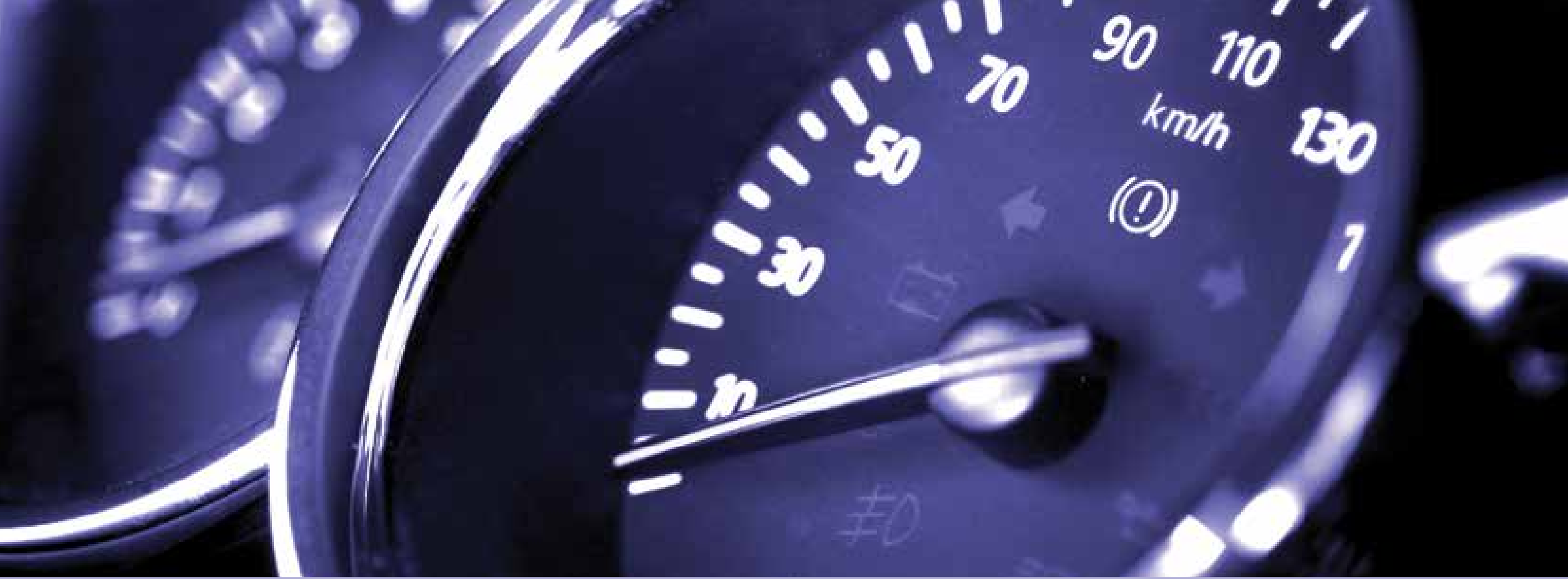

ICLG

The International Comparative Legal Guide to:

Corporate Governance 2016

9th Edition

A practical cross-border insight into corporate governance

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EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Corporate Governance.*

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 30 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Bruce Hanton and Vanessa Marrison of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The companies covered in the answers below are organised as stock corporations.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The primary sources of law relating to corporate governance in Switzerland are the following:

