The Mergers & Acquisitions Review

Sixteenth Edition

Editor
Mark Zerdin

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THE MERGERS & ACQUISITIONS REVIEW

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Chapter 21

LUXEMBOURG

Pit Reckinger, Thierry Kauffman and Ben Reckinger[1]

I OVERVIEW OF M&A ACTIVITY

In 2021, M&A activity in Luxembourg was particularly strong, in line with the historic highs reached by M&A activity globally. The historic high was followed by a notable slowdown starting at the beginning of 2022. The 2022 slowdown was caused, among others, by Russia's invasion of Ukraine, strong inflation and related rise in interest rates, as well as the rising geo-political tensions between the United States and China. Investors are presently worried about a possible recession, which has dampened the M&A appetite.

Even though M&A activity is off the pace of 2021, deal activity remains at a comfortable level. Some of the reasons for Luxembourg's continuing attractiveness are its regulatory and legislative framework, its legal, political and financial stability and its domestic market, in particular its fund industry and financial sector.

Luxembourg remains the largest investment fund centre in Europe, and the second-largest in the world behind the United States. As at 31 August 2022, the total net assets under management in Luxembourg amounted to €5.300 billion.[2] This represents a decrease of 6.15 per cent over a one-year period, which is comparatively low given the slowdown of the global economy and the slowdown experienced in other sectors. The investment fund industry has played, and continues to play, a major role in stabilising the Luxembourg market. Luxembourg is ideally placed to implement tax-efficient M&A transactions and hence to be a key platform for M&A and private equity activity. One reason behind this success is the continued adaptation and modernisation of the relevant Luxembourg legislation in order to be as attractive and flexible as possible. Over the years, Luxembourg has introduced, and adapted to the needs of practitioners, new forms of companies. The special limited partnership and the simplified stock company offer additional solutions for economic actors, including those of the private equity world. Funding instruments and methods created and used by practitioners over past decades, such as the use of tracking shares, have been confirmed by the legislator and codified in the law of 10 August 1915 on commercial companies (1915 Law), thereby creating additional legal certainty. Luxembourg also quickly reacted when covid-19 pandemic-related restrictions were put in place. Within days, the Luxembourg government and legislator, the regulator and practitioners adopted and implemented necessary legislation and measures to allow companies to operate digitally in a new environment dominated by pandemic-related restrictions.

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1 Pit Reckinger and Thierry Kauffman are partners and Ben Reckinger is an associate at Elvinger Hoss Prussen.

2 CSSF press release 22/25 of 3 October 2022.

Luxembourg remains one of the leading European hubs for vehicles investing directly or indirectly in European real estate. Notably, Luxembourg has become a leading hub in the areas of information and communication technology, fintech and space technology. For example, Luxembourg is home to approximately 70 space companies and research labs among which are some of the largest satellite operators in the world.

Luxembourg has also been a destination country for SPACs. In Europe, Luxembourg companies are among the most popular vehicles chosen for SPACs which are then listed on stock exchanges throughout the continent and the United States. As a result, Luxembourg has been involved in several de-SPAC transactions over the past years. The flexibility of Luxembourg corporate law and the approachability of the Luxembourg regulator have made Luxembourg a destination for incorporating SPACs.

Looking forward, we remain in uncertain territory. Key elements that contributed to unprecedented deal activity in 2021 remain in place. Large amounts of deployable capital as well as a continued desire to expand geographic reach and innovation capabilities speak in favour of an active end of the year. However, inflation, rising interest rates, increased attention of executives on supply chain and labour challenges, possible coronavirus spikes and heightened regulatory and environment, social and governance (ESG) scrutiny, may slow down M&A activities.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The Luxembourg Civil Code, notably the provisions governing contracts, and the Luxembourg Commercial Code provide the statutory framework and form the legal basis for the purchase and sale of corporate entities in Luxembourg.

Statutory mergers, including cross-border mergers with EU or non-EU entities, demergers, splits and spin-offs, as well as contributions of branches of activities, of part or all of the assets and liabilities of Luxembourg undertakings, are mainly governed by the 1915 Law, which implemented the EU Cross-Border Mergers Directive.[3]

In addition, the law of 5 August 2005 on collateral agreements (2005 Law) is commonly used in M&A transactions irrespective of the location of the target to secure financing. Luxembourg offers a legal environment more favourable to lenders than any other European jurisdiction and actively strives to maintain that. On 20 July 2022, Luxembourg amended the 2005 Law in order to clarify certain provisions and to codify certain practices adopted by practitioners in relation to security interests governed by the 2005 Law. These amendments modernise the Luxembourg legislation governing security interests and provide greater flexibility while increasing legal certainty for practitioners and lenders.

In the case of an offer for the acquisition of a target whose shares are admitted to trading on a regulated market in one or more Member States, the law of 19 May 2006 transposing the Takeover Directive[4] (Takeover Law) will apply if the target is a Luxembourg company or if its shares are admitted to trading on the regulated market of the Luxembourg Stock Exchange (LSE). If the target is a Luxembourg company and its shares are listed on the regulated market of the LSE, all aspects of the offer will be governed by the Takeover Law (even if the shares are additionally listed on other regulated markets in the European Union or the European Economic Area). If the target is a Luxembourg company but its shares are listed

3 Directive 2005/56/EC.

4 Directive 2004/25/EC.

only on a regulated market in the European Union or the European Economic Area outside of Luxembourg, a split jurisdiction regime applies, with the law of the listing jurisdiction being applicable for the offer, and Luxembourg law being applicable for corporate law matters, the legality of measures by the target that could defeat the offer as well as information to be provided to employees of the target. In such cases, Luxembourg law will also be competent to determine the control threshold, the crossing of which may trigger the obligation to make a mandatory offer, and the exemptions from such obligation. Luxembourg law will also provide for the sell-out and squeeze-out rules following a successful offer.

If a bidder does not achieve the necessary threshold for a squeeze-out as a result of an offer under the Takeover Law, but reaches that threshold at a later stage, such bidder may be in a position to squeeze-out minority shareholders under the law of 21 July 2012 on the mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to dealing on a regulated market in the European Union or having been offered to the public. Conversely, minority shareholders may have the right under that law to cause the majority shareholder to purchase their shares.

Public offerings on the Luxembourg territory and admissions to trading on the Luxembourg regulated market of securities are governed by the EU Prospectus Regulation[5] and by the Luxembourg prospectus law of 16 July 2019 (Prospectus Law). The Financial Sector Supervisory Commission (CSSF) is the supervisory and regulatory authority competent to oversee these operations.

