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# Debt Finance 2025

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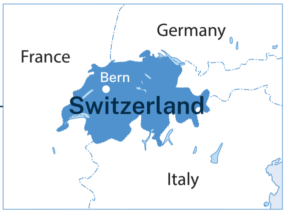
**Switzerland: Law and Practice & Trends and Developments**


Christine Hohl, Fabian Sutter, Pascal Hammerer and Florian Thomas Willi
Loyens & Loeff


# SWITZERLAND




## Law and Practice

**Contributed by:**
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## 1. Market

### 1.1 Debt Finance Market Performance

In 2024, the global economy has remained resilient, declining inflation has improved consumer confidence and monetary policies in most major economies have eased.

While 2023 still saw many refinancings and add-ons, also in Switzerland, there were more new money transactions in the second half of 2024 as well as an uptake in acquisition finance activity supported by an increase in mid-size to large M&A transactions. There has also been notable M&A activity, as well as a number of asset deals, involving Swiss regulated entities, including private banks and fund managers. In the first quarter of 2025, Switzerland has seen a number of M&A deals involving both private banks and pharmaceutical companies, however, tariff increases and policy uncertainty from the new US administration have led to falling stock markets and the lowest number of deal announcements in more than a decade.

In December 2024, the Swiss National Bank (SNB) cut its key policy rate by 50bps to 0.5%, exceeding market expectations and marking the fourth straight rate reduction. Borrowing costs in Switzerland are now at their lowest since November 2022. The decision came as inflation eased, with an average rate of 1.1% for 2024, well within the SNB's target range of 0%–2%. A further drop to around 0.3% is currently anticipated for 2025. Swiss GDP grew by 0.9% in 2024, with a slight improvement to 1.4% expected in 2025, supported by rate cuts. In March 2025, the SNB cut its policy rate by a further 25 bps to 0.25%.

Switzerland's debt capital markets continued to perform strongly in 2024 with 453 new bond listings on the SIX Swiss Exchange (SIX) raising a total of CHF104 billion, thereby exceeding the CHF100 billion mark for the third consecutive year, but down from CHF116 billion in 2023 and CHF114 billion in 2022. The number of outstanding green, sustainable, sustainability-linked and social bonds traded on the SIX increased from 136 in 2023 to 175 in 2024.

However, despite inflationary pressures having begun to ease both globally and nationally and the economic outlook having generally been optimistic, geopolitical tensions, from the situation in Ukraine and the Middle East, to potentially looming US trade wars and unclear policy directions, have impacted market performance in the first quarter of 2025 and are expected to continue doing so.

## 1.2 Market Players

The Swiss debt finance market is a mature and stable market which is still mainly in the hands of banks, with locally headquartered banks (very often the borrower's relationship bank) being predominantly involved in bilateral lending, and international banks more active in relation to syndicated loans.

Although banks are overall the main players in the Swiss corporate lending market, professional investors such as pension funds and insurance companies are also involved. In international leveraged finance transactions, particularly those arranged in the United States but with a Swiss component, specialised debt funds are participating more frequently as well. Private lending has also increased over the last few years, but has not been as prominent as in other jurisdictions.

Small to medium-sized Swiss acquisitions are often financed by large Swiss banks, such as UBS and ZKB, whereas larger acquisitions are usually arranged by international banks via both credit facilities and (international) bond issuances.

The merger of UBS Switzerland AG and Credit Suisse (Schweiz) AG, which completed on 1 July 2024, had a significant impact on Switzerland's financial landscape. Both banks were independently major players in the Swiss and international debt finance markets. In Switzerland, the merger has led to market consolidation and changing market dynamics on the one hand and regulatory concerns on the other. Some international banks can be seen to be stepping in to meet the financing needs of Swiss corporates but, at least so far, not to the level expected. While marketplace lending, where platforms seek to connect institutional investors and borrowers, had become more popular in Switzerland in recent years, volumes started to fall in 2023 and 2024, with the key subsegments of crowdlending and mortgage financing having faced the steepest decline.

Whereas European and North American issuers feature very prominently on the list of the top-ten bond issuers on the SIX, local issuers account for more than two-thirds of the outstanding corporate bonds, led by UBS with around a third of the market share. Banks are generally responsible for most of the SIX corporate bond issuances, followed by chemical and pharmaceutical companies and other service providers.

## 1.3 Geopolitical Considerations

Following the post-pandemic global inflation in 2023, the global economy remained resilient in 2024, declining inflation improved consumer confidence and monetary policies in most major economies eased.

Global GDP increased by 2.3% in 2024 and inflation stood at 4.2%, down from 6.8% in 2023. The OECD expects global GDP to grow by 3.3% in 2025 and 2026, and rates of inflation to reduce to the 2% central banks' target.

While inflationary pressures began to subside, policymakers remained cautious in the face of geopolitical tensions, resulting commodity price volatility and economic uncertainty. The US Federal Reserve (the *"Fed"*) delayed rate cuts until mid-year, reducing rates three times by December to 4.5%. In its March 2025 meeting, the Fed decided to keep interest rates at 4.5%. The European Central Bank began easing earlier and, by year-end, had lowered its three key interest rates (deposit facility, main refinancing operations, and marginal lending facility) to 3.0%, 3.15% and 3.4%, respectively, with three further reductions of 25 basis points in February, March and April 2025 to 2.25%, 2.4% and 2.65%, respectively, effective as of 23 April 2025.

The economic sanctions imposed by the EU on Russia and endorsed by the Swiss government continued to impact financing activity in 2024. They included financial sanctions and restrictions such as a ban on the sale of securities to Russian citizens and entities. These measures were accompanied by enhanced due diligence and reporting requirements in the context of the fight against money laundering. In addition, the majority of Russian banks and other designated Russian entities were disconnected from SWIFT, which has severely affected the processing of financial transactions.

The Israel-Hamas conflict, resurging with the 7 October 2023 attack on Israeli settlements, led to further disruption in global trade and supply chains, higher energy prices, declining revenue from tourism and travel in the region as well as higher costs of insurance and increased volatility in global financial markets.

2024 was the ultimate election year, with national elections in over 64 countries (as well as at an EU level), representing 49% of the world's population.

The impact of the outcome of the US presidential elections in November 2024 has already been felt severely in the first quarter of 2025 and further changes to US foreign, trade, economic, fiscal, healthcare and environmental policies are expected, which could have a significant impact on global trade flows, supply chains and investment behaviour. In addition, crypto legislation, lower capital requirements and a more relaxed approach to bank consolidation are anticipated to affect US financial markets. However, at the time of writing, the Trump administration's aggressive trade policy (including 25% tariffs on steel and aluminium from its major trading partners) triggered a plunge of US stock markets with bank and tech shares among the hardest hit.

## 2. Types of Transactions

### 2.1 Debt Finance Transactions

In Switzerland, the main types of debt finance transactions include general working capital facilities (in the form of both secured and unsecured bilateral loans and syndicated facilities), acquisition finance transactions and receivables finance and securitisations.

The Swiss bank loan market is well developed with some major players in the international cross-border financing market. The international regulatory framework for banks, such as Basel III, provides for strict capital requirements when giving out loans, making it harder for smaller players to participate.

In the acquisition finance space, the market yet again appears to be holding its breath. After a 25% drop in M&A transactions in Switzerland in 2023, the market had high expectations for 2024. However, the value of Swiss M&A transactions decreased by a further 31% in the first nine months of the year, with an uptake in midsize to large M&A transactions only being noticeable towards the end of 2024. Declining inflation, lower interest rates and recovering valuations, as well as about USD2.1 trillion in uncalled capital in the hands of private equity firms, had given cause for optimism, and significant M&A activity had been expected in particular in the technology, healthcare and financial sectors, all of which are strongly represented in Switzerland. While

Switzerland has seen a number of M&A deals involving both banks and pharmaceutical companies in the first quarter of 2025, tariff increases and policy uncertainty from the new US administration have led to falling stock markets and the lowest number of deal announcements in more than a decade.

