

# Germany

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## New rules for venture capital

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In an effort to deliver on its promise stipulated in the coalition agreement on November 11 2005 to create an “internationally attractive framework for venture capital”, Germany’s grand coalition has prepared a set of new rules expected to be enacted in mid-2008. The heart of this reform is the introduction of a Venture Capital Act. As an ancillary measure, the existing rules of the Act on Funds for Private Investments in Companies are also to be amended. A related proposal concerns the introduction of special legislation to limit the risks of financial investments which, however, focuses on investments in listed companies and therefore should not have a direct impact on the venture capital market.

The Venture Capital Act intends to promote equity or equity-related investments in young and innovative companies, especially in the technology sector, by introducing a new type of regulated venture capital fund, the VCI fund. Most German venture capital funds are unregulated vehicles; they are not subject to special legislation and neither the funds nor their managers require a licence or permission.

The Venture Capital Act applies only to venture capital investments (VCIs) – that is, investments in companies that fulfil the following criteria:

- (i) They are organised as corporations.
- (ii) They are located within the European Economic Area.
- (iii) They have a maximum equity capitalisation of €20 million at the time of investment.
- (iv) They are not older than 10 years.
- (v) They are not publicly traded.

### Approval and supervision

VCI funds can be structured in varying legal forms, for example, as limited partnerships

(GmbH & Co KG) or as companies with limited liability (GmbH). Any such vehicle with the purpose of investing in VCIs may seek approval as a VCI fund. The German Federal Financial Supervisory Authority, BaFin, grants the formal status. It is also responsible for the supervision of VCI funds.

The initial approval requirements are low. A VCI fund must have an equity capital of at least €1 million, 25% of which must be paid in upon approval, the remaining 75% within 12 months. In addition, a VCI fund must have at least two directors (individuals, not entities), who must be “reliable and professionally suitable”.

As part of its supervision, BaFin examines whether a VCI fund fulfils the mandatory investment criteria. Most importantly: (i) at least 70% of its capital must be invested in VCIs; (ii) a VCI fund may not hold more than 90% of the capital in any target company; and (iii) no single investment may account for more than 40% of the VCI fund’s capital. With regard to investors, VCI funds must have a minimum commitment of €50,000.

### Tax status and benefits

The Venture Capital Act does not introduce a comprehensive tax regime. Rather, VCI funds are generally taxable under the existing rules applicable to their legal form. Thus, VCI funds organised as partnerships will be treated as tax-transparent (regarding trade tax, only if they qualify for non-business treatment), while corporations will be subject to corporate income tax and trade tax.

However, the Venture Capital Act does have tax implications. Under the proposed rules, a VCI fund enjoys certain tax benefits, the most prominent of which is a status of deemed non-business treatment for VCI funds organised as partnerships. Non-business treatment means that the partnership is fully tax-transparent for German (corporate) income tax and trade tax purposes. Partnerships engaged in trade or business, on the other hand, are subject to trade tax on

their level and thus not fully tax-transparent. Furthermore, non-business treatment of a fund leads to favourable taxation of carried interest for the carry holders.

To qualify for deemed non-business treatment under the proposed rules, a VCI fund may not: (i) trade investments on a short-term basis; (ii) invest in securities, money market instruments and investment funds; (iii) advise portfolio companies, grant loans to portfolio companies or take up loans on the fund level; (iv) recycle proceeds from investments; (v) act on a market by using professional experience; or (vi) enter into atypical silent partnerships. These activities may, however, be performed by a corporate subsidiary of a VCI fund without harming its favourable tax status.

These criteria are still subject to intense discussion between the federal ministries involved and German venture capital experts. It is not yet entirely clear whether they will be adopted as outlined above. The key issue is that the proposed rules are not consistent with, and in some respects are more restrictive than, the current administrative practice applied to unregulated funds.

Today, a great number of German venture capital funds (and even more buyout funds) already qualify for non-business treatment relying on the criteria of an administrative notion of the Federal Ministry of Finance of 2003, or are protected by a binding ruling of a financial authority confirming non-business treatment. It is therefore arguable whether VCI fund status is more a burden than a benefit in comparison with unregulated funds.

Apart from the deemed non-business status, VCI funds will benefit from extended loss carry-forward rules in respect to investments in portfolio companies with accumulated losses. These rules are widely regarded as helpful.

### Act on Funds for Private Investments in Companies

Although most German venture capital funds are organised as unregulated funds, a regulated status is available under the Act on Funds

for Private Investments in Companies (UBG status). A major benefit of UBG status is an individual tax exemption from German trade tax. The UBG status was originally legislated in 1987 and later liberalised on numerous occasions, but has not yet seen a major breakthrough. Only a few funds are acting under this status, usually vehicles from the domain of mutual savings banks. The current proposal aims to liberalise UBG status even further.

## Capital markets – equity

Recommended firms	
<b>Tier 1</b>	Freshfields Bruckhaus Deringer Hengeler Mueller Sullivan & Cromwell
<b>Tier 2</b>	Cleary Gottlieb Steen & Hamilton Linklaters
<b>Tier 3</b>	Clifford Chance Shearman & Sterling White & Case
<b>Tier 4</b>	Allen & Overy Gleiss Lutz
<b>Tier 5</b>	Baker & McKenzie Dewey & LeBoeuf Latham & Watkins

The story of the equity capital markets in Germany is similar to the rest of the continent. IPO activity has been sporadic at best since October 2008 and the fallout from Lehman Brothers' collapse. As one lawyer puts it: "It's just not possible to do an IPO in Germany right now."

Most firms are finding their practices dominated by rights issues and capital increases, as one capital markets lawyer highlights: "The markets have for some weeks now completely shifted to capital increases," while another adds: "These days companies are looking to increase their capital."

Share buybacks are another area where firms are getting mandates. "We had a few share buybacks at the end of last year and then at beginning of this year there were an extraordinary number," says one partner. However some lawyers were not convinced that this would remain a boom area. "A lot of our clients realised that they need their money for

other things so they stopped their share buybacks," reports a partner.

There has also been a move towards breaking transactions down into parts to reduce risk as companies reassess their strategies.

### Freshfields Bruckhaus Deringer

Coming under the umbrella of its corporate practice, the equity capital markets team at Freshfields is led by Andreas König, whose track record is admired by clients. "He's very, very experienced and also has an excellent network with the German banks and the stock exchange. He knows what we can negotiate with them over," says one client.

In line with the market the firm was heavily involved with capital increases last year, advising Conergy on a €400 million transaction in November 2008. The firm also acted for Fresenius on its issue of ordinary shares and preferred shares with a combined value of €289 million.

In a sign of the times, the firm saw one deal put on ice in November 2008 – the high-profile Deutsche Bahn IPO on which Freshfields was advising the issuer.

#### Leading lawyers

Christoph Gleske  
Andreas König  
Rick van Aerssen

### Hengeler Mueller

The leading figures in Hengeler Mueller's equity capital markets team are Torsten Busch and Wolfgang Gross.

With capital increases very much the order of the day in the last 12 months, it is not surprising that they formed a large part of the firm's practice.

One highlight this year was acting for Deutsche Bank on its capital increase which closed in September 2008. The firm also advised Credit Suisse and Dresdner Bank in the capital increase of Conergy.

#### Leading lawyers

Torsten Busch  
Wolfgang Gross

### Cleary Gottlieb Steen & Hamilton

Cleary Gottlieb Steen & Hamilton operates a combined capital markets team out of its Frankfurt headquarters. The firm's strength lies in its ability to offer clients advice on both the US and German aspects of deals.

Cleary Gottlieb has no official head of department but Gabriele Apfelbacher is highlighted by commentators as a leading figure.

This is backed by his involvement in two of the firm's key transactions in 2008. Apfelbacher advised Deutsche Postbank in its €1 billion capital increase in December, which included a public offering in Germany alongside private placements. The firm also represented the bank in its sale of a 29.8% minority stake to Deutsche Bank.

In July 2008 Apfelbacher led a team advising on one of the few IPOs in 2008 – acting as counsel to Citigroup Global Markets and Deutsche Bank in their role as joint co-ordinators and bookrunners in the €362 million IPO of SMA Solar Technology.

#### Leading lawyers

Gabriele Apfelbacher  
Thomas Kopp  
Christoph von Dryander

### Linklaters

In an awkward market the team at Linklaters has kept themselves busy over the last 12 months, with clients singling out Christoph Vaupel as a key figure. "He thinks very commercially," says one client, adding that he has "a very broad range of experience on ECM but also on related issues. He typically finds an elegant solution".

In line with the market the firm has found its time largely dominated by work on capital increases. The firm advised IKB Deutsche Industriebank on a €1.5 billion increase brought about by the bank's exposure to the sub-prime crisis. The deal was made highly complex by a number of issues including state aid regulation, the rescue operation of the bank's major shareholder and deferred settlement of the offering.

The firm also acted for the family offices of Leemaster and Athos Service on the €400 million capital increase of Conergy concluded in November 2008. The complete placement of the new shares was taken over by Credit Suisse and Dresdner Kleinwort.

