The AG and the GmbH

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Formation and capital

An AG requires share capital of at least CHF 100,000, of which at least CHF 50,000 or 20 per cent, whichever is higher, must be paid in at formation.[1] A GmbH requires nominal capital of at least CHF 20,000, fully paid in.[2] Since the company law revision in force from 1 January 2023, the capital of both forms may be denominated in a foreign currency that is freely convertible and is the most important currency for the business. The ordinance recognises the US dollar, euro, pound sterling and yen.[3] A stablecoin denominated in one of those currencies is not that currency, so capital cannot be denominated in USDC or expressed in tokens. The currency option matters nonetheless for a group whose accounts are kept in US dollars.

Formation requires a public deed before a notary, the deposit of the cash contribution with a Swiss bank in a blocked account and the adoption of articles. The founders appoint the board or managing directors and an auditor, or waive the limited audit, before registration with the cantonal commercial register.[4] In Zug the process from notary appointment to registration takes two to three weeks when the bank account is already open. The bank account is the bottleneck for a crypto venture, as Chapter IX explains.

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Capital contributions in crypto assets

A founder who wishes to contribute tokens instead of cash makes a contribution in kind (Sacheinlage). Swiss law permits this where the asset can be recorded in the balance sheet, is transferable to the company and is at the company's free disposal immediately upon registration, or where the company has an unconditional right to demand its transfer.[5] The contribution agreement must be in writing and the founders must submit a report explaining the nature and condition of the contribution and the appropriateness of its valuation, which an auditor must examine and confirm.[6] The commercial register offices accepted bitcoin and ether as contributions in kind as early as 2017. The Zug office has a settled practice. The practical conditions are three. The token must be valued at a verifiable market price on a stated date and time. The contribution agreement must identify the wallet addresses from which and to which the transfer is made. The auditor must be able to confirm that the company controls the receiving address on the day of registration.

Three pitfalls recur. First, volatility between the valuation date and the registration date can leave the capital under-covered. The usual answer is to contribute tokens with a market value well above the nominal capital, with the excess credited to the capital contribution reserve, and to state a cushion in the founders' report. Second, tokens that are themselves issued by the company or by a related foundation are poor contributions, because their market price may not exist or may be controlled by the contributor. The register will ask hard questions and the auditor may decline. Third, the contribution of tokens is a disposal by the founder for tax purposes. For a private holder in Switzerland that disposal is tax-free under Art. 16 para. 3 DFTA, but a founder resident elsewhere at the time of contribution may trigger a taxable event under their home law.[7]

Practice note

A board resolution accepting tokens as a contribution in kind should record the following, in this order: - the token and its contract address or chain identifier, with the quantity - the sending and receiving wallet addresses - the reference price, its source and the date and time of the quotation - the resulting value in Swiss francs,

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split between nominal capital and reserves - the custody arrangement for the receiving wallet, including who holds the keys - the auditor's confirmation Part Q, Chapter III, contains a skeleton.

AG or GmbH

The AG is the form of choice for a company that expects outside investors, intends to tokenise its shares or plans a listing. Shares are freely transferable unless the articles restrict them, shareholders remain anonymous towards the public and the board structure is familiar to venture investors.[8] The GmbH is cheaper to form but its members are published in the commercial register. The transfer of a quota requires a written assignment and, unless the articles provide otherwise, the approval of the members' meeting.[9] For a protocol operating company that will have two or three founders and no outside equity, the GmbH is adequate and can be converted into an AG later under the Merger Act without liquidation.[10] Where the shares are to be issued as ledger-based securities under Art. 973d ff. CO, the AG is the only practical choice, because quotas in a GmbH cannot be securitised.[11]

Feature	AG	GmbH
Minimum capital	CHF 100,000 (CHF 50,000 paid in)	CHF 20,000 (fully paid)
Owners published	No (beneficial owners reported internally)	Yes, in the commercial register
Transfer of equity	Free unless restricted; ledger-based securities possible	Written assignment and members' approval
Governance organ	Board of directors	Managing directors (all members by default)
Suitability	Investors, tokenised equity, licence applications	Small founder teams, cost-sensitive start
Audit	Ordinary above thresholds; limited or opt-out below	Same

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Feature	AG	GmbH
Residence requirement	One board member or officer resident in Switzerland with signing authority	One managing director resident in Switzerland

Both forms must have at least one person resident in Switzerland who can represent the company, a requirement met by a board member, a managing director or a registered officer.[12] Professional directors in Zug supply this for a fee, but a FINMA licence application or an SRO affiliation will require the real management to be in Switzerland, as Part E, Chapter XII, explains.

Notes

1. Code of Obligations (CO; OR), SR 220, Art. 621 para. 1 and Art. 632. ↩
2. CO, SR 220, Art. 773 para. 1 and Art. 777c. ↩
3. CO, SR 220, Art. 621 paras 2 and 3 and Art. 773 para. 2, as amended by the Federal Act of 19 June 2020 (company law revision), AS 2020 4005, in force 1 January 2023; Commercial Register Ordinance of 17 October 2007 (HRegV), SR 221.411, Art. 45a. ↩
4. CO, SR 220, Arts 629 to 635a (AG) and Arts 777 to 779 (GmbH); Art. 727a para. 2 (opting out of the limited audit with the consent of all shareholders where the company has no more than ten full-time employees on annual average). ↩
5. CO, SR 220, Art. 634 para. 1 nos 1 to 3, as amended with effect from 1 January 2023 (removing the earlier requirement that the asset be realisable). ↩
6. CO, SR 220, Art. 634 paras 2 and 3, Art. 635 and Art. 635a. ↩
7. DFTA, SR 642.11, Art. 16 para. 3; FTA working paper on cryptocurrencies, section on contributions of tokens to companies. Part G, Chapter IV, deals with the company-side accounting. ↩

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8. CO, SR 220, Arts 684 to 685g (transfer of shares and transfer restrictions); Art. 697j ff. (duties to report beneficial owners of bearer and registered shares above 25 per cent). ↩
9. CO, SR 220, Arts 785 to 788. ↩
10. Federal Act on Merger, Demerger, Conversion and Transfer of Assets of 3 October 2003 (Merger Act; FusG), SR 221.301, Arts 53 to 68. ↩
11. CO, SR 220, Art. 973d para. 1 and Art. 622 para. 1 (shares may be issued as ledger-based securities); Art. 784 para. 1 (quota certificates of a GmbH are issued as evidence only). ↩
12. CO, SR 220, Art. 718 para. 4 (AG) and Art. 814 para. 3 (GmbH). ↩

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