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PRIVATE EQUITY AND VENTURE CAPITAL

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Private equity in Switzerland: market and regulatory overview

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MARKET OVERVIEW

1. How do private equity funds typically obtain their funding?

2014 has seen a sharp increase in private equity and venture capital investment, compared to 2013 (*Invest Europe*). Swiss private equity firms raised an aggregate amount of EUR3,101 million in 2014, compared to EUR570 million in 2013.

Swiss private equity and venture capital firms continued to raise funds predominantly in Europe, with 63.7% of funds being European-sourced (91.1% in 2013), 15.5% of which were contributed by domestic investors (40.8% in 2013). However, this still constitutes an increase of more than 50% in absolute figures. The statistics further indicate increasing private equity and venture capital investments in Switzerland from outside Europe with 29.8% in 2014 compared to 8.0% in 2013 (or a twenty-fold increased contribution in absolute figures). For 6.5% of the funds, the geographical origin could not be determined.

Funds were mainly sourced from the following types of investors:

- Pension funds: 55.4% (13% in 2013).
- Insurance Companies: 10.3% (3.2% in 2013).
- Family offices: 4.5% (4.3% in 2013).
- Funds of funds: 4.3% (38.2% in 2013).
- Endowments and foundations: 4% (1.3% in 2013).
- Sovereign wealth funds: 3.2% (0% in 2013).
- Corporate investors: 0.7% (13.1% in 2013).

Pension funds and insurance companies contributed over 65% of the new private equity funds raised, showing the importance of large institutional investors for the private equity sector. Pension funds, in particular, regularly rank among the main sources for funding. Investments by pension funds in the private equity market in Switzerland are likely to continue to increase, as the regulatory framework for investments in the public sector has changed for pension funds. The Ordinance against Excessive Compensation with respect to Listed Stock Corporations (OaEC) has imposed various obligations which have the potential to increase the cost of investment in public companies. This, in turn, may boost the attractiveness of private equity investments in Switzerland.

2. What are the current major trends in the private equity market?

Transaction volumes only increased marginally in 2014 (EUR1,128 compared to EUR1,111 in 2013) (*Invest Europe*). 70% of the deals were small (below EUR150 million), which together accounted for just 7.8% of the aggregate transaction volume. Major deals included the:

- Acquisition of Vat Holding AG by Capvis and Partners Group, which closed in early 2014.
- Acquisition of Orange Communications SA by Apax an NJJ Capital SAS for a total transaction value of CHF2,800 million, which was signed in December 2014.

2015 was kick-started with the sale of Infront Sports & Media AG by Bridgepoint to Dalian Wanda Group Co Ltd, valued at approximately EUR1,050 million. The increase in transactions with a high volume at the end of 2014 and the beginning of 2015 may indicate a trend for 2015/2016.

After three years without a statistically recorded IPO involving private equity companies from 2011 to 2013, the deadlock was broken in 2014 and IPOs were finally revived as an exit route. This trend continued into 2015 with IPOs of CVC Capital Partners and Sunrise, Switzerland's second largest telecoms operator. With an offer size of CHF2,274 million (including Over-Allotment Option), the Sunrise IPO was the largest Swiss IPO since 2006 and the largest telecom IPO in the EMEA region since 2004.

In buyout transactions, private equity firms continue to let the management of the portfolio company participate in the equity of a special purpose vehicle, normally by way of a capital increase following the buyout transaction.

3. What has been the level of private equity activity in recent years?

Fundraising

The Invest Europe statistics show a sharp increase in funds raised by Swiss private equity firms. The aggregate amount was EUR3,101 million in 2014 compared to the significantly lower EUR570 million in 2013.

Venture funds accounted for EUR70 million in 2014, a considerable decrease from EUR194 million in 2013. However, the venture capital market also had some high points, such as the recently closed financing round of Zurich-based FinTech start-up Knip AG, which closed at the end of 2015. This involved several private equity and venture capital funds, and was Switzerland's largest FinTech financing round so far.

Investment

Swiss based private equity companies invested a total of EUR1,240 million in 2014 compared to EUR609 million in 2013. EUR987 million were invested in Swiss based portfolio companies in 2014 (EUR889 million in 2013). These funds were invested in 127 companies in 2014 (147 in 2013).

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Investments by private equity companies in Swiss portfolio companies in 2013 showed the following characteristics:

- 34% of the total investments were made in Swiss communications, computing and consumer electronics companies.
- 39.4% of the total investments went into the life science sector.
- The distribution of investments between the different sectors was subject to only minor adjustments compared to 2013.
- Buyout investments (the nominal equity value of all shares bought out) increased from EUR208 million in 2013 to EUR761 million in 2014.
- A total of 11 companies were purchased in 2014 compared to 17 in 2013. Over 70% of the deals were small deals with a transaction volume below EUR150 million. 67.4% of the transaction volume was generated with one upper mid-marked deal between EUR250 million and EUR500 million.

Transactions

2014/2015 saw the signing or closing of some major deals with the:

- Acquisition of Vat Holding AG by Capvis and Partners Group.
- Acquisition of Orange Communications SA by Apax an NJJ Capital SAS for a total transaction value of CHF2,800 million.
- Sale of Infront Sports & Media AG by Bridgepoint with the transaction valued at approximately EUR1,050 million.

The basic structure of buyout transactions did not change. However, it is more and more common for parties to a transaction to agree on a so called "go-shop-clause", under which the seller waives a possible auction sale and grants the seller exclusivity for the negotiations. In return, the purchaser grants the seller a limited amount of time after the signing to "go and shop" for another buyer. If the seller sells to the second buyer, a break-up fee is due to the first buyer. This may be suitable for private equity companies striving to get an exclusive right of negotiation as fast as possible and who wish to at least cover pre-transaction-costs such as due diligence costs.

Exits

Private equity companies based in Switzerland exited 30 companies in 2014, with a total amount divested of EUR276 million (*Invest Europe*). In contrast, 23 portfolio companies based in Switzerland were exited, with a total amount divested of EUR549 million (EUR1,044 million in 2013). For Swiss-based private equity firms, only one write-off was reported in 2014. The same goes for Swiss-based portfolio companies. The following key indicators apply for 2014:

- Trade sales of shares held in Swiss based portfolio companies accounted for 35.3% of the value (EUR194 million).
- Divestments of shares held in Swiss based portfolio companies by public offering accounted for 18.3% of the value (EUR100 million). The beginning of 2015 saw CVC Capital Partners exiting Sunrise by way of an IPO.
- Secondary sales to another private equity house were one of the main methods of exiting Swiss based portfolio companies, accounting for 21.7% of the value (EUR119 million).

