**TRANSPARENCY OF MEDIA OWNERSHIP – THE LEGAL FRAMEWORK**

**SWITZERLAND**



**1. Media-Specific Disclosure Requirements I : *Disclosure to a Media Authority or other Public Body***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **QUESTIONS** |  |  | **YES/** | **COMMENTS** |  |
|  |  |  | **NO** |  |  |
| 1.1 Who is required | a) | Are media organisations which disseminate information |  |  |  |
| to disclose |  | or those who have interests in such media organisations |  |  |  |
| information, when |  | specifically required to report ownership information to a | Y |  |  |
| and to whom? |  | media authority or other public body or bodies? |  |  |
|  |  |  |  |  |  |
|  | b) | If YES, what is the legal basis of this requirement? |  | Swiss Law on Radio and Television of 24 March 20061 (SR784.40) [RTVA] and the Swiss |  |
|  |  |  |  | Ordinance on Radio and Television of 9 March 20072 (SR784.401) [RTVO]. |  |
|  | c) | Who exactly is covered by this requirement, |  | **Broadcast media** |  |
|  |  |  |  | Broadcasters are covered by this requirement. Article 2(d) of the RTVA defines a |  |
|  |  |  |  | broadcaster as a “natural or legal person bearing responsibility for the creation of |  |
|  |  |  |  | programmes or for the compilation thereof into a programme service”. |  |
|  |  |  |  | Disclosure requirements only apply to radio and television enterprises (electronic |  |
|  |  |  |  | media). |  |
|  | d) To whom must the information be reported? |  | The notification must be made to the Federal Office of Communication (OFCOM), the |  |
|  |  |  |  | Swiss telecommunication and broadcast regulator (Article 86 RTVA). The OFCOM is |  |
|  |  |  |  | part of the Federal Administration, in particular, the Department for Environment, |  |
|  |  |  |  | Traffic, Energy and Communication. It is the supervisory body for the |  |
|  |  |  |  | telecommunications and broadcast markets and deals with such matters on behalf of |  |
|  |  |  |  | the Federal Council and the Federal Communications Commission. |  |
|  |  |  |  | OFCOM’s role is to monitor and supervise compliance by telecommunications |  |
|  |  |  |  | companies and the broadcast media with the RTVA and all its ordinances and |  |
|  |  |  |  | guidelines (Article 86 RTVA). The only exception is for complaints about a radio or |  |
|  |  |  |  | television programme which must be made to an independent complaints |  |
|  |  |  |  | 1 |  |
| **Name of Country:** Switzerland |  |  |  |  |
| **Source of information:** Professor Rolf H Weber, University of Zürich |  |  |  |

commission.

It also fulfils an advisory and co-ordinating function for the public and policymakers and guarantees that basic services will be provided in all parts of the country and for all sections of the population.

e) Who must report the information? According to Article 17 para. 2 let. a RTVA and Article 26 RTVO, the media organisation itself is required to report, not the shareholders.

The same provisions also require disclosure of information by legal and natural persons:

 in which the broadcaster has a substantial holding or which have a substantial holding in the broadcaster and which operate in the radio and television market or related markets;

 which canvass for advertising or sponsorship for the broadcaster;

 which produce a major part of the programme service concerned for the broadcaster;

 which organise a public event in accordance with Article 72;

 which operate in the radio and television market and i) at least 20 per cent of their share capital, registered capital, cooperative capital or the voting rights is owned by a licensed broadcaster or at least one third of their share capital, registered capital, cooperative capital or the voting rights is owned by non-licenced broadcaster; or ii) who own at least 20 per cent of the share capital, registered capital, cooperative capital or the voting rights of a licensed broadcaster or at least one third of a non-licensed broadcaster.

