



# Mergers & Acquisitions

# 2020

**Ninth Edition**

Editors:

**Lorenzo Corte & Scott C. Hopkins**

# Global Legal Insights

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# GLOBAL LEGAL INSIGHTS – MERGERS & ACQUISITIONS

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## FROM THE PUBLISHER

Dear Reader,

Welcome to the ninth edition of *Global Legal Insights – Mergers & Acquisitions*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to mergers and acquisitions regulations around the world, and is also available at [www.globallegalinsights.com](http://www.globallegalinsights.com).

The chapters, which in this edition cover 20 jurisdictions, provide detailed information for professionals dealing with mergers and acquisitions.

As always, this publication has been written by M&A lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editors Lorenzo Corte and Scott C. Hopkins of Skadden, Arps, Slate, Meagher & Flom (UK) LLP for their leadership, support and expertise in bringing this project to fruition.

Rory Smith  
Group Publisher  
Global Legal Group

# Switzerland

Dr. Mariel Hoch & Dr. Christoph Neeracher  
Bär & Karrer AG

## Overview

### Statutory and regulatory M&A framework in Switzerland

The regulatory environment in Switzerland is still very investor-friendly for the following three main reasons: no or very limited investment restrictions (a notable exception being the so-called *Lex Koller*; see below); vast flexibility of the parties in the asset or share purchase agreement (e.g. with regard to the R&W, indemnities, disclosure concept, cap, etc.); and low bureaucracy. Below, please find a brief overview of regulations which may be relevant.

Public takeovers by way of cash or exchange offers (or a combination thereof) are governed by the Financial Markets Infrastructure Act (FMIA), which came into force on 1 January 2016 and replaced the respective provisions in the Federal Act on Stock Exchanges and Securities Trading (SESTA) and a number of implementing ordinances. Within this framework, the SIX Swiss Exchange (SIX) is responsible for issuing regulations regarding the admission of securities to listing as well as the continued fulfilment of the listing requirements. The Federal Takeover Board (TOB) and the Swiss Financial Market Supervisory Authority (FINMA) are responsible for ensuring the compliance of market participants with the Swiss takeover regime. Decisions of the TOB may be challenged before the FINMA and, finally, the Swiss Federal Administrative Court.

If a transaction exceeds a certain turnover threshold (turnover thresholds are rather high compared to other European countries: (a) the undertakings concerned together report a turnover of at least CHF 2 billion, or a turnover in Switzerland of at least CHF 500 million; and (b) at least two of the undertakings concerned each report a turnover in Switzerland of at least CHF 100 million) or if a restructuring has an effect on the Swiss market, the regulations of the Federal Act on Cartels and other Restraints of Competition must also be considered.

Any planned combination of businesses must be notified to the Competition Commission (ComCo) before closing of the transaction in case (a) certain thresholds regarding the involved parties' turnovers are met, or (b) one of the involved parties is dominant in a Swiss market and the concentration concerns that market, an adjacent market or a market that is up- or downstream thereof. The ComCo may prohibit a concentration or authorise it only under certain conditions and obligations. The ComCo's decision may be challenged before the Swiss Federal Administrative Court and, finally, before the Swiss Supreme Court.

Further, foreign buyers (i.e., foreigners, foreign corporations or Swiss corporations controlled by foreigners) must consider the Federal Law on Acquisition of Real Estate in Switzerland by Non-Residents (the so-called *Lex Koller*). They must obtain a special permit from cantonal authorities in order to purchase real property or shares in companies or businesses owning real property, unless the property is used as a permanent business establishment.

In November 2019, Switzerland implemented legislation with regard to the legal and beneficial ownership of Swiss legal entities, following the recommendations of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes as well as the Financial Action Task Force (FATF). Bearer shares of stock corporations have essentially been abolished for most private companies.

On 1 January 2020, two new acts entered into force: the Financial Services Act (FinSA); and the Financial Institutions Act. Although primarily addressing the financial services industry, the FinSA in particular could become relevant in the context of (public) M&A transactions. The FinSA contains rules regarding the duty to publish an issuance prospectus in case of a public offering of securities. It sets out the required content of prospectuses, bringing the requirements in line with international standards and those already applied by SIX Swiss Exchange for listing prospectuses, and replacing the outdated rules of the Swiss Code of Obligations which only required very limited disclosure.

