PANORAMIC

PRIVATE EQUITY (TRANSACTIONS)

Switzerland

LEXOLOGY

Private Equity (Transactions)

Contributing Editor

Atif Azher

Simpson Thacher & Bartlett LLP

Generated on: April 8, 2025

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2025 Law Business Research

Explore on **Lexology**

Contents

Private Equity (Transactions)

Contributors

Switzerland

Wenger Vieli Ltd

Michael Baier	m.baier@wengervieli.ch
Marc Walter	m.walter@wengervieli.ch
Daniel P. Oehri	d.oehri@wengervieli.ch
Jonas Bühlmann	j.buehlmann@wengervieli.ch

TRANSACTION FORMALITIES, RULES AND PRACTICAL CONSIDERATIONS

Types of private equity transactions

What different types of private equity transactions occur in your jurisdiction? What structures are commonly used in private equity investments and acquisitions?

In the Swiss private equity market, a wide range of acquisition and investment structures and strategies are present and Swiss law provides the respective flexibility. In addition to the acquisition of all or a majority of a target's share capital, private equity (PE) firms also take minority-stake positions with respective protections contained in a shareholders' agreement.

In private equity investments and acquisitions, funds usually set up an acquisition vehicle (AcquiCo) in Switzerland. The AcquiCo is either held directly or through a foreign structure (eg, via Luxembourg or the Netherlands). Sometimes Swiss targets are also acquired by an AcquiCo incorporated outside of Switzerland.

The acquisition structure is generally driven by tax (tax-efficient repatriation of dividends or application of double taxation treaties, tax-exempt exit) and financing considerations. A Swiss-domiciled seller or manager re-investing in the AcquiCo may realise a tax-free capital gain on its investment when the AcquiCo is sold in an exit. In an auction process, the consideration of the tax consequences may provide an important advantage to a bidder.

Law stated - 1 Januar 2025

Corporate governance rules

What are the implications of corporate governance rules for private equity transactions? Are there any advantages to going private in leveraged buyout or similar transactions? What are the effects of corporate governance rules on companies that, following a private equity transaction, remain or later become public companies?

The main Swiss corporate governance rules are implemented in the Swiss Code of Obligations (CO), which applies to any (listed or unlisted) Swiss stock corporation. The CO had been subject to a corporate law reform, with the new provisions entering into force on 1 January 2023. The revision focused on liberalising provisions governing formation and capital requirements, improving corporate governance and introducing electronic media at the general meeting.

The Financial Market Infrastructure Act (FMIA) with its implementing provisions provides the regulatory framework for stock exchanges and capital markets, such as the rules on the disclosure of major shareholdings, tender offers, and the rules against market abuse.

The Federal Act on Mergers, De-Mergers, Transformation and Transfer of Assets (Merger Act) contains provisions regarding information and voting rights of shareholders as well as safeguards for minority shareholders in mergers, de-mergers or transformations of corporations.

The Financial Services Act mainly governs the provision of financial services as well as the offering of financial instruments and is intended to strengthen investor protection.

The listing rules and implementing provisions of SIX Exchange Regulation, the regulatory authority of Switzerland's main stock exchange (SIX Swiss Exchange), provide for additional rules related in particular to corporate governance, ad hoc publicity and disclosure of management transactions.

The Swiss Code of Best Practice for Corporate Governance provides valuable, non-binding recommendations on how to structure sustainable corporate governance, in particular for listed companies.

The major part of the Swiss corporate governance rules applies to listed companies. The respective provisions can become relevant in the event of an initial public offering (IPO) after which the PE investor continues to hold a significant interest. With respect to private companies, PE firms need to be aware of the corporate governance rules of the CO, in particular regarding veto rights and the PE firms' representatives on the board of directors in accordance with a shareholders' agreement.

Law stated - 1 Januar 2025

Issues facing public company boards

What are some of the issues facing boards of directors of public companies considering entering into a going-private or other private equity transaction? What procedural safeguards, if any, may boards of directors of public companies use when considering such a transaction? What is the role of a special committee in such a transaction where senior management, members of the board or significant shareholders are participating or have an interest in the transaction?

The members of the board of directors of a Swiss stock corporation have a duty of care and a duty to protect the interests of the company in good faith, and must treat all shareholders equally under the same circumstances. If a board member is affected by a conflict of interest, they must immediately and fully inform the other members of the board as well as the executive board.