REFORM

4. What recent reforms or proposals for reform affect private equity in your jurisdiction?

Federal Collective Investment Schemes Act (CISA)

The CISA was revised in 2013. The revised law was subject to various transitory provisions that have in some cases ended as recently as in 2015. The new licence requirement for Swiss asset managers of foreign collective investment schemes was particularly relevant to the private equity (asset management) industry.

In addition, the new requirement for a Swiss representative and a Swiss paying agent for the distribution of private equity funds to qualified investors in Switzerland was an important issue. Besides the conclusion of written representative and paying agency agreements, the relevant information had to be inserted into the product documentation of foreign private equity funds before they could be marketed to qualified investors in Switzerland (*see Question 6, Further foreign structures*).

In view of this, there was controversy as to whether (and with what requirements) a private equity fund for qualified investors could terminate its agreements with a Swiss representative and/or Swiss paying agent after conclusion of the fundraising period. According to the predominant view, there is a difference between open-end and closed-end collective investment schemes for qualified investors:

- For open-end collective investment schemes, the representative and paying agent may cease to perform their activities as soon as the foreign collective investment scheme is no longer distributed to qualified investors in Switzerland and the termination of the agreement is not considered to be an abuse of law.
- For closed-end collective investment schemes the Swiss representative and the Swiss paying agent must continue to be appointed as long as Swiss qualified investors remain invested in the fund.

A separate set of rules applies to foreign structures for the distribution to non-qualified investors, which require an upfront product approval by the Swiss Financial Markets Supervisory Authority (FINMA) before they can be distributed in or from Switzerland (*see Question 6, Further foreign structures*).

Federal Financial Services Act (FSA)

The proposed FSA aims to regulate the financial services and products of all financial services providers and products producers. It aims to provide a level regulatory playing field for all these market participants. Among other things, it will introduce:

- A new regulatory code of conduct (including appropriateness and suitability duties) at the point of sale.
- A prospectus duty.
- Organisational rules.
- Registration duties (also for client advisers of foreign financial services providers that advise clients in Switzerland).

The new law is expected to enter into force in 2017/18.

Federal Financial Institutions Act (FIA)

The FIA regulates the activities of financial institutions in Switzerland. In particular, it will contain new rules on the approval process for fund management companies, asset managers of collective assets, and (regular) asset managers. The bill will represent a significant change for external asset managers in Switzerland because they will become subject to a regulatory approval duty and a prudential supervision for the first time. Pure investment advisers will not be subject to prudential supervision under the FIA. However, client advisers of such "unregulated" financial services providers will need to be registered in the register of client advisers stipulated in the FSA. The proposed law will presumably enter into effect in 2017/18.

Federal Financial Market Infrastructure Act (FMIA)

As part of the new Swiss financial markets regulations, the FMIA primarily regulates financial markets infrastructure (and trading venues) as well as derivatives trading. Therefore, its relevance for

private equity is limited. It has become effective as of 1 January 2016.

Alternative Investment Fund Managers Directive (AIFMD)

Directive 2011/61/EU on alternative investment fund managers (AIFM Directive) is a European and not a Swiss regulation. However, the third-country rules in the AIFMD (and the respective approval requirements in each country) have a significant impact on Swiss asset managers. The European Securities and Markets Authority (ESMA) recently published official advice in relation to the application of the AIFMD passport to non-EU Alternative Investment Fund Managers (AIFMs) and Alternative Investment Funds (AIFs), as well as an opinion on the functioning of the passport for EU AIFMs and the national private placement regimes.

In this context, due to the recent revision of the CISA, the Swiss regulation of asset managers has been recognised as equivalent by the ESMA. The advice and opinion will now be considered by the European Commission, Parliament and Council. Swiss-domiciled asset managers of AIFs (including private equity funds) should benefit from an enhanced EU-market access (passport) in time.

TAX INCENTIVE SCHEMES

5. What tax incentive or other schemes exist to encourage investment in unlisted companies? At whom are the incentives or schemes directed? What conditions must be met?

Swiss-resident corporate shareholders

In general, income obtained by a Swiss corporate shareholder is subject to income taxes at federal, cantonal and communal level. However, dividend income from and capital gains on the sale of qualifying participations are (nearly) tax-free due to a participation exemption. The participation exemption is available on dividend income from (Swiss/non-Swiss) investments which amount to at least 10% of the equity or whose market value is at least CHF1 million. On capital gains, the participation exemption is available if the (Swiss/non-Swiss) investment cumulatively amounts to at least 10% of the equity and if the investment has been held for at least one year.

Swiss-resident individual shareholders

While capital gains from the sale of investments (including movable property or investments through a fund treated as transparent for tax purposes) are usually tax-free for Swiss resident individual shareholders, dividend income is subject to income taxes at federal, cantonal and communal level. However, if the dividend income is obtained from an investment which amounts to at least 10% of the equity, a significant reduction applies.

The sale of investments may be subject to income taxes in certain cases. This applies especially to individuals who frequently buy and sell such investments or where an investment is sold to a corporate entity (or an individual holding the acquired investment as business asset) and the investment sold distributes funds to the new shareholder within five years after the sale (so-called indirect partial liquidation). To clarify such exposure, a tax indemnity clause is usually part of a share purchase agreement and a pre-discussion with the tax authorities resulting in a binding tax ruling is recommended.

FUND STRUCTURING

6. What legal structure(s) are most commonly used as a vehicle for private equity funds in your jurisdiction?

Swiss Limited Partnership (Swiss LLP)

The primary legal structure for collective private equity investments under Swiss law is the Swiss limited partnership for collective investments (Swiss LLP) (*Article 98 et seq., CISA*). In addition, the Swiss Code of Obligations (CO) is applicable subsidiarily.

The launch of a Swiss LLP is subject to a regulatory approval process (and subsequent prudential supervision) by FINMA. FINMA evaluates the proper business conduct of the members of the board and the directors, as well as the organisation, internal regulations, and regulatory compliance of the Swiss LLP (*see Question 10*).

A Swiss LLP is a partnership whose sole object is collective investment. It conducts investments in risk capital (and may also invest in other alternative investments, or in real estate development, construction or infrastructure projects). It is subject to extremely flexible investment guidelines.

A Swiss LLP is based on a partnership agreement. At least one member of a Swiss LLP is subject to unlimited liability (general partner), while the other members (limited partners) are liable only up to a specified amount (limited partner's capital contribution). The general partner must be a company limited by shares with their registered office in Switzerland and can only be appointed as a general partner of a single Swiss LLP. Limited partners must be qualified investors, as defined in the CISA (*see Question 12*).

