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Private Wealth 2021

Switzerland
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SWITZERLAND

Law and Practice

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1. TAX

1.1 Tax Regimes

Switzerland levies taxes on three different levels, namely the federal, cantonal and municipal. For most residents, tax liability arises on their worldwide income and worldwide net assets. Real estate located abroad as well as foreign business operations are exempt from Swiss taxes.

Whereas the federal tax is the same all over Switzerland, cantonal taxes vary considerably, as do the available tax deductions (effectively lowering the taxable basis). The lowest marginal tax rate can be found in the Canton of Schwyz at 22%. Geneva comes in last with 45%. Furthermore, the cantons levy a wealth tax on net assets, ranging from a marginal tax rate of 0.128% in the Canton of Nidwalden to 1% in Geneva.

Investment income (dividend and interest income) is taxed together with other income sources at the marginal tax rate. Swiss-sourced investment income is subject to a 35% Swiss withholding tax. Swiss residents can apply for a full refund of the Swiss withholding tax, foreign tax residents may be able to claim back part of the Swiss withholding tax based on a double taxation agreement. Switzerland has an extensive network of double taxation agreements allowing investors to claim back foreign withholding taxes. A Swiss tax credit may be available.

Capital gains on movable assets are generally not taxable, however, cantons tax capital gains from real estate. The tax rate depends on the gain and on the holding period. Furthermore, many cantons levy a property transfer tax when a real property changes ownership.

Most cantons levy a gift and inheritance tax, except the cantons of Schwyz and Obwalden. The canton of Lucerne does not charge gift tax, unless the donor dies within a five-year period after the donation.

Spouses are exempt from taxation in all, and direct descendants in most, cantons, the canton of Vaud being a prominent exception. The tax rate depends on the relationship between the donor/testator and the recipient/heir. In cases where complex structures such as foundations and trusts are involved it is recommended to obtain a tax ruling prior to moving to Switzerland.

Lump-Sum Taxation

In most cantons, it is possible to pay taxes under the lump-sum taxation regime, provided, in general terms, that the person is not a Swiss citizen and does not carry out an economic activity in Switzerland. Instead of paying taxes on actual income and assets, the basis of taxation is calculated according to living expenses.

1.2 Stability of the Estate and Transfer Tax Laws

At present, there are no plans to introduce a federal inheritance and gift tax. There are no proposals for a tax relief or tax increase in response to the COVID-19 pandemic.

1.3 Transparency and Increased Global Reporting

Based on the Common Reporting Standard proposed by the OECD (CRS), Switzerland has implemented the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (MCAA) and the International Automatic Exchange of Information in Tax Matters (AEOI). Switzerland has, to date, entered into more than 70 bilateral agreements on exchange of account information, among others with the EU, UAE, UK, Hong Kong and Singapore.

With the USA, Swiss financial institutions are obliged to report US bank accounts to the IRS. The EU Reporting requirements according to DAC-6 are relevant if a cross-border tax arrangement between two EU member states or between a member state and a third country exists. Swiss companies with subsidiaries in the EU or Swiss companies that are part of an EU group of companies may be impacted.

2. SUCCESSION

2.1 Cultural Considerations in Succession Planning

According to the Federal Statistical Office, the Swiss have a high life expectancy of 85 years on average. In 2018, the marriage rate in Switzerland (the number of marriages per 1,000 inhabitants in that year) was only 4.8. The notions of family and marriage have changed considerably since the Swiss Civil Code came into force at the beginning of the 20th century. Numerous households are blended families and many couples are cohabiting.

Cohabitating partners are treated as third parties and have no automatic rights of succession. In accordance with the amendment of the Swiss Civil Code which will come into force on 1 January 2023, a testator will be free to dispose of a larger share of their estate in favour of their partner as set out in **2.3 Forced Heirship Laws**.

2.2 International Planning

Due to globalisation and the ensuing increase in the mobility of people between various jurisdictions, many face potential tax liability in more than one jurisdiction. As a result, the transfer of property upon death often gives rise to complex questions, not only from a succession law perspective (eg, which state is responsible for the handling of the estate and which law applies) but also from a tax point of view. In order to avoid the risk of double taxation or lengthy administrative procedures, transfer of assets upon death or during lifetime involving two or more jurisdictions must be carefully reviewed.

Gift and Inheritance Taxes

Depending on the applicable tax laws, gift and inheritance taxes can be based on (i) the residency of the recipient of the gift/the heir, (ii) the residency of the donor/testator, (iii) where the assets that are transferred are located, or (iv) in some cases, even on the nationality of the testator. If, for instance, one state taxes the heir whereas the other state taxes the testator, double taxation may occur.

Switzerland has concluded several double taxation agreements on inheritance tax (amongst others with the UK, Germany, the Netherlands, Austria, Sweden and the USA). These treaties, however, do not cover gift taxes.

Rules of Swiss Private International Law

In the absence of a treaty applicable in this matter, the rules of Swiss Private International Law (PILA) apply to cross-border estates.

Under Swiss Law, the Swiss authorities are permitted to deal with movable and immovable property in Switzerland belonging to a person who has their residence in Switzerland.

Swiss law governs the estate of a person who had his or her last residence in Switzerland. Foreign citizens may, however, submit their estate by will or contract of succession to the law of nationality.

Switzerland recognises the form of foreign testamentary dispositions in accordance with the Hague Convention of 5 October 1961 on the Conflict of Laws Relating to the Form of Testamentary Dispositions.

International Planning

Tailor-made matrimonial property regimes by agreement, succession contracts as well as foundations or trusts are useful planning tools (**4.2 Succession Planning**).

2.3 Forced Heirship Laws

Swiss Succession Law (Applicable until 31 December 2022)

Compulsory legal System

Swiss law provides forced heirship laws that protect the statutory heirs. According to Article 471 et seq of the Swiss Civil Code, the descendants, spouse or registered partner and parents are entitled to a compulsory portion of the estate. The statutory entitlement represents a portion of the heir's statutory succession right (the share to which they would be entitled if the deceased died intestate) and comprises:

- three quarters for the descendants;
- half for the spouse or the registered partner; and
- half for the parents.

The testator may freely dispose of the part of their property that exceeds the statutory entitlement of the survivor or survivors by drafting testamentary dispositions as wills or an inheritance contract as set out in **4.2 Succession Planning** (Article 470, Swiss Civil Code).

Right to dispose

Where the testator has exceeded their testamentary freedom, the heirs who do not receive the full value of their statutory entitlement may take legal action to have the disposition abated to the permitted amount (Article 522, Swiss Civil Code).

Advances against a person's share of the succession and gifts that were freely revocable by the deceased or made in the five years prior to his or her death, with the exception of customary occasional gifts, are subject to abatement in the same manner as testamentary dispositions (Article 527, Swiss Civil Code).

