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Revised Corporate Law – Some key observations after the first AGM season

On January 1, 2023, the revised corporate law entered into force. The revision requires companies, among other things, to amend their articles of incorporation to reflect the new corporate law. Despite a two-year transition period, the vast majority of public companies listed on SIX Swiss Exchange has already amended their articles of incorporation at this year's annual general meeting (AGM 2023).

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While most of the required changes (e.g. lower thresholds for the calling of a shareholder meeting or the request to include an agenda item) did not raise particular concerns and were implemented easily, some newly provided corporate instruments received a bit more attention from the companies, their shareholders and the proxy advisors:

- ***Virtual shareholder meetings.*** Despite a critical stance of certain proxy advisors, more than two-thirds of all listed companies introduced a provision in their articles of incorporation allowing them to hold shareholder meetings solely by electronic means (i.e. virtually). Only very few companies limited the right to hold virtual meetings to 3-5 years. In their explanations most companies stated that for the time being it was not intended to hold shareholders' meetings solely by electronic means. There have been three public companies so far that already held their AGM 2023 by electronic means.
- ***Introduction of "capital band".*** Companies introduced a "capital band" (i.e., the possibility to increase and/or decrease the share capital within certain limits) essentially as a replacement of an existing authorized share capital that would have expired in 2023 or 2024. Only a very

limited number of companies made use of the full range permitted by the law (i.e. plus/minus 50% of the current share capital); instead the capital band typically ranges from 90% to 110% of the current share capital.

- ***Shareholder meetings abroad.*** So far, only a very small number of public companies (and none of the 20 largest Swiss companies) introduced in their articles of incorporation the right to hold shareholder meetings outside of Switzerland. The possibility for shareholder meetings abroad may be more relevant for Swiss subsidiaries of foreign corporate groups.
- ***Share capital denominated in foreign currency.*** Except for one company, no publicly listed company has made use so far of the possibility to convert its share capital into a foreign currency (EUR, USD, GBP and JPY) even though some of them use foreign currencies for accounting and financial reporting purposes. Again, the benefit of a foreign share capital may be bigger for Swiss subsidiaries of foreign corporate groups that use a foreign currency within the group.
- ***Introduction of a binding arbitration clause.*** So far, no publicly listed company has introduced in its articles of incorporation a binding arbitration clause for disputes on corporate law matters. It will have to be seen whether this may still change, considering some apparent advantages (e.g. easier international enforcement, exclusion of potential foreign forum).

Further, the requirement for the board of directors to provide a short explanation for each agenda proposal, the principle of unity of matter (*Einheit der Materie*) as well as the requirement to publish the detailed voting results and meeting minutes within 15 respectively 30 days after the shareholder meeting have not raised any issues. The same holds true for the independent proxy's obligation to keep voting instructions secret until the shareholder meeting has taken place. These topics may get more attention in controversial shareholder meetings, including proxy fights.

Please do not hesitate to contact us in case of any questions.

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