

# SWITZERLAND



With regulatory clamour currently sweeping the EU, *HFMWeek* takes a look at how Switzerland, a well-established draw for hedge funds, on account of its flexible regulation and favourable tax regime, is adapting to the new landscape, and what the region has to offer as a domicile for asset managers

**HFMWeek: What sets Switzerland apart from other jurisdictions as a domicile for hedge funds?**

**Dominique Lecocq (DL):** The straightforward regulatory environment, the favourable tax treatment that can be negotiated with the tax administration, and the fact that Swiss banking institutions have been active in the alternative asset management industry for decades and understand the business.

Switzerland is also one of the only jurisdictions that does not request a specific regulatory licence to manage offshore (non-Swiss) funds – managers are only subject to Anti-Money Laundering regulatory oversight. A licence from the Swiss Financial Market Supervisory Authority (Finma) only is required for the management of Swiss-based investment funds.

The tax environment for investment funds in Switzerland is also favourable, as the Geneva tax authorities have made efforts to encourage funds and fund managers to come to Geneva. The form of the tax ruling is not yet final, but the authorities and the industry are working closely to-

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gether to find an attractive solution.

Finally, there is a wealth of potential investors in Switzerland, including banks, external asset managers, pension funds or other institutional investors.

**Mark Wenda (MW):** Switzerland is too dependent on the EU to be able to really take advantage of its position as a fund domicile; cherry-picking EU regulations would not really work because of possible retaliation.

If Switzerland is to develop as a hedge fund domicile, it would be through the initiatives of the numerous hedge fund manager communities established locally, rather than for regulatory reasons.



**MARC WENDA**

is key account manager for alternative investments at European Fund Administration (EFA) Luxembourg. He joined EFA in 2002 after having worked ten years in the financial markets in Europe and Asia with Banque Indosuez. He is currently looking after a number of European alternative investment clients.



**DOMINIQUE LECOQ**

is a partner with the law firm of lecocqassociate in Geneva. He specialises in regulatory banking and finance, including investment funds, banking law and structured finance.

Luxembourg and Dublin have taken a significant lead in terms of flexible regulation, pragmatic financial authorities and professional experience. Switzerland is probably not in a political position to enter a regulatory ‘race to the bottom’ with the EU in general and Luxembourg and Dublin in particular to replace Cayman as the offshore domicile of choice for hedge funds.

**HFMWeek: What advantages does Switzerland’s position as a non-EU jurisdiction in the centre of Europe bring?**

**MW:** Quality of life, advantageous tax regimes, political stability, quality of staff and accessibility are certainly among the major advantages of Switzerland.

However, being a non-EU jurisdiction is a bit of a double-edged sword in our view; being very dependent on the EU economically, Switzerland is, however, not able to directly influence decisions and participate in EU debates.

**DL:** Being in the centre of Europe, Switzerland is in close proximity to many European countries but does not have the higher tax burdens and restrictive regulatory environments present in some EU member countries. The authorities in Switzerland are also very accommodating to companies wishing to set up their operations here. Finally, the legal environment is stable and it usually takes many years to change the law.

**HFMWeek: How has Switzerland dealt with the challenges brought about by the financial crisis?**

**MW:** Switzerland’s handling of the financial crisis, as well as its position, are both remarkable: despite the risks for the country due to an over-sized financial sector and two ‘global’ Swiss banks (UBS and Credit Suisse), the Swiss managed to ‘soft land’ the country.

The Swiss Central Bank acted swiftly on the monetary side as soon as they noticed the liquidity squeeze in the inter-bank money market. It brought the situation back to normal in a matter of weeks. Moreover, Switzerland’s budgetary surplus enabled it to tailor a rapid solution for UBS’s toxic assets, stabilising the market through this bailout.



**DL:** Like the central banks of many Western European nations and the US, the Swiss National Bank made efforts to ensure liquidity of Swiss commercial banks after they sustained major losses due to sub-prime investments. These efforts along with a relative stabilisation of the financial markets in the recent months seem to have restored investor confidence, as we are seeing a decline in capital outflows with respect to investment funds.

