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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The main entities discussed in this chapter are Swiss corporations (*Aktiengesellschaften*) listed on the SIX Swiss Exchange. Regulated entities face additional duties, which are not discussed herein.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

The main legal source governing corporate governance practice is the Swiss Code of Obligations ("CO", SR 220), which governs Swiss corporations. In particular, it contains rules on the convocation of general meetings and the rights of shareholders. The Ordinance against Excessive Compensation in Swiss Listed Companies ("OaEC", SR 221.331) supplements the CO and contains rules mainly on "say-on-pay", the election of board members and the requirement of a compensation committee and an independent proxy to be elected by the general meeting. In connection with the Swiss corporate law reform, which will enter into force on 1 January 2023, the rules of the OaEC will be transposed into the CO.

The Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading ("FMIA", SR 958.1) provides the regulatory framework for stock exchanges and capital markets, such as the rules on the disclosure of major shareholdings, tender offers, including mandatory bid rules, and the rules against market abuse. It is further implemented by the Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 25 November 2015 ("FMIO", SR 958.11), the Ordinance of the Swiss Financial Market Supervisory Authority ("FINMA") on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 3 December 2015 ("FMIO-FINMA", SR 958.111), and the Ordinance of the Swiss Takeover Board on Public Takeover Offers of 25 November 2015 ("TOO", SR 954.195.1)

The Federal Act on Mergers, De-Mergers, Transformation and Transfer of Assets of 3 October 2003 ("Merger Act", SR 221.301) includes provisions regarding information and voting rights of shareholders as well certain safeguards for minority shareholders in connection with mergers, de-mergers or transformations of corporations.

In addition, the listing rules ("Listing Rules") and the implementing provisions of the SIX Exchange Regulation (the regulatory body of Switzerland's main stock exchange, SIX Swiss Exchange) provide for a set of additional rules for companies listed on the SIX Swiss Exchange. The SIX Exchange Regulation under the Listing Rules issued directives that further implement the principles of the Listing Rules. Among others, it issued a Directive on Information relating to Corporate Governance, a Directive on Ad Hoc Publicity, a Directive on Disclosure of Management Transactions, a Directive on Delisting of Equity Securities, Derivatives and Exchange Traded Products, and a Directive on the Listing of Foreign Companies. With the exception of the Directive on Delisting, the Listing Rules and its implementing directives are primarily focused on disclosure rather than a prescriptive approach.

The Swiss Code of Best Practice published by economiesuisse is a legally non-binding framework with core principles around good corporate governance. The code has a "comply-or-explain" approach. Although the Swiss Code of Best Practice is not binding, the vast majority of Swiss listed companies follow it.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The main developments in recent years relate to ESG (environmental, social and governance). As Swiss companies have an international investor base, they face pressure to comply not only with Swiss law but also with international standards related to ESG.

At the Swiss law level, the following developments and trends are worth highlighting:

- *The OaEC, which entered into force on 1 January 2014, introduced a new set of rights to shareholders*: Among others, shareholders are entitled to vote on the compensation of the board of directors and executive management, and to elect a compensation committee and an independent proxy (corporate proxies and custodian proxies are prohibited). Further, the OaEC requires the board to publish a compensation report and the board is prohibited from making certain payments, such as severance payments, to board members or members of the executive management. In addition, the OaEC requires companies to include rules on the maximum number of mandates permitted outside the company, loans and incentive or participation plans. The compensation of certain large Swiss companies is still hotly debated and institutional investors tend to be less willing to approve high amounts of compensation in cases where a company has not performed.
- *Swiss corporate law reform*: While the main set of rules will come into force on 1 January 2023, rules requiring enterprises active in extractive industries to publish a report on

payments to government agencies and gender quotas (see question 4.4) are already applicable. The Swiss corporate law reform transposes the rules of the OaEC into the CO and includes further rules on the enhancement of shareholder rights. For example, it will lower the threshold of shares required to call a shareholder meeting or put a motion on an agenda and will allow virtual general meetings if the articles of association contain a relevant clause (see question 2.1). Further, the Swiss corporate law reform will provide additional flexibility in connection with capital increases. Last but not least, the Swiss corporate law reform will also require large listed companies to publish a report on non-financial matters and comply with due diligence and reporting duties regarding child labour and conflict minerals in the supply chain.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short termism and the importance of promoting sustainable value creation over the long term?

