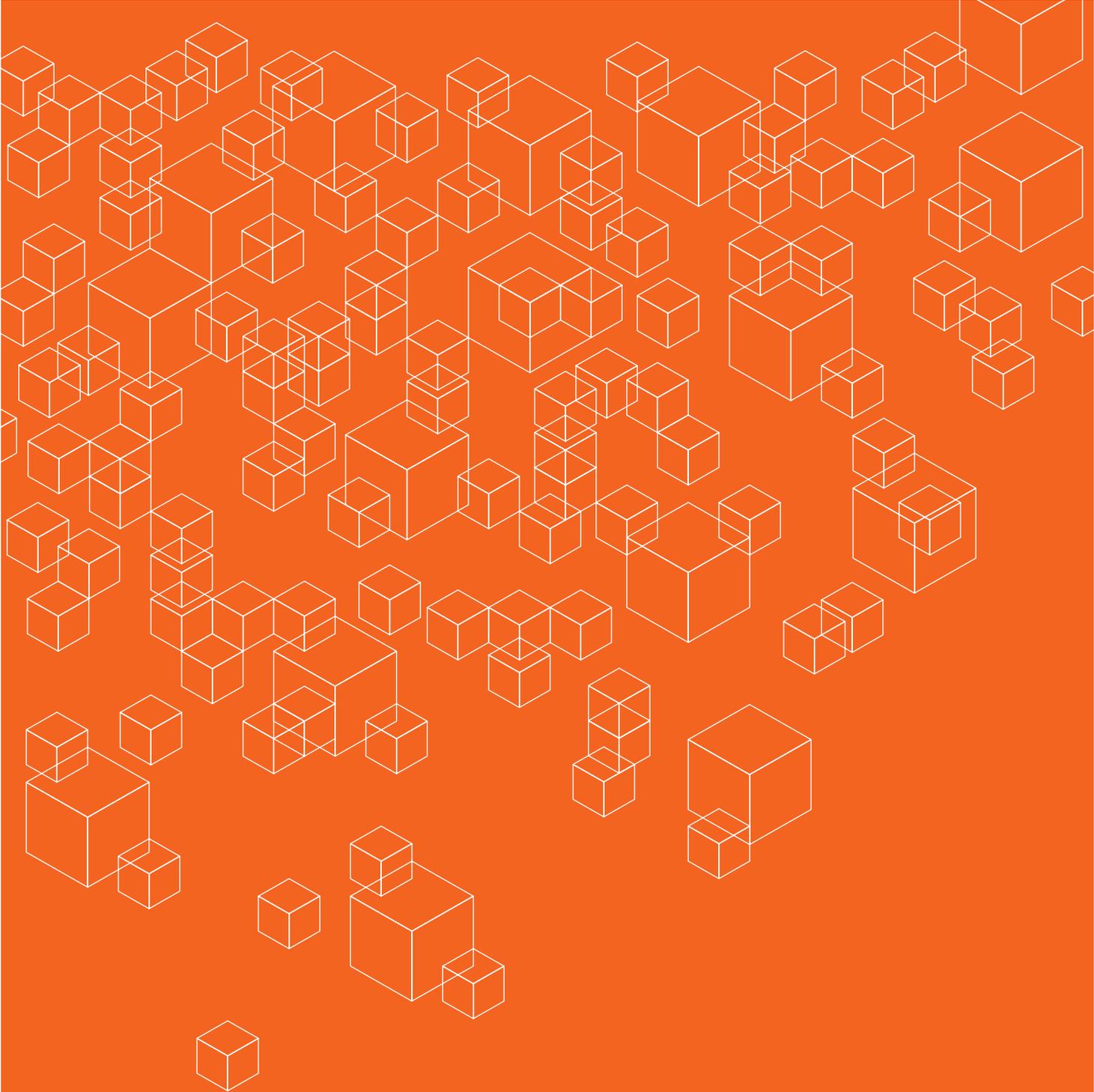


## Mergers & Acquisitions





**In a transaction,  
all the parties want  
their say. We make  
sure you have the  
last word.**

*Prof. Dr Christian Pleister*



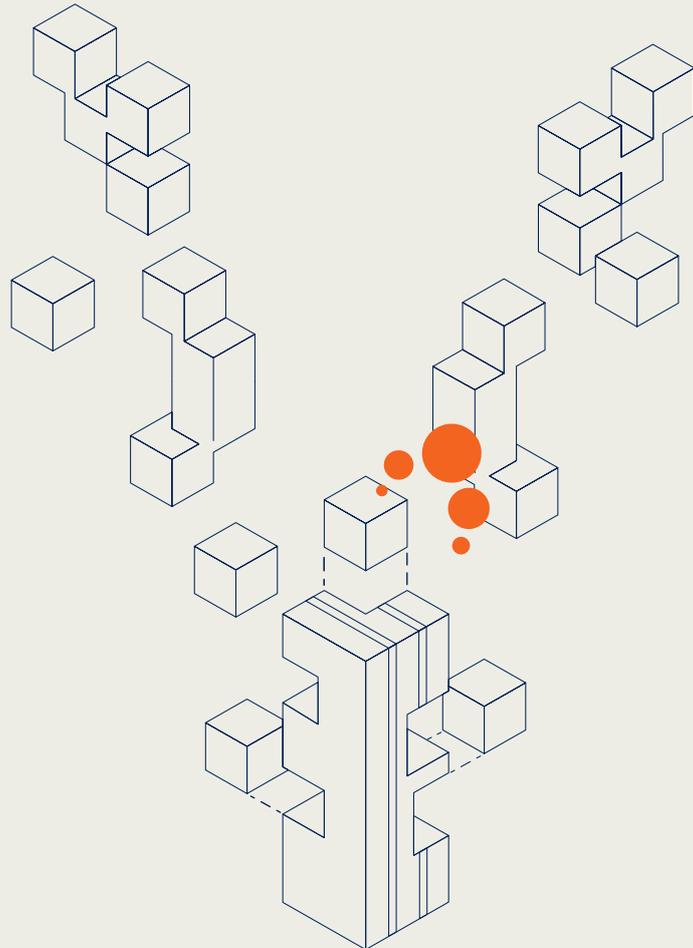


# **/YOUR CHALLENGES**

*As well as the legal challenges, the requirements arising from regional market practices, cultural differences and language barriers during international M&A processes are key factors in determining whether a transaction is successful.*

There is an array of specific challenges when designing a successful M&A process, resulting from the various spheres in which financial investors, entrepreneurs, family-owned companies as well as strategic investors and group companies are active. The increasing regulation of many industries also means that all aspects of M&A transactions become more and more complex. Opting for the right transaction structure is not only crucial in view of the tax implications or for a future exit; it can also influence whether post-merger integration is ultimately successful.

The complexity of transactions is not only growing for the investors and companies involved. An increasingly litigious environment is also placing higher demands on companies' management, particularly where compliance and their own role in the transaction process is concerned. Only integrated and multidisciplinary advice from an experienced team can ensure that the risks for all parties involved in an M&A transaction are identified and appropriately handled in line with the parties' economic objectives.



*Our experienced M&A practitioners can support you in successfully overcoming the challenges that you will face in your corporate transaction.*

Our range of services includes:

