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REPORTS LEGAL
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Crisis? What Crisis?

The Ukraine conflict, energy and supply chain problems, a eurozone recession – but are Swiss law firms really facing a crisis, or will they overcome these short-term challenges?

The distinct trademark of Switzerland: it's small, industrious, and adaptable," says Daniel Daeniker, senior partner of Homburger. "As Darwin said the species most likely to survive are not the biggest and not the strongest, they are the ones which are the most adaptable to change. The industriousness as a trait of character. Even though we call ourselves capitalists, an inherent trust in civil service, and that government is not your enemy." Lawyers, he adds, "never really suffer from crises, they suffer from the low after a crisis has been overcome. We're still in crisis mode."

So, what exactly does 'crisis mode' entail for Swiss law firms? Centred on pharma and life sciences, banking and finance, and fintech, a full-blown crisis is certainly not yet apparent in the wider Swiss economy, which has proved itself to be impervious to many of the problems affecting its bigger eurozone neighbours.

▲ 'Lawyers never really suffer from crises, they suffer from the low after a crisis has been overcome. We're still in crisis mode,' says Daniel Daeniker, senior partner, Homburger

Robust economy

Largely resilient to the initial impact of the global energy crisis, Switzerland's post-pandemic economy grew by 3.4% year-on-year in 1H22, although consensus growth forecasts show a marked reduction to 2.5% in 2022 overall and 1.3% in 2023. Given that a third of the world's economies are forecast to be in recession for much of 2023, including most in the eurozone, Switzerland is not predicted to be among their number. One of only ten countries to be considered AAA by S&P, Switzerland has held that rating since 1989 – longer than any other country. It is also consistently ranked as the world's most innovative economy, according to the Global Innovation Index.

Other factors affecting the Swiss economy look pretty sound too, including inflationary pressures which are notably lower than elsewhere in Europe. Measured by the Harmonized Index of Consumer Prices (HICP), consumer price inflation peaked at 3.3% in July-August and fell to 2.9% in October. Inflation is

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anticipated to hit an average of 3% in 2023 before falling back to 2.2% in 2024.

Switzerland is also less impacted by the global surge in energy costs thanks to its independent electricity generation (based on hydro and nuclear power), and the smaller share of energy in the HICP basket (around 5% compared with 10% for the EU). Meanwhile the continued strength of the Swiss franc further helps to offset inflationary pressures.

But the picture for Swiss companies is mixed. "Our clients in the airline industry are unhappy with rising fuel prices," says Daniel Hayek, managing partner of Prager Dreifuss. "That's a big problem. But banks are more or less pleased about rising interest rates. Generally, I don't feel that clients have difficulties with the economy in Switzerland. Difficulties are going to come in the next year or two." He points to Guy Deillon, formerly an associate at Homburger, who joined Prager as a partner in 2022. "He's busy with French and Swiss private equity companies," he says. "Strategically, part of our growth strategy, but also opportunistic. A really good fit for us."

'The worst is where nothing happens'

Having managed the Covid-19 pandemic with very little disruption to their fee income, Swiss law firms benefitted from a significant number of private M&A deals in 2021, alongside a robust flow of capital markets and private equity transactions. "For legal work, the worst is where nothing happens," says Philippe Weber, senior partner of Niederer Kraft Frey (NKF). "If you look at the numbers during Covid, it's amazing how well law firms did."

After an extremely busy 2021, the Swiss M&A market certainly began 2022 in great shape. Cross-border deals in technology, media and telecom (TMT), pharma and life sciences were notably active: Novartis' sale of its stake in Roche for $20.7bn, the CSL takeover of Vifor Pharma in an $11.7bn deal, Nestlé's sale of part of its stake in L'Oréal for $10 billion, and Lonza's sale of its specialty ingredients business to Bain Capital and Cinven for $4.7 billion. Collectively, these and other deals made Q4 2021 and Q1 2022 a very busy time for Swiss lawyers.

Among Swiss firms advising on these deals, Bär & Karrer topped the Mergermarket advisory league table by deal value for 2021, followed by Lenz & Staehelin and Homburger. By deal volume, Mergermarket's running order was: Bär & Karrer, Walder Wyss, CMS, VISCHER, NKF, Homburger and Lenz & Staehelin.

'Billable hours increased significantly'

"Like many other law firms, the Covid crisis was not an economic crisis for us; billable hours increased significantly," says Christian Oetiker, managing partner of VISCHER.

The legal sector's strong performance during Covid is further evidenced by the most recent data from the IMF's Coordinated Direct Investment Survey, published in December, which shows that Switzerland remained in ninth position globally for inward foreign direct investment (FDI) at year end 2021 – one place ahead of Germany.

Over the past decade, much of that FDI has come from China. According to a think tank study by the Dutch consultancy Datenna, the Chinese government now has a stake in 53% of Swiss companies that have been acquired by Chinese firms since 2010. Swiss commodity firms have been the most favoured targets: Mercuria, Silk Road Commodities, Duferco and Glencore HG Storage International have attracted investment from big Chinese names, such as ChemChina, China Molybdenum, Hebei Steel and HNA. The biggest acquisition (and the biggest in Europe) was that of Syngenta, which was bought by ChemChina in 2016 for $48 billion.

❝ Last year was intense; we're now experiencing a slowdown in M&A – deals, and in particular financings, are more difficult

Susanne Schreiber, senior partner, Bär & Karrer

Daeniker, whose firm advised ChemChina on the Syngenta transaction and financing, notes: "If our clients had said ten years ago: we should reconsider our China strategy because we cannot be dependent on that country alone, either as a supplier or as a market, people would have called them crazy. Now the attitude is different, a certain wariness is palpable. The reason for this is a mixture between changes in the political landscape and some rough experiences with Chinese investors. Six years ago, people said: inbound investment from China into Switzerland doesn't

3%

Anticpated rate of inflation in Switzerland in 2023


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matter as long as we get the money. Today, Swiss corporates look twice."

