Global Public M&A Guide - Switzerland

General Legal Framework

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# 2. General Legal Framework

[Last updated: 1 January 2025, unless otherwise noted]

**2.1 Applicable rules and regulations**

The general legal framework for public takeover bids and the acquisition of major shareholdings in companies listed in Switzerland is set out in the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015 ("**FMIA**"). The FMIA is complemented by several ordinances, three of which are relevant for public takeover bids:

The Ordinance of the Takeover Board on Public Takeover Offers of 21 August 2008. This contains the details on the procedure, the documents to be published and the rights and obligations in public takeovers;

The Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 3 December 2015. This contains the details of major shareholder disclosures and the rules applicable to mandatory takeover bids, which, by reference, also partly apply to voluntary offers; and

The Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 25 November 2015. This deals with the major shareholder disclosure rules for foreign companies with a primary listing on a Swiss stock exchange, the fees payable to the Swiss authorities in connection with public takeover bids, the squeeze-out of minority shareholders and certain exemptions to the ban on insider trading and market manipulation.

While the aforementioned legislation contains the main legal framework for public takeover bids, there are a number of additional rules to be observed when preparing and implementing a public takeover bid, such as the listing rules and regulations of the relevant stock exchange and Swiss corporate law rules.

**2.2 General objectives**

Swiss public takeover regulations are governed by several major objectives:

**Transparency**

Swiss public takeover regulations aim to ensure transparency. All shareholders of the target company shall have sufficient time and information to enable them to reach an informed decision on whether or not to accept the offer. This results in the duty to publish an offer prospectus and the duty to publish a board report explaining the effects of the offer on the target company and its shareholders.

**Equal treatment of the shareholders of the target company**

A further objective is to ensure that the target shareholders are treated equally. All shareholders shall have equal access to information and be able to sell their shares according to the same terms and conditions. This principle takes account of the fact that the minority shareholders are in a weak bargaining position vis-à-vis the bidder. The most important equal treatment rules are the best price rule and the rule that any offer that takes the bidder across the 33 ⅓% voting rights threshold needs to be for all the shares of the target.

**Equal treatment of different bidders**

The principle of equal treatment also extends to all potential bidders. The target company is obliged to ensure equal treatment of all potential bidders and to allow a fair competing offer process.

**Expedient proceedings**

The public takeover rules provide for expedient proceedings with decisions taken within a short period of time.

**2.3 Key regulatory bodies**

Public takeover bids are subject to the supervision of the Swiss Takeover Board ("**TOB**"). The TOB reviews and approves the offer documentation and supervises compliance with the public takeover regulations. Decisions of the TOB may be appealed to the Swiss Financial Market Supervisory Authority ("**FINMA**"). The Federal Administrative Court is the appeal body for any decisions rendered by the FINMA. The decision of the Federal Administrative Court in takeover matters is final.

**2.4 Foreign investment restrictions**

Foreign investments are not restricted in Switzerland with the exception of investments into real estate used for business purposes. Unless in the context of specific industries and sectors (such as the financial industry), takeovers are not subject to prior governmental or regulatory approvals other than customary anti-trust approvals. However, based on a parliamentary motion, the Federal Council has drafted a Federal Act regarding the Screening of Foreign Investments. The draft law was circulated for consultation on 18 May 2022 and submitted to parliament with a dispatch dated 15 December 2023. The draft law is currently in consultation in the two chambers of the legislature. The purpose of the draft law is to avoid takeovers of Swiss enterprises by foreign investors if such takeover would threaten public safety or order. As of the date of this guide, it is uncertain whether and in which form such law will be adopted.

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