PANORAMIC

HIGH-YIELD DEBT

Switzerland

LEXOLOGY

High-Yield Debt

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MARKET OVERVIEW

High-yield debt securities versus bank loans

Discuss the major differences between high-yield debt securities and bank loans in your jurisdiction. What are some of the critical advantages and disadvantages?

Traditionally, Swiss companies have had the choice of three principal markets for leveraged finance:

- The European high-yield bond market: bonds are issued and arranged via European investment banks and marketed to investors in Europe and the United States under an indenture typically governed by New York law.
- The international leveraged loan market: loans are arranged and syndicated by large European banks under Loan Market Association (LMA)-based documentation. The credit facility agreement is typically governed by English law.
- The Swiss domestic leveraged loan market (particularly geared towards middle-market transactions): loans are arranged and syndicated by Swiss banks under a credit facility agreement typically governed by Swiss law.

Over the years, tax considerations have been one of the key drivers in the determination of the market that Swiss companies have been able to tap. This is because, in very simple terms, a Swiss issuer is required to withhold a 35 per cent tax on the payment of interest on bonds. Swiss withholding tax renders bonds issued by a Swiss issuer unattractive to non-Swiss DCM investors.

By contrast, there is no Swiss withholding tax on the interest payable on a loan. This regime applies provided the leveraged loan is not requalified as a bond or note by the Swiss tax authorities. Under the '10/20 non-bank rules', a leveraged loan will be recharacterised as a bond or note if the loan is held by more than 10 non-banks or if the borrower has more than 20 non-bank lenders under any of its borrowings. To ensure this does not happen, the credit facility agreement will contain, among other things, restrictions on the assignability of the loan or the ability of the lenders to sell sub-participations.

Contractual restrictions on primary syndication or secondary sales have created frictions in the ability of Swiss companies to access the international loan market, including non-amortising 'term loans B' (TLBs).

One workaround is for Swiss companies to issue high-yield bonds or borrow under TLBs out of a non-Swiss finance company (a Finco) while restricting the repatriation of the net proceeds of the financing to Switzerland to ensure that no Swiss withholding tax will apply. Fincos' high-yield bonds or TLBs can be guaranteed by the Swiss parent.

In the Swiss market, Swiss companies have been able to access a thriving domestic leveraged loan market (in particular, for middle-market transactions). In broad terms, leveraged loans in the Swiss domestic market typically have features of 'term loans A' and thus are held by banks and are amortising. They offer the borrowers the ability to refinance (as either there is no 'non-call period' or the loan is 'NC1') and are mostly unrated. The documentation is governed by Swiss law and tends to be shorter than the typical LMA-based credit facility agreement.

Law stated - 22 February 2024

Regulation

Are you seeing increased regulation regarding either high-yield debt securities or bank loans in your jurisdiction?

The regulatory environment in Switzerland is fairly stable.

The key characteristics of a high-yield bond offering (as opposed to a leveraged loan) are disclosure and due diligence. Industry groups (such as the Association for Financial Markets in Europe) and investors in the high-yield market have issued guidance on disclosure.

Swiss law will not affect the usual practice for marketing high-yield bonds. The Swiss Financial Services Act is intended to align with the EU prospectus regulation. Since high-yield bonds typically have a minimum denomination making them eligible for the 'wholesale debt exemption', placement of bonds with Swiss investors will not require any prospectus to be prepared and approved by a review body in Switzerland.

In addition, high-yield bonds tend to be listed outside Switzerland with the effect that no listing prospectus will be required in Switzerland. In this respect, it is helpful to note that Swiss issuers without securities admitted to trading in the EU will tend to prefer The International Stock Exchange (TISE) based in the Channel Islands. This is because admission to trading on the TISE does not subject the Swiss issuer to the EU Market Abuse Regulation (MAR), which may be cumbersome. This consideration is less relevant for Swiss Stock Exchange (SIX)-listed companies since SIX has refreshed its rulebook to mirror several MAR requirements. If high-yield bonds are listed in Switzerland, the guarantees will need to meet the requirements of SER Circular No. 4 (CIR4).

