Islamic Finance & Markets 2021

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LEXOLOGY®
Getting The Deal Through

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Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

First published 2013
Eighth edition
ISBN 978-1-83862-355-5

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Islamic Finance & Markets

2021

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Milbank

Lexology Getting The Deal Through is delighted to publish the eighth edition of *Islamic Finance & Markets*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, John Dewar of Milbank, for his continued assistance with this volume.

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London
October 2020

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This article was first published in October 2020
For further information please contact editorial@gettingthedealthrough.com

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Switzerland

Kathrin Waditschatka and Samuel Ljubicic
Meyerlustenberger Lachenal

OVERVIEW

Policies

1 | In general terms, what policy has your jurisdiction adopted towards Islamic finance? Are Islamic finance products regulated differently from conventional instruments? What has been the legislative approach?

There are no Swiss laws specifically addressing Islamic finance in Switzerland; therefore, financial institutions offering Islamic finance products are subject to the same laws and regulations as those offering conventional instruments.

However, the Swiss legal system is, generally, *shariah*-friendly, given that Swiss contract law is based on two principles enabling tailor-made solutions: freedom of contract and freedom of form.

Inter alia, the Swiss concept of freedom of contract – which is similar to the principle of permissibility under Islamic law (ie, something is presumed to be allowed, or *halal*, unless it can be argued as being *haram*) – includes the freedom to:

- determine the subject matter and terms of the contract;
- conclude a contract that cannot be subsumed (as a whole or in part) under a contract category contained in the Swiss Code of Obligations (CO);
- determine whether and to what extent a contract shall be binding among the parties; and
- determine the remedies for non-performance, default, etc, unless such contractual arrangements or certain provisions would conflict with mandatory Swiss law or public policy.

Accordingly, the rules outlined in the CO may, subject to (fairly limited) mandatory provisions, be modified by the contracting parties. Hence, there is no numerus clausus concerning types of contracts in Switzerland and as a consequence, any contractual relationship that is not regulated by statutory law (ie, the CO) would be qualified as a contract sui generis, which typically contains certain elements of different types of contracts (eg, insurance contracts, instalment-purchase contracts and leasing contracts).

Freedom of form means that a contract, to be valid, only needs to meet particular formal requirements if expressly stated by the law or determined by the parties. Such limitations are mostly to be found in consumer protection constellations, where the idea of social protection (ie, protecting the structurally weaker party) is a guiding principle. Conversely, this means that concerning international commercial contracts, mandatory social protection provisions are hardly relevant or only in exceptional cases. Given the freedom of form under Swiss law, it is possible to adapt to formal prerequisites, if so required by or desirable under Islamic law (eg, witnessing of contracts).

Market development

2 | How well established is Islamic finance in your jurisdiction? Are Islamic windows permitted in your jurisdiction?

The Swiss financial market has recognised a growing demand for *shariah*-compliant financial products. Many domestic Swiss banks are offering *shariah*-compliant finance and investment products as well as wealth management services in connection with such products, and major Swiss banks are currently expanding their operations in the Middle East. Further, there are certain reinsurance companies based in Switzerland that offer *retakaful* products through their branches in the Middle East. As for Islamic windows, the scope of services that are provided by a conventional financial institution but based on Islamic principles, and thus the types of Islamic finance transactions they can carry out, are regulated by the same sets of rules applicable to services offered by those institutions in general.

Legislation

3 | What is the main legislation relevant to Islamic banking, capital markets and insurance?

Switzerland has no legislation specifically addressing Islamic finance. Islamic banking, capital markets and insurance are subject to general finance laws and regulations in Switzerland and are intended to be subject to the same treatment that applies to their corresponding conventional instruments having a similar economic effect or rationale.

