

Post-Merger Integration

CMS PMI services

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PMI is key – integration is crucial to success

From corporate acquisitions to mergers and joint ventures, the success of M&A depends on a range of factors across all phases of the project. But only the integration phase reveals whether the new organisation is achieving the pre-defined objectives and can leverage the intended synergies. Merging and integrating previously independent companies into a single entity marks the completion of an M&A project. For completion to be deemed a success, though, robust post-merger integration (PMI) is essential.

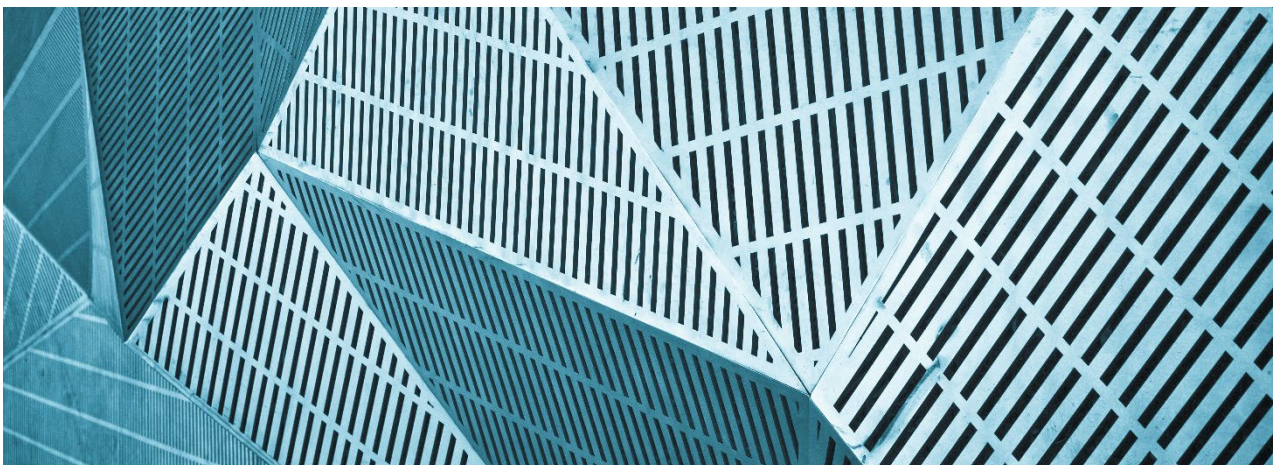
The strategic and economic objectives of an M&A transaction are as varied as they are complex, depending on the specific scenario and the expectations of the businesses involved.

The challenges of integrating the target company into the acquirer's structures are equally diverse. The decision on the type of transaction, e.g. an acquisition or merger, sets the general course for how quickly the target company can be integrated and to what extent this happens.

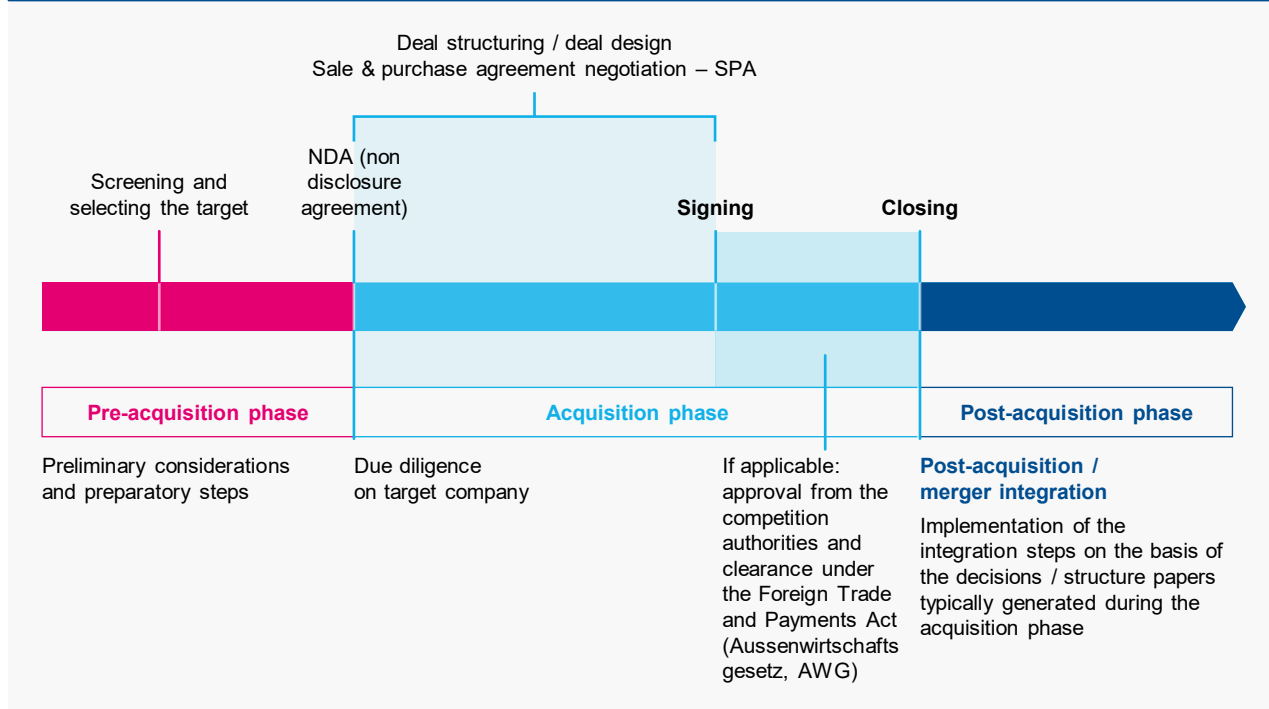
Anyone who waits until after closing to consider the practicalities of merging the acquiring and target companies faces failure. Studies have repeatedly shown that underestimating the importance of timely and carefully planned post-merger integration is a shared feature of unsuccessful M&A transactions.

