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Switzerland

Minder Initiative
Potential Implications

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Result of yesterday's vote

On 3 March 2013 the initiative against excessive remuneration (Minder Initiative) was accepted by Swiss voters. Almost 68% of voters and the majority of Swiss cantons also cast their votes in favour of the Minder Initiative. Consequently, the proposed counter-proposal by the Swiss Parliament will not be put forward.

With the enactment of the Minder Initiative, a new article (Art 95 Section 3) will be included in the Swiss Federal Constitution. Switzerland now joins a select group of countries who have introduced, or are in the process of introducing, a binding shareholder vote in relation to executive pay, including The Netherlands, Sweden, Norway, Denmark, Belgium and the United Kingdom. In addition, a number of other countries, including the USA and Australia, have advisory voting.

Salient points of the Minder Initiative

Of the 24 topics addressed by the Minder Initiative, the main features can be summarised as follows:

- Shareholders are mandatorily required to vote on aggregate compensation of the board of directors and of senior management;
- Payments of golden parachutes and signing-on bonuses for members of the corporate governing bodies are prohibited;
- Requirement for a mandatory annual shareholders' vote for the election of the chairman of the board and of the members of the board;
- Disclosure of pension funds' vote;
- Shareholders cannot be represented at shareholders' meetings by corporate bodies or by proxies for deposited shares;
- Mandatory provisions in the articles of association on credits, loans or pensions granted to members of corporate bodies, as well as bonus and participation plans;
- Criminal sanctions, including prison sentence, in case of violations against the above provisions.

What's next?

The Federal Council will have to issue an ordinance within the next 12 months to implement the changes decided by Swiss voters. This ordinance will apply until the entry into force of statutory provisions, which will take the form of an amendment to the Swiss Code of Obligations. This legislative change will be subject to a facultative referendum which means that lengthy discussions and refinements should be expected on this sensitive issue. For example, some may take this opportunity to further introduce corporate governance topics into Swiss corporate law. Areas of focus may include the representation of women in boardrooms, restriction on executive compensation for companies facing losses and limitation of tax deductibility of sizeable bonuses.

In terms of timing, it is not anticipated that the changes will impact annual shareholders' meetings taking place before 2015.

Impact

The Minder Initiative is only targeted at Swiss public companies which are listed on Swiss or overseas stock exchanges. This means that it only applies to about 300 out of over 300'000 companies operating in Switzerland. As things currently stand, all non-listed companies including foreign listed companies with European headquarters in Switzerland are not covered by the provisions of the Minder Initiative. However, in the longer term, the possibility of an extension of the legislation cannot be excluded.

The central theme of the Minder Initiative is the requirement for a mandatory and binding shareholder vote to take place on aggregate compensation awarded to the board of directors and to senior management. While it is difficult to fully anticipate the impact of this specific change, it is interesting to note that a recent Deloitte corporate governance report revealed that 80% of SMI companies have already voluntarily introduced consultative votes on remunerations ("Say on Pay") with high acceptance rates (ranging from 55% to 99%). It remains to be seen whether shareholders' reaction towards remuneration will change following the implementation of the Minder Initiative.

The Minder Initiative will also have practical consequences on shareholders' meetings. This relates in particular to the prohibition of shareholders' representation by corporate bodies and by proxies for deposited shares which is a widely-spread practice. As a result, decision-making process could be blocked by the failure to reach required quorum. This will however be mitigated by the introduction of the electronic vote.

From a business perspective, the election of the chairman and members of the board on an annual basis may impact the board stability and dynamics, thus potentially leading to short-term strategies.

Conclusion

By accepting the Minder Initiative, Switzerland has adopted one of the most demanding corporate governance regimes worldwide. Although the Minder Initiative may be further refined during the legislative introduction process, this topic will remain of major importance to business leaders. Leading Swiss organisations will be closely monitoring the "Yes" vote to evaluate its consequences for business and for the effective remuneration of senior management and board members. Deloitte will be holding a seminar on the future of senior management remuneration in the Spring when the potential impact of the Minder Initiative will be analysed in more details.

Best Regards,

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