Concerning banking, pure lending activities are generally – subject to providers of consumer credits and anti-money laundering regulations – not regulated in Switzerland; therefore, Islamic finance providers (eg, sellers entering into reverse *murabaha* transactions) would not necessarily be required to obtain a banking licence. If a Swiss-based entity carries out financing activities and refinances itself with more than five banks for more than 500 million Swiss francs or takes deposits from the public, that entity will generally qualify as a bank and be obliged to obtain a banking licence from the Swiss Financial Market Authority and be subject to the Federal Banking Act and encompassing regulations and ordinances.

With regard to capital markets, a distinction must be made between debt capital markets legislation and equity capital markets legislation.

Debt capital markets legislation

The applicable rules concerning debt securities offerings (such as *sukuk*) depend primarily on whether the offering is public or private. Among public offerings, a further distinction must be made based on whether the securities are intended for listing on a trading venue, such as the Swiss Stock Exchange (SIX) or BX Swiss (BX).

If the debt securities are publicly offered, in other words, submitted for public subscription or listed on a trading venue (ie, a stock exchange or multilateral trading facility, in Switzerland, the issuer must prepare

and make available to investors a prospectus that complies with article 40 of the Financial Services Act (FinSA) and article 50, 51 of the Ordinance on Financial Services). If the securities are to be listed on SIX or BX, the detailed SIX and BX listing requirements respectively must be fulfilled in addition to the prospectus requirements under FinSA.

Concerning private placements (ie, the offering of debt securities exclusively to a restricted circle of potential investors), no particular prospectus duty exists. Further, specific exemptions exist from the prospectus requirement, such as the limitation of the public offer to professional investors or to a maximum of 500 potential investors or if the total value of the offering does not exceed 8 million Swiss francs within a 12-month period. In practice, however, a prospectus is often prepared voluntarily. The content and style of the offering documentation in unlisted debt securities offerings are determined by the Swiss market standard. Finally, issuers of bonds or other standardised and mass-issued debt securities or uncertificated rights with the same function must publish a minimum information sheet to avoid becoming subject to the Swiss banking regulations.

Equity capital markets legislation

Under Swiss legislation, the issuance and trade of equity securities are mainly governed by:

- FinSA;
- FinIA;
- the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading;
- the Federal Act on Collective Investment Schemes; and
- the listing rules of Switzerland's main stock exchanges, SIX and BX.

Insurance and reinsurance operations are regulated on a federal level. The Swiss Federal Financial Market Supervision Act, as amended, sets out supervision principles and instruments of the FINMA in respect of all financial markets. The Swiss Federal Insurance Supervision Act (ISA) and the Swiss Federal Insurance Supervision Ordinance contain the rules and regulations for insurance and reinsurance undertakings.

SUPERVISION

Principal authorities

4 | Which are the principal authorities charged with the oversight of banking, capital markets and insurance products?

The Swiss Financial Market Authority (FINMA) supervises insurance and reinsurance undertakings, insurance intermediaries and groups as well as other financial institutions such as banks, securities firms and collective investment schemes. Banking and insurance activities may only be conducted in Switzerland if the relevant entity has been granted a licence by FINMA. Pure lending activities (being subject to anti-money laundering regulations only) are supervised by self-regulatory organisations.

The various requirements to be complied with to obtain a licence are set out in FinIA, the Federal Banking Act and the Swiss Federal Insurance Supervision Act (ISA). The requirements are equally applicable for Islamic banks and insurance providers to be authorised to carry out business in Switzerland. No specific requirements apply to Islamic banks for *takaful* or *retakaful* operators.

Guidance

5 | Identify any notable guidance, policy statements or regulations issued by the regulators or other authorities specifically relevant to Islamic finance.

There is no guidance, policy statement or regulation issued by Swiss regulators or other authorities specifically addressing Islamic finance.

Central authority

6 | Is there a central authority responsible for ensuring that transactions or products are shariah-compliant? Are IFIs required to set up shariah supervisory boards? May third parties, related parties or fund sponsors provide supervisory board services or must the board be internal?

