Key Developments & the Latest Trends in Switzerland From a Legal Perspective

In 2023, Switzerland underwent a transformative period marked by substantial legal and political advancements. This article explores these pivotal developments, focusing on how Switzerland's evolving legal landscape continues to shape its status as a major financial center. Against a backdrop of global economic shifts, Switzerland's response through legal reforms and strategic initiatives highlights its agility and foresight in maintaining a competitive edge in international finance.

1. Switzerland's Legal and Economic Framework

1.1. Global Economy

The global economy was marked by rising inflation rates, fluctuating interest rates and shifts in GDP growth rates in 2023. Inflation rates are driven by lingering supply chain disruptions, as a result of various geopolitical changes and long-lasting impacts from the epidemic and energy price volatility. Whilst Switzerland is relatively insulated due to the strong Swiss franc, it is not immune to these global trends. The Swiss National Bank ("**SNB**") faces the challenge of balancing inflation control with economic growth throughout the past year. Switzerland's inflation rate stood at around 2.1%[1], which is comparatively lower to its European neighbors (around 5.5%) and the US (around 4.1%)[2], but still substantially higher than the usual rates observed in the country. To address the issue, the SNB cautiously adjusted interest rates to 1.75%, ensuring they remained conducive to economic stability and within the range consistent with the goal of price stability in the medium term. The SNB expects the interest rates to ease in 2024 and 2025 (1.7% in 2024 and 1.0% in 2025).

1.2. Administrative and Tax Reforms

Several administrative and tax reforms were implemented in the recent years, aimed at boosting Switzerland's appeal to international investors and aligning with global market dynamics. The reforms were designed to streamline bureaucratic process, making it easier for international businesses to operate within the Swiss financial system. In particular, the tax reforms have been significant. They included strategic reductions in corporate tax rates, while remaining compliant with global tax standards. In May 2019, Swiss voters approved the new corporate tax reform TRAF, which entered into force on 1 January 2020. The TRAF is aimed at providing new incentives for foreign investments, such as tax breaks and subsidies for research and development (R&D) activities, particularly in the technology sectors.

In order to be compliant with the OECD's minimum tax rate for large multinational enterprises, the Swiss Federal Council further introduced a supplementary tax for companies with a global turnover of more than EUR 750 million per year as of 1 January 2024.

2. The Credit Suisse / UBS Merger and Recent Changes in Swiss Banking Laws

2.1. The Credit Suisse / UBS Merger

In 2023, the Swiss banking sector witnessed significant changes particularly following the landmark merger of Credit Suisse and UBS. After witnessing a prolonged crisis of confidence from clients, investors and the markets, Credit Suisse was facing exceptionally high fund withdrawals in mid-March 2023, leading to the risk of insolvency. It then became the first global systemically important bank ("**G-SIB**") to face imminent resolution. The Swiss Federal Council introduced an emergency ordinance on 19 March 2023, which established a framework for rescuing Credit Suisse. This framework provided the basis for the state-backed takeover of Credit Suisse by UBS. The swift reacting by the Swiss Authorities strengthened confidence in the Swiss financial system and created global stability in the markets.

This event has triggered a comprehensive reevaluation of banking laws and regulations, not only in Switzerland but globally. Critical questions regarding market concentration – note that UBS is now the only G-SIB in headquartered in Switzerland -, risk management practices and resilience are being raised. Policy makers and

[1] Schweizerische Nationalbank, Geldpolitische Lagebeurteilung, 14 Dezember 2023.

[2] KOF Swiss Economic Institute, Inflation will remain high by Swiss Standards in 2023, 6 January 2023.

regulators are now prompted to scrutinize existing laws and evaluate the too-big-to-fail framework, with the goal to prevent the use of fiscal revenues to rescue G-SIBs in the future.

2.2. FINMA Report on the Merger

On 19 December 2023, the Swiss Financial market Supervisory Authority ("**FINMA**") published its report[3] on the events leading up to the Credit Suisse / UBS merger. FINMA analyzed the development of Credit Suisse between 2008 and 2023 with regard to strategy, business performance, management decisions and risk decisions. In essence, FINMA found that Credit Suisse had lost confidence of its clients, investors and the markets due to inadequate implementation of its strategic focus areas, repeated scandals and management errors. FINMA had taken far-reaching and invasive measured in the context of its supervisory activities to rectify deficiencies long before March 2023. From summer 2022 onwards, it had also asked Credit Suisse to take various measures to prepare for an emergency. FINMA draws several lessons in its report. It calls for a stronger legal basis, specifically instruments such as the Senior Managers Regime, the power to impose fines and more stringent rules regarding corporate governance. In the area of capital requirements, FINMA is calling for stricter standards for regulation in the context of a review of the "too big to fail" requirements". The report also mentions the topic of high remunerations, even in years in which the bank had reported large losses. It remains to be seen if and how the findings from the FINMA report will be implemented in practice. It may well be that Swiss voters will decide at the ballot about new minimum capital requirements and maximum compensation rules.

3. Updates in Corporate and Insolvency Law

3.1. ESG Updates

Several new provisions have entered into force recently, aligning Swiss companies with the global trend of integrating ESG (Environmental, Social, and Governance) factors into corporate strategies. The updates necessitate increased transparency in companies' sustainability practices.

On 18 June 2023, the Swiss electorate voted in favour of the Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security. The so-called Climate Innovation Act is expected to enter into force on 1 January 2025 and aims to make Switzerland less dependent on energy imports while strengthening climate protection, which is line with the commitments with the Paris Agreements.

