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Update on Client Adviser Registry and Ombudman's Offices under the Financial Services Act

Reference: CapLaw-2020-39

On 1 January 2020, the new Financial Services Act entered into effect. Certain of the transition periods are linked to the licensing of new institutions that perform relevant roles under the Financial Services Act. This article provides for an update on the current status and the end of the transition period.

By Benjamin Leisinger

1) The Financial Services Act

The Financial Services Act of 15 June 2018 (FinSA), which entered into effect on 1 January 2020, introduced new duties for financial service providers. Since the provision of cross-border financial services into Switzerland, *i.e.* to clients in Switzerland, also generally falls within the scope of application of the FinSA, these requirements are relevant for foreign financial service providers, too. FinSA's regulatory duties include the following: (i) the duty to register the individuals who actually perform financial services on behalf of the (foreign) financial service provider in a new register of client advisers; (ii) the duty to categorize their clients as private clients, professional clients and institutional clients; (iii) the duty to comply with expanded conduct rules; and/or (iv) the duty to comply with certain organizational requirements, including by disclosing or passing on fees, commissions and other remuneration or financial benefits received by financial service providers from third parties in connection with the provision of financial services, except where waived.

2) The Transition Periods

Most substantive regulations on the provision of financial services under the FinSA did not apply immediately. Certain duties are subject to a general (mostly two-year) transition period. Others did not apply immediately because new institutions relevant under the FinSA did not exist, yet. In these cases, the transition periods only started to run when these new institutions existed and were approved by the Swiss Financial Market Supervisory Authority FINMA (FINMA).

3) New Institutions Relevant for Financial Service Providers – Registration Bodies and Ombudsman Offices

Under the FinSA, the term "financial services" is statutorily defined: financial services are limited to specific and enumerated services related to financial instruments. Services not related to financial instruments are not covered in the first place. The list of financial services in the FinSA notably does not include services such as dealing on own account, underwriting of financial instruments and/or placing of financial instruments on, or without, a firm commitment basis, investment research and

financial analysis or other forms of general recommendation relating to transactions in financial instruments. Corporate finance advice, M&A advice or similar services where the investment in financial instruments is only a means to a different end (*e.g.*, the optimization of the capital structure or the purchase of an enterprise) generally are not financial services, either.

For financial service providers, two institutions had to be set-up and approved by FINMA first before the relevant transition periods could start to run: registration bodies (Registration Bodies, for more details see CapLaw-2019-55) and ombudsman offices (Ombudsman's Offices). For the new prospectus regime that is also regulated in the FinSA, another institution, the reviewing body, is relevant (see CapLaw-2020-21 for more details on the reviewing bodies).

a) Registration Bodies

Pursuant to the FinSA, "financial service providers" are persons that provide financial services on a professional basis in Switzerland or to clients in Switzerland, while "client advisers" are the natural persons who actually perform financial services on behalf of a financial service provider (or in their own capacity as financial service providers).

Client advisers of Swiss financial service providers that are not already subject to prudential supervision and client advisers of non-Swiss financial service providers that provide their services in Switzerland are obliged to register in a register of client advisers. The registers of client advisers are maintained by the so-called Registration Bodies. The Registration Bodies also verify that the client advisers have completed the necessary training and further education.

Client advisers of non-Swiss financial service providers which are (a) prudentially supervised outside Switzerland and (b) provide services in Switzerland only to professional or institutional clients (as defined in the FinSA) are exempt from the duty to register in a register of client advisers.

FINMA approved BX Swiss Ltd as the first Registration Body with effect as of 20 July 2020. The registration office of BX Swiss offers a fully digital process for entry into the client advisor register. With effect from 14 September 2020, FINMA approved the second Registration Body, the Association Romande des Intermédiaires Financiers (ARIF), headquartered in Geneva. The approval of further Registration Bodies is expected.

The FinSA provides for a six-month transition period after the approval of the first Registration Body for the entry of the client advisers in a register kept by a Registration Body. This transition period now ends on 19 January 2021. In order to meet this deadline, the client advisers need to file their application for entry in a register with a Registration Body by the end of the transition period.

