# Commercial Register Ordinance

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ONLINE COMMENTARY
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COMMENTARY ON

# Art. 43 CRO (Commercial Register Ordinance)

A commentary by Harald Bärtschi

SUGGESTED CITATION

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**Chapter 3: Public limited company**

**Section 1: Formation**

**Art. 43 Application and supporting documents**

[1] The following documents must be submitted to the Commercial Register Office with the application for registration of the formation of a company limited by shares:

a. the public deed of incorporation;

b. the articles of association;

c. proof that the members of the Board of Directors have accepted their election;

d. if applicable, proof that the statutory auditors have accepted their election;

e. the minutes of the Board of Directors on its constitution, on the regulation of the chairmanship and on the granting of signing powers;

f. in the case of cash deposits: a certificate stating the bank with which the deposits are deposited, unless the bank is named in the public deed;

g. in the case of Article 117 paragraph 3: the declaration of the domicile holder that he or she grants the company a legal domicile at the place of its registered office;

h. ...

i. in the case of bearer shares: proof that the company has listed equity securities on a stock exchange or that all bearer shares are structured as intermediated securities within the meaning of the Intermediated Securities Act of October 3, 2008 (BEG).

2 No additional evidence is required for information that is already recorded in the deed of incorporation.

3 If there are contributions in kind, offsetting circumstances or special benefits, the following documents must also be submitted:

a. the contribution in kind agreements with the necessary enclosures;

b. ...

c. the formation report signed by all founders;

d. the unconditional audit confirmation from a state-supervised auditing company, a licensed auditing expert or a licensed auditor.

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# CONTENT

## I. SIGNIFICANCE AND REQUIREMENTS FOR REGISTRATION

1 The newly founded company limited by shares only acquires legal personality when it is entered in the commercial register (Art. 643 para. 1 CO; Art. 52 para. 1 CC). The entry therefore has a constitutive effect. At the same time, the entry has a "curative" effect: the company can acquire legal personality without all the requirements for registration having been met (Art. 643 para. 2 CO).

2 Shares issued before entry in the commercial register are null and void (Art. 644 para. 1 CO). If legal transactions are concluded in the name of the company prior to registration, the parties acting are personally and jointly liable (Art. 645 para. 1 CO). This liability does not apply if the company assumes the obligations within three months of registration (Art. 645 para. 2 CO).

3 The entry is made in the commercial register at the formal registered office of the company (Art. 640 CO), while the public notarization of the act of incorporation (Art. 629 para. 1 CO) can also be carried out elsewhere.

4 In most cases, registration is based on an application (application principle; Art. 929 para. 2 sentence 1 CO). The facts to be registered must be substantiated (substantiation principle; Art. 929 para. 2 sentence 2 CO). The evidence listed in Art. 43 CRO is used to document and substantiate the facts relevant to the formation of a company limited by shares. The catalog of Art. 43 para. 1 CRO is generally considered to be exhaustive. Depending on the circumstances, however, additional evidence may be required. The supporting documents must be submitted in the original or as a certified copy (Art. 20 para. 1 CRO).

5 The registration is made by the founders or the Board of Directors. It must be signed by authorized signatories of the company or by a third party authorized by the Board of Directors (see Art. 17 para. 3 CRO) (Art. 18 para. 1 in conjunction with Art. 17 para. 1 CRO). The signatures of the registering and authorized signatories must be certified (see N. 28). The supporting documents must also be signed in accordance with the law (Art. 20 para. 2 CRO).

6 Instead of on paper, the application may be submitted in electronic form (see Art. 16 para. 3 in conjunction with Art. 12b and 12c CRO) (Art. 16 para. 2 CRO).

The application must be drafted in an official language of the competent canton (Art. 16 para. 4 CRO). The Commercial Register Office may request a translation for foreign-language documents (Art. 20 para. 4 CRO). 7

The law does not stipulate a specific deadline for the registration, calculated from the date of incorporation. However, delays of more than 3-6 months should be avoided. Otherwise, certain documents may no longer be accepted. 8

Upon receipt of the application, the cantonal commercial register office must check whether the requirements for registration have been met, in particular whether the application and supporting documents have the prescribed content and do not violate mandatory provisions (Art. 937 CO). If the application or supporting documents are incomplete or deficient, the application will be rejected by the Commercial Register Office or rejected for rectification. 9

The entry in the daily register is then reviewed by the Federal Commercial Register Office (Art. 32 para. 1 CRO). After approval, the entry is published in the Swiss Official Gazette of Commerce (Art. 35 para. 1 CRO). The entry becomes effective upon publication (Art. 936a para. 1 sentence 2 CO; see Art. 936b CO for the effects). 10

## II. NECESSARY SUPPORTING DOCUMENTS (PARA. 1)

The supporting documents discussed below must be submitted to the competent commercial register office together with the application for registration of the newly formed company limited by shares. They are enclosures to the application. 11

### A. Public deed (para. 1 lit. a)

Art. 629 para. 1 CO stipulates that the formation of a company limited by shares takes place by means of a declaration by the founders in a public deed. The content of the public deed of incorporation is set out in Art. 629 para. 2 CO and Art. 44 CRO. 12

### B. Articles of association (para. 1 lit. b)

The determination of the articles of association is a central component of the formation and must be reflected in the public deed (see Art. 629 para. 1 and Art. 631 para. 2 no. 1 CO). The legally prescribed content of the articles of as- 13 sociation is set out in Art. 626 CO. If the shares are to be listed on a stock exchange, additional provisions must be included in the articles of association (cf. Art. 626 para. 2 CO). The description of the purpose in the articles of association is decisive for the corresponding entry in the commercial register (Art. 118 para. 2 CRO).

14 The date of the first version of the articles of association is based on the date of adoption by the founders (Art. 22 para. 1 lit. a CRO).

15 From a formal point of view, the submitted articles of association must be certified by the notary (Art. 22 para. 4 lit. a no. 1 CRO).

## C. Declarations of acceptance of elections (para. 1 lit. c and d)

16 In addition to the determination of the articles of association, the appointment of the necessary bodies is another key point of the formation (see Art. 629 para. 1 CO). The focus is on the members of the Board of Directors. The law does not stipulate a minimum number (cf. Art. 707 para. 1 CO).

17 Proof must be provided to the Commercial Register Office that the members of the Board of Directors have accepted their election in advance or subsequently (para. 1 lit. c). If the acceptance of the election is not directly declared verbally and documented in the public deed, a written confirmation must be submitted to the Commercial Register Office. Alternatively, it is sufficient if the registration lists the members of the Board of Directors and the relevant member of the Board of Directors (co-)signs the registration.

