

PESTALOZZI LACHENAL PATRY
ATTORNEYS AT LAW

CH-8001 ZURICH - LOEWENSTRASSE 1
TEL. +41 1 217 91 11 - FAX +41 1 217 92 17 - zrh@plplaw.ch - www.plplaw.ch

Lex Mundi

**GUIDE TO DOING BUSINESS IN
SWITZERLAND**

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I. THE COUNTRY AT A GLANCE

The major official languages of Switzerland are: German, French and Italian. Romansh (a Raeto-Roman dialect spoken in parts of the Grisons in the southeast) was designated a "semi-official" language in 1996. About 65 percent of the population speaks German dialects (*Schwyzerdütsch*), around 20 percent of the population speaks French (predominantly in the southwest and west) and 8 percent of the population speaks Italian (spoken in the region of Ticino). Most people speak or understand at least one (other) official language in addition to their own. Knowledge of English is common. In international business relations English is becoming the official language.

The Swiss currency unit is the Swiss franc (*franc/Franken*) which is divided into 100 cents (*centimes/Rappen*). The symbol most commonly used is Fr. or SFr., but more recently CHF. The Swiss franc is freely convertible into any other currency at the prevailing market rate. The exchange rate in 2004 was approximately CHF 1.25 to the US dollar and CHF 1.5 to the Euro.

Switzerland is a small country. With its 41,285 square kilometers (some 16,000 square miles) it is about the size of the Netherlands and about half the size of Austria. Approximately one fourth of its surface is covered by lakes, glaciers and mountains. The climate is temperate; the climate north of the Alps is influenced largely by the conditions over the Atlantic Ocean and the North Sea. The average temperature is 9° C (48.2 F). South of the Alps some influence from the Mediterranean Sea can be felt, and the average temperature is 12° C (69.8 F).

Switzerland lays in the heart of Europe, bordering Germany to the north, France to the west, Italy to the south and Austria and the Principality of Liechtenstein to the east. Switzerland is comprised of 26 cantons and half-cantons. The country's capital is the city of Berne.

Due to its geographic location, the German-speaking, French and Italian cultures meet in Switzerland. The diversity of cultures, languages, religions and the large number of foreign residents, especially in the financial centers of Zurich and Geneva, usually serve as an incentive for foreign companies and international organizations to establish a domicile in Switzerland.

About 45 percent of Switzerland's population is of Roman Catholic denomination and around 40 percent are Protestant.

The public transportation between and within the major towns in Switzerland is excellent. The more important cities can be reached with trains leaving every hour or even half hour. Switzerland has three international airports in Zurich, Geneva and Basle. Smaller regional airports close to Berne, Lugano, and St. Gallen offer further flight connections. Small airports in St. Moritz-Samedan and Sion offer seasonal business connections.

"Swisscom", with the government as its major shareholder, used to be the sole provider of telecommunication services in Switzerland. Following a liberalization in 1998, several new players have entered into the telecommunication market. Swisscom's virtual monopoly over

the subscriber connection will also fall shortly. The mobile telephone coverage in Switzerland is high, the largest provider's network covering close to 100 percent of the inhabited area.

The electricity and gas providers currently enjoy a virtual monopoly, as consumers cannot freely choose their suppliers. The electrical energy market is in the process of deregulation, however, and in approximately five years consumers will be able to make such a choice.

II. GENERAL CONSIDERATIONS

Investment Policies

The Swiss economic policy is based on the principle of free trade and industry guaranteed by the Federal Constitution, with low import duties and only a few import quotas, which are mainly restricted to the heavily regulated agricultural sector.

The average inflation rate has traditionally been low, usually below 2 percent. In 2002 and 2003, the average inflation rate amounted to approximately 0.5 percent.

Switzerland has virtually no natural resources and only a limited surface area. It has therefore been forced to build its wealth on foreign trade. Compared to other countries, Switzerland maintains a very high export rate in terms of percentage of its gross domestic product. Due to its relatively small domestic market – with a total population of approximately 7.5 million – Swiss manufacturers depend on foreign markets in order to make investments in research and development worthwhile.

Although the services sector (e.g. tourism, banks and insurance) is the most significant, the industrial sector, which largely manufactures high-quality products and is characterized by specialized small and medium-sized companies, remains an important pillar of the Swiss economy.

Diplomatic Relations

Swiss neutrality was recognized by the Congress of Vienna in 1815. Since then Switzerland has pursued a policy of armed neutrality, in combination with its readiness and willingness to co-operate with all nations.

Although Switzerland only became a member of the UN on September 10, 2002, it maintained strong ties, not least as a financial contributor to the United Nations since the founding of the organization. With the UN European headquarters in Geneva, Switzerland is the second most important UN host country after New York.

Switzerland maintains diplomatic relations with countries from all around the world, and most countries are represented in Switzerland by having either an embassy or a consulate in Berne.

Government

General

Switzerland (the Swiss Confederation) celebrated its seventh centennial in 1991. In 1291, a relatively loose confederation of small cantons was established as the "Everlasting League". In time it grew in size and, in 1848, was transformed into a federal state composed of twenty-six cantons and half-cantons in which there are more than 3000 communities. Each canton has its own constitution and laws. The Federal Constitution, enacted 1848 and revised in 1874 and 1999¹, was influenced by the American Constitution. It assigns specific functions, such as foreign relations, to the Confederation and leaves the cantons sovereign in other respects. The Constitution embodies the principles of freedom of trade and industry, religion, press, petition and association, the right to private property, as well as Switzerland's unique institution of direct democracy.

The people elect the Federal Parliament every four years and exercise power through referendums and initiatives. The Federal Parliament consists of two chambers, the National Council (*Conseil national/Nationalrat*) modeled after the US House of Representatives, and the Council of States (*Conseil des Etats/Ständerat*) modeled after the US Senate. The national council consists of 200 representatives of the people, and the council of states consists of two representatives from every canton (but only one representative from each half-canton).

The Federal Council (*Conseil fédéral/Bundesrat*) is the highest executive body, consisting of seven members. The members represent the four leading political parties. They are elected by the National Council and the Council of States in a joint session and are consensus candidates acceptable to most sides. Each Federal Councilor heads a ministerial department. The Swiss presidency, which mainly bestows representational duties and no special powers or privileges, rotates each year among the seven. The president continues to administer his or her own department. The Federal Council's collegial system is probably unique in the world and contributes to Switzerland's political stability.

Judicial System

While substantive law is mostly federal, civil procedure law is mostly cantonal. Each canton and half-canton has its own code of civil procedure. Although the organization of the courts and the rules of civil procedure vary from one canton to another, some basic rules of civil procedure are applicable in all cantons.

As a rule, each canton's procedural code provides for two court levels, the courts of first instance and the courts of appeal. The courts of appeal may review questions of law and fact. Most cantonal codes of civil procedure also provide for a court of cassation, which can cancel judgments issued by lower courts based on the violation of procedural principles. Some civil procedure laws exclude certain matters from the general jurisdiction and provide special

¹ *Bundesverfassung der Schweizerischen Eidgenossenschaft vom 18. April 1999 (BV) / Constitution fédérale de la Confédération suisse du 18 avril 1999 (Cst.)*, SR/RS 101.

courts for commercial, lease and labor conflicts. First instance court judges are often laymen without any juridical background. Petty cases and some specific cases are often heard and decided by a single judge.

The highest court of Switzerland is the Federal Court (*Tribunal fédéral/Bundesgericht*). The main location is in Lausanne and the primary function is to provide for a uniform application of federal law throughout the country. A Federal insurance court (*Tribunal fédéral des assurances/Eidgenössisches Versicherungsgericht*), located in Lucerne, has appellate jurisdiction for certain disputes involving social security and insurance matters. In April 2004, the new Federal criminal court (*Tribunal pénal fédéral/Bundesstrafgericht*), located in Bellinzona, took up its functions as the federal court of first instance and the court of appeal in certain criminal matters. In 2007/2008 the Federal criminal system will be completed by the addition of a Federal administrative court (*Tribunal administratif fédéral/Bundesverwaltungsgericht*) with seat in St. Gallen.

The members of the Federal courts are elected in a joint session of the National Council and the Council of States. Other judges are elected.

The election of judges is a political issue. Public elections (judges of trial courts) and parliamentary elections (judges of cantonal appellate courts) determine which of the candidates put forward by the political parties will become judges. There are strict rules concerning the impartiality of judges, and, in general, a judge may be rejected if circumstances indicate that he/she could be biased in any way. The judicial system is generally perceived to be impartial.

Jurisdiction/Choice of Law

Contracts that are international in nature involve questions as to the competent court to settle a dispute and the applicable law.

To the extent not regulated by the Lugano Convention² of September 16, 1988, which became effective in Switzerland as of January 1, 1992 (for instance, where an involved party is domiciled or has its corporate headquarters in a non-member country such as the United States) or other bilateral treaties, the Swiss Federal Private International Law (PIL Statute)³, which became effective January 1, 1989, regulates issues of international jurisdiction, private international law and the enforcement of foreign judicial decisions in Switzerland. The PIL Statute also contains rules pertaining to international arbitration and bankruptcy.

In principle, the Lugano Convention and the PIL Statute allow parties to make an express choice of jurisdiction for an existing or future dispute arising from a specific legal relationship, provided the agreement conferring jurisdiction meets certain formal requirements (e.g.

² The Lugano Convention corresponds to the 1968 Brussels Convention, as amended, between the EU member states on jurisdiction and enforcement of judgments in civil and commercial matters, now replaced by EC Council Regulation 44/2001.

³ *Bundesgesetz vom 18. Dezember 1987 über das Internationale Privatrecht (IPRG) / Loi fédérale du 18 décembre 1987 sur le droit international privé (LDIP)*, SR/RS 291.

an agreement must be in writing or evidenced in writing). Occasionally, the choice of jurisdiction may be restricted or excluded (e.g. the place of jurisdiction for disputes arising out of consumer contracts in a non-business context must be the Swiss courts at the consumer's domicile or place of residence).

The Lugano Convention and the PIL Statute also specify a general place of jurisdiction – the defendant's domicile – as well as exceptions to the general rule, wherein special places of jurisdiction are provided (e.g. disputes involving corporate law are subject to the jurisdiction of Swiss courts at the domicile of the relevant company).

In private international law, parties are largely free to choose the applicable law. The choice of applicable law (governed by the chosen law) must be explicit or clearly evident by means of the provisions of the agreement or the circumstances. Given an absence of a permissible choice of law by the parties, the PIL Statute contains specific rules to determine the applicable law for a variety of circumstances. For example, the Convention of the United Nations on Contracts for the International Sale of Goods of 1955 (CISG) applies between parties of states contracting for the purchase of moveable goods. However, the CISG does not apply to sales contracts for goods purchased by consumers for family or personal use.

Recognition and Enforcement of Foreign Judicial Decisions

Foreign judgments in civil and commercial matters are recognized and enforced in Switzerland in accordance with the Lugano Convention, bilateral international treaties, or based on the provisions of the PIL Statute.

According to the general policy to grant recognition to foreign judicial decisions, a judicial decision is recognized in Switzerland if the foreign court rendering the decision has jurisdiction, the decision has become final (i.e., no ordinary judicial remedy may be brought against the decision) and no extraordinary grounds for non-recognition exist.

Under the PIL Statute, a judicial decision will not be recognized if such recognition were to violate Swiss public policy, or if a party provides evidence that (i) it has not been properly served, (ii) the judgment was rendered in violation of essential Swiss procedural law principles (e.g. the right of a party to be heard) or (iii) legal proceedings between the same parties with respect to the same dispute had already been initiated or decided. The grounds for non-recognition under the Lugano Convention are similar.

A judgment recognized under Swiss law is declared enforceable upon application by the party who benefits from such enforcement.

Arbitration

The PIL Statute also governs international arbitration. It distinguishes between international and domestic arbitration (between parties registered or domiciled in Switzerland) governed by the inter-cantonal Arbitration Convention of 1969 (Concordat). The PIL Statute is applicable provided the arbitral tribunal is based in Switzerland and at least one party maintained

neither its domicile nor its habitual residence in Switzerland at the time the arbitration agreement was concluded. Any dispute involving a financial interest, whether arising from private or public law, may be arbitrated, provided the submission of a dispute to arbitration is based on a written agreement or evidenced in writing between the parties.

Applicable rules for arbitration can be found in the ICC Rules of Arbitration. Furthermore, a number of Swiss chambers of commerce offer services and arbitration rules for international and domestic arbitration. In 2004, the chambers of commerce of Basel, Berne, Geneva, Lausanne, Lugano and Zurich have adopted the "Swiss Rules of International Arbitration", which replace the formerly different rules of international arbitration of these Chambers⁴. . . Frequently, an ad hoc arbitration panel consisting of three arbitrators is agreed upon. In this situation each party has the right to choose one arbitrator, and these two arbitrators elect the chairman.

An arbitral award may only be set aside upon action for annulment for the following reasons:

- the sole arbitrator was not appointed properly or the arbitral tribunal was not constituted properly;
- the arbitral tribunal wrongly accepted or declined jurisdiction;
- the arbitral tribunal either did not decide a claim or went beyond the claims submitted to it;
- if the principle of equal treatment or the right to be heard in adversary proceedings was not observed; or
- the arbitral award is contrary to public policy.

Parties to an international arbitration may explicitly exclude any action for annulment of an arbitral award before Swiss courts in the arbitration agreement or in a subsequent agreement, provided they are neither domiciled nor have a business establishment in Switzerland.

Recognition and Enforcement of Arbitral Awards

The PIL Statute governs the recognition and enforcement of final arbitral awards rendered in Switzerland. The party requesting enforceability may file a copy of the award with the state court at the seat of the arbitral tribunal, which, upon request, will certify the enforceability of the arbitral award. Alternatively, the party may request the arbitral tribunal to certify that the award was rendered in accordance with the provisions of the PIL Statute. The New York Convention of June 10, 1958, is applicable by analogy, if both parties waive their rights to demand the annulment and if the award is to be enforced in Switzerland.

The actual enforcement of monetary claims in Switzerland is governed by the Federal Statute of Debt Collection and Bankruptcy⁵, and awards for non-monetary claims must be submitted to the competent cantonal court or authority which has jurisdiction to order their execution.

⁴ <http://www.swissarbitration.ch/index.html>.

⁵ *Bundesgesetz vom 11. April 1889 über Schuldbetreibung und Konkurs (SchKG) / Loi fédérale du 11 avril 1889 sur la poursuite pour dettes et la faillite (LP)*, SR/RS 281.1.

The New York Convention governs the recognition and enforcement of foreign arbitral awards in Switzerland. The party requesting enforceability must submit the duly authenticated original arbitral agreement and arbitral award (or a duly certified copy) which, if necessary, must be translated into an official language of the canton (duly certified) in which enforcement is sought. The relevant procedural rules for the actual enforcement are similar to those for the enforcement of monetary and non-monetary judgments.

Legislative System

Under the Federal Constitution, the power to enact laws is shared by the Swiss Confederation and the twenty-six cantons.

The Federal Parliament formally enacts Swiss federal laws. These are subject to an optional referendum: a law may be subject to a popular vote if a petition with a sufficient number of signatures (i.e., signed by 50,000 individuals) is presented. A simple majority of the vote is sufficient to pass the referendum.

A public vote is compulsory for amendments to the Federal Constitution; constitutional amendments are ratified by a majority of both the Swiss population and the cantons. Occasionally, an amendment may be approved by a majority of voters but rejected by a majority of the cantons.

A minimum of one hundred thousand individuals are required to pass a petition, by means of a popular initiative (*initiative populaire/Volksinitiative*), that a proposal to delete or change a provision in the Federal Constitution, or to insert a new one, be presented to the Swiss people and the cantons. Such initiatives often prompt a counter-proposal by the Federal Parliament which is more likely to be accepted.

Under the Federal Constitution, the cantons are given lawmaking competence, unless a specific provision confers this power to the Swiss Confederation. Areas of federal control include matters of national interest such as defense and foreign affairs, fiscal policies, and rail and postal services. Even if the Swiss Confederation is empowered to enact a law, it often restricts itself to the general principles and leaves it to the discretion of the cantons to pass detailed regulations for implementation. Swiss cantonal law is enacted at the cantonal, inter-cantonal, or community level.

Swiss law is primarily statutory law. Constitutional provisions take precedence over ordinary statutes and administrative regulations. Such statutory law can be found in the federal and cantonal corpus juris.

Decisions of a court are not binding on other courts. Although interpretations of the law by the Swiss Federal Court and by cantonal appellate courts are generally adhered to, intentional deviation from case law is not infrequent and sometimes this prompts higher courts to revise their decisions.

The Swiss Confederation has the exclusive power to enact legislation in the area of private

law. Private law primarily comprises civil law and the law of obligations. Civil law, which encompasses the law of persons (natural and juridical), family law (including husband-wife and parent-child relationships), and estate and property law (moveable and immoveable property), was codified at the federal level in the Swiss Civil Code⁶ in 1907. The law of obligations covers contract law, unjust enrichment (quasi contracts), torts, partnerships, corporations and negotiable instruments. It was codified in the Swiss Code of Obligations⁷ in 1881, passed in 1911, and materially amended in 1936. These laws are issued in German, French and Italian, but unofficial English translations are available. The Swiss Confederation, the cantons, or the communities may enact laws affecting the public sector. An important part of the public sector law (besides taxation) is the law organizing the various courts and establishing the rules of legal procedure.

Environmental Considerations

The high density of population has led to a sharpened environmental thinking in Switzerland. Ever since the seventies, the Swiss government and population have included the topic of environmental protection among the most important political tasks. An environmental protection article as well as other articles regarding the protection of the environment was therefore adopted into the Swiss Federal Constitution. A number of related laws and ordinances regarding environmental protection have also been added to Swiss law. The effectiveness of these measures is quite impressive. Comparative studies confirm that the environmental quality in Switzerland is on an above average level compared to other European countries.

The following basic principles are predominant in Swiss environmental law and reflect the general attitude of the government and the public toward environmental protection law:

- *Precautionary Principle*

In terms of prevention, the aim is to detect and avoid future detrimental effects on the environment before they become effective. For example, to effectively control the environmental compatibility of new technologies, construction projects, etc., permits must be obtained, which are only issued if the project is compatible with environmental laws.

- *Principle of Sustainability*

The guiding principle of sustainable development is to pace the rate of development so that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The Swiss Federal Constitution refers to the principle of sustainability several times. Although this principle is not directly enforceable, it is all the same important for the interpretation of Swiss environmental law.

⁶ *Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907 (ZGB) / Code civil suisse du 10 décembre 1907 (CC)*, SR/RS 210.

⁷ *Bundesgesetz vom 30. März 1911 betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht) (OR) / Loi fédérale du 30 mars 1911 complétant le code civil suisse (Livre cinquième: Droit des obligations) (CO)*, SR/RS 220.

- *Polluter Pays Principle*

This principle requires that those who cause pollution must bear the expense of the subsequent clean up. If the authorities adopt measures to curb or mitigate the consequences of any particular pollution, the associated expense must be borne by the individual or company which prompted the authorities to intervene.

- *Principle of Cooperation*

The cooperation between authorities and industry is often more effective than bans on the part of the state. Accordingly, it is possible to conclude agreements between authorities and the relevant branches of industry. Regulations may thus benefit from the technological know-how and experience of the industry, and the general acceptance of any such regulations is enhanced.

- *Principle of Integral View*

Detrimental effects on the environment must not be regarded in an isolated manner but rather be assessed from an integral point of view. Where one isolated undertaking might only have a limited impact on the environment, in conjunction with the environmental effects of other undertakings the established threshold may be exceeded.

The above principles appear in the statutes on environmental protection; the most important of which are:

- *Environmental Protection Statute*⁸: statute regarding the impact of industrial and human activities on the environment. The environmental protection statute focuses on air pollution, excessive noise, vibrations, substances which may contaminate the soil, organisms dangerous to the environment and regulations for waste disposal. Furthermore, the environmental protection statute is completed by several ordinances, which regulate the details in the different areas of environmental protection:

- ordinance regarding the control of air pollution
- ordinance regarding noise protection
- ordinance regarding non-ionizing radiation
- technical ordinance regarding waste
- ordinance regarding materials dangerous to the environment
- ordinance regarding organisms dangerous to the environment
- ordinance regarding contamination of the soil
- ordinance regarding environmental impact studies
- ordinance regarding disaster protection

⁸ *Bundesgesetz vom 7. Oktober 1983 über den Umweltschutz (Umweltschutzgesetz, USG)/ Loi fédérale du 7 octobre 1983 sur la protection de l'environnement (Loi sur la protection de l'environnement, LPE), SR/RS 814.01.*

- *Water Pollution Statute*⁹: statute aimed at limiting water pollution, furthering the health of humans, animals and plants, and securing a sufficient supply of water for drinking and irrigation. Everybody is required to apply the care necessary under the circumstances to avoid pollution of surface and ground water. Anyone who fails to act with the required care and causes damages is liable.

- *Zoning Law*: as construction has a substantial impact on the environment, zoning and environmental laws are closely interrelated. The zoning law thus contains several provisions regarding environmental protection. Zoning law ensures the coexistence of commercial and residential areas with natural and agricultural zones.

The above enumeration of environmental regulations is not exhaustive. Over 50 different primary environmental regulations are in force in Switzerland. They provide an above average level of environmental protection and ensure a high quality of life in Switzerland.

Intellectual Property

Trademarks

The Swiss Federal Trademark Statute¹⁰ provides for the protection of trademarks for goods and services. The protection is dependent on the registration with the Federal Institute of Intellectual Property (FIIP). The right to prevent others from using the same or similar trademarks is based on the date of the first application, as opposed to the first use. The registration of trademarks may be applied for by anybody, whether Swiss or foreign. Foreign applicants can apply through a representative residing in Switzerland. Trademark registrations are unavailable for (i) symbols that belong to the public domain, except where they have become accepted as trademarks for goods or services for which they are claimed, (ii) shapes that constitute the nature of goods themselves or shapes of goods or their packaging that are technically necessary, (iii) misleading symbols, (iv) symbols which infringe upon public policy, morality or applicable law. The protection for registered trademarks lasts for 10 years from the date of application, but can subsequently be extended indefinitely for periods of ten years each.

Switzerland is a party to the Madrid Agreement for International Registration of Trademarks (Stockholm 1967) and its Protocol (Madrid 1989), the Treaty of Nice on International Classification of Goods and Services (Geneva 1977, amended 1979), the Paris Convention for Protection of Industrial Property (Stockholm Revision 1967), the Trademark Law Treaty (Geneva 1994), the Madrid Convention for the Prohibition of False Designations of Origin on Goods (Stockholm Revision 1967) and to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS 1994).

⁹ *Bundesgesetz vom 24. Januar 1991 über den Schutz der Gewässer (Gewässerschutzgesetz, GSchG) / Loi fédérale du 24 janvier 1991 sur la protection des eaux (LEaux)*, SR/RS 814.20.

¹⁰ *Bundesgesetz vom 28. August 1992 über den Schutz von Marken und Herkunftsangaben (Markenschutzgesetz, MSchG) / Loi fédérale du 28 août 1992 sur la protection des marques et des indications de provenance (Loi sur la protection des marques, LPM)*, SR/RS 232.11.

Copyright

The Swiss Federal Copyright Statute¹¹ protects literary and artistic works, including (but not limited to) written works of any kind or purpose, musical works, acoustical works, works of art (paintings, sculptures, graphical works), scientific and technical works such as drawings, maps, models, architectural works, works of applied art, visual and audiovisual works, choreographic works, computer programs and further adaptations (including translations) and compilations of works. Neighboring rights of performers, producers of sound recordings and films and broadcasting organizations are also protected. Such rights encompass the exclusive right to communicate to the public, retransmit, broadcast, copy and issue copies of performances or to record the broadcasts and offer the recordings for sale.

Published works may be used and copied privately for teaching and for internal use in public administration and in private businesses, with the notable exception of computer programs for which only backup copies are permitted. Copyrights may be assigned wholly or partly and are transferred to heirs. Related moral rights always remain with the author, who may prevent a distortion of the work. Copyright protection lasts for 70 years after the author's death. Protection of neighboring rights lasts for 50 years from the end of the calendar year in which the performance took place, the recording or film was made or the broadcast was initially aired. The protection for computer programs lasts 50 years. Computer program protection is granted automatically by law without registration. A partial revision of the Swiss Copyright Statute is currently under public consideration.

Switzerland is a party to the Revised Berne Convention (Paris Revision 1971), the Universal Copyright Convention (Paris Revision 1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome 1961), the 1974 Brussels Convention for the Distribution of Program-Carrying Signals transmitted by Satellite and to the Geneva Convention for the Protection of Producers of Phonograms against unauthorized Duplications of Phonograms of 1971. As a member of the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO), Switzerland has adopted the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (both Geneva, 1996).

