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SWISS CODE AND ITS COMPARISON WITH CORPORATE GOVERNANCE CODE OF UZBEKISTAN

Corporate Governance is relatively new area and its development has been affected by different countries' experiences. This article gives a theoretical overview within the disciplines of corporate codes of Uzbekistan and Switzerland. This research paper provides an overview of main points of codes, such as shareholders, role of the general shareholders' meeting, board of directors and executive board, composition, independence, procedures and chairmanship of the board of directors, dealing with conflicts of interest and advance information, chairman of the board of directors and president of the executive board, internal control system, dealing with risk and compliance, committees of the board of directors, audit committee, nomination committee, auditing, disclosure Researchers also reveal the differences among these codes, spanning over different disciplines with diverge scope. In the article the comparative description is made. The author's viewpoint about the necessity of adoption of the most effective instruments using in the foreign practice of corporative management, taking into consideration the Swiss specificity is pointing out.

Since it was introduced in 2002, the "Swiss Code of Best Practice for Corporate Governance" has strongly influenced the development of corporate governance in Switzerland and has proven to be an effective instrument of self-regulation. Various developments in the past few years have made it necessary to modify the "Swiss Code". The revised version takes into account the changes that have resulted from Article 95 (3) of the Federal Constitution. It emphasises in particular the concept of sustainable corporate success as the lodestar of sensible "corporate social responsibility". It also prescribes specific modifications to the composition of the Board of Directors (including representation of women) and to risk management (incl. compliance). The "Swiss Code" provides companies with recommendations on designing their corporate governance and information that go beyond what is stipulated by law. It also ensures that companies retain their organisational flexibility. This has proven to be an important locational advantage of Switzerland. Each company should retain the option of putting its own ideas on structuring and organisation into practice. However, if their corporate governance practices deviate from the recommendations of the "Swiss Code", they now have to provide a suitable explanation (principle of "comply or explain").

The "Swiss Code of Best Practice for Corporate Governance" is intended for Swiss public limited companies. Certain provisions address institutional investors and intermediaries. The purpose of the "Swiss Code" is to set out guidelines and recommendations. However, it should not force Swiss companies into a straitjacket. Every company should retain the option of putting its own ideas on organising corporate governance into practice. If a company's corporate governance practices deviate from the recommendations of the "Swiss Code", it has to provide a suitable explanation ("comply or explain").

Shareholders. The powers of the shareholders are defined by statute. The shareholders alone are entitled to make decisions regarding personnel matters at the top company level (electing and granting release to members of the Board of Directors, electing the Chairman of the Board of Directors and the members of the Compensation Committee, appointing the company's auditors and the independent voting proxies), the final approval of accounts (annual and consolidated financial statement) and the policy on distributions and shareholders' equity (dividends, increase in capital or reduction of capital) as well as compensation paid to the Board of Directors and the Group Executive. The shareholders determine the purpose of the company and other key parameters and rules in the Articles of Association. Their approval is required for decisions on mergers, demergers, changes and liquidation. Shareholders exercise their rights at the General Shareholders' Meetings and have the right to make motions regarding items on the agenda. They may also request information on company matters not included on the agenda and, if appropriate, a special audit. Institutional investors, nominees and other intermediaries exercising shareholders' rights in their own name should ensure, as far as possible, that beneficial owners may exercise their influence as to how such shareholders' rights are brought to bear. Institutional investors, nominees and other intermediaries, including proxy advisors, should take the Guidelines for institutional investors into consideration when exercising their right to vote in public limited companies. If registered shares are acquired through custodian banks, the latter should invite the party acquiring the shares to apply for registration in the company's Register of Shareholders.

Role of the general shareholders' meeting. The Board of Directors decides within the framework of the law and the Articles of Association how it will structure and organise the various votes and elections oncompensation in the General Shareholders' Meeting. It should strive for objective debates and efficient decision-making by the General Shareholders' Meeting. The Chairman of the Board of Directors or the Chairman of the Compensation Committee should provide additional information on the compensation report as well as on the remuneration system, and take questions on these topics. The Board of Directors

should use the resources that it possesses to also facilitate the information retrieval and decision-making of the shareholders in the run-up to the General Shareholders' Meeting.

Board of directors and executive board. The Board of Directors should determine the strategic goals, the general ways and means to achieve them and the persons responsible for conducting the company's business. The Board of Directors should shape the company's corporate governance and put it into practice. In its planning, it should ensure the fundamental harmonisation of strategy, risks and finances. The Board of Directors should be guided by the goal of sustainable corporate development.