The Swiss receivables finance and securitisations markets were again relatively robust in 2024. There were a number of new issuances, with auto-leasing, mobile device rental and credit card receivables constituting important underlying asset classes. Whereas public securitisations and covered bond programmes have traditionally been very strong in Switzerland, a certain trend can be observed towards private placements. In either case, the transaction is frequently structured through a Luxembourg issuing vehicle that purchases Swiss receivables, mainly in order to avoid Swiss withholding tax.

The levy of 35% Swiss withholding tax on interest paid to Swiss and foreign investors on bonds and similar collective debt instruments issued by or on behalf of Swiss-resident issuers has long hampered the Swiss debt capital market, making domestic bonds unattractive for most investors (even if they are entitled to a full tax refund). Following the failed attempt to abolish interest withholding tax on Swiss bonds in September 2022, and with no new proposals currently in the pipeline, the expectation is that domestic bond issuances (including high-yield bonds) will continue to play a less important role in debt financings in Switzerland than in other jurisdictions.

## 3. Structure

### 3.1 Debt Finance Transaction Structure

Revolving credit facilities and term loan facilities are the most common forms of bank loan facilities in Switzerland.

In acquisition financings, senior term loans are used to finance the purchase price of the acquisition itself, while (non-Swiss) high-yield notes are often used in addition to senior term loans in larger transactions. On the other hand, revolving credit facilities and term loans are the most common forms of bank loans to finance the working capital needs of the target company and bridge loans are often used in tight timeframes, as syndication of bank loans can be time-consuming. Bank guarantees are frequently seen as well, whereas swingline facilities are less common. Debt packages consist of either senior debt only or of senior debt supplemented by one or more layers of junior debt in the form of mezzanine and high-yield debt.

The Swiss bank loan market allows for efficient and, if required, confidential (ie, *"non-public"*) financing. Borrowers often maintain long-standing, close relationships with their *Hausbank* (relationship bank). Bank loans are sometimes also used in transactions with volumes that may be too large for the debt securities market. In addition, unlike debt securities, bank loans are not subject to various regulatory requirements relating to prospectus compliance, filing and registration. This is particularly true for listed debt securities. However, syndicated bank loans are generally subject to more stringent covenants and may have a greater impact on the borrower's operating flexibility.

The loan market is almost exclusively dominated by banks, while the investor base for debt securities transactions is much broader (and often includes insurance companies, pension funds, specialised debt funds).

## 4. Documentation

### 4.1 Transaction Documentation

The documentation used for loan financing transactions in Switzerland depends on a number of factors. There are no legally required forms for finance transactions in Switzerland but banks often have their standard agreements or templates.

Large syndicated loans are often governed by either English law and based on Loan Market Association (LMA) standard documentation or New York law and based on the Loan Syndication and Tradition Association (LSTA) standard documentation, with Swiss law specific provisions incorporated into these templates.

Loan documentation under Swiss law also closely follows the LMA standard documentation to the extent permitted by local law. Security documentation for Swiss collateral is generally governed by Swiss law, taking into account Swiss law specifics (such as Swiss-specific forms of security, creation and perfection requirements). Intercreditor agreements also play an important role in debt financing transactions (see **6.1 Role of Intercreditor Arrangements**).

Bond documentation usually consists of a prospectus or other offering document together with a subscription agreement (in the case of a public offering) or just a subscription agreement or note purchase agreement (in the case of a private offering) as well as a note trust deed (for English law transactions) or an indenture (for US law transactions). There may also be an intercreditor or subordination agreement.

In the Swiss market, it is common practice for lenders' counsel to issue an enforceability opinion and for borrowers' counsel to issue a capacity opinion in loan financing transactions, whereas two sets of bond opinions are usually issued. While legal opinions were traditionally required only in international transactions, they are increasingly being issued in domestic transactions as well.

In terms of corporate authorisations, board and shareholder resolutions are usually required together with the customary director's certificates.

For larger acquisition financings that may be suitable for international syndication, long-form commitment letters are common, whereas for smaller, less complex transactions, especially those without cross-border involvement, banks may use only short-form commitment letters or even *"highly confident letters"*.

### 4.2 Impact of Types of Investors

One reason why the loan market in Switzerland is predominantly in the hands of (Swiss) banks are the so-called Swiss *"non-bank rules"* which, in case breached, may lead to up to 35% Swiss withholding tax being imposed on interest payments made by Swiss borrowers or Swiss guarantors in respect of loan financings provided by non-banks. The Swiss *"non-bank rules"* basically limit the ability of lenders to sell their position in a particular facility to more than ten non-bank lenders (or, in certain instances, to any non-bank lender) (see also **9.1 Tax Considerations**).

While there has been some activity in the private lending space in Switzerland in 2024, with the exception of investment-grade deals, private lending has continued to shift to less traditional segments as it faces renewed competition from traditional bank lenders.

### 4.3 Jurisdiction-Specific Terms

Swiss law does not generally place any restrictions on lending into Switzerland, nor on the granting of collateral or guarantees to foreign lenders. However, a foreign lender should ensure that there is no permanent physical presence in Switzerland as this may require authorisation from the Swiss Financial Markets Authority (FINMA).

In addition, there are certain jurisdiction-specific considerations that need to be taken into account in cross-border financings.

In order to ensure compliance with the Swiss *"non-bank rules"* and avoid Swiss withholding tax being levied on interest payments by a Swiss borrower or a Swiss guarantor, a number of provisions are typically included in facility agreements with Swiss borrowers, guarantors or security providers. For example, depending on the structure, the ability of lenders to sell their position in the facility, sub-participate or otherwise enter into so-called damaging exposure transfers must be limited (to a total of ten non-banks under the specific facility (or less if the Swiss borrower would, otherwise, have more than 20 non-bank creditors in total)) to avoid negative tax implications. An alternative, in the case where there is no Swiss borrower but only a Swiss guarantor or security provider, would be to restrict the harmful use of proceeds in Switzerland. In either case, a recalculation of interest provision should be included from the lenders' perspective.

In the case where a Swiss subsidiary guarantor and/or security provider provides guarantees or security or incurs any other financial obligation in respect of obligations of its parent or sister company or companies, such agreements must be entered into at arm's length. Failure to comply with the arm's length requirement may result in the fulfilment of such financial obligation being treated as a hidden profit distribution with possible negative tax implications or, if such payment exceeds the amount of freely distributable shareholder equity of the relevant Swiss company, as a repayment of capital. It is, therefore, common practice to include limitation language in the security and guarantee documents entered into by a Swiss company. Similarly, in view of a potential withholding tax exposure in the event of the enforcement of such guarantee or security, the Swiss subsidiary guarantor or security provider will be required to exhaust all available means to eliminate or reduce the corresponding withholding tax liability.

Under Swiss law, due to the accessory nature of a pledge, a valid security interest can only be created in favour of those persons who are the actual creditors of the secured obligations. Where a security interest under Swiss law is held by a security agent also for the benefit of the other secured parties, such a security agent will have to be appointed to act as direct representative of the other secured parties. Such appointment is usually included in the intercreditor agreement, failing which, the facility agreement. In addition, parallel debt is often used as *"back-up"*. It should be noted that, as there is no legislation or case law on the parallel debt concept in Switzerland, there is no certainty that a security interest based on parallel debt obligations will be upheld by a Swiss court.

## 5. Guarantees and Security

### 5.1 Guarantee and Security Packages

In corporate finance transactions, the security package will typically consist of a pledge over shares or quotas, a security assignment of (certain) claims and receivables, such as intercompany receivables, insurance receivables, and/or trade receivables and a pledge or security assignment over bank accounts. In addition, if the security provider has valuable IP, a pledge over intellectual property rights may also be entered into, and, in case of a real estate financing, a security transfer of mortgage certificates.

The Swiss security provider will usually also grant a guarantee. Such guarantee is, in most cases where the Swiss entity is a subsidiary guarantor, included in the facility agreement (in the case of English law transactions) or a separate guaranty agreement (in most US law transactions). If the guarantee is provided by a Swiss parent company (which may not otherwise be a party to the financing), a separate Swiss law guarantee is often entered into.

It should be noted that neither floating charges nor all asset security are recognised under Swiss law.

#### Types of Assets

- Financial instruments (such as shares).
- Bank accounts.
- Claims and receivables.
- Intellectual property.
- Movable assets.
- Real estate.