- Company purchases and sales
- M&A in regulated sectors
- Public takeovers
- Post-M&A integration
- Post-M&A disputes
- M&A in Russia & Central Europe

# Company purchases and sales

*For more than 60 years we have been supporting clients across the globe in investments, M&A projects and joint ventures. We regularly act as lead counsel, leading cross-jurisdictional teams. We offer excellent and innovative legal solutions at every stage of a corporate transaction, working in partnership to ensure the best possible advice. We put together an individual team for you and your project which is led by versed transaction experts and incorporates other specialised national and international colleagues. In this way we are able to cover all commercial issues and effects and complete the whole process efficiently and successfully.*

In an increasingly competitive, global transactional environment, auction procedures have become widespread. We assist in your role as seller in planning the auction, drafting teasers and information memoranda, setting up and organising the contents of the data room, evaluating offers and negotiating with bidders.

Thanks to our strong China Desk, we are familiar with the varying speeds of decision-making and what international bidders expect from the procedure specifically.

Due to our broad and well-founded knowledge of various industries, we are able to cover all the legally relevant areas of the target company in your role as the buyer, including regulatory requirements, compliance, data protection and cyber security, so that risks relevant for a valuation can be recognised early. We also help to obtain and integrate M&A insurance in the transaction, which is becoming increasingly more common.