1. Where notification is by those with an interest, is this dependent on the size or scale of the interest, e.g. only

|  |  |  |
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| where a shareholding exceeds a certain size or | n/a |  |
| percentage? |  |
|  |  |
| If YES, what is the required threshold? |  |  |

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**Source of information:** Professor Rolf H Weber, University of Zürich

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| --- | --- | --- | --- | --- |
|  | g) Are foreign as well as domestic media organisations | Y |  |  |
|  |  | covered by these requirements? |  |  |  |
|  | If YES, do these requirements apply to EU as well as non- | Y |  |  |
|  | EU foreign organisations? |  |  |  |
|  |  |  |  |  |
|  | h) When is information to be notified? |  | The information is to be notified: |  |
|  |  |  |  |  prior to commencing broadcast activities in Switzerland (during the licence |  |
|  |  |  |  | application process) (Article 3(a) RTVA and Article 2 RTVO; |  |
|  |  |  |  |  subsequently within 1 month after any changes in capital and in voting rights as |  |
|  |  |  |  | well as any substantial holdings in other enterprises have occurred (Article 16 |  |
|  |  |  |  | RTVA, Article 24 para. 3 of the Ordinance on Radio and Television RTVO). |  |
|  |  |  |  |  in the Annual Accounts and Report (Article 27 RTVO, Article 18 RTVA) |  |
|  |  |  |  |  under Article 17 of the RTVA, when requested by the OFCOM to allow it to carry |  |
|  |  |  |  | out its supervisory role and its role in preventing media concentrations, as |  |
|  |  |  |  | required by Article 75 of the RTVA. |  |
|  |  |  |  |  |  |
| 1.2 What | a) | Name and contact details of media organisation? |  |  |  |
| information is to be |  |  | Y |  |  |
| provided? |  |  |  |  |  |
|  | b) Name and contact details of owner? | Y |  |  |
|  | c) | Country of domicile of company with an interest? | Y |  |  |
|  | d) | Citizenship/residence status of individual with an | Y |  |  |
|  |  | interest? |  |  |
|  |  |  |  |  |
|  | e) | Size of shareholding? | Y | According to Article 2 RTVO, broadcasters subject to the obligation to notify must |  |
|  |  |  |  | provide the OFCOM with the “the identity as well as the share of capital or voting |  |
|  |  | If YES, please provide details |  | rights of shareholders and other co-owners possessing at least one third of the capital |  |
|  |  |  |  | or voting rights, as well as their holdings of at least one third in other undertakings in |  |
|  |  |  |  | the media sector”. |  |
|  |  |  |  | According to Article 24 RTVO and Article 16 RTVA, any transfer of share capital, |  |
|  |  |  |  | registered capital, cooperative capital or the voting rights of a licensed broadcaster of |  |
|  |  |  |  | at least 5 percent or at least one third for a non-licensed broadcaster3 with an annual |  |
|  |  |  |  | turnover of more than CHF200,000 (approx. €165,000) is subject to the obligation to |  |
|  |  |  |  | 3 |  |
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|  |  |  | notify. Any transfer as a result of which economic control of the broadcaster changes |  |
|  |  |  | is also subject to the obligation to notify. |  |
|  | f) If shares are held on behalf of another, e.g. through |  | See 1.2(g) below |  |
|  | brokerage, must the name of the beneficial owner be | Unclear |  |  |
|  | disclosed? |  |  |  |
|  | g) Details of companies or individuals with an indirect |  | The information must include data which enables the OFCOM to identify the |  |
|  | controlling or significant interest? |  | shareholder(s). Neither the RTVA nor the RTVO give any guidelines as to the details of |  |
|  |  |  | the information to be disclosed and delivered (Article 17 RTVA and Article 26 RTVO). |  |
|  | If YES, please explain. | Unclear | Therefore, the information must be clear enough that the OFCOM can identify the |  |
|  |  |  | shareholder(s) without ambiguity. In practice, the name and address usually suffices; |  |
|  |  |  | however, additional information could be asked by the OFCOM if further clarification |  |
|  |  |  | is required (Article 17 RTVA). |  |
|  | h) Political, religious or other affiliations of shareholder / | N |  |  |
|  | owner? |  |  |
|  |  |  |  |
|  | i) Interests by owners in other media organisations? | Y | When submitting the annual report and accounts, licensed broadcasters must |  |
|  |  |  | disclose: |  |
|  | If YES, please explain. |  |  |  |
|  |  |  |  the identity as well as the share of capital or voting rights of shareholders and |  |
|  |  |  | other co-owners possessing at least 5 per cent of the capital or voting rights of the |  |
