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A variety of regulatory adjustments with varying degrees of toughness

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The past 12 months are marked by significant new legislative developments which are expected to have great influence on the Swiss market. The following can be highlighted:

Bank secrecy laws

The Swiss bank customer secrecy laws have been heavily debated in connection with the global discussion on tax-havens and the famous black, grey and white lists of the OECD. Following the immense political pressure mounted on Switzerland over the last few months, Switzerland now plans to fully adhere to the OECD tax standard by dropping its reservation against the information sharing provided for in the OECD Model Tax Convention.

In accordance with the Swiss constitutional principle of the protection of personality, that reservation allowed Switzerland not to provide information in case of tax evasion, but only in cases of tax fraud. Under newly negotiated double tax treaties, foreign authorities will have a basis to claim mutual assistance and information sharing also in individual, sufficiently founded cases of alleged tax evasion of taxpayers domiciled in that foreign state (i.e. not Swiss citizens). The Swiss bank customer secrecy in itself however has not been abolished, and most important, Switzerland has not agreed to an automatic information exchange.

Insider trading

On October 1 2008, the scope of Swiss criminal laws on insider trading were substantially expanded. Contrary to the old law, the revised

law's definition of privileged information is no longer limited to equity offerings, M&A or similar events of comparable importance, but includes all events occurring within the issuer that may significantly influence the market price of the securities.

Accordingly, in addition to insider information on M&A and corporate restructurings, financial information and business developments of material significance or changes in financial results (for example, profit warnings) may in the future be considered privileged information.

In loose connection with the above, the Swiss Financial Market Supervisory Authority (Finma) issued a new circular, binding on certain Finma-regulated institutions, containing detailed regulations on market conduct rules. The circular goes substantially beyond the scope of the penal insider trading provision.

Public takeover regulatory changes

The regime on public takeover offers was amended on January 1 2009. Significant changes are as follows.

Shareholder rights have been substantially strengthened so that every shareholder who holds 2% or more of target company's voting rights (qualified shareholders), whether exercisable or not, may either apply to the Swiss Takeover Board (TOB) to be admitted as a party in the proceedings, or object to the TOB's orders. As a result, the uncertainty for both offerors and target companies has increased, as qualified shareholders may obstruct and delay takeover offers with legal challenges.

These rules already had a significant impact in the takeover of Harwanne Compagnie de Participations Industrielles et Financières by MMA Vie where, upon the request of minority shareholders, the offer price finally had to be increased.

- The new put-up-or-shut-up rule aims at dealing with public statements that do not comply with the requirements of a formal pre-announcement or offer prospectus. If

an entity publicly announces that it is considering launching a public takeover offer, the TOB may require such person to either submit an offer for the target company within a certain period of time, or to publicly declare that it will neither launch an offer nor exceed a threshold triggering the duty to launch an offer within the next six months.

- Since January 1 2009, the TOB has issued legally binding orders instead of non-binding recommendations, as under the former law. Such orders by the TOB may be appealed to Finma and then to the Swiss Federal Administrative Court.
- In order to prevent empty voting and similar techniques of secretly building up control over a target, the regime on the disclosure of shareholdings has been revised. Besides amending the existing notification thresholds of 5%, 10%, 20%, 33 1/3%, 50% and 66.66% by 3%, 15% and 25%, important amendments concerning securities lending transactions were also made. Further, different to many other jurisdictions, Swiss disclosure rules also apply to cash-settled transactions and selling positions.

Side pockets for hedge funds

The last few weeks have seen a slowdown of institutional investors exiting hedge funds (such decline in redemptions mainly being caused by hedge fund quotas of institutional portfolios decreasing thanks to the good performance of equities). However, as was the case until very recently, a number of hedge funds may still be confronted with liquidity problems.

Because Switzerland is among the leading fund-of-hedge-funds (FoHFs) domiciles and – in respect of foreign funds – target markets, Finma has received a number of requests from Swiss fund management companies and representatives of foreign funds to create side pockets to avoid a complete suspension of unit redemptions (only redemptions for the

side-pocketed illiquid part of the portfolio will be suspended). These, particularly in the case of repeated suspensions, would normally lead to the liquidation of a fund.

Finma decided that, in general, side pockets, subject to certain conditions, are available for Swiss FoHFs. Among these conditions is the requirement that, upon the introduction of side pockets, a fund may no longer be publicly distributed in or from Switzerland.

This prohibition also applies to foreign FoHFs being licensed for public distribution in Switzerland. Finma justifies the Swiss particularity of prohibiting distribution of side-pocketed funds with the fact that, in contrast to most other jurisdictions, FoHFs are offered to the public. It remains to be seen to what extent Finma will be willing to allow the distribution of side-pocketed FoHFs to qualified investors.

