

German M&A Focus

The BVK (German Private Equity and Venture Capital Association) offers its members and third parties a wide range of services – primarily, participation in the most comprehensive network of private equity firms in Germany. Through the BVK, companies conducting enquiries into private equity can search for potential investors based on their specific requirements for capital.

According to the BVK's managing director Dörte Höppner, and its president Dr. Hans Ostmeier, the German private equity market has gained a lot of stability in recent months. This emerges from the statistics for the German private equity market in 2010 recently released by the BVK.

Investments in Germany increased by 59% to EUR 4.44 billion in 2010 compared to 2009. Approximately 1,300 mostly small and medium-sized companies are financed with private equity and supported in their quest to overcome the financial and economic crisis. After an almost complete collapse of the market in 2009 as a result of the financial and economic crisis, the investment level rose sharply and sustainably. In saying that, the market is still well below the record results of 2007 and 2008.

"These years were exceptions and the result of the truly extraordinary market conditions at that time. What we are seeing now is a more sustainable growth", explained Dr. Ostmeier.

After a decline to EUR 2.78 billion in 2009, EUR 4.44 billion was invested last year. As in the previous year, the majority of investments were buy-outs. The capital invested in this segment amounted to EUR 2.52 billion – an increase of more than 50% in comparison to the year before. While it was mostly small buy-outs in 2009, 2010 saw a growing number of larger transactions that significantly contributed to the increase in investments.

The positive economic environment and the business outlook will be the crucial trigger for the German private equity market. "The growth plans and investment projects of companies will sustain the demand for private equity", predicted Dr. Ostmeier. Ms. Höppner added: "The private equity firms have the capital available, and we expect an investment level similar to the last year at least."

An ideal platform for market entry

Dr. Michael Drill is country head for Lincoln International's German office in Frankfurt, an M&A investment bank with around 200 bankers in 12 offices around the world. He also provided comment.

"In terms of deal activity, we are experiencing an increasingly dynamic

mid-cap segment – the backbone of the German M&A market," he said. "Here, a lot of companies will be put on sale in the next 24 months. With regard to investors, corporates are looking for attractive add-ons while private equity firms still have a lot of money which they need to invest in the coming years. These days, sellers of businesses, investors and the adviser community alike are increasingly busy preparing, reviewing and executing transactions."

Dr. Drill went on to explain that, similarly to the situations in many other countries, the environment for closing M&A deals has improved significantly since the final quarter of last year. Consequently, deals are easier to close.

"This is caused by improved 2010 financials and strong current trading figures of the target companies. In most cases, current order backlog and actual figures are above the original, already ambitious, business plans. In such an environment, sellers and investors can quickly reach an agreement on economic terms. However, on the legal due diligence side, investors are much more prudent and diligent than before the financial crisis and, as a result, it may take a long time before some deals can finally be closed."

In many ways, Germany provides an ideal platform for making a meaningful entry into Europe for foreign investors, said Dr. Drill. It is a leading industrial country and lies at the geographical heart of the continent. It is home to players with holdings and relationships with low-cost suppliers in Eastern Europe. Further, Germany still offers unique investment opportunities for large foreign corporates wishing to acquire family- or conglomerate-owned companies with European or global leadership positions in technological niche markets.

Dr. Drill concluded: "The current market environment represents an excellent opportunity and perfect timing for such investors. In a structured sales process, the likelihood of success is much higher, since private equity investors and domestic competitors – who tend to focus on cost synergies rather than on strategic vision – are only willing to bid on relatively low valuation levels.

"We are now seeing a substantial level of deal activity, including within those industries that were most affected by the crisis during the last 24 months. This applies in particular to the automotive and engineering industries. For these targets, strategic buyers from abroad, and more and more from emerging markets, are showing increasing interest."



Dörte Höppner, Managing Director



Michael Drill, CEO



Otto Haberslock, Partner



Georg Lehmann, Partner

A positive economic climate

Otto Haberslock is a Munich-based partner at P+P Pöllath + Partners, an internationally operating law firm whose 31 partners and nearly 100 lawyers specialise in legal and tax advice in Berlin, Frankfurt and Munich. The firm extensively advises in all transaction-related areas such as corporate/M&A, private equity, funds, real estate, private clients, succession planning and all tax-related matters. In addition, P+P partners are members of supervisory and advisory boards of known companies and are listed regularly in national and international rankings as the leading experts in their respective areas of expertise.

