The pursuit of a company's interest over the life of a company

Corporate Acquisition and Joint Ventures Commission

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Introduction

The typical lifecycle of a company consists of various phases, as for example, startup, growth phase, maturity (mid- to large-size privately held company), IPO and listed phase, and finally the acquisition by another company.

The various stakeholders in a company – understood in a very broad sense including equity holders, debt holders, management, employees, advisors and public – have expectations in the company. According to the stakeholder-value-theory all these expectations of the stakeholders form the company's interest.

Undoubtedly, the expectations of the various stakeholders and, therefore, the company's interest change and develop over the life cycle of the company.

The general report and the working session focus on these changes and developments, how they are reflected resp. influenced by the rules of the various jurisdictions and what the consequences are for us, the legal advisors. For efficiency reasons, the general report is limited to the developments of certain stakeholders' expectations (see A to D in the below matrix)

The following matrix provides an overview of the stakeholders (A to D) and the phases (1 to 5) that are covered by this general report. At the same time it provides an overview of the structure of this questionnaire (chapters A to D, each having sub-chapters 1 to 5). Our goal is to shed light on one or several aspects of a specific stakeholder's interests in each phase so that, as a result, the entire questionnaire provides an overview of the development of the interests of the various stakeholders over the life cycle of the company and, thus, shows the development of the company's interest as such.

	1. Startup	2. Growth	3. Maturity	4. IPO / Listed	5. Acquisition
A. Equity holders	A.1	A.2	A.3	A.4	A.5
B. Debt holders	B.1	B.2	B.3	B.4	B.5
C. Management / Employees	C.1	C.2	C.3	C.4	C.5
D. Lawyers	D.1	D.2	D.3	D.4	D.5

The general report and the working session focus on these changes and developments, how they are reflected resp. influenced by the rules of the various jurisdictions and what the consequences are for us, the legal advisors.

A. Interest of equity holders

1. Start-up phase

In the start-up phase, an entrepreneur or third parties may wish to invest in a business idea as equity holders in a business association. In this context:

1.1 In your opinion, what is an entrepreneur's typical reasoning for setting up a specific business association? Attract investments by third parties? Avoidance of personal liability? Tax reasons? Protect IP rights and technology?

Entrepreneurs typically set up a business association to make it easier for third parties to invest in an enterprise. A business association allows for preferred share classes with voting, dividend and liquidation preferences. Also, a business association facilitates the transferability of equity shares as well as an exit. Business associations are also set up to avoid personal liability. From a tax point of view business associations are not particularly interesting as both revenues of the business association and dividends become taxable and tax laws do not necessarily compensate for the double taxation.

1.2 What kind of business association structures does your jurisdiction offer to equity holders (e.g., partnerships, corporation, LLC, etc.)?

The most relevant structures in Switzerland are the limited liability company, LLC (*Gesellschaft mit beschränkter Haftung, société à responsabilité limitée*) and the stock corporation (*Aktiengesellschaft, société anonyme*).

- ***What are the most crucial differences between these business association structures from an equity holder's perspective?***

The LLC requires a minimum capital of CHF 20,000 (fully paid in) only, whereas the minimal capital of a stock corporation is CHF 100,000 of which 20 per cent (but at least CHF 50,000) must be paid in. In a LLC, the name, place of residence and place of origin of each equity holder as well as the amount of its shareholdings are publicly disclosed, including any changes in these details. As a general rule, these details need not be disclosed in a stock corporation. In contrast to the stock corporation, in a LLC, the articles of association may require the shareholders to make supplementary contributions.

- ***If statistics on the use of business association structures are available in your jurisdiction: which are the most commonly used business association structures for start-ups? Do you see a particular reason for the dominance of one specific structure?***

For many years, the stock corporation was the most used structure for start-ups. Following a revision of the LLC law, the LLC has become a more flexible structure and, today, it is by far the most chosen structure. In 2014, 15,541 LLCs and only 9,500 to 10,000 stock corporations were newly registered.

Whereas the stock corporation is the most versatile business association and suitable for virtually all types of commercial companies, the LLC is mainly used for small, individual-centered businesses and, thus, suitable for the typical start-up company.

- ***In case of a corporation or LLC (in the following we simply refer to the "company"): are there any equity instruments other than common shares that are typically used for equity investments? Non-voting shares? Other forms of participation rights?***

Both, the LLC and the stock corporation know preference shares (i.e., with regard to voting rights, dividends, liquidation rights). In addition, the stock corporation knows the participating certificate (*Partizipationsschein, bon de participation*) and the profit participating certificate (*Genusschein, bon de jouissance*), to both of which no voting rights are attached.

- ***Can equity investors remain anonymous (for example by the use of bearer shares)? Anonymous towards the company, other investors, the public? In the event equity investors cannot remain anonymous when holding shares, is there any alternative scheme that can be implemented to participate on an anonymous basis (for example, silent partnership schemes)?***

In an LLC, it is not possible for an equity investor to remain anonymous (cf. above under 1.2, first bullet point). In principle, in a stock corporation, an equity investor remains anonymous towards the public and other investors, regardless of whether he holds bearer or registered shares. Towards the company, holders of registered shares may only remain anonymous as long as they are not registered in the share ledger of the company. However, for being able to vote in the general assembly, a shareholder needs to be registered in the share ledger. Holders of bearer shares may remain anonymous towards the company. An alternative for an investor to remain anonymous are shares held through a fiduciary. Note: Special disclosure requirements apply for listed companies.

1.3 Once the entrepreneur has set up a company: what could be a typical focus of third party equity investors when they invest in a company in this phase?

- ***What could typically be the friends', family's and fools' ("FFF") focus? Helping the entrepreneur to get his / her business going?***

Typically, the focus of such investors would be the support of the entrepreneur's venture and, sometimes, the hope for a (substantial) profit on their investment.

- ***What could typically be the professional investor's focus?***

The professional investor would typically focus on how he can exercise his influence or even control over the company as well as on protecting his investment (and influence) in later financing rounds or in the case of a liquidation of the company.

- ***If there is a difference in focus among the various equity investors, how is this typically reflected in the legal relationship (be it corporate or contract law)? Are there legal instruments that are only used by certain investors (e.g., only by professional investors)?***

In a LLC, these differences would be reflected in the articles of association, in a stock corporation mainly in a shareholders' agreement and to a lesser extent in the capital structure (e.g. by preference shares). In both cases (LLC and stock corporation), certain industry investors may also secure particular rights on the business idea/product, e.g. with licensing or distribution agreements.