|  |  |  | broadcaster, as well as their holdings of at least 20 per cent in other undertakings |  |
|  |  |  | in the media sector (Article 27 (c) RTVO, Article 18 RTVA); |  |
|  |  |  |  holdings in other undertakings of at least 20 per cent of the capital or voting |  |
|  |  |  | rights, as well as holdings of these undertakings of at least 20 per cent in other |  |
|  |  |  | undertakings in the media sector (Article 27(d) RTVO, Article 18 RTVA). |  |
|  |  |  | According to Article 17 para. 2 let. a RTVA and Article 26 RTVO, the obligation to |  |
|  |  |  | provide information also applies to legal and natural persons in which the broadcaster |  |
|  |  |  | has a substantial holding or which have a substantial holding in the broadcaster and |  |
|  |  |  | which are active in the radio and television market or related markets. It should be |  |
|  |  |  | noted that this obligation does not fall on the broadcaster in question but on the |  |
|  |  |  | persons or companies have a substantial holding in the broadcaster or in which the |  |
|  |  |  | broadcaster has a substantial holding. |  |
|  | j) Interests by owners in non-media businesses? | Y | “Substantial holdings” by a media organisation in other enterprises must be reported |  |
|  |  |  | (Article 16 RTVA, Article 25 RTVO). Disclosure is required if a licensed broadcaster |  |
|  | If YES, please explain. |  | owns at least 20 per cent, or in the case of a non-licensed broadcaster at least one |  |
|  |  |  | third, of the share capital, registered capital, cooperative capital, or the voting rights |  |
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|  |  |  |  | of an enterprise. The information has to include the name of the other media |  |
|  |  |  |  | organisation(s) which is usually sufficient to identify with certainty the enterprise as |  |
|  |  |  |  | well as the percentage of the percentage. |  |
|  |  |  |  | However, since this requirement is about shareholding by the media organisation itself |  |
|  |  |  |  | (Article 16 RTVA), other investments of the owners (shareholders) of the media |  |
|  |  |  |  | organisation might not be known. (Registered shareholders would be known to |  |
|  |  |  |  | OFCOM but they would not be known by the public.) |  |
|  | k) | Interests in the media organisation by individuals (e.g. |  |  |  |
|  |  | family members or organisations) affiliated to the |  |  |  |
|  |  | owner? | N |  |  |
|  |  |  |  |  |
|  |  | If YES, how is ‘affiliation’ defined in the relevant |  |  |  |
|  |  | instruments and what details are to be disclosed? |  |  |  |
|  | l) | Management details: for example, directors (if a |  | Under Article 2 of the RTVO, pursuant to Article 3(a) of the RTVA, broadcasters must |  |
|  |  | company), key executive officers, managing editor? | Y | provide the OFCOM with the identity of board of directors and management |  |
|  |  |  | members. The annual report and accounts must also provide this information (Article |  |
|  |  |  |  |  |
|  |  |  |  | 27 RTVO, Article 18 RTVA). |  |
|  | m) Subsequent changes in ownership (resulting from a | Y |  |  |
|  |  | merger or acquisition by other entities, etc.)? |  |  |
|  |  |  |  |  |
|  | n) | Sources of media revenue? |  | Broadcast operators are required to submit to the OFCOM the annual financial |  |
|  |  |  |  | statements (Article 18 RTVA and Article 27 RTVO); from the financial statements the |  |
|  |  | If YES, please explain. |  | OFCOM can draw conclusions about revenues gained from advertising, voluntary |  |
|  |  |  | Y | contributions etc. |  |
|  |  |  |  | Broadcast operators are also obliged to submit to the OFCOM the relevant information |  |
|  |  |  |  | about the net income gained from advertising and sponsoring (Article 15 RTVA). |  |
|  | o) | Other. |  |  |  |
|  | p) | Are these obligations sufficient to establish who the legal |  | The provisions for mandatory disclosure of media ownership are unclear and lacking |  |
|  |  | or natural persons are who effectively own and |  | in detail. For example, it is not clear whether beneficial ownership or those with |  |
|  |  | ultimately control the media organisations? |  | indirect control / significant interest would be revealed. |  |
|  |  |  | Y | Swiss law does not go very far in respect of transparency requirements compared to |  |
|  |  |  |  |  |
|  |  |  |  | other countries; Swiss legislation is based more on the principle of confidentiality or |  |
|  |  |  |  | secrecy. In the past the population did also not care much about the lack of |  |
|  |  |  |  | transparency but this situation might change in the near future. |  |
|  |  |  |  | 5 |  |
| **Name of Country:** Switzerland |  |  |  |  |
| **Source of information:** Professor Rolf H Weber, University of Zürich |  |  |  |

