



Mergers & Acquisitions

2020

Ninth Edition

Editors:

Lorenzo Corte & Scott C. Hopkins

Global Legal Insights

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Published by Global Legal Group

GLOBAL LEGAL INSIGHTS – MERGERS & ACQUISITIONS

2020, NINTH EDITION

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We are extremely grateful for all contributions to this edition.

Special thanks are reserved for Lorenzo Corte & Scott C. Hopkins of Skadden, Arps, Slate, Meagher & Flom (UK) LLP for all of their assistance.

Published by Global Legal Group Ltd.

59 Tanner Street, London SE1 3PL, United Kingdom

Tel: +44 207 367 0720 / URL: www.glggroup.co.uk

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No photocopying

ISBN 978-1-83918-053-8

ISSN 2048-6839

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CONTENTS

Austria	Horst Ehardt, Hartwig Kienast & Sarah Wared, <i>Wolf Theiss</i>	1
Belgium	Luc Wynant, Koen Hoornaert & Jeroen Mues, <i>Van Olmen & Wynant</i>	12
Canada	Valerie Mann, <i>Lawson Lundell LLP</i>	19
France	Coralie Oger, <i>FTPA Avocats</i>	27
Germany	Sebastian Graf von Wallwitz & Heiko Wunderlich, <i>SKW Schwarz Rechtsanwälte</i>	37
India	Anuj Trivedi & Sanya Haider, <i>Link Legal India Law Services</i>	45
Indonesia	Eric Pratama Santoso & Barli Darsyah, <i>Indrawan Darsyah Santoso, Attorneys At Law</i>	53
Ireland	Alan Fuller, Aidan Lawlor & Elizabeth Maye, <i>McCann FitzGerald</i>	65
Italy	Marco Gubitosi, <i>Legance – Avvocati Associati</i>	75
Japan	Yohsuke Higashi, Ryo Chikasawa & Shimpei Ochi, <i>Mori Hamada & Matsumoto</i>	84
Luxembourg	Marcus Peter & Irina Stoliarova, <i>GSK Stockmann</i>	97
Mexico	Bernardo Canales, Pablo Enriquez R. & Diego Plowells Cárdenas, <i>Canales, Dávila, De la Paz, Enriquez, Sáenz, Leal, S.C.</i>	102
Morocco	Kamal Habachi & Salima Bakouchi, <i>Bakouchi & Habachi – HB Law Firm LLP</i>	109
Norway	Ole K. Aabø-Evensen, <i>Aabø-Evensen & Co</i>	118
Saudia Arabia	Abdulrahman Hammad & Samy Elsheikh, <i>Hammad & Al-Mehdar Law Firm</i>	136
Spain	Ferran Escayola & Rebeca Cayón Aguado, <i>J&A Garrigues, S.L.P.</i>	141
Switzerland	Dr. Mariel Hoch & Dr. Christoph Neeracher, <i>Bär & Karrer AG</i>	149
Taiwan	James Huang & Eddie Hsiung, <i>Lee and Li, Attorneys-at-Law</i>	153
United Kingdom	Michal Berkner, Claire Keast-Butler & James Foster, <i>Cooley (UK) LLP</i>	157
USA	Nilufer R. Shaikh, Steven Khadavi & Kirk Dungca, <i>Troutman Pepper LLP</i>	174

FROM THE PUBLISHER

Dear Reader,

Welcome to the ninth edition of *Global Legal Insights – Mergers & Acquisitions*, published by Global Legal Group.

This publication provides corporate counsel and international practitioners with comprehensive jurisdiction-by-jurisdiction guidance to mergers and acquisitions regulations around the world, and is also available at www.globallegalinsights.com.

The chapters, which in this edition cover 20 jurisdictions, provide detailed information for professionals dealing with mergers and acquisitions.

As always, this publication has been written by M&A lawyers and industry specialists, for whose invaluable contributions the editors and publishers are extremely grateful.

Global Legal Group would also like to extend special thanks to contributing editors Lorenzo Corte and Scott C. Hopkins of Skadden, Arps, Slate, Meagher & Flom (UK) LLP for their leadership, support and expertise in bringing this project to fruition.

Rory Smith
Group Publisher
Global Legal Group

Luxembourg

Marcus Peter & Irina Stoliarova
GSK Stockmann

Overview

This chapter provides an overview of the M&A landscape in Luxembourg in 2019.

