

Delisting and going private in Switzerland

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Not every listing lasts forever. Controlling shareholders, private equity investors and family owners sometimes decide to take a company private, which requires both a delisting from the exchange and, where possible, the removal of the remaining minority shareholders.

1 The delisting procedure

A delisting is initiated by an application of the issuer to the regulatory body of the exchange. The exchange decides on the application and sets the last trading day, taking into account the interests of investors, the exchange and the issuer, so that shareholders have reasonable time to sell. Since the company law reform, a Swiss company also needs a resolution of the general meeting adopted by a qualified majority before it can delist its equity securities.

2 Squeeze-out after a public offer

Under Art. 137 FinMIA, an offeror who, after a public takeover offer, holds more than 98 per cent of the voting rights of the target company may apply to the court within three months of the expiry of the offer period for the cancellation of the remaining equity securities. The remaining shareholders receive the offer price. This route provides a high degree of legal certainty, but the threshold is demanding and often not reached.

3 Merger squeeze-out

Where the 98 per cent threshold is missed, a squeeze-out merger under the Merger Act is the usual alternative. Under Art. 8 para. 2 and Art. 18 para. 5 of the Merger Act, the merger agreement may provide that shareholders of the transferring company receive only a compensation payment, provided that at least 90 per cent of the shareholders with voting rights approve the

merger. Minority shareholders may have the adequacy of the compensation reviewed by the court under Art. 105 of the Merger Act. Tax consequences for the remaining shareholders should be assessed beforehand.

4 Planning a going-private transaction

A going-private usually combines a public offer, which must comply with the takeover rules, a delisting and a subsequent squeeze-out. The sequence, the offer price and the communication to shareholders must be planned together, because each step affects the next.

5 What pays off in practice

- **Model the acceptance rate.** Whether 98 per cent or only 90 per cent is realistic determines the squeeze-out route.
- **Obtain a fairness opinion.** It supports the board's report and helps defend the price in later appraisal proceedings.
- **Coordinate tax early.** Squeeze-out compensation may have different tax consequences for remaining shareholders.

6 How Ressos Legal helps

I advise controlling shareholders, investors and boards on delisting and going-private transactions in Switzerland, including the takeover offer, the squeeze-out and related court proceedings. [Contact me](#) for a first conversation.

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