

Debt capital markets in Switzerland: regulatory overview

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LEGISLATIVE RESTRICTIONS ON SELLING DEBT SECURITIES

1. What are the main restrictions on offering and selling debt securities in your jurisdiction?

Main restrictions on offering and selling debt securities

If debt securities are submitted for public subscription to investors in Switzerland, that is, a primary offering, the issuer must prepare and make available, no later than at the time of the public offering, a prospectus that complies with Swiss law. Neither the term "public offering" nor "public subscription" is defined under Swiss law. As a result and due to the lack of clear guidance from the competent Swiss courts, the meaning of a public offer is the subject of vigorous debate and remains uncertain.

Generally, a public offering is understood as an offering made to an indefinite number of potential investors or by means of public advertisement (for example, newspaper ads, mass-mailings, a web page with unrestricted access, and so on). This means that the investors have not been pre-selected, handpicked and approached on a one-on-one basis. If a finite number of handpicked investors are visited or invited to roadshows, the offering is usually considered non-public as long as no press release or other public advertisement is made in this connection. Some argue that an offering must be made to a minimum number of investors to qualify as public offering, and they hold that an offering to not more than 20 investors (as offerees) in Switzerland per calendar year provides a "safe harbour". However, many others believe that simply examining the number of investors is insufficient and a threshold of 20 offerees is necessarily arbitrary in the absence of official guidance. Accordingly, there is no satisfactory test for determining whether an offering is public, and, in principle, it can only be assessed on a case-by-case evaluation of the individual facts and circumstances. Once the facts have been taken into consideration and in the absence of other characteristics of a public offering, a numerical threshold of up to 20 investors in Switzerland (as an aggregate number of offerees approached per calendar year) provides a conservative safe harbour for non-public placements. Note, however, that listing securities on a Swiss exchange is always considered to be a public offering.

For a public offering of debt securities, a prospectus that complies with Swiss law must be prepared. In essence, a prospectus for a bond issuance must contain the following disclosure items:

- The content of the issuer's entry in the commercial register.
- The amount and structure of the issuer's share capital.
- The issuer's dividend history for the preceding five years.
- The issuer's resolution regarding the issuance of the bond securities.

- The most recent audited statement and consolidated financial statements of the issuer, and, if the closing balance sheet is more than nine months old, interim financial statements.
- Particular details on the terms of the bond securities.

Restrictions for offers to the public or professional investors

Swiss law does not currently distinguish between offers of debt instruments to the public or to professional investors only (*see above, Main restrictions on offering and selling debt securities*). If there is a public offering, regardless of whether only professional investors are targeted, it is necessary to prepare a prospectus that complies with Swiss law.

MARKET ACTIVITY AND DEALS

2. Outline the main market activity and deals in your jurisdiction in the past year.

In addition to the regulator listing of bonds on the SIX Swiss Exchange Ltd (SIX) (the amount of bonds listed on the SIX slightly decreased in 2013 compared to the preceding year (*see Question 5*)) two Swiss issuers listed asset-backed securities (ABS) (backed with car leasing receivables in the first instance and with credit card receivables in the second instance) on the SIX. Both listings are novel listings for the SIX.

STRUCTURING A DEBT SECURITIES ISSUE

3. Are different structures used for debt securities issues to the public (retail issues) and issues to professional investors (wholesale issues)?

The main types of debt securities issued in Switzerland are:

- Straight bonds (fixed-rate bonds).
- Floating-rate bonds.
- Zero-coupon bonds (zero bonds).
- Dual currency convertible bonds.
- Subordinated bonds.
- Convertible bonds.
- Warrant bonds.
- Asset-backed securities.
- Loan participation notes.

It is expected that asset-backed debt securities will become increasingly popular in the near future.

Bonds and notes are often issued through an international or (less commonly) a domestic European Medium Term Note (EMTN) programme, often placed within the Swiss private banking sector.

No different structures are used for debt securities issued to the public than for debt securities issued to professional investors (institutional investors). The denomination of the security may be higher if professional investors are targeted.

