CapLaw

SWISS CAPITAL MARKETS LAW

No. 2/2023

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Trends of the 2023 AGM Season

Reference: CapLaw-2023-12

This year's AGM season is marked by the recent entry into force of the Swiss Corporate Law Reform and the need for Swiss public companies to adapt their articles of association and decide whether and how to make use of new concepts such as the capital band introduced by the new law. Even though the two-year transition period only requires the implementation of the reform until the end of 2024, the majority of companies have proposed necessary changes already to this year's AGM. This article highlights the main trends of the AGM season so far.

By Thomas U. Reutter / Philippe Weber / Daniel Raun

1) Introduction

Most of the larger Swiss public companies have by now held this season's annual general meeting (AGM) or have at least published the respective invitation. This has given us the opportunity to analyze common patterns and main trends in this year's AGM season. A main observation clearly is that most companies have decided to implement the Swiss Corporate Law Reform, which entered into force on 1 January 2023 (the Reform) despite the fact that the legislator has given them time until the end of 2024 to do so. Hence, the focus of this article lies on how companies have transposed the requisite changes prompted by the Reform into their articles of association and to what extent the additional facilities conferred by the revised law are adopted in practice.

As mentioned already in the precursor of this Article (see CapLaw 2023-03), the Reform has also caused economiesuisse to revise the Swiss Code of Best Practice for Corporate Governance (SCBP). For the most part, however, the 2023 version of the SCBP constitutes a mere transposition of the Reform into the SCBP. A majority of the remaining part focuses on enshrining ESG and sustainability considerations into corporate governance of major Swiss companies. As a result, there does not seem to be a noticeable impact of the SCBP on this year's AGM season. However, as discussed below, many companies have amended their purpose clause to include sustainability or ESG wording, which – while certainly also an expression of the common Zeitgeist – may have been facilitated by the changes in the SCBP.

2) Implementation of the Reform

Until the end of the two-year transition period, listed companies incorporated under Swiss law will need to amend numerous provisions of their articles of association even when only changing the bare minimum to align with the new law. The magnitude of the changes is comparable to the overhaul that was required in the wake of the entry into force of the Ordinance against Excessive Compensation in Listed Companies (OaEC) (whose provisions have now been transposed to the Code of Obligations as part of the Reform) nine years ago, albeit broader in scope.

The changes broadly fall into two categories: first, amendments that simply align articles of associations to the new law and, secondly, amendments that are required if companies want to avail themselves of the new possibilities provided under the revised law. The former are generally rather simple to implement and include, amongst others, reflecting the new, lower thresholds for minority shareholders to have items included in the agenda of general meetings or to request an extraordinary general meeting (now 0.5% and 5%, respectively, of the share capital or voting rights). Once the transition period ends, the new law will usually prevail over any provisions in the articles of association that companies have failed to amend. Accordingly, it could be argued that it is not even necessary to adopt these changes as the new law will override outdated articles of association, but good corporate governance and housekeeping dictates that these changes be made anyway. The second category of changes includes the authorization to conduct general meetings virtually and/or abroad and, most notably, the new capital band (replacing the former authorized capital, but conferring on the board of directors the authority to not only increase but also to decrease the share capital). For the capital band, companies who wish to introduce this new type of authorization will have to determine *inter alia* the upper and lower limits as well as the duration of the capital band and in this regard will have to decide whether and to what extent to align with proxy advisors' expectations. Typically, therefore, the adoption of a capital band is not as straightforward and requires a more differentiated approach.

3) Trends

Approximately 110 listed companies have held their AGM or published their AGM invitations at the time of writing of this article. Thus, trends and patterns can already be observed with significant reliability at this stage.

a) Timing of Implementation

As mentioned, listed companies have the possibility to implement the changes required by the Reform already in this year's AGM season, but they can also wait until 2024 to do so. The vast majority of Swiss public companies who have held their AGM or published their AGM invitation have decided to implement the Reform (at least in part) already in this year's AGM season. This pattern is even more pronounced among the larger listed companies. In fact, it seems that only one company of the SMI, Switzerland's index of the largest Swiss listed companies, has postponed the implementation of the Reform to next year; all other companies included in the SMI have decided to adopt the requisite changes in their articles of association already this year. The reasons for this approach may vary, but it seems that Swiss listed companies generally want to be perceived as agenda setting and proactive when it comes to questions of corporate governance.

b) Number of Agenda Items to Implement Reform

Initially, there was some debate among scholars and practitioners whether the amendments of the articles of association by affected companies need to be submitted in several agenda items or could be bundled into one single proposal and be put to a single vote. Based on the AGMs held and the invitations published so far, it seems that the vast majority of companies opt for several agenda items. Only one SMI company seems to have combined the proposed changes in one agenda item. Often companies single out agenda items that need a higher majority (two thirds of the votes present or represented), such as the introduction of a capital band, or that may be particularly controversial, such as the possibility of conducting virtual shareholder meetings. Implementing the Reform with several separate agenda items clearly gives shareholders a greater choice of accepting or rejecting certain proposed changes. This approach is therefore generally perceived as more shareholder friendly, which is most likely the reason why most companies have decided to follow it.

c) Capital Band

As of the time of writing this article, only approximately a quarter of the companies who have held their AGMs or published their AGM invitations have proposed the introduction of a capital band. Among the reasons for this low adoption rate is the fact that many companies have existing authorized capital that will not expire until 2024 and, under the transition rules of the Reform, will remain valid for the duration for which it was originally approved. Companies who introduced or renewed their authorized capital at the 2022 AGM therefore do not typically have an urgent need to resolve a capital band, unless they have since then issued shares from authorized capital, thereby depleting it. Other companies have decided against proposing the introduction of the capital band despite their authorized capital expiring in 2023, some because they do not expect that they will need the capital band and others because they intend to first observe what market practices develop.

Among the companies who did propose to their shareholders a capital band, it is noteworthy that only two opted to set the upper limit of the band at the maximum allowed by law (50% above the existing share capital). In many cases, companies limited the maximum increase to 10% or less of the current share capital, which can be ascribed to the influence of proxy advisors' recommendations for non-preemptive share issuances. The lower limit of the capital band has often been set at 85% to 90% of the current share capital. In several instances companies have proposed capital band provisions that do not allow for reductions at all, making the relevant provisions akin to authorized capital under the old law.

