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Technology M&A 2024

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Switzerland: Law and Practice
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Loyens & Loeff

SWITZERLAND

Law and Practice

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1. Market Trends

1.1 Technology M&A Market

Numerous challenges, such as high inflation, rising interest rates, a strong Swiss franc, turbulences in the financial sector and the ongoing war in the Ukraine, were posed on the deal activity in 2023. Against this background and despite a general slow-down of the Swiss economy, the Swiss technology sector remained resilient with M&A activity showing a continuing upward trend. M&A activity in the TMT sector showed the strongest quarter on record in the first three months of 2023. With regard to M&A transactions, it is noteworthy that the entire process usually takes longer and involves protracted commercial negotiations due to valuation gaps and the parties' future earning expectations.

1.2 Key Trends

For the TMT sector, the ongoing need for companies to transform their businesses, drive innovation and advance digitalisation remain key growth drivers. While cross-border M&A activity in Switzerland in general could see a shift from inbound to more outbound transactions since mid-2022, there has been a strong interest from foreign investors in Swiss IT service providers. When compared to other sectors, TMT deals in Switzerland have a higher proportion of foreign investors, highlighting the generally more international orientation of the sector. With Switzerland's attractiveness as a business location and the many tech start-ups constantly emerging from the highly active start-up community, IT service providers have been the most popular targets for inbound transactions.

In terms of regulatory trends potentially affecting M&A activity in the tech industry, the new Swiss Data Protection Act (revDPA) and recent developments in the field of foreign direct investment screening are particularly worth mentioning. The revDPA modernises Swiss data protection law and brings it into line with EU law, in particular the EU General Data Protection Regulation (GDPR). Since Switzerland has no general foreign direct investment (FDI) screening mechanisms in place, a consultation process on a preliminary draft of a new law on FDI screening took place in 2022. Based on the rejective results of this consultation process, the draft law is currently being revised and is expected to cover only the most security-critical investments.

2. Establishing a New Company, Early-Stage Financing and Venture Capital Financing of a New Technology Company

2.1 Establishing a New Company

Among other features which make Switzerland one of the most innovative countries in the world, it offers a business-friendly legal framework ensuring fast and cost-effective incorporations. Therefore, it is attractive to incorporate a start-up company in Switzerland. Swiss corporate law offers all relevant features required for a start-up company to operate successfully, in particular also with regard to initial seed financings and subsequent capital contributions from financial sponsors or strategic investors. Different share classes with voting/non-voting structure, dividend and/or liquidation preferences are some of these prominent features. The entire incorporation process for a new company typically requires two to four weeks, depending, among other things, on the canton of the company's intended seat, the country of residence of the investors (in particular for opening the required blocked bank account) and the efficiency of the founders of delivering the necessary documents. Unless the founders choose a partnership with

full personal liability, an initial capital contribution is required to establish a new company (see **2.2 Type of Entity** for required capital amounts).

2.2 Type of Entity

Entrepreneurs are typically advised to incorporate an entity in the form of a corporation ("*Aktiengesellschaft*") or a limited liability company (GmbH). Both types of entities are endowed with a separate legal personality and provide for a limited liability with its share capital. The minimum share capital to incorporate a corporation is CHF50,000 (partially paid-in) or CHF100,000 (fully paid-in), whereas investors naturally favour a fully paid-in capital to have recourse to a higher adhesion substrate. An entity may also be incorporated as limited liability company. The main difference towards a corporation constitutes a lower minimum share capital requirement of CHF20,000, the disclosure of the shareholders in the commercial register and somewhat limited flexibility in terms of capital raising features.

2.3 Early-Stage Financing

As professional investors such as venture capitalists usually expect recurring annual revenues, early-state financing is typically provided by family and friends as well as wealthy individuals ("angel investors"). They do not require an accreditation or another qualification, professional experience or net worth. In fact, these are private individuals investing their own money into a start-up and – unlike professional venture capitalist investors – do not get paid for making the investment. Ideally angel investors provide knowledge to develop a company and successful products. In terms of investing volume, angel investors are followed by seed and series A funds, corporate ventures and family offices. Over the past years, Switzerland has seen a large increase in seed investments, both in terms of numbers (166 investments) and value (average investment amount of CHF2 million). The documentation for early stage financing for a start-up company in Switzerland is usually rather basic, consisting in a subscription form (rather than an eloquent subscription agreement) to subscribe for newly issued shares resolved at a shareholders' meeting and a basis shareholder's agreement including to form of tag- and drag-along rights, if at all.

2.4 Venture Capital

Although the Swiss start-up scene has developed impressively over then last ten years, its venture capital industry is still relatively young. Some of the sponsors are in their second or third fund generation, but a lot in their first round. However, Swiss start-ups are attracting large international investors due to attractive valuations and innovative ideas. In general, foreign venture capital firms foremost provide funds in mid- and late-stage financing rounds. Although the proposal for the creation of a governmental innovation fund was recently declined, the government typically provides funds (eg, technology fund) that grant loan guarantees for investments in start-ups operating in technologies that are in a public interest, such as innovative products aimed at achieving a sustainable reduction in greenhouse gas emissions.

2.5 Venture Capital Documentation

The model documentation of the Swiss Private Equity & Corporate Finance Association (SECA) has developed a well-regarded set of documents that are available on its website. In general, there is a substantial standardisation of the documentation. Primarily, a term sheet lays out the financial terms of the investment and forms the basis for implementing an equity investment. These terms may subsequently be implemented into a legally binding investment and shareholders' agreement. Its purpose is to outline the rights,

obligations, and relationships among the shareholders. Minority shareholders such as start-up investors strive to implement special rights to protect their investment.

2.6 Change of Corporate Form or Migration

In principle, start-ups continue to stay in the same corporate form and jurisdiction. Especially, if the start-up is incorporated as a corporation, there is no need to change the corporate form in a later stage of venture capital financing. A general necessity to change jurisdiction is not apparent, rather subject to the start-ups long-term strategy and goals.

3. Initial Public Offering (IPO) as a Liquidity Event

3.1 IPO v Sale

Generally, a liquidity event in Switzerland is still run through a sale process, rather than an IPO. Dual-track processes are sometimes pursued, but there is no general trend to have a dual-track process at the outset. In fact, there are only a few technology companies listed on the Swiss stock exchange (the “SIX Swiss Exchange”), despite the large increase of technology companies in Switzerland.

