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Overview

The chapter provides an overview of the M&A landscape in Luxembourg in 2022.

The years 2021 and 2022 were challenging for the Luxembourg M&A market, firstly due to the COVID-19 pandemic and, since 2022, also the war in Ukraine and resulting economic challenges such as inflation, recession fear and rising interest rates.

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 were set at over €5 trillion at the end of December 2022, which shows a continuous and stable situation 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, the United States and Latin America, as well as 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 asset classes. The key legislation governing M&A transactions in Luxembourg is the law dated 10 August 1915, as amended (**Company Law**), which implemented the EU Cross-Border Mergers Directive into national legislation. The Company 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 as 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 structures. There may also be specific legislation to be considered in M&A deals depending on the sector or area of the transaction.

We also note that, since Brexit, many insurance companies, asset managers and PE firms 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.

Following the decrease of deals in 2020, 2021 and 2022 showed a more positive outlook with view to M&A deals.

The following major deals have been concluded recently:

January 2022 saw the completion of the acquisition of Danske Bank' subsidiary, Danske Bank International (**DBI**), specialising in asset management, by a major Swiss bank Union Bancaire Privée (**UBP**) for approximately \$37 million.

In June 2022, Foyer Group, a Luxembourg-based insurance and asset management company, agreed to acquire from Allianz Group its insurance portfolios managed by Allianz Insurance Luxembourg and Allianz Life Luxembourg. By the acquisition of Allianz's Luxembourg insurance portfolios, Foyer Group reinforced its leading role in the Luxembourg local insurance market. The transaction is subject to approvals from certain authorities including the Commissariat aux Assurances, the Luxembourg insurance regulator. In March 2023, Foyer also announced the acquisition of Globality S.A., which is an international health insurer and reinsurer with specialisation on insuring expatriates and local, independent workers owned by ERGO Reiseversicherung. The deal is also subject to the approval by Commissariat aux Assurances.

As announced in July 2022, the Luxemburgish Steel Company ArcelorMittal has confirmed to acquire the Brazilian Steel Company Pecém CSP for an amount of \$2.2 billion, which is subject to the approval of the Brazilian antitrust authority.

Universal Investment Group (**Universal**), as leading asset manager in Europe and the largest third-party AIFM in Luxembourg, acquired Luxembourg-based financial services provider

European Fund Administration S.A. (**EFA**) in November 2022. This allows Universal to increase its fund services business and its assets under management to more than 900 trillion euro.

The Bermuda-based global financial services provider Apex Group (**Apex Goup**) announced on 17 January 2023 that it had acquired the Luxembourg-based third-party marketing specialist Alfi Partners, which puts another company on the list of asset managers and fund distributors acquired by Apex in recent years, e.g. LRI, FundRock and Sanne Group. On 11 April 2023, Apex Group announced, furthermore, that it intended to acquire operating business units of the British firm MJ Hudson, which also acts as asset manager in Luxembourg and Ireland.

Key developments

As stated above, the Company 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 and fund types were created, such as, for example, the unregulated reserved alternative investment fund (**RAIF**), as well as more flexible provisions pertaining to the issuance of bonds and the holding of shareholder meetings.

The other major legal changes concern the know-your-customer (**KYC**) and anti-money laundering (**AML**) regulatory provisions, 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, whose access was limited recently due to the decision of the Court of Justice of the European Union; 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 last years 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 established also 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 be compliant with the EU Directive 2017/828 of 17 May 2017, amending Directive 2007/36/EC and by the law of 20 July 2022. The Shareholder Rights Law establishes specific requirements to encourage shareholder engagement, especially in the long-term perspective. 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, as amended, implemented the EU Directive 2018/822 on the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (**DAC 6**), and was applied as from 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 needed to be reported to the Luxembourg authorities by 31 August 2020 at the latest. However, due to COVID-19, an extension deadline to 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 and specifically on the structuring of those deals. The owners, initiators and their legal advisers must be more careful and diligent in order to avoid any material adverse consequences related to that.

With regard to reporting obligations for digital platforms, whether located inside or outside the EU, and the automatic exchange of information between tax administrations of EU Members on revenues generated by sellers on these platforms, Luxembourg is still in the process of implementing Council Directive (EU) 2021/514 of 22 March 2021 (**DAC 7**) amending Directive 2011/16/EU on administrative cooperation in the field of taxation (**DAC**). The Luxembourg draft law transposing DAC 7 is currently in commission but shall be adopted shortly.

Furthermore, DAC will be updated by another initiative (**DAC 8**). DAC 8 shall include crypto-assets and e-money in the information exchange and enables EU Member States to receive and exchange information about crypto-asset users by implementing due-diligence procedures and reporting rules for operators active in crypto-asset transactions and their users. DAC8 must be transposed by the Member States by 31 December 2025 at the latest. This means that DAC8 will be effective from 1 January 2026.

