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Marco Toni, Gilles Pitschen,
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Loyens & Loeff

Switzerland: Trends & Developments
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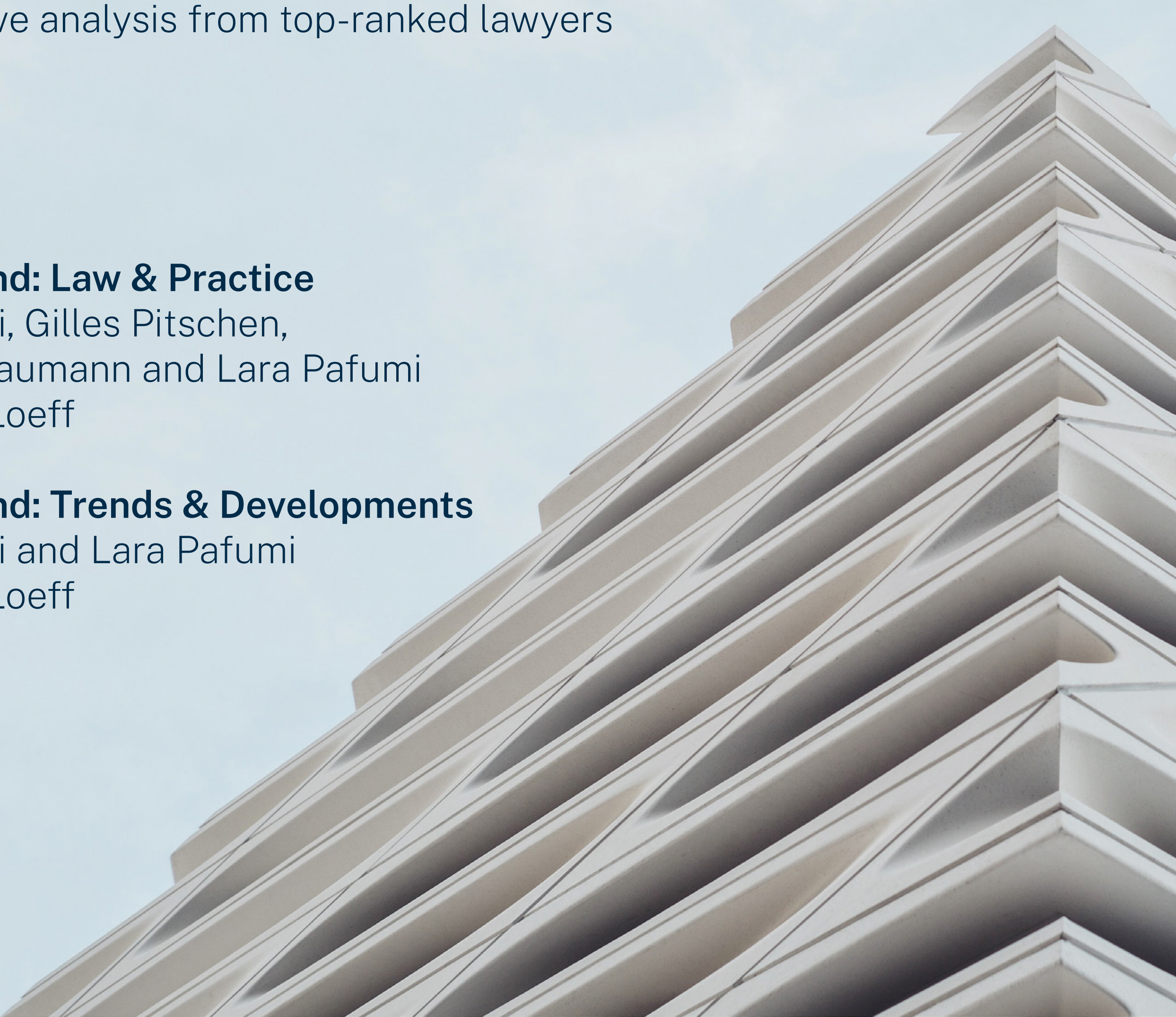

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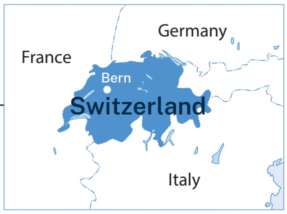

Law and Practice

Contributed by:
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Loyens & Loeff

Contents

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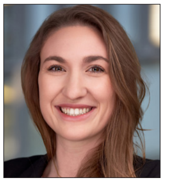

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1. Market Trends

1.1 Technology M&A Market

Following a significant decline in 2024, the global technology, media, and telecommunications (TMT) M&A market began to rebound in 2025, despite ongoing geopolitical uncertainties, especially concerning US trade policies. Previous challenges such as high inflation and elevated interest rates have started to ease, contributing to a more conducive setting for M&A activity. While the number of transactions remained relatively modest, the total deal value rose significantly. This growth was primarily driven by high-value strategic acquisitions and increased investment in artificial intelligence (AI).