Its primary functions are:

1. the overall supervision of the company and issuing of the necessary directives;
2. establishing the organisational framework;
3. organising the accounting system, the financial control and the financial planning to the extent necessary for the management of the company;
4. appointing and removing the persons entrusted with the management and representation of the company;
5. the overall supervision of persons entrusted with the management of the company, specifically with regard to compliance with the law, the Articles of Association, regulations and directives in particular;
6. compiling the Annual Report as well as preparing the General Shareholders' Meeting and implementing its resolutions;
7. notifying the judge in the event of overindebtedness;
8. deciding on motions to be submitted to the General Shareholders' Meeting on the remuneration of the Board of Directors and the Group Executive Board as well as compiling the compensation report.

The Board of Directors should ensure that management and control functions are allocated appropriately. If the Board of Directors assigns management responsibilities to a delegate or to a separate Executive Board, it should issue organisational regulations with a clear definition of the scope of the power conferred. As a rule, it should reserve the power to approve certain significant business transactions.

Composition. The Board of Directors should be small enough in numbers for efficient decisionmaking and large enough for its members to contribute experience and knowhow from different fields and to allocate management and control functions (Section 20 et seq.) among themselves. The size of the Board should match the needs of the individual company. The Board of Directors should be comprised of male and female members. They should have the necessary

abilities to ensure an independent decision-making process in a critical exchange of ideas with the Executive Board. The Board of Directors should guarantee that there is an appropriate diversity among its members. The majority of the Board of Directors should be composed of members who are independent. If a significant part of a company's operations are abroad, persons with long-standing international experience or foreign members should also be members of the Board of Directors.

Independence. Independent members shall mean non-executive members of the Board of Directors who have never been a member of the Executive Board, or were members thereof more than three years ago, and who have no or comparatively minor business relations with the company. Where there is cross-involvement in other Boards of Directors, the independence of the member in question should be carefully examined on a case-by-case basis. The Board of Directors may define further criteria of institutional, financial or personal independence.

Procedures and chairmanship of the board of directors. The Board of Directors should, as a rule, meet at least four times a year according to the requirements of the company. The Chairman should ensure that deliberations are held at short notice whenever necessary. The members of the Board of Directors should ensure that they are able to fulfil the responsibilities of their position even in periods when there are increased demands on their time. The Board of Directors should review the regulations that it has issued at regular intervals and amend them as required. The Board of Directors may obtain independent advice from external experts on important business matters at the company's expense. The Board of Directors should self-evaluate its own performance and that of its committees annually.

The Chairman of the Board of Directors is entrusted with running the Board of Directors in the company's interests. He should ensure that procedures relating to preparatory work, deliberation, passing resolutions and implementation of decisions are carried out properly. The Chairman should liaise with the Executive Board to ensure that information is made available in good time on all aspects of the company that are significant for decision-making and supervision. The Board of Directors should receive, where possible prior to the meeting, well-presented and clearly organised documentation; if this is not possible, the Chairman should make the documentation available prior to the meeting, allowing sufficient time for perusal. As a rule, persons responsible for a particular business matter should be present at the meeting. Anyone who is indispensable for answering questions in greater depth should be available.

Dealing with conflicts of interest and advance information. If a conflict of interest arises, the member of the Board of Directors or the Executive Board concerned should inform the Chairman of the Board of Directors. The Chairman, or Vice Chairman, should request a decision by the Board of Directors commensurate with the seriousness of the conflict of interest. The Board of Directors should decide without the participation of the party concerned. Anyone who has interests in conflict with the company or is obligated to represent such interests on behalf of third parties should not participate in the decision-making. Anyone who has a permanent conflict of interest cannot be a member of the Board of Directors or the Executive Board. Transactions between the company and members of corporate bodies or related persons should be carried out "at arm's length" and should be approved without the participation of the party concerned. If necessary, an impartial opinion should be obtained.

The Board of Directors should ensure, in particular, that appropriate action (e.g."close periods") is taken with regard to purchasing and selling securities of the company or other sensitive assets during critical periods, e.g. in connection with acquisition projects, before media conferences or prior to announcing corporate figures.

Chairman of the board of directors and president of the executive board. The Board of Directors should aim to entrust its chairmanship and the top position on the Executive Board to two people (dual leadership). If, for reasons specific to the company or because the circumstances relating to availability of top management makes it appropriate, the Board of Directors decides that a single person should perform both positions, it should ensure that there are adequate control mechanisms in place. The Board of Directors may appoint an experienced non-executive member ("lead director") to perform this task. Such a person shall be entitled to convene and chair meetings of the Board of Directors on his own if necessary.

Internal control system, dealing with risk and compliance. The internal control system should be geared to the size, the complexity and the risk profile of the company. The internal control system should, depending on the specific nature of the company, also cover risk management. The company should set up an internal audit function, which should report to the Audit Committee, or as the case may be, to the Chairman of the Board of Directors.

The Board of Directors should arrange the compliance function according to the specific nature of the company and issue an appropriate code of conduct. It should follow recognised best practice rules. The Board of Directors should provide itself with an account at least once a year of whether the principles of

compliance applicable to themselves and the company are sufficiently well known and are constantly respected.