For bank loans in the Swiss domestic market, it is helpful to note that the European Central Bank (ECB) Leveraged Lending Guidance does not apply to credit institutions that do not participate in the Single Supervisory Mechanism Regulation. In other words, they do not apply to Swiss financial institutions as such.

Bank loans carry floating rates (unlike high-yield bonds, which are essentially fixed-rate securities, although floating rate notes represent a non-negligible part of the market). The Swiss Financial Market Supervisory Authority (FINMA) issued Guidance 10/2020 in which it provided a roadmap to supervised financial institutions for managing the London Interbank Offered Rate (LIBOR) transition. The Swiss Reference Rate (SARON) is the risk-free rate for Swiss franc-denominated debt recommended by the National Working Group on Swiss Franc References Rates. Following its initial Guidance 10/2020, FINMA published Guidance 03/2021, which provided an update on the transition process and set out best practices.

It should also be noted that there are strict limitations on the ability to implement a debt pushdown for tax purposes (ie, to create a tax shield) as there is no tax consolidation under Swiss tax law, and a merger of an acquisition vehicle with the target, for example, will not enable the surviving entity to reduce its taxable income with interest payable on the acquisition debt. There are a few limited workarounds, including equity-to-debt swaps and asset push-ups.

Law stated - 22 February 2024

Current market activity

Describe the current market activity and trends in your jurisdiction relating to high-yield debt securities financings.

Issuances of high-yield bonds by Swiss companies (or their foreign Finco) increased again in 2024, after a slowdown in recent years. That said, they remain largely dependent on the market conditions in the United States, United Kingdom and other jurisdictions in Europe.

For a long period of time, benign conditions, in particular an environment of negative interest that endured in Switzerland well into 2022, translated into favourable conditions for borrowers and sponsors, although the Swiss market tends to remain disciplined on terms, including covenants. Due to the recent rise in interest rates, the issuance of high-yield bonds has become less attractive for certain borrowers; at the same time, most borrowers prefer fixed-rate debt products in a high-interest-rate environment, and so investor appetite in this regard has been revived.

One key accelerating trend is the strong development of unitranche direct lending. Attractive features of this form of financing, including speed of execution, confidentiality, simpler deal structure and greater certainty, have combined with the absence of Swiss withholding tax and the emergence of a large population of European funds serving Switzerland to fuel the rise of this attractive financing alternative for Swiss companies and financial sponsors.

Law stated - 22 February 2024

Main participants

Identify the main participants in a high-yield debt financing in your jurisdiction and outline their roles and fees.

Swiss companies arrange the issuance of high-yield bonds with European-based investment banks (including UK affiliates of Swiss banks) and tap the international leveraged loan markets via large international banks.

In the domestic market, the now only large universal bank plays a considerable role, alongside Swiss independent banks and cantonal banks.

When financing an acquisition, Swiss banks typically charge commitment and underwriting fees.

Law stated - 22 February 2024

New trends

Please describe any new trends as they relate to the covenant package, structure, regulatory review or other aspects of high-yield debt securities.

What we see is that key trends are driven out of liability management exercises and day 1 capacity considerations. While issuers can face pushback when they market their bonds and may need to retreat on some of the terms they are pushing for, which has happened a number of times in 2024, issuers are seeking, and have successfully managed, to build capacity at above opening leverage levels across debt covenants, restricted payments, investments and even portability in their covenant package. In addition, leveraged-based investment baskets have been increasingly loosened to augment value leakage capacity. On the other hand, J.Crew blockers are top in the bond investors' mind and the actual drafting of the blocker is typically heavily scrutinised in the marketing phase of the bonds.

