Banking Regulation

Second Edition

Contributing Editors: Peter Hsu & Rashid Bahar
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Switzerland

Dr. iur. Peter Hsu & Prof. Dr. Rashid Bahar
Bär & Karrer Ltd

Introduction

The international financial and debt crisis (Lehman Brothers, Madoff, etc.) and other economic and political events have triggered a wave of new regulations in Switzerland in the last few years. Besides client protection and stability for the overall economic system, the currently ongoing reform projects are a reaction to existing international regulations and particularly aim to harmonise Swiss regulations with existing and upcoming EU regulations, such as the EU Alternative Investment Fund Managers Directive ("**AIFMD**"), the Directive 2014/765/EU on Markets in Financial Instruments ("**MiFID II**") and the Regulation (EU) No 600/2014 on Markets in Financial Instruments ("**MiFIR**") to ensure Swiss financial institutions' access to the European financial markets. However, in certain areas the new Swiss regulations will provide for a supplementary "Swiss finish" going even beyond what is required under EU regulations. The core of the new Swiss banking regulation will consist of the existing Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 ("**FINMASA**"), the planned Federal Financial Services Act ("**FFSA**"), the planned Financial Market Infrastructure Act ("**FMIA**") and the planned Financial Institutions Act ("**FinIA**").

Besides these changes in the regulatory framework, the current environment is also characterised by a variety of legal developments particularly in international tax matters: first, at the end of August 2013, the US Department of Justice ("**DoJ**") and the Swiss Federal Council announced a programme for the settlement of the tax dispute between the Swiss banks and the DoJ ("**US Program**"). Approximately 100 banks agreed to participate in the US Program. The US Program entails significant fines for Swiss banks depending on their business activities with US clients but also offers a solution for the banks that allows them to definitively end their legal disputes with the DoJ and provide legal certainty. Second, upon the entering into force of the revised Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 10 October 1997 ("**AMLA**") which was passed by Parliament on 12 December 2014, certain types of tax fraud will constitute a predicate offence for money laundering. Third, the Swiss Federal Council plans to implement the OECD automatic exchange of information in tax matters with countries abroad ("**AEOI**") for 2017 resulting in a direct notification of foreign tax authorities regarding financial information.

Banks in Switzerland are facing pressure due to these regulatory and legal developments. They led to heavily increased reporting burdens. In addition, the tougher international capital and liquidity standards such as Basel III issued by the Basel Committee on Banking Supervision ("**BCBS**") or the new standards set by the Financial Stability Board ("**FSB**") over the last few years led to increased costs of a bank's capital and long-term funding. Besides these increased burdens, the major challenges currently lie in responding to strong competitive pressure and the resulting declining profitability that were even aggravated by the continued low (including negative) interest rates and the strengthening Swiss currency.

The accumulation of these factors forced many banks to scale back some of their activities in Switzerland and consequently led to a trend toward consolidation in the Swiss banking sector in 2013 and 2014. These tendencies toward consolidation are primarily seen with small banks and foreign Swiss bank subsidiaries whereby particularly foreign banking groups either close down their operations in Switzerland by liquidation or sale or try to seek a critical mass of assets under management through an acquisition or merger.

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Despite this currently challenging environment, Switzerland is still a very attractive financial centre, as it combines many years of practical knowledge with expertise particularly in private banking and wealth management. In particular, the Swiss financial centre is the global market leader in the area of global assets managed cross-border (i.e. assets managed offshore, outside the owner's home country) with a global market share of 26 percent (see SwissBanking, Wealth management – at a global level and in Switzerland, November 2013, available at www.swissbanking.org). Professional advice, top-quality services and sophisticated banking products are the traditional strengths of Swiss financial institutions. Furthermore, a good educational and training infrastructure guaranteeing for a reliable stream of qualified staff, political and economic stability, a liberal labour market and good infrastructure are also convincing arguments to build up Swiss banking presences.

Regulatory architecture: overview of banking regulators and key regulations

Responsible bodies for banking regulation

The Swiss Financial Market Supervisory Authority ("**FINMA**") is the supervisory authority for banks, securities dealers and other financial institutions such as collective investment schemes and insurance undertakings. FINMA's primary tasks are to protect the interests of creditors, investors and policyholders, and to ensure the proper functioning of financial markets. To perform its tasks, FINMA uses the instruments of licensing, supervision, enforcement and regulation.