Mr. Haberslock noted that the generally positive economic climate in Germany does reflect on the M&A landscape. "After a significant amount of restructuring was completed during and following the financial crisis, both corporate players and private equity houses have taken up and increased M&A activities," he said.

"These range all the way from financing of start-up businesses – clean-tech industry being a preferred sector – through mid-cap transactions solving succession issues in privately-owned businesses all the way to large buy-outs completed by private equity players. More and more German businesses seem to become attractive targets for Asian investors in pursuit of outstanding technology and know-how as well as market entrance into the European market."

Notably, P+P provides legal and tax advice in an integrated manner for all kinds of M&A transactions from start-up financing all the way through large buy-outs. P+P is, in particular, known for its long-standing experience in private equity fund formation and deal work. The integrated legal and tax know-how is illustrated in the advice P+P provides for management teams regarding their investments in private equity transactions where the company's and the individual's tax situation is a major consideration.

Mr. Haberslock explained: "M&A transactions in Germany are not subject to any special legal rules per se. They follow general rules of German civil, corporate and commercial law. As in other continental European jurisdictions, capital preservation rules are sometimes an issue of discussion and structuring, particularly in the context of leverage buy-out transactions and their collateralisation.

"Not too long ago, German legislation introduced rules regarding the scrutiny of foreign

investments. Government now has the authority to prevent the acquisition of major stakes in German businesses by foreign investors where the government considers such an investment endangering German public order or national security. However, so far the review has not been applied to a larger amount of transactions, and is in no way generally a threat to the vast majority of transactions."

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Seamless cross-border transactions

Raupach & Wollert-Elmendorff (Raupach) offers comprehensive specialist advice in national and international business law. Ranking among the largest German law firms, with more than 90 attorneys in seven offices throughout Germany, Raupach is the German strategic partner of Deloitte, one of the leading international audit, advisory and consulting firms which is represented in more than 150 countries worldwide.

According to Georg Lehmann, partner at Raupach, on a national level – and internationally within the Deloitte legal network – Raupach has channelled its core competencies through service lines. This has ensured truly comprehensive and seamless advice for its clients in national and cross-border transactions.

Of the changing global and domestic deal markets, Mr. Lehmann noted: "After an unassertive recovery of M&A activities in the second half of 2010, deal volume has increased significantly in Germany in the first quarter of 2011. Besides seeing both private equity and billion-dollar (USD) strategic investments in the US at the beginning of 2011, we have seen several big ticket transactions as well. However, more than that we have looked at a remarkable number of smaller, but still substantial, M&A transactions during the first four months of this calendar year in Germany."

He added that the reason is twofold: "Private equity has suffered a sales tailback during the economic crisis, and so there are more targets available in the market for private equity or strategic investors. Secondly, private equity has successfully collected funds recently, and strategic investors are back in the market with higher equity and cash enabling them to stem even big-

ger deals without – or at least with lower demand for – debt financing. However, despite increasing M&A activity, Germany isn't a seller's market yet.

"As to the targets in Germany, private equity and strategic investors are more and more focusing on major mid-market enterprises. Some experts expect private equity to end up with a share of 20-25% of the aggregate deal volume in Germany in 2011."

Together with its cooperation partner Deloitte, Raupach provides its clients with a one-stop shopping for all advisory services around M&A, including Legal, Tax, FAS/Corporate Finance and Consulting. Raupach avails of a global legal network totalling more than 2,000 lawyers, with international service lines in all areas of M&A work.

Economic trend leads to positive outlook

Germany's private equity firms are optimistic that recent market recovery will continue. This is proven by the 'Private Equity-Prognose 2011', a survey of all BVK members on their expectations regarding fundraising, investments and divestment activities. More than three-quarters of the 132 participants of the survey expect an increase in investment in their market segment for 2011.

Those companies operating in growth financing/buy-outs are significantly more optimistic than the representatives of venture capital. For the buy-out market, two thirds of the firms listed secondary buy-outs as the most important dealflow source. Takeovers of parts of groups or enterprises as well as growth financing and minority investments in family-owned companies ranked second place and beyond.

Fund raising will be a crucial topic of 2011 for private equity firms. Many private equity firms had to postpone or extend the commencement of their fund raising as a result of the financial crisis and the reluctance of institutional investors, which means that the capital demand for new funds is still high. 39 companies claim to have either started fundraising already, or will start within the next two years – and they intend to raise a total of EUR 4.21 billion of new fund capital.



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