

Germany Review

ACQ's Charlotte Abbott talks to the German experts that are recognized for the breadth and depth of their financial expertise, their reputations in their jurisdictions, and the quality of their client service within M&A Services, Tax, Financial Advisory & Risk Services.

Dr. Christoph Bottermann, LL.M. is a partner at Schindhelm law firm, an international law firm founded by former partners of PricewaterhouseCoopers (PwC).

"I am one of the managing partners of Schindhelm law firm and together with my partners Prof. Heiko Hellwege, Dr. Manuela Hechler (all in Osnabrueck) and Prof. Dr. Philipp Albrecht (in Hanover) specialised in M&A transactions.

Schindhelm law firm is constantly advising on international M&A deals in various sectors on vendor's as well as on seller's side. The firm's lawyers have experience in multiple jurisdictions, including transitional economies, and therefore are also equipped to deliver "to the point" expert advice in cross-border transactions.

"Schindhelm specialises in personalised legal advice for corporate enterprises and private clients in all areas of business law with a focus on midsize companies. A team of over 50 legal experts located in 7 European and Asian cities as well as global synergies with leading tax advisors and chartered accountants allow us world coverage in all major jurisdictions.

"Schindhelm law firm is expanding in Germany and is becoming increasingly recognised internationally with offices in Shanghai, Bucharest, Paris and Beijing. Moreover, we are also actively extending our network by entering into international alliances.

"In 2008 we accompanied the sale, by share deal, of one of the biggest bakery chains in Germany by the sole shareholder to a private equity fund. We also advised a leading German investment company on a demerger of a subsidiary in the software branch. Furthermore, we counselled the shareholders of a leading worldwide manufacturer of polyurethane based products regarding the sale of their shares to a European venture capital firm. Our Hanover M&A team advised a big publishing group on a purchase of an investment portfolio in the print sector.

"I have observed in the last twelve months is that an increasing number of transactions get cancelled or postponed due to the potential purchaser's financing problems. Furthermore, a growing number of Asian companies have embarked on M&A activity in Germany as purchaser; their targets are especially insolvent German companies.

We anticipate in the latter half of 2009, a larger role to be played by banks as financial issues continue to affect most industry sectors. Since in this regard, the banks are tightening the conditions of their credit facility agreements, comprehensive legal advisory will increasingly include the overseeing of respective negotiations with banks.

Klaus Kremers is Partner in the turnaround and restructuring practice at Roland Berger Strategy Consultants

"A recent study of over 900 board members and CEOs in Germany, with over 100 detailed responses, into the effects of the current worldwide economic crisis has given us some key insights into the trends over the past 12 months.

"As the subprime crisis has developed into a worldwide economic crisis, the expectation in Germany is that the bottom has not yet been reached and is not expected to be reached before the end of 2009. Any sort of economic recovery is not expected to be felt until the second half of 2010.

"Financial services, automotive and engineering products appear to be more greatly affected and are not expected to recover fast. Pharmaceuticals, energy and retail are slightly more optimistic as the effects of the crisis were felt much less severely.

"The continuing squeeze on companies is partly caused by deteriorating credit terms as well as difficulties in obtaining new loans. This was the case 6 to 12 months ago which means that the financial policy by the Government to inject liquidity into the financial system does not appear to have filtered down to the grass roots yet.

"For companies to successfully manage this crisis it is perceived that the key critical success factor is the quick implementation of measures. This is at its highest point of all past restructuring surveys since 2001. Management commitment and having a comprehensive program are the next most important factors for management to navigate through the current crisis.

"Most companies have already launched tough initiatives to cut costs and improve their liquidity over the past 12 months. More than one third of companies have already cut personnel costs by more than 10% with the majority expecting to cut future personnel costs by more than 10%.

DETAILS

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“Due to a stronger political emphasis on clean energy, there will be a significant growth in cross border energy transactions.”

Buse Heberer Fromm

“Companies have used this crisis as an opportunity to cut their total cost base and concentrate on their core business. Most were aware of the benefits of the Government's plans for the economy but view the importance of the plans for their own company as minor.

“Similar studies were also carried out around the world to give us our fifth annual combined International Restructuring Survey 2009

“2009 will continue along the same lines as the last 12 months with a very small amount of acquisitions activity.

“Liquidity issues will continue to be top of the list of priorities for companies. Cost reduction plans will not be pushed as hard as they should be by most companies management, which in turn will then hinder them to take advantage of any opportunities that occur as the economy recovers.

