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Switzerland

CORPORATE GOVERNANCE

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This country-specific Q&A provides an overview of corporate governance laws and regulations applicable in Switzerland.

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SWITZERLAND
CORPORATE GOVERNANCE

1. What are the most common types of corporate business entity and what are the main structural differences between them?

The two most common types of corporate entities are the stock corporation or company limited by shares (*Aktiengesellschaft*, hereinafter referred to as stock corporation or company) and the limited liability company (*Gesellschaft mit beschränkter Haftung*).

The share capital of a stock corporation is divided into shares and its liabilities are covered by its own assets only. The shareholder's sole legal obligation is to pay-in a fixed amount per share. Further obligations may be covered in a shareholder agreement. The minimum share capital is CHF 100'000.- (or the equivalent amount in a foreign currency). The stock corporation is the only type or entity that can be listed on a stock exchange.

The minimum capital of the limited liability company is CHF 20'000.-, divided into quotas held by one or more partners. The partner's liability is limited to the predetermined nominal capital of the company. In addition to the financial obligation of the partners to deposit the entire issue price of the capital contributions, each partner is bound to further personal obligations, such as the duty of loyalty and the prohibition of competition. Similar to the stock corporation, the creditors of a limited liability company can generally take recourse to its assets only, unless its articles of association require the partners to make additional contributions. The limited liability company is particularly suited to small and medium-sized enterprises and family-owned firms.

Since 2021, the number of limited liability companies exceeds the number of stock corporations. Both types are incorporated by at least one or more individuals or legal entities and require at least one board member or officer with sole signature (or two with joint signature) rights who is a Swiss resident. By law, both listed and non-listed stock corporations are required to have three corporate bodies: the general meeting of shareholders, the board of directors and the external auditors. Limited liability companies also have three corporate bodies: the members' general meeting, the management and the external auditors. Private companies may waive the requirement to perform an audit of their annual accounts (and, therefore, to appoint external auditors) if certain criteria are met.

The responses in this Q&A focus on the stock corporation (*Aktiengesellschaft*), unless mentioned otherwise.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

In January 2023, a general corporate law reform entered into force which fine-tunes shareholder rights and the general meeting's process in particular and includes several alterations in the area of corporate social responsibility (see question 24 below). Among other things, the corporate law reform allows shareholders' meetings to be conducted virtually (or in a hybrid form). It remains to be seen at what rate this possibility will be adopted and used by companies; however, given that during the COVID-19 pandemic many companies gained first experiences with virtually held shareholders' meetings, we expect a trend towards virtual shareholder participation.

Additionally, and as part of a separate bill, new reporting obligations and mandatory due diligence requirements on environmental, social and governance (ESG) matters entered into force on 1 January 2022 and must be implemented for the first time with respect to the financial year starting in 2023 (see question 24 below). We further expect the influence of proxy advisors and shareholder activism to continue to increase (see question 19 below). Partly as a response to such challenges, the trend towards non-executive, mostly independent boards, as well as more sophisticated and formalized governance arrangements is picking up (see question 8 below). Moreover, and also in response to these developments, the business organization *economiesuisse* is currently revising the Swiss Code of Best Practice for Corporate Governance (see also question 5 below), which is expected to be published in the first half of 2023 and increase the standards and scrutiny applied to corporate governance set-ups.

Finally, also in light of the recent enactment of the Screening Regulation in the European Union, which established a framework for the screening of foreign direct investments, we see a certain political pressure in Switzerland to impose foreign investment controls. Compared to other countries, Switzerland has been considered as being very liberal towards foreign investments so far. In March 2022, the Swiss Federal Council presented the draft of a new federal act on foreign investment controls. The respective consultation period ended in September 2022. It remains to be seen whether new investment control measures will ultimately be introduced to Swiss law. If adopted, we would expect such law to mainly impact the M&A market, and it might also give rise to new, creative governance structures to mitigate its consequences.