- Swiss Federal Code of Obligations (CO), in particular Art. 620 *et seq*., which governs stock corporations. These rules are in part mandatory and in part non-mandatory, and apply (with exceptions) to any Swiss corporation, whether privately held or listed on a stock exchange.
- Swiss Ordinance against Excessive Compensation with respect to Listed Companies (OaEC), which implements provisions of the Swiss Federal Constitution resulting from the affirmative vote of the Swiss people on 3 March 2013 on the so-called Minder Initiative. The OaEC entered into force on 1 January 2014 and will apply until the Swiss Parliament has translated the Minder Initiative into formal law.
- Swiss Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) and its implementing ordinances which contain, *inter alia*, rules regarding the disclosure of significant shareholdings, and public takeover offers with respect to Swiss companies listed on a stock exchange in Switzerland or non-Swiss companies having their primary listing in Switzerland.
- Listing rules of the SIX Swiss Exchange (Listing Rules) and the implementing directives and circulars which contain, *inter alia*, periodic financial reporting and other continuing and *ad hoc* reporting rules applying to companies whose shares are listed on the SIX Swiss Exchange. The SIX Swiss Exchange holds the status of a self-regulatory organisation under the FMIA.
- Directive on Information relating to Corporate Governance (SIX-DCG) of the SIX Swiss Exchange which requires issuers whose equity securities have their primary or main listing on SIX Swiss Exchange to disclose in their annual reports certain information on the group and capital structure, shareholders (including their participation rights), board of directors and executive board (including their compensation as well as share and option plans), the control mechanisms and defence measures in the case of control changes as well as auditors and information policy.
- Directive on the Disclosure of Management Transactions (SIX-DMT) of the SIX Swiss Exchange which requires issuers whose equity securities have their primary listing on SIX Swiss Exchange to disclose transactions in the company's own shares and related instruments by members of the board of directors and the executive board.
- Swiss Code of Best Practice for Corporate Governance (SCBP) issued by *economiesuisse*, the largest umbrella organisation representing the Swiss economy in Switzerland, which sets corporate governance standards in the form of non-binding recommendations, primarily for public Swiss companies.

In addition, companies have articles of association and internal organisational regulations which, within the limits of the law, may provide for additional rules in the area of corporate governance.

Special or different rules on corporate governance exist in Switzerland for banks and insurance companies as well as for investment companies with variable capital (SICAV) or fixed capital (SICAF) within the meaning of the Swiss Federal Act on Collective Investment Schemes (CISA). Particularly noteworthy is the Circular on Minimum Standards for Remuneration Schemes of Financial Institutions (Remuneration Circular) issued by the Swiss Financial Market Supervisory Authority (FINMA) that has been in effect since 1 January 2010 and sets minimum standards for remuneration schemes of banks, insurance companies and other financial institutions (see question 3.3).

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The financial crisis and the subsequent economic downturn not only fuelled the public discussion on corporate governance topics like management compensation, transparency and shareholder rights, but also increased demand on the political and regulatory level for stricter rules for banks and other financial institutions in particular, in addition to other public companies.

On 3 March 2013, the Swiss people and cantons accepted the Minder Initiative, a popular initiative originally submitted in 2008. The initiative introduces two new paragraphs in the Swiss Federal Constitution that provide for relatively general principles on the corporate governance regime applicable to Swiss listed companies. The new constitutional provisions do not contain a detailed legislative framework and are not self-executing. Therefore, implementing legislation must be drafted. The Federal Council will have to submit a draft of the implementing legislation to the Swiss Parliament. The draft will then have to be adopted by both houses of the Parliament before it can eventually enter into force. The process is likely to take several years. In the meantime, the Federal Council enacted the OaEC, which entered into force on 1 January 2014 and provides for transitional implementing rules that will remain in force until the Swiss Parliament has adopted the actual legislative implementation of the initiative.

The OaEC provides for, *inter alia*, the following new rules:

- Mandatory and annual election by the shareholders of the chairman and the members of the board of directors, the members of the compensation committee and the independent representative of shareholders (*independent proxy*).
- Annual binding shareholder vote on the aggregate remuneration of the members of the board of directors, executive board and advisory boards (if any).
- Prohibition of certain forms of compensation such as severance and "other" payments (*golden parachutes*), advance compensation payments and payments related to the acquisition or disposal of companies.
- Obligation of companies to fix the maximum number of permissible external mandates (in the board of directors of other companies, being listed or not) of the members of the board of directors or the executive board (in the articles of association).
- Prohibition of corporate and custodian proxies.
- Prohibition of delegation of management responsibilities to a body corporate.