18 As is the case for the members of the Board of Directors, proof must also be provided for the statutory auditors that they have accepted their election (para. 1 lit. d). Whether an ordinary or limited audit is required is determined by Art. 727 et seq. CO. A voluntarily appointed auditor may only be registered if it carries out a legally compliant limited or ordinary audit (Art. 61 para. 1 CRO).

19 The declaration of acceptance of the election of the auditors is not required as evidence if the shareholders of a company with no more than ten full-time employees on an annual average unanimously waive the limited audit ("opting out", Art. 727a para. 2 CO), the articles of association do not prescribe an audit and the company does not opt for an audit regardless of the waiver. Such a waiver is mentioned in the public deed of incorporation (Art. 44 lit. f CRO).

In order to waive the limited audit, a declaration must be included in the deed of incorporation (see Art. 62 para. 3 CRO) or a separate form ("SME declaration") signed by at least one member of the board of directors (Art. 62 para. 2 sentence 1 CRO) must be submitted to the commercial register office stating that (a) the company does not meet the requirements for an ordinary audit (Art. 727 para. 1 CO), (b) the company does not have more than ten full-time employees on an annual average (Art. 727a para. 2 CO) and (c) all shareholders waive a limited audit (Art. 62 para. 1 CRO). When registering a new company limited by shares, the waiver declarations of the founders, which are often already included in the deed of incorporation, are sufficient evidence (see Art. 62 para. 2 sentence 2 CRO). Art. 62 para. 4 CRO authorizes the commercial register office to request a renewal of the waiver at a later date, in particular if there are indications that the requirements for the waiver are no longer met. 20

If the articles of association stipulate additional bodies, additional declarations of acceptance may have to be submitted. 21

No declarations of acceptance are required for managing directors, authorized signatories or other authorized signatories. 22

## D. Constituent resolution (para. 1 lit. e)

The required supporting documents also include the minutes of the Board of Directors on its constitution, the regulation of the chairmanship and the granting of signing powers. Instead of minutes or an extract from the minutes signed by the secretary and the chairperson (Art. 713 para. 3 CO), a circular resolution signed by all members of the Board of Directors may be submitted (Art. 23 para. 2 CRO; for electronic resolution, see Art. 713 para. 2 no. 2 and 3 CO). Alternatively, the application may be signed by all members of the Board of Directors (Art. 23 para. 3 sentence 1 CRO). Scanned signatures are not sufficient. 23

The Chairwoman of the Board of Directors is appointed by the Board of Directors, unless the Articles of Association declare the General Meeting to be responsible (Art. 712 para. 2 CO) or the shares are listed on the stock exchange (Art. 712 para. 1 CO). The appointment of a Chairwoman is essential for public limited companies with more than one member of the Board of Directors. Two co-chairwomen are also possible. 24

25 Other conceivable functions include, for example, a vice-chairwoman and a secretary as well as members of the management or directors (see Art. 716b para. 1 CO).

26 In the case of persons authorized to represent the company, the type of signing authority must be determined in each case. For the registration of authorized signatories (see Art. 721 CO), please refer to Art. 458 para. 2 CO. In the absence of a special provision, each member of the Board of Directors is authorized to represent the company individually (Art. 718 para. 1 sentence 2 CO). At least one member of the Board of Directors must always be authorized to sign individually or two members must be authorized to sign collectively (Art. 718 para. 3 CO).

27 One person authorized to sign individually or two persons authorized to sign collectively must be resident in Switzerland (Art. 718 para. 4 CO). Contrary to the wording of the law, in practice a regular signing authority without a special executive function is sufficient, but not a mere procuration or power of attorney.

28 Certified specimen signatures must be deposited by the notifying persons - with the exception of an authorized third party - and all persons authorized to sign (see Art. 18 para. 2 CRO). The certification can also be made directly at the Commercial Register Office (see Art. 21 para. 1 lit. a and para. 2 CRO) or, under certain conditions, as part of the public notarization (see Art. 24a para. 2 and Art. 24b CRO). Certifications by foreign authorities require a Hague apostille in accordance with the relevant convention or superlegalization by the local Swiss diplomatic or consular representation (see Art. 25 para. 1 CRO). Special international treaty provisions remain reserved.

29 In addition, the persons to be registered must submit copies of identity documents to the Commercial Register Office to verify their identity (see Art. 24a para. 1 CRO). These do not constitute supporting documents, are kept with the correspondence files that are not open to public inspection and may be destroyed after registration (see Art. 10 lit. c and Art. 24a para. 3 CRO). Any academic titles of registered persons must also be documented (Art. 119 para. 1 lit. f CRO).

## E. Confirmation of payment (para. 1 lit. f)

The law stipulates that the deposits made in the context of the formation for the settlement of the issue amount must be deposited in cash with a bank (Art. 633 para. 1 CO; for the minimum deposit, see Art. 632 CO). The bank's confirmation of such cash deposits (certificate of deposit) must be submitted to the notary at the time of incorporation (see Art. 631 para. 1 and para. 2 no. 4 CO). 30

If the bank is not mentioned in the certificate of incorporation, the confirmation must be submitted to the commercial register office so that it is clear at which bank the deposits are deposited. It is sufficient if the nominal value has been paid into the blocked account. The payment of any premium is not checked by the Commercial Register Office. 31

## F. Declaration of domicile (para. 1 lit. g)

If the company does not have "its own offices" at its legal domicile (Art. 2 lit. b CRO), but merely a c/o address, a declaration by the domicile holder (domicile provider) is required as proof that the latter grants the company a legal domicile at the place of its registered office (i.e. in the political municipality, Art. 117 para. 1 CRO) (Art. 117 para. 3 CRO). The declaration can also be integrated into the public deed if the domicile holder participates in the act of establishment. 32

The address of the legal domicile must - in addition to the name of the domicile holder ("c/o") - include the street and house number (Art. 117 para. 2 sentence 1 CRO). A P.O. Box may at most be entered as an "additional address" (Art. 117 para. 5 CRO). 33

In principle, the Board of Directors is responsible for determining the legal domicile - in contrast to the statutory registered office (see Art. 626 para. 1 no. 1 and Art. 704 para. 1 no. 13 CO). The granting of domicile is based on a contract with the domicile holder, which does not have to be submitted to the commercial register office as evidence. 34

The domicile holder's declaration is not required if the company has its own address at the stated domicile, namely due to ownership, rent or subletting. The certificate of incorporation or registration may contain a corresponding indication. If it is doubtful whether the company actually has its own premis- 35 es, the Commercial Register Office may request appropriate evidence (see Art. 117 para. 4 CRO).

