Switzerland

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

The Swiss fintech landscape has evolved significantly over the past years and Switzerland continues to be an attractive base for innovators in the financial sector. More than 300 active companies in various sectors form the core of the ecosystem of start-ups and aspiring young fintech businesses that have been founded in the recent past. New start-up projects continue to emerge on a regular basis. However, the scope of fintech in the Swiss market is much broader, with many established financial institutions entering the space in the recent past. As a result, the distinction between fintech and traditional financial services has become increasingly blurred. Furthermore, technology-oriented businesses from outside of the financial sector, including large multinational players, are entering the fintech market in Switzerland as well.

Swiss-based fintech businesses include payment systems, investment and asset management services, crowdfunding and crowdlending platforms, insurance-related businesses (*insurtech*) as well as distribution and information platforms in the area of collective investment schemes. Furthermore, blockchain-based businesses continue to be another key focus area, including but not limited to the areas of cryptocurrencies and decentralised ecosystems. Many blockchain start-ups are based in the so-called "cryptovalley" in the Canton of Zug, which also became known in the recent past as a hub for initial coin offerings ("**ICO**"). Six out of the 15 biggest ICOs since 2016 took place in Switzerland. More recently, the focus of attention has shifted towards the nascent market of so-called security token offerings ("**STO**") and, by extension, the legal framework and market infrastructure to support them.

The Swiss fintech industry has formed a number of associations and shared interest groups (*e.g.* the Swiss Finance + Technology Association, Swiss Fintech Innovations, Swiss Finance Startups, the Crypto Valley Association and the Swiss Blockchain Federation) to promote, together with investors, experts, political representatives and the media, the further development of a strong Swiss fintech sector.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

Switzerland has no specific prohibitions or restrictions in place with respect to fintech. Generally speaking, Swiss financial regulation is technology-neutral and principle-based, which has so far allowed it to cope with technological innovation. That said, fintech operators may be subject to regulation and supervision by the Swiss Financial Market Supervisory Authority FINMA ("**FINMA**") or by self-regulatory organisations, depending on the nature and specifics of their business. The relevance and application of Swiss laws on, *e.g.*, anti-money laundering, collective investment schemes, financial market infrastructures, banks, insurance companies, securities dealers and/or data protection has to be assessed in the individual case (*see* question 3.1). With regard to ICOs in particular, FINMA published a guidance letter in which it emphasised the concept of an individual review of each business case regarding the regulatory impact. It is therefore prudent for fintech start-ups to seek clearance from the regulator before launching their project in the market.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Switzerland has an active start-up scene and various funding opportunities are available for companies at every stage of development. There are seed and venture capital firms for early funding as well as mature debt and equity capital markets for successful companies at a later stage. In addition, there are many financial institutions that have a potential interest in buying an equity stake in fintech companies or in a full integration.

Crowdfunding and crowdlending as alternative sources of funding have shown rapid growth rates in Switzerland, both in terms of the number of platforms and the funds raised. The first crowdfunding platform was founded in 2008 and currently there are over 40 active platforms (compared to only four in 2014). In 2017, apparently CHF 374.5 million was raised via these platforms, which is 192% more than in the previous year (Crowdfunding Monitoring Switzerland 2018).

The legislator has facilitated crowdfunding and crowdlending platforms by way of the introduction of the fintech regulation in Switzerland as follows: a) as of 1 August 2017, the maximum holding period during which the acceptance of funds for the purpose of settlement of customer transactions does not yet qualify as taking deposits from the public (and therefore do not count towards a potential banking licence requirement) was extended from seven to 60 days, b) a so-called regulatory sandbox was introduced in the BankO, according to which more than 20 deposits from the public can be accepted on a permanent basis without triggering a banking licence requirement as long as: i) the deposits accepted do not exceed CHF 1 million; ii) no interest margin business is conducted; and iii) depositors are informed, before making the deposit, that the person accepting the deposits is not supervised by FINMA and that the deposits are not covered by the Swiss depositor protection scheme (*see* question 3.3 for further details).