An heir is entitled to renounce to their statutory succession right in advance by concluding a renunciation contract with the testator.

A testator can deprive an heir of their statutory entitlement by means of a testamentary disposition when an heir has committed a serious crime against the testator or a person close to them, or has seriously breached their duties under family law towards the testator or the latter's dependants.

Revision of Swiss Succession Law (Applicable from 1 January 2023)

The Federal Council has announced that the revision of the law of succession will enter into force on 1 January 2023. This revision aims at adapting the law to the evolution of society.

Compulsory legal system (revised)

The amendments include:

- reducing the statutory entitlement of the descendants from three quarters to half their right of succession; and
- abolishing the statutory entitlement of parents.

The statutory entitlement of the surviving spouse and registered partner are maintained at half of their succession right and will thus be equal to that of the descendants. The statutory heirs remain the same and their shares will not change. As a consequence, in the absence of testamentary dispositions, the division of the deceased's estate will be identical as the current compulsory shares.

The new law also provides that in the event of death before the end of divorce proceedings or

proceedings for the dissolution of a registered partnership, the survivor will, in principle, lose their status as an heir entitled to a compulsory share.

Right to dispose (revised)
This revision increases the testator's freedom to dispose of their assets and makes changes to the calculation of what comprises the estate subject to the compulsory portion rules. For example, the testator will be able to favour their surviving spouse or registered partner more by granting them half of the estate in full ownership and the usufruct on the other half. In addition, greater provision can be given to a life partner.

2.4 Marital Property

Swiss marital property law provides for three regimes:

- participation in acquired property;
- community of property; and
- separation of property.

The Swiss marital property regime of the spouse/registered partner affects the disposition of their estate as well as in a divorce/dissolution context.

Ordinary Property Regime

The ordinary (default) property regime for married couples under Swiss law is that of participation in acquired property during the marriage. This applies unless the spouses have agreed otherwise in a marital agreement.

Each spouse is free to dispose of his or her property during the marriage.

This marital property regime includes the property acquired during the marriage and the individual property, which remains the spouses' property.

By contrast, for those in a registered partnership (same-sex couples), the default regime is separation of property.

Property acquired
The acquired property of a spouse consists of the income earned during the marriage by each spouse.

Unless proven otherwise, all assets of a spouse are deemed to be acquired property and will be shared between the spouses.

Individual property
Individual property includes personal effects used exclusively by a spouse, assets belonging to one spouse at the beginning of the marital property regime or acquired later at no cost by inheritance, claims for satisfaction, and acquisitions that replace individual property.

By marital agreement, the spouses may requalify their acquired property and individual property to limit or extend the assets to be shared between spouses based on Article 199 of the Swiss Civil Code.

Liquidation of the regime
In the case of a spouse's death, divorce, annulment of the marriage or separation of property by court, the marital regime is liquidated. The survivor's spouse will receive half of the benefit of the deceased spouse (their acquired property after deduction of the debts). The other half and the individual property of the deceased will constitute the estate.

Choice of Regime

Spouses may opt for the community of property or the separation of property by marital agreement. Registered partners can also opt for a different regime to apply.

Community of property regime
Under the community of property regime only some assets are considered as individual property of each spouse. The other assets are common property, which are jointly owned by the spouses during the marriage. This regime enhances the (financial) position of the surviving spouse at the liquidation of the marital regime as they are entitled to half of the common property, which may constitute most of the assets of the deceased spouse.

Separation of property regime
Under the separation of property regime, each spouse administers and enjoys the benefits of their own property and has power of disposal over it, unless the spouses agree otherwise.

In principle, there is no splitting of property in the event of the death of a spouse married under the regime of separation of property, since each spouse has remained the owner of their property during the marriage.

However, when one spouse shows an overriding interest in gaining sole possession of an object or asset in co-ownership, they may request that said object or asset be allocated to them in return for compensation.

Marital Property Agreements
The form of a marital property agreement is valid if it fulfils the requirements of the law applicable to its substance, or of the law of the place where the agreement was entered into. If a nuptial agreement electing a matrimonial regime is entered into in Switzerland, it must be in the form of a notarial act (Article 184, Civil Code).

The binding effect of agreements on marital and post-marital maintenance is very restricted. In practice, however, if the financial situation of the spouses has not fundamentally changed between the time of the signing of the agreement and the divorce and outcome is not unfair, the Swiss courts might approve the agreement. The judge may decide not to approve the agreement because it is considered to be manifestly unfair or because a spouse/registered partner objects to this at the time of the divorce/dissolution.

Marital agreements entered into abroad are recognised in Switzerland if they were drawn up and executed in a valid form, any choice of law is valid and the arrangements do not violate Swiss public policy.

2.5 Transfer of Property
As described in **1.1 Tax Regimes**, transfer of property may give rise to gift or inheritance tax. The assets are valued at fair market value. Some cantons allow for a reduction on the fair market value if real estate is transferred. In some cantons, the fair market value dating back twenty years is relevant if the real estate has been held for longer. If the recipient of the gift/inheritance is exempt from gift/inheritance tax, the real estate capital gains tax is deferred. The recipient/heir takes over the holding period and applicable values. Property transfer tax may still apply.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms
There is, generally speaking, no tax planning mechanism available to help transfer assets to younger generations free of tax as in most cantons there is no inheritance tax for direct descendants or, if there is a tax, it is relatively minor.

That said, there are a few options available to minimise tax exposure (if any), including:

- choosing the appropriate matrimonial property to increase/decrease the size of the estate passing to a surviving parent;
- relocating to a more favourable canton; and

- having recourse to legal constructions such as the usufruct or the fideicommis.

2.7 Transfer of Assets: Digital Assets

Cryptocurrencies

Swiss law does not define digital assets, or set statutory provisions or regulatory guidelines governing estate planning for digital assets.

In the event of death, heirs inherit the estate as a whole and assume the testator's legal position upon their death. Subject to the universal succession are the testator's heritable (in)corporeal assets and liabilities (eg, real estate, claims, etc) (Article 560, Swiss Civil Code).

For the division of the estate, the value of any cryptocurrencies must be determined. Bearing in mind that cryptocurrencies are subject to considerable fluctuations in value between the date of death and the date of division of the estate, the heirs must agree on the valuation date. If no agreement is reached, the crypto-assets must be valued at the market value at the time of division.

Data

Digital assets are, as a general principle, considered as transmissible upon death (Article 560, Swiss Civil Code). However, this applies to certain categories of digital assets and when the user has full control (which is less and less the case).

Transmissible data

The following are all transmissible.

Works protected by copyright law

Data relevant from pecuniary/contractual point of view

The balance of a PayPal account or homepage left by the deceased, for example, and tied to the particular contractual relationship (eg, a webhosting contract).

