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Contents

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1. Introduction

1.1 Forms of Corporate/Business Organisations

The principal forms of corporate organisations in Switzerland are the stock corporation (Aktiengesellschaft/AG) and the limited liability company (GmbH/LLC). The AG is the most important company form; it is suitable for all sizes and types of business and it is the only company form that can be listed on a stock exchange. Both AG and LLC feature a separate legal personality, a predetermined capital divided into shares or quotas respectively and limited liability; ie, liabilities payable only from its assets.

1.2 Sources of Corporate Governance Requirements

The primary sources of law relating to corporate governance are the law on Swiss stock corporations (Article 620ss of the Swiss Federal Code of Obligations; CO, company law) and, for listed corporations, also the Swiss Federal Act on Financial Market Infrastructure and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, or FMIA).

The FMIA entered into force on 1 January 2016. It regulates the organisation and operation of financial market infrastructure and the conduct of financial market participants in securities and derivatives trading. Many provisions that have previously been incorporated in the Swiss Federal Stock Exchange and Securities Trading Act (SESTA) have been transferred to the FMIA. The SESTA is still in force but its content is limited to governing the supervision of securities brokers for professional securities trading.

The FMIA is further specified by ordinances. There are three ordinances on stock exchanges and securities trading, of which one is issued by the Swiss government (Federal Council) directly, a second issued by the Swiss Financial Market Supervisory Authority (FINMA) and a third ordinance regulating public takeovers issued by the Swiss Takeover Board (TOB).

In addition to the issuance of ordinances, the regulator FINMA also has the authority to issue directives (circulars). In response to the financial crisis of 2008-09, the FINMA circular 'Minimum standards for remuneration schemes of financial institutions' (2010/01) became effective on 1 January 2010 and was amended as per 1 January 2017. Furthermore, the circular 'Corporate Governance – insurance companies' (2017/02, which completely revised and replaced the previous circular 2008/35) and the respective circular 'Corporate Governance – banking institutions' (2017/01) entered into force on 1 January 2017, both addressing corporate governance, risk management and the internal control system.

The stock exchanges, SIX Swiss Exchange AG (SIX) and the smaller BX Berne exchange (BX), both self-regulatory organisations under the FMIA, have issued Listing Rules with specific reporting and disclosure requirements. In 2002, SIX enacted its 'Directive on Information Relating to Corporate Governance' (SIX Corporate Governance Directive), the current version dating from May 2018. Its purpose being the overall improvement of corporate governance transparency, the SIX Corporate Governance Directive requires SIX-listed issuers to disclose, in a separate chapter of their annual report, important information on the management and control mechanisms at the highest corporate level, or to give valid reasons for not doing so ('comply or explain'). In addition, the SIX 'Directive on Disclosure of Management Transactions' as amended as of 1 May 2018 obliges issuers with a main Swiss listing and indirectly the members of the board and executive management to disclose and report management transactions in their securities.

Furthermore, following a popular referendum adopted by the Swiss voters in 2013, the Ordinance against Excessive Compensation in Listed Companies (OaEC) entered into force on 1 January 2014, which introduced a binding say-on-pay regime that had to be implemented for the business year 2016. The OaEC is applicable only to stock corporations governed by the Swiss company law, whose shares are listed on a stock exchange in Switzerland or abroad. It does not apply, in particular, to companies that have only listed debt securities or non-voting participation certificates and, in general, to all privately held companies.

Moreover, since 2002, there exists a Swiss Code of Best Practice for Corporate Governance (SCBP) issued by Economiesuisse (www.economiesuisse.ch), the most important association of Swiss businesses from all sectors of the economy. The SCBP sets corporate governance standards in the form of non-binding recommendations ('comply or explain'). It primarily addresses Swiss public companies, but also serves as a guideline for non-listed Swiss companies and organisations of economic significance. It integrates and reflects various provisions of Swiss legislation dealing with corporate governance aspects and seeks to embody a high standard of corporate practice already being observed by many companies in Switzerland. SCBP recommendations cover, for instance, the definition of corporate governance, general shareholder meetings, shareholders' rights to information and inspection, the composition of the board of directors and of board committees, the role of auditors, and compensation for boards of directors and executive boards of public companies. Given the recent changes in law, several aspects of the SCBP have been reviewed and revised with effect from September 2014.