#### Types of Security

- Pledge.
- Security assignment.
- Guarantees

#### Formalities and Perfection Requirements

***Pledge***

For the creation of a right of pledge, a security document is highly recommended but in general not required by law. Requirements for perfection on the other hand vary depending on the type of assets.

*Movable assets*

- In general, the pledged assets must be physically transferred to the secured party or to a third-party pledge-holder for perfection.
- For publicly registered aircraft and ships, entry of the right of pledge in the relevant register is a perfection requirement.

*Financial instruments (shares)*

These are pledged by way of a written pledge agreement (which is not required to be notarised) and, in addition:

- in the case of certificated shares, the physical share certificate has to be transferred to the secured party or the security agent; if the shares are registered shares, the share certificate should be endorsed or assigned in blank by the pledgor (which serves a similar function to a stock transfer form in the UK); and
- in the case of uncertificated shares, the pledgee and the custodian holding the pledged shares in a securities account must enter into a control agreement.

*Bank accounts*

Bank accounts are typically pledged, although a security assignment is also possible. Notification of the account bank is a perfection requirement in the case of a pledge, as such pledge is (technically) second ranking due to the prior ranking right of pledge usually contained in the account bank's applicable general terms and conditions. Such a notification has also become standard practice in the case of a security assignment. The parties will often also seek confirmation from the account bank that it waives any such priority rights in relation to the bank account(s). Some account banks request the conclusion of a tripartite (pledge-holding) agreement in their standard form.

*Real estate*

Real estate may be used as security in the form of mortgage certificates, which may be pledged and transferred for security purposes, or as a mortgage (land charge).

If the mortgage certificate has not been issued yet, its creation requires a written agreement in the form of a notarial deed and can take the form of a bearer mortgage certificate, registered mortgage certificate or paperless mortgage certificate. Perfection requires the physical transfer of possession in the case of bearer and registered certificates, while in the case of paperless mortgage certificates, the transfer of legal title must be registered in the land register.

The land charge requires a written mortgage agreement in the form of a notarial deed which itself must be filed with the relevant land register for perfection.

*Intellectual property*

This is usually secured by way of pledge, which requires a written pledge agreement specifying the intellectual property. While, technically, registration is not required for perfection, a lack of registration would allow a third party to acquire the intellectual property in good faith.

*Security assignment*

The assignability of claims and receivables for security purposes is generally accepted under Swiss law and requires a written agreement for creation and perfection. However, it is important to ascertain that the relevant underlying agreements giving rise to the claim or receivable do not contain a prohibition on assignment as, in such case, the assignment for security purposes would be invalid.

*Guarantees*

There are generally no formal requirements for guarantees. However, it is important that guarantees are drafted in such a way as to avoid their requalification as a Swiss law suretyship. This is because such requalification would give the guarantor the same rights of objection and defence as the debtor, and would impose formal requirements that may not have been met with respect to the intended guarantee.

## 5.2 Key Considerations for Security and Guarantees

### Agent and Trust Concepts

Under Swiss law, security may be granted to and held by an authorised agent which, in syndicated financings or hybrid bond/loan transactions, would be the security agent or English law security trustee.

If the security interest is an assignment or transfer by way of security – ie, a non-accessory security interest, the security interest may be granted to and held by an authorised agent acting in its own name and on its own behalf as indirect representative of the other secured parties. However, as mentioned in **4.3 Jurisdiction-Specific Terms**, a right of pledge, which constitutes an accessory security interest, can only be created in favour of those persons who are the actual creditors of the secured obligations. As Swiss law does not generally recognise a trust set up by contractual arrangement, the security agent will have to be expressly appointed by the other secured parties to act as their direct representative for the purposes of taking and holding (and releasing) the security.

Such appointment is usually included in the intercreditor agreement, failing which, the facility agreement.

### Parallel Debt

Parallel debt is often used as *"back-up"* to direct representation where an accessory security interest under Swiss law is held by a security agent for the benefit of the secured parties. As the parallel debt structures remain untested in Switzerland, it is unclear whether the concept would be upheld by a Swiss court, although practitioners tend to assume that it would.

### Restrictions on Upstream Security

The granting of a security interest or guarantee or assumption of any other financial obligation by a Swiss company for the obligations of its (direct or indirect) parent company (upstream liability) or its sister companies (cross-stream liability) is subject to certain restrictions. The relevant agreement needs to provide for arm's length terms and the articles of association should expressly permit such up-stream/cross-stream liabilities. As, under Swiss law, payments made to or on behalf of a direct or indirect parent or sister company are considered akin to a dividend distribution, a shareholder resolution should also be obtained, which expressly approves the distribution of the Swiss subsidiary's assets in the case of enforcement.

In addition, upstream or cross-stream guarantees and security are – just like a dividend – limited to the amount of freely distributable shareholder equity of the security provider or guarantor, as any sums paid in excess of this amount may be considered an impermissible return of capital.

Finally, potential Swiss dividend withholding tax liability (of currently 35%) should be carefully reviewed as a guarantee payment or the proceeds from the enforcement of security would typically be considered to constitute a deemed dividend. Depending on the recipient, in particular, whether the recipient is the direct shareholder, an indirect shareholder or a sister company, there may be significant differences for Swiss dividend withholding tax purposes. If the recipient is the direct shareholder and depending on the specific circumstances, a full refund or settlement of Swiss dividend withholding tax by means of a notification procedure would be possible. In other cases, a cash tax payment due to dividend withholding tax is inevitable.

A subsequent refund of Swiss dividend withholding tax should also be carefully considered in such circumstances in order to reduce the final tax burden to the extent possible, notably, by seeking the application of a double tax treaty in international constellations. Therefore, the respective limitation language included in the documentation will require a Swiss guarantor or security provider to exhaust all available means to reduce or mitigate the withholding tax exposure. From a lender's perspective, it may thus be advisable to carefully review the proposed security structure as withholding tax exposure could be substantially mitigated if the collateral package is structured appropriately (eg, vis-à-vis a direct parent entity where an exemption at source would be available).

### Corporate Benefit

In addition to the specific requirements in respect of upstream and cross-stream liabilities, board resolutions should be obtained confirming that the proposed transaction is in the best interests of, and would materially benefit, the Swiss company.

The purpose clause in the articles of association of the Swiss company should ideally expressly permit the company to grant financings, cash-pooling, guarantees and security to or for the benefit of its group companies as well as third parties, whether for consideration or not, and even if such transaction is to the exclusive benefit of such other person.

Nevertheless, for both corporate law and tax reasons, the granting of loans, guarantees or other security to or for the benefit of group companies should always be carried out on arm's length terms – ie, on third-party conditions. The Swiss company should also carefully assess the creditworthiness of the intra-group obligor and the ability of such obligor to meet its primary obligations.

### Financial Assistance

In Switzerland, there is no general prohibition of financial assistance – ie, the assistance by a company through the granting of a loan, security, guarantee or otherwise for the purpose of the acquisition of its own shares. However, the above-referenced limitations on upstream and cross-stream liabilities and the arm's length principle apply.

### Requirement for Guarantee Fees

As the granting or taking of guarantees and security between related parties must be carried out on arm's length terms, a guarantee fee or security commission should be paid to the guarantor or security provider. The Swiss Federal Tax Administration has also generally required that Swiss companies providing guarantees to their parent companies receive appropriate remuneration for such guarantees.

## 6. Intercreditor Issues

### 6.1 Role of Intercreditor Arrangements

Intercreditor agreements play an important role in financing transactions in Switzerland by allowing the parties to contractually (i) establish certain rights of the different classes of creditors, (ii) agree on the priority of claims, (iii) select mechanisms in the event of an enforcement of the collateral, and (iv) make provisions in the case of the insolvency of the debtors. Such agreements are common in relation to multi-layered debt financings where a combination of senior loans, second-lien loans, mezzanine loans and high-yield bonds are used.

### 6.2 Contractual v Legal Subordination

In the case of secured claims, priority is determined by the order of creation and perfection of the individual security interests (the so-called time priority concept). For unregistered assets, the parties may contractually alter the order of priority by means of an intercreditor agreement. For registered assets, such as real estate, ships or aircraft, the priority of the security interest is determined by its entry/ranking in the relevant register.

