瑞士修订披露和收购规则

Amendments to the Swiss disclosure, takeover regime

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在2016 年 1 月 1 日，新的金融市场基础设施法案（FMIA）开始生效。除了提供金融市场基础设施的运作监管规定和有关衍生品交易规则，金融市场基础设施法案还涉及瑞士上市公司的持股披露的监管规定以及对这类公司公开收购要约的规定。

金融市场基础设施法案和实施条例与之前对于持股披露和公开收购要约的规定变化不大。可是，当中也有些重要的修改，这篇文章将会对此进行综合阐述。

已修改的瑞士披露规则

独自行使其投票权的人的披露义务

根据瑞士法律，如果在瑞士上市公司持有投票权达到或超过 3%、5%、10%、15%、20%、25%、100/3、50%或 200/3 门槛的人需要通知交易所和发行人。

根据上述法律，股权的实际受益人均有此披露义务。根据新定义，实际受益人是任何拥有股权衍生的投票权和承担其经济风险的人。这意味着，比如说，向其客户提供账户投资服务的传统资产管理者不受此披露义务限制。

新的法律规定，对股权可独立行使投票权但不是实际受益人的第三方的披露义务做出了另行规定。这个新规定对于那些帮客户代持公司股份且可自主行使股权投票权的资产管理者尤为相关。

实际权益人和可自主行使股权投票权的资产管理者的披露义务是平行共存的。所以，某些职位的人员可能要重复披露。

因此，考虑到透明度问题，披露的人员需要指明他们披露义务的来源，是实际权益人的角色还是作为可自主行使投票权的角色。在决定某人是否达到或超过披露义务的门槛，应该审核其作为实际权益人和可自主行使投票权人的两个角色的总和。

简化间接收购和间接出售

简化了有关间接收购或间接出售所需要的通知义务。取消了对从直接收购方或卖方到实际权益人之间的所有的权益链的披露要求，这意味着只需披露直接收购方或卖方及实际受益人。

本次修订特别尤其简化了对公司集团的要求，因为在集团内部股权转让过程中，只有在股权的直接持有人变更后才会产生披露义务。

其他变动

新法包括一个完整的目录，阐述了哪些披露信息在新法下需要重新提交通知。

包括了重要信息的变动：

- 向有关交易所的通知可以像以前一样由传真或者电邮递交。新法阐明了这点也适用于寄送发行人的通知。另外，有关随后递交原始文件的要求已被免去。
- 由于继承所衍生的披露义务的通知期将会是 20 个交易日，而不是其他披露义务的 4 个交易日期限。

除了故意违规，由于过失而违反披露义务的仍可以被起诉。但是，由于过失违反披露义务的最高罚款额度已从原本的一百万瑞士法郎（约一百零一万美元）显著减少到十万瑞士法郎。

过渡性措施

已按照现行法律所提交的信息披露通知仍然有效。另外，新法中包含某些过渡性规定。例如，在新法生效之前发生的并且只是由于新法的生效才产生的披露义务的情形，只需要在 2016 年 3 月 31 日前履行通知义务。

已修订瑞士收购规则

废除在印刷媒体公布要约文件

根据修订后的收购制度，要约文件（其中包括但不限于要约的预先公告和要约招股说明书等）不再需要在瑞士的印刷媒体公布。可是，要约文件仍需要刊登在电子出版物上。

在之前的制度下，要约文件需要在买方的网站或者在一个专业的要约收购网站上公布，并且必须递交至各大主要的刊登金融信息的电子传媒和收购委员会（TOB）。除此以外，要约文件现在也必须提交到瑞士主要的媒体和瑞士的主要新闻机构。收购委员会的第四条界定了要约文件必须递交的主要的媒体圈和新闻机构。

向收购委员会递交的豁免通知

按照之前的规定，由于捐献、继承或者分割地产，婚姻财产法律或执行程序而获得的投票权被豁免履行强制的要约义务。但是根据新法，收购方若依据豁免必须通知收购委员会。收购委员会如果有合理理由相信豁免的要求没有得到满足的，其有权重新启动监管程序。■

> “收购方若依据豁免必须通知收购委员会”

On 1 January 2016, the new Financial Market Infrastructure Act (FMIA) entered into force. Apart from supervisory provisions for the operation of financial market infrastructures and rules concerning derivatives trading, the FMIA also contains provisions on the disclosure of shareholdings in companies that are listed in Switzerland, and also rules on public takeover offers regarding such companies.

