

# Switzerland

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## New integrated Financial Markets Authority

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CMS von Erlach Henrici Ltd.  
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Answering the growing complexity of supervising the financial markets and recent developments, Switzerland established (effective January 1 2009) an integrated financial markets authority to comprehensively supervise the market players: banks, insurance companies and other financial intermediaries.

Following foreign samples, Switzerland decided to modernise its supervisory regime and monitor the financial markets with a single supervisory authority. In order to do so, the former Swiss financial markets supervisory authorities (the Federal Banking Commission, the Federal Office of Private Insurance and the Anti-Money Laundering Control Authority) were merged and integrated into one agency, the Financial Markets Authority (FINMA).

The rules governing the organisation of, and the procedures applicable to, the FINMA are set forth in the Federal Act on the Financial Markets Authority of June 22 2007 (FMAA). Pursuant to the act, the FINMA has been incorporated as a public legal entity which exercises its supervisory functions independently from a functional, institutional and financial perspective and which is only subject to supervision by parliament.

There are three bodies incorporated by the FINMA: (i) the board of directors; (ii) the management; and (iii) the external auditors. While the board of directors is competent to decide on strategic matters, the management is the executive body that takes care of the daily business.

### Financial markets legislation

The FINMA acts as supervisory authority in the area of financial markets legislation, which comprises the rules on mortgage bonds, insur-

ance, collective investment schemes, banks, stock exchanges and securities traders, as well as acting to combat money laundering.

Accordingly, the FINMA shall supervise: (i) all persons which, pursuant to the financial markets legislation and in order to operate their business, are required to obtain a permit or admission from, or be recognised by or registered with, a financial markets authority; (ii) collective investment schemes; and (iii) audit companies.

The FMAA does not replace the existing financial market legislation (such as the Federal Act on Collective Investment Schemes). On the contrary, the FMAA shall be applicable only where the financial markets legislation does not provide for regulation. Further, the FMAA does not stipulate material provisions. Rather, its content is limited to matters of organisation, procedure and sanctions. Consequently, financial intermediaries will be subject to both the FMAA and the relevant financial markets legislation. First and foremost: (i) banks are subject to the Federal Act on Banks and Savings Banks of November 8 1934; (ii) securities traders are subject to the Federal Act on Stock Exchanges and Securities Trading of March 24 1995; (iii) insurance companies are subject to the Federal Act on the Supervision of Insurance Companies of December 17 2004; (iv) collective investment schemes are subject to the Federal Act on Collective Investment Schemes of June 23 2006; and (v) only where such legislation does not provide for regulation, the FMAA will apply.

### Purpose: protection and efficiency

The FMAA is designed, on the one hand, to protect the interests of the creditors, investors and the insured and, on the other hand, to ensure the efficiency of the financial markets.

For that purpose, the FINMA is instructed to monitor the financial markets and its participants, and to take the steps necessary to implement and enhance the financial markets legislation: the FINMA may exercise its super-

visory functions directly. Alternatively, it may do so either through third parties it has retained for that purpose or with the support of audit companies retained by the supervised persons and recognised by the FINMA. In addition, in order to investigate a specific matter or enforce a supervisory decree issued by the FINMA, it may appoint an independent and competent person.

The Further, the FINMA shall establish the ordinances required by, and issue circular letters on the application of, the financial markets legislation. However, before implementing any new rules, the FINMA is required to take into consideration: (i) the costs thereby imposed on the supervised persons; (ii) the impact on the competition, the innovative ability and international competitiveness of the financial markets of Switzerland; (iii) the different business operations and specific risks the supervised persons are subject to; and (iv) last but not least, international standards.

### International administrative assistance

The FMAA also sets forth rules on international administrative assistance between the financial markets authorities of different countries. Pursuant to such rules and if certain conditions are met, the FINMA may either forward information and documents to foreign supervisory authorities or even allow such authorities to conduct cross-border audits within the territory of Switzerland.