2. Growth phase

In the start-up phase a business idea comes into existence: the idea is put into a business plan, a company is set up, first steps relating to production, service, distribution, sales etc. are made. The growth phase allows potential new investors to better assess not only the viability of business idea, but also the commitment of the people involved. In this phase, the new investors are usually not FFF, but professional investors. As a result, the FFF who invested in the start-up phase are faced with more demanding and skilled potential new co-investors. Against this background:

2.1 *In your opinion, does the focus of the equity holders (e.g., the FFF or professional investors) shift in the growth phase (as compared to the start-up phase)?*

- ***If so, what could be a particular focus for equity holders in the growth phase? Protection from dilution?***

The focus of the professional investors now moves from protecting the assets to making the company profitable. Insofar, the focus of the FFF approximates the focus of the professional investors. Investors willing to invest further also focus on protecting themselves from dilution. With the increasing influence of the professional investors, FFF need to focus on the protection of their interest (against the professional investors).

- ***In your experience, do the equity investors from the start-up phase participate in further capital rounds in the growth phase? Do they usually accept dilution? Do they usually cash out at this point in time?***

Typically, some professional investors would participate in further capital rounds and others not, in the latter case accepting a dilution. FFF would usually not invest anymore in this phase, accepting the dilution. Investors cashing out in this phase are rarely seen.

2.2 *In your jurisdiction, does the company law provide existing equity holders protection from being diluted in further financing rounds in the growth phase? If so, how are they protected? Is there a need for equity holders to seek protection on a contractual basis?*

Swiss law provides for the right of each shareholder to proportionally participate in a capital increase (article 652b of the Swiss Code of Obligations, CO). However, the subscription rights may be cancelled (withdrawn), which requires a good cause and a two thirds majority of the votes and a majority of the share capital in the general assembly. Hence, depending on the size of an investor's stake, an investor is well advised to protect itself with an agreement among shareholders.

2.3 *When new potential investors offer to come on board during the growth phase, the existing equity holders may be reluctant to provide the information required to satisfy the potential new investor's need for valuation. The reason for the existing shareholders' reluctance may be, for example, that the required information contains (still) unprotected intellectual concepts, knowledge or ideas. In your experience, which legal instruments are used to find a balance between the potential new investor's*

need for information and the existing equity holders' wish to keep such information confidential? Do existing equity holders have legal means to prevent management from disclosing such information?

Typically, potential investors are only granted access to sensitive information if they sign a strict confidentiality undertaking preventing them from disclosing or utilizing the information. The most sensitive information usually is not disclosed to investors. Based on the statutory duty of loyalty and prudence, the management is required to protect the interests of the company and must not disclose confidential information if this could harm the company. Further, the management is often requested to sign confidentiality agreements with the company enjoining it from disclosing unprotected intellectual concepts, knowledge or ideas. If the management discloses such information, the shareholders could replace the members of the board of directors who again could replace the members of the management acting against the interests of the investors.

3. Maturity

During the various capital rounds in the growth phase, the circle of equity investors in a company typically becomes larger and the atmosphere may become less familiar. Also, in the maturity phase the management of the company may become more professional in the sense that there is a management in place which is not, or not significantly, invested in the company (i.e., intensification of the principal-agent-conflict). As a consequence, legal concepts that govern the relationship between equity holders (such as fiduciary duties of majority equity holders) as well as legal concepts that govern the relationship between management and equity holders (such as fiduciary duties of the board members / management, duty of loyalty, principle of equal treatment) may become more important. In other words, corporate governance may become more important. Against this background:

3.1 In your opinion, how does the equity holder base change between the start-up phase, the growth phase and the maturity phase? How does the focus of the equity holders change? Focus on fair distributions of earnings?

A growing company usually sees FFFs slowly but surely take a back seat leaving the floor to professional investors. Founders may still be involved but, typically, professional investors would have an important say in the company. While the fight for survival shaped the start-up face, it is growth in the growth face. In the maturity phase, investors focus on value and expect the company to provide them with steady returns.

3.2 *In your jurisdiction, does the law provide for stricter corporate governance rules for large (privately-held) companies as compared to small companies? If so, what exactly triggers the application of the stricter corporate governance rules? In which sense are the corporate governance rules different / stricter?*

In general, large (privately held) companies are not subject to other corporate governance rules than small companies. The trigger for different rules is generally the listing of shares or notes. Listed companies are subject to a variety of additional rules and regulation (reporting obligations, takeover rules). Also, the economiesuisse as the Swiss Business Federation from all sectors of the economy has authored the Swiss Code of Best Practice for Corporate Governance which serves as guideline for listed companies but is followed by some privately held companies too.

Both, LLC and stock corporations need not undergo a full audit but require a review of their books only as long as, for two consecutive financial years, they do not exceed two of the following figures: (i) balance sheet of CHF 20m, (ii) sales revenue of CHF 40m and (iii) 250 full-time positions on an annual average basis (article 727 para. 1 ciph. 2).

A company may even fully abstain from any review of its books if it does not employ more than ten full time equivalents on an annual average basis (article 727a para. 2 CO).

3.3 *In your jurisdiction, do (certain) equity holders (e.g., majority shareholders) have obligations towards (certain) other shareholders or the company (e.g., duty of loyalty)? Please explain such obligations.*

In the stock corporation, equity holders do not have any obligations towards each other or the company whatsoever. Hence, minority shareholders should make sure to protect their rights based on a shareholders' agreement.
On the other hand, shareholders of a LLC are subject to fiduciary duties (article 803 para. 1 CO). In particular, they have to preserve the company's interest and must not disclose business secrets (article 803 para. 2 CO). Further, the articles of association may provide for non-competition clauses for selected or all shareholders (article 803 para. 2 CO). The articles may also establish a reserve liability for shareholders (article 795 CO). Beyond that, the articles may provide for additional ancillary obligations of the shareholders.

3.4 *Does the company have any means to control the circle of its equity holders (i.e., can the articles of incorporation prevent competitors from holding*

shares in the company?) or have such restrictions to be agreed among the other equity holders (e.g., shareholders' agreement)?

Non-listed stock corporations may provide for transfer restrictions in their articles of association (article 685a CO). Transfers may only be restricted for cause. Restrictions with regard to the shareholder structure qualify as such cause if they are established in view of the purpose of the company or its economic autonomy (article 685b para. 2 CO). Listed companies may only provide for vary limited transfer restrictions in their articles. The articles may provide for a percentage limitation above which the registration of the shares in the share register requires the acceptance by the company. Further, the company may refuse entry in the share register where at the company's request the acquirer fails to declare expressly that he has acquired the shares in his own name and for his own account articles 685d para. 2 and 3 CO). In a LLC, the transfer of shares requires the consent of the shareholders' meeting, unless the articles of association provide for a deviating rule (article 786 CO).

