

SECURITIES FINANCE

Switzerland



Securities Finance

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Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; public offerings; private placements; offshore offerings; underwriting arrangements; ongoing reporting obligations; anti-manipulation rules; price stabilisation; liabilities and enforcement; and recent trends.

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

What are the relevant statutes and regulations governing securities offerings?

Security offerings, in particular the requirement to publish an approved prospectus and the rules on advertisement of financial instruments, are governed by the Swiss Financial Services Act and the Swiss Financial Services Ordinance .

Article 126 of the Swiss Financial Market Infrastructure Ordinance exempts certain transactions stabilising the market following a securities offering on the stock market from the prohibition of market manipulation.

The Financial Market Supervision Act governs the Swiss Financial Market Supervisory Authority (FINMA).

The Swiss corporate law found in the Swiss Code of Obligations , contains specific rules regarding listed companies (eg a compensation regime including 'say on pay'), rules on the annual report and shareholder rights.

Moreover, the listing rules and directives of the two Swiss stock exchanges, SIX Swiss Exchange and BX Swiss, apply to offerings including a listing of securities on SIX Swiss Exchange or BX Swiss.

The Allocation Directives for the New Issues Market , which is based on self-regulation by the Swiss Bankers Association (SBA), provides rules of conduct in connection with the allocation of equity securities in the course of a public offering. FINMA has declared these directives to be generally binding also for Swiss financial institutions supervised by FINMA that are not SBA members.

Law stated - 23 May 2023

Regulator

Which regulatory authority is primarily responsible for the administration of those rules?

Two prospectus review bodies recognised by the Swiss Financial Market Supervisory Authority (FINMA) are responsible for the review and approval of offering as well as listing of prospectuses: SIX Exchange Regulation (SER), which is the regulatory body of SIX Swiss Exchange; and BX Swiss.

FINMA is the main supervisory authority in the Swiss financial market. Among its other supervisory functions, FINMA watches over the interpretation of the respective laws by the prospectus review bodies and supervises advertisement by licensed financial institutions with respect to financial products.

The disclosure offices of SIX Swiss Exchange and BX Swiss are responsible for the administration of disclosure notifications of significant shareholders of issuers listed on a Swiss stock exchange. FINMA, as well as the Swiss Federal Department of Finance as the competent public prosecutor, investigate and sanction breaches of the obligation to disclose significant shareholdings.

The two Swiss stock exchanges, SIX Swiss Exchange (through SER) and BX Swiss, ensure compliance with their respective listing rules and directives.

The self-regulation of the Swiss Bankers Association (SBA) with regard to the allocation of equity securities in the course of public offerings (the Allocation Directives for the New Issues Market), has been declared generally binding by FINMA. It is enforced by the SBA against its members as well as by FINMA against any Swiss financial institution under its supervision.

Law stated - 23 May 2023

PUBLIC OFFERINGS

Mandatory filings

What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

A public offering of securities generally requires a prospectus approved by a recognised prospectus office (currently SIX Exchange Regulation or BX Swiss), unless an exemption from the prospectus requirement applies.

The main exemptions from the prospectus requirement are:

- public offerings solely aimed at investors classified as professional clients;
- offerings addressed at fewer than 500 investors;
- minimum subscriptions of at least 100,000 francs per investor; or
- securities with a minimum denomination of 100,000 francs.

No prospectus is required if the offer does not exceed a total value of 8 million francs over a period of 12 months. In addition, offerings of certain types of securities are exempt:

- equity securities issued outside the scope of a capital increase in exchange for previously issued equity securities;
- equity securities issued or delivered on the conversion or exchange of financial instruments of the same issuer or corporate group;
- securities offered for exchange in connection with a takeover, provided that information exists that is equivalent in terms of content to a prospectus;
- securities offered to employees or members of the management; or
- medium-term notes.

In the case of a listing, additional exemptions must apply for the transaction to be exempt from the prospectus requirement, such as that:

- the securities are equity securities which over a period of 12 months account for less than 20 per cent of the number of equity securities of the same category already admitted to trading on the same trading venue;
- the securities to be listed are already admitted to trading on a foreign trading venue deemed equivalent from a regulatory perspective; or
- they are securities admitted to a trading segment open exclusively to certain professional investors.