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |  |  |
|  | 1.3 Effectiveness of | a) | Are there any sanctions for non-reporting? |  | The sanction consists of a fine of up to CHF 5,000 (€4000) (Article 101 RTVA); in the |  |
|  | the | disclosure |  |  | Y | case of repeated violations, the fine can be increased up to CHF 100,000 (€80,000). |  |
|  | regime |  |  |  |  |  |  |  |
|  |  |  |  |  | i. If YES, have they have been applied in practice? |  | In principle, sanctions are applied, however, no case related to media ownership |  |
|  |  |  |  |  | ii. If NO, why not? |  | seems to have occurred in practice4; either the media has reported fully and |  |
|  |  |  |  |  |  |  | accurately about its ownership or the OFCOM has not become aware of any non- |  |
|  |  |  |  |  |  |  | compliance with media ownership disclosure requirements. |  |
|  |  |  |  | b) | Can the public obtain access to this information? |  | The interested person has to file a request with the OFCOM. According to Article 32(1) |  |
|  |  |  |  |  |  |  | RTVP and Article 19 para. 3 RTVA the OFCOM publishes statistical information which is |  |
|  |  |  |  |  | If YES, how? |  | of interest to the public, and this can be via its website. The use of the data, including |  |
|  |  |  |  |  |  | Y | the collection of the data and its publication, is regulated by the Federal Council |  |
|  |  |  |  |  |  |  | (Article 19 para. 4 RTVA which is reflected in general terms in Article 29-32 RTVO). This |  |
|  |  |  |  |  |  |  | information is not available via the Law on Freedom of Information in the |  |
|  |  |  |  |  |  |  | Administration of 17 December 2004 (SR152.3) (see Articles 4 and 5). |  |
|  |  |  |  | c) | Is this information required to be made available to any |  |  |  |
|  |  |  |  |  | other body, for instance, parliament? | N |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  | If YES, please specify. |  |  |  |
|  |  |  |  | d) | Can certain information be withheld, for instance on |  | Aside from information on owners which must be public by law (ie they can be |  |
|  |  |  |  |  | grounds of commercial sensitivity? |  | identified), the Federal Data Protection Law of 1992, requires that the statistical |  |
|  |  |  |  |  |  | Y | information published by the OFCOM must be in a form that excludes the |  |
|  |  |  |  |  | If YES, please specify |  | identification of any natural or legal person unless the person concerned consents to |  |
|  |  |  |  |  |  |  | publication. (Article 32(2) RTVO). |  |
|  |  |  |  | e) | Are there any bureaucratic or other constraints, for |  | The fee for accessing the information is around a few hundred Swiss Francs (or approx. |  |
|  |  |  |  |  | instance charges, on public access? | Y | €200-250). Whilst this may not a significant amount for a company with an interest in |  |
|  |  |  |  |  |  | finding this out, it is a lot for a member of the public. |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  | If YES, please specify |  |  |  |
|  |  |  |  | f) Would a reasonable, nontechnical individual be able to |  |  |  |
|  |  |  |  |  | ascertain who effectively owns and ultimately controls |  |  |  |
|  |  |  |  |  | the media organisation concerned from the | Y |  |  |
|  |  |  |  |  | information available? |  |  |
|  |  |  |  |  |  |  |  |
|  |  |  |  |  | If NO, please explain. |  |  |  |
|  |  |  |  | g) | Has the public made use of this facility in practice? | N |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  | 6 |  |



**Name of Country:** Switzerland

**Source of information:** Professor Rolf H Weber, University of Zürich

1. If YES, is it common practice? Do the media pick up the information?
2. If NO, why not?

Media ownership is not a hotly debated discussion topic in Switzerland. Data on how often the public seeks information about media ownership is not available, however, most likely the number of requests is very low.



