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Luxembourg

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Overview

The chapter provides an overview of the M&A landscape in Luxembourg in 2018.

2018 has shown a growing trend in M&A transactions in comparison to previous years, despite recent political changes at the European Union level as well as 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 €4,064.644bn at the close of December 2018 and, as at 31 January 2019, increased to €4,199.723bn. 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 is 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. The key legislation governing M&A transactions in Luxembourg is the law dated 10 August 1915, as amended (the **Corporate Law**), which implemented the EU Cross-Border Mergers Directive into national legislation. 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 (the **Takeover Law**), which implemented 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, and implementing the 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* (the **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 structure. 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 the alternative jurisdiction for different investors and companies that do not want to take any risks due to Brexit. Many insurance companies and asset managers consider it important to increase or establish their presence in Luxembourg and have consequently acquired and/or increased their participations in different regulated vehicles 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 a 90% stake in Banque Internationale à Luxembourg (**BIL**) for €1.48bn ($1.76bn) by the Legend Holdings Group from Precision Capital (Qatar). The deal is considered as the biggest takeover of a European deposit-taking bank by a Chinese firm so far. The remaining 10% stake in BIL is held by the Luxembourg government.
- Acquisition by Genstar Capital portfolio company Apex Group (Apex) of M M Warburg & Co's Asset Management and Servicing business in Luxembourg. The deal has just recently closed and M M Warburg & Co Luxembourg S.A. was rebranded to 'European Depositary Bank' under the Apex Group.
- Acquisition by BGL BNP Paribas of all the outstanding shares in ABN AMRO Bank (Luxembourg) S.A. and of its fully owned subsidiary ABN AMRO Life S.A. In the context of consolidation in the private banking market, this acquisition, which represents €5.6bn in assets under management for private banking, will enable BGL BNP Paribas to strengthen its position in Luxembourg.
- Acquisition of a 25% stake in Encevo SA by the China Southern Power Grid Group for €400m. Encevo has two main subsidiaries – Creos and Enovos Luxembourg. Creos manages electricity and gas grids while Enovos Luxembourg is responsible for the sale of energy to a diversified portfolio of clients in Luxembourg and Germany. Encevo currently operates more than 10,150 km of transmission lines and more than 3,700 km of gas pipelines in Europe.
- Acquisition of Azelis SA by Public Sector Pension Investment Board and EQT Partners AB for $2,324m.
- Acquisition of Stella Jones International SA by La Caisse de depot et placement du Quebec, the Ontario Municipal Employees Retirement System, British Columbia Investment Management Corporation, Fonds de Solidarite des Travailleurs du Quebec, GPI Capital LP and Mr. Brian McManus for €356m.

Key developments

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, 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 4th and 5th EU AML Directives.

In Luxembourg, the Law dated 13 January 2019 created a register of beneficial owners (the **RBO Law**). The RBO Law entered into force as of 1 March 2019. The legal entities have a transitional period of six months, i.e. until the end of August 2019, to comply with the provisions of the law. 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.

We do not believe, however, that this new development will be an obstacle to progress in M&A transactions in Luxembourg, as it is part of the EU AML and KYC innovations to be 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 will be amended in the near future in order to be compliant with the EU Directive 2017/828 of 17 May 2017, amending EU Directive 2007/36/EC.

Industry sector focus

In Luxembourg, there is no particular dominant sector for M&A transactions.

Over the last 12 months, investors have, however, shown particular interest in real estate, private equity sectors and also business services sectors.

For transactions involving real estate, the 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 positive outlook for the year 2019 and expect a growing number of M&A transactions in Luxembourg.

The Luxembourg government is also undertaking lots of 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.

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