In addition, the Swiss National Bank ("**SNB**") is an independent central bank and responsible for monetary policy and the overall stability of the financial system. This includes the mandate to determine banks and bank functions as systemically important upon consultation with FINMA.

Under the so-called dual supervisory system, FINMA in its supervision largely relies on the work of recognised audit firms. These audit firms provide a direct supervision by frequently conducting regulatory audits of the banks and by subsequently reporting their findings to FINMA. In addition, FINMA undertakes targeted on-site supervisory reviews with the aim to achieve a timely and comprehensive supervision. As an exception of the dual supervisory system, a dedicated supervisory team of FINMA directly monitors UBS Ltd and Credit Suisse Group Ltd as the two major Swiss banking groups.

Key legislation or regulations applicable to banks

The key legislation for Swiss banks includes the Federal Act on Banks and Savings Banks of 8 November 1934 ("**BankA**") and the Federal Ordinance on Banks and Savings Banks of 17 May 1972 ("**BankO**") outlining, among others, the banking licence requirements and accounting rules for banks; the Federal Act on Stock Exchanges and Securities Trading of 24 March 1995 ("**SESTA**") and the Ordinance on Stock Exchanges and Securities Trading of 2 December 1996 ("**SESTO**") containing, among others, rules on licence requirements for securities dealers and professional trading or issuing of securities. However, the Swiss regulatory architecture is currently subject to fundamental reform (see more information on the contemplated reform of these legislatives below).

Further important regulations are: the Ordinance of FINMA on Foreign Banks in Switzerland of 21 October 1996 ("**FBO-FINMA**"); the Federal Ordinance on Capital Adequacy and Risk Diversification for Banks and Securities Dealers of 1 June 2012 ("**CAO**"); the Ordinance on Liquidity for Banks of 30 November 2012 ("**LiqO**"), the revised version of which entered into force as of 1 January 2015 and replaced previous requirements on overall liquidity; the Ordinance of FINMA on the Insolvency of Banks and Securities Dealers of 30 August 2012 ("**BIO-FINMA**"); AMLA; the Federal Act on Collective Investment Schemes of 23 June 2006 ("**CISA**") and the Ordinance on Collective Investment Schemes of 22 November 2006 ("**CISO**"); and the FINMASA that provides a framework-regulation for FINMA.

In addition, FINMA further specifies financial regulation in numerous circulars. FINMA circulars are in principle not binding for Swiss courts but constitute a mere interpretation by FINMA of the applicable law. However, FINMA circulars can be considered as *de facto* binding for banks since a violation may lead to regulatory sanctions.

Furthermore, the Swiss financial sector has a long tradition of industry-sponsored self-regulation initiatives. Against this background, FINMA acknowledged several self-regulatory guidelines and

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agreements as minimum standards, thus incorporating them within the regulatory framework and subjecting non-compliance to enforcement action (see FINMA-Circular 2008/10 on "Self-regulation as a minimum standard"). An important example of self-regulation is the agreement on the Swiss bank's code of conduct with regard to the exercise of due diligence of 2008 ("**CDB 08**") by the Swiss Bankers Association ("**SBA**"), which defines know-your-customer ("**KYC**") policies that banks and securities dealers must apply. It is currently contemplated that the SBA will issue a revised version of CDB 08 as of 1 January 2016 ("**CDB 15**").

Influence of supra-national regulatory regimes or regulatory bodies

Switzerland is actively involved in numerous international bodies, such as the FSB, the Bank of International Settlements ("**BIS**"), BCBS, the International Organization of Securities Commissions ("**IOSCO**"). Furthermore, Switzerland is a member of the Financial Action Task Force ("**FATF**") that sets out international standards in the area of anti-money laundering ("**AML**"). The standards established by supra-national regimes have a strong impact on Swiss regulation in the financial sector. As a case in point, Basel III had a significant influence on the Swiss regulatory framework, such as CAO or LiqO. Furthermore, international standards have an increasing importance for Switzerland, as Switzerland has to ensure access for its financial institutions to foreign markets and to maintain a good reputation of the Swiss financial market overall.

The Swiss regulatory framework is particularly influenced by developments of the European Union. As an example, the European Union recently harmonised their capital market regulation with MiFID II and MiFIR. Consequently, the Swiss legislator is following up and is voluntarily harmonising certain aspects of Switzerland's legislation with MiFID II provisions in the draft FFSA. This is particularly required to maintain access to the European financial markets (that requires among others a regulation that is equivalent to the EU regulation).