Furthermore, a growing number of incubators and accelerators, either exclusively fintech-related (such as the association F10 or Thomson Reuters Labs – The Incubator) or focused on digital innovation in general including fintech (such as Kickstart Accelerator), support and guide fintech start-ups in transforming their ideas into successful ventures.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

There are no specific tax or other incentives for the benefit of the fintech industry in Switzerland. However, depending on the tax domicile of the company and the residence of the shareholders, there are certain tax benefits for start-up companies and tax schemes granting some relief to investors. In addition, again depending on the tax domicile of the company (as tax rates vary between the cantons/municipalities), the ordinary profit tax rate in Switzerland can be as low as 12%. Currently, Switzerland is in the process of introducing via a corporate tax reform various general tax incentives, such as special R&D deduction regimes and also a patent box regime.

In particular, start-ups may benefit from a tax holiday on the cantonal and federal level if their tax domicile is located in a structurally less developed region of Switzerland. Furthermore, if a company sells a stake of at least 10% in an investment which has been held for at least one year prior to the sale of the participation, the realised profit benefits from a participation deduction. In addition, Swiss resident individuals are not taxed on capital gains realised on privately held assets. Dividend payments to companies which hold a participation of at least 10% or with a fair market value of at least CHF 1 million in the dividend paying company also benefit from the participation deduction. Dividend payments to Swiss resident individuals on substantial participations of at least 10% are taxed at a reduced rate.

Switzerland levies annual wealth taxes. In order to lessen the tax burden for start-up investors, start-up companies are often valued at their substance value for wealth tax purposes (*e.g.* in the Canton of Zurich).

In terms of management/employee incentives, Switzerland offers attractive participation schemes, which, if structured as an equity participation, generally aim to obtain a tax exempt capital gain (instead of taxable salary) for the Swiss resident managers upon an exit.

Finally, it is common in Switzerland to discuss the tax consequences of an envisioned structure with the competent tax administration and there is an uncomplicated process of obtaining advance tax rulings.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The requirements for a listing on the SIX Swiss Exchange (the main Swiss stock exchange) are laid down in its Listing Rules and its Additional Rules and can be divided into (i) requirements regarding the issuer, and (ii) requirements regarding the securities to be listed. Essential criteria include, *e.g.*, (i) that the issuer has existed as a company for at least three years (however, exemptions exist) and has a reported equity capital of at least CHF 2.5 million. Furthermore, (ii) the securities must meet the minimum free float requirements (at least 20% of all of the issuer's outstanding securities in the same category have to be held in public ownership, and the capitalisation of those securities in public ownership has to amount to at least CHF 25 million).

The listing requirements of the BX Swiss (the second regulated Swiss stock exchange) are structured in the same way as those of SIX Swiss Exchange, but they are less stringent (*e.g.* the issuer must only have existed as a company for at least one year and the share capital and the reported equity must only amount to at least CHF 2 million).

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

There have not been any recent IPOs in Switzerland in the specific area of fintech. However, in 2017, Warburg Pincus acquired 45% of the shares in Avaloq Group AG, a leading Swiss provider of software solutions and business process outsourcing services for the financial industry.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

The Swiss financial regulatory regime does not specifically address fintech. In fact, the recent new regulations addressing certain requirements for fintech companies in Switzerland have also been designed according to the principle of technology neutrality, meaning that business activities with substantially similar characteristics are subject to the same regulatory requirements irrespective of whether they are provided using advanced technology or in a more traditional format (although there is a newly introduced mid-range regulatory licence type that is colloquially referred to as "fintech licence"; *see* further below).

The Swiss legal framework governing the activities of traditional financial services providers and fintech operators consists of a number of federal acts and implementing ordinances as well as circulars and other guidance issued by the Swiss Financial Market Supervisory Authority FINMA. Fintech business models have to be assessed in light of this regulatory framework on a case-by-case basis (*see* question 1.2).

More specifically, based on their (intended) activities, fintech businesses may in particular fall within the scope of the Banking Act ("**BA**") (if engaging in activities involving the professional acceptance of deposits from the public or the public solicitation of deposit-taking; *see* question 3.2), the Anti-Money Laundering Act ("**AMLA**") (if active as a so-called financial intermediary, *e.g.* in connection with payment instruments, payment systems, individual portfolio management or lending activities; *see* question 4.5), the Collective Investment Schemes Act (if issuing or managing investment funds or engaging in other activities relating to collective investment schemes), the Financial Market Infrastructure Act (if acting as a financial market infrastructure, *e.g.* a multilateral trading facility), the Stock Exchange Act (if acting as a securities broker-dealer or as a proprietary trader), or the Insurance Supervision Act (if acting as an insurer or insurance intermediary). Moreover, *inter alia*, the Consumer Credit Act ("**CCA**"), the Data Protection Act ("**DPA**") as well as the National Bank Act may apply.