According to the OaEC, the articles of association also have to include rules for members of the board of directors and the executive board on loans, retirement benefits, or incentive and participations plans. Further, the OaEC also provides for criminal prosecution in the case of a breach of the new requirements. While the new constitutional provisions and its implementing ordinance introduced a number of restrictions on remuneration practices, they do not provide for or require a cap on executive pay.

On 4 December 2015, the Swiss Federal Council took fundamental decisions regarding the planned revision of the stock corporation law and determined the key elements of the dispatch to be submitted to Parliament towards the end of 2016. The main proposals are:

- The implementation of the OaEC into the CO, whereby guidelines for joining bonuses, as well as the admissible level of compensations in connection with non-compete clauses, shall be defined.
- A target gender quota of 30% for the board of directors and 20% for the executive committee of major publicly listed companies subject to a "comply or explain" obligation.
- An obligation for major companies in the exploitation of natural resources industry to disclose payments made to public authorities which exceed 120,000 Swiss francs per financial year.
- Numerous changes in "traditional" corporate law, such as the permissibility of a share capital denominated in foreign currency, a minimum par value below one cent, a "capital band" to give companies more flexibility to increase and reduce their share capital, clarification of the requirements for distributions out of the capital reserves and interim dividends, and the enhancement of shareholders' rights and remedies.

On 1 January 2016, the FMIA entered into force, which provides for, *inter alia*, amended rules on disclosure of significant interests in listed companies. These rules were previously provided for in the Swiss Federal Act on Stock Exchanges and Securities Trading (SESTA).

FINMA is currently revising its corporate governance, risk management and internal control requirements for banks, financial groups and conglomerates and securities dealers in the form of a single circular. For this purpose, FINMA has submitted a draft for consultation until 13 April 2016. The new circular is currently expected to enter into force on 1 August 2016.

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/ entities?

The operation and management of a corporation is by statutory law with the management body (board of directors and executive board), and such power may not be withdrawn by way of a shareholders' resolution (certain exceptions apply with respect to anti-takeover actions in the event of a public takeover). Accordingly, under Swiss law, shareholders have no direct rights or powers in the operation and management of a Swiss company. However, shareholders are to vote on the appointment and the removal of the members of the board of directors whenever a shareholder meeting is held and its agenda provides for the appointment or removal of the members of the board of directors. Thus, shareholders may indirectly influence the course of action taken by the board of directors by threatening or bringing removal motions. There are additional corporate actions which may have an impact on the operation of a company and for which the shareholders' approval is required, e.g. change of the company's corporate purpose, approval of mergers, declaration of dividends, and increase or decrease in the company's share capital. In addition to the above, following the entry into force of the OaEC, shareholders are entitled to vote in a binding way on the aggregate amount of compensation for the members of the board of directors and the executive board. The vote may be organised in a prospective or a retrospective way, or a combination of both.

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

Other than the disclosure obligations according to the CO and FMIA, shareholders have no responsibilities as regards the corporate governance of their corporate entity (see also question 2.7).

2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

Swiss corporations need to hold an annual shareholder meeting within six months after the close of the business year and may hold other (extraordinary) shareholder meetings as and when they need to. All shareholders are entitled to be given notice of the shareholder meeting in the form provided for by the articles of association no later than 20 days prior to the day of the meeting.

The prevailing view in Switzerland is that companies whose shares are in the form of registered shares may provide in their articles of association for the use of electronic communications to shareholders; accordingly, it should be possible to send out the relevant notice for calling a shareholder meeting to the holders of registered shares in electronic form only. However, in practice, shareholders are given notice of the shareholders' meeting by mail and publication in the Swiss official gazette of commerce.

Shareholders representing at least 10% of the share capital may request that a shareholder meeting be convened. Shareholders representing at least 10% of the share capital or an aggregate par value of at least 1 million Swiss francs may request that a specific item be put on the agenda irrespective of the board of directors' backing.

Shareholders may participate in the shareholder meeting personally or by proxy. The articles of association may limit proxy-representation to other shareholders. Pursuant to the OaEC, the board of directors had to ensure that, at the latest, in the 2015 annual general meeting, the shareholders were able to give electronic proxies and voting instructions to the independent proxy. There is, however, no duty to provide for real-time "direct" electronic voting. Further, under the OaEC, corporate and custodian proxies are no longer permissible.

