

Ledger-based securities in corporate practice

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The use of ledger-based securities for shares raises practical questions of company law. The general meeting of a company whose shares are tokenised must be organised so that the holders of the tokens can exercise their rights. The company must know who its shareholders are, which requires that the holders of tokens identify themselves to the company in order to be entered in the share register. The revised company law of 2023 allows general meetings to be held online, a possibility that many tokenised companies use because their shareholders are often spread across several countries.¹

Capital increases and other changes to the share capital must be implemented both in the commercial register and in the ledger, with the new shares issued as tokens after the commercial register has entered the capital increase. The capital band introduced by the company law revision allows the board to increase or reduce the capital within a range set by the general meeting, which gives tokenised companies flexibility for the issue of new shares to investors and employees.² Although the dividends of tokenised companies can be paid in francs or in stablecoins to the addresses of the shareholders, the deduction of withholding tax must be organised in the usual way.

The companies that have tokenised their shares report mixed experiences. The issue and transfer of shares has become simpler and cheaper, and employee participation plans can be administered more easily. The secondary market for the shares, however, remains shallow. Since most tokenised shares of small companies are traded rarely, the expected liquidity has not materialised except for a few companies with an active community of shareholders.

1 Notes

1. Art. 701d CO (virtual general meeting), in force since 1 January 2023; SGAV, "Aktienrechtsrevision – Überblick über die wichtigsten Änderungen per 1. Januar 2023", sgav.ch: the revised law permits purely virtual general meetings and electronic circular resolutions. ↩
2. Arts. 653s ff. CO, in force since 1 January 2023; SGAV, "Aktienrechtsrevision – Überblick über die wichtigsten Änderungen per 1. Januar 2023", sgav.ch: the capital band allows the board to change the share capital within a range of up to 50 per cent above or below the registered capital for up to five years, on the basis of a resolution of the general meeting. ↩

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