In the past years, the number of IPOs at the SIX Swiss Exchange has been rather low. Therefore, in 2022, the SIX Swiss Exchange launched a new segment for small and mid-caps to revive the IPO market as an alternative to sale processes. However, the effects have been limited so far. The costs, time and efforts for an exit via an IPO remain significantly higher than via a sale process.

3.2 Choice of Listing

A Swiss company is most likely to list in Switzerland unless it has specific interests in listing in another country. Usually, the decisive factor for a listing abroad would be a larger investment base and higher industry/sector valuations. Currently, we do not see such trends in Switzerland. The main advantages of a “home country” listing in Switzerland are (i) the efficiency of the listing procedure and listing maintenance and (ii) the avoidance of heavier regulatory burdens and additional exposure to litigation risks in multiple jurisdictions. In general, while there are Swiss companies that are listed on multiple stock exchanges in different jurisdictions, the costs of such multiple listings are usually considered higher than their benefits.

3.3 Impact of the Choice of Listing on Future M&A Transactions

A listing on a foreign exchange will have the effect that the company will continue to be subject to Swiss corporate law, but will, in addition, have to comply with the rules of the foreign exchange. This dual applicability of legal systems may lead to increased complexity in structuring a future sale, especially in case of potential conflicts between domestic and foreign law. Moreover, the Swiss tender offer rules (including squeeze out rules in the context of tender offers) will not apply to a sale of a company that is only listed on a foreign exchange. Therefore, additional steps, such as the implementation of a squeeze out merger pursuant to the Swiss Merger Act, may be required to successfully achieve a sale of 100% of the shares in the company.

4. Sale as a Liquidity Event (Sale of a Privately Held Venture Capital-Financed Company)

4.1 Liquidity Event: Sale Process

There is no typical rule for a sale being run as an auction or in a bilateral negotiation. Auctions are usually chosen if the investors are keen to maximise the purchase price. However, the uncertainties and costs of an auction process may keep potential buyers from participating to the auction. Bilateral negotiations are usually conducted by strategic investors that approach potential targets directly if they see a strategic fit.

4.2 Liquidity Event: Transaction Structure

Usually, the sale of a privately held technology company is structured as a share purchase whereby all the shares in the company are sold to the purchaser. Key members of the management holding equity in the company are usually required to roll over part of their sale proceeds in the equity of the buyer.

4.3 Liquidity Event: Form of Consideration

The consideration in a sale of a Swiss privately held venture capital-financed technology company is usually cash. Certain rollovers for the key management are structured in a way that the management holding equity in the company is paid with a mix of cash and equity.

4.4 Liquidity Event: Certain Transaction Terms

Customarily, shareholders agreements between the founders and VC investors provide for drag- and tag-along rights in relation to liquidity events. Such drag- and tag-along rights contain provisions on the key terms and conditions that apply to shareholders in case of a sale event. The terms of such provisions are usually highly negotiated and may contain more or less detailed provisions on what representations, warranties and indemnities the shareholders are required to give in a sale process. In general, any such liability is limited to each shareholder's share in the purchase price and is several, and not joint with the other shareholders. Obligations to enter into escrows or agree to holdbacks may also be contained in the drag- and tag-along rights.

The use of W&I insurance is growing in Switzerland and is generally an accepted instrument among professional players in the market.

5. Spin-Offs

5.1 Trends: Spin-Offs

Usually, Swiss privately held venture capital-financed technology companies pursue one coherent business and are therefore not in a position to spin-off a business. Therefore, spin-offs for such companies are rather unlikely. However, if a company has different lines of business, which do not all match the strategic fit of a buyer, it may be that a spin-off is the preferred structure.

5.2 Tax Consequences

Spin-offs can be structured as tax-neutral reorganisations at the corporate level (including a so called holding spin-off) if certain requirements are fulfilled; irrespective of the execution under civil law – eg, asset deal, two-step demerger or statutory demerger. The most important requirements for Swiss tax purposes are the following:

- the tax liability in Switzerland continues;
- the values previously relevant for income tax are taken over;
- one or more businesses or parts of businesses are transferred; and

- the legal entities that exist after the spin-off continue to operate a business or part of a business.

It should be noted that especially in case of tax neutral spin-offs, the key element is the so called double business requirement.

If the above mentioned conditions are fulfilled, the tax neutrality of spin-offs also applies to the shareholders, provided there will be no gain in the nominal value or so called capital contribution reserves (for individuals).

There is no blocking period for Swiss tax purposes, provided the spin-off qualifies as tax neutral spin-off.

5.3 Spin-Off Followed by a Business Combination

In principle, and bearing in mind that a tax-neutral spin-off is based on the requirement of two separate businesses without being subject to a blocking period, a spin-off immediately followed by a business combination should be possible for Swiss tax purposes.

It should always be considered whether the general rules for tax avoidance may be applicable to the case at hand. Generally, tax avoidance would be assumed if:

- a legal arrangement chosen by the parties involved appears to be unusual ("insolite"), improper or outlandish, or in any case completely inappropriate to the economic circumstances ("objective element"), if, in addition;
- it can be assumed that the chosen legal arrangement was made abusively merely in order to save taxes that would be due if the appropriate circumstances were in place ("intention to avoid"; "subjective element"); and
- if the chosen course of action would actually lead to a significant tax savings, if accepted by the tax authority ("effective element").

Particular attention should be paid to the transfer of tax losses carry forward as part of the spin-off and subsequently the transfer of such tax losses carried forward and the offset with taxable profit of the acquiring business. In general, the offset of tax losses carry forward is possible to the extent that the business will be taken over and continued and that the structure would not be considered as a tax avoidance.

For completeness purposes, however, it should be noted that a contribution of a business followed by an upstream merger could trigger adverse Swiss tax consequences.

5.4 Timing and Tax Authority Ruling

The timing of a spin-off usually depends on the preparation of the transaction from a tax and legal perspective, including the information and consultation of employees, as well as from an operational perspective. From a legal perspective, a spin-off may be structured in different ways, including via:

- a direct business transfer by means of an asset deal ("singular succession") or as a bulk transfer pursuant to the Swiss Merger Act (universal succession);
- a two-step demerger (transferring the business to a newly incorporated subsidiary – "newco" – and selling the shares in the newco to the buyer); or
- a statutory demerger.

In case of a transfer of a business with employees, the employer has certain information obli-

gations and if measures apply that affect the employees, a consultation procedure must be implemented. While no specific waiting period applies for the employees' information and consultation, it is usually recommended to inform and consult the employees at least one month prior to the effective date of the spin-off.