In 2013, an important group of representatives of Swiss institutional investors (such as the Swiss Association of Pension Fund Providers and the Federal Social Security Funds), Swiss businesses (including the Swiss Business Federation, Economiesuisse) and proxy advisers (Ethos fund) published the 'Guidelines for institutional investors governing the exercise of shareholder rights in Swiss listed companies'. Unlike the SCBP, which primarily addresses listed companies, these guidelines are directed towards institutional investors and aim at enhancing good corporate governance by describing best practices for the exercise of shareholders' rights by institutional investors. The guidelines' importance increased as Swiss Pension Funds have been obligated under the OaEC to exercise their voting rights and to disclose their voting decisions since 1 January 2015. Nevertheless, they constitute self-regulating non-binding recommendations.

Finally, Economiesuisse and SwissHoldings, the federation of industrial and services groups in Switzerland, issued in 2014 an additional set of standards named 'Main Features of an effective Compliance Management'. It sets out five principles of an effective compliance management and is meant as a guideline for Swiss multinational enterprises.

1.3 Corporate Governance Requirements for Publicly Traded Companies

Companies with publicly traded shares have to fulfil additional corporate governance requirements. In particular, the OaEC regulates the election and remuneration of the board of directors. The chairperson as well as each member of the board of directors and the members of the compensation committee have to be appointed individually and annually. The board's proposal on the directors', the executive management's and, if any, the advisory board's compensation has to be submitted annually to the shareholders for a binding vote (binding say-on-pay).

Further, the Listing Rules of the SIX and BX foresee specific reporting and disclosure requirements. In addition, the SIX Corporate Governance directive requires SIX-listed companies to disclose important information on the management and control mechanisms at the highest corporate level, or to give valid reasons for not doing so ('comply or explain').

The SCBP also sets out non-binding recommendations regarding the corporate governance of large Swiss entities.

The following analysis will provide further information regarding corporate governance requirements for publicly held (and privately held) companies.

2. Corporate Governance Framework

2.1 Key Rules and Requirements

There are no further key corporate governance rules that are not addressed in the analysis hereinafter.

2.2 Current Issues and Developments

In December 2007, the Swiss Federal Council issued a first draft of a substantially revised stock corporation law (company law). While Parliament had already begun to review the draft bill in 2008, the revision process was significantly slowed down and diverted by the financial crisis. While one part, the new corporate accounting legislation, entered into force on 1 January 2013, the other part – which, in particular, dealt with corporate governance issues – was suspended. In view of the approval of the popular initiative 'Minder' against excessive compensation for board and executive management (leading to the implementation of the OaEC), the Swiss Parliament referred the 2007 legislative draft back to the Federal Council (Swiss government) in 2013. Thereafter, the Federal Council launched a new draft on a substantially revised company law in November 2014 and started a consultation process among interested parties relating to the revised draft company law lasting until March 2015. In November 2016, the Swiss Federal Council finally published its final draft and dispatch, and submitted it to the Swiss Parliament, where it has been controversially debated in several instances. The revision includes many elements of the 2007 draft bill, integrates the OaEC into Swiss federal statutory law, focuses on strengthening shareholder rights and introduces more flexible rules on establishing companies and on capital, and deals with further aspects associated with corporate governance, including gender diversity. The draft provides that women should represent at least 30% of the board of directors and at least 20% of the executive management (the latter requirement having been deleted in a 2019 Parliamentary proposal). Following a 'comply or explain' approach, a company that does not meet these provisions shall be required to state the reasons, and the actions that are being taken to improve the situation, in its remuneration report. The new company law is not expected to enter into force before 2021.

In October 2016, the popular petition 'For responsible companies – for the protection of humans and environment' (Group Responsibility Initiative) was validly submitted for a popular vote. If approved by Swiss voters, it would make companies with their domicile, administrative centre or head office in Switzerland legally responsible for violations of internationally recognised human rights and environmental standards whether committed at home or, possibly through group companies, abroad. Violations shall trigger serious sanctions. The petition is controversially debated in both chambers of Parliament.

With respect to further environmental social responsibility (ESG) issues, since 2017, SIX Exchange Regulation offers listed issuers the opportunity, by means of an opting in, to publish such issuer's commitment to issue a sustainability report annually in accordance with an internationally recognised standard for the benefit of investors. Currently issuers may use as a reporting standard the Global Reporting Initiative, the Sustainability Accounting Standards Board Standard, the UN Global Compact and the European Public Real Estate Sustainability Best Practices Recommendations.

