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Corporate Governance 2025

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Switzerland: Law and Practice

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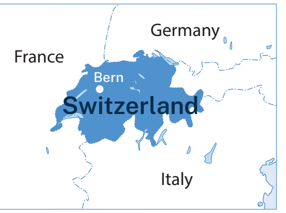

Law and Practice

Contributed by:
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1. Introductory

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 (*Gesellschaft mit beschränkter Haftung* (GmbH) or LLC). The stock corporation is the most important company form; it is suitable for all sizes and types of business and is the only company form that can be listed on a stock exchange. Both the AG and LLC feature a separate legal personality, a predetermined capital divided into shares or quotas and a limitation of liability to their own assets.

1.2 Sources of Corporate Governance Requirements

Primary Sources

The primary sources of law relating to corporate governance are the Swiss Federal Code of Obligations (CO) (namely the Swiss company law in Article 620 et seq. CO) and, for listed corporations, the Swiss Federal Act on Financial Market Infrastructure and Market Conduct in Securities and Derivatives Trading (the *"Financial Market Infrastructure Act"* or FinMIA).

Swiss Company Law

Swiss company law has undergone a comprehensive revision, which came into force on 1 January 2023 (for an overview of various relevant new provisions, see **2.1 Hot Topics in Corporate Governance**).

FinMIA

The FinMIA regulates the organisation and operation of financial market infrastructure and the conduct of financial market participants in securities and derivatives trading.

The FinMIA is further specified by three ordinances on stock exchanges and securities trading:

- the Financial Market Infrastructure Ordinance (FinMIO) is issued by the Swiss government (Federal Council) directly;
- the FINMA Financial Market Infrastructure Ordinance (FinMIO-FINMA) is issued by the Swiss Financial Market Supervisory Authority (FINMA); and
- the Takeover Ordinance (TOO) regulating public takeovers is issued by the Swiss Takeover Board (TOB).

In addition to the issuance of ordinances in its field of competence, the regulatory body FINMA also has the authority to issue directives (circulars). The following are relevant:

- the FINMA circular *"Remuneration schedules"* (2010/01, as amended 4 November 2020), addressing the minimum standards for remuneration schemes of financial institutions; and
- the circulars *"Corporate Governance – insurers"* (2017/02, of 1 January 2017) and *"Corporate Governance – banks"* (2017/01, as amended 4 November 2020), both addressing corporate governance, risk management and the internal control system at insurance companies and banking institutions, respectively.

Listing Rules

The two Swiss stock exchanges, SIX Swiss Exchange AG (SIX) and the smaller BX Swiss AG (BX), both self-regulatory organisations under the FinMIA, have issued listing rules with specific reporting and disclosure requirements, partially amended by the new Financial Services Act (FinSA) as of 1 August 2021. Further, to improve transparency on corporate governance, SIX Exchange Regulation, the regulatory division of SIX, has enacted the *"Directive on Information Relating to Corporate Governance"* (*"SIX Directive Corporate Governance"*), as last amended on 1 January 2023. It requires issuers with a main Swiss listing 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 the Disclosure of Management Transactions"*, as amended on 1 February 2024, requires issuers with a main Swiss listing and (indirectly) their members of the board of directors and of the executive management, to disclose and report transactions of the members of the board of directors and of the executive management in their respective securities.

Furthermore, the revised Swiss company law provides for a statutory say-on-pay regime applicable to the remuneration of the members of the board of directors, executive management and advisory board (if any) of public Swiss companies – ie, stock corporations incorporated under Swiss company law whose shares are listed, either on a stock exchange in Switzerland or abroad. The statutory provisions do not apply, in particular, to Swiss companies that have solely listed debt securities or non-voting participation certificates outstanding, and, in general, not to any privately held companies.

Corporate Governance Standards

The Swiss Code of Best Practice for Corporate Governance, as amended on 6 February 2023 (SCBP), issued by *economiesuisse*, Switzerland's leading business association, following the entry into force of the revised Swiss company law, establishes corporate governance standards in the form of non-binding recommendations (*"comply or explain"*). The SCBP primarily addresses Swiss public companies, but also serves as a guideline for non-listed Swiss companies and organisations of economic significance. Being an effective instrument of self-regulation, it structures, integrates and reflects various Swiss law provisions on corporate governance and accepted corporate practice and sets corporate governance standards. While classified as soft law, the SCBP is widely recognised and observed by many companies in Switzerland (see **2.1 Hot Topics in Corporate Governance**).

