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Ready for the NEW SWISS CORPORATION LAW?

Many Swiss public companies are already busy getting ready for the new Swiss corporation law, which will take effect on January 1, 2023. Shareholders' meetings will become more flexible and more digital. Shareholders will have more extensive rights. And all but the smallest listed companies will be subject to new non-financial reporting obligations. The author summarizes these changes and explains what companies can do to harness the new flexibility.

By Daniel M. Häusermann

Digital shareholders' meetings

Under the new law, companies no longer need to send shareholders mail. Instead, they may send meeting invites to their registered shareholders via email or push message, if the articles of association so permit. In addition, companies that make their annual report available electronically no longer have to print them.

As of January 1, 2023, "COVID-19 general meetings" will no longer be permitted. Instead, listed companies will have four ways to conduct a shareholders' meeting:

- Physical meetings at a single venue may still be the first choice for many companies. Shareholders' meetings outside Switzerland will only be allowed if the articles of association so permit.
- Physical meetings may be held at several different venues if there is a live audio and video link between the venues.
- Companies can hold "virtual" shareholders' meetings without a physical venue if their articles of association so permit. Shareholders would join such a meeting via an electronic platform and vote via televoting. Participants must be able to speak and listen to everything that is said. The law also defines what must be done if there are technical problems.
- Companies may also conduct hybrid meetings, i.e. a combination of a physical and a "virtual" meeting.

After the meeting, companies must make the voting results available electronically (website is fine) within 15 days and must make the full minutes available upon request within 30 days.

Shareholders' meetings will become more digital.

Modified shareholder rights

The new law generally expands shareholder rights. For example, shareholders holding 5% of the capital or voting rights (currently 10% of the capital) may request the calling of a shareholders' meeting. Shareholders holding 0.5% of the capital or voting rights (currently the lower of CHF 1 million in nominal value or 10% of the capital) may request new agenda items; the same threshold applies to requests to include a motion in the invite. Shareholders will also have the right to request that a brief explanation of their motions be printed in the invite. As before, the articles of association may lower but not increase the statutory thresholds.

Starting in 2023, voting instructions given to the independent proxy will be confidential. The independent proxy may only provide aggregated figures (yes votes/no votes/abstentions per agenda item) to the company, and only during the last three business days before the shareholders' meeting. As a result, investor relations officers and external proxy solicitors may be busier, particularly ahead of contested meetings.

GETTING READY FOR THE 2023 AGM SEASON

To get ready for the 2023 AGM season, companies should:

- review their existing articles of association and internal regulations and prepare amendments, if necessary;
- decide on the format of their 2023 AGM (physical, "virtual", hybrid);
- in the case of a "virtual" or hybrid AGM, ensure that the technological solution complies with legal requirements;
- redesign their AGM process so it complies with the new rules; and
- check what they need to do to fulfill their new reporting requirements.

New reporting rules

The Swiss financial reporting rules and the rules regarding the compensation report will not change significantly with the new law. A big change, however, is that most listed companies will be subject to EU- and OECD-style non-financial reporting obligations for the first time as of the financial year 2023. Companies with less than 500 FTEs and companies with up to CHF 40 million in revenue or up to CHF 20 million in assets – in each case in two consecutive financial years – are exempt.

There are sector- and risk-specific reporting obligations, too. Companies active in the extraction of minerals, oil or gas, or in primary forest logging, must prepare a report on certain payments to government agencies for the first time with respect to the financial year 2022. Companies handling conflict minerals or conflict metals in Switzerland and companies with child labor exposure will be bound by due diligence and reporting obligations for the first time as of the financial year 2023.

Outlook

The new Swiss corporation law is the most significant corporate law reform in the last 30 years. However, further changes are on the horizon. The Swiss Federal Council is currently preparing legislation to regulate proxy advisors as well as a report on the merits of loyalty shares. It is uncertain, though, whether these reforms will see the light of day.

FACTS AND FIGURES ABOUT THE IR CLUB SCHWEIZ

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- 83 member companies
- 80% of companies listed in SMI are members
- 10+ events per year
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When the new Swiss corporation law comes into force in 2023, extensive new requirements and opportunities will arise, including when it comes to holding general meetings. In addition to legal considerations, the developments will bring into focus the question of which IT frameworks will enable a smooth handling of AGMs. Concrete use scenarios were addressed in an interactive live demo, a presentation on legal considerations by Daniel Häusermann and a panel discussion with various corporate experts. The event took place on September 29 at the KKL in Lucerne.

Members can find a recording of all the presentations and all the speaker slides in the protected member area on the CCR website: www.corporate-reporting.com