Law stated - 22 February 2024

DOCUMENTATION TERMS

Issuance

How are high-yield debt securities issued in your jurisdiction? Are there particular precedents or models that companies and investors tend to review prior to issuing the securities?

High-yield bonds issued by Swiss companies are generally governed by New York law indentures (as is the case of the broader high-yield bond market). In principle, high-yield bonds issued by Swiss companies follow comparable transactions in the European high-yield bond markets. For tax reasons, the bonds are frequently issued by a non-Swiss finance company of the group, while part of the collateral is granted by Swiss group companies.

Law stated - 22 February 2024

Maturity and call structure

What is the typical maturity and call structure of a high-yield debt security? Are high-yield securities frequently issued with original issue discount? Describe any yield protection provisions typically included in the high-yield debt securities documentation.

Maturity and call structure of high-yield bonds issued by Swiss companies (or their non-Swiss finance companies) reflect the usual terms of the European high-yield bond market.

High-yield bonds generally have terms between five and 10 years with non-call periods of between two and five years. The most common maturity is seven years, with a non-call period of three years (7nc3). In the case of floating-rate bonds, non-call periods are shorter (floating-rate bonds generally have a one- or two-year non-call period).

Even during the non-call period, the issuer can generally redeem the bonds at a redemption price equal to 100 per cent of the principal plus a make-whole premium. After the expiration of the non-call period, high-yield bonds are typically redeemable at a redemption price equal to par plus a fixed premium that ratchets down each year until the issuer is able to redeem at par. Many seven- and eight-year fixed-rate bonds now feature a first call premium of 50 per cent of the coupon. In principle, floating-rate bonds have terms more favourable to the issuer for redemption, with an optional redemption starting at 103 or 102 per cent of the principal amount of the bonds and decreasing over time.

High-yield bonds have generally been issued at par, although there are instances where original issue discounts have been granted.

Law stated - 22 February 2024

Offerings

How are high-yield debt securities offerings launched, priced and closed? How are coupons determined? Do you typically see fixed or floating rates?

The launch, pricing, and closing of a high-yield bond offering follows the usual process in the European high-yield bond market.

Launch and pricing can be structured as 'drive-by' for frequent issuers.

Pricing of the high-yield bonds (eg, coupons, issue price) is determined by the issuer and the 'initial purchasers' (ie, the banks offering settlement underwriting) based on the books built following the launch of the offering.

High-yield bonds issued by Swiss groups generally bear fixed-rate interest, although there are instances of floating-rate bonds.

Law stated - 22 February 2024

Covenants

Describe the main covenants restricting the operation of the debtor's business in a typical high-yield debt securities transaction. Have you been seeing a convergence of covenants between the high-yield and bank markets?

The covenant package of bonds issued by a Swiss company (or its non-Swiss finance company) will typically follow the package of comparable transactions in the European high-yield bond markets.

Among other things, the bonds will have incurrence-based covenants on:

- incurring additional indebtedness and issuing preferred stock;
- making restricted payments that would result in value leakage for the bondholders (eg, dividends, repurchases of equity or subordinated debt);
- entering into certain transactions with affiliates;
- issuing guarantees;
- designating unrestricted subsidiaries;
- issuing or selling assets or share capital of certain subsidiaries;
- granting or incurring certain liens;
- entering into transactions that would result in a change of control of the issuer;
- entering into mergers and consolidations;
- selling substantially all of the assets; and

- agreeing consensual restrictions on the payment of dividends and transfer of assets within the group.

Secured bonds have additional covenants relating to security interests.

There will also be a reporting covenant aimed at ensuring that bondholders will receive the information they need to trade the bonds and monitor the performance of the issuer.

In general terms, high-yield bond covenants usually impose fewer restrictions than bank loans, although there has been a convergence between high-yield bonds and 'term loans B' (TLBs) (which have become 'covenant light', ie, without financial covenants) as they essentially target a similar population of debt investors.