Guidelines for Institutional Investors

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) have issued the *"Guidelines for institutional investors governing the exercising of participation rights in public limited companies"*. Unlike the SCBP, which primarily targets listed companies, these non-binding guidelines are directed at institutional investors. They aim at strengthening good corporate governance by outlining best practices for exercising participation rights in Swiss-listed companies. The Guidelines' importance increased when Swiss pension funds became legally required to exercise their voting rights and disclose their voting decisions (today in accordance with the Federal Act on Occupational Old Age, Survivors' and Invalidity Pension Provision (OPA)).

1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares

Companies with publicly traded shares have to comply with additional corporate governance requirements. In particular, the election and remuneration of the board of directors is more strictly regulated. The chairperson, as well as each member of the board of directors, the members of the compensation committee, and the independent proxy, have to be appointed individually and annually by the shareholders' meeting.

The board's proposal on the compensation for the board of directors and for the executive management (and, if any, of an advisory board) has to be submitted annually to the shareholders for a binding vote (binding say-on-pay).

Additionally, the Listing Rules of the SIX and BX establish specific reporting and disclosure requirements and, finally, the SIX Directive Corporate Governance requires SIX-listed companies to disclose key information on the management and control mechanisms at the highest corporate level in their annual business reports – or provide valid reasons for not doing so (*"comply or explain"*).

2. Corporate Governance Context

2.1 Hot Topics in Corporate Governance

In 2024, the adaptation to the revised Swiss company law, which came into force on 1 January 2023, and the implementation of the new features of the new law into Swiss companies' articles of association remained an important topic.

As a reminder, the revised Swiss company law introduced several key changes and governance features, such as the possibility of holding virtual and hybrid shareholder meetings (see **5.3 Shareholder Meetings**) or the introduction of a capital band. Also, the existing mandatory say-on-pay regime for listed companies was transformed into statutory company law.

Another hot topic in 2024 was the first reporting period pursuant to the new ESG/non-financial reporting and due diligence duties introduced in the CO (discussed in **2.2 ESG Considerations**). While these rules were implemented in alignment with EU regulations, the European Union itself has further developed its respective regulatory framework by adopting the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD). In general, the Swiss rules are currently less strict and less far-reaching than the rules in the CSRD and CSDDD. The Swiss government has started its consideration on aligning future ESG regulation with the new EU regulation. However, very recently, both in the EU and in Switzerland, the further development of the respective rules has slowed down significantly. The European Commission has adopted new proposals, so-called Omnibus packages, that intend to simplify EU rules for citizens and business. The measures shall focus the sustainability reporting obligations on the largest companies and shall make sure they do not burden smaller companies.

Lastly, in 2024, the European Court of Human Rights (ECtHR) issued a landmark judgment in Verein Klimaseniorinnen Schweiz and Others v Switzerland, which requests Switzerland to adopt more effective climate measures and meet its reduction targets. Whether, however, this decision will have a palpable impact on Swiss legislation is not seen as very probable.

2.2 ESG Considerations

According to the Swiss Corporate Social Responsibility Action Plan, the Swiss government's approach focuses on:

- sensitising domestic companies to ESG;
- offering support to companies seeking to address relevant issues;
- promoting transparency; and
- establishing a best practice based on international standards.

At the same time, recent ESG-related legislative changes have been introduced, aligning with international legislative developments.

Gender Representation on the Board of Directors and in the Executive Management

Swiss-listed companies exceeding two of the following thresholds in two consecutive financial years – a balance sheet total of CHF20 million, sales revenue of CHF40 million, and/or 250 full-time positions on annual average – are required to implement certain gender quotas for the board of directors (at least 30% of each gender) and the executive management (at least 20% of each gender) under *"comply or explain"* concept (Article 734f CO).

The threshold is calculated at group level. Any company that fails to meet the mentioned requirements must disclose the reasons for missing the quotas in its remuneration report, along with the actions that are being taken to improve the situation. Privately held stock corporations may voluntarily adhere to the gender quotas (opt-in). The quotas are subject to multi-year conformance periods (2026 for boards of directors and 2031 for executive managements) but in practice significant changes in the composition of boards and senior managements are already underway.

