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Corporate law update 2013

AIBL

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Agenda

1. New accounting law p. 3
2. Minder initiative on executive's pay p. 8
3. Update on the Swiss code of best practice for corporate governance p. 14

New accounting law

Structure

- New law on bookkeeping and accounting
- In art. 957 – 962a CO (total of 30 articles)
- The regulation is independent of the legal form, but depends on the size
- The former art. 662 – 669 CO (for the corporation) are abrogated
- Principle of “informed opinion” ≠ true and fair view
- Still reserves remain allowed

Structure of the new law:

- Chapter 1: General provisions
- Chapter 2: Annual financial statements
- Chapter 3: Accounting for large companies
- Chapter 4: Financial statements following an accepted accounting standard
- Chapter 5: Consolidated accounts

New accounting law

Application

The new accounting rules apply:

- To large sole proprietorships (turnover > CHF 500'000)
 - To all legal persons (some exceptions for associations and foundations)
 - Others can have a simple book of income and expenses
-
- The threshold for VAT registration remains at CHF 100'000

New accounting law

Some changes

- Possibility to have the financial statements in CHF or another currency (the most important currency for the business activities)
- The equivalent values in CHF and the exchange rate must be indicated
- National language or in English (art. 958d al. 4 CO)
- Risk assessment by the board of directors and written management report required only for companies subject to an ordinary audit (20 / 40 / 250)
- Assets listed on an exchange can be valued at the market price on the balance sheet date, even if this value is higher than the purchase price

New accounting law

Annex

The annex must contain, among others, indications on

- Annual average number of employees (FTE)
 - Leasing for more than 12 months
 - Significant events after the balance sheet date (art. 959c CO)
-
- The requirement to indicate the value of insurance against fire was dropped

New accounting law for large companies

Large companies are:

- Listed companies
- Economically significant companies (20/40/250)
- Companies with an obligation to establish consolidated accounts.

Large companies must:

- Complete the annex with some elements, e.g. long term debt and audit fees
- Establish a statement of cash flows
- Write an annual report

A written annual report is not required any more for SMEs!

Do you know this person?



Campaign on the Minder initiative

iPad 16:29 78%

Tribune de Genève Rubriques

SUISSE Dimanche, le 20 janvier 2013, 16h28



Incertitude sur le sort réservé à l'initiative Minder

VOTATION Si les Verts ont recommandé ce week-end l'approbation du texte, le PDC et le PBD lui ont...

Le patron d'Ethos préfère le contre-projet à l'initiative Minder

VOTATION Dominique Biedermann a choisi de défendre le contre-projet plutôt que l'initiative Minder contre les rémunéra...



«L'initiative Minder risque de punir la place économique»

VOTATION Pour le conseiller fédéral Johann Schneider-Ammann, il est trop délicat de laisser le conseil d'administration pre...



Maudet réclame de la fermeté à l'égard des multirécidivistes

GENEVE Le conseiller d'Etat genevois Pierre Maudet va répondre par la fermeté aux délinquants multirécidiviste...



IMAGES



Une campagne anti-sida pour les gays

SANTÉ L'Aide suisse contre le sida lance une nouvelle campagne en faveur des homosexuels. L'objectif de «Fuck Positive...»



Un Allemand trouve la mort dans une avalanche

OBERLAND BERNOIS Un homme de 29 ans domicilié à Berne a perdu la vie dans une avalanche samedi vers 13h00 à Kande...



Key dates regarding the Minder-Initiative

- 21 December 2007: Bill on revision of company law was submitted to Parliament
- 26 February 2008: Minder-Initiative was handed in
- 5 December 2008: Additional bill to company law reform submitted to Parliament
- Spring 2010: National Council (Conseil national) ceases debate on comprehensive company law reform and adopts instead a direct counterproposal to Minder-Initiative
- Summer 2010: Council of States (Conseil des Etats) agrees to stop debate on comprehensive company law reform but opts for a (limited) indirect counterproposal to Minder-Initiative
- 16 March 2012: Parliament adopts indirect counterproposal to Minder-Initiative
- 3 March 2013: Public vote on Minder-Initiative