For companies whose securities are admitted to trading on the regulated market of the LSE, and whose home Member State is Luxembourg, a certain number of additional Luxembourg laws (mainly deriving from the implementation of relevant European directives) may apply, in particular the Luxembourg law of 11 January 2008, as amended, implementing the Transparency Directive[6] (Transparency Law) and the Luxembourg law of 23 December 2016 on market abuse, as amended, (Market Abuse Law) implementing the Market Abuse Directive II.[7]

The law of 24 May 2011 on the exercise of certain rights of shareholders in general meetings of listed companies, as amended (Shareholder Rights Law), will also apply to Luxembourg companies whose shares are admitted to trading on a regulated market in the European Union.

The Takeover Law, the Prospectus Law, the Transparency Law and the Shareholder Rights Law are not applicable to Luxembourg or foreign companies whose shares or other securities are admitted to trading on the Euro multilateral trading facility (MTF) market of the LSE.

The Market Abuse Regulation (MAR),[8] relevant implementing and delegated regulations of the European Commission and the Market Abuse Law will apply with respect to companies whose securities are admitted to trading on the regulated market or the Euro MTF of the LSE.

5 Regulation (EU) No. 2017/1129.

6 Directive 2004/109/EC.

7 Directive 2014/57/EU.

8 Regulation (EU) No. 596/2014.

Moreover, there may be specific legislation to be considered depending on the sector involved in the transaction (e.g., credit institutions, insurance or reinsurance companies, companies operating in the telecommunication business, MiFID firms and satellite operators) and, in particular, prior regulatory approvals or notifications will then be necessary.

Additional regulations will also apply if a purchase, sale or merger of a Luxembourg undertaking involves the transfer of staff.

In practice, the private limited liability company (*société à responsabilité limitée* – Sàrl) is the preferred corporate vehicle for Luxembourg-structured acquisitions for a number of reasons, including the low minimum share capital, less regulation by the 1915 Law and its closed character. In more complex structures, the partnership limited by shares (*société en commandite par actions*) may be interesting in particular for an initiator who wants to retain total control of its management. Some additional company types have become available over the past few years such as the special limited partnership (*société en commandite spéciale*), the simplified private limited liability company (*société à responsabilité limitée simplifiée*) and the simplified stock company (*société par actions simplifiée*). The special limited partnership regime is inspired by the UK and US common law concept of a limited partnership. It provides considerable flexibility and offers additional onshore structuring solutions. Investors have demonstrated significant interest in these partnership vehicles, as evidenced by the high number of incorporations of this type of company over the past few years. The simplified stock company is a company inspired by French law that has seen great success in France, and is being used in Luxembourg as an alternative to the private limited liability company.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Adoption of covid-19 pandemic-related measures in corporate law

Luxembourg reacted swiftly in 2020 to the lockdown restrictions put in place in Luxembourg and elsewhere throughout the world in light of the rapid expansion of coronavirus cases. Under emergency powers granted by the Constitution in the context of the state of emergency declared by the Luxembourg government, the government enacted various temporary measures in order to allow Luxembourg companies and businesses to function normally and carry on their M&A activities despite the strict lock-down rules. Some of these rules were extended by the Luxembourg legislator in light of the continuing covid-19 pandemic-related restrictions and the additional flexibility for companies and businesses, which were appreciated by market players and practitioners.

One of the first measures to be adopted was a possibility for all Luxembourg companies, private or listed, to hold shareholder meetings (including the annual general meeting) and meetings of management bodies exclusively in digital form, without any participant attending in person, regardless of any contrary provision in the articles of association of the relevant company and regardless of the number of participants.

This measure allowed Luxembourg companies to function normally and hold their meetings without physical presence to prevent the spreading of the virus at such meetings, while avoiding any breach of the provisions of their articles of association or of the law.

This measure was popular and appreciated by practitioners. In light of the extension and repetition of the pandemic-related lockdown restrictions, the Luxembourg legislator enacted the provisions, which were initially taken by the government under emergency powers, into a law that remains in force until 31 December 2022.

In addition, the Luxembourg parliament adopted a law applicable to all Luxembourg companies, which provided, subject to certain conditions, for a three-month extension of the deadline for convening annual general meetings (namely the annual general meeting approving the accounts for the financial year ending 31 December 2019) and for filing and publishing the corresponding annual accounts, consolidated accounts as well as related reports giving companies more time to proceed with the relevant formalities.

The above-mentioned measures are some of the measures that Luxembourg enacted that are the most relevant in the M&A context. Numerous additional measures concerning investment funds and regulated entities as well as rules on the suspension of delays in jurisdictional matters and certain procedural matters were put in place. Taken together, these measures allowed the Luxembourg financial centre to carry on with its activities, including, in particular, its M&A activities.

ii Announcement of upcoming requirement for registration with the Luxembourg Trade and Companies Register

The Luxembourg Business Register managing, among others, the Luxembourg Trade and Companies Register (RCS), issued a notice in October 2021 to announce the introduction of a new requirement according to which all individuals currently registered, and to be registered in the future, with the RCS in whatever capacity (e.g., director, manager, shareholder, auditor and liquidator) must provide the RCS with a Luxembourg national identification number (NIN). Individuals who do not have a Luxembourg NIN (e.g., the individual is not a Luxembourg resident) will have to request a NIN from the RCS.

When announcing the requirement, the Luxembourg Business Register indicated that the requirement would commence to apply at the end of March 2022. Since then, it has announced that the introduction of the requirement is postponed to an unknown date. Until a new date for the introduction of the requirement has been announced, no immediate action is to be taken. However, this requirement, once entered into force, will impact Luxembourg entities because all individuals currently registered with the RCS and the individuals who are going to be newly registered (e.g., following a change of control of a corporate entity) must provide a Luxembourg NIN and, if they have no NIN, request one from the RCS beforehand.

iii Rectification of a clerical error in the 1915 Law: no financial assistance criminal offence for Sàrl

The 1915 Law was modernised by a law of 10 August 2016 (Modernisation Law). The initial draft bill of the Modernisation Law sought to introduce for the Sàrl a prohibition of financial assistance in case of acquisition of its own shares by a third party similar to the regime existing for a public limited company (SA) but yet more restrictive. In parallel, it was proposed that a breach of such prohibition should be subject to criminal sanctions. Over the course of the legislative process, it was decided to withdraw the prohibition of financial assistance for the Sàrl on the grounds that for this type of company, where shares are not freely transferable, a more flexible regime should be preserved. A full assimilation to the regime of the SA was considered inappropriate. When deleting the articles introducing the financial assistance prohibition from the draft bill of law, the legislator did not update the related criminal law provision. This clerical error was rectified by a law of 6 August 2021, which deleted all references to shares of an Sàrl in the relevant criminal law provision.