3. Management of the Company

3.1 Bodies or Functions Involved in Governance and Management

In a Swiss stock corporation, three bodies are involved in the governance and management: the general meeting of shareholders, the board of directors and, as to the control, the statutory auditors.

- The shareholder meeting is the supreme authority as set forth in statute and the articles of association. It defines the fundamental organisation of the company, elects the directors and takes the fundamental decisions.
- The board of directors is the executive body. Swiss corporate law provides that the board may pass resolutions on all matters not reserved to the general meeting by law or the articles of association and shall manage the business of the company to the extent it has not delegated such management to individual members or executive management in accordance with organisational regulations.
- The statutory auditor is a controlling body as provided by law. However, in companies with fewer than ten full-time employees, shareholders may unanimously decide not to appoint an auditor. The scope of an auditor's duties depends on the nature and size of the enterprise: listed, large and mid-sized corporations are subject to an ordinary audit, while smaller corporations may be subject to a more limited financial audit only.

3.2 Types of Decisions Made by Governing Bodies

The shareholders' general meeting defines the framework of the company's business activities. In doing so, the general meeting has to decide upon the following matters as they are fundamental non-transferable competences conveyed to the shareholder meeting under company law:

- adoption and amendment of the articles of association, including changes in the share capital, issuance of preferred shares, approval of mergers and changes in the company's corporate structure;
- approval or rejection of the annual business report, including the consolidated financial statements;
- approval or rejection of the use of the balance sheet profit and, in particular, the declaration of dividends;
- election of the members of the board of directors (pursuant to the OaEC in listed companies to be held annually and by individual election of each board member, including the direct election of the chairperson);
- removal of the members of the board at a shareholder meeting;
- election and removal of the members of the compensation committee and of the independent proxy (pursuant to the OaEC) as well as the auditors;
- approval or rejection of the compensation of the board, the executive management and, if any, the advisory board (pursuant to the OaEC);
- release of the members of the board of directors from liability (discharge); and
- matters that are by law or by articles of association reserved to the general meeting of shareholders (special audit pursuant to shareholders' information rights, liquidation of the company, etc).

The board of directors is responsible for the ultimate management and representation of the company. Its core duty is to determine the corporate strategy and allocate corporate resources (strategic governance). In general, the board is authorised to decide all matters that are not reserved to the shareholder meeting or to the auditors by law or by the articles of association, or delegated to the executive management based on organisational regulations.

Statutory law enumerates certain fundamental matters specifically reserved for the board to decide. The following board responsibilities are non-delegable and inalienable:

- performing the ultimate management of the company; in particular, the duty to determine the corporate strategy and allocate the corporate resources (strategic governance);
- defining the fundamental organisational structure;
- setting up an accounting and financial controlling system (including an internal control system for medium-sized and larger businesses) as well as financial planning as far as necessary to manage the company;
- appointing and removing the management as well as granting of signing authority to the individuals authorised to act on behalf of the company;
- ultimately monitoring the individuals entrusted with management responsibilities, in view of compliance with the applicable law, the articles of association, regulations and directives;
- preparing annual business reports and general shareholder meetings as well as implementing its resolutions;
- issuing the annual compensation report on the board's and executive management's compensation, and election of the compensation committee consisting of members of the board (pursuant to the OaEC); and
- notifying the bankruptcy court if the company's liabilities are no longer covered by its assets (over-indebtedness).

Notwithstanding the non-delegable and inalienable nature of these responsibilities, the board of directors may delegate the preparation and execution of its resolutions to committees, but not the decision-making itself. Companies often establish an audit committee, a compensation committee and/or a nomination committee.

The statutory auditors serve as a controlling body by reviewing the annual accounts and the motions made by the board to the general meeting on the allocation of the balance sheet profit and by reporting to the shareholder meeting whether the annual accounts comply with the statutory provisions, the articles of association and the applicable financial reporting standards.

3.3 Decision-making Processes

The shareholders' general meeting is convened by the board of directors. The notice must include the agenda items, and the board's and, if any, shareholders' motions. Resolutions can only be made on motions relating to agenda items that were duly notified (for further information, see **5.3 Shareholder Meetings**). In general, the absolute majority of the votes represented is necessary to pass a resolution and conduct elections.