The listing of securities requires a listing application to the relevant Swiss stock exchange (ie, SIX Swiss Exchange or BX Swiss). Under the Swiss Banking Ordinance, a private placement of debt instruments is deemed accepting funds from the public, which generally requires a banking licence, unless a certain minimum of information is provided in the form of a prospectus or written statement published in the same way as a statutory prospectus. Such minimum information includes name, seat, registered office and purpose of the issuer, terms of the instrument, price, subscription period, last annual financial statements, security provided and, if applicable, the representative of the community of creditors.

The prospectus needs to include essentially all information that is material for the potential investors: covering information on the issuer, including its board of directors and management and its financial situation; on the guarantor, if any; on the security provider, the securities and the rights linked to the securities; as well as information on the offer and the related risks. The required information is specified for equity securities, debt instruments, derivatives, real estate companies, investment companies and collective investment schemes in the annexes to the Swiss Financial Services Ordinance (FINSO). The prospectus must be in English or in one of the official languages of Switzerland.

Law stated - 23 May 2023

Review of filings

What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

In advance of a public offering or a listing of securities, a prospectus must be filed by an approved by one of the two recognised prospectus offices, SIX Exchange Regulation or BX Swiss, unless an exemption applies.

The prospectus office generally informs issuers within 10 calendar days whether the draft prospectus complies with the statutory requirements, or if any amendments are required. In the case of new issuers, the deadline is 20 days. Within 10 calendar days following the submission of the amended prospectus, the prospectus office decides if the prospectus is approved.

The Swiss Federal Council has defined certain types of securities for which the approval of the prospectus by the prospectus office may follow the publication of the offering. Such securities include bonds, convertible or exchangeable bonds, warrant bonds, mandatory or contingent convertible bonds, write-down bonds and structured products with a term of 30 days or more (see Annex 7 of the FINSO). Such retrospective approval requires a confirmation of a bank or securities dealer licensed by the Swiss Financial Market Supervisory Authority (FINMA), that at the time of the publication of the offering the most relevant information on the issuer and the securities is available. A prospectus that will be approved in retrospect must disclose this fact on the front cover. The deadline for the retrospective approval is generally 60 calendar days from the start of the offering period or the admission to trading. This period is reduced to 10 calendar days for instruments with a term of 90 to 180 calendar days and to five calendar days for instruments with a term of 30 to 89 calendar days.

If a prospectus is required, that prospectus must generally be published at the beginning of the public offering, or, in the case of a direct listing, on the first trading day. In the case of a new listing of securities, the publication must take place at least six calendar days prior to the end of the offering period, which results in a minimum offering period for the listing of a new listing of securities.

Material events occurring between the time of approval of the prospectus and final completion of a public offer or opening of trading on a trading venue require the publication of a supplement to the prospectus. If it is a material price-sensitive fact that is generally subject to the ad hoc publication obligation of the respective stock exchange, SIX Swiss Exchange or BX Swiss, the supplement can be published immediately. Otherwise, the supplement must be approved by the prospectus office first.

The application for the listing of securities must be filed by an approved SIX representative with the respective Swiss stock exchange within 10 trading days (20 trading days for new issuers) in advance of the envisaged first trading day. Issuers of debt securities and derivatives may apply to SIX Exchange Regulation for provisional trading based on a provisional decision until the final decision is issued.

The listing application should describe the securities, indicate the planned first trading day and confirm that a prospectus, if required, has been approved. In practice, the listing procedure before the listing office of the applicable

stock exchange runs in parallel with the prospectus approval by the prospectus office. The issuer must sign a declaration stating that the responsible corporate bodies of the issuer agree with the listing and acknowledge the listing rules including the related arbitration proceedings. On the first trading day, the issuer must submit an official notice to the stock exchange, to be published on the website of the stock exchange, informing about the listing and the availability of a prospectus.

Law stated - 23 May 2023

Securities exchanges

What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

The two Swiss securities exchanges are SIX Swiss Exchange and BX Swiss. SIX Swiss Exchange is the larger of the two. BX Swiss specialises in Swiss local issuers, structured credit, fixed income and structured products. The following sections focus on the requirements of SIX Swiss Exchange.

