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## Framework Conditions

### 1. For a Competitive Legal and Regulatory Framework

#### ■ Financial Services Ordinance (FINSO), Financial Institutions Ordinance (FinIO) and Supervisory Organizations Ordinance (SOO)

The Financial Services and Financial Institutions Acts (LSFin and LEFin) entered into force on January 1, 2020, at the same time as their implementing ordinances, i.e. the FINSO, FinIO and SOO (Supervisory Organizations Ordinance). This legislation presents a major challenge, especially to independent wealth managers (IWMs) who play an important role in the financial center.

With effect from January 1, 2020, IWMs are subject to state supervision, thereby terminating a long-standing Swiss exception. They must obtain an authorization from FINMA

and will be monitored by a supervisory organization (SO), which is itself placed under FINMA supervision. A transitional period has been allowed until 2022 for affiliation to an SO.

At present, at least five organizations appear to have applied to FINMA for accreditation as SOs.



**Independent wealth managers:  
on the eve of a new era**

#### ■ Differentiated regulation

In 2019, 67 banks took part in the pilot phase launched by FINMA to test the less stringent provisions from which category 4 and 5 banks could benefit.

The Federal Department of Finance (FDF) conducted a consultation procedure on an amendment to the Capital Adequacy Ordinance, easing the regulatory provisions in several areas and simplifying the requirements for calculating the capital needed by well-capitalized small banks and securities firms.

At the same time, FINMA organized a hearing on the adaptation of several circulars (outsourcing, operational risks, corporate governance, publication, risk spreading and credit risk).

In November 2019, the Federal Council and FINMA announced the introduction of the small banks regime on January 1, 2020.

#### ■ Self-regulation of residential investment properties

At the end of August 2019, the Swiss Bankers Association (SBA) adapted its self-regulation scheme for the residential investment property sector.

The minimum deposit required to obtain mortgages on such properties is now 25%, compared with 10% previously. Moreover, the mortgage must now be reduced

to two-thirds of the lending value of the property within a maximum of 10 years (compared with 15 years previously).

These new standards entered into force on January 1, 2020. FINMA acknowledged these rules as a minimum prudential standard.

## ■ Partial revision of the Collective Investment Schemes Act (CISA)

On June 26, 2019, the Federal Council launched a consultation procedure on an amendment to the CISA relating to the introduction of a new type of fund. These are Limited Qualified Investment Funds or L-QIF, reserved for qualified investors and not subject to FINMA authorization or supervision. These vehicles must be administered by an institution that is supervised by FINMA. The aim is to enable innovative and flexible funds to be placed on the market more rapidly and at lower cost. The consultation procedure ended on October 17, 2019.

The financial center welcomed the new product, which may prove to be of particular interest to pension funds and family offices. However, in the absence of equivalence with the Alternative Investment Fund Managers (AIFM) Directive, the distribution of this new type of fund in EU member states will be impossible.

A Dispatch by the Federal Council is expected in the course of 2020.

## ■ Regulation and technological change

### **Distributed Ledger Technology (DLT)**

On November 27, 2019, the Federal Council published its Dispatch on the Act on the Adaption of Federal law to Developments in the Technology of Distributed Electronic Ledgers. This text is designed as a single amending act and sets out adjustments to nine Federal acts, involving both civil law and financial markets law.

Parliament is expected to examine the matter in the course of 2020.

### **Electronic Identity Act**

At the end of September 2019, the Swiss Parliament adopted the Electronic Identity Act during the final vote. The principle of task sharing between the State and private suppliers was approved: an “e-ID” may be provided by private companies which will, however, be authorized and controlled by an independent commission. The Confederation will only be required to intervene if the private sector does not guarantee a secure system. Its role is therefore subsidiary.

The holding of a referendum on this text was approved in December 2019. The Swiss people will therefore be invited to vote.

## ■ Protection for whistleblowers

At its meeting on June 3, 2019, the National Council rejected by a large majority the Federal Council’s draft text providing for a partial review of the Swiss Code of Obligations, with a view to incorporating into law the conditions under which whistleblowing by a worker will be regarded as lawful. Federal parliamentarians deemed the text to be far too complex, with a cascading system of measures.

In December 2019, the Council of States decided in favour of the text. On March 5, 2020, the National Council upheld its refusal, thereby definitively shelving this project.

## ■ Data protection

The Federal Parliament has decided to deal with the review of the Data Protection Act (DPA) in two phases. The penal provisions linked to the “Schengen” Agreement, which were urgent, were adopted unopposed in September 2018.