The purpose of statutory provisions on public tender offers according to the FMIA or a merger in accordance with the Merger Act is primarily to provide fair and transparent conditions in a takeover process and equal treatment of shareholders.

The board of directors of the target company will have to establish a special committee of at least two independent members, if not all board members can be considered independent.

During a public takeover procedure, the board of directors often has a fairness opinion prepared by financial advisors or investment banks to determine a value range for the shares of the target company. The fairness opinion should help offerees to assess whether the offer price is adequate, and whether or not they should accept the offer. A fairness opinion is mandatory if fewer than two board members qualify as independent.

Law stated - 1 Januar 2025

Disclosure issues

Are there heightened disclosure issues in connection with going-private transactions or other private equity transactions?

In any transaction involving a listed company, ad hoc publicity obligations need to be considered. A listed company must – subject to certain exemptions – inform the market about any price-sensitive facts (ie, facts which could trigger a significant change in market prices). The issuer may postpone the disclosure of a price-sensitive fact (eg, a planned going-private transaction), provided that the company has to take organisational safety measures to ensure confidentiality, such as the obtaining of confidentiality (and standstill) agreements; the maintenance of insider lists; and the implementation of information barriers and other technical safeguards.

In the event that a bidder reaches, exceeds or falls below a certain threshold of voting rights (the lowest of which is 3 per cent) as a result of an acquisition or sale of securities in a Swiss listed company, the respective holdings have to be notified to the target company and the relevant stock exchange.

A going-private transaction will usually take the form of a public tender offer. In case of such a takeover bid, the bidder must publish a prospectus. In the event that the going-private transaction is structured as a merger, the board of directors has to prepare a merger report explaining and justifying the legal and economic aspects of the merger in accordance with the Merger Act. The merger report needs to be reviewed by an independent auditor and has to be made available to the shareholders for inspection (together with the merger agreement and the other relevant documentation of the merger) no later than 30 days prior to the shareholders' meeting approving the merger.

Law stated - 1 Januar 2025

Timing considerations

What are the timing considerations for negotiating and completing a going-private or other private equity transaction?

The timeline for a going-private transaction based on a public offer is to a large extent regulated. Once a public offer has been pre-announced, the bidder has to publish a prospectus regarding its offer within six weeks. After the prospectus has been published, a cooling-off period of 10 trading days applies. The main offer period typically lasts between 20 and 40 trading days. If the offer has been successful, the bidder needs to grant the shareholders an additional acceptance period of 10 trading days after publication of the definitive interim result in order to accept the offer.

In the event that a going-private transaction is effected by way of a merger, the absorbing entity acquires 100 per cent of the shares in the target company in one transaction.
All shareholders of the merging entities have to be provided with the underlying merger documents no later than 30 days prior to the shareholders' meeting approving the merger. Further, prior to the shareholders' resolution to carry out the merger, the employees need to be informed and may have to be consulted about the reasons for the merger and its legal, economic and social implications.

Going-private or other private equity transactions can, in particular, be subject to clearance by the Swiss Competition Commission. Clearance is usually granted within one month (phase I) after the complete application has been filed, except in cases in which the authority initiates an investigation (phase II). Potential tax rulings need to be considered regarding private equity transactions of all kinds, given that the tax ruling confirmation has to be available before the transaction is completed.

Depending on the acquisition structure, the time required for the incorporation of an AcquiCo (approximately 10 to 15 days) needs to be taken into account as well.

Law stated - 1 Januar 2025

Dissenting shareholders' rights

What rights do shareholders of a target have to dissent or object to a going-private transaction? How do acquirers address the risks associated with shareholder dissent?

After the completion of the public tender offer, a bidder does not usually hold all equity securities as not all shareholders will tender into the offer, or others may have no knowledge of the ongoing takeover process. Given the bidder's interest in taking over all equity securities, the bidder has the following options to squeeze-out the minority shareholders.

