

Germany

Chamber of commerce:

Association of German Chamber of Commerce and Industry
Breite Strasse 29
101178 Berlin
Germany
Tel: +49 30 20 308 0
Fax: +49 30 20 308 1000

Professional body:

Deutscher Anwalt Verein
Adenauerale 106
53113 Bonn
Germany
Tel: +49 228 26 07 0
Fax: +49 228 26 07 57

Reinhard Pöllath P + P Pöllath + Partners Munich

The wave of special corporate finance legislation in Germany in the early years of this millennium has slowed down. The emphasis now is on issues of implementation and practical experience with the new rules. Attention can be redirected to the corporate finance ramifications of the general contracts reform legislation, which restated century-old case law on contract and pre-, post-, and para-contractual obligations. Opinions differ as to whether the reform is in line with international contract law or the Unidroit principles.

A likely boost to these legal issues will come in the near future when today's easy credit environment, which is so beneficial for M&A activity, will result in disputes and litigation over loans not repaid, covenants breached and the search for potential third party and other liability.

Pre-, post- and para-contractual obligations

Obligations of disclosure, information, advice, loyalty, protection and so on can derive from a contract, as implied, from the time during which a contract was negotiated (even if the contract was never concluded), or after a contract was terminated. Obligations may also derive from legal relationships without a contract, such as with third parties (including advisors or managers whose contract is with another party). It may be enough for a pre-contractual relationship to be intended and to be started only by one side. If there is such a relationship, it will last until it has been expressly terminated (that is, by ending the negotiations).

Limitation of liability in M&A, loan or other agreements

If and when the intended corporate acquisition or bank loan agreement is made, it may also stipulate rules on liability between the parties for pre- or post-contract situations, but within limits. For instance, even today it is not yet customary for a German M&A agreement to extend the rules on violation of representations and warranties and their conclusive character so that third parties such as managers or advisers would also be protected against excess liability. Therefore, an owner-manager selling a company may be released from liability in the M&A agreement with their seller's hat on, but not from a

parallel liability as a manager, unless the agreement takes the extra step of providing managers with indemnity in this role as well.

Limitations of liability may be without effect if made by pre-formulated standard agreements (a concept that may also apply to M&A and could easily apply to loan documents) or if there was intent. The borderline between conditional intent (*bedingter Vorsatz*, close to recklessness) and gross negligence (*große Fahrlässigkeit*) is thin, and a judge is almost free to find one or the other in the mind of the respective party. Distinguish this from negligent fraud, for example where a party negligently violates a pre-contractual or implied obligation of disclosure. Negligent fraud could entitle the other party to rescind or to claim damages, but this can be limited by agreement.

In an M&A agreement, a special limitation of liability is always needed to limit a seller's liability to the express representations and warranties, because many relevant characteristics of a business or company could otherwise be covered by pre- or para-contractual disclosure obligations. Case law has found an obligation to disclose information such as profit, sales, debt figures, flaws in the character of a leading executive or a potential patent issue. However, it has denied a disclosure obligation of the seller (with a non-compete clause) whose spouse intended to set up a competing business. A party is also responsible for disclosing facts that are known only to that party's employees or assistants.

Duty to disclose

The seller of a business has to disclose to the buyer, and the buyer of a business has to disclose to the bank from which it seeks financing, any information that they have and that the buyer or bank, respectively, does not have, and that they should expect to be relevant for the decision to buy or lend, respectively. The buyer is therefore in a particular predicament – caught between the need, as a buyer, to obtain disclosure from the seller and the need, as a borrower, to make disclosure of information so obtained to the bank (or to the buyer's shareholders in a rights issue). Similarly, case law may require a manager or advisor to disclose concerns regarding the potential borrower's creditworthiness to the bank.

Another general case law rule, now implied in the legislative restatement, is the duty to disclose privileged information. A party with an advantage in information may have a duty to disclose this information to other parties with which it is dealing.

Therefore, an executive of the target may have to disclose their special material information to a buyer (even without a request for information and beyond specific management representations or a formal management confirmation letter). The same may be true for the target's accountant providing due diligence services to a buyer or a bidder, or for a law firm or bank advising several bidders in a bidding procedure for one target. The existence of Chinese walls might or might not be sufficient to exclude that obligation. Pursuant to this case law, it appears that a conflict of interest as such need not be disclosed.

Case law has held that a party can rely on something only if that party is aware of it, and only then is it protected in its reliance on it, for instance in relying on its opponent's representative asserting a role of special knowledge and personal trustworthiness, thereby possibly attracting personal third-party liability to the first party relying on that person's special position. Case law, as restated by legislation, has been reluctant to find third-party liability on the legal grounds of personal economic interest or special personal trust.

Duties in bidding procedures

A party cannot usually assume that a contract will be concluded, however advanced the negotiations might be. It may claim damages if, for example, the other party gives special verbal assurances to this effect and thereby prevents the first party from entering into an alternative contract.

A party must, however, inform the other party of any potential obstacles to the conclusion of a contract, such as an outstanding internal or external approval or outstanding financing or, perhaps, the fact that the intended contract would be the first one of its kind made by that party. A seller may drop a bidder without any justification. Even if the seller assured the bidder that the contract will be made, it may abandon the negotiation for any reasonable cause (not necessarily good or substantial cause).

Proof and documentation

A party may claim damages for violation of duty, by showing that the duty was violated and that this violation caused the damage. To avoid liability, the defendant must then show that it applied due care. The burden of proof may further shift to the defendant (for example, for the rebuttal of a presumed violation or causal link) if the defendant's duties included documentation (such as in the case of an accountant's or financial advisor's due diligence report), or special information or advice or if there was gross violation – although case law does not apply the latter to legal advisors.

Banking

Recommended firms

Tier 1

Freshfields Bruckhaus Deringer

Hengeler Mueller

Tier 2

Allen & Overy

Clifford Chance

Linklaters Oppenheim & Rädler

White & Case

Tier 3

Baker & McKenzie

Gleiss Lutz

Lovells

Tier 4

Cleary Gottlieb Steen & Hamilton

Haarmann Hemmelrath

Latham & Watkins

Norton Rose Vierегge

Milbank Tweed Hadley & McCloy

Shearman & Sterling

Tier 5

Ashurst

CMS Hasche Sigle

Sullivan & Cromwell

Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer's banking team is seen as one of the best in Germany, regularly advising on some of the country's most interesting and innovative, not to mention largest, cross-border and domestic financings.

The firm maintains an impressive client roster, regularly advising Deutsche Bank, WestLB, The Royal Bank of Scotland and HSH Nordbank, as well as global private equity sponsors Apax and the Carlyle Group, among others. On the private equity side, rival practitioners note that the firm has client relationships "to die for". In terms of leading individual banking specialists, Yorck Jetter and Andreas König both come highly recommended.

The firm was involved in two of the most prominent banking transactions of the past year, advising a syndicate of banks, led by Bayerische Landesbank, on KarstadtQuelle's €1.75 billion (\$2.1 billion) group restructuring, and acting for Hochtief in connection with its €1.65 billion syndicated guarantee credit. A Freshfields team led by Jens-Dietrich Mitzlaff also advised on the €3 billion debtor-in-possession financings by the states of Brandenburg and Sachsen-Anhalt.

Over the past year the practice was involved in various continuingly popular leveraged-recapitalization transactions, such as that of Lehnkering. And the steady rise in the number of debt rescheduling and restructuring transactions saw the firm act on Blackstone's €950 million refinancing, as well as on the KarstadtQuelle restructuring mentioned above.

The firm has also responded to changes in mid-sized company financing. In the mid-market, German companies

increasingly rely on hybrid instruments as part of special securitization programmes, and a combination of syndicated and high-yield financing. Notable examples of the firm's mid-market work include the refinancing of the Peri Group, the syndicated guarantee credit granted to the Hochtief Group, and the €600 million Hapag Lloyd ship financing. Investment grade syndicated loans and acquisition financing work includes advising Wesjohann in relation to Advent's €460 million acquisition of the Aviagen Group.

The past financial year was a positive one for the firm's asset finance practice, despite a market characterized by changing tax and financial conditions. Aircraft financing continues to be the key asset area. And the firm has also begun to focus on developing investment products in the real estate and ship financing sectors.

Two new partners, Frank Laudenklos and Ian Frost, joined the banking team in Frankfurt last year. The firm now has a complete team in Frankfurt, under the leadership of Ian Frost, to advise clients on English financing law.

Leading lawyers

Yorck Jetter
Andreas König

Key contact partners

Yorck Jetter
Andreas König

Hengeler Mueller

"They have great lawyers and they do things other firms cannot do," said one leading banking specialist at a rival practice. The strength of Hengeler Mueller's relationships with leading domestic and international banks makes it one of the top banking firms in Germany, with a particular reputation for strength in the acquisition finance and syndicated lending sectors. "They are very much the number one firm in German banking," said one senior German banking law figure.

Examples of the firm's acquisition financing work include advising Allianz Capital Partners, Goldman Sachs, KKR, and SAP on a major acquisition. On the bank financing side Hengeler's recent experience includes arranging credit facilities for Hochtief, KarstadtQuelle and Lanxess, as well as putting together a multicurrency revolving credit facility for DaimlerChrysler.

Hengeler Mueller's banking team, led by partners Dirk Bliesener and Martin Klein, also recently advised Shinsei Bank and JC Flowers & Co on a joint venture for non-performing loans set up by Norddeutsche Landesbank and WestLB. The joint venture will be the first platform in Germany in the public sector banking industry to offer the purchase, financing and realization of non-performing loans.

Clients of the firm's banking practice include large domestic operators, and international lenders such as Citibank, Goldman Sachs, Deutsche Bank and Dresdner. Hengeler's financing lawyers also act for a range of blue-chip corporates, including E.On and Bayer. Hengeler is also well regarded for its banking

regulatory practice, which is headed by Hannes Schneider. Among recent matters in this field, the firm acted as counsel to the City of Stralsund on a landmark transaction relating to the proposed privatization of a local savings bank.

Leading lawyers

Hendrik Haag
Stefan Krauss
Hannes Schneider

Key contact partners

Hendrik Haag
Hannes Schneider

Allen & Overy

Allen & Overy has one of the leading German banking and finance practices, with offices in Frankfurt and Hamburg. The firm advises on domestic and cross-border matters in German, English and US law. In the opinion of some market practitioners, Allen & Overy's banking practice compares favourably with other UK magic circle firms, both for purely domestic and cross-border banking advice. The firm's regular involvement on some of the most sought-after transactions demonstrates its recognized strength in acquisition finance as well as the syndicated lending market. Of the leading individual banking specialists at the firm, Neil Weiland comes highly recommended by the market, as does Peter Stenz for his expertise in regulatory services.

Recent examples of the firm's work include advising a syndicate of banks, led by Citigroup, ING and ABN Amro, in relation to Mobitel's €630 million (\$756 million) financing. The deal has been touted as eastern Europe's largest leveraged buy-out to date. Allen & Overy's banking partners also advised the same syndicate of banks in Mobitel's subsequent €200 million refinancing.

In another prominent recent instruction, partners from the firm's Frankfurt and Hamburg offices joined forces to advise Hypo Real Estate Bank International as arranger on the €246.5 million financing of the purchase of German properties by London-listed investment company Eurocastle Investment. The portfolio, sold by Deutsche Bank, consists of 109 properties in 90 German cities, with an overall rentable area of about 300,000 square metres.

Clients of Allen & Overy's banking and finance team include Citigroup, The Royal Bank of Scotland, Société Générale, Goldman Sachs, Morgan Stanley and Bank Austria Creditanstalt. On the regulatory side, meanwhile, the firm regularly acts for EDS, ABN Amro, Gmac, Barclays and Bear Sterns.

Leading lawyers

Peter Stenz
Neil Weiland

Key contact partners

Cathy Bell-Walker
Peter Stenz
Neil Weiland

Clifford Chance

Clifford Chance's lending and acquisition finance group has maintained a good level of deal flow both on national and international matters.