Swiss law provides for the legal subordination of certain creditors in the event of the bankruptcy of a Swiss company. Secured creditors always have priority over unsecured creditors to the extent that their claims are fully covered by the security. Unsecured claims are divided into three different classes and are satisfied from the proceeds of the bankruptcy estate.

An intercreditor agreement, on the other hand, makes it possible to contractually agree on the priority of claims between certain creditors; whether such agreements are also binding on the liquidator during bankruptcy proceedings remains untested in Switzerland.

Another type of contractual subordination in Switzerland is based on statute and applies to creditors of over-indebted companies. Unless a statutory exception applies, the board of directors of the Swiss company must notify the court of the company's over-indebtedness, with the latter then initiating bankruptcy proceedings. One such exception is where one of the company's creditors subordinates its claims to those of all other creditors to the extent of the over-indebtedness. Such subordination is usually agreed by the shareholder of the over-indebted Swiss company in respect of its shareholder loans. The amount of the subordinated debt must cover both the principal and any interest due.

## 7. Enforcement

### 7.1 Process for Enforcement of Security

A security interest becomes enforceable when the secured obligations become due and payable and are not paid within the required timeframe or as otherwise contractually agreed between the parties (eg, upon the occurrence of an event of default). The specific circumstances under which a security interest may be enforced, therefore, depend on the terms mutually agreed between the parties and are subject to certain minimum legal requirements designed to protect the interests of the security provider.

Security interests can be enforced through formal debt enforcement proceedings under the Federal Debt Enforcement and Bankruptcy Act (DEBA) or through private enforcement. In practice, parties often contractually provide for the secured party's right to choose between private enforcement without court intervention and formal debt enforcement proceedings. Unless otherwise agreed, prior notice must be given to the security provider of a pending enforcement of the security. The parties are free to waive the requirement for prior notice.

In addition to the choice of the type of enforcement, the time of enforcement of the security is also at the secured party's discretion, unless the security agreement contains a provision to the contrary. However, the secured party must act diligently and in good faith. It is usually expressly stated in the security agreement that the secured party has the right, but not the obligation, to enforce the security and realise the collateral.

#### Debt Enforcement Proceedings Under the DEBA

The DEBA is the primary source of legislation governing enforcement and bankruptcy proceedings in Switzerland. As Switzerland is not a member of the EU, any EU directives or regulations are not directly applicable to Swiss enforcement proceedings. Under the DEBA, the situation is slightly different to the EU position.

A security right in the form of a right of pledge may be enforced pursuant to the DEBA (i) via debt enforcement proceedings upon pledge realisation (*Betreibung auf Pfandverwertung*) or (ii) in the course of bankruptcy proceedings (*Konkurs*).

***Debt enforcement proceedings upon pledge realisation (Betreibung auf Pfandverwertung)***

*Commencing debt enforcement proceedings*

Debt enforcement proceedings upon pledge realisation (*Betreibung auf Pfandverwertung*) means realising a specific pledge without bankruptcy proceedings being opened against the company in question. In order to initiate this kind of proceeding, the secured party needs to file an application (*Betreibungsbegehren*) with the competent debt collection office in Switzerland. After the application has been filed, the debt collection office will issue a summons to pay (*Zahlungsbefehl*), giving the debtor a deadline of one month to pay the claimed amount.

The debtor has the possibility to raise an objection (*Rechtsvorschlag*) within ten days after receipt of the summons to pay, whereupon the debt enforcement proceedings will be suspended until the objection is set aside. It is then for the secured party to assert its claim in court proceedings in order to obtain a court judgment. This is an ordinary litigation in which the debtor is free to dispute the existence or the amount of the claim. Only after obtaining a court decision, can the objection be set aside and debt enforcement proceedings be continued. If the creditor has a written acknowledgment of the debt or if the debt arises clearly out of a contract (such as a loan agreement), the objection can also be set aside provisionally in summary proceedings. The debtor would then need to commence ordinary proceedings against the creditor and would have to prove that the claim does not exist or no longer exists.

If the debtor raises no objection or the objection has been set aside by a Swiss court, the creditor will be able to demand realisation of the pledge at the earliest after one month and at the latest one year after the summons to pay has been served. The debt collection office in charge then carries out the realisation.

*Realisation of the pledge*

(i) Public auction

The DEBA provides that the collateral to be realised will be realised by the debt collection office in a pre-announced public auction in which everyone interested is free to bid. The debt collection office is obliged to obtain the highest possible realisation proceeds under the circumstances and to safeguard the interests of the creditor to the best possible extent. The possibilities for the parties to exert influence are limited.

However, since there is hardly any market for shares of companies that are not publicly traded, debt collection offices favour free sales (*Freihandverkauf* – ie, a private sale of the collateral by the debt collection office) over auctions, as experience has shown that they generate higher proceeds than public auctions. Whether a free sale is to be given preference over a public auction depends on the case at hand, whereby the debt collection office is granted considerable discretion.

(ii) Free sale

A free sale is in principle only possible if all parties expressly agree. In practice, however, the debt collection office will often decide itself if the pledge is to be realised by free sale and if so, the manner of execution. A free sale is usually considered (i) if a willing buyer has made itself known to the debt collection office and made a reasonable offer, (ii) if the bids at public auction are expected to be low, or (iii) if the circle of interested parties is limited from the outset. If an asset of a certain value is sold by way of a free sale, the debt collection office typically notifies interested parties of the terms of the offer it considers accepting and gives them an opportunity to place a higher bid.

The creditor is not entitled (even if the legal requirements are met) to demand that the realisation be carried out by free sale. This remains at the discretion of the debt collection office. If the debtor is of the opinion that the debt collection office violated its duty to obtain the highest possible amount of proceeds by the free sale, the order accepting the offer (*Zuschlag mittels betreibungsrechtlicher Verfügung*) can be challenged with an appeal.

*Distribution of the proceeds*

The costs of administration, realisation and distribution are paid in advance from the proceeds of the realisation of the pledged assets. The remaining proceeds would then be paid to the secured party/-ies up to the amount of their claim including interest and debt collection costs incurred. Any surplus is payable to the pledgor.

***Private enforcement***

Out-of-court private enforcement is usually quicker and less burdensome. However, the secured party is obliged to realise the collateral in a manner that ensures that the best possible price for the collateral is obtained, whether by private sale (including self-sale or the sale to another secured party or a third party) or auction.

There is generally no correct selling price that must be achieved. However, a low price may expose the secured party to a claim that the realisation was not conducted carefully and may result in potential liability. There are certain mechanisms that can limit the risk of such liability – eg, a fairness opinion or valuation by an independent third party or a contractual mechanism for valuing the collateral and determining the price. However, including such detail may not be in the interest of the secured party as it potentially limits its discretion when it comes to enforcement, and it might give the security provider the possibility to delay or disrupt security enforcement by claiming that the secured party has not complied with the specific requirements.

Once official debt enforcement proceedings have been commenced or the debtor has been declared bankrupt, private enforcement of the pledged collateral is no longer possible.

If security has been taken in the form of a security assignment (as opposed to a pledge), legal title to the assigned claims has passed to the assignee (except in respect of claims which have only come into existence after the insolvency of the security provider) and the assigned claims, thus, do not form part of the bankruptcy estate of the security provider. Such security can, therefore, only be enforced by way of private enforcement (even after the insolvency of the security provider).

## 7.2 Enforcement of Foreign Judgments

Foreign judgments are principally recognised and enforced in Switzerland, subject to certain restrictions set forth in:

- the Convention on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters (the Lugano Convention);
- other international treaties to which Switzerland is a party; and
- the Swiss Federal Act on Private International Law (PILA). The procedure for the enforcement of foreign judgments in Switzerland, therefore, depends on whether there is a special regime applicable under an international treaty, such as the Lugano Convention, and is otherwise governed by the PILA.

The recognition of a foreign judgment is a prerequisite for its enforcement. In general, a foreign judgment will be recognised in Switzerland (subject to certain exceptions) if:

- the jurisdiction of the courts or authorities of the state in which the judgment was given was well founded;
- no ordinary legal remedy can be invoked against the decision or if it is final; and
- the recognition would not be manifestly incompatible with Swiss legal principles and public policy.