A substantial number of AGMs have already been held and one observation seems to be that authorizations in favor of the board of directors to issue capital such as the capital band seem to be less controversial and accepted by larger majorities in shareholder meetings than was the case a few years ago. One reason may be that companies hardly ever ask shareholders for non-preemptive authorizations to issue capital beyond the levels where proxy advisers would still recommend an affirmative vote.

d) Virtual and Hybrid General Meetings and General Meetings Abroad

One of the central themes of the Reform is to provide for a long overdue basis to use electronic means more broadly. Most prominently, the new law allows for general meetings to be held virtually, *i.e.*, electronically without a venue, or in hybrid form. In order for the board of directors to be allowed to convene general meetings purely virtually, the articles of association need to contain an explicit provision to this effect.

As noted in CapLaw 2023-03, the reactions of proxy advisers and similar institutions to the possibility of holding general meetings exclusively through electronic means have been quite varied, from favorable (GlassLewis) to reluctant (ISS and economiesuisse) to outright opposed (Ethos Foundation). In practice, at the time of writing of this article about 75% of listed companies have decided to propose an amendment of their articles of association to authorize their board to decide that general meetings be held virtually. These proposals have often been accompanied by an explanation that there is currently no intention to hold future general meetings in virtual-only format. Novartis as one of the first listed companies to publish its AGM invitation has limited the authorization to five years, after which shareholders will again have to renew the authorization for virtual general meetings. This solution hasn't caught on with the companies that followed, making Novartis an outlier.

The Reform also allows companies to introduce in their articles of association a basis to hold general meetings abroad. Only very few companies have made use of this possibility. It would seem that most Swiss listed companies still have strong roots in Switzerland and/or do not see a particular need for general meetings abroad, particularly when there is the possibility of virtual meetings.

e) Securities Lending and Registration as Shareholder with Voting Rights ("Empty Voting" Prohibition)

Under the previous law, a listed company had the right to refuse the registration of a new shareholder with voting rights if at the company's request the acquirer failed to declare expressly to have acquired the shares in its own name and for its own account. Under the revised law, this right of the company has been extended. The company may now also reject an acquirer of shares if the latter does not expressly declare that there is no agreement on the redemption or return of corresponding shares and that it bears the economic risk associated with the shares. The new law aims to reduce the improper use of securities lending and similar legal transactions to influence votes and elections at the general meetings. The legislator, however, refrained from introducing a general ban on the exercise of voting rights from shares acquired through a securities lending or similar legal transaction. Instead, the legislator left it to the companies to decide whether or not they wish to make use of this new restriction.

If an acquirer of shares does not submit the required declaration upon request of the company, and the board of directors of the company therefore refuses to recognize the acquirer of shares, the ownership of the shares, *i.e.* shareholder status with the economic rights to hold and sell the shares and the dividend right, will nevertheless pass to the acquirer; however, the voting rights attached to such shares will not pass and the corresponding shares will be deemed not to be represented at the general meeting.

In Swiss doctrine the view has been taken that the right to reject an acquirer due to the absence of a negative declaration on securities lending requested by the company applies directly on the basis of the revised law, *i.e.* that there is no need to include an express provision in the articles of association to provide the company with this right. However, it is not certain that courts will follow this view or rule that the right may only be exercised if expressly provided for in the articles of association.

In practice, at the time of writing of this article approximately 50% of the listed companies which have proposed to amend their articles of association at the 2023 general meeting have decided to adjust the provision on transfer restrictions of shares and to expressly include the requirement to submit a negative declaration on securities lending by a new acquirer. For such purpose, most companies have simply copied the new legal text into the articles of association.

f) Other Changes Related to the Reform

As mentioned above, a vast majority of companies have made proposals to their shareholders to at least partially adapt to the new law. Aside from the capital band, the introduction of an authority to refuse registration as shareholder with voting rights in case of securities lending and the possibility of virtual general meetings, however, these changes are for the most part uncontroversial. For example, many companies still have to adapt their share ownership thresholds for convening a shareholder meeting (5% ownership conferring such right mandatorily under the new law) or for putting an item on the agenda of a shareholder meeting (0.5% ownership conferring such right mandatorily) to the revised thresholds mandated by the Reform. Hence, most of the other changes serve to align the articles of association to mandatory provisions of the revised law, to align terminology or to update outdated references to statutory provisions.

4) Changes Outside the Reform mainly Relate to ESG Considerations

As briefly outlined in the introduction, a "flavor of the AGM season" seems to be that many listed companies have decided to propose amendments to their purpose clause to enshrine sustainability or ESG related considerations. Approximately one third of the listed companies having held their AGM or published their AGM invitation have newly considered such amendment. Such proposals coincide with and may partly be triggered by the revision of the SCBP (Swiss Code of Best Practice for Corporate Governance), which now puts particular emphasis on ESG and sustainability considerations. While the board of directors is the main addressee of such considerations in the SCBP, a legal basis in a company's constitutional document approved by the shareholder meeting clearly helps the board to consider ESG and sustainability considerations in its business decisions. Based on AGM results published so far, such proposals seem to have been non-controversial and have all been approved.

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Non-Financial Reporting

Reference: CapLaw-2023-13

With the entry into force of the reporting obligations on non-financial matters, Swiss listed and/or FINMA-regulated companies will become subject to a comprehensive reporting and disclosure framework on environmental and social matters. The rules on non-financial reporting include in particular detailed disclosure requirements on climate-related matters, all in line with international standards and recommendations. The new set of Swiss disclosure and reporting rules follows trends and similar legislative initiatives in other jurisdictions, most notably in Europe. For this reason, it is important for Swiss companies to understand how ESG-related reporting and disclosure rules in several jurisdictions may be of relevance and where the relevant rules provide for possibilities of substituted compliance in order to avoid duplication of work.

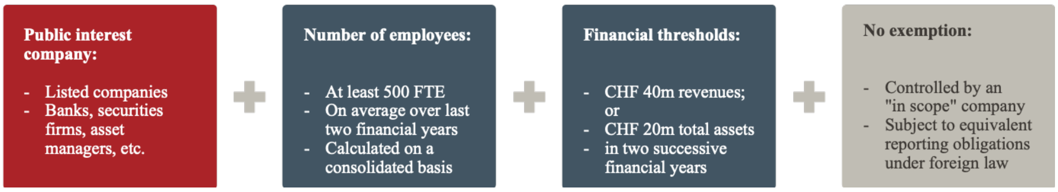
By Patrick Schärli

1) Reporting on Non-Financial Matters: Key Piece of Swiss ESG Reporting Framework

With the new obligations to comprehensively report on non-financial matters, the reporting and disclosure framework for large Swiss public and/or FINMA-regulated companies (so-called "***public interest companies***") now covers a wide range of ESG-related topics, with the rules on non-financial reporting being a key piece of the overall Swiss corporate ESG reporting framework. The non-financial reporting obligations are complemented by additional disclosure and/or reporting rules that may also apply to public interest companies (and certain other Swiss companies). These other rules include: "say on pay" legislation (including the obligation to report on compensation matters) applicable to Swiss listed companies, supply chain due diligence and related reporting obligations (with respect to child labor and conflict metals and minerals), transparency rules for commodities companies, and gender representation quotas for Swiss listed companies.

a) Who needs to prepare a report on non-financial matters?

