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New Swiss financial regulations: Steps towards increased international competitiveness

Loyens & Loeff

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Last week, two publications were released which are crucial for the future regulatory environment of Swiss financial intermediaries:

Federal Council's Fintech strategy

The Federal Council presented its strategy with regard to Fintech on 2 November 2016. In order to promote innovative forms of financial services and therewith to strengthen the Swiss financial center, it proposed a three-pillar strategy:

- Prolonged deadline of 60 days for the holding of money in settlement accounts without the need for a banking license;
- “Sandbox” for the acceptance of public funds up to a total value of CHF 1 million without the need for authorization or monitoring by FINMA (AML provisions remain reserved); and
- Introduction of a Fintech license granted by FINMA to institutions that are restricted to the acceptance of public funds (up to CHF 100 million) without conducting any lending business with maturity transformation; under this license, less stringent regulatory requirements apply, such as a minimum capital requirement of 5% of the accepted public funds (but not less than CHF 300'000.-).

The Federal Department of Finance has been instructed to prepare a consultation draft containing the respective regulatory amendments until 2017. With this approach, Switzerland is one of the first countries to propose the introduction of a Fintech license and to proactively promote digitalization in the banking business.

Amended proposal of the Financial Services Act/Financial Institutions Act

The Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) were proposed by the Swiss Federal Council in 2015. The objectives of the new acts are the unification of competitive conditions and the improvement of client protection. Furthermore, a regulatory environment which is compatible with international developments shall be established – among others so as to ensure equivalence with EU law and consequently gain market access. On 4 November 4 2016, the Economic Affairs and Taxation Committee of the Swiss Council of State (EATC) published its amended drafts of the new FinSA and FinIA. The EATC suggests a number of significant changes to the initial proposal, such as:

1. Asset managers and trustees shall be supervised by FINMA with the involvement of private supervisory organizations. Supervisory organizations are themselves authorized by FINMA and they conduct the ongoing supervision of asset managers and trustees. Any sovereign powers, including sanctioning power, towards asset managers and trustees remain with FINMA. Compared to the Federal Council's proposal, the supervisory organizations have limited competences, e.g. no issuance of licenses, circulars, or orders as well as no power to implement supervisory measures.
2. While the Federal Council has put forward various conduct rules similar to MiFID II, the EATC proposes to alleviate some of these requirements (e.g. best execution, transparency requirements, conduct rules applicable for the servicing of institutional and professional clients or education and training requirements for client advisers).
3. In contrast to the Federal Council which wanted to facilitate claims against financial intermediaries by reducing the financial risk of plaintiffs, the majority of the EATC suggests not to amend the Federal Act on Civil Procedures at this stage.
4. Provisions regarding the insurance business shall be transferred in the Insurance Supervision Act in the realm of the latter's revision.
5. The EATC suggests to give the Federal Council the competence to exempt foreign client advisers supervised abroad from the registration requirement if they only serve professional or institutional clients in Switzerland.
6. The EATC proposes to exempt supervised entities from penal sanctions (fines) in case of violations of conduct rules or provisions regarding prospectus requirements as well as in case of unauthorized offering of financial instruments.
7. The EATC also advocates to exempt companies that accept deposits of up to CHF 100 million from the banking license with a view to promote the establishment of new businesses in the Fintech area (see above, Federal Council's Fintech strategy).

Whether the version of the FinSA/FinIA proposed by the EATC will meet the equivalence requirements set up by EU law (MiFID II/MiFIR) remains to be seen. The Swiss Council of States will discuss the proposal in December 2016, afterwards the National Council will debate it in 2017. Entering into force is currently expected for January 2018.

A detailed briefing on FinSA/FinIA will be prepared upon finalization of the drafts by the Swiss parliament.

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