Swiss corporate law does not provide for communication rights of dissident shareholders which would entitle them to require the board of directors to circulate their statements among the shareholders or to make available the name and address of the other shareholders registered in the company's share register to the dissident shareholders so that they can contact them. Thus, in practice, proxy fights are mainly fought by using the media to make the relevant positions of a dissident shareholder known to the other shareholders.

The shareholder meeting may pass resolutions and carry out elections by an absolute majority of the votes allocated to the shares represented. Certain specific resolutions, however, such as the change of a company's corporate purpose, the creation of shares with privileged voting rights, restriction of the transferability of shares, the limitation or suspension of pre-emptive rights of shareholders in a capital increase and the merger of the company by amalgamation require a qualified majority of at least two-thirds of the votes represented at the relevant shareholder meeting and an absolute majority of the nominal value of the shares represented.

2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Shareholders may only be held responsible for acts and/or omissions of the company where they acted as actual or constructive founder, organ or agent of the company. In exceptional cases, the corporate veil of a company may be pierced on the grounds of abuse of rights, particularly where a sole shareholder commingles its own funds and those of the company, disregards corporate formalities, and where the company is severely undercapitalised. Also, controlling shareholders owe no fiduciary duty to the company or minority shareholders unless they act as an actual or constructive organ or agent of the company.

2.5 Can shareholders be disenfranchised?

The board of directors may cancel the entry in the share register of a shareholder and nominee with voting rights if the entry in the share register is based on false information. Further, upon a public takeover of a listed company where 98% of the shares have been acquired by the bidder, the remaining 2% may be cancelled by the court, against remittance of the recover consideration. Upon a statutory merger, to the extent that the absorbing company holds 90% or more of the voting rights in the absorbed company, the remaining 10% may be forced to accept cash or any other kind of assets in exchange for their shares in the target company. As to the consequences of not complying with disclosure obligations, see question 2.7.

Under the rules of the FMIA, FINMA is given various enforcement tools ranging from an order to provide information to a fine of up to 10 million Swiss francs. FINMA can also order a suspension of the voting rights or prohibit additional purchases of shares as a provisional measure to enforce compliance with the disclosure rules. Further, the Swiss Takeover Board is given the power to take the same provisional measures, if there are indications that a person does not comply with the duty to make a public tender offer.

2.6 Can shareholders seek enforcement action against members of the management body?

In general, the members of the board of directors are liable to the shareholders for damage caused to them by any intentional or negligent violation of their duties (see question 3.6).

Resolutions of the board of directors may not be challenged in court. Exceptionally, however, resolutions of the board of directors which are so defective as to be incompatible with the basic structure or organisation of the company may be declared void by the court following a petition of shareholders.

2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

Under Swiss corporate law, there are no statutory limitations on the number of shares a shareholder may hold or the speed with which he can build a stake in a company. To the extent provided in the articles of association, listed companies with registered shares may, however, refuse to register shareholders in the company's share register with voting rights, if (i) a shareholder, or shareholders acting in concert, exceeds a certain defined percentage of registered shares in the company, or (ii) the acquirer, on the company's request, does not state that he holds the acquired shares in its own name and for its own account. In addition, the articles of association may provide for voting restrictions so that a shareholder may only exercise its voting rights up to a certain percentage. Moreover, the articles of association may refuse the registration as a shareholder with voting rights if such registration would prevent the company from providing evidence of Swiss control as is required by certain Swiss laws. Further limitations and restrictions apply with respect to regulated industries (e.g. banks and insurance companies) and in the case of a public takeover.