The Swiss rules only require so-called "public interest companies" to prepare a report on non-financial matters. For a company to qualify as a "public interest company" it must first either be listed on a stock exchange or be regulated by the Swiss Financial Markets Supervisory Authority FINMA (e.g. as a bank, securities firm, or asset manager). Additionally, a listed or regulated company will have to meet certain size thresholds: a company is only considered a "public interest company" if it (i) employs at least 500 full time equivalents (FTE), and (ii) either generates annual turnover (sales) of at least CHF 40 million or has total assets of at least CHF 20 million. Thus, the mere fact that a company may be listed and/or regulated by FINMA is by itself not sufficient for such company to be considered a "public interest company". In particular, the FTE threshold may not be reached by all of the potential "public interest companies".



If a company meets all of the above criteria and thus qualifies as a "public interest company", it will generally have to prepare a report on non-financial matters for the first time with respect to its 2023 financial year. These reports will then have to be published ahead of the 2024 AGM season (see paragraph 1.c) below with respect to approval requirements). If a Swiss "public interest company" is controlled by another in-scope company (for example, a Swiss bank that has a listed parent company) or if it is subject to equivalent reporting obligations under foreign law, it will not have to prepare its own separate report on non-financial matters.

From the above, it becomes clear that larger private companies (provided they are not subject to FINMA regulation) are currently not in scope of the non-financial reporting obligations (this is / will be different in other jurisdictions, most notably in the EU; see paragraph 3. below). This is important to keep in mind when preparing a company for a going public transaction: investors in public companies will be used to the type of comprehensive ESG disclosure they receive from listed companies and it is expected (and in fact, already observable) that investors in IPOs and similar going public transaction expect to receive more and more ESG-related disclosures. Moreover, newly listed companies find themselves rather quickly after the first trading day already in the preparation phase for their first full year reporting, which will include then also a report on non-financial matters. For these reasons, the IPO-readiness work will in the future also have to include ESG-reporting readiness (such as defining of ESG strategy and targets or the taking of a greenhouse gas inventory). Similar considerations may also apply in pre-IPO funding rounds if a company, for example, wishes to attract funding from green / sustainable funds or similar type of investors.

b) What needs to be included in the report?

The relevant provisions of the Code of Obligations do not go into great amounts of detail in terms of what needs to be included in the report, but state in a rather general matter that the report should in particular address CO_2 targets, social and labor matters, human rights and anti-corruption measures. These matters need to be addressed across the following five areas:

– **Business model**: The report has to include a description of the business model of the reporting company.

- **Concepts**: The reporting company has to describe the concepts it applies with respect to ESG matters. In addition, the report has to include a description of the due diligence procedures applied by the company in relation to ESG matters.

- **Measures**: The report then has to describe the measures taken by the reporting company with respect to ESG matters (e.g. what initiatives it has implemented) and such measures need to be assessed in terms of their efficacy.

- **Risks**: As regards risks, the reporting company has to describe its material ESG-related risks and mitigation measures taken in respect of such material risks. ESG-related risks may result from the company's business activities directly or indirectly from its business relationships, products or services.

- **KPIs**: Finally, the report has to present the ESG-related key performance indicators (KPIs) that are considered relevant from the reporting company and its business.

While the Swiss rules do not directly prescribe how reporting companies have to structure and prepare their report (with the exception of climate-related disclosure, see paragraph 2. below), the Swiss rules at least hint to the use of international standards and reporting frameworks. When using such standards or reporting frameworks, the report will have to identify the relevant set of rules and the reporting company will have to verify that such standards or reporting frameworks indeed cover all of the Swiss reporting requirements.

The Swiss reporting rules do not follow a "one size fits all" approach as to content of the report; rather, companies must include the information and disclosure that is relevant for understanding the company's business, condition and how these non-financial matters affect the company. This is further underscored by the fact that the Swiss reporting requirements currently operate on a "comply or explain" basis, and thus, it is possible that some companies may choose not to report on all of the various topics if they feel that a specific topic or matter is of limited relevance for their specific business. In doing so, companies will also be looking to their industry peers and expectations from investors in their industry and it is thus to be expected that certain industry-specific standards or views will develop over time; for example, scope 3 emissions (i.e. indirect up- or down-stream emissions) may be of particular relevance in certain industries and as a consequence, reporting on such type of emissions will likely be more comprehensive for companies operating in such industries.

In addition to the reporting rules set out in the Code of Obligations, a number of Swiss listed companies have already today committed to prepare a sustainability report in accordance with recognized international standards. These "opt-ins" are made vis-à-vis the SIX Swiss Exchange and pursuant to the listing rules (and related directives) of the SIX Swiss Exchange. To date approximately 50 companies have declared such an "opt-in" with almost all of them reporting pursuant to the standards of the

Global Reporting Initiative (GRI) (a complete list of public companies having declared an "opt-in" as well as the chosen reporting standard is available online at: <https://www.six-group.com/en/products-services/the-swiss-stock-exchange/market-data/shares/sustainability-reporting.html>). These types of sustainability report typically cover a wide range of topics that are also required to be reported on under the new non-financial reporting obligations of the Swiss Code of Obligations. At first glance, one might question whether the sustainability "opt-in" regime of the SIX Swiss Exchange should remain in place given that almost all of the Swiss listed companies will in the future have to report on these type of sustainability matters as a result of the new rules on non-financial matters reporting. That said, the commitment of these listed companies to report in accordance with a recognized international standard will remain important to ensure comprehensive and comparable reporting, allowing investors to track and compare the progress of public companies in their pursuit of sustainability goals and initiatives.

c) Who needs to approve the report?

The report on non-financial matters has to be approved by the board of directors of the relevant "public interest company" and subsequently, the report has to be submitted to the annual shareholders meeting for approval. Accordingly, these reports will have to be finalized and made available together with the other materials for the shareholders meetings (e.g. annual report, compensation report) at least 20 days ahead of the annual shareholders meeting. The report on non-financial matters will also have to be made available in electronic form to the broader public and remain accessible for at least 10 years.

Under the current Swiss rules on non-financial reporting, an audit of the report on non-financial matters is not required. Given developments in other relevant jurisdictions (see paragraph 3. below), it remains to be seen if an audit requirement may be added to the Swiss rules as part of future harmonization and/or adaption of international standards and developments on ESG reports.

