

Switzerland Business & Investment Handbook

Editor

Christian H. Kälin
Henley & Partners, Zurich

Foreword by

Johann N. Schneider-Ammann
Federal Councillor
Head of the Federal Department of Economic Affairs, Berne

Authors of the individual chapters

Switzerland – An introduction

Prof. Clive H. Church
University of Kent, Canterbury

Why Switzerland?

Christian H. Kälin
Henley & Partners, Zurich

The Swiss economy

Dr. Eric Scheidegger
Swiss State Secretariat for Economic Affairs, Berne

Switzerland beyond the “nation brand”

Simon Anholt

Switzerland and the European Union

Barbara Beck
The Economist, London

Switzerland and the United States

Martin M. Naville
Swiss-American Chamber of
Commerce, Zurich and Geneva

The Swiss legal system

Dr. Peter Max Gutzwiller
Lenz & Staehelin, Zurich

Contract law

Dr. Roberto Dallafior / Simone Stebler
Hess Dallafior, Zurich

Corporate law

Gudrun Bürgi-Schneider
Bürgi Nägeli, Zurich

Corporate governance

Franz J. Kessler
von der Crone Rechtsanwälte AG

Labor market and employment law

Dr. Ueli Sommer / Eliane Glaser
Walder Wyss, Ltd., Zurich

Social security and pension system

Lukas Tanner
Mercer (Switzerland) SA, Zurich

Competition law

Prof. Dr. Rolf Watter / Dr. Mani Reinert
Bär & Karrer, Zurich

Intellectual property law

Dr. Mathis Berger
Hess Dallafior, Zurich

CONTENTS OVERVIEW

Sponsors	VI
About this book	XI
How to use this book	XII
Swissnetwork.com – the leading portal for business, investment and living in Switzerland	XIII
Acknowledgements	XIV
Foreword	XV
Johann N. Schneider-Ammann, Federal Councillor Head of the Federal Department of Economic Affairs, Berne	
PART I – INTRODUCTION	1
Switzerland: An introduction	3
Clive H. Church, University of Kent, Canterbury	
Why Switzerland?	19
Christian H. Kälin. Henley & Partners AG, Zurich	
The Swiss economy – a success by tradition	37
Dr. Eric Scheidegger, Ambassador, State Secretariat for Economic Affairs, Berne	
Switzerland – beyond the “nation brand”	47
Simon Anholt	
Switzerland and the European Union	63
Barbara Beck, The Economist, London	
Switzerland and the USA	79
Martin M. Naville, Swiss-American Chamber of Commerce, Zurich	
PART II – LAW, TAXATION, BANKING AND INSURANCE	87
LAW	89
The Swiss legal system	91
Dr. Peter Max Gutzwiller, Lenz & Staehelin, Zurich	
Contract law	117
Dr. iur. Roberto Dallafior and lic. iur. Simone Stebler, Nater Dallafior Rechtsanwälte, Zurich	
Corporate law	135
Gudrun Bürgi-Schneider, Bürgi Nägeli, Zurich	
Corporate governance	159
Franz J. Kessler, von der crone Rechtsanwälte AG, Zurich	
Labor market and employment law	171
Dr. Ueli Sommer and Eliane Glaser, Walder Wyss Ltd., Zurich	
Social security and pension system	187
lic. iur. Lukas Tanner, Mercer (Switzerland) SA, Zurich	

Ueli Sommer is a partner of Walder Wyss Ltd., one of the leading law firms in Switzerland. Ueli Sommer heads the law firm's employment group. He has many years of experience in all aspects of employment law with a focus on compensation schemes, option and participation plans. He also advises international companies and private individuals on immigration and choice of domicile issues. He supported many companies and high-level executives in regard to the conclusion and termination of employment agreements and termination arrangements. Born in 1970, Ueli Sommer was educated at Zurich University (lic. iur. 1995, Dr. iur. 1999) and at the University of New South Wales in Sydney (LL.M. 2001). In 2001 and 2002, he worked as a foreign associate for Allens Arthur Robinson in Sydney.

Eliane Glaser is an associate in the employment group of Walder Wyss Ltd. Born in 1981, she was educated at the University of Zurich (lic. iur. 2007) and Siena (Italy). Before joining Walder Wyss Ltd., she gained working experience as a trainee in a major business law firm in Zurich and at the District Court of Meilen in the canton of Zurich.

Labor market and employment law

Dr. Ueli Sommer

Eliane Glaser

Partner

Associate

Walder Wyss Ltd.
Seefeldstrasse 123
8008 Zurich
Switzerland

Tel.: +41 44 498 98 98
Fax: +41 44 498 98 99
E-mail: ueli.sommer@walderwyss.com
www.walderwyss.com

Contents – Labor market and employment law

1.	Labor market	173
1.1	Main characteristics of the Swiss labor market	173
1.2	Switzerland's workforce	173
1.3	Labor costs	174
1.4	Reforms in the Swiss labor market.....	174
2.	Labor law	175
2.1	Legal basis.....	175
2.2	The employment contract.....	175
2.2.1	Conclusion of an individual employment contract	175
2.2.2	Collective employment contracts.....	176
2.2.3	Standard employment contracts	176
2.3	Termination of an employment relationship	176
2.3.1	Ordinary termination.....	176
2.3.2	Notice periods	177
2.3.3	Termination without notice	177
2.3.4	Abusive notice of termination.....	177
2.3.5	Notice of termination at an improper time.....	178
2.4	Obligations upon termination of the employment relationship.....	178
2.5	Salary.....	178
2.6	Working hours	178
2.7	Free time and vacation	179
2.8	Female employees.....	179
2.8.1	Equal rights for men and women	179
2.8.2	Maternity insurance.....	179
3.	Work and residence permits	180
3.1	Introduction	180
3.2	Conditions for the granting of work and residence permits.....	181
3.3	Types of permits	181
3.3.1	Short-term residence permit (Permit L).....	181
3.3.2	Initial residence permit (Permit B)	182
3.3.3	Cross-border commuter permit (Permit G).....	182
3.3.4	Settlement permit (Permit C)	183
3.3.5	Residence without gainful employment.....	183
3.3.6	Residence without a permit.....	184
3.4	Self-employment	184
3.5	Immigration of family members	184
3.6	Looking for jobs in Switzerland	184
3.7	Concluding remarks	185
4.	Bibliography	185