As regards disclosure, under the FMIA and its implementing ordinance, whoever, directly or indirectly or acting in concert with others, acquires or sells shares in a Swiss company listed on a stock exchange in Switzerland and thereby reaches, exceeds or falls below the threshold percentages of three, five, 10, 15, 20, 25, 33⅓, 50, and 66⅔% of the voting rights must notify the company, as well as the stock exchange within four trading days. Under the new rules of the FMIA, persons who have the discretionary power to exercise voting rights (i.e. asset managers) are also subject to these disclosure obligations. The company then has to make regulatory announcements of this information by using the SIX Swiss Exchange's electronic reporting platform. The disclosure obligations are (*inter alia*) also triggered by put and call options and conversion rights. Under the FMIA, the duty to disclose significant shareholdings also applies with respect to non-Swiss companies with a main listing on a stock exchange in Switzerland. Further, Swiss company law requires listed companies to disclose in their annual report the identity of shareholders or organised groups of shareholders with an interest in shares of more than 5% (if the articles of association provide for a percentage restriction of shareholders at less than 5%, it is this lower percentage which applies to this disclosure). As to dealing in shares of the company by the members of the board of directors or the executive board, see question 3.4.

In the course of implementing the revised Financial Action Task Force (FATF) recommendations of 2012, new provisions have been incorporated into the CO, according to which any person who acquires bearer shares in a company whose shares are neither listed nor organised as intermediated securities must give notice of the acquisition to the company within one month. Additionally, any person who, alone or by agreement with third parties, acquires bearer or registered shares in a company whose shares are neither listed nor organised as intermediated securities, and as a consequence of the acquisition reaches or exceeds the threshold of 25% of the share capital or votes, must within one month give notice to the company about the beneficial owner of the acquired shares. For as long as the shareholder fails to comply with his obligations to give notice, the membership and property rights conferred by the shares in respect of which notice of acquisition must be given are suspended.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

In principle, Swiss corporate law provides for a one-tier board structure. However, the board of directors is granted considerable organisational discretion. Save for non-transferable core competences, such as strategic management, appointment and removal of the members of the management, the supervision of the management and the setup of a sufficient internal controlling and reporting system, the board of directors may delegate the management to an individual or to an executive board. In listed companies, the day-to-day management is typically delegated to the chief executive officer or the executive board, resulting in a two-tier board structure. Special rules apply to banks and security dealers which must establish a two-tier structure with a functional and personal separation of operative management and supervision.

Swiss law does not require that the functions of the chairman of the board of directors and the CEO be separated (except for banks and security dealers). To the extent that the board of directors decides that a single individual should assume the functions of the chairman of the board of directors and the CEO, the SCBP recommends that the board of directors provides for adequate control mechanisms, e.g. by appointing a non-executive member of the board of directors (lead director) responsible for such control.

Under Swiss law, there is no required minimum number of non-executive or independent directors. The SCBP recommends that the majority of the board of directors be composed of non-executive directors, i.e. members who do not perform any line management function within the company. In practice, this recommendation is widely followed (and always has been) by all listed companies. Further, with respect to licensed banks and securities dealers, FINMA expects that a substantial number of the members of the board of directors – at least a third – should be independent. Further, all members of the board of directors of licensed banks and securities dealers must be non-executive directors.

Other than as set out below, neither Swiss corporate law, nor the Listing Rules or any other rules of the SIX Swiss Exchange explicitly provide for mandatory board committees (special rules apply to banks and insurance companies). The SCBP recommends that an audit, compensation and nomination committee be established. The members of the audit committee should be non-executive, preferably independent directors and the majority of the members (including the chairman) should be experienced in accounting matters. The members of the compensation committee should be independent directors. The SCBP defines "independent director" as a non-executive member of the board of directors who has not been a member of the executive management in the past three years and who has no, or only comparatively minor, business relations with the company.

With respect to listed companies, the OaEC provides for a mandatory and annual election by the shareholders of the members of the compensation committee. Further, the articles of association of a listed company must provide for principle-based rules regarding the powers and responsibilities of the compensation committee (which may also be given additional duties, such as nomination of members of the board of directors or the executive board).

3.2 How are members of the management body appointed and removed?

The shareholder meeting appoints and removes the members of the board of directors (see question 2.1). Removal is possible at any time, irrespective of terms of office which may still be running.

