

# INITIAL PUBLIC OFFERINGS

## Switzerland



# Initial Public Offerings

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into initial public offerings (IPOs), including market overview (size, issuers and exchanges); rulemaking and enforcement bodies; listing requirements (authorisation process, prospectuses, publicity and marketing, enforcement); timetable and costs; corporate governance (typical requirements, allowances for new issues, takeover rules and anti-takeover devices); foreign issuers (special requirements and selling foreign issues to domestic investors); tax issues; investor claims (fora, class actions, claims, defendants and remedies); and recent trends.

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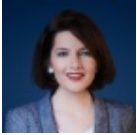
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## MARKET OVERVIEW

### Size of market

What is the size of the market for initial public offerings (IPOs) in your jurisdiction?

The Swiss IPO market came back to life in 2021, after the outbreak of the covid-19 pandemic and related market volatility resulted in subdued activity in 2020 with only two companies completing IPOs on SIX Swiss Exchange (SIX). Five companies went public on SIX in 2021, with a total transaction value of more than 2 billion Swiss francs and a combined first-day market capitalisation of 7.9 billion Swiss francs. The IPO of PolyPeptide Group AG, a pharmaceutical contract development and manufacturing organisation, was the largest, with an offer size of 848 million Swiss francs and a market capitalisation of 2.4 billion Swiss francs. This first listing was followed by the IPOs of Montana Aerospace AG, an aerospace technology company (market cap of 1.6 billion Swiss francs), medmix AG, a medtech company that spun off from the SIX-listed Sulzer Group (market cap of 1.8 billion Swiss francs) and SKAN Group AG, another medtech company (market cap of 1.7 billion Swiss francs). The year concluded with the IPO of VT5 Acquisition Company AG, the first special purpose acquisition company (SPAC) to list on SIX following the entry into force of new regulations clearing the way for SPAC listings in December (market cap of 220 million Swiss francs).

In 2022, the war in Ukraine and related volatility in the capital markets impacted the Swiss IPO market, with many transactions put on hold. In May, the commercial real estate company EPIC Suisse AG became the first issuer to list on the Main Market of SIX in 2022 with a base offer of 183 million Swiss francs and an implied market capitalisation of 693 million Swiss francs. Earlier in the year, Xlife Sciences AG had completed the first listing on 'Sparks', a new equity segment dedicated to small and medium-sized enterprises launched by the SIX in October 2021 (market cap of 270 million Swiss francs). Several other IPOs remain in the pipeline for 2022 in anticipation of improved market conditions.

*Law stated - 30 April 2022*

### Issuers

Who are the issuers in the IPO market? Do domestic companies tend to list at home or overseas? Do overseas companies list in your market?

Issuers listing shares on exchanges in Switzerland stem from a range of Swiss industries and include:

- major banks such as Credit Suisse and UBS, as well as several well-known private banks such as EFG, Julius Bär and Vontobel;
- large reinsurance and insurance corporations like Swiss Re and Zurich International;
- international luxury goods companies such as Richemont and Swatch;
- multinational food and beverage, pharmaceutical and biotech companies such as Alcon, Givaudan, Lindt & Sprüngli, Lonza, Nestlé, Novartis and Roche;
- large industrials such as ABB, Geberit, LafargeHolcim, OC Oerlikon and Schindler; and
- numerous real estate companies such as Allreal, HIAG, PSP Swiss Property, Swiss Prime Site and Ina Invest.

There is also a significant number of foreign companies that have opted for primary or secondary equity listings in Switzerland to gain better access to international institutional investors or because of strong representation from certain industries and the desire to be listed among attractive peers. This is especially the case with regard to the pharmaceutical and biotech industries. Selected foreign companies that have primary or secondary equity listings on exchanges in Switzerland include AMS (A), Cosmo Pharmaceuticals (NL), Newron Pharmaceuticals (I), SHL Telemed (IL) with primary listings and the 3M Company (USA), Abbott Laboratories (USA) and Baxter International (USA) with

secondary listings, respectively.

Of the 253 companies with equity securities listed on SIX as of 30 April 2022, 28 have their registered offices outside Switzerland.

*Law stated - 30 April 2022*

## Primary exchanges

What are the primary exchanges for IPOs? How do they differ?

SIX operates the principal securities exchange in Switzerland and is currently the third-largest exchange in Europe, with a free-float market capitalisation of 1.5 trillion francs (as per August 2020). As at 30 April 2022, SIX had 253 companies listed (of which 225 were Swiss-domiciled issuers). The only other equity exchange in Switzerland is BX Swiss AG (BX Swiss). The BX Swiss is much smaller than SIX and mainly targets small and medium-sized Swiss enterprises. As at 30 April 2022, 20 companies were listed on the BX Swiss.

*Law stated - 30 April 2022*

## REGULATION

### Regulators

Which bodies are responsible for rulemaking and enforcing the rules on IPOs?

Switzerland is not a member of the EU or the EEA. Accordingly, the EU Prospectus Regulation and other EU regulations relating to capital markets offerings are not applicable to offerings conducted in Switzerland.

However, the Swiss financial market regulatory framework has undergone fundamental and comprehensive reforms over the past few years. The main purpose of these reforms is to harmonise Swiss regulations with existing and new EU regulations and to ensure access of Swiss financial institutions to the European market by fulfilling equivalence requirements. The most important parts of the reform package in terms of Swiss capital markets are set out in the new Financial Services Act (FinSA) and its implementing ordinance, the Financial Services Ordinance (FinSO), both of which entered into force on 1 January 2020.

In essence, FinSA (together with FinSO) introduced a new prospectus regime, including specific statutory requirements, for Swiss capital markets applicable to all financial instruments (subject to exemptions and customisations for certain instruments) where any person in Switzerland who makes a public offer for the acquisition of securities or any person who seeks the admission of securities to trading on a trading venue in Switzerland must first publish a prospectus. Furthermore, unlike under the previous regime, any such prospectus must be submitted to a reviewing body for approval prior to publication (ex-ante review).

Below is an overview of the applicable legislative framework (including FinSA and FinSO), followed by summaries of the main regulatory and self-regulatory authorities mandated with the implementation, supervision and enforcement of the legislation.

### Legislative framework

Generally, the current legislative framework with respect to IPOs and equity securities markets and exchanges in Switzerland is governed by the following legislations:

- Financial Markets Infrastructure Act of 19 June 2015 (FMIA);

- Financial Market Infrastructure Ordinance of 25 November 2015 (FMIO);
- Financial Services Act of 15 June 2018 (FinSA);
- Financial Services Ordinance of 6 November 2019 (FinSO); and
- additional ordinances issued by Swiss Financial Market Supervisory Authority (FINMA).

These statutes and regulations contain rules that impose direct obligations on issuers and other market participants, such as specific content requirements for prospectuses, disclosure rules in respect of qualified shareholdings and rules on insider trading and market manipulation.

### **Supervisory bodies**

#### **FINMA**

The main financial market regulatory body in Switzerland is FINMA. FINMA delegates certain aspects of the regulation of the Swiss financial markets to a number of private or semi-private self-regulatory bodies that it licenses and supervises. For example, the SIX Group Ltd is mandated with the issuance, monitoring and enforcement of regulations related to SIX Swiss Exchange Ltd (SIX). Furthermore, FINMA is responsible for licensing and supervising the regulatory bodies responsible for the prospectus review process (ie, the 'reviewing body') under the FinSA and FinSO.

#### **SIX Regulatory Board**

One of the most important self-regulatory bodies under FINMA's supervision with regard to equity markets and exchanges in Switzerland is the SIX Regulatory Board. This is responsible for issuing the rules and regulations that apply to issuers (eg, rules and directives) and participants (eg, SIX Rule Book and participant directives).