4. Are trust structures used for issues of debt securities in your jurisdiction? If not, what are the main ways of structuring issues of debt securities in the debt capital markets/exchanges?

There is no substantive trust law in Switzerland. As a result, it is not possible to establish a trust under Swiss law. However, it is possible to have a bondholder trustee and/or a security trustee established, for example, under English law regardless of whether the terms and conditions of the notes are governed by Swiss or English law.

If (Swiss law-governed) debt securities are issued directly or indirectly by public offering under uniform loan terms by an issuer domiciled or having a business establishment in Switzerland, the bondholders form a community of bondholders, unless the issuer is a public body (*Article 1157, Swiss Code of Obligations (CO)*).

Such a community of bondholders does not qualify as a legal entity and so has no legal capacity except to the extent provided for by applicable law. A community of bondholders does have the power to take, within the limits of the law, all appropriate measures to safeguard the common interests of the bondholders, in particular if the issuer is in a critical position (*Article 1164, CO*).

Regardless of the existence of a community of bondholders, each bondholder is entitled to independently exercise its rights against the issuer, except where:

- A contrary resolution has been validly passed by the bondholders' meeting, and approved by the higher cantonal composition authority where required.
- Certain rights of the bondholders have been transferred to a duly appointed representative of the bondholder (*Anleihensvertreter*).

If a representative is to be appointed, this appointment can be made either in accordance with the terms and conditions of a bond issue or by the bondholders' meeting, depending on applicable legal provisions. To the extent that the representative can exercise the rights of the bondholders, individual bondholders cannot exercise their rights independently.

MAIN DEBT CAPITAL MARKETS/EXCHANGES

5. What are the main debt securities markets/exchanges in your jurisdiction (including any exchange-regulated market or multi-lateral trading facility (MTF))?

Main debt markets/exchanges

The main debt securities exchange in Switzerland is the SIX Swiss Exchange Ltd (SIX) (www.six-swiss-exchange.com) located in Zurich. The other securities exchange is the BX Berne eXchange (www.berne-x.com) located in Berne, which is comparatively small and hardly ever used for the listing of debt securities.

All debt securities (including straight bonds (fixed-rate bonds), floating-rate bonds, zero-coupon bonds, dual currency convertible bonds, subordinated bonds, convertible bonds, warrant bonds, and loan participation notes) that are issued by Swiss and foreign issuers and that are eligible for listing on the SIX are listed on the bond standard of the SIX.

A separate segment called "International Bonds not listed on the SIX Swiss Exchange" has been created for the trading of international bonds that are not listed on the SIX. Admission to trading enables the trade of international debt securities issued by a foreign issuer, denominated in a currency other than Swiss Francs and with a primary listing on an exchange (other than the SIX) recognised by the SIX Regulatory Board. Recognised stock exchanges are those which are members of the Federation of European Securities Exchanges (FESE) or the World Federation of Exchanges (WFE). Under certain circumstances, unlisted or debt securities not listed on a recognised exchange may still be admitted to trading in the International Bonds segment.

Approximate total issuance on each market

As at 31 July 2014, a little over 1,600 bonds have been listed on the SIX and about 35,000 bonds were admitted to trading on the segment "International Bonds not listed on the SIX Swiss Exchange".

6. What legislation applies to the debt securities markets/exchanges in your jurisdiction? Who are the main regulators of the debt capital markets?

Regulatory bodies

Regulatory supervision in Switzerland is undertaken by:

- The Swiss Financial Market Supervisory Authority (FINMA) (www.finma.ch), which is the regulatory body established by law.
- A group of private self-regulatory bodies that are in turn licensed and supervised by FINMA.

The most important licensed self-regulatory body with regard to debt markets and exchanges is the SIX Swiss Exchange Ltd (SIX) Regulatory Board. The SIX Regulatory Board supervises and enforces compliance with the SIX Listing Rules (www.six-exchange-regulation.com/admission_manual/03_01-LR/en/index.html). The SIX Listing Rules contain capital, liquidity and track record requirements as well as transparency and reporting obligations (the BX Berne eXchange has a similar set of rules).

