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Contributing Editors:
Rob Sumroy & James Cook
Slaughter and May

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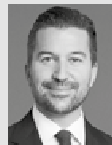

Dr. Daniel Flühmann

Dr. Peter Ch. Hsu

Bär & Karrer

1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there 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)?

Switzerland continues to offer a friendly environment for companies in the fast-growing fintech sector. According to a market study, a total of 384 fintech companies were active in Switzerland by the end of 2021 in comparison to 405 by the end of 2020 (a slight decrease of 5.2%). The number of companies active in the field of blockchain/distributed ledger technology ("**DLT**") decreased slightly to 113 companies in 2021 *vs.* 120 in the previous year (all figures: IFZ Fintech Study 2022, pp 5–6). In contrast to the downward trend in 2021, the number of active fintech companies increased again in 2022 to an all-time high of 437 (an increase of 14% (IFZ Fintech Study 2023, p. 5)). Overall, the Swiss fintech industry is very broadly diversified, and the distinction between fintech and traditional financial services continues to be blurred.

Swiss-based fintech businesses are, for instance, active in payments, investment and asset management services, exchange services, crowdfunding and crowdlending, insurance-related services (*insurtech*) as well as in various platform services, *e.g.* for the purposes of fundraising and/or distribution of financial instruments. Many businesses with a focus on DLT are based in the so-called "Cryptovalley" in the Canton of Zug, which initially became known as a hub for initial coin offerings ("**ICOs**"). While cryptocurrencies and related services remain an active topic, security tokens and their issuance and trading infrastructures have in the more recent past received increasing attention. In November 2021, the Swiss stock exchange SIX ("**SIX**") launched a separate, fully regulated digital platform under the name SIX Digital Exchange ("**SDX**"), which provides a fully integrated end-to-end trading, settlement and custody service for digital assets. Another recent focus in the market has been on decentralised finance ("**DeFi**") applications, which aim to achieve decentralisation and reduce the need for intermediaries in the financial sector through the use of smart contracts. Although there are still many open questions as to the legal and regulatory treatment of DeFi, it has been a rapidly growing sector.

Generally speaking, the fintech market has begun to see more mature projects, many of which are backed or launched by established financial institutions and technology companies. The new wave of start-ups in the financial sector more readily accepts and embraces regulation, with several projects aiming to become licensed and supervised by the Swiss Financial Market Supervisory Authority ("**FINMA**").

With the COVID-19 pandemic, the demand for fintech services increased significantly. According to a survey of the audit firm Deloitte conducted in April 2020, almost 20% of all retail banking customers used a digital banking service for the first time during the pandemic. Furthermore, there was a significant increase in the number of campaigns and volume in the crowdsupporting and crowddonating space, driven by the pandemic (according to the 2021 Crowdfunding Monitor Study of the University of Lucerne, 14,984 projects were crowdfunded at a total amount of CHF 44.6 million in the course of 2021). It can be expected that digital channels will continue to gain importance in various areas of retail financial services such as consumer lending, payments, wealth management and pension solutions.

Swiss fintech businesses were also among those affected by the FTX-scandal in 2022 and its enduring effects on the sector. However, the Swiss fintech market may to some extent also benefit from the uncertainties created given Switzerland's reputation as a stable and reliable jurisdiction. The future will show how this event will impact the regulatory framework for fintech.

Separately, the demand for sustainable financial services has increased in recent years, and so has the number of sustainability-related financial products that are labelled green or ESG. In this context, FINMA recognised early on the risk of greenwashing and took measures to protect investors and clients, in particular with respect to the supervision of investment funds that focus on sustainability. Furthermore, according to its "Risk Monitor" report, FINMA in 2021 launched a multi-year project to integrate climate risks into its supervisory practice (FINMA Risk Monitor 2021, p. 19). Among the first measures are transparency requirements regarding climate risks (both quantitative and qualitative) of Swiss banks and insurers.

In an effort to support the development of environmentally conscious fintech businesses, the Swiss Federal Council launched the Green Fintech Network in 2020. The network presented its first action plan with 16 concrete measure proposals in 2021.

