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INSURANCE M&A

A quick Guide to acquiring a German Insurance Company

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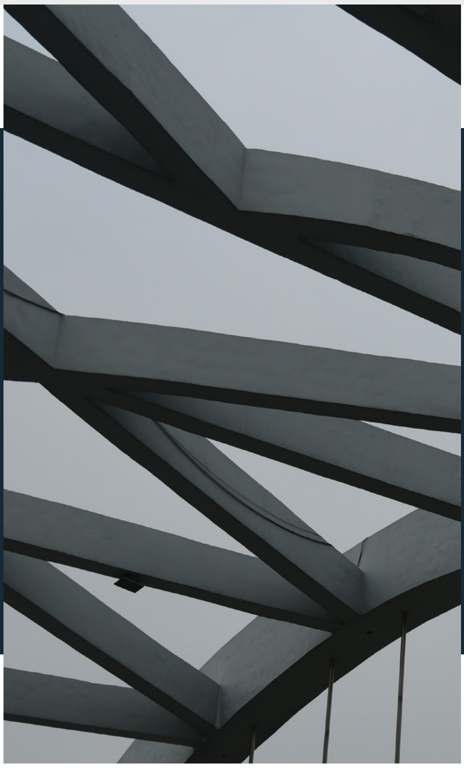


As the strongest economy in Europe, Germany is an ideal basis for covering markets all over EU/EEA. This presents opportunities for investors who would like to enter the German insurance sector.

Therefore, it is not surprising that in the recent past, several German insurance companies were acquired by foreign investors. However, as the insurance sector is heavily regulated, investors should be aware of some particularities when acquiring a German insurance company.

REGULATORY BACKGROUND

In this section, we provide an overview of the regulatory framework in which insurance companies operate in Germany. As used in this overview, the term insurance company includes primary insurance companies (*Erstversicherungen*), reinsurance companies (*Rückversicherungen*) and insurance holding companies (*Versicherungs-Holdinggesellschaften*).

OVERVIEW OF RULES APPLICABLE TO INSURANCE COMPANIES IN GERMANY

Insurance companies are subject to the requirements of insurance contract law, insurance supervision law and insurance company law. The following principles and requirements apply:

- All insurance companies are subject to a **licence requirement**. This requirement generally also covers non-EU insurance companies that intend to open a branch (*Niederlassung*) in Germany or to do business on a cross-border basis. The regulatory licence is issued separately for each insurance division (*Versicherungssparte*), meaning that insurance companies usually require several licences.
- The **Solvency II Regulation** forms the basis for the regulatory requirements for the acquisition of an insurance company at the European Union level. In Germany, it has been transposed into national law, inter alia, by the Insurance Supervision Act (*Versicherungsaufsichtsgesetz, VAG*) and the **Shareholder Control Regulation** (*Inhaberkontrollverordnung*).
- Many of the rules applicable to insurance companies are developed at the EU level. Some of these rules are still in the form of "EU Directives," which need to be transposed into national law by national rulemaking bodies. Therefore, while the regulatory regime is similar in all member states of the European Union, the specific applicable laws differ among member states. Other rules are enacted in the form of "EU Regulations", which are directly applicable in all EU member states.
- As a consequence of a wide-ranging harmonisation of substantive supervisory law in the European Union, European insurers may "passport" their activities into all other EU member states (*i.e.*, they may provide services (i) through a branch or (ii) on a cross-border basis in all other EU member states without the need to apply for an additional licence in each member state in which they conduct business). Therefore, a licence for an insurance division in one EU member state will cover the entire EU market. This is known as the so-called "single licence principle". When carrying out cross-border insurance business, however, insurers must comply with the "general good requirements" in the host EU member state.
- Insurers must establish, implement and document policies and adequate procedures to ensure that all persons who effectively run or have other key functions in the undertaking are at all times "fit and proper" within the meaning of Art. 42 of the Solvency II Regulation (so-called "fit and proper" test).
- Regulatory rules require shareholders to be reliable and therefore provide for a specific **shareholder control procedure** (see below for details) – which is of **utmost importance when acquiring a German insurance company**.

