

# Germany

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## Facilitating taking private transactions in Germany

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### Introduction

For quite some time taking private a German listed stock corporation was burdensome for the majority shareholder. Although a variety of transaction types exist, e.g. delisting resolutions, statutory mergers with and into a non-listed entity, squeeze-out resolutions, the transaction is usually lengthy and prone to be attacked by professional minority shareholders. In general, every shareholder of a German stock corporation can file an action to set aside a shareholder resolution for violation of the law or the articles of association. All corporate measures and transactions, which need to be registered with the commercial register in order to take effect (in particular taking private transactions) are blocked by the filing of a shareholder claim within a period of one month after the shareholders' resolution has been passed. All relevant taking private transaction in Germany require a shareholder resolution.

A special court procedure to overcome the blocking effect of shareholder suits is offered to corporations by the German Stock Corporation Act. However, until recently, this release procedure was time consuming, sometimes lasting more than 12 months. The procedure had to be initiated by the company before the lower regional court *Landgericht* but was in practice finally decided in the second instance, i.e. by the higher regional court, *Oberlandesgericht* (OLG).

### Act Implementing the EU-Shareholders' Rights Directive

In summer 2009, the German legislator passed the Act Implementing the EU-Shareholders' Rights Directive (the Act). An important part of it enacts measures to stop

shareholders filing blocking or vexatious litigation. Therefore, the release procedure to overcome the blocking effect of shareholder litigation is reformed by the Act.

- Instead of two instances, the Act provides that the OLG is the first and final instance for the procedure. This alone shall bring about a significant reduction of the time needed to complete the procedure.
- The company is successful in the procedure if it can either demonstrate that the shareholder claims are inadmissible, unzulässig, or manifestly without merits, offensichtlich unbegründet, or the disadvantages to the company resulting from the blocking outweigh the disadvantages for the claimant if the measure is executed, the so called balancing rule. The Act introduces a new wording of the balancing rule. When weighing the disadvantages to the company resulting from the blocking of the shareholder claims against the disadvantages, which may result to the claimant if the measure is executed, the court shall now in general only conduct a weighing of economic interests. This will typically result in the economic interests of the company prevailing over the economic interests of the minority shareholders, who have filed the claim. Exceptionally, the court shall decide in favor of the claimant, if he can show a particularly severe legal infringement caused by the shareholders' resolution and the measure at stake. However, the burden of proof lies with the claimant.
- Further, the Act introduces a minimum quorum for minority shareholders. Shareholders holding smaller quantities of shares, i.e. less than 1000 of nominal value, who are asserting less serious violations of the law or the articles of association, will no longer be able to block a resolution adopted by the shareholders meeting. They will now only be able to claim damages in case they can prove that the resolution was unlawful and that they have

suffered a personal damage as a result of the execution of the resolution. In case the quorum is not met, an individual shareholder can nevertheless file a claim with the view to set aside the shareholder resolution, however, the claim will not have a blocking effect.

- The Act also introduces various other procedural regulations in order to prevent a delay of the release proceeding to permit entry in the commercial register. Under the Act, service of process is possible with the German attorney representing the claimant in the proceeding to contest the resolution (and not specifically in the release proceeding) even if the claimant is domiciled in a foreign (non-EU) country. Therefore, time consuming service on plaintiffs domiciled in e.g. China or Dubai will no longer be necessary. Corporations are also given the right to inspect the files in court at an early stage if service of an action is delayed due to the non-payment of the advance costs of litigation by the claimant shareholder.

All in all, a shortening of the release procedure, which was initially conceived as an accelerated proceeding, is to be expected. Instead of a duration of six to twelve months, henceforth three to four months should be sufficient to complete a release proceeding and to effect registration of the shareholder resolution with the commercial register.

The first decisions rendered under the new Act by various higher regional courts in Germany confirm that the new Act is constitutional and implement the new rules straightforwardly. Some release proceedings have been completed in a timeframe of two months.

This is good news to majority shareholders and investors in German listed stock corporations who are considering a taking private transaction.

## Capital markets - equity

### Recommended firms

#### Tier 1

Freshfields Bruckhaus Deringer  
Hengeler Mueller  
Sullivan & Cromwell

#### Tier 2

Cleary Gottlieb Steen & Hamilton  
Linklaters  
Shearman & Sterling

#### Tier 3

Clifford Chance  
White & Case

#### Tier 4

Allen & Overy  
Gleiss Lutz

#### Tier 5

Baker & McKenzie  
Dewey & LeBoeuf  
Latham & Watkins

With markedly low activity this time last year and a virtually non-existent IPO market, the equity capital markets have become a healthier and more stabilised corporate environment for both investors and lawyers in the last 12 months. "It's not perfect but it's not bad and it's better than this time last year. The number of pitches the banks do has increased over the past few months, pitches for everything, for IPOs, capitals increases of already listed companies, and capital increases," notes one partner.

IPO activity has significantly improved with clear signs of increased confidence on the part of investors. Following the first quarter of 2010, legal practitioners noted renewed interest in this segment of the market. "IPOs are getting very large coverage at the moment and there are a few deals, but it remains to be seen if there will be a healthy stream of mid-cap IPOs in Germany which makes it easier for both lawyers and banks to get a lasting and sustainable stream of business," says one partner.

The trend is cautiously positive and there are signals that the markets are open for business with a number of successful IPOs. Investors and private-equity houses are closely monitoring opportunities as a range of companies are being prepared and brought to the market bringing potential targets. "We are cautiously optimistic," says one partner, while another adds: "I believe investors are quite fascinated by the way in which the market is opening up, everybody has had an expectation for this to happen, they just did not expect it to happen in the first quarter of this year."

### Freshfields Bruckhaus Deringer

"It is undisputable that Freshfields is a tier one firm. Given their enormous size they have been able to fill their pipeline, no doubt about that," says one competitor.

Freshfields has a solid reputation among its competitors and continues to be a leading firm in the field. Led by Andreas König, the department has been active on a range of deals over the past 12 months. One highlight involved advising Brenntag, a portfolio company of BC Partners, in relation to its €747 million IPO and listing on the Frankfurt Stock Exchange. Closing in March 2010, the deal was led by Nils Koffka.

Rick van Aerssen and Mark Strauch advised Deutsche Bank, HSBC Trinkaus & Burkhardt and I-Bankers Securities, as co-managers on the IPO of Helikos. The €200 million transaction closed in February 2010.

The firm also acted on behalf of Infineon Technologies on a refinancing capital increase of approximately €780 million. The deal involved drafting of a backstop agreement with Apollo, a private-equity company, according to which Apollo undertakes to acquire up to €326 million of the unsubscribed new shares. The deal was led by Christoph Seibt and a team and closed in July 2009.

A further highlight involved the firm representing Spohn Cement and VEM Vermögensverwaltung, which are both part of the Merckle Group, as the main shareholders of HeidelbergCement, in relation to a capital increase of HeidelbergCement for the purpose of reorganisation. The firm also advised on a placement of existing shares at the value of €1.3 billion. The deal was led by Christoph Gleske and closed in October 2009.

Leading a team, Nils Koffka acted on behalf of Brenntag, a chemical distribution company that is owned by funds advised by BC Partners, a private-equity firm, on its IPO on the Frankfurt Stock Exchange. The deal is intended to allow Brenntag to significantly reduce its debt burden as well and finance growth plans. The deal demonstrated to the market that private-equity investors can sustain the growth of their business despite difficult economic times. The deal closed in March 2010.

A figure singled out by peers as a key player is Andreas von Werder. "Andreas has been around in the market for a long time and has a good stable base of top notch private-equity clients. I see him as one of the leading individuals," says one.

#### Leading lawyers

Rick van Aerssen  
Christoph Gleske  
Andreas König  
Andreas von Werder

### Hengeler Mueller

Hengeler has been visible on a range of transactions and is highly respected by competitors and clients alike. Last year the firm appointed Daniela Favoccia and Matthias Hentzen as new managing partners in July 2010.

Favoccia is well respected by her peers: "She is very pragmatic and hands on ... there is no worry about her focusing on the wrong issues."

"The firm has a lot of senior partners who are very experienced who, in addition, have a number of relationships with industry companies which helps. They are just very professional and experienced," says one client.

The firm has been active in advising HeidelbergCement on one of the largest subscription rights capital increases in Germany in a number of years of approximately €2.4 billion and placement of old shares with a value of €2 billion. The deal was led by Favoccia and Wolfgang Gross.

Another deal involved advising Kabel Deutschland on the largest IPO in Germany since 2007. This transaction was a significant indicator of restored faith in the German IPO market. The €750 million deal was led by Torsten Busch.

The firm also advised Fresenius in relation to the conversion of all preference shares into ordinary shares as well as the change of the company's legal form into a partnership limited by shares (*Kommanditgesellschaft auf Aktien*).

#### Leading lawyers

Torsten Busch  
Daniela Favoccia  
Wolfgang Gross

### Sullivan & Cromwell

Led by Wolfgang Feuring, the capital markets department has been active on a range of deals and is considered by competitors to be a practice with a solid team.

The acted as German and US counsel to the underwriters in a €747 million IPO and listing on the Frankfurt stock exchange of common shares by Brenntag. This high-profile deal demonstrated a recovering German IPO market following the financial crisis. The deal was led by Wolfgang Feuring and a team and closed in March 2010.

Another deal involved acting for the underwriters in a €164 million IPO of Tom Tailor Holding. This was only the second IPO of a German company to be listed on the Frankfurt stock exchange since June 2008. The deal was led by Konstantin Technau and closed in March 2010.

Another highlight involved representing Goldman Sachs in relation to a €1.08 billion

rights offering by Continental in January 2010. The deal involved structuring the offering in a way whereby the underwriters agreed to purchase all 31 million new Continental shares. Approximately 75% of shares were subsequently placed with institutional investors by means of an accelerated bookbuilt offering before the start of the rights offering stage. The transaction was handled by Feuring and Carsten Berrar.

### Linklaters

"They entirely satisfy our needs and far exceed our expectations. We have been dealing with Links for many years and we are very happy with the service," says one client, adding: "We appreciate the customer oriented approach they have and we would certainly use them again."

Highly respected for his experience and approach, Herbert Harrer is singled out by clients: "He is customer oriented and detail oriented. We are very happy with the service we get." says one.

Linklaters is a respected contender in the market and is highly regarded by clients and competitor alike. The firm has been active in advising UniCredit on its capital increase which was one of the largest transnational capital increases with subscription rights in the banking sector. The €3.9 billion transaction, which closed in February 2010, was led by Harrer.

Christoph Vaupel led a team advising Qiagen in relation to its capital increase. Listed on the Frankfurt stock exchange and Nasdaq, Qiagen was successful in placing €31.6 million of new ordinary shares including €4.1 million ordinary shares from the green shoe option granted. The deal was led by Mark Devlin and closed in September 2009. The firm also represented Bank of America Merrill Lynch in relation to a secondary public offering of Ifco Systems. The deal was led by Harrer.

On a further deal, Harrer led a team advising Deutsche Bank and Goldman Sachs International in connection with the IPO of GSW Immobilien at the Frankfurt regulated market, the Berlin regulated market and the Luxembourg stock exchange.

### Leading Lawyers

Herbert Harrer

### Other ranked firms

Clients praise Clifford Chance highly and describe the firm as professional and result-oriented, "They deliver, that is the most important thing. They are very professional so at the end you get a result. They are commer-

cial if necessary to get the results needed. You are always comfortable with the legal documentation they provide," says one.