1. Labor market

1.1 Main characteristics of the Swiss labor market

The Swiss labor market is characterized, on the whole, by fairly liberal labor laws, few and flexible regulations as well as outstanding social and economical stability. However, both EU regulations and the worldwide financial crisis led to additional regulations and a pressure to tighten the liberal labor laws.

In addition to a well-trained and highly motivated workforce, low taxation and generally attractive labor costs, a characteristic feature of Switzerland as a business location is the great flexibility of the labor market. A key to the mobility of the Swiss labor market, and thus another secret of Switzerland's success, is the principle of decentralization, which is firmly anchored in the country's political, social and economic organization. The Swiss labor market is typified by local, and in some cases implicit, regulations, which are, by their very nature, adaptable in both period of applicability and content. One reason for this situation is the industrial peace, which is a historical legacy and endures to this day, although labor unions have become more aggressive over the past few years. However, the above is still the foundation for the coexistence and mutual trust which prevails between employees and employers, and for the non explicit and non comprehensive character of many regulations.

Thanks to the flexibility of its labor market, **Switzerland has one of the lowest unemployment rates in the world**. Despite a recent rise, it currently stands at only 3.5% (status October 2010¹), compared with a standardized unemployment rate of 8.6% for the OECD area² and 10.1% for the euro area³. Switzerland's labor-force participation rate currently stands at 79.2%⁴, which tops the international league table and compares with, for example, 65.4% in the USA⁵ and 64.6% in the EU countries⁶.

The **overall productivity** of the Swiss workforce likewise comes out top in international comparisons. On average, Swiss employees work 1,856 hours per annum, the highest in Europe; the comparable figures for Germany and the UK are 1,683 and 1,785 hours, respectively. With a GDP of around 63,536 US dollars per head of the working population (status 2009), Switzerland ranks no. 3 in the world⁷. The reasons for Switzerland's outstanding performance are the **good working morale, a long working week, excellent infrastructure and the almost complete absence of strikes**. The comparatively short statutory notice periods of between one and three months and the lack of strong termination protection further enhances the recruitment flexibility of Swiss companies.

1.2 Switzerland's workforce

According to IMD's **World Competitiveness Yearbook 2010, competitiveness and business climate of Switzerland remain top**, when it is about the efficiency of large corporations (1), small and medium-sized enterprises (2), international experience (3) and the availability of competent senior managers⁸. Switzerland's workforce is also characterized by excellent educational qualifications, a very high level of motivation and

1 Cf. <http://www.seco.admin.ch>.

2 Cf. <http://www.oecd.org>.

3 Cf. <http://epp.eurostat.ec.europa.eu>.

4 Cf. <http://epp.eurostat.ec.europa.eu>.

5 Cf. <http://www.bls.gov>.

6 Cf. <http://epp.eurostat.ec.europa.eu>.

7 Cf. <http://www.imf.org>.

8 Cf. <http://www.imd.org>.

strong company loyalty. Employees generally are dedicated to the objectives of their employer, and therefore productivity as well as work quality is correspondingly high. The relations between employees and management are generally very good, mostly characterized by a **willingness on both sides to settle disputes by negotiation rather than by industrial action**. As a result, strikes are extremely rare in Switzerland. The understanding that the first priority in industrial disputes is to find a settlement within the company was established by the 1937 pact between the employers' associations for the engineering and metalworking industry, on the one hand, and the trade unions of Swiss metalworkers and watchmakers, on the other.

Switzerland's educational system ranks among the best in the world and produces an exceptionally well-qualified and skilled workforce at all levels. According to international research, the Swiss educational system offers students an excellent preparation for coping with the needs of a competitive economy. Swiss universities and institutes of technology are world-renowned for their excellence and high academic standards. As a result of the high-quality educational system and the presence of four official languages (German, French, Italian and Romansh), a large part of the Swiss population is fluent in several languages.

The high quality of the Swiss educational system and the attractive labor market offer a strong incentive to foreign managerial staff and workers to move to Switzerland with their families. In 2009, 28.2% of the working population – a total of 1,251,000 persons – were of foreign nationality. The majority of foreign employees in Switzerland are from European Union member states (67.8%). The highest proportion is from Germany (17.5%), closely followed by Italy (16.8%), then Portugal (13.5%), France (5.6%) and Spain (4.3%)⁹. The high level of Europeans working in Switzerland is also due to the fact that since June 1, 2007, full freedom of movement with the 15 old EU-member states¹⁰ as well as with Cyprus and Malta has been effective.

1.3 Labor costs

The level and structure of salaries and wages reflect the high level of productivity of the service-oriented, high-value-added Swiss economy.