'Ukraine war – entirely different beast'

But Russia rather than China is the most immediate concern facing Europe. Thanks to an increasingly protracted conflict in Ukraine, which began following Putin's decision to invade in February and provoke an energy crisis, the last nine months of 2022 were quite a different story as big public M&A transactions all but disappeared from the headlines. Likewise, the relative feast of Swiss capital markets work in 2021 gave way to a famine in 2022 with only one successful IPO going to market. This compares with five IPOs launched in Switzerland and eight Swiss companies that completed their IPO on a stock exchange outside Switzerland in 2021.

"The Ukraine war is an entirely different beast," says Oetiker. "With Ukraine, we just don't know what's happening. The uncertainty is poison. Transactions is one area where clients are most sensitive to the question: should I go, or delay?"

His fellow VISCHER partner, Benedict Christ develops the point. "Much more than other areas, transactional work depends on the economy. For M&A, it has a big impact. It's the uncertainty of the Ukraine war, that's psychological. Strategic investors are more cautious, while private equity still has lots of dry powder that needs to be invested." Daeniker notes: "There's still too much capital around for too few targets in the PE space, so it's not going to end immediately."

Christ points to volatility in the markets, "which makes it difficult to price the financing for acquisitions. With inflation and supply chain issues in certain industries, valuation becomes much more difficult. Sellers' price expectations can no longer be met."

❝ Being super busy, you need to anticipate a coming recession – that's difficult. We're not laying off people, but we have to be cautious

Stefan Brunnschweiler, managing partner, CMS Switzerland

Stefan Brunnschweiler, managing partner of CMS Switzerland, adds: "Our firm and other firms are facing similar challenges. Being super busy, you need to anticipate a coming recession, and that's difficult. We're not laying off people, but we have to be cautious. Our corporate clients are facing multiple issues, especially energy prices. As always, there are opportunities – corporates who see now as the time to buy targets."

Silver lining

But even in such challenging times for lawyers, there is usually a silver lining. Picking up on the 'lawyers never really suffer from crises' theme, the former managing partner of Walder Wyss, Hans Rudolf Trüeb, summarises the current position and the prospect of a marked slowdown, or possible recession.

"While some practice groups would suffer from a recession (M&A, finance), others will gain (litigation, employment, restructuring) and still others will remain unaffected (regulatory work, public clients)," he says. "I have lived through three downturns in the economy and still have to see a law firm going out of business for economic reasons."

Walder Wyss itself continues to grow and is now among the largest firms in Switzerland, when measured by lawyer headcount. "To a certain extent, they're doing well, but I cannot understand how they do it," says Hayek. "It's a miracle for me how this works." Trüeb, who used to be at Prager Dreifuss many years ago, responds: "Why would we disclose the secret of our success? The fact is that we have substantially increased revenues and partner profits from year to year. One has to understand the concept of gravity. Apparently, others are starting to understand basic physics as well."

Thierry Calame, co-managing partner of Lenz & Staehelin, observes: "Nestlé, for instance, is now increasingly working with Walder Wyss. Their local presence in the French-speaking part of Switzerland was important. When it comes to employment law, social security, pension benefits, even a huge multinational player like Nestlé, apparently finds it important to have some local presence. That's going to be increasingly important – it's certainly one of our strategic initiatives where we would like to build. We've had an established presence in Geneva and Zurich for 30 years, we can draw on that more."

Susanne Schreiber, who was appointed as senior partner of Bär & Karrer in January 2022, offers her perspective on the current legal market. "Last year was intense and we're now experiencing a bit of a slowdown in M&A – deals, and in particular financings, are getting more difficult due to the uncertainty of the future economic situation," she says.

"However, deals are getting through in the end and there are still a number of transactions currently in the pipeline, e.g. for succession planning and add-on acquisitions by private equity firms. In public transactions, we see activity in the market and anticipate there might be new players for takeovers. Work on investigations has kept our internal investigation practice very busy and we expect this to continue."

Debt financing unavailable

Another new appointee in January 2022 was Calame, who became co-managing partner of Lenz & Staehelin in Zurich. "There's less M&A within Switzerland now compared to last year while the strong Swiss franc and a weak Euro is an issue," he says. "2021 was excellent, a record. We advised on some large PE-driven transactions. Lonza was huge. But in 2022, because of Ukraine and uncertain market conditions, PE activity has decreased significantly, in particular larger transactions. One reason is that larger debt financing is unavailable."

Despite these difficulties, CMS had a very strong year in Switzerland. Brunnschweiler draws a distinction between PE work and M&A. "Private equity investors are now reluctant to go full speed ahead after targets," he says. "Clients say that the market is now shifting. We're moving to a buyers' market, where potential buyers are holding off pursuing transactions until the energy crisis hits targets and valuations go down. There's a clear message: private equity clients are more hesitant.

" In terms of numbers we've done really well, better than forecast: in H1 2022, we doubled our turnover

Thomas Reutter, founding partner, Advestra

"In terms of the practice right now, it's the opposite. We've had a very busy year, a bit overheated. Our firm has a decent M&A practice but the number of deals we've been doing in recent months is above our average. We are currently number one, with 34 deals already in Mergermarket in 2022, which shows how busy we've been."

'Courageous for leaving a safe harbour'

Elsewhere, Advestra, which spun off from Bär & Karrer in 2021, also had a busy year. Not full service, it focuses just on capital markets, corporate/M&A, finance, financial services and tax. Since its launch, the firm has grown to around 25 lawyers. Philippe Weber labels Advestra lawyers "very good people." On the impact of their spin-off, he adds: "It helped us reflect upon ourselves, reminding us that however successful you are as a firm, people and culture matter, things can be fragile and it can happen to anyone. One must stay humble and value everyone's contribution."

Daeniker notes: "Advestra is special. For the first time, a boutique firm in the corporate capital market space. Referral sources are mainly their peers in banks and corporate finance departments. It's too early to say whether they can build a sustainable practice that competes with the big law firms." Meanwhile Calame adds: "It's been really successful for them. Their offers can be more competitive – they don't have a big firm in the background anymore that they have to finance." Although "mobility among partners" is still infrequent, he predicts that there will "likely be more spin-offs like Advestra."