The firm has been active in advising Volkswagen on its capital increase with an issuing value of approximately €4 billion. This was one of the largest capital increases in Germany to date and involved a pre-placement within the framework of an international book-building process. The deal included a private placement in the US and listing of the shares in Germany, London, Luxembourg and Switzerland. The deal, which closed in April 2010, was led by Markus Pfüller.

Pfüller also led a team advising IVG Immobilien in connection with a capital increase against cash contributions from authorised capital, excluding subscription rights. The issuing volume was €72 million with new shares listed on the sub-segment of the regulated market. The deal closed in October 2009.

Led by Lutz Krämer, the White & Case capital markets department has been active in advising Drägerwerk on its acquisition of 25% minority stake in Dräger Medical at the purchase price approximately €250 million. Closing in January 2010, the deal was led by Volker Land.

Another highlight saw Krämer lead a team advising Deutsche Bank and Morgan Stanley on a €500 million IPO in the consumer goods sector. Krämer also led a team advising Aixtron in relation to a €160 million, 10% capital increase in November 2009.

Allen & Overy has been active advising Deutsche Bank and Morgan Stanley Bank as the underwriters on a €686 million capital increase of K+S. On another deal the firm advised Bilfinger Berger on its rights issue to the value of €270 million.

The firm was also active advising Schaeffler on the €1.1 billion capital increase of Continental.

Gleiss Lutz has been active across a number of deals over the past 12 months. The firm advised Celesio, an international service provider in the pharmaceutical sector, on a successful issue of a convertible bond with a total issuance volume of €350 million. The deal was led by Stephan Aubel.

Another deal involved acting on behalf of BKM Bausparkasse Mainz on a cash capital increase with subscription right of the existing shareholders. The deal value was approximately €10 million.

Latham & Watkins represented JPMorgan and UniCredit Group on the combined debt exchange for existing notes as well as consent solicitation and capital increase of Escada against a distressed background. The deal was led by Roland Maass and a team.

Another highlight saw the firm advise Unitymedia in connection with a dual-track procedure in which shareholders BC Partners and Apollo Management disposed of all their shares. The deal also involved a trade sale and an IPO which were prepared in parallel. Unitymedia was subsequently sold to Liberty Global. The deal was led by Maass and a team.

### Other notable firms

The capital markets department at Heisse Kursawe Eversheds is headed by Alexander Honrath who has been active over the past 12 months.

Honrath led a team advising JC Flowers in an ongoing deal in connection with its investment of €1.2 billion in Hypo Real Estate Bank. The deal involved a takeover bid of Hypo Real Estate Bank by the German government and a capital increase of €3 billion.

The firm also advised Getmobile Europe on its listing in the German entry standard on the Frankfurt Stock Exchange in addition to its UK listing. The €13.7 million deal was led by Timo Holzborn.

Willkie Farr & Gallagher has been visible across a range of deals in the field of capital markets work. Michael Schlitt, who heads the department, has been active on a number of capital increases this year.

One highlight saw him advise Morgan Stanley and Commerzbank on the €460 million rights issue by Rhön Klinikum. Schlitt also led a team acting for Credit Suisse on the capital increase under exclusion of pre-emptive rights of Roth & Rau.

In June 2010, Hogan Lovells advised Drägerwerk & Co on its share capital increase of authorised capital in subscription rights for the ordinary and preferred shareholders. The deal, led by Lutz Angerer, involved an increase amounting to €100 million.

The firm also acted for the German Federal Ministry of Finance in connection with the second recapitalisation of Commerzbank. The deal involved a €1.8 billion capital increase and a €8.2 billion second dormant equity holding. The big ticket deal was led by Karsten Müller-Eising, who heads the equity capital markets team.

## 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  
Shearman & Sterling  
White & Case

#### Tier 4

Latham & Watkins  
Hogan Lovells

The lack of viable bank lending in the market has led to greater activity in senior debt financing with a number of companies tapping the debt markets for the first time. As a result, corporate bond work has kept law firms busy with a healthy stream of activity. "If companies want to achieve a certain debt profile they can no longer solely rely on bank financing. Everybody was extremely busy on corporate bond work so 2010 is set to be a record year like 2009 for new issuers of bonds," notes one partner.

With a notable decrease in syndicated medium term loans, investors have had little choice but to come into the debt markets. "Companies that have bonds meant to mature in 2012 have already now started to manage their indebtedness," says one partner.

With a positive outlook given the signs of a recovered state, lawyers expect the credit crisis not to exceed the year 2012, "We have quite a number of factors coming together in this time including a lot of eurobonds becoming due, it's a real peak of when debt will mature in Europe," explains one lawyer.

There is also increased work coming from capital increases, but the nature of these has changed compared with the previous year. While in 2009 many were focused mainly on rescue rights offerings, issuers are now making use of favourable capital markets conditions and looking at increases.

### Hengeler Mueller

"Hengeler has a large market share, it's still a force and still very active. They are very present on convertible bonds and have a large number of corporate debt issuing programs they are responsible for so very active there," says one peer.

The firm's top mandates over the past 12 months include advising Deutsche Pfandbriefbank, formerly Hypo Real Estate, on its €22.5 billion refinancing. Another highlight saw the firm representing HeidelbergCement on the largest non-investment-grade bond to be issued under German law.

Hengeler Mueller also acted on behalf of Merck on its acquisition financing through a bond issue of €3.2 billion.

The firm remains a leader in the field of debt capital markets and is highly respected by its competitors. "They have managed to hold their position as a leading firm and have a good reputation in the market," says one.

#### Leading lawyers

Reinhold Ernst  
Hendrik Haag

### Linklaters

The Linklaters debt capital markets team is headed by Peter Waltz and is regarded as a definite leader in the market by competitors. Clients also praise the firm for its depth and quality of service, one says: "Linklaters is a broad firm with good capable lawyers, it really is excellent."

Last year the team advised the Federal Republic of Germany in relation to its issue of €4 billion 1.5% bonds due in 2012. This is only the second issue to be made of US dollar-denominated bonds of the issuer. The bonds were placed internationally and this issue was branded a remarkable success when the approximately \$11 billion book closed only two hours after being launched. The transaction was handled by Berthold Kusserow and Oliver Dreher and closed in September 2009.

A further deal involved advising Ukraine's National Joint Stock Company Naftogaz, a fuel and energy company, on its restructuring of external debt. The deal involved the issuance, and listing on the Irish Stock Exchange, of \$1.6 billion 9.5% guaranteed notes due in 2014. The deal was led by Mark Devlin and Jessie Heners and closed in November 2009.

Another highlight saw the firm represent Commerzbank, Société Générale, HSBC and Landesbank Baden-Württemberg on an issue of €750 million 5% notes due in 2014 of K+S Aktiengesellschaft. The deal was led by Waltz and closed in September 2009.

#### Leading lawyers

Peter Waltz

### Clifford Chance

"Great, we love Clifford Chance. We have a lot of experience with them and have worked with them on a number of transactions. We've worked with several partners there already and in the end you know they will deliver," says one client.

The practice has been involved across a number of significant deals and remains a prominent practice that attracts praise from competitors and clients alike. Sebastian Maerker, who heads the debt capital markets division, led a team advising BNP Paribas, Deutsche Bank, ING Bank and JPMorgan as lead managers in a bond issue by SAP, the first ever by the company. The €1 billion deal closed in April 2010.

Another transaction, led by Maerker and Marc Benzler, involved representing Merrill Lynch International as manager in connection with hybrid Tier I securities issued by NordLB. The \$500 million deal, which closed in October 2009, was one of the few hybrid capital transactions in the market.

The firm also acted on behalf of SoFFin, the financial market stabilisation fund, in the establishment of an SPV. The deal involved developing numerous standards for the German financial stabilisation proposal as well as developing SoFFin policies. The deal, which closed in November 2009, was led by Marc Benzler and Arne Klüwer.

Another highlight saw the firm represent Boehringer Ingelheim on the placement of promissory notes with a total value of €900 million and maturities ranging from five, seven and ten years. The placement was effected through joint lead managers Helaba, HSBC/Trinkaus and LBBW.

#### Leading lawyers

Sebastian Maerker  
Markus Pfüller

### Freshfields Bruckhaus Deringer

Praised by peers for its visibility in the debt capital markets, Freshfields holds its position as an important player in the field. "They are certainly present at a high level," says one competitor.

The debt capital market division is managed by Christoph Gleske who has been active on a number of deals including advising Nord/LB Norddeutsche Landesbank Girozentrale on its issuance of \$500 million capital notes through Fürstenberg Capital International - an independent Luxembourg issuance company - using proceeds for subscribing to a silent participation in Nord/LB. The deal closed in November 2009.

The firm also advised Deutsche Bank, the Royal Bank of Scotland, Merrill Lynch and

Commerzbank as underwriters and joint bookrunners on three high-yield bond issues by HeidelbergCement. This included €1 billion 7.5% notes, €1 billion 8% notes and €500 million 8.5%, notes with a combined total of €2.5 billion. The team also worked on a further two issues by the company with a combined value of €1.4 billion. The deals, which closed in January 2010, were led by Rick van Aerssen and Mark Strauch

Van Aerssen was again involved alongside Andreas König advising SAP on the placing of its benchmark debut bond, with a value of €1 billion. The deal, which closed in April 2010, was made in two tranches including a €500 million four-year tranche and a €500 million seven year tranche.

#### Leading lawyers

Christoph Gleske

#### Other ranked firms

Over the past 12 months, **Allen & Overy** advised UniCredit on the disposal of the shareholdings of the Otto Beisheim Group in Metro, including by way of equity derivatives. UniCredit was engaged by Otto Beisheim as the sole bookrunner in relation to the placement of the Metro shares. The deal was led by Okko Behrends.

Another deal involved advising BNP Paribas on the securitisation of government guaranteed loan receivables with a total value of €15 billion. The deal was led by Behrends.

In April 2010, **Cleary Gottlieb Steen & Hamilton** advised Merrill Lynch, Citibank, Deutsche Bank, HSBC Trinkaus and JPMorgan as the joint coordinators and joint lead bookrunner in the Volkswagen offering of €64.9 million of new preferred shares. The new shares, at an offer price of €65 per share, were offered to existing shareholders in a public rights offering in Germany, UK, Luxembourg and Switzerland the deal was led by Gabriele Apfelbacher.

The firm also advised Wendel and Helikos in the €200 million IPO of Helikos, a Luxembourg-based special-purpose acquisition company (Spac) that began trading on the Frankfurt Stock Exchange in February 2010. Helikos is the first Spac ever listed on the Frankfurt Stock Exchange. The transaction was led by Hanno Sperlich.

**Gleizz Lutz** has been active in advising Celesio in relation to its issuance of a convertible bond. The €350 million deal was led by Hoimar von Ditfurth and Stephan Aubel. On a separate deal, Ditfurth led a team advising the same client in relation to its placement of a €500 million bond with domestic and international investors both private and institutional.

The debt capital markets division, led by Helge Kortz and Aubel, was also active, advising JPMorgan in relation to a planned issuance of a high-yield bond. The €1 billion transaction was led by Jochen Tyrolt.

Headed by Jochen Artzinger-Bolten, the **White & Case** debt capital markets practice has been visible on a range of deals. "The firm is quite active in the market and has a good client base," says one competitor. Artzinger-Bolten advised Barclays Bank on a series of structured note issues under its German note programme, which is one of the most diversified structured note programmes in the market. The deal closed in May 2009.

