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GERMANY

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1. What are the main structures for mergers and acquisitions (M&A) transactions available under local law, and what are their key distinctions?

The most common structures for private M&A transactions in Germany are share purchases, followed by asset purchases, joint ventures and investments via capital increase.

In a share deal, the purchaser acquires the target entity or entities with all assets, rights and liabilities. Third-party consents are generally not required unless relevant change-of-control provisions are triggered.

By contrast, an asset deal involves the selective transfer of assets (and liabilities). This allows the purchaser to exclude unwanted liabilities (subject to statutory exceptions, particularly with respect to employees, tax and environmental matters). However, the transfer of contracts often requires counterparty approval. Asset deals are less common than share deals, as they are less attractive for the sell-side for tax and other reasons, and usually deployed when a share deal is not appropriate (e.g. in distressed M&A or in (reverse) carve-out scenarios).

Public M&A transactions and mergers are governed by a detailed statutory framework. This includes mandatory requirements regarding the minimum offered consideration. Once initiated, public M&A transactions move on a timeline that is imposed by statutory law. Mergers require that certain statutory requirements are met, including a qualified majority of 75% of votes cast at the shareholder meeting(s), and are frequently used in post-acquisition group restructurings. Mergers can also serve as an integration tool following a public takeover.

2. How would you describe the current M&A market in Germany?

In Germany, the current M&A market is similar to what we see in other jurisdictions:

- Overall deal count has declined, while aggregate transaction values have increased, but only due to some megadeals. Transactions with deal values under EUR 100 million continue to represent the majority of transactions, whereas deals exceeding EUR 500 million in value drive a substantial portion of total deal value.
- Technology and industrials account for a large share in M&A activity.
- Cross-border deals continue to outpace domestic transactions in terms of deal count and deal value; however, domestic and European transactions generally involve fewer execution complexities than inbound M&A activities.
- The investor base has remained balanced between financial sponsors and strategic acquirers, with strategics leading large-cap transactions.
- Over the past few years, the average time and effort required to sign a transaction have increased (and, relatively speaking, fewer transactions cross that line), given valuation gaps, financing endeavours and the efforts to safeguard decision-making processes in a volatile environment.

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3. What major trends have you seen in the past 12–24 months?

Major trends over the past 12–24 months include:

- Uncertainty surrounding the new multipolar world order has stalled M&A activity in Germany, at least temporarily and, in part, more fundamentally.
- Pricing mechanisms remain disciplined; earn-outs are still rare.
- Higher interest rates have kept financing costs elevated, but rate cuts initiated by the European Central Bank since mid-2024 have provided some relief; particularly supporting the recovery in private equity activity. Recently, sponsors have increasingly used private credit/unitranche facilities/direct lending to secure certainty, with syndicated loans still selective.
- Companies facing refinancing needs amid a challenging economic environment and increasingly maturing debt have contributed to rising restructuring and distressed M&A activity.
- Transformative transactions and portfolio optimisation, as well as carve-out transactions, have gained prominence, and we expect to see many more in the future.
- Environmental, social and governance (ESG) criteria continue to influence target selection, although they have been deprioritised.
- Deal activity in the defence sector and in the defence/tech area is gaining momentum following a surge in investments, fuelled by uncertainty surrounding geopolitical conflicts and Europe's focus on ramping up defence capabilities.

4. What are your predictions for the M&A market in the next 12–24 months?

While uncertainty surrounding geopolitical developments is likely to persist, investors start showing increasing resilience, supporting a moderate outlook for 2026 (base case) and stronger momentum from 2027 onwards.

- With market conditions shifting away from the highly seller-friendly dynamics of prior years, valuation expectations may converge.
- At the same time, the impact of AI on a company's medium-term development is rarely quantifiable, which complicates valuation, particularly over the next two five-year investment planning cycles.
- Undeployed capital and an exit-backlog may lead to an uptick in private equity activity both on the buy- and sell-side.
- Conglomerates are likely to continue sharpening their focus on core and non-core activities through carve-outs and spin-off transactions.
- Germany's *Mittelstand* (its small and medium-sized enterprises (SMEs), which form the backbone of Germany's economy) is in a phase of succession planning and redefining its role in a globalised economy, which offers attractive opportunities for domestic consolidation and continues to attract foreign investors.
- Elevated insolvency rates over the past two years suggest continued distressed M&A opportunities.
- Technology and industrials will likely continue to lead in terms of target sectors, with the defence sector as well as the energy transition field poised to capture a growing share of M&A activity.

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5. What are the key laws and regulations governing M&A?

While private M&A transactions are generally governed by the contractual terms negotiated among the parties (as well as employment law, and, for the sale and transfer of shares in a German limited liability company, the requirement to execute the agreement in a notarial deed (*Beurkundung*)), the key statutory framework for public M&A transactions includes the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) and the German Takeover Act Offer Ordinance (*WpÜG Angebotsverordnung*). For stake-building in advance of a public takeover, disclosure requirements for shareholdings triggered by voting rights exceeding 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% are governed by the German Securities Trading Act (*Wertpapierhandelsgesetz*).