#### **SIX Exchange Regulation Ltd**

SIX Exchange Regulation, an independent and autonomous entity within SIX Group Ltd, regulates and monitors participants and issuers listed on SIX. In particular, it carries out tasks prescribed under Swiss legislation and under the rules and regulations issued by the SIX Regulatory Board and monitors compliance with these regulations. SIX Exchange Regulation is, subject to the relevant rules, permitted to prescribe sanctions or submit sanction proposals, as well as to inform the chairman of the board of directors of SIX Group Ltd, the supervisory authorities and, where appropriate, the competent public prosecuting authorities of suspected violations of the law or other wrongdoing by market participants.

The Listing and Enforcement department of SIX Exchange Regulation is responsible for the self-regulated listing and admission to trading of companies and securities. This department also monitors compliance with information obligations for listed companies (eg, ad hoc publicity and regular reporting, corporate reporting and management transactions). On the basis of public law, this department operates as a reviewing body (see below) and receives disclosures of shareholdings.

The Surveillance and Enforcement department of SIX Exchange Regulation monitors price movement and trading on SIX's exchanges.

#### **Reviewing body**

As a general matter, under FinSA, any person in Switzerland who makes a public offer for the acquisition of securities or any person who seeks the admission of securities to trading on a trading venue in Switzerland must first publish a

prospectus. Subject to certain exemptions, any such prospectus must be submitted to a reviewing body licensed by FINMA (see above) for approval prior to publication or admission to trading. The reviewing body is responsible for checking that a prospectus is complete, coherent and understandable. On 28 May 2020, the prospectus offices of SIX Exchange Regulation and BX Swiss announced the approval from FINMA to act as prospectus reviewing bodies under FinSA effective 1 June 2020.

*Law stated - 30 April 2022*

## **Authorisation for listing**

**Must issuers seek authorisation for a listing? What information must issuers provide to the listing authority and how is it assessed?**

Under the new prospectus regime introduced by FinSA and FinSO, the prospectus approval process and admission to trading on a Swiss trading venue in an IPO currently consists of two parallel processes:

- prospectus approval prior to publication pursuant to FinSA (ie, by a reviewing body, such as SIX Exchange Regulation or BX Swiss); and
- application for the admission to trading on the relevant trading venue (ie, by the exchange admission body, such as SIX Exchange Regulation).

Following the introduction of the new prospectus regime, the Swiss stock exchanges have also amended their listing rules so that these two processes can operate in parallel. Each is discussed in greater detail below.

## **Prospectus approval by a reviewing body**

The reviewing body follows the administrative procedures set out in Swiss administrative law (specifically, the Federal Act on Administrative Procedure of 20 December 1968 (the APA)). The APA provides for certain rights, including the right to inspect files, the right to be heard and judicial review. Appeals against decisions of a reviewing body may be lodged with the Federal Administrative Court (within the meaning of the APA).

## **Prospectus**

In principle and subject to exemptions and certain easements for selected issuers and financial instruments, under FinSA, any person in Switzerland who makes a public offer for the acquisition of securities or any person who seeks the admission of securities to trading on a trading venue in Switzerland must first publish a prospectus. Furthermore, any such prospectus must be submitted to a reviewing body for approval prior to publication (ex-ante review).

As stipulated by FinSA, the reviewing body will check that applicable prospectuses are complete, coherent and understandable. According to FinSO, the review for 'completeness' will be limited to formal compliance with the content guidelines annexed to FinSO (which are largely based on the well-established content requirements (ie, schemes) previously in place under the SIX Listing Rules). With regard to 'coherence', the prospectus offices of SIX Exchange Regulation and BX Swiss will consider whether:

- any risks mentioned in the summary are also included in the risk factors section;
- the information in the summary corresponds to the information in other sections of the prospectus;
- all amounts concerning the use of issue proceeds correspond with the amount of the expected proceeds from the offering; and



- the financial figures included in the prospectus match those in the financial statements appended to the prospectus.

In addition, the prospectus offices of SIX Exchange Regulation and BX Swiss will check prospectuses for their 'understandability', considering whether:

- the prospectus includes a clear and detailed table of contents;
- the prospectus is free from unnecessary repetitions;
- related information is grouped together;
- the prospectus uses a font size that is easy to read;
- the prospectus is structured in a way that enables investors to understand the contents;
- the components of the mathematical formulas are defined in the prospectus; and
- the language in the prospectus is not deliberately misleading.

In terms of time frames, according to FinSA, the applicable reviewing body shall review prospectuses as soon as they are received. New issuers are required to submit their prospectus for approval 20 calendar days (10 for all other issuers) prior to the publication of the prospectus or admission to trading (as applicable). To the extent that the reviewing body requires amendments or revisions to the prospectus, it will notify the offeror within the applicable timeframe indicating the reasons for the requests. Following receipt of the revised prospectus, the reviewing body shall decide within the same timeframes (ie, 20 calendar days for new issuers and 10 calendar days for all other issuers) whether the revised prospectus shall be approved. Importantly, if the reviewing body does not provide a response within the specified period, this will not mean that the prospectus is deemed approved. Following approval, prospectuses are valid for 12 months for public offers or admission to trading on a trading venue of securities of the same category and the same issuer (subject to any required supplements, see below).

Once approved by a reviewing body, the offeror of securities or the person requesting their admission to trading must file the prospectus with the reviewing body that approved it and publish the prospectus no later than the beginning of the public offer or admission of the securities to trading. In the context of IPOs, the approved prospectus will also need to be published at least six business days (ie, working days) before the end of the offering period; therefore implementing a new minimum statutory requirement for the duration of IPOs. FinSA sets forth a number of permissible publication mediums, including in an electronic format on the website of the issuer or trading venue involved, so long as a paper version is available free of charge upon request.

## Supplements

Generally, a duty to publish a prospectus supplement is triggered by any new facts or circumstances that arise between the time of approval of the prospectus and the completion of the public offer or opening of trading on a trading venue that could have a significant influence on the assessment of the securities. As with prospectuses, in principle, supplements will also need to be approved by the applicable reviewing body prior to publication as well as published in the same form as the approved prospectus. In addition, as a general matter, after the publication of a supplement investors must be given the opportunity to withdraw their subscriptions or acquisitions.

## Pricing supplements

Importantly, events contemplated by and disclosed in the prospectus or the final terms (eg, approvals under company law or by the authorities, the stipulation of the price or volume of the securities offered or possible alternatives to a

capital increase) do not trigger a duty to publish a supplement and, thus, do not require the approval of the applicable reviewing body prior to publication or affect an offering's timeline (as with prospectus supplements described in more below). Indeed, FinSA specifically states that if the final issue price and the issue volume cannot be stated in the prospectus, the prospectus must then indicate the maximum issue price and the criteria and conditions used to determine the issue volume. However, issuers need to file such information (ie, the pricing supplement) with the applicable reviewing body upon publication. In summary, relatively standard pricing supplements in IPOs, for example, do not need to be approved by a reviewing body prior to publication and, thus, do not affect an offering's timeline.

### **Prospectus supplements**

However, for facts and circumstances not contemplated by or disclosed in the prospectus that are capable of materially influencing average market participants investment decisions, a supplement to the prospectus must be immediately prepared and reported to the applicable reviewing body. Subject to exemptions, the approval of the prospectus supplement may be required and the reviewing body shall provide such approval within a maximum of seven calendar days. If any amendments or changes to the supplement are required, the period for such revisions shall be no more than three calendar days in the case of a public offer and no more than seven calendar days in the case of an admission to trading. Once approved, the supplement must be published immediately and in the same format that the prospectus was published.