The client adviser who seeks to obtain registration in the register of client advisers shall, in particular, demonstrate that he or she: (i) has sufficient knowledge of Swiss regulations and the required expert knowledge (please also refer to the next paragraph), (ii) has sufficient professional insurance or similar financial guarantees in place or the financial service provider for which the client adviser is working satisfies this requirement, (iii) is affiliated with an Ombudsman's Office in case the client adviser is also the financial service provider or, if this is not the case, the financial service provider itself holds an affiliation, (iv) is not and was not convicted for certain violations of Swiss financial services regulations, including the criminal provisions set forth in the FinSA, or certain provisions of the Swiss Criminal Code, which have been registered into a criminal record and (v) is not subject to certain sanctions taken by FINMA, such as the prohibition from practicing the profession for a certain period of time.

As far as the required knowledge of Swiss regulations is concerned, in order to be admitted into the register of client advisers, a client adviser should prove that he or she has sufficient knowledge of the rules of conduct set forth in the FinSA. The Registration Body of BX Swiss Ltd as the first Registration Body also provides for "guidelines concerning proof of the required knowledge according to Art. 6 FinSA" (see https://www.regservices.ch/?download=9451) as well as for lists of "accepted external training and further education in the field of FinSA code of conduct rules" (see https://www.regservices.ch/?download=9467) and "accepted external training and further education in the field of the necessary expertise" (see https://www.regservices.ch/?download=9469).

b) Ombudsman's Offices

Under the FinSA, clients of Swiss and non-Swiss financial service providers which offer financial services in or from Switzerland shall have an ombudsman procedure available to settle disputes of clients with the financial service providers. For this purpose, the financial service providers are obliged to affiliate themselves with an Ombudsman's Office recognized by the Swiss Federal Department of Finance. The very significant role of Ombudsman Offices stated in the consultative drafts of the FinSA has, however, been reduced in the final version.

Currently there are no exceptions to this obligation of financial service providers to enter into an affiliation with an Ombudsman's Office. However, there is a proposal in the Swiss Parliament to amend the FinSA to provide an exemption for financial service providers which provide services only to professional or institutional clients (as defined in the FinSA).

The Swiss Federal Department of Finance recognized the first four Ombudsman's Offices with effect as of 24 June 2020. In the meantime, three further Ombudman's Offices have been recognized and the recognition of further Ombudsman's Offices is expected.

One of the recognized Ombudsman's Office is the well-established Swiss Banking Ombudsman of the Swiss Bankers Association. Despite the recognition of the Swiss Banking Ombudsman as Ombudsman's Office under the FinSA, only members of the Swiss Bankers Association are eligible for affiliation with the Swiss Banking Ombudsman. Most of the other Ombudman's Offices, such as for example the Swiss Chambers' Arbitration Institution (SCAI), are open for affiliation by all types of financial service providers under the FinSA.

The FinSA provides for a six-month transition period after the recognition of the first Ombudman's Office for the affiliation of the financial services providers with a recognized Ombudman's Office. The transition period ends on 23 December 2020. In order to meet this deadline, the financial services providers need to file a completed affiliation request with a recognized Ombudman's Office by the end of the transition period.

4) Time to Act

With these shorter transition periods of the FinSA now running, in particular foreign financial service providers should update their analysis on (i) whether they are subject to the registration and/or affiliation requirement and – if so – (ii) whether their client advisers meet the relevant prerequisites for registration and/or (iii) with which Registration Body or Ombudsman Office they want to register or affiliate, respectively.

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Exemptions for Trustee and Portfolio Managers under FinIA

Reference: CapLaw-2020-40

Trustees and portfolio managers are subject to a licensing requirement and prudential supervision following the entry into force of the Financial Institutions Act (FinIA) on 1 January 2020. The scope of activity of specific trustees and portfolio managers may, however, be very limited in scope and the requirements of the FinIA may be disproportionate in the light of its purpose in specific cases. The FinIA and the Financial Institutions Ordinance (FinIO) address these cases to some extent by specific exemptions.

By Alexander Greter

1) New Regulation of Trustees and Portfolio Managers

Following the entry into force of the FinIA, trustees and portfolio managers are subject to a licensing requirement and to prudential supervision by FINMA and an approved

supervisory organization. Existing trustees and portfolio managers benefit from transitional provision expiring on 31 December 2022 at the latest.