In addition, a prospectus must be published. The Swiss Fund & Asset Management Association (SFAMA) and the Swiss Private Equity & Corporate Finance Association (SECA) have produced a model prospectus with an integrated partnership agreement which should represent the basis for the document filed with FINMA.

Swiss Investment Company with Fixed Capital (SICAF)

A SICAF is a company limited by shares (*Articles 620 et seq., CO*). It is regulated under Article 110 CISA and, as a general principle, subject to regulatory approval by FINMA (and respective prudential supervision). The sole purpose of a SICAF is the investment of collective capital.

As an exception to the general rule of a FINMA approval and supervision, an investment company in the form of a company limited by shares is not subject to the CISA where:

- The shares of the investment company are listed on a Swiss exchange.
- The shareholders of the investment company are exclusively qualified investors under the CISA (*see Question 12*).
- The investment company qualifies as an investment club.

The SICAF defines its (private equity) investments, investment policy, and investment restrictions in the articles of association and the investment guidelines. It also publishes a prospectus. Traditionally, listed investment companies have been very popular. However, in recent years the Swiss LLP has gained more attention because, among other reasons, in the past investors in listed investment companies had to bear a markdown of the market price with respect to the value of their shares.

Swiss Investment Foundation

Swiss investment foundations have become increasingly popular investment vehicles for Swiss pension funds in recent years (in particular, with respect to investments in private equity, private debt or real estate). Swiss investment foundations are governed by:

- Articles 53g et seq. of the Occupational Retirement, Survivors' and Disability Pension Plans Act (OPA).
- The Ordinance on Investment Foundations (IFO).

Besides other applicable regulatory legal foundations, the rules governing civil law foundations according to Articles 80 *et seq.* of the Civil Code (CC) are applicable subsidiarily. Swiss investment foundations are subject to (pre-)approval and direct supervision by the Occupational Pension Supervisory Commission (OPSC).

The Swiss investment foundation requires, among other things regulations, articles and a prospectus (in particular, with respect to alternative investments, such as private equity). Investors of Swiss investment foundations are restricted to tax-exempt occupational pension schemes with their domicile in Switzerland (and FINMA-regulated collective investment schemes with the same selling restrictions). Generally, an investment foundation has several investment groups with different investment strategies.

Further Swiss structures

Swiss fund regulation offers a number of other Swiss fund structures, including contractual funds and investment companies with variable capital (SICAVs). Due to the open-end character of these vehicles, they are normally not adequate for (illiquid) private equity investments.

Foreign Limited Partnerships (foreign LLPs)

Private equity fund promoters that are active in the Swiss market frequently use off-shore private equity fund structures. For promoters with a focus on the EU, these structures can make sense due to the AIFMD-regulation which may allow them to distribute their funds in every country in the EU without having to obtain an approval in every single country based on the national private placement regimes. However, Switzerland should also obtain enhanced market access in the near future (*see Question 4*).

Sometimes, offshore LLPs are selected purely because they are less regulated than Swiss LLPs. However, Swiss qualified investors have raised their minimal standard with respect to the regulation of structures that are considered as being "investable" in recent years. As a consequence, it has become very hard to sell unregulated LLPs of certain domiciles to many qualified investors in Switzerland for reputational reasons. This has caused a noticeable shift towards collective investment schemes that are domiciled in either Switzerland or a reputable fund hub in the EU.

Ultimately, whether a Swiss or a foreign structure is more convenient depends primarily on the domicile and geographic focus of the promoter, as well as the domicile and type of the target investors. In addition, specific tax aspects must be considered (*see Questions 7 and 8*).

However, foreign LLPs, like any other foreign collective investment schemes for qualified investors must follow a few mandatory Swiss rules with respect to distribution in Switzerland (*see below*).

Further foreign structures

Distribution to qualified investors. Foreign collective investment schemes for qualified investors in Switzerland must appoint a representative and a paying agent in Switzerland (*Article 120, para. 4, CISA*). This is typically the case for private equity funds (in particular, for foreign LLPs). Written agreements must be concluded with the Swiss representative and a paying agent, and the relevant information must be reflected in a Swiss annex to the fund prospectus (*see Question 4*). In addition:

- Appropriate selling restrictions should be implemented in the fund documentation.
- Where an indirect distribution through a distributor is intended, a distribution agreement is required.
- The name of the foreign collective investment scheme must not provide grounds for confusion or deception.

Distribution to non-qualified investors. A distribution of private equity funds to non-qualified investors in or from Switzerland is only permitted (as with any other collective investment scheme for non-qualified investors) if a distribution approval for the fund can be obtained from FINMA. This is not possible for many foreign private equity fund structures because they are either:

- Not subject to a regulation which is equivalent to the requirements of Swiss law.
- Only permitted for qualified investors (*see Question 12*).

7. Are these structures subject to entity level taxation, tax exempt or tax transparent (flow through structures) for domestic and foreign investors?

SLLP, SICAV and contractual fund

Income of the fund. SLLPs, SICAVs and contractual funds are treated as transparent for tax purposes and are therefore not subject to corporate income tax. Income taxes are generally levied at the level of the investors (regardless of whether income is distributed or retained). An exception applies for funds with directly held real estate, where the fund is subject to income tax on income from such real estate. This income is generally not subject to income taxes at the level of the Swiss-resident individual investors.

Distributions by the fund. Distributions made by an SLLP, SICAV or contractual fund are subject to Swiss withholding tax at 35%. Exceptions apply for distributions deriving from capital gains and directly held real estate. Swiss investors should receive a full refund. Non-Swiss investors may be entitled for a full or partial refund based on a double taxation treaty between Switzerland and the country of residence. In addition, a full refund for non-Swiss resident investors or a notification procedure (instead of a refund procedure) may be applicable if at least 80% of the underlying income is derived from non-Swiss sources (affidavit procedure).

SICAF

Income of the fund. A SICAF is treated as non-transparent for tax purposes and therefore subject to corporate income tax (at rates of 12% to 24%, depending on location). The participation exemption applies (*see Question 5*).

Dividends by the fund. Dividend payments by a SICAF are subject to withholding tax (at a tax rate of 35%). Swiss investors should receive a full refund. Non-Swiss investors may be entitled for a full or partial refund based on a double taxation treaty between Switzerland and the country of residence.

Swiss Investment Foundation

Swiss investment foundations, being auxiliary vehicles of pension funds, are not subject to direct federal and cantonal/communal income taxes.

8. What (if any) structures commonly used for private equity funds in other jurisdictions are regarded in your jurisdiction as being tax inefficient (whether by not being recognised as tax transparent or otherwise)? What alternative structures are typically used in these circumstances?