The CO does not contain a rule specifically on short-termism. However, Swiss corporate law has for a long time defined the interests of the corporation by reference to the long-term elements of the enterprise and allowed the board of directors and the general meeting to consider the interests of other stakeholders such as creditors and employees when making decisions. In recent years, several companies have introduced a commitment to sustainability in their articles of association.

In contrast to the U.S. securities laws and EU rules, the rules of the SIX Exchange Regulation do not require companies to publish quarterly financial statements and instead require half-year financial statements only. Nevertheless, some (mostly larger) Swiss companies publish quarterly financial statements or publish at least quarterly key figures in order to meet the expectation of their international investor base – a phenomenon which might support short-termism.

While many investors still look at the interim and annual results of a company, investors have in recent years also been asking for information on a company's sustainability goals and behaviour. This trend is supported by the newly introduced requirements of Swiss law regarding non-financial reporting and due diligence and reporting duties for child labour and conflict minerals in the supply chain, which will apply from financial year 2023.

In 2014, the Swiss Code of Best Practice was revised to expressly define corporate governance as encompassing "all of the principles aimed at safeguarding sustainable company interests" (preamble). The Swiss Code of Best Practice explicitly states that the board of directors should be guided on the "goal of sustainable corporate development" (principle 9). It also considers that the compensation system should reward performance aimed at medium- and long-term success and more specifically align the interests of executives with the interests of long-term committed shareholders (principle 35). In practice, many compensation schemes include long-term incentives, which aim to prevent short-termism.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

By law, the general meeting of shareholders is required to approve or vote on the following items, among others:

- Amendment of the articles of association.
- Changes to the capital structure through capital increases, either directly by resolving on an ordinary share capital increase or indirectly by voting to introduce authorised or conditional share capital in the articles of association, with a delegation to the board of directors to determine the details of such capital increase within the limits of the articles of association, and capital reductions. The corporate law reform will allow the general meeting to define in the articles of association a range within which the board of directors will have the authority to increase or decrease the capital.
- Yearly election of the members of the board of directors and the chairperson of the board of directors, the members of the compensation committee as well as the independent proxy and auditors.
- Approval of the annual report and resolution on the allocation of profit and dividend distributions.
- Maximum amount of compensation for each member of the board of directors and the executive management in a given year.
- Discharge of the members of the board of directors and executive management.
- Approval for mergers, de-mergers and changes in the legal structure.

Finally, the general meeting of shareholders can also vote on a resolution to raise the threshold for a mandatory bid or even waive a mandatory bid outright. Under takeover law, an affirmative resolution of the general meeting is required to allow the company to decide or commit to acquire or sell a substantial part of the assets, or incur substantial liabilities from the publication of a public tender offer to the publication of the final result of the offer, in order to prevent the board of directors from taking defensive measures which could potentially frustrate the bid.

The general meeting of shareholders does not currently have the authority to vote on a decision to delist shares. This will change under the new company law which enters into force on 1 January 2023.

Generally, a share buy-back can be decided and implemented by the board of directors and does not need to be approved in advance by the general meeting or authorised in the articles of association. Similarly, Swiss law does not require a shareholder vote on transactions with related parties or major transactions unless they consist of a merger or a de-merger, affect the capital structure, require a shareholder vote to increase the capital or constitute a sale of substantially all the assets and hence constitute a dissolution and liquidation of the company.

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

As a matter of Swiss corporate law, shareholders do not owe any duty to the company once they have paid up their shares. This also holds for major shareholders and even majority shareholders, who do not owe a duty of care or loyalty to the company, as a matter of principle. However, for shareholders to be involved in the management of the company they must become *de facto* directors and assume the same duties as a director.

Shareholders are as a matter of corporate law not required to exercise their voting rights. Institutional shareholders are increasingly under pressure to exercise their voting rights and even engage with investee companies as part of their stewardship role. Swiss collective investment schemes are, for example, subject to a general obligation to exercise voting rights in the interests of their investors. This duty does not, however, impose an obligation to actually vote. A further step was made by the OaEC, which requires pension funds and other occupational benefit institutions to vote at general meetings in the interests of their beneficiaries and disclose generally how they exercise their voting rights. These rules will be transposed into pensions legislation as of 1 January 2023 as part of the corporate law reform.