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 businesses or cryptocurrency-related activities, but general Swiss laws and regulations for the financial sector apply. With few exceptions, Swiss financial regulation is technology-neutral and principle-based, which has so far allowed the market and the competent authorities to cope

well with technological innovation. Depending on the nature and scope of their business activities, fintech operators may be subject to regulation and supervision by FINMA or by self-regulatory organisations. The relevance and application of Swiss laws on, *e.g.*, financial services, anti-money laundering ("**AML**"), collective investment schemes, financial market infrastructures, banks, insurance companies, securities firms and/or data protection has to be assessed in each individual case (see question 3.1). With regard to ICOs, stablecoins and cryptocurrencies in particular, FINMA published several guidance papers 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 on 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 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, *e.g.* to ensure new distribution channels.

Crowdfunding and crowdlending as alternative sources of funding have shown rapid growth rates in Switzerland in the last years, both in terms of the number of platforms and the funds raised. At the end of April 2020, according to a market study, 38 platforms were maintaining an active physical presence in Switzerland (compared to only four in 2014) and several non-domestic platforms were active on the market on a cross-border basis. The legislator has facilitated crowdfunding and crowdlending platforms by way of the introduction of fintech regulation in Switzerland as follows: a) on 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 does not count towards a potential banking or fintech licence requirement) was extended from seven to 60 days; and 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, on 1 January 2019, a regulatory licence type geared towards fintech operators with a need to hold deposits from the public in limited amounts was introduced.

Moreover, Switzerland hosts a range of incubator and accelerator programmes for both Swiss-based and international fintech companies, 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) or blockchain (CV Labs Blockchain Incubator). In addition, there are organised challenges aiming to support mainly fintech companies that generally involve a prize (such as the Swiss Innovation Challenge).

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.

Generally speaking, depending on the tax domicile of the company, the ordinary profit tax rate in Switzerland in the year 2021 can be as low as 11.3% (tax rates vary between the different Swiss cantons and municipalities).

In 2020, various general tax incentives came into force in Switzerland in the context of the corporate tax reform. Under the patent box regime, cantons tax profits from qualifying patents and comparable rights at a reduced rate for corporate income tax purposes. Additionally, cantons can also provide for special R&D "super deductions" from corporate income tax and/or exempt a part of the equity (to the extent attributed to qualifying participations, patents and loans to group companies) from the annual capital tax. Cantons with a statutory cantonal and communal tax rate of at least 13.5% at the cantonal capital may also provide for a notional interest deduction on so-called "security capital". Currently, only the Canton of Zurich meets this requirement and accordingly introduced the deduction for equity financing.

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% of the capital held in another company that has been held for at least one year prior to the sale, a participation deduction can be applied to the realised profit. In addition, Swiss resident individuals are not taxed on capital gains realised on privately held assets. Dividend payments to companies that 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. However, in case of an acquisition of employee shares for which a fair market value was unavailable or not accepted at the time of acquisition, part of the capital gain at exit might be taxed in case of a sale within five years after the acquisition. In any case, founder shares will not be regarded as employee shares and will as such generally provide for a tax-exempt capital gain.

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 (as

revised on 15 July 2022). Essential listing prerequisites 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 25 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 a similar way as those of the SIX Swiss Exchange, but are in some areas slightly 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 specifically in the area of fintech. However, in 2021, the industry-led Swiss digital assets bank Sygnum Bank AG conducted a major equity funding round to further develop and bring its digital asset banking platform to market. It also announced that it tokenised its own shares, which makes some experts believe that it is envisioning an IPO in the future (Finews, 14 December 2020, Swiss Crypto Bank Sygnum Mulls IPO). Competitor SEBA Bank AG raised CHF 110 million in Series C funding in January 2022 to further develop its institutional business.

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.

Broadly speaking, 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 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 or irrespective of how they are labelled (notwithstanding, there is a newly introduced regulatory licence type that is colloquially referred to as "fintech licence"; *see* further below). The intention is to provide a level playing field among innovators and traditional providers engaging in similar businesses with similar risks.

