
THE OIL & GAS LAW REVIEW

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EDITOR
CHRISTOPHER B STRONG

LAW BUSINESS RESEARCH

THE OIL & GAS LAW REVIEW

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CONTENTS

Editor's Prefacevii
Chapter 1	ABU DHABI..... 1 <i>James Comyn</i>
Chapter 2	AUSTRIA..... 10 <i>Manfred Fürnkranz, Andreas Gunst, Oskar Winkler, Kenneth Wallace-Müller and Christoph Schimmer</i>
Chapter 3	BRAZIL..... 19 <i>Giovani Loss, Felipe Feres and Nilton Mattos</i>
Chapter 4	CANADA 31 <i>Craig N Spurn, Kristen Haines and Curtis Merry</i>
Chapter 5	COLOMBIA..... 42 <i>José V Zapata L and Claro M Cotes R</i>
Chapter 6	CYPRUS..... 54 <i>Nicolas Th Papaconstantinou</i>
Chapter 7	DENMARK..... 64 <i>Michael Meyer and Anne Kirkegaard</i>
Chapter 8	FRANCE 77 <i>Yves Lepage, Geoffroy Berthon</i>
Chapter 9	GHANA 85 <i>Ferdinand Adadzi and Nana Serwah Godson-Amamoo</i>

Chapter 10	GREECE.....	99
	<i>Yannis Kourniotis and Paris Tzoumas</i>	
Chapter 11	GREENLAND.....	112
	<i>Michael Meyer and Anne Kirkegaard</i>	
Chapter 12	IRAQ.....	121
	<i>Christopher B Strong</i>	
Chapter 13	IRAQI KURDISTAN	133
	<i>Daniel Heintel and Dahlia Zamel</i>	
Chapter 14	ITALY	147
	<i>Roberto Leccese</i>	
Chapter 15	MALAYSIA	162
	<i>Fariz Abdul Aziz</i>	
Chapter 16	MEXICO	172
	<i>Carlos Ramos Miranda and Miguel Ángel Mateo Simón</i>	
Chapter 17	MOZAMBIQUE.....	182
	<i>Pedro Couto, Telmo Ferreira, Paulo Ferreira, Márcio Paulo and Gisela Graça</i>	
Chapter 18	NEW ZEALAND.....	193
	<i>Paul Foley</i>	
Chapter 19	NIGERIA.....	206
	<i>Israel Aye, Laura Alakija, Constance Okbilua and Esther Onoji</i>	
Chapter 20	NORTH DAKOTA.....	219
	<i>Kimberly A Backman</i>	
Chapter 21	NORWAY.....	230
	<i>Yngve Bustnesli</i>	

Chapter 22	PORTUGAL.....	241
	<i>Rui Mayer, Diogo Ortigão Ramos, Ana Isabel Marques and Berta de March</i>	
Chapter 23	RUSSIA.....	255
	<i>Natalya Morozova and Rob Patterson</i>	
Chapter 24	SOUTH AFRICA.....	267
	<i>Manus Booysen, John Smelcer, Jonathan Veeran, Keith Veitch, Garyn Rapson and Benjamin Cronin</i>	
Chapter 25	SWITZERLAND	283
	<i>Andreas Hünerwadel, Beat Speck and Michael Tschudin</i>	
Chapter 26	UNITED KINGDOM	295
	<i>Penelope Warne and Norman Wisely</i>	
Appendix 1	ABOUT THE AUTHORS	307
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS	323

EDITOR'S PREFACE

2016 has been a year of flux for the international oil and gas industry.

With the industry enduring a second straight year of low oil prices, and with no prospects for a significant increase in sight, participants in the industry have been forced to adapt. Capital projects have been delayed or abandoned, staffing levels have been reduced, and oil companies have been seeking to sell off parts of their portfolios to focus on their best prospects and raise capital.

Oil producing countries have been in a similar pinch. Having become accustomed to triple digit oil prices, the 'new normal' of US\$50 oil has produced a grim budgetary reality. Although some producers with a relatively large ratio of reserves to population such as Kuwait, Qatar and the UAE have been able to get by without making drastic changes, others, such as Venezuela, have been brought to the brink of national bankruptcy as years of economic mismanagement enabled by high oil prices have finally taken their toll.