From a tax perspective it is best practice to file advance tax rulings with (i) the competent cantonal tax authority for corporate income tax and annual capital tax purposes – ie, the cantonal tax authority responsible for the assessment of corporate income tax and annual capital tax of the company, and (ii) the Swiss Federal Tax Administration for Swiss withholding tax and stamp duties purposes (usually levy and refund). It is decisive that the tax rulings will be filed prior to the implementation of the spin-off as a confirmation will only be granted for transactions that have not yet occurred.

Depending on the complexity of the spin-off, a confirmation can usually be obtained between three and six weeks after filing from the Swiss Federal Tax Administration and usually between three and 12 weeks after filing from the cantonal tax authorities, whereas this varies largely between the different cantonal tax authorities.

The preparation and completion of a spin-off usually takes six to 12 months.

6. Acquisitions of Public (Exchange-Listed) Technology Companies

6.1 Stakebuilding

In Switzerland, it is common to acquire a certain stake in a public company prior to making a public tender offer. The stakebuilding can take place as a private transaction or through trades on the exchange.

Whenever the relevant shareholder reaches or exceeds a threshold of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66⅔% of votes in the company through an acquisition of shares (or falls below such thresholds as a result of a sale of shares), the relevant shareholder has to notify the company and the exchange. These thresholds apply to stakebuilding in (i) companies having their corporate seat in Switzerland and having all or parts of their participations listed on a Swiss stock exchange as well as (ii) companies having their corporate seat abroad, but have all or parts of their participations primarily listed on a Swiss stock exchange. The notification obligation also applies when shares are bought or sold in concert and when converting participation certificates or profit participating certificates into shares, when exercising convertibles or option rights, other changes of the capital of the company and exercise of sale options.

The notification duty is triggered by the creation of the right to acquire or dispose of the equity securities – ie, upon conclusion of the binding transaction. In case of capital increases or decreases the duty is triggered by the publication in the Swiss Official Gazette of Commerce. The indication of an intended acquisitions or disposal or similar proposals do not trigger the notification duty as long as there are no legal obligations to execute the transaction imposed on any of the parties.

When the notification duty is triggered, the beneficial owners of the equity securities (the party controlling the voting rights) have to be disclosed. In addition, in case of parties acting in concert, the aggregate participation, identity of all members of the group, the type of acting in

concert, and the representative have to be disclosed as well.

If a party publicly announces that it considers a public tender offer without the legal obligation to submit such offer, the Swiss Takeover Board ("*Übernahmekommission*") may at its discretion request the potential offeror to either publish a public tender offer within a certain deadline ("put up") or to publicly declare to abstain from submitting an offer or from stakebuilding in excess of the threshold triggering a mandatory offer (see **6.2 Mandatory Offer**) within six months ("shut up").

6.2 Mandatory Offer

Under Swiss public takeover laws, once a direct or indirect shareholding of 33⅓% is reached, a mandatory offer has to be submitted. This obligation also arises when the threshold is reached by acting in concert.

6.3 Transaction Structures

A public company in Switzerland can be acquired through a public tender offer, a statutory merger, a share deal through which a controlling shareholding is acquired or an asset deal whereby the assets and liabilities of the operational business are acquired. In general, the two typical transaction structures are a public tender offer or a statutory merger. Whereas the public tender offer structure is usually seen in an international setting (in case a (reverse) triangular merger does not work) involving a listed Swiss entity, statutory mergers are more used in domestic private M&A transactions. Public tender offers are governed by the Swiss Financial Market Infrastructure Act and the relevant ordinances thereto. Statutory mergers are governed by the Swiss Merger Act.

6.4 Consideration and Minimum Price

In voluntary offers, the acquisition may be structured as a cash or stock-for-stock transaction or a combination thereof. In public tender offers, it is mandatory to offer a cash consideration in case a stock-for-stock exchange offer is made.

In mergers, a cash compensation is possible and common either as a combination of shares and cash (in which case the cash compensation must not exceed $^{1}/_{10}$ of the fair market value of the shares), a right to choose between shares or cash compensation or by stating in the merger agreement that only a cash compensation is offered.

The price offered in a public tender offer has to comply with a strict minimum price rule. The price has to be equal or higher than either (i) the stock exchange price which corresponds to the volume weighted average price (VWAP) during the 60 trading days' period before the preliminary announcement or the offer prospectus or (ii) the highest price paid by the bidder (or any person acting in concert with the bidder) during the 12 months' period before the preliminary announcement or the offer prospectus, which takes into account all agreements concluded during that period independent of the closing of such transaction.

Contingent value rights are not a common feature in public M&A transactions in Switzerland.

6.5 Common Conditions for a Takeover Offer/Tender Offer

Offer conditions are permitted for voluntary offers if:

- the bidder has a justified interest;
- the satisfaction of a condition cannot be (substantially) influenced by the bidder; and

- if the bidder has to pay a compensation due to the type of the condition, it has to implement all reasonable measures to ensure that the condition is satisfied.

The following types of conditions are common in Swiss public M&A transactions.

- Conditions to secure the acquisition of control (minimum acceptance levels).
- Conditions to protect the substance of the target company, including material adverse change clauses.
- Conditions to secure the completion of the transaction, such as approvals by authorities, amendments to articles of incorporation, entry in the shareholders' register and/or control over the board.

In case a bidder is subject to a mandatory offer (see **6.2 Mandatory Offer**), offer conditions are limited to regulatory approvals and registration as shareholder in the share register.

6.6 Deal Documentation

In Switzerland, it is common to enter into a transaction agreement between the bidder and the target in connection with a takeover, which is supported by the board of directors of the target company.

The transaction agreement would typically contain the following undertakings of the target company.

- Co-operation undertakings with respect to access to information, publication of financial statements, notice of relevant events/violation of covenants/actions threatening the completion of the transaction.
- Non-solicitation of other offers (no-shop undertakings).
- Future management structure.
- Information obligation with respect to competing offers or related inquiries.
- Joint press releases.
- Obtaining a fairness opinion.
- Fulfilment of specific offer conditions.
- Reasonable best efforts to solicit the tender of the shares.
- Compliance with takeover regulations.
- Convocation of shareholders' meeting to elect new board members appointed by the bidder.
- Registration of the bidder in the share register after completion.
- Conduct of business undertakings.
- Payment of a break fee if certain covenants, laws, regulations or conditions are violated.

