

**International
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glg Global Legal Group

Expert Analysis Chapter

1

How May Companies React to Takeover Offers by Controlling Shareholders?

Lorenzo Corte, Denis Klimentchenko, Andrea Spadacini & Sarah Knapp, Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Q&A Chapters

5

Austria

Schoenherr: Christian Herbst, Sascha Hödl & Sascha Schulz

16

Bermuda

MJM Limited: Jeremy Leese & Brian Holdipp

23

Brazil

Pinheiro Neto Advogados:
Joamir Müller Romiti Alves, Carlos Elias Mercante & Luiz Felipe Fleury Vaz Guimarães

30

Bulgaria

Advokatsko druzhestvo Stoyanov & Tsekova in cooperation with Schoenherr: Ilko Stoyanov & Katerina Kaloyanova-Toshkova

40

Canada

Stikeman Elliott LLP: John R. Laffin, John Lee & Meghan Jones

51

Cayman Islands

Maples Group: Suzanne Correy, Louise Cowley & Akshay Naidoo

58

China

JunHe LLP: Jing Cai (Cathy)

65

Croatia

Vukić and Partners: Zoran Vukić, Iva Sunko, Ana Mihovilčević & Ema Vukić

72

Cyprus

Kilikitas & Co Law: Marinella Kilikitas

79

Denmark

Bech-Bruun: Steen Jensen & David Moalem

86

Finland

Dittmar & Indrenius: Anders Carlberg & Jan Ollila

94

France

Vivien & Associés: Lisa Becker & Julien Koch

102

Greece

Masouros & Partners: Pavlos Masouros, Antonis Nikolaidis & Christos Liapis

109

Hungary

Oppenheim Law Firm: Rita Koczka, Barna Fazekas & Gábor Kordoványi

116

India

Shardul Amarchand Mangaldas & Co.:
Raghubir Menon, Sakshi Mehra & Rooha Khurshid

127

Ireland

Philip Lee LLP: Inez Cullen & Rebecca McEvoy

137

Japan

Nishimura & Asahi (Gaikokuho Kyodo Jigyo):
Tomohiro Takagi & Keiichiro Yamanaka

147

Liechtenstein

Ospelt & Partner Attorneys at Law Ltd.:
Judith Hasler & Thomas Plattner

153

Luxembourg

GSK Stockmann: Marcus Peter & Kate Yu Rao

160

Malaysia

WM Leong & Co: Wan May Leong, Wai Kin Leo,
Wan Yi Lim & Ryan Heng

171

Mauritius

SC Legal: Shaheena Abdul Carrim

178

Montenegro

Moravčević Vojnović i Partneri in cooperation with
Schoenherr: Slaven Moravčević & Luka Veljović

186

Netherlands

Houthoff: Alexander J. Kaarls,
Willem J.T. Liedenbaum & Kasper P.W. van der Sanden

195

New Zealand

Russell McVeagh: Cath Shirley-Brown &
David Raudkivi

203

Nigeria

The Trusted Advisors: Olawunmi Olamide Ojo,
Deborah Onafadeji, Adeife Omolumo &
Maureen Izibevie Esegie

213

Norway

Aabø-Evensen & Co Advokatfirma:
Ole Kristian Aabø-Evensen

229

Portugal

Bandeira, Reis Lima & Brás da Cunha – Sociedade de
Advogados, SP, RL: Miguel Brás da Cunha &
Mariana da Silva Esteves

236

Serbia

Moravčević Vojnović i Partneri in cooperation with
Schoenherr: Matija Vojnović & Vojimir Kurtić

244

Singapore

Bird & Bird ATMD LLP: Marcus Chow, Jolie Giouw &
Luke Oon

Q&A Chapters Continued

- 254** **Slovakia**
NOMUS Law Firm: Marián Bošanský & Jozef Boledovič
- 260** **Slovenia**
Schoenherr: Vid Kobe & Bojan Brežan
- 271** **South Africa**
Bowmans: Ezra Davids, Ryan Kitcat & Nanga Kwinana
- 280** **Spain**
J&A Garrigues, S.L.P.: Ferran Escayola & Elisabet Terradellas
- 288** **Switzerland**
Bär & Karrer AG: Dr. Mariel Hoch
- 296** **United Kingdom**
Weil, Gotshal & Manges (London) LLP: David Avery-Gee & Murray Cox
- 304** **USA**
Skadden, Arps, Slate, Meagher & Flom LLP: Ann Beth Stebbins & Thad Hartmann
- 323** **Zambia**
Moira Mukuka Legal Practitioners: Sharon Sakuwaha & Sampa Kang'ombe
- 330** **Zimbabwe**
Absolom & Shepherd Attorneys: Simbarashe Absolom Murondoti & Shepherd Machigere