For certain important resolutions such as an authorised capital increase, introduction of transfer restricted shares, etc, the law requires mandatorily a qualified majority; ie, two thirds of the voting rights represented and the absolute majority of the nominal value of shares represented. In addition, the quorum for a qualified majority may also be increased for other topics by a resolution of the general meeting, satisfying the proposed quorum. In most companies the principle of one share–one vote applies. The articles of association may, however, also provide for voting shares. This may be particularly found in family-controlled companies, private and listed ones.

According to company law, the board of directors' resolutions may be made by a (relative) majority of the votes cast at the meeting. However, the articles of association and the organisational regulations may also require a qualified majority regarding the presence of a minimum of board members as well as the specific vote of the board. In the case of a tie, the chairperson has a casting vote, unless the articles of association provide otherwise. Further, if no member requires a meeting, resolutions may also be taken by circular written resolution.

4. Directors and Officers

4.1 Board Structure

Swiss company law generally provides for a one-tier board model. In practice, however, day-to-day management (except for the non-delegable and inalienable competencies of the board: see **3.2 Types of Decisions Made by Governing Bodies**) is often, and typically in listed companies, delegated from the board to the executive management, thus leading to a two-tier board structure. Such rightful delegation excludes the directors' liability for damages provided that the board applied the necessary care in selecting, instructing and supervising the management. As a particularity, the Swiss Banking Act requires banks to establish a two-tier structure with a functional and personal separation of operative management and supervision. In addition, under the Swiss Ordinance for Supervision of Private Insurance Companies, the chairperson of the board of directors of an insurance company is barred from holding the position of CEO at the same time.

4.2 Roles of Board Members

Swiss company law does not specify the roles of the members of the board of directors in detail.

The chairperson of the board shall ensure the timely and appropriate information of the board members and the preparation of its meetings. The chairperson also acts as a primary contact person to the executive management, chairs the general meeting, represents the company internally and externally, and generally ensures the proper functioning of the board.

Even though the law does not mention the position of vice-chairman, it is advisable to appoint one as the chairperson may be prevented from performing their duties. The scope of the vice-chairman's duties shall be defined in the organisational regulations.

In addition, the board of directors may appoint a secretary who does not need to be a member of the board. The secretary's duties are of mere administrative nature relating to the board's tasks, such as taking the minutes, etc.

The SCBP also recommends the role of a lead director; in particular, to prevent or address any potential conflict of interest situations. The lead director, an experienced non-executive member of the board, may be appointed in the event that a single individual should assume the functions of chairperson and CEO. The appointment of lead directors is not uncommon for listed companies in Switzerland.

4.3 Board Composition Requirements/ Recommendations

Regarding the composition of the board, the current Swiss company law is very flexible and the shareholders enjoy broad discretion. Swiss company law contains no rule on the maximum number of seats, no age restrictions on board members and, so far, no diversity requirement for companies. The current revision of the Swiss company law proposes the introduction of guidelines on gender representation for the boards of directors and executive boards in listed companies (for further details, see **2.2 Current Issues and Developments**). The SCBP emphasises that the board of directors shall be composed of members of both genders. In addition, while, until 2008, there were certain mandatory legal requirements regarding nationality and domicile, today, no such formal prerequisites must be met for a board appointee, with the exception of being a natural person instead of a legal entity.

In regulated industries – in particular, the financial industry – regulation strictly requires the members of the executive bodies of supervised institutions to grant assurance of proper business conduct and required knowledge and experience ('fit and proper'). According to FINMA, the main purpose of these requirements is to maintain public confidence in those institutions and to safeguard the reputation of the financial centre.

Assurance of proper business conduct covers matters of personal character (including criminal records) and professional qualifications required for the proper management of a supervised entity. The principal criterion used in assessing a person's suitability is their past and present business activity.

4.4 Appointment and Removal of Directors/Officers

Only the shareholders may vote on the appointment or the removal of any of the directors. This is permissible whenever a shareholder meeting is held and its agenda provides for the respective election or removal. Significant shareholders are entitled to request the board to convene an extraordinary shareholder meeting and put the requested items on the agenda.

Under the OaEC provisions for listed companies, the chairperson of the board of directors, each member of the board of directors and the members of the compensation committee must be appointed and (re-)elected individually and annually by the shareholder meeting.

Unless otherwise provided by the articles of association, the shareholder meeting passes resolutions on the election and removal of any director by an absolute majority of the votes represented at the respective meeting.