Beyond corporate law and the regulation of investors, the FMIA imposes, as a matter of regulation of financial markets, administrative duties on investors, including the disclosure of major shareholdings and the duty to make a mandatory bid offer (the latter to the extent not waived by the articles of association) as described in further detail below.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

Each company is required to hold an annual general meeting within six months of the end of the financial year. Under the current regime, general meetings may, as a matter of principle, only be held physically by shareholders attending in person or by proxy, although this requirement was relaxed during the COVID-19 pandemic and allowed companies to require shareholders to vote by proxy.

Shareholders who cannot attend the meeting may elect to be represented by the independent proxy or by another person (who might need to be a shareholder if stipulated by the articles of association). The board of directors has to ensure that shareholders may give votes by electronic means to an independent proxy, who is elected on an annual basis by the general meeting and is required to vote as instructed or abstain. Virtual meetings or hybrid meetings will only be allowed from 1 January 2023 with the entry into force of the corporate law reform.

In addition to the annual general meeting, the board of directors may convene extraordinary shareholder meetings if it deems it appropriate. Shareholders may bring forward motions regarding issues covered by the agenda of a general meeting. By law, shareholders representing at least 10% of the share capital have the right to require the board of directors to convene an extraordinary general meeting. Shareholders representing shares with a nominal value of CHF 1 million have the right to put an item on the agenda of a general meeting.

These thresholds are quite high for larger Swiss listed companies, especially if the shares trade at large multiples of the nominal value. Therefore, a number of companies have voluntarily lowered these thresholds in their articles of association. As of 1 January 2023, these thresholds will be lowered to 5% for private companies and 0.5% for listed companies. Shareholders holding 0.5% of the share capital will also be entitled to request to submit an item to the agenda in advance of the general meeting, while all shareholders will continue to enjoy the right to bring a motion on an issue covered by the agenda at the meeting itself. The main advantage of the former will be to allow the motion and a short explanation of the reasons to present it to be included on the materials sent to all shareholders in advance of the meeting, allowing them to instruct the independent proxy to vote in favour of the motion.

Shareholders do not have the right to inspect the share ledger disclosing the identity of the registered shareholders. Hence, dissenting shareholders do not have the possibility to communicate or coordinate with other shareholders ahead of a general meeting, other than by public media, which is, however, far less effective than a direct outreach to shareholders, an instrument to which the board of directors has access.

By default, shareholders will pass resolutions with a majority of the votes represented. Certain important resolutions, such as a change in the purpose of the company, the creation of authorised or conditional share capital or the exclusion of pre-emptive rights, the dissolution of the company or, under the corporate law reform entering into force on 1 January 2023, delisting, require a majority of at least ⅔ of the votes represented and the absolute majority of the nominal value of the shares represented. The articles of incorporation can provide for more stringent majority requirements, but to be validly adopted such provisions need to be approved at least by the same majority as the one they aim to require.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

Under Swiss corporate law, shareholders do not owe a fiduciary duty to the company and may also not be held liable for acts or omissions of the company in their capacity as shareholders.

Major shareholders who also serve on the board of the company have fiduciary duties in their capacity as a board member, but not as a major shareholder. Furthermore, if major shareholders get involved in the management of a company, they are at risk of being treated as *de facto* directors and, as such, assume the same duty of care and loyalty as a director.

As a matter of corporate law, shareholders are free to vote and on how to vote. Institutional shareholders are increasingly under pressure to exercise their voting rights and even engage with investee companies as part of their stewardship role. Swiss collective investment schemes are, for example, subject to a general obligation to exercise voting rights in the interests of their investors. This duty does not go so far as to impose an obligation to vote systematically. A further step was made by the OaEC, which requires pension funds and other occupational benefit institutions to vote at general meetings in the interests of their beneficiaries and disclose generally how they exercised their voting rights. These rules will be transposed into pensions legislation as of 1 January 2023 as part of the corporate law reform.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

Members of the board of directors and the executive management may be held liable for the damage caused by the intentional or negligent violation of their duties. Such suits can be initiated by the company acting through the board of directors or following a resolution of the general meeting, in which case a special representative may be appointed to manage the lawsuit. Shareholders are also entitled to sue directors, members of management or auditors on their own behalf or derivatively on behalf of the company for breach of their duties. Such suits are, however, rare in practice as the suing shareholders would bear the costs of the lawsuit, including the court fees and the fees of the defendant if it loses, whereas any damages awarded would be paid directly to the company.