The group advised Citibank on financing an acquisition of a non-performing loan portfolio, and Landesbank Hessen-Thüringen on a major real estate financing transaction. The team has also been involved in a broad range of leveraged buy-outs (LBOs) and recapitalizations in Germany, winning the lead role on 15 transactions with senior, mezzanine, high-yield and second lien structures. Examples of recent LBO instructions include advising Mizuho Corporate Bank as arranger on the acquisition of the Kalle Group, acting for the Royal Bank of Scotland on the acquisition of MW Dental by PPM Ventures, representing CVC on the acquisition of NOP World, acting for Dresdner Bank on the acquisition of the AHT Group, and advising JP Morgan on financing Montague's purchase of the Stabilus Group. The group also provided acquisition financing advice to HypoVerinsbank, ING Bank and UBS.

The German banking group does a lot of work in eastern Europe, notably advising HVB on the financing of an LBO in Prague. In other matters the team acted on several public-to-private transactions and 10 investment-grade syndicated loans over the past year. Recent public-to-private work, meanwhile, included advising ECP Equity Capital Management on the financing of AG Kühnle Kopp & Kausch, and acting for Permira on the acquisition of Debitel. On the corporate lending side, the group advised HypoVereinsbank on the refinancing of Premiere, acted for Citigroup on the recapitalization of Cognis, represented Deutsche Bank Luxembourg on setting up swingline facilities for Siemens and Merck, and advised Dresdner Kleinwort Wasserstein, Bayerische Landesbank and Commerzbank as lead arrangers on a €500 million multicurrency revolving credit agreement granted to MG Technologies.

Leading lawyers

Barbara Mayer
Peter Scherer
Bettina Steinhauer
Riko Vanezis

Key contact partner

Peter Scherer

Linklaters Oppenhoff & Rädler

A good balance of clients means Linklaters Oppenhoff & Rädler regularly advises banks as well as private equity houses. For example, the firm advised sponsor AlpInvest on the €173 million (\$207 million) secondary leveraged management buyout of Novem Car Interior Design from CVC and Goldman Sachs Capital Partners. The Linklaters financing team has also advised banks Henkel, Tchibo, REWE and Degussa on a series of recent multibillion-euro jumbo loans. In the opinion of one leading banking lawyer at a US firm active in Germany, "Linklaters corners the market on investment grade loans."

The firm advised the Royal Bank of Scotland on its €300 million credit line to German open-ended real estate funds, and acted for UBS Warburg, JP Morgan, Commerzbank and Dresdner Bank on the restructuring of several credit facilities.

In another instruction for AlpInvest, Linklaters advised on the €140 million partial refinancing and expansion of a senior- and mezzanine-debt package provided by CIBC World Markets to the Carcoustics group in a leveraged buyout (LBO) in December 2001. The practice also advised Deutsche Beteiligungs in relation to the financing of an LBO arranged by BW Bank to finance the Deutsche-Beteiligungs-managed funds' acquisition of Preh Werke.

Other deals saw Linklaters advise HSBC as agent on a \$2.5 billion syndicated loan to BASF arranged by Dresdner Kleinwort Wasserstein, HSBC and JP Morgan, and acting for Barclays Capital as lead arranger, agent, bookrunner and security agent on Permira's acquisition of a 49% share in Rodenstock for €155 million.

On the asset finance side, the market has been influenced by the decline of cross-border leasing transactions with US investors, but a new market is developing for infrastructure lease financings, and Linklaters is well-placed to be a big player. The firm has also been able to win instructions in real estate finance through its well-developed client relationships.

At the time of writing, the firm was advising US investor Fortress on the financing of the €2.1 billion acquisition of state-owned real estate company Gagfah, the largest private equity deal ever in Germany.

Leading lawyers

Carl-Peter Feick
Berthold Kusserow
Eva Reudelhuber
Marc Trinkaus

Key contact partners

Carl-Peter Feick
Eva Reudelhuber

White & Case

White & Case has been steadily developing its German banking practice over the past few years, and is now used by most of the leading financial institutions in Germany. The 14-partner group of "highly competent banking lawyers" attracts consistent praise from the market. In terms of leading individuals, *IFLR1000's* market contacts identified Annica Lindegren as a leading practitioner.

In the largest acquisition financing to date in the Scandinavian leveraged buyout market, White & Case advised private equity house EQT on its €1.02 billion (\$1.21 billion) acquisition financing of the secondary buyout of the Sanitec-Group from investor BC Partners. White & Case also represented HSH Nordbank as lead arranger in relation to the financing for US investor Fortress' purchase from the BfA of Gagfah, one of the largest residential housing companies in Germany owning more than 80,000 properties. The 13-

month bidding process resulted in the largest German M&A deal in volume in 2004, and the country's largest private equity deal.

In conjunction with teams in Italy, France and the UK, the firm's Frankfurt office advised CIBC World Markets as lead arranger on the €197 million financing of Advent, and also acted on the financing of Carlyle's acquisition of HT Troplast from Rütgers. In another standout transaction, White & Case represented lenders Deutsche Bank, Citigroup and CSFB in connection with the €1.235 billion debt financing of the acquisition of Grohe by a consortium led by Texas Pacific Group and CSFB Private Equity. The deal was one of the largest secondary buyouts in Germany.

White & Case also represented Commerzbank as arranger of the €107 million debt financing of the buy-in and simultaneous buyout of the Messer Cutting & Welding Group by the Messer family from investor Carlyle. The deal was handled by lawyers working in over 12 jurisdictions throughout Europe, Asia, central America and the US.

The firm's other clients include BTC, Bankhaus Neelmeyer, Bayerische Landesbank, Calyon, Deka Bank, Donnerbank, DZ Bank, Hamburger Bank, Harvest Partners, HypoVereinsbank, Indigo Capital, JP Morgan Chase, Morgan Stanley, Société Générale, the Royal Bank of Scotland, Triton Advisors and WestLB. The team has also attracted work from new clients over the past year, including Highbridge/Zwirn Capital Management, BNP Paribas, CSFB, Barclays, Eurohypo and KfW.

Leading lawyer

Annica Lindegren

Key contact partners

Annica Lindegren

Eberhard Meincke

Baker & McKenzie

Baker & McKenzie's four-partner banking team regularly wins instructions from clients Dresdner Bank, Dresdner Kleinwort Wasserstein, HypoVereinsbank and Deutsche Lufthansa.

Recent examples of the firm's banking work include providing acquisition finance advice to Dresdner Bank in connection with Egana's €70 million (\$84.3 million) acquisition of Salamander Germany, and advising Deutsche Lufthansa in relation to the financing (with Lufthansa Malta Aircraft Leasing) of seven A330-340 Airbus aircraft.

In December 2004, the firm suffered a blow when leading lawyer Rainer Magold, fellow partner Christina Ungeheuer and four associates left the firm to join Milbank Tweed Hadley & McCloy's German operation.

Key contact partners

Michael Foundethakis

Olaf Gebler

Dietmar Helms

Gleiss Lutz

Market commentators feel that Gleiss Lutz's continued success in the corporate sphere is also paying dividends for its developing financing practice. Although the eight-strong team is smaller than its corporate counterpart – and smaller than the banking practices of many of its rivals – it is involved in all areas of banking and finance work, including acquisition finance, syndicated lending and debt restructuring. Lease financing is also reported to be an area of particular expertise.

The firm's debt and acquisition finance team advises both lenders and corporate borrowers, recently acting for JP Morgan Chase on the financing of Blackstone's \$4.7 billion acquisition of TRW Automotive Group and advising sponsor Blackstone in relation to the financing of the €3.2 billion (\$3.85 billion) takeover offer for Celanese. In other highlights Gleiss Lutz advised US private equity investor Ripplewood on the acquisition and financing of the Honsel Group, acted for Center Parcs on a €350 million facilities agreement, and represented an artificial limb manufacturer on a €250 million syndicated loan.

Gleiss Lutz's banking and finance partners also teamed up with UK firm Herbert Smith to advise Hypo Real Estate Bank International on a £141 million (\$78 million) loan facility, provided to a German closed-ended fund initiated by CommerzLeasing and Immobilien Group to assist in the acquisition of London's landmark property, the Lloyd's Building.

On the banking regulatory side, Gleiss Lutz has developed a successful niche practice, and the team advises on all supervisory issues involved in cross-border services into Germany. Examples of the regulatory practice's recent work include advising Honda on obtaining a European passport and restructuring its European group, acting for China Construction Bank on its transformation from a public to a private bank, representing Morgan Stanley in connection with its German portfolio management business, and advising GE Capital on its anti-money laundering and compliance structures.

Key contact partners

Christian Cascante

Burkhard Jäkel

Olaf Otting

Cleary Gottlieb Steen & Hamilton

Cleary Gottlieb's banking practice boasts an impressive list of regular clients, including Citigroup, Escada, HMD Investment Partners and Goodyear Dunlop.

Among the year's highlights, Cleary Gottlieb acted as counsel to Citigroup Global Markets, JP Morgan and Lehman Brothers as lead arrangers in respect of a €230 million (\$276 million) secured term and revolving facility agreement with iesy Hessen, a German cable operator. The banking team also advised Escada on a €90 million syndicated loan provided to it by a syndicate that included Deutsche Bank, Bayerische Hypo- und Vereinsbank, Dresdner Bank, Landesbank Rheinland-Pfalz and DZ Bank.

Citigroup Financial Products instructed the firm on the formation of a consortium to acquire a German real estate loan portfolio from Hypo Real Estate Bank, providing US and domestic law advice on the financing for the deal. And Cleary Gottlieb also acted for Goodyear in relation to a €580 million pan-European syndicated loan transaction.

At the time of writing, the firm is engaged as counsel to several international institutions in respect of the acquisition both of performing and non-performing debt portfolios in Germany, including substantial amounts of real estate loans.

Leading lawyer

Christof von Dryander

Key contact partners

Gabriele Apfelbacher

Christof von Dryander

Werner Meier

Haarmann Hemmelrath

Haarmann Hemmelrath acts for banks and other financial institutions, agents, sponsors, fund managers, lessors and corporate borrowers in relation to international and domestic finance transactions. The firm's recognized expertise in tax matters feeds into many areas of banking and finance advice, and the firm is also active on the regulatory side, advising institutions on licensing requirements, including European passport procedures, as well as capital adequacy and exposure issues.

The firm's relationship with Mobitel has proved to be a particularly productive one. Haarmann acted for Mobitel Bulgaria in the telecommunications company's €630 million (\$756 million) syndicated financing, one of eastern Europe's largest leveraged buyouts, and was also instructed on Mobitel's November 2004 €200 million refinancing.

In other deals Haarmann advised Banca Comerciala Romana on the bank's \$400 million syndicated loan, and acted for GE Capital as German counsel in relation to the refinancing of the Inverness Group's US and European credit facilities.

Clients of the firm's banking practice include Bank of America, Chrysler Capital, LBBW, Société Générale, BTM Capital, Wachovia and Lloyds TSB. Following recent departures, the firm has consolidated, hiring Gordon Stewart from UK firm Richards Butler, and is reported to be building up its practice.

Key contact partners

Gordon Stewart

Andrew Visintin

David von Saucken

Milbank Tweed Hadley & McCloy

The market notes that Milbank Tweed Hadley & McCloy has received a boost in competitiveness this year, after recent hires from international firm Baker & McKenzie. In January 2005 leading practitioners Rainer Magold and Christina Ungeheuer joined Milbank Tweed, along with a team of four associates.

Magold and Ungeheuer join a budding acquisition finance operation at Milbank Tweed that has recently represented Bayerische Hypo- und Vereinsbank on two deals – the financing for Cinven's €690 million acquisition of CBR Holding, and Elektra Europe's €123 million acquisition of iron and steel producer Thyssen Krupp Fahrzeugguss. The firm also acted for Carlyle in relation to its €197 million (\$236 million) joint acquisition (together with Advent Funds) of plastics producer HT Troplast, and represented Edscha in respect of its €500 million group recapitalization.

In other deals closed during March and April 2005, Milbank's acquisition finance partners represented BNP Paribas as arranger in relation to financing the acquisition of a multinational group, advised EQT Mezzanine in relation to the acquisition financing of a German stock exchange traded company, and advised Dresdner Bank as arranger of acquisition financing for Quadriga's acquisition of Jack Wolfskin.

