

Chambers

GLOBAL PRACTICE GUIDES

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Corporate M&A

Liechtenstein

Trends and Developments

Alexander Appel and Benjamin Hartmann

Schurti Partners Attorneys at Law

practiceguides.chambers.com

2021

Trends and Developments

Contributed by:

Alexander Appel and Benjamin Hartmann

Schurti Partners Attorneys at Law see p.6

Liechtenstein Economy: Overview

The Principality of Liechtenstein has a highly industrialised, export-oriented and very competitive economy. Liechtenstein's economy has grown steadily in recent years. It seems that 2021, however, will still be affected by the COVID-19 pandemic. The subsequent slowdown in the field of M&A transactions should be overcome by the end of this year. Nonetheless, holding companies domiciled in Liechtenstein are still actively involved in M&A transactions with a cross-border dimension. Furthermore, industrial Liechtenstein companies maintain successful subsidiaries abroad and are therefore regularly involved in both intra-group and extra-group M&A transactions.

Nevertheless, to date, Liechtenstein has been able to keep its triple A-rating and remains debt free.

Although Liechtenstein has very small domestic market there is a comparatively high number of companies that are world leaders in their fields, which is a result of the legal certainty and liberal economic framework that the Liechtenstein legislature has provided over decades. In addition, the small size of the country allows governmental institutions to support companies in an unbureaucratic manner.

Recent Changes in Legislation and Other Recent Legal Developments

Blockchain Act

Liechtenstein was the first jurisdiction in Europe to create a legal framework regulating distributed ledger technology services: the so-called Blockchain Act (*Token und VT-Dienstleistungsgesetz*; TVTG). The Blockchain Act entered into

force at the beginning of 2020. The Blockchain Act primarily regulates the transfer of tokenised assets by the use of blockchains (further regulated areas include token-issuance, token-generation and token-custodial services), but also the supervision of service providers by the Financial Market Authority (FMA). The predominant motivation of the legislature was to provide a reliable legal framework for parties involved in token transfers but also for the service providers themselves.

As Liechtenstein had developed a sophisticated practice in the distributed ledger technology space even before the implementation of the Blockchain Act, several service providers settled in or migrated to Liechtenstein. In particular, start-ups with digital business backgrounds tried to finance their businesses by issuing self-generated tokens (financing via initial coin offerings). Issued tokens regularly represented certain rights related to the company (pre-emptive rights on products produced by the start-up or pre-emptive rights regarding shares or separate non-voting shares). It became clear that many legal questions in connection with this new form of corporate financing would need to be solved by way of specific legislation (eg, whether a concrete token is a regulated financial product or not).

With the enactment of the Blockchain Act most questions could be solved. Thus, Liechtenstein created a very friendly environment for start-ups providing fintech and blockchain services. Service providers under the laws of Liechtenstein now have access to a well-suited and modern legal framework within which to provide their services.

The first positive impacts within the fintech and distributed ledger technology scene have already been achieved. One of the world's largest cryptocurrency trading platforms migrated to Liechtenstein. It will be interesting to see if other large fintech companies will follow in the near future.

Persons and Companies Act (Personen- und Gesellschaftsrecht)

In the course of the implementation of the Blockchain-Act there has been a remarkable amendment within the Persons and Companies Act (*Personen- und Gesellschaftsrecht*; PGR) as well. The newly introduced Article 81a of the Final Section (SchIT) of the PGR introduces the possibility of issuing so-called book-entered securities (*Wertrechte*). Register or bearer shares can therefore now be represented by book-entered securities which allow share transfers under reduced formal requirements (eg, endorsements or a physical transfer of the share is not a requirement for book-entered securities). The mere registration within the book of shares (*Wertrechtbuch*), which is kept by the company, is sufficient. Alternatively, the book of shares can be managed and kept using a blockchain, which makes it possible to transfer book-entered securities automatically by way of tokens.