International Comparative Legal Guides

Liechtenstein



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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

Liechtenstein M&A Transactions are mainly governed by the Liechtenstein Law on Persons and Companies (PGR), as well as property law (SR) and the Liechtenstein Civil Code (ABGB). Liechtenstein does not provide for a national Merger Control Legislation or Antitrust law, but is subject to the EEA provisions on merger control. In addition, depending on the company's industry (e.g. financial market, insurers, gambling, real estate, media), special legal provisions, particularly regulatory laws, must be envisaged.

In contrast to other countries, it should be noted that there is no stock exchange in Liechtenstein. Liechtenstein companies usually go public on the stock exchange in Switzerland or in the EEA. However, only a handful of companies are listed so far. As there is no local stock exchange, Liechtenstein does not have a stock exchange legislation. However, if a Liechtenstein company is listed on a foreign stock exchange, the Liechtenstein Takeover Act (ÜbG) must be observed. Reference is also made below to the provisions of the Liechtenstein Takeover Act; however, it should be noted that this is rarely applicable.

1.2 Are there different rules for different types of company?

The applicable provisions (civil, regulatory, etc.) depend not only on the company form, but also on the purpose of the company and the assets in question.

The Liechtenstein Takeover Act only applies to stock corporations and limited partnerships.

1.3 Are there special rules for foreign buyers?

In general, Liechtenstein law does not set any restrictions on foreign investments.

However, foreign buyers of companies in Liechtenstein may be subject to additional regulations and requirements depending on the nature of the company being acquired and the industry in which it operates. For example, foreign buyers of companies in regulated industries, such as banking and insurance, may be subject to additional regulatory approval requirements.

In addition, foreign buyers of real estate or real estate companies in Liechtenstein may be subject to certain restrictions on ownership, depending on the type of property.

1.4 Are there any special sector-related rules?

As outlined in question 1.1, special sector-related rules apply in regulated industries such as banking, insurance, media, or gambling. In general, the acquisition of (direct or indirect) control in such a company is subject to prior authorisation by the competent regulator.

Additionally, to ensure the broadest possible distribution of real estate ownership that is socially acceptable and appropriate to Liechtenstein's limited size of land, acquisitions involving real estate are highly regulated. Thus, with minor exceptions (e.g. transfers within family, estate, etc.), almost all transactions involving real estate (including acquisition of legal entities whose assets consist mainly of real estate) must be approved by the competent authority. The requirements for such permit are governed by the Liechtenstein Land Transfer Act and its accompanying regulation. In most cases, approval requires a legitimate interest, which in the case of a business operation is granted if the real estate in question is used to establish or expand a (pre-approved) domestic business.

Notably, approval for such transactions is required regardless of whether the party involved is domestic or foreign.

1.5 What are the principal sources of liability?

The principal sources of liability are an incomplete chain of transfer as well as any contractual agreements (e.g. change of control clauses) and lack of regulatory approvals.

Since the provisions of the Liechtenstein Takeover Act only apply very rarely, as there are only a few Liechtenstein companies even listed on (foreign) stock exchanges, these provisions cannot be considered as principal sources of liability.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

Liechtenstein's company and contract laws are very flexible. The vast majorities of acquisitions are conducted by means of a share deal. However, there are also possibilities for asset deals, mergers, or joint ventures.

2.2 What advisers do the parties need?

Both parties are generally supported by a legal advisor. In bigger transactions the buyer is usually also supported by a financial/accounting and/or tax advisor.

2.3 How long does it take?

As these are off-exchange transactions, no deadlines are generally set. Hence, an estimate of the duration is not possible, but rather depends on the specific situation. It usually depends in particular on its scope, the number of parties involved and whether a domestic or cross-border transaction is concerned.

If, however, an official approval is required, e.g. for acquisitions on the financial market, an additional period of up to six months for the approval process is to be expected.