While parliamentary documents accompanying the Modernisation Law made it abundantly clear that financial assistance provisions do not apply to an Sàrl, the remaining references in the related criminal law provisions to shares of an Sàrl invariably raised discussions among practitioners as to whether or not the financial assistance prohibition applies to an Sàrl. These discussions and the related residual risk came to an end and the legislator confirmed the general conclusion of practitioners. While financial assistance transactions in Sàrls (e.g., where the assets of a target organised as an Sàrl are used to finance or secure the acquisition of the Sàrl) still need to comply with certain safeguards and other requirements and the board of a Sàrl still has to, inter alia, consider the corporate interest of the company, this rectification of the law means certainty as to the non-application of the specific criminal sanctions in respect to financial assistance.

iv Parliamentary bills of law not yet adopted

Ongoing legislative activities relevant to M&A activity are limited with the exception of two bills of law that are noteworthy. The first is Bill of Law 6539 relating to the preservation of enterprises and aiming to modernise the legal framework for insolvency law and assimilated procedures. This Bill was introduced in 2013 but its progress through the legislative process has been slow. Numerous legal and judicial considerations have been raised, which have required considerable discussions with numerous concerned actors. In July 2021, the legislator decided to split the Bill as certain matters relating to the reform of insolvency proceedings can be put in place more quickly. Once the Bill has been passed, the legal framework for insolvency law and assimilated procedures in Luxembourg will be considerably overhauled. In parallel, the legislator introduced a new compulsory dissolution procedure, referred to as administrative dissolution, which aims at eliminating, in a short period of time and at limited cost, dormant companies that do not comply with Luxembourg law.

The second noteworthy bill of law is Bill of Law 8053 transposing the Mobility Directive.[9] The Mobility Directive aims to establish a uniform legal framework for cross-border operations and increase mobility for legal entities within the internal market of the European Union. The Mobility Directive:

a modifies the Company Directive[10] by rectifying certain imperfections in the cross-border merger regime;

b introduces a procedure for cross-border conversions and cross-border divisions; and

c introduces several other novelties, including in particular a mandatory anti-abuse check and a provision giving shareholders opposed to the operation the right to dispose of their shares for adequate cash compensation.

Despite having the ambition to increase mobility within the internal market, the new regimes may limit the exercise of the freedom of establishment principle within the European Union. Indeed, from a Luxembourg perspective, cross-border operations that are not captured by the Mobility Directive (e.g., a merger between a Luxembourg company and a non-EU company) will be less burdensome than a cross-border operation captured by the Mobility Directive (e.g., a merger between a Luxembourg company and a company from another EU Member State).

9 Directive (EU) 2019/2121.

10 Directive (EU) 2017/1132.

As a result of the foregoing, the Luxembourg legislator seeks to:

a limit the applicability of the new cross-border operations regime to the strict minimum in accordance with the postulate of the Luxembourg legislator 'all the directive, nothing but the directive'; and

b use all the options as well as the leeway left to the Member States by the Mobility Directive to set up a regime that is as favourable to cross-border mobility as possible in order to remain faithful to the Luxembourg legal tradition in company law.

Once passed, Bill of Law 8053 will introduce several novelties. First, each of the three cross-border operations (i.e., cross-border conversions, mergers and divisions) introduced by the Mobility Directive will be subject to a report of an independent expert. This will generate delays and additional costs. Second, the Mobility Directive introduces a mandatory anti-abuse check for cross-border operations, which currently does not exist in Luxembourg law. The current draft of the bill of law prohibits Luxembourg notaries (who are the competent authority to issue the pre-operation certificate attesting to compliance with all relevant conditions and to the proper completion of all procedures and formalities for the cross-border operation at hand) from issuing the pre-operation certificate in case the operation is evidently (*manifestement*) set up for abusive or fraudulent purposes leading to, or aimed at, the evasion or circumvention of EU or national law, or for criminal purposes. This provision allows the competent authority not to issue the pre-operation certificate in any of the foregoing scenarios, thereby prohibiting a cross-border operation from becoming effective. The Mobility Directive gives Member States great leeway in transposing this provision in national law with Member States being able to set the procedure for making the anti-abuse evaluation, set the deadlines and provide the facts and circumstances to be considered when making the evaluation. According to the Mobility Directive, 'abusive or fraudulent purposes' include the circumvention of the rights of employees, social security payments or tax obligations. It provides that this check aims at counteracting 'shell' or 'front' companies set up for the purpose of evading, circumventing or infringing EU or national law. In an effort to limit the non-deliverance of the certificate, the Luxembourg legislator added the term 'evidently' (*manifestement*), which is not included in the Mobility Directive and, in the comments section of the bill of law, cites EU case law providing that the mere fact of carrying out a cross-border operation to benefit from more favourable legislation does not in itself constitute an abuse of the freedom of establishment principle. Nevertheless, this anti-abuse check introduces a new requirement that did not previously exist in Luxembourg law.

A third important change is the provision giving shareholders opposed to the operation the right to dispose of their shares for adequate cash compensation. This right will be available in each of the three cross-border operations regulated by the Mobility Directive. This additional protection for minority shareholders currently does not exist under Luxembourg law and will therefore not be available in a cross-border context involving non-EU companies. Traditionally, the majority rule prevails in Luxembourg company law where the risk that minority shareholders have a transaction imposed on them by the majority shareholders is inherent. Luxembourg has always resisted the introduction of a withdrawal right for minority shareholders and it is key that it now strictly limits this right.

In that sense, the Luxembourg legislator made, among others, the following choices in the current draft bill of law:

a the option offered by the Mobility Directive to extend the right of withdrawal to shareholders who did not vote against the cross-border operation was not used (such as shareholders who decided not to vote, holders of shares without voting rights or holders of instruments other than shares (e.g., beneficiary certificates with voting rights));
b the withdrawal right can only be exercised over all of the shares held by the minority shareholder (as opposed to only a portion of the shares held by it) in order to limit opportunistic reductions of holdings in companies in case of a cross-border operation;
c the withdrawal right does not cover the shares transferred *inter vivos* between the publication of the terms of the cross-border operation and the general meeting of shareholders called to approve the cross-border operation (to avoid acquisitions of shares as a way to speculate on the success of the cross-border operation that could seriously hurt the liquidity of a company); and
d a deadline of two months for the company to make the cash payment was set (which is the maximum time period permitted under the Mobility Directive).

