PANORAMIC

INITIAL PUBLIC OFFERINGS 2025

Contributing Editors

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Simpson Thacher & Bartlett LLP

LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) 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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Contents

Romania

Razvan Stoicescu, **Robert Urmosi**

Mușat & Asociaţii

Switzerland

Philippe A Weber, **Deirdre Ní Annracháin**

Niederer Kraft Frey

Türkiye

İltem Dokurlar, **Naz Esen**, **Övgü Kopal**, **Kerem Turunç**

Turunç

United Arab Emirates

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United Kingdom

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Summary

MARKET OVERVIEW

Size of market

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

The Swiss IPO market activity was very subdued in 2023, with no traditional IPOs announced during the year. However, there are indications that the local IPO market is picking up. In March 2024, Galderma Group AG successfully carried out its IPO on SIX Swiss Exchange. The deal reached the top of the price range (53 Swiss francs per share), resulting in a total offer size of approximately 2.3 billion francs and an implied market capitalisation of 12.6 billion francs as of the first day of trading. Provided that market conditions continue to improve, the success of this IPO, together with the fact that there are numerous other Swiss IPOs in the pipeline, is likely to bring a surge of activity later in 2024 or the first quarter of 2025.

Law stated - 16 April 2024

Issuers

2 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 industries and include:

- large reinsurance and insurance corporations such as Swiss Re and Zurich International;
- international luxury goods companies such as Richemont and Swatch;
- banks and financial institutions such as UBS, EFG, Julius Bär and Vontobel;
- 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 for the pharmaceutical and biotech industries. Selected foreign companies that have primary or secondary equity listings on exchanges in Switzerland include AMS (Austria), Cosmo Pharmaceuticals (Netherlands), Newron Pharmaceuticals (Italy), SHL Telemed (Israel) with primary listings and 3M

Company (United States), Abbott Laboratories (United States) and Baxter International (United States) with secondary listings, respectively.

Of the 258 companies with equity securities listed on SIX as at 16 April 2024, 41 have their registered offices outside Switzerland.

Law stated - 16 April 2024

Primary exchanges

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

SIX operates the principal securities exchange in Switzerland and one of the largest exchanges in Europe, with a free-float market capitalisation of around 1.4 trillion francs. As at 16 April 2024, SIX had 258 companies listed (of which 217 were Swiss-domiciled issuers). The only other equity exchange in Switzerland is BX Swiss AG (BX Swiss). BX Swiss is much smaller than SIX and mainly targets small and medium-sized Swiss enterprises. As at 16 April 2024, 21 companies were listed on the BX Swiss.

Law stated - 16 April 2024

REGULATION

Regulators

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

Switzerland is not a member of the European Union or the European Economic Area. Accordingly, the EU Prospectus Regulation and other EU regulations relating to capital markets offerings do not apply 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 that Swiss financial institutions can access the European market by fulfilling equivalence requirements. The most important parts of the reform package as it relates to 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 and formalised safe harbours from offering and listing prospectus requirements, for Swiss capital markets applicable to all financial instruments (subject to exemptions and customisations for certain instruments). A prospectus must be published in order to make a public offer in Switzerland for the acquisition of securities, or to admit securities to trading on a Swiss trading venue. Furthermore, unlike under the previous regime, prospectuses 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.

Legislativeframework

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

- the Financial Markets Infrastructure Act of 19 June 2015 (FMIA);
- the Financial Market Infrastructure Ordinance of 25 November 2015;
- the FinSA of 15 June 2018;
- the FinSO of 6 November 2019; and
- additional ordinances issued by the 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 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. The board 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) on SIX.

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, 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 chair 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) and, on the basis of public law, 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 - 16 April 2024

Authorisation for listing

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

Under the prospectus regime introduced by FinSA and FinSO, IPO candidates must undergo two parallel approval processes in order to list in Switzerland:

- prospectus approval must be obtained from a reviewing body (SIX Exchange Regulation or BX Swiss) prior to publication of the prospectus pursuant to FinSA; and
- approval for the admission to trading on the relevant trading venue must be obtained 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, subject to exemptions and certain easements for selected issuers and financial instruments, under FinSA, any person that makes a public offer in Switzerland to acquire securities, or any person that 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 checks that applicable prospectuses are complete, coherent and understandable. According to FinSO, the review for 'completeness' is 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 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 proceeds from the issuance 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 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 must review prospectuses as soon as they are received. New issuers are required to submit their prospectus for approval 20 calendar days prior to the publication of the prospectus or admission to trading (as applicable). For all other issuers, this deadline is shortened to 10 calendar days. To the extent that the reviewing body requires amendments or revisions to the prospectus, it will notify the issuer within the applicable time frame, indicating the reasons for the requests. Following receipt of the revised prospectus, the reviewing body has an additional 20 calendar days (for new issuers) or 10 calendar days (for all other issuers) to decide whether to approve the revised prospectus. Importantly, failure by the reviewing body to respond within the specified period does not result in automatic approval of the prospectus. Following approval, prospectuses are valid for 12 months for public offers or for the admission to trading on a trading venue of securities belonging to the same category and the same issuer (subject to any required supplements; see below).