Most contracts regarding digital assets are of a commercial and standard type and are concluded regardless of the user's personality. From a Swiss law point of view, in the absence of any contrary provision, these contracts should be regarded as not ending with the user's death as the rights and obligations contained therein are in principle transmitted to the heirs. This would, for instance, be the case of contracts relating to online secured storage of files or providing streaming services.

Data that is saved locally on hardware (PC, tablet, mobile phone, etc)

This is a type of digital asset which will in principle be transmissible upon death with its data carrier; it is considered as a "regular" movable asset. The situation is not clear regarding digital assets over which the user has acquired full control (eg, books downloaded from Amazon or songs downloaded from iTunes).

Licences

Contracts relating to the downloading of intangible assets are generally qualified as licences. This might lead to a conclusion that only a right to use the said digital assets is granted. According to Swiss authors, however, when the downloading of a digital asset corresponds, from an economic point of view, to a sale – ie, the "licence" is not limited in time and the price is fixed and is completely paid at the time of downloading – then these digital assets should be considered as being part of the estate.

Non-transmissible data

Data that only features a personality-rights element but has no pecuniary element is non-transmissible.

Swiss law provides that rights and obligations of the deceased that are intrinsically linked to the deceased's personality are extinguished with their holder's death and are not transmissible to

the heirs. For some Swiss authors, most data posted by a user on social media falls into this category.

It should be noted in this respect that the digital assets themselves are not transmissible when the deceased only had a limited right to use them (eg, streaming). Furthermore, some digital services include a personal use by the user (eg, email services or social media profiles). It would not make much sense for these accounts or profiles to be used continuously by third parties after the user's death.

3. TRUSTS, FOUNDATIONS AND SIMILAR ENTITIES

3.1 Types of Trusts, Foundations or Similar Entities

Trusts

There is no Swiss domestic trust law. However, the Swiss Parliament is reviewing the possible introduction of a Swiss trust law.

Foreign law trusts are used for estate planning purposes in Switzerland, although the benefits that they bring in purely domestic situations are limited.

A Swiss private trust company (PTC), as trustee of a foreign law trust, can be used for planning purposes.

From 1 January 2020, the Swiss Financial Institutions Act (FinIA) and the Swiss Financial Services Act (FinSA) introduced a regulatory regime for trustees operating in Switzerland, obliging trustees to obtain an authorisation to carry out their activities. Note that there are exemptions (eg, certain PTCs).

Family Foundations

Swiss law provides for specific legal provisions regarding foundations, including private foundations known as family foundations. A family foundation is characterised as a foundation established for the benefit of beneficiaries who are members of the founder's family. According to Article 335 of the Swiss Civil Code, as considered by the Swiss Supreme Court, there is an exhaustive list of purposes for which a family foundation may be set up: education, welfare and health. Foundations granting a beneficial interest (eg, to allow a beneficiary a higher standard of living) are considered null and void.

Foundations are also commonly used for charitable purposes (see **10. Charitable Planning**).

3.2 Recognition of Trusts

Foreign Law Trusts

Switzerland is a contracting state party to the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition (the Hague Trust Convention), which became applicable in Switzerland on 1 July 2007. The Hague Trust Convention:

- designates the law applicable to a trust;
- requires contracting state parties to "recognise" the effects of trusts validly settled provided that the trust meets the minimum standards prescribed by the Hague Trust Convention; and
- accepts that certain effects of a trust may conflict with applicable mandatory provisions protecting creditors, spouse, heirs, bona fide third parties, etc, under Swiss law.

Note also that Switzerland is a contracting state party to the 2007 Lugano Convention on the Enforcement of Judgments in Civil and Commercial Matters, which sets out rules of jurisdiction in proceedings against Swiss domiciled trustees. The Hague Trust Convention sets out

the jurisdiction of Swiss courts in matters falling outside the 2007 Lugano Convention.

Foreign Law Foundations

Private foundations governed by the laws of another jurisdiction are recognised in Switzerland provided that they satisfy the publicity or registration provisions of the law of establishment or, in the absence thereof, that they are established in accordance with the laws of that state, regardless of the fact that they might support, even entirely, the living costs of their beneficiaries.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

In 2008, the Swiss tax conference, consisting of the heads of the cantonal tax authorities, published a circular on trust taxation. The trust itself is not taxable under Swiss tax law. The tax treatment of the beneficiary or the settlor depends on the structure of the trust. If, from a Swiss tax perspective, the trust qualifies as revocable (transparent) trust, the trust assets and income derived thereon are attributed to the settlor for tax purposes. The trust deed or the letter of wishes alone are not relevant for the qualification of the trust and the entire circumstances are taken into account. The key criterion is whether the settlor has irrevocably given up their rights over the trust assets.

As long as the settlor is in a position to control the trustees, to instruct and to replace them, or if they remain the main beneficiary, the trust is disregarded for Swiss tax purposes and the trust assets as well as any income thereon is attributed to the settlor for income and wealth tax purposes. Distributions from a revocable trust to the settlor are not taxable upon them. Distributions from a revocable trust to a beneficiary are subject to gift tax depending on the degree of kinship between the settlor and the beneficiary. In principle, a trust established by a Swiss resident settlor is regarded as a revocable trust.

Distributions from an irrevocable and fully discretionary trust (as qualified for Swiss tax purposes) are subject to income tax at the level of the beneficiary. Assets of an irrevocable fixed-interest trust as well income derived thereon are taxable for the beneficiaries in proportion to their share.

It is strongly recommended to seek a tax ruling to confirm the qualification of the trust as well as the taxation of future distributions with the competent cantonal tax administration prior to moving to Switzerland.

3.4 Exercising Control over Irrevocable Planning Vehicles

In accordance with the law, Swiss foundations are irrevocable and independent legal entities. A legal entity is only disregarded as a last resort in cases of tax evasion.

If a foreign foundation has been legally established and there are no grounds for a pass-through, the company is to be recognised in accordance with the incorporation theory prevailing in Switzerland. However, a foreign foundation may be taxed in Switzerland if its effective place of management and control is deemed to be in Switzerland. Furthermore, if it is apparent that the foundation is used to evade taxes, it may be disregarded and its assets may be attributed to the founder for income and wealth tax purposes.

As described above in **3.3 Tax Considerations: Fiduciary or Beneficiary Designation**, if the settlor of a trust reserves too much power over the trust assets, the Swiss tax administration may consider the trust to be transparent for tax purposes. As a consequence, the assets and

income derived from them is attributed to the settlor for tax purposes.

4. FAMILY BUSINESS PLANNING

4.1 Asset Protection

Switzerland's political stability, its sound legal system, the high level of expertise of its financial sector combined with the high levels of confidentiality, mean that Switzerland continues to be a desirable jurisdiction for asset protection planning.