Switzerland is a small country, with only one nationwide publicly-controlled operator. Broadcast media operators on the regional level are also not numerous and the owners of the respective operators are known through their own information about themselves.



**2. Media-Specific Disclosure Requirements II: *Disclosure Directly to the Public***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **QUESTIONS** |  |  | **YES/** | **COMMENTS** |  |
|  |  |  | **NO** |  |  |
| 2.1 Who has to | a) | Are media organisations and/or their owners specifically |  |  |  |
| disclose |  | required to disclose ownership details directly to the | N |  |  |
| information and |  | public? |  |  |
|  |  |  |  |
| when? |  |  |  |  |  |
|  | b) | If YES, please specify the legal basis for this requirement |  |  |  |
|  | c) | Who exactly is covered by this requirement? |  |  |  |
|  | d) | Does the duty apply to foreign as well as domestic media |  |  |  |
|  |  | organisations? |  |  |  |
|  | e) | Are there are any differences in the requirements that |  |  |  |
|  |  | apply to European and non-European organisations. |  |  |  |
|  | f) | Where exactly is the information to be disclosed? |  |  |  |
|  | g) | When is information to be made available to the public? |  |  |  |
|  |  |  |  |  |
| 2.2 What | a) Name of owner? |  |  |  |
| information must |  |  |  |  |  |
| be disclosed? |  |  |  |  |  |
|  | b) | Country of domicile if a company? / |  |  |  |
|  |  | Citizenship/residence status if an individual? |  |  |  |
|  | c) | Size of shareholding? |  |  |  |
|  |  | If YES, please provide details |  |  |  |
|  | d) | If shares are held on behalf of another, e.g. through |  |  |  |

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|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | brokerage, must the name of the beneficial owner be |  |  |
|  |  | disclosed? |  |  |
|  | e) | Details of companies or individuals with an indirect |  |  |
|  |  | controlling or significant interest? |  |  |
|  |  | If YES, explain. |  |  |
|  | f) | Political, religious or other affiliations of shareholder / |  |  |
|  |  | owner? |  |  |
|  | g) | Interests by owners in other media organisations? |  |  |
|  |  | If YES, explain. |  |  |
|  |  |  |  |  |
|  | h) | Management details: for example, directors (if a |  |  |
|  |  | company), key executive officers, managing editor? |  |  |
|  | i) | Sources of media revenue? |  |  |
|  | j) | Other. |  |  |
|  | k) | Are these obligations sufficient to establish who the legal |  |  |
|  |  | or natural persons are who effectively own and |  |  |
|  |  | ultimately control the media organisations? |  |  |
|  |  |  |  |  |
| 2.3 Effectiveness of | a) | Are there any sanctions for non-reporting? |  |  |
| the disclosure |  |  |  |  |
| regime |  | If YES, what is the range of potential sanctions and who |  |  |
|  |  | has power to impose them? |  |  |
|  | b) Are sanctions, if available, applied in practice? |  |  |
|  |  | If NO, why not? |  |  |
|  | c) | Can certain information be withheld, for instance on |  |  |
|  |  | grounds of commercial sensitivity? |  |  |
|  |  | If YES, please specify |  |  |
|  | d) | Are there any bureaucratic or other constraints, for |  |  |
|  |  | instance charges, on public access? |  |  |
|  |  | If YES, please specify |  |  |
|  | e) | Would a reasonable, nontechnical individual be able to |  |  |

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**Name of Country:** Switzerland

**Source of information:** Professor Rolf H Weber, University of Zürich

ascertain who effectively owns and ultimately controls the media organisation concerned from the information available?

If NO, please explain.