Once approved by a reviewing body, the prospectus must be filed with the reviewing body that approved it, and must be published no later than the beginning of the public offer or admission of the securities to trading. In the context of IPOs, the approved prospectus also needs to be published at least six business days before the end of the offering period, thereby implementing a new minimum statutory requirement for the duration of IPOs. FinSA sets forth several permissible publication mediums, including in an electronic format on the website of the issuer or trading venue, provided that a printed 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 also need to be approved by the applicable reviewing body before publication and published in the same form as the approved prospectus. In addition, as a general matter, after the publication of a supplement (other than a pricing supplement), investors must be given the opportunity to withdraw their subscriptions or acquisitions. This means that the offer period must remain open for at least two days after publication of the supplement, or, alternatively, the issuer may grant investors the option to withdraw their subscriptions or acquisitions within two days of final completion of the offering.

Pricing supplements

Events that are contemplated by and disclosed in the prospectus (eg, corporate or regulatory approvals), as well as the final terms of the offering (eg, determination of the price or volume of the securities to be offered) 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. Indeed, FinSA specifically states that if the final issue price and the issue volume cannot be stated in the prospectus, the prospectus must instead indicate the maximum issue price and the criteria and conditions that will be used to determine the issue volume. In order to inform the market about the final issue price and volume,

this information is generally set out in a pricing supplement, which does not need to be approved by the reviewing body. However, the pricing supplement does need to be filed with the reviewing body upon publication.

Prospectus supplements

New facts and circumstances that were not contemplated by or disclosed in the prospectus and that are capable of materially influencing the investment decision of market participants must be published by way of a supplement to the prospectus. The supplement must be immediately prepared and reported to the applicable reviewing body. Subject to certain exemptions, it may be necessary to obtain the reviewing body's approval of the prospectus supplement. The reviewing body has a deadline of seven calendar days to provide such approval. 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 as that used for publishing the prospectus.

To facilitate the timely publication of supplements relating to certain events, FinSA provides that the reviewing bodies must maintain a list of facts that, by their nature, are not subject to approval by the reviewing body. According to these lists, review and approval are not required to publish supplements that notify the market of the occurrence of new facts that, according to the rules of the applicable Swiss or foreign trading venue where application for listing is sought, are made public and are possibly price-sensitive. In such scenarios, the relevant facts must be reported to and filed with the applicable reviewing body at the same time as publication of the supplement.

However, this exemption does not apply to supplements in respect of new facts that entail or result in changes to published annual, semi-annual or quarterly financial statements of the issuers concerned, even if such facts are also ad hoc-relevant and possibly price-sensitive. In such cases, the applicable reviewing body will follow the review timelines stipulated above.

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 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 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

In order to be admitted to trading on SIX, a listing application must be submitted in writing to SIX Exchange Regulation by a recognised representative, pursuant to article 43 of the SIX Listing Rules. As a general rule, the listing application must be submitted no later than 20 trading days before the start of the book-building period 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 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 from such requirements.

In addition to the duly signed listing application, the following documentation must also be submitted to SIX:

- 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 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, 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:

- The 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.
- The 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.
- Sparks (small and medium-sized companies (SMEs)): this is the SME segment of SIX Swiss Exchange and is aimed at entrepreneurs and owners wishing to lead their SME through its next growth phase and significantly advance their business. The proportionate listing requirements for issuers are tailored and balanced to the needs of SMEs and their investors, while ensuring that only first-rate SMEs are admitted to Sparks. Companies admitted to Sparks are subject to the same maintenance requirements as in the main segment, thus ensuring the highest levels of quality, transparency and investor protection.
- The 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).

