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ASSET MANAGEMENT IN SWITZERLAND

INTRODUCTION

Switzerland's reputation as a financial market place is primarily built on its venerable private banking tradition, combining its characteristic solidity with discretion. With the integration of the global economy and also with the accentuated pressure on profitability since the financial crisis, the situation is becoming more challenging. Decision-makers in the industry must lay more focus on strong performing investment products and the quality of services offered to demanding clients. At the same time, they will also have to consider improving the diversification of their business mix. While technological innovation (FinTech) may open up new paths to commercial success for the more agile market participants, even some of the established disciplines in financial services may still offer growth opportunities.

One such growth opportunity is at the heart of the Swiss Funds and Asset Manager Association's (SFAMA) asset management initiative launched in 2012, with the stated goal to make Switzerland a leading location for asset management. As with most strategic initiatives of this kind, the ambition may sound a shade too grand. However, the example of Luxembourg shows that the exercise of updating a country's regulatory framework, if it is thoughtfully done, can be turned into a catalyst for an entire industry. Luxembourg achie-

ved nothing less when they transposed the first UCITS (Undertakings for Collective Investment in Transferable Securities) directive into national law back in 1993.

SUCCESS FACTORS: INTERNATIONAL STANDARDS

When embarking on improving the regulatory environment for a specific industry, the legislator should look at the task from two perspectives. On the one hand, legal provisions should remain as simple as possible and adapted to the core concepts and activities of the business they aim to regulate. Over-engineered regulations are certainly not conducive to new developments or competition. For decades Switzerland followed the model of self-regulation, in particular for financial services. This allowed local market participants to shape large parts of financial regulation, through their associations and by making use of the technical know-how of their own expert personnel. On the other hand, local providers should be in a position to export their services abroad and remain competitive on an international scale. This flexibility requires the legislator to take into account relevant international standards and to aim at harmonising local law at least to some extent with

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the law of leading nations. The two angles seem contradictory at first glance. Certainly, Switzerland followed its own approach in the past, often adding the famous "Swiss Finish" to projects it had to take over from the international community (eg its Collective Investment Schemes Act (CISA), overhauled in 2006). Below, we provide a few examples of how Switzerland combines the two angles in its latest legislative initiatives in financial markets law.

BUSINESS DRIVERS: DEMAND FROM PENSION SCHEMES

To illustrate the first angle, we consider one specific domestic business driver for the asset management industry in Switzerland: pension schemes. Like most developed countries, Switzerland finds itself challenged with changing demographics while having a pension scheme concept developed during a period of sustained economic growth. Pension schemes, therefore, will have to pay more attention to achieving consistently better investment performance across multiple asset classes, turning them into a big user of professional asset management services. Local asset managers could meet local demands.

Swiss pension schemes must comply with numerous strict rules contained in a dense net of legal texts. The relevant provisions set certain requirements for their organisation, list the permissible investments and, last but not least, stipulate various investment restrictions. These investment restrictions are contained in the so-called BVV2-ordinance and set bandwidths for certain asset classes. The Swiss Banking Association and SFAMA recently published a study on the strategic asset allocation requirements of pension schemes, proposing to add more flexibility for private equity and infrastructure investments. Today's regulatory approach clearly limits the flexibility of pension schemes to determine their strategic asset allocation. The approach is similar to the simplified approach for managing market risk exposure for over the counter derivative transactions based on a tabular set of values (see Art 109 of the Financial Markets Infrastructure Act (FMIA), which follows the example of its European counterpart, the European Market Infrastructure Regulation -- EMIR). Whether a fixed limit for international equity makes sense, in particular given the underlying international exposure typical of Swiss blue chips, seems at least debatable. Following the alternative approach in FMIA or EMIR, where companies can employ their own quantitative risk model to manage market risk (see Art 109 FMIA), the legislator should consider introducing a risk model approach for strategic asset allocation in the BVV2- ordinance. The Swiss Banking Association and SFAMA, in turn, also propose moving away from rigid investment restrictions, introducing the Prudent Investor Rule as a main principle regulating pension schemes' investment activities.

Sustainable investment criteria have been a hot topic for many years in the asset management industry. The revised directive on institutions for occupations retirement provision (amending Directive 2003/41/EC) explicitly allows member states to permit pension schemes to take ESG (environmental, social and governance) criteria into account. The Swiss legislator has not yet followed suit, leaving the field to private (or se-

mi-private) initiative. In December 2015, a few large pension schemes, including the public pension scheme, took the initiative, establishing the Swiss Association for Responsible Investments (SVVK-ASIR).

Demand for relevant expertise and services is expected to grow significantly over the years to come, especially should legislators and regulators require pension schemes to take ESG criteria into account.

EXPORTABLE PRODUCTS THANKS TO EQUIVALENT LEGISLATION?

Home-grown demand is certainly an important driver for the success of the local asset management industry, but it will always remain comparatively limited. Attracting new providers is therefore only likely to succeed if they can offer their products on an international scale. Accordingly, having a financial regulation that is deemed equivalent to major international standards becomes of the first importance (the alternative strategy of a pure offshore location for investment funds has never been seriously considered).

When Switzerland started to fundamentally overhaul its financial markets regulations, it moved away from a product-centred approach. The new architecture is based on four major pillars: the Financial Markets Supervisory Act (existing), the Financial Services Act (in Parliament), the Financial Institutes Act (in Parliament) and the FMIA, in force since 2016. The new acts adopt many legal concepts from EU legislation, namely MiFID and EMIR. At a more granular level, this included replacing the traditional term "securities dealer" (*Effektenhändler*) with its MiFID equivalent "investment firm" (*Wertpapierhändler*). At a higher level, this included introducing MiFID's concept of pre- and post-trading market transparency to the various types of trading venues as well as supervision for independent asset managers and trustees. Fine-tuning to specific local circumstances and needs (the "Swiss Finish" mentioned above) tends to be limited to setting the parameters in the adopted regulatory framework. Thus, the Federal government amended the ordinance implementing FMIA (with effect from 1 September 2017), aligning various technical rules regarding collateral management for derivatives trading with the latest technical standards for EMIR.

Switzerland's CISA, completely overhauled back in 2006, will only be revised on a limited scale, removing certain provisions regarding asset managers and management companies to the Financial Institutes Act. CISA includes elements modelled on both the UCITS and AIFM (alternative investment fund manager) legislation. While ESMA gave positive advice on the extension of the Alternative Investment Fund Managers Directive (AIFMD) passport to Swiss AIFMs on 12 September 2016, the Commission has still to make its formal equivalence decision.

As a member of the EEA, Liechtenstein is a step ahead. Its national version of the AIFMD gave market access to locally registered alternative funds and managers on 1 October 2016.