Patents

Inventions which are considered novel based on the "state of the art" and which may be used for industrial purposes can be protected under the Swiss Federal Patent Statute.¹² Patent applications must be filed with the Swiss Federal Institute of Intellectual Property (FIIP). The application must include the application form, an accurate description of the invention and a

¹¹ *Bundesgesetz vom 9. Oktober 1992 über das Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz, URG) / Loi fédérale du 9 octobre 1992 sur le droit d'auteur et les droits voisins (Loi sur le droit d'auteur, LDA), SR/RS 231.1.*

¹² *Bundesgesetz vom 25. Juni 1954 über die Erfindungspatente (Patentgesetz, PatG) / Loi fédérale du 25 juin 1954 sur les brevets d'invention (Loi sur les brevets, LBI), SR/RS 232.14.*

summary thereof, the designation of the inventor, and the payment of the registration fee. Applicants residing outside Switzerland may file an application only through a representative residing in Switzerland or in the Principality of Liechtenstein. No patents will be granted if an invention (i) infringes on public interests or moral values, (ii) concerns a method of surgery, therapy or diagnosis applied to the human or animal body, or (iii) seeks exclusive rights for new varieties of plants or animal breeds or for essential biological breeding processes. However, microbiological procedures as well as products derived thereof are not excluded from patent protection. A revision of the Swiss Patent Law focusing on inventions in the field of biotechnology is currently under public consideration.

Switzerland is a member of the Convention on Unification of Certain Points of Substantive Law on Patents for Invention, the Patent Co-operation Treaty (PCT, 1970), the Convention on International Classification of Patents (1971) and the Convention on Grants of European Patents (European Patent Convention of 1973), the bilateral treaty with Liechtenstein on Patent Protection (1978), the Budapest Treaty on International Recognition of Deposit of Microorganisms for Patent Procedures (1977), the International Convention for Plant Varieties (1972), and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Industrial Designs

Under the Swiss Federal Statute on the Protection of Designs¹³ novel forms and goods, possibly combined with colors, which may serve as models for commercial manufacturing of articles can be protected. Design protection is effective only if the design has been deposited with FIIP prior to it having been disclosed to the public. The protection does not extend to the process of manufacturing, to a utility or the technical effect of the article produced by using the design or model. Design protection is granted for periods of 5 years each as of the deposit dates and irrevocably expires after 25 years or by abandonment, or in case of failure to pay the fee in due time.

Switzerland is a signatory to the Paris Convention for Protection of Industrial Property of 1883, both Hague Conventions for International Deposit of Industrial Design and Models (Hague 1960 and Stockholm 1967) and the Locarno Convention for the International Classification of Industrial Designs of 1968.

Know-How/Trade and Business Secrets

Know-how and trade and business secrets are protected according to general rules of good faith and under specific law rules against unfair competition as well as under criminal law. Employees, in particular, are legally prohibited from disclosing any secrets related to their work. However, employees may freely use personal know-how, such as job experiences, to improve their own skills. There are no formalities required for the protection of business secrets in Switzerland and the protection duration may vary, depending solely on the measures taken by the secret holder against the disclosure of such secrets.

¹³ *Bundesgesetz vom 5. Oktober 2001 über den Schutz von Design (Designgesetz, DesG) / Loi fédérale du 5 octobre 2001 sur la protection des designs (Loi sur les designs, LDes), SR/RS 232.12.*

License Agreements

With the exception of license agreements concerning *collective marks*¹⁴, Swiss law does not provide any formal requirements for the licensing of intellectual property rights. Implied or oral license agreements may also be valid. Nonetheless, written license agreements are essential for the enforcement of the rights granted. The extent and type of royalties are, provided that they are agreed upon at arm's length, subject to the discretion of the parties.

The Swiss Federal Cartel Statute¹⁵ applies to horizontal and vertical agreements and concerted practices affecting competition, to practices of enterprises having a dominant position, and to mergers. Agreements – including license agreements – may be deemed unlawful if they cause the elimination of effective competition and are not justified on grounds of economic efficiency. However, such agreements are only unlawful if they have a substantial effect on competition within a market for particular goods or services, or if they eliminate competition completely.¹⁶ In principle, license agreements on intellectual property rights are deemed to be justified and lawful on grounds of economic efficiency. Other foreign antitrust laws, among others the EC-regulation on technology transfer¹⁷, may apply to license agreements involving Swiss competitors if such license agreements have an effect on foreign markets.

Assignments

Intellectual property rights may be transferred by assignment. By virtue of law, assignments regarding patent applications, patents, trademarks and industrial designs are valid only if a corresponding written agreement is available. The registration of the assignment in the patent, trademark or design register has only declaratory meaning. However, regarding third parties acting in good faith, transfers of intellectual property may be invoked only if entered in the official patent, trademark or design register.

III. INVESTMENT INCENTIVES

Investment Incentives

There are no general incentives for foreign investment. Industry and trade promotion activities are shared between the federal government and the cantons, but the federal government in fact implements very little active promotion. Applications for investment support must be

¹⁴ License agreements regarding *collective marks*, i.e., symbols of an association of manufacturing, trading or service enterprise that serve to distinguish the goods or services of the members of the association from those of other enterprises, are valid only if registered in the trademark register with FIIP. Yet again, however, a written license agreement is not mandatory.

¹⁵ *Bundesgesetz vom 6. Oktober 1995 über Kartelle und andere Wettbewerbsbeschränkungen (Kartellgesetz, KG) / Loi fédérale du 6 octobre 1995 sur les cartels et autres restrictions à la concurrence (Loi sur les cartels, LCart)*, SR/RS 251.

¹⁶ For more details hereto see section "Antitrust Law" below.

¹⁷ Commission Regulation (EC) No. 772/2004 of 27 April 2004.

submitted to the cantonal industry and trade promotion offices, which also provide information on application procedures.

The federal government provides for three promotion measures: limited tax holidays, interest subsidies on bank credits, and guarantees for investment credits. These federal instruments are combined with the activities of the cantons, which implement the federal promotion measures, and are negotiated on a case-by-case basis.

Export Promotion

Companies domiciled in Switzerland may use various instruments of Swiss export promotion (e.g. coaching and supporting access to foreign markets). The export risk guarantee (ERG) protects against risks for which an exporter cannot otherwise obtain insurance coverage, such as political risks and the risk of non-payment by clients in the public sector. The ERG protection for exports to private clients is limited to private clients that are secured by a guarantor accepted by the ERG. The ERG is intended as a supplement to private insurers. It is financially self-sustaining, with premiums payable by the beneficiary. Only approximately 3 percent of all Swiss exports are currently protected through the ERG.

National Tax Incentives

Financial incentives (e.g. loan guarantees and interest subsidies) and federal tax holidays or reduced federal taxes for up to ten years may be granted to businesses making major investments or creating jobs in areas in need of economic development. The incentives as well as the regions for which such incentives are available are specified in the so-called "Lex Bonny Decree". To apply for such incentives, a written request with business plans, investment plans, etc. must be filed with the cantonal offices for industry and trade promotion.

Cantonal Tax Incentives

In order to attract new enterprises and thus strengthen regional economies, cantons may grant investment and tax incentives to newly established corporations. Incentives include tax holidays or reduced taxation for up to ten years at the cantonal/municipal level, interest subsidies, job-related subsidies or special guarantees. Incentives can be granted to both manufacturing and service enterprises and usually depend upon the type and amount of investment, the number of employment opportunities created and the region where the new enterprise is to be established. In order to apply for such incentives, a written request with business plans, investment plans, etc. must be filed with the cantonal offices for industry and trade promotion. Information on the privileged status for companies and the associated tax privileges on the cantonal and municipal level is outlined below in XII., Territoriality Rules.

IV. FINANCIAL FACILITIES

Financial Facilities in Switzerland

Switzerland is one of the world's leading financial centers. The main factors which helped Switzerland to attain this position are a stable political situation, the country's capacity to facilitate savings, a stable currency with minimum transfer restrictions, traditionally low interest rates, and highly sophisticated and secure financial institutions. Domestic and international investors encounter a favorable financing climate and can rely upon the quality and efficiency of the nationwide banking system.

Sources of Law

Public and Private Law, State Regulation and Self-Regulation

The legal sources, both public and private, governing Swiss banking and finance are manifold and widespread. Federal public law is the source for the regulation of currency and money markets, banking institutions, investment funds, securities dealers and stock exchanges. The provisions of domestic public law and of international conventions in the area of criminal law, tax law and legal assistance are of particular importance for banking and finance. Contract and corporate law (the private law areas which affect banking and finance most) are federal laws and are codified in the Civil Code and the Code of Obligations.

State regulation is supplemented by self-regulating organizational decrees, most notably those of the SWX Swiss Exchange, the Swiss Bankers Association, Swiss Funds Association, and the Swiss Insurance Association. Self-regulation plays an important role in the Swiss financial sector due to the fact that some of these decrees, by virtue of supervisory recognition, are practically normative in their effect.

Federal Constitution

Several provisions of the Federal Constitution provide the basis for the federal legislation on the regulation and supervision of the financial markets and banking. Art. 98 gives the federal legislature the power to regulate banking. Art. 99 authorizes the Swiss National Bank to exercise monetary and currency control.

National Bank Act and Ordinance

The National Bank Act¹⁸ governs the organizational structure and the operations of the Swiss National Bank, as well as the functions it exercises. The latter include, in particular, the traditional central bank functions. The National Bank Act also contains provisions regarding the

¹⁸ *Bundesgesetz vom 3. Oktober 2003 über die Schweizerische Nationalbank (Nationalbankgesetz, NBG)/ Loi fédérale du 3 octobre 2003 sur la Banque nationale suisse (Loi sur la Banque nationale, LBN), SR/RS 951.11.*

relationship between the National Bank and the federal government, as well as the Federal Banking Commission. Moreover, the National Bank Act provides for a modern minimum reserve regulation for banks, guided by the cash liquidity requirements previously regulated by the Banking Act¹⁹. The National Bank Act also entrusts the Swiss National Bank with the oversight of payment and securities settlement systems.

In accordance with the National Bank Act, the Swiss National Bank has issued an ordinance containing implementation provisions with respect to its three sovereign monetary powers (compilation of statistics, minimum reserve regulations, and oversight of payment and securities settlement systems).

Banking Act and Ordinances

The Banking Act and its related ordinances are the instruments through which the Federal Banking Commission supervises banks. The Banking Act includes, among other things, provisions on the following regulatory issues:

- definition of banks and other financial institutions and conditions for the granting of banking licenses (art. 1 *et seq.*);
- equity, liquidity and other operational requirements for banks, and financial statements (art. 4 *et seq.*);
- control and audit (art. 18 *et seq.*);
- supervision by the Federal Banking Commission (art. 23 *et seq.*);
- postponement of maturity, moratoriums and provisions for bankruptcy and arrangements with creditors (art. 25 *et seq.*);
- civil liability of banks and individuals who act for banks (art. 38 *et seq.*);
- bank secrecy (art. 47); and
- penalty provisions (art. 46 and 48 *et seq.*).

The Banking Act is complemented by the Banking Ordinance²⁰, which specifies in detail the provisions of the Banking Act, and by the Ordinance on Foreign Banks²¹, which governs branches, agencies, and representative offices of foreign banks in Switzerland.

Investment Funds Act and Ordinances

The Investment Funds Act²² and the Investment Funds Ordinance²³ regulate investment funds

¹⁹ *Bundesgesetz vom 8. November 1934 über die Banken und Sparkassen (Bankengesetz, BankG)/ Loi fédérale du 8 novembre 1934 sur les banques et les caisses d'épargne (Loi sur les banques, LB)*, SR/RS 952.0.

²⁰ *Verordnung vom 17. Mai 1972 über die Banken und Sparkassen (Bankenverordnung, BankV) / Ordonnance du 17 mai 1972 sur les banques et les caisses d'épargne (Ordonnance sur les banques, OB)*, SR/RS 952.02.

²¹ *Verordnung vom 21. Oktober 1996 über die ausländischen Banken in der Schweiz (Auslandbankenverordnung, ABV) / Ordonnance du 21 octobre 1996 concernant les banques étrangères en Suisse (Ordonnance sur les banques étrangères, OBE)*, SR/RS 952.111.

²² *Bundesgesetz vom 18. März 1994 über die Anlagefonds (Anlagefondsgesetz, AFG)/ Loi fédérale du 18 mars 1994 sur les fonds de placement (LFP)*, SR/RS 951.31.

²³ *Verordnung vom 19. Oktober 1994 über die Anlagefonds (Anlagefondsverordnung, AFV) / Ordonnance du 19 octobre 1994 sur les fonds de placement (OFP)*, SR/RS 951.311.

whose managements have their legal domicile in Switzerland. Investment funds need an authorization from the Federal Banking Commission. The fund management must be vested in a Swiss share corporation whose sole purpose is the investment funds business. It requires an authorization from the Federal Banking Commission and must use the services of a custodian bank, which, in turn, requires an authorization from the Federal Banking Commission. The Investment Funds Act and the Investment Funds Ordinance further provide detailed rules governing capitalization, investment guidelines and diversification.

The professional distribution of certificates in a Swiss or a foreign investment fund (i.e. a fund whose management is domiciled abroad and which is incorporated or organized under foreign law) in or from Switzerland requires an authorization from the Federal Banking Commission. Such authorization is granted to a representative whose legal domicile must be located in Switzerland and who must fulfill certain personal and professional conditions under the Investment Funds Act and the Investment Funds Ordinance.

Stock Exchange Act and Ordinances

The Stock Exchange Act²⁴ and its associated ordinances provide for the regulation and supervision of stock exchanges and securities dealers, disclosure of shareholdings, and public takeover offers for holdings, in Swiss listed corporations. The Stock Exchange Act contains, *inter alia*, provisions on:

- authorization, regulation and supervision of stock exchanges (art. 3 *et seq.*);
- authorization, regulation and supervision of securities dealers (art. 10 *et seq.*);
- disclosure of shareholdings in Swiss listed companies (art. 22 *et seq.*);
- supervision by the Federal Banking Commission (art. 34 *et seq.*);
- authorization of foreign stock exchanges and foreign securities dealers (art. 37) and international administrative assistance (art. 38);
- professional secrecy of stock exchanges and securities dealers (art. 43); and
- professional provisions (art. 40 *et seq.* and art. 44).

The Stock Exchange Ordinance²⁵ and further ordinances issued by the Federal Banking Commission and the Takeover Board provide details regarding the implementation of the provisions of the Stock Exchange Act.

Regulation and Supervision of Financial Markets

Sharing of Responsibilities

The regulation of such businesses as securities dealing, investment funds, banking and insur-

²⁴ *Bundesgesetz vom 24. März 1995 über die Börsen und den Effektenhandel (Börsengesetz, BEHG) / Loi fédérale du 24 mars 1995 sur les bourses et le commerce des valeurs mobilières (Loi sur les bourses, LBVM), SR/RS 954.1.*

²⁵ *Verordnung vom 2. Dezember 1996 über die Börsen und den Effektenhandel (Börsenverordnung, BEHV) / Ordonnance du 2 décembre 1996 sur les bourses et le commerce des valeurs mobilières (Ordonnance sur les bourses, OBVM), SR/RS 954.11.*

ance has not yet been organized under one roof, as has been the case in the Scandinavian countries, Luxembourg, the UK, Canada and Japan. Consequently, standards of supervision and investor protection vary, depending on the applicable regulatory framework.

In the future, more powers shall be vested within the Federal Banking Commission under the proposed Financial Markets Act.²⁶

Swiss National Bank

- Characteristics

Fulfilling a public task, the Swiss National Bank is a joint stock company governed by special provisions of federal law. It is administered with the cooperation and under the supervision of the Confederation in accordance with the provisions of the National Bank Act. Its shares are registered shares and are listed on the stock exchange. The share capital of the bank amounts to CHF 25 million, approximately 55 percent of which is held by public shareholders (cantons, cantonal banks, etc.). The remaining shares are largely in the hands of private individuals. The Confederation does not hold any shares.

- Independence, Accountability and Relationship with the Confederation

The independence of the Swiss National Bank is embodied as a principle in the Constitution. It entails various aspects, which are detailed in the National Bank Act. The functional independence consists of the formal prohibition of the National Bank and its statutory bodies to accept instructions from the Federal Council, the Federal Assembly or any other body in fulfilling its monetary tasks. In other words, it has authority to act independent of instructions. The financial independence includes both the budgetary autonomy of the National Bank and the prohibition to grant loans to the Confederation, which bars the state from accessing the banknote press. The independence of the National Bank in personnel issues, finally, is assured by the fact that the members of the Governing Board and their deputies can be removed during their fixed term of office only if they no longer meet the requirements of the office or if they have committed a grave offence.

As a counterbalance to such independence, the Act places a three-fold accountability on the National Bank: vis-à-vis the Federal Council, the Federal Assembly and the public. The National Bank regularly discusses the economic situation, monetary policy and topical issues of federal economic policy with the Federal Council. Formally, the Federal Council's Delegation for General Economic Policy and the National Bank's governing board brief each other by

²⁶ In March 2002, the Federal Council mandated the Federal Department of Finance to recommend measures to improve the coordination and coherence of reform projects in the financial sector. An expert panel was assigned to devise, *inter alia*, a recommendation for an integrated financial market supervisory authority, which would undertake the tasks previously conducted by the Federal Banking Commission and the Federal Office of Private Insurance and to examine the question whether or not the Anti Money Laundering Control Authority and the Swiss Federal Gaming Board should be transferred to an integrated supervisory authority. A general overview, as well as a list of the most important current reform projects in the financial sector are updated every 6 months and can be found on the web under the following address: <http://www.finweb.admin.ch/e/index.htm#>.

means of periodic meetings. The National Bank submits an annual written report on the fulfillment of its statutory tasks to the Federal Assembly, and it elaborates on its monetary policy vis-à-vis the competent committees. The public, finally, is informed by the National Bank through quarterly reports on the development of the economy and of the financial situation, and the Bank publicly announces its intentions with regard to its monetary policy. By explaining its policy on a regular basis and rendering an account of its decisions, the National Bank achieves transparency with regards to its activities.

The Federal Council exercises its cooperation and supervision with regard to the administration of the National Bank through various powers of appointment and approval: it appoints the majority of the Bank Council members (six out of eleven) as well as the three members of the governing board and their deputies. In addition, the Federal Council approves the organizational regulations of the National Bank, and the National Bank must submit the annual report and the annual accounts to the Federal Council for approval before the general meeting of shareholders can approve the reports. The Swiss government thus undertakes that the National Bank is managed properly and efficiently.

- Main Duties

The main duties of the National Bank are the regulation of the country's monetary supply to facilitate payments, and the implementation of a credit and currency policy in the best interest of the country. It also closely cooperates with the federal government in order to protect the public interest, and it acts as a lender of last resort.

The National Bank's traditional means of regulating the money supply lies in its banknote and coin privilege. To facilitate payments and money transfers, the National Bank renders various services to domestic banks, industry and commerce, foreign banks, central banks and international institutions. For example, it offers giro accounts, cooperates with and facilitates bank clearing, and exercises the traditional banking functions for the federal government.

The objective of the National Bank's credit and currency policy is to maintain the purchasing power of the Swiss franc. The regulation of the Swiss franc exchange rate has been a major means of attaining this goal since the institution of flexible currency exchange rates. The National Bank influences interest and currency exchange rates by means of:

- facilitation of credit, in particular to banks, traditionally in the form of discounting bills of exchange and granting margin advances, and regulation of the interest rates;
- purchase and sale of securities, money market instruments, gold and foreign currencies, by direct intervention as well as in forward and swap transactions;
- broad powers to influence the inflow of foreign capital and export of domestic capital, including the power to direct banks to maintain interest-free minimum reserves on deposit with the National Bank.

The National Bank also represents Switzerland in international monetary organizations such as the Bank for International Settlements and the International Monetary Fund.

Federal Banking Commission

The Federal Banking Commission is the supervisory authority for banks, investment funds, securities dealers and stock exchanges. It was created in 1935 following the enactment of the Banking Act. In 1967 the Investment Funds Act entrusted the Federal Banking Commission with the supervision of investment funds. Since 1997, the Federal Banking Commission, under the Stock Exchange Act, also supervises securities dealers and stock exchanges as well as the disclosure of shareholdings in, and public takeover offers for, Swiss listed corporations.

The Federal Banking Commission is regulated by art. 23 *et seq.* of the Banking Act. It consists of seven to eleven members elected by the Federal Council. The statutory provisions guarantee that the Federal Banking Commission is independent from the Federal Council, the National Bank and the banking industry. The members of the Federal Banking Commission must meet high professional and personal qualifications. The Federal Banking Commission is assisted by a permanent secretariat whose head is also elected by the Federal Council. The secretariat deals with the day-to-day business, prepares and executes the decisions of the Federal Banking Commission, communicates with banks, bank auditors and other concerned parties, and conducts administrative enforcement investigations.

The Federal Banking Commission issues the decisions necessary to enforce, and supervises compliance with, the provisions of the Banking Act. It may request information necessary to fulfill its task from the banks and auditors. Upon learning of a violation of the Banking Act or other irregularities, the Federal Banking Commission is authorized to take all necessary remedial actions. The instruments available to the Federal Banking Commission to perform its responsibilities include the power to grant and withdraw banking licenses and to supervise – and, if necessary, to intervene in – the financial structure, management and operations of banks. In addition to individual decisions on individual banks (which are subject to direct review by the Federal Court), the Federal Banking Commission has the power to enact ordinances (the most prominent example being the Ordinance on Foreign Banks) and issue general instructions and guidelines to banks and external bank auditors by means of circulars. The Federal Banking Commission's interpretation of the bank license requirement of continuous assurance of irreproachable business conduct is particularly important.

The Federal Banking Commission has the general power to regulate and supervise investment funds. Under the Investment Funds Act, it has the power to authorize the establishment of domestic investment funds and to supervise their activities. It also grants authorizations for the professional distribution of certificates of foreign investment funds in Switzerland.

The powers of the Federal Banking Commission under the Stock Exchange Act are similar to those under the Banking Act. It may generally take decisions as it deems necessary to implement the Stock Exchange Act and supervise compliance with legal and regulatory provisions. In particular it may grant, temporarily suspend or permanently withdraw authorizations of securities dealers and stock exchanges.

The Federal Banking Commission may cooperate with foreign supervisory authorities in the enforcement of the Banking Act, the Investment Funds Act and the Stock Exchange Act.

However, it may forward confidential information only under certain conditions, which provide for the proper use of such information by the foreign supervisory authority and protect the privacy of investors.

A semi-annual bulletin and the annual report published by the Federal Banking Commission are the sources from which current policies and proposed future legislation may be determined. The Federal Banking Commission increasingly considers itself not just a supervisory authority over banks to secure creditor interests but also, in conjunction with the National Bank a guardian of Swiss national economic interest and a proper and functioning financial market.

Swiss Bankers Association

The Swiss Bankers Association is the leading organization of the Swiss banking and finance industry. Its purpose is to safeguard and represent the interests and rights of the Swiss banking business, to defend its members against unfair competition and to protect Swiss savings. Its members are banks and similar institutions, such as securities firms, other finance and holding companies, and auditing firms. Moreover, individuals holding leading positions in these institutions are admitted as members. The membership list encompasses virtually all institutions in the banking and financial sector, except for a number of foreign – namely US – institutions which have not become members due to anti-trust concerns in the US domestic market.

The Swiss Bankers Association concentrates on representing the interests of the Swiss banking and financial community before federal and cantonal lawmakers, regulatory and supervisory agencies, and in various Swiss and foreign organizations. For instance, it was instrumental in the creation of banking industry organizations such as Telekurs AG and SIS SegalInter-settle AG. It also engages in public relations work for the banking sector.

In addition it influences banking and finance directly by means of self-regulatory measures. These include issuing conventions, guidelines and recommendations on banking procedures in order to reach generally accepted industry standards.

The most important self-regulatory instruments of the Swiss Bankers Association are its conventions. The conventions are agreements with binding effect on their signatories. Although the Swiss Bankers Association strongly recommends adherence, its members are theoretically free to determine whether or not to submit to the conventions. The Federal Banking Commission, however, considers the conventions to be the market practice and use them for interpretative purposes. Institutions are under pressure to adhere to the conventions in order to avoid a disadvantageous market position. The conventions cover various aspects of the banking business; most of them include agreements on binding schedules and fees for banking services. Agreements on interest rates are less common; they are traditionally covered by local or regional conventions.

Other Organizations and Associations

The Swiss banks have formed various service organizations in order to facilitate banking transactions and procedures.

Telekurs AG provides inter-bank services and domestic and international financial information of all kinds. It runs Swiss Interbank Clearing and the Electronic Fund Transfer/Point of Sale system, and is responsible for the Eurocheque system, "Bancomat" and Eurocard (Switzerland) SA, the Swiss banks' credit card organization.

SIS SegInterSettle AG, is the Swiss clearing house. Like Euroclear or Clearstream, SIS SegInterSettle AG acts as a security deposit and clearing center for collective securities safekeeping and ownership transfers on a book entry basis for Swiss security issues. Transactions between banks are settled on the basis of delivery versus payment, by crediting or debiting the securities account at SIS SegInterSettle AG and Swiss Interbank Clearing, the clearing house of the banks involved. Under certain conditions, SIS SegInterSettle AG also provides for the settlement of transactions in Swiss registered shares.

SIS x-clear AG acts as the Swiss Central Counterparty for virt-x trades. In addition, SIS x-clear AG assumes the role in the field of risk management for the SIS Group. Licensed as a bank under Swiss law, SIS x-clear AG is subject to the supervision of the Federal Banking Commission.

