



## Law Department

As of : June 2022

## Competition Law

### Revision of the Cartel Act

#### Current Status & Outlook

On November 24, 2021, the Federal Council opened a consultation on the partial revision of the Cartel Act (CartA). The core element of the partial revision is to modernize Swiss merger control. By changing from the current Qualified Market Dominance Test to the Significant Impediment to Effective Competition test (SIEC test); the review standards for the Competition Commission (ComCo) will be adapted to international practice according to the Federal Council. As a result, civil antitrust law and the opposition procedure are also to be improved. In addition, the Federal Council has included two demands within the partial revision of Motion 16.4094 Fournier calling for the "Improvement of the Situation of SMEs in Competition Proceedings". These two demands relate to the administrative proceedings under antitrust law. The first demand insists that the process should be accelerated by introducing time limits. The second includes that compensation be provided to the parties in the first instance proceedings; even before the competition commission is to be introduced.

Finally, the Federal Council makes a proposal for the implementation of the Français Motion adopted in June 2021 "The revision of the Cartel Act must take into account both qualitative and quantitative criteria to assess the inadmissibility of a competition agreement ". ([Link to media release and consultation documents](#)).

SwissHoldings participated in the consultation ([Link to consultation response](#)) and positions itself as follows:

- The bill needs to be substantially revised before it is adopted because of two important elements: the inclusion of an institutional reform and the absence for the consideration of compliance efforts in the sanction assessment. It is conceivable that a working group with various stakeholders under the leadership of the Federal Government will be established for this purpose. In this case, we consider it central that the interests of the large companies in particular are also represented in such a group via SwissHoldings.
- In taking up institutional reform, the goals considered in 2012 are to be pursued further. This relates in particular to a necessary improvement in the rule of law through the separation of investigation and decision-making.
- The consideration of compliance efforts in the assessment of sanctions could, for example, be included in the Cartel Act by way of an addition to Article 49a para. 5 Draft-CartA and be structured analogously to the regulation in Germany.
- In our view, the introduction of the elements proposed in the preliminary draft - with the exception of the important implementation of the Motion



Français - which includes having a subordinate role compared to the inclusion of institutional reform and the consideration of compliance efforts.

## Corporate and Capital Market Law

### Regulation of Loyalty Shares

#### Current Status & Outlook

In regards to the share revision, an introduction to so-called loyalty shares was under discussion; however, it was not adopted in the end. Instead, the Council of States submitted a postulate instructing the Federal Council to develop a report on the possible advantages and disadvantages. In addition, it would include the possible effects of the proposed regulations stipulated in the revision of the Stock Corporation Act. According to the postulate, the report should address a comparative legal description of possible implemented variants in Swiss stock corporation law and the extent to which action is needed in this area (cf. in detail the [link to the postulate](#)). This could lead to future regulations.

In the context for the revision of stock corporation law: SwissHoldings had supported the original provision as "optional" and is continuing to follow all further developments.

### Regulations Concerning Beneficial Owners (E.g. Central register) and Bearer Shares

#### Current Status & Outlook

In the future, as has been the case in the past, regulatory efforts under stock corporation law are likely to arise in connection with the recommendations of the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Financial Action Task Force on Money Laundering (FATF). Switzerland often regulates each case within national law to ensure that they comply and adopt many recommendations made by various international entities. In these areas, SwissHoldings' general concern is to ensure that Switzerland does not end up on blacklists with such entities because it does not sufficiently implement their recommendations. At the same time, unnecessary restrictions on the freedom of action as well as unnecessary bureaucracy for the (listed) companies must be avoided.

