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Framework Conditions

1. Regulations during the COVID-19 Pandemic

The Coronavirus pandemic has had a direct impact on regulations governing the banking and financial sector. The Federal Council, SNB and FINMA have all had to intervene in this tense environment.

Federal Council COVID-19 Joint and Several Guarantee Ordinance

On March 25, 2020, the Government enacted an Ordinance designed to give enterprises rapid and unbureaucratic access to bank credits enabling them to cover their overheads despite substantial income shortfalls. The four guarantee agencies recognised by the Swiss federal government were asked to provide collateral in the form of joint and several guarantees to the banks which lent money to enterprises.

Two different procedures have been established for granting COVID-19 credits, depending on the amount requested.

- Credits of up to CHF 500,000 (COVID-19 credit)
- Credits of between CHF 500,000 and CHF 20 million (COVID-19 PLUS credit)

An initial total allocation of CHF 20 billion was released on March 26 and subsequently raised to CHF 40 billion on April 3, 2020.

The deadline for the credit applications expired on July 31, 2020. The total volume of funds granted totalled CHF 16.8 billion; more than 136,000 SMEs made use of this measure.

COVID-19 Joint and Several Guarantee Act

The Dispatch issued by the Federal Council on the COVID-19 Joint and Several Guarantee Act was published on September 18, 2020. The purpose of this text was to transpose into an ordinary law the COVID-19 Joint and Several Guarantee Ordinance that had been adopted by the Federal Council on March 25, 2020.

In December 2020, Parliament adopted this law without making any major changes with regard to the aforementioned ordinance. It merely extended the repayment period, which was increased from five to eight years.

Unfortunately, a referendum was launched against this legislation and the Swiss people will be asked to decide on this matter on June 13, 2021. It is to be hoped

that this referendum will be rejected. Otherwise, the law would cease to apply in September 2021, thereby leaving a legal vacuum which would take months to fill. Such a scenario would jeopardise numerous jobs as well as emergency assistance.

FINMA: Exemptions for supervised institutions due to the COVID-19 crisis

At the same time, FINMA temporarily relaxed a number of rules on the debt ratio, risk spreading and identity checks based on the Anti-Money Laundering Act (AMLA).

FINMA: 2020 Risk Monitor

On November 11, 2020, FINMA published its 2020 Risk Monitor. The main feature this year was the COVID-19 pandemic which placed the financial system under severe pressure. This created new risks for the Swiss financial institutions. Hence, the supervisory authority considers that the recurring turbulence observed on the market and the resulting decline in liquidity present a significant short-term risk for the financial institutions. Moreover, the pandemic occasionally exacerbated existing risks. The default risk or changes made to loans granted to companies and corporate borrowings abroad will be added to the list of major risks identified by FINMA.

With regard to climate risk monitoring, readers are referred to the section on “Regulation and sustainable finance” below.

Deferred implementation of the final Basel III standards

On March 27, 2020, the Group of Central Bank Governors and Heads of Supervision (GHOS) decided to postpone the implementation of the final Basel III standards for one year, until January 1, 2023. The aim of this postponement is to enable the banks and regulators to address the immediate priorities relating to the impact of the COVID-19 pandemic on the banking system.

Framework Conditions

2. For a Competitive Legal and Regulatory Framework

■ Financial Services Act (FinSA) and Financial Institutions Act (FinIA)

On October 28, 2020, FINMA announced that the phase of implementing the institutional conditions required for the application of FinSA and FinIA had ended.

The supervisory authority approved the dossiers of five Supervisory Organisations (SO) which are authorised to supervise independent wealth managers and trustees. The latter have until the end of 2022 to obtain a licence from FINMA, which is conditional upon their affiliation to an SO. It is specified that as at June 30, 2020, 1,934 wealth managers and 272 trustees had expressed an interest in obtaining a licence.

FINMA also approved the applications by three registration bodies for client advisers. These bodies must ascertain whether registered advisers have the requisite qualifications and advanced training.

In addition, market players have access to two inspection bodies for the preliminary verification of their prospectuses.

Lastly, the Federal Department of Finance (FDF) has recognised four mediation providers in view of the fact that the SBA ombudsman is reserved for its own members.



