Global Private M&A Guide - Limited External Content - Switzerland

Quick reference guide

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

# Due diligence, pricing and closing

**Typical due diligence issues**

The focus of a legal due diligence in the context of mergers and acquisitions in Switzerland will mainly depend on the industry involved as well as the target company's age, size and structure (start-up, market leader, etc.). However, the following issues are typically considered in a due diligence: corporate matters (e.g., issues in connection with evidencing a proper share history of the target company often arise), commercial contracts (e.g., change of control or exclusivity provisions in material agreements), financing/loan agreements, real estate (e.g., land register entries, leases), employment matters, IP, litigation, regulatory and compliance issues (e.g., environmental law, data protection, industry-related compliance).

A legal due diligence usually entails a review of the relevant documents which are in the vast majority of cases provided in virtual data rooms. Issues identified by the parties or their respective counsels are then generally either remedied prior to signing or dealt with when negotiating the terms of the transaction (e.g., conditions precedent to closing, reduction of purchase price or specific indemnities).

**Pricing and payment**

Swiss law does not require an independent appraisal for private share or asset deals. Financial due diligence is common, especially for larger transactions.

Independent appraisers are usually involved by the parties if the share purchase agreement includes a post-closing purchase price adjustment. In such cases, a provision is common according to which any party may refer the determination of the purchase price adjustment to an independent expert if the parties cannot agree on a proposed adjustment.

In general, apart from tax considerations, there are no restrictions with regard to pricing, currency or payment of the purchase price in relation to a share or asset deal provided that a minimum purchase price must be agreed.

**Signing/closing**

Share sale

The purchase of shares of a Swiss company is usually agreed upon in a comprehensive share purchase agreement. While no notarization is needed, a share purchase agreement is almost exclusively concluded in writing and will govern the rights and obligations of the parties.

Asset sale

The structure, content and form of an asset purchase agreement will depend on the assets in question (a public deed is required in case of a transfer of real estate). Swiss law enables the universal transfer of assets and liabilities (e.g., a business) by operation of law under the Merger Act. The Merger Act entails an enhanced protection of creditors, in particular the three-year joint and several liability of the transferor of liabilities. This is one of the reasons why asset deals are today still usually carried out by way of an individual transfer of assets and liabilities. However, the universal transfer of assets and liabilities under the Merger Act may be particularly useful where several real estate properties are to be transferred, in which case only one public deed is required and all the real estate properties concerned are transferred at the time the transfer agreement is registered with the commercial register.

Closing

In major transactions, signing and closing will often not occur simultaneously, either due to mandatory approvals (e.g., merger control approval) or closing being subject to certain further conditions precedent.

# Approvals/registrations

**Foreign investment restrictions**

Switzerland does not have a foreign investment screening procedure in place.

**Antitrust/merger control**

Switzerland has a mandatory and suspensory merger control regime, which means that transactions that meet the relevant criteria need to be notified to the competition authority and cleared before they can be completed. For further information, see the more detailed section on "Antitrust/merger control".

# Employment

**Share sale**

In share deals, there is no change in the relationship between employer and employee. As a consequence, neither consent from employees nor notices to employees are required due to the sale of the shares as such.

**Asset sale**

In an asset sale that involves the transfer of a business (or part of a business) as a going concern, employees belonging to the business automatically transfer to the buyer by operation of law, and the parties to the transfer of business are not free to choose which employees will transfer with the business. Employees have a right to object to their transfer within one month from the time they are duly informed about the transfer. This information has to be provided in text format and its content is subject to legal requirements.

Terms and conditions of employment in principle have to remain unchanged after the transfer and the new employer has to recognize the employees' years of service. The buyer as the legal successor of the former employer also becomes fully liable for all employment-related liabilities. Compensation for the automatic assumption of liabilities should be addressed in the transaction documents.

The employer has a duty to inform the works council, or if no works council exists, the employees regarding the reason of the transaction and its legal, economic and social implications in due time before completion. Unless measures affecting the employees are planned in conjunction with the transaction (e.g., split of operations, carve-outs of employees, relocations, dismissals), there is no general legal obligation to consult with works councils or the employees regarding the asset deal and the transfer of the employees. Consultations, if required, may take several weeks and, thus, may significantly impact the timing of the implementation of the respective reorganizations or operational changes.