- If the bidder holds at least 90 per cent of the voting rights of the target company, the minority shareholders can be cashed out by way of a squeeze-out merger according to the Merger Act. The minority shareholders only have appraisal rights and may challenge the consideration received in exchange for their shares. However, they are not able to hinder the legal effectiveness of the squeeze-out merger.
- Alternatively, according to the FMIA, the squeeze-out can take the form of a court process cancelling the shares held by the minority shareholders against payment of the public tender offer consideration. However, this option is only available if the bidder holds 98 per cent or more of the voting rights in the target company after the public tender offer.

In practice, bidders typically reach squeeze-out levels during the mandatory additional 10-day offer period once a public tender offer has been declared successful. This is mainly due to limited minority shareholders' rights as well as less favourable tax treatment of squeeze-out mergers compared to a sale in a public tender offer.

Law stated - 1 Januar 2025

Purchase agreements

What notable purchase agreement provisions are specific to private equity transactions?

With respect to consideration structures, although both the locked-box mechanism (with anti-leakage protection), preferred by sellers, and purchase price adjustments based on the closing account mechanism, preferred by buyers, are equally common in Switzerland, the

seller's market environment in recent years has led to an increase in the use of the locked-box mechanism.

In general, the purchase agreements contain a customary set of representations and warranties with respect to:

- title;
- organisation;
- financial statements;
- employment matters;
- material contract;
- taxes and social security;
- intellectual property;
- real estate; and
- compliance, etc.

In addition, specific indemnities are seen for risks identified in due diligence, in particular regarding taxes.

Warranty and indemnity insurance has become quite common in Swiss private equity transactions.

The parties usually agree on non-compete and non-solicitation undertakings for a period of one to three years.

Law stated - 1 Januar 2025

Participation of target company management

How can management of the target company participate in a going-private transaction? What are the principal executive compensation issues? Are there timing considerations for when a private equity acquirer should discuss management participation following the completion of a going-private transaction?

Management participation is common in Swiss private equity transactions as it serves as a powerful tool for long-term retention and alignment of interests between the management team and the PE firm. For this purpose, the target's managers ideally invest their own money in the target company substantially on the same terms as the PE firm (except maybe for a slightly discounted buy-in price coupled with a vesting schedule). Carefully structured, a management participation can also be attractive for managers from a Swiss tax perspective.

Besides that, the target company's management is incentivised by fixed salaries, bonus payments, exit bonuses or additional equity-based compensation, such as shares, share options or restricted shares. While virtual shares and share options are increasingly popular in Swiss venture capital deals, they are less attractive in private equity transactions, mainly due to tax consequences.

Company management participation and incentive schemes are often introduced and agreed in the key terms relatively early in a PE transaction. Depending on the complexity, tax impacts and different interests of individual managers, this might have an effect on the timing of the overall transaction.

Law stated - 1 Januar 2025

Tax issues

What are some of the basic tax issues involved in private equity transactions? Give details regarding the tax status of a target, deductibility of interest based on the form of financing and tax issues related to executive compensation. Can share acquisitions be classified as asset acquisitions for tax purposes?

Corporate income tax

Target companies domiciled in Switzerland are subject to profit and capital tax at the federal, cantonal and communal level. The effective corporate income tax rate ranges between 12 per cent and 22 per cent, depending on the canton and the municipality. The corporate income tax is generally determined based on the statutory financial statements. Any existing tax losses can be offset with taxable profits within seven years. The sale of real estate or of a real estate company may be taxed differently, depending on the tax practice of the canton where the real estate is located. In addition, real estate transfer taxes may be applicable.

Dividend income from participations and capital gains generated by the sale of participations are almost entirely, if not entirely tax exempted. To be eligible for such participation relief, a Swiss company must hold at least 10 per cent of the share capital in the company from which the dividend is received. Alternatively, the participation relief is also applicable for dividends, if the fair market value of the participation amounts to at least 1 million Swiss francs. For the application of the participation relief on capital gains, a minimum holding period of one year is necessary and at least 10 per cent of the entire share capital of the company has to be sold. Additionally, the sales price must have exceeded the acquisition costs. Therefore, the recapture of past value adjustments is not subject to the participation relief. Within the concept of the Swiss participation relief, the gross dividend income is reduced by certain financing and administration costs in connection with the respective participation. It is likely that pure holding companies can claim a full exemption for dividend distributions. However, any existing tax losses need to be offset with qualifying participation income before the participation relief is applicable.

