

Compliance Due Diligence in M&A Transactions

Compliance has an underestimated but still considerable influence on M&A transactions. The reason for this is that compliance violations in the target regardless of when they were committed, can lead to liability for both the target and the purchaser, which is harmful and even threatening to the existence of the company. Therefore, we recommend that in the context of an M&A transaction every purchaser carries out a Compliance Due Diligence, which is tailor-made for the target and the purchaser.

Reasons for a Compliance Due Diligence

Actual duty to implement

The obligation to establish a compliance structure and, as part of this, to conduct a Compliance Due Diligence belongs to the duty of care of a prudent businessman. It can be derived from a whole range of domestic and foreign legal provisions (Sections 91 (2), 93 AktG, Section 43 GmbHG, Section 130, 30 OWiG, Liability for omissions based on a guarantor status under the German Criminal Code / StGB, FCPA, UKBA) and standards (DCGK, Auditing Standard 980 of the IDW). In this respect, the implementation of a Compliance Due Diligence in M&A transactions is a mandatory component of a functioning compliance management system of the purchaser.

Liability minimization

An insufficient compliance structure can result in serious liability consequences under domestic and foreign legal provisions for the target, the purchaser and its management in the event of compliance violations.

Avoidance of reputational damages

In addition to financial impairment, sanctioning measures (e.g. exclusion from public tenders) and damage to a company's reputation can have a negative impact on the company's business.

Determination of the company value and investment requirements

The existence of a compliance structure and the absence of compliance violations are value-creating factors for a company that can be identified by a Compliance Due Diligence. In addition, the investment requirement for the establishment or improvement of a compliance structure or the investigation of compliance violations is also determined.

What we can do for you

The Compliance Due Diligence is about the examination, whether the transaction is worthwhile from a compliance point of view. It is individual to each company. A standardized approach is not sufficient. In this regard, we can support you in the analysis and subsequent detailed legal assessment of the compliance structure and compliance risks of the target, taking into account the size of the company, the industry, market conditions, known compliance incidents and the nature of the transaction. The Compliance Due Diligence includes in particular the existing compliance management system of the target, compliance violations committed in the past and the structuring of business relationships.

Of course, it must be taken into account that Compliance Due Diligence involves particularly sensitive information that should not be disclosed to every potential purchaser. Therefore, our approach is to divide the Compliance Due Diligence into three phases.

Before signing	Between signing and closing	After closing
<p>First risk analysis; review of the answers to a questionnaire on the compliance structure at the target and related requested documents</p> <p>Review of all other due diligence documents relating to compliance violations</p>	<p>If possible:</p> <p>Examination of further information, and documents based on a completed questionnaire</p> <p>First employee surveys</p>	<p>Complete risk analysis</p> <p>Employee surveys; Email screenings</p> <p>Business partner check</p> <p>Review of further information and documents based on a completed questionnaire</p>

Following a Compliance Due Diligence, we will show you various ways to deal with the results during the transaction or post-closing.

Before signing	Between signing and closing	After closing
<p>Inclusion of a compliance guarantee or an indemnity into the SPA</p> <p>Inclusion of a closing condition into the SPA for compliance matters that are identified between signing and closing</p> <p>(Re)negotiation of the purchase price</p> <p>Abandonment of intention to purchase (very rare)</p> <p>Exclusion of a division or locations from the intention to purchase</p>	<p>No closing due to closing condition</p> <p>Adjustment of purchase price</p>	<p>Reverse transaction</p> <p>Examination of claims for damages</p> <p>Assertion of a breach of the guarantee or indemnity</p> <p>Implementation or improvement of compliance structures</p> <p>Harmonization of the compliance management system of the target with that of the purchaser</p> <p>Elimination and reworking of compliance violations</p> <p>Annual risk analysis</p>

About Taylor Wessing

In recent years, Taylor Wessing has expanded the Compliance Department into an area of expertise. Our experience and enthusiasm for all areas of compliance help to develop tailor-made and innovative compliance systems for companies. During a Compliance Due Diligence in the context of an M&A transaction, we support you with proven compliance experts who, based on their many years of experience, can carry out a goal-oriented and efficient analysis of the target and show you practical solutions. Within the scope of post-merger integration, we can support you in the implementation or further development of a risk-based and thus company-specific, individually adapted compliance management system.

Your Expert



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