The same applies also in the context of derivate trading: the provisions on derivate trading of the draft FMIA are primarily based on the respective provisions in the European Market Infrastructure Regulation ("**EMIR**"). Besides the influence of the European Union, the contemplated FMIA rules are also influenced by other international regulatory bodies: for example, Switzerland wants to use FMIA to implement the commitments assumed at the G20 summit in Pittsburgh in 2009 and to adapt the Swiss regulation of the financial market infrastructures and derivatives trading to international requirements.

The so-called "White Money Strategy" which intends to combat abuses in the areas of money laundering and taxation in the Swiss financial market is a general response to the recent criticism of the Swiss financial centre and was heavily influenced by the recommendations of the FATF in connection with international AML standards as well as the pressure of the OECD to adopt the AEOI. Against this background, the Swiss Federal Council approved a declaration on Switzerland joining the multilateral agreement on AEOI and, therefore, intends to collect data from 2017 and exchange it for the first time in 2018. Furthermore, the recommendations of FATF also influenced the revision of AMLA that was passed by Parliament in December 2014.

Restrictions on the activities of banks

A bank must obtain a licence from FINMA in order to operate in or out of Switzerland. Formally, Swiss law only provides for one type of banking licence. However, a bank is required to describe in detail the scope of business (including the geographical scope) of its activities in the licence application (and in the articles of associations and the organisational rules). A broad scope of business in principle requires a more extensive organisation of the bank, in particular to mitigate the risks of potential conflicts of interests within the bank. Similarly, a securities dealer is required to describe in detail the scope of business of its activities in the licence application for a securities dealer (art. 10 SESTA). In case of any changes (in particular an expansion) of the scope of the business activities of a bank or securities dealer, the respective bank or securities dealer is required to inform and obtain prior approval of FINMA. Consequently, the scope of a banking and/or securities dealer licence is *de facto* individualised and, hence, varies from case to case.

This being said, Switzerland follows a model of universal banking and a bank is, as a matter of principle, allowed in addition to deposit-taking business to engage in any other business in the financial industry or even out of the financial industry provided it has an appropriate organisation to

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carry out such activity and manage operational and reputational risks they entail. It is, therefore, fairly common for banks to be also licensed as securities dealers, to provide portfolio management services to their clients or even to act as a family office for high net worth individuals. Similarly, the two large banking groups carried out their investment banking business out of the same legal entity that serviced retail clients until fairly recently, when they were pressured by regulators to separate these businesses to facilitate their resolution as systemically important financial institutions ("SIFIs").

Recent regulatory themes and key regulatory developments in Switzerland

Contemplated new architecture of the Swiss regulatory framework

The current Swiss regulatory framework is based on the so-called "silo-principle": the various financial institutions are, in principle, regulated in separate Swiss Federal acts. For example, Banks are primarily subject to BankA (and BankO), securities dealers to SESTA (and SESTO), and fund management companies and asset managers of collective investment schemes regarding collective investment schemes are subject to CISA (and CISO).

However, the Swiss regulatory architecture is currently subject to a fundamental reform. Under the currently planned new regulatory framework as reflected in various stages of draft legislations, financial institutions will be subject to "cross-sectorial regulation". In particular, the reform would introduce the three new acts i) FFSA regulating the relationship between the financial intermediary (of all sectors, including banks, securities dealers and insurance undertakings to the extent they provide financial services) and the customers, ii) FinIA containing the licence requirements of financial institutions (whereas all institutions need to comply with certain fundamental requirements but additional requirements apply as the licence allows a broader range of activities), and iii) FMIA regulating the effectiveness of the financial market.

It is expected that the drafts of FFSA and FinIA will be debated in parliament in the course of 2015 and enter into force in 2017 or 2018. The draft of FMIA is currently being debated in parliament and is currently expected to enter into force by the end of 2015 the earliest.

Implementation of the Basel III requirements

Under LiqO (as in force since 2012), banks have to appropriately manage and monitor liquidity risks. It was thus possible to transpose part of the international liquidity standards of Basel III into Swiss law. In a further step, the revised LiqO (effective as of 1 January 2015) has now also adopted the new quantitative liquidity requirements in accordance with the international liquidity standards. In particular, a Liquidity Coverage Ratio ("LCR") has been introduced for short-term liquidity, requiring banks to provide for sufficient high-quality liquid assets. A bank should, among others, be able to survive for at least 30 days in the event of a liquidity stress scenario with client deposits being withdrawn or difficulties with securing refinancing on the capital market.

