



## Content

Preface .....	V
Testimonials .....	VII
Acknowledgements .....	IX

### Part 1: Mergers & Acquisitions (M&A)

#### Chapter 1: Why Mergers&Acquisitions?

1.1 The Term "Mergers & Acquisitions" .....	1
1.1.1 Mergers .....	2
1.1.2 Acquisitions .....	6
1.1.3 M&A and Business Alliances .....	6
1.1.3.1 Forms of business alliances .....	6
1.1.3.2 M&A versus business alliances .....	9
1.2 Reasons for and success factors of M&A .....	10
1.3 The process of M&A .....	13

#### Chapter 2: Initial Phase (Phase 1)

2.1 Pitch .....	15
2.2 Choice of process .....	17
2.2.1 The discrete approach .....	17
2.2.2 Simultaneous bilateral negotiations .....	17
2.2.3 Controlled competitive auction .....	17
2.2.4 Full public auction .....	17
2.3 Candidate screening and selection .....	19
2.3.1 MBO or MBI .....	20
2.3.2 Financial investors .....	21
2.3.3 Strategic investors .....	22
2.4 Advisers .....	24
2.4.1 Investment banks .....	24
2.4.2 Accountants and tax advisers .....	25
2.4.3 Lawyers .....	26
2.4.4 Other advisers .....	26
2.5 Mandate letter .....	28
2.6 Confidentiality agreement .....	34

#### Chapter 3: Contacting Interested Parties (Phase 2)

3.1 Documentation .....	38
3.1.1 Anonymous short profile .....	38
3.1.2 Information memorandum .....	38
3.2 Letter of Intent .....	39

**Chapter 4: Financial Aspects in an M&A Sales Process (Phase 3)**

4.1	Due Diligence .....	45
4.2	Valuation .....	45
4.3	Structuring .....	45

**Chapter 5: Legal Aspects in an M&A Sales Process (Phase 4)**

5.1	Negotiations .....	49
5.2	Binding offer .....	52
5.3	Purchase agreement and closing .....	52
5.3.1	Purchase Agreement .....	52
5.3.2	Closing .....	54

## **Part 2: Private Equity**

**Chapter 1: What is Private Equity all about?**

1.1	Definitions .....	57
1.2	Types of investment financing .....	62
1.2.1	Early stage financings (venture capital financings) .....	63
1.2.1.1	Seed financing .....	63
1.2.1.2	Start-up financing .....	63
1.2.1.3	First-stage financing .....	63
1.2.2	Later-stage financings (Private equity financings) .....	64
1.2.2.1	Second-stage financing .....	64
1.2.2.2	Third-stage financing .....	65
1.2.2.3	Fourth-stage financing .....	65
1.3	Occasions for private equity financing .....	67
1.3.1	Expansion (development capital) .....	67
1.3.2	Bridge financing .....	67
1.3.3	Public-to-private (Going private) .....	68
1.3.4	Succession planning and displacement of existing shareholders .....	68
1.3.5	Spin-off .....	69
1.3.6	Private placement .....	70
1.3.7	Turnaround .....	70
1.3.8	Platform strategy or buy and build strategy .....	70
1.4	Types of investments .....	72
1.4.1	Open investments .....	72
1.4.2	Indirect investments .....	73

**Chapter 2: Who drives Private Equity?**

2.1	Bidder groups for equity capital .....	75
2.1.1	Captive funds .....	75
2.1.2	Public funds .....	75
2.1.3	Independent funds .....	75
2.2	The role of banks in the private equity business .....	76

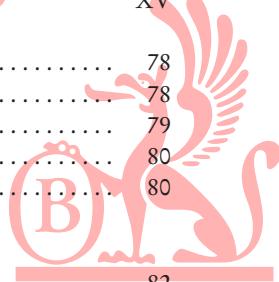
2.3	Investors in private equity capital .....	78
2.3.1	New funds raised according to capital sources .....	78
2.3.2	Geographical distribution in Germany .....	79
2.3.3	New funds raised according to financing phases .....	80
2.3.4	Sectoral distribution of investment .....	80