Yet amidst the ongoing turbulence there are opportunities. The necessity for existing companies (many of which are over-leveraged and cash strapped) to offload parts of their portfolios will create opportunities for new, leaner competitors to arise. US shale producers, whom many were prepared to write off in the low oil price environment, have managed to drastically improve the efficiency of their operations to survive, and even thrive, in the new price environment. And among the major oil-exporting countries, low oil prices have provided the impetus for long-needed structural reforms to diversify their economies beyond the extraction of petroleum. Nowhere is this more evident than in the world's leading exporter, Saudi Arabia, where the recently announced Vision 2030 Plan commits to reforms that would have been unimaginable just a few years ago. Not the least of which would be the potential public flotation of Saudi Aramco, the world's largest company. Long considered to be the best-managed and most professional of the national oil companies, the additional rigour and transparency that would come from being publicly traded would bring significant changes and set an example for other national oil companies to follow.

The international oil and gas industry has always been cyclical. Although the last two years have been eventful, it is by no means the first downturn the industry has faced nor the last. I have no doubt that the years ahead will continue to present challenges and opportunities for practitioners in this most dynamic of industries.

As always, I would like to thank our contributing authors for their outstanding contributions to this year's edition of *The Oil and Gas Law Review* and also the publishers at Law Business Research for their tireless work in bringing this all together.

Christopher B Strong

Vinson & Elkins LLP

London

November 2016

Chapter 25

SWITZERLAND

Andreas Hünerwadel, Beat Speck and Michael Tschudin¹

I INTRODUCTION

Switzerland is one of the leading business locations in the world. Its success is mainly due to high-quality products and services, an investor and business-friendly government, modest taxation, currency and price stability, a first-rate infrastructure, efficient capital markets and a highly professional international banking system. Excellent education as well as political stability further contribute to Switzerland's attractiveness for businesses. However, natural resources, except for water, are scarce.

Although Switzerland has gas reserves, in most cases these are too small to merit production. The area of Finsterwald, where some gas was produced between 1985 and 1994, remains the only example of domestic gas production. However, during a drilling attempt in St. Gallen in 2013 regarding a geothermal energy project a gas reserve has been discovered. The drilling attempt was unsuccessful due to seismic activity. At the moment a feasibility study is carried out in order to analyse options to produce gas on this site. Today, Switzerland relies solely on imports to meet its annual gas consumption.² There are indications, however, that the production of shale gas is possible in Switzerland.

The stable legal framework in connection with the expertise in commodity trading and its guaranteed financing led to an increasing number of commodity traders locating in Switzerland. Besides London, Switzerland (mainly Zug, Geneva and Lugano) has developed into the world's leading location for commodity trading. Hence, despite the lack of natural resources mentioned above, Switzerland may take a more meaningful role in the gas and oil sector in the next few years.

1 Andreas Hünerwadel and Beat Speck are partners, and Michael Tschudin is a senior associate at Wenger & Vieli Ltd.

2 www.bfe.admin.ch/themen/00486/00488/?lang=en.

II LEGAL AND REGULATORY FRAMEWORK

As there is no production of oil and gas, Switzerland does not have a specific regulatory framework regulating the production and no comprehensive framework governing the import, storage, transport and distribution of oil and gas. With regard to trading commodities, Switzerland's legal framework is characterised by a rather low level of regulation.

i Domestic oil and gas legislation

Switzerland relies fully on imports of oil and gas. Although there are no upstream operations in Switzerland, this does not mean that there is no legal framework. Energy policy was introduced into Swiss law in 1990.³ According to Article 89 of the Constitution, the Confederation and the cantons are obliged to provide a sufficient, diversified, safe, economical and environmentally sustainable energy supply as well as the economical and efficient use of energy. Due to certain geographical conditions in Switzerland, the implementation of the energy provisions in the Constitution has largely focused on midstream and downstream oil and gas.

In order to secure the necessary gas imports so that domestic demand can be met, long-term supply agreements between private entities and major foreign gas providers are concluded for up to 25 years. Around 50 per cent of Switzerland's gas demand is guaranteed by four agreements between Switzerland's main importer, Swissgas AG and four foreign providers from Germany and the Netherlands. The remaining gas required is imported from France and Germany.⁴

Switzerland also fully depends on imports regarding oil. Based on the Constitution, the supply of essential goods is a task to be fulfilled by the private sector. The National Economic Supply Act⁵ considers oil as an essential good. Public supply is only activated if supply shortfalls occur. This subsidiarity principle is complemented by the militia principle: industry experts carry out risk assessments and use these to plan the control measures to be taken. Such regulation includes stockpiling and the import of oil. However, the regulation of oil imports aims mainly to secure that the importers actually hold the needed stocks.

