

Corporate Law/ Transactions



The legal structure of a business enterprise depends on a variety of external and internal factors. Key aspects to be taken into account in deciding on which legal entity to use for a business focus in particular on issues such as tax optimization, aspects of financing, and liability. These considerations – along with the impact of internal and external growth, increasing internationalization, as well as the rapid development of market conditions – require constant review. Esche Schümann Commichau provides professional advice on all these issues so as to enable its clients to effectively utilize the existing scope for structuring and development.

As a multidisciplinary firm we offer comprehensive legal, tax-related, and financial advice. You will benefit from our long-standing experience in all matters of corporate/partnership law and from our diverse range of clients. We advise and represent international listed groups of enterprises as well as mid-cap and family businesses, financial investors, banks, associations and cooperative societies.

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Our team includes specialists in such diverse fields of law as employment and labor; anti-trust, IP, real estate, and public procurement. We also cooperate closely with legal departments, in-house counsel, and other staff of our clients. By virtue of our multidisciplinary structure we integrate expertise in tax-matters as well as business-consultancy. Thus, we are well placed to provide full-service advice for businesses and/or their shareholders/partners.

We develop bespoke financial, tax, and corporate strategies, assist in their implementation, and coordinate every step of our clients' projects. In particular, we act for our clients in business acquisitions and sales including private equity transactions and buy-outs, capital measures and IPOs, succession arrangements and restructurings, joint ventures, and privatizations.

We have extensive, long-standing experience in structuring and leading multijurisdictional and cross-border transactions. We draw support from a well-established network of best friend firms which we are able to call upon on a case by case basis in accordance with our clients' needs. We are happy to be of assistance with regard to seminars and practice workshops relating to general or topical subjects.

Areas of Expertise

I. Structuring of Businesses

- Determining the economic objectives of the business and developing business structures to accommodate legal and tax-related aspects, in particular with regard to state of domicile, choice of legal type and group structure, and form and scope of the participation of the owners and future investors.
- Legal implementation of the selected structure, including formation of the company/partnership, changes of legal form, mergers, spin-offs, drop-downs and split-ups.
- Drafting of articles and memoranda of association as well as partnership agreements; preparation of shareholders' agreements (vote-pooling agreements etc.), rules of procedure, service agreements with managing directors; conducting formation audits.
- Structuring of groups, intra-enterprise agreements (domination and profit and loss absorption agreements, business leasing agreements, business management agreements and agreements for the use and operation of businesses) as well as termination thereof; intra-group cash-pooling and service agreements, management companies.

2. Capital Measures

- Preparation and conducting of capital increases and other capital measures, e.g. the issuance of (convertible) bonds, jouissance shares and share buy-backs.
- Coordination of calling on the execution of preemption rights and of issuing shares excluding preemption rights; conducting placement of shares in connection with and for syndicate leader banks.
- Preparation and negotiation of participation agreements with or for (financial) investors.

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- Share buy-backs by the issuer.
- Capital reorganizations such as capital decreases (with subsequent capital increases).

3. Mergers & Acquisitions / Private Equity / MBO-LBO / Joint Ventures

- Tax structuring of the transaction and selection of the type of participation.
- Solving existing legal problems, e.g. in the areas of company/partnership law, antitrust law, labor law, capital markets regulations (including take-over law) or intellectual property.
- Preparation and negotiation of preliminary documents (e.g. engagement letters, letters of intent, confidentiality and exclusivity agreements).
- Preparation and conduct of due diligence reviews as well as evaluation of enterprises for sellers and buyers.
- Preparation of contract drafts (e.g. acquisition, participation and syndication agreements) taking into consideration the results of the due diligence reviews, devising purchase price mechanisms, target-orientated contract negotiations.
- Closing of agreements, post-contractual advice and integration, asserting and enforcing claims for breach of representations and warranties and other contractual claims, as well as taking defensive measures against such claims.

4. Privatizations / Public Private Partnerships

- Advice with regard to bidders in privatization proceedings and in the course of contractual negotiations.
- Legal and tax advice for public authorities with regard to the determination of optimized privatization and transaction structures (including specific advice with respect to public procurement law, budgetary law, etc.).
- Implementation of transaction structures of sale processes with or without formal public procurement procedures.
- Preparation and negotiation of any necessary corporate/partnership or other agreement.

5. Shareholders' Meetings / Conflicts between Shareholders

- Preparation of and advice on shareholders' meetings.
- Advice on negotiations with dissenting shareholders, conduct of mediation and court proceedings, if required.
- Legal advice on conflicts between shareholders; development and implementation of negotiation strategies, conducting of settlement negotiations, representation in court in case of litigation between shareholders, if required.

6. Initial Public Offerings / Listed Companies

- Preparation and conduct of IPOs; tax-optimized structuring of transforming the business into a public company and placement of shares; structuring of public companies by virtue of formation, contribution or transformation, preparation of articles and memoranda of association for publicly listed companies, advice on post-formation acquisitions.
- Drafting of engagement letters and share issuance agreements.
- Preparation and conduct of due diligence reviews.
- Preparation of shareholders' agreements and pooling agreements.
- Preparation of stock option models and other employee participation models.
- Representation vis-à-vis the admission authorities of the stock exchange in question or the regulator, the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin).
- Advice on the preparation of stock exchange admission prospectuses and sale prospectuses.
- Preparation of and advice on shareholders' meetings.
- Advice regarding squeeze-out procedures and delistings.
- Representation in special proceedings regarding shareholder compensation claims (Spruchstellenverfahren).
- Advice for bidders or issuers regarding structure and proceedings according to the German Securities Acquisition and Take-Over Act (WpÜG) regarding mandatory acquisition, or take-over offers or the avoidance thereof.

The Team

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