To facilitate the timely publication of supplements relating to certain events, FinSA provides that the reviewing bodies shall maintain a list of facts that, by their nature, are not subject to approval by the reviewing body. According to the rules of the respective prospectus offices of SIX Exchange Regulation and BX Swiss in the context of IPOs the publication of supplements that provide notifications to the market relating to the occurrence of new facts that (according to the rules of the respective Swiss or foreign trading venue where application for listing is sought or as applicable) are made public and are possibly price-sensitive may be filed as a supplement not subject to review or approval by the prospectus office. In such scenarios, the supplement has to be published at the same time as the facts are reported to and filed with the applicable reviewing body.

However, the rules of the respective prospectus offices of SIX Exchange Regulation and BX Swiss have specifically excluded supplements relating to new facts that entail or result in changes to published annual, semi-annual or quarterly financial statements of the issuers concerned (despite such facts being also ad hoc relevant and possibly price sensitive). In such cases and in the case of all other supplements relating to new facts and circumstances that could have a significant influence on the assessment of the securities, the applicable reviewing body will then follow the review timelines stipulated above.

In each of the above-described scenarios (ie, other than upon publication of customary pricing supplements), following the publication of the prospectus supplement, the offer period cannot end sooner than two days after publication of the supplement or instead of extending the offer period, the issuer may, under the terms of the offer, grant investors the option to withdraw their subscriptions or acquisitions within two days of the final completion of the public offer.

### **Exemptions from the duty to publish a prospectus**

While arguably less relevant in the context of IPOs, FinSA includes express exemptions from the duty to publish a prospectus in the context of public offerings in Switzerland or admissions to trading. The prospectus exemptions to the duty to publish a prospectus in the context of public offerings include, among others, offerings limited to investors classified as professional clients as defined in the FinSA and offerings addressed to fewer than 500 investors.

Furthermore, there are certain other exemptions from the duty to publish a prospectus depending on the type of securities or the context in which such securities are being publicly offered and certain exemptions that apply in the context of the admission to trading on a trading venue in Switzerland. Importantly, FinSA provides that in

circumstances where a prospectus is not required, offerors or issuers must nevertheless treat investors equally when sharing essential information regarding the offering.

## Admission to trading on SIX

### General

The listing application must be submitted pursuant to article 43 of the SIX Listing Rules by a recognised representative in writing to the SIX Exchange Regulation. As a general rule, the listing application must be submitted no later than 20 trading days prior to the intended listing date for new issuers (10 trading days for all other issuers).

The listing application must contain a short description of the securities to be listed and a request regarding the planned first trading day, as well as a reference to the enclosures to the application that are required by the SIX Regulatory Board. In preparing the listing application, issuers must also indicate which regulatory standard they are applying to and demonstrate their satisfaction of the corresponding requirements (further details regarding the regulatory standards are outlined below). In addition, if certain listing requirements are not met, the listing application must contain a well-founded request for an exemption.

In summary, the following documentation must be submitted to SIX, together with the duly signed listing application:

- evidence that the issuer has a prospectus that has been approved by a reviewing body in accordance with FinSA or that is deemed to be approved in accordance with the FinSA;
- a copy of a current extract from the commercial register of the issuer;
- a copy of the valid articles of association of the issuer;
- if necessary, an original of the duly signed declaration by the issuer that any printed share certificates will comply with the SIX SIS AG (SIX SIS) printing regulations. In the case of book-entry securities, the issuer must submit an explanation of how the holders of such securities may obtain proof of their holding;
- evidence that the auditors of the issuer fulfil the requirements of auditors for public companies set out in articles 7 and 8 of the Federal Act on the Licensing and Oversight of Auditors (AOA);
- an original of the duly signed declaration by the lead manager of the issuer that the free float of relevant equity securities is sufficient;
- for the listing of equity securities in the regulatory standard Sparks pursuant to article 89 of the Listing Rules, a duly signed declaration by the lead manager of the issuer that the equity securities of the issuer have a capitalisation of 500 million francs or less at the time of listing;
- an official notice pursuant to articles 40a and 40b of the SIX Listing Rules;
- a duly signed declaration by the issuer in accordance with article 45 of the SIX Listing Rules stating that:
  - its responsible bodies are in agreement with the listing;
  - it has read and acknowledges the SIX Listing Rules together with any applicable Additional Rules and the corresponding implementing provisions, as well as the SIX rules of procedure and sanction regulations and recognises them expressly in the form of the declaration of consent. The issuer further recognises the board of arbitration determined by SIX and expressly agrees to be bound by any arbitration agreement. The issuer also recognises that its continued listing is conditional upon it agreeing to be bound by the version of the legal foundations that is in force at any given time; and
  - it will pay the listing fees.

To the extent possible, all documents should be submitted together with the listing application. However, if such documents are not yet in final form, draft versions may be submitted with the final versions to follow. The issuer's evidence that it has a prospectus approved by a reviewing body in accordance with FinSA must be submitted by

7.30am on the first trading day. The remaining annexes to the application must be submitted in their final forms no later than 4pm one exchange day prior to the first trading day (subject to certain exemptions, in particular in connection with offerings that involve book-building processes).

### Regulatory standards

In preparing the listing application on SIX, issuers must indicate which regulatory standard they are applying to and demonstrate their satisfaction of the corresponding requirements. The following regulatory standards are available for equity listings on SIX:

- International Reporting Standard. This is aimed at international investors. It has the most comprehensive transparency requirements and requires the application of international financial reporting standards (IFRS), US generally accepted accounting principles (US GAAP) or another internationally recognised accounting standard.
- Swiss Reporting Standard. This is aimed at domestic investors. Issuers may apply Swiss GAAP FER or the financial reporting standard under the Swiss Banking Act, with the other listing requirements remaining consistent with the International Reporting Standard.
- Standard for Investment Companies. This is for the listing of equity securities issued by investment companies (ie, companies whose sole purpose is to pursue collective investment schemes to generate income or capital gains, or both, without engaging in any actual entrepreneurial activity as such and that do not operate under a licence as a collective investment scheme under the Swiss Federal Act on Collective Investments).
- Standard for Real Estate Companies. This is for the listing of equity securities issued by a real estate company (ie, companies that continually generate at least two-thirds of their revenue from real estate-related activities).
- Standard for SPACs. Introduced in 2021, this standard is for special purpose acquisition vehicles (cash shell companies) created with the sole purpose of acquiring a non-listed operating company within a certain defined timeframe.
- Standard for the Sparks segment. A new regulatory standard for issuers with a market capitalisation of less than 500 million francs at the time of the listing, launched in 2021. The standard provides less burdensome listing requirements compared with those of the Main Market segment.
- Standard for Depository Receipts. This standard is reserved for global depository receipts (GDRs), defined by SIX as tradable certificates issued to represent deposited equity securities and which permit the (indirect) exercise of the membership and property rights attached to the deposited equity securities.
- Standard for Collective Investment. This standard is for units (or shares) in Swiss and foreign collective investment schemes that in accordance with the Federal Act of 23 June 2006 on Collective Investment Schemes (CISA) are subject to the supervision of FINMA or require a licence from FINMA to be sold in or from Switzerland.

The following table outlines the key listing requirements pursuant to the most commonly used SIX regulatory standards.

	International Reporting Standard	Swiss Reporting Standard	Standard for Investment Companies	Standard for Real Estate Companies
Financial track record	Three years	Three years	N/A	N/A
Minimum equity capital requirements (in million francs)	25	25	25	25
Minimum free float in percentage	20 per cent	20 per cent	20 per cent	20 per cent

Minimum free float market capitalisation (in million francs)	25	25	25	25
Financial reporting	IFRS/US GAAP	Swiss GAAP FER/ Standard according to Banking Act	IFRS/US GAAP	Swiss GAAP FER/ IFRS

### Minimum equity capital requirements

Pursuant to the regulatory standards, an issuer's consolidated equity capital, as reported on its consolidated balance sheet as at the first day of trading, must amount to at least 2.5 million francs for all the standards listed above. Collective investment schemes must hold assets of at least 100 million francs, but exchange-traded funds differ from classic investment funds in this respect and no minimum capitalisation requirements apply to them (although there is a requirement that one or two market makers commit to posting firm bids and asks, the spread between which does not exceed a predefined percentage of indicated net asset value).