In the rare case that the Liechtenstein Takeover Act is applicable, certain steps need to be taken and strict filing timelines must be observed.

2.4 What are the main hurdles?

The main hurdles are:

- the due diligence process;
- negotiation of contract;
- obtaining of official approvals; and
- M&A project management. The importance of due project management in M&A is, in our experience, still underrated.

2.5 How much flexibility is there over deal terms and price?

As the vast majority of deals are not subject to the Liechtenstein Takeover Act, deal terms and price are (with very few exemptions) solely subject to negotiations of parties.

However, under the Liechtenstein Takeover Act, in a mandatory offer as well as in a voluntary offer, certain price rules must be observed (*see* question 5.4).

2.6 What differences are there between offering cash and other consideration?

In principle, the parties are free to determine the remuneration. If the Liechtenstein Takeover Act is applicable, either a cash payment or an exchange with other participation rights is to be offered. In the second case, the valuation method must be disclosed.

2.7 Do the same terms have to be offered to all shareholders?

Generally, shareholders do not have to be offered the same terms. However, in the rare case that the Liechtenstein Takeover Act is applicable, all shareholders must be treated equally. Also, in the case of non-listed companies, shareholders' agreements (SHAs), which may impose certain requirements on the shareholders, are very common.

2.8 Are there obligations to purchase other classes of target securities?

In the event of a mandatory offer according to the Liechtenstein Takeover Act, the offeror must make an offer for all listed securities of the target company. Thereby, all classes of listed securities must be treated equally (equitable ratio).

2.9 Are there any limits on agreeing terms with employees?

The general requirements of labour law must be observed. In principle, the Liechtenstein labour law is very liberal. However, in certain cases, there is an obligation to consult (e.g. in the case of a cross-border merger). However, employees cannot prevent the transaction.

Furthermore, under the Liechtenstein Takeover Act, the offer document must also contain the offeror's intentions regarding the further employment of the employees as well as any substantial changes in the terms and conditions of employment. The offer document must be brought to the attention of the employee representative body, or in the absence thereof the employees themselves, by the administrative body of the target company.

2.10 What role do employees, pension trustees and other stakeholders play?

M&A transactions are not subject to the approval of employees, pension trustees and other stakeholders. However, some requirements to inform or consult with the target's employees or employees' representative body can be applicable.

However, in the event of an asset deal qualifying as business transfer, employees are granted the right to refuse to be transferred to the acquirer. Should they refuse, their employment agreement will automatically end upon lapse of the notice period.

2.11 What documentation is needed?

Before granting access to due diligence materials, the offeror and the target company normally conclude a confidentiality agreement. After the due diligence phase, an SPA agreement and, based on the due diligence findings, possible further agreements will usually be concluded.

If the Liechtenstein Takeover Act is applicable to an offer document, a formal legal document making the offer, which contains detailed information on the offer, must be issued by the buyer. This offer document must at least contain the information stated in Art. 7 of the Liechtenstein Takeover Act (content of the offer, information on the offeror, securities that are subject to the offer, consideration, etc.). Additionally, the board of the target must issue their statutory response statements to the offer and submit an independent expert report.

2.12 Are there any special disclosure requirements?

Under the Liechtenstein Takeover Act, the offeror must disclose certain information in its offer document (*see* question 2.11), e.g. its intentions concerning the future business policy of the target company. The offer document must be disclosed together with the expert report.

2.13 What are the key costs?

The key costs are the advisors' fees and internal costs. If a regulatory approval is necessary or the Liechtenstein Takeover Act is applicable, additional costs arise.

2.14 What consents are needed?

Beside clearance from regulatory authorities, the consent of the competent bodies of the purchaser and seller are required above

all. This is irrespective of whether the Liechtenstein Takeover Act is applicable.

2.15 What levels of approval or acceptance are needed?

In offer proceedings, according to the Liechtenstein Takeover Act, the bidder may make the offer conditional upon a minimum acceptance threshold in voluntary offers.

2.16 When does cash consideration need to be committed and available?

In most transactions, availability of the consideration is dependent on the agreements between the parties.

Cash contribution must be committed no later than 10 trading days after the unconditional legal effectiveness of the mandatory bid if the Liechtenstein Takeover Act is applicable. This is the latest date on which the cash consideration must be available.

3 Friendly or Hostile

3.1 Is there a choice?

The law does not prohibit hostile bids and does not differentiate between friendly or hostile.