Key takeaway: Detailed early planning from the outset through to the integration phase is vital for successful integration.

CMS can help you to cover post-merger integration issues from the start and avoid pitfalls. Our M&A / PMI teams work closely with you to monitor all the necessary legal and tax-related steps in the transaction right from day one. "To help ensure successful post-merger integration, they simultaneously remain aware of the big picture."



The road to successful integration – phases of the M&A process



The initial course for successful acquisition of a company is set in the **pre-acquisition phase**. This phase involves fundamental questions of strategy, the decision to buy and crafting a strategy for the proposed acquisition. The requirements profile and screening of the target, together with strategic analysis, form the basis for the downstream transaction process and subsequent integration of the target company.

Once a suitable target has been identified, initial contact has been made and a **non-disclosure agreement (NDA)** signed, along with other documents, the technical phase of the transaction begins with **due diligence (DD)**. The purpose here is to obtain crucial information about the target's potential, but also to identify possible commercial, financial, tax, legal, real estate, environmental and HR risks. The DD findings provide the basis for steps such as establishing the purchase price and structuring the transaction (deal design). The results of due diligence are also essential for advance planning, design and implementation of integration activities. In turn, the DD teams need to be aware of the proposed integration structure so they can take this into account during information gathering. Depending on the specific requirements of the deal, PMI may best be served by conducting integration due diligence that goes beyond the standard due diligence process.

The **acquisition phase** is all about contract (SPA) negotiations and designing the deal in more detail. The choice of acquisition structure involves making crucial decisions and setting objectives that need to be taken into account during subsequent integration.

The **post-acquisition phase** plays a key role in the overall success of the transaction. In this phase, the aim is optimum integration of the target into the acquiring company or effective merging of the companies into a single entity (post-merger integration – PMI). Here it becomes apparent whether the objectives can really be achieved, and the anticipated deal synergies leveraged in a timely fashion.

Depending on the underlying commercial and corporate strategy, integration usually spans a large number of areas, with corresponding differences in depth and speed. What holds true for all integration processes is that even in routine cases, precise planning at an early stage is essential for integration to be a success.

CMS one-stop service, wherever you need us

Successful transactions and robust integration require an [interdisciplinary approach](#) from the outset. Accordingly, at CMS we put together M&A / PMI teams comprising experienced experts from different practice areas, tailoring the skill set to the specific needs of your project. Your core CMS team will thus generally consist of lawyers from our [Corporate / M&A](#), [Tax](#) and [Employment practices](#). Depending on the focus, specific phase and individual requirements of the transaction, we also bring in M&A / PMI experts from other disciplines, such as [Banking & Finance](#), [Real Estate & Public](#), [Intellectual Property](#), [Competition](#), [Commercial](#), [Disputes](#) and [Compliance](#), or with specific industry expertise (e.g. [Energy](#), [Life Sciences & Healthcare](#) and [TMC](#)). In addition, we are happy to support you in all matters relating to [ESG](#) issues. Notarial support from our CMS Notary's office is also possible at any time.

