IFC Review

The definitive guide to global wealth management and international financial centres

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Swiss Answers to International Challenges

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A Challenging International Environment

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 future Swiss financial markets regulation is expected to 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).

Banks in Switzerland are facing heavily increased regulatory 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 past 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 and refocus 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 acquisition or merger.

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. The Swiss financial centre is the global market leader in the area of global assets managed cross border (ie, assets managed offshore, outside the owner's home country) with an amount of US$2,200 billion of such assets under management, constituting a global market share of 26 per cent (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.

Contemplated New Architecture of the Swiss Regulatory Framework

The current Swiss regulatory framework regarding the financial sector 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 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), securities dealers to 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), and fund management companies as well as asset managers of collective investment schemes regarding collective investment schemes are subject to the Federal Act on Collective Investment Schemes of 23 June 2006 (CISA) and the Ordinance on Collective Investment Schemes of 22 November 2006 (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 a 'cross-sectorial regulation'. In particular, the reform would introduce the three new acts i) FFSA regulating the relationship between the financial intermediary (of all financial 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.

Portfolio managers and investment advisers would be subject to the new regulatory framework as well, to an extent going beyond the already existing regulation by the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 10 October 1997 (AMLA). As they would qualify as financial service providers, both portfolio managers and investment advisers would fall within the scope of the FFSA. In addition, portfolio managers would in principle qualify as financial institutions and would thus be regulated by the FinIA.

In order to reduce the risk of high procedural costs for banking clients, the draft FFSA proposed several changes of the enforcement of Swiss banking client's rights, among others procedural institutions and instruments, including procedural instruments for collective redress (such as representative actions by interest groups and collective settlement proceedings). These proposals were strongly criticized by the industry during the consultation proceeding. Recently, the Federal Council has taken initial decisions on the direction to be taken on the controversial topics in the consultation procedure and intends to implement substantial changes in the bill to present to parliament in the course of 2015. In this context, the Federal Council announced that it is no longer a plan to implement e.g. the contemplated procedural institutions of a permanent arbitral tribunal or a litigation fund sponsored by the financial service providers.

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 expected to enter into force by the end of 2015 the earliest.

Recent Law Changes

Besides the contemplated new regulatory framework, attention will be drawn especially to the following law changes concerning the financial sector, which came into force recently.

Implementation of the Basel III requirements

Under the Ordinance on Liquidity for Banks of 30 November 2012 (LiqO), 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 as well 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.

US Program for Swiss Banks and Implementation of the Foreign Account Tax Compliance Act (FATCA)

The current environment is also characterised by a variety of legal developments particularly in international tax matters: 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 offers also a solution for the banks that allows them to definitively end their legal disputes with the DoJ and provide legal certainty.

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 AMLA

Upon the entering into force of the revised AMLA which was passed by Parliament on 12 December 2014, certain types of tax fraud will constitute a predicate offence for money laundering.

Automatic exchange of information in tax matters with countries abroad

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.

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 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 license requirements have expired.

Switzerland

Switzerland - Fact File

GENERAL OVERVIEW	
Location	East of France, south of Germany, north of Italy.
Time Zone	Central Time Zone.
Population	8,236,000
Capital	Bern.
Airport(s)	Zurich, Geneva, Basel, Lugano and others.
Language	German, French, Italian, Romansh.
Currency	Swiss Franc.
Political system	Federal democracy.
International dialling code	+41.
Legal system	Civil (Roman) law.
Centre's expertise	Finance, banking, insurance, wealth management, commodity trading, fiduciary
TAX	
Personal income tax	Depending on canton.
Corporate income tax	Federal rate 8.5%; cantonal rates vary.
Exchange restrictions	No.
Tax Information exchange agreements	For full details, please go to www.ifcreview.com/TIEA.
SHARE CAPITAL	
Permitted currencies	Swiss franc.
Minimum authorised capital	Corporations: CHF100,000. / LLCS: CHF 20,000.
Minimum share issue	1 share.
TYPE OF ENTITY	
Shelf companies	No.
Timescale for new entities	5-10 days.
Incorporation fees	CHF6,000.
Annual fees	CHF5-10,000 director fees.
DIRECTORS	
Minimum number	One.
Residency requirements	At least one director or manager, who can bind the Company.
Corporate directors	No, members of the board of directors must be individual persons.
Meetings/frequency	Minimum of one per year.
SHAREHOLDERS	
Disclosure	No, unless publicly listed.
Bearer shares	Yes, (for corporations).
Minimum number	One.
Public share registry	No.
Meetings/frequency	Minimum of one per year.
ACCOUNTS	
Annual return	Yes.
Audit requirements	Depending on total assets, turnover and number of employees.
OTHER	
Registered office	Yes.
Domicile issues	It depends on the jurisdictions.
Company naming restrictions	Partial.