出售持牌瑞士企业

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股权出售还是资产出售

瑞士加密企业的出售方式有两种。转让股份公司（AG）或有限责任公司（GmbH）的股份时，牌照、合同和客户关系保持不变。转让资产和负债时，业务则转移至买方自己的实体。如果目标公司持有牌照或隶属于自律组织，股权出售较为简单，因为牌照和SRO隶属关系附着于实体本身，在取得下文所述批准的前提下，不因所有权变更而失效。如果买方希望撇下无法评估的负债，则倾向于资产出售；对加密企业而言，这类负债是指未披露的黑客攻击风险、客户索赔风险以及以往年度违反监管规定的风险。《合并法》允许通过一份经登记的协议转让资产和负债，将所列全部资产和负债转移给收购方，无需逐项转让，转让方在三年内承担连带责任。[1]但如果合同具有人身性质（托管合同即属此类），未经客户同意，客户合同和托管关系不能通过该机制转移。因此，托管机构的资产出售要么需要取得每位客户的同意，要么需要安排迁移程序，由每位客户与买方建立新的业务关系。

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控制权变更的批准

所需批准取决于目标公司的身份。《金融机构法》下的机构（投资组合经理、受托人、集体资产管理人、基金管理公司或证券公司），在任何人取得或处置10%或以上的合格持股，或跨越20%、33%或50%门槛之前，必须通知瑞士金融市场监督管理局（FINMA）。投资组合经理和受托人免于履行通知义务，但仍须遵守合格持股人须具备良好声誉的一般要求。[2]银行的合格持股人发生变更，须依据《瑞士银行法》取得FINMA的批准。依据BankA第1b条发放的金融科技牌照适用银行规则。[3]DLT交易设施或其他金融市场基础设施须依据《金融市场基础设施法》进行通知并接受FINMA的评估。[4]隶属SRO但无FINMA牌照的金融中介机构无需取得批准。SRO的规章要求就控制人和管理机构的变更进行通知，之后SRO可重新进行适当资格审查。[5]

FINMA对控制权变更的审查，提出的问题与发牌时相同：新的合格持股人是谁，他们的资金从何而来，监管记录如何，打算如何经营这家企业。来自瑞士境外且本身不受监管的买方，被要求提供的材料会多于受监管的买方。打算改变商业模式的买方应当事先说明，因为牌照是针对特定模式发放的，换一种模式可能需要重新申请。对FinIA机构的审查需时两至四个月，对银行的审查则更久。

注释

1. Merger Act（FusG），SR 221.301，第69条至第77条（资产和负债的转让：合同、清单、在商业登记册登记、登记后依法转移）及第75条（转让方三年内的连带责任）。↩
2. FinIA，SR 954.1，第11条第4款至第7款（合格持股；在取得或处置之前以及跨越20%、33%和50%门槛时通知FINMA；依据第7款，投资组合经理和受托人免于履行通知义务）。↩

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3. Banking Act，SR 952.0，第3条第2款cbis项（合格持股人须确保其影响力不损害稳健经营）及第5款（取得或处置合格持股以及跨越门槛时的通知义务）；第1b条第4款（适用于金融科技牌照持有人）。↩
4. FinMIA，SR 958.1，第9条第3款及第5款（金融市场基础设施合格持股的通知）。第E部分第V章。↩
5. AMLA，SR 955.0，第14条第2款（隶属条件，包括负责行政和管理人员的良好声誉）；VQF，Rules of the Self-Regulatory Organisation，经修订版本（在规定期限内通知管理层和控制人的变更）。第F部分第I章。↩

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