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New year, new legislation

Several new Swiss laws and amendments have entered into force as of January 1 2014. For firms doing business in Switzerland, changes in executive compensation regulation, in reorganisation proceedings and in respect to redundancy plans are among the most important ones.

The Minder initiative

In Switzerland, the preceding year was characterised by animated discussion on executive compensation which resulted in two milestone decisions on national constitutional referendums. In March 2013, Swiss voters approved the initiative of lawmaker Thomas Minder by a strong majority of 68%. This initiative, which was supported by both left-wing and certain conservative right-wing parties, requires the strengthening of shareholders' powers in public companies, mandating among other things a binding say-on-pay-vote. In November 2013, a large majority of more than 65% of Swiss voters rejected the young socialists' 1:12 initiative, which aimed at introducing a salary cap of 12 times the lowest salary within the same firm. The two unambiguous results sent a strong message for the years to come: executive compensation needs to be regulated by a tight corporate governance regime but not by governmental intervention such as salary caps. Viewed from this perspective, these decisions are well in line with Switzerland's traditional business-friendly attitude and faith in "democratic" self-regulation (including by shareholders' vote), although the Minder initiative unfortunately also provides for prohibitions of certain forms of compensation (backed up by criminal sanctions), which is unnecessarily rigid.

In order to implement the Minder initiative, the Swiss government, the Federal Council, has issued the Ordinance against Excessive Compensation in Listed Companies which has already entered into force as of January 1 2014. It is still subject to various transitional rules and is expected to be replaced by a law of parliament in the mid-term. It imposes a range of new requirements on Swiss companies listed in Switzerland or abroad, including (among other things):

- A binding say-on-pay vote (the articles of association have to specify whether it applies prospectively or retrospectively);
- Annual election by shareholders of the board of directors, its chairman, the members of the compensation committee and the independent proxy;
- Severance payments, advance salary payments and bonuses for the acquisition or disposal of a firm are prohibited. However, other forms of payments remain generally admissible, such as salary payments during garden leave, compensation for post-employment non-compete undertakings, or sign-on bonuses;
- To the extent a company wants to make or pay to directors and top executives loans or retirement benefits (other than regular occupational benefits), or to establish incentive and participations plans, it needs a respective authorisation in the articles of association; and
- Companies must introduce indirect electronic proxy voting and are no longer allowed to use corporate proxies at general meetings of shareholders.

Amended reorganisation procedure

An amendment to Switzerland's Debt Enforcement and Bankruptcy Act has entered into force as of January 1 2014. It will facilitate court-supervised reorganisation proceedings outside of bankruptcy (*Nachlassverfahren*) in the future. Among other things, it introduces – in result – an almost automatic stay upon the submission of a reorganisation petition, and extends the effects of a stay. However, the overall procedure, including the considerable powers and

Urs Kägi
Tel: + 41 58 261 50 00
Email: urs.kaegi@baerkarrer.ch

BÄR & KARRER

Brandschenkestrasse 90
CH-8027 Zurich
Web: www.baerkarrer.ch

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responsibilities of the trustee and the rather burdensome approval requirements for a reorganisation contract (*Nachlassvertag*), is still less debtor-friendly than a reorganisation under chapter 11 of the US Bankruptcy Code, for example.

New requirement for redundancy plans

In connection with the revision of the reorganisation proceedings as discussed above, the Swiss parliament has also amended certain employment law rules. The amendment relating to redundancy plans was a concession for the exemption of bankruptcy and reorganisation proceedings from the rules on mass dismissals and the (automatic) transfer of employment agreements as a result of a business transfer. Outside of such proceedings, an agreement on a redundancy plan is now required in case of mass dismissals of more than 30 employees (over 30 days or based on the same business decision) by companies with more than 250 employees. If the employer and the employee representatives cannot reach an agreement on such a plan, an arbitration tribunal may adopt it in their stead.

Urs Kägi