Additionally, the firm is still working on a restructuring and capital increase issuance of pay-TV broadcaster Premiere. The firm advised seven banks grouped around the Royal Bank of Scotland on a long term financing deal for the broadcaster including a short term bridge loan.

#### Leading lawyers

Herbert Harrer

### Other ranked firms

"He's very good with his corporate clients and he's got a very good knowledge of German law" was one client's opinion of Markus Pfüller, who is a leading figure in Clifford

Chance's equity capital markets team. Although currently postponed, one of the firm's key transactions was advising the German government on the privatisation and IPO of Deutsche Bahn/DB Mobility Logistics.

The firm also advised UniCredit Group on a capital increase of €927 million shares along with a rights offer to existing shareholders in a deal worth €3 billion.

Shearman & Sterling's numbers were swelled in January 2009 when Katja Kaulamo was promoted to the partnership. Among the firm's biggest deals was a \$1.2 billion capital increase and share offering for Wiener Städtische Versicherung, which closed in May 2008.

*Leading lawyers:* Stephan Hutter

At White & Case, Volker Land is held in high regard by his clients. "He did an excellent job in the co-ordination of the time," says one, "it was much better than in other law companies I have worked with in the past."

The firm is involved in ongoing work for the federal state of Schleswig-Holstein and the city of Hamburg over the restructuring of HSH Nordbank, which involves a capital increase of €3 billion and a risk coverage structure of €10 billion.

*Leading lawyers:* Lutz Krämer and Volker Land

Last year saw Allen & Overy's equity capital markets team act for Credit Suisse, JPMorgan and Morgan Stanley on the €1.1 billion capital increase of Commerzbank.

*Leading lawyers:* Oliver Seiler

In November 2008 Gleiss Lutz advised on a €156 million capital increase for Centrotherm Photovoltaics as part of an affiliated company integration. The firm also made use of its connections with Herbert Smith to advise Deutsche Bank jointly on the €250 million stock exchange flotation of Germany1 Acquisition.

*Leading lawyers:* Stephan Aibel

Baker & McKenzie added to their team last year with the hire of Gerald Schumann from Freshfields Bruckhaus Deringer in November 2008.

## Capital markets – debt

### Recommended firms

#### Tier 1

Hengeler Mueller  
Linklaters

#### Tier 2

Clifford Chance  
Freshfields Bruckhaus Deringer

#### Tier 3

Allen & Overy  
Cleary Gottlieb Steen & Hamilton  
Gleiss Lutz  
White & Case

#### Tier 4

Latham & Watkins  
Lovells  
Shearman & Sterling

In the German debt markets, the economic downturn, rather than stifling the sector, has instead caused activity to be focused in particular areas. However it is true that overall activity has decreased. "It was a bit of a strange year last year," says one partner. "Until June and July we were headless [chickens]; we had the summer and had the usual downturn, then when we came back people realised there was a crisis."

Two areas that are still showing signs of activity are corporate and covered bonds. "Corporate bonds have been active; in the last month there have been several issuers with new programmes," says one lawyer. Covered bonds issuance has been boosted by a change in the regulations. "The principle has been abolished whereby only specialised mortgage banks issue covered bonds," explains a practitioner.

The rise in activity in these areas has also been caused by a decrease in demand for complex instruments as the financial crisis continues to spook many investors. "We do notice that people have become more conservative," says one lawyer, while another adds: "Realism has hit the market, but there are still some nutters out there who try complex DCM structures."

In the autumn, firms noticed an increase in work relating to the government's special financial market stabilisation fund (Soffin) after its creation in October. "Initially there was a rush on Soffin then this trailed off," says a partner. There has been less Soffin work in 2009, with most of the companies in need of assistance having already signed up. However there is still plenty of advisory work to be done.

Another growth area that has been seen across Europe is the trend of companies initi-

ating debt buybacks. "We're currently seeing a lot of corporates buying back their own debt," says one partner. "As you buy back at a gain of 20% you make a profit."

### Hengeler Mueller

Hengeler has a strong reputation in the debt capital markets area, as one client highlights: "There is no doubt they have excellent lawyers and in particular Hengeler has long experience, especially regarding Germany."

Among the firm's key transactions last year was the first issuance of state-guaranteed bonds under the German Special Financial Market Stabilisation Act, where the firm acted for Commerzbank. The firm also had mandates relating to the special financial market stabilisation fund (Soffin), with the team advising on the framework of the BayernLB bond.

The team also took a role on the rescue package for Hypo Real Estate bank, counselling Deutsche Bank over the structuring and documentation of a €50 billion bond issuance. A further highlight saw the firm advise Merck on a benchmark bond.

#### Leading lawyers

Hendrik Haag

### Linklaters

The debt capital markets team at Linklaters is led by Peter Waltz who is well respected in the market, with one client describing him as "very much in the details. He knows what the topical issues are".

Waltz led on two of the firm's biggest projects last year. In December 2008 he led the team advising IKB Deutsche Industriebank in regard to a €123 million bond issue with a decoupled, undocumented pre-emptive offer. The firm also acted for the joint lead manager in a €275 million exchangeable bond issue by Arcandor.

In a sign of the times Linklaters also worked on two significant state guaranteed deals. In January 2009 it advised HSH Nordbank on a €3 billion issuance of benchmark bonds guaranteed by the special financial market stabilisation fund (Soffin) – one of the first deals to be guaranteed by Soffin. In the same month the firm acted for NordLB on the establishment of a €20 billion MTN programme guaranteed by the state of Lower Saxony or the state of Saxony-Anhalt.

Another deal of note completed in May 2008 saw the team advise KfW on the issue of €3 billion bonds exchangeable into shares of Deutsche Telekom. This was the largest exchangeable deal in Germany in 2008, and could still be increased by a further €300 million.

**Leading lawyers**  
Peter Waltz

### Clifford Chance

Clifford Chance's debt capital markets team has maintained its position in tier two this year with another impressive record of deals.

Heading the practice is Sebastien Maerker, who drew the praise of the firm's clients. "We have a very good working relationship and we appreciate his service knowledge," says one client. "One of his attributes is understanding the specific needs of our bank and our commercial and economic reasons for decisions."

It was Maerker who led on one of the firm's biggest deals from last year, advising JPMorgan on a programme for the issuance of debt instruments and commercial paper by Hypo Real Estate. The deal was guaranteed by the German special financial market stabilisation fund (Soffin) and closed in November 2008.

The firm was also directly involved in the rescue and stabilisation of Hypo Real Estate, representing the VÖB (Association of public banks) and its members in the structuring of guaranteed and secured notes with an overall value of €50 billion.

In March 2009 the firm worked on another state-guaranteed deal, advising Aareal Bank on a €2 billion bond issue guaranteed by Soffin.

**Leading lawyers**  
Sebastian Maerker

### Freshfields Bruckhaus Deringer

Freshfields' debt capital markets team has been heavily involved with the German government's stabilisation measures over the last year and the firm has received numerous mandates to advise the special financial market stabilisation fund (Soffin).

In December the team acted on the €8.2 billion recapitalisation of Commerzbank – the first silent participation under the new Financial Markets Stabilisation Act. A further €10 billion recapitalisation of Commerzbank followed in January, while in February the firm acted on a €525 million recapitalisation of Aareal Bank through a further silent participation.

Another substantial deal that closed in January 2009 saw the firm advise Fresenius over the pricing and closing of a dual tranche \$860 million offering of high-yield bonds issued by its subsidiary, Fresenius US Finance II.

Department head Christoph Gleske led a team advising Procredit Holding, a group of 22 banks operating in transition economies

and developing countries, on the issue of a €60 million hybrid bond.

Gleske was also in the driving seat when the firm advised Barclays Capital and Deutsche Bank as arrangers on the establishment of a €5 billion debt issuance programme. The firm again advised the two banks, along with BNP Paribas, on the issuance of a €750 million Eurobond by Merck Financial Services.

**Leading lawyers**  
Christoph Gleske

### Other ranked firms

The debt capital markets team at **Allen & Overy**, led by Okko Hendrick Behrends, advised Deutsche Bank in an €80 billion issuance of bonds, *pfandbriefe* and structured products.

The firm also counselled SEB on the establishment of a €7 billion debt issuance programme for bonds and advised the Royal Bank of Scotland on a €750 million bond issue by Telekom Austria.

**Leading lawyers:** Okko Hendrick Behrends

**Cleary Gottlieb Steen & Hamilton's** biggest deals of 2008 were both for Deutsche Bank, on two trust preferred securities for the bank's Contingent Capital Trusts IV and V, valued at €1 billion and €1.27 billion respectively.

**Leading lawyers:** Ward Greenberg

**White & Case's** team is led by Jochen Artzinger-Bolten who also headed the firm's biggest deal of the year – advising Barclays on a series of structured note issues valued at €30 billion in which the bank was arranger for the Euro MTN Programmes of BMW and Austrian corporate OMV.

The firm also advised Citigroup Global Markets on its €15 billion debt issuance programme of Deutsche Postbank.

**Leading lawyers:** Jochen Artzinger-Bolten

A number of ongoing deals are keeping the **Latham & Watkins** team busy, including acting as dealer's counsel in the annual update of Norddeutsche Landesbank Girozentrale's Euro MTN Programme.

