

March 2013

CLIENT INFORMATION – EXECUTIVE COMPENSATION

Switzerland: Popular Initiative “Against Abusive Remunerations”

On 3 March 2013 the Swiss population adopted the federal popular initiative against abusive remuneration. Until the Swiss Parliament adopts and implements these new constitutional changes by way of Federal Act, the Swiss Federal Council has to issue interim regulations within one year. It is expected that such interim regulations will be stipulated by Federal Ordinance entering into force on 1 January 2014. The following client information summarizes the main issues of the initiative.

Application: The new provisions will apply to all Swiss corporations, which are registered in Switzerland and listed on a Swiss (SIX) or foreign stock exchange (approximately 250 companies). They will not apply to any corporations not listed on a stock exchange.

New Provisions: The initiative will curb excessive pay practice by strengthening the shareholders’ rights. The two-dozen roughly drafted points as stipulated in the Swiss Constitution contain the following main provisions:

- Annual approval by the shareholders of the total compensation of the board of directors, of the management (group executive board), and of the advisory board (if any).
- Annually, shareholders shall elect the chairman and each member of the board of directors and of the compensation committee.
- The following payments to any member of the corporate bodies are prohibited: severance or similar payment, advance payment or success-related payments in connection with purchases or sales of companies (change-in-control payments).
- Additional advisor or employment agreements with any member of the corporate bodies are prohibited.
- The articles of association shall state the compensation plans (incentive and participation programs) granted to members of the corporate bodies.
- Further, the articles of association shall state the amount of credits, loans and pensions granted to members of the corporate bodies.
- Proxy vote by custodians and corporate proxy are prohibited.
- Corporations have to provide for systems to allow shareholders to cast distant votes electronically.
- The pension funds shall vote in the interest of their insured beneficiaries and shall disclose how they voted.

Criminal sanctions: Violations against the new provisions shall be punished with a prison sentence of up to three years and a monetary penalty of up to six annual salaries.

Next Steps: Currently, there are many open and unclear issues with regard to the application of the new constitutional provisions. It is now the mandate of the Federal Council to adopt respective applicable provisions, which are both, practical and realizable.

Christof Helbling

Inofficial English translation:

„I
The Federal Constitution of April 18, 1999 shall be amended as follows:

Art. 95 para. 3 (new)

³To protect the economy, private property and shareholders, and with a view to a sustainable company management, the law shall provide for the following principles applicable to Swiss corporations listed on a domestic or foreign stock exchange:

a. The general meeting of shareholders shall annually vote on the total amount of all compensations (cash and value of benefits in kind) of the board of directors, the executive management and the advisory board. It shall annually elect the chairman of the board and, in a separate vote, the members of the board of directors, the members of the compensation committee, as well as the independent proxy holder. The pension funds shall vote in the interest of their insured beneficiaries and shall disclose how they voted. The shareholders may cast distant votes electronically; the representation by corporate bodies and by proxies for deposited shares is prohibited.

b. Members of corporate bodies shall receive no severance - or other compensation payments, no compensation in advance, no bonus for purchases or sales of companies and no additional advisor or employment agreement from another group company. The management of the company may not be delegated to a legal entity.

c. The articles of association shall state the amount of credits, loans and pensions granted to members of corporate bodies, their bonus and participation plans and their number of board memberships outside of the group, as well as the duration of the employment agreements of the members of the executive management.

d. Violations against the provisions a-c shall be punished with a prison sentence of up to three years and a monetary penalty of up to six annual salaries.

II

The transitional provisions of the Federal Constitution shall be amended as follows:

Art. 197 sec. 8 (new)

8. Transitional provision relating to art. 95 para. 3

Until the entry into force of the law, the Federal Council shall, within one year after the approval of art. 95 para. 3 by the public and the cantons, issue the necessary implementing provisions.“

HELBLING Attorneys-at-Law is specialized in any issues around remuneration of the Board of Directors, Executive Board and senior executives and has long-standing experience in remuneration topics and compensation plans.

Contact:

HELBLING Attorneys-at-Law

Grossmünsterplatz 1

CH-8001 Zurich

Switzerland

Tel. +41 44 500 92 60 (reception)

Fax +41 44 500 92 66

www.helbling-law.ch/en

Dr. iur. Christof Helbling

Attorney-at-Law, Partner

Tel. +41 44 500 92 33 (direct)

Tel. +41 79 274 47 29 (mobile)

christof.helbling@helbling-law.ch