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The new Swiss law on accounting and financial reporting became effective on January 1, 2013. With the transitional period coming to a close, enterprises concerned will need to apply the newly implemented legal framework for the business year beginning on or after January 1, 2015. This newsletter aims to present a brief overview on some of the notable changes imposed by the new law and highlight some issues essential for a successful implementation.

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New Swiss Law on Accounting and Financial Reporting – at the Halfway Mark of the Implementation



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The new regulations on accounting and financial reporting impose some notable changes for the vast majority of Swiss enterprises, irrespective of corporate form but linked to their size and commercial relevance. Additionally, the new law more precisely defines assets and liabilities, requires a minimum structure of the balance sheet, the profit and loss statement as well as the notes and expressly sets forth some key valuation principles. Furthermore, it introduces a most welcome modernised approach as to the language and currency of financial reporting.

Duty to Keep Accounts and Prepare Financial Reports

Under the newly imposed legal framework the duty to keep accounts and prepare financial reports is no longer linked to the corporate form of the enterprise but to its size and commercial relevance. Accordingly, corresponding to size and commercial relevance, different levels of accounting and reporting requirements have to be met.

Micro-Sized Enterprises

The new regulations ease the requirements for so-called micro-sized enterprises, i.e. sole proprietorships and partnerships with less than CHF 500'000 sales revenue in the last financial year, associations and foundations not required to be registered with the commercial register and foundations not required to appoint an auditor. These micro-sized enterprises must only keep accounts on receipts and disbursements and provide a simple overview on their financial position.

Small and Medium-Sized Enterprises (SME)

Enterprises of a certain size and commercial relevance, i.e. sole proprietorships and partnerships that have achieved sales revenue of at least CHF 500'000 in the preceding financial year as well as all legal entities, have to keep accounts and prepare their financial reports in accordance with the new law. As under the previous regime, such SMEs are obliged to prepare an annual report consisting of the annual, statutory financial statements, comprising of the balance sheet, the profit and loss statement

and the notes. However, under the new regulations, such enterprises are no longer obliged to prepare a directors' report (*Jahresbericht*).

Larger Enterprises

The new set of regulations defines «larger enterprises» as enterprises required by law to conduct an ordinary audit. In a nutshell, the requirement of an ordinary audit applies to (i) publicly traded companies, i.e. companies listed on a stock exchange or having issued bonds, (ii) entities which exceed two of the following thresholds in two consecutive financial years (a) total assets of CHF 20 million, (b) sales revenue of CHF 40 million or (c) 250 full-time equivalents on annual average, and (iii) entities which are required to prepare consolidated accounts.

Moreover, such larger enterprises are required to prepare a cash flow statement, to provide additional and more detailed information in the notes and to draw up a management report (*Lagebericht*).

Accounting Standards

As under the pre-existing law, the purpose of the new accounting and reporting provisions is to provide a picture of the commercial situation of the enterprise, which may be reliably assessed. This means that the new provisions remain on the pre-existing standard which represents the Swiss interpretation of the international accepted principles of «true and fair view» and «fair representation».

In addition to preparing the statutory accounts, listed companies (if a stock exchange so requires), cooperatives with a minimum of 2'000 members and foundations required to conduct an ordinary audit are obliged to prepare their financial statements in accordance with a recognised financial reporting standard.

Furthermore, among others, shareholders who represent at least 20% of the share capital may also request financial statements to be prepared in accordance with a recognised standard. IFRS, IFRS for SME, Swiss GAAP FER, US GAAP and IPSAS qualify as such recognised financial reporting standards.

Notable Changes

Balance Sheet Eligibility

The new law defines an «asset» as an item which may be disposed of due to past events, from which a future economic benefit in the form of a cash inflow is probable and the value of which may reliably be estimated. Thus, an item meeting these requirements must be shown on the balance sheet as an asset and, by implication, items which do not meet these requirements may not be recognised. Complementarily, liabilities must be entered on the balance sheet if they have been caused by past events, a cash outflow is probable and their value may be reliably estimated.

Minimum Structure

The revised legal framework provides for a minimum structure of the balance sheet with assets and liabilities being prescribed in a statutory sequence. Under this structure, assets are divided into current and non-current assets while liabilities are split up into short-term and long-term liabilities, with a statutory distinction between each of these two categories readily available. In addition, shareholders' equity is required to be shown and structured as required for the legal form of the enterprise concerned. Finally, the new law includes guidelines for the profit and loss statement and adds various additional requirements to the notes' minimal content.

Evaluation of Assets

As some of the most notable consequences of the newly inserted definitions, current assets with a stock exchange price or another quoted market price in an active market have to be recognised together with cash and cash equivalents. Start-up, capital increase and similar (re-)organisational costs may no longer be capitalised. Furthermore, and contrary to the traditional regime which allowed for treasury shares to be treated as assets booked against a reserve position on the liability side, treasury shares now have to be deducted from shareholders' equity. The same rule applies for losses carried forward. Moreover, receivables from and payables to direct or indirect shareholders and related parties as well as receivables from and payables to members of governing bodies of the entity concerned are expressly required to be disclosed separately on the balance sheet or in the notes.

Consolidated Accounts

Under the new rules, the duty to prepare consolidated accounts generally hinges on the fact that one entity controls another entity either (i) by holding the majority of voting securities, (ii) by having the right to appoint and remove the top executive body or (iii) by otherwise exercising a controlling corporate influence. By introducing such a control principle, Swiss lawmakers have moved away from «actual common management» as a determining factor of a duty to draw up consolidated accounts. A controlling entity, when assessed together with all controlled entities concerned, may be exempt from the duty to prepare consolidated accounts if it falls below certain statutory thresholds.

Language and Currency

As a welcome novelty introduced by the new regulations, financial reports may now be presented in one of the official Swiss languages or in English and not

only in Swiss francs as the national currency, but also in the currency relevant to the enterprise's business activities. However, if Swiss francs are not used as the functional reporting currency, all amounts must additionally be shown in Swiss francs with the exchange rate applied published in the notes.

Some Guidance on Implementation

With the transitional period coming to a close, enterprises, if they have not already done so on a voluntary basis, will need to apply the newly implemented framework for the first time for the business year beginning on or after January 1, 2015, with the provisions on consolidated financial statements being applicable in the following business year. When implementing the revised provisions, comparative figures of the preceding year may, due to an obvious lack of consistency and as an express exception to the principal of continuity, be omitted. However, in the second year after implementation, such comparative figures are required.

The transition from the existing accounting and financial reporting framework to the new law requires some foresight and a close coordination with the stakeholders involved. Particularly, any minority shareholders who may request financial statements prepared in accordance with a recognised standard, any accounting services provider and the statutory (external) auditors should be closely involved in the transition process. Finally, practical implications, such as changes to relevant accounting and general enterprise software, accounting manuals and related internal directives and records management processes, should be addressed in time.

The Walder Wyss 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.