Leading lawyers

Rainer Magold

Christina Ungeheuer

Key contact partners

Rainer Magold

Christina Ungeheuer

Shearman & Sterling

Shearman & Sterling is reported to be the best established of all the US firms operating in Germany – although Milbank Tweed's recent recruitment drive might well mean it will rival Shearman's position in this respect before too long, at least on the finance side. The market notes that Shearman has invested considerable time and resources in its German practice over the years, and some believe that this gives it the edge over its US competitors operating in the jurisdiction.

Last year Shearman & Sterling's five German banking law partners were involved in a variety of notable transactions, including acting for Bayerische Hypo- und Vereinsbank and Mizuho Corporate Bank in respect of KKR's €250 million (\$300 million) acquisition of Der Grüne Punkt-Duales System Deutschland. Shearman advised the same clients again when KKR bought the Auto-Teile-UngerGroup for €1.2 billion.

In July 2004 Shearman & Sterling's banking partners acted on the €600 million syndicated lending and bond issue refinancing of Dürr. In other representative deals the firm's acquisition finance specialists were kept busy advising Investcorp on the €230 million acquisition of the Apcoa Group, and acted for Bank of Scotland on the Mauser Group's €400 million refinancing of its corporate indebtedness and acquisition debt, which consisted of secured term and revolving facilities and a bond issue.

Key contact partners

Andreas Diem

Johannes Kremer

Stephan Hutter

Capital markets – debt

Recommended firms

Tier 1

Hengeler Mueller

Tier 2

Cleary Gottlieb Steen & Hamilton

Freshfields Bruckhaus Deringer

Linklaters Oppenhoff & Rädler

Tier 3

Allen & Overy

Clifford Chance

Sullivan & Cromwell

White & Case

Tier 4

Davis Polk & Wardwell

Gleiss Lutz

Latham & Watkins

Lovells

Norton Rose Viregge

Shearman & Sterling

Hengeler Mueller

The worthy recipient of *IFLR's* award for German law firm of the year in 2005, Hengeler Mueller continues to command a dominant position in the league table for debt capital markets advice. 2004 proved to be no exception to previous years as Hengeler's lawyers continued to dominate most practice areas, advising on a prodigious 143 eurobond issues and 45 medium-term note (MTN) programmes. Practice head Torsten Busch comes in for consistent praise, while Hendrik Haag and Wolfgang Gross are also highly rated by market commentators and peers alike.

In a historic German capital markets transaction, partners Hannes Schneider and Hendrik Haag advised the Federal Republic of Germany on its \$5 billion bond issue. The Frankfurt-listed deal was sold into the US under Rule 144A, and was Germany's first foreign currency sovereign bond.

Hengeler's debt capital markets specialists advised on a total of 12 standalone syndicated Eurobonds last year, 11 of which were for client KfW Bank. The practice advised on six new MTN programmes for KfW, Deutsche Hypobank, Münchener Hypobank, HeidelbergCement, the Hungarian Foreign Trade Bank and Volkswagen Bank. The firm also completed 10 commercial paper programmes, both new and updated, for Bundesimmobiliengesellschaft, Continental, Degussa, Eurohypo, Hypo Alpe-Adria Bank, Landesbank Saar, Nestlé, Toyota and Volkswagen.

The firm also advised on jumbo bond issues for Bank für Arbeit und Wirtschaft, Bayerische Landesbank, Deutsche Bank, KfW, Kommunalkredit Austria, Landeskreditbank Baden-Württemberg-Forderbank, and Volkswagen Financial Services.

Leading lawyers

Torsten Busch

Thomas Cron

Hendrik Haag

Hannes Schneider

Key contact partner

Hannes Schneider

Cleary Gottlieb Steen & Hamilton

Cleary Gottlieb's German branch now has nine partners, backed up by over 20 assistants, helping the firm win roles on some of the most complex and innovative debt capital markets deals around, acting for a blend of bank and corporate clients.

In a landmark deal for the German market, a Cleary Gottlieb team led by Christof von Dryander, John Palenberg and Thomas Kopp acted for Deutsche Post on its €1 billion (\$1.2 billion) exchangeable bond, issued through Deutsche Post's Dutch finance subsidiary. The bond was exchangeable into Postbank shares, and the offer was made in conjunction with Deutsche Postbank's initial public offering (IPO). The deal represents the first time a European IPO has been launched in combination with an exchangeable bond.

The firm also acted as counsel to Deutsche Postbank in relation to its €800 million Tier I trust-preferred-securities public offering. More recently, Cleary Gottlieb's lawyers advised Deutsche Bank and JP Morgan as underwriters of the €280 million offering of convertible bonds by Heidelberger Druckmaschinen's Dutch finance subsidiary, Heidelberg International Finance, and represented Escada in connection with its €200 million high-yield bond offering.

Christof von Dryander and Thomas Kopp are both considered leading debt capital markets practitioners by peers and clients.

Leading lawyers

Christof von Dryander

Thomas Kopp

Key contact partners

Christof von Dryander

Ward Greenberg

Gabriele Apfelmacher

Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer's debt team advised on two of the most complex and noteworthy transactions of the past year. In the first, a team acted as German counsel to German chemicals company Cognis on the first US-style second lien financing by a European borrower. The issue was part of Cognis' €2 billion (\$2.4 billion) leveraged recapitalization, which used an innovative three-tiered debt structure comprising a syndicated senior European credit facility, €345 million-worth of subordinated high-yield bonds and €400 million-worth of US-style second lien financing, sold primarily to US hedge funds.

In the second, Freshfields acted for Tui on Europe's first crossover bond, which combined elements of high-yield and

investment-grade debt. The €625 million Tui issue included an unusual step-up clause and novel covenant package. Both transactions were shortlisted for debt and equity-linked deal of the year at *IFLR's* 2005 European Awards, with Cognis taking the award.

Among the year's other highlights, Freshfields advised the state of Brandenburg in relation to its €3 billion debt issuance programme, advised the state of Berlin on its €1.1 billion recapitalization of the Bank of Berlin, advised Claas KgaA on its perpetual bond (the first hybrid transaction effected without buy-back obligation), and represented Tchibo Holding on its €700 million bond issue.

Leading lawyer

Andreas König

Key contact partners

Christoph Gleske

Andreas König

Walburga Kullmann

Linklaters Oppenhoff & Rädler

Linklaters Oppenhoff & Rädler's debt capital markets practice advises companies, financial institutions and sovereigns on complex transactions and standard volume transactions. The firm has developed tremendous expertise acting on hybrid equity instruments and equity-linked transactions, as well as bond buybacks and debt issuance programmes. The bond team has capabilities to advise on German, English and US law, and because of the strength of the firm's global network, it is in an enviable position in terms of cross-border transactions. Of the firm's debt specialists, Herbert Harrer, Berthold Kusserow and Peter Waltz are all well regarded, leading individuals.

Over the past 12 months Linklaters has advised on the first C-Basket transaction worldwide, the first debt issuance programme by a German insurance company, and the placement of the largest exchangeable bond yet issued.

The practice worked on three privatization transactions by KfW – an issue of several tranches of equity call warrants of Deutsche Telekom combined with a €3 billion (\$3.6 billion) sale of KfW's shareholding in Deutsche Telekom by way of an accelerated bookbuilding, a €1.15 billion exchangeable bond convertible into Deutsche Post shares, and a €5 billion bond exchangeable into Deutsche Telekom shares.

The team has also advised on insurance hybrid capital issues in Germany for Allianz and Hannover Re. On the Allianz deal, Linklaters advised the company as well as joint-lead managers Dresdner Kleinwort Wasserstein and Merrill Lynch in connection with the €1.5 billion subordinated hybrid capital notes, which were issued as Series 4 under the €5 billion Allianz Finance programme. The deal was the first subordinated note transaction worldwide that meets ratings agency Moody's C-Basket criteria. On the Hannover Re deal, meanwhile, Linklaters advised on the €750 million subordinated fixed-to-floating rate bond issue, which was combined with a redemption offer to holders of Hannover Finance notes.

Leading lawyers

Herbert Harrer

Berthold Kusserow

Peter Waltz

Key contact partners

Herbert Harrer

Berthold Kusserow

Allen & Overy

Allen & Overy's debt capital markets team continues to improve and expand its reach, winning roles on a number of notable cross-border deals. In terms of individuals, Phil Smith is a "tremendous, excellent lawyer" according to one finance lawyer, and Johannes Bruski is also highly rated.

Last year Allen & Overy advised Deutsche and OTP Bank as joint arrangers on the second-ever euro covered mortgage bond programme in Hungary. The €1 billion (\$1.2 billion) programme was set up by OTP to facilitate the issue of Hungarian mortgage bonds (*jelzáloglevelek*) in dematerialized form, to be cleared and settled through the local clearing and settlement system and in Luxembourg. Hungarian mortgage bonds are the Hungarian equivalent of the German *pfandbriefe*. A&O also advised Deutsche, OTP and the other managers on the €200 million debut issue under the programme. Allen & Overy's instruction to act on the OTP programme follows on from the firm's sterling work on the establishment of the first-ever Hungarian covered mortgage bond programme for FHB Land Credit and Mortgage Bank in November 2003.

In another landmark deal, Allen & Overy advised Citigroup Global Markets as lead manager on the first capital market issue by Saxony-Anhalt that complies with the requirements of Islamic law. With an overall volume of €100 million and a term of five years, this issue is the first of its kind to be effected by a European issuer. Although the issued instrument is not actually a bond (because Islamic law does not permit the earning of interest), a special structure was developed under which Saxony-Anhalt transfers property rights to a Netherlands-based foundation. The foundation then leases the property, and the funds are made available to investors through trust certificates. The structure was awarded the same rating as a customary bond.

The firm also advised the syndicate banks, led by Dresdner Kleinwort Wasserstein, on KarstadtQuelle's convertible bond issue effected through Karstadt Finance. With a total volume of around €170 million, the bonds will mature in 2009 and were issued as part of KarstadtQuelle's restructuring programme.

Leading lawyers

Johannes Bruski

Philip Smith

Key contact partner

Johannes Bruski

Clifford Chance

The debt capital markets practice of Clifford Chance's German operation, headed by partners Sebastian Maerker and Markus Pfüller, advises German and international investment banks and issuers on all areas of debt work, including bond issues, medium-term note programmes, certificates and repurchases.

The firm has acted on a number of notable syndicated trades, advising joint-lead managers HVB, Citigroup Global Markets and JP Morgan Securities in relation to Lanxess Finance's €500 million (\$600 million) issue, acting for JP Morgan Securities on Hannover Finance's €500 million fixed-to-floating rate subordinated callable Tier I bond, representing Commerzbank and Deutsche Bank as managers of Sixt's €150 million note placement, advising HVB on Rhon-Klinikum's bond issue, acting for Barclays Capital, Dresdner Kleinwort Wasserstein and Goldman Sachs on EWE's two-tranche €1.5 billion issue, representing JP Morgan on the bank's multi-strategy index certificates, and acting for KKR on ATU Auto-Teile-Unger Investment's €150 million high-yield bond.

Clifford Chance also had a strong year on the buyback side. Among the year's highlights, it advised ABN Amro and Dresdner Bank on Siemens' €2 billion solicitation of offers to sell, acted for Dresdner Bank, HSBC and Société Générale on Metro's €750 million solicitation, and represented JP Morgan Securities on Hannover Finance's €350 million exchange offer. The firm also advised on a pair of convertible deals, advising Dresdner Bank on Linde Finance's €550 million guaranteed convertible issue and acting for Morgan Stanley on Lanxess' convertible note repurchase. And HVB and Dresdner Bank both instructed Clifford Chance on their debt issuance programmes.

In other deals, the practice acted on a further 18 programme updates and establishments for clients such as Barclays Capital HVB, Deutsche Bank, Lehman Brothers, Rabo Securities and Daimler Chrysler, as well as around 60 programme drawdowns for foreign and domestic banks. Clifford Chance's debt team also acted for BNP Paribas, JP Morgan and Morgan Stanley on 12 certificates deals.