Disclosure Obligations Relating to Raw Material Companies

The provisions regarding transparency for raw material companies have been in force since 1 January 2021, and require major companies (ie, those which have to undergo an ordinary audit by law) to issue an annual report on payments made to state bodies, provided they are engaged, either directly or through a controlled entity, in the extraction of minerals, oil or natural gas, or in the harvesting of timber in primary forests (Articles 964d–964i CO).

Non-Financial Reporting Obligations

As of 1 January 2022, the Swiss Parliament implemented new rules regarding *"transparency on non-financial matters"* encompassing new respective reporting obligations for non-financial matters (Articles 964a–964c CO).

The reporting obligations apply to Swiss *"companies of public interest"* ie, Swiss-listed companies and certain FINMA-supervised financial institutions – if they meet certain thresholds on annual average in two successive financial years:

- regarding the number of employees (at least 500 FTE); and
- with either a balance sheet total exceeding CHF20 million or revenues exceeding CHF40 million.

If within scope, the respective companies have to report on the risks of their business activities in the areas of the environment (in particular, CO_2 targets), social concerns, labour concerns, human rights and the fight against corruption, as well as on the measures taken against these risks. Violations of these reporting duties are punishable by criminal sanctions (fines). The rules are largely based on known international provisions, such as Directive 2014/95/EU (the *"Non-Financial Reporting Directive"*) concerning non-financial reporting.

The first report for non-financial matters was required to be published in 2024 for the financial year 2023.

In this context, and in light of the EU's revised Corporate Sustainability Reporting Directive (CSRD) (Directive (EU) 2022/2464), the Swiss Federal Council has identified a need to adapt the recently introduced Swiss regulation. As a result, the Federal Council opened the consultation on new provisions regarding corporate sustainability reporting obligations. Based on the developments in the EU, this revision project has meanwhile slowed down (see **2.1 Hot Topics in Corporate Governance**).

In order to further specify the environmental aspects of the reporting obligations on non-financial matters, on 23 November 2023, the Swiss Federal Council adopted the Implementing Ordinance on Climate Disclosures, which entered into force on 1 January 2024. The Ordinance provides for the mandatory implementation of the internationally recognised recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). Qualifying Swiss companies must report on:

- the financial risk that a company incurs through climate-related activities; and
- the impact of the company's business activities on the climate and the environment.

This so-called double materiality perspective also corresponds to the approach of the EU.

Due Diligence and Disclosure Obligations Regarding Minerals and Metals from Conflict-Affected Areas and Child Labour Companies whose registered office, head office or principal place of business is in Switzerland and whose business involves so-called conflict minerals or that offer products/services that are prone to child labour must further comply with special and far-reaching due diligence and reporting obligations (Articles 964j–964l CO). In particular, the due diligence and reporting obligations in the supply chain arise if a company:

- imports minerals or specific metals containing tin, tantalum, tungsten or gold from conflict-affected and high-risk areas into or processes them in Switzerland; or
- offers products and services in relation to which there is a reasonable suspicion that they have been manufactured or provided using child labour.

In these cases, companies are obliged to set up an adequate management system and stipulate their supply chain policy and a system by which the supply chain can be traced, in order to identify and assess the risks of harmful impacts in their supply chain. In addition, these companies must draw up a risk management plan and take measures to minimise the risks identified. The report on the company's compliance with the due diligence obligations must be approved and signed by the board of directors. The board of directors must ensure that the report is published electronically immediately after approval and remains publicly available for at least ten years.

The Federal Council has additionally issued an Implementing Ordinance on Due Diligence and Transparency for Minerals and Metals from Conflict-affected Areas and Child Labour (DDTrO), which also entered into force on 1 January 2022.

Reporting Obligations on Wage Inequality

In July 2020, the Federal Act on Gender Equality was modified to include reporting obligations on wage inequality. In broad terms, companies with 100 or more employees will be required to complete an equal-pay analysis every four years. The analysis must be audited by an independent, approved third party. The results of the analysis must be shared with the workforce and, if the company is listed, with its shareholders (in the appendix to the annual report).

Private Sector ESG Disclosure Directives and Initiatives

There are several initiatives from the private sector, such as from the Swiss Bankers Association, which has declared sustainable finance as one of its strategic priorities. Among other things, this led to the development of guidelines for the advisory process for private clients. In addition, certain Swiss proxy advisors have developed corporate governance and responsibility guidelines in connection with their voting guidelines.