1. Has the public made use of this facility in practice? If NO, why not?

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**Name of Country:** Switzerland

**Source of information:** Professor Rolf H Weber, University of Zürich

**3. Non Media-Specific Transparency Requirements (ie laws applying to companies)**

|  |  |  |  |
| --- | --- | --- | --- |
| **QUESTIONS** |  | **YES/** | **COMMENTS** |
|  |  | **NO** |  |
| 3.1 Who is required | a) Are there non media-specific transparency requirements |  |  |
| to disclose what, to | that require media organisations to disclose ownership | Y |  |
| whom and when? | information? |  |  |
|  | b) What is the relevant legal basis for disclosure? |  | Note: This section focuses on the “company limited by shares” provisions, because |
|  |  |  | this is the most frequent corporate form in Switzerland; in fact, the vast majority of |
|  |  |  | listed companies (almost all of them) are companies limited by shares |
|  |  |  | There are 3 Swiss Federal Statutes that contain transparency requirements pertaining |
|  |  |  | to the disclosure of ownership information: |
|  |  |  | 1) The Swiss Code of Obligations5 (1911 but the company law element is from 1936) |
|  |  |  | (CO) which contains several rules relating to information disclosure, some of which |
|  |  |  | apply to listed and non-listed companies, others applying only to listed companies. |
|  |  |  | *The provisions referred to in this questionnaire only refer to listed companies, unless* |
|  |  |  | *expressly mentioned.* |
|  |  |  | 2) The Federal Act on Stock Exchanges and Securities Trading (1995) (SESTA)6 and the |
|  |  |  | Federal Ordinance of the Swiss Financial Market Supervisory Authority on Stock |
|  |  |  | Exchanges and Securities Trading7 (2008) (SESTO-FINMA) (this ordinance specifies the |
|  |  |  | SESTA and gives necessary details for its application), which both only apply to |
|  |  |  | companies that are registered in Switzerland and whose equity securities are (at least |
|  |  |  | partly) listed on the Swiss Stock Exchange (cf. Art. 20 paragraph 1 SESTA). |
|  |  |  | 3) The Swiss Exchange listing rules8 (2011) (LR), and the Directive on Information |
|  |  |  | relating to Corporate Governance9 (2008) (DCG), both of which only apply to listed |
|  |  |  | companies. |
|  | c) To whom do the disclosure requirements apply (e.g., |  | It depends on the rules. Some rules require that the shareholder him/herself declares |
|  | companies) and, In particular, where companies are |  | the shares s/he owns (for example: Art. 20 SESTA); others require that the Company |
|  | required to provide ownership details, which types of |  | declares the (significant) shareholders (for example: Art. 21 SESTA + Art. 663*c* CO). |
|  | companies are covered? |  |  |
|  |  |  | As far as the CO is concerned and as indicated above, only domestic companies are |
|  |  |  | concerned (not foreign companies acting in Switzerland). See above which laws and |
|  |  |  | 10 |
| **Name of Country:** Switzerland |  |  |
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| --- | --- | --- | --- |
|  |  |  | rules apply to every Swiss Companies, and which ones relate only to listed companies. |
|  | d) To whom is the information to be disclosed? |  | It depends on the type of company: some information must be disclosed directly to |
|  |  |  | the company concerned for inclusion in its company register (eg Art. 696 CO, Art. 790 |
|  |  |  | CO); other information must be disclosed to the company *and* to the Stock Exchange, |
|  |  |  | such as when equity securities exceed or fall below certain thresholds (3%, 5%, 10%, |
|  |  |  | 15%, 20%, 25%, 33.3%, 50% and 66.6% of voting rights) (Art. 20 SESTA). |
|  | e) When is the information to be notified? |  | It depends on the type of company. |
|  |  |  | Some rules require that the information be included in an annual report, for example: |
|  |  |  | Article. 663b CO, 663c CO (see also Art. 662 CO), Art. 4 DCG. |
|  |  |  | Other rules require that a notification be made as soon as there is a transfer of shares |
|  |  |  | which result in a significant modification in the ownership of the company (see Art. 20 |
|  |  |  | + 21 SESTA). When such a transfer occurs, it must be notified by the shareholder |
|  |  |  | crossing the defined threshold within 4 trading days from (Art. 22 paragraph 1 SESTO), |
|  |  |  | and then this information must be published by the company within 2 trading days |
|  |  |  | (Art. 22 paragraph 2 SESTO). |
|  | f) What information must be disclosed? |  | It depends on the type of company. |
|  |  |  | **For listed and non-listed companies:** |