COMPETENT AUTHORITIES

Despite the far-ranging harmonisation of regulatory rules on an EU level, national authorities rather than European authorities generally enforce the rules.

In Germany, jurisdiction over insurance supervision is divided between the federal and state governments. The key supervisory authority is the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, **BaFin**), which is responsible for the supervision of private insurance companies operating in Germany that are of considerable economic importance, as well as for competitive insurers under public law that operate beyond the borders of a German federal state (*Bundesland*). Supervisory authorities of the federal states supervise public-law insurers whose activities are limited to the individual federal state and those private-law insurers that are of lesser economic importance.

Insurers domiciled in another EEA member state that conduct business in Germany through the provision of services are primarily subject to supervision by their home state. Still, BaFin intervenes in consultation with the foreign supervisory authority if it identifies violations of general German legal and regulatory principles.

The European Insurance and Occupational Pensions Authority (**EIOPA**) seeks to protect the public interest by contributing to the short-, medium- and long-term stability, effectiveness and sustainability of the financial system for the European Union's economy, citizens and businesses. EIOPA pursues this mission by promoting a sound regulatory framework and consistent supervisory practices designed to protect the rights of policyholders, pension scheme members and beneficiaries and contribute to public confidence in the EU's insurance and occupational pensions sectors.

REGULATORY SHAREHOLDER CONTROL PROCEDURES

Shareholder control procedures (*Inhaberkontrollverfahren*) apply to insurance companies, reinsurance companies and insurance holding companies. In legal terms, this is a notification procedure to the supervisory authority, which primarily serves its specific information interests. Even though it does not formally constitute an approval procedure, factually it does. If BaFin is not convinced of a shareholder's reliability or that the shareholder meets the requirements for sound and prudent management of the insurance company, **BaFin** may **prohibit an acquisition** of an insurance company or even order a **reverse transaction** (*Rückabwicklung*).

Potential shareholders should be aware that the shareholder control procedure will in many cases be time-consuming and onerous in terms of paperwork, in particular if the potential shareholder does not yet own an insurance company or other financial institution in the EU. The shareholder control procedure should therefore be taken very seriously and prepared carefully.

The procedure applies to shareholders who, either individually or together with other persons or companies, wish to acquire a "**significant holding**" (*bedeutende Beteiligung*) in a German insurance company. A "significant holding" means a direct or indirect holding in an undertaking that represents 10 percent or more of the capital or of the voting rights or a holding which makes it possible to exercise a significant influence over the management of that undertaking. The 10 percent threshold can also be reached by several shareholders acting in concert (i.e., coordinating the exercise of their voting rights and influence on an undertaking).

Persons or entities that intend to acquire a significant holding, or to increase their holding to **20, 30 or 50 percent or more of the voting rights or capital**, must notify this intention immediately to BaFin or the supervisory authorities of the German federal states. In the event of cooperation with other persons or companies, there is an obligation of all parties involved to notify the competent supervisory authority. The first notification must be accompanied by a business plan, statements of reliability and further extensive disclosures about the acquirer, its management, its shareholders and its group in German or English. It should be noted that legal entities domiciled in a third country, sovereign wealth funds, private equity funds and hedge funds are subject to additional requirements regarding the documents and declarations that they must submit.

The authorities have up to 90 working days to review the filings. The clock for the assessment period will only start ticking once all required documentation has been submitted and the competent authority has confirmed its receipt. In practice, this leaves authorities considerable discretion as to when the assessment period starts. While no formal approval of the acquisition by authorities is required, authorities may, within the assessment period, prohibit the transaction. Thus, they have a ***de facto veto* right**.

While, following from all this, the shareholder control procedure should be taken very seriously and prepared carefully, it should also be stressed that in the recent past a number of investors other than traditional European Insurance companies have successfully completed the procedure. This shows that authorities recognise that the German insurance industry can strongly benefit from outside investors and their financial strength.