### Financial track record

Pursuant to the regulatory standards, an issuer must:

- have existed as a company for at least three years; and
- have produced audited annual financial statements for the three full financial years preceding the listing application.

The three-year rule does not apply to companies that are listed under the Standard for Investment Companies, the Standard for Real Estate Companies or the Standard for SPACs. For issuers in the Sparks segment, the corresponding track record requirement is two years. However, companies with a shorter financial history than required may benefit from exemptions granted by the SIX Regulatory Board (if necessary) where it appears in the interest of the issuer or of the investors, namely in cases where the listed entity:

- is the result of a corporate reorganisation such as a merger, spin-off or other transaction in which a pre-existing company or portions thereof are continuing as commercial entities; or
- has not yet been able to present financial statements for the prescribed period of time, but nonetheless wishes to access the capital markets in order to finance its strategy for growth ('young companies'); and
- in each case, the SIX Regulatory Board has a guarantee that investors are adequately informed and possess the information required to make a well-founded assessment of the issuer and the securities to be admitted.

Where exemptions are granted, issuers must either comply with, among other conditions, stricter transparency requirements, such as quarterly reporting until annual accounts for three complete financial years are available (in connection with young companies) or provide additional financial information, such as pro forma financials (in the case of listed entities resulting from a corporate reorganisation).

For further details, see the SIX Directive on Exemptions regarding Duration of Existence of the Issuer and the SIX Directive on the Presentation of a Complex Financial History in the Listing Prospectus.

### Minimum free float

At least 20 per cent of all of the issuer's outstanding securities of the same category must be publicly owned with capitalisation of at least 25 million francs, except for issuers in the Sparks segment, for which the requirement is 15 per cent and 15 million francs, respectively. The definition of free float for purposes of the SIX Listing Rules is set out in the Directive on the Distribution of Equity Securities.

### Special listing requirements for foreign issuers

Foreign issuers of equity securities are subject to certain additional listing requirements as set out in the SIX Directive on the Listing of Foreign Companies. Generally, these additional requirements are not very onerous and in practice they do not pose particular issues.

### Special requirements for SPACs

SPAC issuers are subject to certain additional listing requirements, including the following:

- SPACs must be companies limited by shares according to Swiss Law whose only purpose is the acquisition of, or merger with, one or more operational companies.
- The capital raised at the IPO must be placed in an escrow deposit account at a bank.
- A business combination must be completed within three years.
- Additional quantitative and qualitative disclosure in the prospectus, including information regarding the dilutive effect of the de-SPAC and the warrants, conflicts of interests of the sponsors and founders, directors and management, and costs to be borne by shareholders in the event the shares are redeemed.
- Requirements with respect to the de-SPAC process, including a mandatory redemption right for shareholders, the publication of an information document regarding the transaction (which is to include a fairness opinion), and a six-month lock-up of shares held by the company's founders, sponsors, members of the board of directors and management following the de-SPAC.

For further details, see Listing Rules, articles 89h–q and the SIX Directive on the Listing of SPACs.

*Law stated - 30 April 2022*

## Prospectus

### What information must be made available to prospective investors and how must it be presented?

In accordance with FinSA and FinSO, prospectuses shall contain the essential information for the investor's decision on the issuer and the shares being offered. While FinSA outlines the high-level categories of information to be included in prospectuses, FinSO sets out in a series of annexes detailed information requirements depending on the type of security being offered. These annexes largely track the previous information requirements under the SIX Listing Rules. Annex 1 to the FinSO sets out the minimum content requirements for equity prospectuses and generally requires, inter alia, the following information:

- separate detailed and clearly understandable summary of the issuer, the offering and any other essential information in a tabular format;

- the name of the reviewing body and the date of approval must prominently appear on the cover of the prospectus and in the summary;
- description of the main risks with regard to the issuer and its industry;
- information on the board of directors, management, auditors and other governing bodies of the issuer;
- description of the issuer's business activities and prospects insofar as they are of material importance in assessing the business activities and earning power of the issuer (ie, business outlook) as well as information on material court, arbitration and administrative proceedings;
- description of past investments, current investments and investments already approved as well as a capitalisation table;
- description of capital and voting rights of the issuer's securities as well as an overview of significant shareholders in accordance with articles 120 and 121 FMIA;
- overview of the issuer's information policy;
- the issuer's last two published financial reports containing the annual financial statements for the last three full financial years, drawn up in accordance with a recognised financial reporting standard as published by the applicable reviewing body and audited by the auditors (subject to exemptions and additional conditions in the event of significant structural changes (ie, the inclusion of carve-out, combined and/or pro forma financial statements));
- information on dividends and financial results;
- estimated net proceeds of the offering;
- information in the securities being offered (ie, issue price and volume; risks; legal foundation; rights; restrictions; publication; securities number, ISIN and trading currency; and information on the offer, including net proceeds); and
- responsibility for the prospectus.

The information can be in one of the official languages of Switzerland (ie, German, French or Italian) or in English. As noted above, and unlike under the previous prospectus regime, under FinSA and FinSO, prospectuses must contain a clearly understandable summary of the essential information that facilitates a comparison with similar securities. In addition, prospectuses may contain references to previously or simultaneously published documents in all sections apart from the summary.

If the final issue price and the issue volume cannot be stated in the prospectus, the prospectus must indicate the maximum issue price and the criteria and conditions used to determine the issue volume. Once available, the information on the final issue price and on the issue volume shall be filed with the applicable reviewing body and published.

The reviewing body is permitted to grant exemptions and provide that information need not be included in the prospectus where, for example, disclosure would be seriously detrimental to the issuer and omission would not mislead investors with regard to facts and circumstances that are essential to an informed investment decision. In any case, the reviewing body needs to ensure that the interests of investors remain protected.

The prospectus may consist of a standalone document or several individual documents. If it consists of two or more individual documents, it may be broken down into a registration document with information about the issuer; a securities note with information on the securities to be offered publicly admitted to trading on a trading venue; and the summary.

*Law stated - 30 April 2022*

## Publicity and marketing

### What restrictions on publicity and marketing apply during the IPO process?

FinSA (together with FinSO) generally provides that any advertising for financial instruments (ie, aimed at investors and serves to draw attention to specific financial instruments) must be clearly indicated as such, for example with an appropriate disclaimer. Any such advertising must also mention the prospectus for the financial instrument in question as well as where the prospectus can be obtained (ie, the contact details for the issuer, offeror or the underwriters). Furthermore, as a basic principle, any advertising and other information on such financial instruments must correspond to the details given in the prospectus.

In connection with any advertising, it is also important to bear in mind that under article 69 FinSA (Liability), whoever makes statements in prospectuses or similar communications (eg, press releases, press conferences or other marketing materials) that are inaccurate, misleading or in violation of statutory requirements, without having acted with the required care, is liable to the acquirer of a financial instrument for the damage thereby caused. Thus, the term 'similar communications' extends the application of FinSA beyond the offering prospectus and potentially attaches liability to any misleading publicity relating to a securities offering (regardless of the form of media).

In short, if the above conditions and considerations are observed and adhered to and subject to any restrictions under foreign securities laws depending on the structure of the offering, an issuer of equity securities in Switzerland may generally engage in any type of public relations or marketing activities, including promotion of its products and services and advertising a forthcoming equity offering.