The OaEC provides for mandatory and annual election by the shareholders of the chairman and the members of the board of directors, the members of the compensation committee and the independent representative of shareholders (*independent proxy*) (see also question 1.3).

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

With the acceptance of the Minder Initiative, the Swiss Constitution has been amended with a number of new provisions that aim to increase transparency and introduce stricter rules with respect to the remuneration of the board of directors and the executive board of listed companies. As discussed above, these new constitutional provisions are currently being put into law as they are not directly applicable (see question 1.3). Until this legislative implementation has been approved by the Swiss Parliament, the transitional rules as set out in the OaEC apply to all Swiss listed companies. As discussed in more detail below, the new rules of the OaEC prohibit various forms of compensation and require listed companies to amend their articles of association with compensation-related new provisions. Further, the OaEC provides for detailed rules regarding the compensation report that listed companies are required to prepare for the first time with respect to the 2014 financial year. Under these new rules, listed companies are obliged to disclose the total aggregate amount of all remunerations to members of the board of directors and the executive board. In addition, compensations and loans of persons close to the members of the board of directors or the executive board have to be disclosed. Compensations and loans granted to every member of the board of directors have to be disclosed individually, comprising the name and function of the member. With respect to the members of the executive board, only the highest compensation awarded, indicating the recipient and his function, has to be disclosed. In addition, the SIX-DCG, which has been brought in line with the new rules of the OaEC, requires the disclosure of information on the basic principles and elements of compensation and election, the number of permitted activities of the members of the board of directors and the executive committee as well as any share and option plans in the annual report.

Even before the entry into force of the OaEC, the SCBP already provided for detailed recommendations pursuant to which the board of directors has to implement a compensation system for the members of the board of directors and the executive board and to prepare a compensation report for the annual shareholder meeting describing the remuneration system and its application in the business year under review. It was further recommended that the board of directors either brings the compensation report into the discussion during the agenda items “approval of the annual financial statements” or “discharge to the board” (so that the resolution to approve the annual financial statements and the resolution of discharge, respectively, are taken by the shareholders in knowledge of the content of the compensation report), or puts the compensation report to a consultative vote at the annual shareholder meeting in question. In practice, many listed companies accepted the alternative of a consultative vote. Following the implementation of the Minder Initiative, Swiss listed companies are required by law to submit the aggregate compensation of the members of the board of directors, executive board and advisory committees to a binding vote of the shareholders. The first mandatory votes on the aggregate compensation of the board of directors and the group executive board occurred on the occasion of the 2015 annual general meeting (see questions 1.3 and 2.1). With respect to such a vote, companies may choose to have the shareholders prospectively or retrospectively approve the aggregate compensation of the members of the board of directors and the executive board. They may also choose a combination of the two systems by submitting fixed compensation to a prospective and variable compensation to a retrospective vote. As for the compensation report, the OaEC does not require listed companies to submit their compensation report to a vote of the shareholders.

Under the OaEC, certain forms of compensation are prohibited. This includes severance payments, advance payments, payments related to the acquisition or disposal of businesses, loans, credit, pension benefits or performance-based remuneration not provided for in the articles of association and the allocation of shares, other equity securities and options or conversion rights not provided for in the articles of association (also see question 1.3).

The Remuneration Circular supplements the above rules for financial institutions. Generally speaking, it places the responsibility for the compensation system of financial institutions on the board of directors, puts the emphasis on the sustainability of remuneration practices, in particular with respect to variable remuneration and the prevention of incentive distortions, and also increases transparency with respect to the remuneration practices. Further, the Remuneration Circular defines minimum standards for the design, implementation and disclosure of remuneration schemes of banks, insurance companies, securities traders and other financial institutions supervised by FINMA, as well as their consolidated domestic and foreign subsidiaries and branches, and covers the salaries of all employees including the executive board and the board of directors (the only exceptions being the remuneration of partners with unlimited liability and persons holding an interest of at least 10% in the company). While the remuneration principles set out in the Remuneration Circular are merely recommendations for most financial institutions, they are mandatory for a small number of major banks and insurance companies in Switzerland. FINMA is currently revising its Remuneration Circular, whereby its provisions shall only be mandatorily applicable for the two big banks and the largest insurance groups. The amended Remuneration Circular is currently expected to enter into force on 1 August 2016.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Directors may own shares in their companies.