4. IPO / Listed phase

Following the IPO, a company enters into a new phase of being listed. The listing has potentially a great influence on the equity holder: the sale of their interest becomes easier. Against this background:

4.1 How does the focus of the shareholders change through the going public as compared to the maturity phase? Does the fact that a shareholder may at any time sell the residual value in its share (ideally) at a fair price in your opinion soften the focus on distribution of earnings? Does the focus shift from long term to short term?

In the listed phase, the shareholders' focus is almost exclusively on a good return of investment. A company may satisfy this expectation by regularly distributing dividends or by pursuing a growth strategy. For many years, shareholders of Swiss companies preferred growth companies, mainly because capital gains are tax free for individuals. In recent years, more and more shareholders have been looking for steady cash distributions. Still, in general, shareholders of listed companies tend to be more short term focused than those of not listed companies.

4.2 In your jurisdiction, are there publicly available records on the identity of (certain of) the shareholders in a listed company? If so, does this in your opinion influence the shareholders' focus?

Important shareholders are required to disclose their holdings. Whoever directly or indirectly or acting in concert with third parties acquires or sells for its own account shares or purchase or sale rights relating to shares in a company domiciled in Switzerland which is fully or partially listed in Switzerland, or a company not domiciled in Switzerland with a full or partial primary listing in Switzerland, and thereby attains, falls below or exceeds the threshold percentages of 3, 5, 10, 15, 20, 25, 33⅓, 50 or 66⅔ of voting rights is required to notify the company and the stock exchanges on which the equity securities in question are listed (article 20 para. 1 of the Federal Act on Stock Exchanges and Securities Trading, SESTA). The disclosed holdings are publicly accessible on the web pages of the Swiss stock exchanges.

Further, all Swiss companies listed on a stock exchange must specify the important shareholders (i.e., shareholders who own more than 5 per cent of all voting rights) and their shareholdings in the notes to the balance sheet, where these are known or ought to be known (article 663c OR).

These disclosures allow investors to understand the shareholder structure and may influence their decision to invest in or divest the shares of a company. Companies with an owner family or other large shareholders may be interesting for shareholders with a long term focus. Companies with a more diverse shareholder base (and high liquidity of the shares) may be more interesting for short term focused investors.

4.3 An efficient allocation of resources requires a most accurate pricing of the shares.

- ***In this regard, are companies that are listed in your jurisdiction under an obligation to publish price-relevant information (ad hoc publicity)? If so, please provide a short overview of the respective rules including the exemptions from such obligation.***

Yes. The listing rules of the Swiss Stock Exchange SIX (LR, www.six-exchange-regulation.com/admission_manual/03_01-LR_en.pdf) provide that a listed company must inform the market of any price-sensitive facts which have arisen in its sphere of activity. Price-sensitive facts are facts which are capable of triggering a significant change in market prices. The issuer must provide notification as soon as it becomes aware of the main points of the price-sensitive fact. Disclosure must be made so as to ensure the equal treatment of all market participants (article 53 LR).

The issuer may postpone the disclosure of a price-sensitive fact, if (i) the fact is based on a plan or decision from the issuer and (ii) its dissemination might prejudice the legitimate interests of the issuer. The issuer must ensure that the price-relevant fact remains confidential for the entire time that disclosure is postponed. In the event of a leak, the market must be informed about the fact immediately, in accordance with the rules on disclosing price-sensitive information (article 54 LR).

- ***It can be assumed that no jurisdiction requires listed companies to publish all price sensitive information. If this is correct in your jurisdiction, how does the law protect the market and its participants (including, the equity holders in the company) from market abuse? Are there insider trading and market manipulation prohibitions? If so, please provide a short overview and, if you can, provide certain peculiarities about them?***

Swiss law penalizes the abuse of insider information. In the past, the *insider rules* were not very effective, in particular because they only penalized the abuse of a limited range of information. In 2013, new legislation was enacted, pursuant to which any person with legitimate access to insider information may be punished with imprisonment of up to three years (up to five years in case of gains of more than one million Swiss francs due to the market abuse) or a fine if he (i) exploits insider information to acquire or sell securities admitted to trading on a stock, (ii) discloses it to another, (iii) exploits it to recommend to another person to acquire or sell securities admitted to trading on a stock exchange (article 40 SESTA). It remains to be seen whether the new legislation proves more effective. To date, only very few investigations have resulted in criminal sanctions.

Also, insiders must refrain from market manipulation (article 40a SESTA). Market manipulation may be penalized with imprisonment of up to three years (up to five years in case of gains of more than one million Swiss francs due to the market abuse) or a fine.

5. Acquisition

In its life cycle, the company may itself become the object of an acquisition and integration into the acquirer's structure. At this point the life cycle of the company ends. For the purpose of the remainder of this questionnaire, we assume the acquirer proceeds via a public tender offer. Against this background:

5.1 In case a listed company (target) is approached by another company (bidder), the board of the target will have to decide whether it supports the offer (friendly offer) or not (unfriendly offer). What are the interests that the board of directors needs to take into consideration for this decision? Shareholders' interests only (e.g., offer price only)? The interests of other stakeholders (employees, community etc.)?

When evaluating a tender offer the board of the target has to find its guidance in the requirement to act in the *interest of the company*. What the company's interest in this context exactly is, is subject of controversies. Certain scholars, who follow the shareholder value concept, give priority to the sustainable increase of the company value. Others place special emphasis not only on the company value but also on the interests of other stakeholders, such as employees, the community or the political economics. In any event, the members of the board must not take into account personal interest or particular interests at least as long as they are not in line with the company's interest.

5.2 In case of an acquisition of the listed company (target) by another company (bidder), the shareholders' are at a disadvantage as they cannot communicate efficiently or act in concert (for example, regarding the rejection of a low offer). A rational bidder should try to use this disadvantage of the shareholders to his benefit. In your jurisdiction, how does the law protect shareholders of the target in case of public tender offers? (for example, is there a specific process for public takeover offers which provides protection? Does the bidder need to treat target shareholders equally? Are there, for example, minimum price rules and/or best price rules?)

To protect shareholders in a takeover process, Swiss law provides for a process for the bidder (and the target company) to follow as well as certain minority rights which apply in the event of a takeover offer. As a general principle, the law explicitly requires the bidder to treat all shareholders of the same share class of a target company equally (article 24 para. 2 SESTA).