In contrast to shareholder resolutions, resolutions of the board of directors or the executive management may not be challenged by shareholders. In extreme cases, board resolutions, which disregard fundamental principles of a Swiss corporation, may be regarded as void.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

In principle, Swiss corporate law does not limit the interests a shareholder may hold in a company. However, the articles of association may provide limitations with a threshold, above which a shareholder or a group of shareholders will not be registered as shareholders with voting rights or in case an acquirer does not declare that it will hold the shares in its own name and for its own account. The corporate law reform will also allow companies to refuse to register a shareholder as a shareholder with voting rights if it does not also declare in addition that it bears the economic risk of the shares and did not enter into any agreement to return or dispose of its shares.

Furthermore, the articles of association may also cap the voting rights a given shareholder may exercise at the general meeting.

The FMIA imposes, as a matter of the regulation of financial markets, administrative duties to investors, including the disclosure of major shareholdings and the duty to make a mandatory bid offer (the latter to the extent not waived by the articles of association):

- *Disclosure of major shareholdings*: Any person who, directly or indirectly, or acting in concert with third parties, acquires or disposes of shares or acquisition or sale rights relating to shares in a company with its registered office in Switzerland whose equity securities are listed (at least in part) in Switzerland, or a company with its registered office abroad whose equity securities have at least in part a primary listing in Switzerland, and thereby reaches, falls below or exceeds the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 33⅓%, 50% or 66⅔% of the voting rights (whether exercisable or not), must notify its stake to the company and to the Disclosure Office of the SIX Exchange Regulation within four trading days. The implementing regulations provide for complex and detailed rules on calculating the shareholding, in particular when the investor holds equity derivatives or is engaged in securities lending or repurchase transactions with the shares.
- *Mandatory bid rule*: Any person or group of persons holding shares of 33⅓% or more of the voting rights in the respective company must submit an offer to all holders of equity securities to acquire their shares at their price on the exchange or at least at the highest price paid by the offeror over the last 12 months. As a peculiarity, Swiss law permits companies to raise the threshold of 33⅓% up to 49% (so-called "*opting-up*") or even disapply the mandatory rules (so-called "*opting-out*") by including a clause in the articles of association raising the threshold or disapplying the mandatory bid offer rules.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

In general, a shareholder does not have the obligation to disclose its intentions, plans or proposals, neither *vis-à-vis* the company nor other shareholders. This also applies when crossing or reaching a threshold requiring the disclosure of major shareholdings.

As a matter of takeover law, a person publishing a public tender offer is required, among others, to disclose the launch and the results of the public tender offer and to provide certain information (price, timeline) about the offering including its intentions with respect to the target company in the event the offer is successful. This obligation also applies to an offer presented under the mandatory bid rule.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholders are in Switzerland still less active and less vocal than in the United States. However, an increase in shareholder activism can be noted over the last few years and there have been a number of successful campaigns.

Swiss law does not directly address shareholder activism. However, shareholder rights, such as the right to call an extraordinary general meeting and to put motions on the agenda, facilitate shareholder activism. In addition, the OaEC and, in the future, the corporate law reform, facilitate the exercise of shareholder rights and grant shareholders more rights.

On the other hand, the board of directors continues to control, to a large extent, the proxy voting mechanism, by preparing the proxy materials and sending them to the shareholders, while an outsider can at most make a motion and, under the new rules, provide an explanation that will be included in the proxy materials, if it holds a qualifying shareholding of 5% (or a lower threshold set in the articles of association).

Although the rules on the disclosure of major shareholdings and mandatory bids provide for a carve out and do not qualify coordination among shareholders in view of exercising voting rights at a given general meeting as acting in concert, the financial consequences in case of a breach of the complex rules for mandatory bid offers have a chilling effect on shareholder activism in Switzerland.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The highest management body is the board of directors. The board of directors may either manage the company as a corporate body or – as is typically the case for listed companies – delegate the management to the executive management. In the second case, the board of directors may delegate all duties to the executive management, except certain inalienable and non-transferable duties, provided the board adopts organisational regulations setting out the tasks of the executive management.