Trustees are persons, whether an individual or entity, who, on a professional basis, manage or have a power of disposal over a segregated fund for the benefit of one or more beneficiaries or for a specified purpose (*i.e.*, purpose trusts) based on an instrument creating a trust within the meaning of the Hague Trust Convention. Portfolio managers are persons who have the power based on a mandate agreement to dispose, in the name and on account of their customers, over assets of customers for purposes of providing financial services as further defined in the Financial Services Act. This includes the traditional discretionary asset management, but also the execution of transactions in financial instruments based on a power of attorney pursuant to instructions received from the customer or the receipt and forwarding of instructions regarding financial instruments. Pure investment advisory services without any power of disposal of the advisor over the assets of the customer are not subject to the FinIA.

2) Trustees and Portfolio Managers acting on a Professional Basis

The scope of the FinIA is limited to trustees and portfolio managers conducting their activity on a professional basis. The concept has been adopted from the Anti-Money Laundering Act (AMLA). A Trustee or portfolio manager only falls within the scope of the FinIA if:

a) the activity as trustee or portfolio manager generates gross revenue in excess of CHF 50,000 per calendar year;

b) business relationships with more than 20 counterparties are entered into or maintained during a calendar year; or

c) the portfolio manager has a power of disposal over assets of a third party exceeding the total value of CHF 5 million.

Certain relationships of trustees or portfolio managers for which an exemption pursuant to article 2 (2) is available are not included in the calculation of the abovementioned thresholds. This includes the exemptions further described in paragraphs (3)(a) and (3)(b) below. Moreover, a trustee is the legal owner of the assets held in a trust fund of a trust. Therefore, the explanatory notes to the FinIO explicitly state that the threshold of CHF 5 million for assets subject to the trustee's power of disposal is not relevant to determine whether a trustee is acting on a professional basis.

3) Exemptions from the Licensing Requirement

The FinIA and the FinIO provide for exemptions from the licensing requirement. The FinIA provides for a carve-out for persons managing assets exclusively for persons

economically connected to them or with whom they have family ties. Despite the reference to "management of assets", the exemption is not limited to portfolio managers and other financial institutions providing asset management services in the sense of the Financial Services Act, but also applies to trustees. In addition to the general exemptions in the FinIA, the FinIO provides for a possibility to obtain an exemption from the licensing requirement of the FinIA for dedicated trust companies.

a) Exemption for Economically Connected Persons

Persons providing services exclusively to other persons with whom they are economically connected are not subject to the FinIA at all (article 2 (2) (a) FinIA). A qualified economic connection exists between entities connected, directly or indirectly, by participation of more than 50% in the capital or voting rights or in case of control by other means (*e.g.*, parent companies, subsidiaries, affiliates). Pursuant to the explanatory notes to the FinIO, a qualified economic connection also exists between pension funds, patronage welfare funds and charitable organizations linked to a group of companies and the members of that group. This is in line with the current definition of an economic unit pursuant to article 3c (1) (c) Banking Act. This exemption is primarily of relevance for entities providing group treasury functions, which may involve investment of funds of affiliates, but is of limited relevance for the traditional asset management and trustee business.

b) Family Ties-Exemption

Persons providing services exclusively to persons with whom they have family ties are also outside of the scope of the FinIA and its requirements. A corresponding exemption for closely related persons has already been available for financial intermediaries, including trustees and portfolio managers, pursuant to the AMLA. However, while under the AMLA family ties are relevant in the context of the question as to whether services are provided on a professional basis, the exemption in the FinIA directly limits the scope of application. It is, therefore, possible that a person providing services to family members is not subject to the FinIA, but meets the criteria of a financial intermediary under the AMLA.

In relation to individuals, the definition of family ties in the FinIO is almost identical to the corresponding definition in article 7 (5) of the Anti-Money Laundering Ordinance (AMLO). The following individuals are deemed to be connected by family ties (article 4 (1) FinIO):

i. relatives by blood or by marriage in the direct line;

ii. relatives by blood or by marriage up to the fourth degree in the col-lateral line (as opposed to article 7 (5) (b) AMLO which only extends to the third degree in the collateral line);

iii. spouses and registered partners;

iv. co-heirs and legatees from succession until completion of the division of estate or allocation of the legacy;

v. remaindermen and residuary legatees in accordance with article 488 of the Civil Code (CC);

vi. Persons living in a long-term life partnership with the portfolio manager or trustee.

