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Switzerland: Gender guidelines and transparency rules in the extractive industries sector

Introduction

In the future, more women are to be elected to executive management and boards of directors in large listed companies, and stricter transparency regulations are to apply in the extractive and mining industries sector. On 11th September 2020, the Swiss Federal Council decided to put the corresponding changes in the Swiss Code of Obligations ("CO") into force on 1st January 2021.

Gender guidelines and transparency rules as part of the revision of company law

On 16th June 2020, the Swiss Parliament adopted the revision of the company law. Among other things, the proposal includes the introduction of gender guidelines and stricter transparency rules for companies active in the raw materials extraction industry. The revision of company law thus takes account of international legal developments and, in line with EU law, includes the regulation of transparency for economically significant companies active in the extraction of raw materials. These are to be obliged to disclose payments to public authorities.

Since these two amendments do not require any implementing provisions in corresponding ordinances, the Federal Council is already putting the corresponding amendments to the Code of Obligations into force on 1st January 2021. The remaining points of the very comprehensive revision of the company law still require implementing regulations in some cases and are not expected to come into force until 2022.

More women in the management of listed companies

The new regulation is intended to take account of the constitutional obligation to achieve equality between women and men. Large listed companies based in Switzerland are to fill more management positions with women in the future. Specifically, a new benchmark of 30 percent women

on the board of directors and 20 percent women on the executive board applies. If these benchmarks are not met, the company is obliged to explain the reasons for non-compliance in the compensation report and to explain the measures taken to improve the situation. The reporting obligation starts for directors from January 2026 and for executive management from the beginning of 2031.

More transparency in the extractive industries sector

Background of the transparency regulations

The Federal Council's report of 25th June 2014 had recommended that a transparency regulation be introduced in Switzerland similar to the EU's regulations. This was based on Directive 2013/34/EU220 (Accounting Directive) and Directive 2013/50/EU221 (amendments to the Transparency Directive). Both directives include provisions on the transparency or disclosure of payments by extractive industries to government bodies.

Similar provisions are contained in the "Dodd-Frank Wall Street Reform and Consumer Protection Act" passed in the USA on 21st July 2010. The implementing regulations of the U.S. Securities and Exchange Commission (SEC) were successfully challenged by the American Petroleum Institute and the U.S. Chamber of Commerce. The SEC was instructed to draw up new implementing regulations. On 27th June 2016, the SEC published the final rule on payment transparency for companies active in the extraction of raw materials. The reporting obligation first applied to the financial year ending on 30th September 2018 or later.

Content of the regulations

The new provisions in Articles 964a et seq. of the Swiss Code of Obligations are modelled on the EU directives. They are systematically part of the thirty-second title on

commercial bookkeeping and accounting, because their subject matter is closely related to accounting law.

Activities in the raw materials sector are generally divided into the extraction or mining of raw materials on the one hand and physical commodity trading on the other. However, the transparency regime applies exclusively to companies active in the extraction of raw materials (extraction of minerals, oil, natural gas or the extraction or felling of timber in primary forests). Moreover, it applies only to undertakings which are required by law to have their annual financial statements audited. This means that only listed and large companies are covered.

These companies are required to disclose in a written report payments of at least CHF 100,000 per financial year made by the company to government bodies. The report must be published electronically by the company. Penal provisions sanction the violation of the rules concerning the reporting of payments to state authorities. A fine may be imposed on anyone who wilfully fails to report, in whole or in part, or makes false statements therein, as well as anyone who wilfully fails to comply with the obligation to keep and retain reports.

The Federal Council also has the authority to extend the transparency regulations to raw materials trading.

Objectives of the regulation

Switzerland is regarded worldwide as an important centre of international commodity trade and thus bears a corresponding responsibility. If companies based in Switzerland that are active in the extraction of raw materials are required to disclose payments to government bodies (governments and state-owned companies), they contribute to greater transparency. Investors and banks of extractive companies can also better understand what economic and financial payments are flowing in mining countries. Internationally, this trend towards increased transparency in payments made by companies active in the extraction of raw materials to government agencies is already evident. By issuing transparency regulations, Switzerland is following this trend and thereby reducing international pressure and any reputational risks.

We will be happy to assist you with questions regarding the implementation of the new regulations.

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