Among elite firms, Bär & Karrer continues to be very strong – particularly in M&A, banking, private client work and litigation. According to one informed observer, the reason why the Avestra spin-off gained so much attention is that "such things happen so rarely in Switzerland."

Schreiber speaks of the challenge now facing them and their peers. "Recruiting, but in particular retention, is a challenge for every law firm," she says. "When we lose people, it's usually not to competitors, but because they find an in-house position or they want to work with a start-up, or smaller law firm.

"In particular during Covid, many young lawyers missed the outside experiences like secondments with a foreign law firm or LLM programs – but also the personal exchange and experience of the culture of their own firm. I'm glad that this is possible again and that we can live this spirit at Bär & Karrer together: Our work is often very

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demanding, but also interesting, creative and satisfactory when we achieve the best results for our clients, in a high performance, but collaborative environment."

One IPO, deals on hold, Chinese GDRs

Thomas Reutter, Advestra's founding partner who specialises in capital market and M&A transactions, says: "In terms of numbers and turnover we've done really well, better than forecast. Mid-market M&A is still strong and, compared to last year, in the first six months of 2022, we doubled our turnover. But public M&A is struggling because financing is not available. So those deals are on hold, IPOs are on hold."

There was just one IPO in 2022 – NKF advised EPIC Suisse as issuer's counsel in connection with its IPO and listing on the SIX Swiss Exchange. "We advised the banks," says Reutter. "There were also several listings – Chinese GDRs (global depositary receipts). We had four in July, and more which have since closed. So, they're coming. We're currently advising on more deals."

He explains that: "There's a political agenda pushing these GDR deals. It's nice having deals during a market which would be otherwise closed. Some issuers really would like to go out – that's probably what we'll see in 2023. We saw many issuers postponing from spring to autumn. Now, they're still seeing that the market is not there, but at some point, they will need to."

The first quartet of Chinese companies – GEM, Gotion High-Tech, Keda Industrial and Ningbo Shanshan – to list GDRs on the SIX Swiss Exchange successfully raised a combined total of c. $1.6 billion in the Swiss capital market.

NKF advised the underwriters on three of them: Ningbo Shanshan, GEM and Keda Industrial. The fourth issuer, Gotion High-Tech, was advised by Baker McKenzie. As issuers' counsel, Advestra advised Keda Industrial, VISCHER advised Ningbo Shanshan, NKF advised Gotion High-Tech and Baker McKenzie advised GEM.

❝ M&A is very important for our firm and makes up a big chunk of our turnover. So, if M&A is not going as well, that affects us

Thierry Calame, co-managing partner, Lenz & Staehelin

Weber says: "Essentially, all IPOs have been put on hold and, apart from special situations like the recent spin-off and listing of ABB's turbo-charging business or the capital increase of Credit Suisse, ECM (equity capital markets) work has generally been difficult. Another exception are GDR deals on the SIX Swiss Exchange of Shanghai and Shenzen-listed Chinese issuers, where we have seen eight successful transactions generating offering proceeds of around $3 billion with more deals expected to come."

He adds: "It's also worth noting that covered bonds and, interestingly, bank financing is still very active. On the M&A side, there have been a few large public and private deals such as the recently closed CHF 1 billion takeover of SIX-listed Valora by Mexican and NYSE-listed FEMSA, a company with over 300,000 employees and the second biggest Coca-Cola bottler worldwide. We have had a good share in most of these deals." In the latter deal, Bär & Karrer advised Valora while NKF advised FEMSA.

Difficult decade ahead

Looking ahead, Calame says: "We can be optimistic about many things. M&A is very important for our firm and makes up a big chunk of our turnover. So, if M&A is not going as well, that affects us. It's pretty clear that we cannot expect to have another record year like last year. But some public M&A is picking up again, we see strategic investors. But private equity has been slow, so it's inevitable that our M&A business is going to be affected. That's going to affect our turnover to some extent."

Daeniker ends with a note of caution. "I'm not terribly optimistic about the next three or four years," he says. "I'm optimistic about the world economy in general and I'm extremely optimistic about the future of my firm because we have so much young talent. But the next 10 years may be more difficult than the last thirty.

"We have to get used to volatility and uncertainty, to supply chain disruptions, to the idea that you cannot just source one component in a distant corner of the world and then if you are so spread out that there's one component missing, you can no longer sell your products. People will have to rethink costs, procurement, supply chain strategies, and crisis management."

In turn, his critique on volatility and uncertainty might also apply to Swiss law firms.

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As of January 2023, NKF will join forces with Geneva firm Tavernier Tschanz and a team from Python. NKF will be run by 50 partners and will comprise approximately 140 lawyers or 220 employees in total.

TheLab by NKF

Launched in early 2022, The Lab by NKF is a technology-based alternative legal service provider that combines innovative technologies with a wide range of legal knowledge and expertise. NKF is the first Swiss law firm to introduce such innovative alternative compliance product, underlining NKF's positioning as innovative leader with in the legal industry in Switzerland.

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ESG matters

Clients and young lawyers all want to work with Swiss law firms that put ESG high on their priority list. So, how are they responding?

▲ **ESG issues continue to ride high on corporate agendas throughout Europe**

The current economic difficulties may present a significant challenge, but myriad Environmental, Social, and Governance (ESG) issues continue to ride high on corporate agendas throughout Europe. Fast becoming a fixed priority, they not only provide more work for Swiss law firms, but also lead clients to focus on their law firms of choice and how they are responding to the ESG challenges, internally as well as externally.

The three pillars of ESG are now considered to be critical in assessing the sustainability and ethical impact when making investment decisions. According to McKinsey's Global Survey, 83% of C-suite leaders and investment professionals say that they expect ESG programs will contribute more shareholder value in five years' time than today. Meanwhile research from Deloitte shows that "89% of investment managers…indicate their firms will devote more resources to this area in the next two years."

Go ESG

But as the EU continues to target sustainable finance through myriad regulations, Switzerland does not yet have an overarching legislative framework to cover the burgeoning sector. Instead, the Federal Department of Finance and the Swiss Financial Market Supervisory Authority (FINMA) have proposed how financial market legislation could be amended to avoid greenwashing.