Law stated - 22 February 2024

Covenants
Are you seeing any tightening of covenants or are you seeing investor protections being eroded? Are terms of covenants often changed between the launch and pricing of an offering?

In the recent past, generally attractive financing terms have been available to issuers and private equity sponsors. The macro picture has become more mixed since mid-2022 amid interest rate hikes. 'Hung financings' and the adverse impact of interest rate increases on holding values may lead the banks to retreat from certain financings.

Law stated - 22 February 2024

Covenants
Are there particular covenants that are looser or tighter, based on a particular industry sector?

While the industry may play a role, especially if it is expanding or has been contracting, the covenant package will be heavily dependent on the general credit of the issuer, its cash flow generation capacity, its strategy and business model and its market shares.

Law stated - 22 February 2024

Change of control
Do changes of control, asset sales or similar typically trigger any prepayment requirements?

The high-yield bonds of Swiss companies will follow the customary terms in the high-yield European market.

A change of control typically triggers the right of each bondholder to exercise a put at a price of 101 per cent of the principal amount of the bonds, plus accrued interest. This change of control put is given effect via a tender offer.

Asset sale covenants generally contain prepayment obligations according to which proceeds above a certain threshold that are not used for specified purposes (such as reinvestment in the business) must be used to make a repurchase offer to bondholders.

Law stated - 22 February 2024

Change of control

Do you see the inclusion of 'double trigger' change of control provisions tied to a ratings downgrade?

Double trigger change of control provisions are generally not included in high-yield bond documentation issued by Swiss groups.

Law stated - 22 February 2024

Crossover covenants

Is there the concept of a 'crossover' covenant package in your jurisdiction for issuers who are on the verge of being investment grade? And if so, what are some of the key covenant differences?

While we have not yet seen this concept being used in the context of high-yield bonds issued by Swiss companies, cross-over covenant packages depend essentially on the credit rating of the issuer and could be used in the future.

Law stated - 22 February 2024

REGULATION

Disclosure requirements

Describe the disclosure requirements applicable to high-yield debt securities financings. Is there a particular regulatory body that reviews or approves such disclosure requirements?

Disclosure for a high-yield bond offering tends to be driven by international (in particular US) law and practice. Swiss law does not affect the usual practice for marketing high-yield bonds. The Swiss Financial Services Act is intended to align with the EU prospectus regulation and recognises the 'wholesale debt exemption' (for bonds with a denomination of at least 100,000 Swiss francs).

In addition, high-yield bonds tend to be listed outside Switzerland, with the effect that no listing prospectus will be required in Switzerland.

Law stated - 22 February 2024

Use of proceeds

Are there any limitations on the use of proceeds from an issuance of high-yield securities by an issuer?

The use of proceeds section will usually contemplate restrictions on repatriation: proceeds will be used outside Switzerland except to the extent that use in Switzerland is permitted under the Swiss taxation laws without the coupon becoming subject to withholding or deduction for Swiss withholding tax as a consequence of such use of proceeds in Switzerland.

Law stated - 22 February 2024

Restrictions on investment
On what grounds, if any, could an investor be precluded from investing in high-yield securities?

Many European-based investors can only invest in listed securities. Accordingly, listing is sought to accommodate these investors even if the offering of high-yield bonds is made on a private placement basis and secondary market is essentially 'over-the-counter'.

The distribution of high-yield bonds will typically target large institutional investors, as supported by the high minimum denomination and selling restrictions.

Certain classes of potential investors, such as Swiss insurance companies and pension funds, may be subject to restrictions in the composition of their assets that can be used to cover their contingent commitments and may drive their investment decisions.

Law stated - 22 February 2024

Closing mechanics
Are there any particular closing mechanics in your jurisdiction that an issuer of high-yield debt securities should be aware of?

The closing of a high-yield bond offering by a Swiss group typically occurs in the normal way.

Bonds or notes are issued in the form of global certificates deposited with a common depositary on behalf of Euroclear and Clearstream.