In addition to the transposition of the Mobility Directive, Bill of Law 8053 is contemplating a change to the 1915 Law in order to allow special limited partnerships to perform mergers, divisions and transfers of assets, both on a national and cross-border level. Special limited partnerships were originally excluded from the benefit of these operations because of their lack of legal personality while in fact they have all the attributes of legal personality, namely a company name, a domicile, a nationality and a certain form of assets. To further enhance the attractiveness of this corporate form, it is considered appropriate to give this corporate form the possibility of reorganisation without a prior futile transformation into a common limited partnership, which is the route typically taken in case a merger, division or transfer of assets is to be completed with a special limited partnership.

Bill of Law 8053 was introduced on 27 July 2022 and is in the early stages of the legislative process and current draft provisions may change before the law is passed.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Luxembourg is the second-largest investment fund centre in the world after the United States, the premier captive reinsurance market in the European Union and the premier private banking centre in the eurozone. The financial sector is the largest contributor to the Luxembourg economy. Brexit has had a positive impact on Luxembourg with new insurance companies moving to Luxembourg and a number of asset management and private equity firms having moved activities to Luxembourg.

A large part of M&A activity in Luxembourg consists of the involvement of Luxembourg vehicles in the acquisition of foreign targets or assets. In particular, the number of Luxembourg holding structures through which real estate is held has increased rapidly in past years.

Locally, the appetite of foreign investors for Luxembourg assets remains robust, even if the Luxembourg market is small.

The following acquisitions of Luxembourg assets by foreign investors are notable:

a the acquisition of Saint-Paul Luxembourg SA, the publisher of the most widely distributed newspaper in Luxembourg, by the Belgium-based media group Mediahuis NV from Lafayette SA;

b the acquisition of the remaining stake of Paul Wurth SA, a global leader in the design and supply of complete plants, systems and processes for the primary stage of integrated steelmaking, by SMS Group from the Luxembourg State; and

c the sale of Kneip Communications SA, a Luxembourg fund services provider, to Deutsche Börse Group, Clearstream's parent firm.

More generally, Luxembourg's neighbours, France, Belgium and Germany, are considered to be the main players in the Luxembourg market, and they have a noticeable presence in Luxembourg through their financial institutions. While other European countries also have a strong presence, the establishment of some of the main international financial institutions and banks from non-European countries, in particular from China, over the course of the past few years is notable. Indeed, seven Chinese banks have incorporated their European headquarters in Luxembourg, and Luxembourg remains the leading European jurisdiction for international renminbi business.

Luxembourg is a location that many foreign investors and international groups consider, particularly for the establishment of investment funds or the structuring of cross-border acquisitions and intragroup structuring, mainly due to Luxembourg's stability, its pragmatism and flexibility, and its openness to new business as well as the involvement of a knowledgeable and experienced regulator and the absence of any particular restrictions on M&A activity. One of the advantages of Luxembourg's legislation is that when implementing the provisions of the EU Cross-Border Mergers Directive in the 1915 Law, Luxembourg law covers not only national mergers and mergers between Luxembourg companies and EU companies of public limited liability companies (*sociétés anonymes*), but also mergers between Luxembourg companies and non-EU companies of any legal form, contrary to the legislation of most other Member States. In the same spirit of having an efficient and business-friendly corporate law, Luxembourg is now contemplating the introduction of a provision allowing special limited partnerships (*sociétés en commandite spécial*) to perform mergers, divisions and transfers of assets, both on a national and cross-border level.

It is further possible in Luxembourg to express the share capital of a Luxembourg undertaking in a currency other than the euro or to have the legal documentation directly drawn up in English, with the exception that some documents (i.e., notarial deeds) must be followed by a French or German translation.

As further set forth above, the 2005 Law is commonly used in M&A transactions involving a Luxembourg entity to secure financing irrespective of the location of the target and Luxembourg continues to offer a legal environment more favourable to lenders than other European jurisdictions.

In addition, the migration of companies to Luxembourg with the continuation of their legal personality and without the need for reincorporation has always been recognised and is a common occurrence.

Finally, it is worth mentioning Bill of Law 7885, which establishes a screening mechanism for foreign direct investments (FDI) and was submitted to Parliament on

15 September 2021. It implements the EU FDI Screening Regulation,[11] which established EU-wide formalised cooperation between Member States and the European Commission for the screening of FDI into the European Union. The FDI Screening Regulation aims to protect security or public order considering the critical nature of certain investment targets in the EU Member States and the risks that investments by certain investors may pose on critical infrastructure, technologies or sectors such as the health sector, among other areas. The decision on which investments to screen, approve, condition or block lies with the Member States. Bill of Law 7885 captures FDIs of investors from outside the European Economic Area seeking to gain effective control of a Luxembourg-based entity carrying out critical activities in Luxembourg. Such FDI will have to go through a mandatory notification and pre-approval procedure. The scope of the bill is wide, considering the broad definition of a 'critical' activity. However, simple portfolio investments are explicitly excluded. The bill of law is currently going through the ordinary legislative process and may be amended before it is passed.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

Luxembourg, similar to other jurisdictions, has experienced two key trends in its M&A activity. The first trend relates to SPACs. SPACs have become a global phenomenon with an increasing number of SPAC IPOs in Europe in 2020 and 2021. Luxembourg has been a leading EU jurisdiction for incorporating SPACs. This success is due to the flexibility of Luxembourg corporate law and the ability of experienced practitioners and advisors to set up vehicles that match the needs of sponsors. As a result, Luxembourg has been involved in an increasing number of SPAC IPOs and de-SPAC transactions. For example, assistance on Luxembourg law aspects was required on the following SPAC deals:

a the business combination between Odyssey Acquisition SA and BenevolentAI Limited, a leading, clinical stage artificial intelligence drug discovery company, resulting in a combined company now operating as BenevolentAI, a Luxembourg public limited liability company, listed on Euronext Amsterdam NV;

b the business combination between Alussa Energy Acquisition Corp. and FREYR AS, a Norway-based developer of clean, next-generation battery cell production capacity, resulting in a combined company now operating as FREYR Battery, a Luxembourg public limited liability company, listed on the New York Stock Exchange; and

c the business combination between Oaktree Acquisition Corp II and Alvotech Holdings SA, a leading global biopharmaceutical company focused on the development and manufacture of biosimilar medicines for patients worldwide, resulting in a combined company now operating as Alvotech, a Luxembourg public limited liability company, listed on Nasdaq.