Before deciding on whether or not to opt for mandatory regulation, the Swiss Federal Council gave the financial industry an opportunity to implement self-regulation in line with Switzerland's historical approach to how the sector is regulated. Even so, new self-regulation for the Swiss financial market helps to burnish the country's developing ESG credentials. This matters since ESG data, combined with new technologies, will help to overcome the lack of standardisation in regulatory reporting – a critical challenge for the financial sector.

"Switzerland doesn't yet have ESG regulation for the financial sector, but they are working on it," says Caroline Clemetson, banking and finance partner at Schellenberg Wittmer. "For the financial industry, three sets of new self-regulatory guidelines have entered into force. In the investment financial sector, it's a requirement: they have no choice. The guidelines are going to be the huge thing for 2023. For now, those that are ESG compliant are probably not performing as well as those that are not, in terms of financials. There's a cost of compliance – a green cost."

Investors, she adds, know they have to "go ESG." If not, she suggests "they're going to be pointed out. But they're still looking at the performance, especially in current market conditions. It's a bit of a struggle, but that will come."

New ESG Framework

The Swiss government has ensured that a new ESG framework for companies is now subject to mandatory regulation. Its non-financial reporting obligations originally formed part of a counterproposal to the Responsible Business Initiative, a popular Swiss initiative which was narrowly rejected in a national referendum. Similar to the EU Non-Financial Reporting Directive, the new legislation imposes ESG reporting obligations on big Swiss companies which include new disclosure and due diligence rules.

"Switzerland has the transparency requirements for climate that are entering into force and obviously for the human rights sector," says Clemetson. "The Swiss government wants to go further than the EU and the rest of the world because we have that leading role, of being correct, doing things properly."

From January 2023, eligible companies must produce a report on non-financial matters starting in 2024 for the financial year beginning in 2023. These new ESG regulations apply to larger companies with 500+ full-time employees; and with assets of CHF20 million (c.$22 million) or annual revenues of CHF40 million, and whose registered office, head office or principal place of business is in Switzerland.

❝ Swiss companies tell me: we have to look at the EU, what the EU requires, because we have to keep up with that standard

Annette Weber, partner, Advestra

For example, listed companies and those supervised by FINMA will have to comply by publishing annual reports on ESG issues. These must deliver information about their business and how its activities impact on the environment (including CO2 targets), as well as societal concerns related to employees, respect for human rights and the fight against corruption across their value chains.

Customer demand

VISCHER corporate/M&A partner Benedict Christ summarises the immediate impact and likely progression of the new regulations. "Big listed companies now have to report on ESG – it's a legal requirement," he says. "Commercially, the banks do it because the customers demand that they do. It will slowly drip down into medium-sized companies because of customer demand."

In terms of governance, he outlines the changing attitude. "The corporate governance rules – the duty of loyalty, the duty of care – have not changed, but awareness is much higher now. You get many more questions from board members: What does that mean? When do I need to resign? What risks do I have? How can I protect myself? Awareness of these duties has increased. That's ultimately the core of corporate governance."

Annette Weber, Advestra capital markets and M&A partner, adds: "The EU is at the forefront of regulation – a factor for Swiss companies with so many international investors and customers. Some have told me: we have to look at the EU, what

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the EU requires, because we have to keep up with that standard."

In analysing and managing ESG risk, companies also know that ratings agencies now provide granular ESG metrics spanning every major asset class and industry. In doing so, they deliver ESG analysis that considers the impact of everything from sustainability ratings and product involvement to carbon metrics, company disclosure and standards of reporting. Such ESG considerations increasingly matter to multiple stakeholders.

Long tradition of innovation

"In the 1980s, we had the first green wave," notes Christ. "The writing has been on the wall for a long time." Sandra De Vito Bieri, managing partner of Bratschi, outlines the historical context. "Many companies, including Swiss companies, might have enhanced the measures they implemented decades ago because this is not a new topic," she says. "In Switzerland, we grew up believing that you have to take care of that environment – it wasn't labelled green, but it was clear. This was also what Swiss companies did and still do.

"With international pressure, they are even more aware that they have to do something. They now label it, or have special dedicated teams. This is also driven by the fact that many of them are innovation friendly. Swiss companies have a long tradition of innovation, which is important because it helps them to achieve certain goals and they tell the market what they want to achieve."

Annette Weber explains how this now impacts behaviour at a practical level. "It is very much on issuers' agendas, not only because you have new rules, but also because it comes from different angles," she says. "Sometimes, banks are already committed to certain balance sheets, net zero plans. So, they really need to make sure they collect data that is processed to check how sustainable financing business, for example, is. But in the capital markets, if possible, bonds should be green."

❝ We grew up believing you have to take care of the environment. That's what Swiss companies did, and still do

Sandra De Vito Bieri, managing partner, Bratschi

Philippe Weber, senior partner at Niederer Kraft Frey, identifies ESG-related work done by his firm. "We advised on the first issue of green bonds in the Swiss market," he says. "It's a broad area, but in revenue terms, it's still quite small. It won't become like dispute resolution or M&A. It's not a game-changer, although because of mandatory reporting, there are a lot of boards needing advice."

Advestra's founding partner, Thomas Reutter, adds: "Geographically, it's an entirely different story in Asia. My perception, after seeing recent US law firm memos, is that it's primarily viewed from a risk-driven perspective in the US; it's just passive. Something happens outside and you have to reflect that in your risk monitoring within the firm, rather than positively influencing a trend. The latter is a European approach."

Shareholder activism

Shareholder activism is also an issue, explains Annette Weber. "On corporate governance, you see quite vocal investors, also proxy advisors, requesting information from smaller companies regarding their diversity, ESG," she says. "You need to have an agenda, you cannot go out and say: it doesn't affect my business, maybe I'll look a bit at diversity. That's not sufficient anymore."

On the corporate impact of new ESG regulations, Clemetson notes: "Any change of regulation always creates (legal) work. People in business don't like that, but it's true."