SIX Swiss Exchange offers the following trading segments:

- equity market:
 - blue-chip shares;
 - mid- or small-cap shares;
 - sparks shares;
 - global depository receipts;
 - secondary listing shares;
 - sponsored foreign shares;
 - rights and options; and
 - separate trading lines.
- fund market:
 - investment funds;
 - exchange-traded funds ;
 - exchange-traded structured funds; and
 - sponsored funds.
- bond market:
 - bonds – Swiss francs;
 - bonds – Pfandbriefe;
 - bonds – CHF; and
 - bonds – non-Swiss francs.
- structured products market:
 - structured products.
- market for 'other financial products':
 - exchange-traded products.

The main listing requirements for the listing of equity securities on the main segment of SIX Swiss Exchange are the following: (1) a track record of at least three years (exemptions are available), (2) equity capital of at least 25 million francs, (3) a free float of at least 20 per cent and (4) a market capitalisation of at least 25 million francs of freely tradable shares.

The main listing requirements for the listing of equity securities on the Sparks segment of SIX Swiss Exchange, which is designed for small and medium-sized enterprises, are the following: (1) a market capitalisation of less than 500 million francs, (2) a track record of at least two years, (3) a shareholder base of at least 50 investors, (4) an equity capital of at least 12 million francs, of which at least 8 million francs must be raised as part of the initial public offering unless equity capital is 25 million francs or more, (5) a free float of at least 15 per cent and a market capitalisation of freely tradable shares of at least 15 million francs.

In addition to the stock exchange for regular securities, by the end of 2021 SIX Group launched exchange Six Digital Exchange (SDX) for digital assets based on distributed ledger technology for which special listing requirements apply. Since its launch, three digital bonds have been listed on SDX.

Law stated - 23 May 2023

Publicity restrictions

What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Under the Swiss rules on advertising for financial instruments, any advertising of financial instruments must be recognisable as advertisement, which usually means that it is labelled as advertisement. In addition, it must refer to a prospectus or key information document, if any. Furthermore, advertising and any other information provided to investors must correspond with the prospectus and key information document, if any.

If no prospectus is required, issuers and offerors of financial instruments are subject to a duty of equal treatment of investors if they provide information on a public offering.

Under the self-regulation of the Swiss Bankers Association, a bank involved in an initial public offering as a manager or co-manager is not allowed to publish new reports on the issuer or provide any

new recommendation for a 'quiet period' of 40 calendar days following the first day of trading. The compliance department of the investment bank may, with exception, shorten the 40-day-period. In the case of a secondary offering, the quiet period is 10 calendar days following the allocation of the shares, again subject to exemptions granted by the compliance department. Basically, exemptions may be granted in the interest of the investors, mainly if there are significant events relating to the issuer (https://www.swissbanking.ch/_Resources/Persistent/8/2/1/2/82125e0905621696e0b93c2c70ca859427de26b2/SBA_Guidelines_Directives_Independence%20of%20Financial%20Research_2018.pdf).

If already listed issuers are involved, such issuers are subject to the ad hoc publication obligation, which means that they must publish any non-public materially price-sensitive information through the prescribed channels before the information can be published. In addition, if already listed issuers are involved, Swiss insider law requires that non-public materially price-sensitive information not be shared with third parties unless in connection with the conclusion of a contract and based on usual non-disclosure agreements.

Law stated - 23 May 2023

Secondary offerings

Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

A financial service provider is not required to file a new prospectus for a secondary offering if a valid prospectus has already been issued and if the issuer or the responsible person for the prospectus agrees in the use of the existing

prospectus.

In the offering of new shares, Swiss corporate law provides existing shareholders with pre-emptive rights for the new shares, which however can be excluded for cause.

Secondary offerings benefit from a shorter period of 10 days for the review of the prospectus by the prospectus office and require a shorter minimal period of 10 days between the listing request and the first trading days.

In the case of primary offerings, a prospectus, if required, must generally be published at least six calendar days prior to the end of the offering period. In the case of a secondary offering, the prospectus must be published in advance of the public offering.

