Bern, Switzerland

Return to Order

The Swiss market has fought off a rare bout of uncertainty in 2015. Now business has bounced back in 2016 and firms with local capability are riding high.

By Steve Hall

The general consensus is that 2015 was a tough year for many European countries and Switzerland, despite its ability to rely on consistent performance and predictability in key sectors, was, for once, a victim of the disruption. But for anyone questioning the fundamental strength of the market, the transition from the turbulence of the 'unpegging' and rapid revaluation of the Swiss franc in early 2015 to the impressive first half of 2016 shows just why investors put their trust in Swiss business.

Partners in Swiss law firms were quick to warn last year against over-estimating the effects of a slow down in investment and indeed, they are quick today to point out that the appeal of Swiss industry and key sectors therein are undiminished. Philippe Weber, partner with Niederer Kraft & Frey argues that there is even more potential in this market despite the record in 2015: "It has helped Swiss politics, businesses and the wider public to refocus on what are Switzerland's key strengths, such as business friendly and stable regulation, international mindset, innovation and devotion to hard work." This is evidenced by the outcome of recent public votes on new laws and elections where business friendly parties won as well as the push for a more pragmatic approach to dealing with the European Union. Likewise, legislative proposals have been cut down and revisited, increasingly suggesting a willingness to bring some calm to the commercial landscape. "Overall we are more optimistic than perhaps one or two years ago," affirms Weber.

Despite the fact that inbound M&A activity was comparatively low in 2015 and the first quarter of 2016 due to the persistently strong Swiss franc, leading firms report a very healthy number of instructions during the last twelve months.

"One trend we observe is that Chinese buyers are becoming increasingly active in the Swiss market, although there does not seem to be an overriding strategic rationale underlying this investment activity," observes Lenz & Staehelin partner Tino Gaberthüel. For example, in February 2016, government-owned China National Chemical Corp. (ChemChina) announced its all-cash public tender offer for Syngenta, the Swiss seeds and pesticide company, for a record breaking $43 billion. "We expect this trend of inbound investments by Chinese buyers to continue. Sectors of particular interest may include (industrial) technology, financial institutions, consumer markets, real estate and tourism," says Gaberthüel.

Indeed, it's little surprise to see spiralling interest from foreign investors, given both the comparatively favorable environment in the Alpine country and the shifting drivers that are helping commercial activity reach new peaks. Thomas Legler, partner in Pestalozzi's litigation and arbitration group notes two trends in particular: "Switzerland's economy is doing astonishingly well in view of the rather difficult parameters in Europe [...] The concentration/merger process of banks will probably continue; we have to expect that the number of financial institutes (and potential clients) in Switzerland will decrease in the future."

PRIMED TO REBOUND

To the first point: there is a deeper force propelling and modernizing Swiss industry, so that while economic circumstance may have knocked some sectors off course in 2015, innovation is a key force driving investment in Swiss industry. "Though well-known for chemical, watch-making or precision machinery industry, the Swiss economy relies heavily on services," says Alexander Troller, partner at Lalive. "There is also large number of start-ups in Switzerland which are attracting foreign investment. It is also interesting to see in succession where there is no interest in the new generations in continuing the management family businesses over, that this is leading to domestic and foreign external investment into these businesses."

Digitalization is another important driver; the 'Uberization' of the economy is leading to a transformation in the way businesses operate. This presents "significant opportunities for those law firms specializing in technology law and those which are able to master this development," says Troller who points to the growing demand among clients for expertise in terms of knowledge management, a need which firms are focusing on in the belief that it will lead to profitable business models for legal services in this field.

One specific pocket is the digitalization of the financial services. Lenz & Staehelin partner Hans-Jakob Diem says that he would "expect that the Swiss industry is well placed to be at the forefront of 'Fintech' [a contraction of financial technology], given the country's deep expertise in financial services and the strong innovation power of its high-tech sector."

Indeed, the direction of the financial services sector, so often a highlight for the Swiss economy and a central source of marquee engagements for leading law firms, has been a boon for the market as a whole. Lenz & Staehelin's Diem points to reform in the banking sector as a crucial transformation driven by increased regulation, legacy issues and the trend towards transparency and tax compliance of assets. "The banking landscape is rapidly changing, but we expect Swiss banks to ultimately become stronger," he says. "Also, the strong Swiss franc has been a challenge for the Swiss industry. However, most of the businesses have quickly adapted after the removal of the CHF/EUR-peg by the Swiss National Bank in January 2015 by cutting costs and increasing operational efficiency, and have become even more competitive as a result."