As to disclosure, the significant shareholding notification requirements of the FMIA apply equally to director shareholders (see question 2.7). Further, Swiss corporate law requires that any shares, as well as option and conversion rights of the members of the board of directors, the executive board and persons close to them be disclosed on an individual basis in the notes to the annual financial statements of the company.

As regards dealing in the company’s own shares, companies with a primary listing on the SIX Swiss Exchange are, under the SIX-DMT, obliged to ensure that the members of their board of directors and their executive committee report all transactions conducted in the company’s own shares, conversion and share acquisition rights, as well as in financial instruments, the price of which is influenced primarily by the company’s own shares, no later than the second trading day after the reportable transaction has been concluded. The companies then have to report such transactions within another three trading days to the SIX Swiss Exchange. Transactions by related parties which are made under the significant influence of a person who is subject to a reporting obligation under the SIX-DMT are also to be reported to the SIX Swiss Exchange. The relevant notifications to the SIX Swiss Exchange, *inter alia*, have to include the name and function of the person subject to the reporting obligations, number and type of instruments, as well as the total value of the transaction. The SIX Swiss Exchange has to publish the contents of such reports (except for the name of the person subject to the reporting obligation and the date on which such a person has reported the relevant transaction to the company) by making such information accessible on the website of SIX Exchange Regulation for a period of three years.

3.5 What is the process for meetings of members of the management body?

Swiss company law requires that at least one board meeting be held per year for the purpose of preparing the annual general shareholder meeting. In addition, each member of the board of directors may request that a board meeting be convened at any time. The SCBP recommends that at least four meetings of the board of directors be held annually according to the requirements of the company and that its members convene at short notice if necessary.

3.6 What are the principal general legal duties and liabilities of members of the management body?

In fulfilling their responsibilities, the members of the board of directors have to comply with the duties of care and loyalty, as well as the duty to treat shareholders equally. The duty of care requires the members of the board of directors to comply in their actions with standards of care as usual in a given professional or functional context. The duty of loyalty requires a director not to pursue his interests to the disadvantage of the company’s interests. Under Swiss law, the duties of care and loyalty are owed to the company rather than towards the shareholders. The duty of equal treatment requires the board of directors to treat shareholders under the same circumstances equally. Deviations from equal treatment are permitted if such deviations are in the company’s interests and justified by a valid reason.

In fulfilling its responsibilities, the board of directors has to safeguard the company's interests. The company's interests as commonly defined in Switzerland encompass not only the interests of the shareholders but also the interests of other stakeholders such as the company's employees (see question 5.1).

Upon breach of the board of directors' duties, which has the consequence of damage to the company, the company or each of the shareholders may sue the directors; creditors are only entitled to sue the directors for damages incurred by the company if the company is bankrupt. If the board of directors has delegated the management of the company in compliance with the statutory requirements, and the damage has been caused by the management, the board of directors is exempt from liability if careful selection, instruction and supervision of the management can be demonstrated.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

According to the SCBP, the board of directors is to provide leadership and control to the company. It is responsible for the strategic direction of the company and should ensure that strategy and finances are in harmony. Further, the board of directors should ensure that management and control functions are allocated appropriately.

3.8 What public disclosures concerning management body practices are required?

In general, Swiss law does not require the disclosure of board practices. For listed companies, the SIX-DCG requires that they disclose information on its internal organisational structure and on basic principles regarding the allocation of responsibilities between the board of directors and the executive board. Such disclosure is to be made in the annual report (see question 4.2).

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

The general view in Switzerland is that companies are permitted to maintain insurance in respect of directors' and officers' liability to the company and to pay for the premium.

An undertaking of the company to indemnify directors and officers for liabilities is likely to be held invalid except for costs incurred in connection with lawsuits unsuccessfully brought against a director or officer.