2) Climate-related Disclosure

The Swiss legislator and the executive branch consider transparency by large companies on the climate impact of their operations as a key element for the functioning of markets and for climate sustainability in the financial sector. For this reason, the general reporting obligations on non-financial matters of the Swiss Code of Obligations are supplemented with the ordinance on climate-related disclosure (Climate Ordinance), which provides for more detailed reporting requirements as regards climate-related matters. It does so by way of the following three principles:

– **International standards**: The Climate Disclosure builds on the principles of the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), thereby making the TCFD standards the guiding principles for climate-related disclosures by Swiss companies.

– **Comply or explain**: Fully TCFD-compliant disclosure satisfies the Swiss reporting requirements with respect to climate-related matters. That said, the Climate Ordinance does not strictly mandate that all disclosure is to be made in line with the TCFD standards. If a company decides not to (or only partially) follow the TCFD it has to explain (or more accurately, justify) such decision by showing how it nonetheless meets the Swiss reporting requirements.

– **Transparency and accessibility**: The climate-related disclosure has to be published in electronic form on the reporting company's website (both in a human-readable format and in a machine-readable electronic format).

The Climate Ordinance requires that the TCFD recommendations (including any sector-specific guidance) are observed by Swiss companies across all relevant areas, namely:

Of all these different areas, the KPIs and targets on climate related-matters are typically of a particular focus for shareholders and other investors. As regards these key figures and targets, a distinction between backward-looking KPIs and forward-looking targets can be made: KPIs and similar backward-looking measures will have to include quantitative data on CO_2 emissions as well as emissions of any other relevant greenhouse gases. Moreover, such backward looking measures should cover both scope 1 (direct emissions) and scope 2 (indirect emissions from electricity and other forms of powers) emissions, and in addition, where relevant and material, scope 3 emissions (all other indirect emissions). With respect to forward-looking targets, CO_2 (and other greenhouse gases) should include at least scope 1 and 2 emissions (although there is a trend to also include scope 3 emissions, in particular where these scope 3 emissions are material for a specific industry). Moreover, targets should be prepared for the short (5 years), medium (15 years) and long term (30 years). To ensure comparability, the report will also have to disclose, where feasible and appropriate, the underlying assumptions and methodology for the preparation of the KPIs and targets.

The supplemental reporting requirements of the Climate Disclosures will enter into force on 1 January 2024 and will apply for the first time for the 2024 reporting year. The requirement for the preparation and publication of the report in a machine-readable format will only enter into force on 1 January 2025 and apply for the first time for the 2025 reporting year.

3) Developments outside of Switzerland and Relevance for Swiss Companies

ESG is a key topic in numerous jurisdictions across the globe and regulatory developments outside of Switzerland may also affect Swiss companies, many of which are operating globally with subsidiaries in many different countries. Most notably, the European Union is pursuing an ambitious agenda towards climate neutrality and with its "green deal", the EU aims for Europe to become the first climate-neutral continent. As part of this overall green agenda, the European authorities have also enacted wide-ranging new legislation and regulation relating to ESG disclosure. Most recently, the European Corporate Sustainability Reporting Directive (CSRD) has entered into force. The CSRD substantially amends the previously existing European Non-Financial Reporting Directive (NFRD) both in respect of scope and also reporting requirements.

In terms of expanded reporting requirements, the most notable changes are: (i) the CSRD abolishes the current "comply or explain" approach of the NFRD, (ii) the introduction of a so-called "double materiality" standard, i.e. companies will have to report on how ESG issues might create financial risks for the company (financial materiality), and also how the company's business impacts people and the environment (impact materiality); (iii) expanded KPI and targets requirements, including alignment with EU taxonomy, (iv) further standardization of ESG reporting with new European Sustainability Reporting Standards, and (v) an external assurance requirement (i.e. audit).

In terms of scope, the CSRD no longer applies only to those companies already covered by the NFRD (similar to the Swiss rules, these are so-called "public interest companies"), but will also include large private companies (reporting for the first time in 2026 with respect to the 2025 financial year), listed small and medium sized enterprises (reporting for the first time in 2027 with respect to the 2026 financial year), and lastly any undertaking with a non-EU parent that has EU-wide sales in excess of EUR 150 million (reporting for the first time in 2029 with respect to the 2028 financial year).

The developments in the European Union are of relevance for Swiss companies for two reasons: Swiss companies may find themselves (or at least some of their European subsidiaries) falling within the scope of the CSRD (or parts thereof), and in addition, the Swiss legislator may in the future further align the Swiss rules to the European standards. Swiss companies could thus in the future be in a position where they have to comply with both Swiss and European standards. In these instances, the question arises as to whether they have to produce several different types of reports or if they can produce one unified report on non-financial matters. From a Swiss perspective, it is possible that companies prepare their report on the basis of European or other international regulations or standards if such non-Swiss regulations address all of the Swiss requirements and further provided that the non-financial matters report clearly states the regulations and/or standards that have been used as the basis for preparation.

4) Conclusion

With the new reporting obligations on non-financial matters, Swiss listed and/or FINMA regulated companies will in the future be required to comprehensively report on environmental, social and other non-financial matters. The new reporting requirements, which apply for the first time with respect to the 2023 financial year, supplement the already existing, governance-focused reporting obligations (compensation report, corporate governance report) applicable to Swiss listed companies.

In terms of content of the report, there is a clear trend towards more quantitative data and clear KPIs; investors (and regulators) no longer accept purely qualitative statements and declarations of intent on ESG-related topics. Accordingly, recent amendments to or developments on ESG-related disclosure regimes focus in particular on measurable KPIs and targets.

Finally, the ESG reporting obligations are expected to continue evolving in light of developments in other major jurisdictions as well as recommendations and soft law issued by international standard-setting organizations. In particular, the recent developments in the European Union broadening the scope of non-financial reporting obligations are expected to influence future legislative developments in Switzerland.

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Draft Implementing Provisions on the Limited Qualified Investor Fund (L-QIF): A Missed Opportunity for Improving the Competitiveness of the Swiss Fund Market

Reference: CapLaw-2023-14

On 23 September 2022, the Swiss Federal Council opened the consultation procedure on the draft for an amendment to the Collective Investment Schemes Ordinance (CISO) and a number of fund-related provisions in other ordinances. The core content of the consultation draft (Consultation Draft) is the implementing provisions regarding the Limited Qualified Investor Fund (L-QIF), a new category of Swiss collective investment schemes (CIS) which, unlike all existing categories of Swiss CIS, do not require FINMA approval or authorization.

