

SWITZERLAND

Corporate governance

In Switzerland, there have been several changes regarding the corporate governance of listed companies. Economiesuisse, the federation of Swiss businesses from all sectors of the economy, has adopted a Swiss Code of Best Practice for corporate governance. Alongside this initiative, SWX Swiss Exchange has passed a directive on information relating to corporate governance.

Swiss Code of Best Practice

The Swiss Code of Best Practice was adopted by Economiesuisse on 25 March 2002. The Code does not have the status of a formally binding act and is therefore not binding on companies. Instead, it is intended to be a recommended model of behaviour for Swiss public limited companies and therefore amounts to what is known as "soft law". Nevertheless, sooner or later the Code will set new standards for managerial behaviour which will be relevant when it comes to measuring the duty of care and the duty of loyalty of directors.

The first part of the Code addresses the company's relationship to its shareholders. It states that shareholders, as investors, are to have the final decision within a company. Furthermore, the company should endeavour to facilitate the exercise of shareholders' statutory rights. It should also make it easier for shareholders to participate at general shareholders' meetings and ensure that shareholders' rights of information and inspection are met. The company should also take steps to contact shareholders in-between general shareholders' meetings.

In its second section, the Code deals with the board of directors and executive management. Among other things, the Code says that the board of directors should be made up of individuals with the necessary abilities to ensure independent decision-making - abilities which should include being able to have a critical exchange of ideas with the executive management. As a rule, the majority of the board should be composed of non-executive directors who do not perform any line management function within the company. If a significant part of the company's operations is abroad, the board of directors should also include members with long-standing international experience or members from abroad.

In addition, the Code provides that the chairman of the board of directors is responsible for the preparation and conduct of meetings, as well as for the provision of appropriate information. As a general rule, the board of directors should meet at least four times a year.

Conflicts of interest are also covered by the Code. Each member of the board of directors and executive board should arrange their personal and business affairs so as to avoid, as far as possible, conflicts of interest with the company. Transactions between the company and members of the various corporate bodies or related persons should be carried out at arms' length, and should be approved without the participation of the party concerned. If necessary, a neutral opinion should be obtained. Anyone who has a permanent conflict of interest should not be a member of the board of directors or of the executive management.

However, the Code does not specify whether the chairman of the board of directors and the president of the executive management should be joint or separate functions. It does, though, state that, at the top of the company, there should be a balance between direction and control. So if the board of directors decides that a single individual should assume joint responsibility at the head of the company, it should also provide for adequate control mechanisms. The board of directors may appoint an experienced non-executive member (known as a "lead director") to perform this task. Such person should be entitled to convene on their own and chair meetings of the board when necessary.

Finally, the Code says that the board of directors should appoint three committees to perform defined tasks - namely, an audit committee, a compensation committee and a nomination committee. Some of these committees must have a majority of independent members. A director is considered to be independent if he or she qualifies as a non-executive director; was never - or at least was not within the last three years - a member of the executive management; and does not have - or has only comparatively minor - business relations with the company.

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In the case of cross-membership of directors involving boards of two or more companies, the independence of the respective director should be subject to careful examination on a case-by-case basis.

**Corporate
Governance
Directive**

The Swiss Code of Best Practice does not address the issue of information policy. This is covered by the Directive on Information relating to Corporate Governance (the Corporate Governance Directive) of the SWX Swiss Exchange, which came into effect on 1 July 2002. As this directive is based on article 64 of the Listing Rules, it applies to all issuers whose securities are listed on the SWX Swiss Exchange and whose registered offices are in Switzerland. It also applies to issuers whose registered offices are not in Switzerland but whose securities are listed on the SWX Swiss Exchange and not in their own country. A violation of the Corporate Governance Directive may be punished under article 81 of the Listing Rules.

Under the Corporate Governance Directive, the issuers are to make certain key information relating to corporate governance available to investors in an appropriate form. In particular, they must supply information about the group structure and shareholders, the capital structure, the board of directors, the compensation, shareholdings and loans, the shareholders' participation rights, the changes of control and defence measures, the auditors and the information policy. In providing these details, the issuer should confine itself to what is essential to investors. The information should also be provided in an appropriate and comprehensible form.

The information provided under the Corporate Governance Directive must be published in a separate chapter of the issuers' annual report. The disclosure is governed by what is known as the "comply or explain" rule: if the issuer decides not to disclose certain information, it must give specific reasons for each case of non-disclosure. However, the information described in section 5 of the annex to the Corporate Governance Directive (ie information about financial compensation, shareholdings and loans) must be disclosed in any case.

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The Corporate Governance Directive came into force on 1 July 2002 and applies to all annual reports for financial years beginning on 1 January 2002 or later. Most issuers therefore must include a chapter about information relating to corporate governance for the first time in their annual report for the business year 2002.