Leading lawyers

Sebastian Maerker
Markus Pfüller

Key contact partners

Sebastian Maerker
Markus Pfüller

Sullivan & Cromwell

Sullivan & Cromwell's German capital markets group has produced a good volume of work, despite lean conditions, over the last few years. Most recently, Sullivan & Cromwell acted as US counsel to Kreditanstalt für Wiederaufbau in its capacity as issuer of seven large global debt offerings totalling \$12 billion, and on two euro-denominated global debt offerings totalling €9 billion (\$10.9 billion).

In other deals, Sullivan & Cromwell advised Landwirtschaftliche Rentenbank on a \$4 billion series of global debt offerings and, in a landmark capital markets deal, acted as German and US counsel to the underwriters of the Federal Republic of Germany's \$5 billion global bond offering. The Frankfurt-listed issue was the German state's first foreign-currency bond. The issue has been placed in part in the US under Rule 144A and in part in Germany, as well as in the international markets.

Wolfgang Feuring and David Morrison were both repeatedly recommended to IFLR1000's researchers as top-flight debt capital markets lawyers.

Leading lawyers

Wolfgang Feuring
David Morrison

Key contact partners

Wolfgang Feuring
David Morrison
Konstantin Technau

White & Case

Increased overall deal flow and visibility on top-end deals sees US firm White & Case move up the rankings this year. Among the year's many highlights, the practice acted as German counsel to initial purchasers CSFB, Citigroup and Deutsche Bank in connection with Grohe Holding's €335 million (\$402 million) senior note issue, and advised Barclays Bank on setting up its €500 million German structured debt issuance programme, which allows Barclays to issue index-linked, equity-linked, basket-linked and credit-linked notes to the German public.

Other notable instructions saw White & Case advise Dresdner Bank as arranger on the update of BMW's €15 billion, multi-issuer euro medium-term note (EMTN) programme (the first multi-issuer EMTN programme to receive the approval of the Luxembourg Stock Exchange in relation to the new Prospectus Directive regime), and advise Deutsche Bank and HVB in Escada's €200 million high-yield senior notes offering.

Key contact partners

Jochen Artzinger-Bolten
Matthias von Oppen

Gleiss Lutz

Gleiss Lutz had a strong year, advising on some noteworthy debt capital markets work, with particular emphasis on the growing high-yield market.

Among the year's highlights, it advised Blackstone and BCP Caylux Holdings on a \$1.3 billion high-yield bond, acted for JP Morgan on an aircraft engine manufacturer's \$275 million high-yield financing, and represented Deutsche Bank and CSFB on Flender Holding's €250 million (\$302 million) high-yield bond. Non-high-yield work, meanwhile, saw the firm advise Deutsche Bank on a €200 million issue for Hornbach.

Latham & Watkins

Latham & Watkins' position in the global high-yield market means its partners are regularly involved on many of the most rewarding debt capital markets instructions to reach the market. Last year Latham's German capital markets team advised the Royal Bank of Scotland and the other initial purchasers in connection with Tui's issue of two crossover bonds worth a total of €1.025 billion (\$1.23 billion), and acted for arrangers Goldman Sachs, JP Morgan, Citigroup and HVB Capital Markets on the German and US law aspects of Cognis' €745 million issue of subordinated debt as part of its recapitalization. Both transactions were shortlisted for debt and equity-linked deal of the year at the 2005 *IFLR* European Awards.

The Cognis bond won *IFLR*'s award and was also awarded *EuroMoney* magazine's western European high-yield deal of the year. It was Europe's first three-tiered financing, consisting of a first-lien bank facility, a second-lien floating rate loan and notes, and a third-lien fixed-rate senior note. The Tui issue, meanwhile, was Europe's first crossover bond, combining some of the benefits of the high-yield market with elements of investment-grade debt.

Key contact partners

Uwe Eyles
Rudolf Haas
Philipp von Randow

Key contact partners

Christian Cascante
Burkhard Jäkel

Capital markets – equity

Recommended firms

Tier 1

Hengeler Mueller

Tier 2

Cleary Gottlieb Steen & Hamilton

Clifford Chance

Freshfields Bruckhaus Deringer

Shearman & Sterling

Tier 3

Allen & Overy

Linklaters Oppenheim & Rädler

Sullivan & Cromwell

White & Case

Tier 4

Baker & McKenzie

CMS Hasche Sigle

Davis Polk & Wardwell

Gleiss Lutz

Hengeler Mueller

Hengeler Mueller continues to act on almost every large equity capital markets deal conducted in Germany. Despite a slow,

and therefore hyper-competitive, market for equities over the last year, the firm has won roles on the best of the available transactional work.

Among recent examples of the firm's equity work, Wolfgang Gros led the Hengeler Mueller team that advised KfW Bankengruppe on its €1.1 billion (\$1.32 billion) five-year *uridashi* bond. The bond, targeted at the Japanese market, was exchangeable into Deutsche Post shares and was the first-ever exchangeable bond to be placed by a non-Japanese issuer in a foreign currency in Japan.

In another landmark deal for the German equity markets, Achim Herfs led a Hengeler team acting for a Morgan Stanley-led banking syndicate in relation to Epigenomics' initial public offering (IPO), which was the first IPO of a biotechnology company in Germany for three years. The firm also advised Wincor Nixdorf on its €376 million IPO, and the subsequent sale of Wincor Nixdorf shares through an accelerated bookbuilding by investment funds affiliated with KKR and Goldman Sachs.

Hengeler Mueller's equity specialists were also involved alongside the firm's corporate team in advising Sanofi-Aventis on the €650 million squeeze-out of 10 million Hoechst minority shareholders. Complaints against the squeeze-out resolution were filed by 34 plaintiffs, supported by numerous third-party interventions. The firm has handled 50 such proceedings in the last three years.

Reinhold Ernst spearheaded the firm's advice to the Bayer Group in connection with its spin-off of Lanxess, one of Europe's largest chemicals companies. The divestiture took place under the German Transformation Act, and Lanxess shares are now traded on the Frankfurt Stock Exchange.

In other transactions Hengeler advised on capital increases for Allianz, Munich Re and KarstadtQuelle, as well as share placements for KKR, RWE, Talanx and Siemens.

Leading lawyers

Torsten Busch
Wolfgang Gross
Hans Schneider

Key contact partners

Torsten Busch
Hendrik Haag

Cleary Gottlieb Steen & Hamilton

Generally considered the pick of the US firms offering equity capital markets advice in Germany, Cleary Gottlieb Steen & Hamilton boasts a team of nine partners, backed up by over 20 associates. Six of these partners are qualified in German law, demonstrating the firm's ability to service clients such as Citigroup and Deutsche Bank both on domestic and US law-governed securities offerings.

Of the firm's recent equity capital markets instructions, four transactions stand out. In June 2004 Cleary Gottlieb acted as counsel to Deutsche Post and Deutsche Postbank on Postbank's €1.6 billion (\$1.93 billion) initial public offering (IPO), which involved a listing on the Frankfurt Stock Exchange and other

German exchanges, as well as a Rule 144A placement in the US. The transaction was the largest German IPO in 2004, and the offer was made in conjunction with an exchangeable bond, the first such combination ever in Europe. Cleary Gottlieb advised Deutsche Post on its listing of 556.4 million shares on various German stock exchanges, a complex deal because the country's regulatory rules meant that only part of the registered share capital of Deutsche Post was admitted to trading.

Another highlight saw the firm act for Bayer with respect to the US securities law aspects of Bayer's spin-off of Lanxess, and the subsequent listing of Lanxess shares on the Frankfurt Stock Exchange. Lastly, joint-lead managers and bookrunners Deutsche Bank and Commerzbank instructed Cleary Gottlieb to advise them in connection with Conergy's IPO, the first transaction in Germany in which the roadshow to institutional investors was decoupled from the public offer.

Christof von Dryander, Ward Greenberg and Alan Dunning are all highly recommended by the market.

Leading lawyers

Christof von Dryander
Alan Dunning
Ward Greenberg

Key contact partners

Gabriel Apfelbacher
Christof von Dryander
Ward Greenberg

Clifford Chance

Clifford Chance's equity capital markets practice group is experienced in all areas of equity-related securities advice. The team, organized around partners Markus Pfüller, David Detweiler and Sebastian Maerker, has been able to maintain steady deal flow in a difficult market, based on its experience and diversity of advice. The Clifford Chance team's recent work encompasses initial public offerings (IPOs), block trades, capital increases, private placements in Europe and globally, as well as various take-private transactions.

One recent standout instruction saw Clifford Chance advise joint bookrunners UBS, Goldman Sachs and Deutsche Bank on MTU Aero Engines' €700 million (\$846.6 million) IPO and listing with private placement in the US pursuant to Rule 144A.

The practice also advised underwriter Cazenove on Carl Zeiss Mediatech's international private placement, acted for JP Morgan Securities in Hannover Finance (Luxembourg)'s €500 million Tier I bond issue and exchange offer, represented Eckes in relation to its \$100 million US private placement, advised Nordex on its capital increase, rights issue and private placement including admission of new shares, and acted for lead managers Dresdner Bank, HSBC and Société Générale in connection with Metro's €500 million tender offer and bond issue.

In other deals, Clifford Chance advised issuer ATU Auto-Teile Unger Investment in relation to its €150 million high-yield bond in September 2004, acted for Aareal Bank on its €85 million capital increase and exclusion of subscription rights,

advised on GPC Biotech's €110 million capital increase, subscription rights offering and public offering in Germany and the US, and represented lead managers Dresdner Bank and Société Générale in connection with Linde Finance's €550 million convertible bond.

Demonstrating good deal flow in comparatively lean times, Clifford Chance is well placed to benefit from the predicted upturn in the market. In particular it is expected to win roles on a number of planned rights issues this year, as well as on prominent private placements and block trades.

Leading lawyers

Sebastian Maerker
Markus Pfüller

Key contact partner

Markus Pfüller

Freshfields Bruckhaus Deringer

Described by one senior equity capital markets lawyer as "seemingly everywhere on every deal," Freshfields Bruckhaus Deringer continues to represent leading underwriters and corporates on some of the most attractive work around.

Last year the firm advised Permira on the initial public offering (IPO) of pay-TV broadcaster Premiere, acted for UniCredito on the acquisition of HypoVereinsbank, represented MTU Aero Engines Holding and former majority shareholder KKR on its IPO, and advised Deutsche Lufthansa on its €750 million (\$900 million) rights offering and capital increase.

Over the past financial year the firm has been intensively engaged in advising clients in connection with the legislative procedure for implementation of the EU Prospectus Directive into German law. The impact of the new prospectus law, which took effect on July 1 2005, on the market for derivative securities and structured bonds was the subject of numerous individual mandates, which included the preparation of a number of offering documents in accordance with the new law.

Leading lawyer

Andreas König

Key contact partners

Thomas Emde
Lutz Robert Krämer

Shearman & Sterling

"Possibly the most established US firm in Germany," is how one senior partner sees Shearman & Sterling. While this might be overstating things slightly (Cleary Gottlieb might disagree, for a start), it is certainly the case that the firm's equity capital markets practice is a key part of the firm's business and has a solid reputation in Germany, regularly acting for clients such as Merrill Lynch, Dresdner Kleinwort Wasserstein and UBS Warburg. Stephen Hutter and Georg Thoma both come highly recommended for the depth of their expertise and the quality of their equity capital markets advice.

In one of the standout transactions of last year, Shearman & Sterling served as international and US counsel to lead managers Deutsche Bank, Erste Bank and Merrill Lynch, in connection with OMV's combined €657 million (\$788 million) capital increase and €550 million convertible bond. The deal was achieved through a rights offering, a public offering in Austria and a global private placement by the Austrian oil and natural gas group, and marked the first-ever combined equity and convertible bond transaction in Austria.

Shearman & Sterling also acted as German, international and US counsel to the underwriters, led by Credit Suisse First Boston, Bayerische Hypo- und Vereinsbank and Morgan Stanley, in relation to Premiere's €1.2 billion initial public offering and Frankfurt Stock Exchange listing.

In other recent equity capital markets deals, the firm advised JP Morgan Securities and Goldman Sachs International as joint bookrunners on ÖIAG's €1.1 billion sale of 85 million shares in Telekom Austria, and acted for HVB and WestLB on the €234 million capital increase and high-yield bond issue by Gildemeister.