International trusts, family foundations, life insurance wrappers, lifetime gifts and personal holding structures are the most commonly used vehicles.

However, careful considerations need to be given when setting up these structures and vesting funds in them, both in terms of tax consequences and in understating their strength and weaknesses (taking into account the various legal means available in Switzerland and abroad to creditors/heirs, etc, in particular in light of the location of the assets).

4.2 Succession Planning

Foundations (Swiss or foreign) are commonly used succession planning vehicles and foreign law trusts, can, in specific cases, also be used for Swiss residents. In this context, two legislative initiatives should be noted.

Swiss Law of Trust

Currently there is no Swiss (substantive) trust law (see **3.1 Types of Trusts, Foundations or Similar Entities**). However, an expert commission is now reviewing the regulatory and legal framework in an attempt to introduce a proper Swiss domestic law on trusts.

This would allow, among other advantages, the strengthening of Switzerland's competitiveness as a financial market concerned with the preservation of one's privacy and wealth, without the restrictions on the use of Swiss family foundations.

Amendment of the Swiss Civil Code

In addition to the introduction of the revised Swiss succession law (see **2.3 Forced Heirship Laws**), which will in particular give the testator greater freedom of disposal, the Federal Council opened, in April 2019, a consultation on an amendment to the Civil Code in order to further facilitate the transfer of businesses by succession.

The Federal Council is planning four key measures to facilitate such transfer. First, to grant heirs a right to the full allocation of a business in the division if the deceased did not make provision for this. In other words, the judge will be able to allocate a business in its entirety to an heir upon request. This should prevent the splitting up or closure of businesses.

Second, the draft introduces the possibility for the successor heir to obtain a deferral of payment from the other heirs in order to avoid liquidity problems.

Third, it establishes specific rules on the value of businesses: the definitive value will no longer be that at the time of the opening of the succession, but the value at the time of the transfer. This is a way of taking account of the entrepreneurial risk assumed by the transferee without placing other heirs at a disadvantage with regard to assets that can easily be separated from the business.

Finally, the draft strengthens the protection of heirs with forced heirship rights by excluding the possibility of their reserved share being allocated

to them against their will in the form of a minority share in a company controlled by another heir.

4.3 Transfer of Partial Interest

The shares of companies not listed on the stock exchange are valued based on rules set out by the cantonal tax administration. This valuation is relevant for wealth tax. The fair market value of the shares is not adjusted to reflect a discount for lack of marketability and control in the case of a transfer of the shares during lifetime or at death. However, the fair market value can be reduced by 30% in the case of a minority shareholding.

Where real estate is transferred during lifetime or at death, real estate capital gains tax is deferred, however, the donee/heir takes over the relevant tax values.

As described in **1.1 Tax Regimes**, most cantons do not tax spouses and lineal descendants on gifts and inheritances.

5. WEALTH DISPUTES

5.1 Trends Driving Disputes

Two key trends can be observed: (i) increasing attacks on trusts or foundations in family or succession law disputes, and (ii) requests for information to a foreign court.

Trusts and Foundations

Trusts and foundations are challenged in the context of divorce disputes when one spouse claims that assets have been settled onto a trust or a foundation by the other spouse, without consent, such that the assets are to be included in the liquidation of the matrimonial regime upon divorce.

In divorce proceedings, a spouse has a statutory duty to inform the other spouse about their financial situation and the court can, upon request, order the other spouse or a third party (eg, a Swiss bank) to provide the requested information.

A Swiss judge is not competent to grant provisional measures where foreign divorce proceedings are pending and there are assets in Switzerland. However, an exception applies in emergency situations according to Swiss doctrine.

As discussed at **2.3 Forced Heirship Laws**, Swiss succession law allows protected heirs to claw back the gifts or legacies that are in breach of their compulsory portion, under certain conditions. This includes assets settled onto a trust or foundation perceived by an heir to have been settled with a view to breaching their forced heirship rights.

Disclosure of Information to a Foreign Court

Switzerland has very strict rules on giving evidence in foreign court proceedings. If these rules are not respected there are potential criminal consequences for any person who carries out activities that are the responsibility of a Swiss public authority or official. Obtaining evidence in Switzerland by a foreign authority (witness statements, production of documents, expert opinion, including the conduct of a hearing by video conference of a party or witness located in Switzerland, for instance) constitutes an international judicial assistance act by a public authority on Swiss territory and is prohibited unless authorised.

Switzerland is a contracting State to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters and a number of other bi/multilateral treaties relating to civil procedure. It makes provision for obtaining evidence by means of letters of request and through diplomatic or consular officers and

through commissioners. In cross-border divorce or succession proceedings, information from a Swiss bank, for example, needs to be obtained through legal assistance proceedings.

Foreign parties (including foreign lawyers, bankruptcy receivers or investigation companies) may underestimate the difficulties Swiss law will cause when attempting to gather evidence or examine a witness in Switzerland.

Transferring data abroad, or submitting it to foreign courts, may also trigger other legal considerations such as data protection, banking secrecy laws and legal privilege under Swiss law.

5.2 Mechanism for Compensation

In succession and family disputes, there might be cases in which an invalid transfer will result in the relevant assets being qualified still forming part of the matrimonial assets or the inheritance.

In the event that the transfer of matrimonial assets by one spouse without the other spouse's consent infringed Swiss marital property rules, such transfer is not valid under Swiss law. This issue does not fall under the scope of the Hague Trusts Convention because it is a preliminary issue governed by the law applicable to the matrimonial property regime. A spouse could pursue a vindication claim.

To the extent the remaining assets of a spouse are not sufficient to compensate the other spouse in case of divorce, the entitled spouse has a direct claim against the third party (eg, a trustee).

A Swiss judge does not have the power to vary a foreign law trust instrument and can only make property adjustment orders in limited cases.

6. ROLES AND RESPONSIBILITIES OF FIDUCIARIES

6.1 Prevalence of Corporate Fiduciaries

The use of corporate fiduciaries is prevalent in Switzerland and many trust companies are active in Switzerland.

Trustees are subject to a higher standard of conduct according to the Financial Institutions Act (FinIA) and its Ordinance (FinIO) and the Anti-Money Laundering Act (AMLA).

FinIA and FinIO

The FinIA and FinIO came into force in 2020 and require trustees to obtain an authorisation from the Swiss Financial Market Supervisory Authority (FINMA) to operate.

Persons who manage solely the assets of persons with whom they have business or family ties are not subject to the FinIA. Requirements to be met to obtain the authorisation include, notably, being legally classified as either a sole proprietorship, a commercial enterprise or a cooperative and entered as such in the commercial register; and the proof of affiliation to a supervisory organisation (SO). These are licensed and supervised by FINMA but not government agencies.