The team has also done work in regard to the special financial market stabilisation fund (Soffin), advising the German Association of Banks in the placement of a €6.7 billion bond with Soffin as guarantor.

One of **Shearman & Sterling's** highlights saw the firm advising Eon on both German and US aspects of its \$3 billion debt securities issuance in April 2008. The firm also advised Osterreichische Kontrollbank on a guaranteed global notes issuance.

## Capital markets – structured finance and securitisation

Recommended firms
<b>Tier 1</b>
Clifford Chance Hengeler Mueller
<b>Tier 2</b>
Linklaters
<b>Tier 3</b>
Baker & McKenzie Freshfields Bruckhaus Deringer White & Case
<b>Tier 4</b>
Allen & Overy Sidley Austin

The general feeling surrounding structured finance in Germany is "wait and see". As has been the case in many areas, the collapse of Lehman Brothers in September 2008 had a big impact, as one partner noted: "The last 12 months have been pretty dramatic. Lehman ... was arguably the most dramatic event in structured finance history – there was an enormous amount of advice noted in regard to things related to Lehman."

The main trend on the securitisation side has been a drop-off in work. As one lawyer says: "The securitisation market has changed. Investment business has fallen away – now banks who were investing want to take the risks off their balance sheets." A competitor confirms this view: "As a result of the financial crisis the market has changed – you do not have many securitisations in the market." Of the transactions that are being seen, most have been structured for the European Central Bank (ECB) to access liquidity. Meanwhile, questions have been raised about the health of CMBS after the problems in the mortgage market over the last 18 months. "The question being asked is how much default will there be in CMBS," says one partner. "Law firms that have focused on CMBS have suffered quite a lot."

On a more positive note, several partners comment that restructurings rather than defaults seem to be the order of the day. One observes: "In the public sector we see lots of restructurings. They have been looking elsewhere and have been generating profits by looking at structured finance projects."

### Clifford Chance

The head of securitisation and structured finance at Clifford Chance is Kirti Vasu, whose innovation has impressed her clients: "She can think outside the box and raise issues

that other people may not envision,” says one. Peter Scherer is also the subject of client praise: “He was very client-friendly, delivered on time, very hard working,” reports one.

The firm’s strong reputation in the market was reinforced this year by a number of noteworthy deals. A team led by Vasu advised Bayerische Hypo-und Vereinsbank and HVB Banque Luxembourg on the sale of HVB’s small and medium enterprise (SME) loan portfolios to Geldilux-TS-2008 and 2009 at values of €1.5 billion and €1 billion respectively. The deal closed in 2008 was one of the first to combine debt securities and *schuld-scheine* (floating or fixed debt instruments) in a term transaction.

The firm also acted for Hypo Real Estate Bank as arranger on a series of structured bond sales including US student loan bonds and UK PPP (public-private partnership)/private finance initiative bonds. The deal was complicated by restructuring work after changes to the European Central Bank’s eligible asset requirements.

Another highlight saw the team advise the Free State of Saxony on the transfer of €17.5 billion of asset-backed securities to Irish SPV Sealink Funding.

On the securitisation side the firm acted as transaction counsel on the partially-funded synthetic securitisations of numerous SME loans for Bayerische Hypo-und Vereinsbank, UniCredit Bank Austria and UniCredit Corporate Banking. Closing in November 2008 the team also advised HSH Nordbank as arranger of the third securitisation of German hereditary building rights with a value of €90 million.

#### Leading lawyers

Kirti Vasu

#### Hengeler Mueller

Alongside Clifford Chance in tier one is Hengeler Mueller and there is still a clear sense in the market that these two firms are leading the pack. “In the German market they are the major players,” says one Hengeler client, who adds: “The individuals all have different attributes but they are the only law firms we would work with in this area.”

One of the team’s leading lights is Stefan Krauss who one client describes as “very good in his area and he has lots of ideas”.

Despite the slump in CMBS the firm still completed one deal for Westdeutsche Immobilienbank at a value of €547 million. The firm also acted on a €14 billion RMBS deal for Commerzbank and advised Deutsche Bank Privat-und Geschäftskunden on a €27 billion deal.

In the CLO market a noteworthy mandate for the firm was a €20 billion true sale RMBS/CLO securitisation for Bayerische Hypo-und Vereinsbank. Another highlight saw the firm act for Goodyear Europe, Ineos and Kuka Roboter in the securitisation of trade receivables.

#### Leading lawyers

Martin Geiger  
Stefan Krauss

#### Linklaters

Linklaters has two head partners in structured finance: Berthold Kusserow and Oliver Dreher, while the securitisation team is headed by Kurt Dittrich. Clients are keen to praise the firm’s experience, with Dittrich singled out: “He’s very knowledgeable in his field,” says one client, “[he has] a very good commercial instinct and knows how to get things across to the client.”

Both Dittrich and Dreher were involved when the firm advised Norddeutsche Landesbank Girozentrale (NordLB) on a state-guaranteed €2 billion MTN programme. The deal combined the team’s securitisation, structured finance and debt capital markets expertise.

Another highlight saw the team advise Freistaat Bayern on the issue of a guarantee to BayernLB providing a risk shield for a mezzanine tranche of a €20 billion asset-backed securities/CDO portfolio, in an effort to avoid further writedowns on the portfolio.

Like many firms the team also acted in connection with the Hypo Real Estate collapse, advising the banking group on the provision of an emergency liquidity financing at a value of €50 billion. The liquidity was provided by a consortium of financial institutions along with the Federal Republic of Germany.

#### Leading lawyers

Laurenz Uhl

#### Other ranked firms

The structured products and derivatives practice at **Freshfields Bruckhaus Deringer** is led by Christoph Gleske, while Bernhard Kaiser leads the securitisation team. Kaiser was involved when the team advised Bayerische Landesbank over a £6 billion risk shielding of asset-backed security assets. The firm also acted on risk shielding measures for HSH Nordbank, Landesbank Baden Württemberg and the state of North Rhine-Westphalia.

Another highlight saw partner Andreas Bartsch advise Gmac Bank on the €353 million securitisation of auto lease receivables and residual values. In line with the times, the firm

also undertook restructuring work for ABN Amro on an asset-backed securities programme for Karstadt/Ouelle.

*Leading lawyers:* Bernhard Kaiser

Led by Ulf Kreppel, **White & Case**’s structured finance and securitisation team advised Allianz Investment Management last year in connection with a CLO arranged by Dresdner Bank. The firm also advised Dresdner Kleinwort as arranger of a European Central Bank-eligible CLO transaction for Landesbank Baden-Württemberg. In addition, the firm advised Gmac Bank on an RMBS transaction.

*Leading lawyers:* Ulf Kreppel

One of **Allen & Overy**’s biggest deals this year was advising BNP Paribas on the refinancing of its portfolio of public sector assets through the issuance of covered bonds. Another significant deal saw the firm advise the Royal Bank of Scotland in regard to the Palladium Finance securitisation of 32 commercial mortgage loans with a value of €5 billion.

## Banking

### Recommended firms

#### Tier 1

Allen & Overy  
Clifford Chance  
Freshfields Bruckhaus Deringer  
Hengeler Mueller  
Linklaters

#### Tier 2

Milbank Tweed Hadley & McCloy  
White & Case

#### Tier 3

Ashurst  
Latham & Watkins

#### Tier 4

Baker & McKenzie  
Cleary Gottlieb Steen & Hamilton  
Gleiss Lutz  
Lovells  
Norton Rose  
Shearman & Sterling  
Skadden Arps Slate Meagher & Flom

In a turbulent year for global banking it is unsurprising to find that the biggest trend in the market is a reduction in new lending transactions. As one banking partner puts it: “The party is over in terms of lenders pushing anything past the banks.” What new lending that is being done has come in the form of club deals.

This decline has been balanced by a significant rise in restructuring work as old transactions return to the table. “We’re all restructuring lawyers at the moment,” comments one partner.

Most firms have also found themselves advising over aspects of the collapse of Hypo Real Estate Bank (now nationalised) or its repercussions. The fallout has been a fruitful source of work and looks like it will continue to be so.

Another trend that is common across many practice areas is a desire for simplicity in deal structure. How long this lasts however is yet to be seen. A partner comments: "The highly specialised structures, I think these desires will be there in the future, though for some time there will be a desire for less complexity."

Not surprisingly, regulatory work has been in demand with many clients seeking advice on new rules and procedures. "We do experience a higher level of requests for information about laws and legislation," says one practitioner. Optimistic companies are also seeking advice in an attempt to adapt to the new climate they find themselves in. "It's a traditional cat and mouse game between investors finding loop holes and the regulators closing these loop holes," explains a lawyer.

### Allen & Overy

Allen & Overy continues to have one of the strongest banking practices in Germany and last year promoted a further two partners: Olaf Meisen in the bank lending practice and Norbert Wiederholt in the regulatory team.

Alongside group head Peter Hoegen, another leading figure is Neil Weiland. "He's a large, dominating presence," says one client. "He has been involved in a number of complex transactions. He has a dominating style, he always goes into the lead."

Weiland led a team in a deal that has received a lot of press attention – the takeover of Continental by Schaeffler. The Allen & Overy team advised Schaeffler on all aspects of the takeover including the financing in a deal that had a value of €12.1 billion.