The issuance or placement of debt securities (other than the issuance of units or shares in collective investment schemes) is not subject to registration or authorisation by FINMA or any other regulatory authority.

Legislative framework

The SIX Listing Rules and its various additional rules, as far as they are relevant, apply to debt securities listed and/or traded on the SIX as well.

Debt securities not listed or not admitted to trading but offered to the public must comply with the provisions set out in Articles 1156 and following of the Swiss Code of Obligations (CO). In particular, they can only be offered based on an issue prospectus. However, the offering of debt securities to the public does not require authorisation or licensing by FINMA or by any other regulator.

LISTING DEBT SECURITIES

7. What are the main listing requirements for bonds and notes issued under programmes?

Main requirements

The listing requirements are set out in the SIX Swiss Exchange Ltd (SIX) Listing Rules as well as various additional rules that are derived from the Listing Rules and which provide for specific listing

requirements depending on the applicable regulatory standard (www.six-exchange-regulation.com/regulation_en.html).

Minimum size requirements

The nominal value of a debt security listed on the SIX must be at least CHF20 million. SIX has granted exceptions to this minimum size requirement in the past.

Trading record and accounts

The issuer must have been in existence as a company for at least three years, and presented its annual accounts for the three complete financial years that precede the submission of the listing application.

The SIX Regulatory Board can grant exceptions to a company with a track record of less than the requisite three years. However, those companies must fulfil stricter transparency obligations (for example, quarterly reporting) until they have published three consecutive audited annual statements.

The issuer's reported equity capital on the first day of trading must be a minimum of CHF25 million. If the issuer is the parent company of a group, the requirement refers to consolidated reported equity capital.

The requirements imposed on issuers regarding duration and capital resources may be waived if, instead of the issuer, a third party that fulfils those requirements (guarantor) provides a guarantee commitment in respect of the obligations associated with the securities.

In relation to the listing of asset-backed securities:

- The issuer does not need to comply with the standard requirement of having existed as a company for at least three years.
- The issuer's reported equity capital can be less than the usually required CHF25 million.

Minimum denomination

There is no specific minimum denomination for a debt security. The denomination of the security varies depending on the issuer. Issues in CHF usually have denominations of CHF1,000, CHF5,000, CHF10,000 or CHF100,000. Note that the denomination of the security must enable an exchange transaction to occur in one round lot.

8. Are there different/additional listing requirements for other types of securities?

The listing requirements set out under *Question 7* are applicable to all bonds (including convertible bonds, bonds with warrants, asset-backed securities and loan participation notes) that are issued by Swiss and foreign issuers and that are eligible for listing on the SIX. Convertible bonds can be listed if the equity securities to which they relate have already been listed on the SIX or on another regulated market, or if they are being listed at the same time.

Special provisions apply to bonds that are issued by a foreign issuer, denominated in a foreign currency, and already listed on another foreign exchange (international bonds). The SIX Listing Rules do not apply to international bonds.

CONTINUING OBLIGATIONS: DEBT SECURITIES

9. What are the main areas of continuing obligations applicable to companies with listed debt securities and the legislation that applies?

The requirements for maintaining a listing are set out in the SIX Listing Rules and its various additional rules (particularly SIX Circular No. 1 on the Reporting Obligations for the Maintenance of a Listing). The issuer (and in principle the guarantor) must comply with the following ongoing obligations:

- Publication of annual reports, which comprise the audited annual financial statements and the corresponding audit report.
- Notification of every change in the rights attached to the listed debt securities.
- Timely disclosure of potentially price-sensitive facts (ad hoc publicity).
- Payment of annual listing fees.
- Regular reporting obligations concerning, for example, a change of the issuer's name or auditors, annual financial statements, premature repayment of securities or a new interest rate for the securities.

10. Do the continuing obligations apply to foreign companies with listed debt securities?

The continuing obligations apply to domestic and foreign companies. Issuers that are not incorporated in Switzerland can also adhere to the accounting standards of their home country (home country standard), provided that these standards are recognised by the SIX Swiss Exchange Ltd (SIX) Regulatory Board.

