

# LegalWeek

Independent Law Firms



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# Comment

## Why no firm is truly independent

As clients expand their horizons, so must their law firms

If you were starting out from scratch to create the perfect law firm what would it look like? A few years ago this might have been easier to answer. The surge of Verein-style mergers, alongside moves in the English legal market such as allowing the introduction of outside investment into law firms, have shaken up the concept of a true partnership.

The rapid expansion of firms like Dentons through bolt-ons to its verein – four combinations this year alone – and the rise of other global law firms is prompting a rethink about the size and shape of a typical law firm, and how far common branding can take you.

But for the majority of firms – both new and established - some fundamentals remain. Among these, the increasingly global nature of clients has given a new urgency to the need to access other lawyers around the world. Whether this means through your own offices; well-maintained referral relationships; or under the aegis of external networks, the days of being able to survive as an isolated one-office firm are gone.

While the global financial crisis has made many international law firms more cautious about opening offices without thorough analysis of the risks, it has also given them confidence to shut up shop and pull out of jurisdictions that

are no longer financially viable. This throws up opportunities for independent firms which may find themselves in demand as referral partners.

But that is not to say that office openings are a thing of the past – far from it.

So what is the best way to tackle the need to have a network of lawyers at the end of the phone given the increasingly expansive nature of leading international firms?

Whether operating a referral relationship or through a network (and in many cases when passing work between your own offices), a recurrent concern is the quality of the lawyers you are dealing with, as our lead feature discusses (page 4). Other issues centre around the need to both give and receive work, while the limitations of being tied to a particular firm in each country is also a common frustration.

While networks such as Interlaw are responding by more frequently reviewing their members for quality and referral rates, the importance of maintaining a working relationship with your counterparts elsewhere, both on a firm and individual basis, cannot be overlooked. Whether you are a growing behemoth or a newly-established independent in a growing market, this is a two-way process.

No man – and no law firm – is an island.



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The Swiss financial markets regulation is currently being revised, mainly with the aim of bringing it in line with the regulations of the European Union (EU) and thereby securing non-discriminatory access to the EU market.

On 4 November 2015, the Swiss Federal Council adopted draft bills for a new Financial Services Act (FSA) and a new Financial Institutions Act (FIA), which will be dealt with in Parliament next year and are expected to enter into force in 2018.

The new Financial Market Infrastructure Act has already passed Parliament this year and is expected to enter into force in the first quarter of 2016. Together with certain other important changes described below, this will result in a complete overhaul of Swiss financial markets regulation and have an important impact on both Swiss and foreign based market participants conducting business in Switzerland or with Swiss counterparties.

**GENERAL CHARACTERISTICS**

- **Overall structure:** While the existing regulatory structure is focused on sectors, which leads to different regulatory standards between the service providers of different sectors, the new regime more or less follows the concept of “same business, same rules”.
- **Self-regulation:** The Swiss financial sector has a long tradition of self-regulation, and

many of the codes of conduct issued by self-regulation organizations (SROs) have become generally applicable standards. Although the new legislation will integrate some such standards of self-regulation into statutes and shift competences to the Swiss Financial Market Supervisory Authority (FINMA), the SROs will continue to have a significant role.

- **Cross-border financial services (inbound):** The current, very liberal cross-border regime will be tightened. In principle, foreign market participants need to show that they are subject to an equivalent regulatory regime in their home country.
- **Swiss particularities:** The Swiss financial regulation will continue to feature important particularities. In some areas it will be more relaxed than the EU regime, in other areas a “gold-plating” is expected.

**MAIN TOPICS OF THE NEW REGULATION**

**1. Supervision and Enforcement**  
FINMA's organization and competences are set forth in the Financial Market Supervision Act (FINMASA), an existing act that will be substantially amended. FINMA will remain a single, integrated supervisory body with a wide array of enforcement measures. Currently, FINMA tends to direct enforcement measures against individuals rather than the institution itself, and recently, it has started with “naming and shaming”.

**2. Financial Institutions**

The new Financial Institutions Act (FIA) will govern aspects such as licensing conditions (for domestic and international institutions), minimum capital requirements, organizational requirements, and client deposit protection. The FIA provides for a harmonized, cross-sectoral regulation in order to create a level playing field on an institutional level (however, banks and insurance companies remain under their respective special regulatory regime). Portfolio managers will be newly subject to supervision by FINMA.

**3. Financial Services and Products**

The new Financial Services Act (FSA), a core piece of the new legislation, aims to introduce a variety of the MiFID II standards into Swiss financial markets regulation. Accordingly, the core content of the FSA consists of requirements for a loyal, diligent, and transparent provision of financial services, including a MiFID II-style “appropriateness/suitability”-test. In addition, the FSA provides for harmonized rules on product documentation, disclosure and inducements.

**4. Financial Market Infrastructures (FMIs) and Derivatives**

Switzerland will adopt a new regulatory regime on FMIs and derivatives in the form of a new Financial Market Infrastructure Act (FMIA), the content of which is heavily influenced by EU legislation and the US Dodd-Frank Act. The following FMIs will be regulated: Trading Venues (Stock Exchanges, MTFs and OTFs), CCPs, CSDs, Trade Repositories, and Payment Systems. The four main areas of the derivatives legislation consist of clearing obligations, reporting obligations, risk mitigation measures for non-cleared derivatives transactions, and platform trading obligations.

**OTHER IMPORTANT PROJECTS**

- **Too Big To Fail:** There is an ongoing re-calibration of the instruments in relation to systemically important institutions, such as capital requirements, leverage ratio, emergency planning, stress tests etc. Just recently, the Swiss Federal Council defined new (stricter) capital adequacy standards for systemically important banks.
- **Anti-Money Laundering:** The Swiss AML regime has been tightened in order to fight cross-border tax evasion.
- **Transparency:** Switzerland has adopted the OECD standard regarding the automatic exchange of information and will exchange information as of 2018.