*Law stated - 30 April 2022*

## Enforcement

### What sanctions can public enforcers impose for breach of IPO rules? On whom?

FinSA introduces criminal liability in the event of intentional violation of the prospectus rules and regulations thereunder, including where that person provides false information or withholds material facts in the prospectus or fails to publish a prospectus where required under FinSA. For instance, a fine not exceeding 500,000 francs shall be imposed on any person who wilfully fails to publish a prospectus pursuant to article 3 of FinSA by the beginning of the public offer at the latest. Notably, entities that are subject to FINMA's supervision are exempted from these provisions (whereas other applicable (and analogous) provisions would rather apply).

In the case of a breach of the SIX Listing Rules, or of any additional rules or regulations issued by SIX, the SIX Exchange Regulation and SIX Sanctions Commission can impose one or more of the following sanctions on issuers, guarantors or recognised representatives (as applicable):

- warning;
- reprimand;
- a fine of up to 1 million francs (in cases of negligence) or 10 million francs (in cases of wrongful intent);
- suspension of trading or registration;
- issue of a new registration decision under stipulations or conditions;
- delisting or reallocation to a different regulatory listing standard;
- exclusion from further listings; and
- withdrawal of recognition or registration.



The SIX Exchange Regulation is also, subject to the relevant rules, permitted to inform the chairman of the board of directors of SIX Group Ltd, the supervisory authorities and, where appropriate, the competent public prosecuting authorities of suspected violations of the law or other wrongdoing by market participants.

*Law stated - 30 April 2022*

## TIMETABLE AND COSTS

### Timetable

Describe the timetable of a typical IPO and stock exchange listing in your jurisdiction.

In general, the timetable of an equity offering depends on both the type and the size of the offering. In addition, certain offerings may require a greater amount of preparation on the part of the issuer, particularly with respect to corporate governance and corporate structure, as well as accounting and reporting requirements. In addition, when considering the timetable of IPOs in Switzerland, the timeline requirements of the prospectus approval process under new Financial Services Act (FinSA) and application process to the trading venue must be considered.

In relation to the prospectus approval process, according to FinSA, the applicable reviewing body shall review prospectuses as soon as they are received. First-time issuers are required to submit their prospectus for approval 20 calendar days (10 for all other issuers) prior to the publication or admission to trading. To the extent that the reviewing body requires amendments to the prospectus, it will notify the issuer within these timeframes indicating the reasons for the revisions. Following receipt of the revised prospectus, the reviewing body shall decide within the same timeframes (ie, within an additional 20 calendar days or 10 calendar days for all other issuers) whether the revised prospectus shall be approved. For IPOs, once approved by the reviewing body, the approved prospectus will also need to be published at least six business days before the end of the offering period. In the event that the duty to publish a prospectus supplement arises (other than, for example, customary pricing supplements), the approval of the supplement by the applicable reviewing body shall be provided within a maximum of seven calendar days (if required). If any amendments or changes to the supplement are required, the period for such revisions shall be no more than three calendar days in the case of a public offer and no more than seven calendar days in the case of an admission to trading. Following the publication of the prospectus supplement (other than, for example, customary pricing supplements), the offer period cannot end sooner than two days after publication of the supplement or instead of extending the offer period, the issuer may, under the terms of the offer, grant investors the option to withdraw their subscriptions or acquisitions within two days after the final completion of the public offer.

In parallel to the prospectus approval process, the listing application to SIX Exchange Regulation, for example, will need to be submitted at least 20 trading days for new issuers (10 for all other issuers) prior to the start of the book-building period.

In principle, though, IPOs in Switzerland generally take between four and six months, and an indicative IPO can generally be organised into the following five phases.

### IPO planning and preparation phase

During the IPO planning and preparation phase, there are likely to be many workstreams operating in parallel and which may overlap. During this phase, these workstreams generally address the following tasks:

- discussion and development of the issuer's strategy, business plan, equity story (ie, investment case) and offering structure;
- establishing a timetable and holding kick-off meetings;
- selection of the responsible team both internally at the issuer and externally, including the bookrunners and any

other managers (ie, the banking syndicate) and legal and financial advisers;

- making any necessary changes in respect of the company's corporate structure to meet legal or operational requirements (the length of this phase depends on, among other factors, any required restructurings);
- consideration of matters concerning capital, financial and accounting or tax structures; and
- beginning due diligence exercises (which includes business, financial and legal due diligence and will continue throughout the offering process).

### **Drafting phase**

During the drafting phase, the issuer along with its advisers will:

- draft the prospectus and other key legal documents;
- develop marketing and presentation materials, such as early look, analyst and pilot-fishing presentations (notably, in the event that an issuer has publicly listed debt securities on an EU securities exchange, the requirements under the European Market Abuse Regulation (MAR) need to be taken into account);
- engage with the issuer's auditors regarding presentation of financial information in the prospectus and delivery of comfort letters; and
- attend courtesy meetings at SIX Swiss Exchange Ltd (SIX) to discuss the contemplated offering structure and content of the prospectus.

### **Negotiating and investor education phase**

During the negotiating and investor education phase, the IPO workstreams generally address the following tasks:

- shareholders' resolutions in respect of the offering and capital increase (if applicable);
- negotiation of underwriting agreement and any sub-underwriting agreements (if applicable);
- delivery of the analyst presentation and review of research reports;
- submission of the draft prospectus to the reviewing body;
- submission of the SIX listing application and available annexes;
- draft of roadshow presentation and other materials for analysts, press and investors;
- responding to any comments or requests for additional information from the reviewing body and/or SIX Exchange Regulation/Disclosure Office (as applicable);
- inclusion of interim financial statements into offering documents and update analysts (if applicable); and
- issuance of a press release regarding the issuer's intention to float, followed by the publication of analysts' research reports.

### **Pre-trading and marketing phase**

During the period from approximately two weeks prior to the first day of trading, the IPO workstreams generally address the following tasks:

- approval of the prospectus and underwriting agreement by the board of directors of the issuer;
- final price discussions with the board of directors of the issuer and setting of price range;
- approval of the prospectus from the reviewing body and SIX Exchange Regulation for the listing of the equity securities;
- execution of the underwriting agreement; and
- beginning the offer period, publication of the prospectus, start of the price-fixing process (eg, book-building)

process) and beginning roadshow presentations.

During the period from approximately one to two trading days prior to the first day of trading, the IPO workstreams generally address the following tasks:

- subscription and payment of the nominal value of the equity securities to be offered (if applicable);
- registration of capital increase in the commercial register of the issuer (if applicable);
- establishment of the final offer size and price and execution of the pricing agreement to the underwriting agreement and pricing supplement to the prospectus (if applicable), along with any required filings with the reviewing body and SIX Exchange Regulation (as applicable); and
- allocation of shares to investors.

### First day of trading and aftermarket phase

Following the first day of trading, the IPO workstreams generally address the following tasks:

- stabilisation of the shares along with the disclosure of stabilisation measures (within five trading days);
- settlement and payment of net proceeds (usually within two trading days of the first trading day); and
- exercise of the over-allotment option (within 30 calendar days after first trading day) and disclosure of exercise of over-allotment option (within five trading days after exercise).

*Law stated - 30 April 2022*

## Costs

### What are the usual costs and fees for conducting an IPO?

The costs and fees associated with IPOs in Switzerland can vary greatly depending on the size and nature of the offering. The typical costs and fees associated with a Swiss issuer conducting an IPO exclusively on SIX can generally be allocated as follows:

- reviewing body fees (including deposit of the prospectus): 5,400–15,000 francs (depending on the type of prospectus and any additional review requirements or preliminary ruling or enquiry requests, which may be charged at an hourly rate of between 100–500 francs);
- SIX listing fees: depending on size and other factors, between 20,000 and 100,000 francs;
- underwriters' fees: depending on size, type of issuer and other factors, typically between 2 and 5 per cent of the gross proceeds of the sale of the shares (reflecting various possible fee appropriations, including base fee, selling fee, management fee and incentive fees);
- issuer's counsel fees: depending on type of offering (eg, regulation S as opposed to rule 144A) and other factors, typically between 600,000 and 1.5 million francs;
- underwriters' counsel fees: depending on type of offering (eg, regulation S as opposed to rule 144A) and other factors, typically between 300,000 and 650,000 francs;
- financial printer fees: typically, between 20,000 and 40,000 francs;
- Swiss federal stamp duty (if shares are newly issued): 1 per cent on the issue price of the new shares placed in the offering; and
- Swiss federal securities transfer taxes (if shares are already in existence): up to 0.15 or 0.3 per cent of the offer price for the existing shares sold in the offering.