Swiss tax law does not distinguish between Swiss and foreign funds with regard to income tax for investors domiciled in Switzerland. However, a foreign fund classifies as fund (collective investment scheme) for Swiss tax purposes only if one of the following criteria is met:

- The foreign fund is licensed for distribution in Switzerland by the FINMA.

- The foreign fund is under supervision of a recognised foreign regulator.
- The purpose of the foreign fund is collective investment on a contractual or corporate basis. For an open investment scheme, it is additionally required that the investors have the right to redeem at net asset value at least once a year. If one of these criteria is met, the foreign fund classifies as transparent, unless if it is comparable to a SICAF, in which case the fund is treated as non-transparent.

FUND DURATION AND INVESTMENT OBJECTIVES

9. What is the average duration of a private equity fund? What are the most common investment objectives of private equity funds?

Duration

The average duration of a private equity fund is ten to 12 years (with a possible extension of three years). The subscription period lasts up to one year (with a possible extension of another year). The investment period typically lasts five to six years. Subsequently, the divestment period is initiated. However, a private equity fund may also be set up for a longer or an unlimited period of time.

Investment objectives

Typical investment objectives of private equity funds include achievement of substantial (long term) capital appreciation by investing in a portfolio of private companies based on an individual investment strategy.

The range of possible private equity investment strategies is quite broad, and include:

- Financing highly risky start-up companies (seed financing or development financing) with the purpose of achieving an occasional major exit (venture capital).
- Focusing on later financing stages (growth or expansion financing) with a reduced risk due to the target companies having succeeded in the market testing phase.
- Investing in participations of venture capital investors that require liquidity (secondary investments).
- Focusing on investing in more established start-up companies right before a planned IPO (bridge financing or established financing), the investment strategy with the relatively lowest risk profile.
- Special cases, such as a focus on takeovers of companies by its management (management buyouts) or on the restructuring of failing companies (turnaround).

The typical target payoff structure of a private equity fund is best described by the so called "J-curve", which includes negative returns in the first few years, followed by a phase of increasing returns that lead to substantial cash flows and/or capital gains on exit. Historically, an average annual rate of return of 10% to 20% is a representative range for certain market periods.

FUND REGULATION AND LICENSING

10. Do a private equity fund's promoter, principals and manager require authorisation or other licences?

Fund managers

Swiss management companies or asset managers of collective investment schemes are, in principle, subject to a mandatory licence requirement in Switzerland (*Article 13 para. 1 and 2 lit. a and f, CISA*). Certain exceptions may apply for asset managers of collective investment schemes for qualified investors, if the assets under management are below the thresholds of CHF100 million, respectively, CHF500 million, or the investors are exclusively group companies of the asset managers group. Further licencing requirements exist for Swiss representatives of foreign collective investment schemes and distributors of collective investment schemes. The members of the board and the directors of these licensees must:

- Prove that they have a good reputation.
- Ensure proper business conduct.
- Meet certain professional qualifications.

In addition, FINMA evaluates the organisation, internal regulations, and regulatory compliance of the regulated entities. The regulatory requirements are higher for fund management companies than asset managers and are lower for representatives and distributors.

However, the Swiss LLP (and its general partner) are subject to a separate set of rules. As a special case, the general partner is approved together with the Swiss LLP in a regulatory approval proceeding that leads to a combined institute authorisation and product approval by FINMA (*see Question 6*). In this context, the members of the board and the directors of the Swiss LLP are evaluated similarly to those of fund managers.

Promoter

The promoter of a fund, although regarded as the guiding spirit of a fund, is not, in principle, subject to Swiss regulation unless he engages in specific regulated activities, such as the management, asset management or distribution of collective investment schemes, or the representation of foreign collective investment schemes.

11. Are private equity funds regulated as investment companies or otherwise and, if so, what are the consequences? Are there any exemptions?

Private equity funds in the form of a Swiss LLP or SICAF are subject to FINMA authorisation and approval (*see Question 6*). As an exemption, SICAFs that are restricted to qualified investors, as well as listed investment companies, are not required to obtain a FINMA authorisation or approval (*see Question 6*). However, listed investment companies must comply with the listing rules of the Swiss exchange where they are listed (SIX Swiss Exchange or BX Berne Exchange) which represent another set of regulatory provisions.

12. Are there any restrictions on investors in private equity funds?

A Swiss LLP or an unlisted investment company are only accessible for qualified investors. The term "qualified investors" includes:

- Regulated financial intermediaries such as banks, securities traders, fund management companies and asset managers of collective investment schemes, as well as central banks.
- Regulated insurance institutions.
- Public entities and retirement benefits institutions with professional treasury operations.
- Companies with professional treasury operations.
- High-net-worth individuals (HNWI) that fulfil certain conditions (*see below*).

A HNWI is defined as any natural person who provides evidence at the time of subscribing to the collective investment that he both:

- Has the knowledge required to comprehend the risks of the investments based on his individual education and professional experience, or based on comparable experience in the financial sector.
- Holds assets of at least CHF500,000.

Alternatively, the HNWI can confirm in writing that he holds assets of at least CHF5 million. Investors that have concluded written asset management agreements that fulfil the requirements of Article 3 para. 2 lit. a and b CISA may also be looked at as qualified investors, unless they have declared in writing that they do not wish to be considered as such.

The SICAF is not necessarily restricted to qualified investors (apart from a CISA-exempt investment company for qualified investors, or purely optional contractual selling restrictions for efficiency purposes).

In addition, any Swiss collective investment scheme must generally have at least two investors. However, in some cases one-investor funds are permitted, if the investor is a regulated insurance company, a public entity or a retirement benefit institution (pension fund) with professional treasury operations.

Investors of Swiss investment foundations are restricted to Swiss tax-exempt occupational pension schemes and FINMA-regulated collective investment schemes with the same selling restrictions (*see Question 6*).

Further specific selling restrictions may be required or implemented on an optional basis (for example due to regulatory reasons or in order to enhance the efficiency with respect to the distribution process) on a case-by-case basis.

13. Are there any statutory or other maximum or minimum investment periods, amounts or transfers of investments in private equity funds?

There are no legal restrictions on the term of investment or on investment amounts. The regulatory selling restrictions set out in *Question 12* also amount to transfer restrictions for investments in private equity funds. Partnership agreements or articles of association may provide for further restrictions of this kind. In particular, minimum investments of, for example CHF100,000 or CHF500,000 are typical. (For investment periods see *Question 9*.) Further contractual restrictions may be required due to tax reasons or foreign rules and regulations.