Going forward, we expect sustained SPAC-related activity in Luxembourg with, in the case of de-SPAC transactions, an enhanced focus on the valuation of the target from investors and increased scrutiny on disclosure from the regulator, as well as a surge in SPAC liquidations with up to $75 billion being returned to investors in the coming months, thereby giving these investors the cash needed for new M&A ventures.

11 Regulation (EU) 2019/452.

The second trend involves private equity groups that set up continuation funds to buy companies that they own. In such a transaction, a stake in one or more portfolio companies is sold from one fund to another, both of which are controlled by the same private equity firm. The deals became popular when a market freeze prompted a search for new exit routes for private equity firms and is a way for these firms to hold on to their prime assets. Given Luxembourg's status as a leading investment fund centre, it comes as no surprise that Luxembourg has been involved in the structuring of these deals in the past year. With growing popularity, scrutiny on these transactions from regulators around the world, in particular because of the inherent conflict of interest as both the selling fund and the buying fund are under common control. This conflict of interest raises governance and process questions, in particular in terms of valuation of the portfolio company.

More generally, Luxembourg continues to attract major M&A deals and to be the jurisdiction of choice for structuring large and complex transactions. Hence, assistance on Luxembourg law aspects was required, inter alia, in the following major deals:

a the takeover offer led by Volkswagen AG in a consortium with London-based asset manager Attestor Limited and Dutch mobility provider Pon Holdings BV on Europcar Mobility Group, a French car rental company operating in over 140 countries;

b the restructuring process of Intelsat SA, a multinational satellite services provider with corporate headquarters in Luxembourg;

c the acquisition by Stryker Corporation of Wright Medical Group NV, a global medical device company focused on extremities and biologics, for US$5.4 billion; and

d the acquisition by Batipart of a pan-European real estate asset portfolio under the Leroy Merlin and Bricoman brand for an amount of more than €500 million.

Looking ahead, M&A deals are expected to be announced in the space industry with Luxembourg, being home to numerous space and satellite operators, likely to be involved in some of these deals. Globally, the space industry has experienced a boom in M&A activities with traditional players seeing a need to consolidate in the wake of growing competition by new rivals such as Elon Musk's SpaceX and Jeff Bezos' Blue Origin. Recently, French satellite operator Eutelsat announced its intention to acquire UK OneWeb, and US satellite company Viasat announced a takeover of UK group Inmarsat.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

In addition to financing by cash resources, Luxembourg law and existing practice in Luxembourg provide for a large range of financing possibilities and instruments. It is possible to gain financing, inter alia, through an issue of shares, securities and other financial instruments carrying specific financial or voting rights, such as preferred dividend rights, tracking securities, subordinated loans or securities, securities with arrangements ensuring multiple voting rights, convertible instruments, securities or loans with profit-participating elements.

On the equity side, we see contributions to a company's equity account with or without the issue of shares by the company to be financed. In the latter case, the contribution is made to the freely distributable account (account 115) of the company, which is called a 'contribution to equity capital without issue of shares (capital contribution)', pursuant to the Grand Ducal decree dated 12 September 2019 on the presentation and content of standard chart of accounts, this being a sub-account of the share premium account of a company.[12] Alphabet shares, tracking shares and shares with differing par values are also possible. In addition, shares of a SA can be issued below par value under certain conditions.

On the debt side, entities are financed through loans that may be interest-bearing, profit-participating, convertible or tracking. However, transfer pricing rules must be complied with, and payments must be at arm's length.

More complex and hybrid instruments also exist, such as preferred equity certificates (which can be interest free, tracking and convertible, among others), notes and bonds that can be issued by an entity in addition to shares and that are governed mainly by their contractual terms. Luxembourg has introduced additional flexibility in these techniques and the public or private issuance of bonds is now possible for all types of entities vested with legal personality.

Third-party financing usually takes the form of senior or mezzanine loans (whether syndicated or not). That said, alternative lenders are becoming more attractive in the debt financing market, given that they often offer more flexibility than traditional bank lenders.

The covid-19 pandemic has led to uncertainty on:

a borrowers, with borrowers looking for ways to obtain additional liquidity; and

b lenders, with lenders looking to obtain additional security, depending on the business of the borrower and the asset to be financed.

Deal volumes have nevertheless remained high. One contributing factor has been the availability of financings at low cost. With rising interest rates, financings will become more expensive, which may result in a slowdown in the number and the size of financings. In light of the ongoing macroeconomic trends, we expect lenders to be strict on their lending policies and to insist on lender-friendly credit agreements. We also expect an increasing number of risk factors in offering memoranda that highlight the risks flowing from the Russia-Ukraine conflict, geopolitical tensions between the United States and China, inflation, labour and supply shortages, among other factors. Furthermore, the number of financings that have an ESG component is on the rise and we expect this trend to continue.

VII EMPLOYMENT LAW

Where a merger or an acquisition results in a transfer of an undertaking based on the territory of the Grand-Duchy of Luxembourg defined as a 'transfer of an economic entity which retains its identity', meaning an organised grouping of resources that has the objective of pursuing an economic activity, whether or not that activity is central or ancillary, Article L127-1 et seq. of the Luxembourg Labour Code applies.

As a consequence, the rights and obligations of the transferor arising from employment contracts or existing employment relationships on the date of the transfer shall, by virtue of the law, be transferred to the transferee. The transfer takes place automatically and employee consent is not required. The transferee is obliged to maintain all the essential elements of the employment contracts of the transferred employees, who shall be entitled to the same working conditions (i.e., salary, right to leave and seniority).

12 Impact of contributions to account 115 on the participation-exemption regime should be carefully monitored – see Section VIII.

Transferors and transferees shall be jointly and severally liable in respect of obligations that arose before the date of a transfer from an employment contract or an employment relationship existing on the date of the transfer.