Although salaries seem relatively high, the overall labor costs are much lower than in competing countries. Switzerland therefore continues to be a **very cost-effective business location**. Owing to longer working hours than in other countries and the high motivation of the Swiss workforce, ancillary labor costs remain fairly moderate and comparatively low. For example, the unemployment insurance contribution is only 2%, respectively 2.2% from January 1, 2011, of gross earnings¹¹, compared with 3% in Germany¹² or compared with 6.4% in France¹³. The cost in Switzerland and Germany is split equally between employee and employer, whereas in France 4% is paid by the employer and 2.4% by the employee.

1.4 Reforms in the Swiss labor market

A cornerstone of the success of Swiss labor market policies was the reorientation of employment policy in the 1990s. This was prompted by the rise – dramatic by Swiss standards – in unemployment rates, from 0.5% in 1990 to over 5% in 1997. In view of this trend, a reorientation was indispensable. **The shift from a passive to an active labor market policy** was completed with the revision of the Federal Unemployment Insurance Law (*Arbeitslosenversicherungsgesetz; Loi fédérale sur l'assurance-chômage obligatoire et l'indemnité en cas d'insolvabilité*) in

9 Cf. <http://www.bfs.admin.ch>.

10 Belgium, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Luxemburg, the Netherlands, Austria, Portugal, Sweden, Spain and the United Kingdom.

11 Cf. <http://www.seco.admin.ch>.

12 Cf. <http://www.bmas.de>.

13 Cf. <http://www.cleiss.fr>.

1995. Among the most important innovations was the creation of the Regional Employment Centers at the end of the 1990s. These are specifically responsible for job placement and advice for the unemployed.

Another reason for the success of Swiss labor market policies is that, compared with other European countries, the **entitlement to unemployment benefit** is quite restrictive, which helps to keep the cost of unemployment insurance low. Although unemployment benefits – at 70% to 80% of normal salary but capped at a maximum insured salary of CHF 126,000 – are relatively high compared with other countries, there is a general waiting period before payment starts and they are paid for a maximum period between 260 and 640 days, depending on age of the unemployment and period of insurance premium. Unemployed workers also have to prove that they have actively been searching for work, with a minimum of ten job applications expected every month.

The start of the second transitional phase of the **Bilateral Agreements** on June 1, 2004, marked a further increase in the flexibility and openness of the Swiss labor market. Since then full freedom of movement has been effective with the 15 old EU member states, as well as with Cyprus and Malta since June 1, 2007. The prospect of greater cross-border labor mobility in relation to the remaining EU countries is set to increase the efficiency of the Swiss labor market still further.

2. Labor law

2.1 Legal basis

Swiss labor law draws on three main sources of legislation: the Swiss Code of Obligations (**CO; Obligationenrecht; Code des obligations**), the Federal Labor Act (**Arbeitsgesetz; Loi sur le travail**) and the Federal Act Governing the General Applicability of Collective Labor Agreements (**Bundesgesetz über die Allgemeinverbindlicherklärung von Gesamtarbeitsverträgen; Loi fédérale permettant d'étendre le champ d'application de la convention collective de travail**).

The most important legislation on employment contracts is the Swiss Code of Obligations (articles 319 to 362 CO), which regulates individual employment contracts, special employment contracts like the apprenticeship contract, traveling salesman's contract and the homework contract, collective employment contracts, standard employment contracts and, in part, social security.

The Federal Labor Act contains minimum provisions for maximum weekly working hours, minimum breaks and holidays as well as for security at the workplace and the protection of female employees and minors. The Federal Labor Act applies generally for all public and private corporations except for, at least partially, federal, cantonal and local governments, including public-law institutions.

The Federal Act Governing the General Applicability of Collective Labor Agreements provides that collective employment contracts may be declared applicable to all employers and employees in designated industries provided that certain conditions are met.

2.2 The employment contract

2.2.1 Conclusion of an individual employment contract

Generally, no specific form is required for an employment contract under Swiss law. An employment contract may also be concluded orally or even be deemed concluded if the employer accepts the employee, for a given time, to undertake work whose performance, under the given circumstances, is only to be expected against payment of wages.

The employment contract must be made in writing only where it is legally required for certain forms of contract (e.g. apprenticeship contracts or temporary work contracts) or where it is stipulated in a collective employment contract. **Despite the free form of individual employment contracts in general, numerous individual agreements are only valid in written form** – as a legal safeguard, but also for the protection of the employee. Examples include: noncompetition agreements, agreements on overtime work, entitlement to pro rata commissions, or salary payment in the event of illness or accident.

If the term of the employment contract is not for a fixed period of time, the first month is considered **a probationary period**, unless determined otherwise by agreement or a standard employment contract or collective employment contract. However, the probationary period must not exceed three months.

2.2.2 Collective employment contracts

The collective employment contract is a written agreement concluded between one or more employers or their representatives and the workers' associations (trade unions). It contains provisions on labor relations between employer and employee, and provisions applicable to its parties as to the conclusion, content and termination of individual employment relationships. A collective employment contract must be observed where employee and employer belong to an association or trade union signatory to it, or where its applicability has been otherwise agreed. If it has been declared generally applicable by the competent authority, it is applied to the entire industry concerned, regardless of membership of an association or trade union. The most important collective employment contracts are those applying to the hotel and restaurant trade, and the construction and metal industries.

The mandatory law of the Confederation (**Bundesrecht**) and of the cantons of Switzerland (**kantonales Recht**) has priority over collective employment contracts. Provisions deviating in favor of the employee may, however, be established, if the mandatory law does not provide otherwise.

2.2.3 Standard employment contracts

The standard employment contract, contrary to what its name suggests, is not a contract but an official decree issued by the competent authority. It establishes key provisions as to the conclusion, subject matter and end of specific kinds of employment relationship similar to those contained in collective employment contracts.

