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# M&A Legal in Times of COVID-19

The M&A market has been severely hit 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.

The 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.

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.

Regarding transaction financing, only few cases have so far occurred in which the financing commitment was withdrawn because of "market disruption".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.

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.

Furthermore, the 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.

Government officials and civil servants have been compelled to work remotely, thereby potentially slowing the pace of considering and granting necessary consents or approvals customary in M&A transactions, 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. Austria, for example, 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

As soon as the COVID-19 crisis will have been overcome in everyday political life, we will see a discussion about the transfer of core industries to the public sector and about stricter rules in foreign trade law. On the other side, 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 in this regard have already begun but are barely noticeable among the load of crisis-related daily news.

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