Takeover offers which lead to a change in control, are considered mandatory offers. Mandatory offers are triggered if a shareholder's (direct or indirect) stake exceeds the threshold of 33 1/3 percent of the voting rights of a target company whether or not such rights may be exercisable (article 32 para. 1 SESTA). If a mandatory offer is triggered, the bidder has to make an offer for all listed shares of the company. Further, he has to observe the minimum price rule. Pursuant to this rule, the price offered has to be at least as high as the higher of the following two amounts: (i) the stock exchange price and (ii) the highest price that the bidder paid for shares of the target company in the twelve months preceding the takeover offer (article 32 para. 4 SESTA). The best price rule, which applies to mandatory as well as voluntary offers, provides that if the bidder acquires shares of the target company in the period starting from the publication of the offer until six months after the additional acceptance period at a price that exceeds the price offered to the shareholders, it must offer this price to all recipients of the offer (article 10 para. 1 of the Ordinance of the Takeover Board on Public Takeover Offers, TOO). Further, during the offer period of a mandatory offer, the bidder is required, starting from the publication of the offer, until the expiry of the offer period, to disclose any acquisition or sale of equity securities of such company (article 31 para. 1 SESTA).

Overall, the takeover provisions provide for an effective protection of the minority shareholders. However, companies (or majority shareholders, respectively) may take advantage from an opting-up (mandatory offer triggered at 49 per cent only: article 32 para. 1 SESTA) or even an opting-out (prior to or following the listing: article 22 para. 2 and 3 SESTA). This possibility is often considered a weakness of the Swiss takeover rules as it allows shareholders who control a company to sell their stake to a third party at a premium, whereas the minority shareholders have no rights to get any such premium. The recent takeover of the controlling stake (of 52 per cent of the votes, 16 per cent of the capital) of Sika from the owner family by Saint-Gobain intensified criticism on these exemptions.

The compliance with the takeover rules is monitored by the Swiss takeover board, a governmental agency appointed by the Financial Markets Authority (FINMA) (article 23 para. 1 SESTA).

5.3 As mentioned above, a listing provides (ideally) liquidity for the company's shares and ensures a high level of information for a potential new investor. In fact, equity investors may invest in listed companies exactly for these reasons. In your jurisdiction, how is an equity investor protected from a delisting? Does the delisting require (qualified) shareholder consent? What are the deadlines for the delisting? Do issuers need to provide for an off-exchange trading for a certain period following delisting?

The decision to delist the shares of a company lies exclusively with the board of directors, and shareholders have no legal remedy against this decision.

An issuer must submit the delisting application to the Regulatory Board of SIX Swiss Exchange 20 trading days prior to the announcement of the delisting, together with a duly signed statement of the issuer that its responsible bodies agree to the delisting, as well as other documents (article 3 para. 3 of the Directive on Delisting of Equity Securities, Derivatives and Exchange Traded Products, Delisting Directive).

The Regulatory Board may decide on the point in time of the delisting announcement as well as on the last trading day. In its decision, it has to take into consideration the protection of investors, fair and orderly trading, the legal environment and the interests of the applicant (article 4 para. 1 Delisting Directive). In principle, the period between the delisting announcement and the last day of trading may be no less than three and no more than 12 months. However, when setting this period the Regulatory Board has to take a variety of criteria (such as timing, free float per category of security, liquidity, trading volume, approval from the general meeting, if applicable (incl. the necessary decision making quora and the result of the vote)) and other circumstances into account (article 4 para. 2 Delisting Directive). In specific cases, such as subsequent to a takeover offer in which the intention of delisting had already been announced in the takeover notice, the Regulatory Board may shorten the continued listing period to as little as five trading days (article 4 para. 3 Delisting Directive). Shareholders may proceed against the Regulatory Board's decision by lodging an appeal with the independent Appeal Board of the SIX Swiss Exchange (article 9 para. 1 SESTA).

An off-exchange trading period following delisting is not required.

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B. Interest of debt holders

1. Start-up phase

In the start-up phase, the entrepreneur may ask the so called "FFF" (friends, family and fools) for a loan. In other words the entrepreneur asks them to invest in a business idea as debt holders. In this context:

1.1 In your experience, what could be the typical focus of the FFF in this phase? Helping the entrepreneur to get his / her business going? How is this focus reflected in the legal relationship? For example, will such debt holders be likely to refrain from asking for security? Is the agreed interest rate likely to correctly reflect the risks for the debt investor?

Generally speaking, in the start-up phase, friends and family members are usually more willing to "invest" or help than professional investors and less likely to scrutinize every detail in a business plan or to demand a high return on their investment – all due to personal relationships. However, raising money from friends and family might create personal and emotional issues. Because friends/family investments are usually made in a very informal way, misunderstandings might occur about precisely what the friend or family member expects in return. Yet, as pure debt holders (with no equity link) are meant to have at least contractual repayment and interest payment rights, their risk appetite is different from equity investors. When seeking money from friends and family, it is important to be as disciplined in terms of documentation as one would be in dealing with a professional investor. Whether or not security rights are granted depends on the debt amount and of course on the availability of securities (which one should not take for granted in the start-up phase). FFFs tend to provide loans without contractual securities. Occasionally you see personal guarantees provided by the founders to selected FFFs.

1.2 In your experience, is it common for professional investors to act as debt holders in this phase? If so, how is the different focus of professional investors typically reflected in the legal relationship? What are the legal instruments commonly used in your jurisdiction to protect their interests? For example, is it common for the professional investors to request a personal security by the entrepreneur in case the company does not yet have (a lot of) assets to secure a loan?

Professional investors rarely act as debt holders in the start-up phase. Exceptions apply, however, for instance in the life science industry where start-ups typically need to raise large sums already at the initial phase and where key assets (e.g. patents by the founders) are available as securities. In most other cases, with the banking business being heavily regulated and where no securities or positive cash in the short term is available, there is only limited room for negations. Bank and commercial loans are more often seen in the consolidation phase. There are start-up funds provided by cantonal banks and by banks with a specific focus, and they may grant loan amounts, in particular if covered by personal securities.

2. Growth phase

2.1 In your experience, who provides debt in this phase and what could typically be their focus (e.g., high return on investment)?

- ***Are the debt holders and their focus in the growth phase typically different from the ones in the start-up phase? Is it now mostly professional investors (and no FFF)?***
- ***If there is a difference, how could this be reflected in the contractual relationship? For example, do the interest rates or the security for the debt change?***

In the growth phase, and assuming at least a positive outlook as to the company's business and strategy, it gets easier to tap the debt market, be it from FFFs who become more interested in the venture or from professional investors recognizing the company's promising development. This holds true even if the company has a high cash burn rate (which is often the case). At this stage, equity linked debt instruments (e.g. convertible loans) could also be a way of getting existing or new investors (including FFFs) on board as debt holders. Furthermore, companies in the growth phase may become owners of valuable assets (e.g. from its business development, R&D), an aspect which generally facilitates the granting of loans. Interest rates depend on the default risk, which usually remains an issue with a company in the growth phase absent any significant equity allowing for loss absorption. In short: It becomes easier and possibly even cheaper to obtain loans, as long as there are promising signs on the company's horizon.