Storage becomes important to hedge against fluctuations on the global market due to natural disasters, political crises or other disturbances. In this regard, Article 102 of the Constitution states that the Confederation shall ensure that the country is supplied with essential goods in the event of war or of any other severe shortage that the economy cannot counteract by itself. The Confederation has to take precautionary measures to address these matters. In exercising its powers, it may be necessary to depart from the principle of economic freedom. The National Economic Supply Act as well as its associated Ordinance concerning the Compulsory Stockpiling of Liquid Fuels and Combustibles regulate the stockpiling of oil

3 Federal Constitution of the Swiss Confederation of 18 April 1999 (SR 101).

4 Weber, *Energy Law in Switzerland* (2012 Kluwer Law International), 120; www.erdgas.ch/versorgung/herkunft-des-erdgases/lieferanten/.

5 National Economic Supply Act of 8 October 1982 (SR 531).

in further detail.^{6,7} The requirements for stockpiling of oil in storage facilities and the storage of gas are primarily governed by environmental law including, for example, the Waters Protection Act and the associated Waters Protection Ordinance.⁸

Article 91 of the Constitution provides the Confederation with a basis for the legislation on pipelines. This competence was put into execution with the Pipeline Act, the Pipeline Ordinance, and the Ordinance concerning Safety Standards for Pipelines.⁹ The Pipeline Act and its associated ordinances are to be applied to the planning, the construction, the operation and the maintenance of the pipelines transporting liquid and gaseous fuels only. The pipelines are classified into three categories by the federal legislation according to their dimension and the maximal operating pressure within the pipeline, among other criteria:

- a* Big pipelines as defined in the Pipeline Ordinance, as well as all pipelines in the property of the Confederation and those crossing Swiss borders are under the supervision of the Swiss Federal Office of Energy (SFOE). Federal law applies.
- b* Pipelines with smaller dimensions or a small operating pressure (as defined in the Pipeline Ordinance) are under cantonal supervision with cantonal law being applicable.
- c* Excluded from the application of the Pipeline Act are all pipelines within the immediate proximity of gas plants since they are governed by regulations applying to the gas plants themselves.

The pipeline system for oil is not as extensive as the system for gas distribution. Only crude oil is transported directly by pipelines to the refineries in Switzerland.¹⁰ The legal regime on pipelines mentioned above is applicable in this context. The finished products are transported domestically by rail and road. Crude oil, mineral oil as well as finished mineral oil products are also imported via the harbour of Basle by Rhine ships. Primarily, the Inland Navigation Act and the Inland Navigation Ordinance regulate domestic navigation.¹¹ Also applicable to the shipping of oil products on the Rhine is the Ordinance concerning the Carriage of Dangerous Goods on the Rhine, which is based on Article 25 of the Inland Navigation Act.¹² Further applicable in this context is the Major Accidents Ordinance.¹³ Import also takes place by rail and road. Article 87 of the Constitution outlines the Confederation's competence to legislate in the field of navigation and rail transport. Article 82 of the Constitution contains

6 Ordinance concerning the Compulsory Stockpiling of Liquid Fuels and Combustibles of 6 July 1983 (SR 531.215.41).

7 Weber, *Energy Law in Switzerland*, 142 f.

8 Waters Protection Act of 24 January 1991 (SR 814.20); Waters Protection Ordinance of 28 October 1998 (SR 814.201).

9 Pipeline Act of 4 October 1963 (SR 746.1); Pipeline Ordinance of 2 February 2000 (SR 746.11); Ordinance concerning Safety Standards for Pipelines of 20 April 1983.

10 Weber, *Energy Law in Switzerland*, 155.

11 Inland Navigation Act of 3 October 1975 (SR 747.201); Inland Navigation Ordinance of 8 November 1978 (SR 747.201.1).

12 Carriage of Dangerous Goods on the Rhine Ordinance of 29 November 2001 (SR 747.244.141).

13 Major Accidents Ordinance of 27 February 1991 (SR 814.012).

the comprehensive federal competence to legislate on road traffic. Article 3 of the Road Traffic Act determines that the cantons remain competent in this respect.¹⁴ For gas and oil, railway and road planning are governed by the Railway Act and the National Roads Act of 8 March 1960.^{15,16}