Pursuant article 20 (1) CC, the degree of a relationship in the collateral line is determined by the number of births connecting two individuals. Based on the application of the principle of uniformity of the legal system and in the absence of any indications to the contrary, the scope of the exemption of relatives by blood in the collateral line is determined by the number of births connecting the portfolio manager or trustee with the customer being a relative. Grandnephews and grandnieces, cousins and grandaunts and granduncles as well as the spouse of each of them are individuals with are still deemed to have family ties to the asset manager or trustee. More remote family relationships would be beyond the family tie exemption. There is, however, no restriction on the number of births between relatives in the direct line.

The family affairs of wealthy individuals and families are, however, often more complex and not limited to the provision of services between two individuals within the same family. The assets of the family may be managed by a single family office or may be consolidated in a trust structure for the benefit of the family with a private trust company (PTC) as trustee, *i.e.*, a trust company only acting as trustee for trusts of one specific family. Based on submissions received during the consultation process, the exemption of family ties has been extended to certain structures commonly used by wealthy individuals and families to organize their wealth. Pursuant to article 4 (2) FinIO, entities which provide services as portfolio managers or trustees are outside the scope of the FinIA if:

i. the family office manages assets, or the PTC manages or administers the trust fund, for the benefit of individuals who amongst themselves are connected by family ties; and

ii. the family office or PTC is directly or indirectly controlled by:

(1) individuals who are connected by family ties as defined in the FinIA to the individuals for the benefit of whom the assets are managed or administered; or

(2) a trust, foundation or similar legal arrangement established by a person connected by family ties to the individuals for the benefit of whom the assets are managed or administered.

A strict reading of the term "amongst themselves" would require that the conditions of family ties must be met by any possible member of the group of individuals in relation to all the other members of the group as well as in relation to the person controlling, or having established the trust or foundation controlling, the family office or PTC. Due to the limitation to the fourth degree in the collateral line, family offices and trust structures established for the benefit of families comprising several generations may not meet the conditions. In the light of the fact that also relationships between individuals are limited to the fourth degree in the collateral line, which implies that the exemption should only be available for relatively close family relationships, this may be the intended result. However, the FinIA and the FinIO as well as the explanatory notes remain silent on this point.

Pursuant to article 4 (3) FinIO, the exemption is also available if the class of persons for the benefit of whom the assets are managed or administered also includes charitable institutions or institutions with a public purpose despite the fact that they are not connected to a family by blood or otherwise.

c) Dedicated Trust Companies

Based on the submissions made in the consultation process, a further exemption was introduced by article 9 (3) FinIO for a specific type of trust companies. The exemption is available to trust companies exclusively acting as trustee for one or more trusts established by the same settlor or for the benefit of the same family, provided that such trust company is held and overseen by a licensed Swiss financial institution pursuant to the FinIA or a licensed branch of a foreign financial institution. This kind of trust company is typically established by a professional trustee at the request of the settlor who wishes not to share the same trustee with other trusts, but would still like to appoint an independent trustee without family involvement. In practice, such special purpose trust companies are often referred to as dedicated trust companies. There is no equivalent exemption for portfolio managers.

As opposed to the exemption for PTCs, dedicated trust companies are not controlled by the family for the benefit of which the trust has been established, but by a professional trustee or other type of financial institution pursuant to the FinIA. Moreover, different to PTCs, the FinIO does not require the settlor and beneficiaries to be connected by family ties as defined in the FinIO but more generally states that the trusts must be

for the benefit of the same family or established by the same settlor. The exemption is therefore broader and goes beyond relationships involving family ties. In the light of the purpose of the FinIA to protect customers and the functioning of the financial market and taking into account that only dedicated trust companies owned and overseen by a FINMA licensed service provider are eligible for this exemption, this differentiation compared to PTCs is appropriate.

The exemption is not automatically applicable to dedicated trust companies. Dedicated trust companies may be exempt by FINMA from the requirement to obtain a license upon request only. Accordingly, an application for relief from the licensing requirement must be submitted for each dedicated trust company.

It is not entirely clear from the FinIO whether dedicated trust companies are obliged to meet the licensing conditions of the FinIA themselves despite the fact that a license may not be required. This is particularly relevant in practice because dedicated trust companies are regularly companies incorporated in foreign jurisdictions due to lower maintenance costs and reduced complexity of the corporate administration and taxation. Despite the incorporation abroad, dedicated trust companies are typically fully integrated in the organization and oversight of the licensed trust company, including in respect of anti-money laundering compliance, regulatory compliance, risk management and internal controls. Dedicated trust companies generally use the infrastructure of the parent trust company and do not have premises or employees of their own. As ownership and oversight by a trust company licensed in Switzerland is a requirement to be eligible for the dedicated trust company exemption, the purpose of the FinIA does, in my view, not require dedicated trust companies to independently meet the licensing conditions of the FinIA. Otherwise, the intended relief provided by article 9 (3) FinIO would evaporate. In the light of the existing international practice of professional trustees, the exemption for dedicated trust companies should, therefore, permit the establishment and maintenance of dedicated trust companies in foreign jurisdictions. Provided that the requirements in respect of ownership and oversight are met, such foreign dedicated trust companies should be eligible for the exemption from the requirement to obtain a separate license as trustee.