The practical significance of standard employment contracts is where it has not yet been possible to conclude collective employment contracts. At present, apart from the farming industry and domestic service, this applies particularly to teaching staff in homes and residential schools, nursing staff and junior doctors.

2.3 Termination of an employment relationship

2.3.1 Ordinary termination

If an employment contract has been entered into for an indefinite term, **either contractual party may give notice of termination** subject to a certain period of notice and observance of the agreed date of termination of employment. Under Swiss law, notice periods must not differ for the employer and the employee; in cases where an agreement states different notice periods for the employer and the employee, the longer period is valid for both parties. The party giving notice is, upon request, obliged to state the reasons for giving notice.

An employment contract may be concluded for a fixed term; therefore it ends on the expiry of the agreed period unless the parties agree upon continuation of the employment contract. In a case where the contract is tacitly continued after the term, it is deemed to have become an indefinite contract, which cannot be terminated prematurely.

2.3.2 Notice periods

During the ***probationary period***, the employment relationship may be terminated at any time with a notice period of seven days.

If the ***employment relationship has lasted less than one year***, and unless otherwise determined by agreement, standard employment contract or collective employment contract, it may be terminated at the end of the month following the date of notice.

In the ***second up to and including the ninth year of service***, the employment relationship may be terminated with a notice period of two months and thereafter with a notice period of three months.

2.3.3 Termination without notice

For valid reasons, both contracting parties, the employer as well as the employee, may at any time terminate the employment relationship ***without notice, i.e. with immediate effect***. A valid reason is considered to be any circumstance under which the terminating party cannot, in good faith, be expected to continue the employment relationship with loyalty and trust. Whether or not a valid reason exists, is a decision to be made largely at the court's discretion.

Immediate dismissal without notice is an extraordinary measure and may therefore be resorted to only under very serious circumstances, namely if the offending act actually destroys the trust between the two parties. A valid reason for immediate dismissal without notice explicitly stated in the Code of Obligations is the impairment of wages because of insolvency of the employer.

2.3.4 Abusive notice of termination

In Switzerland, an employment relationship shall not be terminated for unlawful reasons (so-called "abusive notice of termination"). In such cases, employee and employer have the right to sue the other party for damages.

The ***notice of termination of an employment relationship is considered abusive*** if given, inter alia, for one of the following reasons:

- because of a quality inherent in the personality of the other party (e.g. sex, race, age)
- because the other party exercises a constitutional right (e.g. religion or membership in a political party)
- solely to frustrate formation of claims of the other party or because the other party asserts, in good faith, claims arising out of the employment relationship (e.g. claim for a bonus payment)
- because the other party performs compulsory Swiss military service, civil defense service, or Red Cross service, or a legal duty not voluntarily assumed
- because of the employee's affiliation, or nonaffiliation, to a union, or lack thereof, or because the employee performs work for a union; or
- while the employee is an elected representative of an employee or labor organization, unless the employer proves grounds for notice
- in connection with a mass dismissal without prior consultation with the employees' representative body or, if there is none, the employees.

The party who serves an abusive notice must pay the other party an indemnity; the amount will be determined by the court considering all circumstances, but will not exceed six months of wage of the employee.

2.3.5 Notice of termination at an improper time

Upon termination of the probationary period, a notice of termination at a so-called “improper time” is null and void. However, any notice given prior to the respective period is effective, but the notice period does not run during the time when the giving of notice would be ineffective.

The following four situations are considered “improper time for notice” by the employer:

- during the other party’s performance of compulsory Swiss military service, civil defense service, or Red Cross service and, in case such service lasts more than twelve days, during the four weeks prior to and after the service
- in the case of full- or part-time absence from work due to illness or accident, as long as the employee is not at fault for the illness or accident (in the first year of employment, during 30 days; from the second to the fifth year of employment, during 90 days; and from the sixth year of employment, during 180 days);
- during pregnancy and the 16 weeks following lying-in of an employee
- during the employee’s participation, with the consent of the employer, in a foreign-aid service assignment abroad ordered by the competent federal authority.

“Improper time for notice” by the employee is the period of four weeks prior to and after a supervisor, whose functions the employee is able to perform, or the employer himself is performing compulsory Swiss military service or civil defense service.

2.4 Obligations upon termination of the employment relationship

Upon termination of the employment relationship, all claims arising from it become due. Each party must make restitution for everything received during the period of the employment relationship from the other party, or from a third party for their account.

Upon termination of the employment relationship of an employee of at least fifty years of age and with twenty or more years of service, the employee is entitled to receive severance pay. The amount of the severance pay may be determined by written agreement, standard employment contract or collective employment contract, but it must not be less than an amount equal to the employee’s wages for two months.

2.5 Salary

There are no statutory minimum wages in Switzerland. However, some collective employment contracts stipulate minimum wages for certain sectors, for example the hotel and gastronomy segment. Under Swiss law, employees are entitled to a special level of remuneration for work performed at night, on Sundays and on public holidays. For regular night work, Swiss labor law provides for a compulsory pay increase of 10%.

The employee is only entitled to a special allowance (bonus) on certain occasions such as Christmas or the end of the fiscal year if agreed between the employer and the employee.

2.6 Working hours

Under Swiss law, the maximum weekly working time for white-collar employees such as employees in industrial undertakings, office staff and technical personnel is 45 hours. The upper limit for all other employees is 50 hours per week. Special working hours apply for pregnant women and nursing mothers.