Another main area of our practice is Distressed M&A: we have played a leading role in more than 60 corporate rescues since 2009 with extremely competitive bidding processes.

## Our key areas of expertise include:

- Preparing for the sale with fact books or vendor due diligences
- Optimising the target company, including carve-outs and carve-ins of business divisions
- Preparing for acquisitions with a tax-efficient acquisition structure
- Carrying out focused and efficient due diligences with a weighted, risk-oriented approach
- Acquisition financing, earn-out and vendor-loan concepts as well as stapled finance
- Drafting and negotiating the transaction documentation and assisting in the transaction from signing until closing
- Joint venture agreements
- Transitional service agreements
- Management participation models

# M&A in regulated sectors

*Banks, energy, healthcare, media, telecommunications and transport – these are just a few of the many sectors in which the state takes a regulatory and controlling role, whether to enable competition, promote private investment, guarantee supply security or to ensure consumer protection. In regulated sectors, companies can only achieve sustained success if they not only manage the specific, legally required mechanisms but also take ongoing developments into account promptly during their business decision-making processes.*

We mitigate risks which can become deal-breakers for M&A transactions in regulated sectors. We advise companies and associations on the rules and prohibitions, assist them through public-law approval procedures both before and during the sale process and support the public sector on legislation impact assessment.

We also arrange and chair discussions between decision-makers from business, politics and public administration prior to a transaction to ensure that the positions of all concerned are clear from the outset.

Our key areas of expertise in regulated industries include:

## **Banks & financial services**

Advising on the foundation and acquisition of banks, financial service providers, investment companies and the establishment of branches of the above companies in Germany as well as in Central and Eastern Europe and Russia; drafting worldwide compliance regulations for banks; advising on setting up funds and cross-border sales of fund participations; (ongoing) advice on all questions of financial markets regulatory law.

## **Energy & infrastructure**

Advising on the creation, financing and acquisition of energy generation facilities (e.g. combined cycle power plants, wind farms, solar, bioenergy and geothermal plants, hydroelectric power, pump storage power stations); negotiating international (EFET) energy trading and storage contracts; managing concession proceedings, network takeovers and network expansion programmes; advising on incentive regulations, unbundling and representation before regulatory and competition authorities; advising on laws concerning renewable energy; combined heat and power and emissions trading.

**Healthcare**

Advising on authorisation and market approval of drugs and medical products; regulatory management of healthcare transactions; award procedures for public hospitals and health insurance schemes; state financing of hospitals with regard to matters of subsidy legislation.

**Media**

Advising on the granting of licences to broadcasters and programme controls; media concentration legislation and mergers of media companies, and on media competition law; network neutrality and hybrid TV; and media financing and advertising.

**Telecommunications**

Advising on the founding and acquisition of telecommunications companies and the establishment of subsidiaries in Germany as well as in Central and Eastern Europe and Russia; negotiating with European and national authorities such as the European Commission, the Federal Network Agency and the Federal Cartel Office; competition law focused analysis and management of transactions, financing and regulation; providing legal assistance with regard to the distribution of media content, drafting of telecommunications contracts and in conjunction with the sale of telecommunications services.

**Environment & waste management**

Waste disposal concepts for manufacturing and trade; plant and product related environment legislation; advising companies and public waste disposal carriers on matters regarding waste management.

**Transportation: air, rail, road**

Planning, construction and operation of airports; planning, allocation and construction of roads; drafting PPP and financing models for road transport; support with tender processes for rail lines and network.

**Insurance**

Advising domestic and foreign insurers, reinsurers and insurance brokers on matters concerning insurance regulatory law and corporate law, especially in M&A projects; stock transfers, acceptance and authorisation of business activities; risk management and compliance; outsourcing of business units; run-off; Solvency II.

# Public takeovers

*Public takeovers – both friendly and hostile – are part of the M&A strategy of financial sponsors and strategics. Enterprises consolidate and acquire companies in this way across the globe. The target companies often respond to this trend by deploying defence strategies in advance of a takeover, but are also subject to special neutrality and publication requirements. At the same time, shareholders and bidders are becoming more proactive. They challenge members of the management board, publicly call their corporate strategies into question and take a leading role in disputes with the target company.*

We advise bidders, target companies and shareholders from the preparation of a public takeover up to and including the post-merger integration. During this process you will reap the benefits of our practical experience in takeover scenarios and our full-service approach; we provide recognised experts in all the legal fields that might play a role in a public takeover, such as antitrust law, European state aid, financing and tax law. Our lawyers work closely with our financial advisory services experts who, if required, will analyse the bidder or target company's strengths and weaknesses in advance in order to use them for offensive or defensive strategies.