VISCHER's managing partner, Christian Oetiker, says: "We're looking at sustainability. What's interesting is to what extent it will develop, because the economic crisis could be a big driver for alternative energy – an area in which we're very strong. For example, projects to build solar plants in the Alps raise new issues, such as protection of the landscape. This is something which our energy team is focused on."

When it comes to hard data, what the ratings agencies say really matters most to investors. It is no surprise that Switzerland scores very highly in terms of ESG.

The country ranks in third place in the Global Sustainability Index and, according to World Bank Governance Indicators and the World Government Bond Index (WGBI), Switzerland has an ESG Relevance Score of 5[+] on Governance, Political Stability and Rights, the Rule of Law, Institutional and Regulatory Quality and Control of Corruption – all of which helps to underpin the country's AAA Sovereign debt rating.

ESG scepticism

But reflecting an increasing strand of scepticism among some clients, former Walder Wyss managing partner Hans Rudolf Trüeb adds a note of dissonance: "ESG is a proxy of having investors and shareholders pay for new and vast back-office functions which rarely add value to a bank's operation. But apparently, that is the price to pay to be a good corporate citizen. I rather have it with (Milton) Friedman that the only social responsibility of corporations is to increase its profits – and pay taxes. Politics should be left to politicians."

At NKF, Philippe Weber takes a different view. "ESG is important in advising clients," he says. "But it's also important for us because big corporates want to have suppliers who fit their own ESG standards. We need to be credible in this respect and adhere to their standards, otherwise they will not work with us anymore. This is also very important for our staff, i.e. that they see that we share the same values and purpose." On diversity, he adds: "We have an executive committee of five – two of whom are female partners. On average, we now appoint as many female as male partners."

Lenz & Staehelin's co-managing partner, Thierry Calame, concurs: "Our young people like to identify themselves with the kind of client work the firm does," he says.

There are other dimensions to ESG in a workplace context, where interaction really matters, notes Calame. "It's important to talk to each other, exchange thoughts and strategy," he says. "We believe that, in terms of cohesion, it's very good to have social activities together. In June, all the Geneva and Zurich partners visited a cheese factory in Emmental to make a 100kg cheese together, our official Lenz & Staehelin cheese. In December, the cheese was cut in pieces and given to all employees. In September, all the lawyers from Geneva, Lausanne and Zurich met in Evian. Those things are important – exactly what you need to do in terms of fostering cohesion."

❝ The economic crisis could be a big driver for alternative energy

Christian Oetiker, managing partner, VISCHER

❝ The only social responsibility of corporations is to increase its profits – and pay taxes. Politics should be left to politicians

Hans Rudolf Trüeb, partner, Walder Wyss

Social sustainability

On a similar theme, Stefan Brunnschweiler, managing partner of CMS Switzerland, identifies two things. "First is the outside world where clients need some advice, they want to team up with an ESG combined partner," he says. "Second, as a company, together with our employees, we want to create a sustainable environment that allows us long term to be very effective and powerful. More and more people are now burning out. It's our task to create a sound environment that helps us conserve our employees' long-term energy. For me, that's also part of ESG."

Picking up on the issue, De Vito Bieri concludes: "Social sustainability goes to the very heart of the relationship between people working in a company. It's how we treat each other, how we talk to each other, how we respect each other, how we value each other; but also, how we want to bring our company forward to allow the next generation to feel comfortable, at ease, and that they also want, at some point, to take over the responsibility for our law firm."

ESG has many strands. But in how Swiss law firms apply them, the human factor perhaps matters most.

NKF's Geneva gambit

Niederer Kraft Frey's Geneva move took everyone by surprise, so what drove the traditionally conservative firm to combine with Tavernier Tschanz and a Python team?

Credit: iStock/nkbimages

"The logic of doing this merger makes sense; it's just a question of why now, why so late, and why NKF?" asks Thierry Calame, Lenz & Staehelin's new co-managing partner in Zurich. His analysis and questions perfectly encapsulate the consensus view of the biggest announcement in the Swiss legal market in 2022: Zurich-based law firm Niederer Kraft Frey will be "joining forces with Geneva firm Tavernier Tschanz and a team from Python" as of January 2023, taking the combined firm to 140 lawyers, including 48 partners."

As a peer in the top tier of Swiss law firms, Calame explains his firm's puzzlement over the timing. "It surprised our Geneva partners," he says. 'We (Lenz) merged in 1991. The benefit of having a presence in Geneva and Zurich has been clear for 30 years. There are several clients that we probably would not be able to service if it were not for these two strategic locations."

Having a footprint in the two major Swiss hubs is indeed pivotal, according to the upbeat language of NKF's formal announcement of the merger: "By combining the strengths of the different teams, NKF will further expand its leading position within Switzerland's two economic centres – the 'Lake of Geneva Region' and the 'Greater Zurich Area' – and anchor itself even more strongly in the market."

▲ NKF says having a footprint in the two major Swiss hubs is pivotal

'No-one expected this'

Sitting down to ask questions of the NKF top brass in their Zurich office, there is measured reassurance, confidence and optimism from the firm's senior partner, Philippe Weber, and his successor in 2021 as managing partner, Patrik Peyer, who – in addition to building his legal career – previously occupied various roles over 20 years in the Swiss army. Recognising that they may be latecomers to the Geneva party, both men nevertheless see every opportunity to enjoy themselves.

"No one expected us to open in Geneva," says Weber. "Now, we're investing a lot in forming one big team and to successfully integrate these people, which is crucial for the project. The Geneva partners from both firms have known each other and worked together for a long time. This forms a sustainable and strong basis to differentiate ourselves. Culture is always very important."

Beyond the German-French language and cultural divide, Zurich and Geneva are also characterised by different workflows. As the country's principal commercial hub and economic capital, most of Switzerland's banking and finance, M&A, capital market and private equity activity takes place in Zurich. Meanwhile Geneva is best-known for its arbitration, sports law, World Trade Organization (WTO), private banking and commodity trading work, as well as being the home of start-up companies facilitated by universities in Geneva and Lausanne.