Swiss law does not prevent executives from sitting on the board of directors or prescribe independence requirements. In practice, most Swiss listed companies have a dual-board structure with a board comprised exclusively of non-executive directors and an executive board with the executive managers, although there are isolated cases where the CEO or even several executives sit on the board. The non-binding Swiss Code of Best Practice recommends separating the chair of the board from the CEO position, but acknowledges that companies may want to deviate from this principle due to the specificities of the company or particular circumstances. In such a case, the board of directors should ensure that there are adequate control mechanisms in place, e.g. by appointing a lead independent director with the authority to convene and chair meetings of the board if necessary.

Swiss law does not require the appointment of employee representatives. If several categories of shares exist, each category has the right to nominate a board representative.

There are no requirements regarding the independence of board members; however, listed companies often ensure compliance with the Swiss Code of Best Practice and the requirements of large proxy advisors, such as ISS and Glass Lewis, in order to comply with good corporate governance, though these frameworks are not mandatory for companies.

3.2 How are members of the management body appointed and removed?

The members and the chairperson of the board of directors as well as members of the remuneration committee are elected annually by the general meeting. Their tenure lasts from one annual general meeting to the next general meeting, unless a board member resigns or is removed by an extraordinary general meeting. The appointment and the removal of a board member requires a majority of the vote present (except where the articles of association provide for a higher majority requirement).

Members of the executive management are appointed by the board of directors. Therefore, shareholders may not appoint or remove members of the executive management. Under the OaEC, employment or service contracts with members of the executive management cannot last longer than 12 months or, if entered into for an indefinite period, be terminated with a notice period longer than 12 months.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

The OaEC introduced "say-on-pay" rules requiring Swiss listed companies to get approval by the general meeting for the compensation of the board of directors and the executive management on an annual basis. The OaEC prohibits certain payments to members of the board of directors or the executive management, such as severance payments or compensation for the acquisition of companies. As a part of their annual report, companies must produce a remuneration report informing shareholders about the compensation of the board of directors and the executive management. The OaEC provides minimum disclosure requirements. Among others, companies are required to disclose the remuneration of each board member and the aggregate compensation to the executive management with the highest paid salary being disclosed separately.

Each Swiss listed company is required to have a remuneration committee, which consists of board members and is elected by the general meeting annually. The role of the remuneration committee is not defined by law but needs to be anchored in the articles of association. In practice, this committee typically prepares the compensation proposals for the board for submission to the general meeting and reviews and gives recommendations to the board of directors in all matters related to compensation.

The Swiss Code of Best Practice includes in its annex guidelines the compensation of the board of directors and the executive management. These guidelines focus on the governance and structure of remuneration rather than the quantitative aspects of executive compensation, which is covered by the OaEC.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Swiss law does not place any limitations on interests held by members of the board of directors and executive management in securities issued by the company.

The shareholdings of each member of the board of directors and executive management specifying their name and function are disclosed in the notes of the financial statements. This disclosure will be maintained under the corporate law reform but will be moved to the remuneration report.

In addition, the Listing Rules require members of the board of directors and executive management to report their transactions in securities related to the company within two trading days. The company has to notify the exchange about the trade within three trading days after the receipt of the notification. The transactions will be disclosed on the website of the SIX Swiss Exchange on an anonymous basis. As with any other shareholder, members of the board of directors and executive management are subject to the rules on disclosure of major shareholdings (see question 2.2).

The OaEC does not permit the granting of equity securities, conversion or options rights for equity securities of the company, whose basis is not laid down in the articles of association of the relevant company. Any compensation-related grants of securities related to the company must be disclosed in the remuneration report of the company (see question 3.3). These requirements will be transposed into the CO under the new corporate law reform without any substantive change.

3.5 What is the process for meetings of members of the management body?

Swiss law, in the CO, provides only for basic rules on the process for meetings of the board of directors. These rules are supplemented or amended by a company's articles of association and organisational regulations.