## G. Confirmation for bearer shares (para. 1 lit. i)

36 In contrast to the shareholders of a GmbH, the shareholders are not mentioned in the commercial register, and unlike in the case of a cooperative (see Art. 837 and Art. 877 para. 1 CO), a publicly accessible list of shareholders is not filed with the commercial register office (see Art. 84 para. 1 lit. h and Art. 88 CRO).

37 However, the limited admissibility of bearer shares has led to a new document: If the company issues bearer shares, it must prove to the commercial register office and have it entered in the commercial register that it has listed equity securities on a stock exchange or that all bearer shares are structured as intermediated securities (cf. Art. 622 para. 1bis and 2bis CO). Proof from the stock exchange or bank must therefore be submitted to the Commercial Register Office.

# III. DETAILS OF THE INSTRUMENT OF INCORPORATION (PARA. 2)

38 According to para. 2, no additional document is required for information that is already recorded in the public deed of incorporation. Art. 44 CRO regulates what must be included in the public deed of constitution.

39 However, this does not apply to the omission of supporting documents pursuant to para. 1, which also served as enclosures to the public deed (cf. Art. 631 para. 2 CO). The same applies to para. 3. If the document refers to a submitted declaration of acceptance of election, for example, this must nevertheless be submitted (para. 1 lit. c).

40 On the other hand, documents in the public deed that are not listed in Art. 43 CRO, such as powers of attorney for the founding meeting or proof of existence for foreign legal entities, do not need to be submitted to the commercial register office. A separate confirmation is therefore unnecessary if the member of the board of directors present at the formation declares his acceptance of the election and this fact is recorded in the public deed.

## IV. QUALIFIED FORMATIONS (PARA. 3)

If there are contributions in kind, offsetting facts or special benefits, additional supporting documents are required, which are listed in para. 3. The corresponding documents are also enclosures to the deed of formation and must therefore already be submitted to the notary (see Art. 631 para. 1 and para. 2 no. 2, 3 and 5 CO). 41

For payment by offsetting against a claim (Art. 634a and 120 CO), no special evidence of the existence, maturity or offsettability of the claim is required. However, the facts must be disclosed in the articles of association (cf. Art. 634a para. 3 CO). 42

Similarly, if special benefits are granted in favor of the founders or other persons, no additional evidence is required apart from the formation report and the audit confirmation. Again, the articles of association must create the desired transparency (see Art. 636 CO). 43

Since the 2020 revision of company law, "certain" and merely "intended" acquisitions in kind (Art. 628 para. 2 CO) no longer have to be disclosed. Therefore, "the non-cash acquisition agreements with the required enclosures" (para. 3 lit. b) are no longer required as supporting documents as of January 1, 2023. 44

### A. Contribution in kind agreement (para. 3 lit. a)

As stipulated in Art. 634 para. 2 sentence 1 CO, contributions in kind (Art. 634 para. 1 CO) must be agreed in writing unless the transfer of the object - as in the case of real estate - requires public notarization. The contribution in kind agreements must be submitted to the commercial register office with the required enclosures and are thus publicly accessible. Ancillary agreements can be recorded separately so that submission to the commercial register office is not necessary. 45

An inventory list or a takeover balance sheet can be considered as enclosures to the non-cash contribution agreement. 46

In addition, the articles of association must state the object and its valuation (total value), the name of the contributor as well as the shares issued in return and other consideration paid by the company (see n. 48) (Art. 634 para. 4 sentence 1 CO). 47

48 The requirements for contributions in kind also apply if the value of the contribution in kind to be credited exceeds the issue amount owed and the difference is credited as a claim of the depositor against the company (see Art. 45 para. 3 aHRegV; under the previous law referred to as "mixed contribution in kind/acquisition in kind"). The additional consideration of the company ("contribution in kind with further consideration") is subject by law to publicity in the articles of association (Art. 634 para. 4 sentence 1 CO), but not in the commercial register (cf. Art. 45 para. 2 lit. a CRO).

### B. Formation report (para. 3 lit. c)

49 A further document required for qualified formations is the formation report signed by all founders. It can also be signed by the authorized representatives of the founders. The content of the formation report is set out in Art. 635 CO.

### C. Audit confirmation (para. 3 lit. d)

50 A licensed auditor must audit the formation report and confirm without reservation that it is complete and correct (Art. 635a CO).

51 The audit confirmation of the state-regulated audit firm, the licensed audit expert or the licensed auditor must also be submitted to the Commercial Register Office as evidence.

## V. FURTHER SUPPORTING DOCUMENTS

52 The commercial register offices provide special forms for clarifying the licensing requirement in accordance with the Licensing Act ("Lex Koller" or formerly "Lex Friedrich"). Depending on cantonal practice, the form must be submitted at least if the company pursues a main real estate activity (acquisition of or trade in real estate) in accordance with its statutory purpose or de facto. The wording of the law is linked to the actual purpose of acquiring real estate (Art. 4 para. 1 lit. e ANRA; Art. 1 para. 1 lit. a BewV). In this way, participation in the formation of a company limited by shares can be regarded as an acquisition of real estate requiring a permit. The form must be signed by the founders or the registering persons.

53 In connection with the Lex Koller declaration, it may be necessary to obtain approval from the cantonal authorities or confirmation from them that no authorization is required (declaratory ruling). If the commercial register office is

unable to exclude the authorization requirement without further ado, it sets a deadline of 30 days for the company or the registering persons to obtain authorization or to determine that no authorization is required (Art. 18 para. 1 and 2 ANRA). Exceptionally, a confirmation must also be submitted to the Commercial Register Office for other reasons that the registration or business activity does not require a license.

If the newly founded company carries out an activity that requires a license, 54
the license to commence business activities must often be obtained prior to entry in the commercial register (see Art. 3 para. 1 BankG; Art. 4 para. 4 FinMIA; Art. 5 para. 2 FinIA; Art. 13 para. 5 CISA; also Art. 128 CRO). The license received or a concise certificate from the licensing authority must generally be submitted to the Commercial Register Office as proof. The simplification proposed in connection with the bill to combat abusive bankruptcy, according to which authorizations that can be viewed in a publicly accessible directory of a local authority (such as FINMA) would no longer have to be proven (Art. 24c VE-CRO), has not been implemented. In some cases, the license must be obtained at a later date and the extract from the commercial register forms part of the documentation for the license application (see Art. 7 para. 2 lit. a KVAG for the health insurance sector).

A separate "stampa declaration" by the founders stating that "there are no con- 55
tributions in kind, acquisitions in kind, offsetting items or special benefits other than those stated in the supporting documents" (para. 1 lit. h in the version up to the end of 2020) is no longer required since this confirmation is already included in the act of incorporation (cf. Art. 629 para. 2 no. 4 CO; Art. 44 lit. g CRO).