Switzerland's TMT market followed a similar pattern. Activity peaked in early 2023, declined through mid-2024, briefly recovered late that year and surged in Q1 2025, before slowing again in Q2.

Private equity and financial investors continue to play a prominent role in the Swiss TMT M&A market, representing a significantly higher share of deals than the global average. This reflects the sector's strong appeal to financial investors.

Key Swiss-related tech deals in 2025 include:

- Shift4 Payments' USD2.5 billion acquisition of Global Blue Group Holding AG, a Swiss-based tax-free shopping technology provider;
- Advent's acquisition of U-blox Holding AG, a Swiss-based provider of leading positioning and short-range communication technologies and services, and former ETH Zurich spin-off, for USD1.3 billion; and
- Swiss-listed SoftwareOne Holding AG's takeover of Crayon Group Holding ASA, a Norwegian cloud services provider, for USD1.3 billion.

1.2 Key Trends

In the TMT sector, the ongoing need for companies to transform their businesses, drive innovation and enhance digitalisation – particularly with advances in AI – remains a key growth driver. 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 strong interest from foreign investors in Swiss software companies and IT service providers. Compared to other sectors, TMT deals in Switzerland have a higher proportion of foreign investors, highlighting the generally more international orientation of the sector and its strategic relevance beyond national borders.

Zurich, Switzerland, in particular, has emerged as one of Europe's most dynamic tech hubs, attracting global players like Google, Meta and Microsoft. Given Switzerland's attractiveness as a business location and Zurich's vibrant start-up community, producing numerous spin-offs in AI and robotics, software companies and IT service providers have been popular targets for inbound transactions.

In terms of regulatory trends potentially affecting M&A activity in the tech industry, recent developments in the field of foreign direct investment (FDI) screening as well as AI regulation are particularly worth mentioning.

Switzerland currently has no general FDI screening mechanism, and the Federal Council has consistently opposed broad investment controls, emphasising the importance of openness for economic competitiveness.

However, following a parliamentary motion, the Federal Council introduced a draft Investment Screening Act in mid-December 2023, which is now under parliamentary debate. A particularly controversial issue is whether private, non-state investors should also be subject to FDI control, a position supported by the National Council, while the Council of States favours a narrower scope limited to state-controlled investors and sensitive sectors.

The EU Artificial Intelligence Act (the "EU AI Act"), which came into force on 1 August 2024, has an extraterritorial reach. This means it applies to Swiss companies whose AI systems are available or used in the EU. In contrast, the Federal Council decided not to introduce a standalone Swiss AI Act in February 2025. Instead, Switzerland will ratify the Council of Europe's AI Convention and address AI-related issues through targeted amendments to existing legislation.

Rapid advances in AI and the accelerating pace of digital transformation are prompting companies to rethink and adapt their business models. This shift is expected to continue driving M&A activity in Switzerland's TMT sector, as businesses seek innovative solutions and strategic growth opportunities. Therefore, the outlook for the Swiss TMT M&A market remains cautiously optimistic. Easing inflation and lower interest rates are gradually improving overall conditions for deal-making. Furthermore, Switzerland's stable economy, sound financial system, and business-friendly legal and political environment continue to position the country as a highly attractive destination for technology-focused transactions.

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 that make it one of the most innovative countries in the world, Switzerland offers a business-friendly legal framework ensuring fast and cost-effective incorporations. Therefore, Switzerland is an attractive location in which to incorporate a start-up company. Swiss corporate law offers all the relevant features required for a start-up company to operate successfully - notably, with regard to pre-seed, 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 on - among other things - the canton of the company's intended seat, the country of residence of the investors (particularly for opening the required blocked bank account) and the efficiency of the founders in 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 (*Aktiengesellscha* ft) or a limited liability company (*Gesellschaft mit beschränkter Haftung*). Both types of entities are endowed with a separate legal personality and provide for a liability limited to their 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 fully paid-in capital to have recourse to a higher adhesion substrate. An entity may also be incorporated as a limited liability company. The main differences from a corporation are the 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. While founders often prefer incorporating a limited liability company rather than a corporation, it should be noted that this legal form is usually acceptable at an early stage (family, friends and fools) but that it is market practice to convert a limited liability company into a corporation prior to (or in the context of) a financing round with independent investors.

2.3 Early-Stage Financing

As professional investors such as venture capitalists usually expect a strong equity story backed by technical data and signs of traction towards the commercialisation of the product before entering the fray, early-stage financing is typically provided by family and friends, as well as by wealthy individuals ("angel investors"). They do not require an accreditation (or another qualification), professional experience or high net worth.

The year 2024 saw a decrease in the number of financing rounds for Swiss start-ups – the first decline since 2012. The total amount invested dropped by 8.5% compared to 2023, which itself had already fallen sharply from 2022. The number of rounds fell by 10.1%, and the invested amount is now similar to pre-pandemic 2019 levels.