In addition to the above, miscellaneous fees and expenses, such as auditor fees, roadshow fees or the fees of the commercial registry and the notary public (in the event that the IPO involves a capital increase or other changes to the articles of association of the issuer), must also be taken into consideration.

*Law stated - 30 April 2022*

## **CORPORATE GOVERNANCE**

### **Typical requirements**

What corporate governance requirements are typical or required of issuers conducting an IPO and obtaining a stock exchange listing in your jurisdiction?

Prior to becoming a public company, there are no specific corporate governance requirements that issuers have to satisfy ahead of their shares being admitted to trading. Nevertheless, during the IPO planning process, issuers typically evaluate the structure of their board and corporate governance strategy and consult authoritative industry standards for best practices that can and should be adopted prior to becoming a publicly listed company. The four main sources of rules on corporate governance that issuers should bear in mind ahead of conducting an IPO in Switzerland are as follows.

### **Swiss Code of Obligations**

The Swiss Code of Obligations requires, inter alia, that listed companies appoint recognised auditors and disclose significant shareholders in their annual report.

On 19 June 2020, the Swiss Parliament approved legislation that will modernise certain aspects of Swiss corporate law. Most relevantly for IPOs, the legislative reform addresses, among other topics, corporate governance and executive compensation matters. Certain aspects of the revised CO partially entered into force in 2021, with the relevant OAEC statutes (see below) entering into force on 1 January 2023 (with certain transitional periods as provided for therein).

### **Swiss Ordinance against Excessive Compensation in Listed Companies (OAEC)**

The popular referendum on 'say on pay' in Switzerland, known as the Minder Initiative, resulted in an amendment to the Swiss constitution and implemented rules currently codified in the OAEC that apply from the first day Swiss issuers are listed on an exchange in Switzerland or abroad. Among other requirements, shareholders need to separately approve the annual fixed and variable aggregate compensation of the board of directors and the executive management at the annual general meeting. In addition, directors, including the chairman, must be elected annually and the board of directors must prepare a separate compensation report. An issuer's articles of association must also include provisions for members of the board of directors and executive management regarding, among others, loans, retirement benefits, incentive and participations plans and the number of additional board and senior management positions such individuals are permitted to participate in outside of the issuer and related companies. Furthermore, certain categories of compensation are prohibited, including severance payments; thus, employment contracts of an issuer must be reviewed and brought in line with current Swiss law prior to becoming a public company. Notably, these provisions apply only to Swiss companies listed on an exchange in Switzerland or abroad. Foreign issuers with a registered address outside of Switzerland would not need to comply with these requirements.

The OAEC came into effect on 1 January 2014 and will be transposed into the Swiss Code of Obligations as of 1

January 2023.

## **SIX Swiss Exchange Directive on Information relating to Corporate Governance**

The SIX Regulatory Board has issued the Directive on Information relating to Corporate Governance (DCG), which outlines certain corporate governance information issuers are required to publish annually so that investors are able to evaluate the characteristics of securities and the quality of issuers, including details on the issuer's management and control mechanisms. The categories of information that issuers are required to publish include descriptions on the group structure and shareholders, capital structure, board of directors, executive committee, compensation, shareholdings and loans, shareholders' participation rights, change of control and defence measures, the issuer's auditors and information policy and, as from 1 July 2021, information on general quiet periods (ie, blackout periods). Notably, this directive applies to all issuers whose equity securities have their primary or main listing on SIX once their shares have been admitted to trading. The DCG follows a 'comply or explain' approach, permitting an issuer to deviate from the disclosure obligations set out therein to the extent that the annual report contains substantiated justifications for such deviation or non-disclosure.

## **Swiss Code of Best Practice for Corporate Governance**

This publication is a best practice industry standard in Switzerland that contains recommendations for the independence of board members and for the organisation of the board of directors, including the formation of committees and the recommended composition of such committees, as well as the compensation of the board of directors

*Law stated - 30 April 2022*

### **New issuers**

Are there special allowances for certain types of new issuers?

Under FinSA and the Financial Services Ordinance (FinSO), there are no specific limitations or requirements in relation to newly incorporated issuers. Rather, according to the FinSO Annex 1 (which stipulates the content requirements for equity prospectuses), specific derogations are provided for newly incorporated issuers. For example, while the last two published financial reports containing the annual financial statements for the last three full financial years, drawn up in accordance with a recognised financial reporting standard and audited by the auditors must be included in the prospectus, for companies that have existed commercially for a shorter length of time, the corresponding reduction in the period that the annual financial statements must cover is permitted to be included instead. For newly founded companies an audited opening balance sheet or audited balance sheet after any contribution in kind has been made needs to be included, subject to certain exceptions.

Upon application to the SIX Regulatory Board, issuers that do not satisfy the applicable minimum track record requirement (in most cases three years) can apply for an exemption from this requirement pursuant to the SIX Directive on Exemptions regarding Duration of Existence of the Issuer.

*Law stated - 30 April 2022*

### **Anti-takeover devices**

What types of anti-takeover devices are typically implemented by IPO issuers in your jurisdiction? Are there generally applicable rules relevant to takeovers that are relevant?

### **Anti-takeover measures**

Issuers in Switzerland can include certain anti-takeover measures in their articles of association. These measures may include:

- share transfer restrictions;
- limitations on the voting rights per shareholder;
- qualified quorum for the cancellation of certain provisions of the articles of association, such as share transfer restrictions;
- shares with enhanced voting rights;
- provisions requiring a certain percentage of voting rights represented in the shareholders' meeting in order to pass resolutions; and
- authorised or conditional share capital with exclusion of pre-emptive rights that the board of directors may use in the event of a tender offer.

Notably, as in the EU, Swiss law restricts the board of directors' ability to take defensive measures once a public tender offer has been announced.

### **Mandatory tender offers**

Pursuant to article 135 of the FMIA, anyone acquiring shares of a Swiss listed company, whether directly or indirectly or acting in concert with third parties, which, when added to the shares already held by such person, exceed 33.33 per cent of the voting rights (whether exercisable or not) of such company, must submit a public tender offer for all listed equity securities of the company. Mandatory tender offers may not be subject to conditions except for important reasons, such as where official authorisation is required for an acquisition, or the equity securities in question do not include any voting entitlement, or the provider wants the specific nature of the target company's economic substance to remain unchanged.

The articles of association of companies may, however, provide for a higher threshold of up to 49 per cent (opting-up) or may declare the mandatory tender offer obligations to be inapplicable at all (opting-out). Such provisions are often put in place where there are large shareholders who may risk accidentally triggering the threshold if their shareholdings change or if they, perhaps along with other family member shareholders, are viewed as a group acting in concert.

If an opting-up or opting-out clause is included following the listing of the company, strict transparency and majority requirements in the shareholders' meeting must be observed; thus, many issuers contemplating an IPO consider whether such opting-up or opting-out provisions are important aspects of their corporate strategy.

*Law stated - 30 April 2022*

## **FOREIGN ISSUERS**

### **Special requirements**

What are the main considerations for foreign issuers looking to list in your jurisdiction? Are there special requirements for foreign issuer IPOs?