The basis for the introduction of the L-QIF was created through a partial revision of the Collective Investment Schemes Act (CISA) passed by the Swiss Parliament on 17 December 2021. As the legal provisions contained in CISA – deliberately – regulate the

L-QIF only in broad terms, and important aspects such as the investment regulations applicable to the L-QIF are delegated to the Federal Council for regulation at ordinance level, the content of the CISO rules is of decisive importance for the attractiveness and, as a consequence, the future success of this new fund category.

This article summarizes and discusses the key points of the proposed regulation of the L-QIF at ordinance level pursuant to the Consultation Draft. Proposed changes to ordinance provisions that are not directly related to the L-QIF will not elaborated on here.

By Sandro Abegglen / Yannick Wettstein

1) Background

a) Competitive disadvantage of Switzerland as a fund domicile

In the fund sector, Switzerland is primarily an asset management location and distribution market. ***As a fund domicile***, however, Switzerland is traditionally less important compared to other jurisdictions such as Luxembourg. This is especially true with respect to alternative investments: For example, there are currently (as of 23 May 2023) only 26 closed ended Swiss CIS (in the legal form of a limited partnership for collective capital investments (*Kommanditgesellschaft für kollektive Kapitalanlagen;* KmGK), which was introduced in 2007 as a Swiss alternative to Anglo-Saxon limited partnerships in the area of venture capital investments).

The main reasons for this situation are the lack of EU market access for Swiss CIS and unfavorable aspects of the Swiss withholding tax. In addition, the regulatory framework abroad, in particular for setting up alternative and innovative fund products, is often more attractive than in Switzerland. In recent years, various EU member states have introduced fund types that do not require approval by the local supervisory authority. An important example is the Luxembourg *Reserved Alternative Investment Fund* (RAIF), which is also popular with Swiss asset managers and investors. By eliminating the need for obtaining regulatory approval, such funds can be brought to market quickly and cost-effectively. In addition, they usually offer more flexibility in terms of investment strategies.

Until now, Swiss law did not provide for a comparable fund category. All Swiss CIS require approval (*Genehmigung*; article 15 CISA) and – in the case of SICAV, KmGK and SICAF – authorization (*Bewilligung*; article 13 CISA) from FINMA and are subject to supervision by FINMA. As a consequence, even for Swiss fund providers and investors, Swiss CIS are often not the "go to" vehicle, especially not for alternative investments by professional investors.

b) The L-QIF as a new category of Swiss CIS

Against this background, the Swiss Parliament intended to strengthen the attractiveness of Switzerland as a fund domicile by creating a new internationally competitive category of Swiss CIS for qualified investors.

As already mentioned, the main feature of the L-QIF, which can be structured either as an open ended CIS (either in the legal form of a contractual investment fund or a SICAV) or as a closed ended CIS (in the legal form of a KmGK), is that it requires neither approval nor authorization from, and is not supervised by, FINMA (article 118*a*(1)(d) CISA). The reduced level of investor protection resulting from the lack of (direct) FINMA supervision is taken into account by the fact that the L-QIF is only open to qualified investors within the meaning of CISA (article 118*a*(1)(a) and (b) CISA). Moreover, the law requires that L-QIF must be managed by certain FINMA supervised financial institutions (article 118*a*(1)(c) CISA in conjunction with articles 118*g* and 118*h* CISA), specifically:

– L-QIF in the legal form of a contractual investment fund must be managed by a Swiss fund management company (article 118*g*(1) CISA);

– L-QIF in the legal form of a SICAV must delegate the administration and the investment decisions to one and the same Swiss fund management company (article 118*h*(1) CISA);

– L-QIF in the legal form of a KmGK must delegate the management to a Swiss manager of collective assets, unless the general partners (*Komplementäre*) of the KmGK are banks, insurance companies, securities firms, fund management companies or managers of collective assets (article 118*h*(2) and (4) CISA).

Investment decisions may be delegated (or sub-delegated) to a Swiss manager of collective assets or to a foreign manager of collective assets that is subject to appropriate regulation and supervision in its country of domicile (article 118*g*(2) and (3) and article 118*h*(3) CISA).

2) Proposed Concretization of the CISA provisions on the L-QIF

a) Investment regulations: too restrictive and not in line with Parliament's objectives

i. Overview

To enable flexible adaptation to market developments, the regulation of investment techniques and investment restrictions for L-QIF is delegated to the Federal Council (article 118*n*(3) CISA). The investment regulations provided for in CISA with respect to FINMA-supervised CIS (articles 53–71 and 103 CISA) are not applicable to L-QIF (article 118*d*(a) CISA).

With a view to the circle of investors, which is limited to qualified investors, and the objective of promoting innovation, the CISA provisions on the L-QIF were deliberately designed in a liberal manner. CISA does not to impose requirements regarding permitted investments or the diversification of risk. This means that, in principle, any type of investments is permitted for an L-QIF. In particular, investments that are only marketable to a limited extent, are subject to high price fluctuations, have a limited risk diversification and/or are difficult to value are also permissible for L-QIF, which makes it possible for an L-QIF to i.a. invest in assets such as cryptocurrencies, wine, artworks or vintage cars.

The investment regulations proposed for the L-QIF are contained in articles 126*o*–126*z*[ter] D-CISO, whereby different rules apply to L-QIF in the legal form of a contractual investment fund or SICAV on the one hand (articles 126*o*–126*y* D-CISO; see(ii) below) and to L-QIF in the legal form of a KmGK on the other hand (articles 126*z*–126*z*[ter] D-CISO; see (iii) below). The investment regulations provided for in CISO with respect to supervised Swiss CIS (articles 32*a*, 67–102, 117(2) and (3), 120 and 121 CISO) expressly do not apply to L-QIF (article 126*f*(b) D-CISO).

ii. L-QIF in the legal form of the contractual investment fund or SICAV

Article 126*p*(1) D-CISO provides that L-QIF in the legal form of contractual investment fund or SICAV may:

– raise loans for an amount not exceeding 50% of the fund's NAV;

– pledge or cede as collateral no more than 100% of the fund's NAV; and

– commit to an overall exposure of up to 600% of the fund's NAV.

In other words, the Federal Council proposes to apply to L-QIF the same rules that apply to FINMA supervised "other funds for alternative investments" within the meaning of article 71 CISA (see article 100(2) CISO). Especially since the latter, in contrast to the L-QIF, are also open to non-qualified investors, it would, in our view, have been justified (and more in line with the legislator's intentions) to set the investment rules for the L-QIF in a less restrictive manner – or, as is the case with the Luxembourg RAIF, to refrain entirely from setting specific investment restrictions and specifications regarding investment techniques – and instead to focus on transparent disclosure of the associated risks in the fund documentation.