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 shareholders' meeting;
- the board of directors; and
- the statutory auditors.

Shareholders' Meeting

The shareholders' meeting is the supreme body. It decides the fundamental organisation of the company, elects the board of directors and takes the fundamental decisions.

Board of Directors

The board of directors is the executive body. Swiss company law provides that the board may pass resolutions on all matters not reserved by law or the articles of association to the shareholders' meeting and shall manage the business of the company to the extent it has not delegated such management to individual members or to an executive management in accordance with organisational regulations.

Statutory Auditors

The statutory auditor is a controlling body, elected by the shareholders' meeting. However, in small companies with less 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 Decisions Made by Particular Bodies

Shareholders' Meeting

The shareholders' meeting defines the framework of the company's business activities. In doing so, the shareholders' meeting has to decide upon the following matters, as they are fundamental, non-transferable competences attributed to the shareholders' meeting by 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;
- removal of the members of the board;
- election of the external auditors;
- release of the members of the board of directors from liability (discharge);
- passing of the resolution on repaying the statutory capital reserve;
- liquidation of the company; and
- all other matters that are by law or by the articles of association reserved to the shareholders' meeting (special audit pursuant to shareholders' information rights, etc).

For listed companies, the following additional non-transferable competences are attributed to the shareholders' meeting:

- direct election of the chairperson or the board of directors;
- election and removal of the members of the compensation committee and of the independent proxy;
- delisting of the company's equity securities; and
- approval or rejection of the compensation of the board, the executive management and, if any, the advisory board.

The Board of Directors

The board of directors is responsible for the ultimate management and representation of the company. Its main 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 shareholders' meeting or to the auditors by law or by the articles of association, or that are delegated to the executive management based on organisational regulations.

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

- 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 control 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 shareholders' meetings as well as implementing their resolutions;
- issuing the annual compensation report on the board's and executive management's compensation (only for listed companies); and
- filing an application for a debt restructuring moratorium 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 (*"delegation of decision-shaping but not decision-making"*). Listed companies often establish an audit committee, a compensation committee and/or a nomination committee.

Statutory Auditors

The statutory auditors serve as a controlling body by (i) reviewing the annual accounts and the motions made by the board to the shareholders' meeting on the allocation of the balance sheet profit and by (ii) reporting to the shareholders' 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' meeting is convened by the board of directors. The notice must include the agenda items and the boards' motions (and shareholders' motions, if any). The board of directors is required to briefly explain its proposals. In the case of shareholders' motions, there is an option, but not an obligation, to provide a brief explanatory statement. Resolutions can only be made on motions relating to agenda items that were duly notified (see **5.3 Shareholder Meetings**). In general, the absolute majority of the votes represented is necessary to pass a resolution and conduct elections.

Resolutions

For certain important resolutions (such as the amendment of the company's purpose, the introduction of conditional capital, of a capital band or of transfer restricted shares), the law requires a qualified majority – ie, two thirds of the voting rights represented and the absolute majority of the nominal value of shares represented. A requirement for a qualified majority may also be increased for other matters by a resolution of the shareholders' meeting which satisfies the proposed majority requirement.

With the entry into force of the company law revision, resolutions of the shareholders' meeting may now be passed in writing or by electronic means, unless a shareholder or its representative requests oral deliberation. In addition, the owners or representatives of all the company's shares may, if no objection is raised and provided that the owners or representatives of all the shares participate, hold a plenary meeting – ie, a shareholders' meeting without complying with the applicable regulations on convening meetings.

In most companies, the principle of *"one share, one vote"* applies. The articles of association may, however, also provide for voting shares. These can often be found in family-controlled companies, both private and listed.

Under Swiss company law, the board of directors' resolutions may be passed by a (relative) majority of the votes cast at the meeting. However, the articles of association and the organisational regulations may also introduce a quorum for the presence of a minimum number of board members or for a specific vote of the board. In the case of a tie, the chairperson holds the casting vote, unless the articles of association stipulate otherwise.

Resolutions of the board of directors may be passed in writing by way of circular resolution or electronically (without signatures), provided that no member of the board requests oral deliberation.

