HEUKING KÜHN LÜER WOJTEK

Cross-border Mergers & Acquisitions in Germany

A Transaction Guide for Foreign Investors

LAWYERS AND TAX ADVISORS

Abstract

This article is intended to provide an overview on key issues arising in Mergers and Acquisitions, inbound investments and starting business operations in Germany involving investors from foreign countries. The article summarizes the specifics a foreign investor is faced and must take care of when investing in Germany. Besides legal aspects the article also highlights cultural differences and other potential pitfalls during the entire transaction process. You simply should know how to successfully invest in Germany.

This article is only intended to be a general guide to the subject matter and does not constitute or substitute individual legal advice in any sense on any specific facts, circumstances or business. We therefore disclaim any and all liability arising from any reliance on its contents in a specific legal or business context.

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Cross-border Mergers and Acquisitions in Germany

About half of the investors in M&A transactions on the German market are from foreign countries. Germany is currently one of the most important target countries in Europe. Germany is a highly developed country in a stable political, financial, economic and legal environment. "Made in Germany" has not suffered any loss in attractiveness for foreign investment. In particular the so called "Mittelstand", midsized and family owned businesses as well as undertakings specialising in high technology become more and more attractive targets of foreign investors. Both, strategic and institutional foreign investors explore the German market. In 2014 57 % of all M&A transactions involving German partners were cross-border transactions. While most foreign investors are still from the US a larger number of investors from Asia appears as regular participants in the M&A market. In 2014 most buyers came from the USA, followed by Switzerland, Great Britain, Austria, France, Japan, the Netherlands and Sweden. In the last three years the most German target companies were part of the service sector. Moreover, many M&A transactions were seen in the financial services sector as well as in the pharmaceutical and chemical industries. For investors from China for example the automobile industry and the mechanical engineering industry are of special interest. Examples of recent M&A transactions of global repute on the German market are the acquisition of Putzmeister, the global leading concrete machinery enterprise, by the Chinese company Sany Heavy Industry and the acquisition of Douglas Holding AG, a German beauty retailer, by the US-based Advent International Corp's Beauty Holding Three AG, both in 2012. In 2013 Vodafone Group Plc from the United Kingdom acquired the German cable operator Kabel Deutschland Holding AG and the German company KION AG was acquired by the Chinese company Weichai Power, a global leader in hydraulic technology and the second largest manufacturer of industrial forklifts. Russian Investors acquired through the Luxemburg investment vehicle LetterOne RWE AG's oil and gas unit RWE Dea in 2014, an EUR 5.1 billion deal. McKesson, an US healthcare services and information technology company, acquired the German Franz Haniel & Cie GmbH's entire holding of stakes in Celesio AG. The transaction had a volume of more than EUR 6 billion.

I. Political, Social and Cultural Environment

In Germany a liberal attitude towards investors from other countries prevails. Foreign investors have almost no disadvantage in comparison to domestic investors. The rules for domestic M&A transactions generally also apply to cross-border M&A. The same applies to starting greenfield operations by incorporating a new business entity or setting up a joint venture. In a very few cases the laws protecting national interests and security do impose certain restrictions on potential foreign buyers.

Successfully conducting M&A transactions in Germany requires an attitude adapted to the German environment and practice. Linguistic and cultural differences must be overcome. Most German companies keep their records only in German and up to now it has not been common practice to translate all documents for the potential investor before the investment process. This might present a challenge to an investor particularly during the due diligence process. At least the most important information will be translated by the seller during due diligence procedures. For that reason, consulting external advisers is highly recommended. The negotiations as well as the final contract will mostly be in English.

Even though investors are hardly disadvantaged by the law, the unfamiliar legal system as well as the language barrier does make M&A transactions more challenging to foreign investors. Different standards regarding corporate governance, disclosure requirements, accounting and environmental protection may create further challenges for foreign investors entering the German market. Seeking local counsel is therefore highly advisable and leads to a successful transaction.

Foreign investors should bear in mind cultural differences. The negotiating attitude of German companies and sellers is rather direct. Germans put great emphasis on compliance with rules and observance of time frames. For example, if a German seller provides specific targets to be met in an auction process, the investor should adhere to those terms. Coping with strict time frames might especially present a challenge to Japanese or Chinese investors whose corporate decisions are mostly made by a time-consuming consensus approach or are dependent on governmental approvals. Different management cultures may also be taken into consideration when planning the post-acquisition process and the integration of the target into the investor's structures.

Germany provides various incentives for investment projects, such as support for direct investment and labour-related costs as well as direct research and development project expenses. The conditions under which an investment will qualify for incentives / subsidies are subject to express criteria, which are the same for German and foreign investors. The existing financial support measures can basically be classified as investment incentives helping to reimburse investment expenses and operational incentives which provide support once the investment has been made. Investors should generally take potential (public) funding systems into account not only on a national but also on a European level.

II. Relevant Legal Forms

Entrepreneurs and investors can find a wide range of legal forms for conducting business in Germany. A foreign investor may choose between establishing an independent German entity or relying on a branch or representative office of the foreign entity. German law basically distinguishes between two types of corporate structures, namely corporations and partnerships. The decision on the legal form depends primarily on the investor's intended operations.

1. Corporations

a) Introduction

A corporation is an incorporated and registered business entity which holds the rights and obligations as a legal person and owns its assets. The corporation is separate from the shareholders. The shareholders' personal liability is limited to their share contributions in the company.

A corporation can be established by one or more individuals or companies through adopting the articles of association before a public notary and registration with the commercial register (*Handelsregister*). A minimum share capital is required by law. Depending on the specific form of corporation additional steps are necessary to establish the company. Until the corporation has been registered in the commercial register, each shareholder is personally liable for debts incurred by the company. For certain types of business to be carried out, the trade office (*Gewerbeamt*) must be informed.

Common types of corporations are the limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*), the stock corporation (*Aktiengesellschaft – AG*) and the partnership limited by shares (*Kommanditgesellschaft auf Aktien – KGaA*). However, newer types of corporations can be found as well, such as the European company (*Europäische Gesellschaft* or *Societas Europaea – SE*) and the entrepreneur company with limited liability (*Unternehmergesellschaft (haftungsbeschränkt)*).