Since the Constitution does not assign the Confederation with the competence of gas supply, the cantons would be competent to provide a legal regime. Generally, gas supply is a task for the municipalities. However, cantonal statutes do not explicitly provide the municipalities with the authority to legislate on gas supply, instead this forms part of customary law. Since in reality it would not make sense to limit the supply of gas just to the territory of one municipality, one municipal gas work usually supplies an area consisting of several municipalities.¹⁷ As gas is regularly supplied by only one single gas distributor for one area, gas distribution companies have a natural monopoly on the corresponding area. This monopoly is only relativised by the intensive competition on the heating market. This competition is caused on one hand by substitutes like oil or electricity and on the other hand by the partial liberalisation of the gas market based on Article 13 of the Pipelines Act. However, owing to the limited content of this Article an association agreement between the providers and the industrial customers regarding gas was signed in 2012. This agreement addresses issues such as the access to the distribution network, the fee for transit and the capacity management. According to a recent amendment of this agreement, the bar of market access for costumers has been lowered from a consumption of 200 to 150 Nm³/h as per 1 October 2015. Consequently, more industrial customers have the free choice of a provider. This private market regulation may contradict with the provisions of the Swiss Cartel Act.¹⁸ The Secretariat of the Competition Commission voiced several concerns in this regard, without taking any actions so far, however.¹⁹ The federal government intends to introduce new legislation for gas transportation and distribution until 2020. A first draft is expected to be ready for public consultation in 2017.

ii Regulation

As Switzerland produces neither gas nor oil, there are no regulatory authorities for those commodities regarding production. However, the Swiss institutional framework involves several federal offices, regulatory authorities and specialised agencies acting as a regulatory authority.

The SFOE is the country's competence centre for issues relating to energy supply and energy use at the Federal Department of the Environment, Transport, Energy and Communications. The SFOE is in charge of the application of the Pipeline Act and the corresponding Pipeline Ordinance. Besides creating the necessary conditions for efficient electricity and gas markets and an adapted infrastructure, the SFOE is in charge of guaranteeing

14 Road Traffic Act of 19 December 1985 (SR 741.01).

15 Railway Act of 20 December 1957 (SR 742.101).

16 National Roads Act of 8 March 1960 (SR 725.11).

17 Weber, *Energy Law in Switzerland*, 132.

18 Federal Act on Cartels and other Restraints of Competition (SR 251).

19 Final report dated 16 December 2013 regarding association agreement gas Switzerland RPW 2014/1, 110.

the prerequisites for a sufficient, crisis-proof, broad-based, economic and sustainable energy supply and ensuring the maintenance of high safety standards in the production, transport and utilisation of energy.²⁰

Concerning transportation, the key institutional player is the Swiss Federal Pipelines Inspectorate (FPI). The FPI supervises everything that is subject to the Pipeline Act, for example, the supervision of the planning, construction and operation of pipeline systems for the transport of liquid and gaseous combustibles and motor fuels. Moreover, the FPI aims to protect human life and the environment above profitability.²¹ All its activities are designed to maintain a high level of safety of pipeline systems in Switzerland. The FPI's activities allow political and legal bodies to take decisions without having to yield to economic restraints. Furthermore, the FPI sets out to promote the familiarity of pipeline operators with new pipeline technologies. The aim of keeping the technical status of official requirements at a comparable level is pursued by maintaining domestic and international contacts with specialised bodies and authorities.²²

In addition to the FPI, it is the responsibility of the SFOE and the Swiss Federal Office for the Environment²³ to ensure that the regulations of the high-pressure gas network are correctly observed.

CARBURA is a private association of importers of liquid fuels and combustibles for compulsory stockpiling, which was founded in 1932. Members either import more than 3,000m³ of petroleum products per year or are common respectively substitute stockholders that concluded a compulsory stockpiling contract with the federal administration. The articles of association are approved by the Federal Department of Economic Affairs, Education and Research²⁴ and overall supervision is carried out by the Federal Office for National Economic Supply. CARBURA carries out two functions regarding national economic supply. First, it guarantees that the compulsory supplies are being stockpiled. Second, it also assists in the planning and carrying out of measures for national economic supply. Moreover, CARBURA issues import permits, levies guarantee fund contributions and manages the guarantee funds, and pays compensation to stockholders for the costs of compulsory stockpiling. Various staff at the branch office and partner companies carry out executive and expert functions in the Petroleum Products Department of the Energy Division of National Economic Supply and support the respective authorities in the context of the International Energy Agency.²⁵

iii Treaties

Switzerland is a civil law country with a long tradition as one of the major global venues for international arbitration and litigation. With its reliable court system the proceedings are comparably fast and quite cost-effective.

20 www.bfe.admin.ch/org/index.html?lang=en.

21 Racine, 'Switzerland', in *The Energy Regulation and Markets Review* (2012 Law Business Research Ltd), 285.

22 www.bfe.admin.ch/eri/index.html?lang=en.

23 For more information: www.bafu.admin.ch/index.html?lang=en.

24 www.wbf.admin.ch/wbf/en/home.html.

25 www.carbura.ch.