11. What are the penalties for breaching the continuing obligations?

Where there is a breach of the SIX Swiss Exchange Ltd (SIX) Listing Rules or any additional rules issued by SIX, the same penalties apply as for equity securities.

The SIX Sanction Commission can impose one or more of the following penalties on issuers, guarantors or recognised representatives where there is a breach of the SIX Listing Rules or any additional rules and regulations issued by SIX (*Article 61(1), SIX Listing Rules*):

- Reprimand.
- Fine of up to CHF1 million (in cases of negligence) or CHF10 million (in cases of wrongful intent).
- Suspension of trading.
- De-listing or reallocation to a different regulatory standard.
- Exclusion from further listings.
- Withdrawal of recognition.

A failure to notify SIX when a shareholding threshold is crossed may lead to a fine of up to double the purchase price of the shares or the sales proceeds.

ADVISERS AND DOCUMENTS: DEBT SECURITIES ISSUE

12. Outline the role of advisers used and main documents produced when issuing and listing debt securities.

Role of advisers

An application for listing or admission to trading must be submitted to the SIX Swiss Exchange Ltd (SIX) by a recognised representative (applicant). The recognised representative may be an employee of the issuer or, if the issuer does not have an in-house specialist, a mandated bank (an "underwriter" with its own legal counsel) or a lawyer that has been granted permission to represent issuers before the SIX.

The issuer has an important role to play regarding the preparation of documents but advisers to the issuer involved in the process may, as required:

- Prepare the issue documentation (such as marketing material, listing prospectus and listing application).
- Assist and advise on all relevant aspects of the issue, for example, they may:
 - provide legal and tax opinions;
 - undertake research;
 - otherwise advise on the underwriting agreement, the purchase agreement, bookbuilding or market making.

A global co-ordinator may also be appointed to supervise and co-ordinate the issuing process (even though this is much less common compared with the issuance of equity securities). The global co-ordinator does such things as:

- Providing the issuer with relevant information.
- Advising on strategy and timing.
- Co-ordinating the underwriting syndicate and other advisers involved.
- Estimating demand for the debt securities.

Main documents produced when listing

The documents produced when listing debt securities are the same as for equity securities. A standalone prospectus can be issued or an issuance programme can be registered which, together with the final terms and the conditions, form the prospectus in the event of an issue.

Main documents for public offers

Securities not listed or not admitted to trading but publicly offered can be offered only on the basis of an issue prospectus (*Articles 1156 and following, Code of Obligations (CO)*). The required content of the issue prospectus is similar to the issue prospectus for equity securities:

- The contents of the issuer's entry in the commercial register.
- The existing amount and composition of the share capital, including the number, nominal value and type of shares and the preferential rights attaching to specific share classes.
- The provisions of the articles of association relating to any authorised or conditional capital increase.
- The number of dividend rights certificates and the nature of the associated rights.
- The most recent audited statutory and consolidated financial statements of the issuer and, if the closing balance sheet is more than six months old (in practice: more than nine months old), interim financial statements.

- The dividends distributed in the last five years or since the company was established.
- The relevant resolutions regarding the issuance of the equity securities.

The listing prospectus must be prepared in accordance with the SIX Listing Rules and its additional rules, which require that the prospectus contain (in addition to the requirements of an issue prospectus):

- Details of the issuer, such as its:
 - name;
 - registered office;
 - legal form;
 - purpose;
 - composition;
 - auditors.
- Sufficient information for competent investors to reach an informed assessment of the issuer's assets and liabilities, financial position, profits and losses, and prospects.
- Information on the securities, including the rights attached to the securities.
- Information on the offer.
- Information on who bears responsibility for the content of the listing prospectus.

The SIX has issued a prospectus scheme, which includes a checklist for the preparation of the listing prospectus (www.six-exchange-regulation.com/admission_manual/04_07-SCHE_en.pdf).

DEBT PROSPECTUS/MAIN OFFERING DOCUMENT

13. When is a prospectus (or other main offering document) required? What are the main publication/delivery requirements?

