AFBS News September 2020

Legislation and Regulation: Switzerland

Revision Bank Law

The Federal Council published its dispatch on the revision of the Bank Law. The revision encompasses two key aspects. It enshrines in law procedures for resolution of banks which were presently defined by FINMA Circulars. It also amends the depositor protection scheme by transforming the liquidity to be held by banks into deposit of securities or cash with a centralised custodian. The depositor protection scheme thus goes one step further to international compatibility and recognition. Parliament is expected to debate the law in the second half of 2020.

Info: Press Release Federal Council DE FR IT

Implementation of the Financial Services and Financial Institutes Acts

The Federal Department of Finance FDF recognised seven **Ombudsmen** for financial intermediaries as outlined in the FinSA/FinIA. The first four started becoming operative from 24 June 2020, leaving financial intermediaries until 24 December 2020 to affiliate. The Swiss Banking Ombudsman, one of the four entities, is open exclusively for banks; the remaining six are open for all financial intermediaries according to the FinIA. Other applications for recognition are pending.

Info: FDF DE FR IT EN

There are four **Supervisory Organism SO** for portfolio managers and trustees authorised by the FINMA. The first authorisations are effective from 6.7.2020. Portfolio managers and trustees need to apply for authorisation by the FINMA and registration by an SO not later than 31.12.2022. During transition they need to be affiliated to a self-regulatory organism according to the ancient legislation.

Info: FINMA DE FR IT EN

The FINMA also authorised two **Registration bodies for client advisers**, BX Swiss AG and ARIF. It expects other registries to be authorised.

Info: FINMA DE FR IT EN

Reform of the Withholding Tax

The AFBS participated in the Parliamentary consultation on the proposal to reform the Swiss withholding tax scheme. The proposal intends to exempt from the tax foreign investors and Swiss institutional investors and to compensate by extending the scope of applicability to foreign securities and Swiss and foreign manufactured products when held by Swiss investors. The banking industry is opposed to the proposal as such because it would impose excessively complex procedures upon the financial intermediaries.

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Info: Comments AFBS LINK and SBA LINK

Luxembourg recognises Swiss regulatory framework for investment services

The Luxembourg supervisory authority Commission de Surveillance du Secteur Financier (CSSF) published two regulatory texts which address the provision of investment services to “per se” professional clients and eligible counterparties by third-country firms. The regulation is transitory until EU Commission recognition of equivalence of third country regulation is available. The SBA is assessing interest and need for simplified market access by intermediaries based in Switzerland.

Info: Circular CSSF 20/743 LINK (in EN and FR) and SBA DE FR EN

Equal Salary Assessment

The obligation to perform an assessment of equal salary is effective from 1 July 2020 for employers with more than 100 FTE. The firms need to perform an assessment between 1 July 2020 and 30 June 2021. They need to have the result of the assessment confirmed by an independent external entity by 30 June 2022. The firms have one more year until 30 June 2023 to inform employees on the results of the assessment. The entire procedure needs to be repeated in four-year rhythms until the moment when no excessive inequalities are shown anymore. The legislation loses validity on 1 July 2032 (sunset clause).

Info: FDJP DE FR IT / Logib tool is now webbased: DE FR IT EN and direct link Logib DE FR IT EN / "Respect8-3" offers an alternative assessment tool LINK

Swiss Distributed Ledger Technology Law (DLT Act)

In September, the Swiss Parliament passed the so-called Blockchain Act or DLT Act, a wide-ranging set of financial and corporate law reforms in the realm of cryptocurrencies and blockchain technology. The new law is aimed at enhancing legal certainty, removing obstacles for applications of distributed ledger technology and limiting the risk of misuse. Separately, the DLT Act includes an amendment to Swiss financial services and financial institutions regulation providing for an exemption from the requirement for financial institutions and financial services providers to join an ombudsman's organisation. It also gives Switzerland the opportunity to further strengthen its position as a leading location for DLT companies. The law will likely come into effect early next year.

Info: Press Release Wicki Partners LINK (DE)

Revision of the Swiss Data Protection Act DPA

Parliament adopted the revision of the legislation. The revision includes a list of sensitive personal data; clarification regarding profiling and conditions under which this is admissible; explicit authorisation for data processing shall only be required in case of highly sensitive data. The Ordinances are being drafted presently and are expected to be published for comments in the first quarter 2021. The revision is expected to enter into force in mid-2022. Transition will be offered for several provisions. The Federal Office of Justice estimates that too late entry into force may challenge equivalence recognition.