Minder-Initiative: poison pills for the business & company location Switzerland

Topic	Minder-Initiative	Why noxious?	Ind. Counter Proposal
Criminal sanctions for violation of «Minder provisions»	Infringements can be sentenced with up to <u>3 years imprisonment</u> and with a fine of up to 6 yearly salaries	<ul style="list-style-type: none"> •No other comparable jurisdiction criminalizes infringements of company law in such way •Small and medium enterprises first victims 	None
Remuneration issues			
•Senior Management	Mandatory <u>and binding</u> vote at AGM on total sum of remuneration	<ul style="list-style-type: none"> •Shareholders are not liable for the management of the company •Not practicable 	Mandatory vote at AGM. By-laws, however, may provide that the vote is consultative instead of binding
•Sign-on-Payments	Prohibited	•Companies will not be able to employ best directors and officers	Permitted under the criteria of the remuneration regulations
•Profit and share option plans in By-laws	Profit and share option plans for Board and Senior Management are a compulsory element of the by-laws	<ul style="list-style-type: none"> •Totally out of proportion to include such plans in by-laws •Regulation in by-laws is too rigid 	AGM needs to adopt remuneration regulations that contain basic principles and elements of remuneration. Right of GMs to request changes that are then drafted by the Board and submitted to the subsequent GM.
•Election of members of remuneration committee by the AGM	Members of the remuneration committee must be elected annually by the AGM	<ul style="list-style-type: none"> •Weakens Board (self-constitution important for its functionality) •Constraint for small enterprises 	None

Source: Swissholdings

Minder-Initiative: poison pills for the business & company location Switzerland

Topic	Minder-Initiative	Why noxious?	Ind. Counter Proposal
Electronic Voting at AGM	Mandatory electronic voting for non-attending shareholders	<ul style="list-style-type: none"> • Causes unnecessary expenses for small and medium enterprises 	Electronic voting if by-laws provide for it
Mandatory voting by Pension Funds	Pension Funds are compelled to exercise their voting rights at every AGM	<ul style="list-style-type: none"> • Undue burden in part. for small pension funds with adverse effects on pensions paid out 	Pension Funds are requested to exercise their voting rights when possible
Election of Members of the Board of Directors	Mandatory annual re-election of individual Board members	<ul style="list-style-type: none"> • Limitation of shareholder's rights 	Members of the Board are re-elected annually, but by-laws may provide for a longer term of up to 3 years
Further mandatory content of by-laws	By-laws need to contain provisions on:	<ul style="list-style-type: none"> • Regulation in by-laws is too rigid 	Remuneration regulations contain provisions on :
	<ul style="list-style-type: none"> •Loans and Pensions to Directors and Senior Management 		<ul style="list-style-type: none"> •Responsibility and procedure for setting compensation
	<ul style="list-style-type: none"> •Number of permitted external mandates 		<ul style="list-style-type: none"> •Elements of the share option programme
	<ul style="list-style-type: none"> •Length of employment contracts for senior management 		<ul style="list-style-type: none"> •Criteria for loans and pensions
Additional consulting and employment contracts for Directors and Senior Management with Group Companies	Prohibited	<ul style="list-style-type: none"> • Prevents a person to work for several companies in a group, also if they cover the person's salary proportionally – prevents optimal business solutions 	Disclosure in Remuneration Report

Application of provisions of Minder-initiative or Indirect counter proposal

Entry into force and transitional periods

Minder Initiative	Indirect counterproposal
<p>Within a year of the adoption of the Initiative, Federal Council needs to release an Ordinance that implements the provisions of the Initiative (= until 3.3.2014 at latest)</p>	<ul style="list-style-type: none"> • Federal Council will decide on date of entry into force after expiry of the referendum deadline → (entry into force possibly on 1.7.2013 or 1.1.2014)
<p>→ In our view Ordinance will have to contain further transitional provisions as to e.g. from when on the say-on-pay provisions apply or at what date the by-laws need to be adapted</p>	<ul style="list-style-type: none"> • Amendments of By-laws At latest 2 years after entry into force → AGM 2014 or 2015
	<ul style="list-style-type: none"> • Say-on-pay Adoption of Remuneration Regulations and shareholder's vote on fixed remuneration in first AGM that takes place after 6 months after entry into force → Entry into force e.g. on 1.7.2013: AGM 2014 on 1.1.2014: AGM 2015 <p>Shareholder's vote on variable remuneration in first AGM after first business year following the entry into force</p>

Possible amendment of the Swiss code of best practice for corporate governance (SCBP)