3. Who are the key persons involved in the management of each type of entity?

The key persons involved in a stock corporation are the board of directors, the executive management and the shareholders (acting at the general meeting of shareholders). While the law states that the shareholders' meeting is the supreme governing body, its powers are generally confined by law and may be extended by the articles of association in limited cases only. The board of directors may pass resolutions on all matters not reserved for the shareholders' meeting by law or the articles of association. Subject to certain non-transferable duties pursuant to statutory law which include, among other things, determining the strategy of the stock corporation and supervising management, the board of directors may delegate all other duties, namely the management of the stock corporation, to the executive management based on an authorization in the articles of association and the adoption of organizational regulations. In listed stock corporations as well as larger private companies, the day-to-day management is typically delegated to the executive management. But the organizational regulations in most cases reserve certain matters for approval by the board of directors, such as significant acquisitions or disposals. Members of the executive management are appointed and removed by the board of directors.

The key bodies involved in a limited liability company are the members' general meeting and the management, with the members' general meeting being the supreme governing body. Compared to a stock corporation, the members' general meeting of a limited liability company may have direct influence on the business of the company because the members' meeting has decisional authority vis-à-vis the management. Furthermore, in contrast to the stock corporation, the members of the limited liability company are in general authorized and obliged to manage and supervise the company, but may still delegate the management to a third party.

4. How are responsibility and management power divided between the entity's management and its economic owners? How are decisions or approvals of the owners made or given (e.g. at a meeting or in writing)

As outlined in question 3 above, the day-to-day management of a stock corporation is usually delegated by the board of directors to the executive management. The shareholders are entitled to elect and remove the members of the board of directors. According to the Swiss Code of Obligations ("CO"), the following matters are subject to the approval by the general meeting of shareholders: adoption and amendment of the articles of association; appointment or removal of the members of the board of directors and the auditors (and, in case of listed companies, of the members of the compensation committee); approval or rejection of the management report, including, if applicable, the consolidated financial statements and the report on non-financial matters; approval or rejection of the use of the balance sheet profits and, in particular, the declaration of dividends (including any repayment of the statutory capital reserves and the approval of interim dividends and the interim financial statements required for such purpose); discharge of the members of the board of directors and executive management from liability; and matters that are by law or by the articles of association reserved to the shareholders' meeting. In case of listed companies, the general meeting of shareholders also has the power to approve the aggregate amounts of compensation of the members of the board of directors and the executive management and to delist the shares or other equity instruments of the company.

Unless otherwise provided by law or the articles of association, the shareholders' meeting passes resolutions by an absolute majority of the voting rights represented. The CO sets out certain important matters, such as, but not limited to, the amendment of the purpose of the stock corporation, the restriction of the transferability of registered shares or the dissolution of the stock corporation, for which at least two-thirds of the voting rights represented and an absolute majority of the nominal value of shares represented are required. The articles of association quite often change the default majority, in particular by calculating the majority on the basis of votes cast (instead of votes represented) and/or by applying a relative majority (i.e., abstentions do not count as votes cast), and sometimes contain other deviations (e.g., additional supermajority requirements).

The shareholders pass their resolutions at a general meeting at least once a year within six months of the end of the stock corporation's financial year. Further extraordinary meetings of shareholders may be convened and held as required. In principle, the meeting is to be held in person, but since 1 January 2023, several alternatives are available. First, the company may allow virtual participation by shareholders at a physical meeting (hybrid meetings). Furthermore, if the articles of association so provide, companies may hold virtual-only meetings. Finally, if all shareholders consent, a meeting may also be replaced by written consent.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

Swiss company law is primarily set out in art. 620 ff. CO. Until the end of 2022, an important source for listed companies used to be the Ordinance on Excessive Compensation ("OaEC"), which has now been repealed as part of the corporate law reform and is only still relevant for transitional questions. From 2023, the respective provisions have been incorporated directly into the CO.

