

Swiss M&A Focus

Switzerland has a strong economy which remained resilient during the height of the global economic downturn – even when its European peer countries fared less well. The country was also spared much of the financial turmoil experienced by member countries of the Eurozone. Moreover, the Swiss Franc has been favoured as a safe haven currency in times of economic difficult, and now continues to rise steadily. These factors have had a significant influence on the state of deal-making in the country.

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According to Ernst & Young's M&A Quarterly Switzerland, Swiss M&A market activity remained strong in the fourth quarter of 2011, showing a significant rise in disclosed deal volume compared to the previous quarter. As a result, the Swiss M&A market environment recorded a solid performance for the full year 2011.

However, enduring market uncertainties in Europe continue to take their toll on the prospect of further economic recovery, also indicated by GDP growth expectations of merely 0.5% in Switzerland in 2012. On a more positive note, the currency situation for export-orientated Swiss companies has eased, partially due to the Swiss National Bank reaffirming its commitment to enforce a minimum exchange rate of CHF 1.20 per Euro.

The financial year 2011 also showed the coexistence of solid M&A activity for small- to medium-sized transactions and high market volatility. Markets have displayed a new paradigm and have, therefore, stress-tested and challenged conventional economic theories. Although 2012 is expected to see moderate M&A activity in Switzerland, this paradigm may result in a larger deal flow than expected by most analysts.

Deal flow remains stable

DRSdigital AG (DRS) is a software specialist developing tools to support the lifecycle of complex assets. The company is perhaps best-known for providing the market's fastest and most secure virtual data room for confidential due diligence processes.

Combining the experience gained from facilitating thousands of transactions since 2001 with a strong service approach and award-winning technical innovation, DRS is uniquely positioned to bring security, transparency and efficiency to transaction-related processes for real estate, M&A, non-performing loans, IPOs, private equity and asset management.

According to DRS managing partner Jan Hoffmeister, deal flow in Switzerland remains stable, with some very large transactions taking place in the last 12 months. When asked how virtual data rooms assist with M&A, Mr Hoffmeister said that DRS is a one-stop-shop, an attribute which ensures a fast and precise due diligence for buyers and sellers. For example, a large multinational in Zug uses DRS' buyside data room to efficiently acquire businesses all over the world.

"In general, transaction costs for small M&A deals are comparatively high, because process and compliance cost continuously apply," said Mr Hoffmeister. "With the buyside data room of DRS, the buyer is in control of the process, and is able to set up the rules in terms of predefined indexes and data request lists."

In this way, the data room brings more speed into the standardised

process because the buyer can easily identify missing documents. The due diligence is made before time- and cost-consuming site visits; meanwhile, scarce corporate resources are saved and travel expenses are significantly reduced.

Mr Hoffmeister added: "Our extensive client list includes many of the largest corporations, law firms, banks specialty advisers and corporations in Switzerland, particularly within the fields of M&A or real estate. More than 100,000 users trust in DRS, including UBS, Novartis, Siemens, Swiss Post, Sulzer, SwissGrid and PwC."

DRS was founded and is still run by transaction professionals who developed tools for their peers. The DRS virtual data room is tailor made for due diligence, and saves transaction professionals hundreds of hours in a single transaction combined with a very personal service. Further, DRS – as a Swiss AG – is governed by Swiss law and privacy standards.

Initially, virtual data rooms were compared to physical data rooms, which were traditionally used in the past. "However, the comparative ease of use and cost-effectiveness of virtual data rooms have now been proven and, as a result, they have become market standard," said Mr Hoffmeister.

"Unlike cloud computing, a customer is generally not able to host and run their own virtual data room because the software to manage document exchanges between sometimes hostile parties is something that is not found off the shelf. Further, from a legislation point of view, companies have become more sensitive to compliance and privacy regulations that are already in place. The need for secure solutions to exchange highly confidential documents is therefore increasing."

A preferred location for international companies

meyerlustenberger was established in 1975. Today, with approximately 50 lawyers, tax experts, notaries public and legal counsellors, meyerlustenberger is one of the leading international law firms in Switzerland. The firm advises clients in all matters of national and international corporate, tax and commercial law, and renders advisory services regarding company acquisitions and sales, also advising financial institutions and borrowers on financing issues and other financial market transactions.

