Switzerland (corrected August 2013)

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 55 companies in Switzerland as of 31 August 2012.

Although Swiss companies are usually not required to implement a specific board structure, shareowner rights in Switzerland are otherwise relatively strong. Companies may adopt a dual-board structure (as required in Germany), a unitary board structure (typical in Anglo-American markets), or the French *président-directeur general* (PDG) system, which gives much of the power to a single person (the PDG) and is a form of the unitary board system.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	68%	
What percentage of companies have fully independent audit committees?	43.6%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	23.6%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Sometimes	
Are there share ownership limitations in this market?	No	For listed companies, there are no ownership limitations.
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is generally unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Sometimes	A number of the Swiss companies researched for this manual have implemented majority voting in the election of board members. They may specify a higher percentage in the bylaws.

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not allowed.
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	Yes	Shareowners vote on approving the annual report, which includes the remuneration report. Additionally, some companies have consultative voting on remuneration.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	Sometimes	Generally speaking, executive/board member option incentive schemes are not subject to a shareowner vote unless the scheme extends to all employees.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	This right is standard. A minimum 10% holding is required to convene a special meeting.
What percentage of companies include golden shares in their capital structure?	0%	
Are shareholder rights plans (poison pills) allowed in this market?	Yes	They are extremely rare.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Issuing share capital as a poison pill is not permitted without the consent of shareowners at the general meeting.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a legal requirement.
Do companies require a supermajority vote to approve a merger?	Yes, usually	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Sometimes	Shareowners who directly, indirectly, or by joint agreement with third parties exceed a limit of 33.3% of the voting rights must make a public offer to all other owners of stock in the company. This offer must correspond to at least the stock market price and must not be more than 25% below the maximum price paid by the bidder for the relevant shares in the previous 12 months. Companies are allowed to exclude this offer requirement from their articles (to "opt out"). If they do so after the stock market listing, exclusion is subject to a reservation stating that decisions of the general meeting may be contested if they breach the principle of equal treatment, inappropriately limit shareowner rights, or deprive shareowners of such rights. In addition, when the Stock Market Law was adopted, companies were allowed to opt out unconditionally for a transitional period of two years ("grandfathering"). Many companies with majority shareowners (e.g., family companies and subsidiary companies) made use of this provision.
Are class action suits commonly used in this market?	No	Not allowed
Are derivative suits commonly used in this market?	No	Not allowed

Current Engagement Practices and Shareowner Rights Developments

Centered mainly on issues of socially responsible investing (SRI) and corporate social responsibility (CSR), shareowner engagement in Switzerland has increased in recent years.

Shareowner rights limitations arise from the varying board structures of Swiss companies; particular concerns relate to companies that have implemented either a dual-board or a PDG system. The dual-board system is modeled after the German system, in which companies have both a supervisory board (board of directors) and a management board. The supervisory board is charged with oversight of the management board, including appointment and dismissal of management board members. The management board makes executive decisions, and shareowners have no direct means of influencing management board membership.

Swiss companies structured after the French PDG system also limit shareowner rights. The centralized structure of the PDG system enables the PDG to single-handedly determine the future direction of a company. The PDG has nearly unchecked control over the company and controls the board of directors with little counterbalance in place. The PDG controls the selection of members of the board and can dictate their responsibilities. Although this arrangement is comparable to the combined chair and CEO position found in markets with unitary board structures, the powers of the PDG are far more extensive. In many developed markets, shareowners commonly pressure companies with a combined chair and CEO to separate these roles, but shareowners of companies structured using the PDG system do not have this opportunity.

In Switzerland, corporate takeovers are primarily overseen by the Swiss Takeover Board (TOB), a federal commission established under the Federal Act on Stock Exchanges and Securities Trading (SESTA) of March 1995. The TOB has jurisdiction to issue general rules and ensure compliance with the provisions applicable to public takeover offers. Furthermore, mergers between Swiss companies and companies from EU member states must be approved by the European Commission. Potential suitors of Swiss companies could be deterred by the requirement to attain supermajority shareowner approval (usually 67%) to undertake a merger or amend the company's articles of association. A quarter of the Swiss companies researched for this manual require only a simple majority to approve a merger or to amend the articles of association.