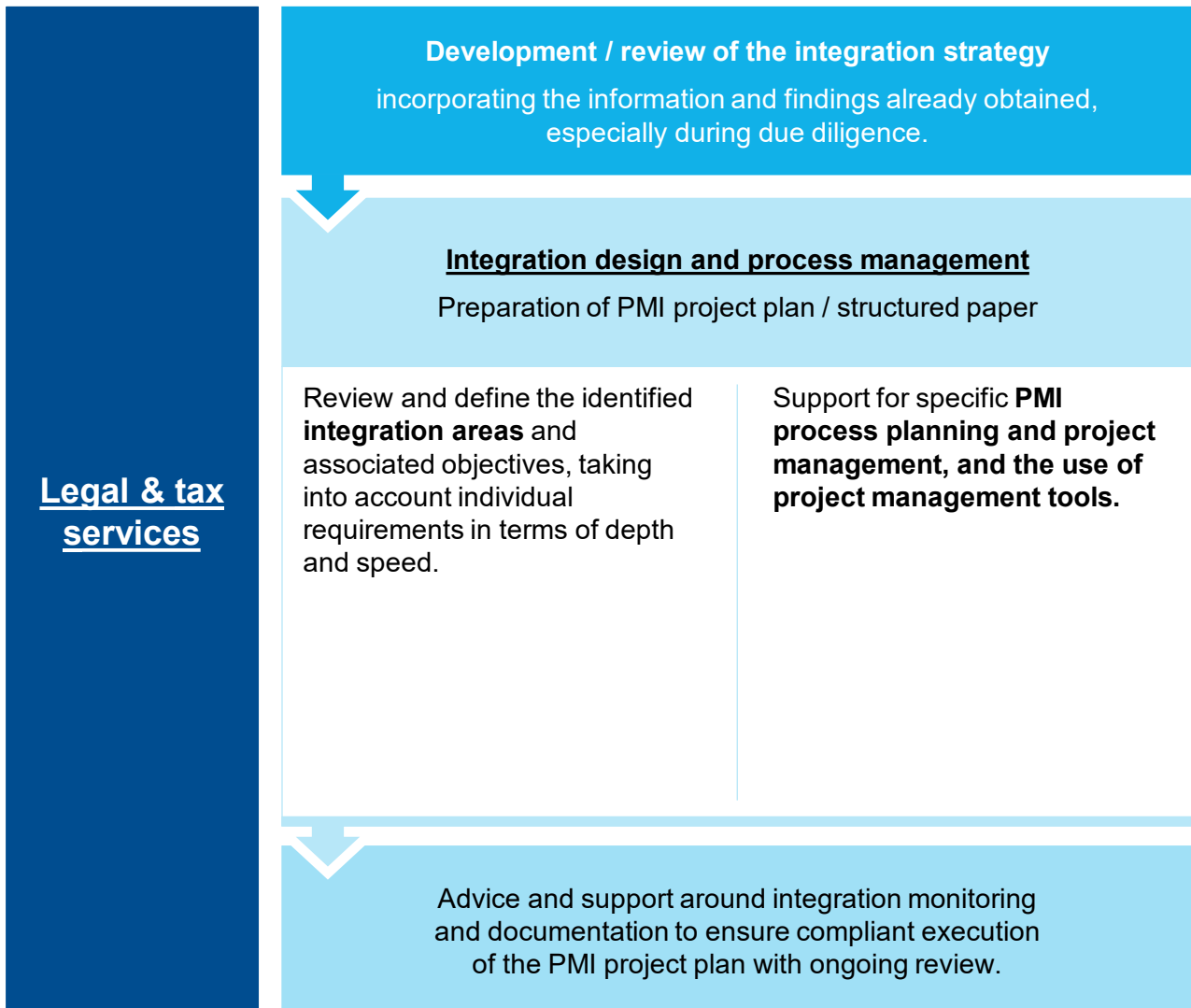
In cross-border transactions, we draw on lawyers from the international CMS organisation. The result is a true one-stop shop – customised solutions from a single source across all phases of the deal.



Our PMI services at a glance

When the actual integration phase begins, our M&A / PMI experts seamlessly build on the information and insights gained in the preliminary phases of the deal. That also applies if we only come on board at the integration phase.