Another of the firm's most complex mandates last year saw it advise the 15 lead arrangers, among them Banco Santander, Barclays Capital and Credit Suisse, in relation to a €10 billion term loan and revolving credit facility to Porsche Automobil Holding to refinance another credit facility. A further considerable deal saw the team advise the mandated lead arrangers in a €9 billion debt financing for RWE's acquisition of Essent.

The firm was also involved in a €970 million financing for the acquisition of Xella International, including a vendor financing – which was worked on by both Oliver Waldburg in Germany and Robin Harvey in the UK.

On the regulatory side new partner Norbert Wiederholt was kept busy with a number of mandates including advising an international bank over licensing requirements for cross-bor-

der lending and assisting a German bank on regulatory investment law.

### Leading lawyers

Peter Hoegen  
Neil Weiland

### Clifford Chance

Clifford Chance's lending and acquisition finance practice is led by Bettina Steinhauer, who receives effusive praise from the market. "Bettina is above them all," says one client: "She's a very diligent lawyer and is great at keeping a complex transaction going. She keeps control of all loose ends and she's non-confrontational in her style."

Steinhauer was lead partner when the firm advised IK Investment Partners on the financing of its acquisition of Axtone, a rail parts manufacturer. This was one of the few leveraged buyouts in Poland last year, closing in October 2008.

Another significant acquisition finance deal saw the team act for DZ Bank and Bayerische Hypo-und Vereinsbank in the financing of the acquisition of Novem by Barclays Private Equity, which closed in June 2008.

Another leading name in the department is Barbara Mayer-Trautmann, who led a team advising TerraFirma and Deutsche Annington on the club financing of their bid for LEG NRW.

In the financial regulatory area the key figure at the firm is Marc Benzler, who advised VÖB (the Association of Public Banks) on rescue measures for Hypo Real Estate, including the structuring of a series of secured notes.

As the German financial regulator tightened its grip, Benzler also advised Goldman Sachs in regard to new regulations on short selling, including the exemptions to the new rules. In another sign of changing times, the team gave advice to Citigroup over *pfandbrief* (covered bond) refinancing structures in relation to non-EU assets under an English law trust.

### Leading lawyers

Barbara Mayer-Trautmann  
Bettina Steinhauer

### Freshfields Bruckhaus Deringer

The biggest change at Freshfields this year was increased focus on the firm's Munich office. In a statement of intent, head of banking Yorck Jetter transferred to the office in May 2009 from Frankfurt to increase the firm's presence in the city.

Jetter remains the leading light in the Freshfields team as one client affirms: "He's excellent in banking and acquisition financ-

ing, and he's a really sophisticated negotiator. He is very capable, very engaged and is strong in negotiations."

In line with the market, one of Freshfields' biggest deals was a restructuring transaction. In September 2008 partner Frank Laudenklos advised Arcancor on its refinancing and recapitalisation as part of the larger restructuring of the group. Laudenklos also advised Deutsche Bank Luxembourg on the restructuring of a revolving syndicated credit facility for Klöckner & Co.

In acquisition financing, Jorck Jetter led a team advising K+S on the acquisition of Morton International with a value of €1.4 billion. Also, in March 2009 the firm was across the table from Allen & Overy advising Porsche Holding on its €12.5 billion credit facility for a loan financing.

### Leading lawyers

Yorck Jetter

### Hengeler Mueller

The expertise of both Thomas Cron and Johannes Tieves is noted within the German market, and one client says of Cron: "His negotiation style is outspoken, he creates a presence in the room. He's very knowledgeable in regard to aspects we need to think about."

Three of the firm's key transactions in the last year have been for Deutsche Bank. Working alongside their colleagues in the capital markets and corporate departments, the banking team acted as counsel on the €50 billion rescue package for Hypo Real Estate. This included €15 billion in bonds and €20 billion in *Bundesbank* (German central bank) financing guaranteed by the state. Thomas Cron advised the same client on a €3 billion multicurrency revolving credit facility for Daimler. Additionally the team advised Deutsche Bank on the financing of an acquisition of 22.9% of the shareholding in Deutsche Postbank.

Other acquisition finance work saw the firm counsel a number of clients including Eurohypo and Natixis on funding of an acquisition of the real-estate assets of Deutsche Postbank. Additionally, Novem Holding instructed the firm on financing of an acquisition by Barclays Private Equity. Elsewhere, the firm advised RWE on the financing of a €9 billion all-cash offer to Essent shareholders to acquire all the shares in the company, apart from the distribution and waste management areas.

### Leading lawyers

Thomas Cron  
Johannes Tieves

### Linklaters

Led by Carl-Peter Feick, Linklaters' team is popular with clients. "Excellent, very hands-on, very pro-active, always there when you need them – that's across the board," says one client. Another praises the firm's approach to negotiating, describing the team as "not adversarial in their approach to negotiations. They don't get their knickers in a twist arguing with people".

Partner Mark Trinkhaus is singled out by one client: "[He's] very good at listening to his client, you don't always get that. [He's] willing to act on the client's terms and point out if you would have problems."

It was Feick who led the Linklaters team advising seven banks grouped around the Royal Bank of Scotland in regard to financing for pay-TV company Premiere. The deal included the re-financing of a €525 million loan facility and a capital increase of €450 million.

Trinkhaus led an international team advising the Royal Bank of Scotland in regard to revolving facilities for Schaeffler to finance a bid for Continental, and to refinance existing debt and derivative transactions.

Another highlight for Linklaters' acquisition finance practice was the financing syndication in relation to a €2.4 billion acquisition of the minority stake in Evonik Industries by CVC Capital Partners. The deal was one of the largest private-equity investments in Germany since the global downturn.

The firm was active in the restructuring market, with one ongoing deal seeing the team work for IKB on the restructuring and refinancing of a credit institution and the IKB group.

#### Leading lawyers

Carl-Peter Feick  
Eva Reudelhuber  
Marc Trinkhaus

### Milbank Tweed Hadley & McCloy

Milbank's banking team is led by Rainer Magold, who is well respected among his peers. "Magold is a seasoned practitioner," says a rival partner. "He's one of the most popular guys in the market," says another competitor.

Much of the firm's work is in acquisition financing and in March 2009 the team acted for Dresdner Kleinwort in securing €1.36 billion for the acquisition of Danisco Sugar by Nordzucker. In February 2009, a team led by Magold advised Dresdner Kleinwort on financing for the Foundry Co joint venture AMD/Mubadala, valued at €700 million.

Magold also led a team advising Bayerische Hypo-und Veriensbank on a

€205 million deal for the financing of acquisition of the Flabeg Group. The firm was also engaged by the bank in February 2009 on the financing for the €700 million acquisition of Hapag-Lloyd by a consortium of sponsors.

#### Leading lawyers

Rainer Magold

### White & Case

White & Case's banking team remains in tier two this year with respectful feedback from the market. Clients are particularly impressed with the firm's European scope: "We always felt we got very good advisory service. White & Case have a wide presence in central and eastern Europe, which is important for us," says one client.

Clients are complimentary about partner Julia Muller in particular, with one describing her as "very pleasant, very competent. She's quite pragmatic in approaching different needs; the quality of the advice was excellent".

The firm's banking group is headed by Annica Lindegren, who led a team on one of its biggest mandates last year – acting for the lead arrangers including BNP Paribas and the Royal Bank of Scotland with regard to secured credit facilities for the acquisition of Xella International by PAL Partners and GS Capital Partners. Closing in August 2008, the deal was worth €970 million.

The firm's financial restructuring team, led by Tom Oliver Schorling, was also kept busy with a number of transactions. In March the team represented Deutsche Bank as arranger of secured credit facilities for the refinancing of existing facilities of the Amedes Group. The Hamburg partners also advised the Free and Hanseatic City of Hamburg and Land Schleswig-Holstein in the restructuring of HSH Nordbank.

In January 2009 Schorling led when the team represented the initial purchasers in connection with an €860 million offering of unsecured notes by Fresenius US Finance II.

#### Leading lawyers

Annica Lindegren

### Other ranked firms

Like many firms **Latham & Watkins** was involved in the rescue package for Hypo Real Estate, representing the back-to-back guarantor Bundesverband Deutscher Banken (Federal Association of German Private Banks). On the restructuring side the firm advised Landesbank Baden-Württemberg as lead arranger in the financial restructuring of Schaeffler's acquisition of Continental.

**Cleary Gottlieb Steen & Hamilton's** biggest deals last year were in the acquisition financing area. Highlights included acting for Citibank in the financing of the €3.2 billion cash acquisition of the EMI Group by Terra Firma Capital Partners, and counselling Henkel on the €2.6 billion financing of its acquisition of A&E Businesses.

In straight lending the firm acted for Goodyear on a €505 million secured loan facility, and advised Bausch & Lomb as borrower in a \$2 billion and a €409 million secured finance transaction.

Led by Helge Kortz, **Gleiss Lutz's** banking and finance practice has two partners in Germany. A notable deal last year saw the firm act for Phoenix Pharmahandel on a standstill agreement with a group of creditors as part of refinancing measures. The team also advised Crédit Mutuel on the acquisition of the retail banking business of Citigroup Germany, which includes over 340 branches.