The Swiss legal and regulatory framework governing financial services consists of a number of federal acts and implementing ordinances as well as circulars and other guidance issued by FINMA. Fintech business models have to be assessed within this set of rules 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 or engaging in collective custody of cryptocurrencies; *see* questions 3.2 and 3.3), 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 ("**CISA**") (if issuing or managing investment funds or engaging in other activities relating to collective investment schemes), the Financial Market Infrastructure Act ("**FinMIA**") (if acting as a financial market infrastructure, *e.g.* a multilateral trading facility), the Financial Institutions Act ("**FinIA**") (if acting as a securities firm, as an asset manager or trustee, *see* further below), the Financial Services Act ("**FinSA**") (if engaging in so-called "financial services for clients", *e.g.* investment advisory services) or the Insurance Supervision Act ("**ISA**") (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 ("**NBA**") 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).

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, mostly suitable for dealing with cryptocurrencies and cryptoassets.

On 25 September 2020, the Swiss Parliament approved the new Federal Act on the Adaptation of Federal Law to Developments in the Technology of Distributed Electronic Registers ("**DLT Act**"). The DLT Act is a framework act comprising a bundle of revisions to various existing Swiss federal acts. The new law is aimed at enhancing legal certainty, removing obstacles for applications of DLT and limiting the risk of misuse. The DLT Act in particular addresses the following areas:

- **Civil securities law**: Creation of a legal basis for uncertificated register value rights as an instrument for the digitisation or tokenisation of assets (rights) such as shares, bonds and other financial instruments, as well as for the transfer of such instruments.
- **Insolvency law**: Specific rules on the segregation of crypto-based assets from the bankruptcy estate, both in general insolvency and bank insolvency, as well as on the access to data.
- **Financial market laws**: Introduction of a new regulatory licence category for DLT trading facilities.

The Federal Council brought the amendments into force on 1 August 2021 (with few exceptions that had entered into force earlier). At the same time, further clarifications were introduced by way of an umbrella ordinance that introduced changes to various implementing ordinances. In particular the Anti-Money Laundering Ordinance ("**AMLO**") was amended to specifically include providers of services related to payment transactions concerning virtual currencies, which also includes certain decentralised exchange services.

Furthermore, the BA and the Banking Ordinance were amended to create a new variant of the so-called "fintech licence", which enables its holder to engage in collective custody of cryptocurrencies.

Separately from the efforts on the level of federal legislation, FINMA in recent years issued several pieces of guidance regarding cryptocurrencies and cryptoassets. In particular, these include FINMA guidance 04/2017 on the regulatory treatment of ICOs dated 29 September 2017, FINMA guidelines for enquiries regarding the regulatory framework for ICOs dated 16 February 2018, an update and supplement to said guidelines focusing on issuances of stablecoins dated 11 September 2019, FINMA guidance 02/2019 regarding payments on the blockchain dated 26 August 2019, and a factsheet regarding virtual currencies dated 1 January 2020.

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 openness in principle to innovation in financial services. At the organisational level, FINMA, *inter alia*, established a dedicated fintech desk to interact with fintech start-ups and 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 AML, FINMA has also revised its respective ordinance, introducing simplified organisational requirements for small fintech companies (*see* question 4.5).

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 (including the Federal Council) back in 2016, with the first two pillars (*see* first and second bullets below) taking effect on 1 August 2017. The third pillar of the legislative reform package refers to the introduction of a fintech licence category to the Swiss framework for financial market supervision and became effective on 1 January 2019 (*see* third bullet below).

- **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 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 must 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 or engage in collective custody of cryptocurrencies in an amount or value 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. On 1 April 2019, new rules entered 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 this licence category (sometimes also referred to as "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. Compared to a fully-fledged banking licence, the fintech licence is subject to less onerous requirements in the areas of minimum capital, capital adequacy and liquidity, governance, risk management, compliance, depositor protection as well as accounting and auditing. Irrespective of the reliefs granted, AML regulation continues to apply to fintech firms if they qualify as financial intermediaries (the same applies to data protection law (*see* question 4.5)). We note that so far only five companies have obtained a fintech licence (one of which filed for bankruptcy in the meantime) as the application scope of the fintech licence is, in practice, limited to certain business models. By way of the DLT Act, in 2021, the licence was expanded to, and is therefore required for, the business of collective custody of cryptocurrencies.

