Chambers
RANKING GUIDE

Global

The World's Leading
Business Lawyers

Switzerland

chambers.com

2020

How lawyers are ranked

Every year we carry out thousands of in-depth interviews with clients in order to assess the reputations and expertise of business lawyers worldwide. The qualities we look for (and which determine rankings) include technical legal ability, professional conduct, client service, commercial awareness/astuteness, diligence, commitment, and other qualities most valued by the client.

Contents:

International & Cross-Border Capabilities p.2581
Banking & Finance p.2582
Capital Markets p.2585
Corporate/M&A p.2586
Dispute Resolution p.2589
Investment Funds p.2593
Tax p.2594
Leading Individuals p.2597

SWITZERLAND: An Introduction

Contributed by Niederer Kraft Frey

Switzerland Country Overview 2020

Despite its relatively small size, Switzerland is home to several large and well-established international companies, spanning a diverse range of industries. These in-clude major banks such as Credit Suisse and UBS, large insurance and reinsurance cor-porations such as Zurich Insurance and Swiss Re, and food and beverage, healthcare and biotech companies such as Nestlé, Novartis and Roche. Switzerland is also home to mechanical and electrical engineering companies specialising in high-technology, knowledge-based production such as the Swatch Group, Oerlikon and ABB. Tourism also plays an important role for Switzerland's economy. While Switzerland has large global companies, most businesses are small or medium-sized, and many of them spe-cialise in niche machinery and high technology. Switzerland is one of the world's most competitive economies, thanks to its large and well-established corporate base, modern infrastructure and highly skilled workforce. Its political stability, comparatively flexi-ble labour market regulations, transparent legal system, efficient capital markets and low corporate tax rates also play a part.

Market developments

Mergers & Acquisitions

Following record high deal flows in 2018, Swiss M&A activity has weakened during the course of 2019. While the number and aggregate value of transactions decreased, individual transactions were large in size. Key noteworthy transactions include the USD27 billion spin-off and IPO of Alcon by Novartis, the USD10 billion acquisition of Nestlé Skin Health SA by EQT and Abu Dhabi Investment Authority, and the USD4.7 billion public takeover bid of DSV AS for Panalpina. May 2018). In addition, the pro-posed USD 6.4 billion acquisition of UPC Switzerland by Sunrise Communications, which was ultimately dropped following the opposition of key shareholders of Sunrise, gained significant public attention.

Capital markets

The Swiss initial public offering (IPO) market in 2019 was not as strong as in 2018. Swiss capital markets have been impacted by various global political and economic uncertainties, including the ongoing negotiations regarding Brexit, trade policy ten-sions between the USA, China and Europe as well as other geopolitical concerns. However, despite such mixed market conditions, there were five successful IPOs in 2019 on the Zurich-based SIX Swiss Exchange Ltd (SIX) with an aggregate offering volume of approximately CHF 3.1 billion, specifically Stadler Rail AG (CHF 1.5 bil-lion), Medacta Group SA (CHF 589 million), Aluflexpack AG (CHF 169 million), SoftwareOne (CHF 798 million) and Novavest Real Estate AG (CHF 52 million), ac-companied by the listing of shares of Alcon Inc and Achiko Limited.

Amid historically low interest rates and economic growth, the Swiss securitisation market continued its steady growth over the past three years. Public transactions in-cluded Auto-Lease transactions by Cembra Money Bank, Multi-Lease (Emil Frey Group's auto leasing company) and AMAG Leasing (the leasing company of AMAG Group, the exclusive importer of Volkswagen Group vehicles in Switzerland), as well as a credit card receivables transaction by Credit Suisse and American Express' joint venture Swisscard AECS. In addition, Credit Suisse (Switzerland) Ltd. established its first of its kind CHF 20 billion Domestic Covered Bond Programme and successfully completed its first CHF 250 million inaugural issuance of Covered Bonds thereunder.