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Federal Council proposal of 3 April 2020 to strengthen the Swiss capital market

Reference: CapLaw-2020-41

On 3 April 2020, the Swiss Federal Council opened the consultation procedure for the new proposal to reform the Swiss withholding tax system and the proposal to abolish the transfer stamp duty on trading in certain securities. The consultation period ended on 10 July 2020. The present article provides for an overview over these proposals.

By Stefan Oesterhelt

1) Current situation

While interest payments on single loans are not subject to withholding tax in Switzerland, interest payments on bonds of a domestic issuer are subject to Swiss Federal Withholding Tax of 35 percent. Swiss bonds are therefore particularly unattractive for foreign investors, even if they are entitled to a partial or full tax refund based on a double taxation treaty (specifically, investors resident in Austria, Denmark, Czech Republic, Finland, France, Germany, Ireland, Iceland, Liechtenstein, Luxemburg, Norway, UK and the US, amongst others, are entitled to a full refund.).

The reasons for this are the liquidity disadvantage between levying and refunding the withholding tax and the administrative costs associated with the refund. In response, Swiss groups regularly avoid withholding tax by issuing their bonds through a foreign company. The Swiss Federal Tax Administration introduced new rules recently to give more flexibility regarding the potential on-lending into Switzerland of such issuances (see Stefan Oesterhelt, Swiss Debt Capital Markets: More Flexibility under New Swiss Withholding Tax Rules, CapLaw-2019-44).

Furthermore, transfer stamp duty is levied on trading in certain securities, including bonds. The tax is payable if at least one of the parties involved in trading is a Swiss securities dealer. Half the tax is payable per securities dealer involved. The total levy for domestic bonds is 0.15 per cent of the sales proceeds, and 0.3 per cent for foreign securities. According to the proposal of the Federal Council of 3 April 2020 the transfer stamp duty would be abolished on domestic bonds (see below at 4)).

2) Reform efforts to date

a) Federal Council proposal 2010

The Federal Council had already launched a reform of the withholding tax in 2010 (for an overview of the 2010 proposal of the Federal Council, see Dieter Grünblatt and Stefan Oesterhelt, Swiss Capital Markets: Welcomed Fundamental Changes in Taxation of Debt Instruments Ahead, CapLaw 2011-42). The trigger for the bill at

that time was the introduction of the TBTF instruments (i.e., AT1 issuances such as CoCo bonds and Write-down Bonds). However, Parliament rejected the proposal to the Federal Council. Instead, it decided to exempt these TBTF instruments from withholding tax (Federal Act of 15 June 2012). A few years later, TLAC issuances have been exempt from withholding tax as well (Federal Act of 18 March 2016).

b) Proposal of the Federal Council 2014

The Federal Council made a further attempt on 17 December 2014 for a reform of withholding tax on interest (for an overview of the 2014 proposal see Stefan Oesterhelt, Withholding Tax on Interest to be Replaced by Paying Agent Tax System, CapLaw 2015-5). The Federal Council's reform proposal was based on a concept developed by the Brunetti group of experts. The Federal Council suspended the project in June 2015 in view of the controversial outcome of the consultation process and against the backdrop of the then pending popular initiative *Ja zum Schutz der Privatsphäre*, which wanted to anchor fiscal banking secrecy in the constitution. In November 2015, it instructed the Federal Finance Ministry to set up a group of experts to develop reform proposals. On this basis, the Federal Council wanted to decide on further action as quickly as possible after the vote on the popular initiative.

c) New Federal Council proposal

After the popular initiative was withdrawn in January 2018, the expert group intensified its work. It delivered its report at the end of 2018. The Federal Council was informed in March 2019. In addition to a reform in favor of the debt capital market, the group of experts also proposes examining measures for the equity capital market.