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 Decisions Made by Particular Bodies**) is common, and typically in listed companies, delegated from the board to an executive management, thereby leading to a two-tier board structure. Such rightful delegation excludes the directors' liability for damages relating to the delegated day-to-day management (but not the core duties) provided that the board applied the necessary care in selecting, instructing and supervising the management.

As a particularity and exception, banks and private insurance companies are required by law to establish a two-tier structure with a functional and personal separation of operative management and supervision.

4.2 Roles of Board Members

Swiss company law generally does not specify the roles of the members of the board of directors in much detail. These roles have to be specified in the organisation regulations.

Chairperson

The chairperson of the board should 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 shareholders' meeting;
- represents the company internally and externally; and
- generally ensures the proper functioning of the board.

As previously stated, the duties of the chairperson are usually further specified in the organisational regulations.

Even though the law does not explicitly mention the position of the vice-chairperson, it is advisable to appoint one in case the chairperson is unable to perform their duties. Again, the scope of the vice-chairperson's duties should be defined in the organisational regulations.

Other Appointments

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

The SCBP also recommends the role of a lead independent director, particularly to prevent or address any potential conflict of interest situations. The lead independent director, an experienced non-executive member of the board, may be appointed in the event that a single individual assumes 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, current Swiss company law is flexible and the shareholders enjoy broad discretion. Swiss company law contains no rules on the maximum number of seats and no age restrictions on board members. However, listed Swiss companies must observe the newly implemented gender representation guidelines for the board of directors in listed companies (see **2.2 ESG Considerations**).

Regulated Industries

In regulated industries – particularly in the financial sector – regulations require 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 Swiss 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. As to the requirements regarding the composition of the board relating to independent directors, see **4.5 Rules/Requirements Concerning Independence of Directors**.

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 shareholders' meeting is held and its agenda provides for the respective election or removal. Significant shareholders (see **5.3 Shareholder Meetings**) are entitled to request the board to convene an extraordinary shareholders' meeting and put the requested items on the agenda.

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 shareholders' meeting. In non-listed companies, the elected board members may resolve on the board's organisation, constitution and its members' functions, and notably may appoint the chairperson among its elected members without a shareholders' vote.

Unless otherwise provided by the articles of association, the shareholders' 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 Rules/Requirements Concerning Independence of Directors

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

The SCBP, however, emphasises that well-founded decisions can emerge only by exchanging ideas and critical views among the members of the board of directors and the executive management. Therefore, it recommends that the majority of the board should consist of independent members. Independent members are deemed to be non-executive members of the board who:

- have never been a member of the executive management or, if they have, then more than three years ago;
- have never served as lead auditor or who served as lead auditor more than two years ago; and
- have no or only minor business relations with the company.

The board of directors may establish further criteria for independence. Importantly, in cases of cross-involvement with other boards, the independence of the member in question should be carefully examined on a case-by-case basis.

According to the SCBP, 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 by the shareholders. Members who have reciprocal board memberships – ie, a committee member responsible for co-determining the compensation of a member of the board of directors or the executive management under whose supervisory or directive authority the committee member serves in another company – should not be proposed.

Banking and Insurance

For banking and insurance entities, FINMA has issued rules in its circulars *"Corporate Governance – banks"* (2017/01) and *"Corporate Governance – insurers"* (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 have not been during the past two years) engaged in any other function for the respective entity (including as auditor). Independent directors should not maintain significant business relations with the entity that could lead to conflicts of interest and/or should not act on behalf of significant shareholders.

Conflicts of Interest

The statutory duty of care and loyalty requires directors to perform their duties with due care and safeguard the company's interest in good faith, including avoiding and properly addressing conflicts of interest. If a director fails to comply with its duty and favours personal interests over those of the company, any shareholder may hold such a director, and potentially the board, liable for any damage caused by such a breach of the duty of loyalty, and seek indemnification (for D&O liability claims, see **4.8 Consequences and Enforcement of Breach of Directors' Duties**).

Members of the board of directors and of the executive management should promptly inform the board of directors of any conflicts of interest affecting them. However, board members are not required to be completely *"disinterested"*; for the conflict to be considered relevant, it needs to be of a certain intensity. The board of directors must then decide on and take the appropriate measures required to safeguard the company's interests. For an overview of such measures and further guidance, the SCBP can be consulted.

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

4.6 Legal Duties of Directors/Officers

The board of directors is responsible for the ultimate management and representation of the company. Its main 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 shareholders' meeting or the auditors (by law or by the articles of association), or that are delegated to the executive management based on organisational regulations.