### Sanctions

The FMAA provides for both administrative and criminal sanctions.

The FINMA is entitled to a multitude of administrative sanctions, the most important of which are the imposition of a ban to exercise certain financial professions for a time period of up to five years, the publication of its decrees, and the sequestration of profits derived through improper behaviour or the revocation of a permit, admission or registration. Decisions rendered by the FINMA may

be appealed to the Federal Administrative Court and, ultimately, to the Federal Supreme Court.

In addition, non-compliance with the provisions set forth in the FMA and the financial markets legislation (such as running a regulated business without previously having applied for the necessary licence) may be subject to criminal sanctions including imprisonment and/or the payment of fines.

To summarise, Switzerland (by way of the FINMA) has established a modern supervisory authority which allows the monitoring of financial markets and market players in a focused and comprehensive way, thereby strengthening Switzerland's position as one of the world's leading financial markets.

## Banking and finance

Recommended firms
<b>Tier 1</b>
Bär & Karrer Homburger Lenz & Staehelin Niederer Kraft & Frey
<b>Tier 2</b>
Baker & McKenzie Pestalozzi Lachenal Patry Schellenberg Wittmer Walder Wyss & Partners Wenger & Vieli
<b>Tier 3</b>
Borel & Barbey CMS von Erlach Henrici Froriep Renggli Nobel & Hug Prager Dreifuss Python & Peter Vischer

## Mergers and acquisitions

Recommended firms
<b>Tier 1</b>
Bär & Karrer Homburger Lenz & Staehelin
<b>Tier 2</b>
Baker & McKenzie Niederer Kraft & Frey
<b>Tier 3</b>
Pestalozzi Lachenal Patry Schellenberg Wittmer Vischer Walder Wyss & Partners
<b>Tier 4</b>
CMS von Erlach Henrici

Meyer Lustenberger Prager Dreifuss Python & Peter Wenger & Vieli
<b>Tier 5</b>
Borel & Barbey Tavernier Tschanz Wenger Plattner

## Restructuring and insolvency

Recommended firms
<b>Tier 1</b>
Baker & McKenzie Schellenberg Wittmer Wenger Plattner
<b>Tier 2</b>
Bär & Karrer Homburger Lenz & Staehelin Niederer Kraft & Frey Walder Wyss & Partners
<b>Tier 3</b>
Froriep Renggli Python & Peter Vischer

Switzerland's proud banking sector took a massive hit from the global credit crunch with UBS announcing a staggering \$36 billion write down of subprime assets. Things look rosy for Credit Suisse in comparison, with the bank writing off a mere SFr8 billion (€4.91 billion). The banks' combined assets are seven times the GDP of Switzerland and if either were to fail the economy would be wrecked.

This does not look likely to happen, but the banking sector has certainly faltered. UBS has struggled to maintain its share price, but its balance sheet was relieved by a record \$15.4 billion rights issue in June 2008.

The volatile global capital market conditions have also bitten into Switzerland. With debt work mainly staying in the domain of the banks' strong in-house teams, it is equity work that is the more available to law firms, but the pipeline has dried up following the higher levels of activity in 2007.

Against this backdrop and the wider global liquidity difficulties, financing in Switzerland has not been so easy. Geneva's private banking industry may be doing well, but the commercial banking, capital market and corporate work focused in Zurich has been dented. Lawyers observe that private equity has struggled in market conditions unfavourable to LBOs, a situation not unique to Switzerland.

This has handed an advantage to strategic players in the M&A market, which remains relatively buoyant. Deals may be more of a mid-size, but the work flow has continued for firms. Switzerland remains an attractive investment environment, with GDP growth stable at around 2% and low inflation.

Partners have highlighted that the purchase of real-estate portfolios was relatively active, but although the property market remains stable, financing issues have had a cooling effect. The energy sector is also seeing action in Switzerland, an example being the lead Swiss companies are taking in the solar-power boom, spurred on by their technological knowhow.