In addition, the DLT Act (*see* question 3.2) provides for a new regulatory licence type in the FinMIA for the operation of a DLT trading facility, defined as a professionally operated venue for the multilateral trading of DLT securities. According to the new law, DLT securities (from a regulatory point of view) include (a) register value rights in the meaning of art. 973d of the Swiss Code of Obligations ("**CO**") (*see* above), and (b) other value rights that are held on electronic registers and enable the creditors, but not the debtor, to dispose over their rights using technological processes.

In the insurance sector, a preliminary bill of the Federal Council for the amendment of the ISA foresees the competence of FINMA to exempt small insurance undertakings with innovative business models under certain conditions from insurance supervision if this serves the sustainability of the Swiss financial market and the interests of the insured are safeguarded (regulatory sandbox). The amended ISA is expected to enter into force in the third quarter of 2023 at the earliest.

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 introduction of the fintech legislation (*see* question 3.3) reduced the number of hurdles for fintech businesses in Switzerland. In general, it can also be said that the Swiss inbound cross-border regulatory regime for financial services is fairly 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 or by frequent travel to Switzerland. Notably, the BA, the FinIA 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. Furthermore, the new Swiss financial services regulation pursuant to the FinSA also captures foreign financial service providers that service clients in Switzerland from abroad on a pure cross-border basis; a significant departure from the otherwise liberal regulatory inbound regime. Separately, it must 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 and consumer credit regulation.

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 Data Protection Act ("**DPA**") and the implementing Data Protection Ordinance ("**DPO**"). The DPA and DPO have been revised and will enter into force on 1 September 2023. The main goal of the revision is to adapt Swiss data protection legislation to the changed technological and social conditions and, in particular, to improve the transparency of data processing and strengthen the rights and 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 ("**GDPR**"), 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 transfers to remain possible in the future without further protective measures.

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 to trigger the applicability of the DPA. Deviating from most foreign data protection laws, the DPA also treats information referring to legal entities as personal data (under the revised DPA, personal data relating to legal entities will no longer be protected). 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 (as with other businesses) 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. This means personal data may only be processed for a specified and legitimate purpose (it is not permitted to collect personal data for unknown future purposes in bulk), the purposes, controller and recipients of the data must at least be transparent upon collection of the personal data (under the revised DPA, companies will have an active duty to inform data subjects of all processing activities; the provision in the DPA includes a list of minimum information that must be provided) and only the personal data necessary to achieve the purpose may be processed. The personal data should only be accessed on a strict need-to-know basis and deleted once it is no longer required for the purpose for which it was collected (subject to statutory retention duties). Registration is free of charge. The revised DPA will introduce additional duties that will impact fintech firms processing personal data in Switzerland, similar to the duties under the GDPR. Fintech firms (as with other businesses) will have (i) to maintain a register of all data processing activities, (ii) to report certain data breaches to the Commissioner and, in certain cases, the affected data subjects, (iii) to actively inform all data subjects of all data processing activities (*i.e.* through a detailed privacy policy) and, in certain circumstances, (iv) to conduct a so-called "data protection impact assessment" (*i.e.* a risk assessment) for high-risk processing activities. Furthermore, the processing of personal data by third-party service providers on behalf of a fintech firm is subject to the conclusion of a data processing agreement between the fintech firm and the third-party service provider. The data processing agreement should, in particular, ensure that the third-party service provider may only process the personal data for the same purposes as the fintech firm and that the third-party service provider ensures at least the same level of data security (by implementation of state-of-the-art technical and organisational data security measures). The parties should also ensure strict confidentiality, where possible and necessary. In particular, a fintech firm must ensure that consent of the affected customers is obtained if the fintech firm is subject to statutory or contractual confidentiality duties that would otherwise prevent the engagement of third-party service providers. Under the revised DPA, third-party services providers will, furthermore, be required to obtain the fintech firm's prior consent if the third-party service provider wants to engage sub-processors for the processing activities it is carrying out on behalf of the respective fintech firm. For the requirements regarding cross-border data transfers, *see* question 4.2 below.