It is also common to include representations and warranties in a transaction agreement, which are normally limited to fundamental representations and warranties (due incorporation, accuracy of information, valid issuance of shares, no violation of any contractual or constitutional obligations).

In case of mergers, it is mandatory to enter into a merger agreement between the merging entities and the Swiss Merger Act prescribes a mandatory minimum content. There are no specific obligations of the target company and it is not common to provide any representations and warranties.

6.7 Minimum Acceptance Conditions

Minimum acceptance conditions prescribing that the bidder (after the expiry of the offer period) directly or indirectly owns a certain number of target company shares are permitted and common in voluntary public tender offers (see **6.2 Mandatory Offer**). In principle, a threshold of 66⅔% of outstanding target shares is usually

accepted by the Swiss Takeover Board. However, there is no specific control threshold for minimum acceptance conditions as long as such thresholds are not unreasonably high. Based on case law of the Swiss Takeover Board the following general rules apply, subject to a case-by-case analysis:

- Thresholds of 50% are reasonable for partial offerings.
- Thresholds of 66⅔% or less are in principle reasonable.
- Thresholds of 66⅔% or more are only reasonable in specific situations.
- Thresholds of 90% are reasonable in case of holding offerings.

With a 66⅔% majority, a shareholder is able to control all important decisions of a Swiss target company according to Swiss law, unless the articles of incorporation would stipulate different voting thresholds.

6.8 Squeeze-Out Mechanisms

If a bidder does not achieve a shareholding of 100% after a public tender offer, it may squeeze out the remaining minority shareholders. The squeeze-out mechanism depends on the ownership threshold:

- If the bidder already holds more than 98% of the voting rights, the squeeze-out can be effected through court proceedings. In this case the bidder would file a respective squeeze-out request within three months after the end of the additional offer period. The shares of the minority shareholders will be cancelled upon court order against a compensation payable by the bidder and re-issued to the bidder. Subsequently, the board of directors of the target company may request the delisting of the shares of the company. Often the delisting process is already initiated in parallel to the squeeze-out procedure.
- If the bidder holds more than 90% but less than 98%, the squeeze-out can be effected through a statutory squeeze-out merger. In this case the bidder (or one of its affiliates) is merged with the target company. This requires the entering into of a merger agreement between the merging companies, approval by the general meeting of shareholders of both companies, a report by the board of the merging companies outlining the reasons for the merger, a report by a Swiss qualified auditor reviewing the merger documentation and a filing with the commercial registers where the two companies are registered. Following registration of the merger, the transferring company will be deleted from the commercial register and the minority shareholders will receive a cash compensation. The adequacy of the compensation can be challenged during a period of two months from publication of the merger in the Swiss Official Gazette of Commerce.

6.9 Requirement to Have Certain Funds/Financing to Launch a Takeover Offer

Upon publication of the offer prospectus in connection with a public tender offer, the bidder must confirm that the funds required to finance the takeover will be available on the settlement date. Under Swiss public takeover laws, an independent review body (auditor) has to confirm the availability of the necessary funds. In case of debt financed offers the executed financing documentation (and not only a term sheet) should be available as the financing banks will issue their commitment letters only under such documentation.

The permissibility of conditions and covenants in the financing documentation are admissible but limited and need to correspond to the offer conditions. Offers conditioned to obtaining financing are not permitted as the financing documentation has to be available in executed form already at the time of publishing the prospectus.

There is no certain funds requirement in a statutory merger.

6.10 Types of Deal Protection Measures

To secure the support of a transaction, the bidder and the target company may enter into a transaction agreement and agree on deal protection measures. Typical deal protection measures are:

- the undertaking of the board of directors of the target company to support the deal;
- non-solicitation provisions; and
- matching rights and break fees.

These measures are all subject to the fiduciary duties of the board of directors of the target company and, therefore, must not be overly restrictive. Break-up fees and reverse break-up fees are generally limited up to the amount of coverage of reasonable costs incurred on the level of the bidder. Punitive break fees are not admissible and transaction agreements have to contain a break right in case a better competing takeover offer is announced.

6.11 Additional Governance Rights

If a bidder cannot obtain 100% ownership of a target company, there are a number of statutory governance rights depending on the exact shareholding:

- A shareholding of more than 50% allows the bidder to pass shareholders' resolutions unless Swiss law or the constitutional documents of the company prescribe a qualified majority.
- A shareholding of 66⅔% allows the bidder to pass resolutions requiring a qualified majority (eg, delisting).

In addition, Swiss law recognises the following governance instruments:

- Super voting shares or preference shares granting preferential dividend and liquidation entitlements.
- Transfer restrictions on the shares issued allowing the board of directors (and indirectly the bidder through the relevant board representatives) to reject new shareholders (eg, competitors).
- Veto rights on board level.

6.12 Irrevocable Commitments

In Switzerland it is common to obtain irrevocable commitments from key shareholders of the target company to support the transaction, either through tendering their shares into the offer or sell their shares before the offer is announced.

The nature of these undertakings depends on whether the underlying agreement contains any conditions with respect to the success of the offer. Such conditions allow the shareholder to withdraw from the tender or sale if a better competing offer is announced at a later stage. In absence of such condition, withdrawal would not be possible.

Depending on the exact timeline, the details of the agreement have to be disclosed in the offer prospectus and the price paid affects the minimum offer price (see **6.4 Consideration and Minimum Price**).

6.13 Securities Regulator's or Stock Exchange Process

Mandatory and voluntary public tender offers are reviewed by the Swiss Takeover Board prior to publication of the offer. The review by the Swiss Takeover Board has to be completed within "a short period of time" and normally takes around three weeks. As part of the review, the Swiss Takeover Board verifies whether the terms of the offer are in compliance with Swiss law, this includes compliance with the best price rule, the conditions of the offer, the fairness opinion on the offer price as well as the provisions of the transaction agreement with the target company.

Prior to the publication of the offer, the bidder normally publishes a pre-announcement. The publication of a pre-announcement is not mandatory but common. The offer prospectus has to be published within six weeks from the pre-announcement. The timeline for the tender offer is determined by the bidder and disclosed in the pre-announcement or offer prospectus based on the deadlines set forth in the Ordinance of the Swiss Takeover Board (see **6.14 Timing of the Takeover Offer**).