The GmbH and the AG are the most common corporate forms in Germany.

b) Limited Liability Company (*Gesellschaft mit beschränkter Haftung – GmbH*)

The GmbH is the most common and appropriate corporate form to serve for foreign investors as vehicle or operating subsidiary. There are no restrictions on incorporation or acquisition of a GmbH by foreign parties nor are the GmbH's activities restricted. The GmbH is designed to function as a closely held or private corporation limited by shares. A minimum share capital of EUR 25,000 is compulsory,[1] of which a minimum of EUR 12,500 must be contributed upon formation. In contrast, the similarly structured entrepreneur company with limited liability can be established with a share capital of only one euro.[2] The shares in a GmbH cannot be listed. The sale and/or transfer of shares

[1] Sec. 5 para. 1 GmbHG.

[2] In that particular case the company has to denominate itself as an *Unternehmergesellschaft* (*haftungsbeschränkt*) and is subject to certain statutory provisions in favour of potential creditors.

require(s) notarisation. The GmbH has two compulsory corporate bodies, namely the management board (*Geschäftsführung*) and the shareholders' meeting (*Gesellschafterversammlung*). In addition, an advisory or supervisory board may also be implemented as a voluntary body. Although the statutory business seat of the GmbH must be in Germany, it may have its administrative seat outside Germany.

The GmbH is managed by one or more managing directors. They conduct the day-to-day business of the company and represent the GmbH in legal transactions. There are no restrictions regarding the number of managing directors. Both shareholders and non-shareholders may hold managing positions. Each managing director may be authorised to act on behalf of the company alone (single signature). Only individuals of full legal capacity can become managing directors. They neither have to be German nor do they need to have their (permanent) residence in Germany. This is for example a main difference to Brazilian, Canadian and Japanese law under which directors of limited liability companies must be residents of the respective country. However, many of the statutory duties of a managing director will require his or her presence in Germany. The courts require that a foreign citizen appointed as managing director must at all times be able to fulfil the duties of a managing director, in particular the duty to keep accounts. Furthermore, for practical reasons, at least one of the managing directors should be available to represent the company in the day-to-day business. Directors not situated in Germany might not be able to fulfil these requirements. While EU citizens and citizens from Iceland, Norway, Liechtenstein, and Switzerland do not require any form of visa, residence or settlement permit to be able to settle or work in Germany investors from other countries have to take into account that some form of visa might be needed.

In internal relations the managing directors must observe the restrictions contained in the articles of association, in resolutions of the shareholders, in their employment contracts or in rules of procedure for the managing directors. Managing directors of a GmbH are subject to instruction by the shareholders' meeting. Shareholders may issue instructions ad hoc or in a general way by establishing rules of procedure which provide for general restrictions on the management. In any case, managing directors require the consent of the shareholders' meeting to carry out extraordinary transactions or measures. If the managing directors do not comply with internal restrictions, they are obligated to compensate the company for any damages incurred.

The GmbH is easy to establish and manage. Additionally, the shareholders can give binding instructions to the managing directors and thus have direct influence on the GmbH's management. The GmbH is well-suited as the legal form for a subsidiary which is part of a group of companies. Beyond that the GmbH is a suitable form of organisation for nearly all types of business. It is therefore hardly surprising that the GmbH is the most popular and suitable investment vehicle chosen by foreign investors.

c) Stock Corporation (*Aktiengesellschaft – AG*)

The AG is to a certain extent subject to rules similar to those of the GmbH, although the AG rules are often stricter and more formal. However, in contrast to a GmbH an AG must maintain a minimum share capital of EUR 50,000[3]. An AG has a three-tier structure: the shareholders' assembly (*Hauptversammlung*), the supervisory board (*Aufsichtsrat*) and the board of directors (*Vorstand*). The supervisory board must have a minimum of three members. The supervisory board and the board of

[3] Sec. 7 AktG.

directors are strictly separate from each other. Neither the shareholders nor the supervisory board can give binding instructions to the board of directors.[4] The directors manage the company's affairs independently and in their own responsibility.

Though shares in an AG are easier to sell and transfer, an AG is less flexible to handle than a GmbH, in particular as more formalities need to be observed. This n particular applies if the shares in the AG are held by more than one shareholder.

2. Partnerships

Partnerships are associations of any individual or corporate entity. It is not the partnership itself but the individuals who act on behalf of the company. Each individual partner is responsible for the liabilities of the company and limitations on this liability are only possible to a certain extent. The different types of partnerships vary mainly in terms of the required registration obligations and the contingent liabilities of the partners. A partnership can easily be established by at least two partners. A minimum share capital is not mandatory. Only partners can hold a management position. Some partnerships demand registration with the commercial register. The trade office must be informed when certain types of business activity will be carried out by the partnership.

Types of partnerships are in particular the civil law partnership (*Gesellschaft bürgerlichen Rechts – GbR*), a general (commercial) partnership (*Offene Handelsgesellschaft – OHG*), a limited (commercial) partnership (*Kommanditgesellschaft – KG* or *GmbH & Co. KG*), or a silent partnership (*Stille Gesellschaft*).

3. Branch Offices

Already existing businesses might also choose to establish a branch office in Germany. Branch offices are part of the parent company and operate in the same field of business. German law clearly distinguishes between autonomous branch offices and dependent branch offices. The main difference can be seen in their level of independence from the company's head office. Whereas autonomous branch offices must be registered with the commercial register and engage in business independently from the head office, the dependant branch offices can be seen as subordinate departments of the head office. Neither type of branch office however is a separate legal entity, so that the head office company bears liability for the assets and business of the branch in both cases.

[4] However, in case of essential management decisions, the executive board should ask the shareholder's meeting for approval to avoid liability.

III. Sources of Information

The initial source to gain information about a target company in order to make an acquisition decision is the commercial register (*Handelsregister*). Nearly all commercial enterprises must be registered with the commercial register at the local courts (*Amtsgericht*) at the statutory seat of the respective company. The register is open to the public and available at the registry court or online (www.handelsregister.de). The commercial register provides fundamental information on the particular company, i. e. the company's name, its legal form, headquarters' address, existing branches, purpose of business, the owners of sole proprietorships, the partners of partnerships, the share capital, the persons with representation authority, the composition of supervisory boards, the articles of association and whether insolvency proceedings have been initiated. The shareholders of a GmbH must be registered in a shareholders' list which is submitted to the commercial register files. In contrast the shareholders of an AG will not be registered in the commercial register. However, an AG which is controlled by a single shareholder must give notice to this effect to the commercial register.