Foreign collective investment schemes

Important requirements relating to the approval of foreign collective investment schemes for public distribution in or from Switzerland (called the Swiss Finish) have been abolished, with effect from March 1 2009. That is, Finma will no longer impose the so-called two-thirds rule, but will shift the responsibility to the fund management to ensure that a fund invests in line with what its name implies.

Also, in accordance with Ucits III rules, Finma has liberalised its practice concerning the limitations for charging a management fee for investments in related target funds (double dip).

Notwithstanding the above liberalisations, each foreign fund is still required to be licensed with Finma and that, among other things, requires the production of a Swiss annex to the foreign prospectus.

Banking and finance

Recommended firms

Tier 1

Bär & Karrer
Homburger
Lenz & Staehelin
Niederer Kraft & Frey

Tier 2

Baker & McKenzie
Pestalozzi Lachenal Patry
Schellenberg Wittmer
Walder Wyss & Partners
Wenger & Vieli

Tier 3

Borel & Barbey
CMS von Erlach Henrici
Froriep Renggli
Nobel & Hug
Prager Dreifuss
Python & Peter
Vischer

Mergers and acquisitions

Recommended firms

Tier 1

Bär & Karrer
Homburger
Lenz & Staehelin

Tier 2

Baker & McKenzie
Niederer Kraft & Frey
Pestalozzi Lachenal Patry
Schellenberg Wittmer

Tier 3

Vischer
Walder Wyss & Partners
Wenger & Vieli

Tier 4

CMS von Erlach Henrici
Meyer Lustenberger
Prager Dreifuss
Python & Peter

Tier 5

Borel & Barbey
Tavernier Tschanz
Wenger Plattner

Restructuring and insolvency

Recommended firms

Tier 1

Baker & McKenzie
Schellenberg Wittmer
Wenger Plattner

Tier 2

Bär & Karrer
Homburger
Lenz & Staehelin
Niederer Kraft & Frey
Walder Wyss & Partners

Tier 3

Froriep Renggli
Python & Peter
Vischer

Some partners comment that Switzerland's situation is in many ways separate to that seen in other parts of Europe: there has been no credit crunch when it comes to national transactions and, as there was no housing bubble to burst, a lot of financings have been operating as they did before.

Equity capital markets activity dropped dramatically in 2009, with stock values plummeting in response to extreme volatility on the global markets. The debt market continued to be strong, however, with an upswing in the issue of Euro MTNs and convertibles.

There has been some trouble in the banking market, obviously, where the credit market has been exposed to international movements, but firms have been reporting a rise in mandates involving very large syndicated loans and Swiss club facilities granted by cantonal and commercial banks. However, this has in the main been on a domestic level. Throughout 2009, international banking deals tended to involve loan refinancings or the adjustment of covenants.

The big shift since autumn 2008 was a significant drop in M&A activity and an increase in regulatory work regarding general banking, insurance, capital adequacy and solvency issues.

Many partners report seeing deals simply stuck in the planning phase. As one puts it: "It's really frustrating – there's a lot of cash out there, and some excellent targets, but sellers are not getting the prices they want. People are just being so cautious with their money."

There was also a shift away from very big deals to small-to-medium ones, as well as deal-flow being largely characterised by restructurings and/or fire sales. Private equity activity changed as part of that trend, and firms watched as funds shifted attention away from the big-ticket deals and began looking at smaller, add-on investments.

Baker & McKenzie

Baker & McKenzie is the only foreign 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 explains why the firm has managed to penetrate the market: "They are a global law firm that acts locally – they can call the US on a specific text-related issue and get back to us straight away, without charge."

Baker & McKenzie 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 SIX Swiss Exchange in Zurich and is aimed at smaller enterprises.

Debt work is often the domain of in-house teams in Switzerland, but Baker & McKenzie advised on some issues over the past year. As well as acting for the republic of Hungary on straight bond issues totalling SFr350 million (€233 million) in May 2009, 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 field.

Leading lawyers

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

Bär & Karrer

Bär & Karrer has powered on over the last year, working on some of the biggest and most talked-about mandates on the market.

One recent big-ticket client said of working with the firm: "They always provide a first-rate level of service. They are highly responsive and easily live up to their reputation as leaders in the field."

The banking, finance and capital markets team hit the headlines in March 2009 when it was added to work on Xstrata's \$5.9 billion two-for-one rights issue.