■ Deposit guarantee - Insolvency law - Segregation of intermediated securities

On June 16, 2020, the Federal Council adopted the Dispatch on a partial review of the Banking Act following a consultation procedure conducted between March and June 2019.

This draft text focuses on deposit guarantees. It stipulates that the time limit set for esisuisse to pay funds to the liquidator will be cut from 20 to 7 days. A further 7-day time limit will apply to payment of the guaranteed sum to depositors by the liquidator. The financing method will be changed as well. Instead of the additional liquidities that are currently required, the banks shall be required to hold on a permanent basis with a reliable sub-custodian first-class securities that can easily be sold or an amount of cash in Swiss francs equivalent to one half of the contributions that

they are required to pay. Lastly, the maximum commitment will equate to 1.6% of the total guaranteed deposits, but at least CHF 6 billion.

The reform in question also applies to two other fields, the first being insolvency law in connection with restructuring plans and, secondly, the obligation imposed upon the banks to hold client securities separately from their own securities (segregation).

The National Council approved this draft at its session in March 2021. The Council of States will be asked to deliver its opinion at its session in summer 2021. If the draft is adopted by the two Chambers, it will enter into force in 2022 at the earliest.

■ Post Organisation Act (POA)

On June 5, 2020, the Federal Council opened a consultation procedure on a partial review of the POA. The purpose of this reform is to authorise PostFinance to grant mortgages and other forms of credit. There are also plans to partially privatise PostFinance.

The main arguments put forward against the proposal by right-wing politicians and business circles, including the SBA, are as follows:

- The fundamental question is to determine how to finance this universal service. The response must be found in the Confederation's budget and not by allowing a State-owned enterprise to intervene on private markets.
- The imposition of a new semi-state player on a market that is already highly competitive would not result in

an improvement. On a market such as real estate and mortgages, knowledge of the field is essential. Otherwise, the risk-taking may prove to be disproportionate. The Swiss Post Office currently has no experience or operational expertise in lending practices.

- Lastly, there would be a distortion of competition on the French-speaking Swiss market where, unlike PostFinance, BCGE and BCV no longer benefit from a State guarantee.

On January 20, 2021, the Federal Council announced that it intended to privatise a majority stake in PostFinance to address the criticism expressed during the consultation procedure. This decision encountered stiff opposition from the left-wing parties and trade unions.

■ Regulation and technological change

Distributed ledger technology (DLT)

On September 25, 2020, the Federal Assembly unanimously adopted the Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology. This legislation is designed as a single amending act which includes changes to nine federal laws, involving both civil law and financial markets law.

The aim is to adapt the law regulating the securities market to provide a legal basis for trading rights through electronic ledgers. This involves amending the law on intermediated securities to specify the link with the new type of securities. The law also regulates the issue related to claiming cryptoassets in the event of bankruptcy.

In October 2020, the Federal Department of Finance (FDF) initiated a consultation procedure that will run until February 2, 2021, on the Ordinance that is designed to transpose the amendments contained in the aforementioned Act.

Electronic Identity Act

At the end of September 2019, the Federal Assembly adopted the Electronic Identity Act in a 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 authorised and inspected by an independent commission. The Swiss federal government will not intervene unless the private sector is unable to guarantee a secure system. Its role is therefore subsidiary.

This Act was contested in a referendum and put to the people on March 7, 2021. 64.4% of citizens voted against this legislation. It was opposed by all the cantons.

On March 10, 2021, the parties represented in Parliament tabled a motion entitled: "The State must implement reliable electronic identification". The State is asked to propose an e-ID that enables people to identify themselves for the online services provided by the authorities and private players.

■ Data protection

In the final vote during the session in autumn 2020, the Federal Assembly adopted the comprehensive reform of the Data Protection Act after resolving the last remaining controversy over the concept of high-risk profiling.

This decision was welcomed in business circles. However, they stressed the need for Swiss law to follow the European rules set out in the General Data Protection Regulation (GDPR) and avoid any "Swiss Finish".

The EU has yet to make a decision acknowledging the adequacy of Swiss law on this subject. This decision, which should have been made in May 2020, has been postponed.