If the performance of overtime becomes necessary, the employee is obliged to work the extra hours as far as he is able and can be expected, in good faith, to do. Under Swiss law, overtime, which is defined as working hours

over and above the agreed or customary working time, must, as a general rule, be remunerated at the rate of 125% of the regular wage or, by agreement with the employer, be offset by equivalent time off. However, the employer and the employee may make different written agreements within the statutory limitations.

2.7 Free time and vacation

A Swiss employer is obliged to give his employees one day off every week, normally Sunday. Different arrangements such as several consecutive days off, or two half days instead of one day off, may be made with the employee's consent.

In Switzerland, annual leave, during which employees receive full payment, is a fundamental right which employees are granted by law. The minimum period for adult employees is four weeks per year and five weeks for employees and apprentices up to and including the age of 20. This minimum period may be extended by contractual agreement. While the employment relation lasts, mandatory vacation time must not be replaced by monetary compensation.

2.8 Female employees

2.8.1 Equal rights for men and women

Since 1981 the Swiss Federal Constitution has stipulated that *“men and women shall have equal rights”* and that they are *“entitled to equal pay for equivalent work”*. However, imbalances remain, especially in terms of fair pay, in Switzerland as well as in other European countries.

In 1996 the Swiss Federal Law on Equality of Women and Men (*Gleichstellungsgesetz; Loi sur l'égalité*) entered into force. This law applies to all areas of working life, prohibiting any direct or indirect discrimination on the basis of sex. A number of measures to combat sexual discrimination are likewise included.

As regards employees' protection, women in Switzerland enjoy the same rights as men. In addition, special provisions apply to pregnant women and nursing mothers.

The Swiss Federal Office for Equality between Women and Men was established in 1988 by the Swiss Federal Council to promote the achievement of equal rights between the sexes in all areas of life and to work towards the elimination of all forms of direct and indirect sexual discrimination.

2.8.2 Maternity insurance

After overcoming several political hurdles, the *Swiss Maternity Insurance Scheme entered into force on July 1, 2005*. Under this scheme, employed and self-employed women who have paid mandatory insurance under the terms of the Old-Age and Survivors Insurance Law (*Bundesgesetz über die berufliche Alters-, Hinterlassenen- und Invalidenvorsorge; Loi fédérale sur la prévoyance professionnelle vieillesse, survivants et invalidité*) for the nine months prior to giving birth and were in paid employment for at least five months will receive 80% of their average wage, up to a maximum of CHF 196 per day¹⁴, for a period of 14 weeks after childbirth. This also applies to women working for cash in the employment of their spouse.

14 Cf. <http://www.swisslife.ch>.

3. Work and residence permits¹⁵

3.1 Introduction

Since the *Bilateral Agreements* between Switzerland and the European Union entered into force on June 1, 2002, Switzerland has had a dual recruitment system. Depending on the applicant's country of origin, i.e. whether the applicant is an *EU/EFTA citizen* or from non-EU/EFTA countries (the "*third-country nationals*"), the requirements for obtaining a work and/or residence permit, and the necessary procedure, are different.

The *Bilateral Agreements* between Switzerland and the European Union include the Agreement on the Free Movement of Persons (*Personenfreizügigkeitsabkommen; Accord sur la libre circulation des personnes*), which has resulted in a significant relaxation of the procedure for obtaining work and/or residence permits for *EU and EFTA citizens*. The Swiss labor market is being opened up to nationals of EU/EFTA countries in stages over a 12-year period. *Full implementation of freedom of movement should be achieved by mid-2014*. The first two-year transition period ended on May 31, 2004. Since June 1, 2004, citizens of EU-15¹⁶/EFTA¹⁷ member states no longer need work permits and since June 1, 2007, they no longer require residence permits to be able to work in Switzerland for up to three months.

The Agreement on the Free Movement of Persons has been extended to the new member states which joined on May 1, 2004 (Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic, Hungary, Malta and Cyprus). The widening of the Agreement was dependant on a *Supplementary Protocol*. Citizens of the new EU member countries (EU-10¹⁸) have found a relaxation of the procedure for obtaining work and/or residence permits on April 1, 2006. However, the liberalization of the labor market for the new EU member is introduced in stages. Entry into force of the Supplementary Protocol has been followed by a transition period until April 30, 2011. Up to the inception of the Supplementary Protocol, citizens of the new EU-8 countries (EU-10 countries except Malta and Cyprus) are subjected to special provisions.

The Agreement on the Free Movement of Persons was concluded for an initial period of seven years. The contracting parties have had until May 31, 2009, at the latest to give official notification of their intention not to continue the Agreement. On February 8, 2009, the people of Switzerland approved the continuation of the Agreement and at the same time the extension of the Agreement to Bulgaria and Romania (EU-2). The additional protocol concerning this extension entered into force on June 1, 2009. The liberalization of the labor market for Bulgaria and Romania, however, is also introduced in stages. The transition period lasts until May 31, 2016, and up until then, citizens of Bulgaria and Romania are also subject to special provisions.

For *third-country nationals*, the entry into force of the Agreement on the Free Movement of Persons resulted in a more restrictive entry policy for specialist and qualified workers. In the specific area of international transfer of managerial personnel within a group of companies or for project-specific activities, for example in the IT field, the granting of work and residence permits is generally straightforward, although justification and documentation may result in a time-consuming application process of up to eight weeks. Despite the stricter conditions of entry for third-country nationals, it is true to say that the Swiss economy not only needs workers from third countries, but is dependent on qualified or specialized professionals from those countries.

15 Cf. <http://www.bfm.admin.ch>.

16 Belgium, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Sweden, Spain and the United Kingdom.

17 Iceland, Liechtenstein and Norway.

18 Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, Czech Republic, Hungary, Malta and Cyprus.