Listing prospectus

If the debt securities are listed on the SIX Swiss Exchange Ltd (SIX), a listing prospectus is required and must be published in one of the following forms:

- Printed in at least one newspaper with a national distribution.
- Provided free of charge in printed form at the issuer's head office and at those financial institutions that are placing or selling the securities.
- Electronic publication on the issuer's website and potentially also on the websites of those financial institutions that are placing or selling the securities. A printed copy must be provided to investors free of charge on request.

Prospectus requirement for public offers

Debt securities that are not listed or not admitted to trading but are publicly offered must comply with the provisions set out in Articles 1156 and following of the Code of Obligations (CO). In particular, they can be offered on the basis of an issue prospectus only. In this case, the prospectus should be available at the time of offering. However, a public offering does not need to be authorised or licensed by the Financial Market Supervisory Authority (FINMA) or by any other regulator.

An issue prospectus for a private placement of debt securities by a syndicate bank to its clients must be prepared if the notes have a denomination of CHF10,000 or more (*Guidelines on Notes of Foreign Issuers, Swiss Bankers' Association* http://shop.sba.ch/1612_d.pdf).

14. Are there any exemptions from the requirements for publication/delivery of a prospectus (or other main offering document)?

Listing requirements

The exemptions from the requirements for publication or delivery of a prospectus applicable to equity securities also apply to debt securities.

Exemptions from the requirement to draw up a listing prospectus may be available in the following circumstances if certain conditions are met (*Articles 33 and following, SIX Listing Rules*):

- If a listing prospectus or an information document equivalent to a listing prospectus has already been published no more than 12 months previously with regard to the listing of the debt securities in question.
- If the debt securities to be listed:
 - account for less than 10% of debt securities of the same class that have already been listed (when calculated over a 12-month period);
 - are issued in exchange for debt securities of the same class that are already listed on the SIX, provided the issue of these securities is not associated with a capital increase on the part of the issuer;
 - are issued in connection with the conversion or exchange of other debt securities, or as a result of the exercise of rights associated with other securities, provided the equity securities in question are of the same class as the equity securities that are already listed;
 - are offered in connection with a takeover by means of an exchange offer, provided that a document is available that contains information that is regarded by the SIX Swiss Exchange Ltd (SIX) Regulatory Board as being equivalent to that of a listing prospectus;
 - are offered, allotted or are to be allotted in connection with a merger, provided that a document is available that contains information that is regarded by the SIX Regulatory Board as being equivalent to that of a prospectus;
 - are offered, allotted or are to be allotted free of charge to existing holders of such debt securities (and dividends should they be paid out in the form of debt securities that are of the same class as the securities for which such dividends are paid) provided that the debt securities concerned are of the same class as those that are already listed;
 - are offered, allotted or are to be allotted by the issuer or an affiliated company to current or former members of the board of directors or executive board, or to employees, provided that the debt securities are of the same class as those that are already listed.

Public offers

The requirements for a listing prospectus go beyond those required for an issue prospectus, as set out in Article 1156 of the Code of Obligations (CO) (*see Question 11*). As a result, if a listing prospectus is prepared for a public offer, this can be used as an issue prospectus as well.

A prospectus is not required for unlisted debt securities or those that are not publicly offered.

15. What are the main content/disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

Listing prospectus

For the debt securities to be listed on the SIX Swiss Exchange Ltd (SIX), the listing prospectus must provide sufficient information for competent investors to reach an informed assessment about the issuer on the following:

- Its assets and liabilities.
- Its financial position.
- Its profits and losses.
- Its prospects.

Information must also be provided on the securities and on who bears responsibility for the content of the listing prospectus.

The information to be disclosed in the listing prospectus includes information:

- On the issuer's:
 - name, registered office, location, incorporation, length of operation, system of law, legal form, purpose, register and group;
 - administrative, management and audit bodies;
 - business activities;
 - capital;
 - annual financial statements.
- In relation to the securities:
 - their legal foundation;
 - nature of the issue;
 - terms and conditions of the securities;
 - form of securities;
 - publication;
 - restrictions on transferability and tradability.
- Swiss security number and international securities identification number (ISIN):
 - settlement date;
 - duration of trading;
 - trading volume;
 - representatives.