4 Transparency and Reporting

4.1 Who is responsible for disclosure and transparency?

The ultimate responsibility for disclosure and transparency rests upon the board of directors.

4.2 What corporate governance related disclosures are required?

As regards financial reporting, companies listed according to the main standard of the SIX Swiss Exchange must publish audited annual financial statements and unaudited half-year interim financial statements in accordance with either IFRS or US GAAP and in line with the Listing Rules and the relevant directives. The Listing Rules further require the company to submit a corporate calendar containing the dates of important corporate events such as the date of shareholder meetings and the publication date of the annual financial statements or the half-year financial statements to the SIX Swiss Exchange and keep such information up-to-date.

SIX Exchange Regulation, responsible for the enforcement of the issuer and participant regulation, introduced a new regulatory standard concept in October 2014 with the aim to streamline the current structure, clearly position Swiss GAAP FER as one of the relevant accounting standards and amend the admission criteria to meet market requirements. The new regulatory standard concept is based on a Standard for Equity Securities (broken down into a Sub-Standard for International Reporting and Sub-Standard for Swiss Reporting). IFRS or US GAAP must be used on the International Reporting Standard, whereas issuers who opt for Swiss GAAP FER are allocated to the Swiss Reporting Standard. The new regulatory standard concept entered into force as of 1 July 2015.

As regards other information, listed companies have a duty to disclose potentially price-sensitive facts (*ad hoc* information) and to disclose in a separate section of their annual report information, *inter alia*, on the group and capital structure, shareholders, the board of directors and the executive board, basic principles and elements of compensation as well as the share and option plans, changes of control and defence measures, and on information policy. With respect to such information, the principle of "comply or explain" applies, i.e. the company must give specific reasons for each instance of non-disclosure to the extent that it decides not to disclose certain information. Further, listed companies have to prepare a compensation report that discloses, *inter alia*, the amount of compensation paid to the members of the board of directors and the executive board and the shares in the company held by them (see questions 3.3 and 3.4).

Copies of the articles of association may be requested from the relevant commercial register with which the articles of association must be filed. The SCBP recommends that the articles of association be made available from the company in writing or in electronic form at any time. The company's organisational regulations do not need to be made publicly available. However, the company must inform the shareholders upon their request about the organisation of the management (see question 3.8). Often, the articles of association, as well as the organisational regulations, can be downloaded from the company's website.

4.3 What is the role of audit and auditors in such disclosures?

The company's auditors have to audit the annual financial statements (but not the interim financial statements) and, since the adoption of the OaEC, the compensation report. In addition, as the information on remuneration and the shareholding interests of the board of directors and the executive board must be disclosed in the notes to the annual financial statements, such disclosures in the notes must be verified by the company's auditors in the course of their ordinary audit activities. Furthermore, the company's auditors have to verify whether an internal control system exists.

4.4 What corporate governance information should be published on websites?

Listed companies are required to make the published annual and interim financial reports available in electronic form on their website. They must also make available any *ad hoc* information on the company's website at the same time as it is distributed to the SIX Swiss Exchange and electronic information systems such as Bloomberg, Reuters or SIX Financial Information, and keep such information posted on the website for at least two years. Finally, listed companies must maintain a so-called "push system", a service that allows investors wishing to receive *ad hoc* information from the company directly to sign up for future distributions on the company's website.

5 Miscellaneous

5.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Neither Swiss company law, nor the Listing Rules (and any implementing directives or circulars enacted thereunder), nor the SCBP provide for specific rules with regard to corporate social responsibility. However, the board of directors, in determining the company's best interests, has to consider not only the interests of the shareholders but also those of other stakeholders such as the employees of the company (see question 3.6).

5.2 What, if any, is the role of employees in corporate governance?

Although unions have contributed to some extent to the recent discussion in Switzerland of corporate governance-related issues, in particular with respect to board of directors and management remuneration, employees do not play a prominent role in corporate governance. In particular, Swiss law does not require that employees be represented on the board of a company.

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