Despite fewer rounds, the median investment per round rose significantly (CHF3 million, up 40.7% from 2023). The seed-stage median remained at CHF1.3 million, the early stage rose to CHF4.3 million (from CHF2.4 million) and the later stage increased to CHF12 million (from CHF6.3 million).

Biotech rebounded strongly, with CHF7.4 billion invested (over 50% higher than 2023, just below the 2020 record). Cleantech set a new record for the number of rounds, with seven of the top 20 investments in this sector. Healthcare, robotics and cleantech are driving a shift towards deeptech.

The documentation for early-stage financing for a start-up company in Switzerland is usually rather basic, comprising a subscription form (rather than a written investment agreement) for newly issued shares resolved at a shareholders' meeting and a basic shareholder's agreement (including tag- and drag-along rights, if any). Sometimes, early-stage financings are structured with convertible loan agreements – ie, by granting subordinated loans that are convertible into equity in the context of the next equity financing round (this being the Swiss law-translated equivalent of the US simple agreements for future equity (SAFE)).

2.4 Venture Capital

Although the Swiss start-up scene has developed impressively during the past ten years, Switzerland's venture capital industry is still relatively young. Some of the sponsors are in their second or third fund generation, but a lot are still in their first round. However, Swiss start-ups are attracting large international investors, owing to attractive valuations and innovative ideas. In general, foreign venture capital firms first and foremost provide funds in mid- and late-stage financing rounds. Generally, there is a persistent funding gap at the growth stage, especially for start-ups transitioning from early traction to international expansion. This makes Swiss start-ups dependent on foreign financing.

The government may provide funds that grant loan guarantees for investments in start-ups operating in technologies that are in the public interest. By way of example, the technology fund promotes innovative technologies that reduce greenhouse gas emissions, support the use of renewable energy and increase energy efficiency. Companies and start-ups developing such technologies can benefit from loan guarantees by encountering fewer hurdles to getting the necessary financing in place.

2.5 Venture Capital Documentation

The model documentation of the Swiss Private Equity and Corporate Finance Association (SECA) has developed into a well-regarded set of documents that are available on its website. In general, there is substantial standardisation in terms 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 are subsequently implemented into a legally binding investment and shareholders' agreement - the purpose of which is to outline the rights, obligations and relationships among the shareholders.

2.6 Change of Corporate Form or Migration

If a start-up is incorporated as a corporation, there is no need to change the corporate form in a later stage of venture capital financing. However, if a start-up is incorporated as a Swiss limited liability company, it will usually have to convert into a corporation prior to (or in the context of) an equity financing round with independent investors (see **2.2 Type of Entity**).

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 through an IPO. Dual-track processes are sometimes pursued, but there is no general trend towards having 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 in technology companies in Switzerland.

In the past few years, the number of IPOs at the SIX Swiss Exchange has been rather low. The launching of the SIX Swiss Exchange "Sparks" segment for small- and mid-caps has not been able to revive the IPO market as an alternative to sale processes. So far, only four companies have listed on this segment. The costs, time and effort required for an exit via an IPO remain significantly higher than those for an exit 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, such trends are not noted in Switzerland. The main advantages of a "home country" listing in Switzerland are:

- the efficiency of the listing procedure and listing maintenance; and
- the avoidance of heavier regulatory burdens and additional exposure to litigation risks in multiple jurisdictions.

In general, although there are Swiss companies that are listed on multiple stock exchanges in different jurisdictions, the costs of such multiple listings are usually considered greater 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 must, in addition, 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 back-end squeeze-out merger pursuant to the Swiss Merger Act following a foreign public tender offer, may be necessary 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 in 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 into 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 such 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 venture capital 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 or a public listing. 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 - rather than joint - with the other shareholders. Obligations to enter into escrows or agree to hold-backs may also be contained in the drag- and tag-along rights.

The use of warranty and indemnity (W&I) insurance is growing in Switzerland. W&I insurance is now 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 that do not all match the strategic fit of a buyer, a spin-off may be 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 that:

- 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 the case of tax neutral spin-offs, the key element is the so-called double business requirement.

If the aforementioned 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 a 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 where 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

- 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 loss carryforwards as part of the spin-off and, subsequently, the transfer of such tax loss carryforwards and the offset against the taxable profit of the acquiring business. In general, offset of tax loss carryforwards is possible to the extent that the business will be taken over and continued, and that the structure would not be considered as 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 tax and legal perspectives, 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 pursuant to the Swiss Merger Act.

In the case of a transfer of a business with employees, the employer has certain information obligations towards the employees and - if measures apply that affect the employees – a consultation procedure must be implemented. Although no specific waiting period applies with respect to the employees' information and consultation, it is usually recommended that the employees be informed and consulted 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:

- the competent cantonal tax authority for corporate income tax and annual capital tax purposes – ie, the cantonal tax authority responsible for the assessment of the corporate income tax and annual capital tax of the company; and
- the Swiss Federal Tax Administration for the purposes of Swiss withholding tax and stamp duties (usually levy and refund).