From a timing perspective, trustees who started their commercial activity before 1 January 2020 must apply for a licence from FINMA by the end of 2022. Those who started commercial activity as a trustee in 2020 must be affiliated to an SO by 6 July 2021 and submit a licence application to FINMA.

AMLA

Trustees who are subject to the FinIA are considered as financial intermediaries and, as such,

subject to the AMLA. This triggers, notably, the following duties:

- to identify and document the customer and the beneficial owner of the trust (and renew such identification process in case of doubts about the identity);
- to clarify the economic background and the purpose of a transaction or of a business relationship if the transaction or the business relationship appears unusual, unless its legality is clear, or if it carries a higher risk (which is always deemed to be the case for business relationships with politically exposed persons and their family members);
- to keep records of transactions carried out and of clarifications required under the AMLA; and
- to file a report with the Money Laundering Reporting Office Switzerland in the event of a suspicion of money laundering.

6.2 Fiduciary Liabilities

Legal entities (eg, companies) which comply with the corporate rules applying at the place where they are incorporated benefit from limited liability. For trusts, their recognition will be exclusively dealt with by the foreign trust law designated by the Hague Trust Convention.

Piercing the corporate veil is restrictively admitted by Swiss courts and requires it be demonstrated that (i) there is, from an economic viewpoint, identity of two formally independent legal entities or that, at least, the legal entity that shall be disregarded is economically controlled by the other entity; and that (ii) invoking the formal independence of the two legal entities is to be considered abusive in light of all relevant circumstances.

Liability exoneration clauses can be used but any agreement purporting to exclude liability for unlawful intent or gross negligence in advance is void under Swiss law. In the case of delegation to an independent associate, the delegating party is liable for the damage caused by the associate unless the principal accepted to exonerate the delegating party from any liability by prior agreement. In this case, the exoneration clause is not subject to any restriction.

6.3 Fiduciary Regulation

There are no specific laws regulating a fiduciary's investment of assets. The relation between a principal and a fiduciary will be regulated by their contractual agreement, usually a mandate agreement, which may contain instructions as to the type of investments that can be made.

In the case of trust structures, the trust instrument and the governing law of the trust will often contain rules.

6.4 Fiduciary Investment

There is no recognised investment theory or standard that applies to the fiduciary investment of assets in Switzerland and no diversification is required.

Trusts and foundations can hold active businesses and run those business effectively. Trustees running businesses will be subject to the supervision of their supervision organisation (if they are subject to the supervision requirement). Foundations will be supervised by their supervisory bodies (either the federal or the cantonal supervisory authority), which will check that such business remains within the purpose of the foundation. Good governance will also be expected from the members of foundation councils. Regarded as the benchmark for best practice, the Swiss Foundation Code includes detailed recommendations on investment strategy.

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7. CITIZENSHIP AND RESIDENCY

7.1 Requirements for Domicile, Residency and Citizenship

Residency

Conditions for obtaining a residency permit in Switzerland depend on the citizenship of the applicant. The most usual forms of permits are the L permit (residency of up to 364 days a year), the B permit (residency of more than a year), the C permit (granted after five or ten years of residency depending on the citizenship and the level of integration of the permit holder) and the G permit (for cross-border workers). No residency permit is required for stays up to 90 days where there is no intention of gainful activity.

EU and EFTA member states citizens

Citizens from all EU and EFTA member states (except Croatia) benefit from freedom of movement and only have to show that they have a place to live and sufficient financial means to support their living expenses in Switzerland.

Third-country citizens

Citizens from other countries (including Croatia) are subject to stricter conditions.

Without gainful activity

Two main options are available.

- A pensioner permit is available to applicants over the age of 55 with ties to Switzerland and sufficient financial means to support their living expenses in Switzerland; such individuals will not be allowed to carry out any economic activity either within Switzerland or abroad.
- Individuals with a certain level of income/taxable basis but with no age limit and no particular ties to Switzerland may be granted a residency permit based on financial criteria; some cantons will allow such permit holders to carry out gainful activity abroad.

With gainful activity

Permits for applicants looking to have a gainful activity in Switzerland are subject to quotas that are set each year by the Federal Council canton by canton with the Confederation keeping a reserve. Three main options are available.

- To be hired as specialised employee by a company in Switzerland if the latter can show that it was not able to find a Swiss or European employee that would match the criteria of the position offered.
- To apply for a permit in relation to the set-up of a company in Switzerland; a permit will be granted only if the applicant can show that the company will have a sustainable impact on the Swiss labour market and economy.
- To apply for a permit in relation to an investment in an existing company with financial difficulties; the applicant has to show that the investment saves existing jobs that would otherwise be at risk.

Since 1 January 2021, separate quotas for British workers hired by companies in Switzerland have been available.

Citizenship

C permit holders may apply for Swiss citizenship if they:

- have resided ten years in total in Switzerland, including three years in the five years preceding the application (years spent in Switzerland between the ages of eight and 18 count double with a minimum actual stay of six years);
- have resided two years in the canton where they are applying, including the last 12 months preceding the application; and
- reside in Switzerland for the duration of the process.

Amongst other conditions, the candidate has to show that they are integrated in the canton in which they apply (language skills, knowledge of local customs, etc) and have not been dependent on social aid for the three years before the application is made and during the process.

7.2 Expeditious Citizenship

There are no expeditious means for an individual to obtain Swiss citizenship. Some categories of people can apply for facilitated citizenship; for instance, spouses of Swiss citizens (who have been married for at least three years and have resided in Switzerland for at least five years); or those who are under 25 years old, born in Switzerland and who are the third generation of their family living in Switzerland.

8. PLANNING FOR MINORS, ADULTS WITH DISABILITIES AND ELDERS

8.1 Special Planning Mechanisms

Given the compulsory application of the forced heirship right of an heir (with or without a disability), the planning options are limited.

Since 2013, there has been a new provision in the law which enables testators to appoint a reversionary heir if an heir is mentally incapable of judgement, is entitled to a compulsory share quota and has no spouse or children.

A family foundation or a trust could be established and the foundation board or the trustee could adapt distributions to the current needs of the beneficiaries. The establishment of a foundation for the satisfaction of the needs of a disabled person is an allowed purpose for a foundation. A tax ruling to confirm the tax treatment of distributions should be requested.

8.2 Appointment of a Guardian

In Switzerland guardians are appointed by the competent Children and Adult Protection Authority, which are organised by the cantons. In Geneva, the competent authority is the *Tribunal de protection de l'adulte et de l'enfant* (TPAE).

The Authority appoints the guardian and must take into account the wishes of the person concerned.

The competent Authority can order one or more of the following.