Although it is generally assumed that the exercise of a veto right by BaFin would not render the acquisition invalid under civil law, the consummation of such acquisition before clearance can qualify as an administrative offence, which BaFin could heavily sanction. Therefore, the l**apse of the assessment period or a certificate of non-objection by BaFin** will generally be agreed as a **condition precedent to the closing of a transaction**.

In addition, if a primary insurance company acquires 10 percent or more of the nominal capital of a third-party company, a separate notification obligation generally applies.

TRANSACTION PARTICULARITIES

TRANSACTION STRUCTURING

The acquisition of an insurance business can, in general, be effected as a share deal or as an asset deal. In addition, German insurance law provides for a special type of an asset deal, the portfolio transfer (*Bestandsübertragung*). Besides that, general measures of the German Reorganization of Companies Act (*Umwandlungsgesetz*) such as spin-offs (*Ausgliederungen, Abspaltungen*) and mergers (*Verschmelzungen*) can be utilised (e.g., to first separate or combine the business to be sold into one legal entity, which is subsequently sold to the purchaser by way of a share deal).

SHARE DEAL

A share deal can be structured as a direct or indirect acquisition of shares in an insurance company. The advantage of a share deal is that the licence of the target company remains unaffected (i.e., it represents the acquisition of an insurance company with an existing licence). All agreements of the target company generally also remain unaffected. However, agreements can contain change-of-control clauses that may be triggered by the transaction and result in a termination right or an automatic termination of the respective agreement. This is particularly relevant for financing agreements and must be thoroughly analysed in the legal due diligence.

The purchaser must, however, undergo the shareholder control procedure(s), as described above, if the transaction concerns a significant holding in the insurance company.

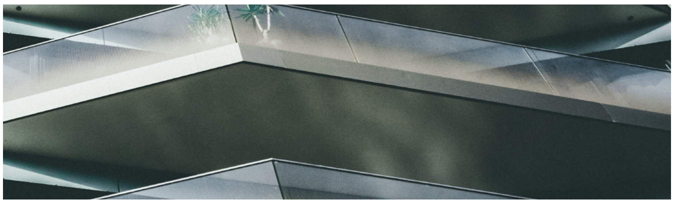
ASSET DEAL

An asset deal allows a purchaser to select the assets (and liabilities) that form part of the transaction. The main advantage of an asset deal is that it does not require the approval of the regulatory authority. The purchaser, however, must ensure that the purchasing entity possesses the licence that is required to conduct the acquired insurance business at the time of the closing. If entire insurance contracts (comprising all rights and obligations) are to be transferred, the contracting party (e.g., the policyholder) must approve the transfer.

Obtaining the approvals may be impracticable if a large number of third parties are involved. In such cases, the portfolio transfer (as described in more detail below), may serve as a solution; besides that, the transfer of renewal rights (*Erneuerungsrechte*) or the reinsurance (*Rückversicherung*) of an insurance portfolio as sub-types of asset deals may be utilised as an interim solution.

By operation of law, employees whose work assignments predominantly relate to the acquired business are also transferred to the purchasing entity (save for their individual right to object to the transfer within one month after receipt of a transfer letter).

However, the employees do not only automatically transfer, but they also keep their existing terms and conditions of employment and seniority, and the purchaser assumes all existing liabilities associated with these employees (which may, for instance, also include pension and other long-term liabilities). Their employment cannot be terminated if such termination is a direct consequence of the transfer of the business. Given the employees' right to object to the transfer, if a purchaser wants to ensure that certain key employees are transferred, it is advisable that the purchaser reaches out to these employees while purchase agreements are being negotiated. If the transaction requires a carveout of a part of a business and the employees have established a works council, the carveout typically requires consultation with the works council, which may take several months and may negatively impact the transaction timeline.



PORTFOLIO TRANSFER (Bestandsübertragung)

A special feature of German insurance law is the transfer of insurance portfolios if a primary insurance company sells its business operations, in whole or in part, by way of an asset deal. The portfolio transfer enables the transfer of various individual insurance contracts without obtaining the consent of each relevant creditor (i.e., the policyholder). The consent of the relevant creditor is replaced by the approval of the competent supervisory authority. However, it should be noted that the portfolio transfer relates to the insurance contracts only, while the assets of the respective security deposits (*Sicherungsvermögen*) and other assets (e.g., reinsurance contracts, business assets, agency agreements and bank accounts) pertaining to the insurance portfolio must still be transferred individually (i.e., by way of an asset deal). Hence, the consent of third parties may be required in this regard.