A further highlight involved advising Deutsche Bank as lead manager of an issuance of €750 million fixed rate notes by Evonik Industries. This was one of the largest issues by a German issuer in 2009. The deal was led by Artzinger-Bolten and Karsten Wöckener and closed in October 2009.

An example of the firm's cross-border capabilities includes acting on behalf of Deutsche Bank as the initial purchaser in relation to the €200 million guaranteed senior secured high yield bond issuance of Ifco Systems. The bond was secured by assets of Ifco Group in the US and seven European jurisdictions. White & Case advised Deutsche Bank in the European jurisdictions predominantly UK, France, Italy and Germany. The deal was led by Leila Röder.

**Latham & Watkins** has been active over the past 12 months and is respected by peers, "It is a good firm and has been involved in high-yield bonds," says one. The firm advised Credit Suisse, JPMorgan, Deutsche Bank and Goldman Sachs as underwriters in the issuance of senior secured notes of UPC Germany for the purpose of financing the acquisition of Unitymedia. The €2.6 billion deal was led by Rudolf Haas.

The practice also represented Sappi PE Paper Escrow in connection with its issuance of senior secured notes of 11.75% and 12%, all due in 2014. The €6.5 billion deal was led by Haas.

**Hogan Lovells** holds its position in the market as a respected condender as competitors report positively on the firm's performance, "They are involved on the debt side and we come across the on transactions, they operate well," says one peer.

The firm this year advised the European Investment Bank on an ongoing basis from May 2009 in relation to the issuance of various tranches of registered bonds and promissory note bonds. The deal also involved preparing the respective model documents. To transaction is handled by Sven Brandt who heads the debt capital markets team. To date, the deal value is over €2 billion.

The practice also advised BNP Paribas in connection with the issuance of structured notes under the base prospectus of a Luxembourg SPV. The value of the issuance was €100 million while the volume of the base prospectus was up to €20 billion. The deal was led by Sven Brandt, Julian Fischer and Anna Rogge and closed in February 2010.

#### Other notable firms

**Sullivan & Cromwell** advised Landwirtschaftliche Rentenbank on its US SEC-registered \$1.5 billion and \$2.5 billion offering of guaranteed notes closing in January 2010 and September 2009. The deal was led by Krystian Czerniecki who works in both the Paris and Frankfurt offices.

Czerniecki also acted for Deutsche Telekom as the underwriters in a \$1.5 billion takedown Deutsche Telekom's US shelf registration. The deal closed in June 2009.

In October 2009, **Willkie Farr & Gallagher** advised Salzgitter on its convertible bond issue following the placement of six million shares in Vallourec through a combined equity offering and synthetic mandatory exchangeable bond. The deal, worth €296 million deal, was led by Michael Schlitt and closed in October 2009.

Schlitt also advised UBS as the underwriter on a convertible bond issue by a German listed stock corporation.

#### 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

There has been a decrease in the volume of European Central Bank (ECB) deals since the bank tightened its criteria to rating agencies on transactions, which has resulted in the market drying up. "We had a transaction which was pulled because the criteria have become more stringent," explains one partner.

The structured finance and securitisation market has been active with transactions tak-

ing place on behalf of lenders who placed their risk with shareholders. These have been the biggest transactions in the market.

“Effectively, using securitisation techniques to get rid of the consequences of the financial crisis, that is one of the main trends of 2009,” a partner explains. “This means using the ECB for funding and using securitisation techniques to transport risks to shareholder in the context of saving the banks, in the restructuring of the banks and using securitisation techniques to do so.”

### Clifford Chance

Headed by Kirti Vasu, who is also a key presence on most of the firm’s major deals, the structured finance and securitisation division has been visible on a number of transactions over the past 12 months. “They have the capacity internally and they simply deliver and operate on a high professional level,” says one client.

Vasu acted on behalf of the Royal Bank of Scotland on one of the largest CMBS restructurings to be completed in Germany to date, employing an innovative acquisition structure on a €2 billion underlying real-estate portfolio consisting of 28 mainly prime office properties throughout the country. The restructuring was the first of its kind in Germany, and sets the firm up as a key contender for the expected CMBS restructuring work coming up when the refinancing wall hits Europe in 2011 and 2012.

Vasu was again involved as the firm advised Deutsche Bank and HSBC as lead managers on two securitisations of German auto loans originated by FCE Bank, a subsidiary of Ford. The €740 million transaction closed in November 2009.

Elsewhere, the team advised HSH Nordbank on a €1.1 billion securitisation of German small to medium enterprise loans, and acted for the arranger on the first term insurance securitisation in Germany.

#### Leading lawyers

Bettina Steinhauer  
Kirti Vasu

### Hengeler Mueller

A key figure at Hengeler Mueller, singled out by competitors, is Dirk Hermann Bliesener. “He is always involved on the asset side of transactions. He is an excellent lawyer and handles the technical aspects and works on implementing complex structures. He is very visible in the market,” says one.

Bliesener has been active on a range of deals including advising Crédit Mutuel in relation its bonds programme involving the

issue of €10 billion *obligations foncières* (covered bonds).

On another transaction, Bliesener was active in the automobile loan sector when he represented Natixis and Santander Consumer Bank in connection with €1 billion floating rate notes linked to auto loan securitisations.

The practice has also been active on a number of CMBS restructurings. On one, Daniel Kress led a team advising the Highstreet joint venture, owned by Goldman Sachs and Arcandor, on the restructuring of its financial debt obligations in connection with a CMBS issue secured against one of its assets.

#### Leading lawyers

Dirk Hermann Bliesener  
Martin Geiger  
Stefan Krauss

### Linklaters

The firm wins praise from both peers and clients with Kurt Dittrich singled out for praise: “He is very straightforward and has a quick grasp of where risks are, where people can be flexible and where they can’t. He is clearly one of the people who is getting things to the point,” says one competitor.

Clients also praise the firm, one says: “Linklaters is a broad firm, it really is excellent and we are very pleased with their service over the years.”

Dittrich heads the securitisation team while Oliver Dreher manages structured finance. Last year Dreher advised Commerzbank on the update of a €5 billion credit linked note programme. This was one of the largest, as well as one of the few, programmes for the issuance of credit-linked notes for retail. The deal was completed in August 2009.

The firm was also active in advising the Royal Bank of Scotland on the establishment of its €15 billion covered bond programme. The programme included the first-ever platform for issuing UK covered bonds, in the form of registered notes, under German law. Led by Dreher and a team, the deal closed in April 2010.

Dittrich also led a team advising the State of Baden-Württemberg on its €12.7 billion risk shield. The firm advised the client on how to protect itself against losses and an increase of required regulatory capital resulting from structured securities. The risk shield was provided through a guarantee by the state. The transaction was completed in the summer of 2009.

#### Leading lawyers

Kurt Dittrich

Laurenz Uhl

### Other ranked firms

Ulf Kreppel heads the White & Case structured finance and securitisation department and has taken the lead on a number of transactions, including advising Residential Capital on the sale of its European mortgage assets and businesses to subsidiary funds managed by the Fortress Investment Group. The deal involved the sale of non-performing loans and involved work in a number of jurisdictions.

Another highlight saw the firm act for GFKL Financial Services on its sale of a lease portfolio as well as other assets relating to its subsidiary GFKL Süd to Augsburger Aktienbank. The deal was led by Dennis Heuer and closed in September 2009.

Allen & Overy’s strength in derivatives is aligned with the firm’s leading position in the UK market. The team this year has been advising Eurex in an ongoing deal on the setting up of a platform to clear credit default swaps through central counterparties. Central counterparty clearing of over-the-counter (OTC) derivatives, particularly credit default swaps, is considered a key reform project in relation to derivatives following the crisis. The deal was led by Okko Behrends and Frank Bierwirth.

Behrends also advised BNP Paribas in connection with the securitisation of government guaranteed loan receivables totalling €15 billion.

### Other notable firms

Heisse Kursawe Eversheds this year advised Capita Group on the securitisation issues of its £10 million acquisition of Capmark Services Europe - a company which provides administrative services for CMBS securitisations.

Hogan Lovells has been active on a range of deals over the past 12 months. The structured finance and securitisation department is led by Sven Brandt who has been active across a number of transactions. Brandt advised FCE Bank on a €487 million German retail public securitisation deal in September 2009 - the first publicly-placed securitisation transaction after the sub-prime crisis began.

Another transaction involved representing the Dr Peters Group in its purchase of two Airbus A380 aircraft, both by a closed-ended fund, financed through a bank consortia led by NordLB. The deal also involved the placement of the shares in both closed-ended funds.

Mayer Brown acted for SoFFin, the German financial market stabilisation fund,

in establishing WestLB, the first German bad bank. Securities to the value of approximately €6 billion will be removed from the banks' balance sheet. The deal also involves the transfer of the entire portfolio with an approximate value of €85. The high-profile deal was led by Jörg Wulfken and closed in May 2010.

The firm also advised Deutsche Bank and the Royal Bank of Scotland on the securitisation of €530 million of automobile financings for GMAC Bank through the European Central Bank (ECB)-eligible asset-backed securities. The deal, which closed in September 2009, was led by Ralf Hesdahl.

## Banking

Recommended firms	
<b>Tier 1</b>	Allen & Overy Clifford Chance Freshfields Bruckhaus Deringer Hengeler Mueller Linklaters
<b>Tier 2</b>	Milbank Tweed Hadley & McCloy White & Case
<b>Tier 3</b>	Ashurst Latham & Watkins
<b>Tier 4</b>	Baker & McKenzie Cleary Gottlieb Steen & Hamilton Glenn Lutz Hogan Lovells Norton Rose Shearman & Sterling Skadden Arps Slate Meagher & Flom

One clear trend in the banking market has been the notable absence of debt financing as banks show an unwillingness to underwrite debt. One partner explains: "If you can't finance a deal through debt, you have to have debt leverage, we see a few deals coming back, deals that will probably close, but at a magnitude that is a fraction of what we saw in 2007."

The market has been dominated by restructuring and refinancing related matters, which have accounted for a large proportion of the work law firms have been dealing with. Banks in Germany, unsurprisingly given the economic situation, have become risk adverse. Financial institutions are far more cautious since taking risk became an unpopular event.

"Investment banks will return in no time, they are here but in hibernating mode. There will be a lot of dynamics as soon as lending becomes a product that is fashionable again,

which means that loans can be underwritten again," says one partner.

Given the lack of availability of funding and the changing structure, investors have had to exercise greater creativity in order to identify alternative methods of financing. "The trend is that deals are partly bank financed and partly by different methods, there is creativity in finding financing. This is a consequence of the liquidity shortfall and unusual legal structures because the way in which loans are structured has changed, so buyers are looking at different instruments. The ratio is 50% where it used to be 100% and sometimes it's all equity based," says one partner.

There is some increase in the demand for energy financing, mainly coal and electricity with increased visibility in export and commodity trade financing. This movement in the project finance sector is characterised by legal practitioners as slow-moving and careful.

"There is still business; clients keep complaining saying it's difficult to get bank finance, realistically it is available but not freely available as it was in the past, it's a matter of how you define crisis. Terms are very strict now but good businesses are getting bank finance," says one partner.

### Allen & Overy

Allen & Overy has a strong reputation in the banking market and is described, by competitors and clients alike, as justifiably a tier one firm. "They are very responsive and give a very good quality of service which is what makes them excellent. We have been entirely satisfied and would definitely use them again," says one international client.