Depending on the specific business model, regulatory requirements may include licence or registration requirements as well as ongoing compliance and reporting obligations, in particular relating to organisation, capital adequacy, liquidity and documentation, as well as general fit-and-proper requirements for key individuals, shareholders and the business as such. Certain types of regulated businesses are prudentially supervised by FINMA on an ongoing basis in a two-tier approach, whereby an audit firm (regulatory auditor) appointed by the supervised entity carries out regulatory audits that will be an important basis for the supervision by FINMA. The individual financial market laws provide for de minimis and other exemptions that can potentially be relevant for fintech operators depending on the type and scale of their activities.

FINMA is the integrated supervisory authority for the Swiss financial market, ensuring a consistent approach to the qualification and regulatory treatment of fintech operators and other financial institutions. Furthermore, Switzerland has an established system of industry self-regulation by private organisations such as the Swiss Bankers Association SBA, the Swiss Funds & Asset Management Association SFAMA as well as numerous professional organisations for financial intermediaries. Some of the regulations issued by self-regulatory organisations have been recognised by FINMA as minimum standards (e.g. in the area of money laundering prevention).

Two major new financial market laws will come into force on 1 January 2020: the Financial Services Act ("**FinSA**") and the Financial Insitutions Act ("**FinIA**"). The FinSA contains cross-sectoral rules for the offering of financial services and the distribution of financial instruments and aims to reflect the principles implemented at EU level by the Markets in Financial Instruments Directives MiFID I/II. It will essentially require financial services providers to adhere to a code of conduct, which includes suitability and appropriateness assessments in case of asset management or investment advisory services. The FinIA will establish a differentiated, risk-based supervisory regime for portfolio managers, managers of collective assets, fund management companies and securities firms. As a result, specific fintech activities such as digital asset management services may become subject to a licence requirement by FINMA under the FinIA (in contrast to the current regime where individual asset managers only require a membership with a self-regulatory organisation for anti-money laundering purposes). In addition, digital financial advice or online investment management may in future be covered by the code of conduct rules of the FinSA.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

As Switzerland pursues a principle-based and technology-neutral approach in its legislation, the Swiss legal framework is, in principle, already suitable for dealing with cryptocurrencies and cryptoassets. At present, there is no regulation in Switzerland that is specifically directed at cryptocurrencies and cryptoassets. However, the Swiss Federal Council has proposed to further improve the prerequisites for distributed ledger technology and blockchain applications and has identified in particular the following key areas for action:

- **Civil law**: Legal certainty in respect of the transfer of rights by means of decentralised digital ledgers may be improved by amending securities law in the Swiss code of obligations.
- **Insolvency law**: The segregation of crypto-based assets in the event of bankruptcy and the potential segregation of data with no asset value should be clarified by amending the Swiss Debt Enforcement and Bankruptcy Act.
- **Financial market laws**: A new and flexible authorisation category for blockchain-based financial market infrastructures should be introduced; as regards banking legislation, bank insolvency law provisions shall be reconciled with the adjustments in general insolvency law.
- **Anti-money laundering and anti-terrorist financing laws**: The treatment of decentralised trading platforms under the Anti-Money Laundering Act should be specified.

To further the legislative process, the Federal Council has instructed the Federal Department of Finance and the Federal Department of Justice and Police to draw up a preliminary draft for framework legislation and a corresponding explanatory report in the first quarter of 2019.

Previously, in February 2018, FINMA published guidelines that outline how the existing regulatory framework will be applied to the enquiries of Initial Coin Offerings ("**ICO**") organisers. The guidelines address important AML and securities law aspects of digital tokens.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

Key representatives of FINMA have repeatedly expressed their principal openness to apply an innovation-friendly and technology-neutral approach to its regulatory and supervisory activities. FINMA has, *inter alia*, established a dedicated fintech desk to interact with fintech start-ups and has revised several of its circulars, which specify the practice of the regulator under the current legislation, to render them technology-neutral (*e.g.* by refraining from physical written form requirements relating to certain documentations or by enabling video and online identification for client-onboarding purposes). In the context of anti-money laundering, FINMA has also revised its respective ordinance introducing simplified organisational requirements for small fintech companies (*see* question 4.5).