Switzerland is party to a number of bilateral and multilateral treaties governing the recognition and enforcement of foreign awards and judgments. If there is no treaty governing the recognition and enforcement, the Swiss Private International Law Act (PILA) is applicable.²⁶

The most important multilateral treaty is the Convention on the Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Lugano Convention).²⁷ In its essence, the Lugano Convention is equivalent to the Brussels Regulation. Besides, there are, on an intra-state level, the Swiss Civil Procedure Code (CPC) as well as the Federal Debt Enforcement and Bankruptcy Act (DEBA).^{28,29} On an international level, the PILA and with respect to foreign arbitral awards, the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) are to be mentioned.³⁰ On 1 January 2011, the CPC, the revised Lugano Convention and the revised provisions of the DEBA on pre and post-judgment attachment all entered into force. In addition, Switzerland has a number of bilateral treaties on the recognition and enforcement in civil and commercial matters with Germany, Austria, Belgium, Spain, Italy, Liechtenstein and Sweden. So far, Switzerland is not a signatory member of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

The State Secretariat for Economic Affairs (SECO) is the responsible body for negotiating international law disciplines on foreign investment, particularly in the form of bilateral investment promotion and protection agreements (BITs). Due to the absence of a multilateral framework, Switzerland negotiates international law disciplines on the protection of investments on bilateral tracks in the form of BITs. Today, there are 118 BITs in effect.³¹ Moreover, through the European Free Trade Association (EFTA) Switzerland negotiates free trade agreements of which some contain provisions on investment. SECO represents Switzerland in bodies of international institutions such as the World Trade Organization, Organisation for Economic Co-operation and Development (OECD, UNCTAD, etc.

As far as multilateral investment rules that apply to specific sectors are concerned, Switzerland adhered to the Energy Charter Treaty (ECT). As a consequence, this creates investment protection for non-commercial risks associated with investments in the energy sector. The ECT also includes an investor–state dispute settlement mechanism. However, an initially planned schedule to this treaty that would have covered the liberalisation of investments in the energy sector was not realised. In addition to Switzerland, the signatory countries to the ECT include all EU Member States, all Balkan countries as well as all members of the Commonwealth of Independent States (with the exception of Russia) and Japan.³²

26 Swiss Private International Law Act of 18 December 1987 (SR 291).

27 Convention on the Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 1 January 2011 (SR 0.275.12).

28 Swiss Civil Procedure Code of 19 December 2008 (SR 272).

29 Federal Debt Enforcement and Bankruptcy Act of 11 April 1889 (SR 281.1).

30 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (SR 0.277.12).

31 Find the full list at: http://unctad.org/Sections/dite_pccb/docs/bits_switzerland.pdf.

32 www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Internationale_Investitionen/

Switzerland has one of the most comprehensive networks of double tax treaties and is therefore very attractive as a business location from a tax perspective. For relations with EU companies, withholding tax on dividend, interest and royalty payments can be reduced to nil in most cases based on the EU–Switzerland Saving Directive (the Saving Tax Agreement). Switzerland does not levy Swiss withholding tax on royalty payments.

III PRODUCTION RESTRICTIONS

So far, there has been no actual extraction of shale gas in Switzerland. Shale gas deposits are expected to lie in north-eastern Switzerland (in particular St. Gallen), below Lake Geneva, and in the Lower and Middle Jura including the canton of Fribourg. It is assumed that at current rates of gas consumption, these deposits could meet Switzerland's demand for 15 to 30 years. Due to the depletion of conventional energy resources and mainly as a result of advances in drilling technology, the production of shale gas reserves appears to be economically attractive for Switzerland as well. In particular, the awarding of concessions for the extraction of shale gas north of Lake Constance (on German territory) has prompted debates in Switzerland.

In March 2013, the Centre for Technology Assessment, the Swiss Federal Office of Energy, the Commission for Technology and Innovation, and the Swiss Academy of Engineering Sciences introduced a study entitled 'Energy from the earth's interior: Deep geothermal energy as the energy source of the future?'. The project, which is led by the renowned Paul Scherrer Institute, aims to address the impact of shale gas extraction. A member of the Swiss parliament addressed the issue in a motion in December 2012. In its response, the Federal Council emphasised that Switzerland's interests are represented by the Swiss delegation to the International Commission for the Protection of Lake Constance (IGKB). In the IGKB's opinion, extraction is incompatible with the drinking water abstraction in the affected region. However, the Federal Council would have no jurisdiction concerning drilling projects planned in Germany. In Switzerland, under Article 21.7 of the Annex to the Environmental Impact Assessment Ordinance, such an assessment for shale gas extraction would have to be conducted by the canton concerned.³³ In 2011, the cantons of Fribourg and Vaud decided that exploration and hydraulic fracturing for shale gas extraction on their territory would be suspended indefinitely.³⁴