The organisational regulations typically provide for a certain period for calling a board meeting by the chairperson of the board of directors. Board meetings are held physically, but resolutions may also be taken by circular resolutions provided that no member objects. Many organisational regulations also allow for virtual meetings.

Generally, the board of directors take their resolutions with a majority of the votes present. The articles of association may give the chairperson the casting vote.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Members of the board of directors owe a duty of care and loyalty to the company and must treat shareholders in like circumstances equally. The duties of care and loyalty require members of the board of directors to safeguard the interests of the company. Swiss law does not further define the interests of a company, but it is generally acknowledged that this term is to be understood broadly and includes, in particular, employees and other stakeholders as well. To a large extent judicial scrutiny over management decisions is watered down by the Swiss version of the business judgment rule, which affords members of the board of directors and executive management broad discretion in business decisions taken on an informed basis and free of a conflict of interest in what they believe to be the best interests of the company.

Board members may be held liable if they fail to comply with the above-mentioned duties. In order for a liability claim to be successful, the plaintiff has to show that an intentional or negligent breach of duty caused damage to the company. Shareholders are entitled to sue board members claiming a damage has been caused to the company. Creditors may only sue in case of bankruptcy of the relevant company.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

Swiss law does not assign an explicit role to the board of directors for corporate governance, although by granting it responsibility for the overall management and the company's organisation, as well as the supervision of the persons entrusted with the management of the company, including compliance with the law, the articles of association, operational regulations and directives, the board of directors is to a large extent responsible for the corporate governance at board and executive level. Moreover, Swiss law indirectly assigns to the board certain corporate governance tasks in connection with reporting requirements. For example, the board of directors is ultimately responsible for the corporate governance report, the remuneration report or the report on non-financial matters (if applicable).

The overarching message is underlined by the Swiss Code of Best Practice, which considers that the board of directors has the lead in corporate governance matters and defines the strategic goals of the company.

The key challenges of corporate governance are mainly set by the demands of the investors, which are currently requiring boards to define a convincing ESG strategy.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

A general undertaking by the company according to which it promises to indemnify members of the board of directors or executive management from their liability to the corporation or shareholders is considered by most scholars to be contrary to the duties of care of the directors and hence null and void. However, the company can agree to cover the costs incurred by a member of the board of directors or executive management in connection with a lawsuit and further to indemnify them from such costs if they are ultimately not held liable.

It is largely admitted that D&O insurance for members of the board of directors and the executive management is permitted and that the company may pay for the premium.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

As a matter of company law, the board of directors have untransmissible and inalienable authority regarding the overall management of the company. This is generally understood to include the authority to define and change the overall strategy of the company. In this respect, a Swiss board of directors has powers that go beyond the role of a German or French supervisory board and are akin to a board of directors of an English law company or a U.S. corporation, even if the management does not generally sit with the board of directors of listed companies. The executive management is then responsible to carry out the strategy and manage the business on an ongoing basis.

Shareholders may, however, have a say indirectly if a change in the company's strategy requires the amendment of the purpose of the company in the articles of association, new equity which requires a capital increase, or the approval of a merger or a de-merger, which all require a vote by the general meeting.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

Swiss law requires the board of directors to safeguard the interests of the company. While the law does not define what the "interests of the company" means, be it by equating with the interests of the shareholders or with the interests of the corporate enterprise, or by defining a hierarchy of interests, case law has repeatedly acknowledged that the board may take into account the interests of other stakeholders such as creditors and employees when exercising its business judgment. More generally, there are a number of precedents where the Swiss Federal Supreme Court held that minority shareholders should accept that their interests may in certain circumstances rank after the interests of other stakeholders.

As mentioned above, some companies have expressly anchored this principle in their articles of incorporation.

The consideration of the interests of other stakeholders is, however, limited by the principle that, subject to a provision in the articles of association approved by a unanimous resolution of the general meeting, a company limited by shares is a for-profit enterprise. In other words, even if the interests of other stakeholders can be considered, they should not amount to a transformation of the company from a for-profit organisation to a non-profit entity.

4.2 What, if any, is the role of employees in corporate governance?

In contrast to other jurisdictions, such as Germany or France, Swiss law does not provide for the representation of employees on the board of directors.