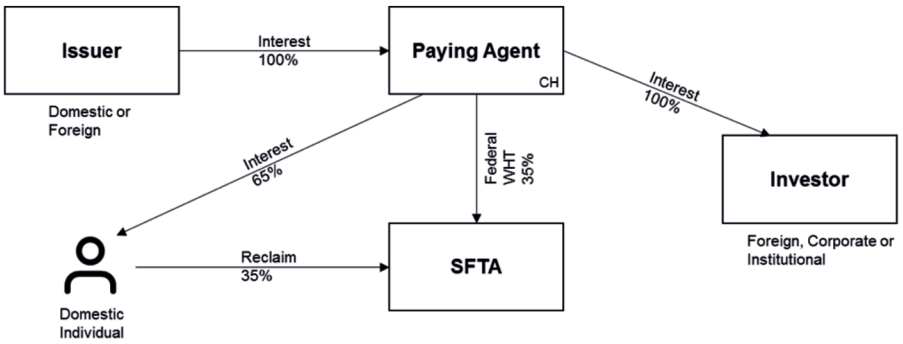
3) Withholding tax on bonds: transition to the paying agent principle

a) Principles

In order to abolish the disadvantage of domestic bond issues compared to foreign bond issues, the Federal Council proposes in its consultation draft of 3 April 2020 to switch to the paying agent principle for bond issues. Under the paying agent principle, the withholding tax is not paid by the debtor of the interest payment (*e.g.*, a company that issues a bond and pays interest on it), but by the investor's paying agent (*e.g.*, the bank in whose custody account the investor holds the taxable bond).

Unlike the debtor, the paying agent knows the identity of the investor. It is therefore in a position to levy withholding tax only in those cases where this is required for security purposes, namely in relation to individuals resident in Switzerland. By contrast, domestic legal entities and foreign investors are exempt from the tax. Domestic banking secrecy for tax purposes remains intact. As is currently the case, the tax authorities will only

learn of the existence of the income and assets subject to withholding tax at the time of the investor's declaration.



b) Scope: interest payments on bonds

The paying agent principle only covers interest payments on bonds (*Anleihensobligationen*) and debentures (*Kassenobligationen*). Withholding tax on dividends is not levied based on the paying agent principle, but on the debtor principle. Interest payments on customer balances (*Kundenguthaben*) are also not covered by the paying agent principle.

However, interest payments on bonds of indirect investments (structured products and collective capital investments) are also covered by the paying agent principle (cf. section 3)f) below). In addition, interest payments on bonds of foreign issuers should also be subject to paying agent tax (see 3)d) below).

The proposal only covers Swiss Federal Withholding Tax. Withholding tax levied by the Cantons on bonds secured by Swiss real estate is not covered by the paying agent principle (for a detailed overview over this withholding tax see Stefan Oesterhelt and Maurus Winzap, Quellensteuern bei hypothekarisch gesicherten Kreditverträgen, FStR 2008, pp. 28.).

c) Paying agents covered

According to the proposal, withholding tax will always apply if the paying agent is domiciled in Switzerland, whereas in the case of the debtor principle the domicile of the debtor is decisive.

Banks are usually eligible as paying agents. However, if interest bearing securities are not held in a bank custody account (*e.g.*, in the case of bonds issued by SMEs or corporate credit balances), the debtor of the taxable performance may also qualify as a

paying agent. In this case, the debtor must identify its investors and is responsible for the correct payment of the new withholding tax.

d) Interest payments of foreign bond issuances

Furthermore, the paying agents are technically able to levy withholding tax on income from foreign interest securities. This means that foreign interest income is now also secured if it is held by a domestic individual in a securities account at a domestic bank. This is intended to close a significant security gap and contribute to combating tax evasion.

However, the recording of interest payments from foreign issuers always leads to considerable practical difficulties when it comes to combined products (such as convertible bonds or structured products) that are not included in the list of securities of the FTA (or a comparable new database to be created).

e) Optional continued application of the debtor principle

Under the new proposal, the domestic debtor would have the possibility to choose whether to apply the debtor principle (as today) or the paying agent principle. If he opts for the debtor principle, he will, as today, pay the withholding tax for all investors. Domestic SMEs and collective capital investments can, thus, be exempted from the additional obligations that the new withholding system entails.