SAG SIS Aktienregister AG specializes in the management of share registers for publicly owned companies. The company incorporates existing share registers, establishes new registers and administrates book-entry securities. SAG SIS Aktienregister AG also plans and organizes general meetings for its clients, i.e., companies with registered shares.

SIS Systems AG provides IT and logistics services for the SIS Group. It runs a data center, provides engineering services, develops and maintains application software on different platforms for the group and its clients.

The Swiss Funds Association is the leading organization of the Swiss investment funds industry. It is closely linked to the Swiss Bankers Association. It has drafted standard forms of prospectuses including standard regulations for several types of investment funds as well as the code of professional ethics for investment funds. The Swiss Federal Banking Commission has accepted and acknowledged the Swiss Funds Association code of professional ethics that applies to all Swiss fund management companies and representatives of foreign funds in Switzerland. Relevant institutions must have their compliance with the applicable provisions confirmed by their auditors.

In addition to the Swiss Bankers Association, banks have entered into various further associations, such as associations of cantonal banks, Swiss regional banks, Swiss private banks, foreign banks in Switzerland, Swiss commercial and investment banks, and Swiss holding and finance companies.

Banks and other Market Participants

Banks

Universal Banking System

Switzerland has a universal banking system. Banks engage in all types of banking activities, such as acceptance of deposits, extension of loans, payment transactions, dealing in securities, precious metals and foreign exchange, portfolio management, custody and deposit services, and underwriting. The criteria commonly used to categorize banks are size, geographical scope of activities, Swiss or foreign control, traditional and special legal status.

Definition

Art. 1 of the Banking Act subjects banks, including private banks and savings banks, to the Act. Securities dealers and portfolio managers who do not engage in regular banking business are expressly exempted from the Banking Act. As a rule, individuals and corporations that are not subject to the Banking Act may not publicly solicit client deposits. As the Banking Act does not positively define the term "bank", specific details have been left to the Federal Banking Commission and the Federal Court, which reviews ordinances and individual decisions of the Federal Banking Commission. In practice, institutions which are engaged in traditional banking business are considered banks. In line with the main purpose of the Banking Act, namely the protection of bank creditors, much emphasis in the past has focused on the activities reflected on the asset side of the balance sheet. The characteristic attribute of a bank was that its profits had to be derived from the difference in interest rates for loans and deposits. Institutions were considered banks only if they accepted deposits and granted loans and credits. Since interest-indifferent banking activities have become an increasingly important part of the banking business, and since such activities are increasingly performed by institutions other than banks, the Swiss banking regulators have broadened the traditional definition of a bank. Art. 2a of the Banking Ordinance defines banks as institutions whose main area of activity is financing business. More particularly, banks are institutions which, for their own account, publicly solicit client deposits or substantially refinance themselves through banks which are not major shareholders, in order to provide financing to an undefined number of persons or enterprises.

In addition, the Banking Ordinance clarifies the definition of public solicitation for the acceptance of deposits. According to art. 3a, public solicitation exists in principle if deposits are accepted on a regular basis from 20 creditors who are neither banks nor institutional investors nor closely related to the accepting institutions.

Certain categories of banks are exempt to various degrees from the provisions of the Banking Act. Exemptions apply to the National Bank, central mortgage bond institutions, cantonal banks (pursuant to art. 3 of the Banking Act) and private bankers in the legal form of individual proprietorships or general and limited partnerships (pursuant to art. 1 para. 1 of the Banking Act). The Bank for International Settlements, whose registered office is located in Basel, is fully exempt.

License, Incorporation and Organization of a Bank

Before a bank may start operations in Switzerland, it must obtain a banking license from the Federal Banking Commission. Before such license is granted, a bank may not be entered in the register of commerce. The license is granted if:

- the scope of the bank's business activities is defined comprehensively in the articles of incorporation, by-laws and regulations, and the bank provides for an internal organization adequate for its business, including the creation and definition of duties of separate bodies for supervision, management and control;
- the bank maintains the paid-in full minimum capital required by law (CHF 10 million);
- the individual members of the board of directors and the senior managers enjoy a good reputation and assure proper business conduct;
- the principal shareholders ensure that their influence is not detrimental to the business conduct of the bank; and
- the place of residence of the senior managers allows them to manage the bank effectively and responsibly.

A bank is subject to the continuous obligation to notify the Federal Banking Commission of all amendments to its articles of incorporation, by-laws and internal regulations in so far as they change its business purpose, scope of operations (including the opening of branch offices in Switzerland or abroad), capital, or internal organization. Disposal or acquisition of principal shareholdings in a bank must be notified to the Federal Banking Commission. The auditors of a bank are charged with safeguarding the continuous observance of the conditions for obtaining a banking license. The Federal Banking Commission has the power to revoke a license if conditions are no longer met or if the bank is in gross breach of its legal obligations.

Although a bank theoretically has a choice as to the legal form of its business organization, the usual structure is that of a share corporation. The bank is subject to the legal provisions applicable to share corporations in general. Furthermore, it must observe the binding organizational guidelines of the Banking Act and the Banking Ordinance. In its articles of incorporation, by-laws, or internal regulations, the bank must define its business, revealing the nature of its principal activities in clear detail. Regular activities and geographic scope of the bank's business must be expressly listed. The scope of business in terms of operations and geographical reach must correspond to the bank's financial resources and internal organization. The bank must adopt an internal business regulation that clearly discloses the decision-making procedures and the powers and duties of the management and board of directors. For high-risk business activities such as lending, foreign currency and stock exchange transactions, separate internal regulations must be drafted. Larger institutions must provide for a strict separation between the board of directors, whose duties are supervision, control and making the principal decisions, and management, which is in charge of the day-to-day operations and decisions. The practice of the Federal Banking Commission also requires larger institutions to maintain an internal control organization.

Only once a bank has obtained a banking license it is permitted to use the term "bank" or

"banker" in the corporate name, advertising, etc. Moreover, art. 4^{quater} of the Banking Act stipulates that banks must abstain throughout the world from utilizing misleading publicity, or from taking undue advantage of their Swiss domicile or of Swiss traditional practices or institutions.

Civil and Criminal Liability

Art. 38 *et seq.* of the Banking Act contains a detailed set of provisions on the civil liability of banks and individuals who act for banks, and on the criminal penalties for breaches of the provisions of the Banking Act.

Foreign-controlled Banks, Branches of Foreign Banks

Foreign-controlled banks, whether subsidiaries of foreign banks or not, are fully subject to and must fully comply with the Banking Act. Banks are deemed foreign-controlled if foreign nationals, directly or indirectly, own more than 50 percent of the share capital or voting rights, or if they otherwise exert a dominant influence. Legal entities controlled by foreign individuals, and individuals who are neither Swiss citizens nor have a permit for permanent residence in Switzerland, are deemed foreign nationals.

Art. 3^{bis} and 3^{ter} of the Banking Act impose additional conditions on foreign-controlled entities wishing to obtain a banking license. Most significant is the requirement for the permit reciprocity. A license will be granted only if the native country of the controlling individuals or entities permits the establishment and operation of a Swiss-controlled bank under conditions comparable to those which allow foreign banks in Switzerland to operate.

The reciprocity requirement may not be applied if it is contrary to treaty obligations to which Switzerland is a party. Presently, the most important treaty which affects reciprocity is the General Agreement on Trade in Services.

It is prohibited for the name of a foreign-controlled bank to indicate or suggest that the bank is Swiss-controlled, and the bank must, as a rule, be subject to consolidated banking (or equivalent) supervision by the native country.

An extraordinary license is required for a foreign-controlled bank if such bank is newly incorporated or if an existing bank becomes foreign-controlled. In addition each change of control by means of acquisition by foreign nationals from foreign nationals is subject to approval by the Federal Banking Commission. The Federal Banking Commission may waive the additional license requirements for foreign-controlled banks in international treaties.

The Federal Banking Commission has defined the conditions for the opening of Swiss branches by foreign banks in the Ordinance on Foreign Banks. Foreign banks opening a branch or a representative office in Switzerland require a license from the Federal Banking Commission; the additional license requirement for foreign-controlled banks also applies to branches. Moreover, unless defined otherwise in the Ordinance on Foreign Banks, the Banking Act, with the exception of the equity and liquidity requirements and lending limits, also applies to

foreign branches. The Ordinance on Foreign Banks contains special provisions for foreign branches on such topics as reports to the Federal Banking Commission, deposit of security, and annual financial statements and their publication and auditing.

Securities Dealers

Trade in Securities and Related Transactions

As long as they refrain from engaging in regular banking business, securities dealers only trading in securities and engaging in transactions directly related thereto do not constitute banks pursuant to the terms of the Banking Act. Given that most Swiss securities dealers are banks, the community of professional securities dealers mainly consists of subsidiaries and branches of foreign brokerage houses.

Securities dealers are regulated under the Stock Exchange Act. Securities dealers need a license from, and are subject to supervision by, the Federal Banking Commission. Banks who engage in securities transactions also need a license under the Stock Exchange Act to supplement their banking license.

Definition

The Stock Exchange Act sets out the framework for the regulation of Swiss securities. The Stock Exchange Act is intended to secure transparency and equal treatment of investors in order to ensure proper and fair securities markets. Similar in scope and purpose to the US Securities Act of 1934, the Stock Exchange Act regulates stock exchanges, securities dealers, disclosure of shareholdings and tender offers. The Stock Exchange Act provides that any intended business conducted by Swiss or foreign securities dealers in Switzerland is subject to an authorization by the Federal Banking Commission. The Stock Exchange Act's definition of the term "securities dealer" is broad and covers:

- *dealers* engaged in the business of effecting securities transactions in their own name and for their own account for re-sale in the short term, provided they are mainly active in the financial sector and attain a gross turnover in excess of CHF 5 billion per year;
- *market makers* engaged in the business of trading in securities on a short-term basis for their own account and creating markets by providing quotations representing their buy and sell interests to the public²⁷;
- *security issuing houses* mainly active in the financial sector and engaged in the business of underwriting securities issued by third parties on a firm or commission basis in order to offer these securities to the public²⁸ on the primary market;
- *derivatives firms* mainly active in the financial sector and engaged in the business of issuing standardized (i.e. uniform) derivatives suitable for mass trading for offer to the

²⁷ Offers are deemed non-public if addressed to banks, securities dealers, enterprises under government supervision, institutional investors with professional treasury functions and certain other persons.

²⁸ Offers are deemed non-public if addressed to banks, securities dealers, enterprises under government supervision, institutional investors with professional treasury functions and certain other persons.

- public²⁹ on the primary market, either for their own account or for the account of third parties;
- *brokers* engaged in the business of acquiring and selling securities in their own name but for the account of clients, if such brokers (i) retain depository accounts in order to settle transactions in their own name for their clients or (ii) retain custody of their clients'³⁰ securities.

In art. 2 para. 3, the Stock Exchange Ordinance provides, furthermore, that the Swiss National Bank, fund management companies, insurance companies, and pension funds do not constitute securities dealers as they are subject to different regulatory regimes.

For the purposes of Swiss law, a foreign securities dealer is defined as a company organized according to foreign law, holding a license as a securities dealer abroad or utilizing the term "securities dealer" or a term with a similar meaning in the company name, the declaration of its business purpose or business documents, or conducting securities trading in accordance with the provisions of the Stock Exchange Act as set forth above. Foreign securities dealers are subject to Swiss regulation and authorization if employing individuals in Switzerland who are permanently engaged in the business in or from Switzerland of (a) trading in securities, maintaining client accounts or committing the securities dealer legally (branch), or (b) operating in another manner, specifically by passing client orders to the dealer or representing the dealer for purposes of advertising or other purposes (representative office). In addition, the Federal Banking Commission has clarified that if employing an introducing broker in Switzerland, foreign securities dealers will require proper authorization, unless such introducing broker is engaged on a non-exclusive basis and refrains from using the name of the foreign securities dealer. Cross-border securities dealer activities, however, are outside the scope of Swiss regulation.

As a general rule, securities dealers which are part of a group operating in the financial sector must be subject to consolidated supervision by the supervisory authorities of their native country.

License Requirements and Continuing Obligations

Securities dealers must obtain a license from the Federal Banking Commission before registering in the register of commerce and initiating any securities dealing activities. To obtain a license as a Swiss securities dealer, applicants must provide evidence on meeting certain conditions regarding corporate documentation and organization of the business, minimum paid-in capital (CHF 1.5 million), as well as management and conduct of business (fit-and-proper test). Moreover, securities dealers must provide information on certain qualified shareholders (holding at least 10 percent of capital and voting rights), directors, managers or other key persons. The Federal Banking Commission must be notified if qualified shareholders acquire or

²⁹ Offers are deemed non-public if addressed to banks, securities dealers, enterprises under government supervision, institutional investors with professional treasury functions and certain other persons.

³⁰ For the purpose of this definition, the term "client" does not include banks, securities dealers, enterprises under government supervision, institutional investors with a professional treasury and certain other persons.

dispose of shares and, as a result, cross certain thresholds (20, 33 1/3 or 50 percent).

Once authorized, securities dealers may conduct their business subject to various duties under the Stock Exchange Act and its implementing ordinances, such as the duty to comply with requirements relating to minimum equity, risk diversification, accounting and auditing, as well as the obligation to comply with rules of conduct, the duty to maintain a journal (disclosing orders received and transacted) and certain reporting duties. The relevant rules apply on a consolidated level.

Rules of Conduct

Art. 11 of the Stock Exchange Act imposes a number of obligations on securities dealers to protect their clients. Such obligations include the duty to disclose risks associated with certain types of transactions, the duty to diligently execute and document orders and the duty to ensure that client interests are not adversely affected by potential conflicts of interest. Securities dealers may take into account their clients' business expertise and professional know-how in exercising these duties.

The Swiss Bankers Association has adopted guidelines regarding the conduct of securities dealers in executing transactions.

Foreign Securities Dealers

Foreign-controlled securities dealers, whether subsidiaries of foreign securities dealers or not, are subject to, and must comply with the Stock Exchange Act. The definition of "foreign control" under the Stock Exchange Act is identical to that contained in the provisions of the Banking Act. Securities dealers, which become subject to foreign control or undergo a change of their shareholder structure must apply for an additional authorization from the Federal Banking Commission. Authorization of foreign control, or change in foreign control, is subject to reciprocity.

Foreign securities dealers intending to open a branch or a representative office in Switzerland must apply for a license from the Federal Banking Commission. The conditions for obtaining such a license and the provisions which regulate business conduct in Switzerland are similar to those found in the provisions of the Banking Act for branches or representative offices of foreign banks in Switzerland.

Portfolio Managers and Financial Intermediaries

Portfolio Managers

Portfolio managers as such are still unregulated and do not fall under the Banking Act or the Stock Exchange Act as long as they merely administer their clients' funds and refrain from conducting banking or securities dealer business. The variety of institutions and individuals competing in the portfolio management business includes banks, professional securities dealers, trust companies, corporate and individual portfolio managers and lawyers. In recent

years, however, the portfolio management business has also attracted market participants and capital of occasionally dubious quality and reputation. To prevent a misuse of the very liberal market framework to the detriment of the international standing of the Swiss financial market, provisions regulating certain aspects of portfolio management have been enacted. One such provision is the Due Diligence Convention among the Swiss banks, under which Swiss banks must identify the beneficial owner of assets held. Further enactments include criminal provisions against money laundering as well as the Federal Act on Combat of Money Laundering in the Financial Sector³¹.

The Swiss Bankers Association has adopted portfolio management guidelines for the exercise of asset management mandates by banks. They provide, *inter alia*, that a bank may accept a portfolio management mandate only in writing, that the bank must have an organization adequate to exercise the mandate and that the mandate is limited to the usual banking transactions, such as the sale and purchase of securities, including derivatives, precious metals and fixed-term deposits in savings and current accounts. Other transactions may be entered into only on the basis of a written order by the client. Investments must be chosen by the bank only on the basis of sufficiently reliable information, and the bank must avoid a concentration on only a limited number of investments. These guidelines represent the generally accepted standard and have also been adopted by the Federal Banking Commission.

Financial Intermediaries

Financial intermediaries are regulated by the Act on Combat of Money Laundering in the Financial Sector and the relevant implementing ordinances. Financial intermediaries are broadly defined to include banks, fund managers, insurance entities, securities dealers and individuals who by profession accept possession of funds. The definition includes individuals who deal in credit transactions, provide payment services, deal for their own or for a third party's account, act as distribution agents of a domestic or foreign investment fund, manage assets, make investments as investment advisors or keep custody of or manage securities. Excluded from the field of application of the Act on Combat of Money Laundering are investment advisors who do not manage investments and financial intermediaries who provide services exclusively to banks, fund managers, insurance entities, securities dealers or foreign financial intermediaries who are subject to supervision pertaining to money laundering.

Financial intermediaries who are neither regulated nor members of a recognized Swiss self-regulatory organization must obtain a license for their activities from the Federal Control Office for the Combating of Money Laundering. A license will only be granted if the financial intermediary is registered as a commercial entity in the register of commerce, ensures compliance with the duties under the Act on Combat of Money Laundering by virtue of internal regulations and organization of the business, and is of good standing, as are the administration and management staff.

³¹ *Bundesgesetz vom 10. Oktober 1997 zur Bekämpfung der Geldwäscherei im Finanzsektor (Geldwäschereigesetz, GwG) / Loi fédérale du 10 octobre 1997 concernant la lutte contre le blanchiment d'argent dans le secteur financier (Loi sur le blanchiment d'argent, LBA), RS/SR 955.0.*

Financial intermediaries are required to identify their contractual partner and the beneficial owner of the assets subject to the contract and to keep transaction or enquiry records mandatory under the Act on Combat of Money Laundering for a period of at least ten years. Moreover, the Act on Combat of Money Laundering makes it mandatory for financial intermediaries to immediately report any suspicious transactions to the Money Laundering Office. Transactions are deemed suspicious if reasons exist to assume that the assets involved either constitute proceeds from a crime or are under the control of a criminal organization, or if they may be linked to money laundering as defined by art. 305^{bis} of the Federal Penal Code, which prohibits actions aimed at foiling the prosecution of a crime.

Regardless of the fact that a report on suspicious investments by a client may have a detrimental effect on the relationship between the financial intermediary and its client if the report leads to a criminal investigation on the suspicion of money laundering, an offence which can result in imprisonment and/or a fine, the Federal Banking Commission has made it clear that it will strictly enforce the obligations arising under the Act on Combat of Money Laundering.

Bank and Securities Dealers Secrecy

Scope of Bank and Securities Dealers Secrecy

Bank secrecy is protected by art. 47 of the Banking Act. Violation of the bank secrecy is a criminal offence. A violation of art. 47 of the Banking Act must be prosecuted by the court *sua sponte*, irrespective of a complaint by the injured party.

The violation of the bank secrecy constitutes a breach of contract or a tort. The contract between a bank and its client, regardless of its qualification or nature, includes the bank's obligation to safeguard the confidential information which it is entrusted with in the course of the contractual relationship. Moreover, the violation of the bank secrecy may constitute a violation of personal privacy, which is protected by art. 28 of the Civil Code. Even before art. 47 of the Banking Act was enacted, the Federal Court consistently held that person's privacy includes information relating to such person's financial affairs and personal assets. Under the terms of art. 41 *et seq.* of the Code of Obligations, interference with privacy constitutes a tort. A bank is liable for any damage suffered by an injured party due to both breach of contract and tort.

A violation of the bank secrecy may lead to administrative sanctions by the Federal Banking Commission. The Federal Banking Commission considers violations of the bank secrecy improper business conduct. Possible sanctions include a warning, a request to dismiss the individual who has committed the violation, and, ultimately, the withdrawal of the banking license.

A more or less identical provision is art. 43 of the Stock Exchange Act, which subjects stock exchanges and securities dealers to the same confidentiality obligations.

Extent of Bank Secrecy

All entities subject to the Banking Act in their entirety are bound by bank secrecy. This includes by analogy all foreign banks and all Swiss branches of foreign banks. Foreign subsidiaries or foreign branches of Swiss banks are not subject to the provisions of art. 47 of the Banking Act.

Any facts entrusted to or discovered by individuals in the exercise of their profession fall under the protection of the bank secrecy. This includes all business and contractual relations between a bank and its clients. It also includes any information relating to the financial situation of the clients and the clients' relationships with other banks and third parties. Moreover, scholars argue that information on transactions between third parties and other banks, of which a bank learns, is protected.

However, federal and cantonal regulations on securing evidence in criminal cases take precedence. The Banking Act authorizes Swiss subsidiary banks to communicate information protected by the bank secrecy to its foreign parent company if such information is required by the parent company for purposes of (i) internal control within the group or (ii) consolidated supervision of banks and other financial intermediaries. In addition, the communication of such information requires that (i) the parent company and the foreign supervisory authority are bound by professional or official confidentiality and (ii) the information received from the Swiss bank is not relayed to third parties unless such forwarding has been sanctioned by the Swiss bank. Alternatively, a relevant treaty may provide for a general authorization regarding the forwarding of such information.

The Banking Act authorizes the Federal Banking Commission to communicate information protected by the bank secrecy directly to the competent foreign supervisory authority for the banking or finance sector, provided (i) the information conveyed is required and used exclusively for the purpose of conducting the immediate supervision of banks and other financial intermediaries whose business activities may not be exercised without a license; (ii) the foreign supervisory authority is bound by official confidentiality; (iii) the information conveyed by the Federal Banking Commission may not be relayed to any third party unless the Federal Banking Commission sanctions such forwarding or, alternatively, an applicable treaty provides for a general authorization regarding the forwarding of such information. The forwarding of information by the foreign supervisory authority to the foreign public prosecutor is prohibited, however, if the relevant facts would cause Switzerland to decline international judicial assistance to the respective foreign country.

Subject to the requirements and restrictions set out in the previous paragraph, the Banking Act provides that the Federal Banking Commission may authorize the foreign authority to effect an inspection of a Swiss bank (subsidiaries, branch offices, and representative offices) on Swiss territory, at the business premises of the respective Swiss bank. Nevertheless, in the course of such inspection, the foreign supervisory authority may only request information necessary for the consolidated supervision of the respective bank. Any information pertaining directly to a particular client within the bank's asset management or depository business may only be requested by the Federal Banking Commission. Client-related information may only

be communicated to the foreign supervisory authority with the client's consent or, alternatively, if a court decision authorizes the communication of client-related information.

The Federal Act on International Judicial Assistance in Criminal Matters³² permits specific assistance (such as supplying information and obtaining evidence) in cases of allegations that would, if adjudicated under Swiss law, constitute a criminal act, including tax fraud. As a general rule, international judicial assistance is not available in cases of simple tax evasion. However, the tax treaty with the United States of America enables the Swiss Federal Tax Administration, under specific preconditions, to obtain information (e.g. from Swiss banks) on behalf of the United States Internal Revenue Service in cases of US tax fraud and the like. Under the Swiss-US treaty on assistance in criminal matters, a court hearing determines under specific preconditions whether or not the bank secrecy may be lifted.

Client Consent

Clients (which term includes all persons whose confidential information must be kept secret), as the 'masters of their secrets', can waive protection of bank secrecy. No special form is required for a waiver. It may be issued explicitly (in writing or orally), implicitly, or by agents or proxies.

Apart from client consent, the confidentiality obligation continues only for as long as the client has a reasonable interest in keeping the information confidential.

Banking Contracts and Relations with Clients

Prevailing Private Law

The relations between banks and clients are a matter of private law. Within the boundaries of the law, banks and clients are free to agree on the terms of their contractual relationship. With the exception of express mandatory provisions, the Civil Code and the Code of Obligations apply only subsidiarily. In practice there is not much room for contract negotiations between client and bank. Banking contracts are highly standardized in standard contract forms and general conditions. In addition, banks are occasionally bound by non-negotiable terms and conditions established in the conventions of the Swiss Bankers Association.

Three banking policy issues also exert a practical impact on banking contracts. Banks have a contractual obligation to preserve bank secrecy. The criminal provisions on money laundering and the Due Diligence Convention impose upon banks an obligation to ascertain the beneficial owner of the deposited funds.

Opening an Account, General Conditions

Banks use standard forms for the most common banking contracts, such as account opening

³² Bundesgesetz vom 20. März 1981 über internationale Rechtshilfe in Strafsachen (Rechtshilfegesetz, IRSG) / Loi fédérale du 20 mars 1981 sur l'entraide internationale en matière pénale (Loi sur l'entraide pénale internationale, EIMP), SR/RS 351.1.

contracts, safe deposit contracts or pledges, providing detailed regulations of the rights and obligations of the parties. Their main objective is to establish a clear contractual basis between the parties; protection of the banks against losses and exclusion of liability are additional essential aspects.

The account opening forms define the party contracting with the bank, the party empowered to sign, and whether powers of attorney (if any) remain valid after the death of the account-holder. For commercial accounts, they specify the power of individuals to sign on behalf of the corporate account-holder.