Ralph Malacrida, who worked on the Xstrata mandate, was joined by others from the team when they acted for Aabar Investments in the acquisition of AIG Private Bank, a globally-networked Swiss private bank for high-net-worth individuals. The list of big clients goes on, including Novartis, Swiss Re and Bank von Roll.

In M&A, Bär & Karrer's corporate team represented Novartis in the SFr1 billion (€666 million) acquisition of Swiss biopharma company Speedel, and also assisted Hiestand Holding in their merger with IAWS Group under Aryzta to create the global leader in value-added baked goods.

The firm has also seen some growth in corporate restructuring activity. Among the mandates were the redomestication of energy and engineering group Foster Wheeler from Bermuda to Switzerland and the restructuring of the Benninger Group, which involved the firm advising Benninger on the sale of its worldwide weaving division to the Karl Mayer Group. One client advised in a restructuring by Michael Trippel said of him: "His focus on getting the work done in a timely way was incredible and, frankly, exceeded the already high expectations we had."

Leading lawyers

Urs Brügger
Felix Ehrat
Ralph Malacrida
Christoph Neeracher
Thomas Reutter
Eric Stupp
Michael Trippel
Rolf Watter

Homburger

Homburger had a busy year, acting on some substantial mandates and drawing praise. David Oser, who was recently promoted to partner, was mentioned by a competitor: "He's a tough and fair negotiator. He's very skilled and really knows and uses the details. That's what corporate M&A is all about." Staff movement within the firm included the

promotion of two associates to partner and one to counsel.

The firm's financial services department has been busy with a whole raft of high-profile work. The most recent and perhaps most notable mandate was advising Roche on financings related to its \$46.8 billion acquisition of the 44% publicly-held interest in Genentech. Another matter involved representing Credit Suisse in the issuance of SFr2.5 billion (€1.7 billion) 10% and \$3.5 billion 11% Tier 1 capital notes, along with SFr1.6 billion mandatory convertible notes and the sale of 93 million treasury shares.

In M&A, two stand-out deals for Homburger were representing Ciba Holding in their public takeover by BASF, and General Dynamics in their SFr2.45 billion all-cash takeover of Jet Aviation from Dreamliner Lux.

The firm is also involved in restructuring and insolvency work. Ueli Huber has been leading a team in advising Deutsche Bank as agent of secured lenders in insolvency, restructuring and asset sales regarding Nexis Fibers, as well as advising SairGroup on composition proceedings, which has involved a series of mandates from the company.

Leading lawyers

Hansjürg Appenzeller
René Bösch
Daniel Daeniker
Claude Lambert
Benedikt Maurenbrecher
Flavio Romero
Heinz Schärer

Lenz & Staehelin

Lenz & Staehelin advised Capvis on the financing for the acquisition of the Koenig Verbindungstechnik Group by one of its funds. The financing was composed of equity, hybrid equity, and senior, mezzanine and expansion debt.

The firm also advised Sal Oppenheim as lead manager in the IPO of Edisun Power Europe (the leading solar power contractor in Switzerland) on the SIX Swiss Exchange. The IPO was split between a rights offering to existing shareholders and an international offering to new investors. Patrick Schleiffer, the partner who handled the IPO, has drawn praise from one client: "Among all Zurich's lawyers, he's the one with the most experience in capital market questions. There are two things that set him apart: his instantly-available knowledge and his solid network."

Another notable banking and finance deal for Lenz & Staehelin was advising a privately-held Swiss group active in commodities trading in connection with a \$500 million syndicated multi-currency secured credit facility

agreement governed by Swiss law and arranged by mandated lead arrangers in Switzerland.

In M&A, Lenz & Staehelin acted in some of the market's most high-profile deals. On the buy side, the firm advised Barclays Private Equity in a management buyout where it acquired New Schild Holding. On the sell side, it advised BASF on its public tender offer for all publicly-held shares of Ciba Holding, where the enterprise value amounted to SFr6.1 billion (€3.99 billion). Another stand-out sell-side deal saw the firm represent AIG on the SFr400 million sale of its private bank to Aabar Investments.

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 held firmly to its tier one position with another year of acting on high-profile, complex mandates in a full range of practice areas. "We have a trusted relationship with NKF for several decades," says one client. "They have advised us on countless critical transactions and other legal issues; we regularly seek their advice for high priority matters."

The client continues: "[The] excellent combination of top-notch legal expertise, high creativity and full commitment makes NKF a first choice for complex, innovative transactions and critical legal proceedings."