At present, there are a number of pending questions regarding shale gas and its extraction in Switzerland and the sector is open to further development. The cantons of Berne and Neuchâtel are discussing or have already passed a provisional prohibition of the exploration and hydraulic fracturing for shale gas extraction.³⁵ At the same time, the Swiss firm SEAG Ltd in cooperation with the Texan firm eCorp International LLC is preparing test bores for shale gas in parts of the Canton Berne and Vaud. The British company Celtique Energy Ltd is also analysing possible extraction of shale gas in Berne.³⁶

Auslandsinvestitionen/Fuer_die_Schweiz_relevante_internationale_Investitionsregeln.html.

33 Environmental Impact Assessment Ordinance of 19 October 1988 (SR 814.011).

34 www.eawag.ch/fileadmin/Domain1/Beratung/Beratung_Wissenstransfer/Publ_Praxis/Factsheets/fs_fracking_apr2013.pdf.

35 <http://www.defacto.expert/2016/06/06/fracking-zweifelsfall-nein/>.

36 www.woz.ch/-/4460; for further information of the projects of SEAG Ltd visit: <http://seag-erdgas.ch/news/>.

IV TAX

The Swiss tax system features different taxes at federal, cantonal and communal level and allows for competition among cantons and municipalities to attract good taxpayers by offering a better tax climate. As a result, there are certain cantons with particularly low tax rates. Generally speaking, taxation in Switzerland is moderate when compared to European standards.

In principle, no special taxation is applicable to upstream oil and gas operators. Such companies are taxable on their profit and capital. The tax rate depends on the location of the company. For ordinary taxed companies the range is between 12 and 24 per cent on the profit before tax. The tax itself is tax deductible.

For companies with only limited commercial activities in Switzerland (i.e., with more than 80 per cent of the income and of the costs from non-Swiss sources), the privileged tax status of a mixed company is available. The taxable net profit of a mixed company is assessed in accordance with divisional calculation. This would lead to an effective tax rate of about 9 to 11 per cent on the profit before tax. International trading companies particularly benefit from such privileged tax status.

Cantonal and federal tax authorities issue tax rulings on the tax consequences of any transaction submitted to them prior to the consumption of the transaction as well as regarding the applicability of a privileged tax status. This leads to a very constructive attitude and stable tax environment in Switzerland.

V ENVIRONMENTAL IMPACT AND DECOMMISSIONING

In general, the legal frameworks for energy and environment are separate, however, overlaps do exist. There is both environmental protection law and spatial planning law.

Inter alia, environmental law regulates the approval process of fossil fuels and combustibles and the protection of waters in the context of electricity production, as well as measures against liquids endangering the water quality. On the domestic level, legislation concerning protection of the environment is mainly to be found on the federal level in about 10 federal acts and over 50 federal ordinances.³⁷ Climate change is largely caused by the emission of greenhouse gases. The consumption of fossil fuels as an emissions source of carbon dioxide is primarily governed in the regulation on air pollution control. The Ordinance on Air Pollution Control aims, *inter alia*, at the protection of human beings, animals, plants and the soil against harmful air pollutants or air pollutants that become a nuisance.³⁸

As mentioned above, the transport and distribution of oil and gas have an effect on the Swiss landscape: pipelines and storage facilities are just two examples. Taking environmental objectives into account, appropriate and economical use of the land and a proper settlement policy are the two main objectives of spatial planning law. Specifically, zoning concepts and the environmental impact assessments required by Swiss spatial planning law function as legal instruments for the coordination and integration of environmental and energy aspects. Based on Article 75 of the Constitution, the Confederation has competence to draw up the

37 Weber, *Energy Law in Switzerland*, 175.

38 Ordinance on Air Pollution Control of 16 December 1985 (SR 814.318.142.1).

principles for spatial planning. Although the cantons have mostly delegated their competence to municipalities, they are responsible for the actual zoning by means of spatial planning instruments.

VI FOREIGN INVESTMENT CONSIDERATIONS

i Establishment

Switzerland offers an advantageous, multilingual environment for establishing a business or even the headquarters of a group of companies. As pointed out above, Swiss corporate law is characterised by a relatively low level of regulation. There are several options when it comes to selecting the most suitable form of organisation for a business. Swiss corporate law offers a variety of legal forms, both in the form of a legal (and separately taxable) entity or in the form of a partnership. Among the companies, the limited liability company (GmbH, (LLC)) and the stock company (AG (Ltd)) are very widely used. The registration procedure for a legal entity usually takes around one week from the date of filing.

