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La cession des parts sociales dans une Sàrl et ses particularités



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The transfer of capital contributions in a limited liability company and its particularities

Introduction

According to data from the Swiss Federal Statistical Office, Switzerland had a total of 129,451 limited liability companies, compared with just 122,235 public limited companies (August 24, 2023). In other words, the number of limited liability companies has exceeded the number of public limited companies.

It is therefore important for both lawyers and professionals to be also familiar with the particularities of selling and transferring capital contributions in a limited liability company (Sàrl) as opposed to a public limited company (SA).

The capital of a limited liability company with a minimum amount of CHF 20,000 is divided into so-called capital contributions with a par value greater than zero. Unlike shares in a public limited company, capital contributions in a limited liability company are not anonymous, since their holders, known as members, are entered in the commercial register as such.

In order to validly transfer capital contributions in a limited liability company, the following requirements must be met:

1. Capital contributions transfer agreement;

2. Approval by the members' general meeting;
3. Entry in the commercial register;
4. Entry in the limited liability company's register of contributions

Capital contributions transfer agreement

The conclusion of a capital contributions transfer agreement between buyer and seller is a basic requirement for the transfer of capital contributions in a limited liability company. Art. 785 para. 1 of the Swiss Code of Obligations (CO) stipulates that the capital contributions transfer agreement must be in writing.

In order to be valid, the capital contributions transfer agreement must specify at least the number and nominal value of the shares transferred and, in accordance with art. 777a para. 2 CO in conjunction with art. 785 para. 2 CO, the following specific rights and obligations, insofar as these are provided for in the articles of association:

- The obligation to make additional payments;
- The obligation to provide ancillary services;
- Prohibition of competition between members of the limited liability company;
- Pre-emptive and emption rights of members of the limited liability company or the company itself;
- Contractual penalties.

As far as the purchase price is concerned, the parties to the agreement are well advised not to mention it in the capital contributions transfer agreement, but instead to include a clause stipulating that the parties settle the purchase price and payment terms in a separate document.

The reason for this is the publicity function of the commercial register, and therefore the fact that third parties may have access to the supporting documents for any entry in the register. It is therefore preferable not to make publicly available the amount paid for the transfer of the capital contributions.

Therefore, as indicated above, it is better to regulate all the terms and conditions of the transfer of the capital contributions, as well as the purchase price, in a separate agreement.

Approval by the shareholders' meeting

Under art. 786 para. 1 CO, the transfer of capital contributions requires the approval of the members' general meeting. Such approval must therefore be obtained by a resolution of the members' general meeting, in accordance with the relevant provisions of art. 804 et seq. of the Swiss Code of Obligations.

As a matter of fact, the transfer of capital contributions only takes effect once the shareholders' meeting has approved it (art. 787 para.

1 CO).

However, approval by the members' general meeting is not required if the company's articles of association explicitly waive this requirement (art. 786 para. 2 no. 1 CO).

Entry in the commercial register

The transfer of capital contributions must then be entered in the commercial register, which requires the submission of the following documents:

- Application for entry in the Commercial Register;
- Capital contributions transfer agreement;
- Minutes of the members' general meeting approving the transfer (insofar as approval of the transfer of capital contributions is required and has not been waived by the articles of association);
- Copy of a valid identity document (ID card or passport) of the new member

Entry in the limited liability company's register of contributions

Finally, the transfer of capital contributions must be entered in the company's register of contributions, which must be kept up to date in accordance with art. 790 CO.

Conclusion

In view of the above-mentioned specific requirements, mistakes are easy to make in [the process of transferring capital contributions](#). Given the complexity of certain transfers, it is advisable to call on the services of a [law firm](#) to prepare all the necessary documentation.

Source :
<https://www.wg-avocats.ch/en/actualites/the-transfer-of-capital-contributions-in-a-limited-liability-company-and-its-particularities/>