Upon entering into a contractual relationship with a bank, clients are regularly asked to acknowledge in writing their acceptance of the bank's general conditions. These general conditions specify the principal rules which apply to all contractual relations between client and bank. The most important topics covered by the general conditions are signing powers and their verification, set-off, pledge, waiver of liability, managing of client complaints, termination of the contractual relationship, change of general conditions, applicable law and jurisdiction. All standard forms provide that Swiss law shall be applicable and subject the client to the non-exclusive jurisdiction of the courts at the bank's registered office.

Deposits

- Savings Accounts

Swiss banks offer a variety of savings accounts. These differ mainly with respect to the time limits and maximum amounts for withdrawals. Some accounts are available only to certain groups (e.g. junior and retiree savings accounts) or serve a special purpose (salary accounts, savings for a house, old-age provisions). Although savings are short-term capital, they have high economic stability and are mostly used by banks for long-term financing. Interest rates vary according to market conditions. Savings are not insured. In case of bankruptcy, claims arising from savings accounts are privileged over other claims in the amount of CHF 30,000 per client.

- Current Accounts

Current accounts are mainly used for business purposes, they serve to effect and receive payments and deposit cash surplus. They are often coupled with the extension of an overdraft facility by the bank to the client. The balance is periodically drawn and, if acknowledged by the parties, results in a novation of the individual entries, i.e., only the current balance remains due between the parties.

- Fixed-Term Deposits

Fixed-term deposits run for a term between a few days and a year. Interest is often higher than in savings accounts, and the increasing consciousness of clients regarding interest rates, along with the availability of significant cash surpluses on the part of clients, has created a strong trend to shift deposits from savings accounts to fixed-term deposits. Fixed-term depos-

its are used by banks in inter-bank transactions and the commercial loan business.

Business Loans

Types of Loans

Banks offer various loan categories. Loans can be distinguished by short or long-term, secured or unsecured, commercial or private, or by the use of loan proceeds.

- *Overdraft Facilities on Current Accounts*

Overdraft facilities are typically granted without a requirement for security if the volume of the client's business enables the bank to monitor the client's financial situation. They are convenient for clients seeking to borrow only to the extent of the current needs. Interest is calculated only on the used overdraft portion. Overdraft facilities are demand loans. The bank standard form contract provides that they can be called at any time.

- *Fixed-Term Loans*

Fixed-term loans typically constitute a loan agreement in which the borrower acknowledges receipt of the loan proceeds and undertakes to repay the loan plus interest in accordance with the terms agreed upon with the bank. Fixed-term loans encompass a broad range from small advances to individuals for private purposes to multi-million syndicated loan facilities. Depending on individual circumstances, fixed-term loans are extended unsecured or secured.

- *Discount Credits*

Discount credits are an important type of commercial loans. The bank grants advances against transfers of bills of exchange or similar securities after subtracting an interest discount for the remaining term. Banks can re-discount papers of first-rate quality with the National Bank. This option, plus the fact that discount credits are short-term and have a high degree of security, accounts for the importance of this instrument.

- *Export Loans*

Loans for the financing of the export of goods are granted either to the exporter or the foreign importer. If the foreign importer is the borrower, the exporter is usually required to guarantee repayment of the loan as a joint and several debtor. Export loans may be covered by the federal government's export risk guarantee, which insures the political and transfer risk, and, upon motion of the exporter, the manufacturing risk. The foreign exchange risk is not insurable.

The remaining uninsured risk is split between the bank and the exporter. The exporter takes the commercial risk and the uninsured political and transfer risk for the principal; the bank bears the uninsured political and transfer risk on the interest and the commercial risk only if the importer is a first-rate debtor or if a first-rate foreign bank guarantee is available. The for-

Foreign exchange risks must be hedged by the exporter.

Security

Along with mortgages on real estate, the following types of security are most commonly used by banks to secure loans:

- pledge of realizable securities (condition for perfection is the delivery of possession to the bank);
- pledge of life insurance policies;
- pledge of trade goods if represented by bills of lading and other documents of title;
- assignment of receivables; and
- personal suretyship and guarantee.

Relationship between Bank and Client in Securities Transactions

As a rule, banks conclude securities transactions as self-contracting parties, i.e., they act towards the client in the capacity of buyer or seller, even if the client's order is effected via the stock exchange or matched with another client's order. This system is considered to be in the interest of both the bank and the client. Clients do not have to deal with unknown third parties, instead they have a reliable counterpart whose standing ensures payment of the sold, or delivery of the bought, securities. Confidentiality is enhanced due to the fact that the bank is under no obligation to disclose the third party to its client and vice versa.

Where there is no obligation to trade through the Swiss Exchange, it is common practice for banks or securities dealers in Switzerland to offset clients' buy orders against other clients' sell orders, or to satisfy client orders by delivering securities from, or taking securities into, their own trading accounts. Such transactions are concluded off the floor, but at current trading prices. The determination of the price is not always entirely transparent. If a bank executes an order at a price which results in an improper profit, it may become subject to civil liability and administrative sanctions. The issue is alleviated by the fact that members of the SWX Swiss Exchange must, as a rule, execute all trades in listed securities using the exchange and that securities dealers must report all trades in listed securities.

Investment Funds

Definition

The Investment Funds Act applies to pools of assets raised as a result of public solicitation on the basis of a collective investment contract. The Investment Funds Act regulates unincorporated and open-ended Swiss investment funds. In the case of foreign funds, open-ended (such as US mutual funds or UK trust units) but only certain closed-ended funds (such as US unit investment trusts, US management companies and UK investment trusts) are covered by the Investment Funds Act, whether incorporated or not. The Investment Funds Act does not apply to foreign closed-ended funds, unless they are labeled "investment fund" or "fund", are subject to investment fund supervision in their home countries, or unless they redeem units

on the request of investors who have a disinclination to participation rights in these funds.

Organization

Swiss investment funds are managed for the account of the investors by the fund manager who legally owns the fund's assets as a trustee for the benefit of the investors. The fund manager must be an incorporated company limited by shares, having its registered office and administrative headquarters in Switzerland. The sole purpose of the company must be investment fund business. Based on a portfolio/management agreement, the fund manager may delegate certain investment decisions to a third party. The fund assets must be held by a licensed Swiss bank as a custodian.

Only a small proportion of the funds managed by Swiss banks are Swiss investment funds. For nearly two decades foreign subsidiaries of Swiss banks have set up funds abroad, particularly in Luxemburg, in order to avoid Swiss issue tax – abolished in 1991 – and to take advantage of a swift registration process and the right to distribute the funds in all member states of the European Union without further regulatory restrictions.

Stamp Duties

Until recently, the sale and purchase of investment fund units in Switzerland was subject to turnover stamp duties levied on the transfer of ownership of fund units through or with the assistance of a Swiss fiscal securities dealer, the definition of which included banks, fund managers and custodian banks. With the recent amendments to the Federal Act on Stamp Duties³³, fund managers fall outside the scope of the definition of a fiscal securities dealer, and transactions involving "institutional investors", including Swiss and foreign investment funds, are no longer subject to turnover stamp duties.

Investment Regulations

Depending upon whether an investment fund is a "securities fund", an "other fund", or a "real estate fund", different investment regulations apply, as specified in the Investment Funds Ordinance, and the Ordinance of the Federal Banking Commission on Investment Funds. For instance, securities investment funds are modeled on the EC Directive on Undertakings for Collective Investments in Transferable Securities and may invest in shares, bonds, and to a limited extent, derivative financial instruments quoted on a stock exchange, traded in another regulated market open to the public or over the counter. Real estate funds are only permitted to invest in real estate and mortgage certificates. By contrast, the regime for other funds permits investments in securities, precious metals and derivative financial instruments.

The fund management draws up the fund regulations jointly with the custodian bank. The fund regulations need to be approved by the Federal Banking Commission. Moreover, funds are distributed on the basis of a prospectus that contains information on the funds, the fund

³³ *Bundesgesetz vom 27. Juni 1973 über die Stempelabgaben (StG) / Loi fédérale du 27 juin 1973 sur les droits de timbre (LT)*, SR/RS 641.10.

management, the custodian bank, the portfolio managers, the fund regulations and other relevant issues.

Foreign Investment Funds

The restrictions on investment funds to the legal form of a collective investment contract can only be enforced within Switzerland. Correspondingly, the term "foreign investment funds" is given a broad definition in art. 44 of the Investment Funds Act and includes both companies and, indeed, closed-end funds.

Being subject to the Investment Funds Act in terms of its relevant provisions does not mean that a fund is subject to the organizational provisions of the Investment Funds Act, but that it is subject to the obligation of obtaining authorization for the sale of units in Switzerland in terms of art. 45 of the Investment Funds Act. Units in a foreign investment fund may not only be sold in Switzerland but also from Switzerland.

The granting of authorization in Switzerland requires the investment fund to be subject to public supervision for the purpose of investor protection in the country of domicile of the fund manager or the company. The organization and investment policy of the fund regarding investor protection must be equivalent to that required by the provisions of the Investment Funds Act. The Federal Banking Commission has qualified the following countries as having the equivalent supervision as required under art. 45 para. 2 of the Investment Funds Act: the member states of the European Union, the USA, Guernsey and Jersey.

As far as foreign investment funds are concerned, a distinction must accordingly be drawn between funds based on a collective agreement and those based on company law. In both cases the right to demand redemption of one's units is significant. Even if an investor is denied such right, a fund requires authorization provided it is labeled an investment fund and is subject to comparable supervision pursuant to art. 45 para. 2 of the Investment Funds Act.

The use of the term "investment fund" and its equivalent in other languages is reserved for special assets authorized under the Investment Funds Act. In contrast, other foreign special assets may be marketed freely, subject, however, to the key restriction found in art. 2 para. 3 of the Investment Funds Ordinance: "Foreign special assets which are similar to investment funds shall be subject to the Act if the legal relationship between investors and special assets, irrespective of the legal form of participation in these assets, are of a predominantly contractual nature and the investors are not in a position to assess their proprietary interest personally."

The similarity to an investment fund is determined by the fact that the assets are not managed by the investors themselves but rather by the fund manager for their account. In a progressive approach, the Investment Funds Ordinance further permits, in principle, more complex forms of organization, which may be classified as "investment funds" only as far as the overall picture is concerned. Art. 2 para. 1 of the Investment Funds Ordinance reads: "Multistage inter-linked collective assets which fall within the definition of an investment fund only when considered in their entirety shall also be subject to the Investment Funds Act (e.g. master feeder

funds). The supervisory body shall authorize such investment funds only when their particular structure is under no circumstance detrimental to the interest of the investors."

License Requirements

Prior to commencing business activities, the fund management of a Swiss investment fund must obtain authorization from the Federal Banking Commission. The same is true for custodian banks and sales agents engaged in the business of offering or distributing fund units ("distributors"). Fund managers, Swiss licensed banks and securities dealers as well as Swiss licensed insurance companies do not require an authorization to offer or to distribute units. Moreover, the fund regulations of each particular investment fund must be submitted to and authorized by the Federal Banking Commission.

An authorization by the Federal Banking Commission is mandatory for anyone wishing to engage in the business of offering or distributing units of foreign investment funds in Switzerland. Technically, an authorization is granted to a Swiss representative of the foreign fund, not to the fund itself. Each foreign fund has only one Swiss representative who in turn may use licensed sales agents to distribute the units in question. A license is granted if the foreign fund is subject to supervision in the country of the fund management headquarters, provided the investment policy of the foreign fund is comparable to Investment Funds Act requirements in so far as investor protection is concerned.

The Investment Funds Ordinance has been amended to clarify that no authorization is required to offer or distribute investment fund units in Switzerland if there is no intention to publicly solicit investors. The circular of the Federal Banking Commission (03/1: Public Advertising/Investment Funds) defines the term "public advertising".

Non-Regulated Investment Advice

No regulatory restrictions apply on providing corporate finance or investment advice in Switzerland. This is conceptually different from the UK, where no person may carry on any kind of investment business unless such person is either authorized or exempted from having to obtain authorization.

The SWX Swiss Exchange

Characteristics

The SWX Swiss Exchange, commonly referred to as the Swiss Exchange, is an association of over sixty members, a quarter of which are foreign institutions such as banks and securities dealers, operating Switzerland's only stock exchange.

The Swiss Exchange is authorized to operate under the Stock Exchange Act. It has broad regulatory powers, which must ensure that its organizational structure in respect of its operations, administration and supervision is appropriate to its activities. Its regulations must be approved by the Federal Banking Commission and they must implement an appropriate ap-

peal structure. The Swiss Exchange complies with these conditions by means of a full set of securities trading rules and listing rules and an organizational structure for market supervision which aims at efficiency and transparency and a fair and orderly market. The listing regulations govern the admission of securities to trading. Decisions on listing are taken by the Admissions Board.

Segments of the SWX Swiss Exchange

Issuers may choose between the following different segments of the Swiss Exchange, each governed by special regulations: Main segment, Investment companies, SWX Local Caps, Real Estate Companies, and Investment Funds.

Listing Requirements

- Main Market

A company applying for a listing must fulfill various conditions, including having a three-year trading record, and must have presented accounts covering three complete financial years. The Admission Board may allow exemptions from this requirement in accordance with principles laid out in a special directive. Accounting standards must be in compliance with the accounting standards as defined in the Listing Rules and their Annexes. The company's capital must amount to at least CHF 25 million on a consolidated level.

- Capitalization

If equity securities are listed for the first time, the off-floor capitalization must have reached at least CHF 25 million. The total nominal amount of debt securities to be listed must not be below CHF 20 million. With respect to derivatives, the minimum market capitalization is CHF 6 million or alternatively, the underlying instruments' capitalization must, in the case of (a) bonds, amount to at least CHF 100 million, (b) Swiss equity securities listed on the Swiss Market Index, at least CHF 50 million, (c) Swiss equity securities not listed on the SMI, at least CHF 25 million, (d) foreign equity securities, at least CHF 50 million, (e) indices, at least CHF 50 million, (f) currencies, precious metals, commodities and investment funds, each a minimum of CHF 25 million, and (f) baskets consisting of the above mentioned underlying instruments, the minimum amount of the respective instrument.

- Application Procedure

The application procedure is simple compared to other jurisdictions. The listing application by the issuer or a recognized representative must be lodged in writing with the Admission Board, and it must be made no later than one month before the listing date, unless an exception is granted. The following documents must be filed with the listing application: copies of the prospectus, listing notice, securities certificates or, in the event of uncertified securities, an assurance by the issuer that the holders of the rights may obtain proof of their holding at any time, and, as far as equity securities are concerned, an extract from the register of commerce or a comparable foreign register from which it can be determined that the equity secu-

rities do legally exist.

New issuers must file additional documents, such as an extract from the register of commerce or a comparable foreign register, articles of incorporation, and copies of the last three business and interim reports as well as notifications about any price sensitive facts which have been published since the last business report.

The Admission Board approves the application if it complies with the listing rules. Debt securities and derivatives may also be admitted provisionally. The application for provisional trading must be filed with the Admissions Board no later than three business days before the intended commencement of trading. If the application for listing is subsequently not lodged within two months, admission to provisional trading automatically lapses, and the applicant may be fined.

- Foreign Issuers

As a general rule, the securities of companies incorporated in countries other than Switzerland and denominated in foreign currencies are admitted to the Main Market of the Swiss Exchange, provided certain other additional requirements are met. If equity securities are not listed in the state where the company is incorporated or where the majority of the shares are held, the issuer must provide evidence that such listing has not been sidestepped due to local investor protection rules. The application and the requisite annexes thereto must be provided in German, French, Italian or English; translations must be certified and accompanied by the original texts. Exemptions from listing requirements are available for equity securities of foreign issuers which are already listed on an exchange with listing requirements equivalent to those of the Swiss Exchange.

- International Bonds

The rules for the admission of International Bonds to trading on the Swiss Exchange, referred to as the Eurobonds rules prior to their latest revision, define International Bonds as bonds that have been issued by foreign issuers in a foreign currency and are listed on a recognized foreign stock exchange. International Bonds may include straight bonds, convertible bonds, exchangeable bonds, warrant bonds and floating rate nature, but not structured derivative products (such as reverse convertible instruments).

International Bonds which have been admitted for trading are not listed securities within the definition of the Listing Rules. Accordingly, there is no need for a bond issuer seeking admission for trading on the Swiss Exchange to produce a prospectus or to provide the exchange with regular or ad hoc information. Under certain circumstances, a term sheet together with what is called a "declaration of interest" must be submitted by a Swiss Exchange participant.

When deciding whether to select and admit International Bonds for trading on the Swiss Exchange, the Admission Board will conduct an examination based on criteria such as whether such securities are already listed on a stock exchange recognized by the Swiss Exchange,

whether such securities are denominated and capitalized in a manner ensuring a proper market in the International Bonds segment, and whether settlement of exchange transactions will be possible by way of a clearinghouse recognized by the Swiss Exchange.

Cross-Border Activities

Cross-border securities dealing into Switzerland is free of regulatory restrictions, except where foreign stock exchanges seek to provide access by means of their technical systems to securities dealers in Switzerland or where foreign securities dealers intend to establish a business in Switzerland or seek membership with the Swiss Stock Exchange without a physical presence in Switzerland.

Cross-border banking has been liberalized so as to mirror the situation for cross-border securities dealing. For instance, internet banks may offer banking and securities dealing services to Swiss residents without authorization, provided no staff is employed in Switzerland and the server hosting the respective website is located outside Switzerland. Trading in commodities and foreign currencies is generally free from any regulations.

In stark contrast to securities dealing and banking, cross-border activities in connection with foreign investment funds require an authorization by the Swiss supervisory authorities, which will be granted under certain circumstances. Cross-border activities of life or non-life insurance companies are also regulated and are basically impermissible unless the foreign insurers are subject to Swiss supervision, whereas re-insurers covering the Swiss market without establishing a local business operation do not have to overcome any regulatory impediments.

V. EXCHANGE CONTROLS

Business Transactions with Nationals, Residents or Non-Residents

Art. 27 of the Federal Constitution of the Swiss Confederation guarantees economic freedom. All business sectors are open to foreign investment. Foreign nationals holding temporary residence or work permits or having permanent residence status may establish companies or acquire equity in Switzerland, just like Swiss nationals. It is not required that Swiss nationals hold equity in a company, and, in general, no special governmental permit is required to establish a company, with the exception of some specific areas (e.g. banks, insurance companies, railways and airlines), where the establishment of a company does require a license. Although there exist certain restrictions with respect to government monopolies, these are undergoing a liberalization process within the framework of the bilateral agreements between Switzerland and the EU. All business sectors are open to foreign investment. To conduct a business personally on a permanent basis, a work permit is required.

It presents no problem for investors to obtain loans from nationals, residents or non-residents. The Swiss credit market is open without restrictions to foreign investors, under the same terms and conditions as for national investors. There are no limitations on obtaining loans from abroad.

Investment Controls

Under Swiss law, direct and indirect investments are subject to the same rules. There are certain restrictions that apply with respect to the establishment of a company and the acquisition of equity. The board of directors of a company registered in Switzerland must consist of a majority of Swiss citizens or of citizens of a member state of the EU or the EFTA, who must be domiciled in Switzerland. At least one member of the board of directors authorized to represent the company must reside in Switzerland. Regarding companies whose equity securities are listed in Switzerland, there is a requirement to report to the company and the respective stock exchanges when an investor (nationals as well as foreign nationals) attains a certain percentage of the voting rights.

There are a number of special regulations for foreign investors who intend to establish a bank in Switzerland. Prior approval is required and in order to obtain the approval from the Swiss Banking Commission, the following conditions must be met in accordance with art. 3bis of the Banking Act: reciprocity on the part of the foreign state; the name of the foreign bank must preclude the impression that the bank is Swiss; the bank must adhere to Swiss monetary and credit policy; and a majority of the members of the bank's management must have their permanent residence in Switzerland. With the exception of these special provisions, foreign banks are subject to the same rules as national banks. When investors (nationals as well as foreign nationals) acquire more than 10 percent of the capital, they must guarantee that they will not exert their influence to the detriment of a cautious and healthy management of the bank.

Money Transfer

Exchange rates are freely determined by supply and demand on the foreign exchange market. There are no exchange controls in Switzerland. Foreign currencies can be bought and sold freely and there are no restrictions on the maintenance of foreign currency bank accounts in Switzerland. There is complete freedom of transfer of investment income and repatriation of capital. There are no Swiss rules regulating or limiting the inflow or outflow of capital. The repatriation of invested capital is unrestricted. Nevertheless, in order to prevent the laundering of the proceeds of serious crime, Switzerland has enacted relevant special acts according to which financial intermediaries have the duty to report any suspicion of money laundering to the authorities.

VI. IMPORT/EXPORT REGULATIONS

Customs Regulations

General

Switzerland has been a party to the General Agreement on Tariffs and Trade (GATT) since August 1, 1966. Switzerland is a member of the European Free Trade Association (EFTA), and has close economic ties with the European Union (EU) and the United States.

Customs Duty on Exports

Customs duties on exported goods are charged only on a very few products. They are listed in the appendix of the Federal Customs Tariff Statute³⁴.

Foreign Trade Regulations

As a member of the UN (since 2002), Switzerland must comply with any UN-embargos. Switzerland is also a member of the European Free Trade Association (EFTA) and the World Trade Organization (WTO). Foreign trade regulation is therefore attuned to the rules of these organizations.

Switzerland has been a party to the General Agreement on Tariffs and Trade (GATT) since August 1, 1966. On July 1, 1995, Switzerland joined the World Trade Organization and ratified the 1994 General Agreement on Tariffs and Trade (GATT).

Switzerland is a member of the European Free Trade Association (EFTA) and a Free Trade Agreement between Switzerland and the European Union (EU) entered into force in 1972. Switzerland is neither a member of the EU nor of the European Economic Area (EEA). However customs law has been, and will most likely continue to be strongly influenced by the relevant EC (European Community) law. The sector bilateral agreements between the EU and Switzerland (in force since 2002) only have an impact on customs rules regarding agricultural products.

Applicable Import/Export Licenses, Quotas and Barriers

The principle of free trade is an important guideline of Switzerland's foreign trade policy. Therefore, Swiss legislation generally facilitates imports and exports of goods as much as possible. Limited to specific cases, the following restrictions exist, however, due to foreign trade regulations. Also, some of the import or export restrictions are currently suspended but may be implemented in the future.

Due to neutrality considerations, prohibitions of imports and exports are presently applied to the states of the former Yugoslavia, Sierra Leone and Angola. Furthermore, the import of certain agricultural products and animals may be restricted owing to safety considerations.

Inspections of imports and exports may be implemented by notification or license requirements. At the moment, such restrictions are applied to the trade of war equipment and other goods which may be transformed into war equipment. Similar restrictions are applicable to the export of nuclear material and environmentally hazardous substances. Licenses are required for the export of certain goods, particularly products of the chemical industry, rare metals, products of the electronic sector and certain machines.

Customs surcharges may be applied to agricultural products.

³⁴ See below.

Imports of Goods

As a general rule, goods imported into Switzerland are subject to customs duties. Goods must be accompanied by a customs declaration, which is examined before the goods are cleared and released upon payment of the customs duties. The following laws affect the import of goods:

- Federal Customs Statute³⁵
- Federal Customs Tariff Statute³⁶
- Value Added Tax Statute³⁷
- Regulations with respect to international organizations and agreements (as mentioned above)

Any goods crossing the customs border must be presented to the relevant customs authorities and prepared for customs inspection and clearance. Untrue customs declarations, such as incorrect indications of weight, are subject to a fine of up to 20 times the amount of customs duties evaded and imprisonment of up to six months. The clearance procedure consists of the examination of the customs declaration, and possibly an inspection procedure. If the customs declaration is accepted or the inspection procedure finalized, the customs authority issues a customs certificate indicating the amount of customs duties owed. After payment of such amount, a receipt is issued and the goods may be reclaimed from customs control.

Switzerland uses the weight, not the economic value, of the imported goods as the basis for the assessment of customs duties. Once the imported goods have been thus qualified, the amount of import duties payable is calculated at the rates listed in the import tariff as appended to the Federal Customs Tariff Statute. This classification is in compliance with the International Convention on the Harmonized Commodity Description and Coding Systems. The tariffs indicate separate rates for normal imports and imports originating from the EU or EFTA countries.

Manufacturing Requirements

In order to benefit from particular advantages such as preferred tariffs, the obtaining of export permissions for strategic goods, or in the case of export embargos and the granting of import permissions in case of import contingents, products must contain ingredients or components found or produced in Switzerland.

³⁵ Zollgesetz vom 1. Oktober 1925 (ZG) / Loi fédérale du 1er octobre 1925 sur les douanes (LD), SR/RS 631.0.

³⁶ Zolltarifgesetz (ZTG) vom 9. Oktober 1986 / Loi fédérale du 9 octobre 1986 sur le tarif des douanes (LTaD), SR/RS 632.10.

³⁷ Bundesgesetz vom 2. September 1999 über die Mehrwertsteuer (Mehrwertsteuergesetz, MWSTG) / Loi fédérale du 2 septembre 1999 régissant la taxe sur la valeur ajoutée (Loi sur la TVA, LTVA), SR/RS 641.20.

Product Labeling

There are a number of statutes which set forth labeling or packaging requirements for products. The most important requirements are:

General Packaging Requirements

The most important rules setting standards for consumer goods are set out in the Federal Statute on Commerce in Foodstuffs and Commodities³⁸ and its implementing ordinances. As a general rule, the applicable statutes stipulate that packaging must not be deceitful with regard to its content and the nature and the origin of the packaged products. In respect thereof, the general impression is relevant.