On data protection, "economic circles have always stressed the need for Swiss law to follow European rules and avoid any Swiss Finish"

■ Regulation and sustainable finance

EU action plan for the development of sustainable finance

On March 8, 2018, the European Commission published its action plan for the development of sustainable finance. The aims are to redirect capital flows towards a more sustainable economy, integrate sustainability into risk management, and facilitate transparency and sustainable investments.

The technical experts group set up by the Commission completed its report on European taxonomy on March 9, 2020; this is designed to enable investors to determine which activities are regarded as sustainable from the environmental perspective. On April 21, 2021, the Commission published a package of measures intended to define its aims in this field.

Moreover, Swiss financial intermediaries and asset managers, in particular, had to do a considerable amount of work by March 10, 2021, to classify their products in line with the sustainability-related disclosure requirements set out in the "EU Sustainable Finance Disclosure Regulation" (SFDR). These provisions apply to all financial products intended for final investors who reside in the EU.

Report and guidelines of the Federal Council

On June 26, 2020, the Federal Council published a Report and Guidelines on Sustainable Development in the Financial Sector. The Report expresses an ambition shared by the branch to make Switzerland "a leading global center for sustainable financial services". The Government therefore sets out a general framework which it leaves to the players in the branch to define in detail, in accordance with the subsidiarity principle.

On December 11, 2020, the Government adopted concrete measures to improve transparency, strengthen risk analysis, and develop Switzerland's commitment at international level. Moreover, on January 12, 2021, it stated that all Swiss enterprises must provide financial information about their climate risks based on the TCFD (Task Force on Climate-related Financial Disclosures) standard.

FINMA Climate Risk monitor

For the record, on December 10, 2019, FINMA published its first Risk monitor. Among long-term risks, the supervisory authority identifies in particular climate risks. In its opinion, these risks may be placed in two categories: physical risks and transition risks. Physical risks relate to the threat of ever more disasters as well as the costs to the economy caused by natural disasters and gradual climate change. Transition risks are the result of environmental policy measures or disruptive technology.

On June 26, 2020, following the Federal Council's Report, FINMA specified the various aspects of its approach in the area of climate risk management, protection against the risks of greenwashing and the publication of climate-related financial risks.

Publications by the SBA, SFAMA and SSF

On June 4, 2020, the Swiss Bankers Association (SBA) published a brochure entitled "Sustainable finance: Switzerland is a pioneer and a leading international player". It also published a "Guide for the integration of ESG factors into the process of advising private clients".

On June 16, 2020, the Swiss Funds and Asset Management Association (SFAMA) and Swiss Sustainable Finance (SSF) jointly published a document entitled "Sustainable asset management: key messages and recommendations of SFAMA and SSF".

CO₂ Act

On September 23, 2020, the Federal Assembly finalised the new CO₂ Act, which introduces many incentives to reduce greenhouse gas emissions in line with the Paris Climate Agreement signed in 2015. Three quarters of CO₂ reductions will have to be achieved in Switzerland and the rest abroad.



**The Swiss Financial Center
plays a leading role in the
international context and favours
the development of sustainable
finance**

Apart from the tax on private jet flights, the reform introduces a tax on airline tickets. There is an increase in the price of fuel oil and petrol. The law also provides for the creation of the Climate Fund with a view to encouraging measures to prevent global warming.

FINMA and the SNB will have to measure the climate-related financial risks at regular intervals. The new law does not impose any other obligations on banking and financial institutions.

The referendum against this law will be held together with the vote scheduled for June 13, 2021. The SBA, *economiesuisse* and the Geneva Financial Center (GFC) have already declared their support for this legislation.

■ European legislation: AIFM Directive

In August 2020, the European Securities and Markets Authority (ESMA) made proposals to the European Commission in the context of the reform of the AIFM (Alternative Investment Fund Managers) Directive. These suggestions refer in particular to the limitation of delegation, clarification of the concept of reverse solicitation, and the harmonisation of supervision of third country entities. A consultation on this Directive was held between October 22, 2020, and January 29, 2021.

This legislation is of considerable importance to the Swiss Financial Center insofar as it does not apply solely within the EU, but also to fund managers based outside the EU. An overly stringent restriction of the possibility of delegating to managers domiciled in third countries is obviously not desirable.