Finally, companies must ensure that they have implemented processes to allow data subjects to exercise their rights in accordance with the DPA (in particular, the right to information/access, the right to correction of inaccurate/wrong personal data and the right to deletion of inaccurate/wrong personal data). The revised DPA will introduce the right to data portability, similar to the GDPR.

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?

Swiss data privacy laws apply to any natural or legal person who processes personal data, if the processing takes effect in Switzerland or impacts individuals in Switzerland, respectively (*e.g.* if personal data is collected or stored in Switzerland or the fintech firm offers products or services to data subjects in Switzerland). Therefore, 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 international data transfers if such a transfer could seriously endanger the privacy of the data subjects concerned. This could be the case particularly if personal data is disclosed to a country where the local legislation does not guarantee an adequate protection of personal data, *e.g.* the U.S., India or China. The Commissioner has published a (non-binding) list of countries that provide for an adequate level of data protection. Under the revised DPA, the Federal Council will issue binding adequacy decisions, similar to the European Commission under the GDPR. In particular, all EU Member States are deemed to meet the requirement of adequate data protection rules for the processing of personal data of individuals but not for the processing of personal data of legal persons. If personal data is disclosed to a company in a country that does not provide an adequate level of data protection, other measures must be implemented to justify such a transfer.

An important means to secure adequate protection for transfers to other countries is the use of standard contractual clauses ("**SCCs**") for the transfer of personal data to third countries issued by the European Commission, adapted to Swiss law requirements, or other contractual clauses explicitly recognised by the Commissioner. In June 2021, the European Commission published the revised SCCs, which were recognised by the Commissioner for Switzerland some weeks later. Before signing these new SCCs, Swiss companies need to implement the requirements published by the Commissioner (*e.g.* in a Swiss appendix) and they need to assess on a case-by-case basis whether the SCCs are actually suitable for ensuring appropriate protection of the transferred personal data or whether supplementary measures need to be in place in addition to the SCCs (a so-called "data transfer impact assessment"). In particular, Swiss companies exporting data need to evaluate on a case-by-case basis whether the laws in the receiving country relating to lawful data access by foreign public authorities (*e.g.* for national security or criminal investigation purposes) and data subject rights are compatible with Swiss data protection law and Swiss constitutional principles.

Furthermore, international data transfers between entities of the same group are permitted if so-called "binding corporate rules" have been adopted by the entities and approved by the Commissioner. Under the current law, the Commissioner must be notified of the use of model contracts or such binding corporate rules for international transfers. Under the revised DPA, the Commissioner will not need to be informed of the EU SCCs used. Another option is to obtain explicit consent for the transfer from the data subject whose data is being transferred for individual cases. Companies are also permitted to transfer personal data abroad if it is necessary, for the respective company to establish, exercise or enforce legal claims in a specific case, or if the transfer is directly connected to the conclusion or performance of a contract and the data subject is party to such contract. The direct collection of personal data from a data subject in Switzerland by a fintech company based outside of Switzerland is not considered an international data transfer.

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**: If the personality of a data subject has been violated (*e.g.* if personal data is not processed in compliance with the general data protection principles, personal data is disclosed to a third party without consent, a legal basis or an overriding interest, or if personal data is processed despite the data subject's objection), then the data subject can lodge a civil claim. A data subject can file a request for an interim injunction against unlawful data processing. It is, among other things, 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 arts 34 and 35 DPA, a competent criminal judge may, upon a complaint, sanction the individual responsible for a breach (not the legal entity) with a fine of up to CHF 10,000 if he or she wilfully breaches certain obligations stipulated in the DPA.