The annual capital tax is determined based on the company's equity and a tax rate below 0.5 per cent (ie, in any canton). Moreover, many cantons offer certain relief measures.

For Swiss tax purposes, share deals cannot be considered as asset deals. However, in the event that a majority of a real estate company is transferred, the transaction is treated as if the real estate has been transferred directly, triggering real estate capital gains tax or corporate income tax implications (or both).

Financing considerations and interest limitations

Interest in relation to loans granted by related parties is subject to two different limitations rules: the arm's-length requirement for the interest rates applied (safe harbor interest rates) and thin capitalisation rules. Under the arm's-length requirement, the interest rate applied must be in line with the prevailing market rates for similar transactions between unrelated parties (ie, based on the standards of the Organisation for Economic Co-operation and Development). Therefore, the Federal Tax Authority annually publishes safe harbour interest rates. In addition, the thin capitalisation rules further restrict the deductibility of interest paid to related parties by limiting the debt-to-equity ratio for tax purposes. Within the thin capitalisation rules, any third party debt collateralised by related parties is considered as granted by related parties. Subject to these restrictions, interest on debit – which is subordinated – is generally deductible for corporate income tax purposes.

Various taxes

Withholding tax of 35 per cent is generally levied on dividend distributions (ie, ordinary as well as deemed dividend distributions) and – if certain conditions are fulfilled – also on interest payments. No withholding tax is generally levied on royalty payments. The reclaim of withholding tax for Swiss beneficiaries is based on Swiss tax law, for non-Swiss beneficiaries the respective double tax treaties must be considered. In order to benefit from a double tax treaty, the Swiss tax authorities review whether both parties (ie, the Swiss entity as well as the foreign beneficiary) are entitled to make use of the double tax treaty (ie, based on specific substance criteria).

In Switzerland, a stamp duty of 1 per cent is generally levied on the issuance of new shares or respectively on the establishment of equity by the direct shareholder. Exemptions are applicable. Furthermore, a securities transfer tax is levied on certain purchases and sales of domestic and foreign securities, provided a domestic securities dealer is involved as a transaction party or intermediary. For domestic securities the sales tax amounts to 1.5 per mille and for foreign securities 3 per mille of the purchase price.

The current standard rate for VAT is 8.1 per cent. Switzerland generally does not fall within the scope of the EU VAT system (ie, a separate VAT system is applicable).

Income tax for individuals

Personal income taxes in Switzerland are progressive and are between 15 per cent and 40 per cent. If an investor holds a qualified stake of shares (ie, more than 10 per cent of the company's shares) the respective income is subject to reduced taxation (ie, at federal level only 70 per cent is taxed, at cantonal level between 50 per cent and 80 per cent). Additionally, individuals need to consider the annual net wealth tax, which is imposed at a rate between around 0.1 per cent and 1 per cent.

The sale of movable assets – held as part of their private assets – by Swiss resident investors is generally tax-free. However, several exemptions can apply, where such capital gain is subject to income tax. Moreover, any losses incurred from such transactions are also not tax deductible. Therefore, a direct investment in the target company or through a transparent structure is recommended to allow individual investors resident in Switzerland to achieve a tax-free capital gain. Individuals investing in fund structures are taxed transparently (ie, as if they held the underlying assets and liabilities directly).

If employees or executives receive employee participations or if they can acquire securities below market value, any capital gain generated is generally subject to both Swiss income tax and social security contributions (without any significant cap). However, provided certain conditions have been met in connection with employee shares (including a minimum holding period of five years), a tax-free capital gain can be realised. For sweet equity, specific limitations have to be considered. Income from golden parachutes and deferred compensation plans is typically taxed under ordinary rules.

Another exemption from the tax-free capital gain can be indirect partial liquidation (IPL). An IPL limits such tax optimisation of a Swiss individual as a seller by limiting dividend distribution by the buyer within five years after the acquisition. A Swiss seller generally requests an indemnity in the purchase agreement for any tax implications in connection with the IPL triggered by actions of the buyer.

In Swiss tax practice, it is common to seek a tax ruling from the competent tax authority prior to the completion of the transaction to obtain certainty regarding the (non-existence of) tax consequences. Within this process all relevant information must be disclosed to the competent tax authority. In addition, these tax rulings may be subject to international spontaneous exchange of information.