2019 was a solid year for the Luxembourg M&A market and has shown a growing trend in M&A transactions in comparison to previous years, despite the United Kingdom's decision to leave the European Union.

Luxembourg continues to be the largest investment funds hub in Europe and the second largest in the world after the United States. Net assets under management in Luxembourg investment funds reached €4,718.9 billion at the close of December 2019 and, as at 31 January 2020, increased to €4,789.797 billion, which shows a continuous and stable growth and development in the market.

Therefore, the investment funds industry continues to play an important role for inbound and outbound M&A transactions in Luxembourg. Investors based in Asia, the USA and Latin America have shown their interest by carrying out M&A transactions using Luxembourg-based structures for acquisitions of targets which are typically based outside Luxembourg.

Luxembourg continues to serve as a platform for M&A deals involving Luxembourg vehicles in the acquisition of foreign targets or assets. In particular, the number of Luxembourg holding structures and/or fund structures through which real estate or other assets are held has significantly increased in the past few years.

The increasing interest in the M&A industry in Luxembourg is due to its legislative stability and attractive, flexible legal framework which allows the creation of various types of structures for different types of investors. The key legislation governing M&A transactions in Luxembourg is the law dated 10 August 1915, as amended (**Corporate Law**), which implemented the EU Cross-Border Mergers Directive into national legislation. The Corporate Law was amended in the last two years to offer an even better corporate vehicle platform for M&A and joint-venture purposes. The provisions of the Luxembourg Civil Code, in particular the provisions governing contractual relationships between parties, provide additional stable legal framework for the sale and acquisition of corporate vehicles in Luxembourg.

Furthermore, the takeover law dated 19 May 2006, as amended (**Takeover Law**), which implemented the EU Directive 2004/25/EC on takeover bids, fully applies to acquisitions where the target company is a Luxembourg registered company, the shares of which are admitted to trading on the regulated market of the Luxembourg Stock Exchange. The Takeover Law introduced and established a legal framework for mandatory squeeze-out and sell-out transactions of certain categories of securities of companies whose registered office is located in Luxembourg. Finally, the Luxembourg law dated 21 July 2012, on mandatory squeeze-out and sell-out of securities of companies, currently admitted or previously

admitted to trading on a regulated market or having been offered to the public, applies. The law provides security for minority shareholders that their shares will be acquired by the majority shareholders at a fair price and the CSSF (as defined hereinafter) is the competent authority to ensure that the provisions of the law are applied and duly respected.

The law dated 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies, for the purposes of compliance with the EU Directive 2017/828 of 17 May 2017, amending EU Directive 2007/36/EC, is applicable to companies registered in Luxembourg and whose shares are admitted to trading on a regulated market in the EU.

For M&A transactions relating to the acquisition of regulated vehicles in Luxembourg, the *Commission de Surveillance du Secteur Financier (CSSF)*, responsible for financial regulation in Luxembourg, has to ensure that the provisions of respective product laws are respected and, additionally, has to approve changes to companies' shareholding structures. There may also be specific legislation to be considered in M&A deals depending on the sector or area of the transaction.

We also note that since the United Kingdom's decision to leave the European Union, Luxembourg seems to be an alternative jurisdiction for different investors and companies that do not want to take any risks due to Brexit. Many insurance companies and asset managers acquired and/or increased their participations in different regulated vehicles and structures in Luxembourg.

Significant deals and highlights

Luxembourg remains involved in different M&A transactions involving counterparties from around the globe.

The following major deals have been concluded recently:

- Acquisition of Quilvest Luxembourg Services (**QLS**) offering private equity/real estate administration services and supporting over \$5 billion of assets by Gen II Fund Services, boosting the latter's geographical coverage through M&A.
- Acquisition of International Administration Group, fund administration and depositary services provider, by Oak, a fund administrator based in Guernsey with its offices in Luxembourg, bringing the total assets under administration of the latter to over £20 billion.
- Merger of the Amundi Funds and Amundi Funds II, bringing the total volume of the Amundi Funds family assets under administration to €90 billion.
- Acquisition by PAI Partners, a leading European private equity firm, and KIRKBI A/S, the holding and investment company of the Kirk Kristiansen family of Armacell, a global leader in flexible foam for the equipment insulation market and a leading provider of engineered foams from Blackstone in a deal that values the business at approximately €1.4 billion.
- Merger of the Luxembourg private telecommunications company Tango with the Telindus Group with effect as of 1 January 2019 to form Proximus Luxembourg.