Leading lawyers

Stephen Hutter
Georg Thoma

Key contact partners

Hans Dickmann
Stephan Hutter

Allen & Overy

Allen & Overy advised on over €5 billion-worth of equity and equity-linked issues launched on the German markets in 2004, equating to over a quarter of the total value of German equity and equity-linked issues that year.

Transactions on which Allen & Overy has advised include acting for a syndicate led by Dresdner Kleinwort Wasserstein and Morgan Stanley on the €750 million (\$900 million) offering by Deutsche Lufthansa, and advising on the €3 billion rights offering by Bayerische HypoVereinsbank (HVB), on which A&O represented a syndicate led by JP Morgan and Lehman Brothers. The HVB offer was the largest German rights issue of the year.

Allen & Overy brought its strong year to a close with a role on KarstadtQuelle's €170 million bond issue through Karstadt Finance, where the firm again advised the bank syndicate led by Dresdner Kleinwort Wasserstein. The practice also advised on KarstadtQuelle's subsequent €535 million rights issue of 93 million new shares, this time acting for ABN Amro Rothschild and Dresdner Kleinwort Wasserstein.

In another major transaction for the German equity markets Allen & Overy advised München Re on the €375 million sale of four million shares in Allianz, equivalent to about 1% of Allianz's share capital. After selection of the banks in an auction procedure, the shares were sold to institutional investors by way of an accelerated bookbuilding.

Among the year's other highlights, Allen & Overy advised on a further block trade for München Re in the form of a sale of 12 million shares in Commerzbank, and assisted Credit Suisse First Boston Europe with the sale of E.On shares by the city of Celle and the district of Goslar.

Leading lawyers

Johannes Bruski
Michael Schlitt

Key contact partner

Johannes Bruski

Linklaters Oppenhoff & Rädler

Linklaters' German capital markets practice is reported to be "particularly strong in equity-linked work," and leading partner Herbert Harrer specializes in advising underwriters on the full range of equity transactions. The firm regularly advises foreign and domestic investment banks and companies on initial public offerings, capital increases and other financing measures, as well as on restructurings, public takeovers and tax structuring and implementation matters. In addition, the firm provides expert counsel on issues relating to obligations arising from stock market quotation, placements, delisting, supervisory issues and employee stock-option schemes.

In addition to the practice's work in the German equity markets, recent instructions have seen the German office advise on transactions in Austria and Switzerland, where Linklaters advised on SEZ Holding's capital increase and rights issue.

In Linklaters' standout equity deal of the past year, Raymond Fischer led the Linklaters team that acted as transaction counsel on Holchim's €1.2 billion (\$1.4 billion) rights and global offering. The global offering consisted of a public offering in Switzerland and an international private placement, including into the US under Rule 144A. The practice also won a prestigious role on the continuing privatization of Deutsche Post: Linklaters represented KfW on the €3.3 billion share sale and exchangeable bond placement, the first major transaction conducted in accordance with the new KuMaKV German stability regulations.

In other standout deals, the firm represented CSFB and Dresdner on the capital increase component of SGL Carbon's €870 million refinancing, and acted for UBS and Deutsche Bank on the combined €950 million sale of Hochtief shares and placement of an exchangeable bond by RWE.

Leading lawyer

Herbert Harrer

Key contact partners

Herbert Herrer
Berthold Kusserow

Sullivan & Cromwell

Sullivan & Cromwell is another firm that has bucked the downward trend in European equity markets, acting both as German

and US counsel on some of the jurisdiction's most high-profile equity matters. The four-partner, 10-associate team is headed by leading lawyer Wolfgang Feuring. "They have enjoyed a great run over the last year," according to one senior capital markets lawyer in Germany.

The highlight of this good run saw the practice advise the underwriters in Deutsche Postbank's €1.5 billion (\$1.8 billion) initial public offering (IPO) and concurrent €1.1 billion offering by Deutsche Post of notes exchangeable into ordinary registered shares of Deutsche Postbank. The deal was awarded western Europe equity deal of the year by *Euromoney* magazine.

In other German equity work, Sullivan & Cromwell's specialists advised Permira and its sole shareholder, Fernseh Holding, on Permira's €1.8 billion offering, and acted on Wincor Nixdorf's €376 million IPO and subsequent sale of Wincor Nixdorf shares through an accelerated bookbuilding by investment funds affiliated with KKR and Goldman Sachs. The firm also acted as US and German disclosure counsel on Paion's IPO, advising on international aspects of the transaction.

Leading lawyer

Wolfgang Feuring

Key contact partners

Wolfgang Feuring

David Morrison

Konstantin Technau

Capital markets – structured finance

Recommended firms

Tier 1

Hengeler Mueller

Tier 2

Clifford Chance

Freshfields Bruckhaus Deringer

Tier 3

Allen & Overy

Baker & McKenzie

Linklaters Oppenheim & Rädler

Lovells

White & Case

Hengeler Mueller

Since the birth of the German securitization market, Hengeler Mueller has advised on public structured transactions representing more than €140 billion (\$168 billion) of assets. Of a total of 56 mortgage-backed deals in Germany to date, Hengeler has had a role in 53. In many of these deals the firm acted as sole transaction counsel, demonstrating the firm's singular status in this practice area.

Last year Hengeler was involved in the Federal Republic of Germany's synthetic securitization of Russian loan receivables, acting for KfW Bank. The loans were owed by Russia under restructuring agreements with the Paris Club of western creditor

countries. This was the first time such obligations have formed part of a securitization transaction. It was also the first time a structured bond has been issued into the capital markets through a German limited liability company special purpose vehicle.

In other recent instructions, Hengeler advised KfW on five residential mortgage-backed securitizations under the bank's Provide platform, totalling over €8 billion, acted for HSH Nordbank on the world's largest securitization of shipping loans, represented Viterra in relation to the securitization of a €265 million residential property portfolio, and acted for CC-Bank on Gacc-2004, a €1 billion securitization of consumer loan receivables.

The firm won a role assisting KfW and 12 other banks with the development of the German true-sale initiative, which established Germany's first securitization platform. Hengeler's structured finance partners also advised on Hypo Real Estate Bank's €500 million non-performing loan deal, one of Germany's first distressed debt deals.

Leading lawyers

Martin Geiger

Stefan Krauss

Key contact partners

Martin Geiger

Stefan Krauss

Clifford Chance

The past year has been a progressive one for German securitization. A number of developments, such as an increasing number of true-sale deals and an increase in the average size of individual deals, evidence a maturing market. Clifford Chance is one firm to have benefited from this maturation. Over the year the firm advised on almost €30 billion-worth of risk transfer matters and some €10 billion in real estate and non-performing loan portfolios.

The German state has recently used securitization as a financing tool in two high-profile transactions. On Aries Vermogenverwaltungs, Clifford Chance acted for the lead managers, Goldman Sachs and Deutsche Bank, on the €5 billion (\$6 billion) securitization of Russian Paris Club debt, and the firm advised the trustee on the €8 billion German Postal Pensions deal, involving the securitization of pension claims.

The practice also advised HypoVereinsbank on the €5.5 billion Geldilux-TS-2005 securitization, a three-series, 19-tranche true-sale deal that securitized a portfolio of short-term loans denominated in euros and Swiss francs and that was the largest cash flow collateralized loan obligation in Europe.

Clifford Chance also advised TSI on the €1.2 billion Driver One, the first transaction under the true-sale initiative platform, acted for Lehman Brothers on Valesco Funding's €246 million deal, and represented Société Générale, Crédit Foncier de France and KfW on Provide Mortgage Loans France 2004, the €3.3 billion synthetic partially funded residential mortgage-backed securitization.

In other deals Clifford Chance advised the Royal Bank of Scotland and Citigroup Global Markets on the \$1 billion Pure Mortgages 2004 commercial mortgage-backed securitization, acted for Depfa Bank as originator in relation to the €394 million Essential Public Infrastructure Capital deal, represented Merrill Lynch on Seas 2005-1, a synthetic €650 million securitization of European acquisition financing loans, advised Banco Commercial Português on Promise Caravela 2004, the €3.5 billion KfW Promise programme deal, and acted for HVB on the €200 million Symvonic 2004 synthetic deal for National Bank.

Clifford Chance also advised on a number of asset-backed commercial paper conduit deals for clients including ABN Amro, JPMorgan, Dresdner Bank, HVB, WestLB and HSH Nordbank. The firm also acted on conduit funding in large, complex workout situations and in connection with the restructuring of existing programmes.

Leading lawyers

Kirti Vasu
Michael Weller

Freshfields Bruckhaus Deringer

The German state turned to Freshfields on Aries, one of the more controversial and innovative securitizations of last year. The €5 billion (\$6 billion) deal securitizes Russian debt owed under bilateral agreements originally negotiated through the Paris Club, the informal debt rescheduling entity. Aries, the first international offering by a German securitization vehicle, created a genuinely new asset class of sovereign debt securitization, and featured a unique hedging arrangement to cope with default risk.

In December 2004 the firm won a mandate to advise the German government in relation to the securitization of Deutsche Bundespost's successor companies' debt to the Federal Pension Service, BPS-PT. The €8 billion Ireland-listed deal took the form of a structured receivables sale, completed in June 2005. The firm also won a role on Fast-2005, a €450 million lease receivables deal on which Freshfields advised the GfKL Group.

Other standout deals of the year saw Freshfields advise Fitch Ratings on Volkswagen Bank's €1.1 billion loan receivables deal, act for Swiss finance boutique the Capital Efficiency Group on League 2004-1, the €390 million development of a capital markets financing structure for mid-sized companies, and represent Fitch Ratings again on Hallam Finance, Viterra's securitization of around 8,500 residential units.

Freshfields also advised on FSG's €265 million real estate portfolio securitization and on Hypo Real Estate Bank's €500 million non-performing loan securitization.

Asset-backed securities conduits continue to represent a big slice of the securitization group's work. Over the last year Freshfields has advised IKB on restructuring the Rhineland Conduit to meet International Accounting Standards, and acted on WestLB's Compass conduit, State Street Bank's Galleon conduit and DZ Bank's Coral Capital conduit.

The firm's structured products practice group also enjoyed a successful 2004/2005, advising on a range of traditional derivative securities such as warrants, hedge fund certificates, hybrid capital and structured bonds. The group's clients include ABN Amro, Commerzbank, CSFB, Dresdner Bank and JP Morgan.

Leading lawyers

Andreas Bartsch
Bernhard Kaiser
Andreas König

Key contact partners

Bernhard Kaiser
Andreas König

Allen & Overy

The structured finance team at Allen & Overy is regarded as a leading adviser on German commercial mortgage-backed securitization (CMBS) matters. In June 2005, for example, the firm advised Hypo Real Estate Bank International (HREI) on Valesco Funding's €246 million (\$297.6 million) CMBS deal. The eight-tranche issue involved the origination and sale by HREI of a commercial-mortgage loan secured over a portfolio of 109 properties across Germany. The firm also advised ABN Amro, as arranger, on restructuring a securitization of Compendium Technology Services' lease receivables, one of the few true-sale financings realized in the German market.

The firm won a role on Viterra subsidiary FSG's landmark €265 million residential real estate securitization, the first residential real estate securitization in Germany. The financing structure used is now available to companies in Germany with a similar business model, and is tipped to become a popular form of financing.

Elsewhere, Okko Hendrik Behrends led an Allen & Overy team advising Landesbank Hessen-Thüringen and Bayerische Landesbank on the creation of platforms for the synthetic pooling of credit risks. The transaction structures provide savings banks with a platform for pooling credit risks synthetically through an Irish special purpose vehicle, allowing individual savings banks to replace individual or industry-related risks with a share in a joint portfolio of credit risks. The derivative instruments used include credit default swaps and basket credit default swaps, as well as basket of credit-linked notes.

Leading lawyers

Okko Hendrik Behrends
Johannes Bruski
Matthew Howard

Key contact partners

Okko Hendrik Behrends
Matthew Howard

Linklaters Oppenhoff & Rädler

Linklaters has a relatively small structured finance practice, but an impressive client list and the strength of the Linklaters global network ensures a steady stream of domestic and international securitization instructions, on which Linklaters advises on US, English and German law aspects. The firm is said to enjoy a particularly good relationship with Citibank, and both Berthold Kusserow and Kurt Dittrich are highly recommended by the market.