Additionally, stock corporations listed on the SIX Swiss Exchange ("SIX") are subject to SIX's regulations, including the Directive on Information Relating to Corporate Governance ("DCG") which requires stock corporations to publish a Corporate Governance section in the annual report.

The Swiss Code of Best Practice for Corporate Governance ("SCBP") issued by economiesuisse, a private association of Swiss businesses, contains guidelines regarding matters of Corporate Governance and is non-binding in nature. It is currently being revised and the new edition is expected to be published in the first half of 2023. The current SCBP follows a comply-or-explain approach, allowing stock corporations to deviate from the SCBP's provisions if they provide a suitable explanation. Although compliance with the SCBP is not mandatory, its provisions are widely observed, and it is thus an important part of the Swiss legal framework. Guidelines by proxy advisors (see question 21 below) have also gained importance in recent years and are considered by a growing number of stock corporations.

6. How is the board or other governing body constituted?

The mandatory governing body of stock corporations is the board of directors. Its members (and for listed stock corporations also the chairman and the members of the compensation committee) are elected by the shareholders' meeting, but otherwise the board of directors usually constitutes itself. The board of directors of listed stock corporations typically comprises several committees, in particular a compensation, a nomination, and an audit committee. The board may appoint further permanent (e.g., risk, sustainability or corporate governance) or ad hoc committees. Several tasks may also be combined in one committee (such as nomination and compensation or nomination and corporate governance matters). For listed companies, the CO requires a mandatory and annual election by the shareholders of the members of the compensation committee and the articles of association must provide for principle-based rules regarding the powers and responsibilities of this committee. In addition, the SCBP recommends that an audit, compensation and nomination committee be established. Other than that, Swiss law does not explicitly provide for mandatory board committees.

By default, the law provides for a one-tier board system, i.e., the board of directors is responsible for the management of the company and represents the company in relation to third parties. However, it is possible – and customary for listed or other larger companies – that the board of directors delegates the day-to-day management to the executive management / an executive committee (see question 3 above). This results in a two-tier governance structure in which the board of directors is mainly tasked with the ultimate direction and strategy of the company as well as the oversight over the executive management. The executive management may be personally fully separated from the board, or certain members of the executive management (such as the CEO) may also sit on the board of directors (see question 8 below). The SCBP recommends that the board chairmanship and CEO position shall not be entrusted to one and the same person (dual leadership). Where exceptionally one person performs both functions, the board of directors should implement adequate control mechanisms (such as the appointment of a non-executive lead director).

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

Members of the board of directors are appointed and removed by the general meeting of shareholders, usually upon proposal by the board of directors. For listed companies, the CO requires that board members be elected individually and on an annual basis. Board members of non-listed companies are elected for a term of three years unless otherwise provided in the articles of association (up to a maximum of six years). In practice, the candidates for board members are often evaluated and proposed by the nomination committee and approved by the board of directors before making a proposal to the shareholders' meeting. It is not possible for the board of directors to fill board vacancies by itself. In practice, board nominees are sometimes involved in the board of directors before their election, such as through invitation as a temporary "guest", but they cannot become formal board members until their election. Therefore, the entity's owners, i.e., the shareholders, hold the ultimate power regarding the appointment and removal of members of the board of directors.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

The board of directors of larger and in particular listed companies is typically mainly composed of non-executive, outside directors who have entrusted the executive committee with the management and operation of the company. The current SCBP recommends that the majority of the board is independent, which it defines as non-executive members who have never or at least not for the previous three years been members of the executive committee and who have no or only minor business relations with the company. The number of board members is not specifically regulated by law, but minimum and maximum numbers may be imposed by the articles of association. Where there are different classes of shares (see question 15 below), the articles of association must stipulate that the holders of each share class are entitled to elect at least one representative to the board of directors. Swiss law does not require particular knowledge or qualifications (e.g., in strategic, financial or accounting matters), nor does it contain rules on director disqualification. However, the current SCBP recommends that the majority of the members of the audit committee should be experienced in financial and accounting matters.