Furthermore, the new FINMA-Circular 2015/3 "Leverage ratio – banks" implemented the required calculation rules for the leverage ratio in accordance with Basel III in Switzerland. Finally, FINMA has issued a revised FINMA-Circular 2008/22 "Disclosure – banks" in order to implement the transparency requirements of Basel III in connection with the disclosure of the leverage ratio and LCR properly. Both circulars entered into force on 1 January 2015.

Implementation of the Foreign Account Tax Compliance Act (FATCA)

On 2 June 2014, the agreement between Switzerland and the United States on cooperation to simplify the implementation of the unilateral US regulation FATCA entered into force. Under this agreement, the implementation of FATCA in Switzerland was based on the so-called "Model 2", which means that Swiss financial institutions disclose account details directly to the US tax authority with the consent of the US clients concerned. However, in October 2014, the Federal Council approved a mandate for negotiations with the US on switching to "Model 1", which might lead to the application of the automatic exchange of information between Switzerland and the US.

Revision of CISA

The Swiss legislator has revised CISA to address the regulatory standards under the new AIFMD rules. The revised CISA entered into force on 1 March 2013 and includes, among others, new rules on the distribution of investment funds, and introduced new licence requirements for asset managers

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of foreign collective investment schemes. By the end of February 2015, the last transition periods for asset managers, representatives and distributors of foreign collective investment schemes to comply with the new rules and licence requirements have expired.

Bank governance and internal controls

Key requirements for governance of banks

In order to obtain a FINMA banking licence, Swiss banks must *inter alia* comply with specific governance requirements as outlined in particular in BankA and BankO and further specified in the FINMA Circular 2008/24 "Supervision and Internal Control – Bank" of 20 November 2008 ("**FINMA Internal Control Circular**") and the FAQs "board of directors of banks and securities dealers" of 28 August 2012 ("**FINMA FAQ**") and further guidelines and publications of FINMA.

Persons entrusted with the bank's administration and management must enjoy a good reputation and guarantee a proper business conduct (art. 3 para. 2 lit. c BankA). Furthermore, qualified shareholders of a bank (i.e. persons holding at least 10% of the capital or voting rights or otherwise have a significant influence on the bank) must guarantee that their influence will not have a negative impact on the bank's prudent and solid business activity (art. 3 para. 2 lit. c*bis* BankA).

Composition of the board of directors

A bank's board of directors as a body and each board member must meet specific conditions including the following:

To comply with the independency requirement, the board members have to structure their personal and business relationships in a way to avoid possible conflicts of interest with the bank. In particular, at least a third of the board members must be independent (FINMA Internal Control Circular N 17 *et seq*.).

Members of the board must enjoy a good reputation and have sufficient leadership skills, both individually and as a group, as well as the necessary knowledge and experience in the banking and finance sector. The board of directors as a whole should have a sufficiently broad background in order to ensure that it not only has expertise in the main business operations but also in other essential business areas (see FINMA Internal Control Circular N 17, FINMA FAQ Question 2).

Furthermore, the board of directors should have a certain "swissness", meaning that the BoD as a whole should, among others, be sufficiently familiar with the conditions of the Swiss market and regulatory framework. Therefore, a substantial proportion of board members should have a close relationship to Switzerland and at least the chairperson or deputy chairperson must reside in Switzerland (FINMA FAQ Question 3).

The board of directors must count at least three members but the actual number of directors required depends on the size, complexity and risk profile of the bank (FINMA FAQ Question 1).

Committees of the board of directors

The board of directors may establish committees if it has at least five members. A committee must be composed of at least two members whereas mixed committees (i.e. committees comprising members of the board and the executive management) are prohibited (FINMA FAQ Question 9).

A bank is required to establish an audit committee if the bank has reached a certain size or complexity as defined in the FINMA Internal Control Circular (among others, if the balance sheet total exceeds CHF 5bn). The audit committee is in particular responsible for the monitoring and assessment of the accuracy of the financial statements. The majority of the committee members should be independent as defined in the FINMA Internal Control Circular.