Currently, the following two developments should be noted in particular:

- Postulate 19.3634 and status report Global Forum ([link Postulate](#)): The postulate instructs the Federal Council to submit a status report by the end of 2021 on the implementation of Bill [18.082](#), "Implementation of the recommendations on the Global Forum on Transparency and Exchange of Information for Tax Purposes." If necessary, the Federal Council is to submit



	<p>proposals for the amendments. The Federal Council published the status report on December 3, 2021 (<a href="#">link status report</a>). In this report, it states, among other things, that international developments at FATF, EU and OECD level would show that an increased trend towards further tightening of corporate transparency obligations is underway. Consequently, Switzerland would in due course conduct an analysis of its national legislative bases and their effectiveness. As a result, this would implement appropriate options as an objective for the Federal Council's Financial Market Policy in the area of integrity and international positioning.</p> <ul style="list-style-type: none"> <li>- Revision of FATF Recommendation 24 on Transparency and Beneficial Owners of Legal Entities: This mainly concerns the topic of beneficial owners and possible introduction of a central register or an alternative mechanism for beneficial owners. In addition to the possible tightening of restrictions on bearer shares. The revision of Recommendation 24 at the international level has already been underway for some time. The FATF officially adopted the revised Recommendation on March 4, 2022 and will develop guidance on it by March 2023. The FATF held two public consultations on this in the summer and winter of 2021, in each of which SwissHoldings participated (see detailed <a href="#">link Statement for our position</a>). Following the adoption of Recommendation 24 at the international level, work will now follow at the national level to implement the recommendations made at the international level.</li> </ul>
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## Stock Exchange Equivalence - Extension of Stock Exchange Protection Measure and the Transition into Ordinary Laws

<p><b>Current Status &amp; Outlook</b></p>	<p>On 30 November 2018, the Federal Council issued an Ordinance directly based on Art. 184 para. 3 of the Swiss Federal Constitution to protect the Swiss stock exchange infrastructure (safeguard measure) after the European Commission had not extended Switzerland's EU stock exchange equivalence. The safeguard measure ensures that EU securities firms can continue to trade Swiss equities on Swiss trading venues even without EU stock exchange equivalence. The Federal Council's Ordinance on the stock exchange protection measure was set to expire on December 31, 2021, and can only be extended once by the Federal Council. After that, it must be converted into ordinary law in order to continue to apply.</p> <p>Since the EU has not yet extended the EU stock exchange equivalence, the Federal Council has now extended the Ordinance. Concurrently, it is proposing the transfer of the Ordinance on the protective measure to the Financial Market Infrastructure Act (FinMIA) (<a href="#">Link Media Release</a>).</p> <p>SwissHoldings participated in the consultation process (<a href="#">link opinion</a>) and essentially stated the following in its opinion:</p> <ul style="list-style-type: none"> <li>• We welcome the extension of the exchange protection measure and transfer to ordinary law. Our members would still prefer Plan A, exchange equivalence, and believe that Switzerland should continue to actively seek to obtain recognition of equivalence. In particular, it is important to note that the disadvantages of not obtaining recognition of equivalence could increase in the near future. However, as long as equivalence is not possible, our</li> </ul>
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	<p>members are clearly in favor of extending Plan B, the exchange protection measure.</p> <ul style="list-style-type: none"> <li>• Sensible transfer to ordinary law without changing the content of the measure is very important. As a proven and tested tool and in the sense of maintaining a balance of the bill, we believe that the measure should be transferred to ordinary law as unchanged as possible. Accordingly, we welcome the fact that the bill essentially corresponds to the previous ordinance.</li> <li>• Time Limit to be Supported: Furthermore, we are also in favor of the time limit of five years provided for in the final provisions. We welcome the fact that this takes account of the exceptional and temporary nature of the recognition obligation.</li> </ul>
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## Article 24 FinMIO and the Self-Regulation Concerning the Stock Exchange