INVESTOR PROTECTION

14. How is the relationship between the investor and the fund governed? What protections do investors in the fund typically seek?

The relationship between investors and the fund is governed by a partnership agreement, which usually provide the same protections as for any usual non-Swiss setup.

There are no guidelines or codes of best practice issued by Swiss bodies with regards to the governance of the investor-fund relationship but European guidelines are typically taken into account (such as the Professional Standard Handbook published by the EVCA).

INTERESTS IN PORTFOLIO COMPANIES

15. What forms of equity and debt interest are commonly taken by a private equity fund in a portfolio company? Are there any restrictions on the issue or transfer of shares by law? Do any withholding taxes or capital gains taxes apply?

Most common form

Private equity funds typically take equity interests, sometimes combined with debt interests. Usually, private equity funds acquire the majority of the equity and the management is granted a right to acquire a minority equity interest.

The main advantage of equity interests is that the investor participates in the increase of the value of the shares as reward for taking entrepreneurial risks and for successful management of the target company.

In addition, the investor has increased control rights. As shareholder, it has the right to, for example, vote for the election of the members of the board of directors. Private equity funds tend to acquire a majority stake in the target company that allows it to control the decisions taken on the level of the shareholders' meeting. If they acquire a minority stake, control rights can also be conferred to them by way of either preferential shares or covenants in a shareholders' agreement governing the exercise of the voting rights at the shareholders' meeting.

The advantages of debt interests are:

- Relatively simple repayment to the investor, meaning the requirements for payment of dividends do not apply (*see Question 30*).
- Preferential treatment in case of a bankruptcy.

However, debt interest is typically subordinated as against bank debt and senior financings. Often, such loans provide for the possibility of a conversion into shares (*see Question 27*), if the investor exercises the option or in the case of mandatory conversion.

Restrictions

Swiss corporate law provides for certain restrictions on the issuance of new shares.

If shares are issued in an ordinary share capital increase, the increase requires an approval by the absolute majority of the voting rights represented in a shareholders' meeting.

An approval by at least two-thirds of the votes represented and an absolute majority of the par value of shares represented at the respective shareholders' meeting is required for:

- Any authorised share capital increase.
- Any conditional capital increase.
- Ordinary share capital increases where:
  - newly issued shares are not paid up in cash but by contribution in kind, by way of set-off, or by conversion of freely available equity;
  - an acquisition of assets from any subscriber or any party related to a subscriber is made or planned in the context of the share capital increase;
  - the subscription rights of the shareholders are not fully granted;
  - particular advantages are granted.

Further restrictions apply under the company's obligation to treat its shareholders equally. Existing shareholders in principle have a right to subscribe for newly issued shares, pro rata to their existing

shareholdings. Therefore, if a company issues the shares for the benefit of an investor, the shareholders meeting must partially or fully exclude the subscription rights of the existing shareholders. Such exclusion is only allowed if done for valid a reason.

Typically, shareholders' agreements provide for an obligation to vote in favour of a share capital increase and an obligation to waive subscription rights in defined circumstances, such as a co-operation with a new private equity investor.

A company's articles of incorporation may restrict the transfer of shares. If so, an approval of the board of directors is required for any share transfer. In general, shareholders' agreements contain detailed provisions on permitted and restricted share transfers.

Taxes

Equity. Contributions in cash and in kind from shareholders into the equity of a Swiss company are in principle subject to stamp issuance stamp tax of 1% (with a one-time tax-free amount of CHF1 million). Exceptions apply for qualifying re-organisations and in some cases where the company is over-indebted. The repayment of such contributions is not subject to Swiss withholding tax (if properly booked and reported).

Debt. Thin capitalisation rules apply on related-party debts. The Swiss Federal Tax Authorities have published safe-haven rules, under which the maximal allowable debt-equity ratio for related party debts is determined by the categories of assets of a Swiss company. For example, receivables can be debt-financed up to 85% and participations up to 70%. If these figures are exceeded, and it cannot be demonstrated that the debt-equity ratio is at arm's length, the exceeding part is treated as hidden equity.

Interest on loans (and on loans from related parties, if not treated as hidden equity) is tax deductible and in general not subject to Swiss withholding tax. An exception applies if loans are treated as bonds and notes (this includes loan facilities in relation to which the total number of creditors that are not qualified banks exceeds ten or 20). In such a case, interest payments are subject to Swiss withholding tax at a rate of 35%.

BUYOUTS

16. Is it common for buyouts of private companies to take place by auction? If so, which legislation and rules apply?

It is common for buyout transactions to take place by auction. If the target company is listed on the SIX Swiss Exchange, the Swiss takeover regulations apply. If the target company is not listed, the transaction follows the rules generally applicable to any buyout transaction.

17. Are buyouts of listed companies (public-to-private transactions) common? If so, which legislation and rules apply?

Although a number of listed companies have a net asset value per share which is higher than the price at which the companies' shares are traded, public-to-private transactions are rare in general, but especially so with the involvement of a private equity house. However, the year 2016 started with the announcement of EQT's tender offer for all publicly held shares of the SIX listed Kuoni Travel Holding Ltd.

The legal framework for public-to-private transactions is set out in the following legislation:

- For public takeovers:
  - Financial Markets Infrastructure Act (FMIA);
  - Financial Market Infrastructure Ordinance (FMIO); and
  - FINMA-Financial Market Infrastructure Ordinance (FMIO-FINMA).

These all entered into force on 1 January 2016.

- For the taking private (delisting): SIX Swiss Exchange Listing Rules.

Principal documentation

18. What are the principal documents produced in a buyout?

The principal documents produced in a buyout transaction typically are:

- A non-disclosure agreement.
- Process letters (if the transaction is done by auction) or a term sheet (if the transaction is not done by auction).
- A share sale and purchase agreement (in a share deal) or an assets purchase agreement (in an asset deal).
- An escrow agreement, if applicable, to secure claims of the purchaser under the share sale and purchase agreement.
- A shareholders' agreement among the private equity investor, the management of the target company and potential further investors.
- A further escrow agreement to enforce the share transfer restrictions by placing the shares held by the managers in the target company with an escrow agent.
- Financing agreements (such as credit facility agreements with financing banks).
- Security agreements to secure the financing banks' rights under the credit facility agreement.
- New employment agreements with management.
- Loan agreements with the shareholders, managers, sometimes the seller, or other parties investing into the target company via debt.
- Corporate documents of the target company, if applicable, such as
  - capital increase documents;
  - articles of incorporation;
  - organisational regulations;
  - new employment agreements with the managers (or amendments to the existing ones); or
  - incentive plans.

