

WilhelmGilliéron

AVOCATS



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Shareholders' right to obtain information about the company is governed by a highly formalised procedure

It is not that easy for shareholders to obtain information from the company in which they own shares. In fact, the Swiss Code of Obligations (CO) only allows them to do so at a general meeting. Although the CO is not specific as such, reference must be being made to the ordinary annual general meeting (AGM) at which votes will be taken, among other items, on the annual report and the auditors' report.

We take the view that, between ordinary AGMs, shareholders representing at least 10% of the share capital may convene an extraordinary general meeting (EGM) and ask for a special item to be included on the agenda; this may be a request for information put to the Board of Directors.

At the general meeting, shareholders are only entitled to obtain information about the business of the company to enable them to reach a decision on exercising their rights as shareholders. As those rights essentially involve approving the annual report presented by the Board of Directors and approving the auditors' report, the business on which shareholders are entitled to put questions comprises matters which the Board of Directors is required to notify to the shareholders in the context of these two reports. In other words, this concerns the company's economic and financial situation, its business strategy and its future prospects. On the other hand, it does not include commercial secrets or specific aspects of the company's business which do not have to be reported to shareholders because disclosing them would jeopardise business secrecy, as stipulated in CO Article 697, para. 2. It is important to point out here that shareholders are not bound by a duty of loyalty or confidentiality in relation to the company in which they own shares. The Board of Directors therefore cannot disclose everything to them and must show discretion in the information and answers that it provides to shareholders' questions.

If shareholders take the view that they are entitled to information withheld from them or that answers given to them by the Board of Directors are incomplete, they are entitled to instigate legal proceedings against the company in the ordinary civil courts having jurisdiction at the place where the company has its registered office. A slow and costly legal battle then ensues, with the stakes very often going beyond the precise framework of the questions put by the applicant shareholder or shareholders.

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