SIX has issued a prospectus scheme which includes a checklist for the drawing up of a listing prospectus for debt securities (www.six-exchange-regulation.com/admission_manual/04_07-SCHE_en.pdf).

In addition to the listing prospectus, a listing application must be submitted before the debt securities can be listed on the SIX. The application must contain a short description of the securities and a request in relation to the planned first trading day, as well as the enclosures to the application that are required by the SIX Regulatory Board.

Issue prospectus for public offers

The main content and disclosure requirements for the issue prospectus in relation to debt securities that are publicly offered but are not listed or not admitted to trading are specified in Article

1156 of the Code of Obligations (CO). In addition to the content required by Article 652a of the CO, the issue prospectus must contain:

- More detailed information on the debt securities and in particular on the interest and redemption conditions.
- Information on any special collateral provided.
- Details of any representative of the bondholders.

16. Who is responsible for the prospectus (or other main offering document) and/or who is liable for its contents?

Preparation of the prospectus

The prospectus may be prepared by the issuer in-house or, if the issuer does not have an in-house specialist, by either a mandated bank (underwriter) with its own counsel, or a lawyer. The issuer, its legal and tax advisers, and auditors play important roles in the preparation of the prospectus and other issuing documentation, as well as in the due diligence process. The issuer and its auditors provide the financial and corporate information required.

The SIX Swiss Exchange Ltd (SIX) Regulatory Board approves a listing application and all its documents if it meets the requirements specified in the SIX Listing Rules and its additional provisions. However, the SIX Regulatory Board does not examine the content of the listing prospectus.

Liability

A person is liable under civil law for the wilful or negligent provision or dissemination of information on an issue of debt securities that is inaccurate, misleading or in breach of statutory requirements (*Article 752, Code of Obligations (CO)*). The elements of a cause of action are:

- The prospectus contained false statements.
- The defendant is responsible for such statements (intentionally or negligently).
- The claimant suffered damages.
- The damages were caused by such false or misleading statements.

The claimant (investor) must prove that false or misleading statements caused the damage suffered and that the defendant responsible for those statements acted intentionally or negligently. The standard of proof relevant is one of predominant probability rather than a strict evidence standard (balance of probabilities). Prospectus liability attaches not only to the prospectus itself, but also to any other (written) materials distributed in the context of an offering. Investors in private placements can also bring a claim in relation to prospectus liability if the offering memorandum or other documents contained false or misleading statements. Liability also arises if securities are issued without a prospectus that complies with the relevant provisions.

Criminal liability may also arise (if, for example, fraud is involved (*Article 146, Criminal Code*)) or any sort of insider trading (*Articles 33e and 33f, Stock Exchange Act*).

TIMETABLE: DEBT SECURITIES ISSUE

17. What is a typical timetable for issuing and listing debt securities?

There are three different phases involved in the issuing and listing of debt securities on the SIX Swiss Exchange Ltd (SIX):

- **First phase.** The debt securities can first be admitted provisionally to trading. An application for provisional

admission must be electronically submitted via the Internet Based Listing (IBL), the internet based listing tool of the SIX. (Internet Based Terms (IBT) should soon replace the IBL tool, and already runs in parallel.) Debt securities can generally be provisionally traded once approved by the SIX (usually three days after the receipt of the relevant application). In more complicated circumstances, it is advisable to obtain a preliminary decision from the SIX Regulatory Board before submitting the application.

- **Second phase.** The issuer must submit the written listing request. Provisional admission to trading will lapse automatically if the listing request is not lodged within two months of provisional trading.
- **Third phase.** The SIX Regulatory Board reviews the written listing request and attachments and approves the listing. Once approved, the securities are definitively listed.

TAX: DEBT SECURITIES ISSUE

18. What are the main tax issues when issuing and listing debt securities?

Under the previous Swiss tax regime, the issuance of bonds by, among others, Swiss-resident companies and Swiss registered branches of foreign-resident companies triggered issuance stamp tax consequences. In addition:

- Interest payments are subject to withholding tax at a rate of 35%.
- The secondary trading of debt securities is subject to 0.15% security transfer stamp duty if a transfer of title to the securities occurs for consideration, and a Swiss securities dealer is involved as a party or an agent to a party.