Our key areas of expertise include:

- Developing and structuring takeover and purchase offers
- Negotiating takeover packages and irrevocable undertakings with existing shareholders
- Negotiating confidentiality/standstill agreements and business combination agreements
- Advising management boards and supervisory boards in takeover situations
- Developing defence strategies for target companies/ safeguard measures for bidders (deal protection)
- Drafting the offer documents and, where necessary, an accompanying securities prospectus (in share-for-share transactions)
- Consulting on the transaction with the German regulator BaFin
- Filing notifications under the German Securities Acquisition and Takeover Act
- After completion of the takeover: concluding control and profit transfer agreements, squeeze-outs, delisting and post-merger integration

## PRE-TAKEOVER

Structuring the transaction within the possibilities offered by takeover law

## TAKEOVER MANAGEMENT

Full-service advice during the takeover covering negotiations, documentation and consultations with the regulator BaFin

## POST-TAKEOVER

Legal support during the integration phase

# Post-M&A integration

*Nearly every acquisition involves the integration of the acquired company into the structures of the buyer and adapting the corporate governance at the target company. Issues involving how the business should be conducted in the future, the buyer's expectations and those of the key personnel at the target company have to be brought into line at an early stage. Careful planning and implementation form the basis for successful integration.*

The aspects requiring integration and consolidation following an M&A transaction range from the fundamental to very detailed elements – from reporting lines and formats or standardised management of IP rights to software systems and the alignment of corporate culture. A key component of post-M&A integration is therefore the restructuring of the target company by converting its legal form or undertaking similar reorganisation measures. Such objectives can be the realisation of synergies, aligning the structures of the target company to those of the buyer or simplifying the organisation of the group.

Our key areas of expertise include:

- Advising on possible target structures which facilitate the optimal implementation of the structural requirements relating to legal and tax aspects
- Preparing the documentation required for the restructuring; if necessary: negotiating the documentation with the responsible employee representatives
- Providing support on implementing company law measures, including their legally effective entry in the commercial register
- Providing advice and support on with respect to employment law measures such as operational changes and forced redundancies, including representation before the labour courts
- Advising on the conclusion of software or IP licencing agreements

# Post-M&A disputes

*Commercial law disputes cost companies time and money – resources which managers would prefer to invest in their business operations.*

Litigation is, however, sometimes unavoidable in business following a transaction in order to protect one's own economic interests. Besides winning the dispute itself, the media impact and possibly also the reaction of the capital markets are of key significance.

The efficient development and implementation of a comprehensive litigation strategy is therefore essential for success in commercial law disputes – ranging from a realistic assessment of the outcome of the litigation and the right procedural channel to the coordination of complex and international actions before state courts or arbitral tribunals.

We provide you with the comprehensive advice and support your need to resolve national and international commercial law disputes efficiently and without unnecessarily burdening resources.

The advice we provide includes:

- Representing you in court and arbitral proceedings (e.g. according to DIS, ICC, LCIA or VIAC rules, Swiss Rules and ad hoc) and coordinating and cooperating with local counsel, in particular from our Lex Mundi network
- Managing and coordinating parallel proceedings in different jurisdictions and forums, as well as in the case of simultaneous involvement of state courts and arbitral tribunals
- Using procedural law instruments of other legal systems such as pre-trial discovery, document productions, witness statements or cross-examinations
- Investment arbitration
- Acting as an arbitrator (individually or in a panel) in national and international arbitration proceedings
- Drafting appropriate arbitration clauses in contracts
- Integrating the expertise of our auditors and advisors at Noerr Consulting AG, for example, in disputes regarding "closing accounts" or "leakage events"