4.5 Independence of Directors and Conflicts of Interest

Swiss company law does not require business corporations to have independent directors.

The SCBP, however, emphasises that independent decisions can emerge only by exchanging ideas and critical views between the board of directors and executive management. It recommends that the majority of the board should consist of independent members, meaning non-executive members of the board of directors who have never or at least not for the last three years been members of the executive board and have no or comparatively minor business relations with the company. Where there is cross-involvement in other boards of directors, the independence of the member in question should be carefully examined on a case-by-case basis. The board of directors may define further criteria of institutional, financial or personal independence. The nomination committee should be predominantly composed of independent directors. For the compensation committee, only independent members of the board of directors should be proposed for election to the shareholders.

For banking and insurance entities, FINMA has issued rules in its circulars 'Corporate Governance – banking institutions' (2017/01) and 'Corporate Governance – insurance companies' (2017/02). Pursuant to these rules, at least one third of the board of a banking entity must consist of non-executive and independent directors. Board members are generally considered to be independent if they are not (and were not during the past two years) engaged in any other function for the respective entity (including the function as auditor). Independent directors shall not maintain significant business relations with the entity that could lead to conflicts of interest and/or act on behalf of significant shareholders.

The SIX Corporate Governance Directive requires for listed companies the publication of information for each non-executive member of the board of directors: (i) whether he or she was a member of the management of the issuer or one of the issuer's subsidiaries in the three financial years preceding the period under review and (ii) whether he or she has significant business connections with the issuer or one of the issuer's subsidiaries.

The statutory duty of care and loyalty requires the directors to perform their duties with all diligence and safeguard the interests of the company in good faith, including avoiding and properly addressing conflict of interest situations. In accordance with case law, resolutions taken by the board in disregard of existing material conflicts of interest of any board member participating in such vote may be null and void. In addition, if a director fails to comply with its duty and favours its own interests over those of the company, any shareholder may hold such director and potentially the board liable for any damage caused and seek indemnification (for D&O liability claims, see also **4.8 Breach of Directors' Duties**).

In practice, companies will often provide for appropriate rules and measures in case of a director's conflicts of interest (such as disclosure of conflict, possible abstention from voting and/or meeting) in their organisational regulations.

4.6 Legal Duties of Directors/Officers

The board of directors is responsible for the ultimate management and representation of the company. Its core duty is to determine the corporate strategy and allocate corporate resources (strategic governance). In general, the board is authorised to decide on all matters that are not reserved to the shareholder meeting or to the auditors by law or by the articles of association, or delegated by the board to the executive management based on organisational regulations. Statutory law enumerates certain fundamental matters specifically reserved for the board for decision (see **3.2 Types of Decisions Made by Governing Bodies**).

4.7 Responsibility/Accountability of Directors

The board owes its fiduciary duties primarily to the company and must represent, and act in, the company's best interests. When determining the best interests of the company, the board, according to the prevailing legal opinion in Switzerland, shall consider the long-term interests of the shareholders as well as those of other stakeholders, such as the company's employees or creditors.

4.8 Breach of Directors' Duties

The board members and the 'de facto directors' (ie, persons not formally appointed as directors but who factually act as directors and significantly influence the company's decision-making process), as well as the members of executive management, are liable for damages caused by intentional or negligent breach of their duties. As a rule, such D&O liability is joint and several, and each director may be held personally liable with his or her own assets.

D&O liability actions may be brought by the company; the shareholders, either directly if they suffered direct damage or as a derivative suit on behalf of the company if a shareholder has suffered an indirect damage (ie, damage to the value of their shares resulting from damage suffered by the company); and, in the event of its bankruptcy only, the company's creditors. However, formal actions against board members are rather rare in practice. Many conflicts end with out-of-court settlements, frequently facilitated (and financed) by D&O insurers. In addition, while Swiss company law contains some rules to address and ease the cost concerns that typically arise in the event of shareholder lawsuits, these rules do not effectively foster shareholders' actions, mainly because they are inapplicable to payments of advances to the courts. Finally, plaintiffs may also prefer actions against auditors, where deemed possible, in search of 'deep pockets'.