Switzerland has no central authority responsible for ensuring that transactions or products are *shariah*-compliant. Further, Switzerland has no specific regulation in place regarding *shariah*-compliant products. To ensure that contractual documentations or products adhering to *shariah* principles governed by Swiss law are *shariah*-compliant, the relevant financial institutions will often seek approval through obtaining an Islamic ruling or legal opinion (*fatwa*) by an expert in Islamic law (*mufti*). Also, for contractual documentation governed by Swiss law adhering to *shariah* principles (eg, master *murabaha* agreements), it is common that the customer represents and warrants that the customer has examined the transaction documents and sought independent advice from advisers and is convinced that the documentation does not contravene *shariah* principles and that the customer waives any objection as to matters of *shariah* compliance.

Board approval

7 | Do members of an institution's shariah supervisory board require regulatory approval? Are there any other requirements for supervisory board members?

There are no specific provisions for *shariah* boards under Swiss law.

Authorisation

8 | What are the requirements for Islamic banks to be authorised to carry out business in your jurisdiction?

Because there is no regulatory framework specifically applicable to Islamic banks in Switzerland, for an Islamic bank to carry out its business as a bank in Switzerland, it must be licensed as a bank under the respective Swiss banking regulations and, like conventional Swiss banks, it will be subject to supervision through FINMA.

Subject to regulations applying to consumer credits, pure lending or financing activities are subject to Swiss anti-money laundering regulations only and do usually not require a banking licence in Switzerland, provided that the financing provider neither refinances itself via more than five banks for more than 500 million Swiss francs nor accepts deposits from the public. Financial institutions that manage third-party assets (particularly, external portfolio managers, trustees, managers of collective assets, fund management companies and securities firms) must be licensed and supervised by FINMA, whereby the ongoing supervision over portfolio managers and trustees is carried out by supervisory organisations.

However, according to the newly enforced FinSA, client advisers at the point of sale of financial service providers that are not already licensed, registered, recognised or approved by FINMA (eg, financial advisers, licensed foreign financial providers providing financial services to Swiss retail clients or non-licensed foreign financial service providers providing financial services to Swiss clients), must register with a client advisory register and join an ombudsman office. Registration bodies maintain a register of advisers as defined in FinSA and will check that the client advisors have completed the necessary training and further education measures.

The granting of credits to individuals for purposes other than business or commercial activities (consumer credit) is regulated by the Swiss Consumer Credit Act (SCCA). Financial service providers contemplating consumer credit activities falling under the SCCA must register

with the canton in which they are established and to obtain a licence from the canton upon fulfilment of certain prerequisites. Exemptions from this registration requirement are, however, available for Swiss banks licensed by FINMA and for certain lending services that are ancillary to the commercial banking activities of a provider.

Foreign involvement

9 | May foreign institutions offer Islamic banking and capital markets services in your jurisdiction? Under what conditions?

Islamic banking and capital market services are not governed by a specific set of rules. Hence, foreign institutions may offer Islamic banking and finance products in Switzerland, provided that they comply with the applicable Swiss law provisions, including obtaining all licences required to conduct their business or to distribute the products in question.

According to FinSA, which entered force on 1 January 2020, client advisers at the point of sale of financial service providers, which are not already licensed, registered, recognised or approved by FINMA, must register with a client advisory register. Registration bodies maintain a register of advisers as defined in FinSA and will check that the client advisors have completed the necessary training and further education measures. These requirements also apply to licensed foreign financial providers providing financial services to Swiss retail clients or non-licensed foreign financial service providers providing financial services to Swiss clients.

Any other licence requirements apart from FinSA, such as banking or securities dealers' licences, are usually only triggered if the foreign institutions maintain a physical presence in Switzerland (eg, because of employees working in Switzerland or other persons domiciled in Switzerland representing the foreign institution) permanently. Further, offering collective investment schemes or structured products to Swiss retail investors may trigger further regulatory requirements.