Buyer protection

19. What forms of contractual buyer protection do private equity funds commonly request from sellers and/or management? Are these contractual protections different for buyouts of listed companies (public-to-private transactions)?

In buyout transactions, buyers typically require from the seller:

- A full set of representations and warranties concerning all aspects of the target (title, good standing, compliance with laws, taxes, financial statements, and so on).
- Specific indemnities for materialised risks (for example ongoing or potential litigation) as well as for taxes.

- Escrow (10% to 20% of purchase price).

Further protective devices have a direct impact on the determination of the purchase price, such as:

- Purchase price adjustments, such as net debt or working capital adjustments.
- Locked-box anti-leakage provisions.

Generally, representations and warranties should not be required from the target company, as they are generally not enforceable. In public-to-private transactions, representations and warranties are limited due to disclosure obligations and the notion that the company's situation is reflected in the stock exchange price. In venture capital transactions, dividend and liquidation preferences (in a moderate form, that is, usually no double dip) are quite common.

In buyout transactions (moderate) break fees are normally agreed on in the binding part of a memorandum of understanding/term sheet to cover costs incurred in the due diligence exercise. In public-to-private transactions they are included in the transaction agreement with the target company.

Provisions by which the buyers put back their investment to the sellers are rare. If they are agreed on, then they are in the form of a put-option by the buyer at a very low price.

Contractual anti-dilution protections are normally only agreed on in venture capital transactions where future financing rounds are expected. They then come in the form of full ratchet or on weighted average basis. Alternatively, the investment documentation may provide for the investor with a veto right against further capital increases, which allows the investor to negotiate a tailor-made solution.

20. What non-contractual duties do the portfolio company managers owe and to whom?

The managers of a portfolio company must, in their capacity as employees of the portfolio company as well as in their function as members of the executive management of the portfolio company, carry out their tasks with due care and must loyally safeguard the portfolio company's legitimate interests in good faith. These duties include specifically:

- A confidentiality obligation and a duty to safeguard business secrecy.
- A non-competition obligation.
- A duty to act in the best interests of the portfolio company and its shareholders, which includes the principle that in situations of conflict of interest the portfolio company's interests must prevail and the manager must inform the board of directors of the portfolio company of such conflicts of interests.
- A duty to safeguard shareholders' equal treatment.

21. What terms of employment are typically imposed on management by the private equity investor in an MBO?

In buyouts and venture capital transactions, senior managers are usually required to participate in the equity of the target, normally at preferred conditions (sweet equity). The specific terms included in the manager's shareholder's agreement (and not the employment agreement) generally include the following features:

- Vesting conditions (where the participation vests over a certain time period and the manager forfeits his participation on a pro rata basis if leaving the company).
- Re-purchase rights of the company or the investor(s) whereby the re-purchase price depends on the reason for the manager's departure (good leaver/bad leaver provisions).
- Non-competition and non-solicitation covenants, usually for time periods of 12-24 months after termination of the employment with the company and often combined with a liquidated damages clause, since non-competition and non-solicitation covenants are difficult to enforce in Switzerland.
- Employee participations. These trigger intricate tax issues and generally require a tax ruling.

22. What measures are commonly used to give a private equity fund a level of management control over the activities of the portfolio company? Are such protections more likely to be given in the shareholders' agreement or company governance documents?

The basic prerequisite to exercise control is information. In the context of a private equity investment, this means that the private equity investor must ensure transparency and strict monitoring that goes beyond financial reporting. The required level of disclosure and the framework for the communication of relevant information is most commonly tailored to the private equity investors' needs in the shareholders' agreement.

Private equity investors often acquire a controlling stake in the portfolio company, which enables them to appoint/elect their representatives on the board of directors by virtue of their voting rights. In addition, the right to appoint board members is typically substantiated in the shareholders' agreement. Shareholders' agreements also usually include supermajorities for certain important shareholder and board matters, and veto rights or voting requirements in favour of private equity investors. However, it is only possible to a very limited extent to mirror these governance provisions of the shareholders' agreement in the company's corporate documents.

DEBT FINANCING

23. What percentage of finance is typically provided by debt and what form does that debt financing usually take?

Under the Swiss legal framework, tax law under the thin capitalisation rules provide for limits on the debt/equity ratio (see *Question 15*), while Swiss corporate law does provide some guidelines, but not specific ratios. The main guideline to be taken into account is the general obligation of a portfolio company's board of directors to provide for a financing structure that is adequate for their company (in particular in view of cash flow, liquidity, long-/short term needs and so on).

Generally, more conservative leverage ratios are seen in Swiss deals than are seen, for example, in US/UK transactions.

Lender protection

24. What forms of protection do debt providers typically use to protect their investments?

Security packages for debt providers are comparable to those in international transactions, in particular in relation to:

- Share pledges.
- Bank account pledges.
- Pledges on intellectual property rights.
- Assignment of claims under the acquisition documentation.

- Intra-group issues.
- Insurance.
- Trade receivables.

The following main issues must be taken into account:

- The is no floating charge on movable assets under Swiss law and perfection requirements for common security rights (such as the requirement for possession by the pledgees) usually make it impracticable to grant security on movable items.
- Security on real estate in favour of non-Swiss banks triggers source tax, which usually prevents parties from including real estate assets in the security package.
- Security to be granted by the acquisition target and its subsidiaries is subject to the Swiss limitation rules (*see Question 25*).

Financial assistance

25. Are there rules preventing a company from giving financial assistance for the purpose of assisting a purchase of shares in the company? If so, how does this affect the ability of a target company in a buyout to give security to lenders? Are there exemptions and, if so, which are most commonly used in the context of private equity transactions?

Swiss limitation rules

There is no Swiss concept directly equivalent to "financial assistance" in connection with providing security for acquisition financing. However, the Swiss maintenance of share capital rules usually have the same effect.

Under Swiss rules on the maintenance of share capital, a Swiss company cannot distribute funds, unless and to the extent it has freely distributable reserves. Distributable reserves are the total equity minus nominal share capital and statutory reserves. Statutory reserves include reserves for up- or cross-stream loans that are not on arm's length terms. Therefore, this limitation applies to:

- Funds flowing up-stream (to the shareholder/parent)
- Funds flowing cross-stream (to subsidiaries of the parent).
- Direct distributions (dividends).
- Loans that are not at arm's length terms.
- The granting of security.

Within these limits, a Swiss company can grant security for acquisition financing provided to its parent, provided that granting such a loan is in such company's (own) corporate interest and (usually explicitly) covered by its corporate purpose.

While the authority to grant security vests with the board of directors (and the executive management), often an explicit approval by the shareholders meeting is requested, in particular if the enforcement of the security would result in a (partial) liquidation of the company's (main) assets.