In light of the COVID-19 pandemic, in 2020, the Luxembourg government introduced in 2020 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. Such measures were firstly introduced by the Grand-ducal Regulation of 20 March 2020 and were further extended by various laws until 31 December 2022. Given the overall uncertainty created by the COVID-19 pandemic, such measures significantly simplified and smoothed the management of companies during pandemic but, due to the official end of the pandemic, expired at the end of 2022.

Regardless of the latest developments in the regulatory framework, the COVID-19 pandemic, and now the current economic situation, also impacted the praxis of deal-making in the M&A sector, e.g. due diligence procedures became more onerous, had to include a deeper assessment of the financial conditions and situation of target companies and, hence, took more time as 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/the war and the impact that it has on business development and evaluation.

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 seem to also impact considerably the M&A deals. This is particularly the case regarding the EU Sustainable Finance Disclosure Regulation, 2019/2088 (**SFDR**) applicable as of 10 March 2021 and the EU Taxonomy Regulation, 2020/852 (**Taxonomy Regulation**) that applies progressively as of 1 January 2022. Since 1 January 2023, level 2 technical and

formal guidelines (**regulatory technical standards** or **RTS**) apply that provide additional disclosure and reporting obligations for financial market participants. It is expected that ESG will become even more relevant in the next years and further regulatory measures will be implemented.

Furthermore, two EU Directive proposals regarding corporate sustainability were introduced during 2022. The Corporate Sustainability Reporting Directive (**CSRD**) entered into force on 5 January 2023. The CSRD lays down the groundwork for sustainability reporting standards at a global level, the requirements of which will apply to all large companies as well as to listed SMEs. Those reporting obligations will apply for the financial year 2024 and need to be included in reports published in 2025. The second proposal refers to a Directive on Corporate Sustainability Due Diligence (**CSDDD**), which was published on 23 February 2022. The CSDDD aims to ensure that companies operating in the EU are legally obliged to respect human rights and the environment in global value chains.

Such regulatory developments indirectly impact the M&A market since the attractiveness of investee companies will depend more and more 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 at verifying 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 “nice to have” to a business imperative that potentially can 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 to how their money is invested and require investments to be ESG-compliant. Potentially, investee companies may be prevented from bank financing in case they are not ESG-compliant.

On 15 September 2021, following the implementation of the EU Regulation 2019/452 of the European Parliament and Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the EU Union, the Bill of Law no.7885 (**Bill**) was submitted to the Luxembourg legislator. The Bill consists in the implementation of a screening mechanism *ex ante*: following a mandatory notification for any foreign investors (i.e. non-European investors) investing in a Luxembourgish entity carrying out critical activities (energy, transport, etc.) to the Ministry of Economy. The Minister shall determine thanks to a pre-screening stage, the likelihood of such investment to affect security and public order or essential national or European interests and, thus, decide whether or not to authorise the foreign investment. The impact of this will most likely result in an enhanced analyse of the target’s activities for potential foreign investors. The Bill is still in commission with a recent publication of a complementary opinion by the Council of State.

A merger control regime is being discussed to be implemented in Luxembourg in the years to come. On 20 January 2022, the Ministry of Economy launched a public consultation on that matter. This would aim at establishing an *ex ante* control over certain mergers and acquisitions transactions that could be considered threats to normal competition such as through the abuse of a dominant position. The deadline for this public consultation was 31 March 2022 and the Ministry of Economy published an interim report on the preparatory work on the introduction of such regime on 13 July 2022. The publication of a draft bill for such merger control is expected shortly (during spring 2023).

Industry sector focus

In Luxembourg, there is no particular dominant sector for M&A transactions. Some sectors are more popular than others and this depends on investors’ appetite for risk; some investors

would rather focus on high-yield areas, promising areas that may bring them the highest return despite the risk being quite high. Judging by the current economic, political 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. Due to the economic situation, the real estate market slowed down during the year 2022 but, recently, the real estate market showed some positive indications of recovery.

Since the COVID-19 pandemic, we have seen significant digital transformation. That tendency showed that more and more companies invested in innovation and technology and that trend will only become stronger in the years to come. More investments have also focused on the healthcare sector since the pandemic.

The year ahead

Global M&A volumes were down by 17% and values by 37% in 2022 due to current political tensions and the war in Ukraine. This situation might slow down or put some M&A deals on hold.

However, globally we expect the overall M&A market to stay stable in Luxembourg and potentially grow, 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, information and communication technology, which all reflect in a positive way on Luxembourg's business industry, attracting new investors and companies to the market and allowing large diversification of the economy.

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

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