

New Swiss Corporate Lawyers Act

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Agenda

1. Introduction
2. Summary / Key Provisions
3. Discussion
4. Questions

1. Introduction

- Purpose of today's session
- Hearing Period (Vernehmlassung)
- Submissions during hearing period
 - SwissHoldings
 - VSUJ
 - ACC Europe
- Feedback is greatly appreciated!

2. Summary / Key Provisions

Register and supervisory authority

- Registers on cantonal level (art. 3)
Content, deletion and inspection of register regulated in section 3, art. 8 to 10
- Supervisory authorities on cantonal level (art. 4)
 - Release from the professional secrecy (art. 12)
 - Disciplinary sanctions in case of violation of the professional regulations (art. 16)

2. Summary / Key Provisions

Requirements for Listing in the Register

- Listing is voluntary / optional
- Professional Requirements (art. 5)
 - Swiss or foreign bachelor degree in law
 - 1 year legal practice in Switzerland
- Personal Requirements (art. 6)
 - Capacity to act
 - No criminal convictions

2. Summary / Key Provisions

Requirements for Listing in the Register (cont'd)

- Requirements relating to employment relationship (art. 7)
 - Company may not be legal services / law firm
 - Independent assessment of legal issues, no directives from persons not listed in the Register
 - Essentially engaged in providing legal advice and doing forensic work
 - Main practice in Switzerland
 - Annual confirmation by the company

2. Summary / Key Provisions

Professional Regulations

- General (art. 11)
 - Practice work with due care and conscientiously
 - Independent assessment of legal issues, no directives from Persons not listed in the directory
- Professional Secrecy (art. 12)
 - See separate slide
- Title (art 13)
 - Obligation to indicate Listing on business cards, e-mail, business correspondence, etc.)

2. Summary / Key Provisions

Attorney Client Privilege

- Listed professionals are to observe the professional secrecy concerning their legal advice and forensic work towards everybody (art.13 para. 1)
- Listed professionals have to ensure that professional secrecy is also observed by their assistants (art. 13 para 2)

2. Summary / Key Provisions

Attorney Client Privilege (cont'd)

- Legal Privilege in criminal and civil procedures
Listed persons and their assistants may refuse to give evidence on secret products of their legal advisory or forensic work
- Criminal sanction in case of violation
Disclosure of secret products of legal advisory and forensic work is punished with up to 3 years imprisonment or a fine

2. Summary / Key Provisions

Attorney Client Privilege (cont'd)

- Scope of Privilege
 - "Products of legal advice and forensic work"
 - No protection for business related information or activities which are not related to providing legal advice
 - Protected is the client
 - Not covered are confidential matters from other activities (e.g. Minutes of the Board)

3. Discussion

View of the panelists

- Assessment / general comment on the preliminary draft
- Major benefits / concerns
- Position of important associations (SwissHoldings, EconomieSuisse, AmCham, etc.)
- Support / opposition from political parties
- Position of Swiss Competition Authorities

3. Discussion

Crucial Provisions / Discussion Points

- Main activity must focus on legal advice and forensic work (art. 7) – other general activities of in-house counsel not covered => negative impact for the ability to register?
- If your boss is not listed or outside of Switzerland, can she/he provide you with professional instructions?

3. Discussion

Crucial Provisions / Discussion Points (cont'd)

- One year legal professional practice in Switzerland?
What happens in the interims period?
- Protection of documents that are located outside legal department?
- Composition of Supervisory Authorities, who represents Corporate Lawyers in this body?

3. Discussion

Crucial Provisions / Discussion Points (cont'd)

- Limited scope (only product of legal advice and forensic work) => Generates difficult interpretation problems in case of mixed mandates, e.g. transactions
- Practical implementation?
 - No guidance related to the storage/custody of documents subject to the privilege
 - Separation of legal and business files necessary?

4. Questions?