In secondary offerings of already existing shares, the seller of the shares may be contractually liable for breach of representations and warranties or for the breach of precontractual disclosure obligations. Under Swiss private law, there is no general statutory guarantee for shares sold if the share purchase agreement or underwriting agreement does not provide for such a guarantee. Like with primary offerings, secondary offerings addressing the public are generally subject to the obligation of publishing a prospectus, and therefore to the prospectus liability.

Law stated - 23 May 2023

Settlement

What is the typical settlement process for sales of securities in a public offering?

As a payment system and central securities depository, SIX SIS provides clearing and settlement services through its integrated settlement infrastructure Swiss Value Chain.

Law stated - 23 May 2023

PRIVATE PLACINGS

Specific regulation

Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

For a placement to be private and therefore exempt from the prospectus requirement, it must be directed at a limited circle of addressees. Other exemptions from the prospectus obligation are offers to professional investors only, offers addressed to less than 500 investors, a minimum investment of 100,000 francs per investor or per financial instrument or offers amounting to no more than 8 million francs over a period of 12 months.

Disclaimers should make clear that the offering is not a public offering and must not be forwarded to third parties. A share purchase agreement or underwriting agreement should specify representations and warranties.

For a private placement of debt instruments to more than 20 investors not to require a banking licence, some minimum information must be published in the form of a prospectus or a written statement in the same way as a statutory prospectus is published.

The offering of the following securities requires the offeror to provide the offeree with a key information document (KID) in advance of the offering. This holds for private placements and public offerings alike: debt instruments with derivative character, structured products and collective investment schemes. The KID essentially informs investors about the issuer, the financial instrument, its cost as well as its risk and return profile.

Law stated - 23 May 2023

Investor information

What information must be made available to potential investors in connection with a private placing of securities?

The offering of certain securities (debt instruments with derivative character, structured products, collective investment schemes) requires the offeror to provide the offeree with a key information document (KID) in advance of the offering. The KID basically informs investors about the issuer, the financial instrument, its cost as well as its risk and return profile.

In addition, under the Swiss rules on advertising for financial instruments any material information provided to investors must be aligned with an existing KID or prospectus.

Law stated - 23 May 2023

Transfer of placed securities

Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

Under Swiss law, no legal restrictions apply to the transferability of securities acquired in a private placing.

To enhance the liquidity of securities sold in a private placing, the securities may be issued as intermediated securities in the SIX SIS system and as such be traded using organised trading facilities of certain banks and securities dealers.

Law stated - 23 May 2023

OFFSHORE OFFERINGS

Specific regulation

What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

Offerings outside of Switzerland by Swiss companies are generally not regulated by Swiss law. Should the offering exclude Swiss investors, appropriate selling restrictions should be implemented.

If bonds or notes are issued by an issuer with registered office or administration in Switzerland, the Swiss rules on the meeting of bondholders and their rights apply, even if the offering is made outside of Switzerland.

If the securities are listed abroad, Swiss corporate law for listed companies still applies such as the rules on the compensation of the board of directors and management board or sustainability related reporting obligations.

Law stated - 23 May 2023

PARTICULAR FINANCINGS

Offerings of other securities

What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

The procedure and modalities of the issuance by Swiss corporations of exchangeable or convertible securities as well

as pre-emptive rights are governed by the Swiss code of obligations.

Such instruments must be listed when the underlying securities are listed. SIX Exchange Regulation may grant an exemption if the market has access to enough information for the valuation of the underlying security.

In the case of a capital increase of a listed company, the issuer may submit to SIX Exchange Regulation a request for pre-emptive rights trading.

Warrants and depositary shares are subject to the special listing rules of SIX Swiss Exchange.

Law stated - 23 May 2023

UNDERWRITING ARRANGEMENTS

Types of arrangement

What types of underwriting arrangements are commonly used?

Among the most common types of underwriting agreements are best efforts underwriting agreements, by which the underwriters are not bound to purchase the securities for their own account. Securities not sold will be returned to the issuer.

Firm commitment underwritings oblige the underwriter to purchase all the securities offered, exposing it to a certain risk if demand is lower than expected.