- The 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).
- The Standard for Special Purpose Acquisition Companies (SPACs): introduced in 2021, this standard is for SPACs (cash shell companies) created with the sole purpose of acquiring a non-listed operating company within a certain defined time frame.
- The 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.
- The Standard for Depository Receipts: this standard is reserved for global depository receipts, defined by SIX as tradable certificates issued to represent deposited equity securities and that permit the (indirect) exercise of the membership and property rights attached to the deposited equity securities.
- The 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, 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**	**Sparks (SMEs)**		**Standard for Investment Companies**	**Standard for Real Estate Companies**
Financial track record	Three years	Three years	Two years		N/A	N/A
Minimum equity capital requirements (in million francs)	25	25	12		25	25
Minimum free float	20 per cent	20 per cent	>15 per cent		20 per cent	20 per cent

in percentage						
Minimum free float market capitalisa-tion (in million francs)	25	25	> 500 at time of listing (if 12 months average >1bn, duty to change)		25	25
Financial reporting	IFRS/US GAAP	Swiss GAAP FER/Standa-rd according to Banking Act	IFRS /US GAAP/Swiss GAAP FER, Banking Act		IFRS/US GAAP	Swiss GAAP FER/IFRS
Notes			Limited trading hours (3pm - 5.20pm + closing auction) >50 investors			

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 the 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; and
- 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 - 16 April 2024

Prospectus

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

In accordance with FinSA and FinSO, prospectuses must 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 that were in place under the SIX Listing Rules. Annex 1 to FinSO sets out the minimum content requirements for equity prospectuses and generally requires, inter alia, the following information:

- a 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, which must prominently appear on the cover of the prospectus and in the summary;
- a 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;

- a 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;
- a description of past investments, current investments and investments that have already been approved as well as a capitalisation table;
- a 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;
- an 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 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;
- the 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
- a statement regarding responsibility for the prospectus and its contents.

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, all sections of the prospectuses other than the summary may contain references to previously or simultaneously published documents.

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 that will be used to determine the issue volume. Once available, the information on the final issue price and on the issue volume must be filed with the applicable reviewing body and published.

The reviewing body is permitted to grant exemptions and determine that information does not need to be included in the prospectus. This may happen in circumstances where, for example, disclosure would be seriously detrimental to the issuer and its 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 - 16 April 2024

Publicity and marketing

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

FinSA (together with FinSO) generally provides that any advertising for financial instruments (ie, communications that are aimed at investors and serve to draw attention to specific financial instruments) must be clearly indicated as such, for example, with an appropriate disclaimer. Any such advertising must also make reference to 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 of 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).

Provided that the above considerations are observed and adhered to, and subject to any foreign securities law considerations, 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 - 16 April 2024

Enforcement

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

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

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):

- a warning;
- a 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;
- the issuance of a new registration decision, including certain 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 chair 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 - 16 April 2024

TIMETABLE AND COSTS

Timetable

9 | 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 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, 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 determining the timetable for a Swiss IPO.

In relation to the prospectus approval process, according to FinSA, the applicable reviewing body must review prospectuses as soon as they are received. First-time issuers are required to submit their prospectus for approval 20 calendar days prior to the publication or admission to trading. For all other issuers, this deadline is shortened to 10 calendar days. To the extent that the reviewing body requires amendments to the prospectus, it will notify the issuer within these time frames, indicating the reasons for the revisions. Following receipt of the revised prospectus, the reviewing body has an additional 20 calendar days (for new issuers) or 10 calendar days (for all other issuers) to decide whether to approve the revised prospectus. Following its approval by the reviewing body, the prospectus must be published at least six business days before the end of the offer period. If a requirement to publish an approved prospectus supplement arises, the applicable reviewing body has a maximum of seven calendar days (if required) to approve the supplement. 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 publication of an approved prospectus supplement (ie, other than customary pricing supplements, etc), the offer period must

remain open for at least two days after publication of the supplement or, alternatively, the issuer may grant investors the option to withdraw their subscriptions or acquisitions within two days after final completion of the offering.

In parallel to the prospectus approval process, the listing application 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.

Notwithstanding the above, in practice, IPOs in Switzerland generally take between four and six months to prepare. The preparation and execution of a typical 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, if the issuer has publicly listed debt securities on an EU securities exchange, the requirements under the European Market Abuse Regulation 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 analyst research reports;
- submission of the draft prospectus to the reviewing body;
- submission of the SIX listing application and available annexes;
- drafting roadshow presentation and other materials for analysts, press and investors;
- responding to any comments or requests for additional information from the reviewing body or SIX Exchange Regulation/Disclosure Office (as applicable);
- inclusion of interim financial statements into offering documents and updating 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 starting 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;
- pricing discussions with the board of directors of the issuer and, potentially, any selling shareholders and setting of price range;
- approval by the reviewing body of the prospectus and by SIX Exchange Regulation for the listing of the equity securities;
- execution of the underwriting agreement and related documents; and
- beginning of the offer period, publication of the prospectus, start of the price-fixing process (eg, book-building process) and beginning roadshow presentations.