In the same vein, Swiss policymakers have reaffirmed their liberal strategy towards the regulation of new technologies in the fintech sector. The Swiss Federal Minister of Finance stated at a roundtable event at the World Economic Forum that Swiss rules for innovations like blockchain will continue to target "processes, not technologies", which means that new technologies themselves are not regulated but rather the impacts which they cause are overseen by existing legislation, made to be flexible enough to accommodate innovation. In order to make it easier for fintech start-ups to set up shop and to ease regulatory hurdles, a three-pillar legal reform programme was initiated by Swiss policy makers back in 2016. The three-pillar "light touch" programme included the introduction of a regulatory sandbox concept and the extension of the holding period from seven days to 60 days for third-party deposits, which already took effect on 1 August 2017. The third pillar of the legislative reform package refers to the introduction of a new licensing category to the Swiss framework for financial market supervision and became effective on 1 January 2019:

- **Maximum holding period for settlement accounts**: The revision of the framework for banking legislation extended the time period for which third party monies accepted on interest-free accounts for the purpose of settlement of customer transactions do not qualify as "deposits from the public" (and therefore do not count towards a potential banking licence requirement) to a maximum of 60 days (instead of only seven days). Crowdfunding platforms in particular, but *e.g.* also payment service providers, the business model of which typically requires holding third party funds for a certain period of time, benefit from this broadened exemption. It should be noted that settlement accounts of foreign exchange dealers generally do not fall within the scope of the exception for settlement accounts. In the context of fintech, this may in particular affect cryptocurrency traders, which are subject to the same limitation if their business is conducted in a manner comparable to a traditional foreign exchange dealer.
- **Regulatory sandbox**: The Swiss regulatory sandbox provides an innovation space for fintech but also for other emerging businesses and other undertakings to test their business models. It allows any person, without the prior approval or review by the regulator (*i.e.* no licence requirement), to accept deposits from the public in an amount of up to CHF 1 million, regardless of the number of depositors. This exemption is, however, available only if the deposits are neither interest-bearing nor invested (or alternatively used for the purpose of financing a primarily commercial or industrial activity). As a mitigating measure, the deposit-taker must inform the depositors – before accepting any of their monies – that it is not supervised by FINMA and that the deposits are not covered by the depositor protection regime. As of 1 April 2019, new rules will enter into force explicitly prohibiting the interest margin business while at the same time enabling deposits received under the sandbox to be used for private purposes (i.e. not for commercial or industrial purposes).
- **Fintech licence**: Under the new licence category (frequently referred to as the "fintech licence" or "banking licence light"), FINMA may authorise companies that do not carry out traditional banking activities to accept deposits from the public up to a maximum threshold of CHF 100 million as long as the deposits are not invested and no interest is paid on them. Hence, companies that merely accept and hold public deposits up to the threshold amount and do not engage in the commercial banking business with maturity transformation are eligible for the fintech licence. The new licence type will bring a number of alleviations in the areas of minimum capital, capital adequacy and liquidity, governance, risk management, compliance, depositor protection as well as accounting and auditing for fintech companies, which so far had to rely on a fully-fledged banking licence for their commercial activities – with the associated regulatory burden. Irrespective of the reliefs granted, anti-money laundering regulation continues to apply to fintech firms if they qualify as financial intermediaries (the same applies to date protection law (*see* question 4.5)).

In addition, regulation professionalising the crowdlending market has been introduced by extending the scope of the CCA to crowdlending intermediaries as of 1 April 2019. Crowdlending intermediaries are now subject to certain reporting duties and further obligations in connection with the review of the creditworthiness of the borrowers.