In acquisition finance, the structural security package (eg, pledge over shares and any intercompany loans, or pledge over claims under the SPA) is put in place at closing, while the 'hard' security package (at the target level) will be implemented post-closing (eg, assignment of trade accounts receivable, control agreement over bank accounts, intellectual property and – subject to tax considerations – real estate).

Law stated - 22 February 2024

GUARANTEES AND SECURITY

Guarantees

Outline how guarantees among companies in a group typically operate in a high-yield deal in your jurisdiction. Are there limitations on guarantees?

The issuance of a guarantee or the grant of a security interest by a Swiss subsidiary for debts of its parent or sister company ('upstream or cross-stream guarantee or security') may in certain circumstances not be enforceable and, in the acquisition context, poses what is loosely referred to as 'financial assistance' issues under Swiss law.

The enforceability of an upstream or cross-stream guarantee or security must be assessed based on (1) the Swiss subsidiary's corporate purpose as set forth in its articles of incorporation and (2) the benefits that the Swiss subsidiary receives for issuing the guarantee or granting the security interest.

In practice, it is often not feasible to conclude that the Swiss subsidiary receives adequate consideration for issuing a guarantee or granting a security interest (under the arm's-length principle). Accordingly, the following steps are undertaken to validate the upstream credit enhancement as if the Swiss subsidiary had agreed to make a distribution to its parent or sister company:

- the articles of association of the Swiss subsidiary are amended to ensure that upstream and cross-stream guarantees and securities are expressly included in the corporate purpose of the company;
- the guarantee or security agreement contains limitation language to the effect that it is limited to the freely disposable equity of the Swiss subsidiary; and
- the issuance of the guarantee or the grant of the security interests is specifically approved by the shareholders' meeting (in addition to the board of directors).

The relevant point of time to determine the quantum of freely disposable equity (and so the scope of the guarantee or security interest) is when the guarantee or security interest is enforced. That determination must be made on the basis of an audited annual or interim balance sheet of the Swiss subsidiary. If the guarantee or security interest exceeds such amount, the guarantee or security would, in the absence of the limitation language referred to above, be voidable to the extent of such excess.

For the avoidance of doubt, depending on the financial circumstances of the Swiss subsidiary, the issuance of a guarantee or the grant of a security interest by a Swiss subsidiary may also qualify as a voidable transaction under the Swiss Debt Enforcement and Bankruptcy Act (subject to claw-back actions) even if it is approved by the shareholders' meeting and limited to its freely disposable equity.

Law stated - 22 February 2024

Collateral package

What is the typical collateral package for high-yield debt securities in your jurisdiction?

It is not unusual for Swiss companies to issue unsecured high-yield bonds in the international market. In the case of senior secured notes, the security package typically includes a pledge over the shares of group companies and intercompany loans (eg, downstream shareholder loans).

Depending on the circumstances (eg, where the issuer is further down the credit spectrum), the security package can also include one or more of the following:

- a pledge over cash or securities held in bank or securities accounts opened with Swiss banks;
- a pledge over material intellectual property rights; and
- the assignment for security purposes of specified receivables (eg, intra-group receivables, trade receivables and receivables resulting from insurance policies).

Law stated - 22 February 2024

Limitations

Are there any limitations on security that can be granted to secure high-yield securities in your jurisdiction? Are there any limitations on types of assets that can be pledged as collateral? Are there any limitations on which entities can provide security?

In addition to limitations inherent in upstream or cross-stream security interests (or financial assistance considerations), one of the main limitations on the scope of the security package lies with the perfection of a pledge over movable assets (or chattel), which under Swiss law requires the transfer of physical possession of the collateral from the security provider to the secured parties or the security agent (under a 'dispossession requirement').