In the case of Lugano Convention judgments, the jurisdiction of the foreign court may generally not be reviewed and preliminary decisions are also enforceable.

On 1 January 2025, the Hague Convention of 30 June 2005 on Choice of Court Agreements entered into force in Switzerland, facilitating the recognition and enforcement of foreign judgments based on exclusive choice of court agreements from countries outside the Lugano Convention, such as, notably, the UK.

An arbitral award issued by a foreign arbitral tribunal must also be recognised in Switzerland before it can be enforced. According to the PILA, foreign arbitral awards are subject to recognition and enforcement in accordance with the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (Convention). This applies even if the award originates from a non-signatory state of the Convention.

## 8. Lenders' Rights in Insolvency

### 8.1 Rescue and Reorganisation Procedures

In addition to bankruptcy proceedings, Swiss law provides for composition proceedings (*Nachlassverfahren*) in the DEBA, which allow for a more flexible and advantageous restructuring of the company than bankruptcy proceedings.

Composition proceedings offer debtors several restructuring options. It is possible to initiate and use such proceedings as a restructuring moratorium, subject to court approval. In this case, individual agreements between the debtor and its creditors must be reached, with the possibility of the court terminating the moratorium once the debtor has achieved financial recovery. If financial recovery cannot be achieved by the use of restructuring measures or individual agreements with creditors, a composition agreement may include a debt rescheduling (*Stundungsvergleich*) or dividend agreement (*Prozent- oder Dividendenvergleich*). The debtor retains control after the agreement is approved, thus avoiding liquidation. A composition agreement must be approved by a majority of creditors representing at least two-thirds of the total debt or by one-quarter of creditors representing three-quarters of the total debt (privileged and secured creditors excluded). The composition court confirms the agreement, making it enforceable against all creditors.

Secured creditors are satisfied directly from the net proceeds generated by the realisation of the collateral. If these proceeds prove to be insufficient to fulfil a secured creditor's claim, the remaining portion of the claim is then classified as an unsecured and non-privileged claim that is subject to the composition agreement, if any.

### 8.2 Main Insolvency Law Considerations

#### Lenders' Rights to Enforce a Loan, Guarantee or Security in Insolvency

*Financial claims generally*

The opening of bankruptcy proceedings against a Swiss debtor results in the acceleration of all claims against such debtor, whether secured or unsecured (except for those secured by a mortgage on the debtor's real estate), and all such claims become due and payable. The creditor's claim will consist of the principal amount of the debt, any accrued interest until the date of insolvency, and the costs of enforcement. It should be noted that, upon insolvency, interest on unsecured claims no longer accrues. In case of claims secured by a pledge, interest that would have accrued until the realisation of the collateral can be claimed.

All creditors wanting to assert a claim against the insolvent debtor need to participate in the Swiss bankruptcy proceedings. Bankruptcy proceedings constitute collective proceedings and creditors can generally no longer pursue individual claims separately but only in accordance with, and subject to the restrictions of, Swiss insolvency laws.

#### *Assigned claims*

Assets or claims that have been legally transferred or assigned for security purposes – ie, legal title which has passed to the secured party, prior to the opening of bankruptcy proceedings against the Swiss debtor, do not form part of the bankruptcy estate of the security provider and, as such, can be realised by the secured party by way of private enforcement.

However, future claims and rights which have been assigned for security purposes, but which have only come into existence after the opening of bankruptcy proceedings against the assignor, will fall within the bankruptcy estate of the assignor and be treated in the same way as assets subject to a pledge (see below).

#### *Pledged assets*

The opening of bankruptcy proceedings deprives the debtor of the ability to dispose of its assets as they form part of the bankruptcy estate. This includes assets which are the subject of a pledge. From that moment on, private enforcement is, therefore, no longer permitted in respect of these assets. Instead, the enforcement of assets forming part of the bankruptcy estate may only be carried out in accordance with the DEBA, which requires co-operation with the bankruptcy administrator. However, the opening of bankruptcy proceedings does not affect the right of the secured creditor to be satisfied first from the sale of the pledged assets. Only if the proceeds from the sale of the pledged assets exceed the secured claims will the remainder be distributed among the unsecured creditors.

### Claw-Back Risks

Claw-back actions aim to recover assets transferred or disposed of by an insolvent debtor and are intended to benefit the bankruptcy estate and ultimately its creditors as a whole. Transactions may be subject to claw-back actions if:

- within one year prior to attachment or the opening of bankruptcy proceedings, assets were given away for free or transferred without adequate consideration;
- within one year prior to attachment or the opening of bankruptcy proceedings, an over-indebted debtor (i) provided security for existing obligations without a prior-existing obligation to do so, (ii) settled a monetary debt by means other than cash or ordinary means of payment, or (iii) discharged a debt not yet due; and/or
- within five years prior to attachment or the opening of bankruptcy proceedings, a transaction was carried out by the debtor with the intention of harming its creditors or favouring a particular creditor, and the party benefiting from such a transaction knew or should have known of the debtor's intention.

### Equitable Subordination

While, in Switzerland, the concept of equitable subordination is not codified in statute and there is no established case law, Swiss doctrine supports the concept of equitable subordination with respect to shareholder loans in insolvency situations. The general view is that shareholder loans granted to a Swiss company at a time when it is already in financial distress or over-indebted and no other third-party financing would be available risk being treated as equity and hence being subordinated to the claims of all other creditors and satisfied last. This is especially the case if such shareholder loan is not granted on arm's length terms.

### Order of Payment

In Swiss bankruptcy proceedings there are different classes of creditors that are satisfied according to their rank.

*Secured creditors*

Secured creditors always have priority over unsecured creditors to the extent that their claims are fully covered by the security.

*Unsecured creditors*

Unsecured creditors are divided into three classes:

- the first class of legally preferred claims consists, in particular, of claims of employees;
- the second class of legally preferred claims consists of claims relating to social insurances, contributions to the family compensation fund and privileged bank deposits up to a maximum amount of CHF100,000 per creditor; and
- the third class includes all other claims.

Creditors within the same class have equal rights. If the proceeds are not sufficient to satisfy all creditors within a particular class in full, they are distributed in proportion to the amount of each creditor's claim, known as the bankruptcy dividend (*Konkursdividende*). Proceeds are not allocated to creditors in a subsequent class until the creditors in the preceding class have been fully satisfied.

If the secured claims cannot be fully satisfied from the proceeds of the relevant collateral, the secured creditor assumes the status of *"ordinary"* bankruptcy creditor. It is then assigned to one of the three bankruptcy classes mentioned above, depending on the nature of its claim, but most likely, the third class.

## 9. Tax and Regulatory Considerations

### 9.1 Tax Considerations

### Interest Withholding Tax

Switzerland levies 35% withholding tax on interest payments in respect of *"bonds"*.

Interest paid by a Swiss borrower on a loan is generally not subject to Swiss withholding tax where the loan is provided by a third party and complies with Swiss thin capitalisation rules. If the loan is provided by a related party, it needs to be ensured that interest payments comply with the safe harbour rates published and updated annually by the Swiss Federal Tax Administration or are in line with the arm's length principle.

However, interest payments in relation to a debt instrument which is qualified as *"bond"* for Swiss withholding tax purposes are subject to Swiss withholding tax at a rate which is currently 35%. In order to avoid a loan granted to a Swiss borrower being requalified as a bond, the so-called Swiss *"non-bank rules"* must be complied with.

The following circumstances may trigger a requalification:

- if more than ten non-bank lenders participate (either as lenders of record or sub-participants) on identical terms against a written acknowledgement of debt and the total borrowed sum is at least CHF500,000 (the so-called ten non-bank rule);
- if a Swiss borrower has more than 20 non-bank creditors on aggregate (ie, all of its creditors and not just the lenders under the particular loan agreement) and the total borrowed sum is at least CHF500,000 (the so-called 20 non-bank rule); and
- if a Swiss obligor has, on aggregate, more than 100 non-bank creditors under financings that qualify as deposits within the guidelines issued by the Swiss Federal Tax Administration, it is subject to the so-called 100 non-bank rule).