Standby agreements by which the underwriters undertake to subscribe any shares not subscribed by existing shareholders are also seen in the Swiss market, particularly in connection with pre-emptive rights offerings.

Law stated - 23 May 2023

Typical provisions

What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

Usually, underwriting agreements provide for a general indemnity of the syndicate banks against any claims, liabilities, losses, damages, actions, costs and expenses arising out of the performance of obligations under the agreement, out of breaches of representations or incorrect, misleading or omitted statements in the prospectus. Further essential elements of underwriting agreements are termination rights when certain conditions are not fulfilled or certain material adverse events occur as well as fees, including an incentive fee, which is usually due if the offer is completed. Underwriting agreements usually include an over-allotment option backed up by a securities lending agreement for the purpose of stabilising the market price following the first trading day.

Law stated - 23 May 2023

Other regulations

What additional regulations apply to underwriting arrangements?

In general, anybody acquiring more than one third (33.33 per cent) of the voting rights of a listed company is required to publish a mandatory tender offer to all shareholders for all shares of the issuer. In a firm underwriting, banks or securities firms are exempt from this obligation if they acquire newly issued shares and sell the number of shares exceeding the threshold of 33.33 per cent within three months.

ONGOING REPORTING OBLIGATIONS**Applicability of the obligation**

In which instances does an issuer of securities become subject to ongoing reporting obligations?

If an issuer lists securities on one of the two Swiss stock exchanges, SIX Swiss Exchange or BX Swiss, it is subject to the disclosure obligations of the respective stock exchange.

Issuers of equity securities listed in Switzerland or abroad that have their registered office in Switzerland are required to issue a statutory report on the compensation of the members of the board and management.

If the issuer of equity shares listed on a Swiss stock exchange receives disclosure notifications of significant shareholders crossing a disclosure threshold of 3, 5, 10, 15, 20, 25, 33.33 or 66.66 per cent according to article 120 of the Swiss Financial Market Infrastructure Act (FMIA), the issuer is required to publish the disclosure notification within two trading days through the SIX reporting platform.

Law stated - 23 May 2023

Information to be disclosed

What information is a reporting company required to make available to the public?

Under the listing rules of SIX Swiss Exchange or BX Swiss, an issuer of listed equity securities or debt instruments is subject to the ad hoc publication obligation, that is, the obligation to immediately publish non-public materially price-sensitive information. Examples of such information are financial figures, M&A transactions, profit warnings, changes in the management, changes in the capital structure or changes in the strategy. The publication of the information may be postponed if legitimate interests of the issuer are affected and if a plan or resolution of the issuer could be jeopardised, provided that the issuer makes sure that the information remains confidential. In the case of a leak, the issuer must immediately publish the respective information.

Furthermore, issuers of equity securities are subject to the obligation to report management transactions in its equity securities executed by members of its board of directors or top management or related persons.

Under the listing rules of the applicable stock exchange, the issuer must publish certain standardised information such as a change in the name and address of the issuer or a change of the auditor. Information to be reported by issuers of listed equity securities includes: contact details of responsible persons such as the chairperson, CEO or CFO; certain weblinks; financial statements; information on the capital structure and dividend payments; and the corporate agenda and resolutions of the shareholders meeting (regulator reporting obligation). In the case of listed debt instruments, events such as amortisations, early repayments, changes related to the interests or the exercise of convertible rights must be reported.

Under the listing rules and directive of SIX Swiss Exchange, issuers of equity securities are required to publish a corporate governance report along with the annual report. The respective directive of SIX Exchange Regulation requires a broad range of information such as information on the issuer, the capital structure, the board of directors, its committees, the management board, the shareholder rights and the compensation regime.

Issuers of listed equity securities and debt instruments are required to publish their annual financial statements (issuers of equity securities: also semi-annual financial statements) based on a recognised accounting standard.

Issuers of listed equity securities which have their registered office in Switzerland are required to issue a statutory report on the compensation of the members of the board and management.

If the issuer of equity shares listed on a Swiss stock exchange receives disclosure notifications of significant shareholders crossing a disclosure threshold of 3, 5, 10, 15, 20, 25, 33.33 or 66.66 per cent according to article 120 of the FMIA, the issuer is required to publish the disclosure notification within two trading days through the SIX reporting platform.

