

# Comparison of AG/SA & GmbH/Sàrl

Legal

Which legal form is most suitable for my company? What advantages and disadvantages must be taken into consideration with a limited liability company or a stock corporation? This publication presents the most important differences between the stock corporation (AG/SA) and the limited liability company (GmbH/Sàrl). Are you considering becoming independent or transforming your AG/SA into a GmbH/Sàrl or vice versa? Please do not hesitate to contact our legal advisers if you have any questions.

	Advantage AG/SA	Disadvantage AG/SA	Advantage GmbH/Sàrl	Disadvantage GmbH/Sàrl
<b>Share capital/ company capital</b>		Minimum CHF 100,000 of which 20% must be paid up, but at least CHF 50,000.	Minimum CHF 20,000 fully paid-up	
<b>Par value of shares</b>	Minimum of 1 Swiss cent			Minimum of CHF 100
<b>Public disclosure</b>	In general <sup>1</sup> , names of shareholders and number and amount of their shares need not be publicly disclosed.			Names, addresses and place of origin of shareholders and amount of their shareholdings must be disclosed, including any changes in these details.
<b>Obligations to make supplementary contributions (other than paying up shares held)</b>		Shareholders cannot be required to make supplementary contributions.	Articles of Association may impose requirement to make supplementary contributions.	
<b>Ancillary obligations</b>		Shareholders cannot be required to perform ancillary obligations.	Articles of Association may provide for ancillary obligations with a view to fostering company's objects, preserving its independence or safeguarding composition of shareholder body.	
<b>Other obligations of shareholders</b>	None		Articles of Association may contain a non-compete clause	Shareholders are subject to duty of loyalty vis-à-vis the company.

<sup>1</sup> Listed companies must disclose participations of members of the board, the management and the consultative committee (including participations of persons closely related to them) and of significant shareholders (Art. 663c CO).

	Advantage AG/SA	Disadvantage AG/SA	Advantage GmbH/Sàrl	Disadvantage GmbH/Sàrl
<b>Rights to information and access</b>		Shareholders' right of access to company's books and information is limited	Shareholders have unlimited right of access to company's books and information when company has no auditors. When company has auditors, right to information only exists to extent that there appears to be a legitimate interest to be protected	
<b>Decisions of general meeting of shareholders</b>		Postal voting or voting by circulation of documents not permitted (but proxies are allowed)  No right of veto is possible	Decision-making by circulation of documents is permitted by law  Right of veto is possible if permitted in Articles of Association	
<b>Referral of management decisions to shareholders for approval</b>		Decisions of board of directors may not be referred to general meeting for approval	Articles of Association may stipulate that certain management decisions must or may be referred to general meeting for approval	
<b>Participation certificates</b>	Possible			Not possible
<b>Company's ability to acquire its own shares</b>		Permanently: max. 10%; temporarily: max. 20%	Permanently: max. 10%; temporarily max. 35%	
<b>Resignation/ removal of a shareholder</b>		A shareholder may be removed in the event of cancellation of shares for non-payment of subscription price of shares acquired, and – in the case of a listed company – after a public takeover offer.	Legal right to resign for material reasons; Articles of Association may permit other grounds; drag-along / tag-along rights; outgoing shareholder has a right to compensation	A shareholder can be removed for material reasons. Articles of Association may additionally provide for removal where specific reasons exist.
<b>Disposal of shares</b>	In general, shares may be sold freely by straightforward transfer / endorsement	Restrictive arrangements govern transferability (i.e. transferability can only be restricted to a limited extent; transfer can now only be refused without giving reasons where shares are acquired at their true value)	Unlimited scope of transferability; transfer can even be prohibited or imposition of limitation on transferability completely waived	Disposal must be in writing and requires according to the optional regulation an approval by a 2/3 majority of votes represented at general meeting and an absolute majority of the share capital. Variations in shareholdings must be disclosed