“We have also seen an increase in the number of firms that are developing restructuring concepts with the main intention of applying for State Guarantees and expect this to continue through out the year.

“As we do not expect the economy to recover until 2010, there is still a small window of opportunity for management that have yet to be proactive in restructuring their cost base and stripping out spare capacity. Realigning their costs to demand now will improve the chance of being able to take advantage of the future opportunities in their market that may arise and give them a competitive edge.

“While it is expected that the economy will start to recover in 2010, it is not expected to get back to 2007 levels until 2013 at the earliest.”

Buse Heberer Fromm provides consulting services with more than 120 practicing lawyers, at the following locations: Berlin, Düsseldorf, Essen, Frankfurt, Hamburg, Munich, Brussels, Milan, New York, Palma de Mallorca, Sydney and Zurich.

Dr. Christian Quack is the leading Corporate/M&A partner of our firm in Duesseldorf: He is the founding Chairman of the firm's Practice Group Corporate/M&A and served in this capacity seven years. Trained, among others, in Canada, Christian has an extensive crossborder practice covering in particular Europe, North America and Japan.

Lutz Hartmann is one of three Corporate/M&A partners of our firm in Frankfurt. Further he is Country Liaison Partner for Italy and France. Lutz Hartmann is specialised in cross-border M&A deals involving countries such as UK, France, Italy, USA and Canada.

Dr. Florian Brem is Senior Associate in the firm's Hamburg office. He is also specialised in cross-border transactions involving countries such as USA, UK, Netherlands and Mexico. Further, he permanently advises national and foreign banks (e.g. Barclays Bank PLC) regarding all areas of their German business.

“As a full service law firm Buse Heberer Fromm provides services in all areas of economic law and tax law. The range of services we provide comprises industrial law, banking and

financial law, energy, company law/M&A, protection of industrial property rights/copyright, trade/transport/insurance, real estate and building laws, information technology and telecommunication, antitrust law and merger control, public law, press and media law, procedural law/arbitration/mediation, tax law and corporate criminal law. Buse Heberer Fromm has 11 practice groups, covering all of the above mentioned major business law sectors such as Corporate/M&A, IT, IP, Labour Law, Real Estate etc.

“Buse Heberer Fromm is one of the top 5 independent German law firms and was just rewarded as Independent Law Firm of the Year in Western Europe by ACQ. Further Buse Heberer Fromm has been awarded the Silver Award in the category “Best Law Firm 2009 Germany” by this year's International Legal Awards in Paris.”

2008 landmark deals

1. US American Group of Investors (advice on the sale of the Global Business Services Plus S.A.S., Paris, together with subsidiaries in Germany and Slovakia to Swiss Post, Bern)
2. Foreign Sports Association vs. German Sports Association (advice on exit from two joint-venture corporations and ancillary agreements)
3. Bayard Presse/Roularta (advice in relation to acquisition of several companies as well as periodicals and magazines as part of an asset deal)

“The restructuring and reorganisation transactions have been particularly strong during the last 12 months. The general corporate transactions are smaller in the last months than they were before. Nevertheless, we could maintain a strong link to our traditional clients and access new clients as they seem to become aware that in times of crisis a closer link to the advising partner and a strong and long term relationship in general is helping them to be understood by their lawyers. Our fee structure remains attractive. We were not forced to big cuts nowadays where others reduced their fees by 40% in order to remain reasonably busy.

“Further the demand for advice related to banks' changed way of doing business due to the credit crunch has increased strongly. This affects counselling of banks but also of many companies especially regarding financing.

“In 2009, we will clearly see increasing M&A activities both in numbers and size as the prices are low and in a lot of sectors a concentration will take place, such as in the automotive industry. It appears that the bottom has been reached. If prices climb again, there will be a big push in the M&A market. Germany has a very strong industrial basis and foreign companies will be tempted to look for an entrance into the German market.

“Due to a stronger political emphasis on clean energy, there will be a significant growth in cross border energy transactions.

“As companies are seeking inflation protection, also infrastructure and government backed deals will see an increased relevance. International investors will usually seek

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Klaus Kremers

more local transactions. Identifying German transactions will often involve patent protected products.

“Industrials as investments are interesting due to their bankability and thus bear a special relevance for international pools of liquidity.

“Further, we expect an increasing number of acquisitions of companies, which are overindebted not only because of the economic situation but especially due to a past leveraged buy-out.