Statutory law enumerates certain fundamental matters specifically reserved for the board for decision-making (see **3.2 Decisions Made by Particular Bodies** for more details).

4.7 Responsibility/Accountability of Directors

The board owes its fiduciary duties primarily to the company, and must represent it and act in its best interests. When determining the best interests of the company, the board, according to the prevailing legal opinion in Switzerland, should 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 Consequences and Enforcement of Breach of Directors' Duties

The board members and *"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 the executive management, are liable for damages caused by intentional or negligent breach of their duties. As a rule, directors' and officers' (D&O) liability is joint and several, and each director may be held personally liable. Under the business judgement rule, as developed by Swiss case law, any business decision made without conflicts of interests in a proper and reasonably informed manner does not constitute a breach of obligations, even if it turns out to have been materially wrong in retrospect.

The expected level of care is generally assessed based on an objective standard. However, specialist knowledge may result in a higher standard when assessing the actions of an individual board member.

Liability Actions

D&O liability actions may be brought by the company, shareholders, and – in the event of bankruptcy, the company's creditors. Shareholders' actions can be direct, if they suffered direct damage, or indirect (as a derivative suit), if they seek to act on behalf of the company due to indirectly caused damages (ie, damage to the value of their shares resulting from damage suffered by the company). 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 Consequences and Enforcement of Breach of Directors' Duties**, the board of directors or the executive management of listed companies may be subject to criminal sanctions pursuant to the Swiss Criminal Code, if they pay or accept prohibited remuneration (see **4.10 Approvals and Restrictions Concerning Payments to Directors/Officers**). It follows that decisions on remuneration for the board and executive management and their subsequent payment or receipt, respectively, have to be carefully prepared in compliance with Swiss company law and related criminal law.

As a general principle, companies cannot validly preclude the liability of directors and executive management in advance. The annual shareholders' meeting may, however, grant discharge to the directors and the executive management for the preceding business year. As a result, the company and any shareholders who voted in favour of the resolution are precluded from bringing an action against the directors and executive management for any facts that were known to the shareholders' meeting at that time.

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

The Swiss Federal Supreme Court has consistently stated that remuneration must be justifiable in relation to both the company's overall financial situation and the relative contributions of the individual board members. This principle also derives from the duty of care and loyalty of board members, which only vaguely limits the board's discretion in determining the remuneration. The Swiss Federal Supreme Court exercises restraint in reviewing remuneration decisions as it considers the companies' governing bodies to be best suited to address such issues.

Say-on-Pay

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

Companies are required to specify the details of the vote on compensation in their articles of association. Various models are possible. For example, shareholders may vote on fixed compensation for the term until the next ordinary shareholders' meeting (prospective vote) or on performance-based compensation for the previous financial year (retrospective vote). Many major Swiss-listed companies include in their articles of association a provision for a vote on a compensation cap, whereby the shareholders vote in advance on the maximum amounts of compensation for the respective governing bodies for the upcoming business year (prospective vote). If variable remuneration is subject to a prospective vote, the remuneration report must be submitted to the shareholders' meeting for a consultative vote.

According to the revised SCBP, the board of directors may link variable remuneration to specific compliance and other sustainability objectives. Furthermore, the remuneration system should be designed in such a way that total compensation is reduced if certain objectives are not achieved (*"malus"*). The remuneration system may also include a provision in the contracts with top executives that, beyond the legal requirements, reserves the right to claw back compensation that has already been paid under certain conditions (*"claw-back"*).

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 not permitted.

Certain types of compensation to members of the board and executive management – eg, sign-on bonuses that do not compensate for an actual financial disadvantage, non-statutory severance payments (*"golden parachutes"*), undue advanced compensation (*"golden hello"*) or certain types of transaction bonuses – are not allowed. The payment or receipt of such impermissible compensation by members of the board of directors, executive management, or advisory board (if any) is punishable by imprisonment and fines.

Special Requirements During Public Bids

Following the launch of a public takeover offer, any amendments to executive agreements with executive management members may qualify as defensive measures and as such may not be altered subject to the approval by the shareholders' meeting and a review and approval by the TOB. Even in a pre-bid phase, the TOB may, as case law demonstrates, declare changes to agreements of executive management null and void if fundamental principles of company 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 specifically disclose the remuneration, fees or benefits payable to their directors and executive management. For publicly held companies, however, Swiss company law requires the disclosure of the respective aggregate remuneration amounts for both the board and the executive management, the total compensation of each of the board members as well as the highest total compensation among the members of executive management (but not the specific compensation of the other members of executive management). All this information is to be disclosed in a separate audited compensation report to the shareholders.