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COMMENTARY ON

# Art. 44 CRO (Commercial Register Ordinance)

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**Art. 44 Deed of establishment**

**The public deed concerning the act of establishment must contain**

a. the personal details of the founders and, where applicable, their representatives

b. the declaration of the founders that they are founding a company limited by shares;

c. the founders' confirmation that the articles of association have been established

d. the declaration of each founder on the subscription of the shares, stating the number, nominal value, type, category and issue amount, as well as the unconditional obligation to make a contribution corresponding to the issue amount;

e. the fact that the members of the Board of Directors have been elected and the corresponding personal details;

f. the fact that the auditors have been elected or the waiver of an audit;

g. the identification of the founders in accordance with Article 629 paragraph 2 CO;

h. the naming of all supporting documents and confirmation by the notary that the supporting documents have been submitted to the notary and the founders;

i. the signatures of the founders;

j. if the share capital is determined in a foreign currency or contributions are made in a currency other than that of the share capital: the exchange rates applied.

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# CONTENT

## I. GENERAL

1 In order to form a company limited by shares, the founders must, in accordance with Art. 629 para. 1 CO, "declare in a public deed that they are forming a company limited by shares, lay down the articles of association and appoint the corporate bodies". The law also requires that the deed of formation includes the subscription of the shares and certain statements (Art. 629 para. 2 and 3 CO). Art. 631 CO is devoted to the enclosures to the deed of formation.

2 The public deed of incorporation (certificate of incorporation) is also of central importance for the entry of the newly formed company in the commercial register, as it serves as an important and reliable source of information. Against this background, Art. 44 CRO sets out the minimum content of the deed of incorporation from the perspective of commercial register law (cf. Art. 943 CO) and accepts overlaps with the requirements of the Code of Obligations.

3 It goes without saying that the notary must comply with all requirements under the law of obligations and the formalities of the applicable cantonal notarial law (Art. 55 para. 1 SchlT CC) irrespective of Art. 44 CRO.

4 The public notarization of the act of incorporation need not be carried out in the canton in which the company has its registered office, but may also be carried out by another notary in Switzerland - in an official cantonal language of the competent commercial register office (see Art. 20 para. 4 CRO).

5 Pursuant to Art. 43 para. 1 lit. a CRO, the public deed of incorporation must be submitted to the commercial register office as evidence with the application for registration of the incorporation. This allows the cantonal commercial register office to check whether the requirements set out in Art. 44 CRO have been met (see Art. 937 CO).

## II. MANDATORY INFORMATION

### A. Personal details of the founders and representatives (lit. a)

6 The public deed must begin by stating the personal details of the founders and any authorized representatives (lit. a). The information should - at least together with the other documents available to the notary or the commercial

register office - allow the persons involved to be clearly identified (see Art. 119 and 24a CRO), even though the founders are not to be entered in the commercial register. The identification of the parties involved can be important, for example, with regard to founding liability (Art. 753 CO).

In view of the public nature of the commercial register documents (see Art. 11 para. 1 lit. b CRO), the transparency sought under commercial register law and any requirements under notarial law are in tension with personal and data protection concerns. Exact domicile details (instead of just the place of residence) or the exact date of birth (instead of the year of birth) should not have to be disclosed. 7

Art. 928c para. 1 CO requires the commercial register authorities to systematically use the AHV insurance number to identify natural persons. The cantonal commercial register offices have access to the central database of persons to be operated by the Federal Office for the Commercial Register. For reasons of confidentiality, the natural persons recorded in this database are assigned a non-pronouncing personal number (Art. 928c para. 3 CO). The AHV insurance number is not public (Art. 936 para. 1 sentence 3 CO). 8

One or more natural or legal persons or commercial companies are eligible as founders (Art. 620 para. 1 sentence 1 CO), including general partnerships and limited partnerships, but not simple partnerships. It is not necessary for the founders to be present in person. 9

If representatives are appointed, the powers of attorney must be presented to the notary. They are often attached to the deed of incorporation. However, they do not constitute proof of registration with the commercial register office. In view of any subsequent notarization actions that may be necessary in the event of objections by the commercial register authorities, corresponding authorizations for adjustments on behalf of the founders are often integrated into the deed of formation. 10

## B. Declaration of formation (lit. b)

Central to the formation of the company is the unanimous and unconditional declaration of the founders to form a company limited by shares (lit. b). By signing the deed (lit. i), each founder confirms that she supports this decision. 11

## C. Determination of the Articles of Association (lit. c)

12 The articles of association are an important document when registering the newly formed company (Art. 43 para. 1 lit. b CRO). In the deed of incorporation, the founders must confirm that the articles of incorporation are set out in the relevant version (lit. c). This requirement arises directly from the law (Art. 629 para. 1 CO).

13 The articles of association are therefore not only proof of registration with the commercial register office, but also an enclosure to the act of incorporation (Art. 631 para. 2 no. 1 CO). The notary must certify the articles of association (Art. 22 para. 4 lit. a no. 1 CRO).

14 The date of adoption of the articles of association by the founders as part of the act of incorporation is decisive for the dating of the articles of association (Art. 22 para. 1 lit. a CRO).

## D. Subscription of the shares (lit. d)

15 In the act of incorporation, the founders subscribe to the shares and establish that all shares have been validly subscribed (Art. 629 para. 2 no. 1 CO). According to the law, the number, nominal value, type, category and issue amount of the shares as well as an unconditional obligation to make the contribution owed are required for the share subscription (Art. 630 CO). Art. 633-634b CO must be observed for the payment of contributions. This generally takes place prior to the formation of the company.

16 While separate subscription certificates (Art. 652 para. 1 CO) are used for capital increases, the corresponding obligation is integrated into the deed of incorporation at the time of formation. Based on Art. 630 CO (N. 15), this must therefore include the declaration of each founder on "the subscription of the shares, stating the number, nominal value, type, category and issue amount as well as the unconditional obligation to make a contribution corresponding to the issue amount" (lit. d).

## E. Election of the Board of Directors (lit. e)

17 The appointment of the statutory bodies is another indispensable part of the formation. While the composition of the General Meeting of Shareholders is derived from the group of shareholders involved, the Board of Directors,

which according to the law consists of one or more members (Art. 707 para. 1 CO), must be elected by the founding or General Meeting of Shareholders (cf. Art. 698 para. 2 no. 2 CO).

The fact that the members of the Board of Directors have been elected must 18
be recorded in the articles of incorporation together with the relevant personal details (lit. e). The acceptance of the election by the elected member can be integrated into the deed ("who hereby declares acceptance") or documented by means of a separate declaration of acceptance of the election ("The declaration of acceptance is available.") or by signing the registration (Art. 43 para. 1 lit. c CRO).