Adds the client: "The NKF partners we work with typically have a wealth of experience and broad knowledge of banking, capital markets and M&A law which enables them to provide holistic and not merely compartmentalised solutions. This makes them particularly valuable in today's critical times where hyper-specialisation and commoditised suite of products are over."

On the capital markets, the firm acted on some very large debt programmes. Philippe Weber led an instruction for Novartis Capital Corporation, Novartis Finance Corporation and Novartis Securities Investment on a €15 billion Euro MTN programme. The same team handled another €15 billion Euro MTN programme, this time for Roche Finance Europe. These were the largest-

recorded Euro MTN programmes for any Swiss company.

"Philippe Weber is the man for large corporate finance, including capital markets and complex M&A transactions; he is bright and efficient," says one client. "I consider him one of the top-five Swiss lawyers in these fields."

The firm advised on a particularly complex deal when it assisted the Qatar Investment Authority on a SFr10 billion (€6.6 billion) fund-raising by Credit Suisse. The transaction was challenging due to the investment mix and the need to structure the hybrid investment as innovative core Tier I capital.

Andreas Casutt was singled out for praise by one competitor, who said: "He handles a lot of really important deals. He's a top lawyer, with a profile to match."

The last 12 months were the strongest yet for NKF's corporate/M&A team, marked by some of the most complex and innovative deals of the year. One particularly notable transaction was co-led by Casutt and Weber, who advised Jelmoli Holding on the structuring and implementation of their strategic plan. This very complex deal, which had a value of SFr3 billion, involved splitting the listed Jelmoli into a real-estate company and a newly-listed investment company.

Casutt had another opportunity to shine when he co-led with Philipp Haas to represent IAWS and Aryzta on their SFr4.2 billion merger with Hiestand Holding, resulting in the creation of the world's largest baked goods group.

"Philipp was excellent, pragmatic, diligent, informed and able to take a position which is not always the case with lawyers," says one client of Philipp Haas. "Controlled the work flow very well, kept the bankers in check and was exceptionally conscious of the costs."

NKF is known as a firm that is well-equipped to handle large, complex restructuring and insolvency mandates, has been living up to its reputation, dealing with multi-billion-franc insolvencies for LBE, ISMM and ISL Worldwide. The ISL case, handled by Thomas Sprecher, was the second-biggest on record in Switzerland and required some highly innovative work as it presented issues not covered by legal precedent.

"Compared to perhaps five or ten years ago, NKF today is much stronger in their team approach; they are well organised and co-ordinated, which makes them highly efficient in multifaceted transactions involving several layers and involving large legal teams," says one client.

Leading lawyers

Ulrich Benz
François Bianchi
Andreas Casutt

Peter Forstmoser
Peter Honegger
Peter Isler
Urs Pulver
Philippe Weber

Pestalozzi Lachenal Patry

Pestalozzi Lachenal Patry has a strong reputation in the market and is moving into tier two in M&A this year following suggestions from peers. The firm has been active on some big-ticket deals in M&A as well as banking and finance.

In M&A, Pestalozzi acted as Swiss counsel to Alcon (the target's counsel) in the disposal by Nestlé of its 77% interest to Novartis, and as lead counsel to Swiss Life in the disposal of Banca del Gottardo to Generali.

On the banking side, the firm acted for both borrowers and lenders on some large mandates, one of which saw the team act as Swiss counsel to an international consortium of lenders led by Barclays Capital on the financing of a SFr3.6 billion (€2.4 billion) medical clinic complex acquisition.

Schellenberg Wittmer

Schellenberg Wittmer's banking and finance team, led by Martin Lanz and Lionel Aeschlimann, holds its top-tier position, acting on some of the largest and most high-profile transactions on the market.

The firm recently acted as Swiss counsel to the Qatar Investment Authority in connection with the acquisition, through its investment arm Qatar Holding, of an important stake in Credit Suisse. Another instruction was acting for the Depositary Trust and Clearing Corporation on services to Swiss customers in connection with Turquoise, a new pan-European trading platform.

An interesting mandate saw the team act for the Bank of China in establishing its Swiss banking subsidiary – the first Swiss bank in Chinese hands. The firm has a reputation for providing trusty hands in all kinds of work. One recent client says of the firm: "It's always very productive for us, working with them. They're very responsive and quick to act."

In M&A, the firm moves up to tier two this year on the back of strong peer review and the nature of their activities in this area. Lorenzo Olgiati and Martin Weber acted as Swiss advisers to the Labelux Group luxury goods holding company in its multi-jurisdictional acquisition of Bally International from US private-equity firm TPG Capital.