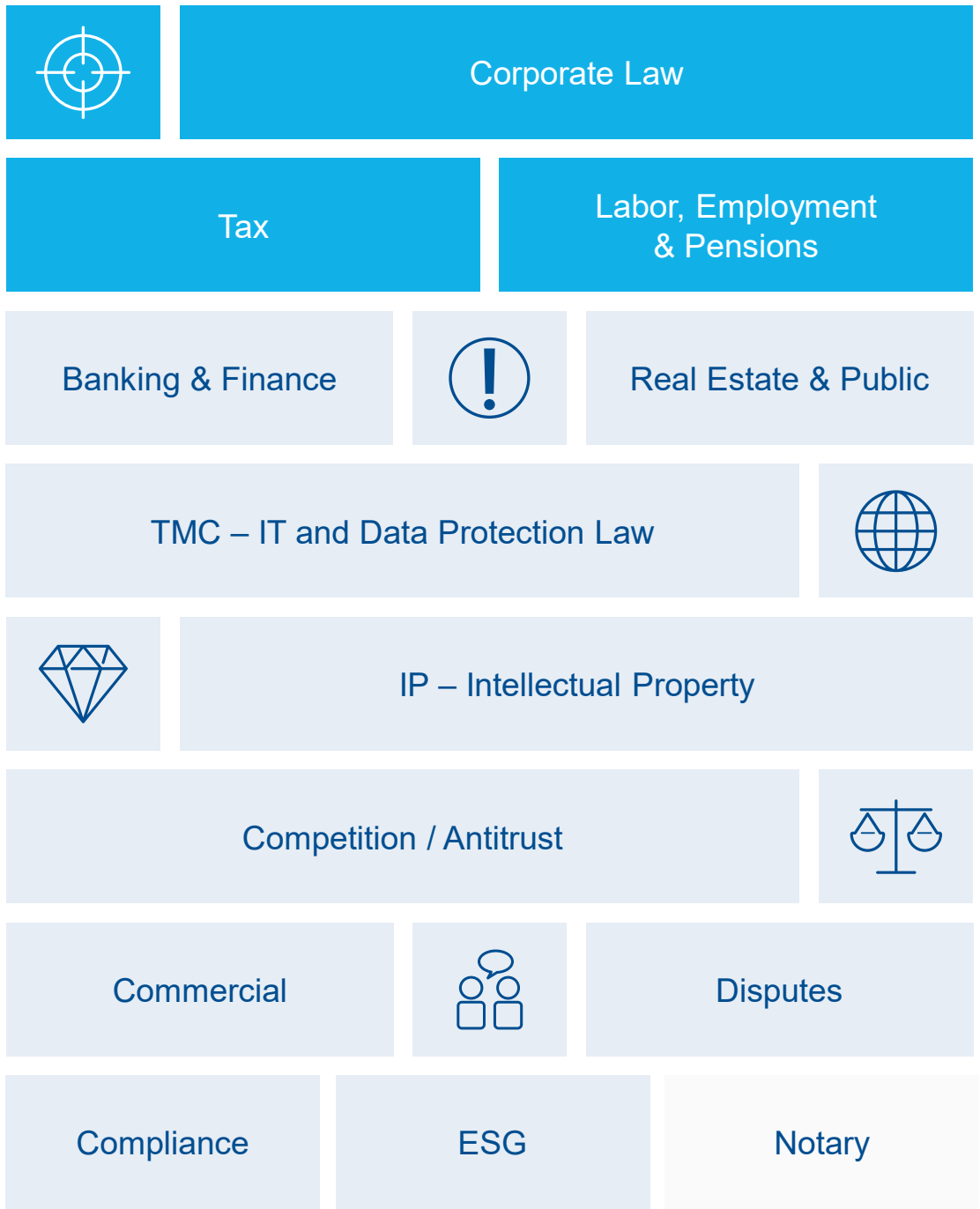
Our PMI services include the following in particular:





Legal & tax services

Relevant legal topics – from a single source



Legal project management

In addition to comprehensive legal advice, we offer efficient solutions for successful implementation of your M&A / PMI projects via our legal project management services, including leveraging technology. Geared to the individual requirements of your project, we provide you with experienced support teams of highly qualified commercial lawyers, legal consultants, project managers, legal engineers and legal tech managers throughout every phase of the transaction. Together with our experienced lawyers, they help to ensure efficient project implementation with regard to both time and cost, in particular through precise digital project design and preparing detailed step plans.

Innovative, digital and resource-efficient approach

Professional use of legal tech tools enables us to handle transactional / PMI projects quickly and flexibly while maintaining the highest quality standards. Our highly qualified SmartOperations staff are specially trained to meet the specific requirements of transactions and PMI work. In addition to often having many years of professional experience, team members frequently have valuable additional qualifications, especially in project management. SmartOperations staff work closely with our M&A / PMI legal teams under the direction of the relevant lead partner and are thus fully integrated into our service.

Design, structuring and management of data rooms and collaboration platforms

Modern data rooms, collaboration and project platforms are at the heart of many M&A / PMI projects and digital working environments. These facilities offer the entire project team a central point for (automated) work processes, step plans and FAQ sets, a shared document filing system, reminder management and the option of automated document creation. It is also possible to view relevant project parameters in a dashboard, providing real-time information on developments within the project and the current status.

CMS's Smart Solutions team can help you to design and structure the appropriate data rooms and platforms, based on the specific requirements of your project. They also provide support around any (partial) automation of processes on the platform.



PMI issues for which we provide support – at a glance

Corporate Law

A transaction process usually takes several months and sometimes develops a momentum of its own. It is good practice to follow a standard sequence in M&A transactions from structuring through to closing, with corporate law experience being particularly important.

Careful preparation by experienced corporate experts ensures that the relevant value drivers of a transaction are recognised, while also highlighting the pitfalls that may emerge in the course of the deal. Corporate law also plays an important role in post-merger integration, e.g. when reorganising business units, streamlining internal processes in alignment with corporate structures, making the best possible use of available resources and strategically (re)aligning the business.



Corporate law – PMI issues in a nutshell

- Selecting the best possible structure for acquisition and integration (e.g. conversion, asset deal, share deal)
- Adapting group structures (national and international mergers and other conversion measures)
- Dealing with existing control and profit transfer agreements (possibly already included in the SPA provisions)
- Harmonising corporate governance (e.g. with regard to uniform approval requirements throughout the group or applying the buyer's management structures)
- Merging compliance organisations
- Support for process management



Tax

Tax parameters not only have a significant impact on deal structuring, they also help determine the optimum structure for successful post-merger integration. To ensure the best possible integration of the target into the existing company from a tax viewpoint, it is important throughout the transaction to be aware of all tax factors that matter post-closing. Valuable tax information and insights can be gained at an early stage of the transaction during due diligence. It is advisable to set out tax considerations relating to (post-merger) integration in a tax structure paper as part of early preparations. This naturally also applies if no due diligence is carried out.



