relevant for the allocation of turnover. Turnover can be disregarded when calculating Swiss turnover if the parties are not involved in sales to customers located in

Switzerland, but the turnover only involves invoicing to Swiss locations for transactions occurring abroad.

In addition, every concentration which involves an undertaking that has been found to hold a dominant position in a certain market is subject to merger control, if the concentration relates to that market or a related market.

Foreign-to-foreign acquisitions are also subject to merger control if the above thresholds are met. In practice, there is an exception for foreign joint ventures that have no activities in Switzerland and if no Swiss activities (in particular, no sales into Switzerland) are planned or expected in the future.

A concentration which is subject to merger control must be notified to the Swiss Competition Commission and is subject to a mandatory waiting period. Closing without notification or prior to clearance is subject to fines.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents

Definition and legal requirements. An invention or process can be patented if it is both:

- Novel (based on the state-of-the-art at the time of the application).
- Capable of industrial application.

A patent is not granted if the invention or process:

- Violates human dignity, such as the cloning of human beings and the modification of the germ line genetic identity of a human being, and the dignity of animals, or is contrary to public interests or immoral.
- Concerns a method of surgery, therapy or diagnosis applied to the human or an animal body.
- Seeks exclusive rights for plant or animal species or breeding procedures (unless it is a micro-biological procedure or product derived from it).

The right holder has the exclusive right to use, execute, offer for sale, sell, circulate and import the patented product.

Registration. Applications for domestic patent registration are filed with the Federal Institute of Intellectual Property (FIIP). The FIIP's website provides information on the application procedure for registration of intellectual property rights in English at <https://www.ige.ch/en/patents/protection-in-switzerland.html>.

Enforcement and remedies. Patent infringers can be prosecuted through both civil and penal proceedings. Criminal penalties include a custodial sentence not exceeding one year or a monetary fine (the maximum fine is 360 times the daily rate of CHF3,000). The calculation is at the discretion of the competent authorities based on the default and economic means of the infringer. Criminal penalties can apply to natural persons and legal entities.

Length of protection. Protection lasts for 20 years from the date of filing. This period is not renewable.

Trade marks

Definition and legal requirements. The following can be registered as a trade mark provided they distinguish, or identify a source of, goods or services:

- Words, letters and numerals.
- Graphic depictions.
- Three-dimensional shapes.
- Combinations of any of the above.
- Series of audible tones.

The right holder has the exclusive right to identify the goods or services for which it is registered and to use, offer for sale, sell, circulate and import the trade mark.

Protection. Applications for national registration must be filed with the FIIP.

Enforcement and remedies. This is the same as for patents (*see above, Patents*).

Length of protection and renewability. Protection lasts for an initial period of ten years from the date of filing and can be renewed for further ten-year periods.

Registered designs

Definition. To be registered, a design must be both:

- For an object with a physical shape or form, which may be combined with colours.
- Novel (this is only investigated if it is disputed by third parties in court proceedings).

The right holder has the exclusive right to use, offer for sale, sell, circulate and import the design.

Registration. An application for registration must be filed with the FIIP.

Enforcement and remedies. This is the same as for patents (*see above, Patents*).

Length of protection and renewability. Protection lasts for 25 years from the date of filing. This period is not renewable.

Unregistered designs

Definition and legal requirements. An unregistered design will be any shape or form that does not fulfil the requirements of registered designs (*see above, Registered designs*). There is no specific protection under Swiss law for unregistered designs, however, protection can be sought under the Act against Unfair Competition (*see below, Enforcement and remedies*).

Enforcement and remedies. The first user of the respective unregistered design can claim under the Act against Unfair Competition. Infringers of the unregistered design can be prosecuted through both civil and penal proceedings based on the provisions in the Act against Unfair Competition.

Length of protection. Not applicable.

Copyright

Definition and legal requirements. Literary, artistic and scientific works (including computer software) have copyright protection provided they:

- Are original.
- Are intellectual creations of literature or art.
- Have a unique character.