## Regulatory overview

As a basic principle, the same rules apply to the public offering and listing of securities by domestic and foreign issuers in Switzerland. In addition, even though Switzerland is not part of the EU and cannot benefit from EU passporting rules, pursuant to the Financial Services Act (FinSA) and Financial Services Ordinance (FinSO), certain prospectuses produced under foreign legislation may be approved by a reviewing body in Switzerland if they are drafted in accordance with international standards established by international organisations of securities regulators and the disclosure obligations are equivalent to the requirements under FinSA (in essence the information in the prospectus must comply in substance with the content of the applicable annexes pursuant to FinSO).

The reviewing body is also permitted to provide that prospectuses approved in certain jurisdictions are considered automatically approved in Switzerland. In such cases, the reviewing body shall publish a list of countries whose prospectus approval is automatically recognised in Switzerland. The reviewing body may also stipulate by which authority the approval needs to be issued. Notably, the prospectuses (and any accompanying supplement to such prospectuses) need to be in an official language of Switzerland or English. As of 1 June 2020, the respective lists of the prospectus offices of SIX Exchange Regulation and BX Swiss include most major European countries, the United States and Australia. Nevertheless, no later than the beginning of the public offer or admission of the securities in question to trading, the prospectus must be registered and filed with a reviewing body, published and made available on request free of charge in paper form.

It is also worth noting that, subject to certain conditions, Swiss law allows Swiss companies to prepare their accounts and to report in a foreign currency. Hence, if an EU or US-domiciled company decides to list in Switzerland it can either list the shares of the foreign entity on SIX Swiss Exchange (SIX) or re-domicile to Switzerland by setting up a new Swiss holding company and list the shares of the new holding company on SIX. In either scenario, the issuer can continue to report in euros or US dollars. In addition, depending on the regulatory standard applied for, financials can be prepared in accordance with either IFRS, US GAAP or Swiss GAAP FER and securities can be traded in Swiss francs, euros and US dollars.

In summary, while foreign issuers of equity securities are subject to certain additional listing requirements as set out in the SIX Directive on the Listing of Foreign Companies (and described in greater detail below), generally these additional requirements are not onerous and, in practice, they do not pose particular issues or result in delays.

## Primary listing requirements on SIX

If a foreign issuer does not have its equity securities listed on another exchange recognised by the SIX Regulatory Board, it may only submit an application for a primary listing. For a primary listing, the foreign issuer must demonstrate that it has not been refused listing in its home country pursuant to investor protection legislations. This requirement is usually satisfied by an opinion delivered from an independent law firm or a relevant extract from the rejection decision issued by the competent authority in the issuer's home country in connection with the registration process in question that clearly indicates that the company was not refused listing because it failed to comply with investor protection regulations.

In addition to the issuer declarations required under article 45 of the SIX Listing Rules, the foreign issuer must recognise the Swiss courts as having jurisdiction over claims arising out of or in connection with the listing on SIX. The SIX Regulatory Board further reserves the right to modify the listing procedure as appropriate if, under the foreign issuer's home country's company law, the time at which the equity securities are legally created is not the same as that

under Swiss law (ie, by entry in the commercial register).

## Secondary listing requirements on SIX

A foreign issuer whose equity securities are listed on another exchange recognised by the SIX Regulatory Board may, however, choose between a primary and a secondary listing on SIX. The same applies if a company is planning on listing simultaneously on another primary exchange and on SIX (a 'dual listing'). In principle, exchanges that are members of the Federation of European Securities Exchange and the World Federation of Exchanges are recognised by the SIX Regulatory Board as having equivalent listing provisions.

In connection with secondary listings, the applicable issuer requirements are deemed fulfilled if its equity securities are listed in its home country or in a third country on an exchange recognised by the SIX Regulatory Board. When submitting the listing application, the applicant must, among other things, declare that the equity securities have an adequate free float (ie, capitalisation of the shares circulating in Switzerland is at least 10 million francs or if the applicant can otherwise demonstrate that there is a genuine market for the equity securities concerned).

*Law stated - 30 April 2022*

## Selling foreign issues to domestic investors

Where a foreign issuer is conducting an IPO outside your jurisdiction but not conducting a public offering within your jurisdiction, are there exemptions available to permit sales to investors within your jurisdiction?

If the offering of equity securities does not qualify as a public offering in the sense of FinSA and no admission to trading of equity securities on a Swiss trading venue is sought (ie, a non-public offering of equity securities in or into Switzerland that are not admitted to trading on any Swiss trading venue), no prospectus duty under FinSA arises. The process for carrying out a private placement is, therefore, not regulated in the same way as public offerings. The drafting of the offering documentation (if any) for private placements is determined by Swiss market standard in a manner designed to minimise potential civil liability issues.

In addition, FinSA includes certain exemptions from the duty to publish a prospectus, inter alia, depending on the type of offer, type of securities as well as certain exemptions that apply in the context of the admission to trading on a trading venue in Switzerland.

*Law stated - 30 April 2022*

## TAX

### Tax issues

Are there any unique tax issues that are relevant to IPOs in your jurisdiction?

The issuance of new shares by, and capital contributions to, a company resident in Switzerland are subject to a one-off capital duty of 1 per cent, with issuances of up to 1 million francs being exempt. Exemptions also apply for certain restructurings.

The transfer of Swiss equity securities is subject to securities transfer tax at a rate of 0.15 per cent, whereas the transfer of foreign equity securities is taxed at a rate of 0.3 per cent, in each case if at least one of the parties or intermediaries involved qualifies as a Swiss securities dealer (as defined in the Swiss Federal Stamp Duty Act). Certain types of transactions or parties are exempt; for example, group restructurings and Swiss and foreign funds.



**INVESTOR CLAIMS****Fora**

In which fora can IPO investors seek redress? Is non-judicial resolution of complaints a possibility?

IPO investors can seek redress for their claims via the Swiss judicial system with prospectus liability being their main cause of action.

Law stated - 30 April 2022

**Class actions**

Are class actions possible in IPO-related claims?

IPO-related class action claims are not provided for under the current laws of Switzerland.

Law stated - 30 April 2022

**Claims, defendants and remedies**

What are the causes of action? Whom can investors sue? And what remedies may investors seek?

Under article 69 of the Financial Services Act (FinSA), whoever makes statements in prospectuses or similar communications that are inaccurate, misleading or in violation of statutory requirements, without having acted with the required care, is liable to the acquirer of a financial instrument for the damage thereby caused. Separately, for information contained in the summary of a prospectus, liability is limited to matters where such information is misleading, incorrect or inconsistent when read together with the other parts of the prospectus. For incorrect or misleading information about the main prospects (ie, forward-looking statements) regarding the issuer, liability is limited to cases where such information was provided against better knowledge or without an appropriate disclaimer about the uncertainty regarding future developments. It should also be noted that the Financial Services Ordinance (FinSO) requires prospectuses to include information about the companies or persons that are assuming responsibility for the content of the prospectus as well as a declaration by these companies or persons that the information is correct to the best of their knowledge and that no material facts or circumstances have been omitted.

In order to establish a prospectus liability claim under article 69 FinSA, the following conditions must be met (each of which to be proven by the claimant):

- the prospectus was inaccurate, misleading or otherwise in violation of statutory requirements;
- the defendant was intentionally or negligently responsible for such statements;
- the claimant suffered damages; and
- the damages were proximately caused by such inaccurate, misleading or legally non-compliant information.

Thus, prospectus liability claims in relation to prospectuses or similar communications (eg, press releases and roadshows materials) may be brought in Switzerland against whoever has been involved in producing the prospectus or similar communications. While this potentially casts a rather large net, the legislative history around the new article 69 FinSA suggests that that it was the legislator's intention to limit prospectus liability to the entity making the offering

and assuming responsibility for the prospectus or similar communication (ie, the issuer or, if applicable, the shareholder offering the offered shares). In addition, generally under Swiss law the hurdles for a successful prospectus liability claim are very high.