As of 1 January 2014 interest paid on contingent convertible bonds (CoCos) of systematically important banks and on write-down bonds is exempt from withholding tax.

The definition of "bonds" in the stamp duty legislation is broader than the definition in the securities legislation and includes both loan and cash debentures. Under the stamp duty legislation, different rates of duty apply to:

- **Loan debentures (*Anleihensobligationen*).** The rate is 0.12% of the par value for each year of the maximum term of the loan. A loan debenture arises if:
 - there are more than ten non-bank creditors;
 - the loan amount is at least CHF500,000;
 - there are identical loan conditions referring to just one loan agreement (including syndicated loans).
- **Cash debentures (*Kassenobligationen*).** The rate is 0.06% of the par value for each year of the maximum term of the loan. A cash debenture involves the raising of funds from more than 20 non-bank creditors against which the debtor issues written recognition of the debts owed on a continuous basis on differing terms. As with a loan debenture, the aggregate amount of the debt must be at least CHF500,000.

In June 2010, the Swiss government partially revised the Swiss Federal Stamp Tax Ordinance so that debts between group companies do not qualify either as loan debentures or as cash debentures and therefore do not count towards the thresholds mentioned above, provided that the Swiss company does not act as guarantor under a bond issuance or a syndicated loan towards a respective foreign group borrower. This revision became effective on 1 August 2010.

In December 2010, the Swiss government, in the context of the discussion regarding systematically important banks, proposed a

Banking Act Reform Bill. This reform Bill has, among other things, abolished the issuance stamp tax for:

- The participation rights stemming from the conversion of CoCos (applicable on the issuances of systematically important banks only).
- The issuance of any loan and cash debentures in general (applicable to all issuers).

The new legislation entered into force on 1 March 2012.

As part of the "too big to fail" reforms, the Swiss Federal Council introduced legislation creating a paying agent tax system with regard to interest payments. Swiss paying agents such as banks in Switzerland are required to deduct Swiss withholding tax at a rate of 35% on certain payments to certain investors. In addition, Swiss paying agents are required to deduct Swiss paying agent tax on interest paid on debt securities to Swiss-resident individuals as final recipients.

CLEARING AND SETTLEMENT OF DEBT SECURITIES

19. How are debt securities cleared and settled and what currency are debt securities typically issued in? Are there special considerations for holding, clearing and settling debt securities issued in foreign currencies?

Clearing and settlement

Debt securities listed on the SIX Swiss Exchange Ltd (SIX) are often issued in Swiss francs.

The Swiss Value Chain, an integrated service provided by the SIX Group, allows for the complete electronic integration of securities trading, clearing and settlement as well as payments. This ensures the efficient and safe settlement of securities transactions on the delivery-versus-payment principle, eliminating settlement risk. Basically, the Value Chain is comprised of:

- The electronic trading platforms Eurex (derivatives) and the SIX.
- The central counterparties SIX x-clear, London Clearing House (LCH) and Eurex Clearing.
- The securities settlement system SECOM.
- The payment systems Swiss Interbank Clearing (SIC) and euroSIC.

Clearing

SIX x-clear offers clearing services for Swiss franc bonds listed on the SIX, based on a sole central counterparty service (CCP) model. SIX x-clear has been recognised by the UK Financial Services Authority (FSA) as a Recognised Overseas Clearing House (ROCH). It holds a Swiss banking licence and is supervised by FINMA.

Settlement

Trades in debt securities effected on the SIX are cleared by SIX x-clear and settled at the SIX SIS Ltd (SIS). SIS acts as a central depository and effects the settlement of stock exchange and off-market transactions in Switzerland. The SIX uses an integrated settlement solution, a facility based on the co-operation of recognised central securities depositories that are incorporated in the straight-through processing process.

Settlement of international bonds can occur in three different ways:

- **Internal.** A trade in the appropriate foreign currency between SIS members.
- **Cross-border.** A trade between a SIS member and a member that keeps its inventory of international bonds with Clearstream Luxembourg or Euroclear Bank.
- **Routing.** A trade between two parties that keep their inventories of international bonds with Clearstream Luxembourg or Euroclear Bank.