2007 SCBP

New SCBP

- Compliance
- Board of directors
- Guidelines for institutional investors (2013)

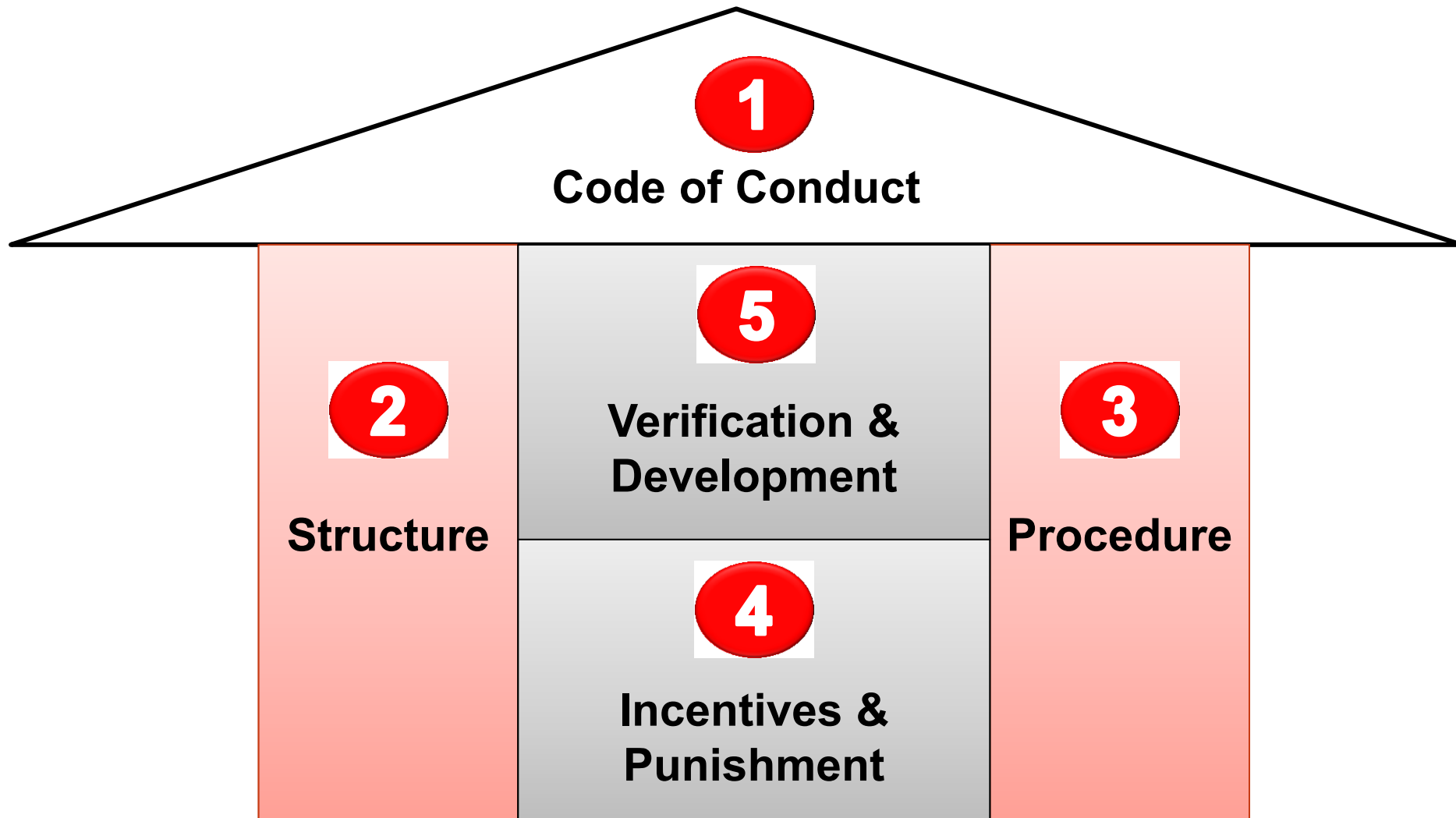
Guidelines for institutional investors

Exercise of shareholders' rights in listed companies

1. Exercise when appropriate & practicable
2. In the interest of the beneficiaries
3. Institutional investors assume their responsibility
4. Transparency on the principles and the procedure
5. Annual activity report

Compliance

5 Key Elements



Thank you for your interest



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