Tax – PMI issues in a nutshell

- Tax-efficient integration structure without capital gains taxation or transaction taxes (mergers, spin-offs, hive-downs, liquidations, accruals, transfer of subsidiaries, operational units, real estate and IP)
- Tax-efficient deduction of financing costs (possibly with debt push down)
- Income consolidation and implementation of tax groups, use of losses and tax incentives
- Cross-border repatriation of cash to shareholders (shareholder loans, share buy-back, dividends, capital repayment, interim holding companies, change of legal form or relocation of registered office)
- Restructuring of corporate governance and employee incentives
- Integration of the target company into your tax compliance system and connecting with existing compliance systems
- Post-closing tax claim management
- Tax optimisation of matrix structures

Further information on tax-related post-merger integration and our comprehensive PMI advisory services is available [here](#).

Labor, Employment & Pensions

Whether an M&A transaction delivers value in practice depends to a significant extent on how well it succeeds in bringing the workforces together. Employment law considerations are thus of particular importance when structuring an M&A transaction, not least for tactical reasons. It is vital to be mindful not only of the interests of the employer but also of those of the employees, and to involve employee representatives throughout the transaction, including during post-merger integration. Transparent communication and trust-based cooperation are particularly important in this respect.



Labor, employment & pensions – PMI issues in a nutshell

- Employment law restructuring in the acquired company (also as part of the SPA provisions)
- Transfer of employees to the target companies (e.g. by way of a business transfer under section 613 a of the German Civil Code (BGB), tripartite agreements, clear assignment of employees to specific units)
- Harmonisation and / or replacement of individual and collective employment terms, such as employment contracts, general commitments by the employer, company-internal regulations (especially workplace agreements), collective agreements and company pension schemes
- Harmonisation and / or replacement of processes, policies and procedures
- Optimisation of operational structures (in the course of restructuring, possibly through operational changes as per section 111 of the Works Council Constitution Act (BetrVG), or by concluding collective agreements or workplace agreements under section 3 of the Works Council Constitution Act)
- Redundancies due to synergies and / or duplicate structures after the transaction
- Sustainable organisational structures (e.g. merging of operations, business units and / or departments, elimination of hierarchical levels, creation of matrix structures or integration into existing ones, etc.)
- Integration of the European Works Council
- Optimisation of corporate co-determination structures



Banking and Finance

Parameters relating to financing law often help to shape the specific structure of an acquisition. It is important here to set the right course upfront and establish aspects such as the corporate level at which financing is to be provided, and how and in what form own funds can be made available. Another crucial factor is whether existing financial liabilities need to be repaid and whether existing finance arrangements will be carried over.

All this also impacts on post-merger integration. One important task is to examine the implications of the transaction for financing agreements already in place and on the acquiring group's financial KPIs. It may be worth sounding out existing financing partners ahead of the transaction. It is not uncommon for the acquired company to be included as collateral provider in an existing financing arrangement. Last but not least, post-merger integration often involves mandatory capital maintenance rules. If these are breached, the managing directors may become personally liable.



Banking and finance – PMI issues in a nutshell

- Compatibility and integration into existing financing agreements (examination of notification and / or approval requirements, lockup periods, impact on financial covenants, etc.)
- Review of collateral agreements (pledging of shares, transfers by way of security to banks, etc.)
- Updating of collateral agreements, if applicable
- Compatibility and integration into existing cash pool financing and other group financing
- Ensuring that capital maintenance requirements are met



Real Estate & Public

Corporate transactions often lead to sites coming under review, the discovery of potential savings in long-term commercial leases or building services being assessed with a view to making them comply with corporate standards, for example. Cutting costs by leveraging synergies along with considering any necessary investment in offices and production facilities are key elements in the strategic real estate-related aspects of a transaction, so real estate law needs to be taken into account.



Real estate & Public – PMI issues in a nutshell

- Review of space needs; leveraging synergies by consolidating sites; optimising use of space
- Optimising facility management and property management, e.g. through standardised contract award processes
- Contract management (digitally assisted) in relation to acquired leases
- Support around process management
- Examination of the site with regard to contamination
- Obtaining missing permits; transfer of authorisations; filing of necessary notifications
- Examination of necessary measures with regard to subsidy notices
- Observance of public procurement law with regard to public contracts