The corporate law reform further introduced a gender quota on a comply-or-explain basis for the board of directors and executive management of listed companies exceeding certain thresholds, but the provisions are subject to long transition periods. Accordingly, each gender must be represented at least by 30% on the board of directors starting from 2026 and by 20% in the executive management starting from 2031. In addition, the current SCBP recommends that the board of directors is comprised of male and female members with the necessary abilities to ensure an independent decision-making process in a critical exchange of ideas with the executive management. Also, companies are free to incorporate qualifications into their articles of association or (albeit not with the same legal effect) into their organizational regulations.

By law, the term of office of board members is either three years (non-listed companies), unless otherwise provided in the articles of association, or one year (listed companies – mandatory). However, the law does not impose any restrictions on the overall tenure, as board members can be re-elected without limitation. The articles of association may provide for age restrictions or a maximum term of office. The SCBP recommends that the board of directors plan the succession and determine the criteria for selecting candidates.

9. What is the role of the board with respect to setting and changing strategy?

The main responsibility of the board of directors is to determine the company's strategy. All matters not specifically reserved by law to the shareholders' meeting or the auditors or delegated to the executive management based on organisational regulations remain the responsibility of the board of directors. The CO specifically lists the ultimate management as well as the fundamental organisational structure of the company as non-transferable duties of the board of directors, which in particular also include the duty to determine the corporate strategy of the company and to allocate the corporate resources.

10. How are members of the board compensated? Is their remuneration regulated in any way?

A cash remuneration of board members is standard, whereby several companies offer (mandatory or optional) stock participation schemes, often in the form of restricted stock. The remuneration covers board meetings as well as committee work. Contrary to the compensation of the executive management, normally no bonuses (i.e., no variable remuneration) are paid at the level of the board of directors. In privately held companies, the remuneration of the board members is in the sole competence of the board of directors. In contrast, listed companies are required to annually submit the board of directors' proposal on the compensation of the board members, the senior management and the advisory board (if any) to the shareholders' meeting for a binding vote (so called "say-on-pay"). Compensation may be voted on by shareholders prospectively for the term until the next general meeting or – less often used – retrospectively for the preceding financial year. The corporate law reform further introduced (i) the requirement of a consultative vote of the general meeting of shareholders on the remuneration report if the aggregate amount of variable compensation (typically for executive management) is voted on prospectively; and (ii) the prohibition of sign-on bonuses, compensation for post-contractual non-compete covenants, as well as compensation payments for board members or members of a management body which are not in line with market practice.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

The members of the board of directors and all persons tasked with the company's management (i.e., members of the executive management) have a duty of care and loyalty requiring them to carry out their responsibilities with due care and to determine and safeguard the best interests of the company. This also includes avoiding or addressing potential conflicts of interest by any board member. These duties are owed to the company. Additionally, members of the board of directors and of executive management are required to treat all shareholders equally in the same circumstances.

Members of the board of directors and executive management as well as other persons who have significant influence on the company's decision-making process (de-facto directors) are jointly and severally liable for damages caused by intentional or negligent breach of their duties. Each member can be held liable with his or her personal assets. The plaintiff for such damages may be the company itself, any individual shareholder or, in case of the company's bankruptcy, any creditor. In some instances, board members (and third persons who act as such, i.e., de-facto directors) may also be held criminally liable, including in case of violation of certain requirements set forth in the CO (e.g., for accepting or making payments of prohibited severance benefits).