**Chapter 3: How are Private Equity firms organized?**

3.1	Organisational aspects .....	82
3.1.1	Structure of Private Equity Companies .....	82
3.1.1.1	Separation of fund and management .....	82
3.1.1.2	Subsidiaries .....	83
3.1.2	Management-, control- and advisory organs .....	83
3.1.3	Inner organisation .....	84
3.2	The investment contract .....	86
3.2.1	Basic types and significant parts of the contract .....	86
3.2.2	Adoption of existing contracts, important side contracts and covenants .....	88
3.2.3	Combined investment contracts .....	89
3.2.4	Participation in advisory and control organs .....	90
3.3	Taxation of capital gains according to German law .....	92
3.3.1	Sale of investments by a corporation / limited liability company .....	92
3.3.2	Sale of investments by a partnership .....	92
3.3.3	Sale of investments by a private person .....	92
3.4	Valuation of private equity investments .....	93
3.4.1	Measuring performance: the Internal Rate of Return (IRR) .....	93
3.4.1.1	Derivation of the IRR .....	94
3.4.1.2	Calculating the IRR using standard spreadsheet software .....	95
3.4.1.3	Three levels of IRR advocated by EVCA .....	96
3.4.2	Valuation principles and methodologies .....	98
3.4.2.1	Valuation principles .....	98
3.4.2.2	Valuation methodologies .....	100

**Chapter 4: How is Private Equity Business done?**

4.1	The working approach of private equity companies .....	107
4.1.1	Organisational milestones .....	107
4.1.1.1	Recruiting .....	107
4.1.1.2	Fund raising .....	108
4.1.2	Project-oriented milestones .....	109
4.1.2.1	Deal-flow .....	109
4.1.2.2	Due diligence .....	110
4.1.2.3	Business plan .....	111
4.1.2.4	Investment negotiations .....	112
4.1.2.5	Investment support .....	113
4.1.2.6	Exit .....	114
4.2	Acquisition policy and risk management .....	120
4.2.1	Quality controls in the project examination area .....	120



B  
Verlag C. H. Beck/Vahlen

4.2.2	Setting of competences and decision levels .....	121
4.2.3	Selection of projects according to the criteria of company size .....	121
4.2.4	Risk limitation through syndication .....	122
4.2.5	Risk limitation through specialisation .....	122
4.3	Investment purchase abroad .....	124

## Part 3: Acquisition Financing

### Chapter 1: What makes acquisition financing special?

1.1	Definition and challenges .....	127
1.2	The challenges of acquisition financing .....	128
1.3	Acquisition financing vs. buy-out/buy-in financing .....	130
1.3.1	Management Buy-Out (MBO) .....	130
1.3.2	Management Buy In (MBI) .....	131
1.3.3	Leveraged Buy-Out (LBO) .....	131

### Chapter 2: Who drives acquisition financing?

2.1	Acquisition financing – parties involved and their various motives .....	133
2.1.1	Senior partners .....	133
2.1.2	Strategic investors .....	134
2.1.3	Financial investors (private equity investors) .....	134
2.1.4	Management .....	134
2.1.5	Financial institutions .....	135
2.1.6	Advisors .....	136
2.2	Main goals of debt capital investors .....	136
2.2.1	Low debt capital ratio .....	136
2.2.2	Collateral .....	137
2.2.3	Marketability – loan syndication .....	137
2.2.4	Return on debt .....	138
2.3	Main goals of equity capital investors .....	139
2.3.1	Return on equity .....	139
2.3.2	Limited liability .....	139
2.3.3	Contract flexibility .....	140
2.3.4	Minimum expenses .....	140

### Chapter 3: How does acquisition financing work?

3.1	Functionality of Leveraged Buy-Outs .....	141
3.2	Exploiting the leverage-effect .....	142
3.3	Improvement of cash-flows .....	143
3.3.1	Fixed assets and working capital optimisation .....	143
3.3.2	Strategic reorientation of the enterprise .....	143
3.3.3	Efficient capital allocation .....	144
3.3.4	Know-how transfer by financial investors .....	144