Possession can be transferred by handing over the collateral itself or the means to dispose of the collateral. In particular, Swiss law does not recognise the concept of floating charge. It is also not possible to perfect a security interest over movable assets by way of registration (with the exception of retention of title). Dispossession requirements would fundamentally disrupt the ability of the Swiss company to conduct its day-to-day activity. Therefore, movable assets located in Switzerland are typically not included in the security package.

In practice, secured parties sometimes require an undertaking from the issuer to pledge specified assets upon the occurrence of predefined triggering events. However, this undertaking is a purely contractual commitment and does not create a security interest (it has no in rem effect).

Law stated - 22 February 2024

Collateral structure

Describe the typical collateral structure in your jurisdiction. For example, is it common to see crossing lien deals between high-yield debt securities and bank agreements?

There are two different collateral structures in Switzerland.

A pledge is deemed to be an accessory security interest to the secured liabilities. This means that (1) the secured parties (ie, the holders of the pledge) must be the creditors under the secured liabilities and (2) the pledge automatically terminates if the secured liabilities are discharged or otherwise cease to exist. As a result, the security provider cannot validly pledge the collateral to a security trustee for the benefit of the creditors. To resolve this issue, the security trustee can serve as 'direct representative' acting in the name of, and on behalf of, the creditors.

New York law-governed indentures often adopt an alternative model: the 'parallel debt structure'. In that construct, the security trustee is deemed to hold a parallel and mirroring claim against the borrower. That parallel claim itself is secured by the pledge. Accordingly, the security agent can enforce independently all obligations under the documentation. The validity, binding effect and enforceability of the structure of the parallel debt have not yet been tested in Swiss courts.

Where assets form part of an assignment or transfer for security purposes (non-accessory security interests), the security agent normally receives and holds the respective assets as a fiduciary in its own name but on behalf of, and for account of, the secured parties. As a consequence, the secured parties have, with respect to their pro rata entitlement in the enforcement proceeds of the security, a contractual claim towards the security agent.

It is possible for the same lien to secure different claims. Often, however, where senior secured notes are issued, they only share collateral with a super senior revolving credit facility.

Law stated - 22 February 2024

Legal expenses
Who typically bears the costs of legal expenses related to security interests?

Legal expenses related to security interests (including preparation of security agreement and perfection) are typically borne by the issuer (potentially subject to a cap).

Law stated - 22 February 2024

Security interests
How are security interests recorded? Is there a public register?

Security interests in real estate properties, ships or aircraft must be recorded in the relevant public registers to be perfected.

There is otherwise no requirement to record security interests in public registers for the purposes of perfecting them in Switzerland.

In practice, in respect of certain assets, registration in public registers is nevertheless recommended to protect the secured parties against a good faith third-party acquiror and facilitate potential enforcement of the security interest. For example, while registration is not required to perfect a security interest over intellectual property rights (eg, patents, designs and trademarks) in Switzerland, it is very common in practice.

There is no public register available for the assignment of receivables.

A pledge over shares does not need to be registered in the share register of the Swiss company (which is private) for perfection purposes. Still, it is common practice for publicity and to enhance the protection of the pledgee.

Law stated - 22 February 2024

Security interests
How are security interests typically enforced in the high-yield context?

Foreclosure occurs either by way of private enforcement or by way of official enforcement proceedings pursuant to the Swiss Federal Debt Enforcement and Bankruptcy Act (DEBA).

It is usual for the secured parties or the security agent to be able to freely choose the foreclosure path. In private enforcement, which is typically the preferred option for timing and efficiency reasons, secured parties are normally duty-bound to safeguard the interests of the security provider and to seek to obtain the best available price in the circumstances for the collateral (either in a private sale or public auction). The parties can agree that the secured parties are entitled to appropriate the collateral on the basis of a market value that can be determined objectively. The secured parties will be required to return any excess proceeds to the security provider under Swiss mandatory provisions.

Once bankruptcy proceedings against a security provider have been initiated, foreclosure on assets that are part of the bankruptcy estate is no longer possible and the enforcement is required to be made by the bankruptcy administrator in accordance with the DEBA.