Finally, the Swiss prospectus regime according to FinSA applies if securities are offered publicly in Switzerland regardless of the issuer's place of domicile.

Takaful and retakaful operators

10 | What are the requirements for takaful and retakaful operators to gain admission to do business in your jurisdiction?

Takaful and *retakaful* operations fall within the definition of insurance business under Swiss law regulations and are therefore subject to the licensing requirements. Hence, such operators must fulfil the respective ISA requirements and comply with the constraints imposed on any insurance or reinsurance provider.

Any *takaful* or *retakaful* operator having its domicile in Switzerland must, therefore, obtain a licence from FINMA before engaging in *takaful* or *retakaful* activities. It must apply to FINMA, such application to consists, inter alia, of a formalised business plan and ancillary documentation on:

- financial aspects;
- management aspects;
- organisational aspects; and
- business rationale, material shareholders, insurance classes and products.

For regulatory purposes, the company must have the legal form of a corporation or cooperative, whereby the predominant legal form is the corporation.

Foreign operators

11 | How can foreign takaful operators become admitted? Can foreign takaful or retakaful operators carry out business in your jurisdiction as non-admitted insurers? Is fronting a possibility?

Takaful operators whose domicile is abroad must obtain a licence from FINMA in respect of insurance activities conducted in or from Switzerland. If one of the policyholders or insured persons or the insured risk is located in Switzerland, an insurance activity is deemed to be conducted in Switzerland. A FINMA licence is not required for mere reinsurance or *retakaful* activities conducted in Switzerland by operators domiciled abroad. Further, certain exemptions apply in respect of specific insurance products or risks (eg, marine, air transportation, international transport and war risks).

When obtaining the relevant licence in Switzerland, foreign *takaful* providers, in particular, must set up a branch in Switzerland, demonstrate that they are duly licensed and adequately capitalised in their home jurisdiction, have an adequate organisational fund in Switzerland and deposit collateral with the Swiss National bank.

Disclosure and reporting

12 | Are there any specific disclosure or reporting requirements for takaful, sukuk and Islamic funds?

There are no specific disclosure or reporting requirements for *takaful*, *sukuk* or Islamic funds that differ from conventional products under applicable federal or state banking, insurance and securities law. Therefore, they only need to comply with the regulations applicable to any operator in the relevant sector.

Sanctions and remedies

13 | What are the sanctions and remedies available when products have been falsely marketed as shariah-compliant?

If financial products (in general) have been falsely marketed as *shariah*-compliant, investors would, in theory, be able to seek damages arising from such misstatements.

By the same token, if a securities offering is made through a public offering involving statutory disclosure documents (such as a prospectus) and those disclosure documents describe the products in question as *shariah*-compliant, and this constitutes a material misstatement, it might be possible that the issuer, its directors, underwriters and certain other parties could be held liable by investors who acquired the products at the offering.

However, in any event, the amount of damages would be calculated based on the economic loss incurred by the relevant investor, which might be difficult to establish or link to a misstatement on *shariah* compliance.

Jurisdiction in disputes

14 | Which courts, tribunals or other bodies have jurisdiction to hear Islamic finance disputes?

There is only one court system in Switzerland, consisting of, among others, the Supreme Court of Switzerland, (cantonal) high courts and commercial courts and (cantonal) district courts. These courts have jurisdiction to hear Islamic finance disputes as well as conventional (financial) disputes. It must be considered that a Swiss court will generally not examine whether any contractual relationships in dispute are *shariah*-compliant or not. Alternatively, the contracting parties may opt to settle their disputes by arbitration.

CONTRACTING CONCEPTS

Accommodation of concepts

15 | Mudarabah – profit sharing partnership separating responsibility for capital investment and management.