4.9 Other Bases for Claims/Enforcement Against Directors/Officers

In addition to the potential claims mentioned under **4.8 Breach of Directors' Duties**, the board of directors of listed companies may be subject to criminal sanctions pursuant to the OaEC if it consciously, "against board's better knowledge", authorises payments to members of the executive management or receives inadmissible remuneration in violation of the applicable say-on-pay regulations (ie, by paying forbidden golden handshake payments, etc).

As a principle, companies cannot validly preclude the liability of directors and executive management in advance. The annual shareholder meeting may, however, grant discharge to the directors and executive management for the preceding business year. As a consequence, the company itself and all shareholders voting in favour of the resolution are precluded from bringing an action against the directors and executive management with regard to facts known to the shareholder meeting at the time.

Often, companies seek D&O insurance coverage for their members of the board and executive management.

4.10 Approvals and Restrictions Concerning Payments to Directors/Officers

For private companies, it is generally the exclusive competence of the board to determine the remuneration of its members and the executive management.

The Swiss Federal Supreme Court has persistently stated that the remuneration must be justifiable with a view to the general financial situation of the company as well as to the relative contributions of the individual board members to the company. This principle also follows from the duty of care and loyalty of board members, which only vaguely limits the board's discretion in determining the remuneration. The Supreme Court exercises restraint in reviewing remuneration decisions as it considers the companies' governing bodies to be best suited to address such issues. In the event of apparently disproportionate remuneration – for example, when there is misappropriation of corporate funds – Swiss company law provides for a special action to recover damages suffered by the company. In addition, excessive misappropriation of funds could, under certain circumstances, also be relevant from a criminal law perspective (disloyal management). For certain financial institutions, the FINMA circular 'Minimum standards for remuneration schemes of financial institutions' sets standards applicable to all employees, including senior management.

Swiss companies with shares listed on a Swiss or foreign exchange, however, are obliged to submit annually the board's proposal on executive compensation to the shareholders for a binding vote (binding say-on-pay). The shareholder meeting has to vote separately on the proposed aggregate amount of compensation for each of the board of directors, the executive management and, if any, the advisory board. In contrast to certain foreign legislations on executive pay, the Swiss OaEC does not, however, impose a limit or maximum amount (cap) on remuneration.

Companies are required to set out the details of the vote on compensation in their articles of association. Various models are possible. It is, for example, possible to vote on fixed compensation for the term until the next ordinary shareholder meeting (prospective vote) and on a performance-based compensation for the closed financial year (retrospective vote). A trend seen in recent AGM seasons is that major Swiss listed companies provide in their articles of association for a vote on a compensation cap, whereby the shareholders shall in advance vote on the maximum amounts of compensation for the respective governing bodies for the coming business year (prospective vote). In addition to such prospective binding vote, some Swiss multinational companies plan to keep a (retrospective) consultative non-binding say-on-pay vote after the respective business year – a bit paradoxically – to address international market expectations and particularly voting guidelines of globally acting proxy advisers. Specific types of executive benefits and compensations – such as loans, credits and pension benefits outside the occupational pension – require an explicit basis in the company's articles of association. This also applies to the maximum terms and the maximum notice periods for service or employment agreements with members of the board of directors and of the executive management; in any event, notice periods or fixed contract terms exceeding one year are impermissible. Certain types of compensation to members of the board and executive management – eg, non-statutory severance payments ('golden parachutes'), undue advanced compensation ('golden hello') or certain types of transaction bonuses – are not allowed. The conscious ("against better knowledge") payment or receipt of impermissible compensation by members of the board of directors, the executive management, or the advisory board (if any) is punishable by imprisonment and a fine.

Following the launch of a public takeover offer, any amendments to executive agreements with senior management members may qualify as defensive measures and as such may not be altered subject to the shareholder meeting and TOB approval. Even in a pre-bid phase, the TOB may, as case law demonstrates, declare null and void any changes to agreements of senior management if fundamental principles of corporate law – in particular, the duty to act in the company's best interests – are disregarded.

4.11 Disclosure of Payments to Directors/Officers

Privately held companies are not required by law to disclose specifically the remuneration, fees, or benefits payable to the directors.

Regarding publicly held companies, however, the applicable regulations under Swiss company law require that the aggregate amounts but also the comprehensive compensation packages of each of the board's members as well as the highest total compensation package among the members of senior management be disclosed separately. That information is to be disclosed in a separate audited compensation report to the shareholders pursuant to OaEC.