REFORM

20. Are there any proposals for reform of debt capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

A revision of the Stock Exchange Act (SESTA) was adopted in June 2012 and entered into force on 1 April 2013. The revised provisions include new criminal and regulatory provisions covering the offences of insider trading and price manipulation, both of which are transferred from the Criminal Code to the SESTA. Most importantly, the category of potential offenders capable of committing insider trading will now include any individual persons with specific characteristics (for example, members of boards of directors or management). In addition, FINMA will have the power and supervisory means to take regulatory actions against all market participants.

In March 2014 the SIX Swiss Exchange Ltd (SIX) enacted revised Listing Rules.

Recently, the Swiss Federal Council published a draft of a new Federal Financial Services Act. This act will introduce uniform prospectus requirements for all securities that are publicly offered or traded on a trading platform. The new prospectus requirements are based on investor needs and are designed in a proportionate manner. The proposed Federal Financial Services Act has not yet been passed by the Swiss Parliament. It is unlikely that the new law will be enacted prior to 2017.

ONLINE RESOURCES

Swiss Financial Market Supervisory Authority (FINMA)

W www.finma.ch

Description. Official FINMA website, directs to statutes and implementing provisions applicable to persons/entities subject to FINMA supervision, broken down by sector (non-binding English version).

SIX Swiss Exchange

W www.six-swiss-exchange.com (www.six-swiss-exchange.com/participants/regulation_en.html (unofficial translation))

Description. Official SIX website, directs to statutes and implementing provisions relating to SIX Swiss Exchange (non-binding English version).

Stock Exchange in Berne

W www.berne-x.com

Description. Official Berne-x website, directs to statutes and implementing provisions relating to Stock Exchange in Berne (non-binding English version).

Practical Law Contributor details



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Areas of practice. Corporate finance and capital markets; financial products; collective investment schemes.

Recent transactions

- Advising a number of Swiss and foreign issuers on the listing of their EMTN programs, in LPN transactions and other debt offerings.
- Regularly advising Swiss and foreign banks on the registration of their structured notes programs in Switzerland.

Languages. English, German, French.

Professional associations/memberships. Zurich and Swiss Bar Association.

Publications. Several articles on banking and regulatory law, capital markets and competition law.

List of certain publications:

- *"Termination of Contracts in an Insolvency Event - Comments on German Supreme Court Decision Az. IX ZR 169/11 dated 15 November 2012"*, *Schweizerische Zeitschrift für Gesellschafts- und Kapitalmarktrecht (GesKR)* 1/2014, pages 77-81.
- *"Switzerland - Regulation of Financial Services"*, *Kluwer Law International (Editor[s]), Comparative Law Yearbook of International Business, Special Issue, 2013*.
- *"Recent Practice on the Regulation of Structured Products"*, *Schweizerische Juristenzeitung (SJZ)*, April 2011.
- *"Internationalization Tendencies in Financial Market Law"*, *Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht (SZW)*, January 2011.
- *"Banking rehabilitation and insolvency reform in Switzerland"*, *Restructuring and Insolvency Handbook 2011/12*.
- *"Securitisation transactions in Switzerland are making a comeback"*, *The Euromoney Securitisation & Structured Finance Handbook 2011/12*.
- *"Recent Developments in European Investment Funds Regulation – Chances and Risks for the Swiss Funds Centre"*, *Schweizerische Zeitschrift für Gesellschafts- und Kapitalmarktrecht (GesKR)*, February 2010.
- *"Proposed Swiss Bank Deposit Protection Law"*, *CapLaw*, January 2010.
- *"Recent Developments in European Investment Funds Regulation – Chances and Risks for the Swiss Funds Centre"*, *World Securities Law Report*, June 2009.
- *"Passing on the Monopoly Overcharge: A Comprehensive Policy Analysis of US, European, German and Swiss Competition Law"*, *Schweizer Schriften zum Handels- und Wirtschaftsrecht, Zürich/St. Gallen 2008*.