Internal audit function

Apart from an exemption by FINMA in specific cases, the board of directors has to establish an internal audit function that directly reports to the board or one of its committees, typically to the audit committee. The internal audit function works independently from the daily business processes and provides an important basis for the assessment whether the bank has implemented an adequate and effective internal control system (FINMA Internal Control Circular N 54 *et seq*.).

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Mandatory management functions

In addition to the general requirements outlined in section 1 above, the management of a bank has to ensure an appropriate segregation of duties and to avoid potential conflicts of interests. Therefore, a bank is required to establish a compliance function and a risk control function that are segregated from profit-generating business activities. The functions have to be headed by a designated member of the bank's management.

Remuneration of a bank's employees

As a general rule, a bank's remuneration system must not offer any incentives for an employee to disregard the bank's internal control mechanisms. In particular, the remuneration system for employees of the internal audit, the compliance function and the risk function may not contain incentives that could lead to a conflict of interests. Therefore, their remuneration (among others through salaries and bonuses) may not depend on the performance of individual products and transaction.

The FINMA Circular 2010/1 on remuneration schemes outlines minimum standards for remuneration schemes of banks and other financial institutions, which are mandatory for the largest banks and apply as a non-binding code of best practice for all other institutions. It outlines ten principles, including the requirement of a remuneration scheme to be simple, transparent, implementable, and oriented towards the long term.

On 1 January 2014, the ordinance against excessive compensation implementing the so-called Minder Initiative entered into force toughening the formal corporate governance regime. Among others, it prohibits severance payments (golden parachutes), advance payments and similar extraordinary payments to directors or senior managers. Furthermore, the aggregate compensation of directors and the senior management is subject to the approval of the general meeting of shareholders.

Scope and requirements for outsourcing of functions

Under the FINMA-Circular 2008/7 ("**FINMA Outsourcing Circular**"), in principle, any area of business may be outsourced without the approval of FINMA if the bank complies with the data protection requirements and with the further requirements of the FINMA Outsourcing Circular. However, the following activities, among others, cannot be outsourced according to the FINMA Outsourcing Circular: Direction, supervision and control by the board of directors; executive management tasks of the executive management and decisions of the management of entering or terminating a business relationship with clients.

Bank capital requirements

In order to obtain a banking licence from FINMA, a bank must have a fully paid-in share capital of at least CHF 10mn (art. 15 BankO). However, FINMA in principle requires a bank to have additional share capital of at least CHF 5mn (that, in principle, must not be fully paid-in share capital) taking into account the banks contemplated business activities.

The CAO specifies in more detail the capital required by Swiss banks, particularly depending on the bank's size and scope of business. The required capital comprises in principle the following parts:

- Minimum required capital: A bank must hold at least 8% of the risk-weighted positions as minimum required capital, whereof at least 4.5% (as of 1 January 2015, upon a specified phasing in period that has started on 1 January 2013) must be held in the form of common equity tier 1 capital (art. 42 para. 1 and 143 CAO).
- Capital buffer (in force as of 1 January 2016): A bank must in principle hold a capital buffer of 2.5% (as of 1 January 2019, upon a specified phasing in period starting on 1 January 2016) of their risk-weighted positions in the form of common equity tier 1 capital at all times (art. 43 and 144 CAO).
- Counter-cyclical buffer: Upon the Swiss National Bank's request, the Swiss Federal Council may, if necessary, require the banks to hold a counter-cyclical buffer of a maximum of 2.5% of their risk-weighted positions in Switzerland in the form of common equity tier 1 capital to i) enhance the banking sector's resilience against the risk of excessive credit growth, or ii) counteract excessive credit growth (art. 44 CAO). Currently, the Federal Council activated the counter-cyclical buffer

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to counter-act the risk of a real estate bubble fuelled by cheap mortgage loans and requires banks to hold a counter-cyclical buffer of 2% of their risk-weighted positions whereby a residential property in Switzerland acts as real security (in accordance with art. 72 CAO).

- Additional capital: FINMA may require a bank to hold additional capital if the minimum required capital and buffer does not sufficiently cover the risks of a specific bank (art. 45 CAO).
- Additional requirements for systemically important banks (SIFIs): In addition to the above-mentioned requirements that apply to all banks, SIFIs have to comply with additional requirements, for example the capital of each individual entity of the SIFI must amount to at least 14% of the risk-weighted positions (art. 124 *et seq*. CAO).