While (physical) registered shares are currently the most popular type of share, (physical) bearer shares have become increasingly regulated and today de facto are "immobilised" due to the legal requirement to register all bearer shares in a specific internal register kept by a special custodian. As a consequence, and also due to the increased administrative effort which they create, new companies no longer issue bearer shares.

Notary Act

With the entry into form of the new Notary Act, Liechtenstein introduced a modern law for notar-

ial services. The law permits Liechtenstein attorneys and other professionals to qualify as public notaries and, in that capacity, to assist contracting parties in the realisation of both domestic and international corporate transactions.

Anti-money laundering measures

By implementing the fourth Anti-Money Laundering Directive (EU Directive 2015/849), Liechtenstein enacted the legal basis for the Register For Beneficial Owners of Liechtenstein legal entities (*Gesetz über das Verzeichnis wirtschaftlicher Eigentümer*). In the meantime, all legal entities domiciled in Liechtenstein as well as their beneficial owners must be registered. On 1 April 2021 the aforementioned Register will be renamed to be referred to as the Register of beneficially entitled previous (*Verzeichnis wirtschaftlicher Berechtigter*) under the new law (*Verzeichnis der wirtschaftlich berechtigten Personen von Rechtsträgern*; VwbPG). For M&A transactions, the consequence is that any resulting change in the identity of the ultimate beneficial owner(s) (who ultimately own or control the entity) must be registered within 30 days (following the date on which the change becomes effective). It is the target entity's obligation to timely arrange for such registration. For closing purposes, it is useful to stipulate the timely registration in the transaction documents by way of a post-closing obligation.

Insolvency Code

During the COVID-19 crises Liechtenstein enacted an entirely revised Insolvency Code, which entered into force on 1 January 2021. This new piece of legislation also provides for various possibilities to save financially distressed companies entirely or partly. The new law also provides for a more varied scope of transactions within the insolvency proceedings that an insolvency receiver can consider, not only in order to protect the insolvent entity's employees but also to increase the financial compensation which the

creditors can expect as a result of the insolvency. The range of such transactions encompasses private asset sales as well as spin-offs and mergers. It goes without saying that the new Insolvency Code can lead to attractive investment opportunities for adventurous investors during the COVID-19 pandemic. The new law constitutes a significant improvement in comparison to the former legislation, which drastically limited an insolvency receiver's options during an insolvency proceeding. It remains to be seen whether the number of insolvencies in Liechtenstein will effectively increase as a result of COVID-19.

Commercial Act (Gewerbegesetz)

Access to the market for simple commercial businesses was made considerably easier by the revision of the Commercial Act, which entered into force on 1 January 2021. The legislature implemented a key change from a broad authorisation requirement to a slim notification requirement with regard to simple commercial activities. Companies which pursue a simple commercial business purpose can now start their business activity in Liechtenstein directly after the notification of the business to the competent national authority. The waiting period until the issuance of the concrete commercial licence has thus been eliminated. Only companies with a business activity that requires official approval need to go through the broader approval process.

M&A Market Trends

Traditionally, M&A transactions in Liechtenstein are private equity-based. Only a very small percentage of the M&A transactions concern listed Liechtenstein companies. In addition, the number of listed/public companies in Liechtenstein is very small since the country does not have a traditional stock exchange of its own. As a consequence, there are no comprehensive public figures on the number of M&A transactions and

transaction volumes and neither the number of transactions nor the volumes involved can be allocated between the various industries. In contrast to other, larger markets, the Liechtenstein transaction market traditionally has been dominated by cross-border transactions (both inbound and outbound).

The key industries are the financial services sector (private banks), the manufacturing industry and fintech companies as well as other start-ups. Some of the largest Liechtenstein private banks have successfully expanded their operations throughout Europe and into the Far East. Furthermore, Liechtenstein continues to be one of the most industrialised countries in Europe. Despite its tiny domestic market Liechtenstein has generated very innovative manufacturers, some of which have developed into world leaders in their respective niches. Many international groups of companies have used the COVID-19 crisis to reorganise their structures, which include Liechtenstein subsidiaries and/or holding companies. Such reorganisations frequently include intra-group corporate transactions such as mergers or de-mergers, re-domiciliations, asset transfers and the creation of new intra-group companies.