“In general the importance of equity capital solutions and mezzanine financing as well as convertible loans will continue to increase compared to solutions based on borrowed capital.

“Banks need support in assessing balance sheet risk exposure in order to be able to open up for interesting transactions.

“Apart from the banking crisis banks will need much advice regarding the – complicated and often unclear – law changes by the national implementation of the European Payment Service Directive (PSD) and the European Consumer Credit Directive (CCD), which will come into effect on 1 November 2009 and June 2010 respectively.”

Dipl.-Kfm Dr Maximilian Koch is a Managing Director and a Partner of Mütze Korsch Rechtsanwalts-gesellschaft mbH (MKRG).

Dipl.-Kfm Dr Maximilian Koch joined MKRG as an equity partner in March 2005 after practising as a corporate lawyer with Freshfields Bruckhaus Deringer, Dusseldorf, for several years. Before Dr Maximilian Koch turned to business law he had worked as a manager with a medium-sized supplier for the international TV set industry for several years.

MKRG is a German full-service law firm with offices in Dusseldorf and Cologne. MKRG has 27 lawyers of whom 15 are partners.

Although the brand MKRG is quite young, the partners are very experienced. Due to the Sabanes-Oxley regulations, PricewaterhouseCoopers separated from its former law firm of which the Dusseldorf and Cologne offices finally became MKRG. Since then MKRG has successfully expanded its partnership internally as well as via fortunate lateral hiring's.

The main areas of MKRG's legal practice are: 1) Real Estate including Construction Law, Public Private Partnerships, Public Procurement Law, Public Law and Hospital Law; 2) Corporate Law, M&A including Financial and Capital Markets Law as well as Insolvency Advice and Restructuring; 3) Labor Law (individual as well as collective) including Immigration Law; 4) IP / IT, Commercial and Competition Law.

Although MKRG is completely independent, it is able to work inter alia on a best-friends basis with PwC regarding industrial auditing, tax law and business management issues. Due to its autonomy and the high quality of its work MKRG is also a valued partner of international law firms not possessing a German office.

MKRG advised inter alia the following closed cross-border M&A headline deals in 2008:

MKRG, led by Dr Maximilian Koch, advised the Maredo top managers on their secondary MBO after MKRG had advised them on their first MBO of Maredo (steak house chain) out of the British Whitbread group in 2005. The secondary MBO in 2008 won MKRG the ACQ global award 2009 in the category “Small Law Firm of the Year – Western Europe”;

MKRG, led by Hans Stefan Korsch, advised the Indian Cranes Software International Ltd., a company listed on the stock exchange in Mumbai, on the acquisition of Cubeware GmbH, a German software company, in 2008. In addition MKRG advised some headline PPP projects in 2008.

Furthermore, Dr Maximilian Koch, MKRG, successfully advised a German metropolis on a very favourable settlement of a complex three-digit-million-euros claim under German stock corporation law.

“We have experienced that - due to the worldwide economic crisis - the M&A market in Germany has changed and shifted its focus. Some months ago primary investments of financial as well as strategic investors were prevailing. Now we have a buyer rather than a seller market. Over the past months secondary transactions among financial investors as well as restructuring deals have gone ahead. However, below the line the worldwide economic crisis has not had a negative impact on our law firm's turnover. For restructuring advice has ever been a main pillar of our legal practice.

“Along with the worldwide economic crisis the economic uncertainty has increased immensely. Leveraged deals, which seemed to be smartly engineered some months ago, have turned into nightmares for the buyers. The takeover of Continental by Schaeffler and the takeover of Volkswagen by Porsche are only two prominent examples. In general, German companies face an economic environment characterised by great difficulty obtaining credits while even big players are crunching with broad repercussions. In particular the automotive industry and its subcontractors have been hit hard. For the M&A business in Germany this economic uncertainty has mainly the following consequences: Companies often put their M&A deals in the pipeline on ice or even call them off. On the other hand, the demand for high-end restructuring as well as divestiture advice is growing.

Due to the growing globalisation and the international dimension of the crisis, in fact the number of cross-border restructuring cases has gone up as well. In Germany, we experience an increase in businesses for sale. However, there is often a lack of investors willing to take the respective risks and having access to the financial means necessary to perform the transaction, although in particular strategic investors are facing attractive M&A and equity investment opportunities in Germany right now.” **ACQ**



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