A popular name at Allen & Overy is that of Walter Uebelhoer. "He is one of the busiest Allen & Overy lawyers, he is works on restructuring and financing deals and has strong capabilities in this market," says one competitor.

The practice represented SAP, a leading provider of business software, on a €1.5 billion three-year syndicated credit line for the purpose of refinancing an existing €1 billion credit line dating back to November 2004.

The firm has also been active in advising Schaeffler Group in connection with its financing arrangements including credit facilities valued at €12 billion. The deal was led by Neil Weiland and Walter Uebelhoer.

Another highlight saw Peter Stenz, together with Oliver Waldburg and Uebelhoer, advise a syndicate of 18 banks in relation to the €8.5 billion refinancing of Porsche.

#### Leading lawyers

Peter Hoegen  
Walter Uebelhoer

Neil Weiland

### Clifford Chance

A key name at the firm is Bettina Steinhauer who is considered to be one of the leading lights in the German banking sector, with a depth and experience that is rarely matched. "She is simply one of the three most experienced lawyers in this field in Germany. That is already a very strong trade market. There is no situation she has never gone through and she always has at least give options to work through for any given situation," says one client.

Alexandra Hagelüken is also highly regarded and is praised by peers for both her visibility in the banking sector as well as her capabilities. "She is involved a lot of financings, she is a positive and constructive lawyer," says one competitor.

In line with the rest of the market, much of the firm's work last year was focused around debt restructuring. Last year Steinhauer advised Commerzbank, Deutsche Bank, Nordea Bank and the Royal Bank of Scotland as mandated lead arrangers on the debt refinancing of the HeidelbergCement Group. The international syndicate involved more than 50 banks with a total volume of €8.7 billion. A number of Clifford Chance offices worldwide were involved in this transaction, which was completed in June 2009.

Barbara Mayer-Trautmann has also been active advising Commerzbank, UniCredit and WestLB as the arranging banks on the restructuring of the financing of the Wepa Group. The restructuring took place in the course of the group acquiring core assets of Kartogroup, which was facing insolvency in Italy. As a result, the funding package covers the financing of the purchase price for Kartogroup, repayment of former loans and operating funds are available. The deal closed in January 2010.

The firm also represented a syndicate of banks in relation to the restructuring of the debt of Nevem Group. The deal involved setting up various restructuring techniques for the German market, including one of the first trust structures. The deal was led by Alexandra Hagelüken and closed in the summer of 2009.

#### Leading lawyers

Alexandra Hagelüken  
Barbara Mayer-Trautmann  
Bettina Steinhauer

### Freshfields Bruckhaus Deringer

The banking practice at Freshfields Bruckhaus Deringer is led by Yorck Jetter who has been

active across a range of transactions over the past 12 months. The firm has a solid reputation in the market in the banking sector and is admired by competitors, "Linklaters does a lot of lending work in Germany and is correctly placed in the first tier. They have one of the largest banking practices in the country," says one competitor.

The firm has been active in representing DZ Bank, Commerzbank, Deutsche Bank, IKB, HSH Nordbank and Deutsche Postbank in connection with the restructuring of mostly bilateral bank debt of GFKL Financial Services into a syndicated back-up facility which also provided fresh capital. The deal, valued at €8.2 million, was led by Frank Laudenklos and closed in December 2009.

Jetter also led a team acting on behalf of Continental on the restructuring of its debt financing in relation to its takeover by the Schaeffler group. The restructuring of the credit facilities totalled €13.5 billion and reached financial close in December 2009.

#### Leading lawyers

Yorck Jetter  
Christoph Seibt  
Christoph von Bülow

### **Hengeler Mueller**

Hengeler Mueller is highly regarded by competitors and considered a leader in the German banking sector "Hengeler is one of the largest firms in Europe and the largest German firm in banking," says one peer.

The firm's top mandates include acting for Carl Zeiss Vision on a high-volume LBO financing of a joint venture, operating internationally, between a strategic investor and a private-equity investor. The transaction was complex given the corporate governance of the joint venture and the settlement proceedings, which went forward in parallel to the financial restructuring.

The practice also advised Citibank and Deutsche Bank in the establishment of a forward start facility to facilitate a capital increase in the first quarter of 2010. The deal involved securing and realigning the existing syndicated financing.

On a complex transaction given the multitude of banks involved, Hengeler Mueller also acted on behalf of HeidelbergCement on its refinancing process. The firm advised on the subsequent implementation of one of the largest capital measures in Europe in 2009. The deal involved the coordination of local counsel in 19 countries.

#### Leading lawyers

Thomas Cron  
Johannes Tieves

### **Linklaters**

Linklaters has expanded its banking practice with the hire of two new partners, Michal Hlasek who joins from the London office in May 2010 while restructuring specialist Kolja von Bismarck joined from Clifford Chance in September 2009.

The firm remains a reputable contender in the field of banking and, despite a difficult market, has been active on a number of transactions. Carl-Peter Feick, who manages the banking department, together with Steffen Schell Schmidt advised the Royal Bank of Scotland, UniCredit Bank and Calyon Deutschland on the restructuring of a revolving credit facility for RWE, the DAX 30-listed German energy and utility company.

Another highlight saw Eva Reudelhuber lead a team advising Commerzbank, Deutsche Bank and Landesbank Hessen-Thüringen Girozentrale in connection with the financing of the €482 million public takeover by Software of IDS Scheer. The firm also advised Commerzbank in relation to a €335 million financing of the acquisition by Software of WebMethods in July 2009.

The firm was also active in the field of restructuring, advising Commerzbank, Landesbank Baden-Württemberg, UBS, UniCredit Bank and the Royal Bank of Scotland in the restructuring of credit liabilities of Schaeffler. This was one of the largest restructurings in Europe in 2009.

#### Leading lawyers

Carl-Peter Feick  
Eva Reudelhuber  
Marc Trinkaus

### **Milbank Tweed Hadley & McCloy**

One of the key figures at the firm gaining prominence among peers is Thomas Ingenhoven, "He is extremely good and very result-oriented. He has been more visible in the banking sector and is a good operator," says one.

Clients also praise Rainer Magold for his professionalism and single him out a key figure they have followed for a number of years. "We have known the partners in charge for more than ten years and we have followed them when they have moved, as long as they have moved to a reputable firm. Rainer Magold is one of these partners; he is professional, commercial and experienced," says one client.

The firm remains strong in the field of acquisition finance and continues to work on a number of key mandates. According to one client, "the practice is professional, commercial and friendly."

Milbank this year advised Advent International on the financing of its acquisition of GFKL Financial Services. The €82.5 million transaction was led by Thomas Ingenhoven and Guido Jestaedt.

Another deal involved advising Commerzbank as arranger of syndicated credit facilities for the acquisition of Thüga. Closing in December 2009, the €850 million deal was led by Thomas Ingenhoven.

#### Leading lawyers

Thomas Ingenhoven  
Rainer Magold

### **White & Case**

The firm has a strong banking practice and is praised for its experience in the field. Head of banking, Annica Lindegren, is a highly respected and well known figure in the banking industry owing to her depth and experience of handling complex transactions.

"I only have positive things [to say] about her and her team," says a client, "first of all she is very experienced and she's dealt with this particular sponsor so was thoroughly familiar which helped, and on top of that I would say she was very efficient and able to turn around the documents."

The client adds: "Another element we had to deal with was a very tight time line with five financial institutions involved, in this respect it was very complex and not easy."

The firm has particular strength in dealing with complex cross-border financing deals and its expertise in this area has impressed clients. "This was a deal that had a financial sponsor and the financial sponsor was very picky about who they wanted to work with so they were adamant that we needed to select a firm that has had experience in working with a particular equity house and have experience with this type of deal," says one client.

"We actually went through a competition process and talked to a handful of law firms and decided on White & Case because of their experience and in particular the experience of Annica."

Peers also highlighted Tom Oliver Schorling. "I came across him in a key private-equity deal that is being restructured and being negotiated with banks, he is representing the mezzanine lenders. I like to work with him because he is very result oriented and pragmatic," says a competitor, adding: "I would rank him like this because he always does well and you will never end up in a useless fight. He is business oriented."

On the acquisition finance side, Annica Lindegren led a team advising ING Bank, UniCredit Bank, Calyon, WestLB and Avenue Partners as arrangers of the financing for the

acquisition of Cable Tel and Eurocom Cable Management by EQT.

#### Leading lawyers

Annica Lindegren  
Tom Oliver Schorling

#### Other ranked firms

**Latham & Watkins** has three regional heads of the banking department: Andreas Diem based in Munich, Uwe Eyles based in Frankfurt and Holger Iversen based in Hamburg.

The firm this year advised Capvis Equity Partners on the financing of its acquisition of the Kaffee Partner Group. The deal was led by Christina Ungeheuer. Nikolaus Lorenz is also representing Hamburger Sparkasse on its financing by the Frankonia Group of the Sophienterrassen landmark project development in Hamburg.

The banking department at **Gleiss Lutz** is led by Helge Kortz, who has been active representing Phoenix Pharmahandel over standstill arrangements with creditors and other refinancing measures.

Kortz, together with Kai-Arne Birke also acted on behalf of a European recycling company in relation to its refinancing. A further transaction involved advising RHJ International in relation to the restructuring of Hosel. The deal was led by Burkhard Jäkel.

The **Hogan Lovells** banking department is headed by two partners, Olaf Grabowski and Katlen Blöcker, both based in the Frankfurt office. The firm represented Marcol on the financing aspects of its acquisition of Median Group, Germany's largest private operator of rehabilitation facilities. The deal, led by Blöcker, was the largest private-equity deal in the country in 2009 and was innovative in making use of released collateral.

A further transaction, led by Grabowski, involved acting on behalf of a syndicate of senior lenders on the German aspects of the restructuring of IMO Car Wash Group, the largest car wash company globally. The legal community had been awaiting the outcome of this particular restructuring as it was expected to significantly impact the way in which distressed assets are valued. The deal closed in August 2009.

**Shearman & Sterling** has been visible on a number of deals over the past 12 months. The firm advised Glatfelter in relation to financing issues in the context of a take-over of German-Canadian Concert Group. The deal, which was led by Esther Jansen, closed in February 2010.

The firm also advised Qatar Investment Authority Holding on its investment in Volkswagen and in Porsche Automobile

Holding. The deal included participation in the sum of a €265 million in a €12.5 billion syndicated loan and in the context of restructuring of syndicated loan. The transaction closed in December 2009 and was led by Jansen.

In December 2009, **Skadden Arps Slate Meagher & Flom** advised UCB on its €1.5 billion multicurrency revolving credit facility to serve the purpose of general corporation and working capital purposes. The transaction was handled by Matthias Horbach.

Another highlight involved representing JPMorgan Chase as the joint lead arranger and bookrunner along with Banco do Brasil, New York branch, on a €300 million senior secured export facility to Magnesita RefratArios, a supplier of steel and cement. The deal was led by Horbach and closed in November 2009.

#### Other notable firms

**Heisse Kursawe Eversheds** represented Bodycote on credit facilities of £110 million and \$20 million to an international group of companies. The first credit facility was completed in January 2010 and the second in March 2010. The cross-border transactions were led by Thomas Ziegler.

On another deal, Ziegler led a team advising a multinational group of companies in connection with a cash pool arrangement with a gross facility limit of £400 million.