Furthermore, Liechtenstein companies have recently experienced an increased demand for being set up as so called "special purposes vehicles" (SPVs) or special purpose acquisition companies (SPACs) for cross-border M&A. As a member of the European Economic Area, Liechtenstein forms part of the harmonised EEA-wide passporting regime for security prospectors. Against this background, a Liechtenstein SPV or SPAC is more frequently involved in the issuance and subsequent listing (as part of a public offer) of financial instruments within the EEA.

Similar to its neighbouring jurisdictions, Liechtenstein will not be spared from the implica-

tions of the COVID-19 pandemic. In practice, postponements were noted within M&A transactions during 2020. In relation to M&A transaction documents, legal advisors have become more aware of the need to draft specific material adverse change (MAC) clauses in order to cover the risks of material changes between the signing and closing of transaction documents. It is also possible that the market will develop a specific standard practice for such clauses in order to mitigate the risks of any future pandemic for M&A transactions.

In practice one could note an increased demand from the transaction parties to stipulate, in the transaction documents, fairly generous long-stop dates and break-up fees allowing a party to prematurely withdraw from the transaction.

In relation to shareholder agreements for Liechtenstein fintech companies and start-ups, international investors have increasingly requested the negotiation of specific exit possibilities which are tailored in view of the COVID-19 pandemic. Experience shows that mere force majeure clauses can lead to complications in an exit scenario. Therefore, investors are interested in more specific termination clauses in order to avoid discussions, and potential litigation or arbitration, in the event of an exit.

Forecast

During recent decades Liechtenstein has maintained its stable and innovative economy. As a result, the country has managed to establish itself as an attractive and reliable hub for corporate transactions with cross-border elements. The country's regulatory framework is in line with modern European and international standards, which also ensures a harmonised approach by the Liechtenstein regulators towards corporate M&A transactions in regulated sectors.

Contributed by: Alexander Appel and Benjamin Hartmann, Schurti Partners Attorneys at Law

Schurti Partners Attorneys at Law is one of the leading Liechtenstein law firms in the area of corporate and commercial law. Over the last decades the firm has been involved in a large number of major and complex M&A projects in Liechtenstein. The team is particularly experienced in cross-border transactions and in M&A transactions involving not only industrial manufacturers but also regulated entities such as banks, insurers and fintech service providers. Furthermore, the team has a long-standing

track record of participating in multi-jurisdictional transactions both as leading and as local transaction counsel, frequently assisting international law firms. Many of the team's lawyers have also been trained in foreign business law firms and are qualified and/or admitted in multiple jurisdictions. The firm frequently advises local and international corporate clients on their daily legal affairs and intra-group corporate matters.

AUTHORS



Alexander Appel is a partner at Schurti Partners with more than 20 years of professional experience in the areas of corporate and commercial law as well as in M&A transactions.

His practice particularly focuses on cross-border transactions such as share and asset deals, (often with a regulatory element), mergers/spin-offs, corporate re-domiciliations and complex finance transactions. He has advised clients in some of the most noteworthy M&A transactions in Liechtenstein. Alexander Appel also regularly advises large Liechtenstein companies and employers on intragroup restructurings and their corporate governance matters.



Benjamin Hartmann is an associate at Schurti Partners who focuses on commercial and corporate law. He is also regularly involved in corporate transactions which frequently

include cross-border elements. He has notable expertise in the thriving fintech and blockchain technology areas and advises both local and international individuals and corporate clients on matters of Liechtenstein commercial and corporate law.

Schurti Partners Attorneys at Law

Zollstrasse 2
9490 Vaduz
Liechtenstein

Tel: +41 44 244 2000
Email: mail@schurtipartners.com
Web: www.schurtipartners.com

SCHURTI | PARTNERS
RECHTSANWÄLTE AG | ATTORNEYS AT LAW LTD