In the absence of a provision to the contrary, the members of the Board of Di- 19
rectors are elected individually for a term of office of three years (Art. 710 para. 2 CO; for the special features of companies with listed shares, see Art. 710 para. 1 CO).

The personal details should allow the elected members of the board of direc- 20
tors to be clearly identified (cf. N. 6). For the recording of personal details (cf. Art. 24b and Art. 119 para. 1 CRO), the commercial register office may rely on the copy of the identity document (Art. 24a CRO) and, in the case of a right of representation, on the certification (Art. 21 CRO) (cf. Art. 119 para. 2 CRO for the spelling of the name).

The Chairwoman of the Board of Directors is only elected by the founding or 21
general meeting of shareholders if the Articles of Association so provide (Art. 712 para. 2 sentence 2 CO) or if the company's shares are listed on the stock exchange (Art. 712 para. 1 sentence 1 CO). Otherwise, the appointment is made by the Board of Directors.

The Board of Directors is also responsible for granting signatory powers to the 22
members of the Board of Directors and other persons authorized to represent the company (Art. 716a para. 1 no. 4 CO).

## F. Election of the auditors (lit. f)

Like the members of the Board of Directors, the auditors must also be elected 23
by the founding or general meeting of shareholders (Art. 698 para. 2 no. 2 CO). Consequently, the fact that the auditors have been elected must be recorded in the articles of incorporation (lit. f). In addition, the fact that the

auditors have accepted their election must be documented to the Commercial Register Office (Art. 43 para. 1 lit. d CRO).

24 If the company is not subject to an ordinary audit by law (Art. 727 para. 1 CO), the founders may, under certain conditions, dispense with an audit and the election of an auditor (Art. 727a para. 2 CO). In this case, the deed of incorporation must state the waiver of the limited audit (lit. f).

25 The declarations of all founders required for this purpose (Art. 62 para. 1 lit. c and para. 2 CRO) can be included directly in the deed, so that the submission of a special form ("SME declaration") and separate waiver declarations of the shareholders is unnecessary (see Art. 62 para. 3 CRO).

26 If the articles of association provide for other necessary bodies, these must also be appointed and mentioned in the deed.

## G. Successful liquidation (lit. g)

27 "The determination of the founders in accordance with Article 629 paragraph 2 CO" is mentioned as a further mandatory content of the deed of incorporation (lit. g). According to this legal provision, the founders must confirm in the deed of incorporation that (1) all shares have been validly subscribed, (2) the promised contributions correspond to the total issue amount, (3) the legal and statutory requirements for the contributions made are fulfilled at the time the deed of incorporation is signed and (4) there are no contributions in kind, offsetting circumstances or special advantages other than those stated in the supporting documents.

28 The latter confirmation (Art. 629 para. 2 no. 4 CO) replaces the former stampa declaration.

## H. Supporting documents (lit. h)

29 In the deed of formation, the notary must name the supporting documents for the formation individually and confirm that the supporting documents were submitted to him and the founders (Art. 631 para. 1 CO). This legal requirement is also reflected in the ordinance (lit. h).

## I. Signature (lit. i)

The signatures must also be listed: All founders or their representatives must sign the deed of incorporation (lit. i). 30

## J. Conversion rate (lit. j)

If the share capital is fixed in a foreign currency (EUR, GBP, JPY or USD, see Art. 45a in conjunction with Annex 3 CRO) or if contributions are made in a currency other than that of the share capital, the exchange rates applied must be stated in the public deed in accordance with Art. 629 para. 3 CO. This requirement is set out in lit. j. 31

## K. Further information

Depending on the circumstances, additional facts may or must be recorded in the certificate of incorporation. As a result, supporting documents may not be required unless they are expressly required by Art. 43 CRO (cf. Art. 43 para. 2 CRO). 32

Art. 44 CRO does not mention the formation report that may be required (Art. 635 CO; in contrast, see Art. 85 lit. d CRO for cooperatives) and the audit confirmation (Art. 635a CO). The same applies to the bank confirmation for deposits in cash and for contribution in kind agreements. 33

These are supporting documents of the deed of incorporation, which is why they must also be cited in the deed of incorporation (see Art. 631 para. 1 and 2 CO). The corresponding references in the deed are omitted if the relevant circumstances - a qualified formation or contributions in cash or in kind - do not exist. 34

The legal domicile is often stated in the deed of incorporation ("The domicile is [address and reference to own offices or declaration of domicile]."). However, it is sufficient to mention the domicile in the commercial register application. 35

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COMMENTARY ON

# Art. 45 CRO (Commercial Register Ordinance)

A commentary by Harald Bärtschi

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**Art. 45 Content of the entry**

[1] In the case of companies limited by shares, the following must be entered in the Commercial Register

a. the fact that a new company limited by shares is being formed;

b. the company name and the company identification number;

c. the registered office and legal domicile;

d. the legal form;

e. the date of the Articles of Association;

f. if it is limited: the duration of the company;

g. the purpose;

h. the amount and currency of the share capital and the contributions made to it, as well as the number, nominal value and type of shares;

i. if applicable, the voting shares;

j. if participation capital is issued: the amount and currency of this participation capital and the contributions made thereto, as well as the number, nominal value and type of participation certificates;

k. in the case of preference shares or preferential participation certificates: the associated privileges;

l. in the case of a restriction on the transferability of shares or participation certificates: a reference to the more detailed description in the Articles of Association;

m. if participation certificates are issued: their number and the associated rights;

n. the members of the Board of Directors;

o. the persons authorized to represent the company;

p. if the company does not conduct an ordinary or limited audit: a reference to this and the date of the declaration of the Board of Directors pursuant to Article 62 paragraph 2;

q. if the company conducts an ordinary or limited audit: the auditors;

r. the statutory publication organ and, if applicable, other publication organs;

s. the form of communications from the company to its shareholders as provided for in the Articles of Association;

t. in the case of bearer shares: the fact that the company has listed equity securities on a stock exchange or that all bearer shares are structured as intermediated securities within the meaning of the BEG78;

u. a reference to the articles of association, if these contain an arbitration clause.

[2] If there are contributions in kind, offsetting circumstances or special advantages, the following facts must also be entered:

a. the contribution in kind, stating the date of the agreement, the object and the shares issued in return;

b. ...

c. the offsetting, stating the amount of the claim to be offset and the shares issued in return;

d. the content and value of the special benefits as described in more detail in the Articles of Association.

[3] ...