**Lovells' banking team** is jointly led by Olaf Grabowski and Katlen Blöcker. The team has been kept busy with a number of real-estate financings for clients such as Bank of Scotland and ING Real Estate Finance. On the restructuring side one of the firm's biggest deals was advising Deutsche Bank on the restructuring of a structured trade finance transaction, with a value of €1.6 billion.

The banking team at **Shearman & Sterling** boosted its strength with the promotion to the partnership of Winfried Carli in January 2009. Carli hit the ground running, renegotiating a syndicated credit facility for Alstria Office Reit and advising Barclays on a €9 billion credit facility for Ineos Group. Other highlights for the firm included acting for Aabar Investment and the International Petroleum Investment Company on the financing of an acquisition of shares in Daimler.

**Skadden Arps Slate Meagher & Flom** enters the banking table for the first time this year after numerous recommendations from the market. The team is led by Matthias Horbach and Johannes Kremer and last year the firm advised Gazit Globe and CPI Capital Partner on its debt restructuring in connection with a €500 million investment in Atrium European Real Estate.

Another restructuring deal saw the firm advise ABN Amro as arranger in the debt restructuring of a real-estate financing. A further highlight for the team was acting for Quadriga in a debt restructuring of one of its newly acquired portfolio companies.

## Mergers and acquisitions

Recommended firms	
<b>Tier 1</b>	Freshfields Bruckhaus Deringer Hengeler Mueller
<b>Tier 2</b>	Clifford Chance Gleiss Lutz Linklaters
<b>Tier 3</b>	Allen & Overy Baker & McKenzie Cleary Gottlieb Steen & Hamilton CMS Hasche Sigle Latham & Watkins Lovells Skadden Arps Slate Meagher & Flom White & Case
<b>Tier 4</b>	Ashurst Nörr Stiefenhofer Lutz Shearman & Sterling Sullivan & Cromwell Weil Gotshal & Manges

As in most jurisdictions, the M&A market in Germany has been sluggish over the last year. Deals are being scuppered due to a discrepancy between the expectations of buyers and sellers, which, combined with the difficulties of getting finance, makes any transaction increasingly difficult to carry out. "Any deal that requires too much bulk is very difficult to pull off – that has changed the M&A landscape," says one lawyer.

A lack of confidence is also causing problems throughout the market. "Strategic buyers are very wary. People haven't been sure whether the bottom has been reached," says one lawyer. Another partner puts it this way: "Buyers have become very risk averse and the question is whether they can walk away without bloody hands."

It is not surprising then that most of the deals being done are in the mid-cap area where financing is easier to acquire, although even here the market is slow.

Other problems surface once deals have been completed, with companies desperate to maximise their benefit. "In the aftermath of transactions there is more discussion about the purchase price. It's getting more and more litigious," says one practitioner.

A potential trend is increased interest in the public sector, with this being perceived as a more stable area in which to invest. "We expect a lot of work coming from companies trying to increase their stake in public companies," says a partner.

### Freshfields Bruckhaus Deringer

Freshfields is well known for its strong corporate focus and market opinion suggests that the firm is still at the top of the tree in this area. The corporate team in Germany is led by Marius Berenbrok, who one client describes as "someone who goes one better for the client in negotiations, [and] identifies with the client's needs." Another adds: "He's excellent in a lot of law fields and we have done many projects with him. He's very good at negotiations and contracts."

This year the department countered the departure of Hans-Michael Giesen to Görg with the promotion to partner of four associates: Jochen Ellrot, Markus Paul, Wessel Heukamp and Arend von Riegen.

The firm backed up its pre-eminent position by advising Continental in the takeover bid by the Schaeffler Group. Valued at €22.9 billion, this was the largest public M&A transaction in Germany in 2008.

Another considerable deal was the staggered sale of Deutsche Postbank to Deutsche Bank. The deal consisted of three tranches with a combined value of €4.9 billion, and was completed in February 2009.

Two significant outbound mandates saw the firm act for Deutsche Telekom on its €2.5 billion acquisition of 25% of Hellenic Telecommunications, while the firm is advising Man on the acquisition of Brazil-based Volkswagen Truck & Bus.

One of Freshfields' biggest clients is Porsche and they have kept the corporate team busy with no fewer than six deals, including three share increase bids for Volkswagen and a €20.9 billion public offer for Audi closed in October 2008.

#### Leading lawyers

Marius Berenbrok  
Andreas Fabritius

### Hengeler Mueller

Alongside Freshfields in tier one is Hengeler Mueller and there is a clear sense in the market that these two firms are still the section leaders. "For sure Freshfields and Hengeler Mueller are the top-tier firms in Germany," says a rival partner, with another admitting that: "Freshfields and Hengeler, for their sheer size, I don't think any of us have become a big risk for them so far."

Unsurprisingly, these two firms found themselves opposite each other on one of the largest transactions last year. The Hengeler team led by Burkhardt Meister advised Deutsche Bank in its acquisition of a 22.9% shareholding of Deutsche Postbank. The deal included the issuance of bonds exchangeable into 60 million Postbank

shares, put and call options and the right of first refusal.

Another strong deal saw the firm advice Commerzbank on its €9.8 billion merger with Dresdner Bank, while Hengeler acted for RWE in an all-cash €9.3 billion offer to acquire Essent except for its distribution and waste management aspects.

A well-publicised deal in Germany last year was Schaeffler's takeover of Continental. A Hengeler team led by Maximilian Schiessl advised Merrill Lynch over its swap agreement with Schaeffler in connection with the latter's €5.7 billion public tender offer.

The team acted as sellers' counsel on a number of transactions including for Deutsche Telekom on the sale of five call centre sites to Vivento Customer Services. The team also advised Freenet on the sale of its DSL business to United Internet, and acted for Metro on its sale of Adler Modemärkte to Bluo.

#### Leading lawyers

Burkhardt Meister  
Maximilian Schiessl

### Clifford Chance

Clifford Chance remains in tier two this year but has increased the size of its M&A practice after the appointment of André Schwanna to the partnership in May 2008.

The team was involved in one of the year's biggest deals advising Dresdner Bank on its sale to Commerzbank, a deal which saw Germany's second-largest bank acquire the third largest. The transaction went through a number of stages starting with a part purchase leading into a merger which was later accelerated into a 100% purchase.

The firm also advised state-owned bank KfW in relation to the restructuring of IKB, in which KfW held a 48% stake, and the subsequent sale of 90% of that stake to Lone Star. IKB was one of the first German banks to be hit in the global financial downturn.

Other highlights include advising Shire Pharmaceuticals on the acquisition of a stake in Jerini and the subsequent takeover bid valued at €550 million. The firm also acted for Norwegian energy company Statkraft in a cross-border asset swap with Eon. This saw Eon acquire 44.6% of Statkraft at a value of €4.5 billion, while in return Statkraft acquired Eon shares worth €2.18 billion.

#### Leading lawyers

Thomas Gasteyer  
Daniela Weber-Rey

### Gleiss Lutz

"When we have worked with them over the years, it's been very good," is one client's opinion of Gleiss Lutz's corporate department, which made a significant hire in May 2009, taking Patrick Kaffiné from Lovells. Kaffiné joins a corporate team headed by partners Ralf Thaeter and Christian Cascante.

The firm's biggest deal this year saw it work alongside the banking team advising Crédit Mutuel on the acquisition of Citibank's retail banking business. Gleiss Lutz also advised Tui Travel on a strategic co-operation with Air Berlin, including the takeover of Tuifly's city carrier business and the acquisition of a 19.9% stake by both companies in the other.

Another highlight saw the team advise Bertelsmann on the sale of businesses in the UK and the Netherlands. The firm made use of its alliance partners Herbert Smith and Stibbe in the sale of DirectGroup Benelux to a Dutch investor and Book Club Associates to a German investor.

#### Leading lawyers

Christian Cascante  
Gerhard Wegen

### Linklaters

The Linklaters corporate team has been trying to increase its presence in the market in recent years but opinion is still divided over whether the impact has really been felt yet. A rival partner sums up the attitude: "They have been very strong, they have hired two senior guys, but I haven't seen the traction of these lateral hires yet."

One highlight in 2008 saw the M&A department head Hans-Ulrich Wilsing lead a team advising IKB on the sale of KfW's share's in the company to Lone Star. The shares had been created through a capital raising exercise as part of a rescue package.

The team was also across the table from Gleiss Lutz in the sale of Citibank's German retail banking business to Crédit Mutuel for €4.9 billion. The Linklaters team led by Peter Erbacher advised Citibank. In another highlight the firm advised TDK on the €1.2 billion voluntary share takeover of electronic components manufacturer Epcos.

An interesting cross-border deal saw the team advise LBBW on a cross-border side-stream merger of SachsenLB Europe into LRP Beteiligungs – a German subsidiary of LBBW. This was based on a newly implemented merger directive in Ireland and was the first ever Irish-German merger.

In April 2009 the firm advised TMD Friction on its takeover by Pamplona following insolvency. The transaction freed TMD of

its debts and saved 3,800 jobs. Linklaters is also involved in an ongoing deal advising RWE on its acquisition of Essent Holding's energy generation operations, which includes the disposal of a 51% shareholding of Essent/Deutsche Essent.