To set up a stock company, a minimum share capital of 100,000 Swiss francs is required, with at least 20 per cent (and in any case not less than 50,000 Swiss francs) paid up. At least one authorised and registered signatory must be resident in Switzerland. A stock company can issue different types of shares, including preferred shares, voting shares or shares without voting rights.

To set up a limited liability company, a minimum capital of 20,000 Swiss francs is required. At least one authorised and registered signatory has to be resident in Switzerland. Due to the smaller amount of registered capital, the limited liability company is a practical alternative to the stock company, in particular for small to medium-sized companies. In contrast to the stock company, each stockholder must be registered in the commercial register.

A Swiss branch office of a foreign company has to provide a registered Swiss business address. However, the branch office is not considered an independent Swiss entity (i.e., the foreign parent bears the legal responsibility). The foreign parent company, the branch itself as well as at least one authorised signatory (who must be a Swiss resident) needs to be entered into the commercial register.

The general accounting regulations are brief. The annual report of a stock company or a limited liability company must contain the financial statement (balance sheet and profit and loss statement), the business report and consolidated financial statements to the extent required by law. Publicly listed companies and large to medium-sized companies must have their accounts audited by an independent certified auditor. Small companies may have their accounts audited in a limited form or may choose to opt out of the obligation to audit, provided that they have no more than 10 full-time employees. The financial statements may be prepared according to internationally accepted standards such as US-GAAP or IFRS.

Switzerland is home to a number of large international trading companies, whose business consists of buying commodities and selling them again to third parties. Those commodities, such as oil and gas, never enter Switzerland but are sold worldwide. About 500 companies with approximately 10,000 employees in the industry of commodity trading operate in Switzerland. These companies are mainly located in Zug, Geneva and Lugano. The commodity trading industry has grown in recent years. It accounted for approximately

3.9 per cent of the GDP in 2014, which is more than tourism or the cross-border banking business.³⁹ Companies such as Vitol, Glencore Xstrata, Gunvor, Trafigura and Mercuria Energy Group have their domiciles in Switzerland.

ii Capital, labour and content restrictions

Switzerland does not have any restrictions on the movement of capital.

Switzerland offers an advantageous, multilingual environment. As a possible consequence of this environment, about one-fifth of Switzerland's population is of foreign origin and one-third of the workforce in Switzerland are foreign nationals. Switzerland is a world-class business location that attracts domestic as well as international companies, including oil and gas trading companies. The very same companies attract and employ highly trained, specialised manpower.

The Swiss government has been gradually adapting its policy on foreign nationals and migration to more modern standards and thus taking into account international developments. Its policy is embodied in the Foreign Nationals Act (FNA).⁴⁰ In the context of the conclusion of bilateral agreements with the EU on the free movement of persons, Switzerland introduced a dual system of recruitment for foreign labour. The Bilateral Agreement on the Free Movement of Persons, which came into force on 1 June 2002, confers upon the citizens of Switzerland and of EU Member States the right to freely choose their place of employment and residence within the national territories of the contracting state parties. Under this system, people from EU and EFTA Member States are granted priority admission to the Swiss labour market over people from other countries. Pursuant to the provisions of the Agreement on the Free Movement of Persons, Switzerland and the EU have agreed to implement the complete freedom of movement of persons by 2014. Based on the acceptance of the initiative 'Against mass immigration' by a majority of the electorate, the future development of the complete freedom of movement of persons is unsure.⁴¹

Workers from third countries – nationals from neither EU or EFTA Member States nor Switzerland – must have a work permit. Regulations on how to obtain such a permit are considerably stricter than for most European countries and are often directly tied to employment. To obtain a work permit, employers have to prove that a person cannot be recruited from the labour market of Switzerland or another EU or EFTA Member State. Pursuant to legal practice based on Article 21 FNA, management, experts and other qualified employees will be admitted. 'Qualified employee' means, first and foremost, someone with a degree from a university or institution of higher education as well as several years of professional experience. Depending on the profession or field of specialisation, other people with special training and several years of professional work experience may also be admitted. However, an applicant is also required to fulfil certain other criteria that would facilitate his or her long-term professional and social integration, such as professional and social adaptability, knowledge of a Swiss language (or languages) and age.⁴²

39 <https://www.sif.admin.ch/sif/de/home/themen/rohstoffhandel-und-finanzierung.html>.

