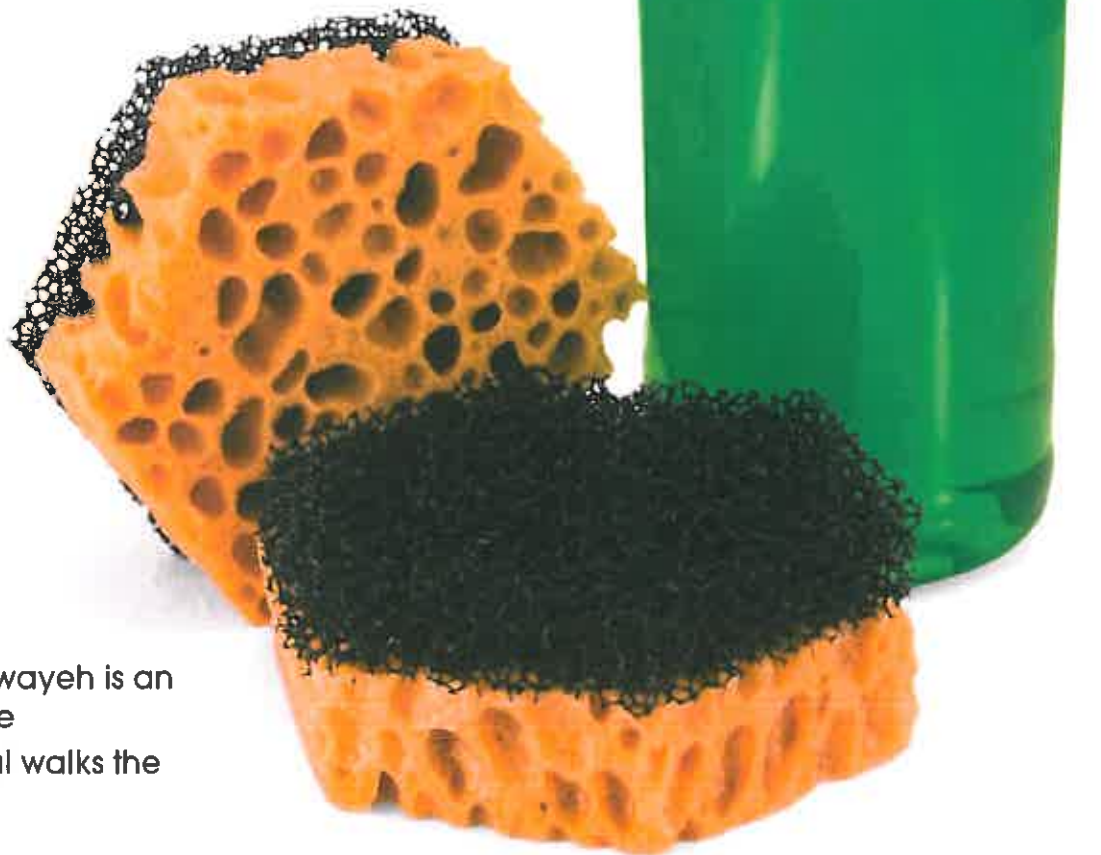


ACQ

Small firms suffer

As funding dries up



This Issue:

- > Al Sarraf & Al Ruwayeh is an oasis of expertise
- > Dutchess Capital walks the equity line



Dagmar Waldzus



Christian Quack

Deutschland deals

In 2009 German M&A activity was down for the first time since 2004. ACQ talks to the experts about whether this trend will continue in 2010.

Dr. Dagmar Waldzus is a partner in the Hamburg office of Buse Heberer Fromm and a member of the firm's M&A / Corporate Practice Group.

Dr. Christian Quack is a senior Corporate/M&A partner of Buse Heberer Fromm's office in Duesseldorf.

Professor Dr. Peter Fissenewert is a partner in the Berlin and Brussels offices of Buse Heberer Fromm.

"As a commercial law firm with six offices in Germany and seven offices abroad Buse Heberer Fromm provides practice-oriented legal services in all areas of economic law. The core areas of Buse Heberer Fromm's business include, among others, corporate law / M&A, protection of industrial property rights / copyright law, IT- and telecommunication law, employment law, tax law, real estate and building laws as well as banking and financing law.

Buse Heberer Fromm's M&A attorneys take a business-minded approach when advising their clients in all phases of a transaction and they have a vast experience in the sale and purchase of business entities, management buy-outs, restructurings, public listings, takeovers, spin-offs and the like.

In 2009, Buse Heberer Fromm was awarded "Independent Law Firm of the Year – Western Europe" by ACQ, was nominated as "Law Firm of the Year Germany" by THE LAWYER and won the Silver Award in the category "Best Law Firm 2009 Germany" at the International Legal Awards in Paris.