The main characteristics of *mudarabah* – being a form of profit partnership, in which one partner, the *rab-al-mal*, provides funds or capital and the other partner, the *mudarib*, manages the financier's investment for economic activity – could be mirrored economically with different legal concepts or partnership forms under Swiss law.

For instance, the basic economic effects of *mudarabah* can be achieved by the *rab-al-mal* and the *mudarib* entering into a simple partnership or a silent partnership agreement. In a simple partnership, by default, both partners shall have management rights, but the partners may defer from the default rule and assign the management responsibility to one of the partners. In a silent partnership, the partnership does not act externally as such; the silent partner will not be visible to the outside, but only his or her partners.

The internal relationship of the simple partnership is primarily determined by the contract between the partners. Subsidiarily, the rules of article 530 et seq of the Swiss Code of Obligations (CO) apply.

In a simple partnership, title to the capital contributions provided by the partners will generally belong jointly to the partners. In the case of a silent partnership, the silent partner customarily participates in the business activities of the other partner by contributing to the transfer of latter's assets – in return for a profit claim – and in which the principal shareholder acts solely externally and appears as the sole beneficiary and obligor of the business activity. Hence, in contrast to the *mudarabah* structure, where the *rab-al-mal* remains the owner of the assets, legal title to the funds or capital provided will usually be held jointly by the partners (simple partnership) or even transfer from the silent partner to the other partners (silent partnership).

From a formalistic point of view, *mudarabah* agreements (with title to the assets will remain with the *rab-al-mal*) in the form of simple partnerships are technically only feasible under Swiss law where the capital to the undertaking is not provided in money but in other assets, and where only the use of such assets (eg, the usufruct of a property), and not ownership of the assets itself, is supplied or contributed by the *rab-al-mal*.

Another possible structure of *madurabah* under Swiss law could be based on a mandate under which the *rab-al-mal* takes the role of principal and the *mudarib* as an agent.

16 | Murabahah – cost plus profit agreement.

Murabaha transactions can be generally implemented under Swiss law and several banks are offering this kind of transaction in the Swiss market (using documentation usually governed by English or Swiss law).

Generally, in *murabaha* transactions, a bank will act as a funder to purchase certain goods (eg *shariah*-compliant commodities such as palladium and platinum) and the customer will act as the purchaser of those goods. The parties must determine the quantity, quality, cost and specifications of the goods. The bank may finance all or part of the cost of the goods and must provide the funds required for the purchase. The margin between the cost of the goods and their sale price for the sale to the bank's client and the (deferred) payment terms are agreed between the bank and the customer.

Therefore, *murabaha* transactions encompass elements of several contractual relationships. Under Swiss law, *murabaha* is treated as a contract sui generis with elements of a purchase contract and a credit transaction. Further, certain provisions of the CO on agency agreements will apply if the customer appoints the bank as its agent to on-sell the purchased goods (in particular in connection with master *murabaha* agreements on commodities).

17 | Musharakah – profit sharing joint venture partnership agreement.

In Islamic finance, *musharakah* is a joint venture or a partnership arrangement in which profits and losses are shared. The term 'joint venture' covers a variety of short or long-term cooperation arrangements between two or more parties for a common project or enterprise. With simple partnership agreements under Swiss law (article 530 of the CO) profits and losses are also shared and compensated and, in principle, compliant with the prerequisites of Islamic finance.

Similar to *mudarabah* structures, the main economic effect of *musharakah* can, in principle, be achieved by different forms of partnerships (particularly, simple partnerships or limited partnerships under article 594-619 of the CO, according to Swiss company law).

Just as *musharakah*, simple partnerships and limited partnerships involve a combination of entrepreneurship and capital, where the partners contribute their knowledge and their assets to achieve a common goal and profits are shared amongst the partners. However, depending on the chosen partnership structure under Swiss law, certain differences to the classic *musharakah* concept will appear concerning the recognition of the undertaking as a legal entity or in terms of the liability of the individual partners towards third parties.