The SIX Directive Corporate Governance 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 of the method of its determination.

For banking entities, insurances, funds and branches thereof, FINMA has issued rules in its circular *"Remuneration Schedules"*. These rules contain the basic principles and general elements of compensation with regard to all employees, directors and officers of the company. However, implementation of these rules is only compulsory for larger banks and insurance companies.

5. Shareholders

5.1 Relationship Between Companies and Shareholders

The shareholders' meeting 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 grants shareholders a variety of rights, which can be categorised in (i) participation and (ii) property rights. These include the right to information and inspection as well as the right to determine dividends. The SCBP emphasises the importance of providing comprehensive information to shareholders to enable them to exercise their rights on a fully informed basis.

5.2 Role of Shareholders in Company Management

By statutory law, the management of a company is entrusted to its governing bodies (board of directors and executive management). Consequently, shareholders are not supposed to be involved in the management of the company (for their competences, see **3.2 Decisions Made by Particular 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 shareholders' meeting on a specific issue that falls within the competence of the board; or
- by threatening or bringing removal motions relating to certain board members, or through shareholders' claims against the company to protect their rights, or against liable directors or officers to penalise non-compliance with statutory duties and to recover damages.

Some shareholder activists also use the media to make the relevant position of the (dissident) shareholder known to the public.

5.3 Shareholder Meetings

Ordinary and extraordinary shareholders' meetings are a core element of corporate governance in Switzerland. The ordinary shareholders' meeting takes place either physically, virtually, or in a hybrid form once a year within six months of the end of the financial year. The in-person meeting may also be held abroad if explicitly provided for in the articles of association and if the chosen venue does not make it unreasonably difficult for shareholders to exercise their rights. Provided that the interventions of the participants are broadcasted to all venues, it is also possible to hold a shareholders' meeting simultaneously at several venues in Switzerland and/or abroad.

At a hybrid shareholders' meeting, shareholders who are unable to attend the meeting in person may exercise their rights electronically. It is further possible to hold shareholders' meetings entirely virtually without an in-person meeting, provided that the articles of association contemplate this format.

Further, extraordinary shareholders' meetings may be convened as and when required.

Convening a Meeting

In general, the board of directors convenes the shareholders' meeting. In order to validly hold a shareholders' meeting, the notice convening the meeting must be given at least 20 days before such meeting date. Further, shareholder(s) of a listed company may request the convening of a shareholders' meeting, provided they hold at least 5% of the share capital or the voting power in the company. If the board of directors receives a request to convene a shareholders' meeting, the board must act within an appropriate timeframe. In privately held companies, the convocation of a shareholders' meeting may be requested by shareholder(s) holding at least 10% of the share capital or the voting power in the company.

The notice must include the agenda items and the motions of the board of directors, and, if any, of the shareholders who have requested an extraordinary meeting to take place or solely requested 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 company shares are present.

Shareholder Participation

When holding the meeting, shareholders are entitled to participate and exercise their rights personally (see **5.3 Shareholder Meetings**) or by a proxy. Shareholders of listed companies may also authorise an institutional proxy, the so-called independent proxy. Such an independent proxy needs to be elected by the shareholders' meeting and has to exercise the voting rights granted by the shareholders in accordance with their respective instructions. The independent proxy must keep the voting instructions of shareholders confidential. Where the shareholders' meeting has not appointed an independent proxy and there are no specific rules in the articles of association, the board should appoint one ahead of a next shareholders' meeting.

5.4 Shareholder Claims

Under Swiss company law, D&O liability actions may be brought against the members of the board and executive management by:

- the company;
- the shareholders (see **4.8 Consequences and Enforcement of Breach of Directors' Duties**); and
- in the event of the company's bankruptcy, the company's creditors (see **4.8 Consequences and Enforcement of Breach of Directors' Duties**).