The transfer of an undertaking shall not in itself constitute a valid ground for dismissal for the transferor or the transferee. Dismissals based on real and serious grounds linked to an employee's behaviour or based on economic reasons not linked to the transfer remain possible. However, additional restrictions with respect to the termination of employment contracts following a transfer of an undertaking may be foreseen in collective bargaining agreements, such as the collective bargaining agreements applicable in the banking and insurance sector. The collective bargaining agreement of the banking sector prohibits terminations based on economic reasons for a period of two years following a transfer unless expressly agreed on by staff representatives. The collective bargaining agreement for the insurance sector does not provide for such exception.

Following a transfer, the transferee is furthermore obliged to maintain the provisions of a collective bargaining agreement that had been applicable to the transferor. Transferred employees will continue to benefit from the provisions of the collective bargaining agreement until its termination or expiry, or until the effective date of its replacement. However, pursuant to Luxembourg case law, in cases where a clause of a transferred employment contract refers to the application of a collective bargaining agreement, the provisions of such collective bargaining agreement shall continue to apply to the transferee even after the termination or expiry of the collective bargaining agreement in force the day of the transfer or the entry into force of its replacement. If so, the application of the collective bargaining agreement can be ended either by mutual consent or by a unilateral decision of the employer, provided a specific procedure is followed.

Article 14(4) of the Law of 9 June 1999 on complementary pension schemes establishes the obligation for the transferee to affiliate the transferred employees to its pension scheme if applicable.

In the context of the transfer of an undertaking, the transferor must inform the transferee in due time about all rights and obligations transferred to the extent that these rights and obligations are known by the transferor at the time of the transfer. Prior to the effective date of the transfer, the transferor and the transferee shall furthermore inform in due time the staff representatives or, in the absence of a staff representation, the employees concerned in the transfer regarding the date and the reasons of the transfer, as well as the legal, economic and social implications for the employees and any measures envisaged towards the employees. Finally, should the transferor or the transferee envisage taking measures involving the employees due to the transfer, their respective staff representation must be consulted on those measures in due time with a view to reaching an agreement. The respective staff representatives of the transferor and the transferee shall also be informed and consulted in advance about all decisions that are likely to entail important modifications in the work organisation or in employment contracts, and the respective staff delegates shall be informed about and consulted on any economic or financial decision that may have a substantial impact on the structure of the undertaking or on the level of employment in undertakings counting at least 150 employees. This applies in particular in the case of a transfer of undertaking. As regards cross-border mergers, the Law of 3 June 2016 amending, inter alia, Article L.426-14 of the Labour Code guarantees to employees who benefitted before the merger from a more favourable employee participation system than the system applicable under Luxembourg law the maintenance of their right to employee participation in such system.

VIII TAX LAW

i Statutory framework

In general, Luxembourg corporate taxpayers may be subject to corporate income tax (CIT) at a rate of 17 per cent, on which a 7 per cent solidarity surcharge is added, leading to an effective corporate income tax rate of 18.19 per cent, plus municipal business tax (MBT), which varies from one municipality to another.[13]

Moreover, corporations are generally subject to an annual net wealth tax (NWT), levied at a rate of 0.5 per cent on their unitary value (i.e., taxable assets minus liabilities financing such taxable assets) as at 1 January of each year.[14] A reduced tax rate of 0.05 per cent applies to the portion of net wealth exceeding €500 million. Corporations having their registered office or their central administration in Luxembourg for which the sum of financial assets, transferable securities and bank deposits, receivables held against related parties or shares or units in tax-transparent entities exceed 90 per cent of their total balance sheet and €350,000 are subject to a minimum NWT of €4,815.Other corporations that are not subject to the above minimum flat tax are subject to a minimum wealth tax, which is determined based on the total assets in the balance sheet of the tax year concerned. This minimum wealth tax ranges from €535 to €32,100. The €32,100 minimum tax is due for corporations with a balance sheet exceeding €30 million. The minimum NWT is however reduced by the corporate income tax to be paid by the corporation.

ii Participation exemption on dividends, liquidation proceeds and capital gains

Under the Luxembourg participation exemption, dividends, liquidation proceeds and capital gains realised by a fully taxable Luxembourg-resident company from shareholdings in resident or non-resident fully taxable companies may be exempt from CIT, MBT and NWT, provided certain conditions are met. Any amount deducted in the previous years that is related to the financing of a qualifying participation for the Luxembourg participation exemption is in principle deductible but subject to recapture upon the sale of the participation at a gain (i.e., the deductible expenses in the current or previous years are reducing the exempt capital gain so that they result in a tax neutral operation).

iii Withholding taxes

The standard withholding tax rate stands at 15 per cent for dividend payments to both resident and non-resident shareholders. Reduced rates or withholding tax exemptions may be available under applicable double tax treaties.[15] Moreover, a full withholding tax exemption may be available under the Luxembourg participation-exemption regime, provided certain conditions are met.[16]

No withholding tax is due in Luxembourg on a full or partial liquidation of a fully taxable company, regardless of the tax residence or tax status of a shareholder.

In addition, there is no withholding tax on royalty payments and fixed or floating rate interest payments made to corporate lenders or to non-residents generally.

13 In Luxembourg City, the municipal business tax is 6.75 per cent and the overall combined rate of corporation taxes in Luxembourg City is of 24.94 per cent for 2022.
14 For corporations having a financial year corresponding to the calendar year.
15 Luxembourg has currently 84 double tax treaties in force.
16 Cf Article 147 of the law on income tax.

iv Recent developments

Hybrid mismatch rules

Hybrid mismatch rules are one of the anti-tax avoidance tools deriving from the Anti-Tax Avoidance Directive (ATAD) [17] adopted by the Council of the European Union as a response to the Organisation for Economic Cooperation and Development (OECD) and G20 action plan on Base Erosion and Profit Shifting (BEPS) set out in 2015.

These rules aim at tackling hybrid mismatch arrangements in an EU context and in transactions involving third countries. They were implemented in Luxembourg, by the Laws of 21 December 2018 and 23 December 2019. They apply to all Luxembourg corporate entities and Luxembourg permanent establishment (PE) of non-resident corporate entities. A hybrid mismatch in tax outcome could typically be the consequence of differences in the tax characterisation of a financial instrument, a payment made under it or an entity. Actually, the rules targets four categories of hybrid mismatches:

a hybrid mismatches that result from payments under a financial instrument;
b hybrid mismatches that are the consequence of differences in the allocation of payments made to a hybrid entity or permanent establishment, including as a result of payments to a disregarded permanent establishment;
c hybrid mismatches that result from payments made by a hybrid entity to its owner, or deemed payments between the head office and permanent establishment or between two or more permanent establishments; and
d double deduction outcomes, resulting from payments made by a hybrid entity or permanent establishment.

