

# **Recent Developments in Swiss Company Law**

**A I B L**    Legal Up-Date 2007

**Ron Aufseesser**

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# New Legislation in 2007

## Company law

- **Transparency on indemnities for board members and management** (01.01.2007)
- **Changes to corporate governance directive of SWX** (01.01.2007)
- **Changes to company law** (01.01.2008?)

# New Legislation in 2007

## Non-Corporate

- **New law on federal court and establishment of an administrative federal court** (01.01.2007)
- **Law on collective placement** (01.01.2007)
- **Law on urgent modifications to company taxation** (July 2007?)
- **New law on radio/TV + changes to telecommunication law** (April 2007 ?)
- **New law on criminal sanctions and procedures for minors** (01.01.2007)

# New Legislation in 2007

## Non-Corporate (cont.)

- **Changes to the civil code enacting protective measures against violence, threats and harassment** (01.07.2007)
- **Minor procedural changes to the ordinances on protection of trademarks, patents and designs** (01.07.2007)
- **New law on same sex partnership** (01.07.2007)

# **Law on Transparency for Board Members and Management**

Entered in effect on 01.01.2007

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- **Art. 663b bis CO**
- **Only for publicly quoted companies**
- **Replaces relevant provisions of SWX directive**
- **Annex to annual balance sheet**
- **Part of audit**

# Law on Transparency for Board Members and Management (cont.)

## What to publish ?

- **All indemnities** (including loans, conversion rights, options, etc.)
- **All members of board, management and advisory board and “related” persons**

# Law on Transparency for Board Members and Management

## What to publish ?

(cont.)

- **Former members of board, management, advisory board**
  - if in relation with their former activities  
or not in accordance with “market practices”
- **“Related persons” to current or former members of board, management or advisory board**
  - if not in accordance with “market practices”

# Law on Transparency for Board Members and Management (cont.)

## How to publish ?

- **Board + advisory board members: total amount + individual amount for each board member with name and function**
- **Management: total amount + highest amount, with name and function**
- **Related persons: separately, but without name**



# Changes to SWX Directives

Entered in effect on 01.01.2007

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- **Chapter on compensation replaced by new article 663b bis CO**
- **More information on auditor's report**
- **"Comply or explain" rule to apply on all non disclosed information**

# **Changes to Company Law**

due to enter in effect on 01.01.2008

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- **Audit rules**
- **LLC**
- **Corporations**

# Audit Rules (727-731a CO)

Applies to all companies

## Two types of audit

- **Ordinary audit:**

- All companies “open to the public”
- Large companies, i.e. / 2 of 3 criteria:
  - balance sheet > CHF 10 mio
  - turnover > CHF 20 mio
  - employees > 50
- Companies which are subject to group accounts

- **Limited audit (review)**

- Other companies

# Audit Rules (cont.)

- **Opting up:** if request from 10% of share capital
- **Opting out:** if limited audit  
= no audit if less than 10 employees  
if request of all shareholders
- **Opting down:** if same as above  
= limited limited audit
- **Opting in:** if contractual agreement  
by third party

# **Audit Rules** (cont.)

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- **Auditors must be**
  - For companies open to the public: certified auditors under state supervision
  - Other companies subject to ordinary audit: authorized certified auditors
  - Companies subject to limited audit: authorized auditor
- **Better definition of independence of auditors**
- **Better description of tasks for both types of audits**
- **Limit of duration**

# Limited Liability Company (772-827 CO)

## Objectives

- **Aimed at SME**
- **Simplicity**
- **Flexibility**
- **Clarity**
- **Better protection of minority partner**

# Limited Liability Company (cont.)

## Main novelties

- **Liability**
  - **limited to company assets**  
(no subsidiary liabilities of partners)
- **Capital**
  - **Must be paid in at foundation**
  - **No maximum amount**
  - **Minimum amount: CHF 20'000.-**

# Limited Liability Company

## Main novelties

(cont.)

- **Transfer of shares**
  - **Written document sufficient**
- **One “partner” sufficient**
- **Greater freedom of allocation of competencies between partners’ meeting and managing partner(s)**



# Corporations

## Main novelties

- **One founder is sufficient**
- **Annex to balance sheet must contain information on performance of risk valuation**
- **Board members can take part at general meeting**
- **Board members must not be shareholders**

# Corporations

## Main novelties (cont.)

- **No need for Swiss (or EU) majority on board, but at least one board member or manager must be domiciled in Switzerland**
- **New powers for the judge (or trade registrar) in case of default of any organ**

# To be expected in coming years

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- **Reform of company law**
  - Better governance
  - Increased flexibility of capital
  - Improved accounting rules
  - Internal controls
- **Consumer law**
- **Contract law ?**