

Retreading

Switzerland has a new prospectus regime

With the new Financial Services Act, Switzerland introduced a new prospectus regime based on the model of the EU with effect as from 1 January 2020. **By Dr Wolfgang Müller, Dr Reto Luthiger, Ülkü Cibik and Dr Alexander Vogel**



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Subject to certain exceptions, issuers who intend to publicly offer financial instruments on the primary or secondary markets must have their prospectuses approved prior to their publication. Should the prospectus also be addressed to the retail segment, it must include an additional Swiss key information document. The content requirements for both documents are stipulated in detail by the ordinances. There are temporary arrangements for the transition from the old to the new prospectus regime.

New prospectus regime

With the exception of stock exchange listings for collective investment schemes and structured products, the prospectus regime valid in Switzerland until the end of 2019 was very rudimentary and had a point-by-point approach, which no longer complied with international standards. With the Financial Services Act (FinSA), which entered into force on 1 January 2020, Switzerland introduced a comprehensive and modern prospectus regime analogous to the EU system. The latter includes a prospectus ordinance and a regulation on key information documents for packaged retail and insurance-based investment products (in short: PRIIP regulation). In addition to shares,

bonds, structured products and collective investment schemes, the Swiss regime covers all kinds of securities (in particular debt securities and derivatives).

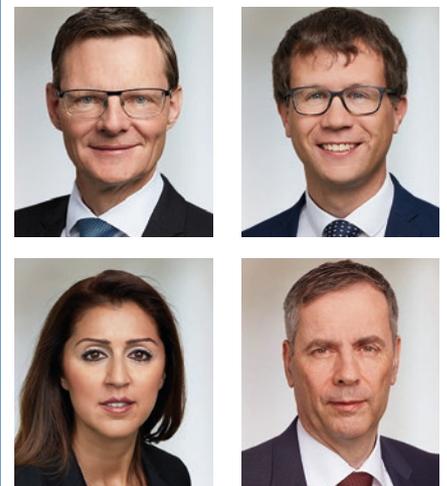
A prospectus must be prepared and approved in advance by an authorised reviewing body if it refers to a public offer (i.e. an offering directed to the general public) of securities on the primary and now also on the secondary market, or if it relates to a request for admission of securities to trading on a trading venue (i.e. on a stock exchange or a multilateral trading system).

There are numerous exemptions from the prospectus regime. In particular, no prospectus must be published if the offering in question is directed exclusively to professional investors as defined by FinSA or to fewer than 500 investors (EU: 150 investors), or in case the total value calculated over a twelve-month period does not exceed CHF 8 million (EU: EUR 1 million).

In its annexes, the Ordinance on Financial Services (FinSO) provides different prospectus schemes with the minimum structure and data for (a) equity securities, (b) debt securities (not including derivatives), (c) derivatives, (d) real estate companies, (e) investment companies and (f) collective investment schemes.

Prospectus review

Prospectuses must be submitted to a reviewing body for review before publishing, where they will be examined for completeness, coherence and understandability. For bonds and structured products with a term of 30 or more days, the prospectus can also be reviewed after it has been published, provided that a bank or securities firm can verify that they possessed the most important information regarding the issuer and the securities at the time of publishing. The prospectus for products with a term of 30 to 89 calendar days must be submitted for



ABOUT THE AUTHORS

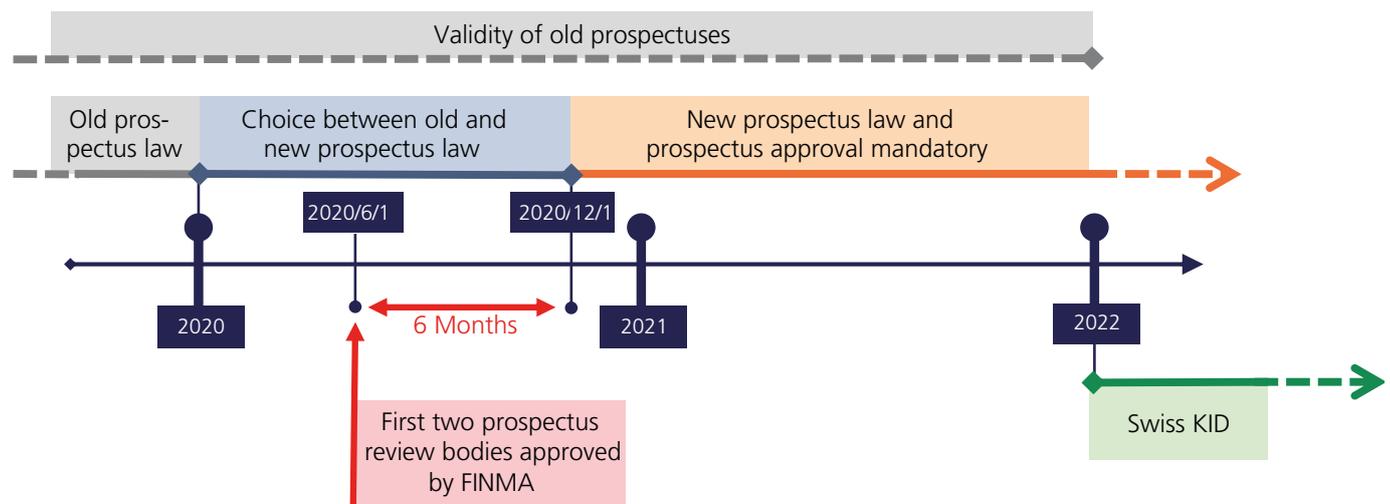
Dr Wolfgang Müller, MBA (top left), Attorney and Partner at **Meyerlustenberger Lachenal AG**.