Quantity Indication Requirements

Packaging containing measurable goods must indicate the quantity in legal units.

Quality Indication Requirements

In order to avoid the purchasers being misled, the packaging must indicate the nature of both the product and the ingredients. Furthermore, packaging of drugs and many foodstuffs must indicate their production and expiration date.

Provenience Indication Requirements

As a general rule, packaging must mention the country of origin of the foodstuffs. Additionally, the Swiss producer, distributor or importer must be indicated on the packaging for drugs, chemicals, environmentally hazardous substances and packaged processed foodstuffs.

Price Indication Requirements

Prices for consumer goods must be indicated in a stipulated manner. They must contain all additional taxes and correspond to the prices which the consumers have to effectively pay (i.e. retail prices), in order to facilitate the comparison of the products and their prices. In case of measurable goods, the basic price must be indicated as well.

As far as foodstuffs and usual objects are concerned, the required data must be printed in at least one of the official Swiss languages (German, French or Italian).

No standardized sanction in case of a violation of the above-mentioned requirements exists. However, violations of these requirements may be punished with imprisonment of up to 3 months or fines up to CHF 20,000. Foodstuffs, commodities and corresponding brochures which fail to meet the requirements may be withdrawn and destroyed by the competent can-

³⁸ Bundesgesetz vom 9. Oktober 1992 über Lebensmittel und Gebrauchsgegenstände (Lebensmittelgesetz, LMG), SR 817.0 / Loi fédérale du 9 octobre 1992 sur les denrées alimentaires et les objets usuels (Loi sur les denrées alimentaires, LDAI), SR/RS 817.0.

tonal authorities.

Finally, attention should be paid to the fact that special requirements, e.g. in respect of safety warnings, are applicable to cigarettes, poisons, drugs, cosmetics, alcoholic beverages, newspapers, precious metals, baby foods and biologically produced and genetically modified foodstuffs.

VII. STRUCTURES FOR DOING BUSINESS

General

The different forms of business organizations require careful consideration when an investor seeks to do business in Switzerland. The method of governance, liability issues and results with respect to tax treatment may differ significantly depending on the business form chosen.

The Swiss Code of Obligations is the main body of law which regulates the different business entities.

Although the stock corporation (*société anonyme/Aktiengesellschaft*) is the most widespread form of business organization, the limited liability company (*société à responsabilité limitée/Gesellschaft mit beschränkter Haftung*) has recently been used more frequently on the strength of its less stringent regulatory structure. Due to the importance of these two types of legal entities, these two business forms are hereinafter elucidated in more detail than other types of business forms.

Anyone trading, manufacturing or otherwise engaged in a business must be registered in the register of commerce (*registre du commerce/Handelsregister*) of the district where the registered office or place of business is located. Many legal entities (e.g. stock corporation, limited liability company) only come into legal existence upon their registration in the register of commerce.

Government Participation

Depending on the type of activity involved, the government may seek to participate in the ownership or operation of privately held business entities (usually stock corporations). Such participation may involve a capital investment or may be limited to control rights. If the government participates in a stock corporation, the articles of incorporation may provide for the government's right to delegate a representative to the company's board of directors.

Such mixed privately and publicly held business entities are usually found in the financial sector, the energy sector or the transport sector (e.g. power plants, trains). Unless the law provides otherwise, such entities are subject to the same tax treatment as privately held companies.

Joint Ventures

A joint venture as such is not a specific form of legal entity and can be established either by setting up a joint venture company or by entering into a so-called ordinary partnership, substantiated by agreements (see below). If the parties choose to establish a joint venture company, the registration and incorporation procedure, and the potential liability of an investor depend on the form of business entity chosen (see below). In general, Swiss joint ventures are organized as a stock corporation.

Limited Liability Company

The limited liability company, hereinafter GmbH, is a so-called capital company, formed by two or more individuals or entities under a company name with fixed registered capital for commercial or other profit-making purposes. Although the company name of a GmbH may be freely chosen, it must contain the indication that it is a limited liability company.

The formation procedure for a GmbH is similar to the incorporation procedure for a stock corporation. Both require the execution of a public deed of formation by all founders. Such public deed, including the articles of incorporation, must be submitted to the register of commerce for the company's registration. Upon registration with the register of commerce, the company is incorporated. The incorporation process may be completed within two to three weeks, and if all required documents are prepared, even in a few days.

The registered company capital must amount to at least CHF 20,000 and may not exceed CHF 2 million. At least 50 percent of the capital must be paid in cash or in kind by each of the members upon the formation of the company. The GmbH capital is divided into fixed quotas, and each member participates in the company's capital with one quota corresponding to the individual capital contribution. Capital contributions may be unequal in multiples of CHF 1,000 with a minimum of CHF 1,000 for each member.

The documents issued to the members for the quotas serve only as documentary proof and are not negotiable instruments. Any transfer of a quota requires a notarized deed and becomes effective only once the register of commerce has been notified and has registered the transfer. The members and all capital contributions or alterations thereof need to be notified to the register of commerce on an annual basis.

The articles of incorporation must set forth the company name, the domicile and company purpose, the amount of company capital, the capital contribution of each member, and the form of notice. Agreements between members altering provisions of the law must be mentioned in the articles of incorporation in order to be valid.

The member's general meeting is the supreme body of the GmbH and is the competent body to take certain measures, such as an amendment of the articles of incorporation or the appointment and removal of managers and internal auditors, adoption of the balance sheet, profit-and-loss statement and the distribution of profits. Each member holds one vote per CHF 1,000 contribution.

In general, all members participate jointly in the management and representation of the GmbH, however, the management of the GmbH may be conferred to non-members.

There are no restrictions with respect to the nationality of the members, and a GmbH can be wholly controlled by non-Swiss persons.

Members are jointly liable for the company's debts up to the registered capital amount. To the extent the capital amount has been paid in full, the extent of liability is reduced.

A GmbH is subject to share issuance tax upon formation (see below, XII. Miscellaneous Taxes Due), cantonal and federal income taxes (see below, XII. Tax on Profits), cantonal capital tax (see below, XII. Miscellaneous Taxes Due). Distributions of a GmbH are subject to withholding tax. Depending on the activities engaged in and the turnover achieved, a GmbH is liable for Swiss VAT purposes..

Liability Companies

A stock corporation (*société anonyme/Aktiengesellschaft*), hereinafter AG, is a separate legal entity formed by at least three individuals or companies for commercial, industrial or other profit-making purposes and with a registered share capital and its own corporate name. There are no restrictions with respect to the company name; reference to the legal nature is required, however, if names of individuals are to be included.

The formation of the AG requires the presence, in person or by proxy, of three founders at the founders' meeting, in order to effect the adoption of the articles of incorporation, the election of the members of the board of directors and the auditors, and further resolutions. The resolutions of the meeting are embodied in a public deed of formation which, together with the articles of incorporation, is submitted to the register of commerce. The incorporation is completed with the entry of the AG into the register of commerce.

The minimum share capital is CHF 100,000. On the day of the formation of the company, the fully paid share capital must be deposited on a special account with an officially authorized depository bank. If the capital consists of registered shares, at least 20 percent of the share capital or at least CHF 50,000 must be paid in full; bearer shares must be paid in full. A contribution in kind is possible; it is subject to a special report by the founders, however, which needs to be confirmed by the auditors. In particular, the confirmation must address the value of the assets to be contributed.

The share capital can be divided into bearer or registered shares of a minimum par value of CHF 0.1 each.

Shares have the legal character of documents of title. Bearer shares may be transferred by way of assignment, or, if certificates are issued, by physical transfer. Registered share certificates must be endorsed, and the transfer of registered shares must be entered in the company's share ledger. There are special regulations pertaining to restricted shares, which differ from listed and non-listed registered shares.

The articles of incorporation may provide for preferred shares with preferred rights, such as preferred dividend rights or liquidation rights, for dividend-right certificates (*bons de jouissance/Genussscheine*), or for subscription rights which may not exceed twice the amount of the share capital. Similar to shares, participation certificates (*bon de participation/Partizipationsscheine*) can be issued against contribution and have a par value. They have no voting rights, however.

The articles of incorporation must set forth the company's name, the registered office, the purpose of the company, the share capital and contributions made, the type of shares issued and par value, the manner of convening shareholders' meetings, shareholders' voting rights, the organization of the management and internal auditing and the form of announcements. The articles of incorporation may provide for a separate body of rules, the organization by laws, which specify the powers of the different bodies in charge of the management.

The shareholders' meeting is the highest authority of the corporation, and it may amend the articles of incorporation, elect and discharge the board members and internal auditors, approve the balance sheet and profit-and-loss statement and declare dividends. For some purposes, the number of votes of a shareholder may be made dependent on the number of shares, instead of the represented share capital.

The board of directors has certain inalienable duties, such as, amongst others, the ultimate management of the corporation, the appointment and removal of individuals entrusted with management and representation of the corporation and the notification of the court in case of negative equity.

There are generally no restrictions with respect to the nationality of the shareholders. According to the letter of the law, however, the company's board of directors must consist of a majority of Swiss citizens residing in Switzerland. Until the relevant provisions can be revised in light of the Agreement on Free Movement of Persons between Switzerland and the EU (respectively the EFTA), citizens of EU and EFTA states are - on the basis of an instruction issued by the Federal Office of Justice to the cantonal authorities - only required to have residence in Switzerland. Furthermore, one member of the board of directors authorized to represent the company must reside in Switzerland. In case of a one-person-board, the sole director must be a Swiss citizen or a EU or EFTA national and have residence in Switzerland. The federal government may grant exceptions for holding companies in the event that the majority of their holdings are abroad.

The shareholders have no personal liability beyond the share capital; a shareholder's liability is restricted to the amount of subscribed for share capital.

An AG is treated exactly the same way as a GmbH for tax purposes. An AG is subject to share issuance tax upon formation (see below, XII. Miscellaneous Taxes Due), cantonal and federal income taxes (see below, XII. Tax on Profits), cantonal capital tax (see below, XII. Miscellaneous Taxes Due). Distributions of an AG are subject to withholding tax. Depending on the activities performed and the turnover achieved, an AG is liable for Swiss VAT purposes.

Partnerships, General or Limited

A general partnership (*société en nom collectif/Kollektivgesellschaft*) is an association of at least two individuals (corporations cannot be partners) with unlimited liability towards the partnership's creditors. A partnership is usually formed under a partnership agreement for the purpose of operating a business based on commercial principles under a joint company name. A general partnership is not a separate legal entity, but it can acquire rights and assume liabilities and it has standing to be sued or to sue. All partners are jointly and severally liable for the liabilities of the partnership.

A limited partnership (*société en commandite/Kommanditgesellschaft*) is an association of at least two individuals or legal entities of which at least one partner (the general partner) is fully liable for the debts and obligations of the limited partnership, whereas the liability of the other partners is limited to the amount of their contributions (limited partners). Individuals may be both general or limited partners; legal entities may only be limited partners. A limited partnership is not a separate legal entity, but it can acquire rights and assume liabilities and it has standing to be sued or to sue.

A limited partnership with shares (*société en commandite par actions/Kommandit-Aktiengesellschaft*) is a company with a company name and share capital, in which one or more shareholders have joint unlimited personal liability similarly to partners of a general partnership. Unless otherwise explicitly stated in the statute, the provisions governing companies limited by shares are applicable. This form of partnership is rarely used.

General or limited partnerships are not subject to cantonal or federal taxation. Any profits made by the general or limited partnership are taxed as personal income of the partners (general or limited). The general or limited partnership's assets are subject to the personal net-worth tax of the partners (general or limited). Partnerships are, however, required to disclose specific information to the tax authorities in connection with the assessment of their partners. Non-resident partners of a Swiss domiciled general or limited partnership are generally deemed to have a permanent establishment and therefore a limited tax liability in Switzerland.

Partnerships, Undisclosed

An ordinary partnership (*société simple/Einfache Gesellschaft*) is the contractual association of at least two individuals or legal entities to jointly achieve a common purpose. No formal requirements must be met for the formation of an ordinary partnership. It is not a legal entity and cannot be entered into the register of commerce. An ordinary partnership cannot acquire rights and assume liabilities and has no standing to be sued or to sue. The partners are jointly and severally liable for the partnership's obligations towards third parties.

Ordinary partnerships are treated exactly the same way as general or limited partnerships for tax purposes. They are not subject to cantonal or federal taxation. Instead, each partner is liable for income taxes on his share of the partnership's profits. The general or limited partnership's assets are subject to the personal net-worth tax of the partners. Partnerships are, how-

ever, required to disclose specific information to the tax authorities in connection with the assessment of their partners. Non-resident partners of a Swiss domiciled general or limited partnership are generally deemed to have a permanent establishment and therefore a limited tax liability in Switzerland.

Sole Proprietorships

The business of a sole proprietorship (*raison de commerce/Einzelfirma*) is not a separate legal entity, and is considered a part of the sole proprietor's assets. Firm names of sole proprietorships, which may not imply that the sole proprietorship is a company, are entered into the register of commerce.

A sole proprietorship is not subject to cantonal or federal taxation. Instead, the sole proprietor is liable for income taxes on his share of the sole proprietorship profits. The sole proprietorship's assets are subject to the personal net-worth tax of the sole proprietor.

Swiss Merger Law

The Swiss Federal Act on Merger, Demerger, Conversion and Transfer of Assets and Liabilities (Merger Act)³⁹ regulates the aspects of restructuring under private law. It applies to the modification of the legal structure of limited liability companies (*GmbH*), liability companies (*AG*), general and limited partnerships (*Kollektiv- und Kommanditgesellschaft*), ordinary partnerships (*Einfache Gesellschaft*), sole proprietorships (*Einzelfirma*), cooperatives (*Genossenschaft*), associations (*Verein*) and foundations (*Stiftung*).

The broad guidelines of the merger procedure are as follows: The participating companies enter into a written merger agreement, the relevant content of which is specified by the Merger Act. Further, a merger report, explaining and justifying the merger from an economic and legal perspective, has to be adopted. A specially qualified auditor must then audit the agreement, the merger report as well as the financial report upon which the merger is based. Finally, the general meeting must resolve upon the merger and the resolution must be certified by public deed. The transaction becomes legally valid upon registration in the register of commerce. There are, however, more detailed rules which have to be respected. Simplified procedures exist for small and medium sized companies and for mergers between parent and subsidiary as well as between sister companies.

Contrary to the provisions on mergers, the Merger Act only permits corporate entities (*AG*, *GmbH*) and cooperatives to demerge. The procedure for a demerger differs from the merger in that the demerger agreement must contain an inventory stating the assets and liabilities to be transferred.

By conversion, a company only changes its legal form without modifying its assets and liabilities or participation and membership rights. The procedure is similar to that of a merger.

³⁹ *Bundesgesetz vom 3. Oktober 2003 über Fusion, Spaltung, Umwandlung und Vermögensübertragung (Fusionsgesetz, FusG) / Loi fédérale du 3 octobre 2003 sur la fusion, la scission, la transformation et le transfert de patrimoine (Loi sur la fusion, LFus), SR/RS 221.301.*

However, since there is only one company involved, there is no agreement but a conversion plan that has to be adopted.

Companies and sole proprietorships that are registered in the register of commerce may transfer all their assets and liabilities to other entities. Unlike the situation of a demerger, the shareholders or partners of the transferring company do not receive participation or membership rights of the acquiring company. Such transfer of assets and liabilities is based on a written transfer agreement containing an inventory determining the assets and liabilities to be transferred. In case of transfer of real estate, the relevant parts of the agreement must be in the form of a public deed. A resolution of the general meeting is not required, but the shareholders or partners are to be informed of the transfer in the annex to the annual financial statements. Finally, the transfer takes legal effect when entry is made in the register of commerce.

Subsidiaries/Branches/Representative Offices

All foreign companies must register their branch offices with the register of commerce in the canton in which they are domiciled. This is similar to the requirements for a branch office of a Swiss business. Further, a representative with full power of representation who resides in Switzerland must be appointed for the branch office.

A branch office must have the same company name as its head office and may contain additional wording in its name that is valid only for the branch office. In addition, the company name of a foreign branch office must include the place of its headquarters, the place of the branch office and the explicit designation as a branch office.

If a foreign company establishes a Swiss subsidiary, the incorporation and registration process as well as the potential liability of an investor depend on the form of the chosen legal entity (e.g. stock corporation, limited liability company, etc.).

Branches of foreign corporations are in general treated the same way as legal entities for tax purposes. They are however not subject to share issuance tax upon formation (see below, XII. Miscellaneous Taxes Due) and the transfer of profits from a Swiss branch to its foreign headquarter is not subject to Swiss withholding tax (see below, XII. Withholding Tax). From a tax perspective, there is no difference between a Swiss subsidiary of a foreign company and a "local" company.

Trusts and other Fiduciary Entities

As is the case with most other countries with a Romano-Germanic legal tradition, Switzerland does not have a law of trust. The creation of a trust ownership according to the Anglo-American concept is not possible under Swiss law but foreign trusts or other fiduciary entities are recognized, however. In Switzerland, the function of a trust may be achieved by a combination of contract types (agency, fiduciary transfer of ownership or claim, promise of a gift and third-party beneficiary clause), foundations and mandates.

VIII. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

Alien Business Law

Swiss law does not distinguish between Swiss-owned and foreign-owned business entities, and, in principle, there are no registration or local agent requirements. According to the Swiss Private International Law, companies are subject to the law under which they were formed. Swiss branch offices of foreign companies are principally subject to Swiss law.

Antitrust Laws

The aim of the Federal Cartel Statute⁴⁰, as Switzerland's main antitrust law source, is to prohibit abuse. It therefore focuses on socially and economically harmful effects of cartels and other restrictions to competition. Moreover, in the interest of a free market economy, competition is furthered. According to the "effects doctrine" it is applied whenever a competition limiting agreement or consultation deploys its effects within Switzerland, wherever the place where such behavior was agreed upon may be.

There are three types of limitation of competition that comprise the subject matter of the Cartel Statute:

According to the Cartel Statute, agreements that are understandings and concerted practices between enterprises on the same (horizontal) or different (vertical) market levels that have as their objective or effect the limitation of competition are illegal. However, such agreements are only illicit if they have a substantial effect on competition within a market for particular goods or services, or if they serve to completely eliminate competition. An effect is "substantial" if the possible alternatives for consumers or suppliers are significantly diminished. For reasons of economic efficiency, agreements impeding competition may be justified, whereas for agreements eliminating competition this may not apply. According to the non-exhaustive list of justifying circumstances provided in the Cartel Statute, agreements reducing production and distribution costs, improving products or production processes, furthering research and development, sharing technical and professional know-how or making more economical use of resources, are permitted. In contrast, in cases of the so-called "hard-core" cartel agreements, in particular price-fixing, territory allocation and quantitative restrictions, the burden of proof that they are justified is incumbent on the concerned enterprises.

The Swiss Federal Council may, by exception, declare permissible an agreement that hinders or eliminates competition on the grounds of compelling public interests for reasons such as public security and public health.

According to the Cartel Statute, dominant enterprises are defined as one or several enterprises that are in a position within the market to act to an appreciable extent independently of other market participants as regards supply or demand. Although the Cartel Statute does not explic-

⁴⁰ *Bundesgesetz vom 6. Oktober 1995 über Kartelle und andere Wettbewerbsbeschränkungen (Kartellgesetz, KG) / Loi fédérale du 6 octobre 1995 sur les cartels et autres restrictions à la concurrence (Loi sur les cartels, LCart), SR/RS 251.*

itly mention the possible manifestations of a dominant position, these are implicit. Therefore, single enterprises that control the necessary market power on their own, enterprises tacitly adopting concerted practices (whereas behavior dictated by the market is not relevant for cartel purposes) and the gathering of enterprises, financially or by other means, particularly conglomerates dominated by holding companies, may constitute a manifestation of a dominant position.

Market power as such is not illicit, however, due to the fact that it may be the result of good performance. An intervention is therefore only considered in the case of an abuse of position. This applies particularly to dominant enterprises, which, without objective reasons, hinder others from entering into or continuing competition, or exploiting the opposite side of the market. According to the Cartel Statute, a position is markedly abused when the establishment of business relationships is rejected, when business partners are discriminated against with regard to business conditions, or when restrictions in production, distribution or research and development are self-imposed.

Again, although only significant limitations to competition are prohibited by the regulatory scope of the Cartel Statute (*de minimis* doctrine), any measures which serve to have prohibitive effects on actual or potential competitors are illegal, unless they can be considered customary business practices. Even permissible limitations to competition may sometimes be prohibited if a competitor has been hindered to a degree which exceeds the threshold necessary for the implementation of the limitation of competition.

For reasons of public interest, the Federal Council may by exception declare permissible an illicit market behavior of dominant enterprises.

Mergers are defined by the Cartel Statute either as (i) a unification of two or more enterprises formerly formally independent, or (ii) as the assumption of control by an enterprise over one or more formerly legally and economically independent enterprises. Any behavior and manners leading to control, such as the acquisition of shares or by means of a contractual basis, is relevant. Joint ventures exerting a substantial structural effect on the relevant market are also examined.

Merging enterprises that, according to turnover, are in a position to substantially influence the market, have a duty to notify the Competition Commission (see below). The determining criteria are (i) an accumulated worldwide turnover of all involved enterprises of CHF 2 billion or a turnover within Switzerland of CHF 500 million and (ii) a turnover of at least CHF 10 million each within Switzerland by at least two of the involved enterprises. However, enterprises dominating the market are subject to a mandatory duty of registration, and special thresholds apply to the media, banking and insurance sectors.

A full investigation will be initiated if the preliminary investigation conducted after the notification reveals that a merger creates or consolidates a dominant position. Sanctions such as conditions, restrictions and prohibitions are pronounced only if the newly created or consolidated dominance is liable to eliminate competition. The future development of the market is thus being taken into account. In case of revitalizing effects on competition within other mar-

kets, a merger eliminating efficient competition may be permitted.

Again, the Swiss Federal Council may by exception exempt rejected mergers due to compelling public interests.

As shown above, the Cartel Statute does not differentiate between private and public antitrust law as far as material rules are concerned, whereas the procedural rules are different:

Private antitrust law is only applicable to the enforcement of civil law claims. Whenever an antitrust lawsuit is being brought before a civil judge, such lawsuit must be submitted to the Competition Commission in order to obtain a relevant opinion.

Anyone obstructed in entering or exercising competition may take legal action pursuant to the provisions of the Cartel Statute in order to avert any hindrance, restrain interference, obtain damages and satisfaction, recover unlawful gains or obtain a declaration of unlawfulness.

The Cartel Statute provides for a specific judicial body in each canton to tend to claims pertaining to anti-competitive behavior. An appeal against the judgment of such cantonal judicial body is possible before the Federal Court, provided that the threshold of CHF 8,000 has been met. To avoid future damage and to grant immediate protection of anti-trust claims, interlocutory injunctions such as a temporary obligation to enter into a contract or a temporary removal of limitations to competition are possible.

Public antitrust law governs the competence of the antitrust bodies. The *Competition Commission* (*Commission de la concurrence / Wettbewerbskommission*), whose members are elected by the Federal Council, is divided into three chambers and consists of a majority of independent experts. It adopts binding decisions, monitors competition conditions, adopts expert opinions and issues recommendations.

The *Secretariat* is the investigating body of the Competition Commission and prepares the agenda of the Competition Commission, executes its decisions and renders public statements.

The *Appeal Commission for Competition Matters* (*Commission de recours pour les questions de concurrence / Rekurskommission für Wettbewerbsfragen*) decides on appeals against decrees adopted by the Competition Commission and the Federal Court decides on administrative-law complaints as a last instance.

In compliance with the protocol of the procedure, a full investigation is initiated only if the preliminary investigation, opened by the Secretariat, produces sufficient evidence of an illicit limitation of competition. At its conclusion, the Competition Commission issues a decision by binding decree, in accordance with the proposal submitted by the Secretariat. However, the investigation may be terminated at any time if a mutual understanding is reached.

Due to the fact that the preventive character of merger control requires a swift and discrete procedure, strict deadlines must be observed. These amount to one month for the preliminary investigation, which examines whether the preconditions for the duty to notify are given, and

four months for the full investigation. If such deadlines are missed, the merger is deemed permitted. Unless the Competition Commission agrees in advance, it is prohibited to execute a merger during the period of investigation. In the case of an execution of a merger without permission, the Competition Commission may re-establish effective competition.

The Cartel Statute provides for two different categories of sanctions:

Administrative sanctions are applied to corporate bodies. The extent of the fine is determined in relation to the gain attained as a consequence of the illicit restriction of competition. For infringements contravening an instruction by an authority, fines amounting to up to three times the gain attained are imposed. For gains impossible to assess, a substitution of an amount equal to ten percent of the turnover of the preceding year applies. Infringements in relation to mergers are fined by an amount of up to CHF 1 million and, in case of a repeat offense, of 10 percent of the annual turnover in Switzerland. Finally, the failure to provide information requested may result in fines of up to CHF 100,000.