The revised DPA provides for an extension of the catalogue of criminal offences (*e.g.* non-compliance with the requirements to engage a data processor or transfer personal data abroad, intentionally providing wrong or incomplete information, failure to comply with the minimum data security standards defined in the DPO, or if a company does not comply with the minimum standards of data security defined by the Federal Council) and an increase in the fines to be imposed to up to CHF 250,000. The Commissioner will still not have the competence to issue such fines but will be entitled to file a criminal complaint. The cantonal criminal law enforcement agencies are competent for issuing fines.

Further, under the revised DPA, the Commissioner will have the competence to issue binding orders against companies processing personal data in breach of the revised DPA. The Commissioner will, amongst others, have the power to restrict, suspend or terminate processing activities or to require companies to comply with their duties under the revised DPA. If companies do not comply with such binding orders, they can face a fine of up to CHF 250,000.

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

Switzerland does not provide for comprehensive cyber security legislation, specific objects and specific industries are regulated with regard to cyber security by way of a number of provisions in different acts and initiatives, among others:

- The DPA and the DPO set forth certain general security requirements applicable to the IT infrastructure deployed when processing personal data. Such requirements are further defined in the DPO and accompanied by the Commissioner's guide for technical and organisational measures to be taken when processing personal data. Under the revised DPA, the Federal Council has issued minimum standards of data security in the revised DPO that companies processing personal data will at least have to meet. Furthermore, the revised DPA provides for an obligation to notify the Commissioner and, where necessary, the affected data subjects of certain personal data breaches.
- Fintech firms subject to the supervision of FINMA also have a duty to report certain cyber security incidents to FINMA in accordance with art. 29 para. 2 of the Financial Market Supervision Act ("**FINMASA**").

- The Swiss Criminal Code ("**SCC**") provides for statutory offences, which protect IT infrastructure against cyber crime (*i.e.* against the unauthorised obtaining of data, unauthorised access to a data processing system, data corruption, *etc.*).
- The National Cyber Security Centre ("**NCSC**") is Switzerland's competence centre for cyber security and thus the first contact point for businesses, public administrations, educational institutions and the general public for cyber issues. It is responsible for the coordinated implementation of the 2018–2022 national strategy for the protection of Switzerland against cyber risks (NCS) (https://www.ncsc.admin.ch/ncsc/en/home/strategie/strategie-ncss-2018-2022.html), which was adopted by the Federal Council on 18 April 2018.
- 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.
- On 5 April 2022, the Swiss Financial Sector Cybersecurity Center ("**Swiss FS-CSC**") was founded. It aims to enhance the financial sector's ability to withstand cyber security risks – its cyber resilience – and promote a partnership between financial institutions and authorities on strategic and operational issues. The 55 founding members include banks, insurers and industry associations.
- The Ordinance on Protection against Cyber Risks in the Federal Administration ("*Verordnung über den Schutz vor Cyberrisiken in der Bundesverwaltung*", "**CyRV**") requires federal authorities subject to the CyRV to report cyber incidents to the NCSC. Furthermore, the Federal Act on Information Security ("*Bundesgesetz über die Informationssicherheit beim Bund*") was adopted on 18 December 2020 and provides that federal authorities subject to the ISG must report security incidents to the competent authority ("*Fachstelle BS*"). The ISG is expected to enter into force mid-2023. In part, it will substitute the CyRV.
- In 2011, Switzerland ratified the Budapest Convention (Council of Europe Convention on Cybercrime of 2001), which fosters increased and rapid international cooperation in the fight against cyber crime.

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 AMLO, ordinances and circulars of FINMA as well as the rulebooks of recognised self-regulatory organisations. Generally speaking, AML regulation applies to so-called "financial intermediaries" (and partially to merchants if they accept 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 banks, securities firms, fund management companies, life insurance undertakings and, with the introduction of the DLT Act, DLT trading systems, 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 (*e.g.* money transmitters or crypto exchanges, but also, depending of the particulars of the case, issuers of cryptocurrencies). The DLT Act also closed potential loopholes in the area of money laundering.

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 introduced a 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 (for example, AI)?

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.