Law stated - 22 February 2024

DEBT SENIORITY AND INTERCREDITOR ARRANGEMENTS

Ranking of high-yield debt
How does high-yield debt rank in relation to other creditor interests?

In high-yield bond offerings of Swiss issuers, high-yield bonds tend to rank junior to bank loans (eg, a super senior revolving facility).

Law stated - 22 February 2024

Regulation of voting and control
Describe how intercreditor arrangements entered into by companies in your jurisdiction typically regulate voting and control between holders of high-yield debt securities and bank lenders?

It is customary to have intercreditor agreements that contain provisions on voting, standstill and control rights between holders of high-yield bonds and bank lenders.

These agreements tend to follow the Loan Market Association template, which is governed by English law.

The content of the voting and control provisions varies depending on the characteristics of the transaction.

Law stated - 22 February 2024

TAX CONSIDERATIONS

Offsetting of interest payments
May issuers set off interest payments on their securities against their tax liability? Are there any special considerations for the high-yield market?

Interest payments on high-yield bonds generally are tax deductible. There are no special considerations for the high-yield market.

Nevertheless, high-yield bonds are very rarely issued by Swiss companies given that bond interest payments are subject to a 35 per cent withholding tax.

In practice, bonds are often issued by a foreign subsidiary with the result that proceeds are on-lent to the Swiss entity to avoid the 35 per cent withholding tax. In such a configuration, intra-group interest payments by the Swiss entity exceeding safe harbour interest rates may be non-tax deductible if they are considered 'non-arm's length'.

Law stated - 22 February 2024

Tax rulings
Is it common for issuers to obtain a tax ruling from the competent authority in your jurisdiction in connection with the issuance of high-yield bonds?

High-yield bonds are very rarely issued by Swiss companies given that bond interest payments are subject to a 35 per cent withholding tax.

In most cases, bonds will be issued by a foreign group company and proceeds may be on-lent to the Swiss entity acting as guarantor with respect to the foreign bond. In such a configuration, the Federal Tax Authority may recharacterise the bond as a domestic bond based on an anti-avoidance approach (the no flow-back rule).

However, such practice is strictly limited and is not applicable, meaning that the withholding tax does not apply, if the amount of proceeds flowing back to Switzerland does not exceed one or both of the following:

- the amount of the combined equity of all of the Swiss entity's foreign (directly and indirectly held) subsidiaries ('equity test'); and
- the total amount of loans granted by the Swiss entities of a group to the group's foreign entities ('net amount principle').

In practice, a tax ruling is usually filed with the Federal Tax Authority in an effort to ensure that the foreign bond will not be recharacterised as a domestic issuance. Tax rulings can also be obtained in relation to the intra-group on-lending to ensure the arm's-length nature of the transaction and compliance with thin capitalisation rules.

Law stated - 22 February 2024

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

In September 2022, the Swiss population voted against the abolition of the Swiss withholding tax on bond interest payments that would have come into effect on 1 January 2023. This is a great loss for the Swiss economy as this abolition would have had a positive impact on the market.

In March 2023, The Swiss Financial Market Supervisory Authority issued a decision ordering the complete write-down of the nominal value of AT1 capital instruments issued by Credit Suisse. This has prompted bondholders to revisit the terms and conditions of AT1 bonds issued by Swiss banks and the risks associated with a potential write-down of such bonds.

The 100 million Swiss franc high-yield bond issuance by Salt, a Swiss telecommunications provider, in the summer of 2023 is noteworthy because the bonds have been listed on the Swiss Stock Exchange (SIX) (usually they are listed on the International Stock Exchange based in the Channel Islands). The €1 billion (equivalent) high-yield bond issuance by ams OSRAM AG, a developer and manufacturer of intelligent sensors and emitters headquartered in Austria and Germany but listed on SIX, is another noteworthy event.

Law stated - 22 February 2024