The portfolio transfer is in similar form also available to reinsurance companies and in case of cross-border transfers of insurance portfolios. In case of the latter, additional prerequisites may need to be observed and the specific responsibilities of the supervisory authority depend on the individual circumstances.

SPIN-OFF STRUCTURES

In some cases, the parties wish to transfer only specific parts of a business or a business which is spread over a number of different legal entities. In this case, it can be advisable to:

- separate the business to be sold into a newly established entity (**NewCo**) (first step) and then
- transfer the NewCo to the purchaser (second step).

The first step can be achieved by way of an asset deal, which, however, requires the approval of third parties. The German Reorganization of Companies Act offers the possibility to spin off all assets and liabilities pertaining to a certain business from one legal entity (transferring entity) to another entity (assuming entity) by way of partial universal succession (*partielle Gesamtrechtsnachfolge*).

The advantage is that approvals of third parties are generally not required. As a result, a business can easily be transferred into a NewCo which itself is subsequently sold and transferred to the purchaser. If a licence is required for the transferred business, the NewCo can be structured as a limited partnership that is ultimately merged into the purchaser, so that an existing licence of the purchaser can be used (so-called collapse merger).

On the flip side, spin-off transactions pursuant to the Reorganization of Companies Act result in a joint liability of the transferring entity and the NewCo as assuming entity for liabilities of the transferring entity for a time period of five years (or 10 years for company pension liabilities). Therefore, purchasers will regularly request a guarantee or indemnification from the seller to protect them from such liability. Ultimately, the risk associated with a spin-off for the purchaser largely depends on the financial standing of the seller.

Which structuring alternative is best suited in a specific situation depends on a variety of factors, such as the nature of the insurance business involved, licence requirements, number of (insurance) agreements pertaining to the insurance business, number of employees and necessity of a post-acquisition restructuring, tax and financing aspects, and time constraints. It is important to analyse advantages and disadvantages of the different alternatives at an early stage. This allows efficient allocation of resources and a smooth transaction implementation.

DUE DILIGENCE

Performing a legal due diligence on a German insurance business requires special attention with regard to compliance with data protection and very strict insurance secrecy rules. Disclosure of the mere fact that a natural person is insured constitutes a criminal offence. In practice, this problem is resolved by only allowing persons who are legally bound to maintain confidentiality (e.g., lawyers, auditors or tax advisors) to review the contracts in a separate (red) data room; ideally, personal data in that data room should also be redacted. Further, the target company must scrutinise any reporting from the red data room to the interested party. These legal restrictions render the process more time-consuming than other due diligence processes.

Besides these legal restrictions, during the legal due diligence purchasers should pay particular attention to the following aspects:

- *licences:* existence of required licences for each insurance class (*Versicherungssparte*) to conduct the insurance business;
- *regulatory requirements:* compliance with regulatory requirements (including Solvency II Regulation); the review should include reports from the supervisory authorities (e.g., if a special audit has been carried out) and correspondence between BaFin and the target company from the recent past; additional requirements apply in the case of an insurance group. This becomes more complex again in the case of an international insurance group;
- *outsourcing of asset management and distribution contracts:* review of contractual arrangements particularly with regard to the continued existence of control and monitoring rights for the outsourcing company and audit and control rights with regard to the outsourced functions;
- *insurance intermediaries:* compliance with the laws governing insurance intermediaries (*Versicherungsvermittler*);
- *proper advice and instruction of the policyholders:* review of whether the legal requirements (e.g., for information on rights of withdrawal) have been complied with and properly documented;
- *terms and conditions of insurance contracts:* review of the insurance contracts forming part of the insurance portfolio, particularly with regard to the validity of general terms and conditions and compliance with the Insurance Contract Act (*Versicherungsvertragsgesetz*);
- *syndicated insurance policies (Konsortialgeschäfte):* if policies are underwritten by multiple insurers to split the risk under the policies, antitrust issues may arise if no exemption under applicable laws applies; and
- legacy or systemic issues in the insurer's conduct of its business, and in particular regulatory investigations or consumer redress requirements.