3.2 Are there rules about an approach to the target?

There are no rules regarding the approach of the target in the prevailing cases.

If the Liechtenstein Takeover Act applies, the bidder can also contact the board before the offer is published. However, secrecy must be maintained.

3.3 How relevant is the target board?

Off-counter transactions negotiations mainly happen between one or more shareholders. However, with comprehensive due diligence, the board must also be included as certain information is only available at board level. Additionally, depending on the articles of association or further complimentary documents, it might be necessary that the board approves the transaction.

The process is slightly different with transactions subject to the Liechtenstein Transaction Act. As soon as the intention to launch a bid has been announced the target boards must stay objective and may not prevent the public bid. In particular, the target board may not take any measures that could prevent the shareholders from making a free and informed decision on the bid or take any action likely to frustrate the bid. Moreover, the target board is obliged to issue a report on the offer immediately after the publication of the offer document. The report shall contain an assessment of whether the proposed compensation and the other content of the offer adequately consider the interests of all shareholders, the public and other relevant stakeholders.

3.4 Does the choice affect process?

The differences in the process are not so much due to the legal basis, but rather to the fact, whether shareholders must be convinced, and defensive measures of the target company must be expected.

Additionally, in hostile takeovers, usually no access to due diligence is granted. In the prevailing cases, friendly takeover

processes tend to be easier, as they are mostly less time consuming, cheaper and generally less stressful for the parties involved.

4 Information

4.1 What information is available to a buyer?

Outside of the Liechtenstein Takeover Act, buyers usually perform extensive due diligence, whereas information is generally disclosed comprehensively. The same applies within the context of the Liechtenstein Takeover Act if the takeover is friendly. Even if no due diligence process is allowed, the buyer can still access certain information. The commercial register provides details of each registered company, particularly the company's articles of association and documents relating to the registrations and annual reports. Further information can be obtained from other public registers (trademarks, real estate, insolvency proceedings, etc.) and on the company's homepage as well as online (newspapers).

Currently, it is not possible to access information on shareholders (except for certain company forms where the shareholders are registered in the commercial register, e.g. GmbH). However, if the shares are publicly listed, depending on the applicable law, there might be information on qualified holdings publicly available.

4.2 Is negotiation confidential and is access restricted?

In off-counter transactions, parties usually agree on a non-disclosure and exclusivity agreement before going into the due diligence phase.

In transactions subject to the Liechtenstein Takeover Act, the law defines that the board of the target, as well as shareholders that are included in the negotiation, are bound to confidentiality. However, the board of the Target is obliged to disclose if there are significant price movements or rumours and speculation regarding an imminent offer for the equity securities of the target company and if it can be assumed that these are due to the preparation of the offer or related considerations.

4.3 When is an announcement required and what will become public?

In transactions regarding a non-listed company, there is no obligation to announce an (intended) transaction.

If the shares are listed on a stock exchange and thus, the Liechtenstein Takeover Act is applicable, the bidder must immediately inform about its intention to launch a bid if its management and supervisory boards have passed a resolution to launch a bid, or if there is a leak of the intention to launch a bid or if circumstances arise that trigger the obligation to make a mandatory bid.

4.4 What if the information is wrong or changes?

Outside of the Liechtenstein Takeover Act, the parties are obliged under ordinary contract law to inform the other party of changes, otherwise warranties or challenges of error may arise.

Under the Liechtenstein Takeover Act the bidder is obliged to publish the updated, improved or otherwise modified bid, if it improves the consideration or makes other modifications to the bid.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

As most transactions in Liechtenstein are not subject to the offer process according to the Takeover Liechtenstein Act, buyers are free to buy shares.

If the Liechtenstein Takeover Act is applicable, the offeror may buy shares outside the offer process; however, such offers might be subject to minimum and best price rules stipulated in the Liechtenstein Takeover Act.

5.2 Can derivatives be bought outside the offer process?

Derivatives may be bought outside the offer process according to the Liechtenstein Takeover Act. However, such purchases are subject to minimum and best price rules.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

As there is no stock exchange legislation in Liechtenstein but Liechtenstein companies' shares are listed on foreign stock exchanges, the foreign law applies. However according to Liechtenstein Takeover Act, anyone who obtains a controlling shareholding is obliged to launch a mandatory bid. A shareholding of voting stock exceeding 30% (this level can be increased or decreased in the articles of association) triggers the obligation to launch a mandatory offer.