#### Leading lawyers

Hans-Ulrich Wilsing

### Other ranked firms

**Allen & Overy's** biggest project this year saw it work alongside its banking team advising Schaeffler in relation to its takeover bid for Continental, with partners Rolf Koerfer and Hartmut Krause leading the corporate team.

The firm also acted for Öger Tours on the sale of 76% of its shares to Alpstream, while Deutsche Telekom mandated the firm on the sale of subsidiary DeTe Immobilien to Strabag. In the troubled automobile sector the firm advised Pamplona Capital Management on the acquisition of parts supplier TMD Friction from its administrator.

*Leading lawyers:* Hartmut Krause

The joint heads of **Baker & McKenzie's** corporate group are Udo Henkel and Nikolaus Reinhuber. Henkel led the German team advising Archer Daniels Midland on its acquisitions of Schokinag-Schokolade-Industrie Hermann and Campa Süd. Another notable deal saw the firm advise Wissenmedia publishing on the acquisition of the encyclopedia business of Bibliographisches Institut & FA Brockhaus, which closed in December 2008.

One of **Cleary Gottlieb Steen & Hamilton's** largest transactions last year saw a team led by Klaus Riehmer act for Deutsche Bahn in the acquisition of Polish railway group PCC Logistics in January 2009. The firm also represented ArcelorMittal in the sale of a €777 million stake in DHS-Dillinger Hütte Saarstahl to SHS-Struktur-Holding-Stahl and DHS-Dillinger Hütte Saarstahl.

Deutsche Postbank mandated the firm in two key deals: the first a €2.79 billion sale of a minority stake to Deutschebank; while in the second the firm advised Postbank in its €1 billion sale of real-estate properties to Lone Star.

*Leading lawyers:* Thomas Buhl, Klaus Riehmer and Jürgen Sieger

**CMS Hasche Sigle's** corporate group, led by Thomas Meyding, was boosted in 2008 with the hire of three new partners, including the lateral hire of Markus Pfaff from Freshfields. In terms of volume the firm remains one of the market leaders and its highlights included advising Georg Von Holtzbrinck on the sale of Handelsblatt, Tagesspiegel and 50% of the Zeit Publishing

group, with a combined value of €600 million. The firm also advised Heag Süd Hessische Energie and Stadtwerke München on a €1.3 billion offshore wind farm investment.

In March 2009 **Latham & Watkins** closed a €4 billion deal advising Albert Ballin on its acquisition of Hapg-Lloyd. The firm also acted for the county of Hameln Pymont on the structure of a 49% sale to Sana Kliniken.

Other highlights included acting for UnityMedia on the acquisition of parts of cable operator PrimaCom's German network and advising the Ventizz Capital fund on the sale of a majority stake in Solar Energy.

**Lovells'** corporate team is led by Michael Witzel. One of the firm's highlights last year was advising Honeywell on the sale of its Consumables Solutions business valued at \$1.05 billion. The team also advised Danisco on its sale of Danisco Sugar to Nordzucker. A further highlight is the firm's representation of Cognis on the sale of the remaining part of its worldwide oleochemicals business.

**Shearman & Sterling** drops a tier this year owing to a feeling in the market that the loss of several partners in recent years has been having an effect. However the firm has promoted Andreas Merkner to partner following the departure of Astrid Krüger.

The firm had a role advising Allianz on the sale of Dresdner Bank for €9.8 billion this year, while Aabar Investment and International Petroleum Investment instructed the firm on their acquisition of 9.1% of Daimler.

The corporate team at **Skadden Arps Slate Meagher & Flom** acted for Daimler last year in two transactions. The first, a 10% acquisition of the share capital of Kamz for \$250 million, closed in December 2008. The team also advised the company in a 9.1% sale of shares to Aabar, valued at €1.95 billion.

A team led by Lutz Zimmer and Bernd Meyer are also acting for Sports Service Deutschland in the acquisition of a 90% stake in the Frankfurt Lions ice hockey team.

In 2008 **White & Case** advised SHS Struktur-Holding-Stahl and Dillinger Hütte Saarstahl (DHS) on the acquisition of shares in DHS from ArcelorMittal for €777 million. The firm also acted for DZ Bank with regard to a joint venture with Italian bank group ICBPI.

Led by Christian Tappeiner and Thomas Schmid, the corporate team at **Weil Gotshal & Manges** is acting for the Czech energy company CEZ on the €400 million share acquisition of Mitteldeutsche Braunkohlengesellschaft. The firm also advised Mangas gaming on an agreement to acquire a controlling stake in the online gaming and betting company bet-at-home.com.

## Private equity

Recommended firms	
<b>Tier 1</b>	Clifford Chance Freshfields Bruckhaus Deringer Hengeler Mueller
<b>Tier 2</b>	Gleiss Lutz Latham & Watkins Milbank Tweed Hadley & McCloy P+P Pöllath + Partners
<b>Tier 3</b>	Kirkland & Ellis Linklaters Skadden Arps Slate Meagher & Flom Weil Gotshal & Manges Willkie Farr & Gallagher
<b>Tier 4</b>	Allen & Overy Ashurst CMS Hasche Sigle Lovells SJ Berwin White & Case

Over the last year the private-equity market has seen a dramatic drop-off in the number of new transactions as the impact of the financial crisis took its toll.

A key reason for this reduction in new deals has been the reluctance of investors to enter a market which they believe has not yet bottomed out. There is also a desire for deals with minimal risk: "We have mid-cap activity but the large houses are still cagey about what they do," says a partner.

Another issue is the inability of investors to get debt financing. "The debt market has pretty much dried up – we are looking at new acquisition structures," comments a lawyer.

These issues have led to a shift in emphasis towards restructuring and portfolio management as companies focus on their existing investments, as one lawyer notes: "Nowadays when you are asked whether you are a PE lawyer you could say that you are a restructuring lawyer."

Some practitioners though are keen to sound a note of optimism: "I don't think the standstill will last," says a partner. "Some deals need to be done. The opportunistic deals may not be happening right now because people are still unsure whether the market has reached the bottom – nobody wants to catch falling knives." A partner at another firm adds: "The paralysis that was in the market in the fall has now gone. People are beginning to look at things again."

There is a clear sense however that when deals do come back it will be a changed market. "The market is quite diverse but it is not the same as previous years when you could just put your money on the table and wait," says one partner.

### Clifford Chance

One of Clifford Chance's key strengths is still seen to be in the private equity market, in line with its market-leading presence in the UK. "Clifford Chance is pretty far ahead on the transactional side," says a rival lawyer, while another agrees, "Clifford Chance is definitely the market leader".

This reputation is not lost on the firm's clients. "We chose them for the quality of work and the speed of execution," says one. There is also praise for leading partner Oliver Felsenstein, with one client describing him as "excellent, very forthcoming, very commercial".

One of the firm's biggest deals last year saw the team advise 3i on the acquisition of healthcare company DC DruckChemie in April 2008. Other highlights included advising CVC Capital Partners in its investment in Evonik, with transactions in both Germany and Austria, and acting for Franz Haniel & Cie on the sale of Xella International in July 2008 to a consortium including PAI and Goldman Sachs.

In September 2008 a team led by Felsenstein, alongside the firm's banking team, advised HG Capital on a co-investment agreement with Swiss company Capvis on an investment in Koenig Verbindungstechnik.

#### Leading lawyers

Oliver Felsenstein  
Christopher Kellett

### Freshfields Bruckhaus Deringer

"The big advantage of Freshfields is its global reach and the consistency of their advice across continents and across offices," says one client about the Freshfields team. And the market was largely in agreement, as the firm again ranks among the market leaders.

In September 2008 Frankfurt partner Heiner Braun transferred to the firm's Shanghai office. However, with the promotion of four new corporate partners, the German practice is confident of retaining its capacity.

The private-equity team at Freshfields is headed by Hamburg partner Nils Koffka who also led a team advising BC Partners on the acquisition of transformer manufacturer SGB Starkstrom Gerätebau.

In one of its biggest deals the firm advised CVC Capital Partners on the acquisition of a 25% stake in Evonik, valued at €2.4 billion. Another impressive transaction was the consortium acquisition of Xella International by Goldman Sachs Capital Partners and PAI. Freshfields advised the buyers in a deal that was worth over €2 billion.

In a move which is an indicator of the wider market, the firm has also involved itself in smaller mid-cap deals, advising Arcadia Beteiligungen Bessel Tiefenbacher & Co on the sale of two waste disposal companies, and IK Investment Partners on the acquisition of Axtone.

#### Leading lawyers

Nils Koffka

### Hengeler Mueller

The Hengeler team was involved in a number of deals in the real-estate sector last year, advising Goldman Sachs on the sale of the Goldpunkt Center in Berlin and the Lufthansa buildings in Cologne.

Other key clients include the CMP Group, which the firm advised on the sale of a 20% stake in Nordex. CMP Fonds also mandated Hengeler on the takeover of an undisclosed stock-listed company.

