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# Mergers & Acquisitions

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# Luxembourg

Marcus Peter & Irina Stoliarova  
GSK Stockmann

## Overview

This chapter provides an overview of the M&A landscape in Luxembourg in 2020.

2020 was a challenging year for the Luxembourg M&A market. Despite a strong start in January and February, the COVID-19 pandemic and Brexit caused a drop of deal-making, which, however, started recovering as of July, August and reached important levels in the last trimester of 2020.

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 € 4,973.780 billion at the close of December 2020 and, as of 31 March 2021, had increased to € 5,248.971 billion, which shows 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 located in Asia, USA and Latin America, as well as some EU countries, have shown their interest by carrying out M&A transactions using Luxembourg-based structures for acquisitions of targets that are typically based outside Luxembourg.

Luxembourg entities and investment funds continue to serve as a platform for M&A deals involving Luxembourg vehicles in the acquisition of Luxembourg-based and non-Luxembourg targets. In particular, the number of Luxembourg holding structures and/or fund structures through which investments 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 that allows the creation of various types of structures for different types of investors and assets types. 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 recent 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 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 the 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 (as defined hereinafter), for the purposes of compliance with the EU Directive 2017/828 of 17 May 2017, amending 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 (CSSF)*, responsible for financial regulation in Luxembourg, must ensure that the provisions of respective product laws are respected and, additionally, must 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 EU, many insurance companies and asset managers acquired and/or increased their participations in different regulated vehicles and structures in Luxembourg. Other market players increased their presence and substance on the market in order to be able to serve different types of clients from the Luxembourg hub.

### **Significant deals and highlights**

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

We note, however, that 2020 has seen a decrease in deals in comparison to previous years.

The following major deals have been concluded recently:

- Acquisition of Schülke & Mayr GmbH, a leading provider of hygiene solutions by EQT.
- Acquisition of Selectra Management Company SA, a Luxembourg regulated management company serving alternative investment funds and undertakings for the collective investment in transferable securities, by the Dutch TMF Group, leader in administrative services for corporations, funds and financial institutions.
- Acquisition of Autopolis, a Luxembourg car dealing company with around 320 people in Luxembourg and dealing in 13 car brands, by the Netherlands-based Van Mossel Automotive Group resulting in the largest car network in the Benelux region.
- Acquisition by Arendt of Mobilu, a company specialised in digitalisation and robotisation.

### **Key developments**

As stated above, the Corporate Law was amended to a certain extent a few years ago 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 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.

The other major legal changes concern the KYC and AML regulatory provisions. These include, in particular: (i) the establishment of the register of beneficial owners by the law dated 13 January 2019, as amended (**RBO Law**) in respect of corporate and other legal entities incorporated within the territory of Luxembourg; and (ii) the law dated 10 July 2020, which established a register of *fiducies* (fiduciary agreements) and trusts (**RTF Law**). The RTF Law integrated the regime set out by the RBO Law enhancing the level of transparency in relation to the beneficial ownership of fiduciary arrangements and trust-related devices.

We believe these new developments did not significantly impact the volume of M&A deals over the year and they will not be an obstacle to the progress of M&A transactions in Luxembourg going forward, as they are part of the EU AML and KYC innovations that were also established in the other EU Member States.

The law dated 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies (**Shareholder Rights Law**) was amended by the law dated 1 August 2019 in order to comply with the EU Directive 2017/828 of 17 May 2017, amending Directive 2007/36/EC. The Shareholder Rights 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. The new legal regime of shareholders rights in listed companies was completed by the EU Commission Implementing Regulation 2018/1212, applied as of 3 September 2020, which improved the communication between the issuer and its shareholders and introduced standardised formats for data transmissions.

The law of 25 March 2020 implemented the EU Directive 2018/822 on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (**DAC 6**), and applied as of 1 July 2020. The first reportable transactions were, however, those transactions whose first implementation step occurred between 25 June 2018 and 30 June 2020. The relevant information had to be reported to the Luxembourg authorities at the latest on 31 August 2020. However, due to COVID-19, an extension deadline for DAC 6 reporting deadlines has been granted, meaning that for reportable cross-border arrangements where the first step was implemented between 25 June 2018 and 30 June 2020, the deadline for reporting was postponed to 28 February 2021, instead of 31 August 2020. DAC 6 had and will continue to have a major impact on M&A deals.