The **Mayer Brown** banking department, led by Manfred Heemann, has been active on a number of deals over the past 12 months. The practice advised WEPA on the rearrangement of its entire debt financing in the course of its acquisition of the Kartogroup and its subsidiaries. As well as the purchase price financing, all existing loans were either repaid or integrated into a new overall financing structure. The deal was led by Friedrich Merz.

**Weil Gotshal & Manges** this year advised Citibank as the lender on a \$1.1 billion refinancing of the JohnsonDiversey Group, a global leading provider of commercial sanitation and hygiene solutions for businesses. The deal involved the restructuring of the entire company financing through new bank loans and a parallel issue of senior secured notes. The deal closed at the end of 2009.

**Willkie Farr & Gallagher** acted on behalf of Oaktree on a loan-to-own transaction in relation to its acquisition of SGD Group. The cross-border deal related to French and German law aspects and was the first French loan-to-own transaction in Germany. The deal was led by Jan Wilms.

Another highlight saw the firm act for HSE Holding regarding the financing Axa Private Equity's acquisition of HSE 24. The

ongoing deal is being led by Wilms, Schmidt and Tobias Daubert.

## 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 Hogan Lovells Latham & Watkins Skadden Arps Slate Meagher & Flom White & Case
<b>Tier 4</b>	Ashurst Noerr Shearman & Sterling Sullivan & Cromwell Weil Gotshal & Manges

The M&A market has declined in the last year and surprisingly there is a scarcity of straight-forward transactions. "There are big deals happening and you wouldn't think there is a crisis, but on the other hand what is lacking is the steady flow of plain vanilla deals," says one partner, adding: "Good assets are still traded but at the same time you still have a broad range of companies struggling. Mid-market is where we see the biggest decline."

In relative terms, the market has been stable and resilient but the number of deals and size of deals has deteriorated. The sectors most active have been automotive and energy; the former being dominated by significant activity from Porsche, among others. In energy there has been pronounced activity in renewables, particularly solar. Other fields of activity include chemicals and health care, which has been busy in the second half of 2009. "We're confident that the worst part of the crisis has been left behind," says a partner.

There are a number of ongoing transactions that continued to dominate the flow of activity within law firms, brought about by the consolidation process undertaken by key corporates. Refocusing has led to large corporates selling segments of their companies that do not belong to the core business. The types of deals on the tables of law firms are less typical than in the past with a number of potential

bidders hitting the competition for assets, essentially classical M&A transactions.

Lawyers in Germany had expected a pick up in distressed M&A transactions arising from insolvencies - however this was not to be the case. "12 months ago everyone expected big German companies to go into insolvency but banks have been reluctant to let these go into insolvency," says one partner, adding: "There are people in the market said there will be a lot of new insolvencies which will lead to M&A distress but this has not happened yet."

### **Freshfields Bruckhaus Deringer**

"Freshfields is the powerhouse in terms of M&A and is sophisticated, they are very good. They concentrate on corporate work and are just huge, their market penetration is good," says one competitor.

Freshfields Bruckhaus Deringer is a clear market leader in the field of corporate work and is commended by peers for its success in this field. "Freshfields is absolutely where it should be," says another peer referring to its tier one position.

Led by Marius Berenbrok, the corporate department has been involved in a number of transactions over the past 12 months. Christoph Gleske led a team advising Daimler, a German-based car manufacturer, on the strategic cooperation and cross-shareholdings with Renault and Nissan. Already connected by a significant cross-shareholding, the French and Japanese brands will acquire a joint interest of 3.1% of Daimler's capital. In return, Daimler will acquire 3.1% of equity in each, Renault and Nissan. The €1.25 billion transaction is ongoing.

The practice also represented Deutsche Bank in connection with its acquisition of companies under Sal Oppenheim-Group. This included Sal Oppenheim Jr. & Cie, BHF-Bank and BHF Asset Servicing and Sal Oppenheim Private Equity Partners. The €1 billion deal acquisition was complete through a trust structure and was led by Matthias-Gabriel Kremer.

#### **Leading lawyers**

Marius Berenbrok  
Andreas Fabritius

### **Hengeler Mueller**

Hengeler is thought of a historic leader in the field of M&A work, one competitor says: "Hengeler is a big German niche player, historically they are leading German work." Sharing the sentiment, another peer says: "They have had the leading practice since the early days of the last century."

Last year the firm advised ATS Automation Tooling Systems in relation to its

acquisition of the Sortimat Group. The deal was led by Cord-Georg Hasselmann and Kai-Steffen Scholz.

Another highlight saw the firm represented AudioNova International in connection with its acquisition of a 75% shareholding in the Geers Group. The transaction was led by Reinhold Ernst.

Georg Frowein was also active, advising Corio in its acquisition of a shopping centre portfolio with a value of over €1 billion from Multi Corporation in Germany, Spain and Portugal. The acquisition also involved a further five-asset portfolio under development in Germany.

The firm also represented First Solar on the establishment of, at the time, the world's second-largest solar park in Brandenburg. The firm advised on the sale of the world's third largest photovoltaic park in Brandenburg Turnow-Preilack to WealthCap, an investment company.

#### **Leading lawyers**

Burkhardt Meister  
Maximilian Schiessl

### **Gleiss Lutz**

"We've been using them for a very long time and we have a long-standing working relationship with the firm. They know how M&A transactions should be dealt with and have the knowledge to do deal with unnecessary Anglo-American extensiveness in the documentation," says one client, adding: "This is something which is extraordinary because not many first tier firms in Germany can do this and Gleiss is amongst them. They are effective, and excellent in transaction management, this is in my view what makes them outstanding."

Gerhard Wegen is highly commended by clients for his exceptional ability in relation to the handling of transactions. "He has extraordinary ability to dig into technical detail in contracts which is not normal for M&A partners, they are not able to do that, but he can. He digs into things usually only an engineer understands which is very useful because we work with engineers," says one.

Cornelius Götz is another key figure singled out by clients, "He is efficient and much like Professor Wegen; he is capable of doing transactions in Germany to a high quality," says one.

Gleiss Lutz has also expanded its practice by appointing Martin Hitzer, Jochen Tyrolt and Cornelia Topf as partners in January 2010, taking the practice to a 27-partner team.

The main highlight for Gleiss Lutz in 2009 was representing Magna International as

the preferred bidder for Opel/Vauxhall from General Motors. The high profile transaction was worth €5 billion and was led by Wolfgang Bosch.

The firm also acted on behalf of IDS Scheer on its public takeover by Software. The transaction included a domination and profit transfer agreement as well as other related measures. This was one of the largest public takeovers in Germany for the year 2009 with an acceptance rate of 90%. The deal was led by Martin Hitzer

Andreas Spahlinger, together with Cornelia Topf, advised Golden Gate Capital on its planned acquisition of Quelle, a global mail order company owned by Primond Group and the purchase of HSE 24 from the insolvency administrator.

Another highlight involved acting on behalf of Infineon Technologies on the sale of Wireline Communications Business to Golden Gate Capital, a US private-equity investor. This was one of the most significant non-distressed private M&A transactions in 2009 in Germany. The transaction was led by Ralf Morshäuser.

#### **Leading lawyers**

Christian Cascante  
Gerhard Wegen

### **Linklaters**

The M&A practice, led by Hans-Ulrich Wilsing, has been active on a range of deals and continues to be among the leading firms in the market with reputable presence.

The practice represented Deutsche BP in the reorganisation of €60 billion downstream business through the creation of a *societas Europaea* (SE - European company), to be followed by a number of cross-border mergers. The legally complex *societas Europaea* (SE) creation will include the merger of companies from five jurisdictions. The mergers taking place following the SE set-up include the merger of a Swiss law company to be merged firstly into a Belgian law company then into the SE. The deal was led by Florian Drinhausen.

Another deal involved saw Wolfgang Krauel advise Hypovereinsbank in relation to the acquisition of the investment division of Bank Austria. The agreement involves Hypovereinsbank acquiring subsidiaries of Bank Austria as well as its brokerage subsidiary CAIB in London. The deal was valued at €1.24 billion plus the available excess capital of the target company.

A further highlight saw Peter Erbacher act on behalf of Telecom Italia in the sale of HanseNet, its German subsidiary, to Telefonica for €900 million.

**Leading lawyers**

Hans-Ulrich Wilsing

**Other ranked firms**

**Cleary Gottlieb Steen & Hamilton** advised Mittal Family Trust in relation to its acquisition of the core business of Escada, a Germany fashion company in insolvency proceedings. The agreement involved the transfer of all assets of Escada's main business, as well as the shares in Escada's subsidiaries. Oliver Schröder led the transaction which closed in December 2009.

The practice also advised Medtronic in its acquisition of German company Krauth Cardio-Vascular, Swiss company Invatec, and Italian company Fogazzi. The agreement required Medtronic to make an initial payment of €350 million to Invatec as well as up to €150 million to earn-out payments for Invatec's achievements. The deal was led by Klaus Riehmer and closed in March 2010.

**Hogan Lovells** expanded its M&A practice with the hire of Christian Eichner in April 2010 from Allen & Overy.

The firm is praised for its experience in the M&A sector; one client says: "We have worked with them in their Frankfurt office which is particularly strong. We use the firm mostly on M&A transactions because of their track record."

Hogan Lovells this year represented Advent International on its acquisition of the majority stake in GFKL Financial Services, a financial services provider. The deal involved a capital increase to in order to strengthen the equity base of GFKL. The deal was led by Karsten Müller-Eising and is ongoing.

The practice also represented members of the supervisory board of Volkswagen on its merger with Porsche. The €15.6 billion deal was led by Christoph Louven.

**Skadden Arps Slate Meagher & Flom** represented Deutsche Bank last year on its acquisition of the Dresdner Bank Global Agency Securities Lending business from Commerzbank. The deal involved a global migration effort including the move of the business' key clients, street side counterparties and custodial relationships internationally. The transactions was handled by Matthias Horbach and closed in May 2009.

The firm also advised Merck on its acquisition of the Millipore Corporation, a life sciences company, for \$7.2 billion.

Led by Andreas Stilcken and Frank Evers, the M&A department at **White & Case** has been advising Drägerwerk on its acquisitions of a 25% minority stake in Dräger Medical. The deal involved advising on the design of a purchase price option component connection with the development of the share price of

Drägerwerk. The €250 million deal, which closed in December 2009, was led by Markus Althoff and a team.

Another deal involved saw Jörg Krattel advise on the seller's side acting on behalf of Vattenfall Europe on the sale of its subsidiary 50HZ Transmission to Elia Systems Operator, a Belgian transmission system operator, and to Industry Funds Management, one of the largest global infrastructure investment managers, for €800 million.

**Other notable firms**

**Noerr** has been active in the wind energy sector advising Iberdrola Renovables on its acquisition of Ventotec Ost 2, a German offshore wind energy project. The multimillion transaction was handled by Christoph Spierling and closed in March 2010.

The firm was also active in relation to the sale of Ratiopharm, a leading pharmaceutical brand in Germany, to Teva Pharmaceutical Industries, an Israeli company. Eckhard Martin and Holger Alfes led the transaction advising trustees of VEM, which dealt with the sale of the family holding's key asset, Ratiopharm, on behalf of the settlor. The €3.6 billion deal was completed in March 2010.

**Sullivan & Cromwell** represented the financial advisor to Teva Pharmaceutical Industries in relation to connection with its acquisition of Ratiopharm, Germany's second-largest generic drug producers and the sixth largest drug company worldwide. Carsten Berrar led the transaction.