Further information will be provided by the register of companies (*Unternehmensregister*), which is a central platform for the storage of legally relevant company data (www.unternehmensregister.de). In addition to the commercial register entries and to the documents submitted to the commercial register, access to entries and submitted documents of the cooperative, and partnership register is given. Furthermore publications from the Federal Gazette (*Bundesanzeiger*) e. g. certain balance sheets; company-relevant messages from securities issuers and disclosures of the bankruptcy courts are available.

Further information can be attained through credit agencies or discreet banking channels. In Germany, bank enquiries play a significant role.

IV. Regulatory Framework of M&A Transactions

1. Overview

Germany does not have specific legislation covering M&A transactions. The laws applying to a transaction vary in each individual case. This makes extensive, tailor-made legal advice essential in every M&A deal.

These are the key laws governing M&A transactions:

- Commercial Code (*Handelsgesetzbuch – HGB*)
- Civil Code (*Bürgerliches Gesetzbuch – BGB*)
- Limited Liability Company Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung – GmbHG*)
- Stock Corporation Act (*Aktiengesetz – AktG*)
- Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz – WpÜG*)
- Transformation Act (*Umwandlungsgesetz – UmwG*)
- Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*)
- Stock Exchange Act (*Börsengesetz – BörsG*)
- Securities Prospectus Act (*Wertpapierprospektgesetz – WpPG*)
- Co-determination Act (*Gesetz über die Mitbestimmung der Arbeitnehmer – MitbG*)
- One-Third Participation Act (*Gesetz über die Drittbeteiligung der Arbeitnehmer im Aufsichtsrat – DrittelbG*)
- Work Constitution Act (*Betriebsverfassungsgesetz – BetrVG*)
- Act Against Restraints on Competition (*Gesetz gegen Wettbewerbsbeschränkungen – GWB*)
- Insolvency Code (*Insolvenzordnung – InsO*)

Additionally, laws of the European Union, particularly regarding merger control, may apply.

The legal requirements for an M&A transaction vary according to the type of business transaction chosen (share deal or asset deal). The requirements for the acquisition of shares depend mainly on the legal form of the target company and the quality of shares purchased. The acquisition of bearer shares, registered shares or voting shares etc. is linked to different legal requirements.

2. Restrictions on Acquisitions

German company law does not impose any restrictions on foreigners acquiring interest in domestic companies or establishing new companies in Germany. However, the articles of association of a company may individually restrict the transfer of shares in that company.

There are only very few business-oriented restrictions on foreign investments, these being in sensitive areas such as arms or crypto system manufacturers, companies with core competencies in military production or companies which operate a high-grade satellite system.

Transactions on the acquisition of direct or indirect interest of 25 % or more of the voting rights in a German company can be reviewed by the Federal Ministry of Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*) if the acquirer is either resident outside the European Free Trade Association (EFTA) or within the EFTA but has a shareholder resident outside the EFTA who holds 25 % or more of the acquirer's voting rights and there are indications that such acquisition vehicle is used in order to circumvent such review by the Ministry. However, such a review is not mandatory to be carried out and does not take place in all cases. The Federal Ministry of Economic Affairs and Energy has only the right but not the duty to do so. In practise, interference by the government is rarely seen.

An investor who wishes to acquire a material interest in a financial services institution or credit institution must disclose its intention without delay to the Federal Bank of Germany (Deutsche Bundesbank) and the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin). An interest is considered material if it comprises at least 10 % of the nominal share capital or the voting rights of the target company or if the transaction enables the investor otherwise to substantially influence the management of the financial services or credit institution. The duty of notifying the aforementioned authorities also applies if a shareholder increases its shareholding or its voting rights to more than 20, 30 or 50 %, respectively. The federal authority is required to assess the investor's application within 60 working days after receipt of the complete notification.

Further restrictions apply in the field of air transport according to the Aviation Compliance Documenting Act (Luftverkehrsnachweissicherungsgesetz-LuftNaSiG).

There are no limitations on the transfer of profits, dividends, interests or royalties by non-residents, except for applicable withholding or capital gains taxes.

3. Labour Law

Relations between German employers and employees are extensively regulated under German labour law. German labour law is strongly biased in favour of employees and is probably best referred to as the "employee protection law".

The employment relationship is established by an employment contract. Numerous mandatory laws on the protection of employees apply to an employment relationship and cannot be contracted out.

There are essentially two levels at which employees and, to some extent, trade unions may exercise their influence on the employers, namely, at the shop-floor and the board level.

Employees at a workplace with 5 or more permanent employees are entitled (but are not obliged) to elect a workers' council. If a company has more than one workplace a combined works council (*Gesamtbetriebsrat*) must be established if there is more than one local workers' council.

Enterprises with over 100 permanent employees are obliged to establish an economic committee (*Wirtschaftsausschuss*) in addition to the works council (*Works Council Constitution Act*). The em-

ployer has the duty to keep the economic committee informed and consult with it in a timely manner on all relevant business matters which may affect the interests of the employees.

Labour representation at the supervisory board level is statutorily provided for by different co-determination acts. Generally, if a company has more than 2000 employees, half of the supervisory board members must be employee-elected. The other half will be appointed by the shareholders. The supervisory board elects a chairman who is usually a representative of the shareholders. The individual is elected as chairman only by two-thirds majority of the members' votes. If this majority is not reached during the first ballot, the members of the supervisory board appointed by the shareholders will proceed to elect the chairman.

4. Insolvency Law

German insolvency law is governed by a comprehensive Insolvency Code. *(Insolvenzordnung – InsO)* There is only one primary uniform insolvency procedure which applies to both individuals and companies.

There are no special restrictions on acquiring shares or assets owned by a seller that may become insolvent if the seller has not yet filed for insolvency. However, if insolvency proceedings are initiated against the seller's estate after the acquisition deal is closed, there is a risk that the insolvency administrator may challenge the transaction, arguing that the transaction disadvantaged other creditors.

Transactions made during the pre-opening period (period between filing for insolvency and the formal opening of the proceedings by the court) run a high risk of being challenged by the insolvency administrator, and for this reason this approach is rarely encountered in Germany.

Transactions made after insolvency proceedings have been opened by the court are rather common. Once proceedings are initiated, an insolvency administrator is appointed by the court, to whom – in principle – all power of administration and disposal over the debtor's assets and business passes. The insolvency administrator may sell assets of the company and provide (limited) guarantees, which makes him the negotiating and selling party in any M&A deal during insolvency proceedings. Distressed M&A transactions are often structured as an asset deal. Such structuring allows the investor to buy the assets without – as basic rule – also assuming the liabilities.