Dr Reto Luthiger (top right), Attorney at **Meyerlustenberger Lachenal AG**.

Ülkü Cibik (bottom left), Counsel at **Meyerlustenberger Lachenal AG**.

Dr Alexander Vogel, LL.M. (bottom right), Attorney and Partner at **Meyerlustenberger Lachenal AG**.

Fig. 1: Transition from the old to the new Swiss prospectus regime



Source: Meyerlustenberger Lachenal AG

review within five calendar days; for products with a term of 90 to 180 calendar days, within ten calendar days; and for products with a longer term, within 180 calendar days.

The prospectus must be deposited with the reviewing body that approved it. The approved prospectuses are normally published on the website of the respective reviewing body and are accordingly accessible to everyone. Up to date, the Swiss Financial Market Supervisory Authority (FINMA) has authorised two reviewing bodies: BX Swiss AG (www.regservices.ch) and SIX Exchange Regulation AG (www.ser-ag.com).

Prospectuses for offering programmes may also be published in the form of a base prospectus and the corresponding final conditions for each public offering; they may be made up of several individual documents (registration form, description of securities and summary) and contain references to documents published previously or in parallel. Also, a prospectus must contain a standardised summary so that its comparability is ensured. Prospectuses are valid for twelve months from the time of their approval by the reviewing body (under the old regime, prospectuses were theoretically valid indefinitely).

The reviewing bodies must coordinate amongst themselves with regard to the recognition of legal systems and authorities of other jurisdictions whose prospectuses are considered automatically approved in

Switzerland. At present, these are the EU and EEA member states as well as Australia, the USA and the United Kingdom (UK). However, such recognised and automatically approved foreign prospectuses must also be deposited with a Swiss reviewing body and accompanied by the decision from the competent foreign reviewing body.

New Swiss key information document

In cases where a financial instrument will also be offered to private investors, a standardised and easily understandable Swiss key information document must be issued. This is to be modelled on the European PRIIP regulations and the key information document (KID), which is already familiar from the area of collective investment schemes. This is not necessary if (a) the financial instruments can be acquired by private investors exclusively as part of an investment management agreement or (b) the securities in question take the form of shares (including comparable financial instruments such as participation certificates) or debt securities with no derivative character. The Swiss key information document is thus used primarily for structured products, derivatives and collective investment schemes.

FinSO largely specifies the form, structure and content of the Swiss key information document in Annex 9. However, specific information must be provided regarding the type of product, its risk

profile, costs, minimum holding period and early termination.

Key information documents which have been produced in accordance with the European PRIIP regulation and its delegated regulation 2017/653 are recognised in Switzerland as equivalent and can therefore be used in lieu of the Swiss key information document pursuant to FinSA.

Transitional regime

The new prospectus regime entered into effect on 1 January 2020 and since then it may be used on a voluntary basis as an alternative to the still valid old prospectus regime, which is based on the Swiss Code of Obligations, the Collective Investment Schemes Act and the Listing Rules of the stock exchanges. A prospectus review has been possible since 1 June 2020, the effective date of FINMA's appointment of the first reviewing bodies. The transitional period will end six months after this date, on 1 December 2020, and application of the new prospectus regime will be compulsory for public offerings launched from this date onwards. Prospectuses approved under the old regime will retain their validity until 31 December 2021 at the latest.

Publication of a Swiss key information document will be mandatory starting on 1 January 2022, although the Swiss key information document may already be used as an alternative to a simplified prospectus for structured products, real estate funds, securities funds and other funds for traditional assets. ■