It is possible to file a last instance appeal against the sanctions before the Appeal Commission for Competition Matters and before the Federal Court.

Criminal sanctions are applied for infringements committed intentionally and personally by individuals that have independent decision-making authority within the enterprise. However, such sanctions only pertain to infringements violating mutual understandings with the Competition Commission or orders issued by authorities and designed to remove restrictions to competition. The maximum fine generally amounts to CHF 100,000. The failure to provide information requested may result in fines of up to CHF 20,000.

It is possible to file a last instance appeal against the sanctions before a cantonal criminal court and before the Federal Court.

Finally, the Cartel Statute provides for an enforcement of international antitrust law, such as the EFTA Treaty and the Free Trade Agreement with the EU. Upon request of the *Federal Department of Economic Affairs*, a preliminary investigation may be initiated by the Secretariat. If the investigation provides evidence that a limitation of competition infringes an international treaty, the Department, in cooperation with the *Federal Department of Foreign Affairs*, may submit a proposal for a mutual agreement and elimination of the infringement to the enterprises. The Federal Department of Economic Affairs may impose direct measures to eliminate the limitation of competition if it proves impossible to reach an understanding and retaliatory measures are therefore likely. Again, such a decree may be challenged before the Federal Court.

Environmental Regulations

[See above, II., Environmental Considerations]

Government Approvals

Notwithstanding a few exceptions (e.g. the requirement to obtain authorization from the Federal Banking Commission for the establishment of a new Swiss investment fund), no government approval or governmental certificate is required for the establishment of a business in Switzerland.

Insurance

Although an enterprise is not required to carry insurance under Swiss law, it is customary to do so. Nonetheless, an enterprise must provide its employees with certain compulsory social security coverage (e.g. old-age, survivors and disability insurance). Private insurers in Switzerland tend to provide voluntary insurance, whereas governmentally operated insurers provide mandatory insurance. The operation of an insurance business by a private insurer in Switzerland requires a license.

Licenses/Permits

Depending on the nature of the anticipated activity, licenses or permits may also be required in other fields of business (e.g. license to establish a branch office of a foreign bank).

IX. OPERATION OF THE BUSINESS

Advertising

See below, IX., Consumer Protection Laws.

Attorneys

Local counsel can be located through the bar associations of the cantons or via the Swiss federal bar association. Attorney's fees may vary from canton to canton.

Bookkeeping Requirements

Any business entity that is required to be registered in a register of commerce must keep local books of account and is subject to the general commercial accounting principles as set forth in the Swiss Code of Obligations. These require that financial statements are complete, clear and true, and drafted in accordance with generally accepted commercial principles so as to reflect the financial situation of the business. Although it is compulsory to maintain the balance sheet, the profit-and-loss statement and the inventory in Swiss francs, this requirement does not apply to the day-to-day bookkeeping.

Business Ethics/Codes

The Swiss Code of Obligations contains additional more stringent accounting rules for stock corporations, limited liability companies and limited partnerships with shares, and the listing

rules of the Swiss Exchange contain accounting requirements for companies with listed securities.

Certain branches of business (e.g. banks, investment funds, licensed insurance companies) are required to adhere to special statutes pertaining to accounting standards. These stricter rules are usually combined with governmental supervision.

The Swiss Chamber of Certified Public Accountants, Tax and Fiduciary Experts (a private organization) has set up "best practice" standards for the audit and accounting profession. The Swiss Expert Commission for Recommendations on Accounting Standards has issued guidelines and recommendations (e.g. GAAP) to achieve a harmonization between the Swiss and the international accounting standards. These recommendations are compulsory for companies listed on the Swiss Exchange. Currently, approximately half of the companies listed in Switzerland follow the International Financial Reporting Standards (IFRS) and only a few, mainly those companies listed in the US, follow the US-GAAP.

Consumer Protection Laws

According to the Federal Constitution, the Swiss Confederation can take measures for the protection of the consumer. However, the legislature takes the view that an all-embracing consumer protection law is neither necessary nor reasonable. Consequently, consumer protection is fragmented and found in several statutes. Beyond statutory provisions of contract law in the Swiss Code of Obligations, particularly the right of revocation by the consumer in door-to-door transactions, various specific federal statutes have been enacted. Moreover, trade in certain types of consumer goods such as drugs, toxic substances, electricity and explosives is limited by particular statutory regulations.

However, only the most important aspects of consumer protection in Switzerland are elucidated below.

Quality standards for consumer goods are governed by the Federal Statute on Foodstuffs and Commodities. The aims of the statute are to protect the health and life of consumers and to prevent manufacturers from deceiving consumers by using confusing or unclear descriptions of goods. More specific rules, applicable to foodstuffs, tobacco, cosmetics and other necessities, are found in the implementing ordinances.

Further rules regarding the sale of goods are contained in the Unfair Competition Statute⁴¹. Its aim is to protect consumers from inaccurate or misleading statements of fact in connection with the sale of goods. The use of abusive general conditions of sale may also constitute unfair competition, if considerably deviating from the usual legal framework or leading to a highly unusual distribution of rights and obligations to the detriment of the purchaser of the goods.

⁴¹ *Bundesgesetz vom 19. Dezember 1986 gegen den unlauteren Wettbewerb (UWG)/ Loi fédérale du 19 décembre 1986 contre la concurrence déloyale (LCD)*, SR/RS 241.

According to the Federal Statute on Consumers' Information⁴², whoever puts in circulation goods or who offers services must, in the interest of consumers, declare the main characteristics of these goods or the main subject-matter of these services. Organizations of manufacturers and consumer organizations jointly define the goods subject to declaration, and the form and contents of the declaration for goods and services. If these organizations are unable to reach an agreement, the Federal Government may impose the declaration.

According to the Federal Product Liability Statute⁴³, any producer, trademark holder, importer or any distributor declining to identify the manufacturer of the product sold, is liable for damages caused by a defective product. However, only damages resulting from personal injuries or the destruction of real or personal property is subject to compensation, provided that the loss amounts to at least CHF 900.

Misleading price information, especially misleading references to price reductions or other comparisons, is prohibited by the Federal Unfair Competition Statute. In particular, consumers are protected against misleading price-cutting, deception about the actual value of an offer by the addition of giveaways and particularly aggressive methods of sales such as psychological pressure in door-to-door sales or sales at parties.

Moreover, the Swiss Commission of Fairness, established by a private foundation of the advertising industry, renders decisions upon complaints against certain advertising practices. The decisions are based on principles developed by the commission itself or in accordance with the International Code of Fair Practice in Advertising promulgated by the International Chamber of Commerce.

The information rights of the consumer, the content, the performance and the assignment and termination of travel contracts are governed by the Federal Package Travel Statute⁴⁴. Furthermore, in order to protect the consumer from problems of insolvency, tour operators are required to secure the payments of the consumer as well as the return journey.

Subject to certain exceptions (e.g. credits below CHF 500 and exceeding CHF 80'000), the Federal Consumer Credit Statute⁴⁵ is applicable to all forms of credits, including loans, deferred payment conditions in consumer contracts or other financing arrangements which are granted by professionals to individuals who do not act professionally or commercially. The statute's main aim is to provide consumers with information. Therefore, it sets requirements concerning the content of consumer credit contracts and advertising. Violation of the re-

⁴² *Bundesgesetz vom 5. Oktober 1990 über die Information der Konsumentinnen und Konsumenten (Konsumenteninformationsgesetz, KIG) / Loi fédérale du 5 octobre 1990 sur l'information des consommatrices et des consommateurs (LIC), SR/RS 944.0.*

⁴³ *Bundesgesetz vom 18. Juni 1993 über die Produktheftpflicht (Produktheftpflichtgesetz, PrHG) / Loi fédérale du 18 juin 1993 sur la responsabilité du fait des produits (LRFP), SR/RS 221.112.944.*

⁴⁴ *Bundesgesetz vom 18. Juni 1993 über Pauschalreisen / Loi fédérale du 18 juin 1993 sur les voyages à forfait, SR/RS 944.3.*

⁴⁵ *Bundesgesetz vom 23. März 2001 über den Konsumkredit (KKG) / Loi fédérale du 23 mars 2001 sur le crédit à la consommation (LCC), SR/RS 221.214.1.*

quirements is sanctioned by invalidity of the contract and the creditor losing payment of the interest. In order to prevent the consumer from excessive indebtedness, the statute creates a credit rating and instructs the Federal Council to set a maximal interest rate.

The Federal Commission for Consumer Problems was established by a decree of the Federal Council on February 26, 1965. It acts, in all matters of consumer policy, as an advisory body to the federal government and its departments. It issues reports, for instance regarding credit cards, is involved in the drafting of new statutes and promotes consumer information.

Construction

The acquisition of immovable property by non-resident aliens is restricted and requires a permit. The statute defines as non-residents, *inter alia*, foreigners, whether individuals or legal entities, who are not entitled to set up domicile in Switzerland. Further, corporate entities controlled by such individuals are treated on the same footing as non-residents, although their domicile is in Switzerland. In accordance with the Agreement on Free Movement of Persons between Switzerland and the EU, facilitations for citizens of the European Union are in effect.

With the exception of holiday homes and units in hotel condominiums, there exists no ceiling on permits, and permits must be granted if statutory requirements are fulfilled. In practice, most permits are granted for the creation of permanent business establishments. There are some absolute grounds for refusal of permits. Generally speaking, a non-resident is prohibited from making a financial investment in immovable property.

Application for a permit must be filed with the appropriate cantonal authority at the place where the immovable property to be acquired is situated. The acquisition of immovable property by a non-resident is void if no permit has been obtained.

Zoning law and construction law are closely interrelated. An important feature of the Zoning Statute⁴⁶ is that it is prohibited to build anywhere without a permit. In order to obtain a permit, the construction site must be located in a zone designated for construction. The principal zones established by federal law are construction, agricultural and protection zones. The cantons are free to provide for further sub-zones. In general, it is only permitted to construct in construction zones although exemptions may be granted. The site must further be provided with utilities and must be ready to be developed. Cantonal and municipal building codes provide (i) various technical provisions on how buildings or installations must be built, (ii) regulations regarding the position of a building within its lot and (iii) aesthetic regulations which apply to various kinds of constructions. To obtain a construction permit, all these requirements must be fulfilled.

The procedure to follow in obtaining a construction permit is governed by municipal codes. First, a request for a permit is filed with the municipal authorities. Secondly, a notice-and-

⁴⁶ *Bundesgesetz vom 22. Juni 1979 über die Raumplanung (Raumplanungsgesetz, RPG) / Loi fédérale du 22 juin 1979 sur l'aménagement du territoire (loi sur l'aménagement du territoire, LAT), SR/RS 700.*

comment period commences, during which interested parties may lodge written objections to the issue of the requested permit with the municipal authorities. The notice-and-comment period expires after a short period. The municipal authority must either grant or deny the construction permit within the time stated in the applicable code. The competent authority must examine *ex officio* whether the request for the permit is in accordance with all legal requirements. Once a permit is granted or refused, interested parties may challenge the decision before a special cantonal court for appeals of building code cases.

The period to receive authorization to construct depends on the intended size of the building and on the procedures of the canton in question. In some cantons, the permit for a single-family house can be obtained in about 11 weeks and a construction permit for a mid-size commercial building or a factory building in about 18 weeks.

There are fees but they depend on the size and kind of building and whether special permits are required.

Contracts

There are no restrictions with respect to the entry of an investor into local agreements. Pursuant to the federal Private International Law Statute, the parties are free to choose the governing law of a contract. If not expressly agreed on by the parties, the applicable law is that of the country in which the party performing the characteristic obligation under the agreement in question resides.

Price Controls

There are several statutes under Swiss law that contain price controls but the Federal Price Supervision Statute⁴⁷, enacted July 1, 1986, provides the general regulatory scheme.

The aim of the Federal Price Supervision Statute is to protect consumers from abusive pricing. Corrective measures are permitted in connection with the sales of goods as well as for the rendering of services, including credits. However, it is not applicable to remuneration for work and credits of the Swiss National Bank. Corrective measures are only applied if the abusive prices in a relevant market are the result of an agreement between private parties, are set by companies in a dominant position or by the government. The statute applies to cartels or similar agreements that limit competition and to dominant enterprises.

The Federal Council appoints a "Price Commissioner" whose job encompasses the observation of price developments and the prevention or challenge of abusive price increases or abusive maintenance of high prices (e.g. book and drug prices). The Price Commissioner also informs the public about such activities.

Corrective measures are only taken by the Commissioner if there exists no efficient competi-

⁴⁷ *Preisüberwachungsgesetz vom 20. Dezember 1985 (PüG) / Loi fédérale du 20 décembre 1985 concernant la surveillance des prix (LSPr)*, SR/RS 942.20.

tion, i.e., consumers are unable to choose other offers without considerable efforts. The relevant criteria to determine whether a price is abusive are the development of prices compared to similar markets, the necessity for companies to attain adequate profits, the development of costs of products and special performances and market conditions.

Besides the Price Supervision Statute there are other statutes containing price controls such as the Product Liability Statute, the Package Travel Statute and the Consumer Credit Statute (see above, IX., Consumer Protection Laws). The Ordinance on the Disclosure of Prices⁴⁸ provides further means of price control. Its aim is to allow consumers to compare prices and to prevent misleading price information. It requires the conspicuous indication of consumer prices on goods and in connection with certain services. Other regulations are applicable only to specified markets such as agricultural rent, protected prices of goods, drug prices and particular insurance premiums, or for the protection of and support of important and endangered professions or branches of the economy.

Product Registration

Administrative registrations are required for commercial products that are subject to specific regulation mainly for reason of health and environmental protection or consumer information. Corresponding obligations exist (without limitation) for pharmaceuticals, medical devices, poisonous agents, products used for agricultural production (e.g. seeds, fertilizers, plant protecting agents, animal feed) or products consisting of or derived from genetically modified organisms.

The authorities competent for the registration differ, depending on the product category concerned. In general, competences are allocated as follows: The Swiss Agency for Therapeutic Products (SWISSMEDIC) or the Swiss Federal Office of Public Health (SFOPH) are assigned issues regarding human health, the Swiss Agency for the Environment, Forests and Landscape (SAEFL) has issues regarding environmental protection, the Federal Veterinary Office (FVO) has issues regarding animal health and animal welfare, and the Swiss Federal Office for Agriculture (FOAG) has issues regarding agricultural means of production. As to the applicable procedures and requirements, depending on the product category, provisions of several statutes and the pertinent ordinances are relevant, e.g. the federal Statute on Drugs and Medical Devices⁴⁹, the federal Statute on Foodstuffs and Commodities, the federal Statute on Poisonous Agents⁵⁰, the federal Statute on Genetically Modified Organisms in the Non-Human Field⁵¹ or the Statute on Agriculture.⁵²

⁴⁸ *Verordnung vom 11. Dezember 1978 über die Bekanntgabe von Preisen (Preisbekanntgabeverordnung, PBV) / Ordonnance du 11 décembre 1978 sur l'indication des prix (OIP)*, SR/RS 942.211.

⁴⁹ *Bundesgesetz vom 15. Dezember 2000 über Arzneimittel und Medizinprodukte (Heilmittelgesetz, HMG) / Loi fédérale du 15 décembre 2000 sur les médicaments et les dispositifs médicaux (Loi sur les produits thérapeutiques, LPT)*, SR/RS 812.21.

⁵⁰ *Bundesgesetz vom 21. März 1969 über den Verkehr mit Giften (Giftgesetz, GG) / Loi fédérale du 21 mars 1969 sur le commerce des toxiques (Loi sur les toxiques, LTox)*, SR/RS 813.0.

⁵¹ *Bundesgesetz vom 21. März 2003 über die Gentechnik im Ausserhumanbereich (Gentechnikgesetz, GTG) / Loi fédérale du 21 mars 2003 sur l'application du génie génétique au domaine non humain (Loi sur le génie génétique, LGG)*, SR/RS 814.91.

For products subject to specific registration requirements, registration can generally only take place if the products have passed an authorization procedure that assesses the risk to the health of humans, animals and plants or the environment. Depending on the complexity of the subject to be assessed, such authorization procedures can be extensive in terms of duration as well as costs. However, governmental authorities in Switzerland generally handle applications for product approvals in due time and are bound to specific official scales of fees.⁵³

Reductions or Return on Capital

While a stock corporation is operational, the share capital can only be repatriated by way of a capital decrease. The resolution of the general meeting of shareholders to reduce the company's share capital requires a report by a qualified auditor confirming that the claims of all of the company's creditors will be covered by the share capital after the reduction. The shareholders' resolution must be published three times in the Swiss Official Journal of Commerce and in the manner of publication provided for in the company's articles of incorporation, including the notification to the company's creditors that they may demand payment or surety of their claims within two months of the third publication. A publicly authenticated deed containing the auditor's report is needed to evidence that the requirements of a capital decrease have been complied with. The capital reduction becomes effective upon registration in the register of commerce. The described procedure is also applicable for the capital reduction of a limited liability company.

A stock corporation may only purchase its own shares if it holds freely disposable capital for such acquisition and provided such shares do not exceed 10 percent of the total par value of all shares. If the company purchases its own shares due to its refusal to accept a new holder of registered shares, the self-owned shares may constitute no more than 20 percent of the share capital, and the shares exceeding 10 percent of the share capital must either be sold or cancelled by way of a capital decrease within two years.

Sale of Goods

(see above, IX., Consumer Protection Laws)

Trade Associations

There are a number of Swiss trade associations which an investor may join, such as the Swiss Office of Trade Development.

⁵² *Bundesgesetz vom 29. April 1998 über die Landwirtschaft (Landwirtschaftsgesetz, LwG) / Loi fédérale du 29 avril 1998 sur l'agriculture (Loi sur l'agriculture, LAgr)*, SR/RS 910.1.

⁵³ As a general rule, the total of the fees collected by an administrative entity may not exceed the aggregated operation costs of such entity and the service rendered by the authority must be of equivalent value compared to the fees charged to applicant's account.

X. CESSATION OR TERMINATION OF BUSINESS

Termination

The following overview concerns only the termination/insolvency of a stock corporation.

A stock corporation is usually incorporated for an unlimited period of time. Nevertheless, a business may be dissolved and liquidated at any time without governmental approval or intervention. Unless the articles of incorporation provide otherwise, the shareholders' meeting of a stock corporation can make that decision. Although the management is responsible for the phase-out of the company, the general meeting may elect another liquidator. At least one liquidator residing in Switzerland must have the right to act and sign for the company. The names of liquidators must be filed with the register of commerce, and the words "in liquidation" added to the company name.

The liquidators of a stock corporation must set up a balance sheet and notify all creditors, whereby unknown creditors are notified by way of a threefold publication of the liquidation in the Swiss Official Journal of Commerce. After satisfaction of all creditors, the remaining assets may be distributed to the shareholders no earlier than one year after the date of the third publication, unless an auditor confirms that all debts have been settled, in the event of which the remaining assets may be distributed three months after the date of the last publication.

After completion of the liquidation proceedings, an application for cancellation of the company must be filed with the register of commerce. The status of the company as a legal entity is not changed until it is deleted from the register of commerce with the consent of the tax authorities.

In tax law liquidation of a corporation means the alienation or realization of the assets of an enterprise. A (full or partial) liquidation usually implies the realization and taxation of the undisclosed reserves (difference between market and book value) on the liquidated assets and liabilities. During the liquidation period, the corporation continues to be taxed on its income and capital. The difference between the net amount of liquidation proceeds and the nominal share capital constitutes the final liquidation dividend, which is subject to the 35% withholding tax. The general tax liability of a corporation ends after the termination of the liquidation procedure. The tax consequences at the level of the shareholders of a liquidated corporation depend on whether the shares are included in the private portfolio of an individual shareholder, or whether they belong to the business assets of an individual shareholder or are owned by a corporate entity. An individual shareholder privately holding the shares realizes taxable income to the extent that the net return from the shares of the liquidated corporation exceeds the nominal value of the shares. The purchase price of the shares is not taken into consideration when determining the taxable income. If the shares of the liquidated company belong to the business assets of an individual (or a partnership), the difference between the liquidation proceeds and the book (income tax) value of the shares is considered taxable business income. The same tax treatment applies where the shares of the liquidated corporation belong to a corporate entity. In this case the participation exemption applies if certain

conditions are fulfilled.

Alternatively, management may choose to transfer all assets and liabilities of the business to an existing stock corporation. In this case, certain provisions pertaining to the liquidation of the existing company must be adhered to. If all assets and liabilities of a business are transferred to a new company, the rules on the formation of a stock corporation and on the transfer of all assets and liabilities to an existing company must be observed.

Insolvency/Bankruptcy

Bankruptcy proceedings may be initiated by the creditors of a company or by the involved company. In the event of an over-indebtedness (*surendettement/Überschuldung*) of the company, the board of directors is responsible for the notification of the competent judge, unless there are tangible prospects of a restructuring.

Once the judge has been notified, bankruptcy proceedings are initiated by the court, and the bankruptcy office draws up an inventory and publishes the bankruptcy, requesting any creditors and debtors to file their claims and debts. The estate is administrated by the bankruptcy office, which may be replaced by one or more individuals elected by the creditors. The creditors may also elect a committee of creditors to supervise the administrators and to authorize them to take certain important measures. Meetings of creditors are held for the purpose of such elections and other urgent matters. The administrators must establish a schedule of creditors. Thereafter, a second creditors' meeting passes all matters, including realization of assets by public auction or private sale. After distribution of the proceeds the bankruptcy court receives a final accounting and declares the bankruptcy closed. Every creditor receives a "certificate of loss" for the unpaid balance of the individual claims.

The bankruptcy court may order summary proceedings if the assets found do not cover the expenses of ordinary proceedings. The bankruptcy office then proceeds with the liquidation without the participation of the creditors. Any creditor can demand ordinary proceedings by advancing the costs.

If no assets are found, the bankruptcy court orders the bankruptcy completed as well, but no "certificate of loss" is issued. In the course of a two-year period thereafter, creditors may institute an execution of seizure against the debtor.

Composition is also known in Swiss law. Basically there are three types of composition: (i) stay of payment during a certain time period; (ii) payment of a percentage on all non-privileged debts; and (iii) abandonment of all or part of the debtor's assets to creditors. Composition is possible for any debtor, even after execution proceedings have started. Except for cases where bankruptcy has already been declared, the debtor must apply for a stay of payment with the "composition authority", by submitting a statement of assets and liabilities and a draft composition plan. If the authority grants composition, a commissioner is appointed. The debtor can, under supervision of the commissioner, dispose of his property but may not sell or encumber it. If the composition liquidation is confirmed, a creditors' meeting elects the liquidators and a committee of creditors to supervise the liquidators. The realization of the

assets and the distribution of the proceeds to the creditors is similar to bankruptcy proceedings.

Special regulations apply to banks, hotels, farms and some other businesses.

XI. LABOR LEGISLATION, LABOR RELATIONS, AND SUPPLY

Employer/Employee Relations

Only a few areas of the contractual relationship between employers and employees are regulated in Switzerland. As a result, Swiss labor law is readily comprehensible and generally more favorable to the employer than the labor law of many other jurisdictions. Nevertheless, a slow change is taking place in the employee's favor. Three sources of law can be indicated:

- The Swiss Code of Obligations (art. 319-362), the most important legislation on employment contracts, regulates individual employment contracts, collective labor agreements, standard provision contracts for certain types of employees and, in part, social security.
- The Federal Labor Statute⁵⁴ sets maximum weekly working hours, minimum breaks and holidays, and addresses security at the workplace and the protection of female employees and minors.
- The Federal Statute Governing the General Applicability of Collective Labor Agreements⁵⁵ provides that collective labor agreements may, under specific circumstances, be declared applicable to all employers and employees in designated industries or divisions of industries. In practice, the contractual relationship between employers and employees in important sections of trade and industry is determined by collective labor agreements.

The Swiss Code of Obligations mentions the standard-provision employment contract together with the collective labor agreements. This contract establishes similar key provisions (concerning conclusion, content and termination) for specific kinds of employment relationships such as those contained in collective labor agreements. The standard-provision employment contract is an official decree, usually issued by the cantonal authority, whereas collective labor agreements are entered into by employers or employer and employee organizations. Within the framework of the Code of Obligations, it stipulates subsidiary employment provisions from which individual employers and employees may deviate by mutual consent. Standard-provision employment contracts are used in economic sectors in which employees do not have the necessary bargaining power (such as household help and agriculture).

⁵⁴ *Bundesgesetz vom 13. März 1964 über die Arbeit in Industrie, Gewerbe und Handel (Arbeitsgesetz, ArG) / Loi fédérale du 13 mars 1964 sur le travail dans l'industrie, l'artisanat et le commerce (Loi sur le travail, LTr)*, SR/RS 822.11.

⁵⁵ *Bundesgesetz vom 28. September 1956 über die Allgemeinverbindlicherklärung von Gesamtarbeitsverträgen / Loi fédérale du 28 septembre 1956 permettant d'étendre le champ d'application de la convention collective de travail*, SR/RS 221.215.311.

There is no general obligation to train employees under Swiss law. However, Swiss tort law states that employers are liable for damages caused by their employees if such employees have not received adequate training. An employer should therefore have an interest in training the employees properly. Special training contracts such as apprenticeships or internships, do impose an obligation on the employer to train the employee. As a result, inadequate training during the apprenticeship may lead to damages.