The SIX Corporate Governance Directive extends the above-mentioned requirement to all issuers with a primary listing at the SIX Swiss Exchange (ie, with no other main listing) whether incorporated in Switzerland or not. In addition, it requires disclosure of information on the basic principles and elements of compensation and share-ownership programmes as well as the method of its determination.

For banking entities, insurances, funds as well as branches thereof, FINMA has issued rules in its circular 'Minimum standards for remuneration schemes of financial institutions', in effect since 1 January 2010. These rules contain the basic principles and general elements of compensation with regard to all employees, directors and officers of the company.

5. Shareholders

5.1 Relationship Between Companies and Shareholders

The general meeting of shareholders is the paramount body of a company. The shareholders are entitled to elect and remove the board of directors and the statutory auditors.

Swiss company law provides for a variety of rights of shareholders that may be categorised in participation and property rights, including the right to information and inspection, and the right to set the dividends. The SCBP emphasises the importance that shareholders need to be informed in such a way that they can exercise their rights in full knowledge of the relevant facts.

5.2 Role of Shareholders in Company Management

The management of a company is by statutory law conveyed to the managing body (board of directors and executive management). Consequently, shareholders are not supposed to be involved in the management of the company (for their competencies, see **3.2 Types of Decisions Made by Governing Bodies**). Shareholders may, however, try to exert pressure and thus indirectly influence the decision-making process and actions of the board; for example, by formally requesting additional information or a non-binding vote in a shareholder meeting on a specific issue that falls within the competence of the board, by threatening or bringing removal motions relating to certain board members, or shareholders' suits against the company to protect their rights, or against liable directors or officers to penalise non-compliance with statutory duties and recover damages. It is also more common that shareholder activists use the media to make the relevant position of the (dissident) shareholder known to the public.

5.3 Shareholder Meetings

Ordinary and extraordinary shareholder meetings are a core element of corporate governance in Switzerland. The ordinary general meeting has to take place physically once a year within six months of the end of the financial year. Further, extraordinary general meetings are convened as and when required.

In general, the board of directors convenes the general meeting. Further, shareholder(s) who represent(s) at least 10% of the share capital or shares with a nominal value of CHF1 million may request the convening of a meeting. In order to hold a shareholder meeting, the notice convening the meeting must be given no later than 20 days before the date for which it is scheduled. The notice must include the agenda items and the motions of the board of directors, and, if any, of the shareholders who have requested the meeting to take place or an item to be placed on the agenda. These formal invitation rules may be disregarded in the case of a universal meeting where all shareholders or representatives of all the company's shares are present.

When conducting the meeting, every shareholder is entitled to participate and exercise his or her rights in person or by proxy. Based on the OaEC provisions, shareholders of listed Swiss companies may also authorise an institutional proxy, the so-called independent proxy. Such independent proxy needs to be elected by the shareholder meeting and is obliged to exercise the voting rights granted by the shareholders in accordance with his or her respective instructions. Direct remote electronic voting is not yet introduced by law, but listed Swiss companies are obliged to ensure that powers of attorney and instructions for the independent proxy may also be given electronically; in particular, via the internet (indirect electronic voting).

5.4 Shareholder Claims

D&O liability actions may be brought under the Swiss company law in accordance with Articles 754ss CO by the company; the shareholders, either directly if they suffered direct damage or as a derivative suit on behalf of the company if shareholders have suffered an indirect damage (ie, damage to the value of his or her shares resulting from damage suffered by the company); and, in the event of the company's bankruptcy, the company's creditors. See also **4.8 Breach of Directors' Duties**.

5.5 Disclosure by Shareholders in Publicly Traded Companies

Pursuant to the FMIA, significant shareholders who acquire or sell equity securities (shares, options or other financial instruments) of a Swiss listed company (or foreign company primarily listed on a Swiss stock exchange) and, in doing so, reach or cross the threshold percentages of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66⅔ of the voting rights of the company must notify the company and the stock exchange within four trading days. Within two additional trading days, the company shall disclose to the public any reports it has received concerning such changes in the ownership of its shares.

6. Corporate Reporting and Other Disclosures

6.1 Financial Reporting

All companies are obliged to prepare an annual report with the annual accounts, composed of the balance sheet, the profit and loss statement, and the notes to the accounts. Larger companies additionally have to draw up a cash flow statement and a management report. In general, the annual report must be made available to the company's shareholders, but, in private companies, not to the public.

