FRAMEWORK CONDITIONS
1. FOR A COMPETITIVE LEGAL AND REGULATORY FRAMEWORK

In 2014, in the context of federal consultations, the GFC communicated its position on several laws drafted by Parliament.

Swiss Financial Market Infrastructure Act (FMIA)

This law is particularly important for the banking and financial industry as it applies to the infrastructure of financial markets as well as to over-the-counter derivatives trading. In this respect, Swiss financial intermediaries must be able to rely on a regulatory framework that is recognized as equivalent to the regulatory framework which is implemented by their main competitors. The GFC therefore welcomed the Federal Council's plan to specifically align Swiss law with the new rules adopted in the European Union (EMIR).

However, the GFC emphasized that Switzerland should refrain from taking advantage of the revision of its laws to introduce measures that exceed the requirements of international standards that are in force in this particular area. Such a "Swiss finish" threatens the competitiveness of our financial center in a globalized world.

The GFC further stressed that in order to avoid penalizing Swiss financial intermediaries that are major players in the OTC derivatives markets this legislation should be adopted as soon as possible. The draft legislation should be discussed during the 2015 spring parliamentary session.

Federal Financial Services Act (FFSA) and Financial Institutions Act (FinIA)

In July 2014, the Federal Department of Finance (FDF) submitted two drafts for consultation.

Federal Financial Services Act (FFSA)

In the opinion of the GFC, the law should adhere to European standards for investor protection as defined by the MiFID 2 directive, with the aim of achieving equivalence, as has already been mentioned above.

The GFC therefore strongly objects to provisions in the FFSA that exceed recognized standards, particularly with regard to procedural rules governing civil suits brought by investors.

More specifically, the GFC fundamentally rejects the reversal of the burden of proof that is specified in this Act. Not only does such a measure discriminate against the banking and financial industry, it could also, when combined with the other civil procedure rules stipulated in the FFSA, lead to the application of a different standard of justice to one particular economic sector.

For the same reason, the proposed creation of a legal defense fund for investors, which would be underwritten exclusively by financial service providers, should be rejected out of hand. This provision is particularly objectionable since it would require the service providers to bear all the costs of a lawsuit, regardless of the outcome.

However, the GFC is in favor of strengthening the role of the Swiss Banking Ombudsman, which has stood the test of time.

Conversely, the GFC is unable to comprehend the decision to introduce class actions, the deleterious effects of which are frequently denounced in the United States. None of the large financial centers that compete with Switzerland, except for the United States, allow class actions. Moreover, this type of lawsuit is incompatible with Swiss legal culture as defined by the new Unified Code of Civil Procedure.

The GFC is also calling for the provisions implementing a register of client advisers to be deleted from the law. Such a register makes absolutely no contribution to investor protection while creating a hugely disproportionate bureaucracy. It also fails to take into account the right of investment professionals to privacy.

It is to be hoped that the Federal Council's Message will take these comments into consideration, as they represent the widely shared view of the Swiss banking community.

Federal Financial Institutions Act (FinIA)

Supervision of independent wealth managers is a central component of the FinIA. The GFC agrees that some form of prudential supervision at national level is needed. However, such supervision should be commensurate with the size and activities of the companies concerned. The supervisory rules that are ultimately adopted should not create additional costs that would result in intermediaries being priced out of the market. The principle: "one size does not fit all" is completely appropriate in this context.

Additionally, the GFC firmly opposes an article that reintroduces the approach to fiscal compliance known as the "white money strategy", which was vehemently criticized when it was first submitted for consultation in spring 2013.

It bears repeating that financial intermediaries should not under any circumstances be held responsible for ensuring that their clients are fiscally compliant. Financial service providers should not be turned into de facto tax agents by being required to check their clients' tax documents, which are often established according to foreign legal norms.

It is also unclear whether such an obligation of fiscal due diligence would apply to Swiss clients domiciled in Switzerland as well. If this were the case, the draft FinIA would effectively be short-circuiting the upcoming democratic discussion of the revised criminal tax law, the drafting of which is currently on hold due to strong reservations expressed during the consultation process.

