COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

Switzerland

MERGERS & ACQUISITIONS

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Switzerland.

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SWITZERLAND
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1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

For acquisitions of enterprises and M&A transactions (e.g. share or asset deals), the key source of law is the Swiss Code of Obligations (CO). Since the provisions of the CO (e.g. in the sales law) are largely non-mandatory and the law provides for a large freedom of contract, the parties can agree on and craft tailor-made solutions in purchase agreements and are free to deviate from or exclude the applicability of certain statutory concepts and default rules.

Mergers, on the other hand, are subject to the Swiss Merger Act. The Swiss Merger Act provides for two forms of mergers, the merger by combination, where the shareholders of the merging companies become shareholders of a new company, and the merger by absorption, where the shareholders of the acquired company become shareholders of the acquiring company. The Swiss Merger Act further governs which forms of companies may be merged with each other and which not, as well as the merger process. In addition, the Swiss Merger Act provides for a statutory transfer of assets and liabilities, which can be used for the sale and transfer of businesses or parts thereof, as well as for the instrument of the statutory demerger.

Public takeovers in Switzerland are governed by the Swiss Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) and its implementing ordinances (Swiss Takeover Rules) including the Takeover Ordinance (TOO) of the Swiss Takeover Board (TOB). The Swiss Takeover Rules apply to public takeover offers for companies domiciled in Switzerland and listed at a stock exchange in Switzerland and for companies domiciled abroad with the principal listing at a stock exchange in Switzerland (Swiss Listed Company/Companies). A public takeover offer that is governed by the Swiss Takeover Rules is supervised by the TOB and the Swiss Financial Market Supervisory Authority (FINMA). The TOB reviews the offering documentation and other documents produced, the offer process and actions taken by the offeror, the target company and other involved parties. It further orders the relevant parties to comply with Swiss Takeover Rules. Parties affected by these orders (including the offeror, the target company and shareholders holding 3% or more of the target company's voting rights) may appeal and request a decision by the FINMA. Decisions of the FINMA may be challenged before the last instance in takeover matters, the Federal Administrative Court.

Except for public offers, M&A transactions do not require governmental approvals or permits. Exceptions apply to certain significant M&A transactions, which require notification to, and ultimately approval from, the Swiss Competition Commission, and M&A transactions in certain industry sectors, such as in the banking, the insurance, and the telecommunication sector, which require notification to or approval by the competent industry regulators, such as for example FINMA for banks and insurances.

2. What is the current state of the market?

Same as in EMEA, the M&A market in Switzerland was significantly affected by the COVID19 pandemic in the first two quarters of 2020, but activity increased in the third and especially in the fourth quarter. While in the second half year of 2020 the number of transactions returned to equivalent levels as before the global pandemic, average deal value was lower than in previous years , in particular as there were only few “megadeals” (transaction value above USD 5 billion). Altogether, in 2020 deal activity in Switzerland was, however, below long-terms average.

3. Which market sectors have been particularly active recently?

Compared to the previous year, M&A activity in the financial services sector (including insurance and insurance brokers) was strong, but there was lesser activity in the life sciences and healthcare sectors. Same as in EMEA region, there was strong activity in the TMT sector. In the consumer goods as well as the electricity sector, the activity in 2020 remained at same levels as in the previous year while activity fell in the chemical industry. For 2021, first indications show that this picture will continue and that the TMT sector will, again, experience a great level of M&A activity, same as the financial service sector, and there could be increased activity in the life sciences and healthcare sectors.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

For Switzerland, same as internationally, we believe that the most significant factor is the further course of the global COVID-19 pandemic and the immunizations grades achieved by the various vaccines on the market. The vaccines stand for a "light at the end of the tunnel" reducing uncertainty which we expect will allow M&A activity to continue at the same level as in the second half of 2020.

Also, the digitalization trend is continuing and will require many business models to adapt and to transform, causing need to combine with tech companies, resulting in a continuously high activity in the TMT sector.

Finally, also the low cost of capital is likely to be a significant driver of M&A activity, especially combined if new deal structures achieve entering the Swiss market such as the so-called (foreign listed) SPAC's (Special Purpose Acquisition Vehicles) which raise capital by way of an IPO for the sole purpose of subsequent acquisitions of companies or business divisions. However, for Swiss listed SPACs to also become a major driver on the Swiss M&A market, much will depend on whether it will be possible to overcome the existing technical hurdles, such as the listing requirement of presenting financials for the past three years prior to the IPO.

