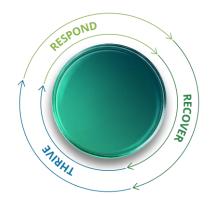
Deloitte. Legal



Six important legal M&A considerations during the global pandemic

RESPOND – A global COVID-19 response for Legal leaders

The M&A market has been hit severely by the COVID-19 crisis. Even though it is far from clear how long the crisis will last and what effects it will have, it is already possible to identify changes and foresee certain developments:



M&A market is drying up

Transactions are either cancelled or postponed. In the current environment, the parties are questioning the economic success of the planned transaction or would like to wait for further developments. In addition, the downward trend is being exacerbated by practical problems. We are increasingly seeing transactions failing because decision-makers are not allowed to travel or important original documents cannot be transported quickly. A number of multinational entities have instituted travel bans and countries have tightened their borders. From a practical perspective, the restrictions on movement (domestic and across borders) would slow down or even halt negotiations.



Due diligence content is changing

The content of due diligence will also change. The security of supply chains, possible crisis-related special termination rights in important contracts and other issues that were considered low-risk in times of economic growth will become more important.



New transactions are being postponed

In the current environment, new transactions are usually postponed because the effects of the crisis on the business plan cannot be foreseen and a reliable purchase price calculation becomes more difficult. For potential buyers, the question arises whether available liquidity can be used for acquisitions or is required to secure the existing business. In running transactions buyers struggle with their pre-crisis valuations of targets and re-open price negotiations. The COVID-19 crisis has highlighted the fragility of supply chains. However, strong market participants will try to bring important procurement channels under their own control through acquisitions or to drastically shorten supply chains at the expense of globalization. This can particularly stimulate the M&A market. Consolidation within the hardest hit sectors could be expected as well. We also assume that if the crisis persists there will be an increase in debt-to-equity swaps again. Special situations funds are already looking out for possible targets in order to be able to strike at the right moment.



Transactions continue to be financed



Contracts are adapting

Regarding transaction financing, only a few cases have so far occurred in which the financing commitment was withdrawn because of "market disruption". To date, we have not seen any cases in which banks have cancelled acquisition financing already provided with reference to the crisis. The extent to which the crisis will affect the future availability of acquisition financing cannot be predicted to date.

M&A-related contracts will adapt very quickly to the new circumstances. The times of a very seller-friendly market are presumably gone. Rising risks mean that buyers have an increased need for security. We believe that the relevance of Material Adverse Change (MAC and MAE) clauses in M&A contracts in those markets where this instrument was rarely agreed (e.g. Belgium or Germany) will increase and COVID-19 will serve as an example in future negotiations.



Filings are being postponed



Foreign trade law may become more strict

Once the COVID-19 crisis is over in political

Government officials and civil servants have been compelled to work remotely, thereby potentially slowing the pace of considering and granting necessary consents/approvals, e.g., antitrust clearance, or approvals required under the foreign investment acts. Parties will have to factor this in when evaluating the overall timing of a transaction, but specifically also when determining the long stop date. For example, Austria has decided, as a reaction to the COVID-19 pandemic, to postpone the "start of the clock" for merger control filings (which are pending or filed prior to 30 April 2020), to 1 May 2020.

Once the COVID-19 crisis is over in political terms, we expect to see a discussion about the transfer of core industries to the public sector, and about stricter rules in foreign trade law. Conversely, many states will hold interests in businesses after the crisis, but will not be interested in a long-term investment. The move away from a shareholder value orientation, towards a broader approach, and thus the acquisition of companies that already have a corresponding focus, will also gain further momentum. Discussions on these issues have already begun, but are currently hardly noticeable among the crisis-related daily news.

Contact:



Dr Markus Schackmann
Deloitte Global Leader – M&A Law
Deloitte Legal Germany
+49 211 8772 3577
mschackmann@deloitte.de

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTIL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Legal means the legal practices of DTTL member firms, their affiliates or their related entities that provide legal services. The exact nature of these relationships and provision of legal services differs by jurisdiction, to allow compliance with local laws and professional regulations. Each Deloitte Legal practice is legally separate and independent, and cannot obligate any other Deloitte Legal practice. Each Deloitte Legal practice is liable only for its own acts and omissions, and not those of other Deloitte Legal practices. For legal, regulatory and other reasons, not all member firms, their affiliates or their related entities provide legal services or are associated with Deloitte Legal practices.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the "Deloitte organization") serves four out of five Fortune Global 500° companies. Learn how Deloitte's approximately 312,000 people make an impact that matters at www.deloitte.com.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited ("DTIL"), its global network of member firms or their related entities (collectively, the "Deloitte organization") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTIL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTIL and each of its member firms, and their related entities, are legally separate and independent entities.