



# CFO Summit

EMERGING EUROPE & CIS

8-9 OCTOBER 2008, VIENNA

## M&A: Best Practice

**Matthias Kittler,**  
Head of Legal Services Europe,  
Evonik Industries AG, Vienna, Austria

**Prof. Dr. Jörg Menzer,**  
Managing Partner, Head of the  
Bucharest office, Nörr Stiefenhofer Lutz,  
Bucharest, Romania

**Peter Neubacher,**  
CFO, Euro-Druckservice GmbH (EDS),  
Passau, Germany

**Dr. Christian Pleister,**  
Partner, Nörr Stiefenhofer Lutz,  
Berlin, Germany

# NÖRR STIEFENHOFER LUTZ

RECHTSANWÄLTE STEUERBERATER WIRTSCHAFTSPRÜFER • PARTNERSCHAFT

# Round Table Session

## **M&A/Private Equity: Best Practice**

### **Talking Points**

NÖRR STIEFENHOFER LUTZ

---

## Transaction Structure

---

- Off-Shore v. On-Shore
- Asset Deal v. Share Deal / mixed Asset and Share Deal structure
- Letter of Intent / Term Sheet
- 100% Acquisition v. Joint Ventures

---

## Financing

---

- Acquisition loan available? Timing?
- Mezzanine/PE investment?
- Equity?

---

## Due Diligence

---

- Virtual Data Room?
- Disclosure Levels
- One-Stop Approach?
- Special Structures
- Reliability of Public Registers

---

## Antitrust / other Authority Approvals

---

- Procedures
- Volume of Disclosures
- How to speed up the process
- Laws on Investment Control regarding Strategic Sections

---

## Agreement

---

- Approval of Spouse / Transfer Issues
- Closing Mechanism
- Reps & Warranties / Parent Guarantees
- Holdback
- Non-competition Clauses
- Validity of Shareholders' Agreements

---

## Post M&A

---

- Local Management
- Integration / Accounting Financing

# Best Practice M&A Legal Implications

1st CFO Summit  
Emerging Europe & CIS  
8-9 October 2008, Vienna

**Matthias Kittler**  
Head of Legal Services Europe



**EVONIK**  
INDUSTRIES

## **Case study**

- 1. Transaction structure**
- 2. Due diligence**
- 3. Contract**
- 4. Closing**

# 1. Transaction structure



## Establishing a JV / Acquisition of shares/assets

- 1) Pros and cons
- 2) VAT
- 3) Application/registration procedures (merger filing, business licenses)

## 2. Due diligence



### **Comprehensive business, financial, tax and legal due diligence**

- 1) Contractual situation fits with the business reality?
- 2) A separate compliance due diligence?
- 3) Environmental liabilities?
- 4) Safeguarded by local/regional/state authorities?
- 5) Ownership of assets? Securities?

## 3. Contract



### **Negotiations, drafting, signing procedures**

- 1) Set-up of agreements (SPA, JV foundation, shareholders' agreement, operational agreements)
- 2) Contractual language / notarial deeds ?
- 3) Fiscal law implications, minimum requirements for safeguarding payment flow
- 4) Shareholders agreements
- 5) Minority rights (JV's)
- 6) Access rights

## 4. Closing



### Time critical issues

- 1) Payment flow
- 2) Merger control approval (formalities, specific countries)
- 3) Suggestions for a fast-track closing

- Thank you very much !

## Disclaimer

*This document is solely for information purposes in connection with the lecture held on the 1st CFO Summit Emerging Europe & CIS, 2008, Vienna. This document may not be used for any other purpose and may not be reproduced in any form, further distributed to any other person, passed on, directly or indirectly, to any other person or published, in whole or in part, for any purpose without the prior consent of the author. This document does not purport to be comprehensive or to contain all the information that may be needed in relation to a transaction.*

*Reliance on the information provided in this document hereunder shall not give rise to any cause of action against the author or Evonik or any of its affiliates, nor its respective officers, directors, employees, contractors or agents including, without prejudice to the forgoing generality, causes of action or claims based on negligence or wilful misconduct. Neither the author, Evonik or any of its affiliates or persons connected with them, shall be liable for any direct, indirect, consequential, special, incidental or punitive damages or losses suffered by any person as a result of such person's reliance on any information, or as a result of the omission of any information, provided or not provided in this document or any other information or communication made in connection with this lecture.*