■ Responsible multinationals initiative

On November 29, 2020, Swiss citizens expressed their opinion on the popular initiative for “responsible enterprises”; this required Swiss enterprises to respect human rights and environmental standards in their activities abroad. This initiative was adopted by the people by a narrow majority of 50.7%. However, it was rejected by a majority of the cantons. As initiatives are required to secure a double majority, this result led to rejection of the initiative.

For business circles, including the Geneva Financial Center (GFC), the text of the initiative went way too far, as it applied to all the companies based in Switzerland and in particular the numerous exporting SMEs which are the pillars of our economy. In addition, the initiative disproportionately extended the responsibility of Swiss enterprises and

provided for a reversal of the burden of proof. Lastly, the Swiss courts would have been called upon to resolve disputes in accordance with Swiss law, even if the alleged acts had taken place abroad, at the other end of the world.

It should also be recalled that, in June 2020, the Federal Assembly adopted an indirect counter-proposal which will come into effect following the rejection of the initiative. This counter-proposal sets out obligations of transparency in all business relationships and additional specific due diligence in connection with trade in certain metals, including gold.

On April 14, 2021, the Federal Council initiated a consultation lasting until July 14, 2021, on the provisions for implementing the indirect counter-proposal.

■ Prevention of money laundering and financing of terrorism

Third Enhanced Follow-up Report on Switzerland by the FATF

Following the publication of the enhanced follow-up report by the FATF in January 2020, Switzerland continued to implement measures designed to fill certain gaps. However, our country is regarded as “compliant” or “broadly compliant” on the great majority of the 40 Recommendations. It is deemed to be “partially compliant” on just 5 Recommendations.

Strengthening the fight against terrorism

In September 2020, the Federal Assembly adopted two sets of measures to strengthen the fight against terrorism.

Firstly, new criminal law provisions (Art. 260 ter and 260 sexies of the Swiss Criminal Code) which punish recruitment, training and travel for the purpose of terrorist acts and related financing activities. The Federal Council decided that these new provisions would come into effect on July 1, 2021.

The second section targets individuals who pose a threat, but against whom criminal proceedings cannot be initiated. These persons may be prohibited from entering certain places and required to report to a police station at specified times. Potentially dangerous persons may also be placed under house arrest.

This aspect, which is incorporated in the Federal Act on Police Measures to Combat Terrorism, was opposed in a referendum and will be put to the people’s vote on June 13, 2021. Some people regard these rules as an attack on fundamental rights and personal freedoms.

Amendment of the Anti-Money Laundering Act (AMLA)

After turbulent debates, the Federal Assembly finally adopted the revised Anti-Money Laundering Act (AMLA) in March 2021.

The reform contains the following main elements:

- The right to notify will be retained. The distinction between the right and the obligation to notify will be defined in an ordinance.
- Financial intermediaries may terminate a business relationship if they do not receive a reply within 40 days after forwarding a notification to the MROS.
- Lastly, the proposal seeks to clarify the rules on the verification of beneficial owners’ identities and on updating client information. The latter point merely codifies the practice followed by Swiss financial intermediaries. However, it is essential to ensure compliance by Switzerland with FATF recommendation No. 10.

However, Parliament refused to require persons providing services for companies or trusts (advisers) to comply with new due diligence obligations. They would have been subject to AMLA once they had become involved in the creation or administration of domiciliary companies or trusts, instead of being covered by this Act only if they transfer securities.

The Federal Assembly also refused to reduce the threshold of the due diligence obligations from CHF 100,000 to CHF 15,000 for cash transactions by traders in precious metals and precious stones.

Framework Conditions

3. For an Attractive Tax System



A reform of indirect taxation will create a dynamic that is likely to facilitate the development of new activities

■ In Switzerland.

Reform of the Withholding Tax Act

For the record, the Federal Council held a consultation procedure until July 2020 on a proposed withholding tax reform. The purpose of this approach 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 legal entities 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 indirect investments.

Implementation of these two core aspects requires the involvement of the paying agents, i.e. primarily the banks as only they know whether the account holders are Swiss residents or foreigners.