**HFMWeek: What effect do you think the proposed EC AIFM Directive regulations will have on Switzerland as a fund domicile?**

**DL:** Given that the Swiss regulatory authorities view licensing for hedge fund managers as a positive thing, I do not think the Directive will have a negative impact on Switzerland as a fund domicile. However, I am not able to comment on the effects on Switzerland until the final draft EU AIFM Directive has been published, given that the current draft has been the subject of intense lobbying efforts to lessen its impact on the European hedge fund market.

**MW:** It is difficult to assess the impact of the AIFM Directive on Switzerland, as it is currently for the EU. This Directive project is currently being discussed and re-drafted.

If the key questions, which can be summarised in two points – third country funds and the role of the depositary – are not answered properly, it may become damaging for EU-based financial products.

That said, it would be politically difficult for Switzerland to directly benefit from this: on the one hand, Switzerland would be considered a third country for fund distribution in the EU; on the other hand, it would start a regulatory ‘race to the bottom’ with the EU and its major centres, Luxembourg and Dublin, if it solves the depositary question, for example, with a loose regulation.

**HFMWeek: To what extent do you think there has been a ‘mass exodus’ of hedge funds into Switzerland in recent months?**

**DL:** There has been an exodus, but not necessarily a ‘mass exodus’. In the past months we have seen a number of UK-based hedge fund managers relocating all or part of their operations to the cantons of Geneva, Zurich and Zug. These hedge fund managers usually have reviewed and

analysed many jurisdictions before selecting Switzerland, with Monaco and Malta among popular alternative choices. It all depends what the managers are focusing on. If the move is for taxation purposes only, Monaco is the place to be. But, given the higher cost of living and manpower in Monaco, Switzerland offers a good balance of many factors: business, industry, tax, regulatory environment, living standards and its central geographic location in the heart of Europe.

**MW:** We have not come across a single re-domiciliation project into Switzerland so far. For our part we cannot speak of a ‘mass exodus’. We have seen some re-domiciliation interest from offshore centres into EU onshore structures, but not a lot. Some of these, by the way, pre-date the AIFM Directive project.

At the moment, there seems to be more relocation talk for hedge fund managers into Switzerland, for tax reasons – but this is not directly related to the funds’ domicile.

**HFMWeek: What impact do you think Switzerland’s removal from the OECD ‘grey list’ will have on the region?**

**MW:** It helps release political pressure and facilitates financial business flows with the OECD. However, this is more a prerequisite for maintaining Switzerland’s position as a financial centre than a condition for business growth.

**DL:** Surprisingly enough, the ‘grey list’ was very political. Not all countries have been treated equally and fairly. Some jurisdictions with a more favourable tax environment than Switzerland, Luxembourg or Singapore were not included on the list. Due to the force in place (EU and USA), the bargaining power of Switzerland and the other countries on the list was limited. It is difficult to assess whether Switzerland made good choices, as we cannot yet see the full consequences. Although Switzerland has been removed from the OECD grey list, the matter is not yet entirely over as the new double tax treaties entered into by the Swiss Federal Council will be subject to a referendum. Swiss citizens see confidentiality in business transactions and private life as an important pillar of Swiss society. In respect of the new double tax treaties, the Swiss authorities have stressed that in formulating their requests, countries must demonstrate the foreseeable relevance of the requested information. Therefore, no unlimited requests for information would be permitted.

**HFMWeek: Looking forward, what opportunities do you think the future holds for Switzerland?**

**MW:** Switzerland is obviously a great location to do business in, and there is still significant growth potential, especially in the asset management area. Being close to investors’ money, in a stable environment with trained staff available from neighbouring countries and an attractive tax regime for asset managers definitely speaks for it.

We believe it would be counterproductive for Switzerland to start a regulatory race with the EU, and therefore expect Switzerland to bring its legislation in line with the EU once the key questions are clarified.

**DL:** As the national treasuries of many countries are planning to increase taxes to shore up their tax bases, Switzerland may become increasingly attractive to businesses, particularly to the finance industry and high-net-worth individuals. While Switzerland has been scrutinised for banking secrecy by many jurisdictions lately, its economy runs well. We have a significant number of clients interested in developing new products and launching new funds here. ■