<p><b>Current Status</b></p>	<p>As part of the revision to the Ordinance on the Federal Act for the Adaptation into Federal Law; specifically pertaining to the Developments in the Technology of Distributed Electronic Registers. The Federal Council decided on a very problematic amendment to Article 24 FinMIO that was put into effect on August 1, 2021. Specifically, it calls for a complete independence over the management of the trading venue and a majority independence for participants and issuers. This would effectively mean the partial end of self-regulation by the Regulatory Board, as it would now have to be independent of the participants and issuers in terms of personnel and organization. The same would probably apply to the Issuers Committee.</p> <p>From SwissHoldings' point of view, the regulation is extremely problematic:</p> <p>Firstly, in terms of content: the self-regulation of the stock exchange is strongly anchored in the consciousness of the local banks and issuers to allow for sensible regulation. Consequently, issued by persons with the necessary practical experience and the corresponding expertise. This also leads to acceptance of the regulations. Secondly, it applies procedurally: it is extremely problematic if such far-reaching changes are adopted in an ordinance and not, for example, in a law, despite negative consultation results. Thematically, the Ordinance to the Federal Act on the Adaptation of Federal Law for Developments in the Technology of Distributed Electronic Registers is not necessarily the right place. Accordingly, it is central that a suitable solution is found here in the sense of the deletion of the adopted regulation.</p>
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## Revision of SER Regulations on Ad –hoc Publicity

<p><b>Current Status / Outlook</b></p>	<p>In 2016 and 2020, the Six Exchange Regulation (SER) conducted consultations on the revision of the regulations for Ad hoc Publicity. The proposal contains various amendments to the listing rules, the Directive on Information relating to Corporate Governance and the Directive on Ad Hoc Publicity.</p> <p>SER (respectively the Regulatory Board of SER) has now published the various changes, in addition to a FAQ last year (cf. in detail the information on the page of SIX Exchange Regulation; <a href="#">link</a>). The fundamental changes were put into effect on July 1, 2021. Further amendments on the new obligation to use the Connexor Reporting Platform to transmit Ad hoc Disclosures to SER have been implemented as of October 1, 2021 (with a transition period; cf. in detail Regulatory Board Communication No. 5/2021 of August 18, 2021; <a href="#">link</a>). Finally, SER is currently revising the Guideline on the Directive on Ad hoc Publicity (DAH Guideline) and, according to SER, will be published on its website (<a href="#">link Guideline</a>).</p> <p>SwissHoldings accompanies and supports the draft and advocates for the interests of its members.</p>
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## Civil Procedure Law

### Revision for the Code of Civil Procedure - Professional Secrecy Protection for In-house Counsel

<p><b>Current Status / Outlook</b></p>	<p>In 2018, a <b>consultation</b> on the amendment to the Code of Civil Procedure was carried out. It particularly concerned the dismantling of cost barriers, collective legal protection and the implementation of the parliamentary initiative Markwalder (16.409). Specifically, providing the right to testify and refuse to disclose in-house legal services employees. At the time, SwissHoldings participated in the consultation process and spoke out in favor of professional secrecy protection for in-house counsel (<a href="#">Link to Response</a>). Bill 20.026 concerns the implementation of the parliamentary initiative Markwalder (16.409) for a right to testify and refuse to disclose in-house legal services employees. This is extremely important from SwissHoldings' point of view. It also concerns various amendments to the Code of Civil Procedure, which only marginally affects the members of SwissHoldings.</p> <p>The two chambers of Parliament have now discussed the bill. Although Parliament would like to tighten up the Federal Council's technically more convincing draft. However, the National Council deleted the problematic requirement of reciprocity introduced by the Council of States. The version decided by the National Council essentially states that in the case of commercial companies; a party may refuse to cooperate with the activities of its in-house legal service and does not have to hand over documents if the legal service is headed by a person who has been admitted to the bar and the activity in question would be considered profession-specific if performed by a lawyer.</p> <p>The bill is now in the procedure for the revision of differences. The decision of the National Council is the right step for strengthening Switzerland as a business location. The bill will go back to the Committee for Legal Affairs of the Council of States and to the Council of States in the fall session of 2022 at the earliest, with the hope that the Council of States will support this compromise.</p>
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<p>SwissHoldings has long been a very active and resolute advocate of professional secrecy protection for in-house lawyers - especially in the form according to the Federal Council or National Council.</p>
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