The Financial Center welcomed the aspect of the reform relating to an exemption for Swiss interest-bearing investments. However, it was not in favour of extending the guarantee role of this tax and emphasised that the cost of implementing this new system would be very high.

Having regard to the criticism voiced during the consultation, the Federal Council decided to amend its proposal. It published its Dispatch on April 15, 2021. The reform now provides for the maintenance of withholding tax on interest on assets held at banks by natural persons in Switzerland, while abolishing the tax on all other types of interest for all investors. Moreover, the Government withdrew the proposal to strengthen the guarantee function. It pointed out that in order to achieve this objective, a complex new deduction system would have to be established or banking secrecy in tax matters limited.

Stamp duty

For the record, at the end of 2009, the PLR political party group had already tabled an initiative for the phased abolition of stamp duty. The parliamentary debates were suspended, particularly because of the priority given to the corporate tax reform (RFFA).

This parliamentary initiative was subsequently divided into two draft texts. The first concerns the abolition of stamp duty on equity capital issues. This abolition is supported by the Federal Council in order to restore the neutrality of financing and help Swiss companies absorb the losses caused by the COVID-19 pandemic. On December 17, 2020, the National Council decided not to suspend its work on this subject. The Council of States will address this issue at its summer 2021 session.

The second aspect concerns the abolition of stamp duty on trading activities and on insurance premiums. In its opinion of November 18, 2020, the Federal Council proposed not to examine this draft text because of the financial implications which are estimated to total nearly CHF 2 billion. On December 16, 2020, the National Council decided to postpone the debate on this proposal in order to conduct a discussion at the same time as the debate on the withholding tax reform.

In its Dispatch of April 21, 2021, on the withholding tax reform (see above), the Federal Council proposed abolishing stamp duty on trading in Swiss bonds, which is an encouraging first step, but is not sufficient.

Popular Initiative

“Less tax on salaries, equitable taxation of capital (99% initiative)”

Tabled by the Young Socialists, this popular initiative seeks to impose a 150% tax on proportions of capital income which exceed a specified amount. The draft does not define “proportions of capital income”. According to its initiators, this would apply to interest (including rents), dividends and capital gains. The initiative would clearly end the partial taxation of dividends and introduce a private capital gains tax.

According to the initiators, exceptions would be allowed solely for rental value and second and third pillar incomes, but the text of the initiative does not specifically mention them. Nor does it comment on the threshold to be defined.

Endorsing the Government’s opinion, both Chambers rejected this initiative by a large majority without putting forward a counter-proposal.

■ At international level



Implementation by Switzerland of the international standard for the automatic exchange of information (AEOI)

In February 2021, 115 States and territories undertook to implement the OECD standard for the automatic exchange of information (AEOI). In its report, published at the end of 2020, this Organisation had announced that in 2019 nearly 100 jurisdictions had exchanged information about 84 million accounts involving nearly 10,000 billion euros.

In September 2020, Switzerland sent information about over 3 million accounts to 86 countries. It received almost as much information itself. It should be added that at the beginning of 2021, Switzerland had activated the AEOI with 102 jurisdictions.

Taxation of digital services

In line with its road map of May 2019, in October 2020 the OECD published new documents that address the two sections designed to resolve the tax challenges raised by the digitisation of the economy:

- The first proposes to partially redistribute the rights to tax profits by transferring them from the producing countries to the market jurisdictions (1st pillar)
- The second seeks to establish a global minimum tax rate on corporate profits (2nd pillar).

The OECD was already banking on a rapid solution based on a “uniform approach” in 2020. However, the pandemic and the US Presidential election campaign slowed the pace of negotiations. The OECD now expects to complete the procedure in mid-2021. In the event of failure to reach full agreement, the member states have adopted a report which defines the overall framework of this reform. With regard to the minimum tax rate, a figure of 12.5% is mentioned. The OECD has initiated a public consultation on these proposals which will run until December 14, 2020.

In April 2021, the Biden Administration proposed introducing a global minimum corporate tax rate. This might help to enable negotiations within the OECD to be brought to a successful conclusion at the Rome Summit in October 2021.

