

**International Employee Equity Plans:  
Participation Beyond Borders**

*Editors:*

**Mary K. Samsa  
Kathleen S. Scheidt**

Authored by  
World Law Group  
Member Firms

With Introduction by:  
**Michael Whalley**  
WLG Publications Coordinator



THE HAGUE - LONDON - NEW YORK

# SWITZERLAND

Dr Stefan Gerster and Christoph J Vaucher\*

## INTRODUCTORY NOTE

By the end of the 1990s, equity compensation for employees such as Employee Equity Ownership Plans (EEOP) or Stock Option Plans (SOP) had become a popular type of employee benefit in Switzerland. In particular, this was the case with start-up companies (often in the Information Technology sector) which did not have the funds to offer attractive cash remuneration to qualified employees. Apart from serving as a useful means of employee compensation, the inclusion of employees in stock option schemes enabled employees to become stakeholders in the company for which they worked, creating a strong incentive for improving and maintaining high performance levels.

With the recent world-wide crisis of the stock markets and the accounting scandals (often also in relation to the valuation of stock option and similar programs) associated with the collapse of U.S. corporate giants such as Enron or Worldcom, the attractiveness of equity compensation for employees has become rather a disincentive. The fact that the time of Swiss income taxation is when the shares or the stock options are granted to the employee has made employees very sceptical in accepting this kind of remuneration for their work. Nowadays, there is a substantial risk that these employees have to pay income tax on something which, due to falling stock markets, they may never or only partially benefit at the time of the sale of their shares.

Although EEOPs and SOPs have become less popular, they remain a common tool of employee compensation in Switzerland. This chapter provides an overview of the different areas of Swiss law which have a major impact on the creation and operation of EEOPs and SOPs. Given the mostly identical legal framework for both EEOP and SOP in Switzerland, only the abbreviation "SOP" shall be used in the following explanations.

## 1. SECURITIES LAW

### (a) Offering Options or Securities to Employees

#### (i) *INTRODUCTORY NOTE*

In Switzerland, the offering of stock options or of other company securities to employees is *not* primarily a matter of Securities Law, but a Corporate Law issue.

---

\* CMS von Erlach Klainguti Stettler Wille, Zürich.

Even the Swiss Company Law, a part of the regulations in the Swiss Code of Obligations (CO), does *not* contain specific rules on SOPs, but only mentions the granting of stock option rights to employees as one of several reasons for the so-called “conditional increase of a company’s share capital” (see Article 653[1] of the CO). However, a conditional capital increase can also occur for other purposes such as the granting of a corresponding benefit to other creditors of the company or to affiliated companies.

This lack of specific SOP-related rules in Switzerland’s Company Law basically also applies to other relevant legal fields such as Labor Law (see Section 4 immediately below) and Securities Law; however, in the area of Tax Law, the Swiss Federal Tax Administration introduced a special SOP taxation regime (see Section 5 immediately below).

### **(ii) SWISS COMPANY LAW**

As mentioned in Section 1(a)(i) immediately above, the legal provisions for the so called “conditional capital increase” (Article 653–653i of the CO) contain the main rules of Switzerland’s Company Law regulating SOPs. These provisions address an increase to the company’s share capital for the purpose of introducing a SOP, subject to the condition that the employees actually exercise the stock options granted to them. A resolution of the general shareholders’ meeting passed by at least 2/3 of the votes and the absolute majority of the par value of shares represented is required. The shareholders’ resolution and the resulting amendments to the articles of incorporation must contain the following:

- (A) details of the beneficiaries entitled to the stock option rights;
- (B) disapplication of the pre-emption rights of the existing shareholders; and
- (C) specification of the maximum amount of share capital which is reserved for the employees.

Apart from the above mandatory supermajority rule and the related necessary amendments to the articles of incorporation, the Swiss Company Law further provides that the total par value by which the share capital is increased in such manner must not exceed 50% of the current share capital. Furthermore, the payment for such shares must be at least equal to their par value.

**NOTE FOR NON-SWISS COMPANIES.** The above aspects of the Swiss Company Law are not applicable to a non-Swiss entity (*i.e.*, an entity which is not incorporated in Switzerland) which offers stock options to its employees.

### **(iii) SWISS SECURITIES EXCHANGE REGULATIONS**

As explained in the introductory note in Section 1(a)(i) immediately above, in Switzerland, the establishment of SOPs or the payment of any other employee remuneration by means of company equity is basically an issue of Company Law