Finally, the principles contained in this "white money strategy" fail to conform to any existing international standards and are also irrelevant, as the Federal Council has already agreed in principle to adopt the OECD standard on automatic exchange of information in tax matters. A consultation procedure on implementing this standard in Switzerland was initiated in January 2015.

For all the reasons outlined above, the GFC recommends that this provision be removed from the FinIA.

Federal Act on the Implementation of the Recommendations of the Financial Action Task Force (FATF)

On December 12, 2014, after several ups and downs, Parliament adopted the Federal Act on the Implementation of the Recommendations of the Financial Action Task Force (FATF).

This document transcribes into Swiss law changes made in 2012 to the recommendations made by the FATF. The main amendments are as follows:

- The introduction of a disclosure obligation for holders of bearer shares and economic beneficiaries of shares in unlisted companies above a certain threshold of equity participation;
- In the area of direct taxation, the introduction of a predicate offence for money laundering in the form of qualified tax fraud, that is, the use of fraudulent documents to evade payment of tax in an amount exceeding CHF 300,000 per tax period;
- A new definition of domestic politically exposed persons (PEP) who are federal government officials as well as PEPs in international organizations and in international sports federations.
- A definition of the due diligence obligations for real estate professionals in the case of transactions involving cash payments in excess of CHF 100,000. These obligations will be explained in detail in a Federal Council Directive;
- Changes to the system for reporting suspicions to the Money Laundering Reporting Office Switzerland (MROS).

This compromise solution allows Swiss law to comply with the recommendations made by the FATF without falling prey to the “Swiss finish”. In fact, the initial draft that was submitted for consultation contained provisions that were more stringent than the international standards in several areas. These discrepancies were resolved through a process of parliamentary negotiation and a satisfactory solution was reached.

Following the adoption of the aforementioned legislation, FINMA issued a new Anti-Money Laundering Ordinance (AMLO-FINMA), which it submitted to a hearings procedure in February 2015. These provisions are specifically designed to implement the principles outlined above.

In light of these various developments, the anti-money laundering measures currently in place in Switzerland should allow the country to face the upcoming FATF review with a degree of serenity.

FRAMEWORK CONDITIONS
2. FOR AN ATTRACTIVE TAX SYSTEM

IN SWITZERLAND

The Geneva Financial Center (GFC) follows the debate on taxation very closely. In fact, Switzerland's international competitiveness and appeal largely depend on the fiscal conditions it offers to individuals and corporations.

Tax issues and natural persons

Taxation according to expenditure (lump-sum taxation)

The GFC has campaigned vigorously against two initiatives at the federal and cantonal level to abolish lump-sum taxation (also known as flat-rate taxation).

It has been pointed out in this context that in Geneva around 700 taxpayers benefit from this regime, which is available only to foreign nationals who are not gainfully employed in Switzerland. Their cantonal taxes contribute around CHF 150 million to the public purse every year. Moreover, because such persons are also major consumers of goods and services, they contribute to creating and maintaining jobs in sectors such as catering, construction, finance, real estate, etc.

If these two initiatives had been accepted, they would have induced these taxpayers to leave both the canton and the country. They would no doubt have been welcomed with open arms by countries with similar lump-sum tax regimes, such as the United Kingdom, which has over 100,000 non-domiciled residents, compared to less than 6,000 throughout Switzerland.

This campaign revealed that the canton of Zurich experienced a fall in tax revenue after the canton voted in 2009 to abolish taxation according to expenditure.

Swiss voters wisely rejected the federal initiative by a 59.2% majority. All cantons except Schaffhausen voted against this initiative. This result reflects the attachment of the Swiss people to the principle of federalism.

In Geneva, the outcome was even more striking as 68.4% of voters rejected the initiative. A large majority of electoral districts of the canton voted against this initiative, including the traditional bastions of the left. The counter-initiative was also rejected by a 56.7% majority.

Federal Inheritance Tax

On June 14, 2015, the Swiss people will be called to the polls to vote on a federal initiative to introduce a federal inheritance tax and gifts tax, which would basically levy 20% on all legacies over CHF 2 million and on gifts. Its effect would be retroactive from January 1, 2012 for gifts only.