2.2 What kind of security is commonly request by debt holders in this phase? For example, rather collateral (pledge, etc.) or personal guarantees by the entrepreneur? What is the reason for the preference of a specific kind of security?

Debt holders commonly request personal guarantees from entrepreneurs (or their family members). While these personal guarantees may prove insufficient in case of a default due to limited funds available to the guarantor, those personal guarantees nevertheless increase the pressure on the entrepreneurs to stick to what they "promised" (formally or informally). Collaterals can be an interesting option if liquid (which is rarely the case) or at least backed up with a reasonable market valuation. The problem with premature granting of collaterals that constitute important business assets (e.g. patents) is that any such disposition significantly limits the company's flexibility. This may become crucial at a later stage where, for instance, the company must raise significant funds to avoid bankruptcy or to finance M&A or other strategic steps.

2.3 During the growth phase, the burn rate of the company may be quite high and the company may continuously be at the verge of over-indebtedness. Will investors usually be willing to subordinate their debt? Usually only the entrepreneur / FFF from the start-up phase or also professional investors?

Whether or not subordination should be granted at the verge of the company's over-indebtedness (or earlier) is a question tied to a classic dilemma: Subordination weakens and strengthens a debt holder's position at the same time. It is a dilemma in which FFFs tend to give in without any arm twisting, while professional investors often give in too, but only after having been faced with the perceived threat of effectively risking the loan amount.

2.4 Investors providing debt in this phase may wish to keep the possibility to participate in the potential valuation upside. How could this wish be accommodated in your jurisdiction? For example, are profit-participating loans or convertible loans commonly used instruments?

The investors' wish to participate in the potential valuation upside is usually accommodated by equity linked instruments such as convertible loans or mezzanine financing means. Equity linked instruments have become frequent; the documentation under Swiss law is quite standard. The mechanics are tried and tested, which of course is an aspect that generally increases confidence for investors interested in such instruments. Robust documentation is required though.

3. Maturity

After having reached maturity, the structure of debt holders may change fundamentally. Against this background:

3.1 In your jurisdiction, who is usually the debt holder in the maturity phase (e.g., banks)?

- ***Are the debt holders and their focus in the maturity phase typically different from the ones in the start-up or growth phase?***
- ***If there is a difference, how may this be reflected in the contractual relationship?***

In the maturity phase, you see both FFFs and professional investors as debt holders, although fewer FFFs enter the landscape only at this stage. As the level of experience and professionalism at the company increases, it often becomes easier to convince professional investors to grant loans at reasonable terms, in particular if the company's financials are sound. Compared to fund raising efforts at the start-up phase, debt holders are still faced with risks, but given the nature of the contractual relationship, the underlying concerns (default risk) tend to decrease, assuming sound financials.

3.2 Before providing debt to a company, the potential debt holder may require information about the company's financial status to assess the default risk. What financial information is publicly available for potential new investors who wish to invest in a privately-held company? Are financial statements available from public registers? Excerpt from the debt enforcement register? Tax returns? Do companies have means to influence the amount of publicly available financial information?

In Switzerland, publicly available information about a privately held company's financial status is very limited. Investors may ask for an excerpt of the debt enforcement register, but there is no publicly available information on the financials of the company. Access to financials is obtained through due diligence at the beginning and later through contractual information rights.

3.3 In your jurisdiction, is it common for privately-held companies to issue notes? Could you provide a short overview of the requirements and the

procedure relating to the issuance of notes? Is the focus of note-holders any different from other debt holders?

In Switzerland, it is not common for privately-held companies to (publicly) issue notes, especially not with young companies. A company issuing notes must prepare a prospectus under mandatory Swiss law, containing certain key information (information about the company such as share capital and its corporate governance; latest financials and audit report; dividend payment during the last five years; corporate resolution of the issuance of the notes; terms of the notes; description of securities granted). The public issuance of notes is often accompanied by an investment bank using its investor network and it takes one to three months. If listed, additional requirements apply.

4. IPO / Listed

4.1 Once a company is listed, the debt holders have a considerably higher level of information regarding the company's financial situation. One could expect that this reduces the risk for the debt holder. Thus, in your jurisdiction, do listed companies usually have to pay lower interests?

Listed companies usually have to pay lower interests for various reasons (professionalism, better access to liquid securities; reduced default risk supported by statistics, level of disclosure, tested business relationship with relationship bank etc.), unless the financial situation creates undue risks for the investor. The level of disclosure and transparency as to the *financial situation* may however be equal for private companies where the lender has been granted the respective information rights.

4.2 In your jurisdiction, is it possible to list notes? Could you provide a short overview of the requirements and the procedure relating to the listing of notes? In your opinion, is the focus of holders of listed notes any different from the focus of other debt holders?

In Switzerland, it is possible to list notes. The following list provides an overview of the most important regulations and publications associated with a listing of bonds at the SIX Swiss Exchange:

- Listing Rules (LR);
- Scheme E for bonds;
- Additional Rules for the Listing of Bonds;

- Directive on the Procedures for Debt Securities;
- Circular No. 1: Reporting Obligations Regarding the Maintenance of Listing;
- Various relevant publications;
- Directive on Recognition as Competent Issuers and Representatives.

For an overview of the procedure, please refer to http://www.six-swiss-exchange.com/issuers/bonds/procedures_en.html.

Additional rules and regulations are accessible under the same rubrics on the Website of SIX Exchange Regulation.

5. Acquisition

5.1 In your jurisdiction, what is commonly the effect of a public tender offer on listed notes? Do they have to be redeemed? Can holders of listed notes interfere in the process of a public tender offer? If so, by which means?

It depends on the term of the notes, although the use of "event of default"-clauses and termination rights are very limited and, if provided, often require material consequences of the target's ability to fulfill its obligations under the terms of the notes. Legal means to effectively interfere in the tender offer process is very limited for note holders. If the target company (the lender) was in breach of the terms of the note, while note holders may try to seek court injunctions, the Swiss takeover law does not grant any legal means. At the same time, Swiss takeover law restricts a target's ability to implement poison pills.

5.2 In your jurisdiction, what is the typical influence of a public tender offer on existing credit facilities?

It depends on the term of the facilities. You see termination rights (i.e. early repayment) and effects on existing securities in case of a change of control.

