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Dr. Thomas Bähler & Dr. Anna Gottret, Kellerhals Attorneys



Dr. Thomas Bähler & Dr. Anna Gottret, lawyers at Kellerhals Attorneys, talk to *Finance Monthly* about what makes Switzerland so attractive to foreign investors, why 2014 was a record year for M&As, and the potential impact of the Swiss Franc depegging against the Euro for future business deals



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Kellerhals Attorneys at law, with offices in Berne, Zurich and Basel, is one of Switzerland's leading full service law firms, with the extensive knowledge and expertise of more than 90 legal professionals. It offers an extensive range of legal services for national and international clients in all areas of commercial and corporate law, with particular emphasis on cross-border transactions.

What makes Switzerland so attractive for foreign investments?

Switzerland attracts M&A transactions due to variety of reasons. First of all, Switzerland has one of the most stable economies and most pleasant quality of life in the world. Swiss political stability, highly educated professional staff and high product quality make Switzerland a very attractive market for investors.

Moreover, Switzerland has a very transparent and favourable legal system. Many tax incentives are offered to investors, in order to attract companies to establish operations and invest in Switzerland. With this very attractive legal and taxation system, it offers great opportunities for investors and foreign companies to either bring their headquarters, holding domicile or investment operations to Switzerland. Many Chinese groups of companies have chosen Switzerland as their business hub for the European market, some of them entering our market by the acquisition of an existing Swiss company.

What are the unique challenges of concluding M&As in Switzerland?

If compared to other foreign jurisdictions, there is a relatively little amount of formalities to comply with in Switzerland; however, an increased tendency to tighter regulations has been recently observed. Swiss corporate regulations have been lately amended and further reforms are currently at stake, especially with respect to the remuneration of top management.

In recent years, the Swiss Competition Commission has also taken a much tougher approach regarding merger-control than in previous terms. It is therefore crucial to seek advisory services from legal experts at an early stage of a planned transaction in order to avoid unpleasant surprises later on. Last but not least, the recent decision of the Swiss National Bank to no longer interfere in the currency markets created a real challenge for further M&A activities in Switzerland. The sudden strong position of the Swiss Franc, especially in comparison with the Euro and US dollar, has already had negative effects on export in Switzerland. We wait and see to observe how it will affect the M&A market in the long run.

What, in your opinion, is the most difficult part of negotiations in an M&A? What are your tips for ensuring all parties get deal satisfaction?

The negotiations between buyers and sellers are considered to be a major challenge for every M&A transaction. Skilful and creative negotiation can make all the difference to any deal. Thus, a clear understanding of the client's objectives and business is crucial. In particular at an early stage of negotiations it is important to think clearly about the processes and have good judgment on what's important and what is less relevant. While having a relationship with your business partner is a great starting point for any negotiation, closing a successful deal will require significantly more. Price is an essential part of every transaction, however, it is not everything. It must be negotiated as a part of the whole deal, a package. The valuation gap that can appear between buyer and seller is often a breaking point in negotiations and is a common reason why transactions fail to close. Negotiators who pay attention only to the price have greater chance to fail than those who see the whole picture.

How important are strong negotiation skills to bringing an M&A to a successful conclusion?

Negotiation is a true art form, and doing it well can deliver the right deal for all parties. Knowledge is power

— in particular in negotiations. The deal parties need to research the asset, the structure, the value and their business partners before entering into negotiations.

Additionally, the buyers have to understand the motivation of the seller, including employee and shareholder interests. Last but not least, a deal is only as good as the negotiator enables it to be. A positive attitude is more likely to lead to a successful closing than conflict and hostile ambience.

What has been the most notable, challenging or unusual M&A you have advised on in your career?

The size of transaction matters, but there are also other factors which play a significant role and make a transaction especially challenging. In our careers, we have advised a great number of companies on M&A transactions. What we have learned from our experience is that every single transaction, no matter whether large or small, is a challenge. It requires a commitment in time and effort and must be always well prepared, in particular if it involves different countries, languages, time zones or cultures. However, the most challenging transaction for an industrial target in Switzerland was one involving a Chinese party and one from the USA, both with very different backgrounds, expectations and communication styles – but we were happy to close that deal.

Was 2014 a good year for M&A transactions in Switzerland?

According to KPMG annual report, 2014 was a very good year in regard to M&A transactions. With an impressive number of large and strategically driven deals, 2014 is considered to be an active year - both in Switzerland and globally. The total volume of M&A transactions with Swiss involvement rose by US\$ 155 billion (€137 billion) to reach a gigantic total of US\$ 188 billion (€166 billion). The increased number of transactions in Switzerland shows that M&As represent a fundamental element of corporate strategies in today's world.

About the Authors

Dr. Thomas Bähler is a highly experienced and dedicated business lawyer, eager to find the most efficient solution for his national and international clients. He is a strong negotiator, going the extra mile to make sure that his client reaches the best possible result. Through his academic background and his memberships on the board of several companies he is both legally precise and pragmatic.

Dr. Anna Gottret is an international lawyer, mostly focused on antitrust and corporate law, as well as international securities, private equity and M&A transactions. She also advises clients on matters of EU law. She is specialized in cross-border transactions involving Eastern European countries, especially Poland.

Kellerhals Attorneys

Kellerhals is comprised of an experienced team of 90 legal professionals from three well-established law firms in Basel, Bern and Zurich. The firms' core areas of expertise are: Corporate; Litigation; M&A and Capital Markets; Finance; Taxes; Construction, Real Estate and Industrial Facilities; Information Technology, Intellectual Property, Competition and Distribution; Administrative Law; Employment; White Collar Crime, International Assistance and Compliance; Private Clients and Notarial Services.

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