The conference of cantonal finance ministers has already made its objection to the initiative abundantly clear since it amounts to a frontal attack on cantonal fiscal sovereignty and the principle of federalism. Following their lead, the Federal Council rejected this initiative outright without proposing a counter-initiative.

The business community, including the GFC, is currently mobilizing to fight a new tax that would have devastating consequences for companies as they would not be exempt. The existence of an inheritance tax would make it extremely difficult to transfer small and medium-sized family enterprises between generations. In the case where a business is the only or main asset in an inheritance, heirs would often be unable to foot the bill. Moreover, deferring tax payments would not be a viable solution. The proposed inheritance tax thus poses a grave threat to the survival of the small and medium-sized enterprises that constitute the backbone of the Swiss economy and which have already been hard hit by the strength of the Swiss franc.

Neither should it be forgotten that the assets targeted by this new tax have already been subject to income and wealth taxes. In fact, by international standards Switzerland is one of the last countries in the world that still taxes private wealth. In Geneva, for instance, the marginal rate of wealth tax is 1% per annum, which is significant.

In view of the situation described above, it is to be hoped that the Swiss electorate will again choose wisely and reject the inheritance tax, just as they massively rejected the initiative to abolish lump-sum taxation.

Corporate Taxation

Corporate Tax Reform III (CTR III)

Successfully reforming the way companies are taxed is vital to ensure the continued economic prosperity of the canton of Geneva as well as the competitiveness of its financial industry and the 37,000 jobs that it generates.

It should be emphasized that the Geneva financial industry is unique is in that it is organized as a cluster of distinct, albeit closely linked, economic activities: wealth management, commodity trade finance, commercial credits and mortgages. This concentration of skills in one small area has attracted numerous commodity trading firms and multinationals to Geneva.

Many businesses and multinational companies benefit from special tax regimes. Reforming corporate tax is therefore essential to ensure that these engines of prosperity stay in Geneva.

The CTR III proposes to abolish cantonal tax regimes, which attract most of the criticism directed at the Swiss corporate tax system. Their abolition should be counterbalanced by measures to help Geneva retain these companies and the tens of thousands of jobs they generate.

In the GFC's view, the following principles should take precedence:

First, the CTR III should be designed for the long term and should conform to international standards (OECD, BEPS), since international acceptance is a fundamental requirement. Consequently, the

GFC does not support the introduction of measures such as notional interest deduction (NID) or the depreciation of hidden reserves (step-up), both of which might be seen by Switzerland's trading partners as an attempt to artificially defer the abolition of cantonal tax regimes.

As a result, the only effective, viable long-term solution for Geneva is to lower ordinary corporate tax. The Geneva Financial Center supports the proposal by the State Council to apply a single rate of 13% to all companies. Other measures being considered as part of the reform package should not detract from this central priority.

Second, the scope of the reform should be limited to corporate tax and not include measures aimed at individuals. However, the CTR III includes a new tax on private capital gains, which is clearly out of place as it affects the taxation of individuals. Such a tax is all the more objectionable as it affects a fiscal base on which wealth and income taxes are already levied.

The GFC has campaigned for many years to eliminate stamp duty, which seriously reduces Switzerland's economic appeal. The GFC thus fully supports the abolition of stamp duty on equity issuances proposed by the CTR III.

Finally, all the proposed measures will have detrimental effects on the tax revenue collected by cantons. The Federal Government should therefore offer suitable financial compensation, especially for cantons that are most severely affected by the reform, such as Geneva. Possible options include a redistribution of Federal Direct Tax or adjustments to inter-cantonal fiscal transfers.

AT INTERNATIONAL LEVEL

Switzerland’s Double Taxation Policy

Federal Act on the Unilateral Application of the OECD Standard on the Exchange of Information (GASI)

In February 2014, the Federal Council decided to unilaterally extend the OECD standard on exchange of information on request to all states covered by a Double Taxation Agreement (DTA) insofar as the provisions contained in such an agreement failed to comply with the standard in question.

The main purpose of this decision was to allow Switzerland to advance to stage 2 of the peer-review process conducted by The Global Forum on Transparency and Exchange of Information for Tax Purposes (hereafter “The Global Forum”).