# CONTENT

## I. GENERAL

The successful application and registration of the newly founded company limited by shares results in the publicly accessible (N. 2) entry in the Commercial Register. Art. 45 CRO specifies the essential content of the register entry for a public limited company. The information is important for the initial entry when the company is founded (see para. 1 lit. a), but is also relevant if entered facts change later (see Art. 933 para. 1 CO) or new facts requiring entry are added, for example if an auditor has to be appointed. 1

The facts entered in the commercial register and the underlying documents submitted to the Commercial Register Office, together with the application, are for the most part publicly accessible or retrievable (Art. 936 para. 1 CO; but see Art. 10, Art. 24b and Art. 119 para. 1 CRO). The information is not only visible in the commercial register, but is also published in advance in the Swiss Official Gazette of Commerce (SOGC) (see Art. 936a para. 1 sentence 1 CO). By publishing the registered facts, the commercial register fulfills its primary function of publicity. 2

The catalog of information to be entered in the commercial register pursuant to Art. 45 CRO includes a number of facts that only lead to an entry if the company makes use of the corresponding option ("if", "in the case of", "insofar as" or "in the event of"). 3

Pursuant to Art. 30 para. 1 CRO, additional facts may be entered in the commercial register upon request if the entry corresponds to the purpose of the commercial register and there is a public interest in disclosure. However, this provision is only used very sparingly in practice. 4

Entry in the commercial register is usually based on an application (application principle; Art. 929 para. 2 sentence 1 CO). 5

The commercial register office at the company's formal registered office is responsible for the entry (Art. 640 CO). In principle, the formal registered office can be freely chosen. The public notarization of the act of incorporation (Art. 629 para. 1 CO) does not have to be carried out in the canton where the company has its registered office. 6

7 The entry is made in the official cantonal language of the application (see Art. 16 para. 4 CRO), and in German or Italian for applications in Romansh (Art. 29 CRO).

8 Upon entry in the commercial register, the newly founded company limited by shares acquires legal personality ("constitutive effect"; Art. 643 para. 1 CO; Art. 52 para. 1 CC). The right of personality is acquired with the registration even if not all requirements for registration have been met ("curative effect"; Art. 643 para. 2 CO).

## II. REGISTERED DETAILS

### A. Formation of a company limited by shares (para. 1 lit. a)

9 The entry must first state the fact that the newly formed legal entity is a company limited by shares (see para. 1 lit. a). For the notification in the Swiss Official Gazette of Commerce, it is essential to recognize that it is not a mutation, but the new registration of the company. The usual reference in the publication text is "public limited company (new registration)".

### B. Company name and company identification number (para. 1 lit. b)

10 The company name and the company identification number (para. 1 lit. b) serve to clearly identify the company limited by shares. Every company limited by shares is recorded in the central database of legal entities operated by the Federal Office of the Commercial Register (formerly the Central Register; see Art. 928b CO).

11 The company name must meet the legal requirements and must be stated in the articles of association (Art. 626 para. 1 no. 1 CO). Subject to the general principles of company formation (see Art. 944-954 CO), the company limited by shares may freely choose its company name (Art. 950 para. 1 sentence 1 CO). Any translations of the company name must also be mentioned. The company name of a public limited company must be clearly distinguishable from all companies of commercial companies and cooperatives already registered in Switzerland (Art. 951 CO).

The company name must state the legal form in one of the national languages of the Swiss Confederation (optionally also in English) (Art. 950 para. 1 sentence 2 CO), either in abbreviated form (in German "AG", in the other national languages "SA" [Art. 950 para. 2 CO in conjunction with Art. 116a para. 2 and Annex 2 CRO], in English "LTD", "INC" or "CORP") or written out in full ("Aktiengesellschaft" in German, "Société anonyme" in French, "Società anonima" in Italian, "Societad anonima" in Romansh and "Limited" or "[In-]Corporation" in English). Upper and lower case letters are permitted. The placement of the legal form within the company name is not prescribed; links to the full legal form are also permitted. 12

The Commercial Register Office examines the legality of the company formation, including the truth and clarity of the company name (see Art. 944 para. 1 CO), in principle with comprehensive cognizance (see Art. 955 CO), but excluding the risk of confusion with existing similar companies, which must be assessed by the courts upon complaint (see Art. 956 CO). The Federal Office for the Commercial Register is responsible for checking the identity of the company. 13

Like all legal entities entered in the commercial register (see Art. 930 CO), the newly established company limited by shares is assigned a company identification number ("UID") when it is founded, namely when it is entered in the daily register (Art. 116 para. 1 CRO). Based on this entry by the cantonal commercial register office, the data from the commercial register is adopted unchanged (Art. 9 para. 3 UIDG). The UID permanently identifies the company and is unchangeable (Art. 116 para. 2 CRO). It is shown in the commercial register as the "company number". 14

## C. Registered office and legal domicile (para. 1 lit. c)

The registered office and legal domicile are also mentioned in the entry (para. 1 lic. c). Like the company name, the registered office (political municipality, Art. 117 para. 1 CRO) is stated in the articles of association (Art. 626 para. 1 no. 1 CO). A link to the respective domicile of the Chairwoman of the Board of Directors ("floating domicile") is not permitted in the case of a public limited company. 15

The legal domicile is the address of the company at its registered office ("street, house number, zip code and place name"; Art. 2 lit. b and Art. 117 16 para. 2 sentence 1 CRO). The company must either have its own offices at its legal domicile or be allowed to use the address of a domicile holder ("c/o address", Art. 117 para. 3 CRO) (Art. 117 para. 2 sentence 2 CRO).

17 The voluntary registration of further addresses, for example a P.O. Box address or additional business addresses, is possible (Art. 117 para. 5 CRO).

## D. Legal form (para. 1 lit. d)

18 The legal form mentioned in the entry (para. 1 lit. d, "public limited company") is already apparent from the information in para. 1 lit. a (N. 9) and from the company name (para. 1 lit. b; N. 11).

## E. Date of the articles of association (para. 1 lit. e)

19 The date of the original articles of association (para. 1 lit. e) corresponds to the date of their establishment (Art. 629 para. 1 CO) and adoption by the founders (Art. 22 para. 1 lit. a CRO).

20 In the event of a subsequent amendment to the Articles of Association, the date is the date on which the General Meeting - or, exceptionally, the Board of Directors - decided to amend the Articles of Association (Art. 22 para. 1 lit. b CRO). A complete new version of the Articles of Association must be submitted to the Commercial Register Office (Art. 22 para. 3 CRO).

## F. Limited duration (para. 1 lit. f)

21 It is extremely rare for the duration of the company to be limited in time in the articles of association (para. 1 lit. f; see Art. 736 para. 1 no. 1 CO). However, the establishment of the company for an indefinite period is not specifically mentioned in the entry.