Employment regulations

Generally speaking, employers are not obliged to hire Swiss nationals. However, Swiss nationals are given priority under Swiss law. Permission from the competent authority is therefore needed for the appointment of a foreign employee. Such permission is granted only if an employer is unable to find a national applicant willing and able to fill the position for a common wage and under common conditions. Exceptions are made for the transfer of executives, for scientists and for foreigners holding a residence permit. The priority of Swiss nationals vis-à-vis EU/EFTA citizens was suspended on 1 June 2004 and is only applied vis-à-vis non-EU/EFTA nationals (see below). As far as permits for border crossers from EU/EFTA countries are concerned, the competent authority must grant a permit upon demonstration of an employment contract with a Swiss employer.

Under Swiss law, no minimum wage is applicable to contractual relationships between employers and employees. In the case of specific groups of businesses, however, collective labor agreements and standard provision employment contracts specify binding minimum wages. The importance of such agreements is likely to increase in the near future in order to prevent wage dumping by EU/EFTA citizens. Vocational training in agriculture is governed by a particular law that fixes minimum as well as maximum wages.

Under Swiss law the maximum working hours for industrial, technical and office workers and other white-collar employees (including shop personnel) are, with certain exceptions, 45 hours a week. For other workers, the maximum hours are 50 hours a week. Such maximum weekly working hours may be exceeded, for true managerial functions and under certain exceptional circumstances, in accordance with prescribed limitations on hours and pay for overtime. Certain rules apply only to particular groups, for instance to women or teenagers. Exceptions are permitted only under very specific circumstances.

Employees must be granted one day off per week, usually on Sunday. Other arrangements for days off may be made with the employee's consent. Moreover, employees must be given at least four weeks annual vacation. For employees under the age of twenty, the minimum is five weeks annual vacation. A minimum of two weeks annual vacation must be taken by the employee at one time. Mandatory vacation time must not be replaced by monetary compensation while the employment is still ongoing.

Hiring and Dismissal Requirements

Under Swiss law an employer is not required to employ a minimum number of people.

Under Swiss law, requirements relating to the nationality of employees depend on the type of the company. In case of a stock company, the majority of the members of the board of directors must have Swiss or EU/EFTA country citizenship and must be domiciled in Switzerland, whereas for any other type of company there exist no similar restrictions (see above, VII., Liability Companies).

There are no written rules concerning the hiring of personnel under Swiss law. However, it is generally expected that negotiations with candidates must be fair. An employer failing to meet a former promise of appointment thus becomes liable to payment of damages, as does an employer rejecting a female candidate due to sexual discrimination. Confidential information regarding applicants must be kept confidential.

In contrast, dismissal of personnel is subject to strict rules. If an employment contract specifies no specific term, either the employee or the employer may give notice of termination. Legal notice periods are of one to three months, depending on the length of the employment relationship.

At any time during the probationary period either the employee or the employer may give notice of termination with a notice period of seven days. The probationary period is one month by law. The maximum term of the probationary period is three months, if agreed upon in writing.

The employer may not give notice of termination in any of the following four situations:

- during compulsory military or civil defense service, women's military service or Red Cross service, and if such service continues for more than twelve days, for four weeks before the commencement and four weeks after the end of such service;
- in case of full or part-time absence from work due to illness or accident, as long as the employee is not at fault for such illness or accident, for 30 days if during the first year of employment, for 90 days if during the second to the fifth year of employment and for 180 days if the person has been employed six years or more;
- during pregnancy and sixteen weeks after the employee has given birth;
- during foreign relief service in which an employee serves with the consent of the employer and which has been ordered by the competent federal authorities.

An employer or employee may terminate the contract of employment without notice if such termination is based on a "cause". A party is considered to have a cause when circumstances are such that the party can no longer be expected to continue the employment relationship with loyalty and trust. Whether or not cause exists is a decision made largely at the judge's discretion.

Under Swiss law, there are only two particular cases in which an employer has post-contractual obligations towards a dismissed employee. Firstly, if the notice has not been given in written form, the employer has, upon the request of the dismissed, to state the reasons for dismissal in writing. Secondly, an employee with twenty or more years of service and being at least 50 years of age is entitled to receive from the employer special compensa-

tion on this termination. This latter provision does not apply in cases where the employer has funded a pension scheme. Given the mandatory pension scheme in Switzerland, this provision has lost most of its scope of application.

Labor Availability

All levels of skilled and unskilled labor are available in Switzerland.

Work Permits

Under Swiss law, foreign citizens need a residence permit and, in order to perform a gainful activity, a work permit. This also applies to temporary personnel, such as technicians or industrial workers, unless they only come to Switzerland for a few days as consultants, whereas trainees need temporary permits. Due to the fact that the regulations are very detailed and subject to annual renewal, applicable law changes quickly.

The Agreement on Free Movement of Persons between Switzerland and the EU, which came into effect on June 1, 2002, will make it easier for EU/EFTA citizens to obtain the required permits. The changes are being introduced in three steps, over five years:

- Step 1: EU/EFTA citizens already residing in Switzerland were treated equally and were granted the right to obtain a new work permit from the date of entry into force of the Agreement, subject to the priority of Swiss nationals and at a quota of 15'000 permits nationwide;
- Step 2: The priority of Swiss nationals was suspended on 1 June 2004;
- Step 3: The quota system will be suspended on 1 June 2007.

There are several residence permit categories under Swiss law. Also, a distinction must be drawn between EU/EFTA nationals and third-country nationals:

Third-country nationals:

Short-term residence permit

(L permit):

This permit may only be granted to third-country nationals for a stay up to one year. However, the period of validity of the permit corresponds to the term of the employment contract. By exception, an extension to a total duration of no more than twenty-four months is possible, under condition that the holder remains in the services

EU/EFTA nationals:

Short-term residence permit

(L EU/EFTA permit):

Provided that the annual quota of 115,700 permits has not been exceeded, EU/EFTA nationals are entitled to this permit. The period of validity of the permit corresponds to the term of the employment contract. However, a regular yearly extension for twelve additional months is possible, provided that the holder has

of the same employer throughout this time. This permit is also applicable to "au-pair" maids and basic and advanced trainees in Switzerland. The annual quota amounts to 5,000 permits, whereas permits granted to foreigners who are gainfully employed for a total of no more than four months within one calendar year are not subject to such quota.

Four-month residence permit:

This permit is granted by the cantons for key positions for the formation and the establishment of a company. The period of validity of the permit is one hundred and twenty days per year.

Cross-border commuters

(G permit):

This permit may only be granted to third-country nationals who are holders of permanent residence permits in a neighboring country and have had their regular place of residence in the neighboring country's border zone for at least six months. Moreover, labor market requirements must be fulfilled. The permit is essentially valid for one year when granted for the first time, and its validity is limited to the border zone of the issuing canton. Permission to change vocation or occupation is required and the employee must return to his country of origin on a daily basis.

Residence permit

(B permit):

This permit is only granted to gainfully

not interrupted his or her residence in Switzerland. Permits granted to foreign nationals gainfully employed for a total of no more than four months within one calendar year are not subject to the quota.

Cross-border commuters

(G EU/EFTA permit):

EU/EFTA nationals living in the border zone are entitled to such permit. The permit provides professional and geographical mobility within any of Switzerland's border zones. If an employment agreement of unlimited duration or of more than a duration of one year exists, the permit is valid for five years, otherwise the period of validity corresponds to the duration of the employment contract. The holder must return to his country of origin on a weekly basis.

Residence permit

(B EU/EFTA permit):

EU/EFTA nationals are entitled to

employed third-country nationals if the annual quota of 4,000 permits has not been exceeded and the labor market conditions (check on payment and working conditions, priority of Swiss nationals) are satisfied. When granted for the first time, period of validity of the permit is limited to one year. Unless there are reasons against a renewal, such as criminal offences, dependence on social security or the labor market, an annual renewal is common. However, a legal entitlement to a renewal exists only in exceptional cases.

this permit if the annual quota of 15,300 permits is not exceeded and there exists an employment contract of unlimited duration. . The period of validity is limited to 5 years if the holder is in possession of an employment contract of at least twelve months duration or of unlimited duration. If the foreign national satisfies the relevant requirements, the permit will be renewed for another five years without any further procedures. If the holder has been involuntarily unemployed for more than twelve consecutive months, however, the period of validity of the renewed permit may be limited to one year.

Settlement permit

(C permit):

This permit is granted to third-country nationals after ten years regular and uninterrupted residence in Switzerland. Due to bilateral agreements, this waiting period is limited to five years for citizens of many countries. A special regulation is applicable to US nationals. There exists no entitlement to settlement permits. Individuals holding a settlement permit are no longer subject to the Limitation Regulation and are free to choose their employers.

Settlement permit

(C EU/EFTA permit):

This permit is granted to EU/EFTA nationals after five years of regular and uninterrupted residence in Switzerland. Permits are checked every five years, analogous to residence permits.

Firstly, it must be noted that the enforcement of immigration legislation is primarily incumbent on individual cantons. The procedure of granting work and residence permits therefore differs slightly in each canton. The following remarks will thus remain very general.

Most work permits are granted by the competent cantonal authority with the consent of the Federal Office for Migration (FOM) in Berne. The FOM handles directly applications concerning exceptional cases involving national interests, scientific research and professional qualifications not found in Switzerland and all applications for a B-permit for non-EU/EFTA nationals. Special rules apply to short-term workers, trainees and au pairs.

The granting of a residence permit depends on the evidence of an employer. The application may be submitted either by the future employee or by the future employer. As a rule, before the competent cantonal authority issues a residence permit, the application has to be submitted to the cantonal labor market authority. This authority will issue a preliminary decision on whether the limits of the quotas and the labor market conditions (check on payment and working conditions, priority of Swiss nationals in case of non-EU/EFTA nationals only) have been satisfied. The cantonal immigration authorities are bound to this decision. A negative decision by the labor market office renders the granting of a residence permit by immigration authorities impossible.

A residence permit by the immigration authorities enabling its holder to take up gainful employment always includes a work permit. A distinction between the work and residence permits issued by the immigration authorities is therefore not made. Unfavorable decisions by the immigration authorities may be appealed at the cantonal level.

For EU/EFTA nationals, the procedure has been considerably shortened since 1 June 2004. Given the fact that the employee may usually start to work prior to the granting of the residence permit by the immigration office, the permit is issued within two weeks after filing of the application. A number of cantons provide for an electronic application by e-mail.

Lawyer's fees for simple EU/EFTA applications should not exceed CHF 1'500.-. Administrative fees of the labor office/immigration office may not exceed the effective costs and usually remain below CHF 100.-. As regards permits for non-EU/EFTA applications, lawyer's fees may easily reach an amount of CHF 5'000.- and administrative costs of CHF 700.-.

Safety Standards

A variety of safety codes must be adhered to under Swiss law. The Swiss Code of Obligations states that the lives and health of employees must be protected by all provisions technically and economically feasible for the employer. As a result, protection devices for machines must be adopted, the operational procedure must be organized in accordance with safety considerations, and hazards must be brought to the attention of employees. Special safety standards are applicable to employees who live in the household of their employer. Moreover, if a labor contract is governed by the Federal Labor Statute, there are additional requirements. Finally, the Accident Assurance Act of March 20, 1981⁵⁶, also contains provisions concerning the prevention of accidents and industrial diseases.

Unions

Trade Unions are recognized by the Swiss Constitution. Consequently, their existence as well as their right to collective action is protected. They not only represent the interests of their members but also accomplish public duties. Among other things, they are therefore competent to conclude mandatory collective bargaining agreements, have the exclusive right to pro-

⁵⁶ *Bundesgesetz vom 20. März 1981 über die Unfallversicherung (UVG) / Loi fédérale du 20 mars 1981 sur l'assurance-accidents (LAA)*, SR/RS 832.20.

claim strikes (strikes without the approval of a trade union are an offence under Swiss law), and they have an independent right of appeal.

In practice, only twenty-four percent of the employees in Switzerland are members of a trade union. There is no central union but several associations of unions. The most important of them is the Swiss Federation of Trade Unions, composed of fifteen unions acting in different groups of businesses, such as the clock and metal industry, construction, selling, trade, transportation, the food industry and so on. Other unions include the Catholic-National Union in which catholic laborers are organized, the SYNA Union, which represents forestry? wood-workers?, construction, industry and trade workers as well as employees in the graphics industry.

These unions are normally affiliated with parties on the political left such as the Swiss Social Democrats.

Under Swiss law, there is no obligation on the part of the employer to organize unions.

Swiss collective bargaining agreements today govern a lot of juridical questions. They are thus the most meaningful legal source for individual employer-employee relationships. Unfortunately, it is impossible to list all of them, due to the fact that collective bargaining agreements do not have to be published or registered. The most recent investigation conducted in 1971 showed that approximately 1,400 collective bargaining agreements existed in Switzerland. The most important federal collective labor agreements are as follows:

- Collective Labor Agreement for the Building Trade;
- Collective Labor Agreement for the Hotel and Restaurant Trade;
- Collective Labor Agreement for the Metal Industry;
- Collective Labor Agreement for the Hairdresser's Trade;
- Collective Labor Agreement for the Furniture Trade;
- Collective Labor Agreement for the Plasterer's and Painter's Trade.

XII. TAX ON CORPORATIONS

Allowances

Any expenses essential to the achievement of the gross profit, so-called commercially justified expenses, are deductible for tax purposes, provided that they are recorded in the statutory accounts. In general, the following expenses are considered commercially justified:

- Depreciation of assets up to certain pre-determined rates. Any additional depreciations must be sustainable from a business point of view.
- The formation of a reserve of up to one third of the stocks' cost or market value, whichever is lower.
- The formation of bad debt reserves of up to 5 percent for domestic receivables and up to 10 percent for foreign receivables. Any reserve exceeding these flat rates must be

sustainable from a business point of view.

- Taxes due for the accounting year on which the assessment is based and for any previous years.
- Contributions to employee pension plans.

Commercially unjustified expenses are excluded from deductibility. Examples of commercially unjustified expenses are payments made in connection with the purchase or improvement of capital assets, voluntary payments to third persons without consideration, open and hidden (constructive) dividends and distributions of profits. Explicitly exempt from deductibility are commercially unjustified depreciations and provisions.

Losses may be carried forward for a period of seven years. There are no loss carry-back provisions.

Calculation of Taxes

Taxable profit is based on the profit according to the profit and loss statement for the period as adjusted for tax purposes. All payments made and charged to the profit and loss account which were used to cover expenses that are not "commercially justified" from a tax perspective (i.e., reasonable business expenses) and exceed depreciations and provisions are added to the balance of the profit and loss account in order to determine the taxable income. To serve as the basis for taxation, both the balance sheet and the profit and loss statement must concur with the legal accounting rules set forth in the Code of Obligations. Once the accounts are approved by the competent executive body of the corporation they are final and binding upon the corporate taxpayer. They may be rectified only if mandatory accounting rules have been violated.

Capital Gains

On the federal, cantonal and municipal level, capital gains are included in the taxable income and therefore taxed at the ordinary income tax rates (see below, XII., Tax on Profits). A participation exemption applies for the taxation of capital gains on substantial participations. A substantial participation exists where a company owns at least 20 percent of the capital in the company or the value of the participation amounts to at least CHF 2 million. The required minimum holding period in order to qualify for the participation exemption amounts to one year. The participation exemption consists of a reduction of the tax amount payable on the corporation's entire net income in the portion of its net income and gains from qualifying participations to its overall net income. The participation exemption only applies on participations acquired as from January 1, 1997. Gains on older participations only qualify for a participation exemption if they have been attained after January 1, 2007.

Special rules may apply to capital gains on real estate or for real estate companies on the cantonal and municipal level. Depending on the canton in which the real estate is located, capital gains on real estate may either be treated as taxable income or subject to a separate cantonal real estate gains tax. The cantons that have adopted such a real estate gains tax have introduced a progressive rate based on the amount of gain and the holding period (higher rates for

short holding periods). The rates vary from 0 to up to 50 percent of the gain realized.

Filing and Payment Requirements

All taxpayers are obligated to file an annual combined tax return for federal and cantonal/municipal tax purposes. The due date for the filing of the tax return may vary from canton to canton but is usually September 30. Federal, cantonal and municipal income taxes are collected annually by the canton assessing the taxes. Cantonal tax laws usually provide for the cantonal government to determine a specific date on which taxes are due. The federal income tax is due on March 1 of the calendar year following the completion of the tax period. The period within which the tax must be paid is usually 30 days from the due date. The taxpayer may pay the taxes usually either in installments or annually.

Miscellaneous Taxes Due

Cantonal/municipal *capital taxes* are levied on the corporation's taxable capital at the end of the relevant accounting year. Taxable capital constitutes the sum of share capital paid in full, legal reserves, statutory reserves, open reserves, and previously taxed undisclosed reserves (retained earnings). Paid in full share capital always represents the minimum taxable capital, even if the former is no longer covered by net assets. Loans granted to the corporation by shareholders or affiliated parties may be treated as capital if the thin capitalization rules are not met. The rates vary between approx. 0.1 and 1 percent. Filing and payment requirements for capital tax are identical to those for the tax on profits (see above, XII., Filing and Payment Requirements).

Switzerland levies a *stamp tax* on the issue of securities, the premiums for specific types of insurance, and – in some cases – also on the transfer of securities: Upon incorporation or capital increase of an AG or GmbH, an *issuance stamp tax* amounting to 1 percent of the registered capital or the amount received by the company, whichever is higher, is levied, if such value exceeds CHF 250,000. The issuance stamp tax is also levied on capital contributions without capital increase. Exemptions may be granted in case of a transfer of the legal domicile of a company incorporated abroad or in case of debt restructurings. *Securities transfer tax* is due on the consideration paid subsequent to the transfer of securities, if one of the contracting parties or an intermediary is a securities dealer in accordance with the provisions of the Swiss stamp tax legislation. The tax rate amounts to 0.5 percent for the transfer of Swiss securities and 0.3 percent for the transfer of foreign securities. Exemptions may be granted in case of reorganizations. Certain *insurance premiums* are subject to a stamp tax at rates ranging from 2.5 percent to 5 percent.

In addition, most cantons levy a *real estate transfer tax* (or a land register fee) on the transfer of immovable property. Taxable transfers are transfers of title to immoveable property and transactions that are economically equivalent to such transfers. The transfer of all or the majority of the shares in a real estate company is thus deemed to be a taxable transfer. The tax is computed on the purchase price or the fair market value of the real estate. The tax rates range approximately between 0.1 and 4 percent. Cantonal tax laws provide for exemptions for various types of transfer, e.g. in the case of reorganizations.

Other miscellaneous taxes, such as vehicle, tobacco, alcohol, and amusement tax, are due and imposed on the sale or the holding of the relevant goods.

No taxes are levied on business licenses, apprenticeships or training.

Registration Duties

Registration duties apply on the incorporation of a company, increase in capital, transfer of shares in a GmbH (but not on the transfer of shares in an AG), change of persons with signatory power and other reorganizations for which an entry in the register of commerce is required. The amount of the duty depends on the registered capital of a company and the transaction being registered.

Sales Tax or other Turnover Taxes

The Swiss VAT system is similar to that operated in the EU Member States. Swiss VAT applies on supplies of goods or services for consideration within Swiss territory, on self-supply within Swiss territory and on the receipt of services for consideration from enterprises with domicile outside Swiss territory. Supply of goods or services in the field of health care, education, culture, sport, real estate and in the field of capital transactions are, amongst others, VAT exempt without credit (in order to protect competitive neutrality, it may however be possible to opt for taxation of specific turnover exempt without credit). An individual, partnership or company are liable to VAT if they conduct an independent business activity and realize a VAT relevant turnover exceeding CHF 75,000 per year. The standard rate for supplies of goods and services is currently (as from January 1, 2001) 7.6 percent, a reduced rate of 2.4 percent applies to certain goods and services of basic necessity, and there exists a special rate of 3.6 percent for hotel accommodation. The mechanism used for VAT accounting is that each business offsets the total VAT paid on purchases during a given accounting period (input VAT) against the total VAT collected on its sales (output VAT). Contrary to the direct taxation regime, the Swiss VAT legislation includes the concept of group taxation for group entities within Switzerland. In general, the VAT declaration has to be filed quarterly. The VAT due must be paid within 60 days of the end of each quarter.

Social Security and Welfare System Contributions

Old age and dependent survivors insurance (AHV/IV/EO): 10.1 percent of gross earned income with no ceiling. 50 percent thereof must be borne by employer.

Unemployment insurance (ALV): 2 percent of an annual salary up to CHF 106,000 and 1 percent of the salary component exceeding CHF 106,000 up to CHF 267,000. 50 percent thereof must be borne by the employer.

Accident insurance (UV/NBUV): contributions to accident insurance vary depending on the type of work performed, the sex and the age of the employee. A distinction is made between professional and non-professional accident insurance. On average, contributions for administrative personnel amount to 1.5 percent of earned income (capped at CHF 106,800) for each

type of insurance. Professional insurance premiums must be borne by the employer.

Pension plan: contributions to a mandatory pension plan vary depending on a series of factors including age, profession, sex, annual salary and previous contributions made by the employee. Pension plan contributions are mandatory for the salary component between CHF 25,320 and CHF 75,960. Many employers subscribe to schemes that provide for additional coverage. On average, contributions for administrative personnel amount to 10.6 percent. Under Swiss law, a minimum of 50 percent of this premium must be borne by the employer.

Family allowance: Family allowance contributions vary from canton to canton. In Zurich, they amount to 1.3 percent of the gross earned income (uncapped). The total amount is borne by the employer.

The employer is required to remit, on a quarterly or, in the case of salaries of over CHF 200,000 on a monthly basis, a provisional amount of the old age and dependent survivors insurance (AHV/IV/EO), unemployment insurance (ALV) and the family allowance to its compensation fund. Compensation funds are run either by the state or by employers associations. The final amount of social security contributions due is assessed and invoiced by the compensation fund, based on the annual declaration that must be filed by the employer at the end of January of the following calendar year. The remittance of the pension fund (BV) and accident insurance (UV/NUB) contributions depends on the applicable pension fund scheme and of the assigned insurance company. Provisional contributions usually have to be remitted on a monthly or quarterly basis, and the final amount due is assessed and invoiced by the pension fund/insurance company based on the annual declaration to be filed by the employer at the end of January of the following calendar year.

Special Tax Schemes

A legal entity doing business in Switzerland is considered to be a tax resident in Switzerland and thus subject to unlimited tax obligations if it has its legal domicile or place of effective management in Switzerland. Non-resident legal entities are subject to a limited tax obligation, if they have an "economic connection" to Switzerland. This economic connection may consist of a business operation or permanent establishment in Switzerland. Swiss immovable property also results in limited taxation. In addition, any brokering or trading in Swiss real property causes a limited tax obligation in Switzerland. Any other income derived by a non-resident legal entity from Swiss sources is not subject to taxation in Switzerland. However, withholding tax applies to dividends paid by Swiss companies and interest paid by Swiss banks to both resident and non-resident recipients (see below, XII., Withholding Tax).

Tax on Profits

The federal corporate income tax rate is proportional and amounts to 8.5 percent of net profit, which leads to an effective tax rate of approximately 7.8 percent. Taxes are deductible. The cantonal (state) and municipal income tax rates are usually progressive and depend on the corporation's return on equity. Depending on the canton and municipality in which the corporation is located, the effective tax rates of the cantonal/municipal taxes range between ap-

proximately 10 and 24 percent.

Whilst all corporations are subject to the regular taxation rules for federal tax purposes, the cantons offer a special tax status for corporations engaged in certain types of activities. A different calculation of the taxable base and therefore reduced taxes on a cantonal/municipal level are available upon request for domiciliary, mixed domiciliary, and administrative corporations. Holding companies are exempt from income taxation on the cantonal/municipal level.

Tax Treaties

The full list of countries with which Switzerland has concluded income tax treaties is as follows: Albania, Argentina, Australia, Austria, Belarus, Belgium, Bulgaria, Canada, China, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran, Ireland, Iceland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Moldova, Mongolia, Mexico, Morocco, The Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Republic of Korea, Romania, Russia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Thailand, Trinidad and Tobago, Tunisia, UK, Ukraine, USA, Uzbekistan, Venezuela, and Vietnam.

Switzerland has issued anti-treaty abuse regulations. Where foreign sourced dividends, interest, royalties, etc. enter Switzerland in such a manner that a reduced withholding tax rate appears applicable under the provisions of one of its international income tax treaties, certain conditions concerning financing, usage of earnings, coverage of expenses and distributed dividends must be met in order to apply the reduced treaty rate. Similar provisions have been included in the treaties with France, Italy and Belgium. Such regulations are not applicable to the treaty with the US, which provides for special anti-abuse regulations.

Territoriality Rules

Corporations residing or considered to be residing in Switzerland are subject to taxation on their worldwide profit, with the exception of income attributed to a foreign permanent establishment or real estate abroad. Conversely, the applicable income tax rates are determined on the basis of the total worldwide net income and capital, thereby including income derived from permanent establishments or real estate located abroad.

