

NEWS

CORPORATE LAW REFORM IN SWITZERLAND

Share capital and new “capital band”

In future, the minimum par value of shares may be lower than the one centime required by current law, but must still be above zero. Furthermore, it will be possible to have the share capital denominated in a foreign currency if this is essential for the business activity of the company. The minimum share capital remains CHF 100,000.

Worth mentioning is the newly introduced possibility of creating a so-called capital band within which the board of directors can increase or reduce the company's share capital over a period of five years. The increase or reduction - approved by the general shareholders meeting - may amount to up to 50% of the share capital. The capital band may be of particular interest in connection with restructurings.

Rules for interim dividends

The distribution of half-year or even quarterly dividends, which has remained a contentious issue to date, will also be codified. The future law provides for the admissibility of interim dividends subject to certain conditions.

Modernization of the general meeting

The general meeting is being adapted to the digital age, the use of electronic means will now be permitted, i.e. it will also be possible to participate and vote in writing and by electronic means. This paves the way for holding a purely “virtual general meeting” without an actual physical meeting venue, insofar as this is provided for in the articles of association.

The question of whether it should be allowed to hold a general meeting abroad was much debated. According to the wording of the law, this is permissible as long as it does not objectively impede the exercise of shareholders' rights in connection with the general meeting and an independent proxy is appointed by the board of directors.

The «major» corporate law reform was passed by Parliament.

On 19 June 2020, after many years of discussion, the Parliament adopted the revision of the corporate law aimed at modernizing the corporate law. The amendment, which brings about a number of simplifications and flexibilities, was positively received. In the following, selected aspects of the reform will be summarized.

Strengthening the shareholders' rights

In addition, shareholders' rights are being strengthened, especially the rights of minority shareholders. Instead of the present 10%, 5% of the shareholders of public companies will in future be able to demand the convening of an extraordinary general meeting, while in other companies' shareholders holding 10% of the votes or share capital will be able to do so. The right to place items on the agenda requires a shareholding of 0.5% in public companies and 5% in private companies.

In non-listed companies, shareholders who combine at least 10% of the share capital or votes shall also have the right to ask questions outside the general meeting. The right of information has also been simplified; shareholders holding more than 5% of the share capital or voting rights can demand access to the company ledgers and business correspondence at any time. However, legitimate interests of the company, such as the protection of business secrets, shall still take precedence.

Restructuring and insolvency

Of particular relevance are the new provisions on corporate restructuring. These are designed to simplify restructuring and strengthen out-of-court procedures.

According to new law, the board of directors must already take measures to ensure solvency in the event of impending illiquidity (inability to pay) and, if necessary, initiate additional restructuring measures respectively propose such measures to the general meeting of shareholders, insofar as they fall within its competence. This is intended to ensure that the necessary steps are initiated early enough. Restructuring measures must still be taken in case of a capital loss, i.e. if the net assets cover less than half of the aggregate of the share capital and the legal reserves.

The board of directors shall have more time for restructuring: In the event of over-indebtedness, the board of directors will not be required anymo-

re to deposit the balance sheet at the insolvency court if there is a reasonable prospect that the over-indebtedness can be remedied within 90 days of the presentation of audited interim financial statements and the creditors' claims are not additionally jeopardized or, if enough creditors declare a subordination.

In contrast, the stay of insolvency proceedings will no longer be possible. The composition with creditors (Nachlassverfahren) now remains as judicial restructuring proceedings to avert insolvency.

Gender quotas

A much-discussed issue was the representation of the genders on the board of directors and the executive management of larger public companies. According to new law, each gender must be represented by at least 30% on the board of directors and 20% on the executive board. In the event of failure to achieve these thresholds, the company must disclose the reasons for under-representation and the measures taken to promote the less strongly represented gender (comply or explain). There will be no sanctions for non-compliance with these quotas. In addition, a transitional period of five years applies to the composition of the board of directors and ten years to the executive management.

Other aspects

Other aspects of the revision concern the transfer of the regulations on the remuneration of senior management, which were previously anchored in the Compensation Ordinance (Vergütungsverordnung, VegüV), to the Swiss Code of Obligations and the transparency of payments from raw materials companies to government agencies.

Need for action

The new provisions will come into force in the second half of 2021 at the earliest; the likely date being 1 January 2022. However, the Federal Council will determine the exact date of entry into force.

In principle, the revision does not entail the necessity of an amendment of the articles of association for existing companies. Nevertheless, it is worth considering whether and how one would like to benefit from the newly created possibilities and simplifications, for example the option of electronic meetings.

If you have any questions or uncertainties, please contact your contact person at BianchiSchwald.



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