The firm advised Integra/KOM9 consortium and Mainova in the acquisition of Thüga, a subsidiary of Germany's largest power and gas company, for approximately €2.9 billion. The sale was made for a cash purchase price of approximately €2.9 billion. The deal was led by York Schnorbus and Konstantin Technau.

**Weil Gotshal & Manges** advised Mercuria Group in relation to its acquisition of 3B Biofuels from Babcock & Brown, an Australian investment company. The acquisition, through two subsidiaries, included the equity as well as a large part of the debt of the target company. The deal, led by Gerhard Schmidt and a team, was completed in November 2009.

Thomas Schmid also represented World Endurance Holdings on its acquisition of BK Sportpromotion.

**Gibson Dunn & Crutcher's** M&A team is led by Benno Schwarz and Philip Martinus who have both been active on a range of deals over the past year. Martinus led a team advising Giesecke & Devrient in the formation of a cross-border joint venture for the develop-

ment of a secure media with Phison Electronics in October 2009.

Another transaction, led by Markus Nauheim, involved advising the Gores Group and Sagem Communications in the acquisition of Gigaset Communication, the broadband and WiMax business.

The M&A practice at **Mayer Brown** is led by Christof Gaudig who led a team advising Progress Rail Services Corporation on its acquisition of General Electric's Rail Inspection Business.

The firm also represented Beijing Automotive Industry Corp (Baic), a car manufacturer, in its closing of a technology contract with Saab. The contract involved, among other factors, Baic acquiring the technology of the Saab models 9-3 and 9-5.

**Milbank Tweed Hadley & McCloy** represented FC Bayern München on the sale of a 10% stake in the club to Audi for €100 million. Peter Memminger also advised LR Health & Beauty Systems in connection with its acquisition of a majority stake in the LR franchise companies in eastern Europe by LR Health & Beauty Systems, a portfolio company of Apax.

**P+P Pöllath + Partners** advised Brockhaus Private Equity in its acquisition of a minority stake in 360 Treasury Systems. The deal was led by Philipp von Braunschweig and closed in October 2009.

The firm was also active in one of the largest real-estate transactions in Germany in 2009. The firm represented Hines Immobilien on the sale of Die Mitte, a key retail building at Berlin's Alexanderplatz, to Commerz Real Investmentgesellschaft through a share deal. The transaction was led by Matthias Durst and closed in July 2009.

**Salans** represented Warner Chilcott, a US pharmaceuticals group, on its acquisition of the pharmaceuticals arm of Procter & Gamble. The €2.3 billion deal was led by Christof Kautzsch who, together with Holger Scheer, manages the M&A practice. The transaction, which also involved the Paris and Madrid offices, was completed in September 2009.

Another highlight saw the firm advise Weber Bank on the sale of Mittelbrandenburgische Sparkasse. Closing in May 2009, the deal was handled by Stephan Busch and Michael Helm.

The M&A department at **Willkie Farr & Gallagher** is managed by Jochen Winter and has been active in the energy sector. The firm advised Eno energy on the sale of its wind park portfolio to DIF Renewable Energies. The deal involved complex ownership servitude and licensing structures to be maintained under an asset agreement.

The firm also represented Beumer Group in relation to the acquisition of Crisplant Group for Beumer Maschinenfabrik. Mario Schmidt led on the multinational transaction which involved a subsequent restructuring and the integration of the target.

## Private equity

### Recommended firms

#### Tier 1

Clifford Chance  
Freshfields Bruckhaus Deringer  
Hengeler Mueller

#### Tier 2

Gleiss Lutz  
Latham & Watkins  
Milbank Tweed Hadley & McCloy  
P+P Pöllath + Partners

#### Tier 3

Kirkland & Ellis  
Linklaters  
Skadden Arps Slate Meagher & Flom  
Weil Gotshal & Manges  
Willkie Farr & Gallagher

#### Tier 4

Allen & Overy  
Ashurst  
CMS Hasche Sigle  
Hogan Lovells  
Shearman & Sterling  
SJ Berwin  
White & Case

There are positive developments in the private-equity market compared with last year, which had been slow because of the significant losses incurred by investors who subsequently became unwilling to invest their capital. "We've had a high level of insolvencies so that makes people careful. Investors have been more careful and more picky," notes one partner.

There has been some change in the return expectations of investors, which had been high given the number of alternative investments with the capacity to earn significant sums of money, such as the securitisation market.

"That bubble having burst, the parameters of what is a desirable return have changed and people are realising that a low double-digit or high single-digit return is not so bad. Return expectations have come down which also fuels the market," points out one partner.

The market has been largely dominated by restructurings and less so by new money deals as the private-equity sector continues to suffer the trickling effects of the financial crisis. "I think it's an interesting period of time for pri-

ivate equity with ups and downs, I'm optimistic but there have been downs, the crisis has impacted significantly and there are significantly less fresh money deals," notes one partner.

While the market has been largely dominated by deals of a smaller scale compared with past years, private-equity partners are optimistic that recovery is in motion. "We are not through with the crisis yet but definitely lots of signs for recovery," says one partner.

### Clifford Chance

Clifford Chance's private-equity team is very well respected across Europe, and the German office is no exception. The German office benefits from the London team's leading position in the UK private-equity market, working on the German elements of a number of large, complex cross-border acquisitions and exits.

The team this year advised KKR on its strategic partnership with Rudolf Wild & Co, which involved KKR acquiring a stake in Wild's German flavours and ingredients business, including subsidiaries in 11 European countries.

#### Leading lawyers

Oliver Felsenstein  
Christopher Kellett

### Freshfields Bruckhaus Deringer

There is no question over Freshfields Bruckhaus Deringer's position in the market as competitors single out the firm as a clear leader, "Freshfields is our main competitor and by some margin the market leader," says one.

The private-equity division is led by Ludwig Leyendecker who is praised by peers, one says: "Ludwig has done a lot of work for a number of houses and is an excellent practitioner. He is among the good ones."

Another leading name at Freshfields is that of Andreas von Werder, one competitor says: "Andreas has dedicated himself to private equity and has done more deals than anyone else. His name is raised a lot and he has a proven track record."

In August 2009, Stephanie Hundertmark represented Advent International on its acquisition of Median Group, a leading independent rehabilitation care provider in Germany. Median Group was acquired from its founders Erich Marx and Axel Steinwartz who sold their stakes. This was one of the largest buy-outs for 2009. The takeover took place on a joint basis between Advent International and Marcol, a London-based real-estate private-equity investor.

#### Leading lawyers

Nils Koffka  
Ludwig Leyendecker  
Andreas von Werder

### Gleiss Lutz

Led by Christian Cascante, the private-equity practice was active last year advising One Equity Partners on the restructuring of Schoeller Arca Systems (SAS). The restructuring was implemented by a joint initiative of the shareholders, the senior lenders and SAS, through the enforcement of share pledges granted in favour of the senior lenders over the shares in the Dutch SAS parent company. The enforcement led to a court-sanctioned private sale of the pledged shares to a company controlled by OEP, as well as the original shareholders. The deal was led by Jan Bauer and Patrick Kaffiné.

The practice was also active in advising Ripplewood/RHJ International on the restructuring of Honsel. The agreement provided Honsel with fresh capital amounting to €50 million in return for a controlling stake in Honsel of 51%. The remaining 49% is held by senior lenders following a debt-to-equity swap. The deal was led by Jan Bauer and Burkhard Jäkel. Bauer is commended by peers, with one noting: "We think he is increasingly prominent and is a very active and a good lawyer."

On another highlight saw Cascante and Andreas Spahlinger acting on behalf of Golden Gate Capital in connection with its planned acquisition of Primondo, Quelle and HSE 24 from the insolvency administrator of Arcandor Group.

#### Leading lawyers

Jan Bauer  
Christian Cascante

### Latham & Watkins

The private-equity division is led by four heads of department - Jörg Kirchner, Hans-Jürgen Lütt, Dirk Oberbracht and Christian Edey. The firm continues to be a highly respected player in the field of private-equity work.

Christian Badura was also active in advising One Equity Partners Europe in connection with a complex restructuring of De-Vau-Ge Cereals Holding, a food production company, in relation to negotiations with joint venture partner One Equity Partners Europe and the financing banks. The deal involved specific German foundation law issues leading to a complex structure requiring contractual implementation of commercial debt-to-equity swap.

Kirchner led a team advising Bain Capital Private Equity in connection with its acquisition of Siemens hearing aid division. The €1.5 billion deal closed in early 2010.

#### Leading lawyers

Jörg Kirchner  
Dirk Oberbracht

### **Milbank Tweed Hadley & McCloy**

One of the most significant figures at Milbank Tweed Hadley & McCloy, according to clients, is Norbert Rieger. "I've worked with Norbert when he was still at Freshfields so I've known him for 12 or 13 years. I'm more than happy with him and his team. We followed Norbert because he is reliable and has excellent performance. He is always committed to the project and he is one of the best experts I know in this area and his advice was always excellent and I'm so happy with him," says one client.

The firm is highly regarded and wins praise for its expert handling of transactions. "We do a lot of projects with Milbank and people are really excited about their performance, and they [are] absolute experts in these transactions and we always have tremendous support from their side," notes one client.

Peter Memminger and Thomas Tiedemann have both been active in advising Lafayette Capital Partners in relation to the acquisitions of various locations of fitness operator Elixia, by Lafayette Capital Partners. The deal closed in November 2009.

Both partners also represented LR Helath & Boday Systems, a portfolio company of Apax, in connection with its majority stake acquisition in the LR franchise companies in Eastern Europe. The deal closed in January 2010.

#### Leading lawyers

Peter Nussbaum  
Norbert Rieger

### **P+P Pöllath + Partners**

The firm continues to be highly regarded in the market with visibility across a range of transactions. "We see Pöllath often on transactions. It is a solid practice and has specific part of market, they do management incentive programmes," says one peer.

The private-equity department has been active in advising Brockhause Private Equity on its acquisition of a minority stake in 360 Treasury Systems. The deal was led by Philipp von Braunschweig and a team and closed in October 2009.

On a further deal, Andrea von Drygalski and a team advised Barclays Private Equity in relation to its reinvestment in Neumayer Tekfor, a leading supplier of forged steel parts and components to the automotive industry. The deal closed in July 2009.

#### Leading lawyers

Matthias Bruse  
Otto Haberstock

### **Other ranked firms**

Led by partners Volker Kullman and Erik Dahl, the well respected private-equity department at **Kirkland & Ellis'** Germany office gives the US firm a strong position in the European market. Few well-known US sponsor-side practices have a strong representation in Europe, and Kirkland's prowess in Germany is well known in both London and New York.

The firm this year has been advising Apollo Global Management on its agreement to backstop the rights offering by Infineon Technologies amounting to €1 billion. Under the agreement, Apollo acquires all new shares not subscribed for by existing shareholders to maximum of 30% minus one share of Infineon's share capital after the rights offering is implemented. The expected deal value is approximately €700 million.

Another highlight saw Kullmann advise, on the buyer's side, Solutia Inc in connection with the €240 million acquisition of Etimex Solar. Etimex Solar is part of Part of Etimex Group, which is largely held by private-equity fund Alpha Group.

In March 2010, **Linklaters** represented HgCapital on its acquisition of StepStone Solutions, the talent management solution segment of StepStone. The acquisition of StepStone Solutions, which is on one of the largest European software as a service companies (SaaS), was 100% equity funded by HgCapital. The deal was led by Rainer Traugott and a team.