However, the comprehensive review of the DPA is still pending. Economic circles are stressing the importance of ensuring that Swiss law aligns with the European rules embodied in the General Data Protection Regulation (GDPR) and refraining from any “Swiss finish”. Failing this, Swiss exporting companies, including those based in the financial center, will have to apply two bodies of legislation concomitantly, Swiss and European.

After several twists and turns, the National Council adopted the revised DPA on March 11, 2020. The final outstanding divergence concerns the concept of profiling. The Council of States has not yet stated its position on this matter. An agreement in the Swiss Parliament could enable Switzerland to align its own legal framework with that of the EU, notwithstanding the fact that Brussels has yet to reach a decision on the compatibility of Swiss legislation with European law.

## ■ Regulation and sustainable finance

### International Platform on Sustainable Finance

On March 4, 2020, Switzerland became a member of the International Platform on Sustainable Finance. This multilateral forum seeks to strengthen international coordination and exchange on sustainable finance. The platform is part of the international efforts undertaken to fulfil the commitments made in the Paris Climate Agreement. Its objective is to stimulate the flow of private capital into ecologically viable investments.

### EU Sustainable Finance Action Plan

On March 8, 2018, the European Commission published its Sustainable Finance Action Plan. The objectives of the action plan are to redirect capital flows towards a more sustainable economy, integrate sustainability into risk management and promote transparency and sustainable investments.

On March 9, 2020, the group of technical experts set up by the Commission published its report on a European taxonomy to provide investors with information about activities that are regarded as environmentally sustainable. This classification has not yet been approved by the Member States. The impact of this action plan and its taxonomy of Swiss financial intermediaries in relation to their European clients remains to be seen.

### Federal Council action plan

In December 2019, the Federal Council set the objective of creating framework conditions enabling the Swiss center to be competitive in the field of sustainable finance. It instructed the Federal Department of Finance (FDF) to examine the following points:

- Obligation to systematically publish relevant and comparable information for clients, owners and investors;
- Greater legal certainty in relation to due diligence obligations;
- Consideration of climate and environmental risks and effects on all matters pertaining to financial market stability.

The FDF is due to publish its report in the first half of 2020.





## To promote sustainable investment, a dialogue and joint commitment of all the relevant players in the financial sector, policies and civil society are essential

### Work of the Swiss Parliament

For the record, the Swiss Parliament adopted the following three Postulates:

- Postulate 19.3950: Promoting sustainability through investment requirements adapted to the current situation;
- Postulate 19.3951: Sustainable financial products: releasing the brakes;
- Postulate 19.3966: Compatibility of financial flows with climate objectives and strengthening their transparency for the purpose of implementing the Paris Agreement.

On March 2, 2020, the National Council also adopted the following two texts:

- A Motion by PDC member Leo Müller to enhance the database on sustainable investments with a view to helping investors choose the best sustainable investments in full knowledge of the facts;
- A Postulate tabled by Green Party member Adèle Thorens seeking further information about Switzerland's position on sustainable finance.

These proposals are general in scope and will need to be clarified by the Federal Council and the Administration.

### FINMA risk monitor report

On December 10, 2019, FINMA published its risk monitor report for the first time. The supervisory authority identifies climate change, in particular, as a long-term risk.

FINMA intends to refine its analyses of climate-related risks in the assessment of financial institutions and will develop approaches to improve the publication of climate risks in the financial sector, on either a voluntary or regulated basis.

### Self-regulation

The financial center is not standing idly by in the field of self-regulation:

- The SBA is currently drawing up guidelines on including sustainable financing in private wealth management;
- The SFAMA is taking similar steps for asset management;
- Swiss Sustainable Finance (SSF) is also drawing up proposals.

These different approaches will require careful coordination to prevent inconsistencies and duplication.

## ■ Responsible multinationals initiative

The initiative “for responsible multinationals” was tabled in the autumn of 2016 by a coalition bringing together around 60 NGOs. It calls for stricter provisions on corporate responsibility in the fields of human rights and the environment. This implies obligations in terms of risk assessment, measures designed to prevent breaches of human rights and environmental damage and the publication of detailed information about the action taken.

The Federal Council published its Dispatch on September 15, 2017. It recommended rejecting the text, but failed to put forward an alternative proposal. The Government believes that the civil liability mechanism specified by the initiative goes too far and would be unique. The Federal Council takes

the view that a concerted international approach (including the UN and OECD) would be preferable. In addition, the initiative would be very difficult to implement because of its extraterritorial nature without, however, providing any guarantee regarding an improvement in the situation of people and the environment in developing countries.