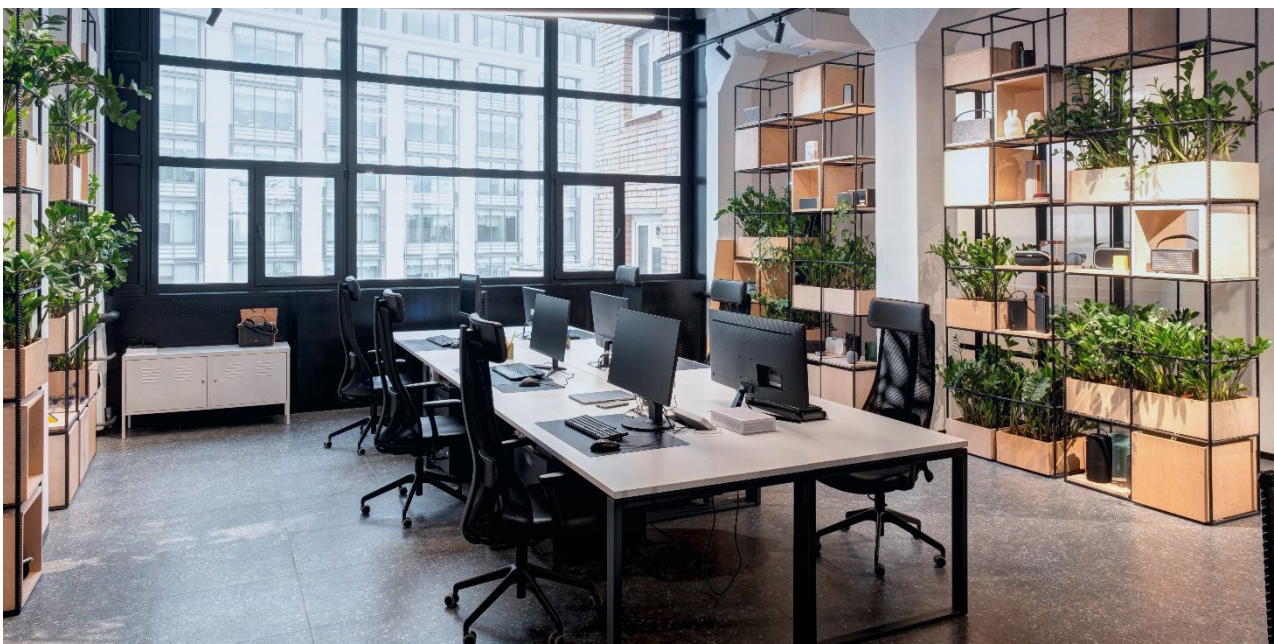
TMC – IT and Data Protection Law

From an operational viewpoint, merging of IT landscapes is often the greatest challenge facing the combined companies in the early stages. While standardising hardware and software plus the associated workflows typically offers enormous potential for cost savings, the implementation effort is often very high. Data protection requirements and IT security issues need to be addressed and carefully documented as part of the PMI process, alongside technical, organisational and licensing aspects.



TMC – IT and data protection law – PMI issues in a nutshell

- Restructuring of IT (data centres, system landscapes, contracts); issues around the use of AI and automated processes (including clarification of relevant responsibilities)
- Provider agreements (carve-out from the IT set-up of the sold entity)
- Drafting of Transitional Service Agreements (TSAs) ahead of the transaction
- Obtaining licenses
- Early-stage examination of data protection restrictions on the transfer of personal data
- Data protection audit to check for compliance (frequently only possible after signing / closing)
- Disentangling data processing activities in the context of IT carve-out projects



IP – Intellectual Property

Patents, trademarks and designs constitute the real value of a company in many cases. Another factor is the expertise that has been built up in the company over the years and decades, which must be protected as a trade secret.

In the early stages of the M&A process, the main objective is to ensure that intellectual property is dealt with properly so that it doesn't leak out, either due to lack of protection or an oversight. At the post-merger integration stage, the key task is to prepare the ground for sustainable IP management.



IP – intellectual property – PMI issues in a nutshell

- Merging of trademark portfolios; trademark transfers and re-assignments
- Portfolio management / trademark management
- Analysis of trademark portfolios and advice on developing trademark strategies
- FTO analysis (with patent attorneys)
- Issues relating to employee copyright and employee inventions
- Protecting know-how after the transaction and ensuring trade secret compliance

Other disciplines

Competition / Antitrust

If a proposed transaction is subject to merger control notification requirements, it must be notified to the relevant competition authorities. Depending on the country in which the notification obligation applies, the transaction may not be completed without approval from the competition authorities and, in a worst-case scenario, could even be invalid under civil law. It is therefore necessary to establish at an early stage whether a merger or acquisition needs to be notified to a competition authority or – in the case of international projects – to more than one competition authority. Even if the authorities give the green light, possibly subject to conditions, competition issues must be considered in the context of post-merger integration.

In addition to notification obligations under merger control law, it is important to be aware of any investment control law requirements.



Competition / antitrust – PMI issues in a nutshell

- Approval under merger control law with (conduct) conditions: Ensuring compliance with conditions imposed in the approval decision
- Post-closing antitrust audit

Commercial

Following an M&A transaction, service and product portfolios usually have to be harmonised, price structures standardised, and customer databases merged. It is also important to review existing contracts and renew them if necessary. Another task is to redefine contract management structures so that integration also goes smoothly from a commercial viewpoint



Commercial – PMI issues in a nutshell

- Transitional Service Agreements with the seller side
- Intra-group agreements on integration of the target into existing (group) structures
- Contract management with regard to acquired contractual relationships, e.g.:
 - Legally compliant transfer of agreements (in asset deals) or amendment of transferred agreements (in share deals)
 - Incorporation of the transferred contractual relationships into existing (compliance) structures
 - Consolidation of purchasing / sales structures



Dispute Resolution

Not every transaction process runs smoothly. Sometimes there are misunderstandings in the run-up to the transaction that subsequently trigger a dispute; in other cases, it turns out during the negotiations that one of the sides cannot or will not comply as expected with all agreements. Post-M&A disputes are thus by no means rare. Being prepared for dispute scenarios, and avoiding them wherever possible, is an essential aspect of careful preparation ahead of a transaction. Ultimately, it is also a prerequisite for successful post-merger integration.