Rules governing banks' relationships with their customers and other third parties

Regulations applying to the bank's dealing with third parties

Banking and securities dealer activities

In Switzerland, the primary law governing the relationship between banks or securities dealers and its clients is the private civil law laid down in the Swiss Code of Obligations ("CO"). In many instances, a banking relationship is subject to the principles of the law of mandate of the CO. Under such provisions, an agent has to act faithfully and diligently (art. 398 para. 2 CO). Furthermore, the nature of the legal duties owed by and practice customs of banks have been developed through court practice and by professional standards established by recognised self-regulation organisations.

Securities dealers must comply with the rules of business conduct outlined in art. 11 SESTA, including the duty of providing information, the duty of diligence and the duty of loyalty. Furthermore, rules of self-regulatory organisations recognised by FINMA as minimum standard requirements applicable to certain financial institutions concretise these duties. These self-regulatory rules include among others the Code of Conduct for Securities Dealers, the Portfolio Management Guidelines of the SBA and CDB 08.

Activities referring to collective investment schemes

If a bank is responsible for the management of a collective investment scheme, the safekeeping of the assets held in it or the distribution of it to non-qualified investors in Switzerland, it has to comply with the code of conduct requirements outlined in art. 20 *et seq*. CISA, including the duty of loyalty, the duty of diligence and the duty of providing information.

Rules applying to the general terms and conditions of banks

The use of general terms and conditions ("**GTC**") to govern the relationship between the bank and its clients is widespread in the Swiss banking industry. However, Switzerland does not have any legal provisions dealing particularly with GTC of banks. Accordingly, the question whether GTC have been validly implemented must be established on the basis of the Swiss private civil law, particularly the general contract law provisions of CO.

Furthermore, in the view of protecting consumers against potential abuse, the use of GTC to govern the relationship between banks and consumers is subject to stricter regulation going beyond the scope of general contract law. Against this background, art. 8 of the Swiss Act against Unfair Competition ("**AUC**") prohibits the use of GTC that, to the detriment of consumers and contrary to the requirement of good faith, provide for a significant and unjustified imbalance between contractual rights and contractual obligations.

Mechanisms for addressing customer complaints against banks

General remarks

Under supervisory law, FINMA's mandate includes the protection of creditors, investors and policyholders. However, client protection is to be understood collectively and therefore FINMA does not adjudicate on a dispute between a client and a bank. For any dispute between a client and a bank, the Swiss Banking Ombudsman as a mediator or the courts are responsible.

Swiss Banking Ombudsman

The Swiss Banking Ombudsman is an independent and neutral mediator whose services are free of charge for the banking customer. He is competent to approach specific complaints raised by banking customers against banks based in Switzerland, but has no power to decide. Consequently, he mainly acts as a mediator in disputes to avoid costly and lengthy legal proceedings. The parties are not bound by his proposal, but may choose either to accept it or to take other steps, such as starting a lawsuit.

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Proposed changes of the enforcement of client's rights according to the draft FFSA

In order to reduce the risk of high procedural costs for banking clients, the draft FFSA proposes several changes of the enforcement of Swiss banking client's rights, among others a permanent arbitral tribunal or a litigation fund sponsored by the financial service providers that are accessible only to private clients as well as procedural instruments for collective redress (such as representative actions by interest groups and collective settlement proceedings). These proposals were strongly criticised by the industry during the consultation proceeding and it remains to be seen if and how they will be implemented in the bill that the Federal Council intends to present to parliament in the course of 2015.

Swiss depositor protection scheme

Deposits of Swiss banks are in particular protected by the following measures:

a) Client deposits of Swiss banks are, in principle, privileged claims in case of bankruptcy of a bank up to CHF 100,000 (art. 219 Swiss Federal Law on Debt Collection and Bankruptcy ("**SchKG**") in conjunction with art. 37b para. 1bis BankA). However, the law further distinguishes among certain types of accounts. For example, deposits for vested benefit schemes are treated separately from other bank accounts and may benefit from the privilege status by an additional protected amount of up to CHF 100,000 (art. 37b para. 4 BankA).
b) Furthermore, client deposits of a bank or securities dealer located in Switzerland are protected to a maximum amount of CHF 100,000 per depositor. This depositor's guarantee in case of bankruptcy of a bank is ensured by the Swiss depositor protection scheme ("*esisuisse*") which requires that all Swiss banks and branches of foreign banks must have their preferential deposits protected by *esisuisse*.
c) Finally, client custody assets of Swiss banks and securities dealers are deemed by law, in principle, segregated client assets. Consequently, they will be segregated in case of an insolvency of a bank or securities dealer (art. 37d para. 1 BankA).