The firm was also active in advising Arques Industries on its sale of Actebis group to Droege Capital. Arques is a private-equity firm that specialises in the purchase of companies with undergoing radical change or those with a high potential for development. The deal, which closed in September 2009, was led by Thomas Niessen and a team.

The private-equity department at **Skadden Arps Slate Meagher & Flom** is managed by three partners, Walter Henle, Matthias Jaletzke and Lutz Zimmer. The firm represented Barclays Private Equity and Hornschuch Konzern in connection with its acquisition of O'Sullivan Films, a US-based firm, by Hornschuch Group, a portfolio com-

pany of Barclays Private Equity. The deal was led by Zimmer and closed in March 2010.

On a further deal, Jaletzke advised Apax Partners on the €3 billion acquisition of the iShares business from Barclays.

**Weil Gotshal & Manges** advised on one of the first private-equity deals to reach completion following the financial crisis. Christian Tappeiner led a team advising private-equity firm Change Capital Partners as buyer in connection with its acquisition of 100% of shares in Hallhuber, a German fashion retail chain, from Stefanel. The firm also advised Lone Star, a US financial investor, as buyer in relation to its agreement to acquire 100% of the shares in Dusseldorfer Hypothekenbank. This was the first time in a number of years where a financial institution has been the target of a private equity transaction.

Led by Mario Schmidt, **Willkie Farr & Gallagher** has been active in advising Labco and 3i in one of the first private-equity investments in the German healthy care sectors. The deal involved LBO financing combined with growth capital provided by 3i. Led by Schmidt and a team, the transaction reached financial close in June 2009. Jochen Winter has also been active leading a team in representing BGP Investment Sarl in connection with the first divestiture by BGP Investments of non-core assets involving further sale transactions. The deal involved a complex structure with trilateral negotiations with financing banks. The deal closed in March 2010.

## Project finance

### Recommended firms

#### Tier 1

Clifford Chance

#### Tier 2

Freshfields Bruckhaus Deringer

Linklaters

White & Case

#### Tier 3

Allen & Overy

Baker & McKenzie

Gleiss Lutz

Hogan Lovells

Milbank Tweed Hadley & McCloy

Norton Rose

The German project finance market has seen substantial movement with a number of energy projects, largely renewables, taking place. The market is stable with clear signs of improvement compared with 2009, as one partner notes: "The project finance market will be robust again in 2010 and 2011 and from our perspective the number of deals has been stable and there is still a substantial number of banks in the business, ... the atmosphere is a lot less fearful than it was in 2008 and 2009."

The energy sector is the main driver of the recovering market. "We see a lot of projects and a lot of interest, renewable is the key buzz word of the year - wind, energy, solar and offshore wind also. There is a new trend in acquisition finance for the acquisitions of existing wind portfolios," says one partner.

Renewable energy projects have been popular investments for two inter-related reasons. Firstly, they are considered attractive by investors owing to the steady cash flows given the standard tariffs. Secondly, lenders have been prepared to provide funding for deals for the same reason. Essentially, in a difficult economic climate renewable projects are seen as safe investments.

Since the first quarter of 2010, lawyers note an increasing number of pitches and requests for new deals coming in which sends a positive sign to project finance partners.

### Clifford Chance

Clifford Chance's Frankfurt office acts as a hub for project finance work across Europe and the Middle East, with many mandates that magic-circle firms would typically run out of London driven out of Germany.

Clients commend Clifford Chance for its level of service and capacity to get results. "It's very important for your own client's relations if you deliver and you deliver if your lawyer

delivers so that is the overriding principle of course," says one client.

The firm has been active in the energy sector on a range of transactions this year; one saw Beda Wortmann acting on behalf of KfW IpeX-Bank in relation to the financing of the Dragaliden wind farm in Sweden. The value of the investment is approximately €43 million with €30 million of debt financed by KfW IpeX-Bank. Closing in January 2010 the project was one of the first of its kind in Sweden and consists of 12 wind energy plants.

Tobias Schulten acted on behalf of Sasol-Huntsman, a joint venture formed by Sasol (South Africa) and Huntsman Corporation (US) on the project financing arranged by WestLB. The funds would serve the purpose of enhancing the production plant for Maleic Anhydride. The €82 million plant is under construction and will begin production at the beginning of 2011.

Another highlight saw a team led by Dietrich Stiller represent KfW IpeX-Bank, NIBC Bank and Raiffeisenlandesbank Niederösterreich-Wien on the funding of the world's largest biogas plant with natural gas quality. The value of the project is approximately €122 million, financed through bank loans valued at €80 million as well as by private investors through a fund.

### Leading lawyers

Riko Vanezis

Beda Wortmann

### Freshfields Bruckhaus Deringer

Led by Daniel Reichert-Facilides, the project finance department at Freshfields Bruckhaus Deringer has been active on a range of deals over the past 12 months. The firm advised Grosskraftwerk Mannheim, a joint venture with RWE, EnBW and MVV, in relation to the financing for the construction of a new hard-coal fired co-generation power plant in Mannheim, Germany. The financing was arranged through a €400 million *schuldschein* (a promissory note) loan and a €800 million club deal loan. The transaction was led by Reichert-Facilides. The €400 million *Schuldschein* loan transaction closed in December 2009 while the €800 million club deal loan was completed in March 2010.

Reichert-Facilides also advised HSH Nordbank on the financing of photovoltaic plants in Spain. The deal involved a 4.32MW solar park in Coreses and a 2.2MW photovoltaic park in Brial. The value of the Coreses project is €19 million and it closed in December 2009. The Brial project value is approximately €30 million and closed in February 2010.

The practice has also been active in the energy sector over the past few months. Reichert-Facilides led a team representing Hannover Leasing, a large German fund initiator, on the €27.4 million financing relating to the acquisition of three photovoltaic power plants, with a combined capacity of 4.32MW.

### Leading lawyers

Daniel Reichert-Facilides

### Linklaters

"I know they have a strong M&A practice and operate well in this area, I would say they are excellent across the board really. They exceed expectations by focusing on client's needs," says one client.

A dominant player in the field of project finance, Linklaters has been visible on a range of wind energy related projects. Eva Reudelhuber acted for banks on the financing of a 400MW offshore wind farm. The deal has been ongoing since March 2009 and involves an investment value of approximately €1.8 billion. The deal was significant in being Germany's first-ever project financing of an offshore wind farm.

Following this the firm advised the lending institutions in relation to the financing of a 200MW offshore wind farm. The approximate investment volume is €900 million in the first phase. The deal has been ongoing since September 2009 and is led by Reudelhuber.

### Leading lawyers

Eva Reudelhuber

### White & Case

White & Case is described as a practice with broad capabilities and admired for the level of experience it offers. "They are capable of delivering and you can always rely on the advice you receive. The lawyers are really very experienced and that is something that is important to financial sponsors as well," says one client, adding: "They were not as competitive on cost as other law firms but it was a choice that was acceptable to us and to our clients because of their experiences."

The practice has a strong presence in the project finance sector and has been involved in a wide range of deals. Head of department Alexander Reuter led a team advising a consortium of banks including Berliner Volksbank and DZ Bank on the €1.4 billion long-term financing of the development of Berlin Brandenburg International Airport. This has been one of the most significant infrastructure projects in the country in the last year.

Another highlight saw Antje Mattfeld advise a large European construction company on the financing of a highway project in Denmark (E51). The deal value ranges from between €150 million to €200 million and was closed in February 2010.

#### Leading lawyers

Claus Wecker

#### Other ranked firms

At **Allen & Overy** Norbert Wiederholt was kept busy last year in the vibrant wind sector advising HSH Nordbank on the financing of two solar parks in Spain sponsored by European Energy. The first consisting of 15 installations with a capacity of 1.5MW. The second consisting of 20 installations with a capacity of 2MW.

Helge Kortz and Burkhard Jäkel drive **Gleiss Lutz's** project finance work, and they have both been active on deals over the past 12 months.

The firm has been active in the energy sector and has been involved in a range of deals. Jäkel, along with Dominique Seifert, advised Sumito in relation to the planned financing of a 40MW solar park. On the wind side Tim Weber acted on behalf of Wetfeet Offshore Wind energy in connection with a €1.3 billion 80 turbine wind park with a capacity of 4000MW.

Led by Ulrich Helm, the project finance division at **Hogan Lovells** has been busy on a range of transactions over the past year. The firm was active on one of the largest waste-to-energy projects in Germany. Helm led a team advising a client in relation to a €180 million power plant project.

#### Restructuring

##### Recommended firms

###### Tier 1

Allen & Overy  
Clifford Chance  
Freshfields Bruckhaus Deringer  
White & Case

###### Tier 2

Gleiss Lutz  
Görg  
Hogan Lovells  
Weil Gotshal & Manges

#### Insolvency

##### Recommended firms

###### Tier 1

Brinkmann & Partner  
Görg  
Jaffé  
Kebekus et Zimmermann  
Pluta  
Schultze & Braun  
White & Case

###### Tier 2

Dr Beck & Partner  
Heuking Kuhn Luer Wotjik  
Wellensiek  
Westpfahl & Spilker

The restructuring and insolvency market is characterised by caution and delay. One of the main trends is that transactions have become more complicated, "Projects do take longer, people are more careful and we see clients are much more cautious with due diligence," says one partner. "We have a much more sober approach to transactional targets and based on that the client decides whether it makes sense to bid or not to bid. Transactions take much longer as a result," notes one partner.

There is also a number of complicated distressed assets because the target is, mostly, almost under obligation to file for insolvency. As a result, companies try to keep the target as an ongoing concern for as long as possible, "You will have a player in the game who may have a different approach and try to liquidate the assets or put it back to the market as a living enterprise," says one partner.

Despite desperate efforts to salvage companies in financial difficulty, many have been declared insolvent. "There has undoubtedly been an increase in the insolvency certainly. The automotive sector took a terrible beating in 2008 and 2009, we also see manufacturing suffering and chemical and retail. Those are suffering worst at the moment," says one partner.

Restructuring has also been a busy field of work given the evident failure of the real estate and construction sectors. "We will see more real-estate restructuring and expect more mid-cap restructuring in the future. Companies are already over-leveraged and the second wave of new owners is what we are seeing," says one partner.

The increase in restructuring is due to timing; a number of loan repayments are due this year and more are expected next year, so this is a critical time for the mid-cap market. "Investors had more equity and so were in a more comfortable position to deal with the crisis, but the liquidity is running out and now they must restructure," says one partner.

Another adds: "Several companies are coming to terms with their severe problems and realising that the crisis hasn't gone yet."

#### Allen & Overy

The firm's lawyers are praised for its ability to think innovatively to reach viable solutions. "I think they are very constructive in the way they approach certain topics, not always just clinging to the law and being innovative in finding solutions. It doesn't just have to be what has been in the past but you must be creative and they were helpful on that front," says one international client.

A key figure at the firm is Peter Hoegen who is praised by peers, "He is one of the first names you will hear in restructuring," says one.

Hoegen was involved on one of the firm's largest deals last year, advising the steering committee banks including Commerzbank, Deutsche Bank and the Royal Bank of Scotland on the restructuring of the Merckle Group, which includes Ratiopharm, Phoenix and Spohn Cement. The €8.3 billion loan restructuring was achieved with shareholders, management teams and about 80 banks and included standstill agreements.