	Advantage/Disadvantage AG/SA
<b>Possible use for GmbH/Sàrl</b>	<ul style="list-style-type: none"> <li>– Limited number of shareholders.</li> <li>– Shareholders wish to impose strict limitations on transferability of shares.</li> <li>– Shareholders may take any type of direct role in management; therefore ideal where the intention is to embark on more than a mere financial investment.</li> <li>– Obligations to make supplementary contributions and/or ancillary obligations shall be imposed on shareholders.</li> <li>– Rights of first refusal, subscription rights and / or acquisition rights of shareholders or of the company in the capital shares shall be created.</li> <li>– Private shareholders wish to have a right to veto over certain decisions of the general meeting.</li> <li>– It shall be mandatory or possible that the executive management refer certain decisions to the general meeting for approval.</li> <li>– GmbH represents a simple company whose structure does not have to be regulated as rigidly and in such detail as under the laws governing stock corporations.</li> </ul>
<b>Obligation to keep a register of bearer shareholders and beneficial owners (not applicable to listed companies)</b>	<ul style="list-style-type: none"> <li>– The acquirer of bearer shares in a company must give notice of the acquisition to the relevant company (or, in case of a delegation, to the financial intermediary designated by the company) within one month.</li> <li>– Shareholders (bearer shares and registered shares), respectively company members who reach or exceed the threshold of 25 per cent of the capital or voting rights by acquiring shares in a company, must within one month give notice to the company (or in case of bearer shares and corresponding delegation to the financial intermediary designated by the company) of the beneficial owner for whom they are ultimately acting. The beneficial owner is always a natural person.</li> <li>– For as long as the shareholders/members fail to comply with their obligations to give notice, the membership (voting) rights are suspended and the property (monetary) rights cannot be exercised. Upon the expiry of a one-month period all property rights arising under the shares will lapse until the actual notification.</li> <li>– The stock corporation shall keep a register of holders of bearer shares. The stock corporation as well as the limited liability company shall keep a register of the beneficial owners notified to the company. The registers shall be kept in such a manner that they can be accessed in Switzerland at any time. The notice documents must be retained for ten years following the person's deletion from the register. The entry in the register has no constitutive effect, i.e. the ownership of the shares and all related rights are transferred regardless of the registration.</li> <li>– The register of the beneficial owners as well as the register of the holders of bearer shares are not public and must be submitted to the competent authorities only on request.</li> </ul>
<b>Auditors/Audit of accounts</b>	<ul style="list-style-type: none"> <li>– Audit requirement for an AG/SA or GmbH/Sàrl depends on size of the company.</li> <li>– Public companies (i.e. listed companies, the issuers of bonds, and companies whose assets or turnover represent at least 20% of the assets or turnover in the group accounts of a public company), and companies which in two consecutive years exceed two of the following figures must have an ordinary audit of their annual accounts carried out by an auditor: (i) total assets of CHF 20 million; (ii) turnover of CHF 40 million; (iii) average annual full-time staff of 250.</li> <li>– Companies not meeting the above conditions are subject to a limited audit.</li> <li>– Companies subject to a limited audit may waive this requirement with the agreement of all shareholders and if average annual number of full-time staff does not exceed ten.</li> </ul>
<b>Accounting</b>	<ul style="list-style-type: none"> <li>– The degree of itemization of the accounting depends on the company size. Only those businesses which are subject to an ordinary audit will have to set up an annual report and a cash flow analysis apart from the balance sheet, the profit and loss statement and the annex.</li> </ul>

	Advantage/Disadvantage AG/SA
<b>Transformation of a AG/SA into a GmbH/Sàrl and vice versa</b>	<ul style="list-style-type: none"> <li>– Transformation is subject to the Federal Law on Merger, Demerger, Transformation and Transfer of Assets (Merger Act).</li> <li>– Transformation involves a change in company's legal form without any alteration in terms of its assets or the shareholder body. Company continues to exist and only alters its legal form.</li> <li>– A company wishing to transform must draw up an interim balance sheet if annual balance sheet date is more than 6 months earlier or if major changes in its assets and liabilities have occurred.</li> <li>– A company which is overindebted or which has suffered a loss of its capital cannot be transformed.</li> <li>– Certain conditions have to be complied with when new legal form is assumed (e.g. amount of share capital, rules for paid-up capital, content of Articles of Association).</li> <li>– Transformation procedure involves submitting a transformation plan, which has to be submitted for approval to the general meeting; additionally, if companies being transformed are not considered as SMEs within the meaning of the Merger Act, other documents or procedures are necessary (transformation report, auditor's report, right of inspection of shareholders).</li> <li>– The transformation is recorded in the Commercial Register. It becomes effective as soon as registration has taken place.</li> </ul>

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