With respect to securities lending, repurchase agreements, derivative financial instruments and collateral management, the provisions contained in articles 1–55 CISO-FINMA (in the version of 1 January 2015) are to be applied to L-QIF *mutatis mutandis*, with certain exceptions (article 126*p*(4) D-CISO).

The L-QIF must meet the investment restrictions within two years of the launch of the fund; if this deadline cannot be met, the fund management company may extend it once by six months, if this is provided for in the fund contract or the investment regulations (article 126*q*(3) D-CISO).

If an L-QIF in the legal form of contractual investment fund or SICAV makes direct real estate investments, the specific provisions of articles 126*t*–126*y* D-CISO also apply. The regulations contained therein are less stringent than those for the FINMA-supervised real estate fund (*Immobilienfonds*; article 58 et seq. CISA): In particular,

- an L-QIF may hold real estate in co-ownership even if the fund management company or the SICAV cannot exercise a controlling influence (article 126*u* D-CISO); and
- in the case of pledging land (*Verpfändung von Grundstücken*) and ceding the rights of lien as collateral (*Sicherungsübereignung der Pfandrechte*), an average encumbrance of up to 50% of the market value of the L-QIF's real estate assets is permissible (article 126*v* D-CISO), compared to one-third in the case of supervised real estate funds.

Article 126*w* D-CISO sets out the minimum information that the fund contract or the investment regulations must contain on risk diversification. When entering into transactions with related parties, the restrictions provided for in article 126*x* D-CISO must be observed.

The Consultation Draft provides that master-feeder structures (where a feeder fund structured as an L-QIF invests at least 85% of the fund assets in units of a master fund) are only permissible if this is provided for in the fund contract or the investment regulations and if *both* the master fund and the feeder fund are L-QIF (article 126*s* D-CISO). However, we do not see any reason why an L-QIF should not be allowed to invest in a (more regulated) supervised fund. A feeder fund structured as an L-QIF should therefore also be allowed to invest in a supervised master fund.

iii. L-QIF in the legal form of KmGK

Just as for supervised KmGKs, there are in principle no statutory investment restrictions, or regulations on investment techniques, for L-QIF in the legal form of a KmGK. It is therefore up to the L-QIF to determine the investment restrictions and investment techniques applicable to it, and to describe them in detail in the company agreement (article 126*z*(2) D-CISO).

Importantly, L-QIF in the legal form of KmGK must have a minimum duration of five years (article 126*z*(1) D-CISO). This provision is intended to prevent a blurring of the distinction between open-ended and closed-ended CIS and an undermining of the investment restrictions and investment techniques for open-ended CIS (see(ii) above) – particularly against the background that in the case of L-QIF in the legal form of a contractual investment fund or a SICAV, the right of investors to redeem their units at any time may be suspended under certain circumstances for a period of up to five years (see article 126*m* D-CISO; Explanatory Report, 29). The fact that the Federal Council would like to generally prohibit the establishment of L-QIF in the legal form of a KmGK with a term of less than 5 years with the argument of the conceptual separation between open-ended and closed-ended collective investment schemes seems, however, regrettable, especially since also for funds with a term of less than 5 years it is conceivable that the KmGK represents the more suitable legal form (compared to the contractual fund or SICAV) in certain cases.

b) Applicability of federal ordinances and of the self-regulation recognized by FINMA as a regulatory minimum standard

Pursuant to article 118*a*(2) CISA, the L-QIF is subject to the provisions of CISA unless the latter provides otherwise. Also applicable to the L-QIF are all other federal acts (such as tax laws, the Anti-Money-Laundering Act, or, with regard to L-QIF making real estate investments, the Federal Act on the Acquisition of Real Estate by Persons Abroad ("Lex Koller")) that contain provisions for CIS and do not stipulate special provisions for the L-QIF (Explanatory Report, 18).

The question arises as to what extent the provisions of ordinances issued by the Federal Council (in particular: CISO) or FINMA (in particular: CISO-FINMA), as well as the self-regulation recognized by FINMA under article 7(3) of the Financial Market Supervision Act, apply to the L-QIF. In this regard, D-CISO provides for the following:

The provisions of CISO apply to the L-QIF, unless CISO provides otherwise (article 126*b*(1) D-CISO). CISO provisions ***not*** applicable to the L-QIF are set out in article 126*f* D-CISO. Other ordinances issued by the Federal Council containing provisions on CIS are also applicable to the L-QIF, unless special provisions are made.

In contrast, the FINMA Collective Investment Schemes Ordinance (CISO-FINMA) is ***not*** directly applicable to the L-QIF. It only applies to the L-QIF if the Federal Council expressly stipulates this in CISO (article 126*b*(2) D-CISO), which results from the fact that the L-QIF is not subject to the supervision of FINMA (as a consequence of which FINMA has no (direct) regulatory powers whatsoever with respect to the L-QIF itself). Against this background, the Federal Council has declared certain provisions of the CISO-FINMA applicable to the L-QIF by analogy, namely (each with certain exceptions): articles 1–55 CISO-FINMA on securities lending, repurchase agreements, derivative financial instruments and collateral management (see article 126*p*(4) D-CISO), articles 56–64 CISO-FINMA on master-feeder structures (see article 126*s*(4) D-CISO) and articles 79–105 CISO-FINMA on bookkeeping, valuation and accountability (see article 126*z*^{quater}(1) D-CISO). It should be noted that the references to the CISO-FINMA contained in D-CISO are ***static***, i.e. they each refer to a specific version of CISO-FINMA. This means that future amendments to CISO-FINMA do not automatically apply to the L-QIF, but only if the reference in CISO is also amended accordingly (Explanatory Report, 18).

The ***self-regulation recognized by FINMA as a minimum standard*** is also ***not*** directly applicable to the L-QIF. However, the following six self-regulations issued by the Asset Management Association Switzerland (AMAS) shall apply to L-QIF by analogy (article 126*b*(3) D-CISO):

i. AMAS Code of Conduct (in its version of 5 August and 23 September 2021);

ii. Guidelines for real estate funds (in its version of 5 August 2021);

iii. Guidelines for money market funds (in its version of 5 August 2021);

iv. Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes (in its version of 5 August 2021); and

v. Guidelines on the calculation and publication of performance data of collective investment schemes (in its version of 5 August 2021);

vi. Guidelines on the calculation and disclosure of the Total Expense Ratio (TER) of collective investment schemes (in its version of 5 August 2021).

Future amendments to self-regulation will not automatically apply to the L-QIF, but will first require a corresponding amendment to article 126*b*(3) D-CISO.