3.3.5	Elimination of underperformance in the enterprise .....	144
3.3.6	Asset Stripping .....	144
3.4	Improvement of company valuation .....	145
3.4.1	Increase purchase price-multiple due to improved returns and profits .....	145
3.4.2	Increase purchase price-multiple due to an optimised firm size .....	145
3.5	Integral parts of successful Leveraged Buy-Outs .....	146
3.5.1	Attractive LBO market environment .....	146
3.5.2	LBO proficient company .....	146
3.5.3	Exit possibilities and increase in company value .....	147
3.5.4	Management .....	147
3.5.5	Track record and firm ethics of financial investor .....	148
3.5.6	Fair price .....	148
3.5.7	Fiscal-optimisation .....	150
3.5.8	Feasible and sustainable financing structure .....	150

**Chapter 4: How to structure an acquisition**

4.1	Acquisition financing – structuring the project under company law ..	154
4.1.1	Three step takeover approach .....	154
4.1.2	Respective interests of equity capital investors .....	156
4.1.3	Respective interests of debt capital investors .....	156
4.1.4	Legal restrictions .....	156
4.2	Asset deal vs. share deal .....	157
4.3	Acquisition financing – structuring the financing tools .....	158

**Chapter 5: How to determine the financial structure of an acquisition financing**

5.1	Determination of the debt service ability .....	162
5.2	Acquisition financing – role of equity capital .....	165
5.2.1	Share capital .....	165
5.2.2	Shareholder loans .....	165
5.3	Acquisition financing – role of outside capital .....	167
5.3.1	Senior term debt .....	167
5.3.2	Working capital facilities .....	170
5.4	Mezzanine capital .....	173
5.4.1	Particular characteristics of mezzanine capital .....	173
5.4.2	Mezzanine capital in the context of acquisition financings .....	174
5.4.2.1	Mezzanine capital – bridging the gap .....	174
5.4.2.2	Mezzanine capital – payment structure and yield expectations .....	175
5.4.2.3	Mezzanine capital – contractual structuring .....	175
5.4.3	Different forms of mezzanine capital .....	177
5.4.3.1	Equity mezzanine instruments .....	178
5.4.3.2	Debt mezzanine instruments .....	179
5.5	Capital structure and key figures .....	183

**Chapter 6: What kind of contracts are used in acquisition financing?**

6.1	Credit agreement .....	186
6.1.1	Precedent conditions .....	187
6.1.2	Representations and warranties .....	187
6.1.3	Covenants .....	188
6.2	Collateral agreement .....	191
6.3	Consortium agreement .....	191
6.4	Intercreditor agreement .....	191
6.5	Purchase agreement .....	192

**Chapter 7: How is acquisition financing done?**

7.1	Pre-deal screening .....	194
7.1.1	Business plan .....	194
7.1.2	Due diligence .....	195
7.1.3	Financing case .....	197
7.1.4	Financing structure and term sheet .....	197
7.1.5	Commitment letter .....	198
7.1.6	Contract documentation .....	198
7.1.7	Syndication .....	198
7.1.8	Deal signing and closing .....	200
7.2	Post-deal monitoring .....	200

**Part 4: Initial Public Offering****Chapter 1: Why Initial Public Offering?**

1.1	Definition and reasons for IPO .....	203
1.2	Pros and Cons .....	206
1.2.1	Benefits and Opportunities .....	207
1.2.2	Drawbacks and Continuing Obligations .....	208
1.3	Pre-IPO Strategy .....	211