Positive clients, good vibe

"In opening a Geneva office, technically speaking, we're hiring new partners, not merging with another law firm," explains Weber. "It allows us to focus on joint business opportunities without the usual distractions of a merger and related political issues. The integration process also becomes less complicated. Our vision was not only to be in tier one and stay there, but to differentiate ourselves and to surprise the market."

Surprise or no surprise, clients certainly support the move. Peyer describes the feedback given to their new Geneva partners as "amazing." He adds: "We've also received very positive feedback, but what's important is that the feedback is very good in Geneva – that's the future." This response is echoed by two prominent general counsel who spoke to Reports Legal.

"As one of Zurich's strongest firms, NKF provides the highest-quality legal advice; we're delighted to see them extend their offering to Geneva," says one client. "Niederer Kraft Frey has always demonstrated a strong understanding of our commercial needs: their experienced teams provide excellent pragmatic advice across the board," adds another NKF client. "They should do well in Geneva."

❝ The logic of doing this merger makes sense; it's just a question of why now, why so late, and why NKF?

Thierry Calame, co-managing partner, Lenz & Staehelin

Nevertheless, Peyer acknowledges that "it's a big step since we've been based just in Zurich for so long." It is, he adds, "a fantastic opportunity – we gain 40 very good, qualified, smart and sympathetic new lawyers – a dynamic process which creates a very good vibe in the firm."

Tavernier's leading trio

Perhaps best-known at Tavernier are: founding partner Pierre-Yves Tschanz, Frank Spoorenberg and Jacques Bonvin.

Tschanz co-founded the firm in 1989, having trained at LALIVE in Geneva before working at White & Case in New York and Paris. Widely-lauded by disputes lawyers in Switzerland, he has acted as counsel and arbitrator in more than 200 arbitration cases around the world under most major arbitration rules. Spoorenberg, who was mentored by Tschanz, joined the firm as a trainee in 1993. He receives plaudits from his counterparts at other Swiss firms and among the wider pool of international arbitrators.

But perhaps the pivotal relationship between NKF and Tavernier rests between Weber and Bonvin. Both men are dealmakers who have an enduring friendship and longstanding working relationship, forged over M&A deals during the past two decades. Stefan Brunnschweiler, managing partner of CMS Switzerland and fellow M&A lawyer, offers the following assessment: "Jacques Bonvin wanted to find a new home and had a longstanding contact with Philippe Weber – so they decided to team up."

Beyond this personal relationship, what were the other key drivers for the move? "There's a battle for talent; approaching 40% of lawyers are in the French and Italian-speaking parts of Switzerland," explains Weber. "You can't afford not to be eligible for 40% of the people in your country."

He provides some local context to the recruitment challenge which now permeates so many legal markets. "Unlike some jurisdictions, studying law is perhaps a bit less prestigious in Switzerland," he says. "There's no difference between Swiss universities, they're all very good. Law is often something people do by default. Only a few become eligible for tier one firms, which are all competing for the same talent."

'The Homburger way…or a Geneva office'

Turning to firms that he sees as the closest competition, Weber outlines how their offerings differ between Zurich and Geneva.

"Lenz and Bär & Karrer have offices in Geneva. Homburger doesn't, but they have a French-speaking partner, Frank Gerhard – a very smart guy with a French-speaking team. For a French-speaking lawyer, we would not be

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their first choice. French-speaking clients like to speak French – you need a lot of lawyers fluent in French." He summarises the alternatives: "You can either do that the Homburger way, or you have a Geneva office."

Stefan Brunnschweiler, managing partner of CMS Switzerland, concurs: "Geneva is a completely different world. Even if I spoke French, going to Geneva and feeling that I can be an important player is impossible. You need to have a strong partner with local roots."

When deciding how to open in Geneva, there are two further options, according to Peyer. "Greenfield and hire selectivity from various firms: it takes time and is very difficult to implement the culture, especially if you're talking about such a significant number of people, as we have been targeting," he says. "Whereas if you take a block of people that have worked together for a long time, with strong personal bonds and a developed and shared culture, your chances of success are significantly better."

Peyer adds: "We play in the same league as Bär, Lenz and Homburger. But it's more challenging to do that if you're significantly smaller in size. That's the reality and obviously also a driver for this project. Teaming-up with a well-rehearsed group of some 40 high quality lawyers with a shared sense of culture and vision for NKF therefore clearly was an opportunity not to be missed. It will also provide a much more attractive platform for additional ambitious talents we intend to hire in Geneva over the coming years."

In examining NKF's closest competitor firms, Lenz & Staehelin (48 partners) and Bär & Karrer (49 partners) each have 200+ lawyers in total, while Homburger has 38 partners and 120+ other fee earners. Its push to 140 lawyers, combined with a sizeable Geneva presence, certainly boosts NKF's ability to compete for more top line work.

❝ From day one, we'll have the biggest corporate team in Geneva, bigger than any of our peers

Philippe Weber, senior partner, NKF

Growing the top line

Boosting revenue is another important factor. "We want to grow the top line," says Peyer. "We recently discussed the top ten green clients that we're not able to serve because we're only in Zurich, or which our new partners were not able to serve because they were only in Geneva."

He further explains: "Our practices are heavily based on finance and life sciences – two big pillars in Switzerland. Another very fast-growing pillar is technology. EPFL, the Technical University in Lausanne, plays an important part in the tech start-up and venture capital scene and many big tech companies are based around the lake in Geneva. Being physically present in that region will bring new opportunities, including for our new partners in Geneva who will benefit from NKF's top tier brand and full-service offering. Simply speaking, NKF as a whole will become more attractive for its existing and potential new clients in that region."

So, how does the market perceive NKF's belated move? Some prominent lawyers at other firms acknowledge the rationale for the combination. "The idea makes perfect sense and it should work well for them," says one. "NKF is very strong in litigation whereas Pierre-Yves Tschanz and Frank Spoorenberg are very good in arbitration," says LALIVE co-managing partner Domitille Baizeau. "It's a very complementary merger and they are going to take a good chunk of the market."