5. What are the key means of effecting the acquisition of a publicly traded company?

The most common instrument to acquire control over a Swiss Listed Company is the public takeover offer. There are two different starting points for a public takeover offer for all shares of the target company: the mandatory offer and the change of control offer.

Mandatory Offer: A shareholder who directly, indirectly or together with concert parties acquires shares in a Swiss Listed Company and thereby passes the threshold of 33 1/3% of the voting rights of the target company (Mandatory Offer Threshold) has to submit a public takeover offer within 2 months from the date the Mandatory Offer Threshold has been surpassed. The mandatory offer rules do not apply in the event that the target company has a so-called opting-out provision in its articles, or only applies at the relevant higher threshold (up to 49%), if the target company has included in its articles a so called opting-up provision. The Mandatory Offer is subject to restrictive rules on the offer price, the type of consideration, the permissibility of conditions etc.

Change of Control Offer: A shareholder who directly, indirectly or together with concert parties, at the time of the launch of the public takeover offer, does not hold shares in the target company above the applicable Mandatory Offer Threshold and offers to purchase all outstanding shares in the target company and therefore exceed the applicable Mandatory Offer Threshold if the offer is successful is bound by some of the rules applicable to Mandatory Offers (e.g. minimum price rule) but not to all (e.g. less restricted permissibility of conditions).

A shareholder who directly, indirectly or together with concert parties does not offer to buy shares above the applicable Mandatory Offer Threshold is subject only to certain aspects of the Swiss Takeover Rules. While the minimum price rule does not apply to such type if offers, the requirement of equal treatment of shareholders and therefore the best price rule still applies: if more shares are tendered than offered to purchase, the same percentage of the shares tendered by each shareholder must be purchased under the offer at the same price.

Very rarely only, listed Swiss Companies are taken over by way of statutory mergers. The statutory merger is the transaction method of choice in order to restructure a group of Swiss companies or to merge Swiss private companies of equal size. Swiss law permits the merger of Swiss companies with foreign companies, provided that foreign law does not conflict with it. However, in practice, such cross boarder statutory mergers are rare, even in case of private companies. These transactions are rather effected by way of reverse triangular mergers or schemes of arrangement under applicable foreign law.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

General corporate information on a Swiss target company, for example, information on share capital and number of shares, the articles of association, the name of members of the board of directors, the officers and registered corporate restructurings (such as statutory mergers, transfer of assets and liabilities or de-mergers) is publicly available from the commercial registry. No other information is publicly available for privately held companies, in particular, absent specific circumstances, no financial statements or shareholder registers are publicly accessible information. There is no duty for privately held companies to disclose diligence related information to a potential buyer.

This is different for Swiss Listed Companies. Swiss stock exchanges have to subject the issuers to regulations that take into account recognized international standards and include provisions on the publication of information on which investors rely for assessing the characteristics of securities and the quality of the Swiss Listed Company. Under the rules of the SIX Swiss Exchange (SIX), the most important of the Swiss stock exchanges, the periodic reporting duties include the publication of the issuer's annual report (consisting of the annual financial statements and the corresponding audit report), its corporate governance report and, if opted in, its sustainability report and the semi-annual financial statements. Publication of quarterly financial statements is voluntary and interim financial statements do not need to be audited or reviewed. Transactions of members of the board of directors and the executive committee in the issuer's equity must be disclosed as well as information on significant shareholders. Issuers must immediately inform the market of any price-relevant fact arising in its sphere of activity, unless disclosure may be postponed (see question 16). In addition, general information about the issuer and its stock is published on the SIX website.

Generally, Swiss Listed Companies are not under an obligation to disclose additional information to an offeror. If, however, the target company has granted a friendly offeror access to additional information, a competing offeror has the right to access to the same information as the preferred offeror.

7. To what level of detail is due diligence customarily undertaken?

Typically, in Swiss M&A practice a due diligence review is performed prior to signing a deal. The level of detail varies from case to case. In private M&A transactions, a fully-fledged due diligence review covering all areas has become the standard, but regularly applying a red flag scope of review, which is adapted to the particular industry the target is active in order to assess chances and risks of the target's business model.

Despite of the many information that is publicly available on Swiss Listed Companies, a friendly offeror will always try to conduct a due diligence review of the target. This is particularly important because the offeror, once it has launched its takeover offer, can only reduce the offer price in very limited circumstances and cannot agree on representations and warranties with the selling shareholders.