**Chapter 2: How do the Stock Exchanges in Frankfurt, London and New York work?**

2.1	Listing at the Frankfurt Stock Exchange .....	215
2.1.1	Frankfurt Stock Exchange – the Company .....	215
2.1.1.1	History and Development .....	215
2.1.1.2	Legal Framework .....	216
2.1.1.3	Organisation and Indices .....	217
2.1.2	Listing Requirements .....	221
2.1.2.1	Requirements before IPO .....	221
2.1.2.2	Continuing Listing Requirements .....	223
2.2	Listing at the London Stock Exchange .....	225
2.2.1	London Stock Exchange – the Company .....	225
2.2.1.1	History and Development .....	225
2.2.1.2	Legal Framework .....	225

2.2.1.3	Organisation and Functions .....	226
2.2.2	Listing Requirements .....	228
2.2.2.1	Requirements before IPO .....	228
2.2.2.2	Continuing Listing Requirements .....	232
2.3	Listing at the New York Stock Exchange .....	235
2.3.1	New York Stock Exchange – the Company .....	235
2.3.1.1	History and Development .....	235
2.3.1.2	Legal Framework .....	235
2.3.1.3	Organisation and Functions .....	236
2.3.2	Listing Requirements .....	238
2.3.2.1	Listing Requirements before IPO .....	239
2.3.2.2	Continuing Listing Requirements .....	241

### Chapter 3: What is the difference between an IPO in Germany, UK and the US?

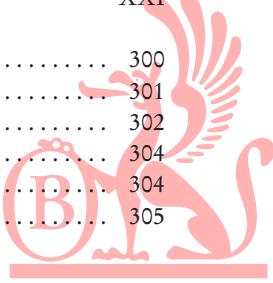
3.1	The IPO process in Germany .....	243
3.2	The IPO process in UK (LSE) .....	244
3.2.1	Countdown to flotation .....	244
3.2.2	The flotation timetable .....	244
3.2.2.1	The timetable: 12 to 24 weeks before admission .....	244
3.2.2.2	The timetable: 6 to 12 weeks before admission .....	245
3.2.2.3	The timetable: 1 to 6 weeks before admission .....	245
3.2.2.4	The timetable: 1 week before admission week .....	246
3.2.2.5	The timetable: Admission week .....	246
3.3	The IPO Process in the US .....	247
3.3.1	Overview of the IPO Process .....	247
3.3.2	Securities regulation in the USA .....	247
3.3.3	Securities Act of 1933 .....	247
3.3.4	Securities Exchange Act of 1934 .....	248
3.3.5	Private placements vs. public offerings .....	248
3.3.5.1	Private placements .....	249
3.3.5.2	Rule 144a .....	249
3.3.5.3	Buyers of Rule 144a offerings .....	249
3.3.5.4	Regulation S .....	249
3.3.6	Documents .....	250
3.3.7	Resale restrictions .....	250
3.3.8	Ongoing disclosures .....	250
3.3.9	The offering process .....	251
3.3.10	Timetable .....	252
3.3.11	Documentation and disclosure .....	253
3.3.12	Financial statement requirements .....	253
3.3.13	Liability and due diligence .....	254