f) Scope of application for indirect investments

The paying agent principle applies to all interest income. It is intended to cover not only direct investments in interest-bearing securities, but also indirect investments via a collective investment scheme or a structured product. This applies to both distributed and reinvested interest income. However, dividend income and capital gains are not covered by the paying agent principle. Withholding tax is still levied on the former according to the debtor principle. The latter are tax-free.

g) Comparison with proposal 2014

In the consultation process, the 2014 proposal was rejected by the banks, in particular because they considered the administrative effort, costs, settlement and liability risks to be disproportionately high. The 2020 proposal is intended to take some of these considerations into account:

i. Limitation of the paying agent principle to interest income only. (In its 2014 proposal, the Federal Council had also proposed that foreign dividend income should be included).

ii. The criminal liability of paying agents is excluded in cases of negligence.

iii. The 2020 proposal contains an option for the debtor principle, which is particularly beneficial to SMEs.

iv. Restriction of withholding tax to domestic individuals.

v. No recording of accrued interest.

vi. Quarterly delivery of the withholding tax.

Nevertheless, the 2020 proposal is still quite complex and therefore subject to criticism, especially by the banks (see Petrit Ismajli and Urs Kapalle, Geplante Reform der Verrechnungssteuer, EF 2019, pp. 894; Stefan Keglmaier and Charles Hermann, Une occasion manquée, EF 2020, pp. 513).

h) Further legislative process

The Federal Council opened the consultation procedure for the new proposal on 3 April 2020. The consultation period ended on 10 July 2020. Most participants in the consultation process acknowledge the need for action. However, the proposal is still considered too burdensome to implement for the paying agents, which is why the Federal Council will once again thoroughly revise the proposal before issuing a dispatch. It is expected to be able to be discussed in parliament in 2021. The earliest possible date for the revision to enter into force would be 2022, but this date is unrealistic. Therefore, it is not expected to enter into force before 2023. Furthermore, it is expected that the paying agents will be granted a transitional period to make the necessary preparatory steps to introduce such a paying agent system (Fabian Baumer, Reform der Verrechnungssteuer – ein Projekt zur Unzeit?, StR 2020, pp. 118, 124).

4) Abolition of the turnover tax on domestic bonds

Trading in domestic bonds is currently subject to a 0.15% turnover tax. To further strengthen the domestic capital market, the turnover tax on trading in domestic bonds is to be abolished. However, trading in foreign bonds will remain subject to the 0.3% turnover tax.

In contrast to the relatively complex introduction of a paying agent principle for interest payments, the abolition of the turnover tax on domestic bonds could be introduced relatively easily. Implementation in the course of 2021 would theoretically be possible. Without the introduction of the paying agent principle, however, the abolition of the turnover tax on domestic bonds would do little to significantly strengthen Swiss bond issuances.

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Placement of New Shares of Molecular Partners

Reference: CapLaw-2020-42

On 7 July 2020, Molecular Partners announced the placement of 5'528'089 new shares to institutional investors by way of an accelerated book-building process in a private placement. The offer price was set at CHF 14.50 per share. The gross proceeds from the placement amounted to CHF 80.2 million. The proceeds from the capital increase will be used to fund research & development activities as well as for general corporate purposes.

New Anchor Shareholder in MCH Group

Reference: CapLaw-2020-43

On 10 July 2020, MCH Group AG announced a comprehensive set of measures, including a new anchor investor, Lupa Systems LLC, an independent private investment company owned by James Murdoch. In order to strengthen its capital structure and shareholder base and to accelerate its ongoing transformation, MCH Group's board of directors proposed to its shareholders a capital increase of CHF 104.5 million and an amendment to its articles of association (opting-up clause) enabling Lupa Systems LLC to acquire a holding of over 33.3% and up to 49% of MCH Group without being required to publish a public takeover bid. The proposals were approved by MCH Group's shareholders on 3 August 2020. However, on 20 August 2020, the Swiss Takeover Board (TOB) ruled that under takeover law the opting-up clause adopted by the shareholders' meeting is invalid. MCH Group subsequently announced that it is filing an appeal with the Swiss Financial Market Supervisory Authority (FINMA) against the TOB's ruling.

Swiss Re Update of USD 10 Billion Debt Issuance Programme and Offering of EUR 800 Million Guaranteed Subordinated Notes, as well as SGD 350 Million Guaranteed Subordinated Notes

Reference: CapLaw-2020-44

Swiss Re recently updated its USD 10 billion Debt Issuance Programme, and thereunder issued (i) EUR 800 million Guaranteed Subordinated Fixed Rate Reset Step-Up Callable Notes with a scheduled maturity in 2052 and (ii) SGD 350 million

Guaranteed Subordinated Fixed Rate Reset Callable Notes with a scheduled maturity in 2035.