TRANSACTION DOCUMENTATION

The required transaction documentation depends on the specific transaction structure. In case of a share deal, in addition to a share purchase and transfer agreement, a shareholder's agreement may be required if several purchasers act together, or if one of the sellers retains a minority stake. In case of an asset deal, transitional service agreements or other servicing agreements with the seller (or seller's group) may be required at least for an interim period. If a spin-off structure is utilised, a framework agreement may be prepared that comprises the entire transaction structure and the different steps to be undertaken by the parties.

Purchase agreements in the context of insurance transactions entail specific issues that must be addressed. Typical issues and stipulations in purchase agreements are:

- *warranties:* The scope of warranties depends on the target company and the individual situation in which the negotiation takes place. The purchaser will, inter alia, typically request warranties from seller(s) regarding the (i) validity of all required regulatory licences (no revocation, withdrawal or restriction), (ii) completeness of disclosed correspondence with regulatory authorities, (iii) maintenance of required regulatory capital and compliance with Solvency II Regulation and (iv) effectiveness of the reinsurance contracts and the continuation of the reinsurance policy. In case of an indirect acquisition of an insurance company (or insurance group), management typically makes warranties concerning the business in a separate deed. In return, the seller(s) will typically request the purchaser to warrant that there are no circumstances in its person that would justify the prohibition of the transaction by the supervisory authority.
- *conditions precedent: (aufschiebende Bedingungen):* The closing of an insurance transaction is typically made subject to the (i) successful completion of the statutory shareholder control procedure, (ii) consent of the supervisory authority (e.g., consent to a portfolio transaction), (iii) merger control clearance and, in case of an asset deal, (iv) consent of third parties to the transfer of agreements. Completion of the shareholder control procedure can be time-consuming, which results in a relatively long interim period between signing and closing. The purchaser will seek protection against a detrimental development of the business. This can be achieved by a "material adverse change" clause entitling the purchaser to walk away in certain defined situations, but this is often difficult to negotiate. A purchaser may also wish to be involved in major decisions regarding the target company in the interim period. This is legally limited by merger control rules which generally do not allow a factual transfer of control before clearance.
- *conduct of business:* Instead of (customary) purchase price adjustment clauses, insurance purchase agreements typically include detailed stipulations on the conduct of business for the time period between signing and closing. The reason for refraining from purchase price adjustment clauses lies in German accounting laws for insurance companies, which allow considerable discretionary leeway, particularly with regard to the provisioning policy and therefore render corresponding adjustment clauses highly prone to dispute.
- *information technology and data protection:* Against the backdrop that the GDPR-compliant processing of insurance contracts is of particular importance for the insurance business, the transaction documentation typically provides for detailed warranties as to the (i) ownership of all software programs essential to business operations, (ii) operation of IT-systems without material interruptions, (iii) compliance with the requirements on IT of the relevant supervisory authority and (iv) compliance with GDPR.

