Swiss Corporate Law Reform: The changes in a nutshell

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After many years of discussions, the Swiss Parliament adopted the general Corporate Law Reform in June 2020. Although the referendum deadline elapsed unused on 8 October 2020, this reform is not expected to enter into force before 1 January 2023, depending on when the relevant implementation regulations are passed into law (certain limited amendments already came into effect on 1 January 2021).

What are the key changes?

Greater flexibility for share capital and equity distributions

- Share capital may be denominated in an approved foreign currency (presumably the EUR, USD, GBP or JPY), thereby eliminating some of the inconsistencies arising from differences between accounting rules (which already permit accounts to be held in a functional foreign currency) and Swiss corporate law.
- The nominal value of shares can be any value greater than CHF 0, which makes unlimited splitting of shares possible. The minimum nominal value of CHF 0.01 is abolished.
- The concept of a so-called “capital band” is introduced. This allows a Board of Directors to increase a company’s share capital to up to 150% of the registered share capital or reduce it to 50% over a period of five years (a combination of an authorized capital increase with an option of an ‘authorized capital reduction’ not previously permitted under the existing statutory provisions). The introduction of a capital band offers Swiss corporations more flexibility in designing their equity capital structure.
- The rules on legal reserves are aligned with the accounting rules, and the formation and termination of reserves is clarified. Specifically, the distribution of capital reserves (i.e. paid-in capital surplus and other shareholder contributions in excess of the nominal value) to shareholders is permissible within certain limits.
- The payment of dividends from the profits for the current financial year is explicitly permitted, this having been a matter of some dispute up to now.

Modernization of shareholders’ meetings

The new law is intended to make the organization of shareholders’ meetings more flexible

- The new law permits shareholders’ meetings to be held by electronic means (virtual meetings) under certain conditions.
- Shareholders’ meetings can also be held at different locations at the same time, or outside Switzerland, always provided that this is permitted under the Articles of Association, the exercise of the shareholders’ rights is not unduly restricted, and an independent voting proxy is appointed.
- Shareholders’ meetings may also be held in writing, i.e. by way of circular resolution.

Strengthening of shareholders’ rights

- The threshold for shareholders to convene an extraordinary meeting of shareholders is lowered to 5% of the share capital or voting rights for listed companies. For private companies the threshold remains 10% of the voting rights, but the alternative, one million in nominal value, is changed to 10% of the share capital.
- The threshold for placing items on the agenda and submitting motions is lowered to 0.5% for listed companies and to 5% for private companies.
- Shareholders holding at least 10% of the shares or voting rights in private companies will have the right to pose questions to the Board of Directors outside shareholders’ meetings (currently, they may only be raised at shareholders’ meetings) and these must be answered within four months.
- Shareholders holding at least 5% of the share capital or voting rights may inspect the company’s books as required for the exercise of their shareholder rights and subject to the company’s legitimate confidentiality interests.
- The requirements for lawsuits against shareholders, directors, and managers for repayment of unduly received benefits are simplified. Claims may also be brought against members of the management and persons related to shareholders, directors and managers. The financial situation of the company is no longer relevant to the outcome.

Companies in financial distress

- If there is a risk of illiquidity (inability to meet financial obligations) of a company, the Board of Directors must take measures to ensure the company's ability to pay. If necessary, it must take, or propose to the shareholders' meeting, restructuring measures or apply for a debt restructuring moratorium. In addition to the current equity-related triggering events, the risk of becoming unable to pay debts as they fall due is expressly made a triggering event requiring the Board of Directors to take action.
- Where there is well-founded concern about over-indebtedness, notification of the insolvency court can be deferred if sufficient creditors agree to the subordination of their claims (which is in line with the current law) and, under the new legislation, if there is a reasonable prospect of restructuring within a short period (but no more than 90 days after the inter-im accounts have been prepared and audited), provided creditors' claims are not jeopardized by any such deferral.
- A deferral of bankruptcy is no longer possible; hence, the restructuring moratorium is the only court-sanctioned restructuring procedure.

Specific rules for listed companies

- The rules currently contained in the Ordinance against Excessive Compensation that apply to listed companies are transferred to the statutory law on corporations. Only minor changes are implemented in comparison with the existing law and certain current market practices are now enshrined in the new law (e.g., payments for post-contractual non-competes are permissible in an amount of up to 100% of the executive's three-year average total annual compensation).
- The new law sets target quotas for representation of both genders of 30% for the Board of Directors and 20% for the Executive Committee of listed companies that are subject to an ordinary audit. If the target quotas are not met after a transition period of five years for the Board of Directors and ten years for the Executive Committee, the relevant companies must explain in the compensation report the reasons for the underrepresentation and the measures taken to promote gender diversity within their corporate bodies.