Restrictions on inbound cross-border banking activities

The Swiss approach to inbound cross-border banking services is rather liberal. Banking activities on a pure cross-border basis from abroad into Switzerland are, in principle, not regulated. Consequently, a foreign banking institution may, in principle, freely offer banking services to Swiss-based customers if it does not establish a physical presence in the meaning of art. 2 para. 1 BankA in Switzerland (i.e. a representative office, a branch or a bank subsidiary).

In contrast, the distribution of shares or units of collective investment schemes or the placement of certain financial products in Switzerland are subject to restrictions and licence or prospectus requirements, including the restriction that only Swiss licensed representatives, holders of a FINMA distributor licence or entities licensed in their country of domicile to distribute collective investment schemes may proceed with any form of distribution of collective investment schemes in Switzerland (art. 13 CISA).

Regulatory framework on anti-money laundering

Money laundering is subject to criminal sanctions under art. 305bis of the Swiss Criminal Code ("SCC"). Money laundering in the meaning of SCC includes any act that conceals or disguises assets of criminal origin or assets that have been obtained through serious crime (including certain types of tax offences upon the entering into force of the revised AMLA).

With regard to the prevention of money laundering, financial intermediaries are subject to licence requirements for AML purposes. Financial intermediaries in the meaning of art. 2 para. 3 AMLA are unregulated persons or entities that, on a professional basis, accept or hold third party assets or that assist in the investment or transfer of such assets, including activities such as (independent) asset management and certain types of credit/lending business, trade finance including factoring with right to recourse, payment services, trading activities, etc. Financial intermediaries which are not otherwise regulated (e.g. by FINMA through holding a banking or securities dealer licence) have to join a recognised self-regulatory organisation ("**SRO**") which will review their compliance with Swiss AML rules on a regular basis or, alternatively, submit themselves to direct AML supervision by FINMA.

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A major part of the AMLA provisions deal with the due diligence duties in connection with a financial intermediary's handling of third party assets including the duly identification of the contractual party and the duly determination of a potential beneficial owner whereas among others these duties are further specified in the CDB 08.

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Dr. iur. Peter Hsu
Tel: +41 58 261 53 94 / Email: peter.hsu@baerkarrer.ch
Peter Hsu is Bär & Karrer's key contact for the practice area of banking and insurance. His main practice areas are banking, insurance, financing and capital markets. He focuses on advising Swiss and foreign banks, securities dealers, insurance undertakings and other financial institutions with regard to regulatory and contractual matters. Furthermore, he regularly advises clients on M&A transactions, including private and public transactions in the financial sector as well as in other industry sectors.
Peter Hsu has published books and articles on topics in banking, insurance and capital markets and is regularly invited to speak on these topics.
The Legal 500 2014 refers to Peter Hsu as "a key individual within the banking and insurance sector". He is ranked as a leading individual in the practice area Insurance & Reinsurance (Who's Who Legal). Peter Hsu is "the 'go-to guy' for clients in need of insurance and reinsurance regulatory advice" (Who's Who Legal 2013) and a "key player in the Swiss insurance and reinsurance regulatory field" (2014).

Prof. Dr. Rashid Bahar
Tel: +41 58 261 53 92 / Email: rashid.bahar@baerkarrer.ch
Rashid Bahar's practice focuses on banking, finance and capital markets. He regularly advises Swiss and foreign banks and securities dealers on transactional and regulatory matters. He is often involved in M&A transactions and complex financings, where he advises both lenders and borrowers. Rashid Bahar is extensively published and is regularly invited to speak on these issues.
Rashid Bahar is also an associate professor at the University of Geneva, where he teaches corporate and capital markets law. He is a member of the executive committee of the Center for Banking and Financial Law and of the committee of the LL.M. course in Banking and Finance, both at the University of Geneva. He was appointed as an expert member of the working group of the Federal Department of Finance responsible for the drafting of a new Federal Act of Financial Services (FIDLEG).

Bär & Karrer Ltd

Brandschenkestrasse 90, CH-8027 Zurich, Switzerland
Tel: +41 58 261 50 00 / Fax: +41 58 261 50 01 / URL: http://www.baerkarrer.ch

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