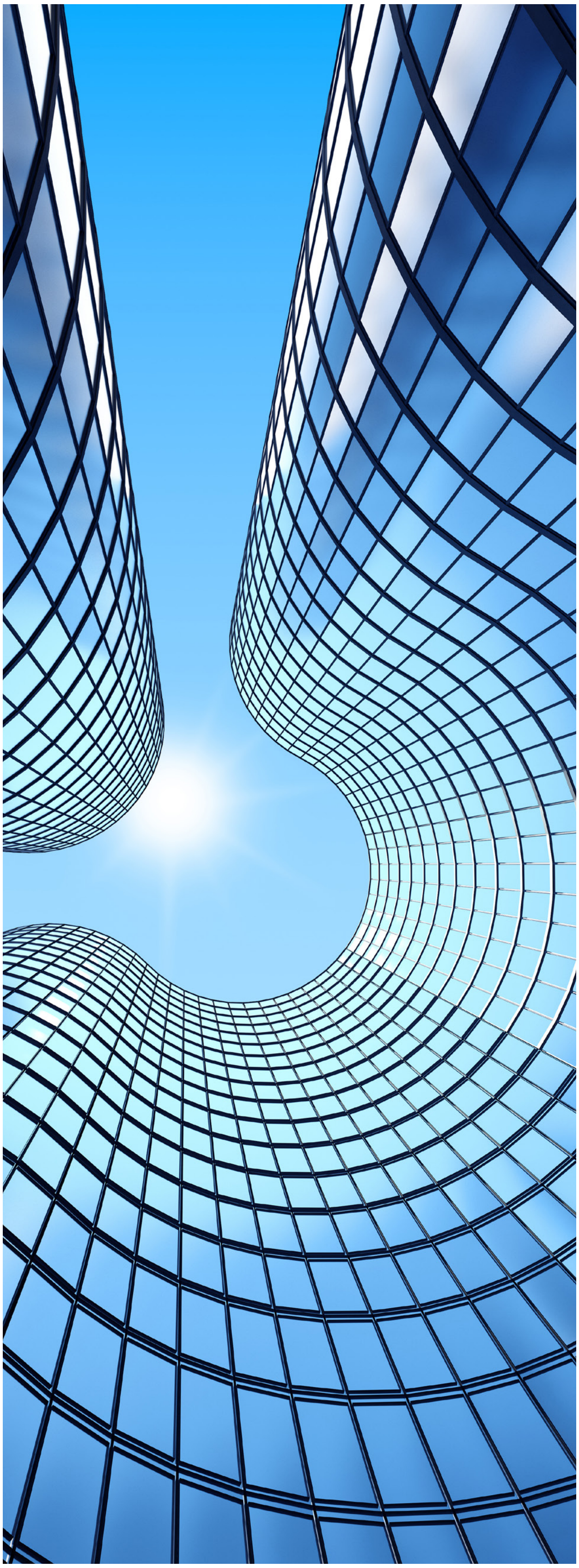
- *strategic concept:* The transaction documentation should also include the purchaser's strategic concept which, *inter alia*, typically comprises the (i) key strategic goals, (ii) probable significant consequences (including for the management of risks) and (iii) probable significant effects on the overall risk profile of the target company or the target group.

OTHER CONSIDERATIONS

Further particularities due to regulations of the insurance industry must be considered when structuring the acquisition of a regulated entity, including:

- Regulatory rules generally provide for a consolidated view of the target group. Therefore, it must be considered what effect the acquisition of a regulated entity has on other parts of the group of the purchaser.
- Insurance companies or groups may generally not borrow funds that are not classified as equity within the meaning of the Insurance Supervision Act. This regulatory requirement entails that the acquisition of insurance companies in Germany may not be debt-financed. However, if properly structured, debt financing may be possible by introducing an intermediate holding company as borrower, or even above the solvency group. Nevertheless, solvency-related legal requirements must also be met at group level.
- If a third party finances the acquisition, a structure must be found which allows the granting of sufficient collateral to the financing party while at the same time observing regulatory restrictions.

If the purchaser wants to nominate members of the management or supervisory board of the target company, the individuals must undergo "fit and proper" tests of BaFin.



MERGER CONTROL AND FOREIGN INVESTMENT RULES

In addition to insurance specific regulatory rules, purchasers of insurance enterprises must also comply with general merger control regimes and foreign trade rules.

MERGER CONTROL

The acquisition of shares, voting rights or assets, either in part or in their entirety, may require merger control review by antitrust and competition law authorities.

Whether a merger control filing is required in a given jurisdiction is usually a question of whether the parties concerned surpass certain global and/or domestic turnover thresholds (sometimes also market share thresholds). In the case of insurance companies, this is usually the sum of all premiums collected. It should be noted that while in most jurisdictions only the acquisition of control is subject to clearance, in Germany the acquisition of a minority stake may also require prior notification and clearance.