3.2 Conditions for the granting of work and residence permits

Nationals from old EU-15 and EFTA countries as well as from Malta and Cyprus benefit from full freedom of movement: They are allowed to stay and pursue gainful employment in Switzerland for three months without a permit. They merely have to report to the competent authorities. If their gainful employment lasts more than three months, they have to report to the local authorities and apply for a residence permit. In order to obtain a residence permit, the following documents must be presented to the competent authorities: a valid identity card, the employment contract, a copy of the rental contract, a photograph in passport format.

Nationals from EU-8 and from EU-2 are allowed to exercise salaried employment in Switzerland under the following interim provisions: (1) priority of national manpower, (2) control of wage and working conditions, (3) Quotas for permanent and short-term residence permits. These admission restrictions apply until 30 April, 2011, respectively until May 31, 2016, for nationals from Bulgaria and Romania and only on first-time admission. After this date nationals from these countries may settle and work freely – an employment relationship entitles nationals from these countries to a residence permit. The exercise of a self-employment occupation is not subject to these provisions.

Third-country nationals only receive a work and residence permit when the criterion of quota availability is fulfilled. Third-country applicants have to prove that they offer qualified or specialized labor and that no Swiss or EU/EFTA national is willing or able to do the job. The priority status accorded to labor from Switzerland and the EU/EFTA member countries does not apply in the case of executives or key staff of international companies who come to Switzerland as part of a company executive transfer or, in the case of highly qualified specialists, whose presence in Switzerland is vital for the fulfillment of special assignments. Moreover, exceptions are granted in regard to the recruitment priorities in certain sectors, e.g. tourism, healthcare, the arts, domestic service and catering, as long as the required admission criteria can be met.

3.3 Types of permits

Every foreign citizen who pursues gainful employment in Switzerland that lasts longer than three months requires a residence card for foreigners. There are different types of residence card, depending on the purpose of the stay and the duration of the permit.

3.3.1 Short-term residence permit (Permit L)

Short-term residents are foreigners who are resident in Switzerland for a limited period and for a particular purpose, with or without gainful employment.

A short-term residence permit **for EU/EFTA nationals** (L EU/EFTA) is granted when the applicant has a fixed-term employment contract for more than three months and less than 12 months. The period of validity of the short-term permit is identical with the term of the employment contract. The permit can be extended to an overall duration of no more than 364 days and renewed any number of times, without interruption, as long as an employment contract exists. The holder of a short-term residence permit has a right to occupational and geographic mobility, in other words the L EU/EFTA permit authorizes the holder to change his or her job, profession and canton without first asking permission.

Trainees from EU/EFTA States are also in principle granted short-term residence permits in accordance with the agreement on the Free Movement of Persons. Trainees are persons who are aged 18–30, have completed their occupational training and who are willing to undergo some advanced occupational or linguistic training in the context of gainful employment in Switzerland.

EU-15/EFTA nationals and nationals from Cyprus and Malta starting a new job with a Swiss employer, self-employed service providers from an EU/EFTA member state and seconded employees can reside in Switzerland for the purpose of gainful employment for three months of any calendar year without a residence permit.

However, these persons are under an **obligation to register**. Mandatory registration is fulfilled when the appropriate form is submitted to the responsible cantonal labor-market authorities. Several registrations from the same employer in Switzerland can be submitted online to the Federal Office for Migration. The registration procedure is mandatory for all jobs in Switzerland lasting longer than eight days and no more than 90 days. For nationals from EU-8 and EU-2 member states all employment is still subject to a permit.

Third-country nationals can be granted a short-term residence permit for a stay of no more than one year, as long as the maximum quota for the number of third-country nationals has not been reached. Permits issued to foreigners who are gainfully employed for a total of no more than four months within one calendar year are not subject to the quota regulation. The period of validity of the permit is identical with the term of the employment contract. In exceptional cases this permit can be extended to an overall duration of no more than 24 months, provided the holder works for the same employer throughout this time. After a period of residence of 24 months, an application must be made to convert the short-term residence permit into an initial residence permit (Permit B). Third-country nationals in possession of a short-term residence permit are not allowed to change their employer in Switzerland. Changes of canton are subject to permission.

Trainees are eligible for a short-time residence too. The period of validity is limited to one year; in exceptional circumstances, the period of validity may be extended by further six months. Trainees are subject to special rules, which have been laid down in special treaties. Thus they are subject to special quotas. The legal provisions concerning national priority are not applicable to them.

3.3.2 Initial residence permit (Permit B)

Initial residence permits are granted when the period of residence in Switzerland is to be longer than one year.

An initial residence permit (B EU/EFTA) is granted to **EU/EFTA nationals** when the term of the employment contract is one year or more. The initial period of validity of the permit is five years. Additional temporary regulations apply for EU-8 and EU-2 nationals. The residence permit will be renewed for another five years without any further procedures if the foreign national satisfies the relevant requirements. On the occasion of its first renewal, however, the permit can be limited to one year if the holder has been involuntarily unemployed for more than twelve consecutive months. The holder of a B EU/EFTA residence permit has the right to occupational and geographic mobility: therefore changes of job, profession and canton are not subject to permission.

As a rule, the period of validity of the initial residence permit for **third-country nationals** is initially limited to one year. First-time permits for gainful employment may only be issued within the limits of the quotas and in compliance with art. 20 of the Foreigner Act. Once a permit has been granted, it is normally renewed every year unless there are reasons against a renewal, such as criminal offences, dependence on social security or the labor market. A legal entitlement to the renewal of an annual permit is normally renewed as long as its holder is able to draw a daily allowance from unemployment insurance. In such cases, however, the holder is not actually entitled to a renewal of the permit. Third-country nationals in possession of an initial residence permit are not usually permitted to change employer in Switzerland. Any changes of job, profession or canton are subject to permission.