A bank lender is a person that (i) qualifies as a bank pursuant to Swiss banking legislation, or (ii) effectively conducts banking activities with its own infrastructure and staff as its principal purpose and has a banking licence in full force and effect issued in accordance with the banking laws in its jurisdiction of incorporation, and a non-bank lender is a person that does neither.

Similarly, interest withholding tax may also apply to financings with a non-Swiss borrower which are guaranteed and/or secured by a Swiss parent or subsidiary guarantor. In the case of a harmful use of proceeds in Switzerland as interpreted by the Swiss Federal Tax Administration, interest payments may be subject to 35% Swiss withholding tax if the debt instrument is in breach of the non-bank rules.

It should be noted that, with respect to interest withholding tax, Switzerland does not provide for an exemption-at-source mechanism. Therefore, in the event of a breach of the non-bank rules, interest must be withheld by the Swiss payor even if, for example, the recipient of the interest payment would be entitled to a zero rate under an applicable double tax treaty.

It is possible and standard market practice to obtain an advance tax ruling from the Swiss Federal Tax Administration to confirm (i) in the case of a Swiss subsidiary guarantor, that such upstream or cross-stream guarantee or security – which is limited to the amount of distributable shareholder equity of the Swiss subsidiary – is not harmful for Swiss withholding tax purposes (irrespective of the use of proceeds in Switzerland) or (ii) in the case of a Swiss parent guarantor, the amount of proceeds from the financing which may be used in Switzerland without negative interest withholding tax consequences.

In addition, interest payments to non-Swiss lenders may also be subject to Swiss withholding tax if the payments are secured by Swiss real estate.

Swiss withholding tax may be partially or fully refundable depending on applicable double tax treaties or based on domestic tax law.

### Thin Capitalisation Rules and Dividend Withholding Tax

Swiss thin capitalisation rules generally only apply to related parties, in which case, the related party debt may be treated as taxable equity (hidden equity). Circular letter No 6/1997, published by the Swiss Federal Tax Administration, stipulates the rules for determining/calculating whether a Swiss company is thinly capitalised. The maximum permitted debt financing of a

Swiss company is, in principle, calculated based on the type and (fair market) value of the assets. A Swiss company's debt may be reclassified as hidden equity to the extent that such debt constitutes related party debt and cannot be justified based on economic arguments or the arm's length test. In order to determine the arm's length nature of intra-group transactions, the Swiss tax authorities generally rely on the OECD transfer pricing rules. Interest paid on related party debt which is reclassified as hidden equity is not tax deductible but is treated as a deemed dividend distribution subject to Swiss dividend withholding tax, which is currently 35%.

Similarly, debt provided by third parties to a Swiss borrower but benefiting from a related party (downstream) guarantee may be reclassified as related party debt and become subject to limitations under the Swiss thin capitalisation rules. Such exposure can typically be mitigated by adjusting the security package.

There are no limitations on independent third-party financings of Swiss companies.

As mentioned above, payments made under upstream or cross-stream guarantees or security are typically also subject to Swiss dividend withholding tax, which is currently 35%.

### Stamp Duties

In Switzerland, no stamp duty or documentary taxes are levied on the execution of loan or security documents. However, notary fees and registration fees may be payable for documents that are drawn up as public deeds or need to be filed with a registry.

In addition, the transfer of certain securities such as notes, bonds or shares evidencing or securing a loan, may be subject to Swiss stamp duty if a Swiss bank or securities dealer is involved as a principal or intermediary in the transaction.

## 9.2 Regulatory Considerations

In Switzerland, lending activities are generally unregulated as long as the lender does not accept deposits from the public or refinances itself through a number of banks.

As a general rule, foreign regulated entities operating on a strict cross-border basis do not require FINMA authorisation. This does not apply if these activities involve a physical presence (such as personnel or physical infrastructure) in Switzerland on a permanent basis, as the cross-border exemption would generally not apply. FINMA may also assume a Swiss presence based on the volume of business in Switzerland or the use of teams specifically dedicated to the Swiss market.

The Swiss Federal Act on Financial Services (FinSA) and the Swiss Federal Act on Financial Institutions (FinIA) were introduced in response to the *"third-country rules"* of MiFID II (the EU's Markets in Financial Instruments Directive 2014) and require foreign financial services providers that would be subject to authorisation in Switzerland to register in Switzerland before providing financial services to Swiss-based investors. Certain exemptions are available for regulated financial institutions that exclusively target institutional and professional clients in Switzerland.

It is important to note that lending to individuals for purposes other than business or commercial activities may qualify as consumer credit, which is regulated by the Swiss Federal Act on Consumer Credit.

## 10. Jurisdiction-Specific or Cross-Border Issues

### 10.1 Additional Issues to Highlight

Certain restrictions may affect the enforcement of a security interest by a foreign secured creditor, depending on the type of collateral, the nature of the security interest and the industry.

One notable example is real estate financing transactions involving residential real estate located in Switzerland. The Swiss Federal Act on the Acquisition of Real Estate by Persons Aboard, also known as Lex Koller, imposes restrictions on the direct acquisition of residential real estate by foreign nationals or entities as well as on the acquisition of pledged shares in real estate companies.

In addition, the creation of certain security interests (such as over real property, aircraft, and ships) may require registration with a public register and certain restrictions may apply in relation to security interests granted by companies active in regulated industries.

The consent of the works council is not required for financing transactions unless employees are affected in certain ways (eg, labour safety, mass dismissals, transfer of a business or of pension plans).

# Trends and Developments

**Contributed by:**
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**Loyens & Loeff** is a leading continental European law and tax firm with over 1,000 advisers, and is the logical choice for companies doing business in or from the Netherlands, Belgium, Luxembourg and Switzerland, its home markets. The banking environment is constantly evolving. Financing solutions are multiplying and legal implications related to financial products are becoming more complex. Due to the ever-changing economic, political, environmental and regulatory worlds, financial markets will continue to be a challenge in the years ahead. Loyens & Loeff keeps track of the developments and helps its clients to navigate the increasingly complex debt and financial markets. It also goes a step further – guiding its clients in identifying opportunities and innovative ways to access the funding most suitable for them, whilst also managing risk. It is the firm's job to stay ahead of these changes for its clients, allowing them to stay focused on their core business.

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### Inflation, the Economy and Interest Rates

In 2024, the global economy has remained resilient, declining inflation has improved consumer confidence and monetary policies in most major economies have eased.

Global GDP increased by 2.3% in 2024 and inflation stood at 4.2%, down from 6.8% in 2023. The OECD expects global GDP to grow by 3.3% in 2025 and 2026 and rates of inflation to reduce to the 2% central banks' target.

While inflationary pressures began to subside, policymakers remained cautious in the face of geopolitical tensions, resulting commodity price volatility and economic uncertainty. The US Federal Reserve (the *"Fed"*) delayed rate cuts until mid-year, reducing rates three times by December to 4.5%. In its March 2025 meeting, the Fed decided to keep interest rates at 4.5%. The European Central Bank began easing earlier and, by year-end, had lowered its three key interest rates (deposit facility, main refinancing operations, and marginal lending facility) to 3.0%, 3.15%, and 3.4%, respectively, with three further reductions of 25 basis points in February, March and April 2025 to 2.25%, 2.4% and 2.65%, respectively, effective as of 23 April 2025.

In Switzerland, GDP increased by 0.9% in 2024 and is expected to grow by 1.4% in 2025 and 1.7% in 2026. The rate of inflation was 1.1% in 2024, well within the Swiss National Bank (SNB)'s target range of 0%–2%, and a further drop to around 0.3% is currently anticipated for 2025. The SNB reduced its policy rate incrementally in 2024 from 1.75% in January to 0.5% in December and by a further 25 basis points to 0.25% in March 2025.

### Market Performance

#### *Swiss capital markets*

After 2023 had seen the lowest trading activity on the SIX Swiss Exchange (SIX) in over a decade, in 2024, SIX recorded a trading turnover of CHF1,186.59 billion which represents a 13.4% increase from the previous year. Transaction volume increased by a moderate 4% but strong growth could be seen in the EFT and structured products segments with turnover up by 31% and 12.8%, respectively.