From June 2018 onwards, the text went back and forth between the National Council and the Council of States, which both rejected the initiative but were unable to agree on the principle and content of a possible counter-proposal. The suspension of the parliamentary session in the spring of 2020 delayed further consideration of the matter.

## ■ Prevention of money laundering and financing of terrorism

In January 2020, the Financial Action Task Force (FATF) adopted the 3rd enhanced follow-up report on Switzerland. The FATF finds that Switzerland has, on the whole, made substantial progress in filling the gaps in technical compliance identified in the Mutual Evaluation Report of 2016. Our country is regarded as “compliant” or “broadly compliant” in respect of the great majority of the 40 Recommendations. It is deemed to be “partially compliant” on just five Recommendations. However, Switzerland remains in an enhanced follow-up process.

### **Stronger measures to prevent terrorism**

On March 9, 2020, the Council of States adopted by a large majority the range of measures proposed by the Federal Council to strengthen the fight against the terrorist threat in accordance with the Dispatch of September 14, 2018.

That Dispatch envisages a new provision in criminal law which will punish recruitment, training and travel with a view to committing a terrorist act, as well as the related financing activities. It also improves international cooperation. The Money Laundering Reporting Office Switzerland (MROS) will be able to deal with notifications of suspicious transactions from abroad, even in the absence of a notification at national level. Lastly, the proposal advocates a simplification and acceleration of mutual legal assistance in certain cases. However, the early transmission of information will be confined to exceptional situations, to avert a risk or facilitate investigations that would otherwise be excessively complicated.

The National Council is expected to examine this matter at its next session in 2020.

### **Amendment of the Anti-Money Laundering Act (AMLA)**

At the end of June 2019, the Federal Council adopted its Dispatch on the review of the AMLA. It contains the following main elements:

- People who provide services for the benefit of companies or trusts (advisors) must not only fulfil the obligations of due diligence and control embodied in the AMLA but are also under an obligation to report;
- The right to report will be upheld;

- Financial intermediaries will be able to terminate a business relationship if they do not receive an answer within 40 days of sending a report to the MROS;
- The threshold for due diligence obligations will be reduced from CHF 100,000 to CHF 15,000 for the cash transactions of traders in precious metals and gemstones;
- Lastly, the proposal provides for a clarification of the rules on verifying the identity of beneficial owners and for updating client details.

On March 2, 2020, the National Council declined to comment on this text. The only reason for its refusal lies in the obligations laid down for “advisors” in relation to domicile companies and trusts. If the Council of States endorses the People’s Chamber’s position, the Federal Council will have no option but to table a new proposal excluding the provisions relating to “advisors”.

### **Abolition of unlisted bearer shares**

On September 27, 2019, the Federal Council decided to bring the Federal Act on the Implementation of the Recommendations of the Global Forum into effect on November 1, 2019.

Under these provisions, bearer shares will only be authorized if the company has securities that are listed on the stock exchange or if bearer shares are issued in the form of intermediated securities. Unauthorized bearer shares will have to be converted into registered shares 18 months after the entry into force of the Act, i.e. on March 2021. Five years after the Act enters into force, i.e. on November 1, 2024, the shares of shareholders who have not come forward will be cancelled.

# Framework Conditions

## 2. For an Attractive Tax System

### ■ In Switzerland

#### Corporate taxation

##### Federal Act on the Tax Treatment of Financial Sanctions

By way of background, in December 2015, the Federal Council launched a consultation on the Federal Act on the Tax Treatment of Financial Sanctions.

After many twists and turns, in December 2018, the National Council adopted a proposal at its plenary session, which essentially makes the following provisions:

- Undisclosed commissions paid to public or private agents are not deductible;
- Fines and other financial sanctions imposed in Switzerland are not deductible if they are of a criminal nature;
- Foreign financial sanctions are not deductible if:
  - they are not in breach of Swiss public policy
  - the offence is also punishable in Switzerland
  - the amount of the sanction does not exceed that imposed in Switzerland.

On October 18, 2019, the Economic Affairs and Taxation Committee of the Council of States (CER-E) proposed a new wording, according to which fines imposed abroad will be deductible if the offences are in breach of Swiss public policy or “if the taxpayer is able to produce credible evidence that they have done all that is reasonably possible to comply with the law”. Meeting in plenary session, the Council of States endorsed this opinion in December 2019 and the National Council adopted the proposal in March 2020.

##### Reform of the Withholding Tax Act

In March 2020, on the basis of the guidelines presented in June and September 2019, the Federal Council launched a consultation procedure on a draft reform of withholding tax, which is due to end on July 10, 2020. The purpose of this action is to strengthen the Swiss capital market and extend the guarantee function of this tax at national level.