The scope of the due diligence review typically includes the review of corporate matters, equity instruments (options, convertible instruments, etc.), important commercial and financial contracts, employee matters, intellectual property, compliance with laws, environmental issues, licenses, litigation and other matters specifically relevant to the target.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

Under Swiss company law, there is a comprehensive presumption of competence in favor of the board of directors. In principle, the board of directors is responsible for all matters that are not assigned by law or the articles of association to the general meeting of shareholders or the auditors. The board of directors is free to delegate its powers to a management, except for some fundamental control and oversight duties, which are non-alienable. For example, the board of directors is responsible for assessing and dealing with strategic alternatives, however, the decision on strategic alternatives are often in the competence of the shareholders such as in case of a merger, a de-merger, or, of course, the sale of shares of the company.

Given that the shareholders are the body that eventually decides on success of the public takeover transaction, the question for the offeror in almost every takeover transaction is whether to seek the support of the board of directors of the target company (friendly transaction) or not (unfriendly transaction). In the past, Switzerland saw mostly friendly transactions in which the offeror approached the target company ahead of the launch of the offer with the goal to secure the support of the board of directors for the takeover (see question 12 for information about transaction agreements under which the board of directors of the target company undertakes to support an offer) . In case the parties cannot agree on terms for the offer, the offeror can launch an unfriendly offer. Although Swiss Takeover Rules do not impose additional burdens for unfriendly takeover offers, offerors often aboard their takeover plans if the target company does not support the transaction.

In asset deals, the board of directors approves the sale and purchase of the respective assets. The sale of all or substantially all assets of a company, however, requires approval of the shareholders. A shareholders resolution is also needed if the articles of association are amended in connection with the asset deal (e.g. if new shares are issued or if the corporate purpose of the company is changed).

9. What are the duties of the directors and controlling shareholders of a target company?

The members of the board of directors must perform their duties with all due care and must safeguard the interests of the company in good faith. The board of directors has therefore no duty to actively look for strategic alternatives to the benefit of the shareholders. But the board of directors may also not impede the interests and freedom of decision of the shareholders. Hence, it must ensure that the shareholders, insofar as a decision is left to them, can actually decide. In case a Swiss company listed on a Swiss stock exchange is approached by an offeror, it has to evaluate whether the offer is in the interest of the company or not. In the first case, it has to support the offer, in the latter case it has to take the measures permissible under the Swiss Takeover Rules to fend off the offer (see question 24).

Upon the launch of a public takeover offer, the target's board of directors has a duty to assess the interests of the company in the offer and to issue a report setting out all information necessary for the recipients of the offer to take an informed decision. The board report shall explain the consequences of the offer for the target company and its shareholders. It may recommend the acceptance or the refusal of the offer or can simply lay out the advantages and disadvantages of the offer without making any recommendation. If a fairness opinion of a third party forms the basis of the recommendation of the board of directors, it becomes integral part of the report.

Swiss corporate law does not impose shareholders any fiduciary duty vis-à-vis the company or other shareholders. For disclosure duties of significant shareholders of Swiss Listed Companies see question 15. Starting from the launch of a public takeover offer until the expiry of the additional offer period, all parties to the takeover proceedings and shareholders, alone or acting in concert, holding 3% or more of the voting rights of the target company must report to the stock exchange and the TOB all transactions in securities of the target company.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

In share deals, including public takeover offers, employees, creditors or contractual counterparties of the target do not have any statutory approval, consultation or other rights, except with respect to the employees in case thresholds of a mass dismissal are met (see last paragraph below).

In statutory regulated transaction forms under the Swiss Merger Act such as in case of statutory transfers of assets and liabilities, statutory mergers and statutory de-mergers, creditors are protected by certain mandatory provisions of law and employees must be informed prior to completion or, in case of a statutory merger or statutory de-merger prior to the shareholders' approval. If, as a result of the transaction, measures affecting the employees are planned (e.g., dismissals, less favorable terms in the employment contract), the employees have to be consulted in due time before closing or the shareholders' approval; sufficient time (i.e., typically around two weeks) must be given to employees to react to the proposed measures, but there is no requirement to follow proposals by the employees.

The same information and consulting rights for employees apply in case of an asset deal or de-merger which is structured *outside* the Swiss Merger Act, provided the transaction causes a transfer of a business unit. No creditor or other stakeholder protection apply however.

In the event of employee dismissals that reach a certain threshold within a short period (no matter if connected to a transaction or not) specific rules of a mass dismissal apply and a separate process with information and consultation rights of the employees may be triggered.