In principle, the GFC welcomes efforts by the Federal Government to ensure that Switzerland passes the test set by The Global Forum.

However the GASI has come too late, since the decision to allow Switzerland to proceed to stage 2 was taken on March 16, 2015 at The Global Forum. This consequently begs the question as to whether the draft law will have any influence whatsoever on the future decisions by The Global Forum.

Furthermore, Switzerland has already adopted other measures to meet the conditions set by The Global Forum (amendment of the notification procedure for requests for administrative assistance in tax matters and the identification of holders of bearer shares). The GASI thus appears to be superfluous.

In January 2015, the Federal Council initiated a consultation procedure with a view to ratifying the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters (see below), which makes the GASI even less relevant. A state that ratifies the OECD Convention automatically commits itself towards the other signatories. However, at the end of 2014, 84 states had signed this Convention and its ratification is imminent.

Consequently, as soon as the aforementioned Convention is ratified, the GASI will only apply to a limited number of countries with which Switzerland has negligible economic ties.

For all of the above reasons, the GFC opposes adoption of the GASI.

International Exchange of Information in Tax Matters

Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA) and Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOI Act)

It will be recalled that in May 2014, the Federal Council declared that it intended to apply the OECD standard for automatic exchange of fiscal information. Switzerland also played an active part in defining these rules by insisting that they include the principles of specialty, confidentiality and reciprocity.

In October 2014, the Swiss Government signed the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA). This document provides for the implementation of standards that were drawn up under the auspices of the OECD.

Insofar as this treaty is not directly enforceable, a federal law would have to be enacted in Switzerland in order to define the methods of application. In January 2015, the Federal Council accordingly launched consultations regarding the Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOI Act).

In practical terms, the AEOI Act requires Swiss financial intermediaries to start collecting information on their clients non-domiciled in Switzerland in 2017, with a view to an automatic exchange of information from 2018 onwards. The actual timing of the implementation will naturally depend on how quickly the law passes through the Federal Parliament, which is involved at every stage of the process, as well as on the possibility of a referendum.

In the opinion of the GFC, one of the essential issues will of course involve compiling a list of the countries with which Switzerland will sign bilateral agreements to implement this automatic exchange of information. In this regard, the Federal Council has announced that it plans to prioritize its negotiations with the European Union and the United States, which is perfectly understandable. However, it is likely to be more selective about including other countries.

Particular attention will have to be paid to ensuring that potential partners respect the basic principles of the rule of law and human rights.

Furthermore, it seems sensible to give preference to countries that have close economic and political ties to Switzerland, and that offer their citizens sufficient opportunity to settle their tax debts.

Above all, it is absolutely essential that improved market access is included in the negotiations on automatic exchange of information.

Lastly, Switzerland must closely monitor the strategies of its main competing financial centers.

According to the principle of the level playing field, Switzerland should in fact refrain from placing itself at a competitive disadvantage by rushing headlong into signing bilateral agreements without considering the strategic positions of its competitors.

OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters

The Federal Council included ratification of the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters in the package submitted for consultation in January 2015.

Switzerland signed the above Convention in October 2013. It provides for three types of exchange: on request, spontaneous and automatic.

The GFC is pleased to note that the Swiss Government intends to append several conditions to the Convention before ratifying it, namely in connection with the notification of documents originating from foreign authorities on the one hand, and with the scope of the tax offences concerned, on the other hand.

The Swiss Confederation also intends to submit two supplementary declarations. The first declaration will stipulate that Switzerland will in principle inform the persons concerned before any information is exchanged, and the second declaration will state that no tax audits will be conducted in Switzerland at the request of foreign authorities.

The GFC generally welcomes ratification of the Convention, provided the conditions and declarations are clearly formulated in accordance with the considerations outlined above.

Such an approach is justified, since 84 states had already signed the Convention by the end of 2014 and are expected to ratify it in the near future.

However, the ratification of this Convention by Switzerland requires the Government to abandon its plan to pass the Federal Act on the Unilateral Application of the OECD Standard on the Exchange of Information (GASI), as the Convention would makes it totally irrelevant (see above, p. 12).