Against this background, in September 2020, the National Council’s Economic Affairs and Taxation Committee (CER-N) refused to act on the parliamentary initiative seeking to introduce a tax on sales in Switzerland by the Internet giants when the profits made in Switzerland are evidently not taxed there. In particular, the Committee took the view that, in the light of the ongoing international negotiations, a unilateral decision by Switzerland would be detrimental to its fiscal attractiveness.

At the end of 2020, the Socialist Group tabled a motion in each of the Chambers asking the Federal Council to prepare a draft designed to tax the digital economy unless the OECD negotiations were successfully completed by June 2021. In the spring of 2021, the Council of States referred this motion back to the Committee.

Framework Conditions

4. Relations with the European Union

■ Institutional agreement with the EU

For the record, in June 2019, the Federal Council stated that it did not intend to sign the institutional agreement as it stood and had written to the European Commission seeking clarification of the following three points: salary protection, the prohibition of State aid, and the EU Citizenship Directive.

On September 28, 2020, the President of the European Commission, Ursula von der Leyen, asked the Federal Council to expedite the conclusion of this agreement. Shortly afterwards, on October 13, 2020, the Federal Council replaced Secretary of State Roberto Balzaretti with Mrs Livia Leu as chief negotiator with the EU. On the same occasion, following the vote on the limiting initiative, the Government announced the resumption of discussions with Brussels on the settlement of outstanding points.

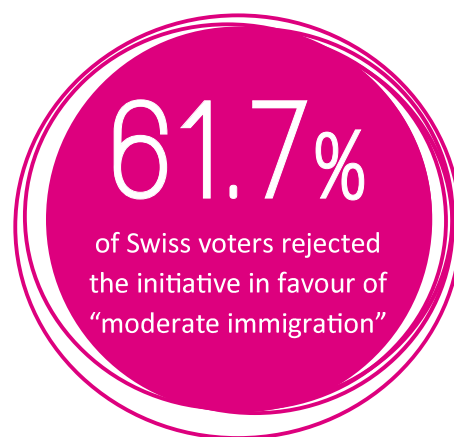
Unfortunately, the meeting held on April 23, 2021, in Brussels between the President of the Swiss Confederation, Guy Parmelin, and the President of the European Commission, Ursula von der Leyen, failed to break the deadlock.

On May 26, 2021, the Geneva Financial Center noted with regret the Federal Council's decision not to sign this Agreement. In the future, it will be essential to stabilise and strengthen bilateral relations with the EU, particularly in relation to access to the market for financial services.

It will be essential to stabilise and strengthen bilateral relations with the EU

■ Initiative against the bilateral agreements

On September 27, 2020, the Swiss people rejected by a clear majority of 61.7% the UDC initiative in favour of “moderate immigration” (limiting initiative). This legislation demanded the abolition of the agreement on freedom of movement of persons between Switzerland and the EU. Due to the guillotine clause, this initiative not only jeopardised the freedom of movement of persons, but also the provisions of Bilateral Agreements I.



■ Consequences of Brexit for Switzerland

After numerous twists and turns, the EU and the UK reached a trade and cooperation agreement in extremis on December 24, 2020. This treaty admittedly provides for the abolition of customs duties but restores border controls with effect from January 1, 2021, with import and export declarations required on both sides. Moreover, the treaty does not address financial services, which are to be the subject of separate negotiations. In the spring of 2021, a Memorandum of Understanding on this subject seems to have been concluded, but not yet signed. This document apparently has little substance beyond the creation of a discussion forum, in particular to settle matters of equivalence. For the UK financial center, this means that, as things stand, banks and financial intermediaries in the City have lost their European passport which allowed them

to offer their services to clients in the EU from London without any restrictions.

As part of its “Mind the Gap” strategy, Switzerland has concluded a series of agreements with the United Kingdom to maintain the status quo in terms of bilateral relations with this important economic partner. Moreover, the two countries have expressed their intention to strengthen their financial relations on the basis of the concept of mutual recognition. The aim is to ensure mutual access to the market, which allows unobstructed cross-border services to be provided. Switzerland and the United Kingdom accordingly signed a joint declaration on June 30, 2020. The intention is to finalise the text of the agreement by the end of 2021, with a view to its formal conclusion in 2022.