It is imperative that the tax rulings are 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 – although 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%, 33.3%, 50% or 66.6% 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:

- companies having their corporate seat in Switzerland and having all or parts of their participations listed on a Swiss stock exchange; and
- companies having their corporate seat abroad, but which 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 participation certificates into shares, when exercising convertibles or option rights, when there are other changes in the capital of the company and when exercising 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 the event of capital increases or decreases, the duty is triggered by the publication in the *Swiss Official Gazette of Commerce*. The indication of an intended acquisition or disposal, and similar proposals, does 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 ultimately controlling the voting rights) have to be disclosed. In addition, in the case of parties acting in concert, the aggregate participation, the identity of all members of the group, the form of acting in concert and the representative must 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 ask the potential offeror either to publish a public tender offer within a certain deadline ("put up") or to publicly declare that it will abstain from submitting an offer – and 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 33.3% is reached, a mandatory offer has to be submitted - unless the articles of incorporation of the company provide for a valid opting out. This obligation also arises when the threshold is reached by several persons 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 and 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 used more 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 the event a stock-for-stock exchange offer is made.

In mergers, cash compensation is possible and common, either as a combination of shares and cash (in which case the cash compensation must not exceed one-tenth of the fair market value of the shares), a right to choose between shares or cash compensation, or by agreeing in the merger agreement that only 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:

- the stock exchange price that corresponds to the volume-weighted average price (VWAP) during the 60 trading days' period before the preliminary announcement or the offer prospectus; or
- the highest price paid by the bidder (or any person acting in concert with the bidder) during the 12-month 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
- the bidder must pay compensation due to the type of the condition – in which case, 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; and
- 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.

If 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 regard to access to information, the publication of financial statements and notice of relevant events/violation of covenants/actions threatening the completion of the transaction;
- recommendation to the shareholders (with fiduciary-outs) and non-solicitation of other offers (no-shop undertakings);
- future management structure;
- information obligation with regard to competing offers or related enquiries;
- 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 a 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; and
- 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. These are normally limited to fundamental representations and warranties (due incorporation, accuracy of information, valid issuance of shares and no violation of any contractual or constitutional obligations).

In the 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 66.6% of the 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 66.6% or less are in principle reasonable;
- thresholds of 66.6% or more are only reasonable in specific situations; and
- thresholds of 90% are reasonable in case of holding offerings.

With a 66.6% majority, a shareholder is able to control all important decisions of a Swiss target company according to Swiss law, unless the articles of incorporation 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, as follows.

- 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 squeeze-out request within three months after the end of the additional offer period. The shares of the minority shareholders will be cancelled upon a court order against compensation payable by the bidder and re-issued to the bidder. Subsequently, and after the general meeting of shareholders has resolved a delisting, the target company may request the delisting of its shares. 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 cash compensation. The adequacy of the compensation can be challenged during a period of two months following the 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 the 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 with the offer conditions. Offers conditional on obtaining financing are not permitted, as the financing documentation must already be available in executed form 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 support for 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 at the level of the bidder. Punitive break fees are not admissible, and transaction agreements must 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, the following statutory governance rights apply, depending on the exact shareholding:

- a shareholding of more than 50% of the voting rights allows the bidder to pass shareholders' resolutions, unless Swiss law or the constitutional documents of the company prescribe a qualified majority; and
- a shareholding of 66.6% of the voting rights allows the bidder to pass resolutions requiring a qualified majority (eg, a delisting).

In addition, Swiss law recognises the following governance instruments:

- super-voting shares or preference shares granting preferential dividend and/or liquidation entitlements;
- voting restrictions (eg, limiting the percentage of voting rights of a shareholder);
- restriction of "empty voting" (eg, limitation of the exercise of voting rights by persons who do not bear the economic risk of the shares they hold); and
- transfer restrictions on the shares issued (eg, limitation of the percentage of shares a shareholder is permitted to acquire);

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 selling their shares before the offer is announced.

The nature of these undertakings depends on whether the underlying agreement contains any conditions with regard 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 the absence of such conditions, withdrawal would not be possible.

Depending on the exact timeline, the details of the agreement must 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 and the fairness opinion on the offer price, as well as with 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 is common. The offer prospectus has to be published within six weeks following the pre-announcement. The timeframe 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 timeframes of both offers. Specifically, 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 has a maximum length of 40 business days. The offer period may be shortened by the Swiss Takeover Board upon request of the bidder if 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 by 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, so as 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 for an extension to be granted if 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, insurtech 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. In addition, the listing rules of the relevant stock exchange apply.

