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## New Guidance on Company Names



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The Federal Office for the Commercial Register (*Eidgenössisches Amt für das Handelsregister*) issued new guidance on 1 April 2009 concerning company names based on the "minor revision of company name law", as well as further elaborations on administrative practices in recent years. The new guidance enters into force on 1 June 2009.

### Background

The Instruction and Guidance to the Cantonal Commercial Register Authorities concerning the Review of Company Names dated 1 January 1998, which is in force until 31 May 2009, has needed revision at least since the entry into force of the minor revision of company name law. In addition, during the 10 years that the instruction has been in existence, the practices of the cantonal commercial register offices and the federal commercial register office concerning company names have developed further.

### The "minor" revision of company name law

With the minor revision of company name law of 16 December 2005 (in force since 1 January 2008), uniformity was established, in particular in respect of the requirements for the company names of corporations (*Aktiengesellschaften*), limited liability companies (*Gesellschaften mit beschränkter Haftung*, "GmbH") and cooperatives (*Genossenschaften*). In particular, on the basis of amended Art. 950 of the Code of Obligations (CO), it is now required that every corporation and cooperative state the legal form of the entity in its name – just as was previously the case for the GmbHs. This now applies for all corporations and not just those whose name includes the name of a natural person, as was the case before the revision. This new requirement has to be implemented by corporations not later than 1 January 2010. Furthermore, under the new company name law, the names of GmbHs acquire greater geographic protection. Although the uniqueness of the name of a GmbH was previously limited to the location of its registered office, now the name must be unique nation-wide (Art. 951 CO). Note should also be taken of newly introduced Art. 954a CO, which now expressly requires the use of the correct, complete company name in business correspondence.

### Significant changes in the content of the guidance on the law of company names

The significant changes for corporations, limited liability companies and cooperatives, as well as for the new legal forms under the Collective Capital Investments Law are summarised below:

The *specification of legal form* in the names of corporations, limited liability companies, as well as cooperatives may be made, pursuant to Art. 950 CO, in capital or lower case letters. The legal form must be clearly recognisable. Consistent with the principle of uniformity, only Switzerland's national languages may be used for the specification or abbreviation of the legal form in company names. If a legal entity is registered in the commercial register with an English description of its legal form, then at least one further registration of the name must include the legal form in a Swiss national language (margin paragraph numbers 100 ff).

In respect of the names of corporations, limited liability companies and cooperatives which include the *names of natural persons*, it is now no longer required that a legal or factual relationship exist between the name of a natural person included in the company name and the legal entity. A natural person who claims to be injured through the use of his or her name is, under decisions of the Federal Supreme Court, responsible for taking action against the misappropriation of his or her name (margin paragraph numbers 66 ff).

*Geographical descriptions* may be freely used as part of a company name and the purpose of the business does not have to be related to the geographic component of the company name. This new rule nevertheless is limited by the principle prohibiting obvious misuse of the description. Likewise, company names

that consist only of geographic descriptions are still not permitted. Multiple geographic descriptions may be included in the company name only when at least one of them is related to the actual location of its registered office (margin paragraph numbers 27 ff).

The new guidance also includes a rule for the *legal forms of the Collective Capital Investments Law*. Investment companies with variable capital (SICAV) and investment companies with fixed capital (SICAF) may freely choose their names, but must nevertheless include the legal form in their names (margin paragraph numbers 205 ff).

*Association and Foundation names* are given more liberal treatment under the new guidance, subject to the continuing application of the prohibition on deception, the principle of truthfulness, as well as the prohibition on conflicts with the public interest under Art. 26 of the Federal Commercial Register Regulation (margin paragraph numbers 245 ff).

#### **Elaborations on and additions to existing rules**

The following rules still remain fundamentally in force, but are partially elaborated or supplemented:

Increased concern for the public interest means that the use of certain terms as components of a company name is available only to entities that have a *license to engage in the relevant business* from the responsible governmental authority. The terms "bank", "banking" and "banker", for example, are therefore reserved for entities that have the relevant license to engage in that business from the Federal Financial Market Supervisory Authority. The same principle applies for investment funds, investment companies, legal entities under the Collective Capital Investments Law, etc. (margin paragraph numbers 8 ff).

Consistent with the principle that company names serve to clearly identify legal entities and to make them distinctive, the new guidance specifies that company names which are not clear, such as so-called "double names" (*Doppelfirmen*) or company names that cause confusion for third parties about the legal form of a legal entity, are prohibited (margin paragraph numbers 21 ff).

Foreign language translations of company names are to be registered in the commercial register. In such cases, either a literal translation of the company name or a translation of the term identifying the legal form into a Swiss national language must be used (margin paragraph numbers 110 ff).

Mere *descriptive terms* which describe the business or the legal entity and add the legal form are still insufficient to uniquely name a legal entity (margin paragraph numbers 131 ff).

Reference is also made to the new guidance concerning *trademarks and domain names* (margin paragraph numbers 285 ff). Trademarks and domain names may not, as such, be registered in the commercial register, but may, of course, be registered as a company name or a component thereof.

#### **Unaffected areas of regulation**

The other areas of regulation, in particular such as the manner in which the company name is written (margin paragraph numbers 224 ff), or indications that successors now conduct the business (margin paragraph numbers 75 ff) and the company name in the event of liquidation, bankruptcy or an arrangement with creditors and re-registration in the commercial register (margin paragraph numbers 258 ff) remain in force without change.

#### **Conclusion**

The new guidance on company names enters into force on 1 June 2009 and has immediate effect for company names to be newly registered. For legal entities already registered in the commercial register on 1 January 2008, but whose registered names no longer comply with the new rules, a transition period of two years applies for conforming their articles of incorporation and regulations to the new requirements. The commercial register offices will, on their own initiative, supplement, amend or delete registrations which have not been conformed by 1 January 2010.

The ww&p NewsLetter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this NewsLetter should seek specific advice on the matters which concern them.

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