Legal work on the regulatory side has shifted to a focus on funds. The new Law on Collective Investment, which eases access for foreign collective investment schemes into the Swiss market, has started to have an impact, with the intention of attracting funds from the likes of Luxembourg.

Despite the difficult times in the investment banking sector, when it comes to restructuring and insolvency work, one partner comments: "The wave hasn't really hit."

## Baker & McKenzie

Baker & McKenzie is the only foreign firm law firm to have successfully infiltrated the Swiss market and is solidly ranked in the second tier for corporate finance and transactional work. One client helped explains why the firm has managed to penetrate the market: "They are a global law firm who act locally - they can call the USA on a specific text-related issue and get back to us straight away, without charge."

Baker & McKenzie has acted on a couple of notable Swiss capital market transactions in the past year. In September 2007 it advised perfume company Art & Fragrance regarding its IPO on the BX Berne Exchange. The Berne Exchange is smaller than the SWX Swiss Exchange in Zurich and is aimed at smaller enterprises.

Debt work is often the domain of in-house teams, but Baker & McKenzie still advised on some issues in the past year. As well as acting for the republic of Hungary on straight bond issues totalling SFr350 million in May this year, in June 2007 the firm advised storage company Kardex on its SFr55 million issuance.

Baker & McKenzie can call upon some excellent partners for banking work. Lukas Glanzmann is well-known in the market for his banking work, while clients also single out Markus Affentranger for praise: "He's one of our go-to guys in this sector," says one. "He

always makes sure the other party follows our lead.”

The firm’s banking highlights include advising German real-estate bank EuroHypo on the acquisition and construction financing facility for a commercial development. The transaction was closed in August 2007, a time when Baker & McKenzie was working on multiple mandates in Switzerland’s buoyant real-estate sector.

The firm regularly works with the country’s two financial powerhouses, Credit Suisse and UBS. In January 2008, Affentranger led a team advising UBS on the provision of a syndicated loan to a trading company to finance exchange-traded derivatives transactions.

Although the firm has plenty of work in other areas, restructuring and insolvency is one area where competitors view it as a leader, and partner Urs Schenker is singled out as being particularly skilled in this practice.

#### Leading lawyers

Markus Affentranger  
Martin Anderson  
Martin Frey  
Martin Furrer  
Lukas Glanzmann  
Urs Schenker

#### Bär & Karrer

“They are a big company, so capable of advising us on all matters pertaining to banking, right down to minor stuff - they are a full-service firm,” says a client of Bär & Karrer.

Client feedback like this and respect from rivals justify the firm’s placement in the top tier for its finance and M&A work. The firm is also highly praised on an individual level. “Really their partners are just fantastic; they know the law so well,” says one client. Rolf Watter is described by a peer as “the one who drives the show”.

One standout debt transaction saw the firm act as local counsel for Petroplus Finance, a subsidiary of oil refiner Petroplus, on its \$500 million convertible bond issue in March 2008.

IPOs may have dried up in 2008, but evidence of the firm’s position as one of the leading capital markets specialists in Switzerland could be found in its role acting as Swiss legal advisor to JP Morgan, Morgan Stanley, BNP Paribas and Goldman Sachs as the joint bookrunners of UBS’s SFr15 billion rights issue in April 2008.

The firm advises banking clients at the highest level, and the past year has seen it assisting a bank in setting up a hedge fund trading platform. Additionally, the firm advised the private bank and wealth management firm Arbuthnot on the establishment of

a Swiss subsidiary. Both these deals involved partner Eric Stupp, who one peer refers to as “excellent in all areas”.

The firm can also call upon a talented list of lawyers with M&A expertise, including Urs Brügger. Says one client of Brügger: “He is a very good lawyer, very good indeed.”

A team led by Rolf Watter advised Swiss pharmaceuticals company Novartis on the local law aspects of its \$11 billion acquisition of a 25% stake in medical company Alcon from Nestlé. Novartis has also acquired the option to purchase the remaining 52% stake for \$28 million.