**Pensions**

Pension schemes and the transfer of pension liabilities need to be considered carefully in the transaction context, including that Swiss defined contributions plans qualify under International Financial Reporting Standards (IFRS) as defined benefit plans and that such requalification may result in unfunded actuarial liabilities.

# Tax

In case of an asset deal, the assets sold are generally subject to VAT. However, groups of assets and liabilities that comprise a single autonomous business unit may be transferred by using a declaration procedure instead of invoicing with VAT ("transfer of a going concern" or TOGC). Special transfer taxes may apply, in particular in case of a transfer of real estate. The costs of financing are, in principle, fully tax-deductible. However, if financing is provided by a related company, or provided by third parties but guaranteed by a related company, the tax regulations on the maximum debt-to-equity ratios will have to be observed and interest payments made have to comply with the arm's length standard.

In case of a share deal, the transfer of shares is exempt from VAT. It may be subject to securities transfer tax if the seller, the buyer or an intermediary is a professional securities dealer within the meaning of the Stamp Act. In some cantons, a share deal may also be subject to real estate transfer tax. In addition, in a share deal tax liabilities embedded in the acquired company are indirectly transferred to the buyer. This may apply to the deferred withholding tax liability on the distributable reserves of the acquired company that are not necessary, from a commercial point of view, for the company's ongoing operations, and if the applicable withholding tax rate on dividend distributions to the seller (as former shareholder) would have been less favorable than the rate on distributions to the buyer (the "old reserves" doctrine). These reserves remain tainted and subject to the (less favorable) rate applicable to the seller as a former shareholder when distributed to the buyer.

A capital gain realized by a Swiss resident individual on the sale of shares held as private assets (as opposed to business assets) is, as a general rule, tax-free. Depending on how the acquisition is structured, in particular if the buyer finances the acquisition with assets of the acquired company, the tax authorities may requalify the tax-exempt capital gain realized by an individual seller as a partial liquidation distribution, and requalify and subject a part of the gain to ordinary income taxation of the seller. It is thus common practice in Switzerland for a private individual seller to ask for a corresponding representation or an indemnification in the event that the transaction could qualify as an indirect partial liquidation.

A debt push-down through a merger of an acquisition vehicle and the target company is usually not accepted by the Swiss tax authorities for the purpose of obtaining a tax deduction of the financing costs, as it is usually argued that the merger represents a tax avoidance scheme. Besides that, a debt push-down may trigger the above-mentioned indirect partial liquidation.

A restructuring, in particular mergers, spin-offs and transformation of a legal form, may qualify as a tax neutral restructuring provided that certain general and, depending on the nature of the transaction, other transaction-specific conditions are met. The general requirements are (1) continuation of the tax liability in Switzerland and (2) the book values remain unchanged during the restructuring.

**OECD's Two Pillar Solution**

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting has put forward a so-called Two-Pillar Solution to address the tax challenges arising from the digitalization of the economy. Pillar Two is intended to introduce a global minimum effective tax rate of 15% for large businesses in each jurisdiction in which they operate and will lead to fundamental changes in the international tax system. It is currently being implemented in a large number of jurisdictions.

Groups will need to consider how the Pillar Two rules could impact on the life cycle of M&A transactions from the pre-acquisition phase (including transaction planning (such as the choice of acquisition structure and financing) and due diligence of the target group), through the acquisition phase (such as contractual risk allocation around Pillar Two) to the post-acquisition phase and the impact of Pillar Two on any post-acquisition integration.

# Post-acquisition integration

For information on post-acquisition integration matters, please see our [Post-acquisition Integration Handbook](https://www.bakermckenzie.com/en/insight/publications/resources/post-acquisition-integration-2023).

Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion:** All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites.  **Attorney** **Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction of reasonable portions of the Content is permitted provided that (i) such reproductions are made available free of charge and for non-commercial purposes, (ii) such reproductions are properly attributed to Baker McKenzie, (iii) the portion of the Content being reproduced is not altered or made available in a manner that modifies the Content or presents the Content being reproduced in a false light and (iv) notice is made to the disclaimers included on the Content. The permission to re-copy does not allow for incorporation of any substantial portion of the Content in any work or publication, whether in hard copy, electronic or any other form or for commercial purposes.