Linklaters was one of three advisers on KfW's true-sale initiative, through which KfW (along with 12 other banks) set up Germany's first securitization platform. The firm also advised on a number of innovative deals both on a national and international level, including Epic, the first synthetic securitization of project finance loans under German law. On the £390 million (\$468 million) Epic deal, Linklaters advised Merrill Lynch International as sole arranger and manager, and KfW. The underlying assets referenced by the deal are UK project finance loans originated by Depfa Bank.

Linklaters' securitization partners were also involved in the €500 million acquisition of Hypo Real Estate Bank's and Niederschlesische Sparkasse's non-performing real estate secured loan portfolios, on which the firm represented JP Morgan on the deal. The deal was one of the first distressed debt transactions in Germany.

Leading lawyers

Kurt Dittrich
Berthold Kusserow

Key contact partners

Kurt Dittrich
Berthold Kusserow

Insolvency and restructuring

Recommended firms

Tier 1

Grub & Partner

Schultze & Braun

Wellensiek Rechtsanwälte

Tier 2

Clifford Chance

Görg Rechtsanwälte

Haarmann Hemmelrath

Hengeler Mueller

Heuking Kühn Lüer Wojtek

White & Case

Tier 3

Freshfields Bruckhaus Deringer

Gleiss Lutz

Linklaters Oppenhoff & Rädler

Lovells

Metzeler-van Betteray

Westpfahl & Spilker

Schultze & Braun

Schultze & Braun continues to enjoy a commanding position in the German insolvency market. The insolvency administration business division has been dealing with all issues involved in insolvency administration for over 20 years. The firm's lawyers are appointed as administrators in bankruptcy throughout Germany and carry out many judicial composition, settlement and conciliation proceedings. Partners Eberhard Braun and Edgar Grönda are both highly recommended by peers and clients.

The firm's 25-branch network boasts expertise in all areas of formal insolvency proceedings, including the preparation and supervision of insolvency plan calculations, the generation of operational business analyses, bookkeeping issues, annual financial statements and tax returns, and capital replacement and share capital raising procedures.

The reorganization consulting division forms the other side of the firm's practice. The firm's reorganization lawyers specialize in restructuring and insolvency-related consulting, in collateral management and other insolvency plan issues.

Leading lawyers

Eberhard Braun
Edgar Grönda

Key contact partner

Eberhard Braun

Clifford Chance

Clifford Chance's three-partner insolvency and restructuring group has experience at the domestic level, but is more likely to be involved in cross-border transactions, often advising international banks, insurance companies and other financial service providers.

Recent instructions include providing restructuring advice to the Authentos Group, and acting for the senior lenders regarding the restructuring of the PrimaCom group. In other matters Clifford Chance advised Frankfurter Volksbank on the consolidation of the cooperative banking sector, acted for the Austrian Uniqua Group in relation to the recapitalization of Mannheimer, and represented Sony Pictures Entertainment Group on the Kirsch Group insolvency.

Key contact partner

Kolja von Bismarck

Görg Rechtsanwälte

Insolvency specialist Görg has offices in Berlin, Cologne, Essen and Frankfurt. The firm advises foreign and domestic businesses, both on the debtor and creditor side, across a range of industry areas.

Görg has built an enviable reputation for its expertise in cross-border insolvencies and out-of-court restructuring and reorganization advice, and maintains a working alliance with other independent international law firms. Cologne partner Klaus Hubert Görg has a solid reputation within German insolvency circles.

Since September 2004 the firm has been entirely independent. For the four years before this it had an alliance with UK firm DLA, but the alliance ended in 2004 when DLA decided to set up a German office under its own name.

Leading lawyer

Klaus Hubert Görg

Key contact partner

Klaus Hubert Görg

Haarmann Hemmelrath

Haarmann Hemmelrath's lawyers advised the bondholders of DN Deutsche Nickel Financial on restructuring bank loans and bonds totalling €150 million (\$180 million) and acted on a series of mid-sized deals, demonstrating that the practice is able to win its fair share of instructions despite recent partner defections.

Alongside the restructuring and corporate recovery side of the practice, Haarmann regularly acts as insolvency administrator, particularly for small and medium-sized companies.

Clients of the firm include Bankgesellschaft Berlin, Commerzbank Kondor, Wessels Deutschland, IKB Deutsche Industriebank and IMH Hannover Venture Capital.

Ingo Scholz joined the practice in July 2004 from US-based firm Skadden Arps Slate Meagher and Flom.

Key contact partners

Stefan Denkhäus

Hans-Jörg Hegerl

Andreas Ziegenhagen

Hengeler Mueller

In common with fellow top-ranked corporate firm Freshfields Bruckhaus Deringer, Hengeler Mueller boasts an outstanding client list that means the firm frequently wins instructions on the largest and most complex restructuring work. Recently Hengeler's lawyers advised Bayer on its €6.3 billion (\$7.56 billion) group reorganization, the largest in the history of the Bayer Group, in a deal that gave rise to the independent Lanxess.

Leading lawyers

Reinhold Ernst

Gerd Sassenrath

Heuking Kühn Lüer Wojtek

Heuking Kühn Lüer Wojtek's insolvency and restructuring practice is best known for its work on large-scale recoveries, including corporate and employment issues, but is also involved in formal receiverships. Excellent contacts with administrators, insolvency specialists and companies means Heuking Kühn remains one of Germany's premier insolvency practices, and the firm is also a leading advisor on restructuring matters.

Name partner Hans-Jochem Lüer comes highly recommended by the market, as do his colleagues Peter Fissenewert and Ben Elsner.

Leading lawyers

Ben Elsing

Peter Fissenewert

Hans-Jochem Lüer

White & Case

White & Case's 16-partner insolvency and restructuring practice continues to win roles on almost all of the big insolvency matters around, including the Gontard & MetallBank proceedings, Germany's largest bank insolvency.

Since April 2002, White & Case has been representing Premiere Fernsehen and its subsidiaries on its long-running restructuring, after proceedings were opened against companies of the former KirchGroup. The firm is also representing German telecoms company MobilCom in relation to its restructuring efforts, while partner Claudia Jansen was appointed insolvency administrator of Atlantic Telecom.

Other highlights include the appointment in March 2005 of Biner Bahr as preliminary insolvency administrator over Krülland Andreas Krüll, and Sven-Holger Undritz acting as insolvency administrator for Triton-Format Schiffstechnik Umweltschutzsysteme. Clients of the firm's insolvency group include Atlantic Telecom, Decision Warehouse, Eurobike, Gontard MetallBank, Management Data Media Systems, PopNet AG, RMB Deutschland and Sächsische Porzellanmanufaktur Dresden.

On the restructuring side, meanwhile, the practice's recent clients include Bertelsmann, Edel Music, Hermann Heye and Prosoz, as well as MobilCom and Premiere.

Klaus Pannen comes highly recommended by his competitors. Partners Biner Bahr, Sven-Holger Undritz and Bettina Schmutde are also recommended, demonstrating the strength in depth the practice offers.

Leading lawyers

Biner Bahr

Klaus Pannen

Bettina Schmutde

Sven-Holger Undritz

Key contact partner

Sven-Holger Undritz

Freshfields Bruckhaus Deringer

Perceptions of Freshfields Bruckhaus Deringer's German office tend to revolve around its work in banking and mergers and acquisitions. But the firm's enviable ties with corporates and banks means Freshfields' partners regularly appear on the most challenging cross-border recovery mandates.

For example, Freshfields recently advised Apollo Management as second secured lender in relation to the restructuring of financially distressed German cable operator PrimaCom, acted for the Bayerische Landesbank-led senior lender bank consortium on the €1.7 billion (\$2.04 billion) refinancing of German retailer KarstadtQuelle, and guided Vereinigte Deutsche Nickel-Werke through its tricky restructuring.

In other matters, Cologne partner Franz Aleth led a Freshfields team acting for buyer Strabag in relation to its acquisition of subsidiaries from insolvent German construction group Walter Bau.

Key contact partners

Franz Aleth
Hanns Arno Magold
Lars Westpfahl

Gleiss Lutz

The strength of Gleiss Lutz's corporate practice is complemented by the restructuring the firm has recently acted on. Warner turned to the Gleiss Lutz corporate restructuring team on a pair of recent transactions. On the first, Gleiss Lutz acted for Warner Music on the restructuring of Edel Music, and on the second the firm advised Warner as a creditor of the insolvent Kinowelt Medien, KirchMedia, Sunburst Merchandising and Achterbahn. Gleiss also acted for the major contractual partners and creditors in connection with the insolvencies of Peguform, Fairchild Dornier, KirchMedia and Babcock Borsig.

In another standout deal, the practice won a role on the restructuring of Brokat, which featured a debt-to-equity swap of the company's high-yield financing. Another debt-for-equity deal involved Gleiss' specialists acting on the restructuring of Iesy Hessen. Other highlights included acting on the restructurings of Wienerwald Deutschland and Daewoo Automobile Germany, and advising the state of Baden-Wurtemberg in connection with the FlowTex restructuring.

Linklaters Oppenhoff & Rädler

In the DVI restructuring, an international Linklaters team advised the European Bank for Reconstruction and Development on enforcement claims against a German borrower in a transaction involving questions of international insolvency law as applied in England, Germany and Poland.

Bernd Meyer-Löwy, Christoph Poertzgen and Tillman Brauer led the Linklaters team advising joint administrators Grant Thornton on the cross-border insolvency of Automold GmbH, and the firm acted for the French Intermarché Group on insolvency law aspects of its stake in Spar Handels.

In other recent highlights, Linklaters' insolvency lawyers advised investment banks UBS, JP Morgan Chase and Dresdner Bank on proceedings involving Schulte, and acted for Citibank (as part of a 37-bank syndicate) in relation to a €3 billion out-of-court restructuring, the first substantial leveraged structure to be devised under German law. The practice also advised ISA Deutschland's insolvency administrator, and acted for Regus on the restructuring and formal insolvency proceedings of Regus Business Centre.

Mergers and acquisitions

Recommended firms

Tier 1

Freshfields Bruckhaus Deringer
Hengeler Mueller

Tier 2

Allen & Overy
Clifford Chance
Gleiss Lutz
Linklaters Oppenhoff & Rädler
White & Case

Tier 3

Ashurst
Baker & McKenzie
Cleary Gottlieb Steen & Hamilton
Debevoise & Plimpton
Latham & Watkins
Shearman & Sterling
Sullivan & Cromwell

Tier 4

CMS Hasche Sigle
Haarmann Hemmelrath
Hölters & Elsing
Lovells
Nörr Stiefenhofer Lutz
P + P Pöllath + Partners

Freshfields Bruckhaus Deringer

Freshfields' highly respected German M&A practice continued to advise leading corporates and private sponsors on some of Germany's biggest and most complex domestic and cross-border transactions last year. For example, the practice advised Italian bank UniCredito on its acquisition of Germany's Hypo Vereinsbank, which allowed UniCredito to bid for HVB's Austrian and Polish subsidiaries Bank Austria Creditanstalt and BPH. With a combined market value of €45 billion (\$54.3 billion), the deal was the largest cross-border bank merger in Europe. Freshfields fielded a cross-network team of advisers, with over 70 lawyers from 13 jurisdictions working on the deal. Frankfurt partners Andreas Fabritius and Matthias-Gabriel Kremer led the team.

Staying at the top end of the market, Freshfields advised E.On, Germany's largest utility company, on another multibillion-dollar deal, the €7 billion sale of its real estate division Viterra to Deutsche Annington, a Terra Firma subsidiary.

Among the year's other standout mandates, Freshfields' corporate partners advised the ING Group on the €600 million sale of most of its German banking unit, ING BHF-Bank, to Sal Oppenheim, acted for the Blackstone Group on the €1.4 billion acquisition of a portfolio consisting of 31,000 residential apartments from WCM Beteiligungs- und Grundbesitz, and represented Hypo Real Estate Bank on the €3.6 billion sale of a real estate loan portfolio to US investment company Lone Star.

The practice has hired two new junior partners this year, Hartmut Nitschke and Rick van Aerssen. Although five partners have recently retired, the depth of the practice is revealed by the fact that the firm still boasts 63 corporate and M&A partners, who are ably assisted by over 120 associates.