7.3 Restrictions on Foreign Investments

There are limited restrictions on foreign investments in Switzerland. 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 FDI 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 for investments by foreign governments or related investors. On 15 December 2023, the Swiss Federal Council adopted the dispatch on the draft legislation relating to FDI control (the so-called Investment Screening Act). In September 2024, the National Council, in its role as the first chamber, undertook deliberations on the draft bill, while the Council of States did so in September 2025. The draft legislation intends to prevent takeovers of Swiss companies operating in critical sectors by foreign state-controlled investors if such takeover could threaten public order or security. Critical sectors include defence, dual-use goods, electricity, water supply, health, telecommunications and transport infrastructure. The Council of States backed leaner investment controls, limiting checks to state-controlled investors, while the National Council sought to extend the scope to all foreign investors. The State Secretariat for Economic Affairs (SECO) would be the competent authority for this process.

The Swiss Parliament is currently continuing its deliberations on the draft legislation. Notably, there are controversial discussions surrounding whether private, non-state investors will also be subject to FDI control. There is currently no expected timeline on when the Investment Screening Act may come into force.

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 or 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 to 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). Exports 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 the case of transactions through which a company acquires direct or indirect control of one (or more) previously independent companies or in the case of transactions whereby two or more undertakings acquire joint control over an undertaking that they previously did not jointly control. A merger control notification obligation is triggered if:

- the companies concerned have a joint turnover of at least CHF2 billion worldwide or a turnover of at least CHF500 million in Switzerland; and
- 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 must be made to the Swiss Competition Commission. 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 connection with M&A transactions are rather lenient. There is no involvement of employees and/or works councils in public takeover offers. In the case of a statutory merger or an asset deal constituting a business transfer, the employees (or the employees' representative body) must be informed about the reason for and the (legal, economic and social) consequences of the transaction. If the intent is 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 was one of the first countries in the world to introduce 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. Specifically, interim dividends are now explicitly permitted under Swiss law. They make it possible 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 compatibility with EU law – ie, the General Data Protection Regulation (GDPR). Data protection in general becomes more important, especially in technology M&A deals involving large databases. Compliance of the target company with the newly introduced law should be observed, and data disclosure during the transaction process should take the new data protection law into consideration.

The Swiss Cartel Act is currently being revised. The Swiss Federal Council adopted a dispatch on the partial revision of the Swiss Cartel Act that is currently in deliberation in the Swiss parliament. The core element of this revision is the modernisation of Swiss merger control. By changing from the current qualified market dominance test to the significant impediment to effective competition (SIEC) test, the antitrust test standard will be adapted to international practice. The introduction of the SIEC test allows for a lower threshold for regulatory intervention. Swiss merger control proceedings are expected to be more time-consuming and burdensome owing to the increased role of economic evidence. This could have an impact on the larger transactions in the technology sector. However, this revision is still subject to the approval of the Swiss Parliament.

Furthermore, a new draft legislation to screen FDI in Switzerland was adopted by the Swiss Federal Council in December 2023 and is currently being deliberated in the Swiss Parliament. Specifically, it is debated whether FDI control on incoming cross-border investments will also apply to private, non-state investors. Depending on the final scope of the new legislation, it could make investments in Switzerland – including the technology sector – less attractive. The new legislation is not expected to come into force before 2026.

Finally, it is worth noting that the EU AI Act entered into force on 1 August 2024. With its extraterritorial reach, similar to the GDPR, it also applies to Swiss companies whose AI systems are available in the EU or whose AI-generated output is used in the EU. Currently, Swiss law does not specifically regulate AI. However, in February 2025, the Federal Council communicated its decision to ratify the Council of Europe's AI Convention and commissioned the Federal Department of Justice and Police (FDJP) to prepare a consultation draft for new regulations on the use of AI by the end of 2026. The legislative initiative is particularly intended to cover the topics of transparency, data protection, non-discrimination and regulatory supervision. At the same time, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) will propose additional non-legislative measures by the end of 2026. These planned steps are intended to enable Switzerland to ratify the Council of Europe's AI Convention.

9. Due Diligence/Data Privacy

9.1 Due Diligence Process

No response has been provided in this jurisdiction.

9.2 Technology Company Due Diligence

Publicly listed companies are allowed to provide due diligence information as long as the provision of such information is in the best interest of the company and 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 and bidder, as well as the 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 need-to-know basis. Information that 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 due diligence information to actual or potential bidders, 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 that is already public in the relevant IP registers. However, particular attention should be paid 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 be disclosed in connection with a due diligence.

9.3 Data Privacy

Any processing of personal data of Swiss data subjects must comply with the provisions of the Swiss Federal Data Protection Act (DPA). Generally, it is noted 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 following general principles that apply to any processing of personal data:

- the processing of personal data must be done 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 that personal data is being collected and 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 sensitive 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 33.3% (or a higher threshold of 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 opt-out clause. Otherwise, a bid will usually only be made public after the 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 exists that 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 like - again, provided information exists 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 (so-called duty of care); and
- must apply equal treatment to all shareholders (so-called fiduciary duties).

This also applies in the event 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 as to whether this includes only the shareholders' interests (shareholder approach) or if the interests of other stakeholders must also 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 that seems appropriate.