The FMIA and the implementing ordinances leave the previous rules on the disclosure of shareholdings and public takeover offers largely unchanged. However, there are certain important amendments to these provisions that are summarized in this article.

Revised disclosure rules

Disclosure obligation of persons exercising voting rights of their own discretion. Under Swiss law, persons reaching or crossing a threshold of 3%, 5%, 10%, 15%, 20%, 25%, 100/3, 50% or 200/3 of the voting rights of companies whose equity securities are listed in Switzerland have to notify the stock exchange and the issuer.

As under the previous law, the beneficial owners of positions in equity securities are subject to this disclosure obligation. Pursuant to the newly introduced definition, a beneficial owner is anyone who controls the voting rights deriving from a shareholding and who bears the economic risk. This means, for instance, that traditional asset managers who choose the investment for their client's account are not subject to this disclosure obligation.

The new law introduces a separate disclosure obligation on third parties who are entitled to exercise voting rights associated with equity securities at their own discretion, but without being beneficial owners.

This new rule is particularly relevant for asset managers holding shares for their clients if the asset manager has the discretionary power to exercise the voting rights related to these shares.

The disclosure obligations of the beneficial owner and the person having the discretionary power to exercise the voting rights apply in parallel. As a consequence, certain positions may have to be disclosed twice. Hence, for transparency reasons, the disclosing person needs to indicate whether the positions are held as a beneficial owner, or whether the person has discretionary voting power.

> "An acquirer relying on the exemption must notify the Takeover Board"

In order to determine whether a person has reached or crossed a threshold, the positions held by this person as beneficial owner, and the positions for which the person has discretionary power to exercise the voting rights, have to be added together.

Requirements eased

Simplifications for indirect acquisitions and indirect sales. The information needed for the notification of an indirect acquisition or an indirect sale has been simplified. The requirement for disclosure of the entire chain of ownership, from the direct acquirer or seller to the beneficial owner, has been abolished.

This means that only the direct acquirer or seller and the beneficial owner have to be disclosed. This revision in particular leads to a simplification in groups of companies, because transfers of shareholdings within the group only trigger a disclosure of information obligation if the direct holder of the equity securities changes.

Further changes. The new law contains a conclusive catalogue of disclosed information which, if amended, requires a new notification. Further changes of a formal nature have been included:

- Notifications to the relevant stock exchange can, as before, be conveyed by fax or email. The new law clarifies that this also applies to notifications to the issuer. Furthermore, the requirement to subsequently file the original documents has been waived.
- The notification period for disclosure obligations resulting from inheritance will be 20 trading days compared to four trading days for the other disclosure cases.

Apart from intentional violations, negligent violations of the disclosure obligation are still prosecutable. However, the maximum imposable fine for negligent violations has now been significantly reduced, from CHF1 million (about US$1 million) to CHF100,000.

Transitional application. Disclosure notifications that have been filed in accordance with the previous law will remain valid. The new law contains certain additional transitional rules. For example, circumstances having occurred before the entering into force of the new law and triggering a disclosure obligation only due to the entering into force of the new law have to be notified by 31 March 2016.

Amended takeover rules

Abolishment of publication of offer documents in print media. Under the revised takeover regime, the offer documents (including, among others, the pre-announcement of the offer and the offer prospectus) no longer have to be published in print media in Switzerland. However, the electronic publication of the offer documents has been extended.

As under the previous regime, the offer documents have to be published on the bidder's website or on a website dedicated to the takeover offer, they must be submitted to major electronic media that distribute financial information, and they have to be filed with the Takeover Board (TOB).

In addition, the offer documents must now also be submitted to major Swiss media and major press agencies active in Switzerland. The new circular no. 4 of the TOB defines the circle of major media and press agencies to which the offer documents must be submitted.

Notification of exemptions to TOB. As under the previous rules, the acquisition of voting rights through donation, inheritance or partition of an estate, matrimonial property law or enforcement proceedings is exempted from the mandatory offer duty. However, pursuant to the new law, an acquirer relying on the exemption must notify the TOB, which will open administrative proceedings if it has reason to believe that the requirements for the exemption are not met. ■

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