Law stated - 1 Januar 2025

DEBT FINANCING

Debt financing structures

What types of debt financing are typically used to fund going-private or other private equity transactions? What issues are raised by existing indebtedness of a potential target of a private equity transaction? Are there any financial assistance, margin loan or other restrictions in your jurisdiction on the use of debt financing or granting of security interests?

In Swiss private equity deals, in particular leveraged buyout transactions, debt financing is most commonly seen in the form of senior loans provided by banks and comprising one or more term loan facilities and a revolving facility. Banks will usually require that existing indebtedness of the target company is fully refinanced and the existing collateral is released for use as a security package for the senior debt. Other types of debt used by private equity (PE) firms include mezzanine debt or subordinated loans. In the case of debt financing by related parties, interest limitations and thin capitalisation rules should be followed from a Swiss corporate tax perspective.

Upstream loans and guarantees granted by target companies to their parent company must be examined in the light of certain specific restrictions and conditions imposed by Swiss corporate and tax laws. If upstream loans are not granted at arm's length, corporate law restrictions require, amongst other things, the upstream loan to be covered by the target's corporate purpose and not to exceed the target's freely disposable equity. A debt push-down into the target company is generally not accepted by the Swiss tax authorities, and a group taxation for corporate income tax purposes is also not available.

Law stated - 1 Januar 2025

Debt and equity financing provisions

What provisions relating to debt and equity financing are typically found in going-private transaction purchase agreements for private equity transactions? What other documents typically set out the financing arrangements?

For a going-private transaction, a public takeover offer with an offer prospectus is necessary. The prospectus must contain information on the financing of the tender offer (including a declaration from the independent review body confirming that the necessary funds are available). The independent review body assesses the certainty of funds (ie, the financing of the offer and the availability of funds prior to the announcement of the tender offer). Hence, before launching a public tender offer, a bidder will need to have the respective (mix of) equity and debt financing committed.

Law stated - 1 Januar 2025

Fraudulent conveyance and other bankruptcy issues

Do private equity transactions involving debt financing raise 'fraudulent conveyance' or other bankruptcy issues? How are these issues typically handled in a going-private transaction?

Transactions with the target company, including the sale of assets, the granting of securities and the incurrence of financing obligations, harbour the pending risk that such transactions become subject to avoidance actions under the Federal Act on Debt Collection and Bankruptcy in subsequent bankruptcy proceedings over the target company. Such actions allow the bankruptcy estate, respectively the creditors, once the target company has entered into bankruptcy proceedings, to challenge prior transactions in court (including the sale of assets, the granting of securities and the incurrence of financing obligations), by which the target company has disposed of assets to third parties below market value, or which are perceived to be fraudulent conveyances. If such a challenge is sustained by the competent court, the assets disposed are returned to the bankruptcy estate, respectively the relevant transaction is reverted, and the counterparty is left, in respect of any of its claims, as an unsecured creditor of the target company.

Fraudulent conveyance issues are not commonly seen in private equity transactions in Switzerland. In going-private transactions involving debt financing, parties providing financing commonly conduct a thorough financial due diligence and request confirmation of the involved parties with regard to their financial situation. However, the question of whether a particular transaction will be subject to a voidance action in a future bankruptcy will be determined on a case-by-case basis by the competent court.

Law stated - 1 Januar 2025

SHAREHOLDERS' AGREEMENTS

Shareholders' agreements and shareholder rights

What are the key provisions in shareholders' agreements entered into in connection with minority investments or investments made by two or more private equity firms or other equity co-investors? Are there any statutory or other legal protections for minority shareholders?

Shareholders' agreements in Switzerland commonly display the same structure, and typically contain rules with regard to qualified majority requirements for board and shareholder resolutions, extended information rights for shareholders, liquidation preferences, anti-dilution protection as well as transfer restrictions (such as right of first refusal, drag-along and tag-along rights and purchase options).

In addition, PE firms often request to include a put option to exit the investment if needed and an exit clause, that will ensure that they can exit their investment, usually by triggering an exit for all shareholders.

The contractual arrangements in the shareholders' agreement are commonly mirrored in the corporate documents (ie, the articles of association and board regulations) to the extent permitted by mandatory law.