5. Basic Information on Litigation and Arbitration

Technically speaking, there is no case law in Germany. This is one of the main differences to the Anglo-American legal system. Formally, decisions made by courts are only binding for the participating parties and not for other courts of law. Nonetheless, the decisions made by the superior courts are used as guidelines. In practice, a lower level court will almost never deviate from the superior courts' jurisprudence. German courts undertake the organization and management of proceedings. The sequence of proceedings in a civil process is primarily determined by the plaintiff. The plaintiff's application for relief determines the court's area of decision-making responsibility. There are

no so-called “pre-trials,” such as those recognized by American law, in Germany. If the court orders a hearing of evidence, then as a rule, it is up to each party to prove the facts of their specific case.

In Germany, cross-border M&A purchase agreements often contain an arbitration clause requiring any dispute arising out of the agreement to be submitted either to domestic or international arbitration depending on the parties. There are a number of reasons for agreeing on an arbitration clause, such as arbitration being a quick and efficient way of resolving disputes, the appointment of arbitrators with special expertise, the flexibility of and the parties' influence on the proceedings, and, in particular, the confidentiality and privacy thereof. The German Institution of Arbitration (DIS) is a well reputed arbitration centre for the promotion of national and international arbitration applying rules of international standard (see www.dis-arb.de). Beyond DIS, arbitration is also often referred to the International Chamber of Commerce (ICC).

V. Acquisition Vehicle

As in other jurisdictions, a buyer in Germany will often use acquisition vehicles (SPV) for transactions. A domestic SPV usually allows more flexibility and leads to a target-aimed and quicker conduct of the transaction. In Germany the legal form of a GmbH is the investment vehicle most favoured by foreign investors.[5] The shareholders must provide the SPV with the necessary funds for the acquisition. The ratio of debt to equity will depend on different factors such as the size of the transaction. Incorporation and registration of a SPV in the commercial register is relatively simple and a rather quick procedure. The use of a German investment vehicle is advisable, as administration of the German business is easier to handle and it simplifies taxation issues.

Instead of establishing a completely new company the purchase of a so-called shelf company is possible. This will be a bare-shell company deemed to be formed by a service provider and without business activities. From an economic point of view, the acquisition of shares in a shelf company is deemed by the German Federal High Court (*Bundesgerichtshof*) to be the equivalent of forming a new company. Hence the same provisions with regard to the raising of the registered share capital will apply to the shelf company, meaning that there is no cost advantage over forming a new company. For this reason the shelf-company option is usually chosen only when there is too little time to establish a new company, which even can be done within a few days.

[5] See chapter II.1 b).

VI. Types of Transactions

1. Acquisitions

The acquisition of any kind of already existing German enterprise in whole or in part can be structured as a share deal or as an asset deal. The economic and legal consequences of both types of transactions are significantly different. In general the parties may choose whether they prefer an asset or a share deal depending on their intentions and the circumstances. In particular, tax considerations will have an impact on the final decision.[6] However, in some cases due to the legal circumstances only one transaction method is possible.

a) Asset Deal

In an asset deal the purchaser acquires specifically defined assets directly from the target who is the seller. The parties choose which assets will be transferred. The parties may buy some or all assets of the company. This gives the investor the opportunity to acquire only those assets suiting his purposes and to avoid liabilities. Cherry picking is possible. An asset deal is therefore advisable when only parts of the business are of interest to the buyer or there are high risk liabilities to be avoided.

As a general principal of German law such transfer of assets and liabilities requires that the individual assets and liabilities be specified and that they transfer individually. A simple reference to the balance sheet will not suffice. Extensive documentation, some of which will require notarisation, is needed. Failing to fulfil these requirements will make the transaction invalid. The assets and liabilities may be specified in the acquisition agreement itself or in a separate transfer agreement. Transfer of contractual relationships which the selling company maintains with third parties will usually require the approval of the third party and/or creditors to become effective. As a general rule, licenses and permits related to the business operations can be transferred. Licenses and permits related to a specific person or company normally cannot be reassigned and must be reapplied for by the purchaser after the transfer of the assets.

The acquired company's business operations are thereafter continued by the individual purchaser or its special-purpose vehicle (SPV). Especially in the case of asset deals, it is advisable for the foreign investor to establish a company under German law to use as its acquisition vehicle.[7]

As regards employment, the employers before and after the transaction are different legal entities in case of an asset deal. All employment contracts pertaining to the business acquired normally transfer to the purchaser as a matter of law. Section 613a of the German Civil Code (*Bürgerliches Gesetzbuch*) provides that if a business or a part of a business is transferred to a new owner, all employment relationships existing at the time of the transfer and which pertain to the business or business division transferred will also transfer to the new owner by law. Each employee has how-

[6] For the most relevant tax issues which have to be taken into account, see chapter X.
[7] For further details on acquisition vehicles, see chapter V.

ever the right to object to the transfer of his/her employment. If objecting, the employment remains with the seller as is. Also, the purchaser may not terminate an existing employment contract on the grounds of the acquisition, although the right to terminate due to other reasons remains in force.

Although rights, claims and liabilities must be specified in order to transfer, the investor should also be aware that in certain cases he will have to take steps to exclude liability for any debts or obligations attached to specific assets or contracts transferring by law. The buyer of a mercantile business who continues business under the previously existing trade-name might be liable for debts of the former business incurred by the previous owner.[8] He may be liable for earlier tax liabilities of the company.[9] According to section 4 para. 3 of the German Federal Soil Protection Act (*Bundesbodenschutzgesetz*), the buyer might be liable for existing contamination and the costs of remediation. Typically the transfer of such liabilities cannot be excluded by contract. One may however include clauses in the agreement stipulating an *inter se* allocation of liability between the buyer and the seller; these are legally permissible, but will not affect liability of the contractual parties towards third parties.

b) Share Deal

In practice, share deals are more common than asset deals. In a share deal all or part of the shares in the target company are acquired by the investor. As a consequence the acquirer automatically becomes the owner of the target company as a whole including all assets, rights, claims and (undisclosed) liabilities even without the consent of creditors. The target company is maintained and continues to exist as legal entity. The change in ownership does not have a direct effect on the company's business operations. Unless there are change-of-control clauses governing this, contracts with third parties and public licenses, permits and registrations are not affected, as this is deemed to be only a change in shareholding.