The reform proposal comprises two key elements:

- Exemption from withholding tax for Swiss interest-bearing investments made by corporate bodies domiciled in Switzerland and by foreign investors;
- Extension of the withholding tax to interest received by natural persons domiciled in Switzerland on foreign securities, including on indirect investments.

The implementation of these two core aspects involves the intervention of the paying agents, i.e. primarily the banks, which alone know whether the account holders are Swiss or foreign residents.

The Confederation concedes that the loss of revenue, estimated at CHF 250 million, would be offset in the long term by the dynamic impact of the reform. However, for the banks, the costs of implementing the new system are estimated by the SBA at between CHF 0.5 and 1 billion, in view of the more active role that the banking institutions would have to play in their paying agent capacity.



**The reform of withholding tax and stamp duty helps to ensure the economic prosperity of our country and of its inhabitants**



## Stamp duty

The collection by the Confederation of stamp duty on new issues and trades places the Swiss financial center at a disadvantage in relation to its main competitors. Parliament has been approached several times in a bid to abolish this obstacle to the development of the Swiss banking and financial sector. Back in 2009, the PLR Group submitted an initiative seeking the phased abolition of stamp duty. The parliamentary debates were suspended primarily due to the priority given to the Corporate Taxation Reform (CTR). In January 2020, the Economic Affairs and Taxation Committee of the Council of States (CER-E) decided to extend this suspension.

In January 2020, the Economic Affairs and Taxation Committee of the National Council (CER-N) launched a consultation lasting until April 23, 2020 on two preliminary drafts.

The first text provides for the abolition of:

- Stamp duty on trading in Swiss securities (CHF 190 million)
- Stamp duty on foreign bonds with a residual maturity of less than 1 year (CHF 5 million)
- Stamp duty on life insurance premiums (CHF 24 million)
- The second preliminary draft concerns the abolition of:
  - Stamp duty on trading in other foreign securities (CHF 1.05 billion)
  - Stamp duty on insurance premiums for property and assets (CHF 743 million).

At present, the outcome of the examination of these preliminary drafts is hard to predict, given the amount of tax revenue at stake.

## Individual taxation

### Abolition of rental value

Following the extensive preparatory work undertaken since 2017, the Economic Affairs and Taxation Committee of the National Council (CER-N) launched a consultation procedure on the abolition of rental value in April 2019. Essentially, the proposal is that rental value and deductions for the costs of acquiring the income would be abolished at both federal and cantonal level for owner-occupied accommodation. However, they would still apply to second homes for personal use. The deductions allowed for investments intended to save energy and protect the environment and also for the costs incurred for work undertaken to restore historic monuments and demolition costs would be abolished at federal level. However, cantons that so wish can maintain these deductions. The deductibility of private interest payments would be greatly restricted, with five options on the table. Lastly, the bill allows for the introduction of a deduction for first-time home buyers.

The Swiss Bankers Association (SBA) showed some willingness to discuss the situation, while assessing the impact of the options retained.

At the end of the consultation procedure, it emerged that the left rejected the proposal outright, on the basis that it is afraid that the loss of tax revenues would lead to public service cutbacks. The other parties tend to favour the reform, but fail to agree on the deductions to be eliminated in exchange. The cantons see no need for action.

In November 2019, the Economic Affairs and Taxation Committee of the Council of States (CER-E) began to consider the proposal, but decided to suspend its work pending the Federal Council's opinion on the desirability of a change to the system; it also wished to ascertain the form that a set of balanced measures might take in the Government's view.

As a result, the Council of States, meeting in plenary session, decided in December 2019 to extend the deadline for dealing with this parliamentary initiative by two years, i.e. until the session in autumn 2021.

## ■ At international level



### Implementation by Switzerland of the international standard for the Automatic Exchange Of Information (AEOI)

In September 2019, Switzerland forwarded information to 62 countries, including EU Member States, except for Bulgaria and Romania (where the OECD took the view that data confidentiality and security rules were not observed). In September 2020, other countries will be added to this list, including Israel. At that time, the Confederation will have activated the AEOI with 109 States or jurisdictions, with the proviso that some do not wish to obtain information (they include Bermuda, the Cayman Islands, the United Arab Emirates and Kuwait) while others do not yet have a suitable legal framework (e.g. Albania, Lebanon, Nigeria and Peru). In the case of Turkey, the AEOI will not be applied until 2021 for political reasons.

### Exchange of information on request based on the OECD standard

On April 6, 2020, the Global Forum on Transparency and Exchange of Information for Tax Purposes published its peer review report on Switzerland. The overall rating of “broadly compliant” was granted to the Confederation in respect of the legal framework in place in January 2020 and the applications processed from July 2015 to June 2018.