In light of the COVID-19 pandemic, the Luxembourg government introduced last year a package of measures aimed at facilitating the holding of board and shareholders meetings in companies, by allowing the remote attendance without any physical presence, despite any contrary provision in the company's articles of association. Shareholders are entitled to exercise their voting rights (i) in writing or in electronic form allowing their identification and provided that the full text of the resolutions or decisions to be taken had been published or sent to their attention in advance, or (ii) via videoconference or other means of telecommunication allowing the identification of shareholders. As regards board of directors or managers, including any supervisory board and management board, the members are allowed to (i) adopt resolutions by way of circular resolutions, or (ii)

attend a meeting held by video conference or other telecommunication means allowing the identification of the participants. Such measures were firstly introduced by the Grand-ducal Regulation of 20 March 2020, further extended by the law of 20 June 2020, then by the law of 23 September 2020 and finally by the law of 25 November 2020, which extended those measures until 30 June 2021. Furthermore, the law of 22 May 2020 extended the deadlines for filing and publication of annual accounts and for holding general meetings in the companies. Given the uncertainty created by the COVID-19 pandemic, those measures significantly simplified and smoothed the management of companies during pandemic.

Regardless of the latest developments in the regulatory framework, the COVID-19 pandemic also impacted the praxis of deal-making in the M&A sector; e.g. due diligence procedures become more onerous, had to include a deeper assessment of the financial conditions and situation of target companies, and hence took more time than usual. The drafting of standard contract clauses, such as representation and warranties, indemnity clauses and specific provisions relating to material adverse change, termination clauses, or price adjustment, had to be drafted more diligently considering the current economic environment due to COVID-19 and the impact that it has had on the business' development and evaluation. Both buyers and sellers demanded inclusion of specific COVID-19 provisions in the agreements.

Finally, given the central role played by the Luxembourg investment funds industry on M&A transactions, the latest regulatory developments impacting investment funds relating to environmental, social and governance (ESG) matters on the European level are likely to also considerably impact M&A deals. This is particularly the case regarding the entry into force of the EU Regulation 2019/2088 of 27 November 2019 on sustainability-related disclosures in the financial services sector (SFDR), applied as of 10 March 2021, and the EU Regulation 2020/852 of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (**Taxonomy Regulation**), which will apply progressively as of 1 January 2022. Such regulatory developments indirectly impact the M&A market as the attractiveness of investee companies will increasingly depend on the implementation of reliable and effective ESG policies and strategies by those target companies. In practice, this leads to enhanced due diligence procedures by investors aiming to verify the compliance of the investee company with ESG standards and disclosure requirements.

We observe a huge change in trend with view to ESG matters, from a “nice to have” to a business imperative that can potentially affect long-term success and value creation of companies. Companies become more accountable to shareholders and customers and shareholders are paying more and more attention on how their money is invested and whether their investment has any positive or negative impact on the environment. Potentially, from a long-term perspective, investee companies may be prevented from bank financing in case they are not ESG-compliant.

### **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' appetites 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.

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.

With the COVID-19 pandemic, we observe a significant digital transformation. That tendency showed that an increasing number of companies invested in innovation and technology and this trend will only become stronger in the years to come.

### **The year ahead**

Despite a certain level of uncertainty, a stable growth in M&A deals is expected for 2021. There is confidence that the recovery started in the second half of 2020 will accelerate, given the increasing access to finance by private investors.

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 positively on Luxembourg's business industry, attracting new investors and companies to the market and allowing large diversification of the economy.

A new focus of the Luxembourg industry is indisputably sustainable finance that is largely promoted by various industry players and government.

**Marcus Peter****Tel: +352 2718 02 50 / Email: [marcus.peter@gsk-lux.com](mailto:marcus.peter@gsk-lux.com)**

Marcus Peter is a Lawyer admitted to practise in Luxembourg and Germany. He studied in Germany and Russia, earning a Master's degree and a Ph.D. degree in law. He specialises in investment funds, private equity & venture capital, as well as corporate and M&A law. He worked at 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.

**Irina Stoliarova****Tel: +352 2718 02 52 / Email: [irina.stoliarova@gsk-lux.com](mailto:irina.stoliarova@gsk-lux.com)**

Irina Stoliarova is a Senior Associate at GSK Stockmann in Luxembourg. She has experience advising national and international clients on all legal and regulatory aspects in the fields of investment funds (UCITS, AIFs, regulated and non-regulated structures) and private equity, as well as corporate and M&A matters. Irina Stoliarova is admitted to the Bar in Luxembourg and speaks Russian, English, French, German and Luxembourgish. She holds a Master's degree in European and International Financial Law (LL.M.) from the University of Luxembourg, a Master's degree in Business Law – Corporate Tax Management from The University of Nice Sophia Antipolis, France and is member of the Luxembourg-Russia Business Chamber and of the Association of the Luxembourg Fund Industry (**ALFI**).

## GSK Stockmann

44, Avenue John F. Kennedy, L-1855 Luxembourg  
Tel: +352 2718 02 00 / Fax: +352 2718 02 11 / URL: [www.gsk-lux.com](http://www.gsk-lux.com)

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