A share deal will not affect any of the mutual rights and duties under existing employment contracts. A share deal, in general, is not subject to any co-determination or participation rights, the only exception being that the works council must be informed within a reasonable period prior to the transaction, concerning the name of any buyer potentially gaining control (i.e., 30% or more of the voting rights with respect to a listed company) and the buyer's intentions with respect to the company's future business activities as well as the consequences for its employees, unless such disclosures would endanger business secrets. The change of ownership does not establish a right to terminate existing employment contracts.

Transferring ownership is simpler from a legal perspective than the transfer of individual assets is. In general, less documentation is needed.

Subject to transfer restrictions under the Articles of Association and a few other exceptions under German case law,[10] the sale and transfer of shares in a corporation does not require the consent of the other shareholders. However, interests in a German partnership are not freely transferable. A transfer requires the approval of all partners, unless the partnership agreement provides otherwise.

[8] Sec. 25 para. 1 HGB.

[9] Sec. 75 para. 1 German Fiscal Code (*Abgabenordnung – AO*).

[10] For example the so-called "Holzmüller-doctrine" from the decision of the Federal High Court, dated 25.2.1982, file no. II ZR 174/80 which was amended by the "Gelatine" decision, dated 26.04.2004, file no. II ZR 155/02.

There may however be duties of notification. The Stock Corporation Act requires companies holding shares in a German based unlisted stock company to notify the stock corporation in writing upon attaining or subsequently no longer maintaining either more than 25% of the total par value of the shares or more than 50% of the total par value of the shares or the voting rights. Failure to do so will render the rights attached to the shares invalid while leaving the transfer of the shares unaffected. These notification obligations only apply to stock corporations (AG). Comparable standards do not exist for limited liability companies (GmbH).

Different rules apply for shareholders of listed stock corporations. They are required to notify the stock corporation as well as the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin*) in writing without undue delay, at the latest within four trading days in the event of directly or indirectly reaching 3, 5, 10, 15, 20, 25, 30, 50 or 75% of the voting rights. Failure to comply in this case as well will result in the loss of rights attached to the shares.

2. Mergers

Mergers in Germany are codified in the German Transformation Act (*Umwandlungsgesetz – UmwG*). There are four basic methods of restructuring a company under the Transformation Act: 1. mergers; 2. demergers; 3. transfer of assets for cash; 4. change of legal form. The subsequent three stages can be seen as elementary not only for mergers but for all four kinds of reorganisation. First of all an agreement of reorganisation, fulfilling certain minimum standards set by law, must be reached by the parties.[11] Secondly a report containing the details of the planned reorganisation has to be submitted to the interest owners.[12] Based on the received information a resolution on the reorganisation will be made by the owners of interest.[13] As a third mandatory step the registration of the reorganisation must be recorded in the commercial register to become effective.[14] This can be a significant aspect regarding the timing of the overall transaction.

However, the Transformation Act only provides regulations on national and European cross-border mergers and prohibits cross-border mergers otherwise.[15] International mergers for corporate purposes therefore must be dealt with by other legal means. There are three general possibilities. The first option is to transfer all assets and liabilities to the other company and subsequently dissolve the transferor. The second alternative is to transfer all interests in a German partnership to the foreign company. In a third option, the statutory seat of one of the companies can be transferred to the other jurisdiction and the subsequent merger will then be deemed to take place under one national law.

[11] Regarding mergers, see amongst others section 4 et seq. Transformation Act *(Umwandlungsgesetz – UmwG*).
[12] For cross-border mergers, see 122 c UmwG.
[13] For mergers, see sec. 13 UmwG.
[14] For mergers, see sec. 19 UmwG.
[15] Sec. 1 para. 2 UmwG.

VII. Process of Transaction

1. Introduction

The structure and timing of a transaction largely depend on whether it is an auction process or whether bilateral negotiations are conducted. In Germany tender offers are much more common than takeovers. In general an aggressive acquiring method may cause the acquisition to fail, in particular in cases of private negotiations toward purchase of small and medium – often family-owned – companies. Transactions in Germany differ significantly from Anglo-American ones in this way.

In Germany a bidding process is generally a strictly defined M&A process with clear structures and strict deadlines, differing from the Chinese approach where bilateral negotiations based on mutual trust seem to be the current method.

While an asset deal will always be privately negotiated, a share deal may take diverse forms such as a merger or leveraged or management buy-out.[16] Nonetheless in most cases the acquisition of the shares will be carried out through a private acquisition agreement.

If a party seeks to obtain control over a company by takeover, a certain level of existing shareholding is necessary. The level of shareholding required depends on the legal form of the target company and its articles of association.

According to the German Takeover Act, a bidder who intends to make a takeover bid of a listed company has to publish its decision immediately.

2. Confidentiality Agreement

Typically the first step in a transaction process is a non-disclosure or confidentiality agreement. It is very much in the interest of both the seller and the target company to conclude such an agreement in order to protect sensitive information, even though the legal sanctions available in case of a breach of such a confidentiality agreement will not be very effective. In practice, it may be difficult to prove that damages particularly caused by the violation of the confidentiality agreement were incurred and how much. For that reason German sellers sometimes request penalty clauses and interim legal protection that do not require providing evidence. In general a German confidentiality agreement is shorter than a comparable standard U.S. or UK form.

[16] In case of a buy-out transaction management members or leading employees, sometimes together with investors, would acquire all or part of the employer's company in a financial crisis, on the occasion of an outsourcing project or otherwise.

3. Letter of Intent/Memorandum of Understanding

A letter of intent or a memorandum of understanding is often the first written document in a private sales process and will constitute the basis for further research into and evaluation of the target company. The document sets out the preliminary negotiation results and the intended execution of the transaction. It focuses on the economic terms of the transaction but commonly sets out elementary legal aspects and a time line for the transaction as well. Often an exclusivity agreement is reached, granting exclusivity for a time period of between three weeks and six months subject to the circumstances of the individual case.

In general the memorandum of understanding is legally not binding except for granting exclusivity, a regulation regarding the payment costs in case of break-off of the deal, non-competition clauses and the confidentiality agreement. Regarding that point German law particularly differs from French law. Under French law a foreign investor has to make sure that initial documentation is not considered as final, as otherwise the agreement could be construed as enforceable.