5.5 Disclosure by Shareholders in Publicly Traded Companies

FinMIA requires that significant shareholders who acquire or sell equity securities (shares, any kind of rights to buy or sell including options or other financial instruments) of a Swiss-listed company (or foreign company primarily listed on a Swiss stock exchange) must notify the company and the stock exchange within four trading days if their holdings reach or cross any of the following voting rights thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 33.33%, 50% or 66.66%. Within two additional trading days, the company must publicly disclose to the market 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 Swiss 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 must additionally draw up a cash flow statement and a management report. In general, the annual report must be made available to the company's shareholders. In private companies, however, it does not have to be disclosed to the public.

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

6.2 Disclosure of Corporate Governance Arrangements

In contrast to privately held companies, listed companies and their shareholders have to fulfil certain reporting and disclosure requirements provided for by the SIX Listing Rules, starting with a duty to disclose significant shareholdings (see **5.5 Disclosure by Shareholders in Publicly Traded Companies**). Further requirements include the following.

Ad Hoc Publicity

As a rule, a listed company must immediately disclose to the market any non-publicly-known, price-sensitive facts that arise in connection with its business. A fact is considered price-sensitive if its disclosure is likely to cause a significant change in market prices and influence a reasonable market participant's investment decision (ex ante determination). A price change is deemed significant if it substantially exceeds the usual price fluctuations.

The SIX Listing Rules and the SIX Directive on Ad Hoc Publicity were partially revised in 2021, with the following main changes:

- the new regulations repeal the practice of per se price-sensitive information and leave the determination of whether information is price sensitive to the issuer (other than for the annual and interim reports);
- ad hoc announcements containing price-sensitive information must now be flagged as such (*"Ad hoc announcement pursuant to Article 53 SIX Listing Rules"*) and be made separately available and easily identifiable on the issuer's website; and
- additionally, issuers are required to implement adequate and transparent internal rules or processes to ensure the confidentiality of price-sensitive facts whose disclosure has been postponed.

Information on Management and Control Mechanisms

The SIX Directive Corporate Governance 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, and information policy – may be dealt with in accordance with the principle of *"comply or explain"*.

Management Transactions

The SIX Directive on the Disclosure of Management Transactions imposes obligations on listed issuers to disclose any buy-or-sell transactions concluded by their directors and members of the executive management (including related parties) in the respective issuer's equity securities or financial instruments. Each issuer has to ensure that its board members 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 any changes thereto with the competent cantonal commercial registry. This includes amendments to the articles of association, such as a change to the corporate purpose, the capital structure, share transfer restrictions, and appointments to the board, as well as changes to other authorised signatories. This information is publicly available from the competent commercial registry. Filings must be made upon occurrence and are also published electronically in the Swiss Official Gazette of Commerce.

7. Audit, Risk and Internal Controls

7.1 Appointment of External Auditors

Depending on the size of the entity, a company has to submit its accounts and financial statements to an ordinary (ie, full) audit or a limited audit. No audit requirement exists for smaller companies with less than ten full-time employees, if their shareholders unanimously resolve to opt out of the audit requirement. 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 required for the following companies:

- public companies that trade their shares at a stock exchange, have bonds outstanding, or contribute at least 20% of the assets or of the turnover to the consolidated accounts of a listed company;
- companies that exceed two of the following thresholds in two consecutive financial years – a balance sheet total of CHF20 million, sales revenue of CHF40 million, and/or 250 full-time positions on annual average;
- companies that are required to prepare consolidated accounts;
- where the company's shareholders who represent at least 10% of the share capital so request; or
- where the articles of association provide for it or the shareholders' 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 the elected external auditor. If the company is not subject to an ordinary audit, it has to submit its annual accounts for a limited audit. 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 Requirements for Directors Concerning Management Risk and Internal Controls

Swiss financial reporting rules require that companies or groups of companies subject to an ordinary (full) audit (see **7.1 Appointment of External Auditors**) undergo a review (to be confirmed by the auditors) regarding 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 lies with the board of directors. An exception applies to banks and private insurance companies, for which FINMA has set forth specific requirements regarding risk management and internal controls in the relevant circulars (*"Corporate Governance – banks"* and *"Corporate Governance – insurers"*, respectively).

Such companies additionally 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 should ensure that the corporate risk of medium-sized and large enterprises is regularly monitored and analysed. The ultimate responsibility lies 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; it should encompass risk management, compliance and financial monitoring. In addition, the effectiveness of the internal control system should be assessed by an internal audit.

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