

# Switzerland: Beating the Strong Currency Trap

**On January 15th the Swiss National Bank (SNB) announced that it would no longer hold the Swiss franc at a fixed exchange rate with the EUR. Immediate reactions to the unexpected announcement made itself noticeable; the franc soared by almost 30% in value against the EUR.**

Why did the SNB suddenly drop the cap? A fixed minimum exchange rate was introduced in 2011 during a period of overvaluation of the Swiss franc and tremendously high level of uncertainty on the financial markets. This temporary measure was supposed to protect the Swiss economy from a serious harm.

The economy was able to take advantage of this stage to adjust to the new situation, with 2014 as one of the best economical years since a long time. Now the SNB decided not to interfere in the currency markets anymore. The big question now is how much the removal of the cap will hurt the Swiss economy? Was it time enough for Swiss companies to prepare for a strong currency period?

Switzerland has an export and tourism-oriented economy – more than 50% of our income is earned by exporting goods and services. There is a risk that if the Swiss currency stayed at such a high level, the export industry will not be able to recover very fast. Swiss companies already consider transferring their production bases abroad to the Euro zone countries in order to stay competitive with foreign companies, leading to vivid Swiss M&A activities abroad.

On top of everything, cross-border shopping has become more attractive than ever, harming Swiss retail operations. The SNB's decision may also increase uncertainty on the employment market due to too high salary costs. As a result, many jobs may be at stake if the Swiss franc is allowed uncontrolled appreciation.

These days, for Swiss business lawyers, there is literally no contact with clients without any discussions of the current strong currency trap. The boards of directors do meet in extraordinary meetings to evaluate the options for the companies, requiring the assistance of legal counsel. These are challenging times that are offering also many opportunities to the Swiss business community.

*Dr Thomas Bähler is a highly experienced and dedicated business lawyer, eager to find the most efficient solution for his national and international clients. He is a strong negotiator, going the extra mile to make sure that his client reaches the best possible result.*

*Kellerhals Attorneys at law, with offices in Berne, Zurich and Basel, is one of Switzerland's leading full service law firms, with the extensive knowledge and expertise of more than 90 legal professionals. It offers an extensive range of legal services for national and international clients in all areas of commercial and corporate law, with particular emphasis on cross-border transactions.*

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## UCITS V: new rules

**On 23 July 2014, the European Union adopted Directive 2014/91/EU (UCITS V) of the European Parliament and of the Council amending Directive 2009/65/EC (UCITS IV) relating to undertakings for collective investment in transferable securities (UCITS) regarding depositary functions, remuneration policies and administrative sanctions. The Directive will have to be implemented into national law by 18 March 2016 at the latest.**

UCITS V intends to learn from the recent financial crisis by restructuring three main aspects of the asset management regulation: the role of depositaries, managers' remuneration and administrative sanctions.

### New depositary's role

Under UCITS V, a UCITS will have to appoint a single depositary chosen between eligible entities which are national central banks, authorised credit institutions or another legal entity subject to certain conditions.

The depositary will have to ensure that operations concerning units of the UCITS are carried out in accordance with the applicable national laws and fund rules. The depositary will have to control net asset value calculations and will have to ensure that the cash flows of the UCITS are properly monitored.

New safe-keeping duties should be noticed for both safe-keeping of financial instruments and of other assets.

UCITS V also strengthens the depositary's liability regime and provides that any contractual discharge of liability is forbidden.

UCITS V only allows the delegation of safe-keeping duties while cash-monitoring and oversight duties have to be performed by the appointed depositary.

### New rules governing remuneration

Under UCITS V, self-managed UCITS and management companies will have to establish and apply remuneration policies and practices that are consistent with risk management and that do not encourage inconsistent risk taking according to the risk profiles, rules or instruments of incorporation of the UCITS managed.

The remuneration requirements concern a wide range of staff including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and certain risk takers.

Under certain circumstances, management companies shall establish a remuneration committee which can exercise competent and independent judgement on remuneration policies and practices.

### Sanction regime

UCITS V provides a long list of about 20 breaches meant to be sanctioned and the administrative sanctions and measures to repress such breaches.

Administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive. In addition to a public statement, Member States must ensure that the administrative penalties and other administrative measures include in particular an order to cease the conduct, or the suspension or withdrawal of the authorisation of the UCITS or the management company.

Finally, UCITS V requires Member States to establish mechanisms encouraging the reporting of potential or actual breaches of the national provisions implementing UCITS V.

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