It must also be noted that under certain regulations, especially in the financial sector, state disclosure is triggered at a lower level, e.g. 10% (qualified holding).

5.4 What are the limitations and consequences?

If the Liechtenstein Takeover Act is applicable, the price of the mandatory bid may not be lower than the highest consideration granted or agreed in cash by the offeror or a person acting in concert with the offeror for such equity security of the target company within the last 12 months prior to the announcement of the bid. In addition, the price must be at least equal to the average stock exchange price of the respective equity security, weighted according to the respective trading volumes, during the last six months prior to the day on which the intention to make an offer was announced.

Outside of the Liechtenstein Takeover Act, the parties are free to negotiate the price.

6 Deal Protection

6.1 Are break fees available?

Generally, break fees are not prohibited according to the Liechtenstein Takeover Act; however, they must be disclosed in the offer document.

Regardless of whether the Liechtenstein Takeover Act is applicable, a general rule under Liechtenstein law stipulates that breaking off negotiations without cause may entitle negotiation parties to reimbursement of frustrated costs, even without a respective agreement. Break Fees should also not result in coercing shareholders to accept the offer.

6.2 Can the target agree not to shop the company or its assets?

Outside of the Liechtenstein Takeover Act, a standstill agreement is usually negotiated between the parties together with the non-disclosure agreement (NDA) or term sheet.

In the context of the Liechtenstein Takeover Act, it is also possible to agree on a standstill provision. However, the target, or, respectively, the board of the target, must also be neutral towards other competitors.

6.3 Can the target agree to issue shares or sell assets?

Under the Liechtenstein Takeover Act, the target may issue or sell its own shares to support the preferred bidder, if the general assembly approves.

6.4 What commitments are available to tie up a deal?

Outside of the Liechtenstein Takeover Act, the parties are free to negotiate measurements to tie up a deal.

Within the Liechtenstein Takeover Act, the target board is restricted from undertaking defensive actions regarding the public tender offer, without the shareholders' approval. However, the target board may recommend the preferred bidder's offer in the mandatory target response statement.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

For transactions outside of the Liechtenstein Takeover Act, the provisions of general contract law apply, whereby a contract that violates a statutory prohibition or is *contra bonos mores* is void. Legal prohibitions depend on the specific contract.

In respect of voluntary offers, according to the Liechtenstein Takeover Act, and in addition to the general contract law regulations, a condition of the offer and a reservation of the right of withdrawal are only permissible if they are objectively justified, particularly if they are based on legal obligations of the offeror, or if the occurrence of the condition or the assertion of the right of withdrawal does not depend exclusively on the discretion of the offeror. For mandatory offers, per the Liechtenstein Takeover Act, the offer may not be conditioned unless the condition is required by law.

7.2 What control does the bidder have over the target during the process?

In transaction agreements (in and outside of the Liechtenstein Takeover Act), the offeror may request the target company to conduct its business according to its ordinary course. Additionally, the ability of the target board to frustrate a public offer according to the Liechtenstein Takeover Act is limited as the target board is obliged to stay objective upon announcement of the offer. Beyond that, no further means of control are granted to the offeror by law.

Outside of the Liechtenstein Takeover Act, the parties are free to agree on additional measures.

7.3 When does control pass to the bidder?

In public tender offers, the effective control passes to the offeror upon settlement of the offer. Outside of the Liechtenstein Takeover Act, the effective control passes with the transfer of shares.

7.4 How can the bidder get 100% control?

If, after the expiry of the offer period, the offeror holds at least 95% of the voting capital and voting rights of the target company, it shall be entitled to request the competent regulation authority to declare the remaining equity securities invalid within a period of three months against payment of the offer price or fulfilment of the exchange offer. This provision shall apply *mutatis mutandis* to the offeror who, after the expiry of the offer period, holds at least 95% of a class of the remaining equity securities.

8 Target Defences

8.1 What can the target do to resist change of control?

Outside of the Liechtenstein Takeover Act the target is free to take (legal) measurements against change of control.

If the Liechtenstein Takeover Act is applicable, the target board is bound to neutrality as soon as the intention of the bid is known. However, upon approval by the target's general assembly, the competent board may also take measures that are directed against the offeror's attempted takeover after the bid becomes known. Furthermore, the mandatory target statement issued by the competent target board may recommend the offer's rejection if this is objectively justified.