Pre-eminent key political and legal topics discussed in 2018/2019

New financial market legal architecture

The Swiss financial markets' legal architecture continued its significant transformation, with the entering into force of the Swiss Federal Financial Services Act and the Swiss Federal Financial Institutions Act on 1 January 2020.

One of the aims of the new rules is the regulatory harmonisation with the relevant EU rules (in particular MiFID II, MiFIR, the Prospectus Regulation, the PRIIPs Regula-tion) to attain third-country equivalency thereunder, with adjustments made to reflect the specific circumstances of the Swiss financial markets.

Because the EU's third-country equivalence rules give the EU wide discretion in grant-ing or withdrawing equivalence for a third country, relying on third-country equivalen-cy to gain access to EU financial markets remains subject to substantial challenges. For example, the SIX Swiss Exchange is the fourth largest stock exchange in Europe. In December 2017 the EU granted equivalence for Swiss stock exchanges only on a tem-porary basis for one year until 31 December 2018 amid open issues on a broader framework agreement that would define Switzerland's ties with the EU. Subsequently, the EU let the temporary equivalence expire. As a reaction, Switzerland introduced emergency measures banning the trading of shares listed in Switzerland on EU stock markets, forcing European securities dealers to trade Swiss shares in Switzerland.

Swiss Financial Market Infrastructure Act

As a first cornerstone, the Financial Market Infrastructure Act (FMIA) came into force on 1 January 2016. Following the end of the last transitional periods, all obligations and provisions of FMIA are now in full force and effect since 1 January 2019. The FMIA established a regulatory framework for financial market infrastructure and trad-ing venues, disclosure of significant shareholdings in listed companies in Switzerland, insider trading and market manipulation, and public takeovers, each modelled after the relevant EU rules. The FMIA also introduced regulations applicable to the over-the-counter (OTC) derivatives market.

Swiss Federal Financial Services Act

The new Federal Financial Services Act (FinSA) and its implementing ordinance, the Federal Financial Services Ordinance (FinSO) entered into force on 1 January 2020, subject to phase-in with respect to certain obligations thereunder.

The FinSA sets out cross-sector rules (except for insurance and insurance products, which are excluded) for the provision of financial services. It introduces a comprehen-sive and harmonised prospectus regime that aims to achieve harmonisation with rele-vant EU rules while reflecting specific Swiss circumstances.

In connection with the offering and listing securities in the Swiss market, the FinSA includes the following novelties:

- The requirement to approve all offering and listing prospectuses by a new regula-tory body (the 'review body') that is licensed and supervised by the Swiss Finan-cial Market Supervisory Authority (FINMA), subject to certain exemptions.
- A new obligation to publish a prospectus not only for primary but also for sec-ondary public offerings of securities in Switzerland.
- The codification of the private placement exemption and other exemptions from the requirement to publish a prospectus based on accepted Swiss standards and the EU Prospectus Directive.
- The requirement to prepare and make available a basis information document when offering financial instruments other than shares (or comparable equity se-curities) or certain debt instruments without derivative character to retail inves-tors containing all necessary information to make an investment decision, pre-sented in an easily comprehensible way and designed to make financial instru-ments easier to compare.

According to the new regime, the review body must approve a prospectus prior to a public offering or an admission of securities to trading on a Swiss trading platform. However, for certain debt securities (e.g. bonds) a prospectus can be approved after its publication provided certain requirements are met, reflecting longstanding Swiss mar-ket practice. By preserving the advantage of the current approval process for listing prospectuses in the Swiss debt capital markets, Switzerland continues to ensure attrac-tive time-to-market conditions for issuers of debt instruments.

The new prospectus rules will enter into force on the earlier of 1 October 2020 or six months after the approval of a review body by FINMA. During the transition period, the old prospectus rules will continue to apply and issuers will have an option for vol-untary early adoption of the new rules.

The requirement to prepare and make available a basis information document pursuant to the FinSA will enter into force on 1 January 2022. During the transition period, the obligation to prepare and make available a "simplified prospectus" for structured prod-ucts will continue to apply. Specific transitional provisions apply with respect to real estate and securities funds.

