

# Corporate Governance in Switzerland

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## General framework

The main corporate entities used to conduct business in Switzerland are the stock company, the most common form of companies and the subject of this short article, and the recently overhauled limited liability company.

Companies' corporate governance is governed by the relevant provisions of the Swiss Code of Obligations and, as far as voluntary corporate restructuring is concerned, the Federal Act on Mergers. Additional requirements, mainly based on the principle of self-regulation, apply to listed companies. Regulation applying to the financial sector also includes aspects of corporate governance.

The umbrella organisation representing the Swiss economy, *économie suisse*, published in 2002 the Swiss Code of Best Practice for Corporate Governance ("SCBP"). These non-binding recommendations intended for listed companies and economically significant entities represent the current standard of practice widely accepted by Swiss companies. In 2007 the SCBP was supplemented by ten recommendations on directors' and managers' compensation.

## Structure of management

The board has quite broad flexibility in its organisation and can either manage the company itself, allocate management responsibilities to certain directors or delegate them to officers – within the limits of the so-called non-delegable powers of the board (general strategy and organisation, supervision of the management, financial reporting to the shareholders, etc.) – as provided for in the by-laws and specified in organisational regulations.

In practice, the management and the board are usually clearly separated,

especially in large companies where it is recommended that the majority of the board be non-executive; in fact 90% of listed company directors are non-executive.

The board should establish committees, including an audit committee, a compensation committee and a nomination committee, whose tasks are detailed in the SCBP.

A majority of the audit committee and all members of the compensation committee should be independent. As a rule a non-executive director is independent if he or she is not involved in management or was involved more than three years ago or has no (or comparatively minor) business relations with the company.

The ordinary term of directors should not generally exceed four years, and staggered terms are desirable.

The board should determine whether one person can simultaneously be the chairman of the board and the CEO, depending on reasons specific to the company or relating to the availability of senior management. If one person holds both roles, the company should exercise adequate control, for example by appointing a non-executive lead director.

## The General Meeting of the Shareholders

The general meeting of the shareholders has non-delegable powers encompassing the modification of the by-laws, the election and removal of the directors and the auditors, the approval of the annual report, the use of the annual profit, the modification of the share-capital.

The ordinary general meeting must take place within six months after the end of the business year; more stringent deadlines apply to listed companies.

Save for specific decisions which require a higher threshold, decisions are generally passed with a majority of the votes allocated to the shares represented (majority vote).

Shareholders that either represent at least 10% of the share capital or hold shares of a par value of at least CHF 1 million can (US\$ 950,000) request that the board convene a general meeting and/or include specific items in the agenda. The SCBP recommends that the by-laws lower these thresholds to facilitate the exercise of shareholders' rights.

At the general meeting, directors must provide shareholders, at their request, with information concerning the company to the extent that is necessary to exercise shareholders' rights, provided this does not jeopardise business secrets or other company's interests. Shareholders can only inspect company books and correspondence if they are authorised to do so by the general meeting or the board.

A shareholder can propose that specific facts be subject to a special audit if necessary, provided he has already exercised his right to information or inspection. If the proposal is rejected by the general meeting, shareholders can ask the court to appoint a special auditor, if they either hold at least 10% of the share capital or shares with a par value of at least CHF 2 million.

## Remuneration

In addition to the general requirements of company law, the recently revised SCBP provides for ten detailed recommendations regarding the remuneration of directors and managers.

In particular, the remuneration should be commensurate to market conditions and be conditional on the company's sustainable success and the individual contribution; it should reward medium and long-term interests. False incentives should be avoided.

The dilution effect caused by share option schemes should be minimised, and the conditions for exercising options should not be subsequently modified in the option-holder's favour.

As a rule, the company should not grant golden parachutes or severance compensations.

The board should establish a compensation report for the general meeting and involve the shareholders in the compensation system by bringing it into the discussion regarding the approval of the financial statements or by submitting it to a consultative vote of the general meeting.

The board should ensure transparency and provide information that is readily comprehensible.

Listed companies must disclose the content and method of determining directors' remuneration, including the authority and procedure.

Listed companies must disclose in the notes to the financial statements remuneration, loans and guarantees to directors (on an individual and aggregate basis), senior managers (on an aggregate basis), and the senior manager with the highest remuneration. All participation rights in the company's share capital (as well as convertibles and option rights) held by directors and senior managers must be disclosed on an individual basis.

### Conflict of interests

Generally, a director should not participate in a decision where he or she has a conflict of interest, and the other directors should ensure that he or she does not do so.

The SCBP sets out the legal framework and procedure to be followed should a conflict of interest arise, and recommends that anyone with a permanent conflict of interest should not be a board member.

Transactions between a director (or his or her relatives) and the company should be carried out at arm's length and approved without the participation of the person concerned. As a rule, the agreement must be in writing.

The board should take measures to prevent insider trading (such as declaring periods of

time during which the directors cannot deal in the company's securities) in connection, e.g., with, takeovers, before media conferences or announcing corporate results.

Directors or managers who trade listed shares of the company or inform third parties based on important confidential information which are likely to have a significant influence on the shares' market price are subject to criminal liability (insider trading).

### Disclosure of information

General information on companies is publicly available (most of it online) from the Trade Register and/or is published in the Swiss Official Gazette of Commerce.

The board must inform in writing any shareholder or creditor who can prove an interest worthy of protection of how management is organised.

Listed companies must disclose their internal organisation and the allocation of responsibilities. Information on the activities of non-executive directors, their vested interests outside the company and their (former) connections with the company must be disclosed (see also above regarding the disclosure of the remuneration system).

In addition, listed companies are subject to stringent disclosure requirements regarding the regular publication and the availability of financial statements, the changes to shareholding structure and ad hoc publicity.

They must disclose to the SWX Stock Exchange ("SWX") the direct or indirect purchase or sale of the company's securities by directors and senior managers. If a transaction or the total value of the transactions concluded by one person within one calendar month exceeds CHF100,000, the SWX makes the information publicly available.

### Internal controls, accounts and audit

It is part of the general duties of the board to set up an internal control corresponding to the size and the type of the company and covering financial and operational risks. In addition, the notes to the financial statements must disclose information on the

implementation of risk evaluation measures; the statutory auditors of companies subject to a regular audit (see below) must certify the existence of an appropriate internal control.

There are two different sorts of audits, namely the regular audit and the limited audit, which depend on the size of the company, whether the company is listed or has issued bonds, or whether it has to establish consolidated financial statements. Shareholders representing 10% of the voting rights may request that a company subject to a limit audit be subject to a regular audit (opting-up). The shareholders of small companies having less than ten full-time employees may choose, by a unanimous vote, to ease or to waive the requirements of the limited audit (opting-down or -out).

Auditors have to be registered with the Federal Auditing Oversight Authority. In addition, auditors of listed companies or having issued bonds are supervised by this Authority.

Auditors must be independent. Detailed rules set forth the scope of the independence which depends on whether the auditors perform regular or limited audits.

Listed companies must apply accounting standards recognised by the SWX and their auditors must be approved by the SWX.

### Proposals of reform

A thorough reform of company and accounting law is to be discussed by Parliament. The main issues relate to corporate governance, the structure of the share capital, general meetings of the shareholders and accounting and financial reporting requirements.

The government has been asked to prepare a draft bill to protect persons who internally or publicly reveal cases of bribery or other irregularities which have been discovered at their place of work from abusive dismissal and other discrimination.

The scope of insider trading prohibition will be extended in the near future by removing the current narrow definition of important facts. Price manipulation on stock exchanges will also be revised. ●