Leading lawyers

Burkhard Bastuck
Andreas Fabritius
Ralph Wollburg

Key contact partner

Andreas Fabritius

Hengeler Mueller

In terms of volume, Hengeler Mueller's "peerless" mergers and acquisitions practice once again topped the various M&A league tables in 2004. Hengeler had another stellar year, acting for a range of corporates, banks and other financial institutions on some of the most innovative and complex cross-border deals in the market. To complement its international presence, Hengeler is considered, even by its closest rivals, as the market leader in German domestic M&A work, this practice sitting alongside its cross-border operation with an array of instructions on domestic transactions.

Among the firm's many interesting deals, Hengeler advised Allianz Capital Partners and Goldman Sachs on the sale of Messer Griesheim's assets, acted for Bertlesmann on the sale of its publishing group, represented Celanese on its acquisition by Blackstone, advised Deutsche Bank on the sale of its global custody business, acted for Deutsche Telekom on the sale of its cable assets, acted for Robert Bosch on the public takeover of Buderus, and represented Tichibo on the sale of a stake in Beiersdorf. In December 2004 the firm advised ThyssenKrupp in relation to the €2.1 billion (\$2.54 billion) sale of its residential real estate group to Morgan Stanley Real Estate Funds, and also acted for MG Technologies when it sold its stake in Dynamit Nobel to US speciality chemicals company Rockwood Specialties Group for €2.25 billion. On the latter deal Hengeler worked alongside US firm Wachtell Lipton Rosen & Katz, which advised on US law issues.

In other deals, Hengeler acted as transaction counsel to Carl Zeiss in relation to its \$1.1 billion acquisition of listed US lens manufacturer Sola International, advised Citigroup in connection with its joint venture with Eurohypo for the acquisition of €2.4 billion (\$2.88 billion)-worth of Eurohypo's non-performing loan portfolio, represented BorgWarner on its €600 million takeover bid for Beru, and advised Deutsche Borse on its aborted cash offer for the London Stock Exchange. Lastly, having acted on the acquisition of Flender from Babcock Borsig in 2000, Hengeler advised CVC Equity Partners on the €1.2 billion sale of the Flender Group to Siemens.

Leading lawyers

Andreas Austmann
Michael Hoffmann-Becking
Burkhardt Meister
Maximilian Schiessl

Key contact partners

Oleg de Lousanoff

Allen & Overy

Although the M&A group is not as dominant as the firm's top-flight finance practice, the calibre of Allen & Overy's international client list means its corporate and M&A specialists regularly win roles on the larger cross-border transactions. Of the corporate team's recent work, standout deals include advising Bilfinger Berger on the acquisition of the Babcock Borsig Service Group from Deutsche Beteiligungs, and acting for the Royal Bank of Scotland on Spohn Zement's €5.8 billion (\$6.96 billion) takeover bid for Heidelberg Cement. The credit facilities extended by the bank are governed by German law.

Another notable transaction saw an Allen & Overy team led by partners Hartmut Krause and Oliver Seiler advise Morgan Stanley, in its capacity as exchange agent to Unicredito, on the €15.4 billion exchange offer for HypoVereinsbank by Unicredito. Allen & Overy advised Morgan Stanley as to German and Italian law on the deal.

Leading lawyers

Hartmut Krause
Arndt Overlack

Key contact partners

Johannes Bruski
Reinhard Hermes
Hans-Christoph Ihrig

Clifford Chance

In terms of size, Clifford Chance's M&A practice competes with those of the top two firms in Germany. The corporate team has a particularly strong reputation on the private equity side, recently advising KKR, for example, on its high-profile €1.45 billion (\$1.74 billion) acquisition of Auto-Teile-Unger Holding. The market puts the firm's strength in private equity down to a recognition that clients demand specialization. The firm has had a particularly successful time advising regular client, UK investment company 3i, on its acquisition of Jung Pumpen from the US Masco Corporation, and on the management buyout of Wendt.

Recently Clifford Chance advised Linde on its acquisition of a 51% stake in the joint venture MNS Nippon Sanso, acted for Bayer on the €2.38 billion (\$2.86 billion) acquisition of Roche Consumer Health, represented BASF, Bayer and Hoechst on the sale of DyStar to global investment firm Platinum Equity, advised Whitbread on the sale of the Maredo steakhouse chain to the investment company German Equity Partners II, Parcom Ventures and Fortis Private Equity, and

acted for InterGen, a Shell and Bechtel joint venture, on the sale to Norwegian utility Statkraft of the proposed combined cycle gas turbine power plant in Knapsack Chemical Park, Cologne.

In other deals the practice advised insurance group Aegon Nederland on the sale of its German subsidiary Aegon Lebensversicherungs to Deutsche Ring, Hamburg, acted for US consumer goods maker Rayovac on its €415 million takeover of Tetra Holding, represented Babcock & Brown on the sale of its real estate portfolio to Kristensen Kiel under a share and asset deal, advised UBS on the acquisition of the wealth management operations of Dresdner Bank Lateinamerika, and acted for Sita on its 51% – 49% joint venture with Cargolux Airlines International.

From among the strong team, corporate partner and leading lawyer Daniela Weber-Rey is especially well regarded by the market for her work advising insurance companies and other financial institutions.

Leading lawyers

Thomas Gasteyer
Daniela Weber-Rey

Key contact partner

Andreas Dietzel

Gleiss Lutz

Although it does not possess the biggest M&A team in Germany, Gleiss Lutz has been successful in sustaining last year's excellent performance in the market. In the opinion of one partner at a leading M&A firm, Gleiss Lutz's corporate and M&A practice has progressed to the point where "it has successfully entered the elite circle of firms, benefiting from independence in Germany and ties with Herbert Smith in the UK." Other commentators pointed out that Gleiss Lutz's independence (rather than a full-on merger with Herbert Smith) was helpful in attracting plenty of referral work from US firms.

Following on the firm's work on Proctor & Gamble's €6.6 billion (\$7.92 billion) acquisition of Wella last year, Gleiss Lutz advised the Blackstone Group on its €3.1 billion takeover of Celanese, the largest public-to-private deal yet in Germany. Gleiss Lutz acted as German counsel to Air Liquide in relation to its €2.7 billion acquisition of the German, US and UK business of Messer Griesheim, advised T-Online in relation to its merger with Deutsche Telekom and, together with Herbert Smith, represented TXU in relation to the €370 million auction sale of its energy company BVag to Veolia.

In another deal conducted in partnership with Herbert Smith, Gleiss Lutz advised Ripplewood Holdings on its €625 million leveraged buyout of Honsel.

Gleiss Lutz maintains an impressive list of regular M&A clients including, among others, KPN, UBS, Ergo, Invensys, DaimlerChrysler, Mùchener Ruck and The Blackstone Group.

Linklaters Oppenhoff & Rädler

The market confirms that Linklaters Oppenhoff & Rädler boasts a "first rate" mergers and acquisitions practice that definitely benefits from the strength of the Linklaters' network, especially through close working ties with the London office.

The practice had a role on four of the five largest German M&A transactions this year. On the largest deal in Germany this year, and the largest-ever private-equity deal in Germany, it advised Fortress on its €3.5 billion (\$4.2 billion) acquisition of real estate company Gagfah from the Federal Insurance Office for Salaried Employees. It also acted on the German aspects of Sanofi-Synthélabo's originally-hostile takeover offer for Aventis, which was finally recommended after it was increased to around €55.3 billion, represented Kabelnetz and its owners (a bank consortium led by Citibank) on the €1.4 billion sale of the North Rhine-Westphalia cable network operator ISH to Kabel Deutschland, and advised on the sale of Auto-Teile-Unger Holding to private equity house Kohlberg Kravis Roberts.

Linklaters also advised ING when it sold ING BHF-Bank to Sal Oppenheim, acted for Postbank on payment processing arrangements with Deutsche Bank and Dresdner Bank, represented CVC Capital Partners Europe on the acquisition of the printing inks businesses of BASF and the ANI Printing Inks Group, and advised Investcorp Technology Investment on its PIPE (private investment in public entity) acquisition of a stake in listed company Utimaco Safeware, this deal being combined with a convertible bond issue.

In other matters, the practice advised the Berlin Senate with regard to the €2.11 billion privatization of residential and commercial real estate units, and acted for HVB on the €110 million sale of BethmannMaffei to ABN Amro following an auction procedure. Linklaters' work for HVB included the execution and organization of the auction, evaluation of the offers and negotiations, and support regarding civil and tax law issues.

Linklaters' corporate partners also advised AlInvest Partners on the €200 million acquisition of Novem Car Interior Design from CVC Capital Partners and GS Capital Partners, and acted on the secondary leveraged management buyout of Novem Car Interior Design Group from CVC and Goldman Sachs.

Leading lawyers

Stephan König
Michael Lappe
Georg Maier-Reimer
Hans-Ulrich Wilsing

Key contact partners

Stephan König
Detlev Schuster
Jochen Winter

White & Case

White & Case's M&A practice has had another good year in the German M&A market. Among the year's highlights, Andreas Stilcken and Josef Grosse-Honebrink advised Fidelity National Financial in relation to its acquisition of a 74.9% stake in

Kordoba from Siemens Business Services, and Heiko Wilde led a team that acted for Israeli flavour and fragrance company Frutarom Industries on its €30 million acquisition of IFF's fruit preparation business in Germany and Switzerland.

Among the year's other deals, in February 2005 a large Frankfurt team also advised ABN Amro-owned private equity fund FI Equity Partners when it bought 24.9% of GFKL Financial Services, a leading German leasing and receivables management company, and the firm also advised private equity firm Primary Capital in the sale of its majority shareholding in PLC Group Munich to the Arrk Corporation for €53 million.

Key contact partners

Frank Evers
Andreas Stilcken

Cleary Gottlieb Steen & Hamilton

With 12 partners, backed up by over 20 associates working out of Frankfurt and Cologne, US firm Cleary Gottlieb has a large and influential presence in German M&A. The practice was bolstered in July 2004 when leading local lawyer Klaus Riehmer joined the practice from Haarmann Hemmelrath.

Cleary Gottlieb's standout deals of the past 12 months included acting as counsel to United Technologies Corporation in relation to the €325 million acquisition of Linde's commercial refrigeration business by the Carrier Corporation, advising Citigroup in relation to the formation of two joint ventures with EuroHypo and Gmac Commercial Holding concerning the servicing of non-performing loans and the acquisition of a large non-performing loan portfolio from EuroHypo, and representing Belgian multinational Agfa-Gevaert when it sold its consumer imaging business to an investor group consisting of private investors, private equity funds and management, and acquired GWI, a leading European IT service provider in the healthcare sector, for €350 million.

The firm's other clients include the Ahlstrom Corporation, Dow Deutschland and Deutsche Post.

Key contact partners

Thomas Buhl
Christof von Dryander
Klaus Riehmer

Sullivan & Cromwell

Sullivan & Cromwell's German M&A practice is "going from strength to strength" according to peers, and the firm's increasing deal flow and visibility on a number of complex cross-border deals over the past 12 months is testament to this. The practice is headed by Wolfgang Feuring and David F Morrison, and comprises four partners and 10 associates who are capable of providing both German and US law advice.

In relation to Sanofi-Synthelabo's hostile bid for Aventis, Sullivan & Cromwell advised Aventis on the legal aspects of the defence against Sanofi's German offer. The deal was one of the biggest deals to hit the market last year, and its complexity and innovative use of legal techniques meant it also won *IFLR's* European M&A deal of the year for 2004.

Among the year's other highlights, in July 2004 Konstantin Technau led a team that advised consortium member Goldman Sachs' Whitehall Funds in connection with the consortium's \$2.37 billion acquisition of Gemeinnützige Siedlungs- und Wohnbaugesellschaft from the state of Berlin. And in December 2004 the firm acted for selling shareholder Betas when it sold a 5.23% minority interest to Terra Firma Capital Partners for \$260 million.