The firm, named as one of Novartis' preferred advisers, advised Novartis Venture Funds and other sellers in their disposal of Swiss Pharma Contract. Also in M&A, Oliver

Triebold acted as counsel to Mid Europa Partners, the largest private-equity firm operating in the central and eastern European region, in the acquisition of Disa, a large provider of moulding and metal surface preparation equipment.

Restructuring and insolvency matters have also kept the firm busy. It was recognised for its expertise in this field when Vincent Jeanneret and Lionel Aeschlimann were appointed by Finma (the Swiss financial market supervisory authority) to liquidate both the Geneva branch of Kaupthing Bank Luxembourg and ACH Securities.

Leading lawyers

Lionel Aeschlimann
Martin Lanz
Oliver Triebold
Martin Weber

Walder Wyss & Partners

Walder Wyss acts for high-profile clients in large deals and is respected in the market for its quality work. One recent client said: "They are our top adviser in Switzerland. They're solution-focussed: they're deal makers, not deal breakers, and they're always available to us."

On the capital markets, a matter requiring an innovative solution was handled by Markus Pfenninger when he advised Swiss Life on its SFr2.5 billion (€1.6 billion) share buy-back programme. Also, Johannes Bürgi acted as Swiss counsel to Merrill Lynch in the sale of a large Swiss B loan and note portfolio to an undisclosed buyer.

One of the firm's stand-out financing mandates involved advising BNP Paribas, Royal Bank of Scotland and Merrill Lynch as Swiss transaction counsel in a number of pre-export and other financings of the Mechel Group, a deal worth SFr2 billion and handled by Francis Nordmann.

Walder Wyss's M&A, corporate and commercial department, led by Markus Vischer, worked on some large mandates over the last 12 months. One deal involved representing HgCapital in its acquisition of Koenig Verbindungstechnik, together with Capvis. Another, also on the buy side, saw Vischer lead the team representing Tamedia in the staggered acquisition of Presse Publications.

Leading lawyers

Markus Pfenninger

Other ranked firms

Meyer Lustenberger had a productive year in banking and finance, M&A and restructuring and insolvency, acting for some high-profile

clients. The firm acted for Meyer Burger Group, advising on their acquisition of French company Emix. The firm also represented Allreal Group when it acquired Apalux.

Prager Dreifuss worked on some interesting mandates over the last 12 months. In banking and finance, the firm acted for Senior Investments in the issuance of senior notes to refinance private placement notes, and for Merrill Lynch in the trading of distressed debts relating to the Swissair bankruptcy.

The firm's corporate team, who is as comfortable with multi-jurisdictional deals as it is with domestic work, has also been busy. One particularly notable deal involved representing Essilor International as lead counsel in its €360 million acquisition of multinational Satisloh Holding.

Vischer had a busy year, holding its strong reputation. The firm's banking and finance practice, led by Markus Guggenbühl, undertook some interesting work, including advice to the liquidators of Lehman Brothers on a number of regulatory and legal issues, and to Elliott Advisors (UK) on the takeover, corporate and security laws relating to the fund's minority stakes in Swiss-listed companies subject to tender offers.

The corporate department, run by Jürg Luginbühl, has also been busy. Stand-out matters include representing Swiss International Air Lines in its acquisition of Edelweiss Air, as well as assisting in the acquisition of Intrax, a health insurance provider, from the Zurich Insurance company and Vaud Insurance, by CSS, who have an 18% share in the Swiss health insurance industry.

Leading lawyers: Felix Egli, Markus Guggenbühl and Jürg Luginbühl.

Wenger & Vieli moved up to tier three in M&A this year as a result of a shift in market opinion and some very positive comments from peers. The firm is well respected in the market, especially for its finance and capital markets work, and also works on some interesting restructuring and insolvency mandates.

On the banking side, the firm acted several times on syndicated and non-recourse loans for Zürcher Kantonalbank, as well as for Deutsche Bank on a \$600 million asset-based loan. On the restructuring front, Wenger & Vieli represented Maerki Baumann & Co in the restructuring of the establishment of a holding structure and the establishment of a separate bank by demerger.

Leading lawyers: Andreas Hünerwadel, Christian Wenger, Georg Zondler and Wolfgang Zürcher.

Other notable firms

Staiger Schwald & Partner has been busy on both the corporate and banking and finance fronts, representing some high-profile clients. On the capital markets, the firm advised Deutsche Bank and Mizuho International on regulatory issues of collective investment schemes and the restructuring of convertible bond issues, respectively.

In M&A, the corporate team acted as seller's counsel in the sale of, among other things, two private banks. Staiger Schwald has also been busy with restructuring work, recently representing some of the main creditors in the liquidation of Swissair.