The Swiss Federal Council published a draft partial revision of the Insurance Supervision Act for public consultation that ended on 28 February 2019. The draft law foresees the competence of FINMA to exempt insurance undertakings with innovative business models from insurance supervision if this serves the sustainability of the Swiss financial market and the interests of the insured are safeguarded.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

The Swiss inbound cross-border regulatory regime for financial services is relatively liberal in comparison to international regulation. Many Swiss financial market regulatory laws do not apply to fintech (and other) businesses that are domiciled abroad and serve customers in Switzerland on a pure cross-border basis, *i.e.* without employing persons permanently on the ground in Switzerland (including by frequent travel). Notably, the BA and the AMLA apply only to foreign operators that have established a relevant physical presence in Switzerland, e.g. a branch or representative office. That said, cross-border operators that are not regulated in Switzerland should refrain from creating an (inaccurate) appearance of "Swissness", *e.g.* by using a ".ch" website or referring to Swiss contact numbers or addresses.

However, it should be noted that some areas of Swiss financial regulation are more restrictive with regard to cross-border activities, notably the regulation of collective investment schemes as well as insurance regulation.

Furthermore, as Switzerland is neither a member of the EU nor of the EEA, there is no passporting regime available.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Swiss data protection law is set forth in the DPA and the implementing Data Protection Ordinance ("**DPO**"). Swiss data protection law is influenced significantly by EU law, both in terms of content and interpretation.

Fintech firms are subject to the DPA if they process personal data in Switzerland. In this context, the mere storage of personal data on a server in Switzerland is sufficient. Deviating from most foreign data protection laws, the DPA also treats information referring to legal entities as personal data. It is worth mentioning that Swiss data protection law is based on an "opt out" model, meaning that the processing of personal data is not allowed against the express wish of a data subject, but the consent of a data subject is not a requirement for lawful processing (subject to specific rules regarding the processing of particularly sensitive personal data).

A fintech firm processing personal data in Switzerland must do so in accordance with the following data processing principles: good faith, proportionality, purpose limitation, transparency, accuracy, data security, and lawfulness. Furthermore, an obligation to register a data file with the Swiss Data Protection Commissioner

("**Commissioner**"), prior to any data processing, applies if the controller of a data file regularly processes so-called sensitive personal data (*e.g.* health data or trade union related views and activities) or personality profiles (*i.e.* a collection of data that permits an assessment of essential characteristics of the personality of an individual), or regularly discloses personal data to third parties (including affiliates). The Commissioner maintains an online register of such data files (www.datareg.admin.ch). The registration is free of charge.

Currently, Swiss data protection law is under revision to adapt the DPA to the changed technological and social conditions and, in particular, to improve the transparency of data processing and strengthen the self-determination of data subjects. Furthermore the revision aims to further align Swiss data protection legislation with the requirements of the General Data Protection Regulation (EU) 2016/679 of the EU, as this is a key element to ensure continued EU recognition of Switzerland as a third country with an adequate level of data protection in order for cross-border data transmission to remain possible in the future. The revised DPA is, however, not expected to enter into force before January 2020.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The activity of processing of personal data on equipment located in Switzerland is, in principle, within the scope of the DPA (*see* question 4.1). This is particularly relevant for foreign fintech firms that are processing personal data in Switzerland through branch offices or third party service providers.

The DPA prohibits a disclosure (transfer) of personal data to abroad if such a transfer could seriously endanger the personality rights of the data subjects concerned. This might be the case particularly if personal data is intended to be disclosed to a country where the local legislation does not guarantee an adequate protection of personal data. The Commissioner has published a (non-binding) list of countries that provide for an adequate level of data protection. In particular, all EU Member States are deemed to meet the requirement of adequate data protection rules. An important means to secure adequate protection for transfers to other countries is the use of model contracts for the transfer of personal data to third countries issued by the European Commission (EU Model Clauses), adapted to Swiss law requirements, or other contractual clauses explicitly recognised by the Commissioner. Another option is to obtain consent for the transfer from the data subject whose data is being transferred.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

The sanctions pursuant to the current DPA are moderate:

- **Civil law sanctions**: A data subject can file a request for an interim injunction against unlawful data processing. It is also possible to lodge a claim for correction or deletion of data or a prohibition on the disclosure of data to third parties. In addition, a data subject is entitled to compensation for actual damages caused by unlawful processing or other breaches of the DPA.
- **Criminal law sanctions**: The Commissioner is not competent to issue any fines. However, based on article 34 DPA, a competent criminal judge may, upon a complaint, sanction individuals with a fine of up to CHF 10,000 if they have wilfully breached certain information obligations stipulated in the DPA.

The draft revision of the DPA provides for an extension of the catalogue of criminal offences and an increase in the fines to be imposed to up to CHF 250,000 (*see* question 4.1).