While 2024 only saw two IPOs in Switzerland, Galderma's CHF2.286 billion placement (including over-allotment option) in March was one of the biggest in Europe and the largest in Switzerland since 2017. In November, Sunrise, a spin-off of Liberty Global, listed its Class A shares on the SIX at an opening price of CHF44.75, resulting in a market capitalisation of around CHF3.2 billion. In addition, existing issuers raised around CHF2.3 billion via capital increases.

On the debt capital side, there were 453 new bond listings, raising a total of CHF104 billion, exceeding the CHF100 billion threshold for the third year in a row but down from CHF116 billion in 2023 and CHF114 billion in 2022. The number of outstanding green, sustainability, sustainability-linked and social bonds traded on the SIX increased from 136 in 2023 to 175 in 2024.

### *M&A activity*

After a 25% drop in M&A transactions in Switzerland in 2023, the market had high expectations for 2024. While, in the first nine months of 2024, transactions in North America increased by 13%, reaching a total value of USD958 billion, and the value of European M&A increased by 14% to a total of USD353 billion, with a remarkable 131% increase in the UK, 111% in Sweden, 68% in the Czech Republic and 29% in France, the value of Swiss M&A transactions decreased by 31% in the same period, alongside a 25% decrease in Italy, 34% in Austria and 52% in Germany.

Predictions for 2025 were again optimistic in light of declining inflation, lower interest rates and recovering valuations and about USD2.1 trillion in uncalled capital in the hands of private equity firms. Significant M&A activity was expected in particular in the technology, healthcare and financial sectors, all of which are strongly represented in Switzerland. While Switzerland has seen a number of M&A deals involving both banks and pharmaceutical companies in the first quarter of 2025, tariff increases and policy uncertainty from the new US administration have led to falling stock markets and the lowest number of deal announcements in more than a decade.

### *Swiss banking sector – challenges and optimism*

In March 2024, the SNB cut interest rates earlier than expected and was the first major central bank to do so. At the same time, it significantly raised the minimum reserve requirement on its current account for domestic banks and reduced the amount from which deposits earn the full interest rate. These measures are expected to considerably affect interest income of Swiss banks and 77% of banks surveyed for the EY Banking Barometer 2025 anticipate their interest margins to fall in the next two years. While the disappearance of Credit Suisse has reportedly led to an increased demand for corporate financing solutions from other Swiss banks, only slightly fewer than half of these banks seem to have been able to translate this into higher margins.

In addition, as a consequence of the takeover of Credit Suisse as well as international developments (including sanctions against Russia and a closer co-operation between the Swiss Financial Market Supervisory Authority (FINMA) and other supervisory authorities generally), FINMA is strengthening its supervisory instruments and monitoring activities, and a stricter interpretation and enforcement of existing and new regulatory requirements is expected.

A positive side effect of declining interest rates, at least from the perspective of Swiss banks, is a continued rise in property prices in Switzerland. The value of mortgage collateral, which in 2024 made up around 77% of the loan portfolio of Swiss banks, thus continues to increase while mortgage default rates are expected to further decrease. Similarly, two-thirds of the banks surveyed by EY do not expect SME credit defaults to increase, despite a rather challenging outlook for the European industrial sector.

AI continues to gain momentum among Swiss banks and is expected to present both opportunities, in particular, in process automation and compliance, and challenges, notably in relation to regulatory requirements and risk management, mainly data protection.

While the importance of ESG continues to increase, driven by international regulatory requirements, most notably, reporting obligations and increased action against greenwashing, sustainability appears to have entered the mainstream with sustainable investments in particular having lost some of their significance for the banks surveyed, reflecting an apparent decrease in customer demand.

## Key Regulatory Developments

### *Revisions to the Financial Market Infrastructure Act*

The Swiss Federal Council published a proposal for a revision of the Swiss Financial Market Infrastructure Act (FinMIA), with a consultation period which ended in October 2024. The Swiss Federal Council will now draft a revised version of its proposal for submission to the Swiss Parliament, which is expected in 2025. The proposal sets out extensive revisions covering various areas, inter alia, financial market infrastructures (such as payment systems, central securities depositories and trading venues), derivatives trading and transaction disclosure rules.

Swiss law currently employs a tiered regulatory approach with respect to payment systems. Swiss payment systems not operated by a bank require a FINMA licence only if deemed necessary for the proper functioning of the financial market or the protection of its participants. Smaller payment systems not operated by a bank are not subject to prudential oversight but are typically subject to Swiss AML/CFT rules.

The current version of FinMIA does not clarify when a payment system would require authorisation due to its impact on the financial market. At the time of writing, no payment system had obtained authorisation. The SIX Interbank Clearing System (SIC) is the only one potentially in scope, but since it is operated on behalf of the SNB, it does not hold a FINMA licence.

The proposed amendments to FinMIA aim to provide legal certainty regarding when payment systems require authorisation by FINMA. These amendments will establish thresholds based on transaction volumes, as outlined in the implementing ordinance. Such thresholds will determine when a payment system operator must obtain a FINMA licence.

The evaluation of FinMIA has further shown that it lacks a clear definition for central securities depositories (CSD), leading to certain legal uncertainties. In order to increase legal certainty, it is proposed to clarify the definition of a CSD. The term is to be sharpened, but not expanded (ie, no additional financial market players are to be covered by the definition). Specifically, it is clarified that central custody or clearing and settlement activities only require authorisation under FinMIA if (i) the authorisation requirement is justified by the link between these activities and a trading venue, or (ii) because such activities are otherwise relevant for the functioning of the financial market. It is up to the Federal Council to define thresholds according to which this second condition is fulfilled.

The proposed amendments also aim to facilitate access to foreign trading venues. Currently, Swiss regulated entities can only be admitted to a foreign trading venue if that venue holds individual recognition from FINMA. However, practice has shown that the benefits of this individual recognition are limited. Therefore, the existing recognition of individual trading venues will be replaced by the recognition of the regulation of the country in which the trading venue is domiciled. This means that access will be granted if FINMA determines that the state in which the trading venue is domiciled adequately regulates and supervises its trading venues and guarantees administrative assistance to FINMA. The aim is to simplify the recognition process, which is also in the interest of Swiss market participants.

The proposal further introduces various amendments with respect to derivatives trading. With respect to transaction reporting duties, the proposal aims to (i) align the content of the reports with international standards (such as LEI, UTI, UPI), and (ii) facilitate access of non-Swiss authorities to Swiss transaction registers.

The proposal also includes various facilitations for small non-financial counterparties (NFCs-). In order for non-financial counterparties to be classified as small, the current law requires the 30-working-day rolling average gross positions in the relevant outstanding OTC derivative transactions to be below a certain threshold. In practice, this calculation method has proven to be relatively complex. It is proposed that this calculation shall now be based on the average of the aggregated gross month-end positions for the previous 12 months in the relevant outstanding OTC derivative transactions per derivative category (this is an alignment to the rules of the revised EMIR-REFIT). This new calculation method is expected to smooth out the positions and yield more precise figures for determining whether a counterparty is large or small. Under the proposed amendments, NFCs- will further benefit from simplified reporting obligations. Under the current rules, after a transition period ending on 31 December 2027, NFCs- must report derivatives transactions entered into with foreign counterparties. This reporting obligation will be removed under the proposed amendments. The rationale is that the costs associated with mandatory reporting for NFC- are likely to outweigh the benefits. Additionally, a simplification of the rules of substituted compliance is being proposed.

The current Swiss disclosure law requires the reporting of a large number of facts and in practice leads to a high number of disclosure reports by international standards. Accordingly, the new rules propose, inter alia, to increase the minimum disclosure threshold for shareholdings in companies listed on Swiss trading venues from 3% to 5%. The Federal Council notes that this is compatible with international standards and is also justifiable from a market transparency perspective. Additionally, it is proposed to introduce a new requirement for issuers of securities listed on a Swiss trading venue, as well as persons acting of their behalf, to keep an up-to-date insider list (ie, a list of persons who have access to inside information).