4. Due Diligence

Typically the purchaser will be given the opportunity to carry out a due diligence review to evaluate the commercial, legal and financial situation of the target company and to determine his investment decision.

a) Approach

In a cross-border process the information offered to the investor by the seller is often provided in a virtual data room. There are no legal requirements regarding the due diligence process, as it is the investor's decision as to how in-depth the efforts to reveal material facts and identify risks should be. Especially in the event of a share deal it is advisable to closely examine the target to limit the risk of hidden liabilities which may transfer automatically. In the event of a share deal the purchaser is well-advised to be sure of the seller's legal ownership of the shares, since there is no public register in Germany confirming this.[17] In general the seller is obligated to disclose all fundamental facts influencing the investor's decision on whether or not to complete the transaction. Also, under German law, if facts were disclosed prior to the signing, the purchaser will not be able to assert warranty claims afterwards based on such facts. For this reason, in order to limit its liabilities, a seller should disclose as much information as possible during the due diligence process. From the seller's perspective a due diligence is a tool to avoid liability rather than a promotional process to present the target company from its best side.

[17] Information on the shareholders of a stock corporation can be gained from the record of shareholders (*Aktionärsbuch*), which is however not open to public. Though, further sources of information are voting right notifications and the list of attendees at general meetings of shareholders.

b) Key Challenges

The seller in an acquisition process often fears that the company's know how might be "spied" on during the due diligence process and the process is then broken up by the potential purchaser. The German company may be particularly concerned that a confidentiality agreement or a letter of intent does not provide sufficient protection. In these cases, the due diligence may be conducted in separate phases. Highly confidential information is either disclosed only in a later phase when the closing is most likely, as a confirmatory due diligence, or in a special data room to which only very few experts have access. These experts will keep sensitive information confidential and only make anonymised information available to the potential purchaser.

German data-protection law applies to the due diligence process, which can make gaining certain information before closing the deal more difficult. Further challenges might arise from anti-trust laws.[18] Although integration planning is permitted, the purchaser and the target must act as separate entities until closing and merger control clearance. Before regulatory approval is granted, they are prohibited from sharing competitively sensitive information such as customer lists, pricing data, and certain sales contracts. This creates a challenge, as some of the information that will be critical to post-closing decision-making is off limits. To enable comprehensive integration planning, many organizations have begun using clean teams to gather information, analyze scenarios, and make preliminary integration decisions prior to deal consummation. These clean teams operate under strict protocols that enable competitive or confidential information to be aggregated and summarized in a form that helps leadership review the analysis about the future combined organization without violating competition laws.

[18] Regarding further anti-trust regulations, see chapter IX.

VIII. Negotiating the Sale and Purchase Agreement

1. Introduction

It is not possible to identify a general acquisition strategy a German party would follow in an acquisition process. This will always be subject to the individual circumstances, particularly the strength of the parties' negotiating positions. A stronger position of the seller might lead to a more aggressive strategy while a weaker position increases the willingness to negotiate, though as a general rule in Germany the parties do not follow an overly aggressive transaction strategy and an aggressive approach will normally not lead to a successful outcome. At the beginning the negotiations should be executed on highest management level with the involvement of a very limited group of people, since large negotiating teams on the investor side may have a deterrent effect.

Also in Germany the acquisition process has begun more and more to follow Anglo-American and international standards and practise, in particular in cases involving cross-border transactions. These agreements are often set out in English and comprise some 50 pages. However, there is still a tendency in Germany for sellers to prefer rather short acquisition agreements than over-elaborate agreements. The same applies to France. Though, this should not be misinterpreted as carelessness. Germany has elaborate and extensive statutory law. Unless agreed otherwise in a contract, these existing legal regulations will apply. This not only saves time with the drafting of the contract, but it also reduces legal consultation costs. In contrast to US and UK documents a German sale and purchase agreement may not include an exhaustive list of definitions as these are typically embodied in the specific provisions.

In very difficult negotiations it might occasionally occur that certain important points are not settled until near the end of the negotiation process.

When the parties have agreed on the major points, later attempts to renegotiate these when there is no obvious need to do so may cause tensions between the parties, particularly if agreement on these points had already been set out in a letter of intent or memorandum of understanding (regardless of whether these are legally binding). Such renegotiations are only common where it has been explicitly agreed that the parties were awaiting the results of further due diligence examinations.

In larger German companies there are usually several departments involved in the transaction process. This may lead to delays in the decision-making process, as decisions can only be made after the different departments have been consulted.

One of the key issues in the negotiation phase are pre-signing restructuring measures, such as carve-outs. A carve-out allows the purchase of a specific business from a larger company and isolates the buyer from past liabilities, subject to any specific rules on joint and several liabilities. A carve-out is also used to ring-fence the perimeter of the target and to exclude real property or unwanted business activities from the acquisition. Carve-outs require an opening balance sheet.

2. Content of the Purchase Agreement

Under German law, the principle of abstraction (*Abstraktionsprinzip*) has to be observed. German law distinguishes between (i) the obligatory agreement to sell and transfer the shares/assets to the purchaser and (ii) the transfer of the title in the shares/assets. The two acts are separate from one another. While the parties are free to choose any foreign law to apply to the sales agreement, the transfer of the title in the shares/assets is mandatorily subject to German law.

The negotiations on the purchase agreement are the most important part of an acquisition process. Special attention must be given to the representations and warranties made, with the purpose of lowering the risks which will arise upon the automatic assumption of liabilities. In an asset purchase agreement a further focus lies on the identification of the individual assets which are intended to be transferred.

a) Representations and Warranties

Representations and warranties play an important role in sale and purchase agreements. If the agreement is governed by German law, there are statutes that apply in the event of breach of contract. These statutes however are not always suited to solving problems in the sale of a business. Therefore the parties will usually contract out any statutory rights.[19] In return the parties agree on a contractual warranty regime sui generis where the seller provides representations and warranties which are set out in the purchase agreement. The catalogues of representations and warranties are quite detailed and must be adapted to the individual transaction on a case-by-case basis.

b) Purchase Price Mechanism

As to the purchase price, the parties can either agree on a fixed net price established at the time of the agreement or a formula which may be tied to net assets, cash free/debt free models, earn-out arrangements and many other possible variations. Whereas purchase price-adjustment clauses are very common in US related transactions, in Europe only 45 % of the purchase agreements provided for such an adjustment in 2014. Earn-out structures lead to a deferred payment of the purchase price and can also serve as financing structure. Due to the high risk of legal disputes, there has been a recognizable trend towards deferred portions of the purchase price. Locked-box models are nowadays regarded to be advantageous to both the seller and buyer due to the certainty they offer and reduced effort and expense required in post-closing. Locked-box models were in the German-speaking countries in 2014 seen in more than half of the transactions, in particular in the small and mid-cap market.