11. To what degree is conditionality an accepted market feature on acquisitions?

In private M&A transactions, the parties are generally free to agree on any sort of closing conditions, except for example in case of transactions subject to merger control, which requires the parties by law to only close after clearance is received or the waiting period lapses. Needless to say that a prudent party will object to such closing conditions for the counterparty, the satisfaction of which is entirely in the hand of the counterparty and, therefore, presents de-facto an walk-away right ("potestative conditions").

In public M&A transactions, potestative conditions are not admissible. The offer can only be made subject to conditions over which the offeror has no influence and in which the offeror has a justified interest. . To the extent that a condition requires a contribution by the offeror, it must take all reasonable measures to ensure such condition is met. Over the years, the practice of the TOB has brought clarity as to which conditions are admissible, under which circumstances and until which point in time they must be met. Amongst other, such closing conditions include minimum acceptance, obtaining voting rights in the shares, gaining control over the targets' board of directors, no injunction, issuance and listing of shares offered as consideration, no material adverse change. Mandatory Offers may only be subject to conditions if there are important reasons for the conditions (e.g. governmental approvals, etc.).

12. What steps can an acquirer of a target company take to secure deal exclusivity?

In private M&A transactions, parties are free to agree on deal exclusivity.

In public M&A transactions, the offeror usually tries to enter into a transaction agreement with the target company, in order to obtain the target company's board of directors' support for its offer. The target company's board of directors can only support the offeror, subject to a fiduciary out. This means that, in case a competing offer is launched, the target company's board of directors is released of its duties under the transaction agreement. Another means to enhance deal protection are break fees and no shop agreements (see question 13). Also, offerors will try to obtain tender agreements with significant shareholders (irrevocable's) early on.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Typical deal protection mechanisms in public M&A transactions are break fees / reverse break fees and no shop agreements.

According to the practice of the TOB, break fees are permissible if the amount payable in case of a break does not deter a third party from launching a competing offer (i.e. the break fee does not restrict the target company's shareholders' freedom of choice with respect to offers). Whether a certain break fee amount is permissible in a transaction requires an analysis of the circumstances of the specific case.

No shop agreements, according to which the target company does not actively solicit offers from third parties, are permissible under Swiss takeover law and commonly included in transaction agreements between the offeror and the target company. No talk agreements, according to which the board of the target company shall not talk to potential third party offerors approaching the target company, are not permissible to the extent that they compromise equal treatment of a competing offeror following the launch of the competing offer or to the extent that they restrict the target company's board of directors in its reporting obligation to its shareholders.

Other deal protection mechanisms include matching rights of the offeror or information rights with respect to third party's requests for due diligence.

14. Which forms of consideration are most commonly used?

The consideration usually takes the form of cash, shares or other securities, or a combination thereof. While the parties are entirely free in their choice of consideration in private M&A transactions (including vendor loans), Swiss Takeover Rules provide for certain restrictions in the choice of consideration in public M&A transactions. Mandatory Offers must always provide for an all cash alternative but can also offer securities. In Change of Control Offers, the offeror is only obliged to also offer an all cash alternative, if, in the twelve months preceding the launch of the offer, it has acquired securities of the target company against cash representing 10 % or more of the share or participation capital of the target company.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

The stock exchange and the target company have to be notified within four trading days when a person, acting alone or in concert with others, directly or indirectly acquires or disposes of securities in a Swiss Listed Company and reaches or crosses any of the thresholds of 3%, 5%, 10%, 15%, 20%, 25%, 33⅓%, 50% or 66⅔% of the voting rights. The signing of the transaction is considered to be the triggering event for the disclosure obligation and not the closing. The breach of the disclosure duties may trigger administrative and criminal proceedings whereby an intentional breach of the disclosure duties is punishable with a fine of up to CHF 10 million.

16. At what stage of negotiation is public disclosure required or customary?

The negotiations between the offeror and the target company regularly constitute price-relevant information according to the listing rules of the relevant stock exchange. Therefore, disclosure of the negotiations can only be postponed, if (i) dissemination of the information might prejudice the legitimate interests of the target company and (ii) the target company ensures that the price-relevant fact remains confidential for the entire time that disclosure is postponed. Because the signing of a transaction agreement between the offeror and the target company will usually prevent further prejudice of the legitimate interests of the target company, the offer is usually launched (be it by publication of the pre-announcement of the offer or the offer prospectus itself) immediately following the signing of the transaction agreement.

In private M&A, a public disclosure is customary after the signing of the sale and purchase or other key transaction agreement.