“They are one of the leading law firms in Switzerland,” says a client. “I would put them up there in a bracket of three, perhaps four firms.”

#### Leading lawyers

Urs Brügger  
Felix Erhat  
Ralph Malacrida  
Thomas Reutter  
Eric Stupp  
Michael Trippel  
Rolf Watter

#### Homburger

Clients are glowing in their praise for Homburger’s lawyers: “They are very talented,” says one client. “They have the expertise and a great dedication. I think they are the best firm in Switzerland.”

Clients are particularly impressed with Homburger’s reputation in the Swiss capital markets. “They have far more experience than anyone else in this sector,” says one.

The firm’s lawyers are also highly praised by the market. “They only attract the best,” says a competitor. The firm’s key members include René Bösch, a capital markets specialist - says a client of Bösch: “He has very good knowledge on the new company listing rules.”

The firm acted on numerous IPOs in 2007, including for issuer Gottex Fund Management Holding when it listed on the SWX in November 2007 raising \$1.9 billion. The firm also secured the top issuer mandate of the past 12 months, advising UBS on its SFr15 billion rights offering. Both these deals featured Daniel Daeniker, who has an excellent reputation among his peers.

Homburger is capable of advising on a whole range of structured products and complex debt instruments. In November 2007 the firm advised UBS as the underwriters on dental health company Noble Biocare’s SFr385 million convertible bond issue.

“They are one of the leading law firms in Switzerland in the regulatory sector,” says one of the firm’s banking clients. In April 2008 the

firm assisted UBS in relation to a regulatory investigation by the Swiss Federal Banking Commission. The firm was also active in a number of transactional highlights in the banking sector, including advising insurance and pension provider Swiss Holding on its e1 billion credit facility in December 2007.

Homburger’s M&A team was also active this year, with deals such as advising Nestlé on its pending \$39 billion sale of a 75% stake in medical company Alcon to Novartis. Acting on the buyer’s side, the firm advised Swiss Life on its e1.1 billion acquisition of German financial-services company AWD Holding.

Homburger has now formed a specialised privatisation group for restructuring and insolvency work. Although work in this area is not yet flowing, the firm is advising SAirGroup, one of the owners of Swissair, in relation to the national airline’s bankruptcy proceedings.

#### Leading lawyers

Hansjürg Appenzeller  
René Bösch  
Daniel Daeniker  
Benedikt Maurenbrecher  
Flavio Romerio  
Heinz Schärer

#### Lenz & Staehelin

Lenz & Staehelin is recognised by peers as being “unbelievably strong in M&A and banking”, and this strength transfers across to the firms capital market works as well. One client says: “They are a fine firm,” and a glance at a list of their notable transactions gives an impression of the strength across a variety of practice areas.

The firm advised Valartis Bank as the lead manager on the IPO of Russian investment company ENR Russian Invest, in the first two-step IPO in Switzerland. The SFr90 million transaction involved a listing on the SWX exchange, then an immediate rights offering. The two stages took place during the difficult market conditions of December 2007 and January 2008.

Lenz & Staehelin was also involved on a number of debt issues, including advising issuer Pagesa Holdings on its SFr920 million listing of convertible bonds on the SWX Exchange - the largest deal of its kind in 2007. The firm continues to make progress in securitisation, advising a large industrial group on its e1.15 billion programme.

The firm acted on some large-scale acquisition financing transactions, including advising South African private hospital group Medi-Clinic on its borrowing of SFr3.8 billion to acquire Hirslanden Clinic in November 2007. On the regulatory side,

Shelgy Du Pasquier has assisted in the establishment of the first limited partnerships under the new Swiss Investment Fund Law.

The firm's M&A team benefits from the managing partner of the Zurich branch Rudolf Tschäni, who peers respect as a leader in the field. As well as the financing, the firm advised Medi-Clinic on its merger with Swiss private hospital group Hirslanden. The team from the Zurich office was advising the South African buyer on its first investment in Europe. Hirslanden was owned by private-equity group BC Partners.