In each category, the scope of the hybrid mismatch rules is limited to mismatches arising between associated enterprises, between a taxpayer and an associated enterprise, between a head office and its PE, between two or more PEs of the same entity or under a structured arrangement. The rules provide for different kind of adjustments in order to remedy the various scenarios of mismatch in tax outcome. For instance, a payer will not be allowed to deduct from its taxable base the payment made under a financial instrument that gives rise to a deduction without inclusion outcome attributable to the difference of characterisation of such instrument by the country of the payer and the payee. In the case of a reverse hybrid entity, the adjustment will be different. In a nutshell, a reverse hybrid entity is a Luxembourg entity that is considered in Luxembourg as tax transparent (e.g., a partnership) but as tax opaque by the jurisdiction of the investor. To neutralise the effect of hybrid mismatch, the reverse hybrid entity will be considered as a resident taxpayer in Luxembourg and its net income is subject to corporate income tax to the extent that its net income is not otherwise taxed under the laws of Luxembourg or any other jurisdiction. The rules provide some exemption and carve-out, some of which are specific to Luxembourg showing its thorough understanding of the market. Although most of the anti-hybrid mismatch rules have been applicable since 2019, the reverse hybrid rule has only been applicable since 1 January 2022.

17 Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD 1) as amended by Council Directive (EU) 2017/952 of 29 May 2017 as regards hybrid mismatches with third countries (ATAD 2).

DAC6 : a new world of transparency

DAC6 is a European Directive,[18] that requires intermediaries or, as the case may be, taxpayers to report to local tax authorities detailed information on any cross-border arrangement (i.e., an arrangement that involves more than one EU Member State or an EU Member State and another country) that contains at least one of the hallmarks listed in the Directive. A hallmark is defined as a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Annex IV of DAC6. An example of notable hallmarks is hallmark E3, which targets intragroup cross-border transfers of functions, assets or risks, or any combination thereof (but only if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50 per cent of the projected annual EBIT of such transferor or transferors if the transfer had not been made). Many corporate reorganisations would typically be in the scope of this hallmark E3, such as transfer, merger and migration. Hallmarks B2 must also be given special attention. It covers the conversion of income into capital, gifts or other categories of revenue, which are taxed at a lower level or are tax exempt. Even if this hallmark seems to target employee incentive and share option plans,[19] its broad definition entails the risk of a wide interpretation that captures all types of financial instruments, having the result of converting an income into another form taxed more favourably. As for some hallmarks (hallmark E3 not being one of them), it is however required that the main benefit test is also met in order for the arrangement to be reportable. DAC6 has been faithfully implemented in Luxembourg on 25 March 2020 and a frequently asked question was published subsequently by Luxembourg tax authorities, providing certain clarification on the rules. However, just as in other EU countries, many uncertainties remain.

Account 115 contribution: impact on the participation-exemption

In a decision dated 31 March 2022 (No. 46067C), the Administrative Court upheld the judgment of the Administrative Tribunal of 11 May 2021 (No. 42417) and ruled that contributions to the 115 account[20] are not to be taken into account for the purposes of the determination of the €1.2 million minimum acquisition price for the application of the dividend withholding tax exemption. According to this ruling, taxpayers should no longer rely on contributions to account 115 to meet the minimum acquisition price required in order to benefit from the Luxembourg participation-exemption. Notably, such condition related to the minimum acquisition price is very specific to Luxembourg as it is not provided in the parent-subsidiary directive (2011/96/EU). It was introduced in Luxembourg law – as an alternative condition to the minimum 10 per cent shareholding – to avoid real distortions where major investment projects could be prejudiced solely because the shareholding threshold is not reached. Mother and subsidiaries should still be able to rely on contributions to share premium to reach the minimum acquisition price requirement. Eventually, if, for

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18 European Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

19 Council of the European Union: Working Party on Tax Questions (Direct Taxation – DAC), Examples and origin of the hallmarks, WK 9981/2017 INIT, 21 September 2017.

20 A 115 account contribution is a capital contribution without issue of shares. It is an accounting classification included in the Luxembourg Standard Chart of Accounts group 11 equity accounts called 'share premium and similar premiums'.

any reason, it is not certain that they will meet the minimum acquisition price requirement, they could still meet the condition related to the minimum 10 per cent shareholding to benefit from the Luxembourg participation-exemption regime.

Upcoming developments

In a communication published on 18 May 2021, referred to as the 'Business Taxation for the 21st Century', the European Commission set out a tax agenda for the following two years with targeted measures that promote productive investment and entrepreneurship and ensure effective taxation. Two of the projects announced already give rise to two directive proposals published on 22 December 2021.

The first proposal is the ATAD 3, which aims to tackle the abusive use of shell companies. In a nutshell, the ATAD 3 proposal targets EU Member State entities mainly involved in cross-border activities whose daily management and decision-making are outsourced. Certain undertakings are considered from the outset as being low-risk and are thus excluded from the scope of ATAD3 proposal (e.g., listed companies and regulated financial undertakings). The ATAD 3 proposal introduces specific reporting obligations in order to identify so-called shell entities. Once qualified as a 'shell', an undertaking would be denied treaty benefits and EU directive access. ATAD 3 will have to be transposed into Member States' national laws by 30 June 2023 for the rules to come into effect as of 1 January 2024.

The second proposal is the Pillar 2 directive, which aims at implementing a minimum level of effective corporate taxation, ensuring that large multinational groups and large-scale purely domestic groups operating in the Single Market pay an effective tax rate of at least 15 per cent in each jurisdiction they operate. The Pillar 2 directive proposal largely mirrors the GloBE rules; that is, the OECD model legislation for a new global minimum tax regime published on 20 December 2021, with some amendments necessary to ensure that the rules are compatible with EU law (e.g., by extending the scope of the GloBE rules to domestic situations). Although the aim of the Proposal is simple (i.e., seeking to set a floor to excessive tax competition for large multinational enterprises (MNEs) groups), it achieves this with a series of highly technical and complex rules. On 12 March 2022, an amended draft compromise text of the Pillar 2 directive proposal was published, providing numerous amendments, among which the one-year deferral of the entry into force, namely the rules, would in principle apply to tax years starting from 31 December 2023 (instead of 1 January 2023).