Simplification of the incorporation process

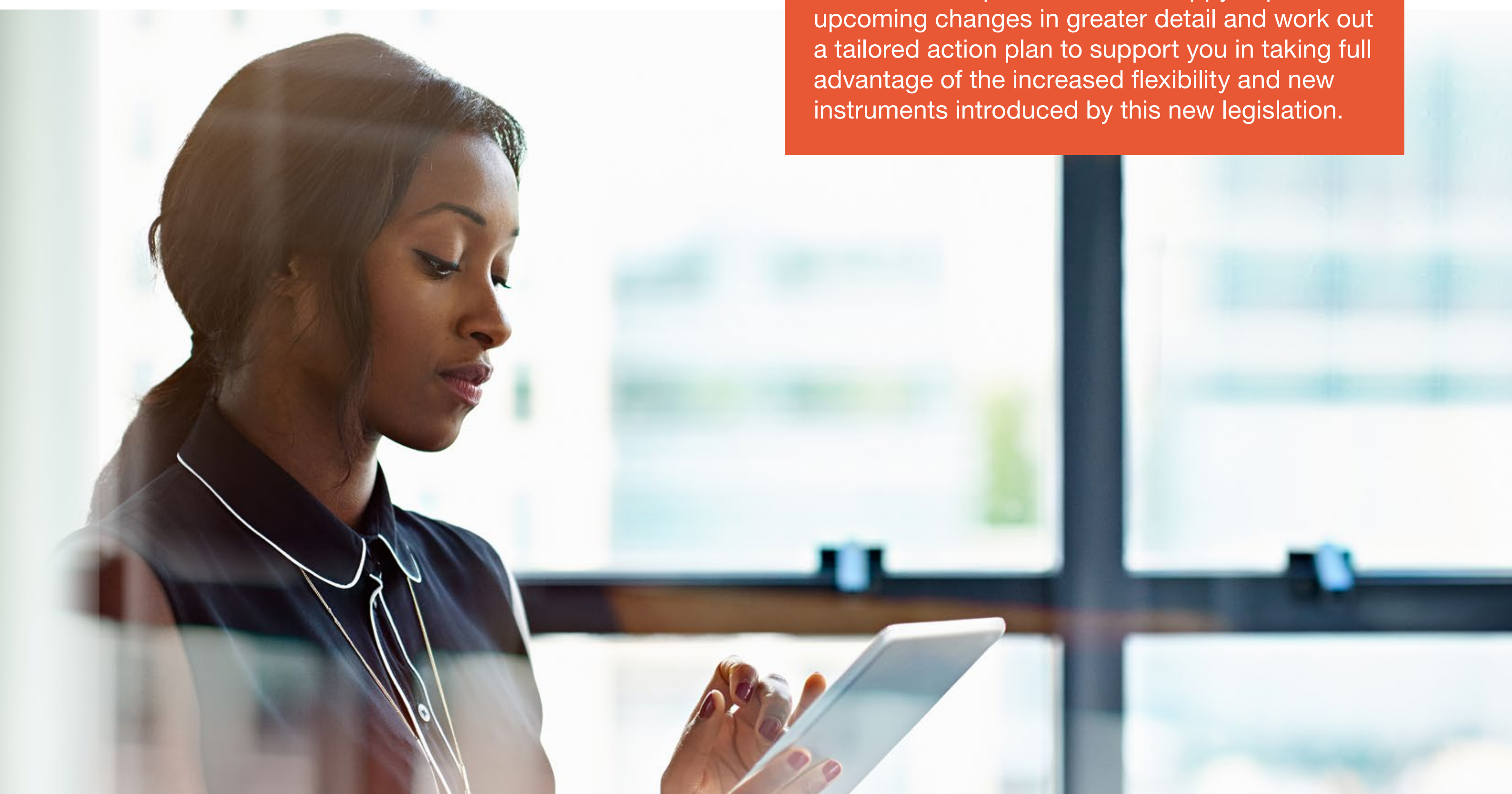
- The rules on (intended) acquisitions of assets (where new companies intend to take over the material assets of related parties immediately after the incorporation) which currently significantly complicate the procedure for incorporations and capital increases in certain situations are abrogated.

The transition period for companies to adapt

their articles of association and regulations is two years from entry into force of the new law.

Now is therefore the time to act and undertake the preparations needed to derive the maximum benefit from these changes.

Our team of experts would be happy explain the upcoming changes in greater detail and work out a tailored action plan to support you in taking full advantage of the increased flexibility and new instruments introduced by this new legislation.



Connected Expertise

We believe in intradisciplinary collaboration: we are stronger and more effective when we work together.

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