

MERGERS & ACQUISITION PRACTICE AREA REVIEW

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MAJOR RECENT ACTIVITY

Following an exceptionally active 2014, both in Switzerland and worldwide, 2015 was a relatively calm year for the Swiss M&A market. Against a record year on an international level, with a transaction volume of US$4,519.3 billion, Switzerland faced a decline in M&A activity in 2015. KPMG reports the number of transactions to have declined by 17 per cent year-on-year, and the total value of mergers and acquisitions with Swiss involvement to have fallen by 55 per cent at the end of the year, to US$84.9 billion.

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The global development was largely driven by global economic growth, favourable financing conditions and sustained shareholder pressure on management to invest in profitable growth segments and, quite substantially, to extremely large-scale transactions, such as the mergers of Pfizer and Allergan or Anheuser-Busch InBev and SABMiller, which pushed the total volume of M&A deals to impressive heights.

Switzerland's comparatively low M&A activity throughout 2015 is mainly attributable to the absence of the mega-mergers witnessed in 2014. With Switzerland being home to typically export-oriented industries, the strengthening currency caused many market players to struggle. According to the economic forecasts by the federal government's expert group 2015/2016, Swiss GDP stagnated between January and September 2015, with the slowdown in growth essentially being attributable to the appreciation of the Swiss franc from mid-January. The Swiss National Bank's decision to abandon the CHF/EUR exchange rate floor in January 2015 came as a surprise to most market participants and had a negative impact on transactions in Switzerland. The weaker expansion of global trade and the slowing dynamic of the domestic economy are also reported to have had a dampening effect.

Nonetheless, SIX Swiss Exchange Division CEO Christoph Landis looks back at a "very successful year" in 2015. The SMI closed the year at 8,818.1 points, climbing to an eight-year high (9,526.8) on 5 August. The previous record of 9,531.5 points was reached on 1 June 2007. Altogether, 286 new bonds (-20.6 per cent) and 42,729 new structured products (+8.7 per cent) were listed. SIX Swiss Exchange and SIX Structured Products Exchange reported their trading turnover to have grown by 19.5 per cent to 1,372.5 billion Swiss francs, while the number of trades rose 32.7 per cent to 51,543,273. The peak trading day, 15 January 2015, witnessed 949,988 trades with a trading volume of 27.7 billion Swiss francs, which constitutes a new historical high. With Cassiopea SpA, PLAZZA AG and Sunrise Communications Group AG, 2015 saw three IPOs.

Switzerland remains an exceptionally attractive marketplace with reportedly very strong economic fundamentals. For the seventh consecutive year, Switzerland ranks first in the Global Competitiveness Index, according to the World Economic Forum's Global Competitiveness Report 2015/2016. Owing to its world-class research institutions, companies' high spending on research and development and the strong level of cooperation between the academic world and the private sector, Switzerland heads the innovation pillar. Factors such as a high level of business sophistication and the capacity to foster and attract talent account for Switzerland's innovation ecosystem. Switzerland offers an excellent education system and its labour market is highly efficient, balancing employee protection with flexibility and business needs. Swiss public institutions are among the world's most effective and transparent, and competitiveness is further supported by an excellent infrastructure and connectivity, as well as highly developed financial markets. Switzerland's macroeconomic environment is among the most stable worldwide at a time when numerous developed countries are continually struggling in this area. Recent developments, such as the slow recovery in key trading partner countries, the appreciation of the Swiss franc following the exit of the exchange rate floor, near-zero inflation and negative real interest rates have, however, created some downside risks. Uncertainty about Switzerland's future immigration policy in light of the referendum against "mass immigration" might weaken Switzerland's capacity to access the global talent pool which is so essential to fuel its economy.

INDUSTRIES AND CLIENTS ACTIVE IN THIS SECTOR

The list of Switzerland's top 10 M&A transactions 2015 was headed by the US$28 million transaction between the Chubb Corporation and ACE Limited. The list also included:

- *Holcim Ltd and Lafarge SA (certain assets)/CRH Plc*;
- *World Duty Free SpA/Dufry AG*;
- *TE Connectivity Ltd (Broadband Network Solutions business unit)/ CommScope Holding Co Inc*;
- *Swissport International Ltd/HNA Group Co Ltd*;
- *Guardian Financial Services Limited/Swiss Re (Admin Re UK Limited)*;
- Sunrise Communications AG's IPO placement;
- *Ikaria Inc/Mallinckrodt plc*;
- *Madrilena Red de Gas, SAU/GGM NV*;
- *Gingko Tree Investment Limited/EDF Invest*; and
- *Universal Services of America Inc/Warburg Pincus LLC.*

Once again, private banking was a M&A hotspot in 2015, with most of the transactions being asset deals. Swiss Re further penetrated the UK market, while Switzerland's investment managers concentrated on clearing out their portfolios. The acquisition of the Chubb Corporation by ACE Limited is to be the biggest insurance transaction in 20 years.

Despite comparatively steady financial performances, Swiss chemical firms took on limited M&A activity in 2015 due to attempted hostile takeovers, market uncertainties and limited availability of suitable assets. Activity should revive again in this sector in 2016, says KPMG.

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Exchange rate movements in 2015 hit Switzerland's export-oriented industrial sector hard, but, on the bright sight, also encouraged some operational restructuring. As the waves calm, many well-financed market players are looking for prospective acquisition targets both in Switzerland and elsewhere.