Besides these voluntary contractual arrangements, Swiss company law provides for different rules that are aimed at protecting the interests of minority shareholders, such as qualified majority requirements for important shareholder resolutions and a preferential subscription right of the existing shareholders. With the last revision of Swiss company law, which entered into force on 1 January 2023, the rights of minority shareholders have been further reinforced. The thresholds to call for a shareholders' meeting as well as for the shareholders to request items to be put on the agenda of the shareholders' meeting have been lowered, as well as the threshold to request a special investigation.

Law stated - 1 Januar 2025

ACQUISITION AND EXIT

Acquisitions of controlling stakes

Are there any legal requirements that may impact the ability of a private equity firm to acquire control of a public or private company?

The Swiss Competition Commission oversees the merger control in Switzerland. If a private equity firm's targeted company meets certain thresholds in terms of turnover or market share, the transaction will be subject to a mandatory pre-merger notification and consecutive clearance by the Swiss Competition Commission.

Additionally, certain industries in Switzerland, such as banking, insurance, telecommunications and healthcare have specific regulatory frameworks that may impose additional requirements on the acquisition of companies operating in those sectors.

In the event of the acquisition of a listed company in Switzerland, the Swiss Financial Market Infrastructure Act and the Ordinance on Public Takeover Offers govern the conduct of public takeovers. These regulations require PE firms to comply with disclosure obligations, minimum offer prices and other provisions that are aimed at protecting the interests of the other shareholders. In particular, a person or group of persons acting in concert and acquiring more than 33.33 per cent of the voting rights of a Swiss company listed on a stock exchange

in Switzerland (or of a foreign company that has its shares listed at least in part on a stock exchange in Switzerland) is required to submit a tender offer for all listed shares of that company, unless such company's articles of association provide for an exception permitted by the Swiss Financial Market Infrastructure Act and its regulations.

Law stated - 1 Januar 2025

Exit strategies

What are the key limitations on the ability of a private equity firm to sell its stake in a portfolio company or conduct an IPO of a portfolio company? In connection with a sale of a portfolio company, how do private equity firms typically address any post-closing recourse for the benefit of a strategic or private equity acquirer?

The exit is a crucial aspect of every private equity investment, and exit strategies are, therefore, carefully considered by PE firms already when making the initial investment. In this context, when considering the key limitations on the ability of a PE firm to sell its shares in a portfolio company, typically the following limitations are relevant:

- the transfer restrictions set forth in the articles and the shareholders' agreement;
- the composition of the shareholders' base of the target company – strategic investors may be more reluctant to agree to an auction process opening the sales process to third parties, including to potential competitors of the strategic investor;
- the company is not ready for an IPO yet – in order to be able to be listed on the Swiss Stock Exchange (SIX), the target company needs:
    - a track record of at least three years;
    - a minimum equity capital of 25 million Swiss francs;
    - a minimum free float of 20 per cent; and
    - a minimum free float market capitalisation of 25 million Swiss francs;
- the reluctance of shareholders to give (extensive) representations and warranties or to pay a (substantial) amount of the sale price into escrow in a trade sale; and
- the market environment in general.

To facilitate an exit and address potential limitations already at the point of the initial investment, PE firms try to embed in the shareholders' agreement rules allowing them to coerce the company to evaluate and initiate an IPO or auction process or to coerce the other shareholders to participate in a trade sale (drag-along).

To address post-closing recourse for the benefit of strategic or private equity acquirers, escrow accounts and agreements are typically agreed between the sellers and buyers. Representations and warranties insurances are not that common in trade sale transactions yet, but are seen from time to time.

Law stated - 1 Januar 2025

Portfolio company IPOs

What governance rights and other shareholders' rights and restrictions typically survive an IPO? What types of lock-up restrictions typically apply in connection with an IPO? What are common methods for private equity sponsors to dispose of their stock in a portfolio company following its IPO?

Usually, governance rights and other shareholders' rights agreed in shareholders' agreements do not survive an IPO as these agreements are usually terminated upon the IPO. It is especially unusual for board appointment or veto rights to survive. In IPOs, PE firms are often required to agree to lock-up periods during which they are restricted from selling their shares. These lock-up periods are typically designed to stabilise the stock price and protect other investors.