The principle of equal treatment of the shareholders must always be observed, as long as this does not contradict the company's best interests. For Swiss companies whose shares are at least partly listed in Switzerland, Swiss takeover law already takes this principle into account (eg, by stipulating the best price rule, meaning that the highest price paid for equity securities must be offered to all shareholders). 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 will 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 in streamlining the transaction process. Even if certain tasks might be delegated to the special or ad hoc committee, important strategic decisions (eg, authorising due diligence by a party or deciding to defend the company) must be passed by the full board, excluding 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 of 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.

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. Specifically, 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 option to take defensive measures at this stage. However, certain defensive measures might still be taken by the board, such as actively looking for a "white knight" (always taking into consideration 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 Swiss Takeover Board and are eligible to challenge its rulings. There have been cases in which qualified shareholders challenged the rulings of the Swiss Takeover Board in the past, 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 an 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 at least two members of the board of the target company are not 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 acceptance of a public tender offer.

Trends and Developments

Contributed by:
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Loyens & Loeff is a leading law and tax firm that integrates legal and tax expertise to provide its clients with smart and efficient solutions through advisory, transactional work and litigation. The firm's digital technology know-how, combined with its in-depth knowledge of the most recent legal and tax developments in Switzerland and the EU, provides clients with a team of experts who have a thorough understanding of their businesses. Loyens & Loeff has a dedicated and multidisciplinary digital economy team with expertise in, among other things, AI, blockchain, fintech, software, cloud sourcing and eHealth.

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Deal Activity and Market Insights

In 2025, the global technology, media and telecommunications (TMT) M&A market is showing signs of recovery following a sharp decline in 2024. Easing inflation and interest rates have helped restore deal confidence. Although the number of deals remained relatively low, the overall value of transactions increased significantly. This was largely due to high-value strategic acquisitions and growing investment in artificial intelligence (AI).

This also affected the Swiss TMT sector. Swiss TMT M&A activity peaked in early 2023 but declined steadily through mid-2024 according to PricewaterhouseCoopers (PwC). A brief rebound in late 2024 was followed by a strong Q1 2025, before slowing again in Q2. As of mid-2025, deal volume remains modest amid ongoing market volatility.

As in previous years, the Swiss TMT sector continued to attract a high proportion of both cross-border and cross-sector deals. The strong presence of foreign investors reflects the sector's international appeal. Moreover, many buyers come from outside the TMT sector, which underlines an ongoing trend driven by the need for innovation and digital transformation across industries.

Private equity and financial investors remain highly active, accounting for roughly two-thirds of all TMT transactions in the first half of 2025. This is notably higher than in other sectors and underscores the attractiveness of Swiss tech companies for buyout activity.

Technology remains the dominant force in Swiss TMT M&A, representing about 80% of all deals. Within this category, software companies led the way, driving over two-thirds of transactions, followed by IT service providers. Key areas of investor interest included cloud computing, data analytics, AI, collaboration tools and cybersecurity.

Notable transactions in 2025

Key Swiss-related tech deals in 2025 include:

- Shift4 Payments' USD2.5 billion acquisition of Global Blue Group Holding AG, a Swiss-based tax-free shopping technology provider;
- Advent's acquisition of U-blox Holding AG, a Swiss-based provider of leading positioning and short-range communication technologies and services and former ETH Zurich spin-off, for USD1.3 billion; and
- Swiss-listed SoftwareOne Holding AG's takeover of Crayon Group Holding ASA, a Norwegian cloud services provider, for USD1.3 billion.

Zurich's rise as a European tech hub

Zurich, Switzerland, has emerged as one of Europe's most dynamic tech hubs thanks to its renowned institutions (ETH Zurich), high quality of life and growing concentration of global tech firms. Global players like Google, Meta, Microsoft and IBM have established major R&D centres in Zurich, with Google's Zurich office being its largest outside the USA, and leading global AI and machine learning initiatives.

ETH Zurich plays a central role, having produced numerous spin-offs, contributing to a vibrant start-up ecosystem focused on deep tech, AI, robotics and quantum computing. The city's compact geography fosters collaboration between academia, start-ups and corporates, making Zurich a launchpad for deep tech innovation and a magnet for international investment.

Switzerland's stable regulatory environment, access to talent and vibrant start-up ecosystem make it an attractive base for both domestic and international investors. Many Swiss tech companies originate from Zurich's innovation clusters. The concentration of software firms and digital service providers in Zurich has made it a focal point for M&A activity, especially in AI, automation and data analytics.

Outlook

Rapid advances in AI and the accelerating pace of digital transformation are prompting companies to rethink and adapt their business models. This shift is expected to continue driving M&A activity in Switzerland's TMT sector, as businesses seek innovative solutions and strategic growth opportunities.