In the technology, media and telecommunications sector, 2015 recorded the greatest number of deals in eight years and the highest total deal values since 2010. The sector also witnessed numerous new joint ventures as market players sought to reinforce their market positions and advance their competitive edge.

The appreciation of the Swiss franc against the euro has rendered acquisitions in Switzerland even more costly for euro-denominated funds. The combination of strong market conditions and well-funded private equity houses nevertheless led to intense competition for quality assets. With Swissport and Infront, 2015 saw two private equity exits to Chinese investors.

LEGAL AND REGULATORY FRAMEWORK

Like other regulatory bodies all over the world, Switzerland also spent 2015 continuing to address issues that became apparent during the financial crisis. The finance industry, and in particular the Swiss asset management and banking field, has to face a significant increase in costs for running its business.

New laws and guidelines that entered into force on 1 January 2015 include:

- the Banking Act (amendment regarding dormant accounts);
- the Banking Ordinance (total revision);
- the Liquidity Ordinance for banks (partial revision);
- the FINMA Collective Investment Schemes Ordinance (CISO-FINMA; total revision);
- the FINMA Circulars 2015/1, accounting – banks (new);
- 2015/2, liquidity risks – banks (new);
- 2015/3, leverage ratio (new); and
- 2008/22, capital adequacy disclosure – banks (amended).

Moreover, on 1 July 2015, a partial revision of the Swiss Insurance Supervisory Ordinance (ISO) came into force.

The Banking Act saw an amendment in connection with dormant accounts, which set forth the possibility for banks in Switzerland to liquidate dormant accounts that could not be allocated to a specific beneficial owner, given that Swiss bank secrecy rules did not allow banks to publicly search for unknown account holders.

The Banking Ordinance has been fully revised in accordance with the amendment of the new reporting and accounting law and the stipulation of the liquidation of dormant accounts. In addition to formal and editorial changes, the provisions on liquidity for banks have been transferred to the Liquidity Ordinance for banks. The minimum structure for the annual financial statements is set forth in the appendix of the revised Banking Ordinance.

The amendment of FINMA's ordinance on collective investment schemes (CISO-FINMA) completes the partial revision of the Collective Investment Schemes Act (CISA) and its respective Ordinance (CISO) that entered into force on 1 May 2013. The CISO-FINMA sets out to substantiate the provisions stipulated in the CISA and the CISO, mainly implementing the changes that both national and international regulatory standards have undergone. Aligning the risk measurement of derivative financial instruments with Europe's UCITS directive, the amendment of the CISO-FINMA aims to enhance investor protection and is intended to facilitate EU market access.

In adapting the international regulatory framework for banks (Basel III), FINMA has published three new circulars and one amended circular, all of which entered into force on 1 January 2015:

- FINMA circular 2015/1 sets forth the accounting standards for banks with consideration of the characteristics of the banking business;
- FINMA circular 2015/2 governs the minimum qualitative requirements with regards to liquidity risk-management and defines quantitative requirements for the quota on short-term liquidity (liquidity coverage ratio); and
- FINMA Circular 2015/3 defines the calculation of the leverage ratio according to the Basel III minimum standards. It also elaborates the provisions set out in the Capital Adequacy Ordinance and the changes made to FINMA circular 2008/22 concerning the disclosure of the leverage ratio and liquidity coverage ratio.

The revision of the ISO focuses primarily on solvency, qualitative risk management and disclosure, mostly with a view to accommodate considerations of Solvency II in national legislation.

On 1 January 2016, the AML/Implementation of FATF guidelines and the Federal Financial Market Infrastructure Act (FMIA/FinfraG) entered into force. The FMIA governs the organisation and operation of financial market infrastructure. The provisions that were previously dispersed in various federal acts were combined in a single law and adjusted in line with changed market relationships and international standards. The stock exchange regulations are largely the same as those previously contained in the Stock Exchange Act. The act aligns the regulation of financial market infrastructures and derivatives trading with market developments and international requirements.

Important projects in the legislative pipeline include the Automatic Exchange of Information (AEoI) and the Federal Financial Services Act (FFSA/FIDLEG) and Financial Institutions Act (FinIA/FINIG).

FUTURE DEVELOPMENTS

In December, the Swiss State Secretary of Economic Affairs (SECO) published its growth forecast for the Swiss economy, predicting acceleration in economic growth in Switzerland from 0.8 per cent in 2015 to 1.5 per cent in 2016 and 1.9 per cent in 2017. While a sharp appreciation in the value of the Swiss franc is projected to dampen Switzerland's economic performance in 2015, healthy GDP growth should resume in 2016 and support deal activity, although a moderation in transactions is expected after equity prices peak in 2017.

Baker & McKenzie's Global Transactions Forecast predicts a slowdown in deal activity from 2016 to 2020. However, according to a recent study by EY, confidence among market participants remains high: companies all over the world seem optimistic about the development of the global economy in the near term. In Switzerland, too, four out of five companies predict a stronger global economy. For the Swiss domestic market, over half of the surveyed companies expect the economy to strengthen, according to the Capital Confidence Barometer recently issued by audit and advisory firm EY. The study is based on a survey of 1,600 managers in large companies around the world, including 25 companies in Switzerland.

Against the generally positive environment, KPMG says the chances are good for a larger number of more significant Swiss M&A activities in 2016. Patrik Kerler, head of M&A at KPMG Switzerland, sees the past year as a transitional phase and anticipates that the coming months will witness various businesses preparing for new strategic transactions which will translate into increased M&A activities in 2016.