SIX-listed companies must publish audited annual reports and unaudited half-yearly interim financial reports in accordance with International Financial Reporting Standards or, where permitted in the respective trading segment, with alternative recognised accounting standards (such as US Generally Accepted Accounting Principles (US GAAP) or Swiss GAAP-FER).

6.2 Disclosure of Corporate Governance Arrangements

Contrary to privately held companies, listed companies have to fulfil, in particular, the following reporting and disclosure requirements provided for by the SIX Listing Rules.

- A duty to disclose significant shareholdings (see **5.5 Disclosure by Shareholders in Publicly Traded Companies**).
- Ad hoc publicity – as a rule, the company must immediately disclose to the market potentially price-sensitive, not publicly known facts that occur in connection with the business activities of a listed company, including changes to the board or executive management.
- The SIX Corporate Governance Directive requires SIX-listed issuers to include in their annual report a separate corporate governance section concerning important information on the management and control mechanisms at the highest corporate level. Although information on remuneration is compulsory (see **4.10 Approvals and Restrictions Concerning Payments to Directors/Officers**), other broad categories of information – such as group and capital structure, board of directors, auditors, shareholder participation rights, change of control or defence measures, as well as information policy – may be dealt with in accordance with the principle of 'comply or explain'. If the issuer decides not to disclose certain information, it must explain why.
- The SIX Directive on Disclosure of Management Transactions imposes obligations on listed issuers to disclose any buy or sell transactions concluded by the directors and members of the executive management in the respective issuer's equity securities or financial instruments. Each issuer has to ensure that its members of the board and executive management report each management transaction to the issuer within two trading days. The issuer has to publish the notified transaction via the SIX electronic reporting platform for the disclosure of management transactions within three trading days following such notification; the report will be shown without mentioning the individual's name.

6.3 Companies Registry Filings

Swiss companies must file relevant corporate information and changes thereof with the competent Cantonal Registry of Commerce; in particular, changes in the articles of associations, such as changes of corporate purpose, capital structure, any share transfer restrictions, appointments to the board as well as other individuals authorised to sign on behalf of the company. This information is publicly available. Filings must be made upon occurrence and are also published in the Swiss Official Gazette of Commerce.

7. Audit, Risk and Internal Controls

7.1 External Auditors

Depending on the size of the entity, a company has to submit its accounts and financial statements to an ordinary (full) audit, or a limited audit, or there is no audit at all. If there is an audit requirement, the company has to elect an appropriate qualified independent auditor.

An ordinary audit of the annual accounts, and if applicable the consolidated accounts, is necessary for the following companies:

- public companies that trade their shares at the stock exchange, have bonds outstanding, or contribute at least 20% of the assets or of the turnover to the consolidated accounts of a quoted company;
- companies that exceed two of the following thresholds in two successive financial years: a balance sheet total of CHF20 million, sales revenue of CHF40 million, 250 full-time positions on annual average;
- companies that are required to prepare consolidated accounts;
- if the company's shareholders who represent at least 10% of the share capital request so; or
- if the articles of association provide for it or the shareholder meeting decides that the annual accounts are subject to an ordinary audit, even if the law does not require so.

An ordinary audit must be carried out by an external qualified auditor.

If the company is not subject to an ordinary audit, it has to submit its annual accounts for a limited audit by a licensed independent auditor. With consent of all shareholders, a limited audit may be waived if the company does not have more than ten full-time employees.

Auditors are accountable and may be liable to the company and to the shareholders and creditors for losses arising from any intentional or negligent breach of their duties.

7.2 Management Risk and Internal Controls

Swiss financial reporting rules require that companies or groups of companies that have to submit their annual accounts to an ordinary (full) audit (see **7.1 External Auditors**) are subject to a review and confirmation by the auditors as to the existence of an appropriate internal control system. There are, however, no statutory requirements for the specific establishment and effective organisation of the internal control system. This responsibility lays with the board of directors.

Such companies in addition have to report on the company's risk assessment process and the identified material risks in the management report accompanying the annual financial statements. These provisions shall ensure that the corporate risk of medium-sized and large enterprises is regularly monitored and analysed. The ultimate responsibility lays with the board of directors, which has to evaluate material business-related risks in a forward-looking and systematic manner.

In addition, the SCBP also recommends that the board of directors should provide internal control and risk management systems that are suitable for the company. Risk management shall refer to financial, operational and reputation-based risks.

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