The institution responsible for managing the L-QIF is also responsible for compliance with the legal provisions applicable to the L-QIF (article 126*h*(1) D-CISO). It must inform FINMA, the custodian bank and the audit firm without delay if a CIS no longer meets the characteristics of an L-QIF pursuant to article 118*a*(1)(a)-(c) CISA (see 1(b) above; article 126*h*(2) D-CISO). If any legal, contractual, statutory or regulatory provisions applicable to the L-QIF are otherwise not complied with, the responsible institution must inform the investors and the audit firm of this and ensure that compliance is restored within a reasonable period of time. If this is not possible, it must dissolve the L-QIF (article 126*h*(3) D-CISO).

c) Report to the Federal Department of Finance (FDF) as a constitutive requirement for the establishment of an L-QIF

Article 126*a* D-CISO specifies that a CIS which fulfils the characteristics of an L-QIF pursuant to article 118*a*(1)(a)-(c) CISA, i.e., a CIS which

i. is open exclusively to qualified investors within the meaning of CISA (respectively, in the case that it invests directly in real estate, exclusively to qualified investors that are professional clients pursuant to article 4(3)(a)-(h) FinSA); and

ii. managed in accordance with the provisions of Arts 118*g* and 118*h CISA* (see 1(b) above),

is not automatically deemed to be an L-QIF, but only if the institution responsible for the management expressly waives the obtaining of FINMA approval (and, in the case of CIS in the legal form of a SICAV or KmGK, authorization) for the L-QIF by submitting to the Federal Department of Finance (FDF) the notification provided for in article 118*f*(1) CISA and article 126*g*(1) D-CISO within 14 days of the signing or adoption of the fund contract, the articles of association and the investment regulations or the company agreement.

A period of 14 days also applies for reporting the launch date of the L-QIF, any changes to the reported facts and the discontinuation of the management of the L-QIF (article 126*g*(2)D-CISO). The FDF may make this data publicly accessible in a directory (article 126*g*(3) D-CISO).

d) Change of status and restructuring

Supervised CIS may "downgrade" from supervised to L-QIF status by returning their FINMA approval and, if any, authorization (article 118*b* CISA). The requirements for such a change of status are further specified in articles 126*c* D-CISO. Article 126*d* D-CISO contains provisions on the information obligations vis-à-vis FINMA and the investors in the event of a change of status.

Specifically, the change of status requires prior approval (and, in the case of a SICAV or KmGK, authorization) from FINMA (article 126*c*(1) D-CISO), which is granted if the CIS meets the characteristics of an L-QIF pursuant to article 118*a*(1)(a)-(c) CISA (see 1(b) above) and if (article 126*c*(2) D-CISO):

i. the fund contract, the investment regulations or the company agreement provide for the possibility of a change of status;

ii. neither the CIS nor the investors incur any costs from the change of status;

iii. depending on the legal form of the CIS, the following additional requirements are met:

   – in the case of a contractual investment fund, only investors who have expressly consented to the change of status remain in the CIS;

– in the case of a SICAV, company shareholders (*Unternehmeraktionäre*) holding at least two thirds of the issued company shares (*Unternehmeraktien*) have consented to the change of status and only investors who have expressly consented to the change of status remain in the CIS;

– in the case of a KmGK, all investors have consented to the change of status.

In view of the these requirements, the change of status is likely to be relevant in practice only for supervised CIS for qualified investors, since an exclusion of non-qualified investors will be practically impossible. The requirement that all investors remaining in the fund must have expressly consented to the change of status also appears difficult to implement. It would be preferable to have a regulation that allows investors to object to the change of status within a certain period of time instead.

e) Audit, accounting, valuation, accountability and publication requirements

The audit of the L-QIF is divided into an audit of accounts (*Rechnungsprüfung*; article 126*z*$^{\text{septies}}$ D-CISO), which is carried out in accordance with the same provisions as for supervised CIS, and a supplementary audit (*ergänzende Prüfung*; article 126*z*$^{\text{octies}}$ D-CISO), the purpose of which is to assess compliance with the material product-specific provisions of the L-QIF that are not already the subject of the audit of accounts, e.g., whether the fund in question meets the characteristics of an L-QIF pursuant to article 118*a*(1) CISA (article 126*z*$^{\text{octies}}$(1)(a) D-CISO). If the audit firm identifies material deficiencies based on the audit of accounts or the supplementary audit, it records these as objections in the audit report on the supervisory audit of the institution responsible for managing the L-QIF (article 126*z*$^{\text{tredecies}}$(1) D-CISO), so that that the latter can be held accountable under supervisory law if it fails to comply with the regulations applicable to the L-QIF to a material extent.

As regards accounting, valuation and reporting, pursuant to article 118*a*(2) CISA, the same CISA provisions apply to L-QIF as to supervised funds (articles 87–90 and 108 CISA), save that the issuance of specifying regulations does not fall within the competence of FINMA (see article 91 CISA) but of the Federal Council (see article 118*i*(6) CISA). The Federal Council has made use of this competence in article 126*z*$^{\text{quater}}$ D-CISO to the effect that the specifying provisions for supervised funds, namely articles 79–105 CISO-FINMA (in the version of 1 January 2021), also apply by analogy to the L-QIF (without, however, the possibility for FINMA to grant exceptions).

Article 126*z*$^{\text{quinquies}}$ D-CISO, which governs the publication duties for the L-QIF, provides that the issue and redemption prices or the NAV must be published in the media of publication for each issue and redemption of units (para. 1) and that the prices for L-QIF must be published at least twice a month (or at least four times a year for L-QIF for which the right to redeem at any time has been restricted) in the media of publication (paras 2 and 3).

f) Investment regulations for Swiss investment foundations

In addition to the amendments to CISO described above, the Consultation Draft also provides, among other things, for adjustments to the investment regulations for Swiss investment foundations (*Anlagestiftungen*) contained in the Investment Foundations Ordinance (ASV).

In particular, it is proposed that investment foundations may now also make investments (both traditional and alternative) via L-QIF (revised article 30(2) and article 29(3)(b) ASV).

Liberalization is also envisaged regarding indirect investments via foreign collective investments: Under current law, the share of a single foreign collective investment may only exceed 20% of the assets of an investment group if the collective investment has been approved by FINMA pursuant to article 120(1) CISA for offering to non-qualified investors or is subject to supervision by a foreign supervisory authority with which FINMA has concluded a cooperation agreement pursuant to Article 120(2)(e) CISA (Cooperation Agreement). According to the Consultation Draft, the 20% threshold may also be exceeded if the fund management company or the fund company as well as the asset manager and the custodian are subject to supervision by FINMA or a foreign supervisory authority with which FINMA has concluded a Cooperation Agreement (Article 30(3^{bis})(c) D-ASV). This is intended to cover foreign collective investments that are comparable to the L-QIF, such as the Luxembourg RAIF (Explanatory Report, 34).