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Members of the board of directors and executive management may protect themselves against potential personal liability by the following key means: (i) Acting in compliance with the business judgment rule, which means that if directors take decisions in a flawless and well-documented decision-making process, on the basis of appropriate information and free from any conflicts of interests, courts only examine whether a business decision was reached in a sound manner and do not question or assess the reasonability of the decision itself; (ii) setting up D&O insurance, which is generally permissible and today is standard in larger companies in Switzerland; (iii) entering into appropriate indemnity arrangements, although their enforceability is not fully settled in many respects and according to case law not allowed with regard to criminal fines, and (iv) the shareholders granting discharge to the members of the board of directors and the officers, meaning that the company, and to a certain extent also shareholders, are excluded from or at least limited in bringing forward any action against the directors for facts that were known to the shareholders' meeting at the time of its granting discharge.

13. How (and by whom) are board members typically overseen and evaluated?

First, members of the board of directors are appointed and removed by the general meeting of shareholders (see question 7 above). Therefore, the general meeting of shareholders is ultimately overseeing and evaluating board members. Additionally, the chairperson of the board of directors must assure that the board fulfils its duties according to the law and the company's internal regulations, and that the relationship between the board of directors and the executive management functions properly. The law requires that the chairperson of Swiss listed companies is annually elected by the shareholders' meeting. Finally, there is an increasing tendency towards the review and evaluation of the board's performance with external experts.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

The primary forum for communication and engagement between the board of directors and the shareholders of a stock corporation is the annually held ordinary general meeting of shareholders, where shareholders are entitled to request information regarding the company's affairs to the extent required for the exercise of their shareholders' rights and subject to confidentiality requirements. Information is otherwise mainly provided by the means described under question 16 below. The corporate law reform introduced the right to request access to the company's files and records for individual shareholders or groups of shareholders representing together at least 5% of the share capital or the votes. In addition, for non-listed companies, shareholders or groups of shareholders representing at least 10% of the share capital or the votes may request in writing that the board of directors provide information on company matters. Such answers must be provided by the board of directors within four months of the request and made available for all shareholders at the subsequent general meeting of shareholders.

Apart therefrom, the board of directors may also engage with individual investors directly. However, it may only do so within the boundaries of the law, particularly the principle of equal treatment of shareholders, and where information is shared, restrictions under insider trading laws and stock exchange regulations relating to ad hoc publicity.

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

Swiss law is rather flexible when it comes to equity (and debt) capital structures, and it is permitted to issue several classes of shares as well as debt instruments. It is, however, only allowed to create voting shares (i.e., shares with higher voting power) by attributing to them different nominal values, meaning that all shares technically carry one vote, but have different dividend rights. As a result, a shareholder may hold one ordinary share with higher nominal value (determining such shareholder's entitlement to dividends) and a number of shares with lower nominal values (giving such shareholder more votes), whereas the nominal value of the ordinary shares may not be more than ten times higher than the nominal value of the voting shares.

Moreover, it is possible to issue participation certificates, which do not bear any voting rights and are the equivalent of non-voting shares.

According to a study conducted by a Swiss proxy advisor for the year 2022, only 11% of the 171 reviewed listed companies have more than one class of shares. This number has generally decreased over the last years, as the overall trend is towards the principle of 'one share one vote', i.e., capital structures in which the voting power is in proportion to the respective capital share. Only very few listed companies have issued participation certificates (three of 171 reviewed according to the study mentioned above).

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

Disclosures of financial and non-financial information are required under a variety of provisions under the CO, other statutes (in particular, the Financial Services Act (FinSA) and the Financial Infrastructure Act (FinIA)) as well as stock exchange rules. A broad distinction can be made between periodic, recurring disclosures and disclosures required upon the occurrence of certain events. Listed companies are required to prepare and publish an annual report comprising the annual (consolidated and stand-alone) financial statements and a management report. The compensation report required by the CO and the corporate governance report pursuant to the DCG are typically included as separate sections in the annual report. The publication of semi-annual (consolidated) interim financial statements is mandatory for companies listed on the SIX, while quarterly financial reporting is voluntary.