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

The topic of cyber security is addressed by a number of legal provisions and initiatives:

- The DPA and the DPO set forth certain general security requirements applicable to the IT infrastructure deployed when processing personal data. Such requirements are accompanied by the Commissioner's guide for technical and organisational measures to be taken when processing personal data. It is to be noted that the current DPA does not require data processors to notify a Swiss authority or the data subject concerned of personal data breaches. However, the draft revision of the DPA provides for such an obligation to notify.
- The Swiss Criminal Code ("**SCC**") provides for statutory offences which protect IT infrastructure against cybercrime (*i.e.* against the unauthorised obtaining of data, unauthorised access to a data processing system, data corruption, *etc.*).
- The Reporting and Analysis Centre for Information Assurance MELANI supports private computer and internet users as well as providers of critical national infrastructures (such as banks, telecommunication services providers, *etc.*) with regard to risks relating to the use of modern information and communication technologies.
- The Federal Department of Defence, Civil Protection and Sport established a Cyber Defence Campus that commenced operations in January 2019, focusing on early detection and observation of current developments in the cyber-world and on the development of action strategies in this respect.

In 2011, Switzerland ratified the Council of Europe Convention on Cybercrime of 2001 (which entailed certain amendments of the SCC and the Swiss Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981).

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

The Swiss rules on prevention of money laundering and terrorist financing are set forth in the AMLA, the Anti-Money Laundering Ordinance ("**AMLO**"), ordinances and circulars of FINMA as well as the rulebooks of recognised self-regulatory organisations. Generally speaking, anti-money laundering ("**AML**") regulation applies to so-called financial intermediaries (and partially to merchants accepting large sums in cash, *i.e.* more than CHF 100,000, as payment in commercial transactions). On the one hand, certain prudentially regulated entities such as *e.g.* banks, securities dealers, fund management companies and life insurance undertakings qualify as financial intermediaries based on their regulatory status (*per se* financial intermediaries). On the other hand, any otherwise unregulated person or entity can qualify as a financial intermediary by virtue of its professional activities. In general, this refers to any person that, on a professional basis, accepts or holds on deposit third party assets or that assists in the investment or transfer of such assets.

Many fintech business models include elements that lead to their operators qualifying as financial intermediaries in the meaning of the AMLA. If this is the case and no exemptions are available, the fintech firm is required to join a recognised Swiss AML self-regulatory organisation. In this context, the firm is required to comply with certain duties on an ongoing basis, in particular the duty to verify the identity of customers and the beneficial ownership in the relevant assets as well as documentation, reporting and audit requirements. In a push to eliminate barriers for technology-based business models, FINMA has introduced a new circular that enables onboarding of customers via digital channels, *e.g.* by means of video transmission and other forms of online identification. This model has also been replicated in the rulebooks of recognised AML self-regulatory organisations.

The AMLA includes specific criminal provisions sanctioning the violation of duties under AML regulation. In addition, certain offences in the area of corruption and money laundering are set forth in general criminal law, meaning that they apply to fintech (and other) firms regardless of their qualification as a financial intermediary.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

Aside from financial regulation in various areas (*see* questions 3.1 *et seqq.*) and the data protection regime (*see* questions 4.1 *et seqq.*), fintech firms have to comply with general corporate and civil law provisions as well as with Swiss competition law on the basis of the Unfair Competition Act. Furthermore, depending on the specific business model, the Telecommunications Act may apply.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

Swiss employment law is based on the principle of freedom of contract and, as a general matter, relatively liberal. Individual employment contracts regulate the rights and obligations of employers and employees. Employment contracts can be concluded on a fixed-term basis (the contract ends on a date agreed from the outset) or on an open-ended basis (the contract ends by notice of termination). In case of an open-ended employment contract, statutory law prescribes that the first month of work is the probation period (but it can be contractually extended up to three months, be shortened, or be eliminated entirely). In case of a fixed-term employment contract, there is no statutory probation period (but it can be agreed). In the probation period, the statutory termination notice is seven days.