Following the IPO, private equity sponsors typically have the freedom to divest their shares in a portfolio company, as long as there are no restrictions or obligations such as a lock-up period. Two common strategies are followed when selling shares. The first approach involves a trading plan, where shares are sold gradually in smaller portions over a certain period of time. The second approach involves the sale of a larger block of shares.

Law stated - 1 Januar 2025

Target companies and industries

What types of companies or industries have typically been the targets of going-private transactions? Has there been any change in industry focus in recent years? Do industry-specific regulatory schemes limit the potential targets of private equity firms?

Private equity transactions in Switzerland occur across a wide range of industries without any notable industry focus. Going-private transactions are not as common in Switzerland and only a few such transactions are expected for 2025.

The acquisition of or investment in targets in regulated industries may be subject to advance notice or approval requirements, or both. However, there are no specific regulatory schemes applicable to PE firms as such.

Law stated - 1 Januar 2025

SPECIAL ISSUES

Cross-border transactions

What are the issues unique to structuring and financing a cross-border going-private or other private equity transaction?

Switzerland has not yet adopted specific restrictions regarding foreign investments.

However, a number of things need to be considered in cross-border transactions, such as restrictions with regard to real estate companies and regulated companies as well as merger law considerations and different tax aspects, in particular applicable double taxation treaties.

Dividend payments as well as deemed profit distributions (including liquidation proceeds) of a Swiss company are subject to Swiss withholding tax of 35 per cent. Provided that a double tax treaty can be applied, the withholding tax can be reclaimed partially (by individuals or, in the case of certain double tax treaties, by companies) or fully (by companies directly holding a certain equity share based on most double tax treaties). A partial or full reduction at source may be available for companies. In a cross-border context, substance requirements need to be fulfilled for a full refund. No Swiss withholding tax is levied on the repayment of paid-in share capital or qualifying capital contribution reserves.

Law stated - 1 Januar 2025

Club and group deals

What are some of the key considerations when more than one private equity firm, or one or more private equity firms and a strategic partner or other equity co-investor is participating in a deal?

Investors teaming up for private equity deals is quite common in Switzerland. Depending on the target's business, level of control and active management as well as the number of club deal partners, PE firms should take care that their syndication does not unintentionally qualify as a regulated entity or structure under the Swiss Collective Investment Schemes Act or, when using loans from co-investors to (partially) finance and leverage the transaction, fall under the Swiss banking regulations. Otherwise, there are no specific Swiss legal considerations that would apply to syndicated parties other than general contractual considerations.

The relationship among the different investors in a club deal is mainly governed by a shareholders' agreement; sometimes there are two or more shareholders' agreements involved to structure management buy-out scenarios or add-on strategies.

When private equity investors opt for debt-based investments, it is necessary to take into account the limitations imposed by Swiss tax practice.

Law stated - 1 Januar 2025

Issues related to certainty of closing

What are the key issues that arise between a seller and a private equity acquirer related to certainty of closing? How are these issues typically resolved?

Deal certainty is a key aspect in every private equity transaction. Whereas simultaneous signings and closings are frequently seen in smaller private equity transactions, they are not as typical for mid-sized and larger deals.

Closing conditions are often limited to legal matters required to close a transaction, such as regulatory approvals (eg, antitrust clearance or approvals for financial services). Business

related conditions precedent such as the financing arrangements of the buyer, satisfactory due diligence findings, or others are often negotiated based on specific deal circumstances. Failure to comply with closing conditions after an agreed long stop date may result in termination of the share purchase agreement, with or without certain indemnification obligations of the parties.

Law stated - 1 Januar 2025

UPDATE AND TRENDS

Key developments of the past year

Have there been any recent developments or interesting trends relating to private equity transactions in your jurisdiction in the past year?

Despite hopes for a rebound of private equity (PE) deal flow in the beginning of 2024, PE deal activity has slowed down in the first half of 2024, with a few industry sectors recovering slightly towards the year end. For 2025, M&A activity is expected to recover due to the need for deals driven by strategic and economic pressure.

PE firms have demonstrated remarkable resilience and adaptability in the face of external events, and PE dealmakers remain creative in finding suitable deal structures. The set-up of continuation funds to enable PE firms to hold on to their most promising companies is an ongoing trend in Switzerland.

Law stated - 1 Januar 2025