Exemptions

There are no exemptions from these limitations.

Insolvent liquidation

26. What is the order of priority on insolvent liquidation?

Secured claims have an independent status and are paid off out of the net proceeds from realising collateral. If a secured claim cannot be fully covered by the proceeds from realising collateral, the residual claim is ranked with the unsecured claims. A surplus is used to satisfy unsecured claims.

The gross liquidation proceeds from liquidating unsecured assets of the company are used to pay the liquidation expenses and the liabilities incurred after the declaration of bankruptcy. Unsecured claims are ranked in three classes (in order of priority):

- The first class, which comprises employee's claims based on their employment agreement, which accrued during the six months before the declaration of bankruptcy, and other claims by and for the benefit of employees (and other claims that are less relevant for the private equity sector).
- The second class, which consists of claims for social security and insurance contributions and, in an insolvent liquidation of a financial institution, customer deposits up to CHF100,000 (and other claims that are less relevant for the private equity sector).
- The third class comprises all remaining claims.

Creditors that agreed to a subordination of their claims are paid after all other claims have been satisfied. All creditors' claims rank above equity.

Equity appreciation

27. Can a debt holder achieve equity appreciation through conversion features such as rights, warrants or options?

A debt holder may achieve equity appreciation by way of conversion features. A lender and the provider of other debt instruments can be granted the right to convert shares into equity, or can be granted option rights to purchase new shares. These instruments typically require the creation by the target company of conditional share capital in its articles of incorporation. Alternatively, the shareholders can contractually agree to resolve a capital increase at the relevant time or, if the target company has sufficient freely disposable reserves, it can purchase treasury shares up to 10% of the share capital.

PORTFOLIO COMPANY MANAGEMENT

28. What management incentives are most commonly used to encourage portfolio company management to produce healthy income returns and facilitate a successful exit from a private equity transaction?

The most fruitful strategy in incentivising the management of a portfolio company is to align as far as possible the interests of the managers with those of the private equity investor (reduction of the principal-agent conflict of interest). The most effective way to achieve this goal is to ensure that the manager invests a fair amount of his net worth in the portfolio company. Such investment should be on similar terms as the private equity investor's investment, as far as appropriate. In standard market practice, the following forms of incentives are most commonly used:

- Share options.
- Restricted shares/restricted share units.
- In some circumstances, performance share units.

For tax reasons, phantom and similar virtual stocks are less common in Swiss private equity environment.

In addition, market standard remuneration elements include a fixed salary base, with a bonus based on, for example, an EBITDA target, a net debt target or on qualitative targets. In non-listed portfolio companies, exit bonuses based on capital gain targets are also seen.

29. Are any tax reliefs or incentives available to portfolio company managers investing in their company?

In general, there are no incentives such as specific tax reliefs for portfolio company managers investing in their fund. However, capital gains at the level of the fund (if treated transparently) are generally tax-free for portfolio company managers resident in Switzerland. Where a fund is not treated transparently (such as a SICAF), capital gains through the sale of the investment shares are generally also tax-free for such investors. Due to the close relationship of the portfolio company managers to the fund, it is advisable to ensure by prior discussion with the tax authorities that such capital gains are seen as return of their investment and not due to their function for the fund (for example, through a higher participation in the gains of the fund as other investors or through an inadequate remuneration for their services rendered to the fund).

30. Are there any restrictions on dividends, interest payments and other payments by a portfolio company to its investors?

Dividends can only be paid out of the portfolio company's balance sheet profit and its freely disposable reserves (that is, the total equity capital minus share capital and statutory reserves) (*see Question 25*) The balance sheet profit and the freely disposable reserves are calculated based on the portfolio company's financial statements, which must not be older than six months. The portfolio company's shareholders meeting must:

- Approve the financial statements.
- Take notice of the auditor's report.
- Resolve the dividend payment.

Interest payments and payments based on other legal grounds are generally not subject to these restrictions, provided that the payments are based on agreements concluded on arm's length terms.

31. What anti-corruption/anti-bribery protections are typically included in investment documents? What local law penalties apply to fund executives who are directors if the portfolio company or its agents are found guilty under applicable anti-corruption or anti-bribery laws?

While the importance and awareness of anti-bribery measures continues to grow, specific anti-corruption or anti-bribery protections are rarely included in transaction documents, apart from confirmations to be provided by the buyer that the funds used to finance the transaction stem from "clean sources" and a representation and warranty clause by which the seller confirms that the target company is in compliance with these provisions.

Fund executives who serve as directors on the boards of portfolio companies or their agents may become personally liable if the company or its shareholders suffer damage caused by the director's negligent or willful misconduct. Such negligence may include the breach of the director's duty to supervise the persons entrusted with the management of the company. Criminal sanctions are rare because they generally require a direct involvement of the director in the criminal behavior.

Where corruption occurs within a company and the criminal behavior cannot be attributed to a specific individual, the company may be sanctioned if it cannot be proven that all reasonably required organisational measures to avoid the criminal behavior were implemented. Such measures typically include a "message from the top", the implementation of a code of conduct, and the continuous instruction and training of the employees. The Swiss criminal code contains sanctions for the bribery of public officers and the Swiss Federal Act on Unfair Competition contains sanctions for bribery of employees, consultants and so on of a third party in the private sector. Sanctions include fines and imprisonment of up to three years for bribery in the private sector and up to five years in the public sector. The Swiss anti-corruption law is currently under revision and these provisions are planned to be included in the Swiss penal code.

EXIT STRATEGIES

32. What forms of exit are typically used to realise a private equity fund's investment in a successful company? What are the relative advantages and disadvantages of each?

Forms of exit

The exit lies at the heart of every private equity transaction. Therefore, exit strategies are considered by a private equity fund in assessing a transaction even before investing. As in every other jurisdiction, the most common forms of exit in successful portfolio companies are a trade sale or an initial public offering (IPO). In the evaluation and planning phase, one of these forms of exit can be explored individually (single track) or can be combined and structured as a double- or triple-track exit process.

Advantages and disadvantages

The advantages of trade sales are:

- The private equity investor achieves maximum liquidity, meaning its entire participation is sold. The selling private equity investor receives the entire sale price immediately. Subject to special considerations, private equity sellers will be reluctant to accept amounts deposited in escrow or earn-outs.
- A sale to a strategic buyer can create synergies and may increase the company's options to develop its business. Both should have a positive impact on the sale price.
- The buyer usually also provides the funds necessary for the repayment of senior, mezzanine or similar debt granted by the private equity investor beside its equity investment.
- The sale can be carried out confidentially and the transaction costs may be lower.