IX COMPETITION LAW

The law of 23 October 2011 on competition, as amended (Competition Law), which reflects Articles 101 and 102 of the Treaty on the Functioning of the European Union, prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices having as their object or effect the prevention, restriction or distortion of competition as well as the abuse of dominant market positions. Currently, the Competition Law does not provide for an approval mechanism for mergers by the Luxembourg Competition Council.

Where a transaction has an EU dimension within the meaning of EU competition law, EU merger control rules will apply exclusively and the European Commission will be solely competent to review the transaction.

Where a transaction is below the EU merger notification thresholds, no pre-merger filings or prior notification requirements exist in Luxembourg law, but the referral mechanism in EU merger control law allows the European Commission to review transactions below the EU merger notification thresholds under certain conditions. The European Commission published new guidance in 2021,[21] indicating that it supported the referral of certain merger cases to it by national competition authorities not having initial jurisdiction over the transaction, including authorities having no merger control competence based on their national law, where the Commission previously discouraged such referrals. In any event, the cooperation mechanism in EU merger control law allows the European Commission to exchange information with the Luxembourg Competition Council when investigating an M&A transaction involving a Luxembourg entity or affecting the Luxembourg market, or both.

Given that the Luxembourg national market is small, and that most M&A transactions with a Luxembourg connection deploy their competitive effect on a global or EU scale, or mainly in other jurisdictions, most of these M&A transactions do not raise any antitrust issues in Luxembourg. Nevertheless, the need of a national merger control regime is being considered in Luxembourg, in particular since Luxembourg is the only EU Member State that does not have a national merger control regime. On 20 January 2022, the Ministry of Economy launched a public consultation on the possible implementation of a merger control regime in Luxembourg. The purpose of such a regime would be to give the Luxembourg Competition Council the power and the tools to carry out an *ex ante* control of certain mergers and acquisitions or other alignments between undertakings that may have a restrictive effect on competition in Luxembourg. On 13 July 2022, the Ministry of Economy published an interim report on the preparatory work on the introduction of such a regime to which economic players and public authorities have participated. A majority of the responses to the public consultation approve the introduction of a national merger control regime. However, a number of important questions must be resolved. One of the crucial points is the choice of the notification system, which can be mandatory, voluntary or a combination of both. Each of these models presents its advantages and drawbacks. Another crucial question is the determination of the thresholds triggering the jurisdiction of the competition authority, which is particularly important in Luxembourg, a small country with a high international M&A activity. Other themes relate to the specificities of Luxembourg and include the often cross-border activity of Luxembourg companies and the crucial role of the definition of the relevant market in the analysis made by the Competition Council, the importance of the financial sector in Luxembourg and the need to provide the authority with adequate resources and powers. The interim report published by the Luxembourg government indicates that the Luxembourg government expects to file a bill of law with Parliament in the spring of 2023.

Even though the Competition Law currently does not provide for pre-merger filings with or prior notification requirements to the Luxembourg Competition Council, the Council asserted its competence to scrutinise and sanction M&A transactions that create or strengthen a dominant position in Luxembourg in its *Utopia* decision.[22] Through this decision, it affirmed its authority to exercise *ex post* control of mergers by using, in the absence of a specific merger control regime at the national level, the provisions prohibiting the abuse of a dominant position. In a more recent *Féderation des Artisans* case,[23] the Competition Council

21 Commission Communication of 26 March 2021, C(2021) 1959 final.

22 Decision 2016-FO-04.

23 Decision 2019-R-01.

confirmed its case law in this respect and carried out *ex post* control of that transaction.[24] These decisions by the Luxembourg Competition Council illustrate the general sentiment identified in the public consultation launched by the Luxembourg Ministry of Economy, whereby a national merger control regime should be introduced.

Finally, the law of 15 November 2016 on certain rules governing actions for damages for competition law infringements and amending the Competition Law (Private Damages Law) implements Directive 2014/104/EU of 26 November 2014 on antitrust damages actions, which seeks to improve the effectiveness of private enforcement as to infringements of EU and national competition law, and to fine tune the interplay between private damages actions and public enforcement by the European Commission and national competition authorities.

On the one hand, the Private Damages Law facilitates actions for damages through the introduction of certain specific procedural rules:

a their exercise is simplified by a set of irrebuttable and rebuttable presumptions with respect to the existence of an infringement of competition law and its effects;

b access to evidence, essential for competition law-based claims, is facilitated through certain disclosure rules;

c the joint and several liability of undertakings that have infringed competition law through joint behaviours allows an injured party to require full compensation from any of them until it has been fully compensated; and

d the Private Damages Law refers to the Luxemburgish general procedural law principles that provide for a 10-year limitation period for commercial claims.

On the other hand, the Private Damages Law encourages consensual dispute resolution. In accordance with the directive, it provides for the suspension of the limitation period to bring an action for damages for the duration of the consensual dispute resolution process and the suspension of the proceedings relating to the action for damages during a maximum period of two years.

X OUTLOOK

We expect that M&A activities will remain strong in Luxembourg. Despite ongoing and rising geopolitical tensions, strong inflation, tightening financing conditions and worries about new pandemic-related restrictions, the market fundamentals for robust M&A activity exist. A lot of firms have strong cash flows and balance sheets, private equity firms still have unprecedented amounts of capital to deploy and leadership are eager to move forward with M&A deals to add new capabilities and fortify their market position. Reduced liquidity, strong inflation as well as supply chain and workforce shortages may lead to decreasing valuations, which in turn creates opportunities for dealmakers to generate profits in a more difficult market.

24 In that matter, the complaint, which qualified as an acquisition of shares as an abuse of a dominant position, was dismissed.

The cool-off experienced at the beginning of this year was expected at some point and must be put into perspective. M&A activity remains resilient at a high level. We remain optimistic that the Luxembourg market will continue to grow and attract interest from investors both domestic and abroad. Luxembourg's position as one of the leading financial centres and the first investment fund centre in the European Union, its attractive regulatory and legislative framework as well as its legal and political stability will continue to attract M&A activity.

Appendix 1

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Pit Reckinger became a member of the Luxembourg Bar in 1990 and joined Elvinger Hoss Prussen in 1991, where he has been a partner since 1994. Pit holds a *maîtrise en droit* and a postgraduate degree (DEA) in business law from the Université Paris 1 Panthéon-Sorbonne (France). He currently serves as chairman of the Luxembourg Bar Association (*Ordre des Avocats du Barreau de Luxembourg*).

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