Swiss law does provide for the possibility for firms to create employee representation to discuss employment matters and requires that employees or the employee representation be informed and consulted prior to mass redundancies, certain corporate transactions such as mergers and de-mergers, transformations, sales of businesses and bulk transfers of assets. Beyond these issues, employees and unions do not play a major role in corporate governance matters.

4.3 What, if any, is the role of other stakeholders in corporate governance?

Third parties (i.e. parties who are not shareholders or members of the board of directors of the company) do not play a formal role in the corporate governance of a company. However, they might nevertheless play an important role. For example, companies or consumers purchasing goods from a company may exercise pressure on that company to comply with certain sustainability standards.

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility and similar ESG-related matters?

Companies listed on the SIX Swiss Exchange have the option for a so-called "opting in" with regard to the publication of a sustainability report. Companies having chosen an opting in are required to publish a sustainability report in accordance with a standard recognised by the SIX Exchange Regulation. The Global Reporting Initiative and Sustainability Accounting Standards Board standards are among those that are recognised.

On 1 January 2021, Swiss law introduced a diversity "quota", which is subject to the "comply-or-explain" principle. The level of representation of each sex needs to reach a quota of at least 30% at board level and 20% at management level. Failure to meet this requirement is not subject to hard sanctions but merely to a duty to explain the reasons for such deficiency and measures taken to improve the representation of the least represented gender at firm level. Both quotas are subject to a transitional period of five and 10 years, respectively. Proxy advisors ISS and Glass Lewis already require companies to comply with these rules as of this year.

Since 1 January 2022, Swiss enterprises active in extractive industries, which are subject to an ordinary audit by Swiss law, have to produce a report on payments made by themselves or companies controlled by them to governmental agencies involving the extraction of minerals, oil or natural gas or in the harvesting of timber in primary forests.

In line with the developments in the EU, larger Swiss listed enterprises will be required as of 1 January 2023 to produce a report on non-financial matters and enterprises whose registered office, central administration (*Hauptverwaltung*) or principal place of business (*Hauptniederlassung*) is in Switzerland must comply with certain due diligence and transparency obligations if they have business abroad involving conflict minerals or potential child labour.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency and what is the role of audits and auditors in these matters?

The board of directors is ultimately responsible for the annual report and, in the future, also for the report on non-financial matters. In case of enterprises in extractive industries, the board is also the responsible body for the publication of the report on payments to government agencies (see question 4.4).

Auditors review the compensation report and will review the report on conflict minerals (see question 4.4).

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Under the Listing Rules, a company must publish its annual report on its website within four months after the end of its financial year. Included in the annual report are financial statements drawn up in accordance with a recognised standard, being IFRS, US GAAP or Swiss GAAP FER, the remuneration report according to the OaEC and the corporate governance report required under the Directive on Information relating to Corporate Governance. Interim reports covering the first six months of a financial year are due within three months after the end of that period.

Companies must inform the market of any price-sensitive facts, i.e. facts which are capable of triggering a significant price change, by publishing a press release on the website and by circulating it to interested parties (push service).

For additional ESG disclosure, please refer to question 4.4.

5.3 What are the expectations in this jurisdiction regarding ESG- and sustainability-related reporting and transparency?

Although Switzerland still lags behind the EU in ESG regulation, it has caught up in certain areas in recent years, such as with the requirement to publish a report on non-financial matters or due diligence and reporting requirements on child labour and conflict minerals. Because of their broad and international investor base, Swiss listed companies are and remain to be exposed to demands from large institutional investors, which will require such companies to comply with ESG requirements that go beyond those of Swiss law. We therefore expect that Swiss law will not be the driver for new ESG requirements, but will rather reflect what is already expected from and implemented by larger Swiss listed companies.

Prof. Dr. Rashid Bahar is a founding partner of Advestra. Previously, he was partner at a leading Swiss law firm for eight years. Rashid Bahar is an expert on corporate law and financial market regulations. He advises clients on transactional and regulatory matters. Financial institutions frequently seek his advice on M&A matters and their regulatory implications. Rashid is a professor at the University of Geneva, where he teaches corporate law as well as law and economics. He has extensively published and is an editor of the leading commentary on Swiss financial market regulation as well as the *Swiss Business Law Review*.

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