Public Repurchase Offer for Existing Convertible Bonds by Basilea Pharmaceutica Ltd

Reference: CapLaw-2020-45

On 28 July 2020, Basilea Pharmaceutica completed the offering of approximately CHF 97 million 3.25% convertible bonds due 2027 to finance the repurchase of a part of Basilea's existing convertible bonds due 2022. With the repurchase of part of its existing bonds financed by newly issued bonds, Basilea was able to extend its debt maturity profile and to optimize its debt structure. The reference price for the conversion price of the new convertible bonds was set by the placement of shares in Basilea. Goldman Sachs International and UBS AG acted as Joint Global Coordinators in the placement of the new convertible bonds and as dealer managers in the public repurchase offer of the existing convertible bonds.

Meyer Burger Technology's Rights Offering

Reference: CapLaw-2020-46

On 29 July 2020, Meyer Burger Technology AG completed a capital increase comprising a rights offering to its shareholders and a private placement to selected investors, resulting in gross proceeds of approximately CHF 165 million. Meyer Burger intends to use the proceeds to finance the strategic transformation from a supplier of photovoltaic production equipment to a manufacturer of solar photovoltaic cells and modules and the related ramp-up of production capacities. Credit Suisse acted as Global Coordinator and Joint Bookrunner and Zürcher Kantonalbank acted as Joint Bookrunner in connection with the rights offering.

Polyphor's up to CHF 19.3 Million Equity-Linked Financing

Reference: CapLaw-2020-47

On 28 July 2020, Polyphor AG announced that it has entered into an equity-linked financing arrangement with the French company IRIS to raise a gross amount of up to CHF 19.3 million over a period of two years. Under the innovative financing instrument,

IRIS will receive Polyphor shares to be created from the company's conditional capital based on an interest-free mandatory convertible bonds program.

Merger of Neue Aargauer Bank AG (NAB) with Credit Suisse (Switzerland) Ltd

Reference: CapLaw-2020-48

On 25 August 2020, Credit Suisse announced its plan to merge the business of its wholly-owned subsidiary, Neue Aargauer Bank AG (NAB), with that of Credit Suisse (Switzerland) Ltd., NAB's direct parent company. NAB is a universal bank in the Canton of Aargau and approximately CHF 19 billion of assets under management as well as a mortgage volume of CHF 19.1 billion (as of 31 December 2019).

Liberty Global to Acquire 100% of Sunrise Communications Group by Tender Offer

Reference: CapLaw-2020-49

On 12 August 2020, Liberty Global plc announced that it plans to acquire 100% of Sunrise Communications Group AG (Sunrise) via an all-cash public tender offer for all publicly held shares of Sunrise, valuing Sunrise's equity at CHF 5.0 billion. Sunrise's board of directors has announced that it has unanimously resolved to recommend the offer. Freenet AG, Sunrise's largest shareholder with 24.4% of the capital, has agreed to tender its shares into the offer.

Dufry AG to acquire all remaining equity interest in Hudson Ltd.

Reference: CapLaw-2020-50

On 19 August 2020, Dufry announced that it had signed a definitive agreement pursuant to which Dufry would acquire all the remaining equity interest in Hudson, that it does not already own, for USD 7.70 in cash per Hudson Class A share. Upon completion of the transaction, Hudson will be delisted from the New York Stock Exchange. Dufry intends to finance the transaction through an equity capital increase by way of a rights issue. UBS AG and Credit Suisse AG as joint global coordinators and joint bookrunners.

GesKR Event on the New Corporate Law (GesKR-Tagung zum neuen Aktienrecht)

Wednesday, 21 October 2020, Metropol Zurich

https://www.dike.ch/web/viewer.html?file=https://www.dike.ch/image/data/Veranstaltungen/GesKR-Tagung-zum-neuen-Aktienrecht_21-10-2020.pdf

Capital Market – Law and Transactions XVI (Kapitalmarkt – Recht und Transaktionen XVI)

Wednesday, 11 November 2020, Metropol Zurich

https://www.eiz.uzh.ch/EIZ/web/eiz/event.aspx?WPParams=43A9B2A7C6D4E0E8AAB08D92A795A4