Although there is currently no particular legislation concerning AI in place in Switzerland, the Swiss Federal Council has recognised the potential and risks of the technology and aims to introduce guidelines for the interpretation of the already existing regulation with a specific view to AI.

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, 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 law employment contracts can, in principle, be terminated for any reasons except for undue reasons 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 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 in an amount up to six monthly salaries (in addition to the salary payment). Second, 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 due to illness or accident, or during the pregnancy of an employee and the 16 weeks following birth. The termination of an employment contract during such period is not effective.

Furthermore, Swiss employment law 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. For certain professions, collective and standard employment agreements set minimum salaries. Further, certain cantons foresee statutory minimum salaries.

The employer may, and in some cases must, make deductions from the salary. Social insurance premiums are mandatory and paid either by the employer alone, or by the employer and the employee together, in which case the employer deducts the employee's portion of social insurance premiums from the employee's salary. Further deductions are made for the mandatory unemployment insurance and the mandatory professional 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, customarily and 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 within the public law limitations. Typically, for full-time employment, a weekly working time between 40 and 44 hours is agreed upon. Time worked in addition to the agreed weekly working time (overtime, "*Überstunden*") must be compensated in principle (by remuneration or leisure time). This compensation is not mandatory, *i.e.* can be waived by written agreement. However, public law provisions limit the maximum working time (to 45 hours or 50 hours per week depending on the nature of the work). Extra time exceeding the weekly maximum working time of 45 or 50 hours per week (excess time, "*Überzeit*") has to be compensated by the proportionate basic salary plus a premium of at least 25% of the regular hourly salary or by extra free time of the same duration. However, in the case of office staff, as well as technical staff and other employees including sales personnel in large retail businesses, the duty to compensate excess time applies only to excess time that exceeds 60 hours in a calendar year.

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. All working fathers are entitled to two weeks' paternity leave, *i.e.* 10 days off work. Fathers can take this leave within six months of the child's birth, either all at once or spread over individual days. Employers are prohibited from reducing vacation in return.

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 work permit requirement applies to business visits of a duration not exceeding eight days (irrespective of the length of the stay, foreign nationals require a work permit if they are engaged in specific sectors (*e.g.* the construction, hospitality or cleaning sectors) as set forth in art. 14 para. 3 of the Ordinance on Admission, Residence and Employment (*Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit*)). This exception is valid both for EU/EFTA nationals and non-EU/non-EFTA nationals. 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*, "**AFMP**"), while on the other hand permits for nationals from third countries are subject to the requirements set forth in the Federal Act on Foreign Nationals and Integration (*Ausländer- und Integrationsgesetz*, "**AIG**") and thus nationwide quantitative restrictions (quotas).

EU/EFTA nationals, according to the AFMP, have a right to a work permit if they have an unlimited employment relationship with an employer based in Switzerland. No work permit is required for work for a duration of less than 90 days per calendar year (there is only a reporting requirement). In this case, employees have to be registered online at least eight days before their start of work. The same applies to self-employed service providers and companies based in an EU/EFTA country posting workers to Switzerland if the employees have held a valid EU/EFTA 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 in total or for 120 days per calendar year (L-Permit "120 days"), (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; extendable to 24 months), (iii) a long-term permit for five years based on an unlimited employment contract (B-Permit), or (iv) a so-called "border-crosser permit" if they continue to live outside of Switzerland (within EU/EFTA states) but commute to their Swiss workplace (G-Permit). Self-employment for 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. The UK left the EU on 31 January 2020. Switzerland and the UK signed an agreement on 25 February 2019 on the acquired rights of their citizens. The agreement had been applicable since 1 January 2021 and allowed Swiss and UK nationals to keep the rights they acquired up to 31 December 2020 based on the AFMP. UK nationals that have taken up their posts in Switzerland from January 2021 can no longer invoke the AFMP. They now fall, in principle, under the provisions for third-country nationals, but with a separate annual quota. In addition, UK service providers still can make use of an online registration system that allows them or their employees to provide services in Switzerland for up to 90 days without any work permit.