If a competing offer is announced during the offer period, the shareholders are free to choose between the earlier offer and the competing offer. To enable this free choice, the Swiss Takeover Board would consult the parties involved and co-ordinate the timelines of both offers. In particular, it may determine a maximum offer period and limit the deadlines for amendments of the offers.

6.14 Timing of the Takeover Offer

Under Swiss takeover laws, the general offer period is at least 20 business days and maximum 40 business days. The offer period may be shortened by the Swiss Takeover Board upon request of the bidder in case the bidder already holds a majority of voting rights and the report of the board of directors is published in the prospectus.

The offer period may be extended up to 40 business days if an extension has been reserved in the offer. A longer extension requires the approval of the Swiss Takeover Board and is granted if this is justified by superseding interests.

In the past, an extension has been granted while administrative proceedings were pending with the Swiss Administrative Supreme Court, to review the launch of a partial offer during an ongoing primary offer and for synchronisation with a foreign public tender offer. It is also possible that an extension is granted in case regulatory/antitrust approvals are not obtained prior to the expiry of the offer period.

7. Overview of Regulatory Requirements

7.1 Regulations Applicable to a Technology Company

In principle, there are no specific regulations in Switzerland when setting up and starting a technology company. Certain exceptions apply to telecommunication, radio/TV, fintech, insuretech and biotech companies.

7.2 Primary Securities Market Regulators

The primary securities market regulators for public M&A transactions in Switzerland are the Swiss Financial Market Supervisory Authority FINMA and the Swiss Takeover Board.

7.3 Restrictions on Foreign Investments

There are limited restrictions on foreign investments in Switzerland, and currently these only

exist in the banking/financial services and real estate sectors.

However, a motion was submitted to the Swiss Federal Council to develop a legal basis for a foreign direct investment control in 2018. In 2021, the Swiss Federal Council determined the main aspects of such FDI control, which would entail a notification and approval requirement of investments by foreign governments or related investors. For private foreign investments only transactions in certain sectors with a minimum turnover threshold would be subject to a notification and approval requirement. The State Secretariat for Economic Affairs (SECO) would be the competent authority for this process. During the parliamentary consultation process it became clear that there are significant concerns about such FDI regime and the Swiss Federal Council has instructed the Federal Department of Economic Affairs, Education and Research to draft a proposal with a more limited scope until the end of 2023.

7.4 National Security Review/Export Control

In principle, there is no national security review of acquisitions in Switzerland.

Currently, Switzerland has restrictions in place against 26 countries and certain organisations, which restrict the transfer of goods and payments and also include certain notification obligations. The applicable restrictions need to be assessed on a case-by-case basis at the moment of a transaction.

Export control regulations apply to all military goods and arms as well as dual-use goods, technologies and software that may be used for civil and military purposes. The applicable restrictions are mainly governed by the Federal Act on Military Goods and the Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods (and ordinances issued in this context). Export of such goods, technologies and software are subject to governmental permits.

7.5 Antitrust Regulations

Swiss antitrust regulations have to be taken into account whenever two (or more) previously independent companies merge, in case of transactions through which a company acquires direct or indirect control of one (or more) previously independent companies or in case of transactions whereby two or more undertakings acquire joint control over an undertaking which they previously did not jointly control.

A merger control notification obligation is triggered if (i) the companies concerned have a joint turnover of at least CHF2 billion worldwide or a turnover of at least CHF500 million in Switzerland, and (ii) at least two companies have an individual turnover of at least CHF100 million.

Irrespective of the turnover, a notification obligation is triggered if one of the companies involved in a transaction has held a dominant position in the Swiss market and the takeover/business combination concerns either the same market, an adjacent market or an upstream or downstream market.

The notification has to be made to the Swiss Competition Commission and the obligation is triggered at signing and must be made prior to completion of the transaction.

7.6 Labour Law Regulations

Generally, Swiss labour law regulations in connections with M&A transactions are rather lenient. There is no involvement of employees and/

or works councils in public takeover offers. In case of a statutory merger or an asset deal constituting a business transfer, the employees (or the employees' representative body) have to be informed about the reason and (legal, economic and social) consequences of the transaction. In case it is intended to implement measures that affect the employees concerned, the employees need to be consulted on those measures and they can comment and propose alternative measures. Employees are also granted the right to reject the transfer of their individual employment relationship, in which case the employment would be terminated. However, employees, or the employees' representative body (if any), do not have a binding vote on the transaction itself.

7.7 Currency Control/Central Bank Approval

There is no currency control regulation or approval by the Swiss National Bank for M&A transactions.

8. Recent Legal Developments

8.1 Significant Court Decisions or Legal Developments

There are a number of legislative reforms that (could) have an impact on technology M&A transactions in Switzerland. Some are already in force, while others are still being debated in the legislative process.

On 1 August 2021, Switzerland introduced as one of the first countries in the world legislation on distributed ledger technology. Such legislation includes civil law but also regulatory provisions with the aim of enabling the use of distributed ledger technologies in a trusted environment.

As part of the Swiss corporate law reform, which came into force on 1 January 2023, new legal provisions have been introduced that provide opportunities for flexible structuring of M&A transactions. In particular, interim dividends are now explicitly permitted under Swiss law. They allow to avoid "cash for cash" payments so that the liquidity management after the acquisition can be improved. Additionally, a capital fluctuation band can now be introduced allowing the board of directors to increase or reduce capital within a certain range. This enables the board of directors to issue shares as acquisition currency.

Additionally, the revised Swiss data protection law came into force on 1 September 2023. One of the main goals of the new law was to achieve the compatibility with EU law (GDPR). Data protection in general becomes more important, especially also in technology M&A deals involving large databases. The compliance of the target company with the newly introduced law should be observed and also the data disclosure during the transaction process should take the new data protection act into consideration.

The Swiss Cartel Act is currently being revised. Although it is not yet clear what specific provisions will be included, the core element of the revision is the modernisation of Swiss merger control. It is planned to adapt an internationally accepted standard of review for business combinations, namely by replacing the qualified market dominance test by the significant impediment to effective competition test (SIEC test). This would result in a lower threshold for regulatory intervention. Swiss merger control proceedings are expected to be more time consuming and burdensome due to the increased role of economic evidence. This is likely to have an impact on the larger transactions in the technol-

ogy sector. However, this revision is still subject to the approval of the Swiss parliament

Lastly, new legislation to screen foreign direct investment in Switzerland is currently discussed. However, it is disputed whether such a regulation is needed and there is widespread scepticism about the proposal of the Swiss Federal Council on how to control incoming cross-border investments. Even if the exact content of such a law is still unclear, it could make investment in Switzerland, including in the technology sector, less attractive.