3.3.3 Cross-border commuter permit (Permit G)

Cross-border commuters are foreign nationals who are resident in a foreign **border zone** and gainfully employed in the neighboring border zone in Switzerland. The border zones are those regions which are specified in the cross-border commuter treaties between Switzerland and its neighboring countries.

Cross-border commuters from **EU/EFTA nationals** are granted professional and geographical mobility within all Switzerland's border zones. On June 1, 2007, the border zones were abolished for citizens from EU-17 and the EFTA member states. These persons may live anywhere in the EU/EFTA region and work anywhere in

Switzerland provided they return to their place of residence abroad once a week. The border zones remain in force for citizens from the EU-8 and EU-2 member states. The EU/EFTA cross-border commuter permit is valid for five years, provided there is an employment agreement of unlimited duration or of more than one year's duration. If an employment contract is concluded with a duration of less than a year, the period of validity of the cross-border commuter permit is identical with the duration of this employment contract.

Third-country nationals can obtain a cross-border commuter permit only if they are in possession of a long-term residence permit in one of Switzerland's neighboring countries and have ordinarily resided in the border zone of the neighboring country for at least six months. In principle, the initial permit is granted for a period of one year and is valid only for the border zone of the canton issuing it. The cross-border commuter must have the authorization of the labor-market authorities if he or she wishes to change place of work or profession.

3.3.4 Settlement permit (Permit C)

Settled foreign nationals are foreign nationals who have been granted a settlement permit after five or ten years' continuous employment in Switzerland. **Citizens of EU-15 and EFTA countries** are normally granted the settlement permit after five years' continuous residence in Switzerland. For Cyprus, Malta and the EU-8 member states, Romania and Bulgaria there are no such treaties yet. **Third-country nationals** may be granted the settlement permit after ten years' continuous residence. There is a special arrangement for citizens of the USA and Canada: They are granted the settlement permit already after a five-year continuous period of residence in Switzerland. Training periods do not count towards the five- or ten-year residence periods.

The settlement permit is indefinite and must have no conditions attached. However, the C permit, granted to settled residents, is valid for only five years. The purpose of this five-year period is simply to enable the Swiss authorities to check whether the permit holder is still resident in Switzerland. Foreigners with settlement permits are on an equal footing with Swiss citizens in terms of economic and employment rights, provided Swiss citizenship is not a prerequisite for the activity in question.

3.3.5 Residence without gainful employment

In contrast to residence for the purpose of gainful employment, the Agreement on the Free Movement of Persons has no provisions for a transitional arrangement for non-employed **EU/EFTA nationals**. The provisions of the Agreement on the Free Movement of Persons correspond to the regulation in force in the European Union. In contrast to the admission to employment, no transitional provisions apply for EU-8 and EU-2 nationals. EU/EFTA nationals who are not economically active have a right to a residence permit in Switzerland, without age limits, if they can provide the following:

- proof of sufficient financial means to cover the cost of living in Switzerland; and
- proof of adequate health and accident insurance.

For third-country nationals the situation is different. A lower age limit of 55 applies for the granting of a residence permit without gainful employment – which is why this is also known as a **“pensioner permit”**. Pensioners may be granted residence permits if they fulfill the following criteria:

- they are over 55 years of age;
- they have close relations to Switzerland;
- they are not gainfully employed in Switzerland or abroad;
- they make Switzerland their main residence; and
- they have the necessary financial means.

Third-country nationals who do not satisfy all five of the above criteria may be granted a residence permit when compelling reasons exist. Such reasons may be of a cultural, economic or fiscal nature.

3.3.6 Residence without a permit

EU/EFTA and third-country nationals who have entered Switzerland in compliance with the relevant regulation as **tourists** or **visitors** and are not taking up any form of employment require no residence permit if the duration of their stay does not exceed three months. Their stay must not exceed a total of three months within a period of six months. Furthermore, citizens of both EU/EFTA and third countries may engage in gainful employment in Switzerland for eight days in any calendar year without a permit. However, it should be noted that, for citizens of certain countries, an entry visa is necessary even for short stays in Switzerland.

3.4 Self-employment

Since June 1, 2007, **EU/EFTA nationals** who enter Switzerland to take up self-employment obtain a first-time residence permit with a period of validity of five years, provided they can prove self-employment already at the time of the application. They are no longer subjected to the so called “settling-in period.” An exception, however, applies to nationals from Bulgaria and Rumania. They are initially granted a residence permit with a period of validity of maximal six month. During this period, proof of gainful self-employment activity must be provided. If this proof is forthcoming a residence permit with a period of validity of five years is granted.

It is in Switzerland’s interest that foreign nationals come to the country to establish businesses. Applications for work and residence permits from self-employed **third-country nationals** are assessed on the basis of whether the relevant economic sector is already oversupplied and whether the new business will create jobs for Swiss citizens. It is in any case advisable to discuss such applications beforehand with the responsible cantonal authorities.

3.5 Immigration of family members

All foreign nationals in possession of a residence permit with a period of validity of more than four months are allowed to bring their dependents with them. The period of residence permitted to family members is identical with that of the holder of the residence permit.

The circle of family members authorized to reside in Switzerland is wider for **permit holders from EU/EFTA countries** than it is for third-country nationals. In the case of EU/EFTA nationals who hold a work and/or residence permit, spouses, children and grandchildren less than 21 years of age, as well as parents and grandparents may take up residence in Switzerland. The regulations of immigration of family members apply for all EU members. There are no additional temporary regulations for EU-8 and EU-2 nationals.