Treatment of Tax Losses

Losses of a corporation may be carried forward for income tax purposes over a period of seven years. There are no loss carry-back provisions.

Losses from a foreign permanent establishment of a Swiss resident company are deductible from the profit of the corporation located in Switzerland to the extent that they were not taken into account at the location of the permanent establishment. If a foreign permanent establishment of a Swiss-resident company realizes profits within seven years following the year of a

loss, however, and if the permanent establishment offsets the loss against such profits in the foreign jurisdiction, the Swiss-resident corporation must add the loss to the offset amount to its profit in the country in which the permanent establishment is located.

Wealth Tax

There is no corporate wealth tax in Switzerland, but a corporate capital tax is levied (see above, XII., Miscellaneous Taxes Due).

Withholding Tax

A 35 percent withholding tax is levied on dividends (including deemed dividend distributions) as well as on interest payable on corporate securities such as bonds and debentures. It is also withheld on all interest credited by a bank to its clients, whether on current accounts, time deposits or savings accounts. However, the tax must not be withheld on interest on accounts payable, inter-company accounts or straight mortgage interest. No withholding tax is levied on royalties. The withholding tax must be withheld by the payer of the taxable benefit and charged to the recipient of the taxable benefit. The payer of the taxable benefit must declare the withholding tax to the tax authorities within 30 days after the taxable event. Such declaration must be made on the payer's own initiative and the tax must be paid at the same time. The withholding tax will usually be fully refunded if the recipient of the dividend or interest is a resident of Switzerland. If the recipient is located in a treaty state, a refund is granted as provided for in the treaty. In all other cases, no refund will be made.

Profit remittances by a Swiss branch to its foreign main office are not subject to withholding tax.

XIII. TAX ON INDIVIDUALS

Allowances

Deductible items include expenses incurred in connection with the generation of income, social security contributions, accident and health insurance premiums up to a maximum amount, interest payments up to a maximum amount, repair and maintenance cost of inhabited dwellings as well as certain charitable donations. Self-employed individuals may also deduct depreciations and write-offs on business assets (up to a maximum amount), provided such deductions are commercially justified and recorded in the books.

Calculation of Taxes

In general, all types of income earned by resident individuals are considered taxable income for federal, cantonal and municipal tax purposes, including the following:

- any kind of remuneration by employers, including base salary, bonus and stock options, as well as payments for leave, rent, taxes, school fees and utilities (special rules apply for expatriates);

- income derived from the operation of a business;
- compensatory income (received as a substitute for income lost as a result of voluntary or involuntary termination of the gainful activity);
- income derived from movable property (dividends, interest and royalties);
- income derived from real estate, including rent proceeds from an individual's residential property.

Income from real property and business operations or permanent establishments located abroad is not taxed in Switzerland. Married couples are usually assessed jointly, i.e., their income and wealth are aggregated ("family tax" concept). In order to minimize discrimination, different progressive tax rates apply for married and single individuals.

Capital Gains Tax

Capital gains realized on moveable business assets as well as gains realized upon transfer of business assets into private assets are generally subject to taxation. Business assets are defined as assets used in the conduct of a business. Capital gains realized on movable private (non-business) assets are not taxed (restrictions exist for capital gains deriving from the sale of shares to corporations).

Capital gains realized on real estate held in private wealth are subject to a cantonal/municipal real estate gains tax. The rates are usually progressive, based on the amount of gain and the holding period (higher rates for short holding periods). Depending on these factors and the canton/municipality where the real estate is located, the rates vary from 0 up to 50 percent of the gain realized. There is no federal tax on capital gains realized on immovable private assets. Capital gains realized on immovable business assets are subject to federal income tax. For cantonal/municipal tax purposes they may either be subject to an income tax or a separate real estate gains tax, depending on the canton.

Filing and Payment Requirements

Swiss nationals and permanent residents must file an annual tax declaration. The due date for the filing is usually March 31 of the year following the tax period. The tax period is the calendar year. The tax due date varies from canton to canton.

Foreign nationals without permanent residence permits ("C-permit") working for Swiss employers are subject to a direct deduction of the income tax at source (source tax). If the taxable income of an individual does not exceed a certain limit (presently at CHF 120,000 p.a. in most cantons), Swiss income tax liability is covered by source taxes. If such limit is surpassed during any given year, the regular assessment procedure applies and the foreign national must file a tax return. The payroll tax is then credited against the final tax burden as calculated on the tax return.

Inheritance and Gift Tax

Whilst no inheritance and gift taxes are levied on the federal level, most of the cantons levy

taxes on property transferred either as a gift or upon death. Depending on the canton of residence of the donor or the decedent, inheritance and gift taxes are payable either by the recipient, the personal representative of the decedent or the donor. Non-residents are liable for inheritance or gift taxes if the decedent or donor was a Swiss resident, or if the property in question is real property located in Switzerland. The tax rates differ between cantons. In general, they vary according to the value of the property inherited or donated and the relationship between beneficiary and decedent or donor. Almost all cantons refrain from levying taxes on transfers between husband and wife. In about 13 of the 26 cantons, transfers between parents and children are tax-free as well. Transfers between unrelated persons are subject to taxation at rates of up to 60 percent.

In order to avoid double taxation, Switzerland has concluded agreements concerning inheritance tax with Austria, Denmark, Finland, France, Germany, The Netherlands, Norway, Sweden, the United Kingdom, and the United States of America. These treaties do not cover gift taxes, however.

Miscellaneous Taxes

Individuals may be subject to income tax (see below, XIII., Tax on Income), wealth tax (see below, XIII., Wealth Tax) and inheritance and gift tax (see above, XIII., Inheritance and Gift Tax). If immovable property is owned, individuals may be subject to real estate tax (see below, XIII., Real Estate/Habitation Tax), real estate gains tax (see above, XIII., Capital Gains Tax) and real estate transfer tax (see above, XII., Miscellaneous Taxes Due). Individuals independently carrying out a business activity may be subject to VAT (see above, XII., Sales Tax or other Turnover Tax). Further duties due by individuals are social security contributions (see below, XIII., Social Security and Welfare System Contributions).

Real Estate/Habitation Tax

In addition to wealth tax, some cantons levy a cantonal real estate tax. Rates and the particular method applied in the valuation of the real estate vary from canton to canton. In all cantons that levy a real estate tax, it is designed as a flat rate tax. The base rates range from 0.75 per mill to 4 per mill, depending on the location of the real estate.

Sales Tax

Switzerland does not levy a sales tax. Individuals independently conducting a business activity may, however, be subject to VAT (see above, XII., Sales Tax or other Turnover Tax).

Social Security and Welfare System Contributions

Old age and dependent survivors insurance (AHV/IV/EO): 10.1 percent of gross income earned with no ceiling. 50 percent thereof has to be borne by the employee and is withheld from the employee's salary.

Unemployment insurance (ALV): 2 percent for an annual salary of up to CHF 106,000, and 1

percent for a salary component from over CHF 106,000 up to CHF 267,000. 50 percent thereof has to be borne by the employee and is withheld from the employee's salary.

Accident insurance (UV/NBUV): contributions to accident insurance vary depending on the type of work performed, the sex and the age of the employee. A distinction is made between professional and non-professional accident insurance. On average, contributions for administrative personnel amount to 1.5 percent of earned income (capped at CHF 106,800) for each type of insurance. Non-professional insurance premiums have to be borne by the employee and are withheld from the employee's salary.

Pension plan: contributions to a mandatory pension plan vary depending on a series of factors including age, profession, sex, annual salary and previous contributions made by the employee. Pension plan contributions are mandatory for the salary component between CHF 25,320 and CHF 75,960. Many employers subscribe to schemes that provide for additional coverage. On average, contributions for administrative personnel amount to 10.6 percent. Under Swiss law, a minimum of 50 percent of this premium has to be borne by the employer. The remaining cost is withheld from the employee's salary.

Health Insurance: premiums vary from canton to canton and depend on the insurance coverage. Health insurance premiums have to be fully borne by the employee. The respective premiums are not withheld from the employee's salary and are therefore paid directly by the employee.

Stock Option, Profit Sharing and Savings Plans

Stock options generally create taxable income upon grant (or, in case of a vesting period, upon vesting) of the options (up-front income taxation). In the case of an increasing value of the underlying stock, up-front income taxation of employee stock options may be quite attractive as subsequent capital gains realized upon exercise are not subject to income taxation. Conversely, if the underlying stock declines in value, up-front income taxation leads to over-taxation as capital losses subsequently realized are non-deductible from taxable income. Options (i) which provide for a term of more than 10 years until maturity and/or (ii) whose exercise is subject to a period of restriction for more than 5 years and/or (iii) which are subject to too many other individual restrictions and conditions are deemed to be not valuable at the time of the grant or vesting and are therefore taxed at exercise. A new law regarding the taxation of employee stock options is currently being drafted. This law will be binding with respect to federal and cantonal/municipal taxes. It is not yet clear when the new law will enter into force or how the taxation of employee stock options will be governed in detail. There exists a clear tendency towards taxation at exercise, however, whereby it is likely that only a part of the income achieved at exercise will be subject to taxation.

Profit sharing or saving plans for employees are usually subject to income taxation as soon as the employee has a non-forfeitable right (as opposed to a mere contingent right) on the benefit.

Taxation of Benefits In Kind

Benefits in kind are generally qualified as income and taxed at their market value.

Taxes on Dividends

Dividend income of individuals – as income derived from movable property – is subject to income taxation. Special rules apply for dividends distributed by corporate structured foreign investment funds.

Tax on Income

Individual income tax rates are generally progressive. The maximum federal tax rate amounts to 11.5 percent, the maximum cantonal/municipal tax rates in major cities range between approx. 12.3 percent (canton of Zug) and 32.3 percent (canton of Jura). Within this range, and in certain municipalities above or below it, exist considerable variations. When determining the effective burden on an individual's income, the fact must taken into consideration that employment income (as well as income from sole proprietorships and partnerships) is also subject to social security contributions (see above, XIII., Social Security and Welfare System Contributions).

The tax rates for non-residents subject to limited taxation in Switzerland are in general identical to those for Swiss residents. Specific types of income are subject to source tax (see below, XIII., Withholding Tax).

The federal as well as the cantonal tax laws provide for the possibility of lump-sum taxation for wealthy foreign nationals who are Swiss residents but do not work in Switzerland. Under the lump-sum taxation system, the taxable income of such individuals is determined on the basis of the total living expenses. These are defined as being at least five times the rental value of the relevant living accommodation in Switzerland or, if higher, equal to his or her income from Swiss real estate or other Swiss sourced income such as mortgages, shares, bonds, etc. plus any income remitted from foreign sources for which double taxation relief is obtained based on a treaty.

Tax Treaties

There are income tax treaties and rules against treaty abuse (see above, XII., Tax Treaties), and treaties regarding inheritance tax (see above, XII., Inheritance and Gift Tax).

Territoriality Rules

From the Swiss domestic point of view, residence is defined as the place where a person resides with the intention of settling permanently and which is thus the center of personal and business interests. An individual is considered resident in Switzerland if staying in Switzerland for a minimum of 30 consecutive days (regardless of brief temporary interruptions) and earning a living or remaining in Switzerland for an extended period of more than 90 consecutive days (regardless of brief temporary interruptions), even if not engaged in a gainful activ-

ity. An individual resident in Switzerland is, in principle, subject to unlimited taxation on worldwide income. However exposure to Swiss taxation does not extend to income derived from businesses, permanent establishments or real estate located abroad. Such income is relevant only for the determination of the taxable income.

Non-resident individuals are only required to pay Swiss taxes on certain types of Swiss-sourced income such as income from real estate, income from business activities performed in Switzerland, income from work for a Swiss employer in Switzerland or directors fees paid by a Swiss company.

Wealth Tax

All cantons impose cantonal and municipal wealth tax on worldwide assets, with the exception of foreign real estate and permanent places of business or permanent establishments located abroad. The assessable wealth is the individual's net wealth at the end of each tax year. Married couples are usually assessed jointly, i.e., their wealth is aggregated ("family tax" concept). In order to minimize discrimination, different progressive tax rates apply for married and single individuals. Wealth tax has to be declared and paid together with the income tax (see above XIII., Filing and Payment Requirements). The tax rates depend on the canton/municipality of residence and range between approximately 0.5 and 1.5 percent. No wealth tax is levied on the federal level.

Withholding Tax

The income of individuals is usually assessed based upon their tax returns. In the cases indicated below, income taxes are instead withheld at source:

- Foreign nationals without permanent residence permit ("C-permit") working for Swiss employers are subject to direct deduction at source of the income tax on their employment income. If the taxable income of such individual does not exceed a certain limit (presently CHF 120,000 p.a. in most cantons), the Swiss income tax liability is covered by the source tax. If such limit is surpassed during any given year, the regular assessment procedure applies and the foreign national must file a tax return. The payroll tax is then credited against the final tax burden as calculated on the tax return. The tax is calculated on the gross income and no deductions are available. The rates are progressive and depend on civil status, the religion, and the number of children. In the canton of Zurich the tax rates range from 1 to 32.32 percent.
- Income of non-resident public entertainers (actors, musicians, athletes, etc.) derived from their independent activities in Switzerland is subject to taxation at source. The tax is calculated on the gross net income of related costs. Instead of deducting effective costs, a lump-sum deduction (in Zurich: 20 percent) may be applied. According to standard procedures, a lump-sum deduction of 20 percent on gross income is granted for these costs. The federal rates are progressive. The tax rates are progressive and vary considerably from canton to canton. The tax rates in Zurich range between 10.8 and 17 percent.
- Directors' fees and other compensation of non-resident executives of Swiss corpora-

tions or other legal entities in Switzerland are also subject to taxation at source. The tax is calculated on the gross compensation amount and no deductions are possible. The tax rate in the canton of Zurich amounts to a flat 25 percent.

- Retirement pay or other remuneration by an employer or pension fund with a registered office in Switzerland and paid to non-resident retired individuals, as well as benefits from private Swiss employment pension funds distributed to non-residents, are subject to taxation at source. The tax rate in the canton of Zurich amounts to a flat 7 percent on pensions. Special rules apply in the case of capital payments.
- Interest income of non-residents on debts secured by mortgages or pledges on Swiss immovable property is subject to taxation at source at the location of the immovable property. The tax rate in the canton of Zurich amounts to a flat 17 percent flat.

The aforementioned tax rates are designed to cover federal, cantonal and municipal tax rates.

XIV. TAX ON OTHER LEGAL BODIES

Allowances

In general, the same rules apply as those described for corporations (see above, XII., Allowances). Exceptions exist in particular for charitable foundations for which donations are exempt from taxation or are deductible from gross income. Similar rules apply to membership fees of associations, where membership fees are provided for in the articles

Calculation of Taxes

The taxable base is generally determined as described for corporations (see above, XII., Calculation of Taxes).

Capital Gains

The participation exemption is applicable only for corporations rather than for foundations or associations. Other than that, the same provisions apply as described for corporations (see above, XII., Capital Gains).

Filing and Payment Requirements

In general, the same rules apply as those described for corporations (see above, XII., Filing and Payment Requirements).

Miscellaneous Taxes

In general, the same taxes apply as those described for corporations (see above, XII., Miscellaneous Taxes Due). On the cantonal level, other legal bodies may either be subject to taxes on profit and capital (see above, XII., Capital Gains, and Tax on Profits) or income and wealth tax in accordance with the rules governing individuals (see above, XIII., Tax on Income, and Wealth Tax), whereby special tax rates may apply.

Registration Duties

In general, the same duties apply as those described for corporations (see above, XII., Registration Duties).

Sales Tax or Other Turnover Taxes

The same provisions apply as those described for corporations (see above, XII., Sales Tax or other Turnover Taxes).

Social Security and Welfare System Contributions

The same provisions apply as those described for corporations (see above, XII., Social Security and Welfare System Contributions)

Special Tax Schemes

Charitable foundations and associations acting in the public interest may – upon request – be exempt from taxes on income and capital.

Tax on Profits

Foundations, associations and real estate investment funds are subject to taxation on profits at a reduced flat rate of 4.45 percent on the federal level. On the cantonal level, they may either be subject to taxes on profit and capital (see above, XII., Capital Gains, and Tax on Profits) or to taxes on income and wealth according to the rules governing individuals (see above, XIII., Tax on Income, and Wealth Tax), whereby special reduced tax rates may apply.

Tax Treaties

The same provisions apply as those described for corporations (see above, XII., Tax Treaties).

Territoriality Rules

The same rules apply as those described for corporations (see above, XII., Territoriality Rules).

Treatment of Tax Losses

In general the same rules apply as those described for corporations (see above, XII., Treatment of Tax Losses).

Wealth Tax

On the cantonal level, other legal bodies may either be subject to taxes on profit and capital (see above, XII., Capital Gains, and Tax on Profits) or to taxes on income and wealth accord-

ing to the rules governing individuals (see above, XIII., Tax on Income, and Wealth Tax), whereby special reduced tax rates may apply.

Withholding Taxes

There is no withholding tax burden with regard to profit distributions by other legal bodies. With respect to interest payable on corporate securities such as bonds and debentures, the same rules apply as described for corporations (see above, XII., Withholding Tax).

XV. GENERAL TAX CONSIDERATIONS

Taxes in General

Transactions between related parties must conform to the arm's length principle in order to be accepted by the tax authorities.

Taxpayers are free to use any method of operation and form of organization available under the law. The choice of legal structure and procedure is recognized for tax purposes, even if it results in tax savings. However, the tax authorities may disregard a legally accepted transaction if its recognition would allow the taxpayer to avoid the taxes due if they had structured the transaction properly. The Federal Court has developed the following fundamentals regarding tax avoidance: (i) the legal structure chosen by the taxpayer is "unusual" or inadequate to achieve the purported goal and is contrary to ordinary business practice and (ii) the taxpayer's primary motive for choosing such legal structure is to achieve tax savings, and (iii) the taxpayer would realize considerable tax savings if the legal structure chosen were accepted by the tax authorities. If a case of tax avoidance is exposed, the legal structure of the transaction chosen by the taxpayer may be disregarded and the taxpayer made subject to the taxes as if an appropriate legal form had been chosen in the first place.

It is quite simple and very common to request an advance tax ruling in Switzerland. Discussions with the tax authorities are conducted informally in a climate of mutual trust and, in general, lead to a result satisfactory to both the taxpayer and the tax authorities.

XVI. IMMIGRATION REQUIREMENTS

Immigration Control

Generally speaking, nationals of states other than Australia, Canada, New Zealand, the United States of America and the member states of the EU and EFTA are required to undergo a medical examination upon entering Switzerland, in order to test them for pulmonary tuberculosis. However, most individuals staying in Switzerland for less than three months are exempt from this requirement.

No entry permit is required to enter Switzerland. However, the entry of a foreign national

may be refused due to issues of conduct, particularly if there is an expulsion order or a judicial ban on entry, or if such foreign national fails to meet the immigration requirements (e.g. he is a threat to public safety, there is evidence that the foreign national will not leave Switzerland after the intended stay or that the such foreign national does not possess the required means of subsistence).

No exit permit is required to leave Switzerland. However, holders of Swiss residence and settlement permits are required to sign out at the immigration office.

Immigration Requirements/Formalities

The requirement for a residence permit depends on the initial circumstances. Tourists and holders of Swiss residence permits as well as foreign nationals from states that exempt Swiss nationals from their visa requirements, require neither a residence permit nor a visa. Individuals who intend to accept gainful employment or reside in Switzerland need a residence permit and, in some cases, also a visa (see below, XVI., Visas). No residence permit is issued for stays of up to three months.

Individuals intending to accept gainful employment in Switzerland must obtain a confirmation regarding the grant of a residence permit before entering Switzerland, whereas individuals intending to reside in Switzerland without accepting gainful employment are not required to obtain such confirmation. However, the customs procedure will be streamlined if an immigrant is able to produce a confirmation regarding the grant of a residence permit. As far as visas are concerned, they must, in any case, be obtained before entering Switzerland.

The required documents may vary from one canton to another and in accordance with different initial circumstances. However, the applicant is generally required to provide the immigration authorities with all documents confirming that the conditions for the grant of a residence permit have been met. This includes, for instance, documents confirming that the applicant has at his or her disposal the required means of subsistence and an extract of the criminal record. For employed persons see below.

It may take from a few days to two or three months to receive immigration authorization, depending on the circumstances.

Visas

Generally speaking, a visa is required for foreign nationals traveling to or staying in Switzerland. However, due to bi- and multilateral treaties and unilateral Swiss resolutions, a valid passport is sufficient for citizens of most of the western countries. Moreover, foreign nationals who have a Swiss residence, settlement or cross-border permit, do not need a visa. This is also true for tourists and travelers who do not intend to stay in Switzerland for more than three months.

The period of validity of the visa depends on the applicant's requirements and on the period of validity of his travel documents. The maximum period of validity is six months for the first

visa and three years for any further grant. The applicant is required to submit the application for a visa to the competent Swiss representation at his domicile abroad.

Beyond the application form and travel document, the applicant may upon request have to submit further documents confirming the purpose of the intended stay.

XVII. EXPATRIATE EMPLOYEES

Cost of Living and Immigration

The cost of living in Switzerland is relatively high, and the average inflation rate has traditionally been low. For immigration requirements see above, XVI., Immigration Requirements.

Drivers' Licenses

In order to drive in Switzerland, every driver must have a valid drivers' license and car insurance. An international insurance card is required for foreign cars. Foreign and international drivers' licenses are recognized in Switzerland. After a stay of twelve months in Switzerland during which the driver has not been abroad for at least three consecutive months, a Swiss drivers' license is required. The Swiss drivers' license is granted once the driver has shown on a test drive that he possesses the necessary driving skills and knows the driving rules. Drivers' licenses are issued by the competent cantonal authorities. Failure to obtain the necessary drivers' license may result in monetary fines.

Education

There are public and private schools, some of which teach in English. Fees depend on the school in question.

Special tax deductions are available at the federal level as well as in some cantons for expatriate executives temporarily transferred (for a maximum of 5 years) to Switzerland (see below, Tax Liability).

Housing

Federal legislation restricts the acquisition of real estate in Switzerland by non-residents. To acquire real estate prior authorization is required. Permission has to be obtained from the appropriate cantonal authority. The authority specified by the canton decides on whether a transaction should be subject to authorization and whether it should be authorized. This permission may be granted solely on grounds provided for by federal and, as appropriate, cantonal legislation. EU/EFTA nationals residing in Switzerland and other citizens holding a C permit (see above, XI., Work Permits) are not considered non-residents.⁵⁷

⁵⁷ For more information see <http://www.ofj.admin.ch/e/index.html>, "Land register and acquisition of real estate".

Importing Personal Possessions

There are no import duties for personal belongings if these are properly declared as such. However, cars may only be imported free of customs duties if they have been the property of the person importing them for at least six months prior to the importation.

Medical Care

A high level of medical care is available in Switzerland. There is no national health care scheme, but health insurance is compulsory for every person residing in Switzerland for more than three months.

Moving Expenses

Special tax deductions are available at the federal level and in some cantons for expatriate executives temporarily transferred (for a maximum of 5 years) to Switzerland (see below, Tax Liability).

Tax Liability

Expatriates working in Switzerland are generally taxable in accordance with the same principles as other individuals (see above, XIII., Tax on Individuals). For expatriate executives temporarily transferred (for a maximum of 5 years) to Switzerland, however, special tax deductions from the taxable income are available at the federal level and in some cantons. Examples are: housing costs, moving costs, travel costs and the schooling costs for minor children.

Work Contracts

See above, XI., Labor Legislation, Relations and Supply.

Work Permits

See above, XI., Work Permits.

The Swiss employer usually files the application for a work permit to the competent authority. The required documents may vary from one canton to another and in accordance with the individual initial circumstances. The following documents are generally required for the granting of a work permit:

- a curriculum vitae;
- photocopies of diplomas;
- an extract of the criminal record;
- a description of education and work experience;
- the reasons for the application;

- proof that the applicant possesses the ideal profile for the place of work;
- information regarding possible residences in Switzerland;
- proof that the employer was unable to find an adequate Swiss national for the relevant position;
- written labor contract;
- photocopy of the health insurance contract in favor of the applicant;
- photocopy of the hiring contract regarding an accommodation;
- possible references;
- information about the workforce;
- the number of Swiss and foreign employees;
- development of turnover and future perspectives.

For applications concerning EU/EFTA nationals, only an employment contract and passport copies are required. Only rarely do the authorities require an extract of the criminal record. If family members would like to move to Switzerland too, marriage and birth certificates are required.

Zurich, April 11, 2005

Useful internet addresses

Official website of the Swiss Federal Government:	www.admin.ch
General information about Switzerland:	www.infoplease.com www.switzerland-in-sight.ch
Information about business in Switzerland:	www.standortschweiz.ch www.kmuinfo.ch
SWX Swiss Exchange:	http://www.swx.com/top/index_en.html
Swiss Bankers Association:	http://www.swissbanking.org/en/home.htm
Swiss Funds Association:	http://www.sfa.ch
Swiss Insurance Association:	http://www.svv.ch

Further reading

PESTALOZZI GMUER & PATRY, Business Law Guide to Switzerland, 2nd edition, Bicester (UK) 1997

Martindale-Hubble Law Digest – Switzerland (2003)