On the regulatory end, in addition to sector-specific provisions, the EU Merger Regulation, the German Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*), the German Foreign Trade Act (*Außenwirtschaftsgesetz*) and the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*) can be relevant in both public and private M&A transactions. If the thresholds for a mandatory merger filing with the European Commission or the German Federal Cartel Office (*Bundeskartellamt*) are met, clearance must be obtained prior to closing the transaction. Acquisitions involving a foreign investor may require clearance by the German Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*).

6. What forms of consideration are commonly used? Are there restrictions on non-cash consideration?

In public M&A, the takeover bid must at least offer either cash or liquid, publicly traded stock, or a combination thereof, as consideration. A public offer of shares as consideration requires compliance with the German Securities Prospectus Act (*Wertpapierprospektgesetz*). If the bidder has acquired at least 5% of the shares or voting rights in the target shortly in advance or in parallel to the takeover offer in cash, the offer must mandatorily include a cash compensation alternative. At the minimum, the offer price must equal either: (i) the highest price paid by the bidder for shares in the target within the six months prior to the publication of the offer memorandum; or (ii) the three-month volume-weighted average stock exchange price prior to the announcement of the decision to launch the takeover offer, whichever is higher.

In private M&A, cash is the most common form of consideration. Assets such as shares are a viable form of consideration as well (including rollovers). If the acquisition of an equity stake is implemented through a capital increase, the contribution-in-kind of assets is subject to corporate formalities, including a valuation report by a court-appointed valuation expert. Regarding purchase price mechanisms, fixed locked-box purchase prices with no-leakage undertakings were historically popular in the seller-friendly German market, shifting the economic risk as of the historic, pre-signing locked box date. As market dynamics shift, the closing accounts mechanism is seen more often. While escrows and holdbacks have become rare, earn-outs may bridge valuation gaps. Purchase price adjustments and earn-out mechanisms are generally more susceptible to post-M&A disputes than fixed price arrangements.

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7. What is the typical scope and focus of due diligence?

M&A transactions usually require commercial, legal, financial and tax due diligence. Depending on the nature of the target's business, there may be additional due diligence efforts (e.g. relating to environmental risks, IP, real estate). The scope of the due diligence is determined by multiple factors, including whether the acquirer is active in the same sector or even a (major) shareholder of the target and therefore familiar with its business.

If warranty and indemnity (W&I) insurance coverage is sought, careful consideration should be given to the interaction between the potential scope of the insurance policy and the need for underlying due diligence when tailoring focus areas and review thresholds as part of the due diligence workstream.

Access to information may be restricted by corporate, competition, data protection and other rules but can often be mitigated through non-disclosure and clean team agreements, redaction of documents or aggregation of data. In public takeovers, inside-information rules may limit the timing and extent of due diligence. The due diligence efforts of the buyer are frequently supported by fact books that are provided by the seller, especially in auctions, to expedite the bidders' efforts. Unlike full-blown vendor due diligence reports, a fact book usually does not include analysis or conclusions of specific issues.

8. How common are warranty and indemnity (W&I) insurance policies, and how do they affect negotiations of representations and warranties?

W&I insurance policies have become increasingly common in recent years. Such insurance solutions are ubiquitous in (sell-side) private equity deals but have been recognised as a versatile tool in other M&A transactions as well. The warranty catalogue is often one of the most fiercely negotiated parts of the purchase agreement. W&I insurance can ease these negotiations, as sellers are more comfortable providing a comprehensive warranty package when a potential breach is insured (the insurance is typically taken out by the purchaser). Most recently, W&I policies may serve as tool bridging a valuation gap. Zero liability and synthetic policies can exclude liability of the seller (except for fraud) completely. The insurer's willingness to cover specific warranties depends heavily on the quality of the due diligence disclosure.

9. Distinct from antitrust and competition law requirements, are there restrictions or review mechanisms for foreign buyers acquiring domestic businesses or assets?

Share purchases above certain voting rights thresholds, as well as the acquisition of (parts) of a business through an asset purchase by foreign investors may be subject to review by the German Federal Ministry for Economic Affairs and Energy. Depending on the sensitivity of the target's business, acquisitions can trigger notification and approval requirements. The sensitivity of the target's business also determines the relevant threshold triggering the review, which can be as low as acquiring 10% of the voting rights. While most transactions are only subject to review if the investor or its indirect shareholders (above certain voting

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right thresholds) are based outside the EU, Iceland, Liechtenstein, Norway or Switzerland, in some industries — namely the defence sector — even investors based within the EU are within the scope of the Ministry's review.

10. What are the major disclosure or announcement requirements for public M&A transactions?

Once a bidder decides to launch a voluntary public tender offer, the decision must be notified to the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) and to the stock exchange on which the target is listed without undue delay. Furthermore, the decision to launch the offer must be published on the internet and through designated information services. The publication of the decision to launch the offer does not obviate a listed bidder's duty to disclose inside information (e.g. the basic terms of the intended offer once such terms have been sketched out). The bidder (and potentially also the target, if the target is in possession of such inside information) will usually have a legitimate interest that justifies delaying the disclosure, subject to continued strict confidentiality of the information.