## G. Purpose of the company (para. 1 lit. g)

22 The purpose of the company must be mentioned in the articles of association (Art. 626 para. 1 no. 2 CO). The Commercial Register Office adopts the description of the purpose (para. 1 lit. g) unchanged and unabridged from the articles of association (Art. 118 para. 2 CRO). The company's field of activity must be clearly evident to third parties (Art. 118 para. 1 CRO).

## H. Share capital and contributions (para. 1 lit. h)

With regard to the share capital, the commercial register states the amount (current total nominal value) and currency (CHF, EUR, GBP, JPY or USD) of the share capital and the contributions made to it (payment) as well as the number, nominal value and type of shares (para. 1 lit. h). Example (as published in the Swiss Official Gazette of Commerce): "Share capital: CHF 100,000.00. Share capital paid up: CHF 50,000.00. Shares: 90 registered shares at CHF 1,000.00 (ordinary shares) and 100 registered shares at CHF 100.00 (voting shares)." 23

According to the law, the same information must also be mentioned in the articles of association (Art. 626 para. 1 no. 3 and 4 CO). The entry in the commercial register can be based on this without taking into account the adjustment possibilities as a result of conditional capital or a capital band. 24

## I. Voting shares (para. 1 lit. i)

According to Art. 693 para. 1 CO, the articles of association of the company limited by shares may determine the voting rights according to the number of shares irrespective of the nominal value and grant each share one vote. The voting shares must be fully paid-up registered shares (Art. 693 para. 2 sentence 1 CO). 25

The voting shares are also the subject of the entry in the commercial register (para. 1 lit. i). For this purpose, when stating the number and nominal value of the shares concerned ("share denomination"), it is sufficient to add the specification in brackets that the shares are voting shares (see the example in N. 23). The extent of the additional voting power can be derived from the nominal value of these shares compared to the nominal value of the ordinary shares. 26

## J. Participation capital (para. 1 lit. j)

The company's articles of association may provide for participation capital (Art. 656a para. 1 sentence 1 CO). This may be created when the company is founded or as part of a capital increase (Art. 656a para. 4 CO). The currency must correspond to the share capital. The participation certificates are issued against a contribution and have a nominal value, but do not grant voting rights (Art. 656a para. 1 CO). 27

28 If participation capital is created, the entry in the commercial register must state the amount and currency of the participation capital and the contributions made to it, as well as the number, nominal value and type of participation certificates. Example: "Participation capital: CHF 50,000.00. Payment of participation capital: CHF 50,000.00. Participation certificates: 5,000 registered participation certificates at CHF 10.00."

## K. Preferential rights (para. 1 lit. k)

29 Preference shares enjoy those privileges over ordinary shares (see Art. 656 para. 2 CO) that are expressly granted to them in the original articles of association or by amendment to the articles of association (Art. 656 para. 1 sentence 1 CO). In the case of preference shares or preferential participation certificates, the associated preferential rights must be summarized under "Remarks" in the commercial register (Art. 1 lit. k; example: "The preference shares grant preferential rights with regard to dividends, subscription to new shares and liquidation proceeds in accordance with the Articles of Association."). In addition, the shares concerned are designated as "preference shares" in brackets in the "Share denomination" (N. 26).

## L. Transfer restrictions (para. 1 lit. l)

30 The articles of association may stipulate that the (registered) shares may only be transferred with the consent of the company (Art. 685a para. 1 CO). The same applies to participation certificates (Art. 656a para. 2 CO). If such a restriction on transferability (restriction on transferability) is provided for the shares or participation certificates, the commercial register entry must mention this fact in the "Remarks" with reference to the more detailed description in the articles of association (para. 1 lit. l; example: "The transferability of registered shares and registered participation certificates is restricted in accordance with the articles of association.").

## M. Participation certificates (para. 1 lit. m)

31 The articles of association may provide for the creation of non-par value (Art. 657 para. 3 CO) participation certificates (Art. 657 para. 1 sentence 1 CO). This may entitle the beneficiaries to a share of the net profit or liquidation proceeds or to subscribe to new shares (Art. 657 para. 2 CO). Profit participation

certificates may only be created in favor of the founders on the basis of the original articles of association (Art. 657 para. 5 CO).

If profit participation certificates are issued, their number and the associated rights must be specified not only in the articles of association (Art. 657 para. 1 sentence 2 CO), but also in the commercial register entry under the "Special facts" (para. 1 lit. m; example: "Profit participation certificates: 200 profit participation certificates with rights to a share in the balance sheet profit and liquidation proceeds as well as to the subscription of new shares in accordance with the articles of association."). 32

## N. Board of Directors (para. 1 lit. n)

The members of the Board of Directors elected by the founding meeting are mentioned in the entry in the commercial register irrespective of their signing authority (para. 1 lit. n). 33

The personal details are based on Art. 119 para. 1 CRO: At least the family name and a first name, the place of origin or foreign nationality, the place of residence (political municipality) as well as the function (e.g. member or chairwoman of the board of directors), the type of signing authority (or lack thereof, "without signing authority") and the personal number of the central database of persons must be stated. 34

The internal data collection based on the copy of the ID card is carried out in accordance with Art. 24b CRO and also includes, for example, the date of birth and the ID card number. 35

The AHV number, the use of which is prescribed by the commercial register offices for the identification of natural persons (Art. 928c para. 1 CO), is not published (Art. 928c para. 2 and Art. 936 para. 1 sentence 3 CO; Art. 11 para. 6 UIDG; Art. 10 para. 1 lit. a CRO). 36

## O. Authorized signatories (para. 1 lit. o)

In addition to the members of the Board of Directors and any other governing bodies - whether with or without signing authority - the entry in the commercial register also includes the other persons authorized to represent the company (para. 1 lit. o), provided they have been notified to the commercial register office. 37

38 The same applies to the personal details as for the members of the Board of Directors (N. 34). Certain special functions may be mentioned (e.g. member of the management or director).

## P. Waiver of audit (para. 1 lit. p)

39 If the company does not conduct a regular (N. 42) ordinary or limited audit, this circumstance (opting out) must be mentioned in the entry under "Remarks".

40 Under the currently applicable law, the date of the declaration of the Board of Directors pursuant to Art. 62 para. 2 CRO must also be stated (example: "According to the declaration of 10.05.2024, the limited audit was waived."). If the limited audit is waived at the time of incorporation, the date of the act of incorporation is decisive. As part of the implementation of the Federal Act on Combating Abusive Bankruptcy, from the beginning of 2025, the date of the beginning of the financial year from which the waiver applies must be stated in the waiver - instead of the date of the declaration by the Board of Directors (see Art. 45 para. 1 lit. p and Art. 62 para. 2 revHRegV). The background to this is that the waiver of the limited audit (opting out) can now only be decided for future financial years (Art. 727a para. 2 revOR).