40 Federal Act on Foreign Nationals of 16 December 2005 (SR 142.20).

41 www.ejpd.admin.ch/ejpd/de/home/aktuell/abstimmungen/2014-02-09.html.

42 www.bfm.admin.ch/content/bfm/en/home/themen/fza_schweiz-eu-efta/eu-efta_buerger_schweiz.html; www.bfm.admin.ch/content/bfm/en/home/themen/arbeit/nicht-eu_efta-angehoerige/grundlagen_zur_arbeitsmarktzulassung.html.

Swiss labour law is fairly liberal. The freedom of the employer or the employee to terminate the employment agreement, subject to the applicable notice period, is a fundamental principle of Swiss labour law. With strictly limited exceptions, terminations are legally valid and binding while subject to relatively low compensation.

iii Anti-corruption

Switzerland supports various international instruments aimed at fighting corruption and is actively involved in the further development of these measures. These measures include the Convention of 1997 signed by the OECD members on combating bribery of foreign officials in international business transactions. As a direct consequence, the signatories made amendments to their legislation in a coordinated action and made the bribery of foreign public officials a punishable offence. To guarantee that the Convention is implemented and applied in all participating states, a far-reaching monitoring procedure has been set up. The Criminal Law Convention on the fight against corruption, which passed under the auspices of the Council of Europe in 1999 and was acceded to by Switzerland, goes beyond the OECD Convention since it contains the general minimum requirements for criminal law provisions to fight both private and public corruption. The UN Convention against Corruption was signed by more than 100 countries including Switzerland in December 2003. This Convention came into force in 2005. Switzerland ratified this Convention because of its universal nature and the inclusion of provisions with respect to the restitution of funds acquired through illegal and corrupt practices.

In the past decade, Switzerland has introduced the penalisation of bribery of foreign public officials and of private individuals. It further introduced the prosecution of companies (and not just individuals) for corruption in its criminal law. Not only management and staff are potentially criminally liable, but also those who otherwise act on behalf of the company. Pursuant to Article 716a of the Code of Obligations (CO) it is the board of directors' non-transferable and inalienable duty to oversee that management complies with laws, statutes, regulations and orders.⁴³ If a company has not undertaken all requisite and reasonable organisational precautions that would be required to prevent the bribery of public officials or persons in the private sector, it will be subject to criminal prosecution and a fine of up to 5 million Swiss francs.

Many internationally operating Swiss companies have already decided to introduce an anti-corruption code of conduct. Such a code has several advantages: employees are confronted with the problems of corruption and their implicit consequences; they receive guidance on how to recognise corruption in good time and how to fight it. Furthermore, the company's business partners and clients, as well as the general public, perceive the company to be reliable and trustworthy.

By adopting an anti-corruption code of conduct, a company undertakes to act with integrity. Normally, a code of conduct encompasses general principles, rules of conduct to prevent corruption from arising and instructions on how to proceed in a case.⁴⁴

43 Federal Act of 30 March 1911 on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911 (SR 220).

44 www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/Korruptionsbekämpfung.html.

VII CURRENT DEVELOPMENTS

Switzerland hosts many energy and commodity trading companies, in particular in the Geneva and Zug area, and consequently is a leading location in this sector.

For example, Switzerland is a favoured host country for new international energy project companies, such as Trans Adriatic Pipeline Ltd (which is a natural gas pipeline project in south-east Europe) and Nord Stream Ltd (a twin gas pipeline system through the Baltic Sea). It is expected that more project companies will be set up in Switzerland.

In relation to the energy strategy 2050 currently discussed in the Swiss parliament⁴⁵ gas could become increasingly important in Switzerland, since the development of new technologies, such as power-to-gas, could help to manage production peaks from renewable sources, such as wind and solar power.⁴⁶ In this regard, it is worth mentioning, that Swiss institutions and firms participate in an EU research programme regarding energy storage and power-to-gas.⁴⁷ In addition, Swisspower, an association of companies, which controls more than half of the distribution market for gas, intends to develop two power-to-gas-plants to enrich biogas in order to gain methane.⁴⁸

45 <http://www.bfe.admin.ch/energiestrategie2050/index.html?lang=en>.

46 <https://www.psi.ch/media/turning-electricity-into-gas-and-back-into-electricity>.

47 https://www.regioenergie.ch/fileadmin/regioenergie/Unternehmen/Dokumente/Medienmitteilungen/MM_Store_Go_2016.pdf.

48 http://www.swisspower.ch/wp-content/uploads/2016/04/MM-Kooperation-Swisspower-und-Viessmann_DE.pdf.

Appendix 1

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