### Chapter 4: What is the roadmap for a successful IPO?

4.1	Phase One: Planning and preparation .....	256
4.1.1	Checking the pre-requisites for Going Public .....	256

4.1.1.1	Stock Corporation .....	256
4.1.1.2	Financial Reporting .....	258
4.1.1.3	Business Plan .....	259
4.1.2	Equity Story .....	259
4.1.3	Issue Concept .....	262
4.2	Phase two: Structuring.....	264
4.2.1	Recruiting syndicate banks .....	264
4.2.1.1	Co-ordinators .....	264
4.2.1.2	Syndicate Structure .....	265
4.2.1.3	Designations .....	268
4.2.1.4	Beauty Contest and Selection Criteria .....	269
4.2.1.5	Agreements with Co-ordinators .....	271
4.2.1.6	Underwriting Commissions .....	272
4.2.2	IPO Consultants .....	273
4.2.3	Legal Advisers .....	274
4.2.4	Auditors and Tax Advisers .....	276
4.2.5	IR/PR Agencies .....	276
4.2.6	Due Diligence .....	277
4.2.7	Valuation .....	279
4.2.8	Prospectus .....	281
4.2.9	Corporate Governance .....	284
4.3	Phase three: Marketing: Investor Relations, Pre-marketing, and Road Show .....	285
4.3.1	Investor Relations .....	285
4.3.2	Pre-marketing .....	286
4.3.2.1	Analyst Meetings .....	286
4.3.2.2	Research .....	286
4.3.3	Road Show .....	289
4.4	Phase four: Pricing, Allocation and Stabilisation .....	290
4.4.1	Pricing .....	290
4.4.1.1	Pricing Methods .....	290
4.4.1.1.2	Fixed-Price Method .....	290
4.4.1.2	Bookbuilding .....	290
4.4.1.2	Pricing Structure .....	291
4.4.1.3	Pricing Mechanism .....	291
4.4.2	Allocation .....	294
4.4.2.1	Allocation to Institutional Investors .....	294
4.4.2.2	Allocation to Retail Investors .....	295
4.4.2.3	Employee equity compensation programmes .....	296
4.4.2.4	Friends & Family Programme .....	296
4.4.3	Stabilisation .....	297
4.4.3.1	Greenshoe (Over-Allotment Option) .....	297
4.4.3.2	Naked Short .....	298
4.4.3.3	Naked Long .....	298
4.5	Phase five: Life as a Public Company .....	299
4.5.1	Ad-hoc Disclosures .....	299

4.5.2	Insider Information and Compliance .....	300
4.5.3	Transparency for Capital Markets .....	301
4.5.4	Annual Financial Statements and Quarterly Reports .....	302
4.5.5	Analyst Conferences and Research .....	304
4.5.6	Corporation Action Timetable .....	304
4.5.7	Investor Relations .....	305



## Part 5: Going Private

### **Chapter 1: Why go private?**

1.1	Definition of going private .....	309
1.2	Going private and going dark .....	310
1.2.1	Going dark .....	310
1.2.2	Similarities and differences between going private and going dark .....	312
1.3	Motives and success factors for going private .....	313
1.3.1	Reasons for going private .....	313
1.3.2	Benefits of going private .....	314
1.3.3	Risk of going private .....	315
1.4	Candidates for going private transactions .....	316
1.5	Recent transactions in the U.S., U.K. and Germany .....	317

### **Chapter 2: Going private in the U.S. and U.K.**

2.1	Delisting Procedure at New York Stock Exchange and London Stock Exchange .....	319
2.1.1	Delisting at the New York Stock Exchange .....	319
2.1.2	Delisting at the London Stock Exchange .....	319
2.2	Legal Framework .....	321
2.2.1	The Sarbanes Oxley Act affecting the U.S. going private activity .....	321
2.2.2	Corporate Governance Guidelines in the U.K. .....	323
2.3	Protection of shareholders .....	324
2.3.1	Protection of shareholders in the U.S. .....	324
2.3.1.1	Rules against false and misleading information .....	324
2.3.1.2	Disclosure issues .....	325
2.3.2	Protection of shareholders in the U.K. .....	326

### **Chapter 3: Going private in Germany**

3.1	What is the legal framework of going private transactions in Germany? .....	331
3.2	How can delisting be done? .....	332
3.2.1	Ex officio delisting .....	332
3.2.2	Hot delisting .....	332
3.2.3	Cold delisting .....	333
3.2.3.1	Squeeze-out .....	333
3.2.3.2	Integration .....	335

3.2.3.3 Conversion, merger and corporate division .....	336
3.2.3.4 Liquidation and sale of all assets .....	337

## Part 6: Due Diligence

### Chapter 1: Why Due Diligence?

1.1 Definition of the term due diligence .....	339
1.2 Motives for conducting a due diligence .....	340
1.3 Objectives of the due diligence process .....	341
1.3.1 Reducing the information asymmetry .....	341
1.3.2 Identifying and examining the synergy potential .....	341
1.3.3 Linking the strategic preparation with the integration period .....	342
1.3.4 Providing reps and warranties .....	342
1.4 Participants in the due diligence process .....	342
1.5 Information sources for conducting due diligence .....	343
1.5.1 Internal sources of information .....	343
1.5.1.1 The Data room .....	343
1.5.1.2 Interviewing the management .....	343
1.5.1.3 Site visits .....	344
1.5.2 External sources of information .....	344

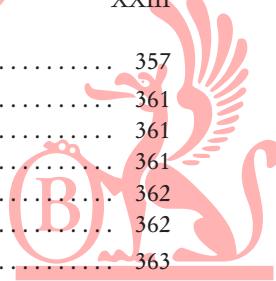
### Chapter 2: What is a data room?