Further, the Ordinance on Climate Disclosures has entered into force on 1 January 2024, which specifies reporting obligations pursuant to Article 964b CO. From the fiscal year 2023 onwards, companies meeting certain criteria (public companies, banks and insurance companies with at least 500 employees and at least CHF 20 million in assets or more than CHF 40 million turnover) must now prepare an annual report on non-financial matters, covering environmental matters, social issues, respect for human rights and measures to combat corruption (specification of Art. 964a et seq of the Swiss Code of Obligations "**CO**"). As of 2024, these organizations are also required to disclose their climate impact. Companies are expected to integrate these ESG factors into their annual reports, providing shareholders and stakeholders with a comprehensive understanding of their sustainable practices and policies. These changes also bring about a heightened level of accountability. Non-compliance or inadequate disclosure can result in penalties, including fines and reputational damage. This legal shift aims to encourage Swiss companies to take more proactive and responsible roles in addressing global sustainability.

Additionally, companies domiciled in Switzerland that import or process certain minerals or metals from conflict-affected areas or offer products or services for which there are reasonable grounds to suspect that child labor was involved, must comply with due diligence and reporting requirements in connection to their supply chains. In particular, a supply chain policy and management system ensuring traceability is now required. Further alignments with the EU's regulations are expected to be developed continuously throughout the next years.

[3] FINMA Report, Lessons Learned from the CS Crisis, 19 December 2023.

3.2. Streamlined Bankruptcy Procedures

Additionally, there have been efforts to streamline bankruptcy procedures, aiming to facilitate more efficient restructuring processes for financially distressed companies. The goal is to enable quicker resolution processes, which can help preserve economic value and protect employment. This includes simplifying the filing processes for bankruptcy, reducing administrative burdens, and providing clearer guidelines for the restructuring of debts. The new laws in force since 1 January 2023 emphasize early intervention in cases of financial distress (Articles 725 et seq CO). Companies are encouraged to engage in restructuring discussions with creditors at earlier stages to prevent the escalation of financial issues. The laws also facilitate smoother negotiations between debtors and creditors, promoting mutually beneficial agreements that can lead to the recovery of the distressed company.

3.3. Combating Abusive Bankruptcy

On 1 January 2025, the Federal Act on Combating Abusive Bankruptcy ("**CABA**") will enter into force, together with corresponding amendments the CO, the Debt Enforcement and Bankruptcy Act ("**DEBA**") and the Swiss Criminal Code[4]. Going forward, debtors should not be able to abuse bankruptcy proceeding in order to be released from financial obligations such as payment of salaries and other debts and thereby harm creditors. In view of this, the Federal Parliament has introduced an amplitude of new measures, such as the possibility of searching individuals in the commercial register and the abolition of the possibility for smaller companies to retroactively opt out of their limited audit obligations. Further, trading of shell companies and transferring shares of an over-indebted company without business activity and realizable assets("*Mantelhandel*"), will be regarded as null and void.

The CABA is intended to inform, simplify and generally combat the abuse of bankruptcy proceedings. The underlining motivation of the parliament was to lessen the legal and de facto hurdles for creditors. On the other hand, the debtors will be controlled more closely, even before a bankruptcy filing occurs. This comprehensive approach of the cantonal and federal administrations will lead to a state-of-the-art combat against abusive bankruptcy proceedings.

4. Data Privacy and Security Regulations

Switzerland significantly updated its data privacy regulations as of 1 September 2023, notably aligning the Federal Act on Data Protection ("**DPA**") with the EU's General Data Protection Regulation ("**GDPR**"). These amendments aim to enhance data subject rights and introduce stricter penalties for non-compliance. Responding to these reforms, Swiss financial institutions have significantly invested in their data protection strategies. This includes implementing advanced encryption technologies, stringent data access controls, and comprehensive cybersecurity measures to safeguard client data and uphold trust in the digital age.

5. Sustainable Finance

Sustainable finance is a much-discussed topic and saw significant strides in Switzerland in 2023. In particular, the Federal Council formulated sustainable finance goals in December 2022[5] to strengthen Switzerland's role as a leading hub for sustainable finance, which have been taken into account by organizations such as the Swiss Banking Association. The association issued two sets of self-regulations as of 1 January 2023 with binding rules on integrating ESG criteria into investment advice and portfolio management. Further, the Federal Council is expected to tackle the issue of greenwashing in financial markets in due course, after having instructed a working group led by the Federal Department of Finance to examine the issue.

Generally, Swiss financial institutions have responded to the growing importance of ESG topics with dedicated ESG divisions, launching sustainable investment funds, and shifting strategically towards green initiatives.

6. Current Legal Challenges and Risks

Swiss financial institutions continue to navigate a complex array of legal challenges and risks. These include the ongoing need for stringent regulatory compliance, the ever-present threat of cybersecurity breaches, and the

[4] The Federal Council, Press Release, 25 October 2023.
[5] The Federal Council, Sustainable Finance in Switzerland, 16 December 2022.

complexities brought about by Switzerland's unique position in international geopolitics. This position is characterized by its traditional stance of neutrality, which presents both opportunities and challenges. Navigating international sanctions, regulatory changes in international trade agreements and maintaining its reputation as a secure financial hub will be crucial in the coming years. Switzerland is likely to continue its collaborative approach, engaging in international dialogue and partnerships to align its financial sector with global standards and practices.