C. Interest of management / employees

1. Start-up phase

In the start-up phase, it is essential that the key management is committed towards the development of the business idea or project. In this context:

1.1 Which are the most commonly used means to ensure that the management / key employees will not leave the company until the company reaches the growth or maturity phase? Are warrants or similar incentives granted during this stage?

Typically, the founders would keep significant stakes in the company, which incentivizes them to stay with the company. The founders often incentivize other key employees by ceding them some of their shares or by offering them a stock option plan.

1.2 It is likely that at this stage, there are not sufficient funds for remuneration of management / key employees. Is it common to grant warrant or stock incentive schemes in your jurisdiction? Is there any other scheme to liaise with this issue?

Stock incentive schemes are often seen at this stage. Other schemes are not common.

2. Growth phase

The management plays a crucial part in order that a company achieves going from a start-up phase to a growth phase and tend to assume considerable risks by devoting to such project. Therefore, it would seem reasonable to protect the management in further financing rounds during the growth phase.

2.1 In case new investors come on board in the growth phase and such investors request replacement of the current management: in such replacement, does the current management usually lose rights granted under an incentive plan? How broad are "bad leaver" provisions usually formulated?

The current management is usually protected against replacement by clauses which make them good leavers in case of a termination of their employment contract by the company. Managers leaving the company voluntarily usually qualify as bad leavers. Insofar, bad leaver clauses are broad.

2.2 Upon implementation of an incentive plan, the rights related to the shares that the management will be entitled to receive are usually subject to vesting. Is there any specific vesting period that is applied in your jurisdiction or is the vesting period usually linked to a liquidation event (such as an IPO)?

Vesting periods may vary from company to company. Typically, vesting periods would be between two and five years. In most cases, liquidation events (IPO, trade sale) trigger an acceleration.

2.3 In certain jurisdictions the management may fall out of labor relationship since it is developing executive duties for the company and/or may hold certain stock of the company (it might fall in a special labor relationship or corporate relationship). Is this the case in your jurisdiction? If so, is the loss of labor rights compensated by special laws or by contractual means?

In principle, the labor relationship is the same for managers as for other employees of a company, regardless of whether they hold shares in the company or stock options related thereto. However, certain labor protection rights do not apply for managers such as the compulsory overtime compensation rules.

3. Maturity

After having reached maturity, the business activity and the relationship between the shareholders and the management / key employees tend to become more complex (in particular, intensification of the principal-agent-conflict). The increasing complexity triggers certain hindrances or deterrents for the ongoing activity of the company. In this context:

3.1 In your jurisdiction, do the various corporate bodies (e.g., board of directors, directors, management) have

- ***an obligation to "act in the best interest of the company"? If so, how is the "interest of the company" defined? Is it the interest of all stakeholders (including the interests of all equity holders (e.g., holder of non-voting shares), debt holders, management, employees and public) or just the shareholders? Are only long term interests taken into account or also short term interests?***

Yes. While it is undoubted that directors and managers have to act in the company's best interest, it is strongly debated what exactly the company interest is (cf. above under A., 5.1). An important guideline to define the company interest, is the purpose of the company and so are the interests of the equity holders and other stakeholders of the company. Following the company interest should be sustainable for the company. Hence, the company's interest is a long and not a short term interest.

- ***"fiduciary duties" or a duty to treat equity holders equally? How are these defined?***

Both, directors and managers have fiduciary duties. They are subject to the duty of care, the duty of loyalty and the duty of equal treatment. Pursuant to the duty of care, directors and managers have to perform their duties with utmost care whereby an objectified standard of care applies. This means that directors and managers have to apply the duty of care, which can be expected from a properly acting person in a comparable situation. The duty of loyalty requires the directors and managers to orient themselves to the company interest.

Pursuant to long-standing case law, the principle of equal treatment means that equal facts or issues have to be treated equally and unequal facts or issues unequally. Unequal treatment is regarded justified if it is necessary in the interest of the company.

3.2 In your jurisdiction, how are conflicts of interest addressed by the law? Are the rules on conflicts of interests for listed companies applied to non-listed companies? Have the rules on conflicts of interests become more rigid in recent years?

Switzerland has seen increasing legislation in recent years aiming at alleviating the principal-agent problem. For example, in 2014, the Ordinance against Excessive Compensation was enacted, which provides more power to the shareholders. Among other things the shareholders have to vote on the compensation of the company's directors and managers ("say on pay"). Also, several tightened disclosure requirements have been put in place and the insider trading rules have been broadened significantly.

3.3 *In your jurisdiction, is it common to put in place incentive plans for key management and employees or are they only entitled to receive a cash bonus (usually based on individual and overall performance)? Do incentive plans provide tax advantage for the company?*

Typically, listed companies have incentive plans in place, especially for the middle and higher management but also pay cash bonuses. Often, members of lower management and, not rarely, senior employees receive cash bonuses which depend on the achievement of individual goals, goals of their team and the overall performance of the company. In mature privately held companies, incentive plans are rather scarcely seen.

There are no particular tax advantages of incentive plans for a company compared to cash bonuses.

4. IPO/ Listed phase

Reaching an IPO is often the pinnacle of private companies which have reached certain growth and have an attractive equity interest. Obviously, the management and employees play a significant role in the IPO / listing process. In this context:

4.1 *It is our understanding that when a company goes from a private to a public setting it implies considerable changes for management and employees. In your experience and within this framework, what is the most significant change for management and employees? Does going public usually increase the total amount of the compensation and/or does it usually change the structure of the compensation (cash, shares, warrants, etc.)?*

The directors and the management of a listed company are subject to the Ordinance against Excessive Compensation, which stipulates, *inter alia*, the publishing of the total compensation of the top management of a company and a description of the compensation scheme in a compensation report and the voting of the shareholders on the compensation package for the directors and the top management.

Managers of listed companies tend to receive higher compensations than those of privately held companies. Hence, a listing seems to lead to an increase of the compensation of managers. Typically, listed companies compensate their managers and, in some cases, also their employees with shares or stock options. The sale of these shares is strictly regulated and the sale of these shares and warrants is only possible in limited periods to prevent insider trading.

Apart from that, the directors and the management are required to report any transaction (acquisition, disposal and grant (writing) of rights) in the company's shares, other equity rights financial instruments related thereto (for further details, cf. Directive on Disclosure of Management Transactions of the SIX Swiss Exchange).