Considerable challenges

Hans-Rudolf Troeb, former managing partner of Walder Wyss, offers the following critique: "Apparently, NKF has seen the potential of having a presence in Geneva," he says. "The challenge will be to integrate the different cultures which requires a full integration and day-to-day cooperation on client mandates. Potentials and challenges of the NKF move – which makes perfect sense – are both considerable."

A prominent managing partner whose firm operates a pure lockstep system adds: "The NKF move was a bit of a surprise, but based on their 'eat what you kill' culture, it will be interesting to see how it plays out."

Without attribution, some lawyers in other firms are clearly anxious about the increased threat of competition from a much-enlarged NKF offering. But rather than aiming at NKF, they target the teams which they are acquiring. "Tavernier is quite small: it's a boutique," suggests one managing partner.

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"NKF wanted to have a Geneva presence, but in terms of the market, the tie up with Tavernier will not have much impact," adds another.

In addition to praise for several partners, there is a suggestion that Tavernier needed to merge because of its size. Failure to keep pace over the years meant that it had fallen behind some competitor firms. "Tavernier never grew because they didn't make enough people up to partner," suggests one lawyer who knows the firm well. "A law firm that doesn't promote is a law firm that dies: either you die or you get swallowed up, and that's what's happened to them."

Python partners

The second strand of NKF's move involves a number of partners from Python, another Geneva-based firm which also has offices in Lausanne, Sion, Bern and Zug. "It's not the whole Python firm that's joined NKF," says Daniel Hayek, managing partner of Prager Dreifuss. "The strongest Python partners continue to practise independently."

Cultural differences between Switzerland's two major legal hubs can lead to tension for firms with offices in both. "If you see a Zurich partner billing 160-180 hours a month and the equivalent partner in Geneva does 110-120 hours and feels stressed," he suggests. "That creates problems, but the 'eat what you kill' system alleviates it a bit."

According to one observer, the 50-strong Python team "has always had losses of partners over the years." This is not dissimilar to Froriep, which saw lawyers continuously lured away by Walder Wyss, among others, before it completed a defensive merger in July 2021 with Meyerlustenberger Lachenal.

Unsurprisingly, at least two firms have also had merger discussions with Python, but to no avail. They floundered because of incompatible compensation systems: the highest-earning Python partners earn more than twelve times their lowest-earning counterparts. This notable difference is perceived as a driver behind the decision of some Python lawyers to join NKF, notwithstanding the latter's 'eat what you kill' culture.

❝ We play in the same league as Bär, Lenz and Homburger. But it's more challenging to do that if you're significantly smaller

Patrik Peyer, managing partner, NKF

As NKF's new Geneva office opens for business in January, Weber believes they will hit the ground running. "From day one, we will have the biggest corporate team in Geneva, bigger than any of our peers."

Given the rapid growth of some insurgent Swiss firms in recent years, most notably Walder Wyss and Kellerhals Carrard, will NKF expand its Geneva offering much further? Peyer is unambiguous. "We have a clear goal to grow in Geneva," he says. "The office we've rented has much more space than for just 40 people. In the next five years, we don't want to be overly ambitious, but we could grow significantly."

Disruptive move

Weber describes the NKF move as disruptive. "There are some unhappy people in the Geneva marketplace looking for new options," he says. "Even though we're a very old firm in a traditional place, we have transformed ourselves to become an interesting alternative for talented and ambitious lawyers. We have a really strong Geneva corporate team and a very good dispute resolution team as well as financial services and real estate. There are some practice areas we want to build, but we don't need to rush."

Recognising that every combination presents significant challenges, Peyer concludes: "Such joining of forces can only be successful on a long-term basis if we manage to create strong personal and business bonds. This is where we are investing most of our time and efforts right now."

He seems determined to bridge the Zurich-Geneva divide that can so often apply.

"Many Zurich firms with a Geneva office say: the guys in Geneva do what they want," says Peyer. "It's two separate offices – almost two separate firms. It's totally different to our one firm approach, shared by everyone. For example, we will have one corporate team, not a Geneva corporate team and a Zurich corporate team. By using this approach, we will be able to unleash the full potential of their joint forces."

An appropriate military metaphor from a former soldier about a city synonymous with Conventions governing international standards of war: it sounds like a declaration of intent.


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Swiss disputes set to fly

"Clients are less interested in maintaining commercial relationships; they're interested in cash." Fuelled by litigation funding, Swiss disputes may sky-rocket

▲ **Federal Supreme Court in Lausanne, Switzerland**

The reality is that when the world is in chaos, disputes lawyers tend to do very well," says Domitille Baizeau, co-managing partner of LALIVE in Geneva. "We've noted that, as the world economic situation worsens, clients are less interested in maintaining commercial relationships; they're interested in cash. They still need to be able to pay their bills however, so law firms may have to be more flexible with their fee structures, as we can be."

If 2023 is a year in which recession makes an unwelcome return to parts of Europe, accelerated by international chaos, then a rise in legal disputes is inevitable. A perfect litigious storm is further guaranteed by the continued fallout from the Russia-Ukraine conflict: increased borrowing and energy costs, high inflation and a fall in consumer spending will make lenders more cautious, ultimately leading to a significant uptick in insolvencies as debt problems that emerged during the Covid-19 pandemic finally crystallise.

Despite the inherent strength of its domestic economy, Switzerland is not immune from the problems of its larger eurozone neighbours, as evidenced by the expectations of Swiss law firms.

Insolvent restructurings coming our way'

"There will be some insolvent restructurings coming our way," says Daniel Daeniker, senior partner of Homburger. His view is echoed by Thierry Calame, co-managing partner of Lenz & Staehelin. "Our restructuring and insolvency people expect there will be more work," he says. "It's surprising that there hasn't been more out of the pandemic. There are some insolvencies and restructurings they're involved in, but it's not yet developed as expected."

So far, the same applies to commercial litigation. Christian Oetiker, managing partner of VISCHER, notes: "During the global financial crisis, people were much more aggressive in litigating. Because of Covid, people's attitudes have changed. But this may soon change again: the risk of a recession is now much higher than ever before and disputes work may be increasing."