Lenz & Staehelin has a very strong Geneva office, and it was a Geneva-based team that advised a consortium featuring Swiss company Ascom Telecommunications on its sale of a majority stake in Cypriot company SB Telecom to Austria Telekom. The SFr2.4 billion sale in November 2007 indirectly involved the sale of Belarus's second-largest mobile operator, MDC.

As is the case with its competitors, the firm's restructuring and insolvency practice has had a quiet year so far, though it did act for Nybron Flooring International on its financial restructuring, including the implementation of an agreement with a lender to deleverage the group.

#### Leading lawyers

Stefan Breitenstein  
Hans-Jakob Diem  
Shelby du Pasquier  
Patrick Hünerwadel  
Beat Kühni  
Matthias Oertle  
François Rayroux  
Andreas Rötheli  
Rudolf Tschäni  
Andreas von Planta

#### Niederer Kraft & Frey

Niederer Kraft & Frey has had another successful year, acting on a number of high-profile transactions. Peers have noted the high quality of the firm's partners, in particular Peter Isla and Peter Forstmoser.

In June 2008 the firm advised the lead manager Zürcher Kantonalbank on the IPO of Swiss electronics group Burkhalter, which raised SFr80 million on the SWX. The instruction was a valuable mandate for the firm, being only the second IPO on the SWX this year.

The firm is advising on one particularly complex listing, providing assistance to Aryzta as it undergoes a primary listing on the Irish Stock Exchange and the SWX. The Swiss parent company is a result of the merger between Irish listed food company IAWS and Swiss listed baker Hiestand.

In banking, Niederer Kraft & Frey is well-known for its capability in regulatory work, and has advised the likes of Credit Suisse, Deutsche Bank, RBS and Barclays in the past year, as well as a large Swiss investment fund.

The really big regulatory instructions, however, have come off the back of corporate work. In March 2008, global insurance group Ace moved its headquarters from Bermuda to Zurich - a discernable trend in the market. As well as advising Ace on corporate law, the firm provided significant insurance regulatory advice.

2008 has seen Niederer Kraft & Frey act on a number of headline corporate transactions. In March, the firm advised Swiss Life in its SFr1.8 million acquisition of Italian private bank Banca del Gottardo of the Generali group to create one of Switzerland's largest private banks.

#### Leading lawyers

Ulrich Benz  
François Bianchi  
Peter Forstmoser  
Peter Honegger  
Peter Isler  
Urs Pulver  
Philippe Weber

#### Schellenberg Wittmer

Clients speak very highly of Schellenberg Wittmer. "We have worked with them for a long time in Switzerland and they are very good," says one. "I would say personally that they were the top firm." Another adds: "I think they're doing a fantastic job. Whatever legal questions we ask of them, they always handle them superbly."

This year the firm's banking and finance department had a role on some groundbreaking transactions. Zurich finance head Martin Lanz led the team advising Banque Héritage as lead manager of pharmaceuticals company Venturepharm's SFr15 million convertible note issue - the first-ever by a Chinese issuer in Switzerland. "He's very reliable," says a client of Lanz.

Lanz's team also acted on the SFr55 million capital increase of investment firm Sustainable Performance Group, managed by Zürcher Kantonalbank. Other regular clients include Raiffeisen Switzerland and BNP Paribas, with the latter seeking Philippe Borens' advice on the registration of its derivatives programme with the SWX this year.

Lionel Aeschlimann heads the banking and finance team in Geneva and is respected by both peers and clients. "He's a very good lawyer - one of the best I think," says a client.

The firm's notable banking transactions include acting on an unsecured \$1.5 billion

credit facility for a Swiss borrower provided by a consortium of foreign banks, and assisting with a secured working capital facility of \$300 million for the foreign subsidiary of a Swiss parent company.