17. Is there any maximum time period for negotiations or due diligence?

According to Swiss law, there is no maximum time period for negotiations or the due diligence process. However, in public M&A transactions, once an offer has been formally launched by an offeror, a strict timetable pursuant to the TOO applies until the transaction is consummated.

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

In public M&A transactions, minimum price rules apply to Mandatory Offers and Change of Control Offers. The minimum price is the higher of (i) the 60-day volume weighted average price or (ii) the highest price paid by the offeror in the last twelve months preceding the launch of the offer.

In addition, all offers governed by Swiss Takeover Rules must comply with the best price rule. This means that if the offeror acquires shares of the target company in the six months following the lapse of the additional offer period at a price exceeding the offer price, such higher price must be paid to all shareholders of the target company who sold or are willing to sell their shares in the offer.

19. Is it possible for target companies to provide financial assistance?

There are no explicit rules under Swiss law on financial assistance. However, with respect to a Swiss (direct or indirect target) company, Swiss corporate and tax law restrictions apply not only in a situation with minority shareholders but also in a wholly owned group context if, absent an arm's length consideration, such Swiss company provides any monetary benefit, e.g., security or guarantees to, or assume liabilities of, its direct or indirect shareholder(s) ("up-stream") or to other affiliates that are not direct or indirect subsidiaries of the Swiss company ("cross-stream").

Therefore, if a Swiss target entity is to guarantee or secure any acquisition financing received by the purchasing entity (or any of its affiliates, but for the target) such financial assistance is, in essence, only permissible if limited to an amount that the target company is able to distribute as dividends and if the same corporate formalities of a dividend payment are complied with (board and shareholder approval as well as in some circumstances a report by the auditor that confirms the amount that is free to distribute) and the company's purpose clause needs to provide for a specific financial assistance wording. Also, respective up-stream or cross-stream guarantees or security may give rise to Swiss withholding taxes.

20. Which governing law is customarily used on acquisitions?

In private M&A transactions, parties are generally free to agree on a governing law, provided certain Swiss law aspects of the transaction are governed by Swiss law such as the transfer of shares of a Swiss company, the transfer of real estate or other assets physically located in Switzerland. The same holds true if the transaction involves certain statutory transaction structures such as statutory mergers, demergers or transfers of assets and liabilities. Therefore, in most cases when a Swiss target company is involved in a share deal, a statutory merger, demerger or transfer of assets and liabilities between Swiss companies, the transaction agreement is governed by Swiss law.

Public takeovers of Swiss Listed Companies are governed by Swiss Takeover Rules.

21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

At its election, the offeror may choose to publish a pre-announcement of the offer prior to the publication of the prospectus. The pre-announcement summarizes the key terms of the offer and triggers several effects for the benefit of the offeror. With the publication of the pre-announcement or the prospectus, as the case may be, the offer is launched and can no longer be withdrawn.

The main public document of a takeover offer is the prospectus. The prospectus is a comprehensive document which shall enable the target company shareholders to take their decision in full knowledge of all relevant facts; the content of the prospectus is defined by the Swiss Takeover Rules. Besides terms and conditions, the prospectus must include certain information about the offeror, the financing of the offer, the plans of the offeror with respect to the target company, all arrangements between the offeror and the target company (including, transaction agreement, if any). Prior to its publication, the prospectus must be reviewed by a special review body and its opinion on several points is to be included and published in the prospectus.

Following the offer period and the additional offer period, the offeror has to publish the intermediate and final results of the offer.

All offer documents must be published electronically in German and French and posted on the Offeror's website or a special offer website and the important Swiss and financial information providers.

22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

The transfer of shares in a company requires a share purchase agreement and the handover of endorsed share certificates. If no certificates have been issued, a written declaration of assignment is required or, in case the shares are issued as intermediated securities, the instruction to transfer and the crediting of the shares to the acquirer's securities account. Articles of association may stipulate that shares may only be transferred with the consent of the company. In such case, the approval of the board of directors is required. Shareholders may also be required to declare that they hold the shares in their own name and on their own account.

In the case of shares of Swiss companies that are listed on a stock exchange, the company may only reject an acquirer as a shareholder if the articles of association provide for a percentage limitation. As with private companies, the shareholder may be required to declare that he holds the shares in his own name and on his own account.