- Guardianship support, to assist a person in performing certain acts on a voluntary basis.
- Guardianship by representation, to represent this person in performing certain acts. A special form is that of the asset-management guardianship, which includes any act which by its nature is able to preserve or increase that person's estate, or to achieve its intended purpose, such as contracting an obligation, selling property or initiating a lawsuit.
- A general guardianship for the person who needs assistance.

Guardians are under the ongoing supervision of the Authority (an exception applies if the guardian was appointed based on an advance care directive).

The Authority monitors the guardian's activity, consents to certain actions, reviews reports and approves accounts.

8.3 Elder Law

The competent Adult Protection Authority has a comprehensive set of protective measures that it can exercise, including guardianship, in cases of incapacity.

Swiss law also provides for two preventive measures to address issues of incapacity: advance

care directives/patient decrees; and mandates in case of incapacity.

Switzerland has an excellent social security system that is based on three pillars. The first pillar is the mandatory state system covering old age and survivor's benefits (AHV/AVS) as well as disability (IV/AI). The first pillar is intended to cover basic needs. Contributions are due on the entire salary and are borne half by the employer and half by the employee. The self-employed pay the entire contribution on their net income. Individuals who do not work either pay contributions based on their net wealth or, if they are married or living in a registered partnership, are covered by the contributions of their spouse/partner.

The occupational pension scheme is the second pillar. Benefits from the second pillar should allow, together with benefits from the first pillar, the standard of living to be maintained. Pension schemes are provided by the employer. The employer must pay at least 50% of the contributions. Apart from certain legal minimal standards, the employer is free to offer additional pension benefits to its employees. The self-employed can also join an occupational pension scheme or take advantage of the possibility to make greater contributions towards the third pillar.

The third pillar is private savings plan for retirement. The contributions are tax deductible up to CHF 6,883 for individuals covered by an occupational pension scheme and up to 20% of the net income (maximal CHF 34,416) for individuals not covered by an occupational pension scheme (all figures as of 2021).

Savings from the second and third pillar can be withdrawn or pledged to finance the purchase of a home that serves as main residence.

Furthermore, Swiss social security covers unemployment and social welfare. If the combined benefits from all three pillars is not sufficient to cover a person's need after retirement, additional benefits can be received from the first pillar.

All Swiss residents must take up a health insurance. The cantons allow for premium reductions for individuals in need.

9. PLANNING FOR NON-TRADITIONAL FAMILIES

9.1 Children

Swiss law dictates who the legal parents are and who has parental authority, irrespective of what the adults have agreed. A child can have no more than two legal parents. The birth mother is always the legal mother and will have parental authority. The other legal parent is either her spouse or the father who recognises the child.

Given the principles set out in the Swiss Federal Constitution, the Federal Law of 18 December 1998 on Medically Aided Reproduction (LPMA) is very restrictive regarding the types of ART that are allowed and the persons eligible to make use of assisted reproductive technology (ART) in Switzerland. The LPMA prohibits, for example, the donation of eggs and embryos and any sort of surrogacy.

Adopted Children

Switzerland allows joint adoption of a child by a married couple (who must have been married for at least five years; in addition, both spouses must be at least 35 years old and 16 years older than the child). Individual adoption by an unmarried person is also permissible subject to conditions. Same-sex couples cannot (as yet) jointly adopt a child.

Since the revision of the adoption law in 2018, stepchild adoption is possible after three years

of de facto cohabitation – ie, one cohabiting partner can adopt the child of the other partner.

Once a legal relationship has been established, the child (also children born out of wedlock and adopted children) is treated as a child of legal parents and is entitled to the same share of their parents' estate as a biological heir.

Surrogacy

Article 119 of the Federal Constitution of 18 April 1999 and Article 4 of the LPMA prohibit all forms of surrogacy in Switzerland. For surrogacy arrangements undertaken abroad, Switzerland does not always (automatically) recognise the legal parent-child relationship of a child born abroad by surrogacy. The Federal Supreme Court distinguishes between genetic and non-genetic parents when deciding whether the parent-child relationship established abroad as a result of surrogacy is recognised in Switzerland. In a leading ruling issued in 2015, the court decided that only the parent genetically related to the child can be recognised as the legal father in Switzerland. Non-genetic parents can establish legal parentage through (second parent) adoption.

9.2 Same-Sex Marriage

Same-sex couples currently cannot marry in Switzerland, but they may form a (federal) registered partnership. Same-sex marriages concluded abroad are recognised in Switzerland as a registered partnership. It should be noted that Switzerland will hold a referendum in the autumn of 2021 on legalising same-sex marriage which is supported by the Federal Council.

Federal registered partnerships are certified by a registry office as a "life partnership with mutual rights and obligations" and entail a change in marital/civil status. A canton-registered partnership does not change the registrant's civil status.

Federal registered partners benefit from the same next of kin status – and have equal rights in matters of taxation, inheritance, social security and pensions and shared possession of a home – as married partners.

In contrast to married couples, the default property regime for those in a federal registered partnership is separation of property.

10. CHARITABLE PLANNING

10.1 Charitable Giving

Both foundations and associations are commonly used in Switzerland for charitable purposes.

The Swiss charity sector is highly regarded internationally in particular due to its sound regulation and supervision. More than 13,000 charitable foundations are registered.

Charitable giving is mainly encouraged in Switzerland through a very favourable tax system.

Taxation of Charitable Swiss-Based Entities

As far as direct taxes are concerned, Swiss federal law as well as most cantons (the precise rules varying between them) exempt, under specific conditions, legal entities that are pursuing public service or public interest purposes from the federal income and wealth tax provided that the capital and income are exclusively directed to such purposes.

Donor Taxation

Gifts made by individual or legal entities to non-profit organisations are generally exempted both at the federal and cantonal level.

Furthermore, as far as individual taxation is concerned, federal law foresees that such gifts are deductible from taxable income up to 20% of

the taxpayer's net income. At the cantonal level rules vary from one canton to another.

The system is equivalent regarding the taxation of gifts made by companies to tax-exempted entities.

Cross-Border Donations

Gifts in favour of charitable entities established abroad are not deductible for a Swiss-resident donor. Furthermore, such gifts are subject to gift and inheritance taxes, unless a reciprocity agreement is concluded with the country where the foreign charity is registered. In Geneva, it is possible to apply for a partial exemption which may amount to at least 25%; however, the relevant rate is determined on a case-by-case basis. The Geneva government is also authorised to conclude reciprocity agreements with foreign countries.

In addition, certain private initiatives exist to facilitate/optimise the tax efficiency of cross-border donations throughout Europe (including Switzerland). Transnational Giving Europe is one of them.

10.2 Common Charitable Structures

In Switzerland, foundations and associations are commonly used for charitable planning. It is also common to see HNWIs residing in Switzerland using charitable trusts. The latter not being governed by Swiss law, they will not be discussed here.