## Q. Auditors (para. 1 lit. q)

41 If the company carries out a regular (N. 42) ordinary or limited audit, the chosen auditors must be stated in the entry in the commercial register (para. 1 lit. q). Several auditors may also be elected and entered in the commercial register (see Art. 730 para. 2 CO). The function is uniformly stated as "Auditors"; the form of the audit (ordinary or limited) is not specified, but the function may refer to the limited scope of duties of an additional auditor (example: "Auditors with a limited mandate to audit capital increases").

42 An auditor may only be entered in the commercial register if it carries out an ordinary or limited audit in accordance with the law (cf. Art. 728-729c CO) (cf. Art. 61 para. 1 CRO).

43 The Commercial Register Office must verify the approval of the auditors (cf. Art. 727b f. CO) by inspecting the register of the Federal Audit Oversight Authority (cf. <https://www.rab-asr.ch/#/publicregister>) (Art. 61 para. 2 CRO).

The registered details of the auditors are based on Art. 119 para. 3 CRO (company name, UID, registered office and function "auditors"). The type of approval of the auditors is not specified (Art. 121 CRO). If circumstances give the appearance of dependence (see Art. 728 and 729 CO on the requirements for independence), the Commercial Register Office must refuse registration (Art. 61 para. 3 CRO). 44

## R. Publication medium (para. 1 lit. r)

Under "organ of publication", the entry in the register also mentions the statutory organ of publication - i.e. the Swiss Official Gazette of Commerce ("SOGC", Art. 936a para. 2 CO) - as well as any additional organs of publication on a statutory basis (para. 1 lit. r). 45

## S. Notifications to shareholders (para. 1 lit. s)

The articles of association of the company limited by shares must contain a provision on the form of notifications by the company to its shareholders (Art. 626 para. 1 no. 7 CO). This form of notification provided for in the articles of association must also be mentioned in the commercial register under "Remarks" (para. 1 lit. s; example: "Notifications to shareholders shall be made by letter or in electronic form to the addresses recorded in the share register."). 46

## T. Reason for bearer shares (para. 1 lit. t)

Bearer shares are only permitted to a limited extent: The company must have equity securities listed on a stock exchange, or the bearer shares must be structured as intermediated securities and deposited with a Swiss depositary or entered in the main register (Art. 622 para. 1bis CO). 47

The relevant reason for the admissibility of the bearer shares is formally examined by the commercial register office and forms part of the register entry (see Art. 622 para. 2bis CO). Consequently, the fact that the company has listed equity securities on a stock exchange or that all bearer shares are structured as intermediated securities must be mentioned (para. 1 lit. t). 48

## U. Arbitration clause (para. 1 lit. u)

The articles of association may provide that disputes under company law are to be decided by an arbitration tribunal domiciled in Switzerland (Art. 697n 49 para. 1 sentence 1 CO; on the quorum required for the introduction of the provision in the articles of association Art. 704 para. 1 no. 14 CO).

50 If such an arbitration clause exists, the entry in the commercial register must include a corresponding reference to the articles of association (para. 1 lit. u; example: "Arbitration clause as further described in the articles of association."). This transparency is important because, in the absence of a provision to the contrary in the articles of association, the arbitration clause binds not only the company and its governing bodies and members, but also the shareholders (Art. 697n para. 1 sentence 2 CO).

## III. ADDITIONAL INFORMATION IN THE CASE OF QUALIFIED FORMATION (PARA. 2)

51 If there are contributions in kind, offsetting facts or special benefits, some additional facts must be listed in the commercial register entry under the "qualified" or "special facts" (para. 2). Creditors of the company may have an interest in this.

### A. Contribution in kind (para. 2 lit. a)

52 The articles of association must state the object and its valuation (total value), the name of the contributor as well as the shares issued in return and other consideration paid by the company (Art. 634 para. 4 sentence 1 CO).

53 The contribution in kind must also be mentioned in the commercial register entry, stating the date of the contribution in kind agreement, the object of the contribution in kind and the shares issued in return (para. 2 lit. a; example: "Qualified facts: Contribution in kind: The company acquires various building materials upon formation in accordance with the agreement [with inventory list] dated 23.01.2024 [...], for which 100,000 fully paid-up registered shares at CHF 1.00 are issued.").

54 Any further consideration by the company, namely due to a credited claim of the depositor, must be mentioned in the Articles of Association (see Art. 634 para. 4 sentence 1 CO), but is not subject to publication in the commercial register (see n. 60).

55 The provisions of the articles of association on contributions in kind can be repealed by the general meeting after ten years (Art. 634 para. 4 sentence 2

CO). Based on this, the corresponding entry in the commercial register is also deleted.

## B. Acquisitions in kind

Since the revision of company law in 2020, "certain" and merely "intended" acquisitions in kind (Art. 628 para. 2 CO) no longer have to be listed in the commercial register (stating the date of the [possible] contract, the object and the [maximum] consideration of the company). Para. 2 lit. b has therefore been deleted. 56

## C. Offsetting (para. 2 lit. c)

In the case of offsetting, the articles of association must state the amount of the claim to be offset, the name of the shareholder and the shares to which it is entitled (Art. 634a para. 3 sentence 1 CO). In the commercial register, the offsetting of claims is mentioned, stating the amount of the claim to be offset and the number of shares issued in return (para. 2 lit. c; example: "Qualifying facts: Offsetting: The company offsets a claim in the amount of CHF 50,000.00 at the time of formation, for which 50,000 registered shares at CHF 1.00 are issued."). 57

## D. Special advantages (para. 2 lit. d)

If special benefits are granted, the content and value of the special benefits must be disclosed in the commercial register with reference to the more detailed description in the articles of association (para. 2 lit. d; example: "Qualifying facts: special benefits: There are special advantages in favor of the persons named in the Articles of Association that are described in more detail in the Articles of Association in the form of the granting of two third-party pledges to secure loan receivables with a total value of CHF 758,250.00"). 58

## E. Mixed contributions in kind/acquisitions in kind

Para. 3, which has since been deleted, dealt with the case of a "contribution in kind whose imputed value exceeds the contribution obligation and for which the company grants a consideration in addition to the shares issued". An acquisition in kind had to be entered in the commercial register to the extent of this consideration. The depositor not only receives shares, but is also entitled 59 to a claim against the company. This was referred to as a mixed contribution in kind/acquisition in kind.

60 While acquisitions in kind ceased to be facts subject to publication with the 2020 revision of company law (n. 56), the transaction described is still to be treated as a contribution in kind (n. 52 f.). The additional consideration of the company ("contribution in kind with further consideration") is subject to the articles of association (Art. 634 para. 4 sentence 1 CO), but not to commercial register publication (N. 54)

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