Law stated - 23 May 2023

ANTI-MANIPULATION RULES

Prohibitions

What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

Articles 142 and 154 of the Swiss Financial Market Infrastructure Act (FMIA) prohibit insider trading in securities listed on a Swiss trading venue or in related derivatives based on non-public materially price-sensitive information, sharing such information with third parties as well as tipping. Article 122 et seq provides for safe harbours from this prohibition, namely with regard to share buybacks and transactions in securities solely for the purpose of realising transactions in listed securities. Breaches are prosecuted and sanctioned by the Swiss Financial Market Supervisory Authority (FINMA). In addition, insider trading and sharing insider information is a criminal act that is prosecuted by the federal public prosecutor. Criminal prosecution additionally requires criminal intent and a pursuit of profit.

Article 143 of the FMIA prohibits the public dissemination of information or the performance of pretended or real transaction which may send wrong or misleading signals to the market regarding the supply, demand or the price of securities listed on a Swiss trading venue. Article 122 et seq provides for safe harbours from this prohibition, namely market stabilisation following a public offering of securities and share buybacks. Market manipulation is equally subject to prosecution and sanctioning by FINMA and, pursuant to article 155 of the FMIA, to criminal prosecution by the federal public prosecutor. Again, criminal prosecution requires criminal intent and the pursuit of profit. In addition, only pretended manipulative transactions (such as circular trading) and not real transactions may be subject to criminal prosecution.

Law stated - 23 May 2023

PRICE STABILISATION

Permitted stabilisation measures

What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Under Article 126 of the Swiss Financial Market Infrastructure Ordinance, securities transactions for the purpose of stabilising the price of securities admitted to trading on a Swiss trading venue are permitted under the following conditions:

- The transactions must be carried out within 30 days of the public placement of the securities to be stabilised.
- The transactions may not be executed at a price higher than the issue price, or, in the case of trading with subscription or conversion rights, at a price higher than the market price.
- Prior to the start of trading with the securities to be stabilised, the maximum period during which the stabilising transactions may be carried out as well as the identity of the executing securities firm shall be published.
- The transactions shall be reported to the trading venue on the fifth trading day following their execution and published by the issuer at the latest on the fifth trading day after the 30th day following the public placement.

- Finally, no later than five trading days following the exercise of an over-allotment option and greenshoe, the issuer shall inform the public about the time of the exercise and about the number and type of the securities concerned.

Law stated - 23 May 2023

LIABILITIES AND ENFORCEMENT

Bases of liability

What are the most common bases of liability for a securities transaction?

First and foremost, anyone who provides information that is false or misleading or not compliant with the law in a statutory prospectus, a key information document or 'similar communications', is subject to prospectus liability pursuant to article 69 of the Swiss Financial Services Act (FINSA). The limitation to 'anyone who provides', which was introduced in the course of the revision of the Swiss prospectus regime as of 1 January 2020, is generally understood as the issuer and its directors and officers, not the investment bank or advisers. However, there is no case law in this respect. A similar communication is communication accompanying the offering or listing of securities and does not refer to any other public statements.

Furthermore, directors and officers of issuers may be subject to shareholder suits for breach of the fiduciary duties of care and loyalty if they damage the issuer. However, Swiss courts generally apply the business judgment rule, which protects directors and officers from liability if business decisions were taken on a sound information basis and were unaffected by conflicts of interests.

Swiss laws on liability and civil procedure are not particularly plaintiff-friendly. The hurdles to establish evidence are generally regarded as high. Apart from the procedural risk to bear the legal cost of the defendant if the case is lost, the plaintiffs must prove damage, causation and fault, and there is no collective redress, for example, in the form of class actions or model lawsuits in Switzerland. In the debates on the revised Swiss prospectus regime, the parliament finally voted against an inversion of the onus of proof in securities claims. In addition, in a leading case the Swiss Federal Supreme Court expressly denied the 'fraud on the market theory' according to which any false or misleading information would be assumed to have caused the damage.