Committees of the board of directors. The Board of Directors should appoint committees from amongst its members responsible for carrying out an in-depth analysis of specific business-related or personnel matters for the full Board of Directors in preparation for passing resolutions or exercising its supervisory functions. The Board of Directors should appoint the members of the committees if the General Shareholders' Meeting does not have the right to do so. It should appoint the Chairman of each committee and determine its procedures. Apart from that, the rules applying to the Board of Directors also apply to the committees. The Board may combine the functions of several committees provided that all their members fulfil the respective qualifications. The committees should report to the Board of Directors on their activities and findings. The overall responsibility for the duties delegated to the committees remains with the Board of Directors.

Audit committee. The Committee should consist of non-executive and independent members of the Board of Directors. The majority of the members, including the Chairman, should be experienced in financial and accounting matters. In complex situations, at least one member should be a financial expert (e.g. current or former CEO, CFO or financial auditor). The Audit Committee should form an impression of the effectiveness of the external audit (the audit body), the internal audit, and their collaboration. The Audit Committee should also assess the effectiveness of the internal control system, including risk management, and should form an impression of the state of compliance within the company. The Audit Committee should critically review the single-entity and consolidated financial accounts as well as the interim financial statements intended for publication. It should discuss the latter with the Chief Financial Officer and the head of the internal audit, and separately, should the occasion warrant, with the head of the external audit. The Audit Committee should decide whether the single-entity and consolidated financial accounts can be recommended to the Board of Directors for presentation to the General Shareholders' Meeting. The Audit Committee should assess the performance and the fees charged by the external auditors and ascertain their independence. It should examine the compatibility of the auditing responsibilities with any consulting mandates.

Nomination committee. The Nomination Committee should consist predominantly of non-executive and independent members of the Board of Directors. The Nomination Committee should lay down the principles for the selection of candidates for election or re-election to the Board of Directors and prepare the selection of candidates in accordance with these criteria. The

Nomination Committee may also be assigned responsibilities in connection with the selection and assessment of candidates for top management.

Auditing. The external auditors should exercise the role assigned to them by law in accordance with the guidelines that are relevant to them. They should cooperate in an appropriate manner with those in charge of the internal audit. The audit body shall comply with the guidelines on maintaining independence that are applicable to them.

Disclosure. The SIX Swiss Exchange Directive on information relating to Corporate Governance and the provisions of company law are applicable with regard to individual pieces of information.

DIFFERENCES BETWEEN UZBEK AND SWISS CODES OF CORPORATE GOVERNANCE

1. First of all, we should mention the name of the Codes. Pay attention how they are named? Our Code is typically as one of the 17 Codes called just "Corporate Governance Code", while Swiss code called as "Swiss Code of Best Practice for Corporate Governance".

2. Uzbek Code includes more detailed rules than Swiss Code. The size also one of the distinctive aspects of the Codes. Uzbek Code consists of 42 terms and 2 appendixes while Swiss Code consists of 38 terms including 1 appendix.

3. Second difference is that, if any company retain the rule of the Code, this company should publicly announce about it in its website, press, media, stock market or in any way that makes the information available for the public, especially for the shareholders. According to Swiss Code, rule of the Code are guidelines and recommendations like ours, but it does not stipulate the companies to provide with such information for the public, as well as does not restrict such rigths of the companies.

4. About transparency and disclosure of the information. In both Codes terms say that companies action should be transparent and disclose certain types of the information to the shareholders as well as to the public. But in Uzbek Code you can find detailed information about this rule where Swiss Code does not give detailed information about these rules.

5. While scrutinizing the two Codes you can find many differences in other spheres as well. For example, these differences can be seen in detailed information, in shareholder's rights, obligation, percentages. Swiss Code does not explain if the shareholders hold X percent shares of the whole shares what kind of rights or obligation they owe, or for having X rights how many percent shares shareholders should hold, or for electing to the certain type of position how many years have they worked in the company, but Uzbek Code does.

To conclude, the “Swiss Code” is intended as a list of recommendations, using the “comply or explain” principle for Swiss public limited companies. Non-listed, economically significant companies or organisations (incl. those in legal forms other than a public limited company) can also take appropriate guidelines from the “Swiss Code”. To complement the “Swiss Code”, each of the organisations involved in drafting this text should be free to emphasise certain aspects differently and pursue its own ideas, even when deviating where necessary from the main rules set forth therein.

The “Swiss Code of Best Practice for Corporate Governance” is intended for Swiss public limited companies. Certain provisions address institutional investors and intermediaries. The purpose of the “Swiss Code” is to set out guidelines and recommendations. However, it should not force Swiss companies into a straitjacket. Every company should retain the option of putting its own ideas on organising corporate governance into practice. If a company’s corporate governance practices deviate from the recommendations of the “Swiss Code”, it has to provide a suitable explanation (“comply or explain”).

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