The Report states that since its last review in 2016, Switzerland has closed a number of gaps, in particular by guaranteeing the availability of information about the rightful owners of bearer shares, in particular, providing administrative assistance with regard to deceased persons, improving its procedure for the exchange of information and doubling the staff of the Information Exchange Service.

The Report recommends some improvements. Switzerland should take further measures to guarantee the availability of information about the actual beneficial owners of all legal entities and structures. Switzerland should also guarantee that notification and appeal procedures do not prevent or unduly delay an effective exchange of information and ensure that the confidentiality of the information received is always safeguarded when an application is processed.

### Taxation of digital services

A debate on the taxation of digital services is currently raging.

France opened fire by seeking to introduce a 3% tax on the digital services turnover generated by the Big Four (GAFA). Other services, notably in the financial sector, are not involved.

In May 2019, the OECD adopted a route map based on two pillars to resolve the tax challenges raised by the digitalization of the economy:

- The first pillar will explore possible solutions to determine where the tax should be paid and on what basis (the “link”), as well as the share of profits that could or should be taxed in the jurisdictions in which customers or users are based (“distribution of profits”);
- The second pillar will examine the design of a system seeking to ensure that multinational businesses – in the digital economy and beyond – pay at least a minimum level of tax.

The OECD was expecting an early solution based on a “unified approach”. Conflicts of interest between the States and the devastating effects of the coronavirus pandemic on the global economy will no doubt make progress slower. The next OECD summit, scheduled to take place in Berlin in July 2020, may provide indications about further action on the proposal.

Switzerland will no doubt play an active role in defining the new standards in order to reduce the impact on tax revenue as far as possible. This has been provisionally estimated at between CHF 1 and 5 billion for the Confederation.



**Switzerland has a central role to play by participating in the debate on the taxation of digital services**



# Framework Conditions

## 3. Relations with the European Union

### ■ Institutional Agreement with the EU

The GFC, acting jointly with the SBA and *economiesuisse*, supports the Institutional Agreement negotiated with Brussels. This text has the advantage of mapping out a credible path for future bilateral relations between Switzerland and the EU.

Moreover, this treaty is an essential prerequisite for opening negotiations on an agreement allowing future access to the market for Swiss banks and other financial intermediaries.

Following intense debates in the Foreign Policy Committees of the National Council and Council of States in the spring of 2019 and after consulting social partners, the Federal Council stated on June 7, 2019 that it did not intend to sign the Institutional Agreement as it stood and had written to the European Commission seeking clarification of the three following points: salary protection, the prohibition of State aid and the Directive on EU Citizenship.

### ■ Stock-market equivalence and the cohesion billion

At the end of 2019, noting the lack of progress on the Institutional Agreement, the EU decided, for purely political reasons, not to extend the equivalence of the Swiss stock markets with European legislation. Consequently, the countermeasures proposed by the Federal Council came into force on July 1, 2019. Their purpose is to prohibit European stock markets from trading in Swiss securities.

The dispute over stock market equivalence became part of the debate over Switzerland's second contribution to the enlargement of the EU, commonly referred to as the cohesion billion. The Confederation is expected to pay the sum of CHF 130 million to certain EU Member States for 10 years in support of specific projects. In December 2019, following an intense debate, the Swiss Parliament decided to grant the cohesion billion on the express condition that the EU waives the discriminatory measures against Switzerland.

### ■ Initiative against Bilateral Agreements

It was expected that the Swiss people would decide on the UDC initiative "for moderate immigration (containment exercise)" on May 17, 2020. This text seeks to terminate the Agreement on the free movement of people between Switzerland and the EU. As a result of the guillotine clause, this initiative threatens not only the free movement of people but the entire Bilateral Agreements I system. Due to the coronavirus pandemic, the vote has been delayed until September 27, 2020.

Economic interests are unanimously opposed to this text, which would cause serious damage to Switzerland's prosperity.



### ■ Consequences of Brexit for Switzerland

January 31, 2020 marked the official departure of the United Kingdom from the EU. December 31, 2020 is the deadline for settling the details of future cooperation between London and Brussels. This seems a very short period of time in view of the countless issues that still have to be resolved.

As part of its "Mind the Gap" strategy, Switzerland has signed a series of agreements with the United Kingdom to

maintain the status quo in terms of bilateral relations with this important trading partner. Moreover, both countries have expressed the intention of strengthening their financial relations on the basis of the "mutual recognition" concept. The aim is to ensure mutual access to the market, thereby enabling the unfettered provision of cross-border services.