Since 2021, the CO requires commodity companies that extract minerals, oils, natural gas or primary timber to annually publish a special report with respect to certain payments of more than CHF 100'000 to governmental authorities. Further, an amendment to the CO that entered into force in January 2022, requires that companies of public interest, including listed companies and prudentially supervised large companies in the financial sector, exceeding certain size-related thresholds publish annual reports on non-financial matters (including environmental, social and employee matters as well as compliance with human rights and combating corruption). The first reports will have to be published in 2024 covering the financial year 2023. Additionally, all (i.e., listed and privately held) companies that (i) import to or process conflict minerals in Switzerland or (ii) offer products or services giving rise to a justified suspicion that they were manufactured or provided using child labour must adhere to certain due diligence requirements and publish an annual report in that regard (see question 24 below).

Companies listed on the SIX are further required to inform the market of price-sensitive facts (so-called ad hoc publicity) as soon as they occur through both a "pull" (publication on the company's website) and a "push" (distribution by e-mail) system to ensure equal treatment of market participants. Companies may postpone the publication under ad hoc publicity rules in certain limited circumstances only. SIX stock exchange regulations require that members of the board of directors and executive management report transactions in the company's equity securities or financial instruments related thereto (including transactions by related parties if made under the significant influence of the relevant member) to the company. The company must submit information regarding such transactions to SIX Exchange Regulation (SER) through an electronic reporting platform. The information is publicly accessible on SIX's website indicating the function of the reporting individual but not the name. In addition, SIX's regulations also require companies to provide certain further information on their websites (such as a corporate calendar) and include several regular reporting obligations. Specific reporting obligations apply to issuers of certain instruments such as bonds and derivatives.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

An individual shareholder or group of shareholders representing 0.5% of the share capital or the votes (in case of listed companies) or 5% of the share capital or the votes (in case of non-listed companies) may request that an agenda item together with a proposal (including, if desired, a short reasoning) be included in the invitation to a general meeting of shareholders. The articles of association may contain a lower threshold and the current SCBP states that in case the general meeting of shareholder reduces the par value of shares through repayment, the board of directors should review whether it would be appropriate to adjust the required threshold. If a shareholder requests that an agenda item be added to the next shareholders' meeting, the respective deadline for the submission is contained in the company's articles of association and ranges typically between 40 and 60 days prior to the shareholders' meeting. Usually, the board of directors will add its own motion to the item. Qualifying shareholders may also submit an explanation that needs to be added to their proposal. In addition, each shareholder, regardless of any threshold, may submit a proposal under an existing agenda item directly at the shareholders' meeting.

An individual shareholder or group of shareholders representing 10 % of the share capital or the votes (for non-listed companies) or 5% of the share capital or votes (for listed companies) may request in writing (and indicating the agenda items and proposals) that an extraordinary shareholders' meeting be convened. The articles of association may contain a lower threshold.

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

Swiss law allows shareholders to file liability actions against members of the board of directors and members of the executive management for violation of their duties as well clawback actions for payments received with no or only a disproportionate consideration. This includes standing for own damage suffered by the relevant shareholder as well as damage suffered by the company, in which case shareholders can only sue on behalf of the company and a successful judgment leads to a payment of damages to the company. In case of a bankruptcy, also the bankruptcy trustee and, under certain circumstances, individual creditors may sue as a result of a damage suffered by the company.

In addition, any shareholder can challenge shareholders' resolutions made in violation of applicable laws or the articles of association within two months after they have been taken and with effect for the entire company. Finally, indirect enforcement actions may also include the initiation of criminal proceedings against the company's management.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

Compared with other jurisdictions, in particular the United States, the number of activist campaigns involving Swiss companies is moderate. From 2012 until 2016, the number of activist campaigns increased and it remained on a high level until 2019. With six campaigns on targets with a market capitalisation of more than US$ 500 million in 2019, Switzerland ranked fourth in Europe after the United Kingdom, France and Germany. Over the last three years, there has been a degression in the launch of live campaigns. In 2022 (up to and including Q3), only four activist campaigns were launched in Switzerland, moving it down to fifth and sixth place in Europe (on par with Germany and behind the United