3. Signing and Closing

Under Anglo-American law the signing of the sale and purchase agreement and the closing are often two separate processes. While in Germany the signing and the closing originally were in one

[19] As far as the legal provisions are at the parties' disposal/can be contracted out.

process, the Anglo-American approach has been adopted to an increasing extent. Whereas proposing a separate closing might cause a certain degree of distrust in very small transactions, it has become common practice in large transactions, where different rounds of approval and/or merger control clearance are required.

In that context it should be noted that in Germany certain legal acts require notarisation. For example the purchase agreement concerning a transfer of real estate or shares in a GmbH must be notarised before a German notary public. In case of a GmbH not only the obligation to transfer shares but also transfer of the title in the shares must be notarised.[20] Notarisation causes additional costs.

4. Breaking off Negotiations

In Germany it is not common practice to agree on break-up fees. It should be noted that trying to impose the costs of unsuccessful negotiations on the other party is extremely problematic. However, entering into negotiations is deemed to create a pre-contractual relationship between the parties, giving rise to certain obligations irrespective of whether an acquisition agreement is ultimately signed. These obligations result from the trust which is mutually expected of and provided by the parties toward one another. With regard to M&A negotiations each party is obliged to negotiate in good faith, including the duty to make truthful statements, especially concerning financial data as well as to disclose all information which is objectively of fundamental relevance for the other party's decision. Negligently or intentionally violating these obligations may lead to liability to compensate damages. However, it should be pointed out that there is no obligation to sign an acquisition contract and close the transaction as long no compulsory commitment has been made. Each party may at any time break off the negotiation and back away from a contemplated transaction.

[20] Sec. 15 GmbHG.

IX. Merger Control Procedure/Anti-Trust Law

A prospective purchaser should be aware that German and European antitrust regulations may be applicable.

1. Germany

The principal legal basis of German merger control is set out in chapter VII (sec. 35 – 43) of the Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*). In addition, the Federal Cartel Office (FCO – *Bundeskartellamt*) has issued several guidelines and notices for the interpretation and practice of merger control in Germany, most of which are also available in English on the FCO's website (http://www.bundeskartellamt.de/EN/Home/home_node.html).

An obligation to file a merger control notification only exists where a transaction is considered a "concentration" and where the turnover of the companies involved exceeds in the last business year preceding the concentration the following thresholds:

- The combined aggregate worldwide turnover of all undertakings concerned was more than EUR 500 million; and
- At least one of the companies had a turnover of more than EUR 25 million and another undertaking of more than EUR 5 million generated in Germany.

Not only mergers in the stricter sense and majority holdings constitute a concentration within the meaning of the law. In some cases, the acquisition of a minority interest can also qualify as a "concentration". This is the case, for example, if at least 25 % of the voting rights or capital shares of another company are acquired. Minority participations must also be reported if they will enable the acquiring company to exercise a material influence on the other company. The acquisition of significant assets, such as a production site or a business division, can also constitute a concentration within the meaning of the law.

The law also provides for a *de minimis* exception, if the above thresholds are met but the competition on the market is not significantly affected

2. European Union

EU merger control is governed by Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation). Subject to limited exceptions, under the Merger Regulation the European Commission has exclusive jurisdiction within the EU over „concentrations" that have a „Community dimension".

These transactions require prior notification to, and clearance by, the Commission.

A concentration exists where one or more undertakings acquire whether by purchase of securities (shares, interests, etc.) or assets, by contract or any other means, direct or indirect control of the whole or part of one or more other undertakings. Therefore, a concentration can include:

- An acquisition of sole control.
- A pure merger.
- An acquisition of joint control.

Control is the possibility of exercising decisive influence. A concentration only arises where there is a change of control on a lasting basis. The key issue in assessing whether a transaction constitutes a concentration is whether or not the possibility of exercising decisive influence over strategic commercial behaviour is conferred. The Commission considers cases involving legal and de facto control as giving rise to a concentration.

Assuming that there is a concentration, and subject to the possibility of referral between member states and the Commission the Merger Regulation only applies if the transaction has a Community dimension. This is determined by reference to two sets of turnover.

The primary thresholds are satisfied if both applies:

- The combined aggregate worldwide turnover (in the preceding financial year) of all the undertakings concerned exceeds EUR 5 billion;
- The aggregate Community-wide turnover of each of at least two of the undertakings concerned exceeds EUR 250 million.

Where these thresholds are not met, the secondary thresholds apply and are satisfied if all of the following criteria are fulfilled:

- The combined aggregate worldwide turnover of all the undertakings concerned exceeds EUR 2.5 billion;
- In each of at least three member states, the combined aggregate turnover of all the undertakings concerned exceeds EUR 100 million;
- In each of those three member states, the aggregate turnover of each of at least two of the undertakings concerned exceeds EUR 25 million;
- The aggregate Community-wide turnover of each of at least two of the undertakings concerned exceeds EUR 100 million.

However, even where the primary or secondary thresholds are met, there is no Community dimension if each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same member state (the „two-thirds" exception).

In case a merger is subject to European merger control, an additional filing in the respective member state is not required.

X. Taxes

The decision as to the form of an acquisition (share deal or asset deal) is often highly motivated by tax factors. The German taxation system is rather complex. However it follows certain strict and systematic rules. Individuals and entities can often take advantage of various exemptions, deductions and depreciation rules. As German tax law is subject to continual changes, recent developments always need to be taken into account. The below overview on general tax aspects reflects the tax laws applicable as per March 2014.

To avoid double taxation on income and capital Germany has signed double taxation treaties with most countries.[21] Especially for those investors who are not located in a country with which Germany has concluded a Tax Treaty, an acquisition vehicle[22] could be held through an EU holding for tax reasons.

The following summary is limited to the basic tax aspects which have to be taken into account by an investor. For further details, please contact the author.

1. Taxation of Companies in General

The applicable taxation rules are often tied to the taxpayers' status as resident or non-resident. This applies to individuals and corporate entities likewise. The registered office and place of management in combination with a permanent establishment are decisive for resident or non-resident taxation in Germany.

