

NewsLetter

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Corporate Governance in Switzerland

Corporate governance is defined as the totality of principles applied in the interest of shareholders, which are intended to achieve transparency and a balanced relationship between direction and control while at the same time leaving space for decision-making capacity and operational efficiency at the top corporate level. In Switzerland, two sets of regulations have been issued recently which deal with corporate governance.

History

So far, Swiss legislation, the listing regulations of the SWX Swiss Exchange ("SWX") and the by-laws and organisational regulations of individual Swiss companies only sporadically contained rules regarding the rights and obligations of shareholders, the rights, obligations, structure and modus operandi of the board of directors as well as the disclosure requirements of a company. Principles of corporate governance were not codified in Switzerland. Furthermore, criticism was directed, for



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example, at the limited options for appointing proxies at general meetings of shareholders, the long deposit periods for shares in connection with carrying out a general meeting of shareholders, non-transparent cross-shareholding situations or the fact that the number of seats on a board of directors is not limited. Thus, the

Swiss business association Economiesuisse, covering all branches of industry, and the SWX have issued a recommendation and a directive, respectively, which describe the principles of corporate governance in Switzerland and define the subject and scope of information pertaining thereto.

Swiss Code of Best Practice

The Swiss Code of Best Practice ("Code") issued by Economiesuisse is soft law and contains non-binding recommendations for corporate governance. The Code is available on the Economiesuisse's website (<http://www.economiesuisse.ch>). The Code is primarily

intended for Swiss public companies but can also serve as a guideline for larger companies not listed on a exchange.

The Code recommends that companies endeavour to facilitate shareholders' participation in general meetings and exercising their legal rights. Therefore, the companies should publish as early as possible the date of the annual general meeting of shareholders and the deadline for the submission of agenda items as well as reduce the thresholds provided by law for the submission of agenda items or the calling of an extraordinary general meeting of shareholders. Furthermore, the companies should endeavour to fix a deadline just a few days ahead of the meeting date for determining those eligible to exercise shareholder rights. Meetings should be structured such that shareholders can comment on agenda items in a concise and factual manner. The board of directors should make an effort, to keep in touch with shareholders and, with the principle of equal treatment in mind, inform shareholders also during the course of the financial year about the development of the company.

According to the Code, the board of directors should plan ahead for successions and address training of its members. It should meet at least four times a year and regularly examine its set of organisational regulations. For important business, it should be able to engage, at the company's expense, the services of external consultants for independent advice. The board of directors should form committees with defined responsibilities, in particular an audit committee, a compensation committee and a nomination committee. Finally, the Code requires that a company should give details regarding corporate governance in its annual report; in this area, the SWX Directive on Information Relating to Corporate Governance applies.

SWX Directive

The SWX Directive on Information Relating to Corporate Governance ("Directive") urges the issuers of securities to make available to investors certain key information

on corporate governance in a suitable form. The subject and scope of this information are defined in an appendix to the Directive. The Directive and the appendix are available on the SWX website (<http://www.swx.com>). The information is to be published in a separate chapter in the annual report. The Directive applies to all issuers whose securities are listed on the SWX and whose registered company address is in Switzerland. Issuers of securities whose registered company address is not in Switzerland also come under the scope of the Directive if their securities are listed on the SWX but not on a exchange in their country of origin. Basically, the principle "comply or explain" applies: if the issuer decides not to disclose certain information, then the reason for not disclosing has to be specifically and substantially explained in the annual report. The Directive is to be implemented for the first time for the business year starting on or after 1 January 2002.

According to the appendix to the Directive, the issuer has to present in the annual report the operational group structure and, if known, significant shareholders or groups of shareholders as well as the extent of their shareholdings. Further, cross-shareholding situations have to be disclosed if the capital shareholding or voting rights on both sides exceed the threshold of 5%. In addition, the capital structure is to be presented with details concerning ordinary, authorized and conditional capital, changes of capital during the last three reporting years and outstanding convertible bonds. Likewise, the number of and conditions pertaining to options issued by the issuer or group companies offering securities of the issuer must be disclosed.

Apart from disclosing name, nationality, education and professional background for each member of the board of directors, information also needs to be provided on, amongst other things, which activities are carried out by a director in management or board positions of other companies, which other permanent management and consulting functions are provided for important interest groups and which official functions and political positions are held. Also, the basis and elements of compensation and shareholding programs for members of the board as well as the total sum of all compensations to board members (such as salary, bonus, payment in kind, allocated options and allocated shares) are to be listed. In a separate item, the highest total compensation received by a director during that reporting year is to be disclosed, but without mentioning the director's name. Similar disclosure rules as for members of the board of directors apply to

members of the executive management. Finally, change of control clauses in agreements and plans benefiting the members of the board of directors and key management (so called "golden parachutes") are to be disclosed. The issuer must provide details about the participation rights of shareholders, in particular voting rights restrictions.

With regard to the auditors, the annual report has to contain information as to when the auditors took on the auditing assignment, when the head auditor responsible for the assignment took up his or her office and the total of the auditor's fee for the reporting year. In addition, fees which have been invoiced during the reporting year by the auditors or persons associated with the auditors for other than auditing services must also be disclosed.

Requirements for Action

In regard of the implementation of the Code and the Directive, certain requirements for action have emerged. It needs to be considered whether the by-laws and organisational regulations of a company require adaptation. Changes may also be required in respect of the preparation and management of the general meeting of shareholders, the selection principles of board members, the appointment of board committees or the handling of risk management or compliance issues.

NewsLetter

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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