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# KNOWLEDGE NUGGETS

THE ACQUIRER CONCEPT –  
AN OPTION FOR ACQUISITIONS OUT OF INSOLVENCY

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## I. WHY THIS TOPIC IS IMPORTANT

The acquisition of assets or business operations out of insolvency proceedings is one of the most practically significant transaction structures under German insolvency law. In 2025, approximately 24,000 corporate insolvencies were recorded in Germany, and the trend continues to rise. This creates attractive acquisition opportunities for investors, though such transactions present distinct legal challenges.

A key concern in insolvency acquisitions is that acquirers typically have no interest in assuming all of the target's existing employment relationships. Under Section 613a para. 1 of the German Civil Code (*BGB*), however, employment relationships transfer automatically to the acquirer upon a transfer of operations, and Section 613a para. 4 *BGB* invalidates any termination issued because of that transfer. The "acquirer concept" (*Erwerberkonzept*) developed by case law offers a legally reliable solution to this challenge.

## II. WHAT IS AN "ACQUIRER CONCEPT"?

The acquirer concept is a restructuring and business management concept developed by the acquirer. It enables the insolvency administrator to issue terminations prior to the transfer of operations that are based on the acquirer's business decision—and thus on operational grounds—rather than on the transfer of operations itself.

Developed through the case law of the Federal Labor Court (*Bundesarbeitsgericht*), the acquirer concept has become an established tool for workforce restructuring in out of insolvency acquisitions. The decisive distinction from a prohibited termination on account of a transfer of operations is that the grounds for termination derive from the acquirer's specific business decision, not from the transfer itself. The terminations therefore qualify as operational dismissals within the meaning of the German Unfair Dismissal Protection Act (*Kündigungsschutzgesetz*).

To be effective, the acquirer concept must satisfy several requirements. First, it must be a binding plan: at the time the notice of termination is issued, the concept must have taken concrete form and cannot be a mere declaration of intent. Second, the grounds for termination must flow from the acquirer's plan itself, rather than from the transfer of operations as such, meaning the acquirer's specific business decision must be the operative reason for the elimination of positions. Third, the acquirer must be in a position to implement the plan, both organizationally and financially; purely theoretical plans will not suffice.

In practice, the prospective acquirer develops the plan during due diligence and submits it to the insolvency administrator. The plan should generally address the following questions:

- Which units, functions, and headcount does the acquirer require on a sustainable basis for the business operations?
- Which positions will be permanently eliminated, which skill sets will be reassigned?
- Within what time frame must measures be implemented before and after the transition?
- How many employees are to be transferred to the acquirer, taking into account the principle of social selection? This is typically done by means of a list of names, as this provides the acquirer with significant legal certainty due to the legal presumption that the terminations are necessitated by urgent operational requirements.

## III. RECOMMENDATIONS

- **Develop a detailed acquirer concept:** The plan should be substantively well-defined and document the acquirer's specific business decisions. Care should be taken to establish the grounds for termination properly and to maintain complete supporting documentation. The selection of employees affected by terminations must be conducted carefully, as it remains subject to judicial review—albeit on a limited basis.
- **Conduct thorough due diligence:** Perform comprehensive labor law due diligence, particularly because data is often incomplete in insolvency proceedings and the insolvency administrator will, as a general rule, not be able to provide comprehensive warranties or guarantees.
- **Coordinate with the insolvency administrator and works council:** Present the plan as early as possible and align it with both the insolvency administrator and the works council.
- **Plan a realistic timeline:** Implementing an acquirer concept requires time for negotiations, works council consultations, and statutory notice periods. These time frames should be considered when determining the overall transaction schedule.
- **Early involvement of advisors:** Engage specialized attorneys at an early stage. An acquisition out of insolvency using an acquirer concept is a complex undertaking at the intersection of insolvency, corporate, labor, and tax law.

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