Companies are generally taxed by the federal government on the one hand and local municipalities on the other hand. Every new company will receive a tax assessment questionnaire from the competent tax office (*Finanzamt*) once it has been established or registered. The taxpayer must file an annual tax declaration.

a) Taxation of Corporations

A corporation is subject to corporate income tax (*Körperschaftssteuer*) levied by the federal government,[23] imposing a tax of at present 15 % on a corporate's worldwide income.[24] In the case of a non-resident corporation, this tax is levied only on income generated in Germany. The corporate income tax is due for both undistributed and distributed profits. An additional solidarity surcharge (*Solidaritätszuschlag*) is levied on the corporate income tax, with a present rate of 5.5 %.[25]

[21] A list of all double taxation treaties signed by Germany is available at:
http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Staatenbezogene_Informationen/staatenbezogene_info.html.
[22] For further details on acquisition vehicles, see chapter V.
[23] The Corporate Tax Law Act (Körperschaftssteuergesetz – KStG) contains the relevant rules regarding this type of taxes.
[24] See Sec. 23 KStG.
[25] See Sec. 4 Solidarity Tax Act (*Solidaritätszuschlagsgesetz – SolzG*).
[26] The Income Tax Act (*Einkommenssteuergesetz – EStG*) stipulates the relevant rules.

Companies must charge a Value-added tax/VAT (*Umsatzsteuer*) on the exchange of their goods and services.

German resident corporations and non-resident corporations maintaining a permanent establishment in Germany also have to pay a trade tax (*Gewerbesteuer*). This tax is imposed by local municipalities and varies within Germany. The trade tax rate starts at 7%, with the average being around 14%.

b) Taxation of Partnerships

Due to the fact that a partnership is not a legal entity the individual partners are liable to pay the taxes at federal level. The profits of the partnership are allocated to the different partners and taxed pro rata according to their shareholding at their level. Individuals must pay personal income tax (*Einkommenssteuer*)[26] plus again an additional solidarity surcharge. Personal income tax is based on the worldwide income. Non-resident individuals must only pay income tax on income from German sources.

At the municipal level a trade tax is charged as well. In contrast to the personal income tax the partnership itself is liable for the trade tax.

2. Transaction Related Taxes

a) Share Deal

Currently there are no special taxes related to the share deal on the buyer's side. At present, Germany does not have a stamp duty. While other European countries (e.g. France) have implemented financial transaction taxes, Germany has not yet passed such an act.

b) Asset Deal

In terms of taxes asset deals are more complex than share deals. Unless the entire company is acquired, VAT will be due on asset deals. VAT is at 19% in Germany.[27] In most cases, the seller is responsible for collecting VAT and remitting to the competent tax office.

Quite frequently asset deals involve some form of real estate. Transfer of real estate will trigger property transfer taxes (*Grunderwerbssteuer*). The level of taxation varies from 3.5–5% depending on the individual German state (*Bundesland*).

c) Mergers

For mergers under the German Transformation Act (*Umwandlungsgesetz – UmwG*) special tax regulations are provided by the Reorganization Tax Act (*Umwandlungssteuergesetz – UmwStG*). The Reorganization Tax Act enables under certain circumstances an income tax neutral merger and non-disclosure of hidden reserves. Another important privilege of a reorganisation under the German

[27] Sec. 1 para.1 a UStG.

Transformation Act is that most reorganisations can be carried out with a retroactive effect of up to eight months for tax purposes.

d) Loss Carry-Forwards

German corporations may use tax losses carry-forwards (LCF) without time limitations. However, there is one relevant restriction regarding acquisitions: the corporation claiming the LCF and the corporation which incurred the losses must be one and the same from a legal and economic standpoint. They will not be deemed identical for economic purposes if more than 50% of the shares in the corporation are sold and if the corporation reassumes or continues its business with predominantly new business assets. The German tax authorities take into account a 5-year period to determine whether companies are legally and/or economically identical, which often leaves uncertainty about whether the corporation may or may not continue using the LCF. Even in case of forfeiture of the LCF a corporation's unused tax losses are preserved to the extent they are compensated by hidden reserves that have been built in those business assets of the corporation that are subject to German taxation.

3. Funding

A purchaser will have to decide whether it wishes to fund the acquisition through debt or equity. The main concern will often be to ensure that interest on funding can be set off against the target's profits to reduce the German effective tax rate.

Generally, interest payments are fully deductible as operating expenditure. However, some special rules apply for corporate groups. If the amount of interest payments exceeds the amount of interest earnings by more than EUR 3 million, these excess interest payments are only deductible up to an amount of 30% of the earnings before interest, taxes, depreciation and amortization (EBITDA).

XI. Costs

The costs of the execution of the acquisition contract and the asset transfer may vary considerably between an asset and a share deal, depending on what types of assets and shares are being acquired. Notarisation and registration duties cause additional costs which will depend on the transaction value. For example: when the target company combines ownership of real property with liabilities, the value of the real property might be considerably higher than the total value of the target company. That has the effect that notarization of the separate sale and transfer of the real property would be much more expensive than the sale and transfer of the shares in the target company. A stamp duty does not have to be paid in either case. Usually, the purchaser bears the costs of notarisation.

Author's background information

Dr. Martin Imhof is an Equity Partner at the Düsseldorf office of the German law firm Heuking Kühn Lüer Wojtek. He specialises in Mergers and Acquisitions, Joint Ventures, Corporate Law, Corporate Litigation/Arbitration and Distribution Law.

Martin has a special expertise in domestic and cross-border M&A and commercial transactions and the formation and structuring of international Joint Ventures. He advises foreign enterprises and individuals investing in Germany and Europe or transacting business with German companies. Additionally, Martin provides counselling to companies and shareholders regarding general corporate matters, the incorporation and (re)organisation of companies, shareholder disputes and shareholder protection. Martin does not only concentrate on negotiating transactions and drafting contracts but also represents his clients in corporate/commercial litigation and arbitration proceedings.

Clients appreciate Martin's hands-on and pro-active approach. The combination of his legal excellence with a good understanding of the various commercial, cultural and legal challenges faced by a foreign company entering the German and European market makes his advice extremely valuable. The Düsseldorf Bar Association awarded Martin the title of a Certified Specialist Lawyer in Commercial and Corporate Law (Fachanwalt für Handels- und Gesellschaftsrecht).

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