Swiss corporations model their corporate governance structure primarily after the Swiss Code of Best Practice for Corporate Governance. Although companies are not required to abide by the code, they usually at least report whether they are in compliance. The code provides guidelines and recommendations on matters regarding corporate governance for publicly held Swiss companies. Companies listed on the Swiss Exchange (SWX) must comply with the Corporate Governance Directive of the SWX, which requires listed companies to disclose important information regarding their board and senior managers. In cases of nondisclosure, companies are required to explain why they do not comply with the directive. The directive came into effect in 2002 and was revised in 2008. The revisions included updates to address disclosure on executive compensation matters.

Legal and Regulatory Framework

Administered by the Swiss Federal Department of Justice and Police (EJPD), the Swiss Company Law is the primary law governing publicly traded Swiss companies and contains a number of rules regarding shareowner rights. The Code of Obligations (CO) is part of the Swiss Company Law and relates closely to corporate governance and shareowner rights issues. In addition to the Swiss Company Law, the SESTA and its associated ordinances—the Stock Exchange Ordinance and the Ordinance of the Swiss Federal Banking Commission on Stock Exchanges and Securities Trading—contain important provisions related to shareowner rights; all these provisions are based on the principle of self-regulation. Within this framework, the SWX is responsible for issuing rules and regulations on the admission of securities to trading as well as the implementation of all provisions and can require specific corporate governance practices. The EJPD conducts criminal enforcement of these rules and laws.

A variety of mechanisms in Switzerland facilitate shareowner engagement and activism. In particular, the CO assigns important nontransferable powers to the general meeting of shareowners, including the right to adopt and amend the articles of incorporation, elect board members, approve the annual and consolidated accounts (including the company's remuneration or compensation committee report), and approve dividend payments.

Unlike EU regulations that require companies to obtain shareowner approval of buybacks at general meetings, Swiss law contains no such requirement. For buybacks between 2% and 10% of the company's capital, approval from the Swiss TOB is required in order to avoid the full requirements of the public takeover provisions of SESTA. Such approval is subject to certain conditions provided for in Swiss TOB Release No. 1. The Swiss TOB can exempt offers outside these limits on a case-by-case basis. In either case, the approval of shareowners is not required. Furthermore, companies are not required to approve shareholding programs (e.g., stock options) for executives and board members at the general meeting unless those options are made available to all employees of the company. Special meetings of shareowners may be called if shareowners holding an aggregate of at least 10% of company shares request such action. Additionally, shareowners representing shares with a nominal value of at least CHF1 million can demand an item be placed on the agenda. Shareowners who invoke this right must present their proposal sufficiently far in advance for the board of directors to include the motion of the board as well as the shareowner agenda item in the invitation to the general meeting. In most cases, changes to the articles of association and bylaws must be approved by a supermajority vote (67%), although a growing number of companies require only a simple majority.

Shareowners may exercise their voting rights by proxy without any restrictions. In companies that have issued bearer shares,[1] those shares must be deposited before they may be voted at the general meeting of shareowners. In practice, bearer shares are a less important factor than they were a few years ago; registered shares have become more prevalent because of the market trend toward one share, one vote. SESTA mandates that shareowners who—directly, indirectly, or by joint agreement with third parties—exceed the limit of 33.3% of the voting rights must make a public offer to all other owners of stock in the company. This offer must, at a minimum, correspond to the stock market price and be no more than 25% below the maximum price paid by the bidder for the relevant shares in the previous 12 months. In certain circumstances, however, companies may opt out of this requirement.

Although board members may be removed without cause, most Swiss companies have not implemented a majority voting standard for the election of board members. In Switzerland, board member terms can extend to a maximum of three years, but many Swiss companies hold board member elections annually.

Key organizations with information relevant to shareowner rights in Switzerland include the following:

Federal Department of Justice and Police (www.ejpd.admin.ch)

Federal Department of Finance (www.efd.admin.ch)

Swiss Takeover Board (www.takeover.ch)

Competition Commission (www.weko.admin.ch)

SIX Swiss Exchange (www.swx.com)

economiesuisse (www.economiesuisse.ch)

Ethos, Swiss Foundation for Sustainable Development (www.ethosfund.ch)

[1]Bearer shares are equity securities not registered on the books of the issuing corporation. Such shares are transferred by physical delivery. The issuer disperses dividends to the bearer when a physical coupon is presented to the issuer.

European Commission—Competition (http://ec.europa.eu/comm/competition/index_en.html)

European Commission—Company Law & Corporate Governance (http://ec.europa.eu/internal_market/company/index_en.htm)