4.2 *Following the IPO the management is constantly assessed by the performance of the share price. Also the management's pay may to large extent depend on the share price performance. One could expect that management may abstain from taking any steps that are likely to weaken the share price – even if such steps are beneficial to the company in long term. In your jurisdiction, are there any measures that are commonly taken to address this conflict (i.e., incentives for long term strategies)? Is, for example, by law or by agreement a part of the pay paid in mid- to long term options?*

Several companies have long term incentive plans in place. Stock option plans typically provide for vesting periods of at least three years. Stock incentive schemes often provide for the grant of shares only after the lapse of a certain time (usually three years or more) or lock-up periods for the granted shares. However, there are no legal requirements to mitigate this conflict of interest.

4.3 *Is the management and/or employees bound by a mandatory lock up period upon the IPO? In the event the lock up period is not mandatory, please explain the common standards in your jurisdiction towards implementing a lock up period.*

No, there is no mandatory lock-up period. Nonetheless, it is common to put lock-up periods for management and/or employees in place as this can convey the image of a sound corporation with a high potential for further growth. Lock-up obligations are typically agreed with the syndicate banks for a term of 180 to 360 days. The lock-up obligations, including their term are to be included in the listing prospectus. Lock-up arrangement have the effect that the respective managers / employees become subject to public disclosure rules as a group, requiring the group to disclose the aggregate shareholdings held (if reaching or exceeding in total 3%).

5. Acquisition

In the scenario of the acquisition, it is frequent that the management is essential towards the subsequent development of the company. In this context:

5.1 The focus of the board of directors of a listed company may be set to a large extent on the share price performance. Usually, this should be in line with the corporate interest. However, in case a listed company is being approached by a potential bidder, the board of directors and the management of the potential target may face a conflict of interest: an acquisition that may be beneficial to the shareholders of the potential target, may at the same time require replacement or adjustment of the target's board of directors and management. In your jurisdiction, how is this conflict of interest addressed? For example, are there limits to the defense measures that the board of directors of the target may take?

The board of directors has the fiduciary duty to protect the interest of the company. If it is in the interest of the company to take defensive measures against a takeover offer, the board may do so. But the range of defensive measures is limited:

From the moment a takeover offer is published until the result is announced, the board of directors of the target company is not allowed to enter into any legal transactions which would have the effect of altering significantly the assets or liabilities of the company (article 29 para. 2 SESTA). In particular, the following defensive measures are unlawful if taken without a resolution of the general meeting (article 36 para. 2 TOO):

- Sale or acquisition of assets the value or price of which exceeds 10 percent of the balance sheet total, or that contribute more than 10 percent to the earning power of the company;
- Sale or pledge of any parts of the business or its intangible assets that form part of the main subject matter of the offer and have been specified as such by the bidder;
- Entering into contracts with members of the board of directors or management board that provide for unusually high remuneration payments in the event of their leaving the company;
- Issuance of shares on the basis of the authorised capital without granting subscription rights to the shareholders, unless the resolution of the general meeting establishing the authorised capital expressly provides for the issue of shares in the event of an offer. The foregoing also applies to the issue of bonds

with conversion or option rights based on conditional capital with no pre-emptive subscription right for shareholders;

- Purchase or sale of its own equity securities or securities in the company whose securities are being offered in exchange, or related financial instruments;

- Issuance or granting of rights to acquire the target company's equity securities, and in particular conversion or option rights.

The conflict of interest is also addressed by a disclosure obligation of the board of directors in the report which the board has to publish on the takeover offer. In this report, the board has to disclose not only the defensive measures that the target company intends to take or has already taken (article 31 para. 2 TOO). Also, and more importantly, the report must state whether any member of the board of directors or the management has a conflict of interest (article 32 TOO). The report must in particular state whether any member of the board of directors:

- has entered into an agreement with, or has any other ties to, the bidder;

- was elected on the proposal of the bidder;

- is to be re-elected;

- is a company officer or employee of the bidder or of a company that has significant business relations with the bidder;

- exercises his or her mandate according to the instructions of the bidder.

The report must also indicate the consequences that the offer has for the individual members of the board of directors and the management, in particular in relation to the remuneration they receive for continuing or terminating their activities.

The board does not only have to disclose the conflicts of interest but also has to take measures to prevent them. Such measures may include the abstention of conflicted members of the board and management, forming a committee of independent board members or obtaining a fairness opinion.

5.2 Which are the common alternatives in order to keep management / key employees focused and keen to continue in the company?

The bidder may offer the management / key employees employment agreements for the time following the takeover. Incentive plans usually provide for the loss of (locked-up) stock or stock options granted under the plan if the beneficiary leaves the company by its own choice. At the same time, incentive plans typically provide for an immediate vesting of all stock options and immediate ending of lock-up periods upon a takeover of the company.

5.3 *In parallel, is it common to reinforce non-competition and confidentiality undertakings of the management / key employees upon acquisition? Is it common to regulate a non-solicitation by the Seller and that it is enforceable (for which period)?*

An acquisition does not typically lead to a reinforcement of the non-compete and confidentiality undertakings of the management or key employees. On the other hand, it is common for target companies to request the bidder to sign a confidentiality agreement and a non-solicitation undertaking when conducting a due diligence investigation prior to making a takeover offer. Typically, this non-solicitation undertaking is enforceable until the bidder has taken over the target company.

D. Interest of advisors / lawyers

1. Startup

During the startup phase, it is one of the most difficult stages to advice companies and/or projects since the company does not have the resources (funds) to implement an appropriate legal scheme and the management/equity holders tend to think in the short term rather than the long term.

1.1 Which are the common difficulties you liaise with during this stage? How do you tend to structure your fees (for example, do you go below your standard rates and agree to have this difference compensated at a later stage when the company has become more successful)?

One problem at the very beginning lies with clients' general unawareness of the importance of the lawyer's role. Once the relationship has developed and the added value is recognized, it becomes no longer an issue. Lawyers mostly still stick to the hourly based fee structure, but often offer caps, cut a few hours, lower rates or forthcoming payment terms. For some standardized work (e.g. incorporation), you see lawyers offering fixed amounts irrespective of the time spent on the assignment.

1.2 In case you accept warrants / rights to shares as compensation for professional services rendered: how do you set the amount or the value of such warrants and rights? Do you rely on valuations of the company? If so, whose valuations? Is it common for an advisor in this situation to request that the company has previously successfully completed a minimum viable product ("MVP") stage which reduces the risk of failure (i.e., as part of the lean startup methodology it is advisable to diminish uncertainty for the project by means of developing an MVP to validate the project)?

As a matter of policy, a vast majority of lawyers does not accept any interest in the company as (a sole or substantial part of the) compensation of legal advice. Apart from this, having one's own "skin in the game" may negatively affect a lawyer's independence.

