

Takeover law in Switzerland: public offers and the mandatory offer

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Swiss takeover law governs public offers for the equity securities of listed companies. It is set out in the Financial Market Infrastructure Act (FinMIA) and its implementing ordinances and is applied by the Swiss Takeover Board, with FINMA acting as the appeal instance.

1 Scope

The rules apply to public offers for Swiss companies whose equity securities are listed at least in part in Switzerland, and to foreign companies whose equity securities are mainly listed in Switzerland. A public offer may be voluntary or mandatory, and it may be offered in cash, in securities or a combination of both.

2 The mandatory offer

Under Art. 135 FinMIA, anyone who directly, indirectly or in concert with third parties acquires equity securities that, together with those already held, exceed one third of the voting rights of a target company must make an offer for all listed equity securities of the company. The offer price must be at least equal to the higher of the stock exchange price before the offer and the highest price paid by the offeror for securities of the target in the preceding twelve months.

3 Opting-out and opting-up

A company may raise the threshold in its articles of association to a maximum of 49 per cent of the voting rights (opting-up) or exclude the mandatory offer altogether (opting-out). Such clauses introduced after the listing are scrutinised for their effect on minority shareholders and must be transparently disclosed. Exemptions from the duty can also be granted

by the Takeover Board in particular situations, for example in a restructuring.

4 Procedure and the Takeover Board

An offer is generally preceded by a pre-announcement or launched directly with an offer prospectus. The offer must be reviewed by an audit firm or a securities firm before publication. The board of the target company must publish a report setting out its position. The Takeover Board supervises compliance with the best price rule, equal treatment and transparency and issues binding decisions, which can be challenged before FINMA and ultimately the Federal Administrative Court.

5 What pays off in practice

- **Review the articles before investing.** An opting-out or opting-up clause changes the economics of building a stake.
- **Watch concert parties.** Shareholder agreements and family arrangements can lead to holdings being aggregated.
- **Plan the price trail.** Purchases in the year before an offer set the minimum price for all shareholders.

6 How Ressos Legal helps

I advise investors and target boards on Swiss public offers, mandatory offer questions and proceedings before the Takeover Board, in close cooperation with financial advisers. [Contact me](#) for a first conversation.

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