The FinSA also introduces criminal liability in the event of intentional violation of the Swiss prospectus rules and regulations, including where any person willfully provides false information or withholds material facts in the prospectus or fails to publish a prospectus where required under FinSA by the beginning of the public offer at the latest.

In connection with a prospectus liability claim, potential defendants (ie, lawyers, banks and other advisors) can often mitigate and defend themselves against claims of wilful or negligent conduct by evoking a 'due diligence defence'. Switzerland does not have official due diligence guidelines and, thus, the essence of this defence will be based on standard market practice and the adherence to these established due diligence undertakings, which demonstrate that they acted with due care and diligence in the preparation of the prospectus or similar communications. Recognised due diligence undertakings include, inter alia, comprehensive documentary due diligence, meetings with management, review of the issuer's business plan, review of financial statements and meetings with the issuer's accounting personnel and auditors, interviews with third parties (such as customers and suppliers), site visits, directors' and officers' questionnaires, negotiation of representations and warranties in the underwriting agreement, legal opinions and disclosure letters from legal counsel, comfort letters from auditors, officers' certificates and bring-down diligence calls.

In addition to initiating a prospectus liability claims under FinSA, a plaintiff may also try to invoke general remedies under Swiss contract or tort law. Furthermore, a person liable for a false or misleading prospectus may also become subject to criminal prosecution under the Swiss Criminal Code (eg, in the case of fraud (article 146) or forgery of documents (article 251)).

*Law stated - 30 April 2022*

## UPDATE AND TRENDS

### Key developments

Are there any other current developments or emerging trends that should be noted?

### New prospectus regime

Switzerland's financial market regulatory framework has undergone fundamental and comprehensive reforms over the past few years. The most important parts of the reform package in terms of Swiss capital markets (mainly through the introduction of a new prospectus regime) are set out in the new Financial Services Act (FinSA) and its implementing ordinance, the Financial Services Ordinance (FinSO), both of which entered into force on 1 January 2020 (subject to the phase-in of certain provisions as well as transition periods, some of which has already passed). Notably, according to FinSO, the duty to publish an approved prospectus took effect as of 1 December 2020.

Market participants have transitioned seamlessly to this new framework and we believe that the regime will positively impact Swiss IPOs in the long run.

### Equivalency of Swiss stock exchanges

On 30 June 2019, the recognition by the European Commission of Swiss stock exchanges under MiFIR article 23 expired. In essence, without such equivalence, EU investment firms (subject to limited exemptions) are no longer permitted to trade applicable equity securities of Swiss companies on Swiss stock exchanges and trading venues. However, the Swiss government has implemented certain protective measures intended to remove potential legal barriers under MiFIR article 23 for EU investment firms to trading Swiss equity securities on Swiss stock exchanges

and trading venues (where liquidity for Swiss equity securities is typically greatest). In practice, the expiry of the recognition of Swiss stock exchanges under MiFIR has therefore not had any noticeably adverse impact on Swiss IPOs.

## **New prospectus regime**

Switzerland's financial market regulatory framework has undergone fundamental and comprehensive reforms over the past few years. The most important parts of the reform package in terms of Swiss capital markets (mainly through the introduction of a new prospectus regime) are set out in the new Financial Services Act (FinSA) and its implementing ordinance, the Financial Services Ordinance (FinSO), both of which entered into force on 1 January 2020 (subject to the phase-in of certain provisions as well as transition periods). Notably, according to FinSO, the duty to publish an approved prospectus took effect as of 1 December 2020. Market participants have transitioned seamlessly to this new framework and we believe that the regime will positively impact Swiss IPOs in the long run.

## **New 'Sparks' equity segments for SMEs**

In October 2021, the SIX Swiss Exchange (SIX) launched Sparks, a new equity segment dedicated to small and medium-sized enterprises (SMEs) with a market capitalisation of less than 500 million francs. Sparks is intended to allow SMEs to benefit from the advantages of a stock exchange listing, including greater public visibility and more efficient capital-raising, while offering best execution to investors. To this end, the segment provides simplified listing requirements compared to the Main Market, including a shorter track period requirement of two years, lower equity capital and free float requirements, and a shorter daily trading window to optimise price formation and trade execution. However, issuers on the Sparks segment are subject to the same post-listing obligations and regulatory oversight as companies listed on the Main Market, as well as the requirement to publish a prospectus in connection with the listing.

Whether Sparks will flourish as a listing venue will depend, among other factors, on its reception by the investor community and on how issuers weigh the advantages of a listing against the burden of post-listing obligations and the costs associated with the transaction and maintaining the listing. As of 30 April 2022, one issuer, Xlife Sciences AG, has completed a listing on Sparks.

## **SPAC IPOs**

Since 2021, global markets have seen a re-emergence of IPOs of special purpose acquisition companies (SPACs). SIX Exchange Regulation responded to this global trend with the issuance of a comprehensive regulatory framework governing SPACs in December 2021, clearing the way for the first SPAC to list on SIX a few days later.

Among other requirements, the new 'Standard for SPACs' provides for additional quantitative and qualitative disclosure in the IPO prospectus, including with respect to potential conflicts of interest of founders, sponsors, the board of directors and management, the dilutive impact of the de-SPAC transaction and the costs to be borne by public shareholders if the shares are redeemed. Shareholders must be granted a redemption right (which may be limited to those voting against the transaction), and at the time of the de-SPAC must be provided with an information document containing specified information regarding the target and the transaction.

While the framework tracks the general market practice and rules of other jurisdictions in many respects, it also imposes substantive features not currently in place in other key markets, including a requirement for an independent fairness opinion with respect to the de-SPAC. Further, SPACs are required to be Swiss stock corporations, which in spite of the significant flexibility Swiss corporate law affords in replicating the features of US-listed SPACs in a Swiss entity may reduce the attractiveness of SIX as a listing venue for SPACs in the eyes of foreign market participants.

Whether Switzerland will become an attractive market for the listing of SPACs remains to be seen and will depend, in

part, on how the general market practice and regulatory frameworks governing SPACs in other jurisdictions evolve over time. As of 30 April 2022, VT5 Acquisition Company AG remains the only SPAC to list on SIX.

### **Expansion of China Stock Connect programme to Switzerland**

In February 2022, the China Securities Regulatory Commission (CSRC) amended the regulatory framework for the China Stock Connect programme to provide for its expansion to Germany and Switzerland. China Stock Connect is a mutual access stock programme that has linked the Shanghai and Hong Kong stock exchanges since 2014, and since 2019 has allowed companies listed on the London and Shanghai stock exchanges to list global depository receipts on the other exchange (London-Shanghai Stock Connect). Following the entry into force of the revised framework, which also expanded the programme to the Shenzhen Stock Exchange, several PRC-listed issuers announced their intention to list global depository receipts on SIX. The SIX announced in May 2022 that it will update the existing regulatory framework for global depository receipts in the third quarter of 2022 to facilitate such listings, subject to approval from the Swiss Financial Market Supervisory Authority.

*Law stated - 30 April 2022*

## Jurisdictions

	<b>Australia</b>	Gilbert + Tobin
	<b>Denmark</b>	Mazanti-Andersen
	<b>Greece</b>	Karatzas & Partners Law Firm
	<b>Hong Kong</b>	Simpson Thacher & Bartlett LLP
	<b>Japan</b>	Nishimura & Asahi
	<b>Luxembourg</b>	Arendt & Medernach
	<b>Singapore</b>	Rajah & Tann Asia
	<b>South Africa</b>	Bowmans
	<b>Sweden</b>	Advokatfirman Hammarstiöld
	<b>Switzerland</b>	Niederer Kraft Frey
	<b>Turkey</b>	Turunç
	<b>United Kingdom</b>	Simpson Thacher & Bartlett LLP
	<b>USA</b>	Simpson Thacher & Bartlett LLP