If a notification is required, the parties need to file a notice of the proposed transaction with the competent authority. In Europe, this is either the European Commission in Brussels (in case of particularly large companies) or national antitrust authorities, such as the German Federal Cartel Office (*Bundeskartellamt*).

Once notified, the antitrust authorities examine whether the transaction significantly impedes effective competition in the relevant product markets. The authorities can be expected to analyse a transaction in more detail if, inter alia, the merging parties combine market shares of more than 35-40 percent in a given market. The EU Commission has defined three broad relevant product markets in the insurance industry: life insurance, non-life insurance and reinsurance. It further considers several subsegments of these broad markets as distinct markets on their own (e.g., in case in non-life insurance): motor vehicle insurance; accident and sickness insurance; property insurance; liability insurance and many others. From a geographic perspective, the authorities usually define national markets. Exceptions may be available for such insurance types that are usually sourced on geographically wider markets, such as reinsurance which is sourced on a global market.

Parties usually provide notice of a transaction immediately after signing, but should prepare the filings well in advance. In all EU member states, the merging parties are not allowed to implement the transaction prior to clearance. Clearance is therefore generally made a condition to closing. In many jurisdictions, including in the EU and Germany, competition authorities make public the fact that notice of a transaction has been provided (but not the filing itself).

In most cases, the clearance process does not take longer than a few weeks, at the EU level 25 working days and in Germany one month (Phase I). Parties also need to account for a couple of weeks of preparation of the paperwork in advance of filing. Still, transactions that raise serious antitrust concerns will be assessed in-depth (Phase II), and the process takes much longer (a few months). Such deals potentially require the merging parties to offer remedial measures to get the transaction cleared. Generally, in more complex cases, it is sensible to reach out to the authorities before filing, so that questions can be addressed before the official clock starts running. This can prevent the authorities from opening a lengthy Phase II investigation because the short Phase I does not suffice to clarify their questions.

FOREIGN INVESTMENT RULES

The Federal Ministry for Economic Affairs and Climate Action (B*undesministerium für Wirtschaft und Klimaschutz – BMWK*) may prohibit the acquisition of German companies if there is a concern that the transaction bears risks to the public order or security in Germany, and, post-transaction, 25 percent or more of the voting rights of the target will directly or indirectly be held by a non-EU purchaser. The BMWK may also apply less severe measures to address concerns. This power of the BMWK applies regardless of the sector of the target company and therefore also applies to insurance companies.

If a target is active in certain sectors, the acquirer must give notice of the transaction to the BMWK (if 10% or 25% or more of the voting rights are acquired, depending on the sector). For example, if the target offers insurance services that are considered critical infrastructure (e.g., life insurance and health insurance) and such services exceed certain volume-based thresholds, and the non-EU purchaser (directly or indirectly) acquires 10 percent or more of the German target, the transaction requires notice to the BMWK.

Upon giving notice, or after the authority becomes aware of a transaction (e.g., through a press release), the BMWK has up to two months to initiate a review procedure. Where notice is not required, purchasers can apply for a certificate of non-objection (Unbedenklichkeitsbescheinigung) from the BMWK if there is a need for more legal certainty. The BMWK will then either grant such a certificate or will notify the purchaser of its decision to investigate the transaction. If the authority remains silent, a certificate is deemed to be granted two months after receipt of the application.

TAX ASPECTS

Among others, the following special German tax aspects can be relevant for the structuring of insurance M&A transactions or the tax due diligence of an insurance target.

PORTFOLIO TRANSFERS

Although the sale and transfer of receivables are generally exempt from German VAT, the sale and transfer of an entire insurance portfolio can qualify as a VAT-able service. (Cf. ECJ decision dated 22 October 2009, C-242/08, Swiss Re.)

PARTICIPATION PRIVILEGE

Subject to further requirements, under the German participation privilege, corporations can benefit from a tax exemption in respect of dividends received and capital gains derived from the sale of corporate shares. Still, life and health insurance undertakings usually cannot claim such privilege to the extent their shareholdings are attributable to their capital investments.