The right holder has the exclusive right to be recognised as the author of the work, produce, reproduce, offer for sale, recite, perform, broadcast and re-broadcast the works.

Protection. Protection arises automatically on creation of the work.

Enforcement and remedies. This is the same as for patents (*see above, Patents*).

Length of protection and renewability. Protection lasts for the life of the author, plus:

- 50 years for computer software.
- 70 years for all other copyrights.

Other

Not applicable.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Agency

An agent must safeguard the interests of his principal and has a duty of secrecy (*Swiss Code of Obligations 1911*). On termination of an agreement, an agent is entitled to fair clientele compensation if the principal substantially benefits, even after termination, from the business relations established with the acquired clientele.

Distribution

There is no specific regulation.

Franchising

There is no specific regulation.

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

Switzerland has no specific e-commerce law. Electronic signatures are equivalent to an autographic signature if based on a qualified certificate of an authorised provider of a certification service.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

Switzerland has no specific advertising law. Applicable provisions can be found in various acts and ordinances, for example, the Act against Unfair Competition, the Swiss Civil Code of Obligations, and the Ordinance on the use of Prices. The Act against Unfair Competition contains, for example, restrictions on mass advertising. Moreover, specific advertising rules exist for regulated products, such as pharmaceutical products, alcohol and tobacco.

DATA PROTECTION

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Data protection is governed by the federal Data Protection Statute 1992 and cantonal law. The statute applies to any processing of data relating to natural and legal persons by private persons and federal bodies. It grants protection against the infringement of personality rights.

PRODUCT LIABILITY

33. How is product liability and product safety regulated?

Producers and importers are subject to strict liability for damages caused by defective products relating to consumer goods (*Product Liability Statute 1993*). Since July 2010, a new law on product security (*Product Security Statute 2009*) providing for security standards applies.

MAIN BUSINESS ORGANISATIONS

State Secretariat for Economic Affairs (*Staatssekretariat für Wirtschaft*) (SECO)

W www.seco.admin.ch/index.html?lang=en

Main activities. The SECO is the Swiss Government's centre of expertise for all core issues relating to economic policy and acts as an interface between business, social partners and government.

Swiss Financial Markets Supervisory Authority (*Eidgenössische Finanzmarktaufsicht*) (FINMA)

W www.finma.ch/e/pages/default.aspx

Main activities. FINMA is responsible for protecting creditors, investors and policyholders and ensuring the smooth functioning of the financial markets.

Federal Commercial Registry Office (*Eidg. Amt für das Handelsregister*)

W www.zefix.admin.ch/zfx-cgi/hrform.cgi/hraPage?alle_eintr=on&pers_sort=original&pers_num=0&language=4&col_width=366&amt=007 (Zefix Central Business Names Index) and www.bj.admin.ch/bj/de/home/themen/wirtschaft/handelsregister.html (Office)

Main activities. The Federal Commercial Registry Office has supervisory authority over the cantonal Commercial Registers.

Swiss Federal Tax Administration (*Eidgenössische Steuerverwaltung*) (FTA/ESTV)

W www.estv.admin.ch/index.html?lang=en (English) and www.estv.admin.ch/index.html?lang=de (German)

Main activities. The FTA is the Swiss Government's federal tax authority.

ONLINE RESOURCES

W www.admin.ch/ch/d/sr/sr.html

Description. This is the official compilation of Swiss federal legislation maintained by the federal government. English translations (provided for information only) are available at this site.

W www.bger.ch/

Description. Official website of the Swiss Federal Tribunal (the highest court in Switzerland) and provides the court's case law. This site is only available in German, French and Italian.

W www.admin.ch/dokumentation/gesetz/index.html?lang=en

Description. This site provides unofficial translations of excerpts from the classified compilation of federal legislation. Generally, there are many translations of high quality of official texts available which can easily be found through a web search.

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