#### Overview of M&A activity in 2019

After all-time record deal volumes in 2018, deal activity in Switzerland has remained high. In 2019, 402 recorded transactions involved Swiss corporations (2018: 493) and the total transaction volume has only slightly decreased compared to 2018 (around four to five per cent). The number of outbound deals was approximately twice as high as the number of inbound deals. The most attractive sectors were the industry sector as well as the pharmaceuticals & life sciences sector. Private equity firms again were very active in Switzerland and took part in almost half of the 50 biggest transactions in 2019 (according to the KPMG M&A Report 2019 for Switzerland). Swiss private equity firms continued to expand their presence, both in Switzerland and abroad.

#### **Significant deals and highlights**

The most significant deals of the year were the acquisition of Nestlé Skin Health by a consortium led by Sweden-based private equity investor EQT and the Abu Dhabi Investment Authority for a total purchase price of approximately CHF 10.2 billion, and the public exchange offer by DSV A/S for all publicly held registered shares of Panalpina Weltransport (Holding) AG for approximately CHF 4.6 billion. Seven IPOs took place in Switzerland in 2019. The biggest IPO was the listing on the SIX Swiss Exchange of Alcon AG, a spin-off of the eye care division of Novartis, with a market capitalisation of CHF 28.369 billion. These transactions are prime examples of the attractiveness of Swiss companies for foreign investors.

#### **Key developments**

Broadly speaking, the Swiss M&A market and, in particular, the private equity market, seem to be in good shape, in spite of some geopolitical uncertainties (such as Brexit, trade disputes between the US and China, etc.). The following key factors can be identified for this positive trend.

First, interest rates continue to stay low and the borrowing conditions remain generous, which promotes fundraising and puts pressure on investors to invest. Private equity investors, who tend to be highly leveraged, are benefiting from this environment in particular.

Second, Switzerland remains attractive for investors, with various investment opportunities – notably small and medium-sized enterprises, which will need to deal with succession planning in the coming years (estimated to be approximately 80,000), are particularly attractive targets for (private equity) investors.

Third, Swiss companies continue to transform and reshape their portfolios through M&A transactions (e.g. by strengthening digital capabilities or focusing on the core business).

Finally, in the field of public M&A, private equity clients appear more frequently as possible bidders in take-private transactions. Another trend is shareholder activists who continue to engage more broadly in Swiss targets (e.g. Cevian with Panalpina prior to the take-private by DSV A/S). A number of campaigns launched in 2018 are still running. Another continuing trend is anchor shareholders in listed companies.

### **Industry sector focus**

In Switzerland, various sectors (healthcare, technology, media, pharma) are facing a consolidation wave, which increases M&A activity. Industry consolidation in particular concerns the healthcare sector, where we see a high level of M&A activity including private equity investors having dedicated healthcare desks for such investments. Tech targets such as payment systems and internet platforms continue to be in high demand.

### **The year ahead**

In general, the key drivers which led to high M&A activity in 2018 and 2019 continued to be relevant in 2020 at the beginning of the year. However, the impact of the COVID-19 pandemic has altered the general economic outlook. It remains to be seen how far the COVID-19 pandemic will slow down M&A activity and – more importantly – for how long. A lot will depend on the duration of the governmental lockdown of businesses, as well as the ability of companies to rebound their revenues up to pre-crisis levels once their businesses reopen.



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Mariel Hoch is a partner in the corporate and M&A department at Bär & Karrer. Her practice focuses on domestic and cross-border public tender offers and mergers, general corporate and securities matters, including proxy fights, hostile defence matters and corporate governance. She also represents clients in M&A-related litigations. She has advised a broad range of public and private companies and individuals in Switzerland and abroad in a variety of industries including healthcare, pharmaceuticals, technology, financial services, retail, transportation and industrials.

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Christoph Neeracher specialises in international and domestic M&A transactions (focusing on private M&A and private equity transactions, including secondary buyouts, public-to-private transactions and distressed equity), transaction finance, venture capital, start-ups, corporate restructurings, relocations, corporate law, general contract matters (e.g. joint ventures, partnerships and shareholders agreements) and all directly related areas such as employment matters for key employees (e.g. employee participation and incentive agreements).

He is experienced in a broad range of national and international transactions both sell and buy side (including corporate auction processes) and the assistance of clients in their ongoing corporate and commercial activities. Additionally, Christoph Neeracher represents clients in litigation proceedings relating to his specialisation.

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