The firm also represented the SAF-Holland Group in connection with the restructuring and long-term securing of its financing. Allen & Overy utilised its network in the deal, advising the company in six jurisdictions. The deal was led by Munich-based Walter Uebelhoer and Astrid Krüger, as well as Frankfurt-based Gernot Wagner.

Uebelhoer and Krüger also advised Monier on the restructuring and refinancing of the Monier Group, one of the largest global manufacturers of roofing tiles.

#### Leading lawyers

Peter Hoegen

#### Gleiss Lutz

Led by Andreas Spahlinger, the Gleiss Lutz restructuring department is thought of favourably and is described as a solid player with a strong corporate base.

One of the key figures in the firm who is visible on transactions is Burkard Göpfert, "He is very active in the market; if you ask for Gleiss, he typically comes up and I've seen him in various R&I work," says one peer.

The firm has been visible over the past 12 months, representing a consortium including RREEF, Generali, Pirelli RE and the Borletti Group on restructuring efforts before insolvency proceedings. The ongoing deal is led by Spahlinger, Jan Bauer and Burkhard Jäkel

Spahinger has also advised Golden Gate Capital in connection with its restructuring of a group of companies during insolvency proceedings. The deal closed in March 2010.

#### Leading lawyers

Burkard Göpfert

### **Hogan Lovells**

The restructuring and insolvency department is led by Heiko Tschauner who has been involved in a range of significant transactions.

One such deal saw Tschauner represent the security agent on the enforcement process relating to a pledge of shares in Orion Cable. The transaction was significant since public enforcements of share pledges are rarely conducted.

In August 2009 Tschauner also acted on behalf of senior lenders in relation to the restructuring of the IMO Car Wash Group. This landmark deal represented the first time claims of mezzanine lenders had been impaired entirely by way of scheme of arrangement.

The firm was also active in advising an international bank as consortium leader in relation to the insolvency of the Trailer/Kögel Group.

### **Kebekus et Zimmermann**

Kebekus et Zimmermann is highly regarded by competitors who praise the firm unservedly. Peers describe the practice as one of the strongest in the field of insolvency, with a large market share. "It is an excellent firm, they are very visible in the market and involved in a lot of deals," says one peer.

Led by named partner Frank Kebekus, the firm has been active on a range of transactions over the past 12 months including advising on the restructuring of TMD Friction Group, a global leading manufacturer of brake friction materials in the original equipment markets. This was the first key automotive supplier restructuring in a chain of suppliers in financial difficulty.

The firm was also involved in the restructuring of Olympia Flexgroup with subsidiaries across Europe. The innovative deal involved a combination of share deals and share releases to secured creditors.

#### Leading lawyers

Frank Kebekus

### **Weil Gotshal & Manges**

Weil Gotshal & Manges this year represented a consortium of investors including Goldman Sachs and Silver Point Capital as sellers on the

restructuring and sale of HP Pelzer, a German automotive supplier. The deal also involved a debt-to-equity swap in which Goldman Sachs, Silvery Point Capital and further lenders assumed the equity capital share in the HP Pelzer Group which has since been sold. The sale completed the restructuring process. The deal closed in April 2010 and was led by Gerhard Schmidt.

Leading a team, Schmidt has also been advising Wilhelm Karmann & Co (WKO) in connection with the structuring, negotiations as well as the implementation of agreements with Volkswagen and Magna, in relation to the insolvency of Wilhelm Karmann, including a possible takeover of its assets.

One further highlight saw the firm represent Lehman Brothers as the majority shareholder in proceedings of the insolvent German Lehman Brothers Bankhaus. The deal involved the takeover of a loan portfolio by Lehman Brothers with a value in excess of €3.8 billion. The deal, led by Uwe Hartmann and a team, is ongoing.

#### Leading lawyers

Gerhard Schmidt

### **White & Case**

The firm expanded its practice with the hire of three partners from Schröder in January 2010. Christoph Schulte-Kaubrügger, Philipp Hackländer and Markus Wischemeyer all joined the firm's restructuring and insolvency department.

White & Case is the only international firm in Germany with a focus in both restructuring and insolvency.

There is divided thought in relation to the extent to which a firm can be successful in both fields. It is thought working on both sides may cause conflict issues as creditors may be hesitant to disclose how they operate on the restructuring side if it's possible they will later see the firm on the insolvency side. "It is the custom in Germany that if you act as an insolvency administrator that you can't take any advisory role, you need to take a position to do either," says one partner.

Despite this the firm remains an active player in restructuring work with a number of mandates.

Heading the department is Biner Bähr and Sven-Holger Undritz who have both been active in advising Daimler, an automotive company, in relation to the legal issues arising following the insolvency of certain automotive parts suppliers. The deal is ongoing.

The firm also acted on behalf of the City of Hamburg and the state of Schleswig-Holstein in relation to the restructuring of HSH Nordbank. Both clients hold a stake of

approximately 30% in HSH Nordbank. The deal involved the structuring of a risk shield with a guarantee of €10 billion provided by both federal states, a €3 billion capital increase, the set-up of a joint fund by both states, a bond issue of €1.5 billion to finance the capital increase as well as negotiations with the EU Commission for rescue aid approval. The ongoing deal is led by Volker Land.

In January 2010, George Degenhardt led a team advising of Global Safety Textiles, a distressed manufacturer of textiles to the global automotive sector, in relation to its successful restructuring.

#### Leading lawyers

Biner Bähr  
Sven-Holger Undritz

### **Other notable firms**

**Bingham McCutchen** has launched a new German practice to be headed by Jan Bayer, who will focus on financing restructurings. The practice will initially operate from its London office until the completion of the Frankfurt base.

Bayer will be responsible for building the German team and formally opening the Frankfurt office which is expected to take place at the end of 2010.

Bingham's London office is a clear leader in representing subordinated creditors in restructuring proceedings, and it will be interesting to see the impact the firm has on the German market in the years to come.

**Heisse Kursawe Eversheds'** restructuring and insolvency division is led by Sebastian Zeeck, who has been active across a range of transactions over the past 12 months. Zeeck advised RGIS Inventurspezialisten on securing a significant creditor during preliminary and final insolvency proceedings of Hertit-Group, which was one of the biggest in the German retail industry for over a decade. The deal value was approximately €5 million.

On a further transaction, Zeeck led a team representing Borealis, a leading supplier and manufacturer of safety technology for the automotive industry, during preliminary and final insolvency proceedings as well as advising on the restructuring of Plastal and Aksys.

**Hengeler Mueller's** top mandates include the high-profile insolvency proceedings of the Federal City of Bonn/WCCB. The legally complicated and innovative transaction involved advising the City on interconnected receivership and insolvency proceedings.

Another deal saw the firm advise Carl Zeiss Vision on a €1 billion restructuring involving a large international syndicate. The deal was complex given the corporate governance of

the joint venture and the settlement proceedings, which were driven forward simultaneously with the financial restructuring.

**Kirkland & Ellis** showed its skills advising private-equity clients when it represented a consortium of senior lenders led by Apollo management International, Towerbrook Capital Partners and York Capital Management on a €2 billion bankruptcy acquisition of the Monier Group. After accumulating a significant debt position in Monier Group, the consortium joined senior banks in order to seize control of the company from the existing sponsor PAI by way of a non-consensual restructuring. Bernd Meyer-Löwy and Leo Plank led a team in the handling of the deal which closed in October 2009.

The firm also took the lead in advising mezzanine lenders Sankaty, NIBC, and GSC Group in connection with the €400 million restructuring of the Jost-World Group, a leading manufacturer of components for commercial vehicles. The deal included the acquisition of the group by the mezzanine lenders as well as a financial restructuring of the group.

Kolja von Bismarck's move to **Linklaters** last year showed that the firm is taking the R&I market seriously in Germany.

The firm this year represented Cerberus, as landlord, in relation to the insolvency of Woolworths in Germany. The deal included the renegotiation of various rent agreements as well as advice on the bidding and sales procedure run by the insolvency administrators in connection with the assets of Woolworths. The ongoing deal is handled by Sven Schelo, who together with Kolja von Bismarck heads the department.

The firm also acted on behalf of Oaktree, as lender and new shareholder, in relation to the restructuring of Bavaria Yachtbau. The deal, which was led by Schelo, closed in May 2010.

The restructuring and insolvency department at **Latham & Watkins** is led by three regional partners: Andreas Diem based in Munich, Uwe Eyles based in Frankfurt and Holger Iversen based in Hamburg.

The firm advised Bavaria Yachtbau on the cross-border debt restructuring of the boats and yachts manufacturer. The transaction was handled by Liane Bednarz and a team. The practice was also active in advising agents to the senior lenders on the restructuring of term loans and revolving credit facilities of GST Group. The deal was led by Constantin Alfes and a team.

**Mayer Brown** advised Li & Fung group, one of the largest buying agents in the world, in relation to the insolvency of Arcandor and Woolworth group in Germany. The multi-million euro transaction is ongoing and led by Marco Wilhelm and a team.

The practice also advised the liquidators of a range of Asian Lehman Brothers companies in connection with the insolvency of Lehman Brothers. The €250 million matter is ongoing and led by Wilhelm.

The **Milbank Tweed Hadley & McCloy** restructuring and insolvency work is done by Martin Erhardt and Rainer Magold who were jointly involved in acting for Merced Partners/ EBF & Associates in the restructuring of Treofan Group. The deal closed in July 2009.

In December 2009 the firm also represented Advent International on the restructuring of credit facilities for GFKL Financial Services. The €82.5 million deal was led by Thomas Ingenhoven and Guido Jestaedt.

Led by Christoph Scotte and Thomas Hoffmann, the restructuring and insolvency division at **Noerr** represented Thomas Cook Group the sale of approximately €12 billion to the collapse of its majority shareholders Arcandor which filed for insolvency in Germany in June 2009. Thomas Cook was released from German's largest bankruptcy in the last decade and is the only subsidiary of listed Arcandor to be unaffected by its insolvency. The €1 billion deal was led by Hoffmann and Laurenz Wieneke.

The firm also advised the German subsidiary of Saf-Holland on its restructuring. The ongoing deal is led by Martin Kleinschmitt.

**Salans** represented Gordon Brothers on the acquisition of the German Woolworths Group from insolvency proceedings. The ongoing deal was led by Andreas Ziegenhagen, head of the restructuring and insolvency department.

Ziegenhagen, along with Bernd Schumann, also acted on behalf of Capita Asset Management in relation to its role as servicers of two loan engagements granted by Credit Suisse with various German companies of the insolvent Level One Group. The €250 million deal is ongoing.

**Shearman & Sterling** advised IKB Deutsche Industriebank on the restructuring of financial indebtedness of a range of portfolio companies. The ongoing deal is led by Winfried Carli.

The firm also advised Avenue Capital/DDJ Capital in relation to financing and insolvency legal issues, as well as the acquisition of Milacron Group. The deal, which closed in November 2009, was led by Esther Jansen.

**Willkie Farr & Gallagher** acted on behalf of Commerzbank, as the largest lender in a syndicate agreement, on the debt restructuring of Schaeffler Group. The syndicated loans to Schaeffler, in relation to the takeover of Continental, amounted to €12 billion. The

deal, which closed in November 2009, was led by Andreas Hautkappe and a team.

The firm also advised a group of significant lenders of Delphi Group on the restructuring of Delphi. The deal involved the worldwide separation of the business into two parts. The deal was led by Hautkappe and Ingo Bednarz. The transaction value amounts to \$4 billion and closed in October 2009.