Private employment contracts can usually be terminated rather easily and, as a general principle, terminations do not lead to any statutory law obligations to render severance payments. The statutory period of notice is between one and three months, depending on the accrued duration of the employment relationship, but the parties are free to agree on another notice period, as long as the notice period is the same for both parties and amounts to at least one month. Nevertheless, the principle of freedom to terminate the employment contract is limited in two ways. First, there is a protection from unlawful dismissal (*missbräuchliche Kündigung*). A notice of termination is, *e.g.*, unlawful where given because of an attribute pertaining to the person of the other party or because the other party in good faith asserts claims under the employment relationship (retaliation). The party having received the unlawful notification may raise a claim for compensation up to a certain threshold. Furthermore, there are restricted periods during which the parties are not allowed to terminate the employment contract (*Kündigung zur Unzeit*, *e.g.* during a certain period while the employee through no fault of his or her own is partially or entirely prevented from working by illness or accident, or during the pregnancy of an employee and the 16 weeks following birth).

Furthermore, Swiss employment law *e.g.* provides for special rules to be met in cases of mass redundancies.

5.2 What, if any, mandatory employment benefits must be provided to staff?

The employer must pay its employees the agreed or customary salary or the salary fixed by standard employment or collective employment contracts. No statutory minimum salary exists in Switzerland, but for certain professions, collective and standard employment agreements set minimum salaries.

The employer may, and in some cases must, make deductions from the salary. Social insurance premiums are paid either by the employer alone, or by the employer and the employee together with the employer deducting the employee's portion of social insurance premiums from the employee's salary. Further deductions are made for unemployment insurance and non-professional accident insurance. The premiums for mandatory occupational pension schemes are fixed by the relevant institutions and borne collectively by the employers and the employees. Health insurance premiums are, unless otherwise agreed, borne by the employees and handled separately from the employment.

The parties are, in principle, free to determine the regular weekly working time. Typically, for full-time employment, a weekly working time between 40 and 44 hours is agreed upon. Overtime hours must be compensated in principle (by remuneration or leisure time). However, public law provisions limit the maximum working time (to 45 hours or 50 hours per week depending on the nature of the work).

Employers in Switzerland must grant their employees at least four weeks of vacation per year, and in the case of employees under the age of 20, at least five weeks of vacation (excluding public holidays). Part-time employees have a *pro rata* entitlement. During the vacation, the employee is entitled to the continued payment of his or her salary.

If the employee is prevented from working due to personal circumstances for which the employee is not at fault, *e.g.* illness, accident, legal obligations or public duties, the employer must pay the employee a salary for a limited period of time provided that the employment relationship lasted or was concluded for longer than three months. Furthermore, a female employee is entitled to maternity leave of at least 14 weeks. Paternity leave is currently not granted under Swiss law but may be agreed upon by the parties to the employment contract.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

As a general matter, foreign nationals engaged in any kind of gainful employment in Switzerland must apply for a work permit. An exception to the permit requirement applies to business visits of a duration not exceeding eight days as well as third-country nationals who do not work more than eight days per calendar year in Switzerland. Switzerland has a dualistic system for the admission of foreign workers where on the one hand, nationals from EU/EFTA states can benefit from the Agreement on the Free Movement of Persons (*Personenfreizügigkeitsabkommen*) while permits for nationals from third countries are subject to nationwide quantitative restrictions (quotas).

EU/EFTA nationals according to the Agreement on the Free Movement of Persons (*Personenfreizügigkeitsabkommen*) have a right to a work permit if they have an employment relationship with an employer in Switzerland. No permit is required for work for a duration of less than 90 days per calendar year (there is only a reporting requirement). The same applies to self-employed service providers and companies based in these countries posting workers to Switzerland if the employees have held a valid EU work permit for at least 12 months prior to their assignment to Switzerland. All EU/EFTA citizens being employed by a company in Switzerland for longer than 90 days per calendar year are required to obtain a permit in the form of either (i) a short-term permit for up to four months of uninterrupted stay or 120 days per year, (ii) a short-term permit for up to one year (the actual period of validity depends on the duration of the limited employment contract; "L-Permit"), (iii) a long-term permit for five years based on an unlimited (or at least one-year) employment contract ("B-Permit"), or (iv) a so-called border-crosser permit if they continue to live outside of Switzerland but commute to their Swiss workplace ("G-Permit"). Self-employment from EU/EFTA nationals also requires permission, which may be granted for five years upon establishment of a business or permanent establishment with effective and viable business activities in Switzerland.