Dispute resolution – PMI issues in a nutshell

- Implementing uniform dispute resolution mechanisms that respect all interests
- Monetising unrealised claims within Germany and internationally
- Strategic and legal advice ahead of disputes
 - Choice of appropriate dispute resolution method (court proceedings, arbitration, mediation)
 - Drafting of dispute resolution clauses
 - Timely securing of evidence through claim management
- Minimising the risk of post-M&A disputes and resolving such disputes, e.g. those related to:
 - The final purchase price
 - Earn-out provisions
 - Breaches of warranty by the counterparty
 - Breach of the counterparty's pre-contractual duties of disclosure
 - Indemnity clauses
 - MAC clauses
 - Downstream arrangements with regard to the target (exercise of put / call options)
- Representation in post-M&A disputes before courts or arbitration tribunals, or in mediation proceedings

Compliance

Every transaction process involves linking and – ideally – harmonising the risk management systems of the acquired company and the acquirer. In particular, the preventive compliance management systems of the acquired company must be critically examined at the due diligence stage and aligned with best practice standards after closing, with the aim of subsequently integrating them. This is a critical task for the acquirer because immediately after closing it becomes liable both for retrospective risk arising from possible compliance violations and for inadequate compliance measures.



Compliance – PMI issues in a nutshell

- Documenting and analysing the existing compliance management system in the target company as an integral part of due diligence
- Developing and implementing necessary improvements, and integrating the compliance management systems as part of PMI
- Registering, assessing and mediating operational or structural compliance risks faced by the acquired company



In coming years, management teams will be required by law to apply ESG principles to acquired companies. You may already have reviewed and assessed ESG factors in the target proactively as part of due diligence during the acquisition process. Accordingly, ESG issues will be included in the SPA as post-signing obligations on the part of the seller or, alternatively, in the form of cooperation between the buyer and seller until the transaction completes.

If you have acquired a company with a good ESG score, the objective will be to integrate its sustainability management system efficiently and smoothly into your own business operations, whether operations are being merged or not. If you are aiming to integrate your own sustainability management system into the target company, you should check compatibility during the acquisition process. Integration in either direction requires a structured approach. Any ESG risks associated with the acquired company can thus be addressed without impairing your ESG rating, your risk profile in the eyes of business partners, banks and investors, and your competitiveness from an ESG viewpoint. Likewise, structured integration by leveraging relevant synergies and potential can enable a step forward in continuous improvement, with the objective of increasingly integrating sustainability into your business practices.



ESG – PMI issues in a nutshell

- Review of the statutory ESG obligations applying to your company and the target, and operational implementation options
- Review and adaptation of your materiality analysis, taking into account the components added by acquiring the target
- Integration of the target company into your sustainability management system and ESG compliance system, and connecting existing compliance systems
- Harmonisation or replacement of policies relating to ESG issues, certification, audits, etc.
- Harmonisation or replacement of processes, policies and procedures with regard to your ESG reporting obligations, your sustainability reporting, metrics/KPIs
- Optimisation of organisational structures in sustainability management (adaptation due to post-transaction synergies or duplicate structures, merging of departments, elimination of hierarchical levels, etc.)
- Improvement of ESG rating through ESG compliance
- Development of a roadmap and recommendations for implementing ESG issues with legal and strategic relevance