Further, meyerlustenberger represents clients' interests before all Swiss courts and authorities as

well as in arbitration proceedings. With offices in Zurich, Zug and Geneva, the firm is present in the most important business centres in Switzerland.

Daniel Schoch, a partner at meyerlustenberger, noted that Switzerland has always been a location of choice for international companies. "International groups choose Switzerland as their preferred location for a number of reasons besides its very competitive tax regimes," he said. "These include its excellent infrastructure, its public officials who show a high degree of flexibility and service-minded attitude, its excellent governmental and social stability including safety of residents, its flexible labour laws, as well as the fact that Switzerland is consistently ranked world number one in the World Competitiveness Report published by the World Economic Forum."

Moreover, the effective income tax rate for holding companies amounts to 7.83%, and dividend income is virtually tax exempt. Other attractive tax regimes exist for IP companies, financing and international trading activities, as well as for principal companies, resulting in effective tax rates between 8% and 11%. Operating companies in other sectors pay income taxes at an overall effective tax rate of 12.6% - 24%.

Mr Schoch added that many international groups of companies have chosen Switzerland as their European headquarters, including Amgen, Cargill, eBay, Google, Kraft Foods, McDonald's, Monsanto, Pfizer and Yahoo.

Companies migrating to Switzerland not only benefit from generally low tax rates but may even be eligible for a full tax holiday of up to 10 years. Also, if a migration is properly structured, a company may have the opportunity to repay funds to its foreign shareholders without incurring withholding tax.

David Brönimann, a tax expert at meyerlustenberger, explained that non-European citizens may be granted a special residence permit if there is an important cultural, political or fiscal interest of the canton of planned residency. Mr Brönimann said: "Such a person can opt for a special tax regime, the so-called Lump Sum Taxation, when migrating to Switzerland. In this case, taxation is based on a lump sum amount of income and net wealth, regardless of the actual income and wealth. Usually, the total tax burden amounts to CHF150,000 – CHF300,000. This status is also available for EU nationals."

Meanwhile, meyerlustenberger partner Andrea Sieber noted that Swiss M&A activity throughout

2012 is expected to be modest due to unresolved political and financial issues in Europe, overall uncertain macroeconomic conditions, and limited economic growth prospects. These combined factors are likely to cause further uncertainty in the market and, consequently, high volatility.

Ms Sieber added: "Many companies are likely to wait for economic conditions to improve. Likewise, banks are expected to reduce lending due to the turbulent market conditions and recapitalisation requirements for financial institutions. Therefore, highly leveraged transactions of financial buyers are likely to remain rare in 2012."

"On the other hand, analysts note that Swiss companies across a range of industries are traditionally less leveraged, and are displaying high liquidity and strong balance sheets. M&A activity of these companies is less likely to be affected by tightened credit conditions. In addition, the still-strong Swiss Franc could favour outbound deal flow for Swiss companies."

A competitive global economy

Mr Hoffmeister from DRS also said that since the Swiss M&A market – measured in number of transactions – has been relatively stable over the last five years, DRS has been able to gain significant market share in this area thanks to the ease of use and cost-effectiveness of virtual data rooms. Through the increased popularity of virtual data rooms, the current need for secure solutions to exchange highly confidential documents is being met.

Moreover, the Swiss economy is one of the most competitive worldwide. Ms Sieber from meyerlustenberger said that this may be partially attributed to the fact that there are no restrictions on inbound or outbound capital flows. Meanwhile, Switzerland's bilateral agreement with the European Union, inter alia, guarantees the free movement of people. For skilled non-EU employees, employers may obtain work permits at short notice. Businesses further benefit from a motivated and highly skilled workforce which, as a result of Switzerland's multicultural society, is typically fluent in multiple foreign languages.

Ms Sieber concluded: "Switzerland's business-friendly environment, and the general attractiveness of the country, can be best documented by the recent relocations of global or regional headquarters of well-known multinational corporations such as Google, Transocean or Kraft Foods, among others."