

Delivering expert knowledge
to global counsel



Employment & Labour - Switzerland

New 'fat cat' regulations enacted

February 05 2014

In Spring 2013 Swiss voters overwhelmingly approved the Minder Initiative (also known as the 'rip-off initiative'), which introduces to the Constitution stringent provisions requiring shareholder voting on board and management compensation for companies registered in Switzerland and listed on either a Swiss or foreign stock exchange. In order to enact these constitutional amendments, the government passed an interim ordinance – effective from January 1 2014 – which will subsequently be replaced by ordinary parliamentary legislation.

The new interim ordinance requires listed Swiss companies to incorporate sweeping 'say-on-pay' rules into their articles of association and relevant organisational board regulations. All existing employment contracts of both board and highest-level management members must be brought into line with the new regime by the end of 2015. Conversely, employment contracts to be concluded on or after January 1 2014 are subject to the new requirements with immediate effect.

The definition of permitted board and management compensation set out in the interim ordinance is all-encompassing. It includes, in particular, all types of direct and indirect benefits (eg, pension fund contributions, compensations in kind, company loans, guarantees and suretyships), while simultaneously prohibiting sign-on bonuses, brokerage fees for the purchase and sale of company businesses or specific (undue) severance payments.

In the near future, contractual termination notice periods exceeding six to 12 months and post-contractual non-compete agreements will be carefully reviewed to determine whether they constitute such undue severance payments. Similarly, sign-on bonuses will continue to be valid as long as they compensate, for example, for the forfeiture of non-vested interests in share and option plans of the former employer.

The ordinary shareholders' meeting must first vote on the board's annual compensation report as a whole. This board report indicates not only the overall amount of fixed and variable board and management compensation, but also the specific amounts granted to individual board members. Conversely, the compensation report must account separately for the highest-paid manager's compensation. The shareholder vote on the board's compensation report is binding (ie, the mere consultation votes of the past are no longer permitted).

From now on, shareholders must also approve the overall compensation schemes granted or due to be granted to board and management members. This vote is also binding.

The draft interim ordinance prepared by the Justice Department will still contain specific provisions dealing with shareholder votes. It was proposed that the ordinary annual general meeting (AGM) would prospectively vote on the overall amount of fixed compensation for board and management members for the upcoming financial year, while the same retroactively approving the overall amount of variable board and management compensation earned during the preceding financial year.

The final ordinance now provides for greater flexibility as to how shareholder voting is structured via the articles of association. It is possible, too, that in the articles of association shareholders may provide a budget position that allows for the compensated hiring of management members following the annual AGM. This budget position would be exempt from future shareholder approval.

For further information on this topic please contact Thomas Rihm at Thouvenin Rechtsanwälte by telephone (+41 44 421 45 45), fax (+41 44 421 45 00) or email (t.rihm@thouvenin.com). The Thouvenin Rechtsanwälte website can be accessed at www.thouvenin.com.

ILO provides online commentaries as specialist Legal Newsletters. Written in collaboration with over 500 of the world's leading experts and covering more than 100 jurisdictions, it delivers individually requested information via email to an influential global audience of law firm partners and international corporate counsel. Please click here to register for the service.

The materials contained on this website are for general information purposes only and are subject to the disclaimer.

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at www.iloinfo.com.

Author

Thomas Rihm



© Copyright 1997-2014 Globe Business Publishing Ltd

Online Media Partners 