Dagmar Waldzus: "Aspects of Corporate Governance and Legal Compliance have become increasingly important for

managing directors and shareholders represented by our firm. Compliance-related issues arise with respect to a wide variety of legal areas and are relevant in all kinds of industries. Our clients' demand for legal support in their efforts to implementing the necessary compliance structures without disturbing or even destroying the entity's individual business culture when doing this has been a challenging but rewarding task. We definitely see a greater need in the future for attorneys who are experienced in providing profound legal advice and who have enough sensitivity to take into consideration the particularities of the respective business entity's culture. In particular where investors are involved as shareholders, the management is required to evaluate whether existing corporate compliance structures are sufficient or whether new instruments should be established."

Christian Quack: "Transaction work showed smaller deals with cost-conscious clients and often mounting time pressure in fire sale situations, fitting well with our way of working close to the client. Restructuring including downsizing of operations became an ever increasing part of our business. The order of the day for private equity investors is to steer their portfolio through these critical times. This includes negotiations with banks due to broken covenants in financing agreements, a task we happily support with our advice. German banks tend to stretch the financing against an increase in fees whereas foreign banks more often consider a partial waiver. Investors inject fresh money. As many of our clients are in the Mittelstand business we see that as a rule private equity investors carefully try to help as they do not want to lose their credibility and reputation with the often family owned Mittelstand business - investment opportunities of the future!"

Peter Fissenewert: "Besides the regular M&A business, which has decreased over the last few years, the challenge of business' restructuring and reorganisation has grown immensely and I proceed in this field with a special impetus. There is a considerable number of corporate law related questions to be solved when advising business entities in relation to restructuring or reorganisation. In particular, a



Peter Fissenewort

deep knowledge of insolvency law is required. In many restructuring processes, it is essential to sell at least parts of the business entity whereas in other situations it may be advisable to even acquire other companies or businesses. In this context, it is always relevant to consider whether there are any manager's liability and/or legal compliance issues and this is where I see new areas of activity for us as corporate attorneys."

In 2009 German M&A activity was down for the first time since 2004. Will this trend continue for 2010?

Christian Quack: "I think we can hope for a slow recovery reversing this trend. Looking back to 2009, investments of German financial investors in the second quarter went down to a level which we have not experienced since 2003. The third quarter shows an increase in number and volume of deals. We are now in a period of slow and considered growth. Even though we have seen some resurgence in private equity deals that sector of the market will continue to be hampered by a shortage of debt financing, putting it at a comparative disadvantage to strategic investors. Distressed M&A is all importance. Although many financial buyers are forced to the sidelines due to limits in credit financing available, regional private equity firms look for investment in small and mid-sized targets and family owned businesses, a sector where we are particularly strong."

Dr. Patrick Giesler is partner with the Lawfirm of Meyer-Köring, a medium-size German Lawfirm with offices in Bonn and Berlin which has been founded in 1906.

Patrick Giesler is head of the franchise department of the Lawfirm. According to the Who's Who Legal (www.whoswholegal.com) he is one of the leading German franchise-lawyers. He advises solely franchisors in the expansion of their respective franchise business. This includes the drafting of franchise agreements, the drafting of franchise and operations manuals, international franchising and advising this clients in questions of franchise management.

Today, the franchise department of Meyer-Köring represents the interests of about 150 franchisors in the German Market.

Have there been any trends emerging which you have noticed over the last 12 months?



Ralf Philipp Hofmann

"With respect to the Franchise Industry it is notable that the economic crisis does not have any negative effect on our clients' businesses. On the contrary the Franchise Industry seems to have advantages from tight labour market in Germany."

Ralf Philipp Hofmann is Managing Partner & Co-founder at Jupiter Capital Partners

"Jupiter Capital Partners focuses on M&A and financing transactions in the technology industries, including software/IT, Internet/digital media, electronics/security, cleantech and business services. We advise both public and private technology companies. Jupiter partners with French corporate finance firm LD&A, with representations in Munich, Paris, London and Brussels. In 2009, Jupiter was awarded "Technology Corporate Finance Advisor of the Year - Western Europe" and "Corporate Finance Advisor of the Year (High Tech) - Germany" by ACQ." Major transactions in the last year included the trade sale of billiger.de for ProSiebenSat.1 and the merger of SCM Microsystems with Bluehill ID to form Identive Group.

In 2009, German M&A activity was down for the first time since 2004. Will this trend continue for 2010?

"We believe that the German M&A market, particularly in the technology industries, looks attractive in 2010 with increased interest from strategic buyers as well as financial investors driven by the strong performance of fast-growing companies.

In 2010, we see increased M&A and financing activities in the e-commerce and cleantech space, M&A will also be driven by the consolidation in the RFID and software sectors. Furthermore, taking privates and secondary deals gain momentum."

How have deal structures changed in the course of the financial crisis and what has private equity learned from deal making in these turbulent times?

"Private equity in the technology industries has moved towards later-stage companies, focusing more on operational performance of the underlying businesses than financial structuring of deals, leverage plays a less important role, transactions are pre-dominantly being equity financed." ACQ

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