9. Due Diligence/Data Privacy

9.1 Technology Company Due Diligence

Publicly listed companies are allowed to provide due diligence information as long as the provision of such information (i) is in the best interest of the company and (ii) complies with applicable law and contractual obligations, in particular with insider trading rules, ad hoc-disclosure obligations, confidentiality undertakings, data privacy obligations and the principle of equal treatment of shareholders. The permissibility of any disclosure of due diligence information must be analysed on a case-by-case basis in relation to the specific information, bidder and intended transaction and its implications for the company.

Before any confidential information is disclosed, the company should ensure that the bidder has entered into appropriate non-disclosure undertakings and that the due diligence information is only disclosed on a limited and a need-to-know basis. Information which is sensible from a commercial or antitrust perspective should be disclosed to clean teams only.

The company has no general obligation to provide due diligence information to potential or actual bidders. However, if a company has provided or will provide to actual of potential bidders due diligence information, all actual (but not other potential) bidders have a right to receive the same information.

The level of technology due diligence depends on the specific IP portfolio. Generally, a company may be allowed to disclose IP information which is already public in the relevant IP registers. However, particular attention should be taken in relation to trade secrets and other commercially valuable confidential information, including source codes. In technology companies, such information is likely to qualify as insider information and therefore may not disclosed in connection with a due diligence.

9.2 Data Privacy

Any processing of personal data of Swiss data subject must comply with the provisions of the Swiss Federal Data Protection Act (DPA).

Generally, we note that on the one hand, the processing must be based on one or more of the legal bases provided for in the DPA. In the context of a due diligence exercise, the seller and the buyer usually may rely on the legal basis of safeguarding their legitimate interests. On the other hand, the seller and the buyer must comply with the general principles that apply to any processing of personal data:

- the processing of personal data must be made in good faith and must be proportionate;
- personal data may only be used for the purpose(s) specified at the time of its collection; and
- both the fact:

(a) that personal data is being collected; and
(b) the purpose of the processing must be apparent to the relevant data subject – moreover, the data must be accurate and data security must be ensured.

Finally, specific requirements apply for transfers of personal data abroad and for the processing of particularly sensible personal data.

10. Disclosure

10.1 Making a Bid Public

A requirement to launch a public tender offer applies if the target's shares are listed on a Swiss stock exchange and more than 33⅓% (or a higher threshold up to 49% as stipulated in the target company's articles of incorporation) of the voting rights are acquired by the bidder (mandatory bid), unless there is an opting out clause. Otherwise, a bid will usually only be made public after parties have reached a definitive agreement. The public offer is made public by way of an offer prospectus. In the scenario of a hostile bid environment, a bidder may publicly announce the intention of an acquisition of a target's shares. In such case, the hostile bidder may be required to announce a public offer under the "put up or shut up" rule.

10.2 Prospectus Requirements

The publication of a prospectus is required by any person making a public offer for the acquisition of securities or seeking the admission of securities for trading on a trading venue. Provided that information exist which is deemed equivalent in terms of content to a prospectus in connection with shares offered in a stock-for-stock takeover, a prospectus may not need to be published. A similar exception applies in connection with a merger, spin-offs and the likes, again provided information exist that is deemed equivalent in terms of the content of a prospectus.

10.3 Producing Financial Statements

The prospectus contains detailed information on the company's assets, financial position and earnings as well as on the type, price and prospects of the shares. Companies listed on a stock exchange and larger undertakings must prepare financial statements in accordance with a recognised financial reporting standard.

10.4 Disclosure of Transaction Documents

The prospectus for a public tender offer needs to be submitted to the Swiss Takeover Board for review and clearance.

11. Duties of Directors

11.1 Principal Directors' Duties

In general, the directors of a Swiss company:

- have a duty of loyalty towards the company;
- must always pursue the company's best interest with due care; and
- apply equal treatment to all shareholders (so called fiduciary duties).

This also applies in case of a business combination and other forms of M&A transactions.

There is no general definition of what falls under the "best interest of the company". In recent years, it has been discussed among Swiss scholars whether this includes only the shareholders' interests (shareholder approach) or if also the interests of other stakeholders must be considered (stakeholder approach). Despite these discussions, in business combinations, a

company's interests should not only encompass value growth and fair shareholder compensation but also the interests of other stakeholders. It is up to the directors to weigh these different interests in a way they seem appropriate.

The principle of equal treatment of the shareholders must always be observed as long as this does not contradict the company's best interest. For Swiss companies whose shares are at least partly listed in Switzerland, the Swiss takeover law already takes this principle into account (eg, by stipulating the best price rule so that all shareholders may sell their shares for the same price). The Swiss takeover law further stipulates the principle of equal treatment of different bidders. Extensive exclusivity agreements with individual potential buyers not allowing the board of the target company to negotiate with other potential buyers may likely be unlawful in light of this principle.

11.2 Special or Ad Hoc Committees

Swiss listed companies often establish a special or ad hoc committee in the context of M&A transactions. The establishment of such a committee is a way to avoid conflicts of interest but can also be beneficial to streamline the transaction process. Even if certain tasks might be delegated to the special or ad hoc committee, important strategic decisions (eg, granting due diligence to a party or the decision to defending the company) must be passed by the full board, excluding the principal directors with conflicts of interest.

11.3 Board's Role

Prior to the launch of a public takeover offer of the buyer, the board is actively involved in the negotiations with potential buyers. It is the task of the board of the target company to review the proposal of a potential buyer. At this stage, the board is guided by the question whether it is in the best interest of the company to continue the takeover process. If the board concludes that the offer is not in the best interest of the company, it may abandon the negotiations. However, if the board decides to continue with the process, the shareholders will have the final decision on whether to accept the offer or not.

The Swiss takeover law further specifies the role of the board of a listed target company as soon as a public tender offer has been officially made. In particular, the board must prepare a report for the shareholders setting out its position in relation to the offer. Furthermore, the board is not allowed to enter into legal transactions that might significantly alter the assets or liability of the company (eg, the sale or acquisition of assets representing more than 10% of the total assets or contributing to more than 10% to the profitability of the company). This limits the possibilities to take defensive measures at this stage. However, certain defence measures might still be taken by the board, such as actively looking for a "white knight" (always under consideration of the principle of equal treatment of different bidders), PR communications or convening an extraordinary shareholder's meeting to decide on defence measures.