Key developments

As already stated above, the Corporate Law was significantly amended in 2016 by creating additional legal security with regard to the structuring of M&A transactions. Now there is more flexibility with regard to the structuring of share classes and their characteristics; the rules applicable to different forms of companies have been also harmonised. Moreover, new corporate forms were created, such as, for example, the unregulated reserved alternative investment fund (**RAIF**), as well as more flexible provisions pertaining to the issuance of

bonds and the holding of shareholder meetings. In December 2017, the numbering of the articles and sections of the Corporate Law were significantly changed by the Grand Ducal Regulation; the text of the articles, however, did not change.

The other major legal change concerns the KYC and AML regulatory provisions; in particular, the establishment of the register of beneficial owners in respect of corporate and other legal entities incorporated within the territory of Luxembourg as required by the fourth and fifth EU AML Directives.

In Luxembourg, the law dated 13 January 2019 created a register of beneficial owners (**RBO Law**). The RBO Law entered into force as of 1 March 2019. The existing legal entities, in order to comply with the obligation to identify and report the identity of beneficial owner(s), had a transition period until 30 November 2019. In addition to the RBO Law, on 19 February 2019, a Grand Ducal Regulation was published, providing further details regarding the registration methods, the administrative fees as well as access to the information contained in the register. Several other circulars and guidance were issued by various market players, including the CSSF, in order to support and assist companies with the identification of beneficial owner(s).

This new development does not seem to have impacted the volume of M&A deals over the year and we believe it will not be an obstacle to the progress of M&A transactions in Luxembourg, as it is part of the EU AML and KYC innovations which were established in each EU Member State.

The law dated 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies was amended by the law dated 1 August 2019 in order to be compliant with the EU Directive 2017/828 of 17 May 2017, amending EU Directive 2007/36/EC. As amended, the law establishes specific requirements to encourage shareholder engagement, especially in the long term. These specific requirements apply to the identification of shareholders, transmission of information, facilitation of exercise of shareholders' rights, transparency of institutional investors, asset managers and proxy advisors, remuneration of directors and related party transactions.

On 8 August 2019, the Luxembourg government published bill n°7465 implementing the Directive (EU) 2018/822 on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (**DAC 6**). DAC 6 was adopted on 25 March 2020 and will apply as from 1 July 2020. The first reportable transactions will, however, be those transactions whose first implementation step occurred or will occur between 25 June 2018 and 30 June 2020. The relevant information will then have to be reported to the Luxembourg authorities at the latest by 31 August 2020. DAC 6 will have a major impact on M&A deals.

Industry sector focus

In Luxembourg, there is no particular dominant sector for M&A transactions. Some sectors are more popular than others and this depends on investors' appetite for risk; some investors would rather focus on high-yield areas, promising areas that may bring them the highest return despite the risk being quite high. Judging by the current economic and market conditions, investors are looking for alternatives and seek to diversify their risks.

Over the last 12 months, investors have, however, shown particular interest in the telecommunications sector as well as the banking and financial services sector.

For transactions involving real estate, assets are mainly located in the other jurisdictions where Luxembourg is used for holding structuring purposes due to its business-friendly and positive legal environment.

The year ahead

We anticipate a stable outlook for the year 2020; however, we expect a lower number of M&A transactions in Luxembourg until mid-2020 due to the COVID-19 developments. However, there is confidence that M&A activity will pick up strongly in the second half of 2020 assuming that the COVID-19 impact will fade.

The Luxembourg government is also undertaking many different measures to make Luxembourg a leading centre in the areas of fintech, space technology, and information and communication technology, which all reflect in a positive way on Luxembourg's business industry, attracting new investors and companies to the market and allowing large diversification of the economy.

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Marcus Peter is a lawyer admitted to practise in Luxembourg and Germany. He studied in Germany and Russia, earning a Master's and a Ph.D. in law. He specialises in investment funds, private equity & venture capital as well as corporate and M&A law. He worked in a leading independent law firm from 2004 to 2016 (the last four years as partner) and in 2016 he opened the Luxembourg office of GSK Stockmann, a German law firm. He regularly speaks at investment fund events and is also a member of the Cross-Border Business Lawyers Network.

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