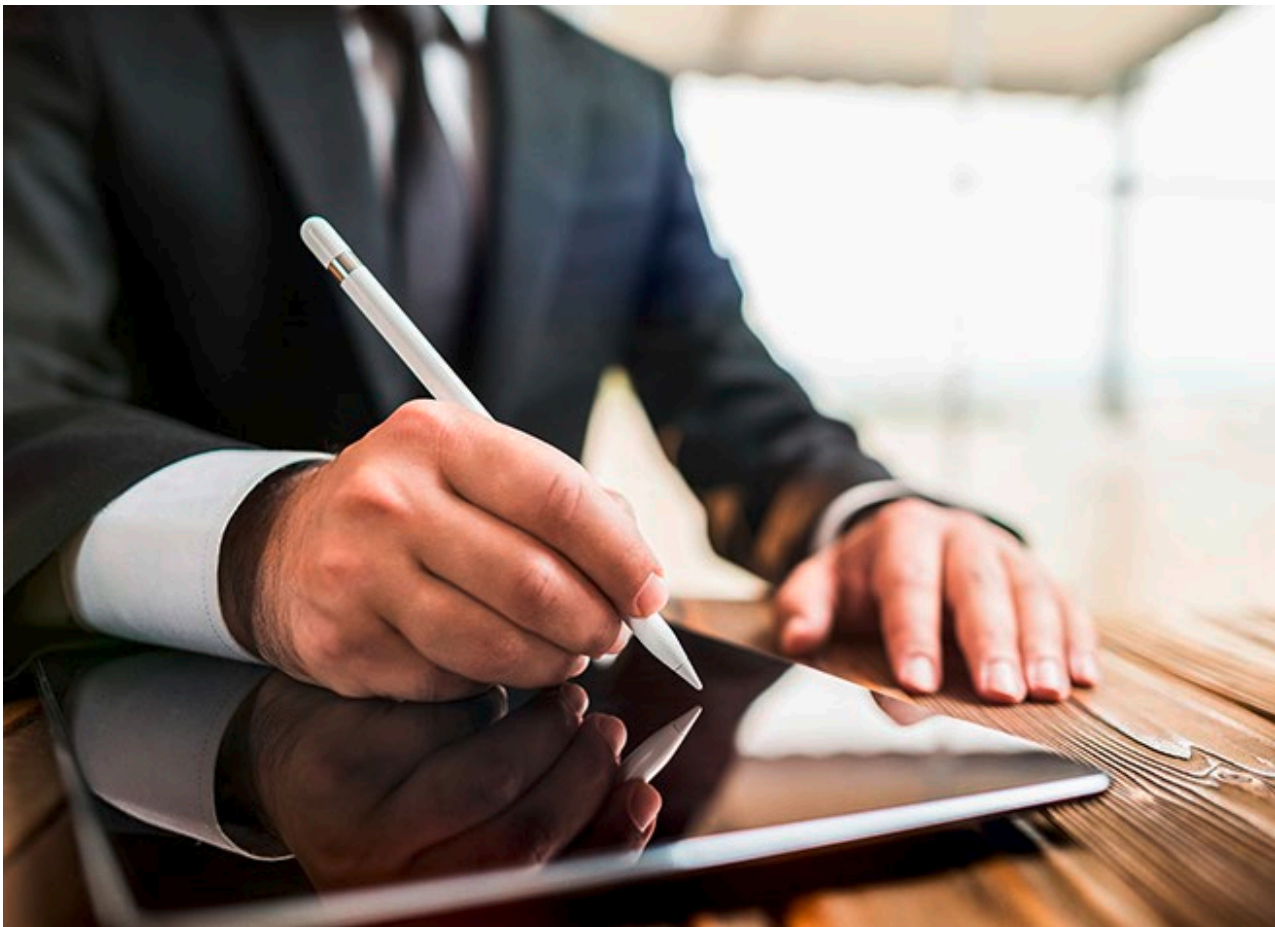
Notary's office

In addition, notarial support by our CMS notary's office is possible at any time.



Notary's office – PMI issues in a nutshell

- Preparation and notarisation of, for example, mergers, intra-group share transfers and changes in company name
- Request for corrections to land register entries and drafting of new lists of shareholders, including submission to the commercial register
- Preparation of necessary changes in the management or in the articles of association of new group companies, including notification for entry in the commercial register



Project management and digital solutions for efficient and successful M&A / PMI processes

Legal project management

- **Project design and step plans**
- **Commercial budget and project monitoring**
- **Visual services and customised tools**
- **Translation services**
- **Central coordination / contact person**



Transactional services

- **Due diligence:** Innovative, digital and resource-efficient approach, support by project lawyers for DD
- **Platform management:** Design, structuring and management of data rooms and collaboration platforms
- **Documents and templates:** Handling, automation, anonymisation of documents and creation of templates
- **Condition manager:** Collaborative handling of transactions



Legal tech tools

- **HighQ:** Data rooms and collaboration platforms for transactions and reorganisations
- **Transaction Manager:** HighQ-based project management platform for efficient and transparent project control, with innovative features and links to other legal tech tools
- **HotDocs:** Contract automation
- **Kira:** Legal data analysis
- **CMS Clause Tool:** Tech-accelerated knowledge management



The benefits of bringing in CMS at an early stage

Deployment of established M&A / PMI teams across all phases ensures that the transaction process runs smoothly from initial preparation through to successful PMI. The earlier you involve our lawyers in your M&A project, the better we can support you around defining the integration objectives, checking them for feasibility and, if necessary, adapting them to the specific circumstances of the national or international transaction.

You can expect the following benefits from early involvement of CMS teams:

- Efficient and smooth development and implementation of integration strategies: your CMS contacts will advise you all the way from due diligence through to completion of integration.
- Continuous validation of the overall strategy and each of the sub-steps through iterative processes: fully integrated workstreams and well-developed feedback mechanisms ensure that any obstacles to integration are identified at an early stage; our teams naturally remain in continuous contact with you.
- Leveraging synergies during the transaction: by involving CMS teams no later than the due diligence stage, the special integration-related challenges and requirements of the deal can be taken into account in a timely manner.

Please feel free to get in touch at any time.



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