2.1 The data room .....	345
2.2 Data room checklist .....	347
2.2.1 Corporate organisation .....	347
2.2.2 Employees .....	348
2.2.3 Litigation .....	348
2.2.4 Pensions .....	348
2.2.5 Taxation .....	348
2.2.6 Agreements .....	349
2.2.7 Insurances .....	349
2.2.8 Financial documents .....	349
2.2.9 Intellectual property .....	349
2.2.10 Property .....	349
2.2.11 Products/services/technology .....	350

### Chapter 3: What is done in a due diligence?

3.1 The strategic audit .....	351
3.1.1 Assessing the target company's forecasting process .....	351
3.1.2 Steps for formulating a business plan .....	351
3.1.3 What happens with the business plan? .....	352
3.1.4 Challenging the business plan .....	352
3.2 The financial audit .....	357
3.2.1 Assessing internal controls .....	357

3.2.2	Assessing annual reports .....	357
3.3	The legal audit .....	361
3.3.1	The legal foundation .....	361
3.3.2	The legal risk factors .....	361
3.3.3	The internal legal structure .....	362
3.3.4	The external legal structure .....	362
3.4	Conducting a tax due diligence .....	363
3.4.1	The scope of the tax due diligence .....	363
3.4.2	Past periods that were not covered by tax audits .....	363



## Part 7: An Overview of Corporate Valuation

### Chapter 1: Why Valuation?

1.1	Valuation methods at a glance .....	367
1.2	Occasions and Purposes of Valuation .....	369
1.3	General framework .....	372
1.3.1	Valuation: Art or Science? .....	372
1.3.2	Value versus price .....	372

### Chapter 2: How to carry out a valuation

2.1	Valuation techniques .....	374
2.2	Methods of individual valuation .....	374
2.2.1	Net asset value based on reproduction values .....	375
2.2.2	Net asset value based on liquidation values .....	375
2.3	Multiple methods .....	377
2.3.1	Multiples valuation procedure .....	377
2.3.2	Comparable Companies Approach (Trading Multiples) .....	378
2.3.2.1	Enterprise-value multiples versus equity-value multiples .....	378
2.3.2.2	Enterprise-value multiples .....	379
2.3.2.3	Equity-value multiples .....	380
2.3.2.4	Example .....	380
2.3.2.5	Applicability of the Comparable Companies Approach .....	381
2.3.3	Comparable Transactions Approach .....	382
2.3.3.1	Procedure .....	382
2.3.3.2	Example .....	382
2.3.3.3	Applicability of the Comparable Transactions Approach .....	383
2.3.4	Summary .....	384
2.4	Discounted Cash Flow Method .....	385
2.4.1	Introduction .....	385
2.4.2	The entity approach or WACC method .....	386
2.4.2.1	Introduction .....	386
2.4.2.2	Cash flows and terminal value .....	387
2.4.2.3	Cost of Capital .....	390
2.4.3	Applicability of the Discounted Cash Flow Method .....	394

2.5	The Book value .....	396
2.6	The Trade Buyer's Approach .....	396
2.6.1	The procedure .....	396
2.6.2	Applicability .....	397
2.7	Real Options Approach .....	399
2.7.1	Advantages and classification of the Real Options Approach .....	399
2.7.2	Basic overview on the real options approach models .....	400
2.7.2.1	Analytical models .....	400
2.7.2.2	Numerical models .....	400
2.7.3	Advantages of the binomial model .....	400