In contrast, non-EU/non-EFTA citizens must apply for either (i) a short-term permit for up to four months in total or for 120 days per calendar year (L-Permit "120 days"), (ii) a short-term permit for up to 12 months based on a limited employment contract (L-Permit; extendable to 24 months), or (iii) a long-term permit that is valid for a period of one year when the permit is granted for the first time. Such a long-term permit can be prolonged but needs to be renewed annually based on the submission of an unlimited employment contract (B-Permit). With very specific exceptions described below, work permits for citizens of non-EU/non-EFTA countries are subject to a nationwide quota. The annual quota is set relatively low, therefore only very few work permits can be issued per year. Furthermore, such permits are only granted to highly qualified employees (*e.g.* senior management personnel, 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 all EU/EFTA countries could be found (so-called "*Inländervorrang*"). Therefore, basically no work permits would be issued for less qualified positions or if suitable employees were available in the Swiss or in the EU/EFTA's domestic labour markets. The precedence in favour of domestic employees or employees from the EU/EFTA, however, is not applied to intra-group transfers of highly qualified specialists and executive personnel under the terms and provisions of the General Agreement on Trade in Services ("**GATS**"), if the employee has worked abroad for the same group of companies for at least one year. However, the requirements regarding nationwide quotas and the conditions of work and salary still apply. Non-EU/non-EFTA citizens wishing to start working on a self-employed status may be admitted to work on a self-employed basis pursuant to art. 19 AIG if: a) this is in the interest of the economy as a whole; b) the necessary financial and operational requirements are fulfilled; c) they have an adequate and independent source of income; and d) the requirements of arts 20, 23–25 AIG are met. According to art. 20 AIG, third-country nationals are subject to national quotas of permits. Art. 23 AIG addresses the personal qualifications required to be eligible to national quotas (as outlined above, *i.e.* managers, specialists, other highly qualified personnel, *etc.*). Finally, art. 24 AIG stipulates that foreign nationals may only be admitted to work if suitable accommodation is available and art. 25 AIG applies to cross-border commuters. Such employees working on a self-employed status in Switzerland must basically submit an application together with a business plan, proof of business experience and financial means and a certificate of registration to the competent authority. The competent authority will review the business plan and assess the relevant market situation. The issuance of such permit is at the discretion of the competent authorities.

Special rules apply to non-EU/non-EFTA citizens 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. However, as for EU/EFTA nationals, a registration procedure is required. Hence, employees have to be registered online at least eight days before their start of work.

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 copyright 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 Swiss 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 Swiss 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 if Switzerland was chosen as the 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.

Dr. Daniel Flühmann's practice focuses on banking, insurance and financial market laws as well as on the area of collective investment schemes. He assists Swiss and foreign banks, investment managers, securities firms as well as insurance companies and other financial services providers in regulatory and contract law matters and in the context of licence application proceedings before FINMA. A special focus of Daniel Flühmann's work is on fintech, advising both financial innovators and established market participants. Furthermore, he advises clients on general corporate and commercial matters as well as on M&A transactions. Daniel Flühmann has authored various publications in his areas of expertise and regularly speaks on topics in the area of financial services at expert conferences.

Bär & Karrer
Brandschenkestrasse 90
Zurich, 8002
Switzerland

Tel: +41 58 261 56 08
Email: daniel.fluehmann@baerkarrer.ch
URL: www.baerkarrer.ch

Dr. Peter Ch. Hsu is a key contact for the practice area of Banking, Insurance & Finance and heads the insurance team of Bär & Karrer. His practice focuses on banking, insurance, financing and capital markets. He advises Swiss and foreign banks, insurers, securities firms, asset managers, insurance brokers and other financial intermediaries as well as fintech and insurtech businesses with regard to M&A, regulatory, corporate law and contract law matters. Moreover, he advises clients on M&A transactions in other sectors. Peter Hsu has published several books and articles on topics in banking, insurance and capital markets and is regularly invited to speak on these topics.

Bär & Karrer
Brandschenkestrasse 90
Zurich, 8002
Switzerland

Tel: +41 58 261 53 94
Email: peter.hsu@baerkarrer.ch
URL: www.baerkarrer.ch

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