Also, it is possible to already prevent a future change of control before such situation arises. Such measures could be aimed at the target's organisational structure, the target's assets or its capital structure. Additionally, the target's competent board may withhold crucial information, as it is not obliged to provide information to the offeror allowing it to conduct a due diligence assessment.

8.2 Is it a fair fight?

There are no specific rules in the Liechtenstein Takeover Act regarding a level playing field between competing offerors. However, as soon as the intentions of a public offer become known to the target's board, the target's board is bound to neutrality. However, if a competing offer is made, the holders of securities shall be entitled to withdraw from previous declarations of acceptance with respect to any other offer. Therefore, also a later public offer has a chance.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

The major influences on the success of an acquisition outside of the applicability of the Liechtenstein Takeover Act are complete

and traceable documentation in the due diligence phase, open and honest communication between parties (building trust), potential regulatory approvals and the quality and experience of the parties' advisors.

Regarding listed companies, the offered consideration is a major driver for the success of the acquisition as shareholders of listed companies are often more interested in the return than in the company itself (they are often financial rather than strategic investments).

9.2 What happens if it fails?

Outside of the Liechtenstein Takeover Act, the parties are free to resume negotiations at any time. As outlined in question 6.1, breaking off negotiations without cause may entitle parties to reimbursement of frustrated costs.

If the Liechtenstein Takeover Act is applicable and the offer to acquire securities fails, the offeror and all persons acting in concert with it may not make any further offer for equity securities of the target company within one year from the publication of the result of the offer. During the same period, they are also prohibited from any acquisition of shares that would trigger an obligation to make an offer. The same shall apply if the offeror does not make an offer, although it a) has made public its considerations or intention to make an offer or has brought about facts that oblige it to make an offer, b) has made public the decision of its administrative body to make an offer, or c) has publicly declared that an offer will not be excluded. In such cases, the blocking period shall commence 40 trading days after the announcement or the public declaration.

Furthermore, the making of an offer shall be prohibited for a period of one year if the offeror has publicly declared that an offer will not be made or that the bringing about of facts obliging the making of an offer is not being considered.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

Liechtenstein's traditionally pursued path of a liberal and progressive economic policy and a correspondingly liberal corporate law was continued in the course of an extensive amendment of corporate law in 2022. For example, the new legislation now provides for the possibility of holding general assemblies and meetings of other bodies without the physical presence of the participants (this was originally only envisaged as an interim measure during COVID-19).

This practice-oriented legislation is intended to considerably simplify and accelerate decision-making processes and resolutions. Hence, it is to be expected that this will also simplify large-scale transactions and allow them to be conducted in a more agile manner.

Furthermore, new developments that will likely have an influence on the M&A are the increasing density of regulatory requirements leading to consolidation, as well as regulations on ESG concerning the financial sector.



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During her studies, she worked for the Liechtenstein Financial Market Authority (FMA) for two-and-a-half years. Judith Hasler gained legal experience at a Swiss law firm. She successfully passed the Swiss Bar exam in 2018 and the Liechtenstein EEA qualifying examination in 2020.

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Thomas Plattner joined Ospelt & Partner Attorneys at Law Ltd. in 2019. He successfully completed his studies in business administration at the University of Innsbruck in 1998 (*Mag. rer. soc. oec.*) and subsequently began his professional career as an assistant tax consultant in Germany. He then moved to the External Bank Audit Department of the Raiffeisenlandesverband Salzburg.

In 2006, Thomas Plattner successfully graduated from the Faculty of Law of the University of Salzburg (*Mag. iur.*) and completed an internship at Salzburg Regional Court. Thomas Plattner started working for a Liechtenstein law firm with an affiliated trust company in 2007 and passed the Liechtenstein fiduciary examination in 2012.

In 2013, Thomas Plattner moved to the FMA; there, he worked on a number of financial market regulation topics. In addition, his activities consisted of supervision in the field of money-laundering prevention and of casinos in Liechtenstein. In 2017, Thomas Plattner passed the Liechtenstein Bar examination.

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- Friendly or Hostile
- Information
- Stakebuilding
- Deal Protection
- Bidder Protection
- Target Defences
- Other Useful Facts
- Updates