Shareholder litigation challenging the board's decision to recommend a particular transaction is not common in Switzerland. However, qualified shareholders (holding at least 3% of the voting rights of the target company) may be parties to proceedings before the Takeover Board and are eligible to challenge its rulings. There are some past cases where qualified shareholders challenged the rulings of the Takeover Board, but this is often not necessary in friendly takeovers anyway.

11.4 Independent Outside Advice

It is common for the board to obtain financial, legal or other advice in the context of a M&A transaction. This allows the board to ensure the availability of sufficient expertise and to act with due care.

The Swiss Takeover Board imposes the obligation to obtain a fairness opinion if not at least two members of the board of the target company are free of conflicts of interest. However, obtaining fairness opinions is also customary in business combinations where no conflicts of interests exist as they allow the board to legitimise its position when rejecting or recommending accepting a public tender offer.

Trends and Developments

Contributed by:
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Loyens & Loeff

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Deal Activity and Market Insights

Deal activity in 2023

In general, cross-border M&A activity in Switzerland could record a shift from inbound transactions to more outbound transactions since mid-2022 alongside a slight overall decrease in M&A activity in 2023. Against this background and despite a general slow-down of the Swiss economy, the technology, media, and telecommunications (TMT) sector remained resilient with M&A activity showing a continuing trend in this sector. In the first quarter of 2023, M&A activity of Swiss TMT companies was able to record the strongest quarter ever with a growth of around 23% in the first half of 2023 compared to the first half of 2022. Most TMT deals in Switzerland involve software companies as well as IT services. In contrast, businesses in media and telecommunications account for only a very small share of M&A activity in the TMT sector.

Compared to other sectors, TMT deals in Switzerland show a higher share of foreign investors, highlighting the generally more international outlook of this sector. Furthermore, M&A activity in the Swiss TMT sector is driven by buyers outside the TMT sector. This marks a significant difference to other sectors, particularly as most transactions in Switzerland are completed by buyers from the same sector. This trend towards out-of-sector buyers in the TMT market can be reasoned with the ongoing need for companies to drive innovation and advance digitalisation. In addition, as in all other sectors, the transaction share of private equity and financial investors also increased in the Swiss TMT M&A market in the first half of 2023.

Swiss IT firms as attractive targets

In the first half of 2023, IT service providers were the most popular targets for inbound transactions in Switzerland. The attractiveness of the country as a business location and the many new tech companies constantly emerging from the highly active start-up community are likely to be the main reasons for this strong interest in Swiss IT service providers.

In contrast, IT services only rank fourth in outbound transactions. Industrial companies are the main foreign targets of Swiss SMEs.

Outlook

Besides the overall slow down of the economic growth in Switzerland, 2023 has been marked by numerous challenges, including high inflation, rising interest rates, the strength of the Swiss franc, turbulence in the financial sector and ongoing wars. Against this challenging background, an overall decline in M&A activity within the Swiss market is expected. The strong Swiss franc makes foreign targets attractive for Swiss investors, while Swiss companies become more expensive for foreign investors. This will also affect the TMT sector. However, it is expected that the industry's resilience and the strong trend towards innovation and digitalisation will continue to drive growth and deal activity in the sector.

Deal Structures and Other Key Aspects in Tech M&A

Earn-out clauses

The adequate valuation of a target company can be challenging in technology deals, especially with respect to start-ups that have only been operating for a few years and can therefore only provide limited financial metrics. In such cases, the estimation of the target company's performance depends to a great extent on future forecasts. At the time the deal is closed, there is often a great degree of uncertainty regarding the development of the company and the success of the digital technology or digital business model. This uncertainty can result in valuation gaps and

different price expectations between the seller and the buyer.

To tackle this uncertainty and close the gap, M&A agreements in technology deals often include earn-out clauses. The earn-out is a performance-related, variable purchase price component, which is paid in addition to a fixed base price. The performance indicators can be defined by the parties. Often financial performance indicators, such as net income or operating cash-flow, are used. This way, the earn out depends on actually generated revenues and can thus compensate for uncertainties with regard to future returns.

By using an earn-out mechanism, the seller and the buyer share opportunities as well as risks after the acquisition. Such mechanism can be beneficial for both the seller and the buyer. From the seller's perspective, the earn-out is a way of maximising the proceeds of the sale without having to discount the purchase price due to the buyer doubting the value of the target company. For the buyer, it can ensure a more accurate valuation of the target company and reduce uncertainty about its future. In constellations where the seller continues to be involved in the company beyond closing, an earn-out can further incentivise the seller to maintain and improve the performance of the business during the earn-out period.

Due diligence

The general scope of the due diligence to be performed in a technology M&A deal needs to be determined on a case-by-case basis. However, in addition to the typical issues such as legal, tax, economic and financial conditions, there are also issues that require special attention during the due diligence process in a technology M&A transaction. These include in particular intellectual property (IP), software and employees.

The core value of tech companies naturally lies in their intangible assets. IP due diligence therefore plays a central role and usually involves determining the portfolio and extent of IP owned by the target. Legal IP due diligence often goes along technical due diligence of the target's IP, especially in technology-driven industries. A clear understanding of the technology in question is necessary for the determination of what IP rights may and should be in place. IP due diligence should also cover prior, current or emerging disputes in connection with the company's IP portfolio.

During the due diligence process the software owned and used by the target company needs to be identified. The purpose of this is to determine the type of the software, the identity of its developers and the ownership of the software claimed by the target, as well as to verify the licensing of the software, and to assess the legality of the efforts to market it.

With respect to employees, the due diligence will include a review of the employment contracts, in particular those of the founders and other key employees. In the context of IP and technology, it is critical to determine the existence of any employee-generated IP or technology. As part of the due diligence process, the ownership rights to such intangible assets must then be clarified. According to Swiss employment law, inventions and designs produced by the employee in the course of his work for the employer and in performance of his contractual obligations belong to the employer. Furthermore, the employer may acquire inventions and designs created by the employee in the course of his work for the employer, but not in the performance of

his contractual obligations, against reasonable compensation. However, if the employee creates works protected by copyright, it is necessary to distinguish between software and other copyrighted works. In case software is created by an employee while discharging professional duties and in fulfilling contractual obligations, the Swiss Copyright Act grants exclusive rights to the employer. Regarding other works protected by copyrights the so-called "creator principle" is applicable and the rights are not automatically transferred to the employer. For more details on copyrights and information on how to deal with works protected by copyrights created by contractors or other third parties, including software, please refer to the subsection on IP protection below.