Despite ongoing geopolitical tensions and economic policy challenges, such as the US tariffs, the outlook for the Swiss TMT M&A market remains cautiously optimistic. Easing inflation and lower interest rates are gradually improving overall conditions for deal-making. Furthermore, Switzerland's stable economy, sound financial system and business-friendly legal and political environment continue to position the country as a highly attractive destination for technology-focused transactions.

Zurich's role as a leading European tech hub contributes to a generally positive outlook. Its active start-up scene, skilled talent pool and concentration of software and IT firms make it a magnet for innovation and investment, reinforcing Switzerland's appeal for tech M&A. However, while these factors support Switzerland's appeal for tech M&A, broader market uncertainties may still influence deal activity.

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 regarding start-ups that have only been operating for a few years and can therefore only provide limited financial metrics. Performance estimates often rely heavily on future forecasts, and at closing, uncertainty around the company's trajectory and or digital business model can lead to valuation gaps and differing price expectations between the seller and the buyer.

To bridge this gap, M&A agreements in technology deals often include earn-out clauses. The earn-out is a performance-related, variable purchase price component 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 ties the earn-out to actual revenues, helping offset uncertainties regarding future returns.

Earn-outs allow both parties to share post-acquisition risks and opportunities. For sellers, it is a way to maximise proceeds without discounting the price due to buyer scepticism. For buyers, it enables a more accurate valuation of the target company and reduces future risks. If the seller remains involved post-closing, the earn-out can further incentivise strong performance during the earn-out period.

Due diligence

The general scope of due diligence in tech M&A deals needs to be determined on a case-by-case basis. Beyond typical legal, tax and financial checks, special attention is needed for IP, software and IT (including AI-related systems), and employees.

The core value of tech companies naturally lies in their intangible assets, making IP due diligence central. It usually involves identifying the IP portfolio and assessing ownership. Legal and technical IP due diligence often go hand in hand. Understanding the technology is key to determining necessary IP rights. During the due diligence process, software owned and used by the target must be identified to assess its type (including any AI-generated components), developers, ownership claims, licensing and marketing legality. IP due diligence should also cover past, current or emerging disputes.

Corporate IT environments are becoming increasingly complex, not least due to AI. IT due diligence aims to identify risks such as system vulnerabilities and data breaches and ensure integration or divestiture does not disrupt critical business processes.

AI-specific due diligence is gaining importance, particularly when the target's value relies on proprietary AI capabilities. Buyers should assess the maturity and scalability of AI solutions, the quality and ownership of underlying data assets, and the robustness of governance and compliance frameworks. It is essential to determine whether AI features are genuinely differentiating or easily replicable, and whether responsible AI practices are in place to mitigate reputational and regulatory risks. Overlooking these aspects may result in missed opportunities for value creation or exposure to significant post-deal challenges.

Employment due diligence includes reviewing contracts – in particular, those of the founders and other key employees. It is essential to identify employee-generated IP or technology, including AI models or training data, and clarify ownership. Under Swiss law, inventions and designs produced by the employee in the course of the employee's work for the employer, and during the performance of the employee's contractual obligations, belong to the employer. Furthermore, the employer may acquire inventions and designs created by the employee in the course of the employee's work for the employer – but not during the performance of the employee's contractual obligations – against reasonable compensation.

However, if the employee creates works protected by copyright, different rules apply. It is necessary to distinguish between software and other copyrighted works. For software created during professional duties and in fulfilling contractual obligations, the Swiss Copyright Act grants exclusive rights to the employer. For other copyrighted works, the so-called creator principle applies, 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.

Finally, technology transactions frequently involve continued collaborating with the seller to retain key know-how and implement non-compete clauses. Typically, the seller remains in a management position.

IP protection

As discussed in the foregoing subsection on due diligence, IP rights are the primary reason for acquiring a technology company and thus require special attention. Specifically, determining their scope and ownership can be challenging. In addition, transferability must be ensured, especially when the target owns IP rights in multiple jurisdictions with differing rules.

Identifying relevant IP requires understanding the types of rights and intangibles involved. Under Swiss law, a distinction is to be made between registered and non-registered IP rights. Trade marks, patents and designs are common registered IP rights in Switzerland. Registration entitles the owner to exclusive rights.

Unregistered IP rights, such as copyrights, are more challenging to identify. Copyrights are especially relevant for 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 copyrights resulting from the performance of the contract. An exception applies to software created by employees, as described in the foregoing subsection on due diligence.

Swiss copyright law distinguishes between economic rights and moral rights. Economic rights determine who can commercially exploit a work – such as using, distributing or reproducing it – and these rights can be transferred. Moral rights, on the other hand, such as the right to be credited as the author and protecting the work's integrity, cannot be transferred. Therefore, in the case of copyrighted works other than software created by an employee, copyright usually vests in the employee who has created the work. The employer may only obtain economic rights to exploit the work to the extent required by the purpose of the employment. To avoid uncertainty, employment agreements should set out the extent of the rights transferred.

Particular attention must also be paid if external contractors or other third parties are involved in the creation of work protected by copyright. It is essential to contractually clarify the scope of the rights the company needs in the work – ideally, full copyright.