The proposed amendments would also introduce the obligation to publish ad hoc notifications and disclose management transactions to FINMA. Currently, these rules are primarily governed by the listing regulations of the relevant stock exchanges (SIX Swiss Exchange or BX Swiss). It is further envisaged that FINMA will centrally receive transaction reports in the future. Consequently, trading venues and DLT trading systems will no longer need to operate their own reporting offices. The market has heavily criticised the proposed transfer of responsibility to FINMA, as the existing model is perceived as proven and effective.

### *Amendments to the Swiss AML/CFT framework*

In line with the international standards of the Financial Action Task Force (FATF) on combating money laundering and terrorist financing, and the recommendations of the Global Forum, the Swiss AML/CFT regime is expected to undergo a comprehensive overhaul. In May 2024, the Swiss Federal Council submitted the dispatch for the new Transparency Act of Legal Entities (the *"Transparency Act"*) along with amendments to the Anti-Money Laundering Act (AMLA) to the Swiss Parliament. The amendments to the Swiss AML/CFT regime are expected to come into force at the start of 2026 at the earliest.

The Transparency Act introduces a non-public federal register of beneficial owners of legal entities. All domestic legal entities, as well as foundations and associations that must be entered in the commercial registry, are required to obtain the necessary beneficial ownership information and transmit it to the register-keeping authority. Additionally, legal entities that are based abroad but (i) have a branch in Switzerland, (ii) are effectively managed from Switzerland, or (iii) own real estate in Switzerland are in scope of the above duties.

Beneficial owner (UBO), for the purposes of the Transparency Act, means any natural person who directly or indirectly holds at least 25% of the capital or voting rights of the relevant company, or exercises control over such company through other means. This differs for foundations and associations, where any individual who exercises control or significant influence, such as beneficiaries or the founder, may be identified and registered as a UBO. In cases where no individual meets the above criteria, the highest-ranking member of the executive body must be registered as the UBO. The highest-ranking member of the executive body of the legal entity is responsible for registering the UBO.

The register is not public and accessible to authorities and financial intermediaries to the extent necessary to fulfil their due diligence obligations under AMLA. It will be managed electronically by the Swiss Federal Department of Justice and Police. Under the Transparency Act, the highest member of the executive body of the in-scope legal entities is responsible for registering the beneficial owners.

The above-mentioned amendments to the Swiss AML/CFT framework also extend the due diligence duties under AMLA to non-financial intermediary advisers, such as legal advisers, attorneys and notaries, involved in risk-prone activities. These activities include preparing or executing transactions related to the acquisition or sale of real estate, or the set-up, acquisition or sale of a company. Advisers involved in such activities must comply with KYC and CDD rules, which include identifying the contractual counterparty, verifying the beneficial owner, understanding and documenting the nature, purpose and background of the transaction or service, and implementing internal controls and procedures for risk mitigation. Professional secrecy must be observed at all times. Advisers must further file a notification of suspicious activities related to AML/CFT to the Swiss Money Laundering Reporting Office (MROS). Advisers will be supervised by self-regulatory organisations (SROs).

In cases where advisers already qualify as financial intermediaries within the meaning of AMLA (for example attorneys that act as escrow agents), the existing rules continue to apply.

*ESG and greenwashing*
As of 1 January 2025, an overarching framework to guide the climate transition in Switzerland has come into effect. This framework now consists of the reworked Federal Act on Climate Protection Targets, Innovation and Strengthening Energy Security (the *"CO2 Act"*), the Federal Climate and Innovation Act (the *"CI Act"*) as well as the Ordinance on Mandatory Climate Disclosures (which entered into force on 1 January 2024).

Both the CI Act and the CO2 Act are designed to ensure that Switzerland meets its international obligations under the Paris Climate Agreement.

As a framework law for climate targets in Switzerland, the CI Act stipulates that Switzerland must achieve climate neutrality (ie, a net-zero emissions balance) by 2050. It sets targets and interim targets for the reduction of emissions and is intended to ensure that financial resources are invested in a more climate-friendly manner.

The CO2 Act aims to halve Switzerland's greenhouse gas emissions by 2030 compared to 1990 levels (aiming to meet the first interim target of the Paris Agreement), with two-thirds of the reduction to be achieved through domestic measures. For the period from 2025 to 2030, the CO2 Act is intended to help Switzerland achieve its goal of net zero emissions by 2050 and secure its energy supply. The CO2 Ordinance outlines the reduction targets for greenhouse gas emissions across various sectors by 2030 and specifies the measures to be taken, including sector-specific actions in industry, transportation, aviation and building technology.

Swiss-domiciled public interest companies (including banks, insurance companies and securities firms) which, together with their controlled companies in Switzerland and abroad: (i) have at least 500 full-time employees on annual average and (ii) assets in excess of CHF20 million or revenue in excess of CHF40 million in two consecutive years, are subject to non-financial reporting obligations. The Ordinance on Climate Disclosures requires in-scope companies to report on their climate risks in line with the recommendations of the Task Force on Climate-Related Financial Disclosures for the first time in this year for the 2024 financial year. In December 2024, the Swiss Federal Council opened a consultation on amending the ordinance in order to adopt it to the latest international developments. The consultation will last until March this year.

Swiss greenwashing prevention in the financial sector adopts a fragmented approach, relying heavily on self-regulation. To combat greenwashing, the Swiss Bankers Association, the Asset Management Association Switzerland and the Swiss Insurance Association have adopted new and refined self-regulatory provisions. These provisions reflect many of the Swiss Federal Council's recommendations, including a definition of sustainable investment objectives and an independent audit requirement. These self-regulatory measures will come into force, with transitional periods, by January 2027. Given the above developments and the EU's ongoing amendments to the Sustainable Finance Disclosure Regulation (SFDR), the Swiss Federal Council has decided not to introduce legislation to combat greenwashing in the financial sector at this time. This decision will be re-assessed once the EU publishes further amendments to the SFDR, but no later than the end of 2027.

However, addressing greenwashing from a competition law perspective, the Unfair Competition Act (UCA) was amended as of 1 January 2025. Previously, greenwashing could only be addressed as misleading behaviour within the meaning of the UCA. The amendments now specify that unsubstantiated statements about climate impact are deemed unfair, effectively reversing the burden of proof.

### *Bankruptcy abuse*

On 1 January 2025, the Federal Act on Combating Abusive Bankruptcy came into force, introducing amendments to several laws, including the Swiss Code of Obligations, the Debt Enforcement and Bankruptcy Act, the Criminal Code, and the Swiss Federal Act on Direct Federal Taxation. The purpose of these new rules is to combat the misuse of bankruptcy proceedings by preventing debtors from using such proceedings to escape their financial obligations, thereby harming their creditors and unfairly competing with other companies.

Key amendments include the abolition of the possibility to retroactively waive the limited audit (opting-out) for companies with a maximum of ten full-time employees on an annual average. In future, the opting out will only be permitted for the financial years ahead. Additionally, the law codifies the long-standing jurisprudence of the Swiss Federal Supreme Court that the trading of shell companies (*Mantelhandel*) constitutes a void transaction.

### *Too-big-to-fail regulatory initiatives*

In the wake of the Credit Suisse crisis, Switzerland is considering several new too-big-to-fail (TBTF) regulatory initiatives. As part of the report on banking stability of 10 April 2024, the Swiss Federal Council notes that the Credit Suisse case in March 2023 revealed gaps and a need for action to develop and strengthen the existing Swiss TBTF framework.

In its report, the Swiss Federal Council analysed the existing TBTF regulations, focusing on actions needed to bolster the resilience and stability of systemically important banks. As a result, it proposed 22 immediate measures and seven additional ones to enhance the current TBTF framework. The main focus areas of the proposed measures include (i) strengthening the preventive regime to reduce the likelihood of failures of systemically important banks, (ii) ensuring liquidity during crises, both in terms of the banks' liquidity levels and liquidity provision through the SNB and a public liquidity backstop, and (iii) developing the crisis toolkit, which involves expanded resolution plans and improved crisis co-ordination between authorities.

The Federal Council has specifically expressed support for expanding FINMA's toolkit, particularly in the area of corporate governance for early intervention purposes, to enhance enforcement effectiveness. This includes considering granting FINMA the authority to impose fines on legal entities. To implement this strategy, the Swiss Federal Council will first approve regulatory adjustments through ordinances, followed by the preparation and submission of legislative changes to the Swiss Parliament.

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