Dear clients and business partners,

Upon expiry of the two-year transition period, companies will be required to introduce and implement the provisions of Switzerland’s new accounting legislation with effect from 1 January 2015.

The new financial reporting standards include a change – which, although minor, is not to be underestimated – regarding the mandatory retention of business documents. Business correspondence previously required to be kept for 10 years now only needs to be retained in certain exceptional cases.

The present issue of Legal News outlines the scope of the changes in the rules governing the statutory preservation of business records and provides practical pointers on archiving business correspondence in the future.

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1. Applicable as of 2015 financial year

Companies have had the option to adopt the changes brought by the revised accounting provisions ever since they entered into force on 1 January 2013. The statutory provisions become mandatory from the beginning of FY 2015. In respect of consolidated accounts, they will be applicable as of FY 2016. The rules on the mandatory retention of business documents and, especially, business correspondence have also been amended.

Applicable across all legal forms, the new accounting provisions can be found in Articles 957 to 963b of the Swiss Code of Obligations (CO). The accounting standards imposed under company law (Art. 663d to 669 CO) have been revoked.

2. Companies required to keep documents

The obligation to retain business documents arises from the duty to keep accounts and file financial reports (Art. 958f in conjunction with 957 CO).

In particular, sole proprietorships and partnerships generating sales revenue of less than CHF 500,000 per year are also required to retain documents since the principles of due accounting apply mutatis mutandis to these types of company (Art. 957 para. 3 CO).

3. Business documents required to be kept

The old version of Art. 957 CO specified that the books, accounting vouchers and business correspondence must be retained. The term “business correspondence” is nowhere to be found in the revised accounting rules. Article 958f CO merely stipulates that the accounting records, accounting vouchers, annual report and audit report be retained.

However, a mandatory requirement to keep business correspondence still applies in two particular cases: First, where business correspondence provides evidence of the circumstances underlying an accounting entry and where no other voucher exists that would verify these circumstances to the same degree, this correspondence can be construed to wholly or partially represent an accounting voucher. Second, depending on the sector in which the company operates, special legal provisions may apply which directly or indirectly require it to retain business records. Depending on the company, this may mean that even certain business correspondence without a voucher-like function is nevertheless subject to mandatory storage.

4. To keep or not to keep

Companies should now, under the revised Swiss accounting rules, weigh up the extent to which correspondence is worth

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Retaining business correspondence under the revised Swiss accounting rules

Legal News
retaining. Leaving aside special statutory documentation requirements and quasi-voucher records, it makes little sense - nor is it economical - to store every item of business correspondence for 10 years.

The question of whether or not a document merits being kept should be assessed from the angle of risk and the consequences of a potential lack of recorded evidence. We recommend a strategy geared to the specific company and business area. This strategy may be based on a broad interpretation of what needs to be retained by law - also taking in electronic correspondence, blogs, instant messaging and social media content. At the other end of the scale, it could entail restrictive storage criteria applied case by case.

To counter the risk of important items of business correspondence not being archived (either accidentally or intentionally), companies are advised to issue internal guidelines clearly defining which documents with which specific content are to be kept. In our view, the following in particular qualify as important business correspondence: documents which either substantiate rights and obligations or contain key information on the company's legal status and contractual actions, e.g. agreements, tenders and offers, orders, reminders, lead time logs, delivery time sheets and supporting records (knowledge, acknowledgement, involvement, etc.).

5. Period of retention

The period of retention for business records that are required to be kept is still 10 years as of the end of the financial year in which the documents were created. Certain special rules provide for longer periods of retention, e.g.:

- the statute of limitations for value added tax claims is 10 years (Art. 42 VAT Act), with an equally long retention period for the related records. While documents related to immovable goods must be retained for 20 years (Art. 70 para. 3 VAT Act), the Swiss Federal Tax Administration goes so far as to recommend an extended retention period of 26 years.
- A claim evidenced by a certificate of loss falls under a statute of limitations of 20 years as of the date of issue (Art. 149a para. 1 Debt Enforcement and Bankruptcy Act), during which period the relevant documents must be kept. Furthermore, if the limitation period is interrupted by the instigation of debt enforcement proceedings in accordance with Art. 135 Item 2 CO, the period will commence afresh and the documents have to be retained in the archive for a further 20 years.
- The accounting records and the accounting vouchers may still be retained on paper, electronically or in a comparable manner, provided this correlates with the underlying business transactions and circumstances and provided they can be made readable again at any time (Art. 958f para. 3 CO). The annual report and the audit report must be retained in a written form and signed (Art. 958f para. 2 CO), i.e. in the original. Here an electronic signature is also deemed equivalent to a handwritten signature (Art. 14 para. 2bis CO).

6. Method of retention

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7. Conclusion

By the beginning of the 2015 financial year at the latest, companies will have the option of retaining business correspondence on a selective basis only and potentially cutting their archiving costs.

At the same time, companies must adhere to any special statutory documentation provisions applying to their business and evaluate the specific risk they might face in case of lack of recorded evidence owing to business correspondence no longer being available. Companies are advised to scrutinise their current strategy on the retention of business correspondence: they should define which documents are worth keeping on the basis of precisely defined document contents.

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