Foundations

A foundation is an autonomous legal entity consisting of a pool of assets irrevocably committed to one or more defined purpose(s). As an autonomous and separate legal entity, it benefits from full legal personality. Once constituted, the foundation becomes an autonomous legal entity thus falling outside of the direct control of the founder.

A foundation can have any kind of clearly defined purpose(s) provided that it is lawful, and not impossible nor immoral. As such, foundations are not required to pursue charitable purposes.

The supreme body of a foundation is the board of the foundation, which is vested with executive functions and in particular with the administration and the representation of the foundation. The board have a fiduciary duty to act in accordance with the foundation's best interest.

The purpose of a foundation can only be amended under extraordinary circumstances or if the founder has retained, in the statutes, the right to do so under the condition that ten years have elapsed since the constitution of the foundation (or since the last amendment).

Associations

An association is an autonomous separate legal entity formed by individuals or corporate members. An association acquires legal personality as soon as its intent to exist as an independent corporation is made apparent from its statutes.

Contrary to foundations, associations are composed of members. In practice, there must be a minimum of two members to constitute an association.

The main purpose of an association cannot be economical, which means that it cannot procure to its members an advantage directly linked to its commercial or industrial activities.

The supreme body of an association is the general assembly which is also the general meeting of the members of the association.

The purpose of an association can be changed by the general assembly.

Pros and Cons

While an association can be established simply and cost-efficiently, the establishment of a foundation is more complicated, as it requires not only notarisation but also a substantial capital contribution. If desired, the purpose and statutes of an association can be changed by the members themselves, whereas changing the purpose or statutes of a foundation requires the approval of the supervisory authority. However, this provides the founder with greater security as to the use of its assets. Foundations are often used for long-term projects.

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Charles Russell Speechlys is a leader in the world of dynamic growth and family businesses, and highly sought after among the world's leading creators and owners of private wealth and their families. From its headquarters in London, as well as from offices across the UK, Europe, Asia and the Middle East, the firm provides comprehensive and integrated advice in the management of private wealth, deploying its broad range of skills and experience across the full spectrum of business and personal needs. Clients come from all over the world and include families, entrepreneurs, family offices, trust companies, trustees and banks. Advice is often required within short timescales, and across several time zones. The firm has established expertise in international tax matters; disclosure, investigations and cross-border reporting; wills, tax and estate planning; philanthropy; and cross-border child matters and divorce proceedings.

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Trends and Developments

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2021 in Summary

Many would be forgiven for thinking that Switzerland's private wealth management industry would suffer as a result of the growing trend toward international transparency combined with COVID-19; however, the private wealth industry continued to display resilience during 2021, with the financial sector making a very important contribution to the Swiss economy. Switzerland also continues to maintain its place at the top of the leader board as the largest global cross-border financial centre (Global Wealth Report 2021; Boston Consulting Group).

There has been and continues to be strong interest in Switzerland as a jurisdiction for relocation – whether that be for wealth or business owners, or family offices seeking a stable jurisdiction from which wealth can be managed. In terms of legal and regulatory changes, the wealth management sector came to grips with a new regulatory framework for portfolio managers and trustees, and continued to grapple with the challenges of the possible introduction of a domestic trust law.

Trends and Developments – Wealth Management

Switzerland and the USA

Although the Bank Program with the US Department of Justice (DOJ) has for all intents and purposes come to an end, odd cases of non-compliant US taxpayers with Swiss accounts and/or fiduciary structures continue to emerge and will probably do so for some time. This has in turn seen the DOJ reopen agreements with particular Swiss private banks, wealth managers and insurers, as well as imposing stiffer penalties.

Against this backdrop and the implementation of the Foreign Account Tax Compliance Act (FATCA) generally, the expectation has been that Swiss financial institutions would refuse to do business with any US-connected persons. Although many have responded in this way, the past ten years has seen a very significant increase in the number of Swiss-based, dedicated and usually SEC-regulated wealth managers for US-connected clients. Some of these are standalone arms of well-known Swiss private banks whilst others are independent wealth managers. According to the Swiss Bankers Association, there has been a net inflow of assets under management for clients and entities based in the USA since 2008. Behind that headline figure is the detail that there are fewer but larger (often US family office) clients. They are seeking not only the safety and stability that Switzerland provides but also a diversity of investment approach and custody from the USA.

The common theme is one of compliant and transparent investment management. To support this inflow of US money, an eco-system of private client lawyers, accountants and fiduciaries with experience of advising on and structuring compliant cross-border US-connected clients has emerged to enable Switzerland to retain its edge as a truly world-class centre for the investment and structuring of private wealth.

Privacy

When Switzerland agreed to automatic exchange of tax information under FATCA and the OECD's Common Reporting Standard (CRS), as well as regularisation under the DOJ Bank Program, there were dire warnings of it being the end of the Swiss wealth management industry. To

paraphrase Mark Twain, "reports of its death are greatly exaggerated". Banking professionals who understood only how to hide money from the taxman have gone or moved on. As with the reinvention of the Swiss watch industry in the 1970s, a new highly quality product has emerged, fit for a compliant, transparent and cross-border wealth management world. The strategy of many Swiss private banks is now fewer, bigger, better clients.

One key reason for the turnaround of the Swiss private wealth industry is that privacy doesn't begin and end with the sharing of information with tax authorities. Privacy and confidentiality are hard-wired into the legislative framework (in banking since 1935) as well as the professional culture itself. There is a strong belief and understanding in Swiss banking circles that wealth managers do not talk about clients, which is perhaps unrivalled by other significant wealth management centres across the globe. This cultural defence of privacy is highly valued by high net worth individuals around the world and continues to be actively sought out.

This privacy culture could also be contributing to the trend toward very stringent IT and data security in Switzerland, not just in the private wealth industry but more widely. Data thefts from Swiss banks and fiduciaries resulted in significant reputational damage, but the real scandal was that data was able to be stolen at all. It was a huge wake-up call to an industry sector that prided itself on its reputation for confidentiality and discretion. The investment in IT and data security across wealth managers and professional advisers over the past ten years has been highly significant. It is a major reason why Switzerland has been pioneering the wider use of blockchain technology in areas such as client on-boarding and due diligence.

A new trust law for Switzerland?

Switzerland is a civil law country. As such, the classic estate planning solutions do not include trusts, with Swiss-based trustees administering and managing foreign law trusts from Switzerland. This can give rise to issues in the event of trust disputes, and recent decisions from the Swiss courts indicate that they remain uncomfortable when dealing with equitable concepts including the split of legal and beneficial ownership inherent in a trust.

The introduction of a substantive trust law in Switzerland has been discussed since 2010, but talks stalled due to differing views on the form that a Swiss trust would take – ie, similar to its common law counterpart or as an adaption of the Swiss private foundation, which may currently only be established for education, welfare and health. However it is likely that a draft of the law will be ready by mid-August for consultation, so more will be known once this process has been completed.