Kingdom, France, Ireland and Spain). However, market observers still expect that influence by shareholder activism will further increase: A report on shareholder activism in the year 2022 conducted and published by an investment bank showed a 20% increase of shareholder campaigns with European targets (still primarily British, French and German companies) compared to the previous year, surpassing previous records of 2018. The corporate law reform in effect since 1 January 2023 could support this trend also in Switzerland, since it lowered the thresholds for shareholders of listed companies to bring forward agenda items and proposals at shareholder meetings (see question 17 above). Furthermore, with respect to US listed companies incorporated in Switzerland, the SEC's universal proxy rules are expected foster activism.

Activist campaigns could also focus on new topics, such as the recently introduced reporting and due diligence obligations concerning ESG matters (see question 24 below). Activist shareholders often reach out to an entity's management to enter into confidential negotiations about their ideas and demands. However, with regard to such private negotiations, companies must pay attention to the duty of equal treatment of all shareholders and further rules (see question 14 above). Alternatively, an activist may launch a public campaign to make key requests towards the company and to receive the support of other shareholders (as shareholders do not have access to the share register of the company). If the required thresholds are met, activist shareholders may propose matters for vote at the general meeting or call a special meeting (see question 17 above). Sometimes, activists try to have a representative elected to the board in order to be able to directly influence the board. Some requests may also be directly addressed by shareholder proposals, such as the distribution of excess cash.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

Swiss companies must hold an annual shareholders' meeting within six months after the close of the business year and may hold further (extraordinary) shareholders meetings, if necessary. Each shareholder has the right to receive each year a copy of the audited (consolidated and stand-alone) financial statements of the company, the management report, the compensation report, and the audit report (typically all included in the annual report). If a company is obliged to produce a report on non-financial matters or on due diligence with respect to conflict minerals or metals or child labour (see question 24 below), such report has to be electronically published.

In addition, each shareholder has the right to ask questions to the board of directors and the auditor during the general meetings of shareholders. Information requested by the shareholder has to be provided to the extent such information is necessary for the shareholder to exercise its rights. Disclosure of information can be refused if it jeopardizes the business secrets or other worthy interests of the company. Since entering into force of the corporate law reform, shareholders in a non-listed company who hold at least 10% of the share capital or the voting rights may further request information on company matters from the board of directors during the business year.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Proxy advisors, including international players such as ISS and Glass Lewis, as well as the leading Swiss national player Ethos, usually provide shareholders with voting recommendations for each agenda item on the agenda for the general meeting of listed companies. Some big institutional investors also issue their own advisors.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

Other stakeholders are typically not formally involved in the corporate governance of a company or represented in its corporate bodies; in particular, Swiss law does not provide for formal employee representation on the board of directors. However, stakeholder interests may be considered in decisions of corporate bodies (see questions 23 and 24 below). In addition, similar to other European jurisdictions, Swiss corporate law provides for specific protections of creditors, namely capital maintenance provisions, which the board of directors must observe in the interest of creditors.

23. How are the interests of non-

shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

By default, Swiss companies are profit oriented. In following the corporate purpose as defined in each company's articles of association, a company's board of directors must pursue the long-term interest of shareholders. At the same time, the board of directors is, pursuant to existing case law, allowed to appropriately consider the interests of other stakeholders, including employees, customers and creditors. Accordingly, and if aligned with the long-term interests of shareholders, a company's board of directors will typically appropriately consider all stakeholders within the framework of good corporate management (see also question 24 below).