The disadvantages of a trade sale are:

- The selling private equity investors lose the opportunity to participate in future benefits of the portfolio company.
- Possible disputes and liability for breaches of representations and warranties, although these are rare as private equity sellers insist on selling on standard institutional terms, giving only representation for title to the shares and capacity to enter into the share purchase agreement, and even these risks can be mitigated by R&I insurance.
- In certain rare cases, private equity investors may have to keep part of the proceeds in escrow as a security.

The advantages of an IPO are:

- In most cases, the IPO process leads to a higher selling price per share.
- The IPO process leads to an increased public awareness not only for the company itself but also for the private equity house invested.
- The selling private equity investor does not have to give representations and warranties in an IPO. For the private equity investor, it is therefore a clean, even if only a partial, exit.

- Current shareholders, including the private equity investor, may continue (subject to a lock-up) to hold a stake in the portfolio company and accordingly participate in future benefits of the portfolio company.
- Once, the lock-up period ends, a market sale may be easier.
- Although the IPO will be subject to market conditions, it may well add some certainty to the process.

The disadvantages of an IPO include:

- The private equity investor main goal to achieve maximum liquidity is impeded by lock-up provisions which usually prevent the private equity investor (and other shareholders) from selling their shares during a period of up to 18 months after the IPO.
- The IPO is usually very costly.
- The completion of the transaction is subject to market conditions.
- The day-to-day business is more exposed to market pressure.
- Being listed adds regulatory pressure and the fulfilment of the various compliance rules. Ongoing disclosure obligations may add stress and complexity to the management of the company.
- In Switzerland, being listed also means that board and management compensation is subject to shareholders' approval.

33. What forms of exit are typically used to end the private equity fund's investment in an unsuccessful/distressed company? What are the relative advantages and disadvantages of each?

Forms of exit

In distressed portfolio companies, a regular trade sale is only possible to specialised buyers and the IPO route is no longer available. Accordingly, the following exit strategies/options will be considered:

- Write-off.
- Secondary deal to a private equity investor with a focus on distressed transactions.
- Management buyout.
- Liquidation of the portfolio company.

Advantages and disadvantages

Due to fact that it can be implemented immediately without any public attention and further costs, the write-off is a very lean and efficient but of course not a very satisfactory exit strategy in the case of a distressed portfolio company. To save at least part of the investment, whenever possible either a management buyout or a secondary sale to a private equity investor with a focus on distressed transactions should be considered. A liquidation of the portfolio company is more costly, time-consuming and comes along with a certain visibility to the public. Accordingly, it is generally used as a last resort. Redemptions, which are available in some jurisdictions, are not admitted under Swiss law, at least in the strict sense. Only share buy-backs at the company's, not at the investors' discretion, are permitted but are not a viable exit strategy in distressed situations, due to the very limited admitted scope and rigid pre-requisites such as sufficient freely distributable reserves.

PRIVATE EQUITY/VENTURE CAPITAL ASSOCIATION

Swiss Private Equity and Corporate Finance Association (SECA)

Head. Bernd Pfister (Chairman) and Maurice Pedergnana (General Secretary) **Address.** Grafenauweg 106300 ZugSwitzerland **T** +41 41 757 67 77 **F** +41 41 757 67 00 **E** info@seca.ch **W** www.seca.ch

Status. SECA is a non-governmental organisation.

Membership. SECA has more than 330 members who are equity investment companies, banks, corporate finance advisors, auditing companies, lawyers, management consultants and private investors.

Principal activities. SECA is the representative body for Switzerland's venture capital, private equity and corporate finance industries. SECA:

- Promotes venture capital, private equity and corporate finance activities.
- Promotes the exchange of ideas and co-operation among SECA members.
- Contributes professional education and development for SECA members and their clients.
- Represents SECA members' views and interests in discussions with the government authorities and other bodies.
- Establishes and maintains ethical and professional standards.

Published guidelines. SECA publishes:

- The code of conduct for private equity professionals.
- The code of conduct for corporate finance professionals.
- The code of conduct for private equity investments.
- Templates: Standard venture capital investment and shareholders' agreement as well as related term sheets and corporate documents.

Information sources. See website above.

ONLINE RESOURCES

Swiss federal legislation

W www.admin.ch

Description. The official website of the Federal Authorities of the Swiss confederation contains the entire body of federal legislation in German, French and Italian. English versions are not provided.

Swiss Financial Markets Supervisory Authority (Eidgenössische Finanzmarktaufsicht) (FINMA)

W www.finma.ch

Description. The FINMA publishes its circulars on its own website in German, French, Italian and in some cases also in the English language.

Swiss Private Equity and Corporate Finance Association (SECA) templates for venture capital agreements

W www.seca.ch

Description. SECA provides on its website templates for venture capital agreements.

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Areas of practice. International and domestic mergers and acquisitions; public takeovers; private equity, venture capital and finance; corporate law and governance; capital markets; recognised issuers' representative at the SIX Swiss Exchange; financial products, fund structuring.

Recent transactions.

- Structuring of a Swiss investment foundation for an alternative investment asset manager (2016).
- Advising Orange Growth Capital in connection with Knip AG's (Zurich) recently closed financing round, which is with CHF15 million Switzerland's largest FinTech financing round for a start-up company so far (2015).
- Advising Bridgepoint in connection with the sale of Infront Sports & Media AG to Dalian Wanda Group Co for a transaction value of approximately EUR1,050 million (2015).
- Advising CITTIC Group, a group of companies specialized in the acquisition and development of European industrial companies, in the acquisition of Schaltag AG (Switzerland) and Schaltag s.r.o. (Czech Republic) from the Rieter Group for an undisclosed purchase price.
- Advising Swiss Prime Site in connection with its successful launch of the Swiss Prime Investment Foundation with a primary issuance of CHF550 million. The setting up of the investment foundation comprised a regulatory product approval proceeding before the Occupational Pension Supervisory Commission (OPSC) (2015).
- Advising Swiss Prime Site with respect to obtaining an asset management license regarding asset management for pension funds from the OPSC (2015).
- Advising NJJ Capital SAS as Lead M&A, Regulatory Legal Counsel and Swiss legal counsel for tax and financing related matters to NJJ Capital for the sale of mobile telecom operator Orange Communications SA for a total transaction value of EUR2,300 million (2014/2015).
- **Languages.** English, German, French, Italian, Czech, Dutch, Hebrew, Hungarian, Norwegian, Russian, Spanish, Swedish.
- **Publications.** See http://nkf.ch/en/publikationen_suche/fachgebiete.php.