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Meanwhile, M&A activity in the wealth management and banking sector has picked up during the last twelve months and the expectation among market commentators and firms is for this trend to continue, in particular as regards smaller banks and external wealth managers.

CHANGE THE RULES

In line with the general trend, regulatory and compliance instructions have significantly increased, both on the advisory and on the litigation/investigation side. Indeed, the increasing regulation in the Swiss economy, in particular in the financial services sector, is affecting a large number of organizations that were previously not regulated. Lenz & Staehelin's Diem argues that the current spate of reforms being contemplated will bolster the prosperity of the Swiss economy: "the currently ongoing corporate tax reform that will strengthen the tax competitiveness of Switzerland for corporates. However, there are also some challenges," he suggests, noting that firms are being pressed to help clients from across the spectrum to stay ahead of the potential changes.

Of particular note is the draft bill on the Corporate Tax Reform III, a piece of legislation that includes elements that particularly enhance the attractiveness of Switzerland's tax environment for companies. The topline benefits focus on the introduction of a patent box

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at the cantonal level, the general lowering of cantonal corporate income tax rates, a 'step-up' mechanism to reveal hidden reserves and the optional introduction of input incentives.

In parallel this year, the Financial Markets Infrastructure Act entered into effect and a new Financial Services Act is in the pipeline. These new statutes and other new laws have a significant impact on existing

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and on new clients, and create additional demand for cutting-edge legal advice. One example is asset managers, whose business is now under increased scrutiny, which is translating into more work for law firms in advisory services and disputes/enforcement for asset managers and their clients.

"The increased intrusion of the State in the economy as a rule generates a greater need for legal advice. As a result of increasing regulation, our firm has received a large number of instructions in the banking sector, both to provide regulatory advice and disputes and in bankruptcies," says Lalive's Troller.

On July 1, 2016, enforced anti-bribery and corruption rules will enter into effect in Switzerland. Firms expect this will bring further instructions in the area, also considering that companies and their boards will have to adopt and enforce the required internal measures to prevent corruption.

The push for greater transparency and stricter anti-corruption regulation in the US has also led to a rise in the number of mandates for firms with investigations practice, with the potential to advise banks in particular with their cooperation with the DOJ Program and corporates in self reporting processes on the rise.

For firms that focus mostly on disputes, there were several multi-billion disputes (arbitration and litigation) in the energy, banking and construction sectors that provided high-profile engagements.

IT'S WHO YOU KNOW

The proposition and perception around the Swiss economy may be shifting, but there are several central, if unspoken, tenets that govern businesses operating in Switzerland, not least among which is the importance placed on trust and maintaining reputation. "Track record is crucial because clients tend to prefer those firms who just did the most recent similar matter," confirms Niederer Kraft & Frey's Weber. "This gives tier-1 firms a natural advantage, especially in a small market like Switzerland. This also makes it difficult for international firms to build a Swiss track record that would allow them to replace Swiss firms; by contrast, one has to be realistic, in the largest cases involving many other jurisdictions, international law firms increasingly play a leading role." In these cases clients expect Swiss and international firms to collaborate seamlessly, which is prompting local firms to invest a lot of time in relationships with tier 1 international firms.

Indeed, though international firms are able to stake a claim to a large share of work based on representing international clients and providing a coherent service across different regions, local firms have been able to compete strongly based on their knowledge of the intricacies of the local market. "Well-organized fully integrated law firms with specialized multi-lingual lawyers who are used to work in teams adapted to the needs of their clients will continue to play an important role in the Swiss legal market," argues Pestalozzi's Legler. "They will easily compete with international law firms who are entering the Swiss market but who may be less familiar with what typically renders us 'Swiss made'."

Thus, the legal market has maintained consistency at a time when the commercial landscape has been characterized by reform and reinvention. Looking forward, the propensity for litigation and arbitration, as well as a strong demand for compliance-led work, brought about by changes both legislative and transactional, will undoubtedly continue to fuel the growth of this marketplace. Once unfairly considered a bastion of dour, unexciting but predictable financial activity, there's something fresh in the Alpine air in 2016 and the legal market is well-poised to make the most of the opportunity. ■