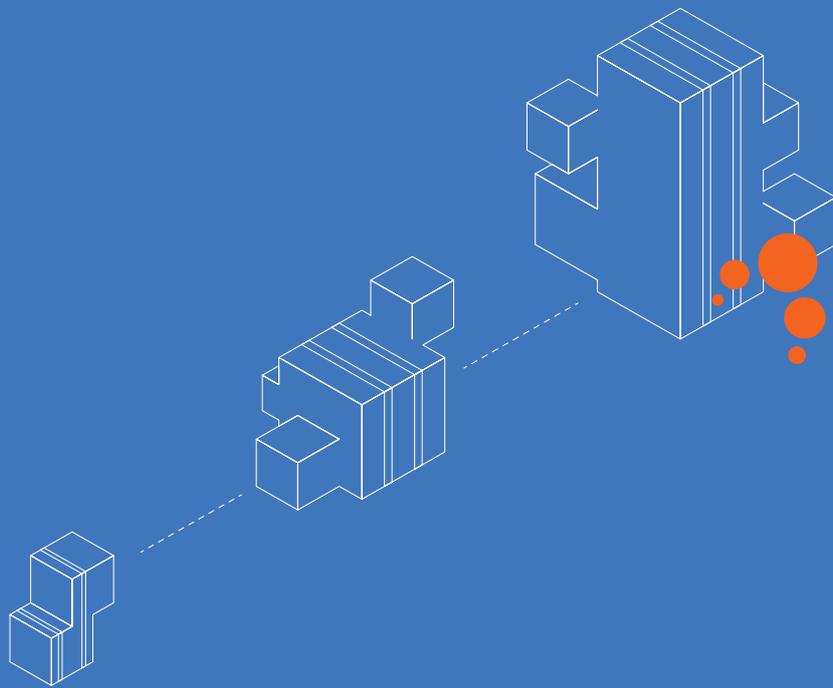
# M&A in Russia and Central and Eastern Europe

*Understanding cultural differences is essential for the success of an M&A transaction in Russia or Central and Eastern Europe (CEE). Knowing both the language and local practices is critical in a negotiation situation. Regulatory issues and conflicts can also become deal-breakers. Here you can rely on our comprehensive knowledge of the processes and working methods of authorities and contractual partners in Russia and CEE which we have amassed over many years.*

We offer a unique combination of experience, international coverage and industry knowledge; as one of the first Western law firms to open offices in CEE, we have been advising both investors and local enterprises, including on M&A projects, for over twenty years.

We have advised and supported many clients during both economic boom and crisis phases, and enabled them to overcome the challenges posed by a changing market. We have negotiated with tax and other regulatory authorities at all levels up to the ministerial position of national governments, in order to mediate tailor-made solutions which comply with constitutional and administrative law requirements.

Both local and Western lawyers work at our CEE offices. Our professionals are fluent in several languages and familiar with both Anglo-American and European legal mindsets. We therefore ensure we understand the objectives and expectations of all parties involved in a transaction. Such mutual understanding is a precondition for optimal advice and ensures that the transaction can be executed smoothly.



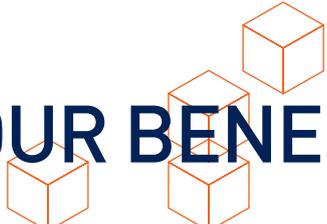
*We offer you a combination of outstanding legal expertise and many years of practical experience in handling transactions. Since the founding of the firm over six decades ago, Noerr has handled numerous large and medium-sized national and international transactions. Our interdisciplinary approach means that the entire know-how of our firm is at your service. In this way you benefit not only from our excellent legal advice, but also from the extensive sector-specific knowledge we gain by advising and assisting businesses on their daily operations.*