18 | Ijarah – lease to own agreement.

Ijarah can be implemented under Swiss law in the form of a rental agreement (operating lease) or the form of a lease with a transfer of ownership at the end of the period (financial lease), the latter being usually referred to as 'leasing' under Swiss law.

A financing lease involves pure innominate contracts, while an operating lease can include elements of a rental agreement or usufructuary lease.

To date, there are no laws in Switzerland that specifically regulate the (financial) leasing industry, as leasing agreements usually contain and combine aspects of different types of contracts (eg, instalment-purchase contracts, loan contracts and rental contracts).

Given the predominant principles of freedom of contract and form under Swiss contract law, *shariah*-compliant *Ijarah* transactions governed by Swiss law are possible without there being significant obstacles to be observed.

19 | Wadiah – safekeeping agreement.

In Switzerland, *wadiah* agreements could, in principle, be used for safekeeping agreements. Contrary to customary safekeeping agreements, the bank should not guarantee any incentive, performance, reward or bonus to the customer and the bank would have to guarantee the return of the deposited funds and allow the customer to collect the funds at any time (subject to any restrictions directly imposed by certain investment vehicles). However, the bank could, at its sole discretion, grant to the customer a gift (*hibah*) instead of interest. The bank could still charge the customer administration fees if they directly relate to the management of the deposited funds.

Deposit-taking is regulated in Switzerland and providers should thus adhere to the relevant licensing requirements.

PRODUCTS

Securities structuring

20 Sukuk – Islamic securities. Have sukuk or other Islamic securities been structured and issued in your jurisdiction to comply with Islamic principles, such as the prohibition of interest?

At present, there are no *sukuk* listed on the Swiss Stock Exchange. Further, we are not aware of any *sukuk* issuance publicly announced in Switzerland to date.

Legal position

21 What is the legal position of sukuk holders in an insolvency or a restructuring? Are sukuk instruments viewed as equity or debt instruments? Have there been any court decisions or legislation declaring whether sukuk holders are deemed to own the underlying assets?

Generally, holders of *sukuk* issued by a Swiss issuer should be treated the same way as conventional bondholders (ie, *sukuk* would most likely qualify as debt instruments).

However, there is no court decision concerning or clarifying the legal position of holders of *sukuk* in the event of the insolvency or restructuring of the issuer.

Insurance

22 Takaful – Islamic insurance. Are there any conventional cooperative or mutual insurance vehicles that are, or could be adapted to be, shariah-compliant?

There is no definition of the term 'insurance contract' in the Insurance Supervisory Act or Insurance Supervisory Ordinance. The Swiss Federal Supreme Court has consistently defined the following vital elements of an insurance contract, namely:

- the risk or the danger (the financial consequences of the possible risk or danger are transferred from the insured to the insurer);
- the premium (the duty of the insured to pay premiums to the insurer);
- the duty of the insurer (if the risk or danger is realised, the insured has the right to receive the contribution agreed from the insurer; in most cases, this will be a financial contribution);
- independence of the operation (the performance of the insurance has to be the core of the specific business operation; the insurance business operation should not be a sideline business or a mode of a different business operation only); and
- compensation of the risks based on the rules of statistics.

As opposed to certain more sophisticated insurance products (such as mixed life insurances combining elements of a mere risk insurance and capital investment plus interest accruing thereon), the mere risk insurance products (as per the definition above) could be adapted relatively easily to be *shariah*-compliant (for as long as the insured risks cannot be associated to gambling but rather can be seen as a form of shared risk in the sense of a cooperative insurance contract).

However, as regards the set-up of Swiss insurance companies, the way cooperative insurance vehicles (fairly limited in numbers) have been set up in Switzerland until now is not comparable with such Islamic insurance vehicles.

23 Which lines of insurance are currently covered in the takaful market? Is takaful typically ceded to conventional reinsurers or is retakaful common in practice?