Further highlights included counselling Cyrtle Investments on the acquisition of bol.com from the Georg Von Holtzbrinck group and acting for Cinven in the acquisition of the Jost Grup from Silverfleet.

#### Leading lawyers

Christoph Jäckle  
Maximilian Schiessl  
Peter Weyland  
Hans-Jörg Ziegenhaim

### Gleiss Lutz

Gleiss Lutz's private-equity department is praised by clients for its small, focused teams. "What I really like with Gleiss Lutz is their fair approach," says one: "The big boss is working on the transaction himself." Clients also have praise for partner Jan Bauer: "He's one of the rising stars. He's very pragmatic and he's very responsive," says a client, adding: "He is able to create a very good friendly environment for the client. He's very clever and he's got good economic sense."

One of Gleiss Lutz's biggest clients in the private-equity market is Blackstone and the firm acted for the company on three separate transactions last year. Christian Cascante advised on the private-equity house's bid for a 25.1% stake of Evonik, which later went to CVC. Cascante also assisted on German

aspects of Blackstone's €19.1 billion acquisition of the Hilton Group – the largest real-estate private-equity deal in 2008. Partner Jan Bauer was also active, advising Blackstone on its investment and participation in the North Sea's largest wind farm project.

Away from Blackstone, the firm acted for the Tomkin Group on its planned €5.85 billion acquisition of Landesentwicklungsgesellschaft Nordrhein-Westfalen, which was eventually sold to Whitehall.

#### Leading lawyers

Christian Cascante

### Latham & Watkins

Led by Christian Edye and Hans-Jürgen Lütt, the Latham & Watkins private-equity team has been kept busy by Ventizz Capital Partners on two notable deals. The firm acted for the private-equity house in the acquisition by its portfolio company, CardFactory, of the Austrian smartcard manufacturer Visioncard. The deal involved cash, debt and stock compensation and the drafting and structuring of a shareholding agreement. In 2008 the team acted for Ventizz Capital Fund II in the sale of its majority participation in Solar Energy in a deal worth over €1 billion.

Other highlights included advising One Equity Partners on the proposed takeover of the Xella Group and acting for Capvis Equity partners on the acquisition of the Bartec Group from Allianz Capital Partners.

#### Leading lawyers

Jörg Kirchner  
Dirk Oberbracht

### Milbank Tweed Hadley & McCloy

Clients of Milbank Tweed Hadley & McCloy's private-equity team have particular praise for lead partner Peter Nussbaum. "I have experienced many lawyers and clearly he's by far the best M&A lawyer I've met," says one, adding: "What makes him so good is that, compared with other seniors, he's in every detail of the contract and he has a real commercial sense, which from time to time really helps us to identify risks."

It was Nussbaum who led the Milbank team advising PAI Partners which, in conjunction with Goldman Sachs Capital Partners, acquired Xella International for €1.8 billion. Nussbaum also led on a deal advising Deutsche Private Equity on the acquisition of the SSB group from Granville Baird.

Another highlight saw the firm advise Cerberus for more than a year on the intended takeover of Siemens Enterprise

Communications, which operates in over 60 countries. The company was eventually sold to investor Gores Group.

In March 2009 the firm advised Germanischer Lloyd on its merger with Noble Denton, a marine and offshore engineering company.

#### Leading lawyers

Peter Nussbaum  
Norbert Reiger

### P+P Pöllath + Partners

P+P Pöllath + Partners has a slightly different role in the market than most leading firms, focusing on what one rival partner describes as the "classical private equity" elements of fund formation and management. The team is led by Otto Haberstock and this year increased its manpower with the hire of Andreas Junius.

In the area of fund formation, a highlight was the implementation and structure of a new private-equity fund for HeidelbergCapital Asset Management.

Among the firm's transactional highlights was its advising of Whitehall Real Estate Funds over the €3.3 billion acquisition of LEG Landesentwicklungsgesellschaft and the acquisition of a portfolio of investments from 3i, where the firm advised the buyers, Heidelberg Capital.

The firm also counselled SG Capital on the acquisition of DC DruckChemie for €133 million and acted for DZ Equities on the sale of Konrad Hornschurch Group to Barclays Private Equity.

#### Leading lawyers

Matthias Bruse

### Other ranked firms

The private equity team at **Kirkland & Ellis** is headed by Volker Kullmann, who led the team acting for Gilde Buy Out Partners in the disposal of Walter Services Holding. The firm was again mandated by Gilde in the acquisition of SPL Powerlines.

Another notable instruction was the €110 million acquisition of Autodistribution, where the firm advised the buyer, Towerbrook Capital Partners.

A **Linklaters** team led by Ulrich Wolff advised Taros Capital on the disposal of all shares in the Bavarian automotive supplier Novem Group to Barclays Capital in June 2008. Another key deal saw the firm advise HgCapital in the sale of Addison Software to multimedia group Wolters Kluwer.

In December 2008 the firm acted for HCP Capital in the sale of its shares in the

SGB Group – one of the largest buyout deals of the year.

*Leading lawyers:* Rainer Traugott

In August 2008 the **Skadden Arps Slate Meagher & Flom** team advised Barclays Private Equity on the acquisition of an 80% stake in Konrad Hornschurch. Other highlights included acting for Jost Luxembourg in a LBO by Cinven and acting for Quadriga Capital on its leveraged management buyout of Punker.

Led by Gerhard Schmidt, the team at **Weil Gotshal & Manges** advised Avenue Capital Group last year in the acquisition of a 6.5% stake in Premiere Star – the marketing unit of Premiere – from its parent company. The firm also acted for JC Flowers in the €20 billion capital increase of Nordbank. Weil Gotshal has been working on an ongoing basis for TPG Capital on a number of contemplated investments.

In the troubled automobile sector, **Allen & Overy's** private-equity team advised Pamplona Capital Management on the acquisition of parts supplier TMD Friction from the administrator. Another highlight saw the firm advise Towerbrook Capital Partners on the acquisition of a majority stake in Pack2pack Group.

The head of private equity at **CMS Hasche Sigle** is Udo Simmat. The team was boosted this year with the promotion of Heiko Wiechers to partner. Highlights last year included advising Aurelius on the acquisition of Blaupunkt from Robert Bosch. The firm also advised 3i on the sale of Novem to Barclays Capital, while the ESO Capital Group instructed the firm on the acquisition of Mania's outsourcing business.

The **Lovells** team advised Columbus McKinnon in October 2008 on the €36 million acquisition of Pfaff Beteiligungs from the EQT Opportunities Fund. The firm also advised HC Starckon on the sale of Kieselsohl to Akzo Nobel Chemicals, and counselled Holtzbrinck Ventures on the sale of shares in webnews.de and the acquisition of a minority holding in liebejz.de.

The **White & Case** team, led by Andreas Stilcken and Frank Evers, promoted four local partners in the last year. In May 2008 the firm advised Nordwind Capital on the acquisition of insolvent Automotive Group ISE Innomotive Systems Europe and Automotive Group ISE Industries.

Another noteworthy deal saw the firm advise Nordic Capital and Avista Capital Partners in a \$4.1 billion bid for ConvaTec – the largest private-equity deal in 2008.

## Project finance

Recommended firms
<b>Tier 1</b>
Clifford Chance
<b>Tier 2</b>
Freshfields Bruckhaus Deringer
Linklaters
White & Case
<b>Tier 3</b>
Allen & Overy
Baker & McKenzie
Gleiss Lutz
Lovells
Milbank Tweed Hadley & McCloy
Norton Rose

With investment cycles in project finance being much longer than in other areas, the sector has not been as dramatically hit by the global financial crisis. However this is not to say that there has been no impact. "Transactions do get delayed," says a partner, "but my impression is they do not get called off."

Those transactions that have export credit agency funding are also taking longer to see through to completion due to the less flexible nature of the lenders.

There is also doubt as to whether there will be additional government funds made available for projects to boost the economy, "My personal feeling is that the government is watching its funds," says one partner. "I would doubt that these projects would increase because of the downturn."

One sector that looks like it will be riding out the downturn better than most is renewable energy. "Four to five years ago we would not have done many renewable projects, but now with fewer brighter projects we are doing more," says one lawyer. Offshore wind and solar look like two likely areas of growth, however any increase will be gradual. "Offshore wind farms are a growing sector," says one lawyer, "although offshore people would have thought that the market would take off more quickly."

The sector will also provide a boost to Germany-based firms, as the prominence of German technology in the renewables industry translates into a number of roles on cross-border financings.

### Clifford Chance

Clifford Chance's project finance team is led by Riko Vanezis, while Beda Wortmann is well regarded by both lawyers and clients. "He's always very well prepared from our perspective and he doesn't start conflicts with

other people or raise the heckles of people on the other side," says one client about Wortmann.

With a mix of German and English-trained lawyers, Clifford Chance's Frankfurt team is used as a base to advise on a wide range of projects across Europe and the Middle East. This is backed up by its involvement in a number of global transactions in the past year. Alongside associated firm Al-Jadaan & Partners, the team advised Sabc and Saudi Kayan on the signing of a \$6 billion financing package for a petrochemical complex in the Jubail industrial city in Saudi Arabia. The deal included the largest *ijarah* (capital leasing) facility ever provided in a project finance deal, as well as a *murabaha* (deferred sale) facility.