Info: Parliament DE FR IT

Sustainable Finance

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Federal Council: Report and guidelines on sustainability in the financial sector

The Federal Council has published a Report and Guidelines for sustainability in the financial sector. The Report offers a comparison of initiatives adopted by different financial centres and suggests 13 possible action points. The report promotes private initiative and self-regulation rather than legislation. It alerts that sustainability offers major opportunities but also bears risks for financial institutes, which do not always appear immediately.

In its Guidelines the Federal Council confirms that competitiveness is core for the financial centre, which contributes to enhance sustainability by applying financial market and environment policy instruments, taking into account long-term risks, facilitating market-pricing and enhancing transparency. To achieve these goals the Confederation defines an adequate regulatory framework and assures exchange at international level and with various stakeholders.

Info: Report and Guidelines DE FR IT EN

AFBS Board Meeting: Development of Sustainable Finance in Switzerland

At its latest AFBS Board Meeting, representatives from the Swiss Bankers Association and from Sustainable Finance Geneva informed about sustainable finance activities at the Swiss level. Switzerland further strengthens its position as a leading financial centre in the realm of sustainable finance investments. According to the SBA the penetration of portfolios with SF is around 30%, which is above the global average of 15%. The growth of sustainable investments is broadly supported across all investor segments.

The “EU action plan on sustainable finance” should be considered as reference for Swiss regulatory initiatives. Standards should be internationally aligned to assure comparability and understandability. Other areas of activities are the proactive positioning of the subject of Greenwashing, deepening the application of Climate-related Financial Disclosures in smaller financial institutions, or the systematic integration of sustainability in education and training.

Info: SBA Dossier Sustainable Finance DE EN FR / Sustainable Finance Geneva LINK

Legislation and Regulation: International

Switzerland and United Kingdom Financial Dialogue

The UK and Switzerland work towards deepening cooperation in financial services. Following the signing of a joint statement, the Financial Dialogue meeting took place on 7 and 8 September in Bern. The parties agreed on working towards mutual recognition of the respective jurisdictions' regulatory and supervisory regimes. The countries intend to ease the cross-border market access and to strengthen cooperation in international fora.

Info: SIF DE FR IT EN and DE FR IT EN / economiesuisse DE FR IT EN

Digital

Economiesuisse: Code of Practice for the Responsible Handling of Data

Economiesuisse adopted the Code of Practice which contains ten basic principles for the treatment of data. It does not go beyond the Data Protection Act or the EU standards in the realm and defines the basis for good practice in corporate data governance.

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Info: Code of Practice DE FR EN

Others

ECB: Impact of the COVID-19 pandemic on the euro area labour market

The European Central Bank (ECB) published a preliminary assessment of the impact of the Covid-19 pandemic on the euro area labour market. It notes the moderate increase in the unemployment rate up to the end of May is in sharp contrast with indicators of economic activity. It concludes that the use of short-term work schemes is a key factor in the overall muted immediate response of the labour market to the Covid-19 crisis.

Info: ECB Bulletin LINK

Members

New Members

- Sygnum Bank AG

Termination of Membership

- Jefferies International Limited, London, Zweigniederlassung Zürich
- BlackRock Asset Management Schweiz AG
- FIL Investment Switzerland AG

AFBS Events

26 October 2020: Away from LIBOR - State of play: Olivier Favre, Schellenberg Wittwer Attorneys at Law; Dániel Puskás, Credit Suisse.

29 October 2020: Update MROS / goAML reporting: Camillo Zbinden, Société Générale

11 November 2020: CH Data Protection Law *vs* EU GDPR: A Comparative Assessment from a Swiss Perspective: David Vasella, Walder Wyss Attorneys at Law.

Last Minute

- The Banking Ombudsman published its annual report 2019: DE FR and an AFBS Summary in EN: LINK
- SBA Banking Barometer 2020: DE FR IT EN
- Bank Employers Association: Update on legal and regulatory matters relating to employment in banks in DE: LINK
- SBA Discussion paper on Open Banking: DE FR EN
- SFI Roundup: "Private Markets—the New Financial Frontier?": DE EN FR IT
- SFI Activity Report 2019: LINK
- OECD Report: Advancing the Digital Financial Inclusion of Youth: LINK
- Global Trade Review: How Covid-19 has changed the crime threat to banks: LINK
- Bank for International Settlements (BIS): Annual Economic Report 2020: LINK
- European Banking Authority (EBA): Annual Report 2019: LINK

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- Boston Consulting's Report "Global Wealth 2020: The Future of Wealth Management—A CEO Agenda": LINK
- KPMG Clarity on "Performance of Swiss Private Banks": LINK
- SBA Annual Media Conference: DE FR IT EN
- The Hacker News: Report on COVID-19's Impact on Cyber Security: LINK
- Third edition of the Swiss Asset Management Study: DE FR EN

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