GLI GLOBAL LEGAL INSIGHTS

# Mergers & Acquisitions

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Contributing Editors: **Scott C. Hopkins & Lorenzo Corte**

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# 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 that 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 the SIX 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 2020

After strong deal volumes in 2019, deal activity in Switzerland has been overshadowed by COVID-19. In 2020, 363 recorded transactions involved Swiss corporations (compared to 402 in 2019) and the total transaction volume has more than halved compared to 2019. The number of outbound deals was approximately twice as high as the number of inbound deals. The most attractive sectors were the IT sector, as well as the pharmaceuticals & life sciences sector. Private equity firms again were very active in Switzerland and accounted for almost half of the total deal volume in 2020 (according to the KPMG M&A Report 2020 for Switzerland). Swiss private equity firms continued to expand their presence, both in Switzerland and abroad. However, in our experience, after a decline in transaction volume at the beginning of the pandemic caused by the uncertainty in connection therewith, M&A activity has picked up again in Q3 and Q4 of 2020 and remains strong. In particular, the IT and healthcare industries in Switzerland offer attractive investment opportunities in robust targets.

## Significant deals and highlights

The most significant deals of the year were the acquisition of Sunrise Communications by London-based telecommunications company, Liberty Global, with a deal volume of approximately CHF 6.8 billion, and the merger of CPA Global, a portfolio company owned by Partners Group, with US-based Clarivate Analytics (USD 7.1 billion). Only two minor IPOs took place in Switzerland in 2020, both of which involved business unit spin-offs. The larger of the two was the listing on the SIX of household appliances manufacturer V-Zug, formerly part of industrial group Metall Zug, with a market capitalisation of CHF 463 million.

## Key developments

Broadly speaking, the Swiss M&A market and, in particular, the private equity market, appear to have recovered from the dip in the first half of 2020, in spite of remaining uncertainty in the market due to the pandemic. The following key factors can be identified to sustain a 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 benefitting 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). Thus, carve-out transactions, in particular, have significantly increased in the last 12 months.

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. Veraison Capital and Cobas with ARYZTA). A number of campaigns launched in 2019 are still running. Another continuing trend is anchor shareholders in listed companies (e.g. Lupa Systems LLC with MCH Group). In 2021, the first attempts to structure special purpose acquisition companies (SPACs) in Switzerland took place. The regulatory framework is, however, not yet in place to allow for SPACs to launch and operate successfully.

## Industry sector focus

In Switzerland, various sectors (healthcare, IT, technology, media, pharma) are facing a consolidation wave, which increases M&A activity. Industry consolidation in particular concerns the healthcare sector, where we usually 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 that led to high M&A activity in 2019 and the second half of 2020 continue to be relevant at the onset of 2021. At the same time, ongoing uncertainty surrounding COVID-19 and liquidity problems of companies hit hard by the pandemic will likely spur reorganisational undertakings to maximise cost-effectiveness. It remains to be seen whether M&A activity in 2021 will catch up to pre-COVID heights. A lot will depend on the speed and effectiveness of vaccination programmes around the world and the emergence of new coronavirus variants.

**Dr. Mariel Hoch**
**Tel: +41 58 261 50 00 / Email: mariel.hoch@baerkarrer.ch**
Dr. 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.

**Dr. Christoph Neeracher**
**Tel: +41 58 261 50 00 / Email: christoph.neeracher@baerkarrer.ch**
Dr. 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 in 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.

Bär & Karrer AG

Brandschenkestrasse 90, CH-8002 Zurich, Switzerland
Tel: +41 58 261 50 00 / Fax: +41 58 261 50 01 / URL: www.baerkarrer.ch