The *takaful* insurance market in Switzerland is in its infancy. However, some major Swiss reinsurance companies have recognised the increasing importance of Islamic reinsurance or *retakaful*; therefore, major Swiss reinsurance providers have built up certain expertise in this regard and offer *retakaful* to their clients (mainly through their Middle East branches).

MISCELLANEOUS

Regulatory obstacles

24 What are the principal regulatory obstacles facing the Islamic finance industry in your jurisdiction?

Islamic finance is emerging in Switzerland and there are currently no regulatory obstacles in place that would adversely affect the further development (the Swiss legal system is in principle *shariah*-friendly, because the two core principles in Swiss contract law – freedom of contract and freedom of form – enable tailor-made solutions). There are no legal restrictions to establish banks that solely operate in a *shariah*-compatible manner or for conventional banks to offer *shariah* windows.

Shariah law

25 In what circumstances may shariah law become the governing law for a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of shariah or the conflict of shariah and local law relevant to the finance sector?

There is currently no judgment by a Swiss court addressing whether *shariah* law would be the appropriate governing law for a contract made in Switzerland or a dispute arising in Switzerland.

In light of Swiss civil procedure, it seems unlikely that general *shariah* principles (as opposed to the substantive laws of any specific country or the specific substantive set of rules contained in certain conventions (eg, the United Nations Convention on Contracts for the International Sale of Goods)) would be recognised as the governing law for a contract or a dispute under Swiss conflict-of-laws rules even if the parties to the relevant contract so designate.

Institutional takeover

26 Are there any special considerations for the takeover of an Islamic financial institution, outside the requirements of the general merger control regime?

Besides the generally applicable provisions on mergers and takeovers applicable in Switzerland generally, the acquisition of control of an Islamic (financial) institution holding a banking, securities trading or insurance licence would be subject to prior authorisation by the Swiss Financial Market Authority.

Other notable features

27 Are there any notable features of the Islamic finance regime and markets for Islamic finance products in your jurisdiction not covered above?

Not applicable.

UPDATES AND TRENDS

Key developments of the past year

28 Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? If so, please give a reference to any written material, whether official or press reports. Are there any other current developments or trends that should be noted?

No updates at this time.

Coronavirus

29 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Since there are no Swiss laws specifically addressing Islamic finance in Switzerland, reference is made to emergency legislation and relief programmes implemented by the state in general.

The Federal Council provided companies (particularly start-up companies) in Switzerland with liquidity relief totalling 40 billion Swiss francs to help mitigate the negative economic consequences of the coronavirus. The covid-19 credits backed by federal guarantees are interest-free and have been made available immediately with minimal administrative effort for applying companies.

To help maintain the current robustness of Swiss financial institutions, the Swiss Financial Market Authority (FINMA) called on them to adopt a prudent distribution policy. Further, FINMA introduced a temporary exclusion of central bank reserves from the calculation of the leverage ratio.

To avoid mass lay-offs, the Federal Council released new guidelines and extended the scope of application and the maximum compensation period of the short-time working compensation retroactively from 1 March 2020 until 31 August 2020.

Further, a temporary insolvency and restructuring regime has been implemented (the covid-19 Insolvency Ordinance) that contains three measures:

- a suspension of the duty of the board of directors to notify the judge in case of over-indebtedness;
- a new moratorium for small and medium-sized enterprises to obtain a temporary stay of their payment obligations for an initial period of up to three months; and
- amendments to the existing debt restructuring regime (ie, companies are released from the obligation to provide the judge with a provisional restructuring plan when applying for an ordinary moratorium).

The Federal Council's strategy to refrain from state intervention regarding tenancy law was opposed by the Swiss parliament. A new statutory law is planned to regulate unanswered questions in connection with the payment of business rents during the lockdown.

For further and regularly updated information visit the Federal Department of Finance and FINMA websites.

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ISBN 978-1-83862-355-5