PROVISIONS FOR PREMIUM REFUNDS

Life and health insurance companies can create provisions for premium refunds. Complicated tax rules may limit the deductibility of such provisions and, therefore, careful planning and calculation of these provisions is important in order to avoid inadvertently generating taxable income. This can be a focus area for a tax due diligence.

IPT

Insurance services are generally exempt from VAT, but subject to German insurance premium tax (IPT), provided that the insured risk is allocable to Germany. Under the German IPT rules, the location of the risk can depend, among other things, on the insurer's seat, the type of risk insured and the policyholder's residence. In particular, in the context of permanent establishments, a precise analysis of the locations of the insured risks is required and can be subject to uncertainties. IPT should therefore be another focus area for a tax due diligence.

TRANSFER PRICING

Insurance companies frequently use, also for regulatory reasons, branches to organise their foreign activities. There is a set of specific transfer pricing rules stipulating the income and asset allocation between the head office and foreign branches in the insurance sector that should be in scope of a tax due diligence.

TAX RISK INSURANCE POLICIES

For insurers issuing warranty and indemnity (W&I) and/or contingent tax risk policies, the scope of a tax due diligence should not only focus on the insurer's own tax position but also take into account any exposure in respect of insured third-party tax risks. In particular, this applies if a claim notice under such policies has been received or legal developments have increased the risk profile of insured tax risk areas.

EMPLOYMENT / REMUNERATION ASPECTS

In the wake of the 2008 financial markets crisis, the Insurance Remuneration Ordinance (*Versicherungs-Vergütungsverordnung – VersVergV*) came into force in 2010. Its aim is to ensure sustainable corporate development through statutory requirements for the risk management of insurance companies. It applies to insurance companies and stipulates similar restrictions for the organisation of remuneration systems as in the area of the Remuneration Ordinance for Financial Institutions. Remuneration systems must be designed in such a way that:

- they provide for a focus on achieving the objectives set out in the company's strategies and must be reviewed and, if necessary, adjusted in the event of changes in strategy,
- negative incentives are avoided, in particular conflicts of interest and the assumption of disproportionate risks are avoided and the monitoring function of the control units is not jeopardised,
- in the case of managing directors, a variable remuneration component ensures that remuneration is linked to sustainable corporate success,
- significant risks and their time horizon are taken into account,
- in addition to individual organisational units, the success of the company as a whole is also taken into account and
- appropriate staffing levels are not called into question.

The resulting appropriateness requirements of a remuneration system must be reviewed at least once a year and adjusted if necessary.

Special requirements apply for those employees of significant companies whose activities have a material influence on the overall risk profile. Significant companies are those with balance sheet totals of at least EUR 45 billion or that belong to an insurance group with such a balance sheet total, and determine their significance on the basis of a risk analysis in accordance with more detailed requirements set out in the ordinance. For such employees, fixed and variable remuneration must be in an appropriate relationship to each other, so that on the one hand no significant dependency on the variable remuneration arises, but on the other hand the variable remuneration can provide effective behavioural incentives. Guaranteed variable remuneration is generally only possible for these employees when they start work and for a maximum of one year. Furthermore, the variable remuneration must take into account not only the overall success of the company or group and the contribution to the success of the organisational unit, but also the individual contribution to success. Non-financial parameters, such as compliance with internal company regulations and strategies, customer satisfaction and qualifications achieved can also be taken into account. Furthermore, when determining the success, in particular such connecting factors are to be used that take into account the sustainability of the success, taking into account the risks taken and capital costs. At least 40% of the variable remuneration may not be paid out before the end of an appropriate retention period, generally three years. Overall, at least 50 percent of the retained amount should depend on the sustainable performance of the company and negative successes can reduce this entitlement. The ordinance contains further requirements for major companies, such as the risk-orientation of remuneration and compliance structures.

Certain provisions do not apply to remuneration that is governed by a collective agreement or a works agreement based on a collective agreement. In the case of employment agreements, companies must work towards ensuring that any deviating existing agreements are adapted in accordance with certain provisions in the ordinance. Here, too, the employer cannot intervene unilaterally in existing contracts, so that this requires the agreement of the employees.

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