Relocation/mobility

Switzerland consistently tops the lists of the best countries in the world in which to live, from a health, wealth and lifestyle perspective. It is therefore not surprising that Switzerland proves popular from a mobility perspective for ultra-high net worth individuals.

Immigration conditions for non-EU nationals remain restrictive as compared to nationals from the EU. As such, wealthy individuals may sometimes find immigration to Switzerland possible via an application under the lump sum taxation regime, which can dovetail into immigration status (B permit or a residence permit). Statistics from the Federal Department of Finance indicate that at the end of 2018, 4,557 people were subject to lump-sum taxation in Switzerland and paid a total of CHF821 million in tax, with most of these residing in the French speaking cantons

(Switzerland has 26 cantons). Lump-sum regime taxpayers are not able to work in Switzerland, so most will live off foreign investment income.

Trends and Developments – Regulatory

Licensing of trustees

The trust industry has experienced a period of rapid change over the last few years, as a result of a proposal to introduce the concept of the trust into Swiss law, as well as the introduction of a licensing regime for trust business carried on from Switzerland.

The provision of trust services from Switzerland now requires a trustee licence issued by the Financial Market Supervisory Authority (FINMA), as well as affiliation with a recognised self-regulatory organisation (SRO), charged with day to day supervision of licensed trustees. The regime applies to legal entities established in Switzerland as well as foreign entities carrying out trust activities in Switzerland whether that be through a local branch or group of individuals acting in a commercial manner. Approximately 390 organisations had applied to be licensed as of 31 December 2020, according to FINMA.

The size and coverage of Swiss trustees varies, and ranges from small (anywhere from two to ten persons, usually family owned and managed) to medium-sized right through to bank-owned trust companies with trust administration carried out from Switzerland. The larger trust companies operating from Switzerland tend to carry on trust business in other locations (so Switzerland is part of an international footprint). However, Switzerland is home to a number of local/domestic trustees that also provide trust services to non-Swiss residents. The industry is therefore very international in terms of its client base, and it is not uncommon to find Swiss-based trust relationship managers who speak two to three languages.

Swiss trustees are able to maintain close connections with Swiss banks and external asset managers, meaning that Swiss-based trustees are popular for international clients with financial assets booked in Switzerland. Historically, it was common to see some of the smaller Swiss trustees carrying out investment management services. However, the introduction of a licensing regime for asset managers has required those carrying out both to separate each business line into a separate licensed entity.

Although the provision of trust services now requires a licence for professional trust companies, there is as of yet no regulation of Swiss-based corporate service providers in Switzerland (although they are subject to AML regulation). In addition, the application of the licensing regime to advisors where commercial trust services may be ancillary to the core business (eg, lawyers and notaries) continues to be problematic, with many now being compelled to transfer trusteeship to a licensed trust services provider. Importantly, those carrying out trust services for a single family (rather than a wider class of clients) may be able to utilise an exemption from licensing similar to those available in other regulated jurisdictions for the provision of private trustee services.

The introduction of a licensing regime has resulted in a consolidation within the trust services industry, with some of the smaller trustees exiting or merging with other trustees. To this end, FINMA has usefully clarified that it is not possible for a non-licensed entity to acquire a licence simply by merging with a licensed entity – in such cases this would likely be viewed as a significant change to the status of the licensed entity, requiring a pre-approval.

Licensing of independent portfolio managers

Historically, Switzerland has required its banks, insurance companies and other financial service providers to be licensed and supervised by

the FINMA, necessitating the implementation of specific financial, organisational and risk management processes and procedures. Independent portfolio managers (also referred to as external asset managers) were not required to obtain a licence and were therefore not subject to prudential supervision by the FINMA, although they were required to affiliate with an SRO and comply with Swiss anti-money laundering standards.

The licensing of portfolio managers (which applies from January 2020) is therefore still a relatively new regime, and was originally proposed as part of a package to license Swiss-based intermediaries (the Financial Institutions Act applying to both portfolio managers and trustees respectively).

Portfolio managers must now obtain a FINMA licence in order to carry out asset management activities in Switzerland. A number of criteria must be met in order to obtain a licence, including capital and liquidity requirements, formal processes and procedures, rules of conduct, professional liability insurance, fit and proper criteria for directors as well as investors with a qualifying interest, along with a whole host of structural and governance requirements.

For the smaller asset managers this has necessitated organisational adjustments and, as with trustees, has prompted merger activity in the industry. Regulatory burdens have added to this trend. Outsourcing of activities has been another method employed by leaner portfolio managers, although what is permissible as an outsourced activity (eg, compliance functions) may be subject to legal limitations.

Trends and Developments – Other

Liberalisation of succession regime in Switzerland

Swiss succession law has remained practically unchanged for over a century; however, the Swiss Federal Council recently approved changes to the Law of Succession, which will come into force in January 2023. This revision of the law will modernise the legal system by increasing the testator's freedom to dispose of assets at their death as the statutory entitlement of the descendants will be reduced from three quarters to half and the statutory entitlement of parents will be abolished.

The aim behind the revision is to ensure the law adapts to the evolution of society without, however, changing its fundamental structure. In particular, the revision aims to allow testators to dispose of their assets more freely and will have a significant impact on estate planning.

Environmental, social and governance (ESG) issues

Switzerland's private wealth industry has grappled with the issue of retaining client relationships past the first generation, and second generation retention programmes are prevalent in the many of the larger Swiss private banks. More recently, private banks in Switzerland have shown a greater interest in the benefits of having an ESG framework – embedded not only into their offerings and investment style, but also the institutions as a whole. This is becoming a talking point for Swiss wealth managers with their international clients. Swiss trustees are also positioning themselves to respond to these needs, possibly due to changes in the sustainability goals of the families they serve.

Crypto

Switzerland continues to make a name for itself in the area of crypto, with four banks being licensed by the FINMA to operate as crypto banks in Switzerland. The canton of Zug has been re-purposed as "crypto valley", and serves as a hub for cryptographic, blockchain and other distributed ledger technology businesses, as

well as being home to the Crypto Valley Association.

Switzerland also has provided clarity around the taxation of crypto-assets. Many cantonal Tax Administrations have issued rules/guidelines relating to the taxation of cryptocurrencies such as bitcoin. In principle, cryptocurrencies are subject to wealth tax at their year-end fair market value. Income from cryptocurrency-related services, such as mining or the providing of computing power, is taxable as income. Capital gains resulting from the disposal of cryptocurrencies are in principle exempt from taxation. The Federal Tax Administration has also issued a working paper on cryptocurrencies and initial coin/token offerings covering income and wealth tax as well as withholding tax and stamp tax duty.

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