A Swiss federal securities transfer tax may apply to the sale and purchase of shares if a "Swiss securities dealer" is involved as a party or intermediary to the transaction. Swiss securities dealers include Swiss banks, Swiss professional traders and brokers as well as Swiss companies holding taxable securities (such as shares and bonds) with a book value of more than CHF 10 million according their latest statutory balance sheet. The tax rate is 0.15% for shares of Swiss companies and 0.3% for shares in non-Swiss companies. The Swiss securities dealer is liable to report and pay the securities transfer tax, but the parties may freely agree who shall bear this tax. Certain types of investors (e.g., collective investment schemes, listed non-Swiss companies and their non-Swiss subsidiaries) and certain types of transactions (e.g., issuance or redemption of shares and certain restructurings) are exempt.

If a company's main activities and assets relate to real estate investments without using such real estate for an active business, cantonal and/or municipal real estate transfer taxes may apply to a share transfer to the extent that the real estate is located in a canton/municipality levying such tax.

23. Are hostile acquisitions a common feature?

Hostile acquisitions are very rare in Switzerland, even though they are permitted.

24. What protections do directors of a target company have against a hostile approach?

From the moment of the launch of the offer until the end result is announced, Swiss Takeover Rules prevent the target company's board of directors to take defense measures that are not approved by the shareholders meeting. This includes, for example, any purchase or sale of assets with a value / price of more than 10% of the balance sheet total or assets which contribute more than 10% to the target company's profitability. Accordingly, "scorched earth", "fat man", or "pac man" strategies are not permissible under Swiss Takeover Rules. To the extent that the offeror has identified certain divisions of the target company as the main subject of his offer, the board of directors of the target company is prevented from selling such divisions (and making use of a "crown jewel defense strategy"). Golden parachutes for target company board members or management are not permissible in Switzerland. To a certain extent, the target company's board of directors may use the announcement of a share buy-back program or percentage restrictions in the articles of association, voting right limitations as well as qualified quorum and majority requirements to change the articles of association to prevent hostile takeover attempts.

The target company must report any planned defensive measure.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

See the description of the Mandatory Offer under the question 5.

26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Shareholders (even if only holding 1 share) have the right (i) to be treated equally by the board of directors, to receive (ii) the invitation to all shareholders meetings, (iii) a copy of the annual report as well as the audit report and (iv) to attend each shareholders' meeting, vote and ask questions during the meeting to the board of directors and the auditor.

Further, each shareholder can propose at the shareholders' meeting the initiation of a special audit to investigate specific facts, provided that such audit is necessary for the shareholder to exercise its rights and (cumulative) the shareholder has already exercised the rights to obtain information and consult the books and accounts of the company as per (iii) and (iv) above. If the shareholders' meeting refuses to initiate a special audit, one or more shareholders representing at least 10% of the share capital or holding shares with a par value of at least CHF 2 million can request a judge to appoint a special auditor within three months from the resolution of the shareholders' meeting refusing the special audit.

If shareholders want to convene an extraordinary shareholders' meeting or request that certain items are put on the meeting's agenda, respectively, they must represent together at least 10% of the share capital or hold shares with a par value of CHF 1 million, respectively.

The CO requires for certain important shareholders resolutions the acceptance of a qualified majority of shareholders, meaning that an absolute majority of the par value of the shares are represented at the shareholders' meeting and a two-third majority of the voting rights agree to the resolution. The articles of association may subject further resolutions to qualified quorums.

27. Is a mechanism available to compulsorily acquire minority stakes?

If an offeror holds more than 98% of all voting rights in the Swiss Listed Company following the public takeover offer, it is entitled to file a squeeze out claim against the target company with the court within 3 months following the end of the additional offer period. In its judgment, the competent court cancels the shares of the remaining minority shareholders and the target company reissues these shares and allocates them to the successful offeror against payment of the offer price to the squeeze out minority shareholders.

If an offeror holds more than 90% of all shares it may squeeze out the remaining minority shareholders by merging the target company into a subsidiary of the offeror and providing cash or securities other than the securities of the surviving company to the minority shareholders (squeeze out merger pursuant to the Swiss Merger Law). The merger consideration will, absent specific circumstances, equal the price offered for the shares under the public takeover offer. Given that the Swiss Merger Act provides the minority shareholders with appraisal rights, the careful offeror will only effect the squeeze out merger once the best price rule does no longer apply (see question 18). By doing so, it can ensure that even if a court, in an appraisal suit, would decide that the price paid for the shares under the public takeover offer was too low, it would not trigger the effect of the best price rules, i.e. the offeror would not have to pay the higher value of the shares to all tendering shareholders but only to the squeezed out minorities.

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