In contrast, non-EU/non-EFTA citizens have to apply for either (i) a short-term permit for up to four months/120 days per calendar year, (ii) a short-term permit for up to 12 months based on a limited employment contract ("L-Permit"), or (iii) a long-term permit that is valid for an unlimited period but needs to be renewed annually based on an unlimited employment contract ("B-Permit"). With certain exceptions, work permits for citizens of non-EU/non-EFTA countries are subject to a nationwide quota. Furthermore, such permits are only granted to highly qualified employees (*e.g.* senior management positions, specialists or other qualified personnel). In case the person was not assigned from a foreign company to a Swiss affiliate (intra-group transfer), it must be shown that no appropriate candidate throughout Switzerland and EU/EFTA countries can be found. Non-EU/non-EFTA citizens wishing to start working on a self-employed status must submit an application together with a business plan, proof of financial means and a certificate of registration. The competent authority will review the business plan and assess the relevant market situation.

Special rules apply to persons holding a work permit from one of the EU/EFTA countries for more than one year being employed by an employer with domicile in the EU-/EFTA-area. Such persons can be assigned to Switzerland for up to 90 days per calendar year without meeting the requirements as set forth above.

Switzerland does not have a specific immigration scheme for the fintech sector.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Fintech inventions are predominantly protected either by copyright law or by patent law. Assuming that fintech products are typically based on computer programs – or more broadly software – they are protected by copyrights if they possess an individual character (*i.e.* if they are original). In practice, this criterion relates to the novelty or absence of triviality in comparison to existing computer programs. Copyrights in computer programs cover the source code and object code. However, the underlying ideas and principles as well as algorithms and formulas used in and for computer programs are not protected. Copyright protection in computer programs expires 50 years after the author deceases. Software that is integral to an invention may further be patented for a period of 20 years. However, computer programs *per se* are excluded from patentability.

In addition, the design of fintech products (*e.g.* if implemented in portables, wearables, *etc.*) may be protected for a maximum period of 25 years by design rights. Fintechs may also seek protection under the Trademark Act and register graphical representations for the distinction of the company's products or services during a period of 10 years (renewable). Marketable products are further protected by the Unfair Competition Act against technical reproduction processes and exploitation without appropriate effort on the part of the reproducing party. Unlike the laws of EU Member States, Swiss law does not provide for database rights.

The protection of fintech inventions or innovation as trade and business secrets may also be based on statutory or contractual obligations.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

As a general rule, the primary owner of the copyright is the author, i.e. the natural person who created the work. Computer programs – or more broadly software – are works as defined by Swiss copyright legislation. The copyright automatically vests in the author and exists informally upon the moment of intellectual creation; registration is not required.

In case a computer program has been created under a contractual employment relationship in the course of fulfilling professional duties and contractual obligations, the employer alone is entitled to exercise the exclusive rights of use. Similar statutory rules apply as regards to designs and inventions (patents). However, unlike the situation regarding computer programs, the acquisition of inventions and designs is subject to the payment of an additional compensation to the employee if they have been created outside the performance of contractual obligations (mandatory claim). Outside employment relationships, the IP rights (copyrights) or the right to apply for IP protection (patents, designs) vest in the person who has created the work, inventions or design.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

In Switzerland, only (Swiss) national IP rights are enforceable. This also applies if an IP right has been applied for via an international application system (*e.g.* WIPO's international patent system PCT or the international trademark system) or regional application system (*e.g.* patent applications under the European Patent Convention) and Switzerland was chosen as designated state in respective applications (the resulting rights are national rights, not multi-jurisdictional rights).

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

IP rights are, as a general matter, exploited/monetised by means of assignment (transfer), licensing, and the granting of security interests. There are slightly different formalities for the various types of IP rights in respect of assignments and licences. Subject to the assignment of copyrights, an assignment must be in writing and signed by the assignor. The recording of the change of ownership in the relevant IP register is not a requirement for the assignment and transfer to the assignee, but may be advisable since a change of ownership not recorded in the register is not relevant for persons who have acquired IP rights in good faith. The written form is not required for licence agreements in general.

Both the licence agreements and the pledge agreements pertaining to trademarks, patents and designs may be entered in the relevant IP register at the request of one of the contractual parties. As a consequence, they become binding on any rights related to trademarks, patents and designs subsequently acquired.

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