On the other hand, **third-country nationals** whose family members are also nationals of third countries may enter Switzerland only with spouses and children under 18 years of age. If the dependents of third-country nationals hold citizenship of a member country of the EU or EFTA, the right of residence is subject to the provisions of the Agreement on the Free Movement of Persons.

3.6 Looking for jobs in Switzerland

Job vacancies in Switzerland are advertised in the press or in specialist publications. In addition, many companies publicize vacancies on their websites. Personnel recruitment agencies are often engaged to fill vacancies in managerial positions.

EU/EFTA citizens are recommended to consult the EURES website (see www.eures.ch), which contains valuable information for EU/EFTA citizens looking for work in Switzerland.

3.7 Concluding remarks

Applications for work and residence permits should be submitted to the responsible authorities in the canton where the employment is to be located. Applications from EU/EFTA citizens should be addressed to the cantonal migration offices, and applications from third-country nationals to the relevant cantonal labor office. The scope of the application forms and the length of the procedure vary considerably depending on the applicant's nationality. Many cantons issue the necessary permits for EU/EFTA citizens within a few days. Depending on the canton, the procedure for dealing with applications from third-country nationals may take between three weeks and three months.

4. Bibliography

- REHBINDER MANFRED / PORTMANN WOLFGANG, *Basler Kommentar zum Schweizerischen Privatrecht, Obligationenrecht I*, 4th edition, Art. 319 ff., Helbing & Lichtenhahn, Basel/Genf/München 2007.
- REHBINDER MANFRED, *Schweizerisches Arbeitsrecht*; 15th edition, Stämpfli Verlag, Bern 2002.
- STÖCKLI JEAN-FRITZ, *Berner Kommentar zum schweizerischen Privatrecht, Band IV, 2. Abteilung, 2. Teilband*, Art. 319ff., Stämpfli Verlag, Bern 1999.
- STAEHELIN ADRIAN / VISCHER FRANK, *Zürcher Kommentar zum Schweizerischen Privatrecht, Teilband V2c*, Art. 319ff., Schulthess Verlag, Zürich 1996.
- STREIFF ULLIN / VON KAENEL ADRIAN, *Kommentar zum Arbeitsrecht*, 6th edition, Schulthess Verlag, Zürich 2006.
- Swiss–American Chamber of Commerce: *Swiss Work Permit Regulations*, 2002.
- VISCHER FRANK, *Der Arbeitsvertrag*, 3rd edition, Helbing & Lichtenhahn, Basel 2005.
- GEISER THOMAS / VON KAENEL ADRIAN / WYLER RÉMY, *Arbeitsgesetz: Bundesgesetz vom 13. März 1964*, Stämpfli Verlag, Bern 2005.

Walder Wyss Ltd.

Seefeldstrasse 123
 P.O. Box 1236
 8034 Zurich
 Tel.: +41 44 498 98 98
 Fax: +41 44 498 98 99
 reception@walderwyss.com
 www.walderwyss.com

Wenger & Vieli

Dufourstrasse 56
 P.O. Box 1285
 8034 Zurich
 Tel.: +41 58 958 58 58
 Fax: +41 58 958 59 59
 www.wengerlaw.ch

Tax advisors**Alva Tax and Finance AG**

Fraumünsterstrasse 11
 8001 Zurich
 Tel.: +41 44 210 30 00
 Fax: +41 44 210 30 01
 Contact person: Dr. Sonja Sidler
 E-mail: info@alvaservices.com
 www.alvaservices.com

Alva Tax and Finance AG is your boutique for international tax and financial consulting services. Alva Tax and Finance AG creates material added value for you in the area of tax planning and tax optimization. We provide integrated services, considering and optimizing actively relevant financial and corporate transactions for companies and internationally based individuals. Alva is your independent, personal advisor and coach for complex international tax and financial consulting services. We apply for tax rulings with the competent tax authorities in Switzerland and represent or support you in tax matters.

Henley & Partners AG

Klosbachstrasse 110
 8001 Zurich
 Tel.: +41 44 266 22 22
 Fax: +41 44 266 22 23
 Contact person: Dr. Peter Krummenacher
 E-mail: peter.krummenacher@henleyglobal.com
 www.henleyglobal.com

Henley & Partners Switzerland is part of a group of companies with worldwide operations focusing on international tax and legal consulting as well as fiduciary services. The Swiss subsidiary specializes in advising discerning international clients in the sectors of tax law, real estate, domicile questions and choice of international location for companies. The consulting service for private clients covers the acquisition and holding of real estate, residence, citizenship, international succession law, inheritance and tax planning.

KPMG Fides

Badenerstrasse 172
 8026 Zurich
 Tel.: +41 44 249 31 50
 Fax: +41 44 249 29 89
 Contact person: Mr. Jörg Walker
 E-mail: joergwalker@kpmg.com
 www.kpmg.ch/tax

Chemin De-Normandie 14
 1211 Geneva 12
 Tel.: +41 22 704 17 63
 Fax: +41 22 347 73 13
 Contact person: Mr. Thierry Sauvaire
 E-mail: tsauvaire@kpmg.com

Landis + Gyr-Strasse 1
 6304 Zug
 Tel.: +41 41 727 74 74
 Fax: +41 41 727 74 01
 Contact person: Dr. Frank Lampert
 E-mail: flampert@kpmg.com

KPMG with its global network of professional services firms is one of the leading providers of audit, tax and advisory services, employing