

Suter Howald Attorneys, Zurich

Suter Howald Attorneys, Zurich, is a medium-sized law firm with a strong focus on business legal services with offices in the centre of Zurich.

The Swiss funds industry

Annette Zimmerli, attorney-at-law, explained that while Luxembourg is the undisputed leader in the fund business in Europe, Switzerland is catching up and gained in terms of volumes rank six in undertakings for Collective Investment Schemes within the European market in the year 2010. At the end of the same year, a total of 7,191 funds authorised for public sale in Switzerland have been reported by the Swiss Fund Association (SFA) in their annual report. This is a net increase of 689 funds in one year. They break down as follows: 1,400 Swiss-law products and 5,791 products established under foreign law. Luxembourg-law funds make up the bulk of these with 4,103 products.

The annual report attributes the increase of the total to the result of a "wave of activity" by market participants. In the course of the year 1,180 foreign Collective Investment schemes were newly approved while 548 had their authorisation withdrawn. The ratio of foreign funds to Collective Investment Schemes under Swiss law has remained fairly constant at around 4:1 over recent years. Luxembourg and Ireland are by far the largest foreign domiciles of funds authorised in Switzerland.

Recent and future legislative changes

Ms Zimmerli noted that a number of legislative changes and changes in the policy of the FINMA have been observed since the new law [Federal Act on Collective Investment Schemes (CISA)], Ordinance on Collective Investment Schemes (CISO), Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes (CISO – FINMA) and the respective Guidelines and Circulars entered into force starting 2007.

"These changes have clearly enhanced the competitiveness of the Swiss financial sector," commented Ms Zimmerli. "The first investment company with variable capital (SICAV) based on the new legislation was launched in the year 2007. In the course of these legislative changes the FINMA has dropped regulation of the performance fee applied to Swiss and Foreign Collective Investment Schemes."

The new FINMA – Circular 'Market Behaviour Rules for the Securities Market', which entered into force in 2008, sets out specific monitoring rules, gives guidelines on how to avoid market abuse and defines accepted market practices. The rules are based on the requirement to conduct business.

At the end of January 2009, the Federal Council finally decided to amend the CISO in line with EU law. According to Ms Zimmerli, the amendment of the ban on 'double dipping' was also widely welcomed by the fund industry. As of the same, the FINMA abolished the "Swiss finish" for Foreign Collective Investment Schemes.

"This move was aimed at contributing toward repositioning the Swiss fund sector and thus promoting Switzerland as a production location for Swiss-law collective investment schemes," explained Ms Zimmerli. "As well as abolishing the formal requirements, FINMA did refrain from thereon from imposing quantitative requirements regarding the naming of collective investment schemes."

Besides the various topics of international taxation which are currently dealt with by the Federal Department of Finance (FDF), Ms Zimmerli believes that the focus on future legislative changes will clearly be on the UCITS IV and the Directive on Alternative Investment Fund Managers (AIFM).

"Against the backdrop of UCITS IV, the focus for Switzerland is on replacing the simplified prospectus with the new Key Investor Information Document (KID)," explained Ms Zimmerli. "The adoption of the KID will lead to a minor

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amendment of the CISO. The amendment of the CISA in view of the AIFM as well as tax adjustments for Switzerland as fund production location will be one of the key regulatory challenges in the near future aimed and headed by the SFA and the fund industry in Switzerland."

Predictions/expectations for the next 12 months

Ms Zimmerli noted that the positive results of the State financial statements of the year 2010 have implications on the fiscal policy as reported by the FDF. On this basis the Council of States resolved not to adopt the 2012-2013 consolidation program (COP 12/13). However, this does not mean complete abandonment of the consolidation measures, but merely a suspension of the short-term initiatives to review the functions of government as part of the COP 12/13. The remaining measure, accounting for more than 80% of the total relief package, remain essential in order to meet the debt brake requirements in the medium term.

"Therefore, this decision does not amount to a u-turn on fiscal policy but simply an adjustment of direction," commented Ms Zimmerli. "It should also be noted that the crisis is not over yet and the federal budgets still exposed to major risks, due mainly to the prevailing situation in the euro area and the associated exchange rate movements. Pressure on exports due to the stronger Swiss franc remains an area of uncertainty for the Swiss economy and by extension of the federal budget."

Following the upheavals and changed market structures on global financial markets, the Federal Council decided to rethink its strategy for the Swiss financial centre. According to the press release of the State Secretariat for international financial matters (SIF), the new financial market policy pursues four objectives: "help the financial sector continue to provide high-value services for the national economy; ensure good framework conditions for creating added value in the financial sector; guarantee a highly stable system with good functionality; maintain the financial centre's integrity and reputation".

The strategy report of the Swiss Federal Council "takes into account many of the fund and asset management industry's demands" as admitted by the SFA.

"The past and future legislative changes show clearly a commitment by the government to further enhance the competitiveness of the Swiss financial sector and to promote Switzerland as a production location for Swiss-law collective investment schemes," commented Ms Zimmerli.

She concluded: "Regarding the fund market and Exchange Traded Funds (ETFs) specifically, a tremendous potential for new, innovative products that will encounter an interesting sales outlet in the form of the Swiss financial centre and the transparent, highly efficient SIX Swiss Exchange trading platform is existing."