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

Specific legal reporting and disclosure regulations on ESG issues entered into force in the CO on 1 January 2022. These provisions require large companies of public interest, i.e., large listed companies and prudentially supervised companies in the financial sector, to publish annual reports on ESG matters (including environmental, social, employee matters, the respect of human rights and combating corruption, see question 16 above). The non-financial reporting obligations are largely analogous to the Non-Financial Reporting Directive of the European Union (Directive 2014/95/EU) and they must, among other things, describe the overall approach applied to each of the non-financial matters, any due diligence measures taken and their effectiveness, as well as the main risks in connection therewith. The report on non-financial matters must be approved by the board of directors and the shareholders' meeting like the annual financial statements, but the report must not be audited. Additionally, the amendment to the CO has introduced supply chain due diligence and annual reporting obligations for all companies in Switzerland that (i) import to or process in Switzerland tin, tantalum, tungsten, or gold containing minerals or metals from conflict or high-risk areas (Conflict Minerals) or (ii) offer products or services giving rise to a justified suspicion that they were manufactured or provided using child labour. The report on Conflict Minerals has to be audited by an independent expert. Companies will have to publish their first reports on non-financial matters and on the due diligence on Conflict Minerals and/or child labour (if applicable) in 2024 (covering the financial year beginning in 2023). Failure to comply with these reporting obligations regarding ESG matters may result in criminal liability (fines up to CHF 100,000).

Furthermore, all companies can include certain information in their annual report on a voluntary basis. Currently, companies with a primary listing on the SIX Swiss Exchange can opt to produce a sustainability report according to an internationally recognized standard, which is published on the SIX website and binds the issuer.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Shareholders, including shareholders holding a majority stake, do not owe any fiduciary duty or duty of loyalty to the company in general (unless they act as directors or materially influence the company's management as de facto directors). Further, Swiss law does not prevent shareholders from paying any direct compensation to board members who have been appointed by them. However, members of the board of directors are always required to act in the best interest of the company and to generally treat all shareholders equally. Additionally, according to the CO, board members and management members need to disclose resulting conflicts of interest to the board of directors, which should take appropriate measures in the best interest of the company. The company's articles of association and organisational regulations usually include more detailed processes and decision competences with respect to handling conflicts of interest. The company may also have to disclose any such additional compensation in the annual report.

The disclosure obligations of investors can be differentiated between investors of listed and of non-listed companies. Any shareholder or group of shareholders acting in concert of a company listed on SIX must disclose if it attains, falls below or exceeds the threshold percentages of 3, 5, 10, 15, 20, 25, 33.3, 50 or 66.6% of the voting rights of the company, irrespective of whether such voting rights may be exercised or not. This applies to direct or indirect holdings of shares. Shareholders are considered to be acting in concert if they are coordinating their conduct by contract or by any other organised method regarding the acquisition or sale of shares or the exercise of voting rights. The disclosure contains the number and type of securities held, the percentage of voting rights, the facts and circumstances that triggered the duty to disclose, the date the disclosure obligation was triggered, information about the shareholders as well as a responsible contact person. However, the shareholder's intentions must not be disclosed. The disclosure must be made towards the company and SIX within four trading days following the triggering event. The company must publish the required information within another two trading days. Intentional non-reporting may result in a maximum fine of up to CHF 10 million. Further, any shareholder who directly, indirectly or acting in concert with third parties exceeds the threshold of 33.3% of the voting rights of a listed company must make an offer to acquire all shares of such company, unless an exception applies or is being granted by the Swiss Takeover Board. Companies may raise the threshold to 49% of the voting rights in their articles of association. For non-listed companies, the CO requires any person who alone or by agreement with third parties acquires shares in a company and thus reaches or exceeds the threshold of 25 % of the share capital or voting rights to give notice to the company of the ultimate beneficial owner of the shares within one month.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

Generally, there is a trend to new rules and regulations that promote sustainable longer-term value creation in contrast to short-term approaches. For example, the mandatory "say on pay" by shareholders regarding executive compensation (see question 5 above) or the new rules on non-financial reporting and supply chain due diligence obligations regarding Conflict Minerals and child labour (see question 24 above) contribute to this trend.

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