



Final „Minder“ Ordinance – Summary of Changes

On Wednesday, 20 November 2013, the Swiss Federal Council has announced the enactment of the Ordinance against excessive Compensation as per 1 January 2013.

Find below a list of major changes against the draft of the ordinance as published in June 2013. The first part concerns the interim regime, the second part relates to the content of the new requirements/prohibitions and criminal sanctions.

Key changes timing wise:

- New remuneration report due for financial years (FY) ending after 1 January 2014
- Amendments of Articles of Incorporation (AoI) at 2015 AGM acceptable
- Vote on Compensation Amounts at 2015 AGM for FY 2016 acceptable
- Employment contracts can be amended until 1 January 2016; until such date, any contracted but no longer accepted payments are considered lawful.

Key changes content wise:

Elections

- Representatives/Vices can be decided by BoD, same in case of vacancies.

Mandates

- AoI to provided for rules covering foreign entities as well.

Say on Pay

- No default, no separation between fix and variable pay.
- Everything, including voting and consequences of a negative vote to be defined in AoI.
- Budget for new hires only regarding prospective elements.

Employment contracts

- No fixed term or termination period of more than 12 months.
- Payments owed based on employment contract until the end of the termination period excluded from severance prohibition.
- Severance payments which are owed based on Swiss (rare) and foreign law are excluded from severance prohibition.
- No prohibition of Change of Control premium at shareholder level unless qualified as severance.
- No prohibition of replacement of losses with previous employer upon hiring.

Remuneration Committee

- General rule with referral to organization rules or charter accepted.

Delegation of executive power and definition of “Executive”

- Delegation of asset management to a third party corporation accepted.
- Executive defined as body directly subordinated to the Board.

Remuneration Report

- Separation of describing statement from audited part.
- Disclosure of replacement payments and spend out of statutory budget for new hires.
- Clarification of own “materiality” for the audit.

Independent Proxy

- No election of representative required, delegation of replacement to BoD.
- Proxies for more than one year prohibited, general proxies for a specific AGM, for example, to follow the board proposals, accepted.
- Proxies without instructions will lead to abstention of the independent proxy.
- Electronic proxies and instructions do not require a specific standard (qualified electronic signature).

Pension funds

- The duty to vote has been limited to elections and compensation related votes.
- The duty to vote has been enlarged on pension funds to the extent they control a investment vehicle (single owner funds) or have a vote in the vehicle.
- Abstentions are accepted.
- The duty to report has been clarified; no votes and abstentions have to be reported and explained specifically.

Criminal sanctions

- Limitation of heavy sanction (prison and fine) to a) prohibited payments (severance, advance or transaction related payments), b) BoD, and c) to deliberate intention.

Initial assessment:

While many issues raised have been clarified and, most importantly, criminal sanctions have been broadly limited, the final wording grants a broad leeway in how to address say on pay.

Generally, in view of the required certainty of pay for the management and to be attractive for outside executives as well, companies tend to choose a prospective vote on the total maximum amounts of compensation for BoD and executive management.

Although implementation can be postponed to 2015 at large, we expect a number of companies to consider adaptation of Articles already as per AGM 2014 in order to set the rules for any compensation amount votes at AGM 2015.

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