2. Growth

Commonly, it is important to provide appropriate legal advice when the company intends to achieve going from the start-up phase to a growth phase. The role of lawyers and advisors would likely enhance the possibilities to effectively reach a solid growth phase. In this context:

2.1 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up phase)?

Most lawyers work on a time spent basis, irrespective of the development stage of the client. Hourly fee rates may change however over time, although it becomes difficult to sell a steep increase in fees just because the client has survived a few years or shows robust financials.

2.2 Is it common for advisors (in particular, lawyers) to take board positions during this phase? If so, how is such board member compensated? In cash? Or with exclusivity for providing legal services to the company?

The big law firms in Switzerland try to stay away from having lawyers sitting on the board of clients, often as a matter of policy. Yet smaller law firm have less restrictive rules and you see lawyers on the board, compensated by cash and/or securities.

2.3 As the lawyer you may be asked by the entrepreneur to render advice on the division of equity (in particular to FFF)? What is the basis for your advice regarding the division of equity?

Primary consideration should be given to contributions made and expected contributions in the future, be it financially or nonmonetary. Discussing and negotiating divisions of equity is often a delicate exercise as it may yield in frictions jeopardizing the company and the smooth functioning of its corporate governance. Frequently unequal splitting can be achieved more easily if this is the solution to get new important investors on board.

2.4 In certain jurisdictions corporate law is rigid and does not allow to regulate certain rights of the shareholders in the by-laws of the company (such as, preferential preemptive rights, drag along or tag along rights). Please explain (succinctly) which is the corporate legal scheme that applies in your jurisdiction. Is the shareholders agreement enforceable against third parties in your jurisdiction or is only binding between the relevant shareholders?

Shareholders' agreements are common in Switzerland and are enforceable against the shareholders who are parties to it. Shareholders' agreements are however not enforceable against third parties (such as other shareholders) who are not party to it. Articles of incorporation of a corporation must not provide for any obligations to any shareholders, thereby limiting the ability to include typical clauses seen in shareholder's agreement.

Shareholders' agreements typically contain provisions regarding:

- the composition of the board of directors;
- decisions of the board of directors or the GM requiring qualified majority, the consent of a specific shareholder or board representative or subject to certain veto right;
- subscription rights and other rules on capital increases;
- transfer restrictions (pre-emptive rights, right of first refusal, tag-along, drag-along and similar rights);
- change of control provisions; and
- dividend policy and future financing, including anti-dilution protection, liquidation preferences etc.

Shareholders' agreements can also contain certain undertakings of one category of shareholders (e.g. founders) towards another (e.g. financial investors).

3. Maturity

After having reached maturity, the business activity is much more complex and the interests of the company become more intricate. In this context:

3.1 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up or growth phase)?

Cf. above under 2.1.

3.2 Are you able to become member of the board of directors of the companies? Do you tend to render more unique advice to companies (while the corporate counsel provides the typical ongoing corporate advice)?

Cf. above under 2.2.

3.3 From a lawyers' perspective, how is the conflict of interest of the management liaised with (are there any mandatory provisions that apply in your jurisdiction)?

Lawyers have to avoid any conflict between the interests of their clients and the people with whom they have business or personal relationship (Article 12 lit. a Federal Law on the Free Movement of Lawyers).

3.4 Does the anti-money laundering provisions in your jurisdiction have changed the form your render advice?

Lawyers are covered by the Anti-Money Laundering legislation to the extent they engage in financial intermediation. A lawyer who represents a client within traditional activities of the legal profession is not subject to the Anti Money Laundering Act (AMLA).

Article 9 of the AMLA provides for a reporting obligation in the presence of founded suspicions that assets involved in a business relationship or a transaction are related to a crime, are the proceeds of a crime or are under the control of a criminal organization.

4. IPO/ Listed phase

Reaching an IPO is often the pinnacle of private companies which have reached certain growth and have an attractive equity interest. It is unlikely that the process of becoming a listed company will be successful without the proper advice. In this context:

4.1 How do you structure your fees for an IPO?

Cf. above under 2.1, although it should be noted that given the required time to be devoted to such a project and the involved complexity, rates tend to be higher than when rendering advice to start-up companies.

4.2 From a lawyers' perspective, which are the main regulatory aspects of offering equity to the public? Is it common that companies reach this stage (in certain jurisdictions becoming a listed company is less rigid)?

The listing requirements for a primary listing on the SIX Swiss Exchange are set out in the SIX Listing Rules as well as various additional rules that are derived from the SIX Listing Rules and that provide for specific listing requirements depending on the applicable regulatory standard (www.six-exchange-regulation.com/regulation_en.html).

The following regulatory standards exist (www.six-exchange-regulation.com/admission/listing/standards_en.html): Main Standard, Domestic Standard, Standard for Investment Companies, Standard for Real Estate Companies, Standard for Depository Receipts, Standard for Collective Investment Schemes. In principle, equity securities can be listed in accordance with the Main Standard and Domestic Standard of the SIX. Investment companies and real estate companies can only be listed in accordance with the standards specifically designated for them.

4.3 Is there any specific secondary market in your jurisdiction that allows early startup companies to become listed with the aim of obtaining more equity (given the complexity of becoming a public company in certain jurisdictions a startup company can become listed in a specific market which is less rigid and allow it to obtain other sources of financing, among others)?

There is an unregulated secondary market in Switzerland, but it is used only by very few start-up companies. Also, the SIX provides for a regime applicable to the listing of shares of young companies, where less stringed requirements as to track record, minimum equity and free float apply. However, it is being used very rarely.

4.4 Does the fact of becoming a listed company imply that the lawyers and/or advisors adjust their rates accordingly?

Yes, at least law firms try to sell higher rates to listed companies.

5. Acquisition

In the scenario of the acquisition, it is frequent that lawyers and advisors are highly involved. In this context:

5.1 Which is most frequent scheme of implementing an acquisition (asset deal vs share purchase deal)?

The most frequent scheme of implementing an acquisition is still a share purchase deal.

5.2 *From a lawyers' perspective, which are the main differences within the process of acquiring a stake in listed companies versus private companies?*

From a lawyer's perspective, the main differences within the process of acquiring a stake in listed companies versus private companies are applicable regulations (governing the acquisition of listed companies) and the dealing with shareholder's agreements, management/board and particularities in the articles of incorporation.

5.3 *From a lawyers' perspective, which are the main steps in your jurisdiction in order that a public entity becomes a private entity as a consequence of an acquisition?*

From a lawyer's perspective, the main steps in order for a public entity to become a private entity as a consequence of an acquisition are the proper pursuit of the takeover process and the delisting, which requires in-depth knowledge of the applicable regulations.

5.4 *How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to other phases)?*

Cf. above under 2.1.