NEWSLETTER

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Swiss Federal Tribunal Confirms Broad Right to Inspection of LLC Quotaholders (Article 802 para. 2 CO)

In a decision dated 29 June 2026, case no. 4A_533/2025, the Federal Tribunal confirmed that the right of a limited liability company (LLC) quotaholder to inspect the company's "books" and "records" under Article 802 para. 2 of the Swiss Code of Obligations (CO) extends well beyond accounting records. NKF represented the minority quotaholders throughout the proceedings, obtaining confirmation of a broad right of inspection.

KEY TAKE-AWAYS

1. Broad scope of "books and records"

The right of consultation under Article 802 para. 2 CO is not limited to accounting documents it extends to various other business records of a LLC.

2. Numerous questions not a fishing expedition

A request comprising many questions is not, for that reason alone, a "fishing expedition" provided each question is precisely and specifically formulated.

3. Leading case status

Designated for official publication, this decision is set to become a leading case on the scope of consultation rights in Swiss LLCs.

1. THE DECISION

1.1 The factual background: A quotaholders' dispute over the right to inspection

According to the facts set out by the Federal Tribunal, the dispute arose within a Swiss LLC holding among others a substantial minority stake in a foreign group active in agricultural production. At the annual quotaholders' meeting pertaining to a given fiscal year and in the related financial statements, the company disclosed that it booked a deconsolidation of that stake due to a difficult political environment as well as a substantive impairment of the same. It also announced the closure of its worldwide physical trading platform. A group of minority quotaholders had already requested information and inspection in respect of such deconsolidation and impairment before the meeting, in view of the draft financial statements.

Considering that the answers provided during the annual quotaholders' meeting were incomplete, the quotaholders submitted 22 additional written questions (each question being tied to one of the disclosed events) and formally requested to inspect the company's books and records. Following those requests, the company provided only few of the requested documents (meeting minutes and a legal opinion) and answered only partially to the questions arguing that since the company was submitted to statutory audit, the quotaholders' right of inspection was limited to accounting records and that the extensive questioning was an impermissible "fishing expedition". The quotaholders then sought judicial enforcement of their rights before the Geneva Courts. The Tribunal of First Instance first and then the Court of Justice granted them a right of inspection in broad terms. The Company applied for the annulment of the Court of Justice's decision before the Federal Tribunal.

1.2 The legal question

Article 802 CO grants every LLC quotaholder a right to information on the company's business (para. 1) and, where the company has a statutory auditor, a right, conditional on a legitimate interest, to inspect its "books" and "records" (para. 2). The scope of those terms has divided scholars: one view, pointing out the reference to the statutory auditors, suggests that the right of inspection is limited to documents of an accounting nature, while the prevailing view in legal doctrine reads "books" and "records" broadly, covering correspondence, contracts, business plans, due diligence reports, tax filings and legal opinions, in addition to accounting documents. In its decision, the Federal Tribunal firmly endorsed this broader reading.

1.3 The Federal Tribunal's reasoning and decision

The key elements of the Federal Tribunal's reasoning were the following:

- The scope of Article 802 CO was already broadened by the revision of the LLC provisions (articles 772 et seq. CO), which entered into force on 1 January 2008. Moreover, in 2023, the equivalent joint stock company provision (article 697a CO) itself replaced the narrower term "correspondence" with "books" and "records", aligning its own scope and wording with the LLC standard.
- The personal ties and enhanced duties of loyalty and confidentiality among LLC quotaholders justify an even broader right than for shareholders of a joint stock company.
- A request comprising numerous questions is not, for that reason alone, a "fishing expedition", provided that each question is precisely and specifically formulated.
- A legitimate interest is established where the requested documents would allow the quotaholder to verify the accuracy of information provided by the company on events, which affected the value of their quotas.
- Still according to the Federal Tribunal, the right of inspection extends to documents subject to business secrecy or involving third parties, including correspondence with external counsel, in light of the quotaholders' own statutory duty to safeguard the company's business secrets under Article 803 CO. Legally protected professional privileges apply. In the case at hand, the Federal Tribunal held that the company had not demonstrated why the disputed documents, in particular “correspondence with a law firm”, should not be accessible to the respondent quotaholders, given that this correspondence concerned precisely the transactions which are the object of the inspection request.

The Federal Tribunal thus dismissed the company's appeal in its entirety, confirming that the quotaholders were entitled to inspect, at the company's premises, the full scope of documents ordered by the cantonal courts, not merely accounting records.

2. THE PRACTICAL IMPLICATIONS

This decision, rendered by a five-judge bench and elected for official publication, is set to become a leading case on the scope of the right of inspection in Swiss LLCs. LLCs' managements should therefore keep in mind that:

- The right of inspection available to quotaholders is not limited to accounting documents — it covers correspondence, legal opinions, contracts and internal reports, provided a legitimate interest can be shown;
- A precisely formulated request tied to identifiable events will be hard to challenge as overbroad or as a “fishing expedition", regardless of the number of questions; and
- In light of this decision, companies are well advised to engage constructively with information requests and agree on practical terms for inspection.

If you have further questions or comments on this topic, please reach out to your regular NKF contact.

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