The firm had an extremely busy year in M&A work, acting on several significant auction sales. It advised one of the two final-round bidders in the auction for Jelmoli Holding's real-estate portfolio of more than 80 properties. Zurich corporate head Martin Weber, Yves Jeanrenaud and Oliver Triebold acted on the deal, but the firm's client was beaten by an offer from Israeli institutional investors of SFr3.4 billion.

Triebold also assisted Bank Vontobel and meat producer Albert Spiess on the auction sale of Albert Spiess to food group Orior.

The firm has an outstanding reputation for its restructuring and insolvency practice, led by Vincent Jeanneret in Geneva and Thomas Bolliger in Zurich. This year Jeanneret led the team advising on the liquidation of distribution company Bureau Genevois d'Adresses. The firm also assisted the court on the transfer of tour operator Cit-Frantour's assets to a subsidiary of the Kuoni group, and advised an airline on its restructuring process.

#### Leading lawyers

Lionel Aeschlimann  
Martin Lanz  
Martin Weber

#### Vischer

Markus Guggenbühl heads Vischer's banking and finance practice, which is building a solid reputation in the market.

This year Guggenbühl, Peter Hettich and Benedict Christ advised real-estate company Swiss Finance & Property Investment on a private placement and the listing of its shares on the BX Exchange. Guggenbühl, Jana Essebier and Robert Berner are the preferred counsel of private financial institution Julius Bär & Co for various projects, including the listing of structured products on the SWX and the public offering of structured products in Europe in line with the EU Prospectus Directive.

Guggenbühl also acted as Swiss counsel to a large cosmetics company on the €125 million restructuring of its bank debts. Telecoms company Global Crossing also turned to Adrian Dörig for advice on the Swiss law aspects of a \$350 million collateralisation of senior secured credit facilities.

The firm was also active for the lenders, with Dörig representing Dresdner Bank on the Swiss aspects of the €165 million restructuring and increase of the financing for a large German biotech company.

Competitors single out Jürg Luginbühl for his M&A work. This year he assisted Eos Holding in its public tender offer for the shares of energy company Atel, and advised on the sale of Swiss online job portal jobs.ch to Tiger Global Management in the biggest Swiss transaction in the internet sector in 2007.

In another significant deal, Guggenbühl acted for Swiss Re on the sale of its private-equity fund-of-funds advisory business to Horizon 21.

#### Leading lawyers

Jürg Luginbühl

### **Wenger & Vieli**

“They are a very serious firm,” says a client of Wenger & Vieli. “We’ve worked with them for 17 or 18 years, since we started basically, and in that time we have never once had a bad experience with them. They are very reliable and incredibly dedicated.”

Competitors regard the firm as being particularly strong on capital markets and finance work. In one significant deal Beat Speck advised forest plantation manager Precious Woods on its IPO and capital increase. “He is an excellent lawyer - very concrete, very efficient,” says a client of Speck.

Several companies turned to capital markets co-head Wolfgang Zürcher for assistance with IPOs, including 3S Swiss Solar Systems, global positioning system provider u-blox, and software company Esmertec.

Zürcher is known for his fund-related work, and this year he also advised on the IPO of Swiss fund-of-funds Partners Group, and assisted Cross Capital on the establishment of an international private-equity investment fund structure.

The capital markets group takes the lead on many public M&A deals. The team’s co-head Christoph Schmid advised Bank Linth on a hostile takeover by White Knife and Zürcher is now acting for two listed companies on takeover defence strategies.

The firm’s banking department numbers UBS, Bank Leumi and Zürcher Kantonalbank among its clients. This year department co-head Andreas Hünerwadel and Michael Huber advised Zürcher Kantonalbank on a SFr150 million acquisition finance facility and a SFr160 million syndicated property finance loan.

### **Other notable firms**

Meyer Lustenberger has had another productive year, particularly in M&A. The firm acted for Meyer Burger Group in the energy sector, advising on two acquisitions in the solar-

power industry for SFr160 million. The firm also advised foreign investors on two unsuccessful bids for Formula One teams.