Key contact partners

Krystian Czerniecki
Wolfgang Feuring
Konstantin Technau

Other notable firms

Reinhard Eyring and Jörg Kirchner head up **Ashurst's** M&A practice, which grew this year with the hire of associate Nikolaus von Jacobs from Freshfields in January 2005. The UK firm's presence is steady; over the past year it acted for Carlyle Beratungs on its acquisition of HT Troplast from Rütgers, advised Electra Partners on its acquisition of Thyssen Krupp Fahrzeugguss, helped Advent International on the management buyout of the Sportive Group, and represented Cinven on its intended acquisition of Kabelnetz.

US firms are increasingly making their mark in the German M&A market, and two of them appear in the rankings for the first time this year – **Debevoise & Plimpton** and **Latham & Watkins**. Private equity work forms the focus of Debevoise & Plimpton's practice, and in this area it acted for Clayton Dubilier & Rice, Eurazeo, and Merrill Lynch Global Private Equity in connection with the German aspects of their €3.7 billion (\$4.5 billion) acquisition of Rexel, advised Swedish venture capital fund Odlander Fredrikson in relation to a proposed investment in a German biotech company, and represented Providence Equity Partners as one of Kabel Deutschland's controlling shareholders in connection with Kabel Deutschland's attempted acquisition of three German regional cable network operators for about €4 billion.

Latham & Watkins, meanwhile, has been going from strength to strength across Europe, and its intentions are clear – the German office has hired nine associates since June 2004. Among the year's highlights, the firm represented SchmidtBank in connection with the sale of its branch banking operations to Commerzbank, advised Bundesverband deutscher Banken on the merger of SchmidtBank's operational services with Delmora Bank, served as counsel to VeriSign in relation to the acquisition of Jamba, a leading German portal for mobile Internet content, and acted for Bayard Capital on the €100 million leveraged buyout of Swiss electricity meter maker Landis & Gyr from Demag Holding.

Lastly, **Shearman & Sterling's** M&A practice comprises 15 partners and 29 associates, and is headed by Hans Rolf Koerfer. In December 2004 the firm was busy on two deals, advising Allianz on the sale of its Latin American private banking business to UBS Wealth Management and acting for Sal Oppenheim on its €600 million purchase of BHF from ING

BHF Bank. More recently, in February 2005, Novartis instructed the firm to advise on the acquisition of Hexal, and in May 2005 the firm acted for France Telecom on the sale of nearly all its shares in Mobilcom.

Project finance

Recommended firms

Tier 1

Allen & Overy

Clifford Chance

Freshfields Bruckhaus Deringer

Tier 2

White & Case

Tier 3

Baker & McKenzie

Cleary Gottlieb Steen & Hamilton

Hengeler Mueller

Linklaters Oppenhoff & Rädler

Lovells

Tier 4

Ashurst

Gleiss Lutz

Norton Rose Vieeregge

Shearman & Sterling

Allen & Overy

Allen & Overy's relatively small projects team is headed by Peter Stenz, and both he and fellow partner Neil Weiland are well respected by their peers. Recent major transactions for the team include advising BayernLB in connection with the €175.5 million (\$210 million) financing for HFTS Helicopter Flight Training Services, the first military public-private partnership (PPP) project in Germany, acting for the arranger of a €150 million financing for a waste-to-energy project in Germany, representing KBC Finance Ireland in relation to the project financing of a waste disposal plant in eastern Germany, advising the arranger of the financing in connection with an export credit agency loan for the extension of a telecoms net in Algeria, and acting for Vinci Construction in connection with a PPP financing for the city of Offenbach schools project.

In other deals the practice advised the sponsor in connection with the bidding for a PPP for the city of Witten schools project, acted for Rabobank in connection with the refinancing of the project finance loans for a combined heat and power station at Oberburg, represented DEG-Deutsche Investitions- und Entwicklungsgesellschaft on project financings for various projects in developing nations, and advised the financier in connection with the project finance of a gas power station in Hamm-Ütrop.

Leading lawyers

Peter Stenz

Neil Weiland

Key contact partner

Peter Stenz

Clifford Chance

Following on from the firm's work on the landmark €1 billion (\$1.2 billion) Stendal pulp mill project, Clifford Chance's projects team has cemented its position in the German projects and public-private finance markets. "They produce consistent quality because they have quality people and certainly belong in the top tier," said one peer in Frankfurt. The group draws on the recognized projects strength of the London office, and both Riko Vanezis and Beda Wortmann are highly recommended for the quality of their advice.

Clifford Chance's projects partners recently advised HVB on the €172 million Ankara Airport financing, acted for IKB as arrangers in connection with the first Hermes-backed local currency financing of a wind farm, represented KfW on the €380 million financing of the Zagreb-Macelj toll road in Croatia, advised RZB on the €2.6 billion Romanian Brasov-Bors motorway financing, and acted for Citigroup on the \$120 million synthetic local currency loan to start-up telecoms company Colombia Movil – the first loan of its kind in Colombia.

Among the year's other highlights, the firm advised Siemens in connection with the development of a 400MW gas-fired power plant in Belgium, acted for Ferrostaal on the €359 million project financing of a methanol plant in Oman, and represented KfW, KBC, Commerzbank, HVB, K+H and MKB on the €500 million financing of the M6 motorway in Hungary.

In another landmark deal showcasing the firm's skills in advising on eastern European projects, Clifford Chance advised Citigroup on financing the Kiev Cardboard and Paper Mill in Ukraine, the first export credit agency-supported transaction in Ukraine to be effected without a local bank guarantee. It acted for Citibank again on the \$207 million financing of a petrochemical plant in Nanjing, advised the Project Management and Development Company on a proposed \$3.5 billion petrochemical complex in Saudi Arabia, and represented HVB and ABN Amro as arrangers of €552 million-worth of PPP financing granted in connection with the implementation of a vehicle inspection system in Turkey.

Clifford Chance also won PPP instructions from HSH Nordbank, NRW Bank, Municipality Rheingau-Taunus, Hessian Real Estate Management and g.e.b.b.

Leading lawyers

Riko Vanezis

Beda Wortmann

Freshfields Bruckhaus Deringer

The project finance team, led by Frankfurt partners Christian Bunsen and Daniel Reichert-Facilides, is especially well thought of for PPP and PFI work. "They have great people," said one commentator, "and receive a steady stream of referral work coming from the London office."

The legal market for infrastructure and project financing gained momentum in the past year, with the Offenbach Schools

projects identified as two deals that really ignited the German PPP market. Many of the other projects were quite small, but mark a significant development as the market matures and more, larger, deals are expected to follow. Freshfields advised on the Offenbach PPP pilot project, which moved to implementation in October 2004. Each of the projects has a term of 15 years and involves a total investment volume of around €200 million.

On the back of its role on the Offenbach project, Freshfields received another schools PPP mandate from the city of Schwarzenbek, and is involved in a number of other PPP construction projects, including a state of Baden-Württemberg pilot project in Heidelberg, and representing SportStadiaNet, which offers PPP services for stadium construction.

The Ministry of Transportation and Housing's A-Model highway renovation projects ushered in a new phase in German infrastructure PPPs. Freshfields advised the bidding consortium on those projects. The firm also advised on two F-Model projects – the Warnow and Trave crossings – with a focus on supporting the financing banks in the start-up phase after the opening of the Warnow crossing.

Although project financing transactions remain somewhat rare in Germany outside of the public construction and road-building sectors, Freshfields advised Helaba and KfW-Ipex Bank in relation to the combined project and lease financing of the TREA Leuna waste incineration plant. The firm also received a mandate to advise the sponsor in connection with the financing of Berlin Brandenburg International Airport.

On the cross-border financing side there has been an increased willingness to use German as the governing law. There is more work around as a result of this, and Freshfields has been well-placed to reap the benefits. A combined effort by the firm's Frankfurt, Berlin and Hamburg offices saw the firm play a major role in the implementation of the Croatian Zagreb-Macelij and Hungarian M6 highway financing projects, in cooperation with the firm's London-based energy and infrastructure team. In addition, several export financing transactions in accordance with German law were documented and negotiated for DZ Bank. Freshfields also advised KfW-Ipex Bank in relation to the Kreishaus Unna project.

Leading lawyers

Christian Bunsen
Daniel Reichert-Facilides

Key contact partners

Christian Bunsen
Daniel Reichert-Facilides
Thomas Wagner

White & Case

White & Case receives a steady stream of projects work, and has consolidated its position in the German projects market. Stephen Hodgson is described as “very active” in the market, and is particularly well known for his work on international projects.

Last year White & Case represented a consortium comprising Eurocopter, Rheinmetall Defense Electronics, CAE and Thales on a €300 million (\$360 million) PFI project with the German Ministry of Defence for the design, construction, ownership, operation and financing of helicopter flight training facilities for the NH90 military transport helicopter, effected under a 20-year operating and concession contract with the Bundesamt für Wehrtechnik und Beschaffung on behalf of the German government. White & Case also advised the Ministry on the implementation and operation of a digital radio system for nationwide security offices and agencies, using a PPP structure.

In other deals White & Case advised Concord Power on the first independent power project in Germany (the €600 million 1200MW combined-cycle Lubmin power station), and acted for KfW, HSH Nordbank and new client EFK Eksportkredifonden with regard to project financing the €420 million 80-unit Butendiek offshore wind park. White & Case also advised Mark-E on the project financing, development, construction and operation of a power plant, the first power plant project that has been developed in a joint venture between a German enterprise and an international energy company.

Other clients of the firm include ASKK Holding, Landesbank Hessen-Thüringen Girozentrale, Commerzbank, Mitsubishi Heavy Industries, DaimlerChrysler Services, Toll Collect GmbH, Polyamid 2000, Reinecke + Pohl Neue Energien, the European Bank for Reconstruction and Development, Deutsche Bank, DEG, Hochtief and Siemens.

Leading lawyer

Stephen Hodgson

Key contact partners

Sebastian Kuhl
Claus Wecker

Baker & McKenzie

Although leading lawyer Rainer Magold recently left Baker & McKenzie to join US firm Milbank Tweed Hadley & McCloy's German operation, the firm still retains an “extremely proficient” project finance capability, allowing it to complete some noteworthy instructions over the past year.

Recent instructions included advising CVRD and Norsk Hydro on Alunorte, the \$330 million expansion of an aluminium refinery in Brazil, acting for Dresdner Bank on the €700 million (\$850.2 million) expansion of a microwafer process lab, and representing Siemens on the \$1.3 billion IS-TIM, the vendor financing of a Turkish telecoms company. Other clients of the firm include Norsk Hydro and Bombardier Transportation.

Key contact partners

Michael Foundethakis
Olaf Gebler

Linklaters Oppenhoff & Rädler

Linklaters' project finance team comprises Kornelius Kleinlein in Berlin and Eva Reudelhuber in Frankfurt, backed up by seven associates. The practice has experience advising clients in the public sector, including the Federal government and German states, as well as leading private sector sponsors and financial institutions both on project finance and public-private partnerships (PPPs).

The firm has been involved in many important developments in the evolving German PPP market recently, including the development of innovative models for schools, hospitals, prisons, transport and further infrastructure projects. At the beginning of this year Linklaters published the *Guidelines for Communities – Public Private Partnerships*, together with a working group of the SPD Federal Parliamentary Group and Deutsche Bank, KPMG and WestKC, as a practice-orientated guideline for PPP projects.

Instructions have been regular and noteworthy. Recent instructions include advising the Federal Ministry of Transport, Building and Housing in relation to the €7.2 billion (\$8.64 billion) HG Electronic Tolling Project, acting for HVB as arranger of the €100 million German and Portuguese wind farm project bond, representing WEV on the €50 million financing of a mechanical biological waste processing plant, advising Autostrade on the €350 million Austrian heavy vehicle tolling project, acting for Bilfinger Berger and WalterBau in connection with the €3.5 billion A-Model motorway projects, and representing Macquarie Bank on the €200 million financing of the Rostock Tunnel project.

In other matters Linklaters advised the German Social Democratic Party, Deutsche Bank, KPMG and WestKC on the political promotion of PPPs, acted for the state of Berlin on the development of a PPP structure for the Charité-Universitätsmedizin Berlin, represented the European Commission and Space Agency on the procurement and structuring of the Galileo satellite project, and advised a bidding consortium headed by Alcatel on public procurement contracts for German telecommunications infrastructure.

Key contact partners

Kornelius Kleinlein
Eva Reudelhuber