Another aspect to consider is that technology transactions frequently involve a strong wish on the part of the buyer to continue collaborating with the seller. This is a way to secure key competencies and know-how and also an effective tool to implement a non-compete clause under Swiss law. Typically, in such cases, the seller remains in a management position.

IP protection

As discussed in the subsection on due diligence above, intellectual property rights are the primary reason for acquiring a technology company and thus require special attention. In particular, the determination of the scope and ownership of IP rights can be challenging. In addition, transferability must be ensured, considering the different types of IP rights. If the target company owns IP rights in different jurisdictions, the possible differences in the rules governing the transfer of IP rights will have to be taken into account.

Identifying and listing the IP rights in scope, requires an understanding of the types of rights and intangibles. Under Swiss law, a distinction must be made between registered and non-registered IP rights. Trademarks, patents and designs are common registered IP rights in Switzerland. Registration in the applicable registers entitles the owner to exclusive rights.

Unregistered IP rights are more challenging to identify and inventorise. In this category, copyrights are the most relevant rights. Copyrights are particularly valuable in relation to software. There is no register of copyrighted works in Switzerland. Instead, according to the so-called "creator principle", the Swiss Copyright Act grants exclusive rights to the natural person who created the work. Unlike other jurisdictions, Switzerland does not have a general work-for-hire doctrine applicable to third-party contractors and employees, whereby the client or employer obtains the intellectual property rights resulting from the performance of the contract. Exceptions apply to the creation of software by employees as described in the subsection on due diligence above.

In case of copyrighted works other than software created by an employee, copyright usually vests to the employee who has created the work, not to the employer. The latter only obtains a licence to use the work generated by the employee, but only to the extent that this is required by the purpose of the employment, which does not include a transfer of ownership of the copyrighted work. To avoid legal uncertainty, the employment agreement should set out the extent of the rights transferred.

Particular attention must also be paid in case external contractors or other third parties are involved in the creation of a work protected by copyright. It is essential to contractually clarify

the scope of the rights the company needs in the work – ideally full copyright.

In order to ensure the transfer and continued use of key IP rights after a transaction and to protect the buyer from potential damages and liabilities, it is essential that the share or asset purchase agreement contains a detailed set of representations and warranties and indemnification mechanisms. The precise content of the representations and warranties will be based on a number of factors including the results of the due diligence process.

If uncertainty remains after the due diligence process as to the scope, ownership or transferability of certain IP rights, IP liability insurance may be another risk mitigation tool. Such insurance can help companies cover the costs of litigation associated with enforcing or defending patents, trade marks or copyrights, and it can help protect policyholders against third-party infringement claims.

Regulatory and Other Developments

Data protection

On 1 September 2023, the new Swiss Data Protection Act (revDPA) came into force. The aim of the revDPA was, on the one hand, to modernise Swiss data protection law and, on the other hand, to bring it into line with EU law, in particular with the EU GDPR. Companies that were already compliant with GDPR had only minimal changes to make.

The following summarises the major changes of the revDPA.

The revDPA follows key international data protection standards, including the GDPR, in that the personal data of legal entities will no longer be protected. Sensitive data has been expanded to include genetic and biometric data, which now also requires explicit consent to process.

Furthermore, the principles of Privacy by Design and Privacy by Default have been newly introduced. The principle of Privacy by Design obliges developers to include protection of users' privacy in the structure of the products or services that collect personal data. The Privacy by Default principle, on the other hand, ensures that the highest level of security is in place when the product or service is released, by ensuring all necessary privacy and data use restriction measures are enabled by default – ie, without user intervention. This means that all software, hardware and services must be configured to protect data and safeguard user privacy.

In addition, under the revDPA enhanced governance and documentation requirements apply. Controllers and processors must keep records of data processing. However, SMEs with fewer than 250 employees may qualify for an exemption.

The revDPA further allows companies to regulate themselves. There are fewer data protection impact assessment requirements for those who appoint a data protection officer (DPO) and notify the Federal Data Protection and Information Commissioner (FDPIC) that they have done so. The role of the DPO is to monitor the company's compliance with data protection requirements and to advise the data controller on data protection matters. In contrast to the provisions of the GDPR, the appointment of a DPO is mandatory only for federal bodies; for private companies, it is voluntary.

Any breach of data security which is likely to pose a serious risk to the privacy or fundamental rights of the data subject must be notified to

the FDPIC without delay. If necessary for their protection or if the FDPIC so requires, the data subject must also be notified.

Finally, the fines for wilful breaches of certain provisions of the revDPA have been heavily increased in the revDPA. Cantonal authorities will be responsible for prosecuting such violations.

Foreign direct investment screening

Currently, Switzerland does not have any general foreign direct investment (FDI) screening mechanisms in place. However, FDI controls apply to certain industries and sectors, for example, banking and real estate. Several additional business activities require a governmental licence, and the licensing conditions include specific requirements regarding foreign investors. Examples for such business activities are aviation, telecom, radio and television and nuclear energy.

In adoption of a corresponding motion, the Swiss Federal Council published a preliminary draft for a new law on FDI screening and initiated its consultation in May 2022. Most of the participants in the consultation process rejected this draft, arguing that restricting international investment would be harmful to the economy since it would weaken Switzerland's position as a business location. Based on these results, the Swiss Federal Council decided to substantially revise the preliminary draft by the end of 2023. Under this new draft legislation, investment screening is expected to only apply when a foreign state-controlled investor takes over a domestic company that operates in a particularly critical area, such as defence equipment, power grids and production, or health and telecom infrastructure.

Swiss innovation fund

In June 2022, the Swiss Federal Council made a directional decision to establish a Swiss innovation fund. This fund was intended to improve the financing of start-ups during their growth phase, especially in the area of digitalisation. However, instead of taking further steps towards realisation, in spring 2023, the Swiss Federal Council decided not to pursue the matter further for the time being.

In June 2023, a motion was submitted to push for the implementation of an innovation fund through parliamentary channels. The Federal Council rejected this motion, arguing that there was insufficient room for manoeuvre due to the tight financial situation. However, during the autumn session, the Council of States referred the motion to the preliminary advisory committee.

The implementation of such an innovation fund would increase the maturity of the Swiss venture capital market, strengthen its resilience and thus improve Switzerland's attractiveness as a business location. The actual implementation of such a fund still remains to be seen.

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