11. How are public takeovers regulated, and what are the main procedural requirements?

Under the regime of the German Securities Acquisition and Takeover Act, the bidder must file the offer document with the German Federal Financial Supervisory Authority within a period of four weeks following the publication of the decision to launch the offer. If the German Federal Financial Supervisory Authority does not object to the offer document within a review period of 10–15 business days, the offer document must be published without undue delay. The publication marks the commencement of the time window in which the offer can be accepted (minimum four and maximum 10 weeks). During this time window, the bidder needs to publish the number of tendered shares weekly, and daily in the last week of the offer period.

If a competing bid is launched with an offer period that exceeds the offer period of the original bid, both offer periods are synchronised (i.e. the offer period of the original bid is extended to match the competing bid). Deal protection devices such as break fees, exclusivity, or "no-shop" clauses are permissible within the boundaries of corporate and takeover specific regulations, depending on their scope and the circumstances of their implementation. Limitations arise *inter alia* from the target management board's (*Vorstand*) duty to act in the best interest of the target company and by capital maintenance rules.

Following the acquisition of a sizable majority of shares, squeeze-outs are frequently implemented to gain full control. They are often preceded by delisting the target company, which requires a mandatory public offer for the remaining shares, thereby further increasing the stake of the bidder. Minority shareholders are entitled to receive compensation in the case of a squeeze-out. Depending on the legal basis of the squeeze-out, such compensation must be adequate and attested by a valuation expert (which can be challenged by the minority investor

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in an appraisal proceeding (*Spruchverfahren*)) or equal to the consideration offered in the takeover bid. Sell-out rights entitle the minority shareholders to sell their shares and receive the consideration offered in the takeover bid, subject to the bidder having acquired 95% of the voting shares, but are hardly relevant in practice.

12. How are M&A disputes commonly resolved? Are there preferred dispute resolution forums or governing laws?

Given the benefit of confidentiality, purchase agreements and shareholders agreements often include arbitration agreements. In agreements with German law as governing law of the merits, arbitration under the rules of the German Arbitration Institute (*Deutsche Institution für Schiedsgerichtsbarkeit* (DIS)) is a popular choice.

Disputes relating to closing accounts using the agreed purchase price mechanism are typically supposed to be resolved in expert determination proceedings.

Challenges by minority investors in the context of typical post-acquisition measures such as a squeeze-out or domination and profit and loss transfer agreement (*Beherrschungs- und Gewinnabführungsvertrag*) between the target and the majority shareholder are adjudicated by the state courts.

13. What role are emerging technologies playing in shaping upcoming M&A opportunities or challenges locally?

Fintechs have experienced higher levels of consolidation, driven by tighter financing conditions and increasing regulatory complexity.

The European Union's efforts to promote sovereignty including with respect to technology, as well as European players' corresponding demand for such sovereignty (including for data security and sustainable supply chains), create a more supportive environment for businesses developing emerging technologies, including AI, data centres, energy transition and defence/tech, though regulatory initiatives may also impose additional constraints.

In the near term, broader German M&A activity is likely to be influenced by the operational efficiencies and revenue opportunities created through corporate adoption of AI, although reliable target valuation is complex.

14. Are there any other significant corporate M&A considerations in Germany?

German corporate governance features — most notably the two-tier board system — may impact transaction timelines and approval processes. A German stock corporation (*Aktiengesellschaft*) by default has a two-tiered board, comprising a management board and a supervisory board (*Aufsichtsrat*). The articles of association may designate certain types of transactions that require the prior consent of the supervisory board (e.g. the sale of a subsidiary or a participation in another company above a certain threshold), but the supervisory board has the power to extend approval requirements on its own initiative. The management board can ask the shareholders' meeting to override a veto by the supervisory board, such resolution requiring a qualified majority of 75% of the votes cast.

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German co-determination rules require that in corporation with 500 to 2,000 employees, one-third of the supervisory board members are elected by employees. In corporations with more than 2,000 employees, half of the supervisory board members are employee representatives (with a casting vote for the chairperson, which is a representative of the shareholders). This means that the shareholders' representatives have the majority on the supervisory board, as long as they do not break rank.

In public M&A, the target's works council (*Betriebsrat*), a body that is elected by the employees, has the right to comment on the offer and have its comments published alongside the assessment of the target's management board.

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As a partner at Sullivan & Cromwell based in the firm's Frankfurt office, Silke advises corporate clients on a wide range of cross-border and German domestic M&A transactions, including complex carve-outs, international joint ventures and distressed M&A. Silke combines deep sector expertise in technology, consumer, retail and defence, with extensive experience across other industries. Having completed her legal education in Frankfurt, Berlin and New York, Silke has been admitted to the Frankfurt bar since 2014.

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