Nicholas Wong is described by one client as, "really a top-class guy – he can work on larger legal and financial aspects; he's tier one as a lawyer". Wong acted for the International Finance Corporation, WestLB, the European Investment Bank and Akbank on the €1 billion financing package for Enerjisa Enerji Üretim for the construction of ten hydroelectric plants and one gas power plant in Turkey.

In the German domestic market, Clifford Chance advised a banking consortium on financing of the A5 motorway extension for €450 million. The firm also advised the Gekko Group of companies in regard to a joint venture with RWE Power. The deal is a €2 billion co-operation agreement for the construction and operation of a coal power plant in Hamm, and was closed in June 2008.

### Leading lawyers

Riko Vanezis  
Beda Wortmann

### Freshfields Bruckhaus Deringer

Head of department and the primary figure in Freshfields Bruckhaus Deringer's project finance group is Daniel Reichert-Facilides, who has led teams on all the firm's key mandates over the last 12 months.

Freshfields advised Vinci Concessions and the other sponsors of the A5 public-private partnership (PPP) project – a 60km stretch of motorway between Malsch and Offenberg in southern Germany. The deal has a value of €535 million.

Another sizeable project saw the firm act for the lender Flughafen Berlin-Schönefeld in connection with the €400 million financing of Berlin Brandenburg International airport.

In the energy sector the team advised on both renewable and fossil fuel projects, acting for HSH Nordbank on the restructuring of a €166 million photovoltaic power project financing in Extremadura, Spain. The firm

also advised the lead arrangers on an 823MW coal power station.

### Leading lawyers

Daniel Reichert-Facilides

### Linklaters

Led by Carl-Peter Feick, the project finance team at Linklaters was kept busy last year by a number of energy projects. Eva Reudelheuber led a team advising HSH Nordbank on the financing of a wind farm in southern Italy, with the firm assisting on both German and Italian legal elements.

The team counselled RWE Power on a financing of a joint venture in Bulgaria for the construction of the Belene nuclear power plant, while Deutsche Bank mandated the firm on the refinancing of four solar power plants in Majorca, Spain.

Alongside its energy work, the team also acted for a consortium on the financing of an extension to the A1 motorway between Hamburg and Bremen. Another highlight was the financing of a maleic anhydride chemical plant in Moers, Germany. Linklaters advised WestLB on the financing and due diligence aspects.

### Leading lawyers

Eva Reudelhuber

### White & Case

White & Case's project finance team is led by Alexander Reuter. One of Reuter's highlights this year was advising an Austrian road financing company on a new project.

The firm has been busy in the area of renewable energy, representing the mandated lead arranger over the portfolio financing of a wind farm in Poland, and acting for the lead bank on the financing of a solar park in Spain.

Other highlights include representing a bank consortium in the financing of a photovoltaic power plant.

### Leading lawyers

Claus Wecker

### Other ranked firms

One of Allen & Overy's largest deals saw the firm advise UniCredit, Caja Madrid and DZ Bank on financing of an extension and operation of the A1 motorway between Hamburg and Bremen. The deal concerns an over-73km stretch of road and has a value of €650 million. The firm also advised Commerzbank over the financing of an extension of a subterranean gas storage facility with a value of €252 million.

**Gleiss Lutz** advised key client Blackstone this year over its €1 billion investment in a North Sea wind power project.

Head of project finance at **Lovells** is Ulrich Helm, who acted for Lang Papier last year on the financing of a waste-to-energy plant in southern Germany. Helm also advised over another waste-to-energy plant in Westphalia with a value of over €150 million.

## Restructuring

### Recommended firms

#### Tier 1

Allen & Overy  
Clifford Chance  
Freshfields Bruckhaus Deringer  
White & Case

#### Tier 2

Görg  
Gleiss Lutz  
Lovells  
Weil Gotshal & Manges

## Insolvency

### Recommended firms

#### Tier 1

Brinkmann & Partner  
Görg  
Pluta  
Schultze & Braun  
White & Case

#### Tier 2

Dr Beck & Partner  
Heuking Kuhn Luer Wotjek  
Kebekus et Zimmermann  
Michael Jaffe  
Wellensiek  
Westpfahl & Spilker

The level of restructuring work has naturally increased following the onset of the economic downturn and there is a feeling in the market that the heights have not yet been reached. "We see the high [point] of restructuring and insolvency still in front of us. At the moment we are still looking at balance sheets up till the end of 2008," says a partner.

One consequence of this increase has been a migration by the market into this area. "Since the recession it became obvious for a number of niche players to realign themselves because restructuring is kind of hip," says one lawyer. Another partner agrees: "People are now being asked for advice as to how to restructure a debt situation and that is why they've become restructuring lawyers."

Looking forward, an area where firms may expect to see growth is in leveraged finance, as one partner says: "In the next few years there

are a number of leveraged finance deals that will need to be restructured. The situation is also exacerbated by local companies needing to restructure."

In the insolvency area there has not been the level of work that some people would have expected. One development has seen companies looking at the insolvency rules of different jurisdictions. "People now are still thinking about moving companies abroad and taking advantage of different insolvency regimes," says one partner.

This led to a fear among some that insolvency work would be taken by foreign offices. However, as re-domiciling is not always an option for troubled companies, local law experts remain vital to any deal. "People were afraid that the insolvency work would go to the UK," says one lawyer, "but people have realised that this is not going to work."

It was also noted by several partners that a lot more insolvency deals are cross border during this downturn than in previous economic slumps. "The German Ministry of Justice has touched base with its clients [law professionals] in regard to cross-border insolvency, which shows there is awareness," says one partner.

### Allen & Overy

Allen & Overy enhanced its corporate restructuring team last year with the appointment of Sven Prüfer. The team is a combination of finance and corporate lawyers led by the head of the banking and finance practice, Peter Hoegen.

Hoegen acted in one of the largest transactions last year, advising the steering committee on the restructuring of the Merckle group, which comprises Ratiopharm and Phoenix.

Hoegen was also lead partner when the firm acted for EganaGoldpfeill and its German subsidiaries on its restructuring.

### Clifford Chance

Clifford Chance's R&I team suffered a blow in July 2009 with the announcement that lead partner Kolja von Bismarck was moving to Linklaters. The market will be waiting to see what effect the departure will have on the practice.

One of the firm's most impressive mandates in 2009 saw it act for General Motors Europe on the restructuring of the troubled American company's European operations. The firm is still working on the project as new developments come to the table.

Another prominent deal saw the team advise Bundesdruckerei on its reorganisation, restructuring and eventual sale to the government. Arcandor also called the team in to

advise on the restructuring of a real-estate portfolio.

The firm was not short of insolvency mandates either, acting for the lenders in the insolvency of real-estate company Level One, which had built up debts of approximately €1.5 billion. The team also acted for the lender in the insolvency of department store Hertie, advising on possible workout and enforcement solutions.

### White & Case

"White & Case have been the only really international law firm in Germany with a specialised R&I department, so if you have a true international case you need someone who can bring this together," says one client about the firm.

The White & Case team is led by Biner Bähr and Sven-Holger Undritz, with the firm adding two local and one full partner to the department in early 2009. Undritz in particular is highlighted as a key practitioner. "He can motivate people [and is] very good with all the parties," says one client. "He has the intellectual capacity to really understand the complexity of the case, which is vital in the really big cases."

In 2009 Bähr was appointed as administrator of Hertie and its subsidiary Hertie Warenhandels, which owns 72 department stores throughout Germany. White & Case is working on a restructuring plan as the company seeks a new investor.

In the automotive sector, the firm is advising Daimler over the insolvency of various suppliers and is advising two suppliers on out-of-court restructuring scenarios.

### Leading lawyers

Biner Bähr

### Other ranked firms

Led by Lars Westpfahl, the **Freshfields Bruckhaus Deringer** R&I team advised the senior lenders of automotive supplier TMD Friction over the company's failed attempt to avoid insolvency. This was followed by further work in connection with the sale of the company by the insolvency administrator.

*Leading lawyers:* Lars Westpfahl

Like many other firms in the market, the restructuring team at **Gleiss Lutz** was busy in the automotive sector. The team advised RHJ International over the restructuring of Honsel. The deal saw RHJ provide the Honsel Group with €50 million of capital in return for a 51% controlling stake in Honsel.

The R&I department at **Lovells** is led by Heiko Tschauer. This year the firm advised an international automotive company on

financial aspects of a potential insolvency. The firm also advised an international IT company on its insolvency.

**Weil Gotshal & Manges'** restructuring department is led by Uwe Hartmann. The firm advised Lehman Brothers Holdings last year in negotiations over a potential out-of-court settlement for Lehman Brothers Bankhaus and its subsequent liquidation.

The team is also advising General Motors and Opel on the restructuring of Adam Opel and its other European subsidiaries. Another highlight saw the firm act for Goldman Sachs on the restructuring of the Lomo Group.

### **Other notable firms**

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**Linklaters** announced its intentions loud and clear when it hired the high-profile Kolja von Bismarck in July 2009. While it is still too early to see how the hire will affect the firm's position in the market, Linklaters' strong banking and M&A departments will provide a solid platform for its development in this practice area.