To ensure the transfer and post-transaction use of key IP rights, 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. Their precise content will be based on several factors, including due diligence findings.

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. It may cover litigation costs related to enforcing or defending patents, trade marks or copyrights, and protect against third-party infringement claims.

Regulatory and Other Developments

Reopening of Swiss-EU dual listings

In 2018, the EU required investment firms to trade shares only on EU-regulated or equivalent foreign exchanges. Switzerland's equivalence status expired in 2019, prompting the Swiss government to restrict EU venues from trading Swiss-listed shares. This effectively blocked dual listings of Swiss-listed shares in the EU from July 2019 onward.

On 1 May 2025, Switzerland lifted its protective measures against EU trading venues, reinstating the possibility for Swiss companies to dual-list their shares on EU-regulated markets. This follows the EU's revision of its legal framework in 2024, which restored equivalence for Swiss stock exchanges and removed barriers for European investment firms trading Swiss shares.

The change is particularly relevant for public M&A transactions involving Swiss and EU companies. Under EU takeover law, shares offered as consideration must be listed on a regulated market. Since Swiss exchanges did not classify as such under EU law, companies previously had to offer cash or use complex structures. Dual listings now allow shares of Swiss-listed companies to be offered directly, simplifying deal execution and unlocking cross-border deal potential.

AI regulation

The EU's Artificial Intelligence Act (EU AI Act), adopted in 2024, is the world's first comprehensive legal framework for AI. It introduced a risk-based framework for AI systems and imposes strict obligations on high-risk applications. Although Switzerland is not part of the EU, the extraterritorial scope of the AI Act means that Swiss companies offering AI systems in the EU or whose outputs are used there must comply. This prompted Switzerland to reassess its own regulatory approach to AI.

In February 2025, the Federal Council confirmed it would not pursue a standalone "Swiss AI Act". Instead, Switzerland will ratify the Council of Europe's AI Convention and regulate AI through targeted amendments to existing laws, focusing on transparency, data protection and non-discrimination. This approach has received broad support from experts, who note that Swiss legislation already covers many AI-related risks through its current legal framework. By aligning with international standards and avoiding overregulation, Switzerland seeks to remain competitive and flexible. This approach also aims to prevent a "Swiss finish" that could disadvantage domestic companies.

Foreign direct investment screening

Switzerland currently does not have any general FDI screening mechanisms, although controls apply in sectors such as banking, real estate, aviation, telecommunications and nuclear energy. Certain business activities also require a government licence, which may include specific conditions for foreign investors.

The Federal Council has consistently opposed broad investment screening, stating that openness to foreign investment is essential for Switzerland's economic competitiveness and prosperity. Nonetheless, following a parliamentary motion, the Federal Council adopted a draft Investment Screening Act in December 2023. This proposed law would require approval for takeovers of Swiss companies operating in critical sectors by foreign state-controlled investors, subject to certain thresholds. These sectors include defence, energy and water supply, as well as healthcare, telecommunications and transportation infrastructure.

In September 2024, the National Council approved the bill and proposed extending it to non-state investors and essential goods and services. However, in September 2025, the Council of States endorsed a narrower version, limiting the scope to state-controlled investors and sensitive sectors. Approval would be required for companies with at least 50 employees and annual turnover of CHF10 million, or CHF100 million in certain industries such as healthcare, telecommunications and banking. The bill now returns to the National Council for further debate.

Partial revision of the Swiss Cartel Act

In May 2023, the Federal Council adopted a dispatch to partially revise the Swiss Cartel Act, aiming to implement three parliamentary initiatives. The main focus of this revision is to modernise Swiss merger control by replacing the current qualified market dominance test with the Significant Impediment to Effective Competition (SIEC) test, aligning it with international standards.

The SIEC test would lower the threshold for regulatory intervention, making it easier for authorities to step in. This change is expected to make Swiss merger control procedures more time-consuming and burdensome owing to the increased role of economic evidence. Larger transactions in the technology sector could be particularly affected. However, this revision is still under deliberation by the Swiss Parliament.

ESG regulation

Swiss ESG regulation, anchored in Article 964a et seq of the Swiss Code of Obligations, imposes reporting and due diligence obligations on companies of public interest exceeding certain thresholds. These include disclosures on environmental and social matters, anti-corruption, conflict minerals and child labour. For tech M&A, these rules introduce compliance checkpoints that can affect deal timelines and valuations, especially for targets with complex supply chains.

In 2024, the Federal Council proposed aligning Swiss rules with the EU's Corporate Sustainability Reporting Directive (CSRD), aiming for greater harmonisation and stricter reporting obligations. However, the EU's Omnibus Package, a proposal to simplify and reduce the administrative burden of sustainability and other regulations, particularly for small and medium-sized enterprises, softened certain CSRD requirements. This prompted Swiss authorities to paused further alignment pending clarity from the EU.

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