In the 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, execution of the pricing agreement to the underwriting agreement and finalisation of the 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 after-market phase

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

- stabilisation of the shares along with disclosure of any stabilisation measures taken (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 of the first trading day) and disclosure of exercise of over-allotment option (within five trading days of exercise).

Law stated - 16 April 2024

Costs

10 | 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): between 5,400 and 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 and 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 discretionary/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 newly issued shares sold 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 (if applicable) must also be taken into consideration.

Law stated - 16 April 2024

CORPORATE GOVERNANCE

Typical requirements

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

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 main sources of rules on corporate governance that an issuer needs to adhere to after becoming a pubic company in Switzerland are as follows.

The 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. The bulk of the revised legislation came into effect on 1 January 2023. Most relevantly for IPOs, the revised law addresses, among other topics, corporate governance and executive compensation matters. In particular, the new law transposes the former Swiss Ordinance against Excessive Compensation in Listed Companies (OAEC) into statute. The OAEC was the result of the popular referendum on 'say on pay' in Switzerland, known as the Minder Initiative, which triggered an amendment to the Swiss Constitution and implemented rules that would apply from the first day Swiss issuers are listed on an exchange in Switzerland or abroad. The OAEC requirements, which are largely unchanged in their new iteration in the Swiss Code of Obligations, include a requirement for shareholders 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 chair, 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 participation 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 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 the securities and the quality of issuers. The categories of information that issuers are required to publish include descriptions of 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 blackout periods. Notably, this directive applies to all issuers whose equity securities have their primary or main listing on SIX Swiss Exchange Ltd 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.

The 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 - 16 April 2024

New issuers

12 | Are there special allowances for certain types of new issuers?

Under the Financial Services Act 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, although the general rule is that 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 period to be covered by the financial statements may be reduced accordingly. For newly founded companies, the prospectus must include an audited opening balance sheet or audited balance sheet after any contribution in kind has been made, subject to certain exceptions.

Upon application to the SIX Regulatory Board, issuers that do not satisfy the applicable minimum track record requirement may apply for an exemption from this requirement pursuant to the SIX Directive on Exemptions regarding Duration of Existence of the Issuer.

Law stated - 16 April 2024

Anti-takeover devices

13 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 may 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 to be represented in the shareholders' meeting in order to pass resolutions; and
- capital band (formerly, authorised capital) 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 Financial Markets Infrastructure Act, 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 (eg, antitrust approval), 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 - 16 April 2024

FOREIGN ISSUERS

Special requirements

14 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 Ltd (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 International Financial Reporting Standards, US Generally Accepted Accounting Principles or Swiss Generally Accepted Accounting Principles 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, which 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 corporate 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 issuer 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 issuer can otherwise demonstrate that there is a genuine market for the equity securities concerned).

Law stated - 16 April 2024

Selling foreign issues to domestic investors

15 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 standards 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 - 16 April 2024

TAX

Tax issues

16 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.

Law stated - 16 April 2024

INVESTOR CLAIMS

Forums

17 | In which forums 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 - 16 April 2024

Class actions

18 | 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 - 16 April 2024

Claims, defendants and remedies

19 | 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 of the issuer (ie, forward-looking statements), 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 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 of 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 roadshow materials) may be brought in Switzerland against whomever 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 of FinSA suggests that it was the legislature'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.

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 prior to the start of the public offer.

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 - 16 April 2024

UPDATE AND TRENDS

Key developments

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

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 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.

Equivalency of Swiss stock exchanges

On 30 June 2019, the recognition by the European Commission of Swiss stock exchanges under Markets in Financial Instruments Regulation (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 'Sparks' equity segments for SMEs

In October 2021, SIX Swiss Exchange Ltd (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 at 16 April 2024, one issuer, Xlife Sciences AG, has completed a listing on Sparks.

SPAC IPOs

Starting in 2021, global markets saw 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, VT5 Acquisition Company AG, to list on SIX a few days later. In 2023, VT5 Acquisition Company AG acquired R&S Group, thereby completing the first-ever Swiss de-SPAC. Given the current state of the global SPAC market, it appears unlikely that SPACs will become a significant element of the Swiss equity landscape in the near future.

Expansion of China Stock Connect programme to Switzerland

In February 2022, the China Securities Regulatory Commission 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, as at 16 April 2024, 17 China-listed issuers have listed global depository receipts on SIX.

Law stated - 16 April 2024

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