

# New rules for publication of documents relating to public tender offers

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On January 1 2016 an amendment of the Ordinance of the Takeover Board on Public Takeover Offers entered into force, abolishing the requirement that announcements and notices relating to a public offer will be physically published in newspapers. Consequently, the Takeover Board has issued guidance on the newly applicable rules for publication of the offer documents in the course of a voluntary or mandatory public tender or exchange offer under the regulatory framework for companies listed in Switzerland. In particular, the board adopted a new Circular 4, Communication to Major Media.

From January 1 2016 the offer documents – in particular, the pre-announcement, the offer prospectus, any summary or amendments thereof, the report of the board of directors of the target and the interim and final results – no longer need to be published in at least one German-language and one French-language newspaper with a nationwide audience. Instead, these documents must now be published either on the offeror's website or on a website dedicated to the public offer (as in the past), as well as communicated to a wider circle of electronic media – in particular, to major Swiss media, major news agencies active in Switzerland and major electronic media which distribute stock exchange information (financial information providers). In addition, the new rules provide that if the pre-announcement of the offer is published (in addition to the mandatory German and French versions) in an additional language (eg, English), all other offer documents (ie, the offer prospectus or the report of the board of directors) must also be published in such additional language simultaneously with the mandatory German and French versions.

The new Circular 4 defines the circle of major media in the sense of the new provision in the ordinance by listing certain media (eg, the national German, French and Italian television networks, *swissinfo.ch*, *AWP*, Reuters, Bloomberg and certain newspapers including *Neue Zürcher Zeitung*, *Tages-Anzeiger*, *Bund*, *Le Temps*, *L'AGEFI* and *Corriere del Ticino*) as a minimum standard. Publication is deemed to have been completed once the full text of the communication has been transmitted by email or fax to all media included in the minimum group without receiving any error notice or out-of-office replies. As a result, the bidder is no longer responsible and bears no risk that the electronic publication fails or is incomplete, contrary to the takeover board's former practice.

As in the past, the offer documents must be transmitted by the bidder to the takeover board. However, from now on the takeover board will disclose the offer documents immediately after publication, together with a reference to the publication date, directly on the takeover board's website. Depending on the relevant rule, publication of the offer documents on the bidder's or the takeover board's website will now be relevant for the calculation of, and compliance with, certain deadlines and time limits in public takeover procedures. As opposed to formal electronic submissions in administrative proceedings before the board and the Financial Market Supervisory Authority – which from January 1 2016 must be executed by way of a recognised electronic signature for the transmission of the offer documents to the takeover board – submission by email remains possible.

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