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Beyond local difficulties, Switzerland has long been a preferred jurisdiction for resolving international disputes. Caroline Clemetson, partner at Schellenberg Wittmer explains why.

"People like Switzerland for dispute resolution, it's calm and has many competences," she says. "The political and economic situation is always very stable. You can rely on the judicial system: very steady and trustworthy, competent, very experienced and independent judges who will never decide cases for political reasons. Alternative dispute resolution is also well recognized in Switzerland for the same reasons as dispute resolution: steady, calm, competent people."

Supply issue disputes

The disputes practice at Lenz has already been very active, according to Calame. "We've noticed a huge increase where our clients, especially in the energy sector, have been involved in long term contracts with supply problems under the agreement," he says. "Typically, many such agreements provide for arbitration in Switzerland. Our litigation and arbitration practice has been extremely busy in relation to disputes concerning these supply issues."

Lenz wants to grow their dispute resolution (DR) capacity further. "One strategic goal is to increase dispute resolution, which is thriving," says Calame. "We aim to have more DR partners: we have some excellent people in the pipeline. It's good to have a mix of activities, because we can see that arbitration and litigation are going really well."

Notwithstanding the quality of its courts, Switzerland's undoubted forté in resolving disputes lies in arbitration. For instance, Geneva and Zurich are among the most frequently chosen seats in ICC arbitrations, according to the most recent study by London's Queen Mary University. Leading the overall list, London, Singapore, Hong Kong, Paris and Geneva rank as the top five for the most preferred seats, while ICC, SIAC, HKIAC, LCIA and CIETAC are identified as the top five arbitral institutions.

❝ The reality is that when the world is in chaos, disputes lawyers tend to do very well

Domitille Baizeau, co-managing partner, LALIVE

"The problem for litigation work is that Switzerland is a fairly small country, so the pie is smaller than in arbitration," explains Baizeau. "A selling point of Switzerland: Swiss law is often chosen because of neutrality and because Swiss contract law provides parties with maximum autonomy and control over their contract," adds Calame.

'More people want arbitration'

"More and more people want to do arbitration rather than the usual disputes if they can – it's more private," notes Clemetson. "Many arbitrators come from Switzerland and many arbitrations happen here." Calame anticipates that the current difficulties will generate more. "We expect – because our clients have huge investments – to be involved in multiple arbitrations," he says.

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Number of full-time arbitration lawyers in the LALIVE London office

No surprise, perhaps, when the value of disputes in international arbitration 0ver the past decade has grown at least 7% faster than the global growth rate to exceed $2 trillion. Published information about arbitration awards and other details is often scarce. But in October 2022, the Swiss Supreme Court rejected Russia's attempt to overturn a $5 billion arbitral award to Yukos Capital. It was yet another defeat for Russia in the battle over Yukos, after the Swiss Federal Supreme Court had upheld the $5 billion arbitral award in favour of investors in the now defunct energy company.

At over 100 lawyers, LALIVE is by far the largest Swiss firm dedicated exclusively to disputes. "We were the first to focus primarily on dispute resolution, long before any other boutique firms opened up in this field; our 63-strong arbitration group is now one of the biggest such practices of any firm worldwide," says Baizeau. "We have always had a mix of investment and commercial arbitration work – in terms of turnover, about half-half." In commercial arbitration, she points to a rise in post-M&A services, supply agreement disputes, and termination of distribution agreements.

Inevitably, the Ukraine conflict has triggered significant pre-arbitration work for investor claims against Russia. "Even if the process is so long that some of the large investors may not even see the money in the lifetime of their representatives, there is an interest in pursuing these claims.," says Baizeau. "We've been advising investors in the energy sector in particular on how to bring such claims. We already do work for Ukrainian entities, as a result of the annexation of Crimea, with investment treaty cases against Russia, and related award challenges before the Swiss courts. Some partners are also involved with international initiatives to consider how to use frozen Russian assets, by putting them into a fund to use for reparations/compensation."

> *More and more people want to do arbitration*
>
> ***Caroline Clemetson, partner, Schellenberg Wittmer***

Global competition

Baizeau distinguishes between the work done by the firm in Switzerland and the international work they do in different arbitration seats, most notably London. "Our Swiss competitors are Bär & Karrer, NKF, Schellenberg, Lenz, and Homburger," she says. "Schellenberg is real competition in arbitration for Swiss work and we often have them on the opposite side of high-profile award setting aside applications."

Internationally, she identifies a different list. "Our main competitors are firms like Three Crowns, and the international arbitration teams of the large global firms in that we often pitch to the same clients," says Baizeau. "We also appear against these firms and the likes of Shearman & Sterling, White & Case, Dechert, Clifford Chance, Debevoise, A&O, and Quinn Emanuel.

LALIVE opened in London in 2018 to establish "a permanent common law foothold", she explains and the office now has 20 full-time arbitration lawyers.

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"A third of our London team is composed of pure English lawyers," says Baizeau. "The rest are a mix of American, Latin American and French lawyers, who are fully integrated in the entire group – this gives us a competitive edge. Every lawyer in London works on matters opened in Geneva and Zurich and many of our Geneva and Zurich lawyers also work on matters opened in London.

"Our competitors like to describe us as Swiss because it serves their purpose. Or to say "this is a Swiss firm with a London representative office", but in fact we operate on a global basis as a fully integrated firm – and much of our work has no connection to Switzerland."

As elsewhere, third-party funding now occupies a pivotal role in determining whether an action will fly in Switzerland. According to Clemetson, "Litigation funders are very active and ready to fund litigation; there will probably be lots of disputes relating to contracts and sanctions."

▲ LALIVE is by far the largest Swiss firm dedicated exclusively to disputes

Baizeau echoes the sentiment, but with a qualification: "Litigation funders are very active at present, but Russia is much more difficult for them because of the long time-frame for enforcement and recovery."

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Reports Legal is managed by Dominic Carman and James Air, both of whom have considerable experience in these markets. In recognising that most legal publishers now operate behind a paywall, they decided that everything published by Reports Legal will be free for lawyers to access online. There is no paywall.

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