|  |  |  | A company must keep a share register of registered shares in which the names and |
|  |  |  | addresses of the owners and beneficial owners are recorded (Article 686, para 1). This |
|  |  |  | provision does not apply to bearer shares. |
|  |  |  | The accounts must contain information on shareholdings, including the number of |
|  |  |  | shares held by the company itself and “its own shares held by another company in |
|  |  |  | which it holds a majority interest” (Article 663b paragraph 10 CO). |
|  |  |  | The Management and audit report must be disclosed no later than 20 days prior to an |
|  |  |  | ordinary general meeting (Article 696 CO). |
|  |  |  | For Limited Liability companies, a register of shareholders should include the names |
|  |  |  | and addresses of company members, number and nominal value of shares, and names |
|  |  |  | and addresses of usufructuaries. (Article 790 CO): |
|  |  |  | **For listed companies only:** |
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| **Name of Country:** Switzerland |  |  |
| **Source of information:** Professor Rolf H Weber, University of Zürich |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  | Article 21 SESTO-FINMA also requires disclosure of the proportion of voting and |  |
|  |  |  | capital shares, name and address of the shareholder and DCG ANNEX 1.2 requires |  |
|  |  |  | disclosure of “significant shareholders and significant groups of shareholders and their |  |
|  |  |  | shareholdings to the extent that the issuer is aware of them.” Significant shareholders |  |
|  |  |  | are defined, as those holding more than 3% of the voting rights. |  |
|  | g) Do these obligations enable the public to obtain |  | It is not always possible to discern who has ultimate control from the information that |  |
|  | sufficient information to establish which legal or natural |  | should be disclosed. In general, for non-listed companies, basic information such as |  |
|  | persons effectively own or ultimately control media | N | the names and size of shareholding will not be available to the public (cf Art. 686 CO |  |
|  | organisations? | and 790 CO). For listed companies, this information can generally be accessed by the |  |
|  |  |  |
|  |  |  | public (cf. art. 663c CO, 697h CO, 6 DCG and Annex 1.2 DCG). |  |
|  | If NO, please explain. |  |  |  |
|  |  |  |  |  |
| 3.2 Effectiveness | a) Where is the information recorded? |  | It depends on the kind of company: it might be the company’s shareholder register |  |
|  |  |  | (Articles 686 & 790 CO), in the notes to the accounts (Article 663b, para 10), in the |  |
|  |  |  | Annual Report (Article 6 DCG), in the Commercial Register (Article 837 CO), or on the |  |
|  |  |  | website of the competent Disclosure Office (Article 23 SESTO-FINMA).10 |  |
|  | b) Are there any sanctions for non-reporting? |  | 1) CO: Ordinary corporate law consequences (which are not sanctions *stricto sensu*). |  |
|  |  |  | 2) SESTO: Under Article 40bis, a judge can suspend the voting rights for up to 5 years |  |
|  | If YES, what form do they take and who applies them? |  | for a shareholder who has failed to fulfil their reporting obligations. Under Article |  |
|  |  |  | 41, a fine of no more than twice the purchase or sale price can be also be issued; |  |
|  |  | Y | for repeat offences within 5 years, a fine of no less than CH10,000 (c. €8,530) can |  |
|  |  | be issued. See in particular Art. 20 paragraphs 4+4bis SESTO. In the case of |  |
|  |  |  |  |
|  |  |  | negligence, a fine of up to CHF 1 million (c. €853,000) can be issued. |  |
|  |  |  | 3) DCG: under Article 61 LR, sanctions include reprimands, suspension, delisting or |  |
|  |  |  | fines of up to CHF 1 million (c. €853,000) can be also be issued for negligence or |  |
|  |  |  | CHF 10 million for wrongful intent (c. €8,530,000). |  |
|  | c) Are any applicable sanctions for violations applied in |  |  |  |
|  | practice? | Y |  |  |
|  |  |  |  |
|  | If NO, why not? |  |  |  |
|  | d) Can the public obtain access to this information? | Y – | It depends on the company and the law in question. |  |
|  |  | for |  |  |
|  | If YES, how? | some | Some information can be accessed by everyone (generally for listed companies), while |  |
|  |  | comp- | others can be accessed only by some stakeholders (for example: the shareholders). |  |
|  |  | anies |  |
|  |  | See in particular: Art. 686 CO, 696 CO, 697h CO, 790 CO, 837 CO, 21 SESTA, 22 SESTO- |  |
|  |  |  |  |
|  |  |  | FINMA, 23 SESTO-FINMA and 6 DCG). |  |
|  |  |  | 12 |  |
| **Name of Country:** Switzerland |  |  |  |
| **Source of information:** Professor Rolf H Weber, University of Zürich |  |  |  |