Swiss Federal Financial Institutions Act

On 1 January 2020, the Federal Financial Institutions Act (FinIA) and its implementing ordinances, the Federal Financial Institutions Ordinance (FinIO) and the Supervisory Organisation Ordinance (SOO) entered into force.

• The FinIA essentially harmonise the authorisation rules for financial service pro-viders and will, for the first time in Switzerland, subject independent portfolio managers and trustees to licensing requirements and continuous prudential su-pervision.

• The Financial Institutions Ordinance (FinIO) details the conditions for authorisa-tion and duties of financial institutions and their supervision.

• The Supervisory Organisation Ordinance (SOO) governs the authorisation condi-tions and activities of the newly introduced supervisory organisations (SO) that will be responsible for the ongoing supervision of portfolio managers, trustees and trade assayers in accordance with the Precious Metals Control Act.

Corporate tax reform

Switzerland has been undergoing major corporate tax reforms. The so-called third cor-porate tax reform package proposed by the Swiss Federal Council intended to abolish certain tax advantages for holding, domiciliary and mixed companies pursuant to an agreement with the European Union as well as implementing tax advantages deemed in line with EU rules.

The third corporate tax reform package hit a political roadblock when voters rejected it in a referendum with an unexpectedly high proportion of 59.1% of the popular vote in February 2017. While the Federal Council announced its intention to propose a new reform package as soon as possible, the referendum added a lot of uncertainty in part because it is unclear whether a new package will be in place within the timeframe agreed with the EU.

On 19 May 2019, Swiss voters approved the reform package with 66.4 per cent of the popular vote in a referendum (combined with more than 2 billion Swiss francs of addi-tional funding for Switzerland's statutory pension system, AHV/AVS). The aim of the reform package is to create an internationally compliant, competitive tax system for companies by abolishing existing tax privileges for companies that operate predomi-nantly internationally (subject to phase-in) and introducing replacement measures in-cluding a general reduction of tax rates, a Patent Box, an R&D super-deduction, a step-up upon migration of companies or activities to Switzerland for tax purposes and the option for cantons to introduce a notional interest deduction.

Withholding tax reform

Another troubled Swiss tax reform project relates to withholding tax. Currently, a Swiss issuer of bonds must deduct a withholding tax of 35% from interest (and certain other) payments made to investors inside and outside of Switzerland (debtor-based regime).

Because it may be difficult for investors outside Switzerland to reclaim Swiss with-holding tax, the current system makes it impracticable for Swiss issuers to directly ac-cess investors outside Switzerland. This had a material adverse effect on Swiss capital markets for decades. To address this issue, the Swiss Federal Council published in De-cember 2014 draft legislation to, among other things, replace the current debtor-based regime with a paying agent-based regime for Swiss withholding tax, where a withhold-ing would be required only for Swiss investors. The Federal Council withdrew the draft legislation in June 2015 and mandated the Swiss Federal Finance Department to ap-point a group of experts to prepare a proposal for reform of the Swiss withholding tax system. Because of a popular initiative to enshrine banking secrecy in the Swiss consti-tution, the project of the group of experts has been put on hold in 2015 pending the results of the popular vote. To facilitate compliance by banks with the tougher capital requirements under Basel III prior to the reform of the Swiss withholding tax system, the Swiss Federal Council exempted contingent capital instruments and bail-in bonds from the withholding tax until 2021.

On 9 January 2018, its sponsors withdrew the banking secrecy initiative. Following this withdrawal, the Swiss Federal Council decided to resume the suspended reform of the Swiss federal withholding tax. The consultation draft of the Swiss Federal Council is expected for spring 2020 and will thereafter be submitted for parliamentary consulta-tion. The exact scope of the Swiss federal withholding tax reform and the date of its implementation are not yet known. The proposal is expected to replace the current debtor-based regime applicable to interest payments with a paying agent-based regime for Swiss federal withholding tax. Consequently, interest payments to foreign investors and to Swiss corporations would no longer be subject to withholding tax.