Swiss stock exchanges may impose sanctions on issuers breaching listing rules and related regulations. Criminal sanctions as well as administrative sanctions may apply in the case of false, misleading or omitted information in a prospectus or a key information document, in the case of insider trading or market manipulation, or in the case of breaches of the obligation to notify significant shareholdings.

Law stated - 23 May 2023

What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Market abuse (ie, insider trading and market manipulation), is prosecuted as an administrative offence by the Swiss Financial Market Supervisory Authority (FINMA). Basically, FINMA may issue a declaration of breach, publish the declaration ('naming and shaming'), claw-back profits and, in the case of representatives of supervised financial institutions, impose a limited suspension from professional activity. Moreover, market abuse is prosecuted as a criminal offence by the federal public prosecutor, possible sanctions being imprisonment of up to three years (five years in the case of a profit above 1 million francs) or a fine of up to 540,000 francs.

In the case of financial institutions supervised by FINMA, FINMA can impose additional administrative sanctions and orders to correct unlawful behaviour in the context of securities offerings and listings, including limiting or withdrawing

a license or assigning an administrator.

In connection with the offering and listing of securities, breaches of disclosure obligations based on the listing rules of one of the two Swiss stock exchanges, SIX Swiss Exchange and BX Swiss, are investigated and sanctioned by the stock exchanges. SIX Exchange Regulation, the regulatory body of SIX Swiss Exchange, may issue a reprimand or impose a fine of up to 10 million francs (1 million francs in the case of negligence), suspend trading or delist the security, to mention some of the more common possible sanctions.

Providing false or misleading information or omitting material information in a statutory prospectus or a key information document is subject to criminal prosecution by the competent public prosecutors.

The main remedies for improper securities activities are: prospectus liability pursuant to article 69 of the Swiss Financial Services Act; and corporate claims against directors and officers in the case of breaches of the fiduciary duties of care and loyalty, or certain provisions of corporate law.

Law stated - 23 May 2023

UPDATE AND TRENDS

Proposed changes

Are there current proposals to change the regulatory or statutory framework governing securities transactions?

Currently, no statutory proposals specifically addressing securities transactions are in prospect. With regard to the most recent changes in the Swiss legal environment, the following may be noted.

The revision of the main Swiss rules governing securities transactions in the Financial Services Act that aimed to harmonise the Swiss rules with the corresponding rules of the European Union entered into force on 1 January 2020. The listing rules of SIX Swiss Exchange have been adjusted to the new regime in the meantime.










Another eminent change has been the revised Swiss corporate law, which entered into force on 1 January 2023. This has significant consequences for listed companies, for example, regarding the share capital by introducing the 'capital band' within which the board of directors may freely issue new shares or delete shares; replacing the former authorised capital; or regarding the compensation of directors and officers of listed companies.

On 1 January 2022 and 1 January 2023, new disclosure obligations of listed companies about sustainability related information entered into force. These new rules were basically following the model of the now already outdated European Non-Financial Reporting Directive. Pursuant to a new ordinance of the Federal Council adopted in November 2022, listed companies are subject to climate reporting obligations under the recommendations of the Task Force on Climate-Related Financial Disclosure or an alternative standard as of 1 January 2024. Listed companies breaching the new sustainability-related disclosure obligations are subject to criminal prosecution. In a recent paper, the Swiss Federal Council announced the intent to assess a possible harmonisation of the Swiss sustainability reporting obligations with the new European Corporate Sustainability Reporting Directive, which will lead to significantly extended disclosure obligations of listed companies.

While the statutory rules on the disclosure of sustainability-related information apply to listed companies with registered office in Switzerland only, SIX Exchange Regulation has declared the intent to apply them to non-Swiss companies listed on the Swiss SIX Exchange by analogy.

Law stated - 23 May 2023

Jurisdictions

	Egypt	Soliman, Hashish & Partners
	Japan	Nagashima Ohno & Tsunematsu
	Luxembourg	Vandenbulke
	Qatar	Al Tamimi & Company
	South Africa	Bowmans
	Switzerland	Walder Wyss Ltd
	Turkey	Pekin & Pekin
	United Kingdom	Fried Frank Harris Shriver & Jacobson LLP
	USA	Fried Frank Harris Shriver & Jacobson LLP