|  |  |  |  |  |
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|  |  |  | With regard to the registers of companies limited by shares (686 CO) and limited |  |
|  |  |  | liability companies (790 CO), normally the former (686 CO) can be fully accessed only |  |
|  |  |  | by the company (moreover each owner can access only his/her own information), |  |
|  |  |  | while latter (790 CO) can be accessed in its entirety by every owner. |  |
|  |  |  | Switzerland is in the process of negotiating 40 double taxation agreements with other |  |
|  |  |  | states (including EU Member States) which would require Switzerland to provide EU |  |
|  |  |  | Member State regulatory authorities with greater information on companies banking |  |
|  |  |  | in Switzerland. Although this is not a media specific measure, NRAs would have much |  |
|  |  |  | greater access to information on which companies are registered and banking in |  |
|  |  |  | Switzerland and who owns them. This information could then, in turn, be requested |  |
|  |  |  | (from the NRAs) by civil society groups. |  |
|  | e) Are there any practical conditions or charges that could |  |  |  |
|  | serve to restrict public access? | N |  |  |
|  |  |  |  |
|  | If YES, please specify, |  |  |  |
|  | f) Would a reasonable, nontechnical individual be able |  | No, as indicated above, it is not always possible to discern who has ultimate control |  |
|  | to understand who effectively owns and ultimately |  | from the information that should be disclosed. In general, for non-listed companies, |  |
|  | controls the media organisations using the | N | basic information such as the names and size of shareholding will not be available to |  |
|  | information indicated in this section? | the public (cf Art. 686 CO and 790 CO). For listed companies, this information can |  |
|  |  |  |
|  |  |  | generally be accessed by the public (cf. art. 663c CO, 697h CO, 6 DCG and Annex 1.2 |  |
|  | If NO, why not? |  | DCG). |  |
|  | g) Have the public made use of this facility to establish |  | Unknown. |  |
|  | media ownership information in practice? |  |  |  |
|  | If NO, or limited, use has been made, why not? |  |  |  |
| **ENDNOTES** |  |  |  |

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**Name of Country:** Switzerland

**Source of information:** Professor Rolf H Weber, University of Zürich

6 In French: “Loi fédérale sur les bourses et le commerce des valeurs mobilières (LBVM)

7 In French: “Ordonnance de l’Autorité fédérale de surveillance des marchés financiers sur les bourses et le commerce des valeurs mobilières” [OBVM-FINMA]

8 In French: “Règlement de cotation” [RC]

9 In French: “Directive concernant les informations relatives à la corporate governance” [DCG]

10 The Disclosure Office was created as a result of the introduction of the obligation to disclose holdings in companies incorporated in Switzerland whose equity securities are listed, in whole or in part, in Switzerland, if they reach, exceed or fall below certain thresholds (3%, 5%, 10%, 15%, 20%, 25%, 33/3%, 50% and 66.6% of voting rights). Under applicable law and ordinances, the task of the Disclosure Office is to receive notifications of shareholdings, control the compliance of reporting and disclosure rules, grant exemptions or relief from the reporting obligation and render preliminary decisions on whether an obligation to notify exists or not. The fulfilment of the legal tasks of the Disclosure Office is subject to the supervision of the Swiss Financial Market Supervisory Authority (FINMA)..