3) Assessment / Conclusion

CISA gives the Federal Council considerable leeway in specifying the provisions on the L-QIF. This applies, in particular, with respect to the investment regulations applicable to the L-QIF. The Federal Council faces the challenge of, on the one hand, taking into account the objectives associated with the introduction of the L-QIF (which are to enhance the competitiveness and innovative strength of Switzerland as a fund domicile), and, on the other hand, ensuring adequate investor protection.

In our view, the rules provided for in the Consultation Draft are too restrictive overall. Although the Federal Council largely refrained from enacting prohibitions and investment restrictions and, for example, expressly permitted the holding of real estate in co-ownership (article 126*u* D-CISO), the Consultation Draft now nevertheless contains restrictions that are likely to have a negative impact on the attractiveness of the L-QIF compared to foreign vehicles such as the Luxembourg RAIF, in particular the investment restrictions for L-QIF in the legal form of a contractual fund or SICAV provided for in article 126*p* D-CISO (restrictions on borrowing, pledging / ceding as collateral as well as limitation of total exposure) and article 126*v* D-CISO (encumbrance of all properties may not exceed 50% of the market value on average). In order to protect investors (who, in the case of the L-QIF, by definition consist only of qualified investors), we believe it would be sufficient to require the institution responsible for managing the L-QIF (which is supervised by FINMA) to transparently disclose the material risks associated with the investment policy in the fund documentation.

As the general disadvantages of Swiss CIS (keywords: lack of market access to the EU, Swiss withholding tax) also affect the L-QIF and these disadvantages do not seem to compensated by any significant advantages – in fact, the investment rules for L-QIF (as set out in the Consultation Draft) are more restrictive than those for Luxembourg RAIF – the legal framework for the L-QIF will have to be developed further to make the L-QIF a real alternative to foreign vehicles, especially when it comes to attracting foreign investors. And even when it comes to regulated Swiss investors, the L-QIF will be in direct competition with its foreign peers: For example, as mentioned, article 30(3^{bis}) (c) D-ASV provides that investment groups of Swiss investment foundations may in principle invest up to 100% of their assets via a foreign vehicle comparable to the L-QIF (such as a RAIF). Against this background, we do not expect Swiss L-QIF to be set up on a significant scale in the near future instead of the well-established foreign structures.

We hope that such liberalizations will be made in the final draft. If so, the L-QIF could compete on par with comparable foreign vehicles and thus become a certain success, which would also be beneficial for the investors who could choose from a broader range of funds, investment strategies and styles.

It remains to be seen whether or to what extent the Federal Council will take into account the considerations the criticism expressed by some of the participants in the consultation (namely that of AMAS) when drafting the final version of the revised regulations. Currently, it is assumed that the launch of L-QIF will not be possible before Q1 2024.

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CHF 650 Million Bond Issuance by Sika AG

Reference: CapLaw-2023-15

On 6 March 2023, Sika AG placed bonds in a total amount of CHF 650 million, consisting of three tranches.

CHF 108 Million Share Placement by Bachem Holding

Reference: CapLaw-2023-16

In March 2023, Bachem Holding successfully placed newly issued shares raising gross proceeds of approximately CHF 108 million by way of an accelerated bookbuilding.

USD 3 Billion Issuance of Notes by Nestlé

Reference: CapLaw-2023-17

On 14 March 2023, Nestlé Holdings, Inc. successfully completed its issuance of USD 1 billion 5.250% Notes due 2026, USD 850 million 5.000% Notes due 2028, USD 500 million 4.950% Notes due 2030, and USD 650 million 4.850% Notes due 2033. The Notes are guaranteed by the Nestlé group's Swiss parent company Nestlé S.A.

Merger of Credit Suisse and UBS

Reference: CapLaw-2023-18

On March 19, 2023, Credit Suisse announced that Credit Suisse Group AG and UBS Group AG have entered into a merger agreement following the intervention of the Swiss Federal Department of Finance, the Swiss National Bank and the Swiss Financial Market Supervisory Authority FINMA. UBS Group AG will be the surviving entity upon closing of the merger transaction, which is subject to customary conditions. The combined market capitalization is approximately USD 65 billion. In a unique step, the Swiss Federal Council has issued an emergency ordinance (*Notverordnung*), based on which the merger does not require approval of the shareholders' meetings of the two companies and certain other requirements under the Swiss Merger Act do not apply.

USD 564 Million Offering of GDRs and Listing on SIX Swiss Exchange by Zheijan Supcon Technology

Reference: CapLaw-2023-19

In April 2023, Zheijan Supcon Technology, whose A Shares are listed on Shanghai Stock Exchange, sold 20,958,000 GDRs representing two A Shares each at an offer price of USD 26.94, raising gross proceeds of approximately USD 564.6 million from the offering. Trading in the GDRs on SIX Swiss Exchange commenced on 17 April 2023.

CHF 135 Million Rights Offering by Orascom Development Holding AG

Reference: CapLaw-2023-20

In April 2023, Orascom Development Holding AG carried out a successful capital increase by way of a rights offering. The transaction consisted of an offering of subscription rights and a backstop commitment by the majority shareholder for shares for which subscription rights were not exercised. Orascom issued 19,228,617 registered shares in a total amount of approximately CHF 135 million.

CHF 425 Million Issuance of Bail-in Bonds by Zürcher Kantonalbank

Reference: CapLaw-2023-21

On 5 April 2023, Zürcher Kantonalbank priced its inaugural CHF 425 m Bail-in Bond issuance. ZKB's Bail-in Bonds are novel instruments which have been designed and issued on the basis of a new legal framework allowing Cantonal Banks to issue Total-Loss-Absorbing-Capacity (TLAC) Bonds. The Bail-in Bonds provide for the issuance of a recovery certificate (*Besserungsschein*) in the event that the Swiss Financial Market Supervisory Authority FINMA orders the partial or complete reduction of the bondholders' claims under the Bail-in Bonds in a restructuring proceeding concerning Zürcher Kantonalbank pursuant to the Swiss Banking Act.

EUR 500 Million Issuance of Bail-In Bonds by Raiffeisen Schweiz Genossenschaft

Reference: CapLaw-2023-22

On 3 May 2023, Raiffeisen Schweiz Genossenschaft, a Swiss systemically relevant bank, successfully completed its issuance of EUR 500 million of 4.840 per cent. debt instruments for loss absorbency in the event of insolvency measures (bail-in bonds) due 2028.