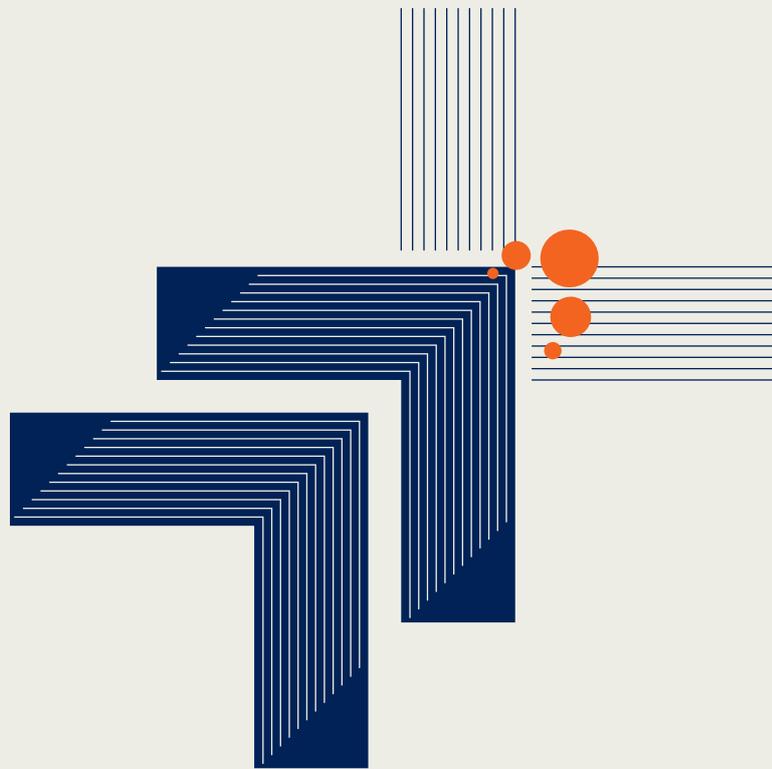
You can always rely on us to provide the best people. We put in place an individually selected, streamlined team of M&A experts who are characterised by their personal qualities and who are complemented by specialists from other practice groups as required.

As an independent law firm with short decision-making channels, our approach is efficient and unburdened by unnecessary internal consultations. We always give our advice in the form of clear and practical recommendations for action – tailored to your particular situation and strategic goals.

Moreover, wherever you may need help, we are able to provide it. In projects with a foreign component you benefit from our presence in Central and Eastern Europe as well as from our close cooperation with top law firms in around 160 jurisdictions, including within the world's leading network Lex Mundi.

Our experience and extensive contacts allow you to concentrate on what really matters to you: your business.

 / YOUR BENEFIT



*Noerr stands for excellence and entrepreneurial thinking. With well-versed teams of strong characters, Noerr devises and implements solutions for the most complex and sophisticated legal matters. United by a set of shared values, the firm's 500+ professionals are driven by one goal: the client's success. Listed groups and multinational companies, large and medium-sized family businesses as well as financial institutions and international investors all rely on the firm.*

### **Entrepreneurial thinking**

Noerr's advisors make their clients' challenges their own and are always thinking one step ahead. In doing so, they assume responsibility and are at liberty to make their own decisions. The firm is committed to always going the extra mile for its clients and to resolving complex matters with the perfect mix of experience, excellence and sound judgement.

### **Innovative solutions**

In complex and dynamic markets new approaches are regularly required – and delivered by experts who bring both the know-how and the necessary passion. This is precisely what Noerr excels at: implementing integrated and innovative solutions in the most efficient way.

### **Global reach**

As one of the top European law firms, Noerr is also well established internationally. With offices in eleven countries and a global network of top-ranked "best friends" law firms, Noerr is able to offer its clients truly cross-border advice.

In addition, Noerr is the exclusive member firm in Germany for Lex Mundi, the world's leading network of independent law firms with in-depth experience in 100+ countries worldwide.

### **Capacity in Central and Eastern Europe**

Noerr has long had its own offices in all major Central and Eastern European capitals. The firm regularly advises on greenfield investments, joint ventures, acquisitions and divestments in Central and Eastern Europe by investors from all over the world. With around 100 professionals, Noerr is one of the leading law firms in the region.

### **Noerr Group**

Noerr LLP – Noerr Consulting AG – TEAM Treuhand GmbH – NOERR AG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft

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**/YOUR CONTACT** 



**German  
perfectionism is  
demanding. And  
very successful  
internationally.**

*Dr Jens Liese*



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Law Firm of the Year:  
Banking & Finance



Juve Awards 2017

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Transatlantic Equity Capital  
Markets Team of the Year



Transatlantic Legal Awards 2017

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European Law Firm  
of the Year



British Legal Awards 2016

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Germany Law Firm  
of the Year



Chambers Europe Awards 2015

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Law Firm of the Year:  
Germany



The Lawyer European Awards 2015

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Global Dispute of the  
Year: U.K. Litigation



The American Lawyer  
Global Legal Awards 2015

**/LEGAL AWARDS**

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