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U.S.-based life sciences companies considering transactions in Europe may easily become overwhelmed with the complexity of Europe's various jurisdictions.

In this series, members of our European Life Sciences Transactions Team provide country-specific perspective and guidance to help you navigate the jurisdictional challenges and differences that you may run into when acquiring a European life sciences company.

In this edition, Lutz Angerer will discuss life sciences transactions in Germany.

W&I-Insurance - Door opener for the German Life sciences market

The Life Sciences market in Europe continues to flourish. The medical devices market alone generates revenues of approximately USD 90bn per year and growth forecasts are promising. An almost 7% CAGR is predicted in the European medical devices market. Naturally, the German Life Sciences market plays a major role in this growth. It is – to name only one example – attractive and popular for its ease of certification procedures which ensures a quick market entry providing a suitable environment for proof-of-marketability-tests for, among other products, medical devices.

Whilst the economic environment is showing promise, obstacles for investment in the German market are being removed due to the rising importance of Warranty & Indemnity Insurance (W&I-Insurance). The underwriting of warranties and indemnities in connection with corporate transactions is quite standard in the US. However, the German Private Equity and M&A market has only relatively recently begun to use this tool in acquisition transactions, however, the number of M&A transactions using W&I-Insurance is growing. According to recent studies, W&I-Insurance is currently used in approximately 20% of German M&A transactions.

W&I-Insurance has not often been used in life sciences M&A transactions in Germany, but this picture is changing and W&I-Insurance is increasingly being used. W&I-Insurance is a tool which bridges the gap between the interests of the seller and the interests of the buyer in the course of strategic acquisitions and can significantly accelerate the timeframe of a transaction. By providing a buy-side W&I-Insurance, the buyer obtains a solvent partner in cases of W&I claims.

Furthermore, a W&I policy can extend the duration or the cap of the warranties, ensure a quick claims settlement or be an alternative to an escrow account. Furthermore, W&I-Insurance also facilitates investments in unfamiliar jurisdictions.

With regard to compliance and regulatory claims, the importance of W&I-Insurance is increasing not only in the U.S. and Europe, but also globally. Approximately 15% of all claims concern the breach of warranties regarding compliance with applicable (regulatory) laws. Intellectual property – another crucial area for life sciences companies – constitutes the source of a considerable amount of claims addressed by W&I-Insurance.

The provision of W&I-Insurance not only bridges the gap between opposite interests in reaching final agreement, but also makes a buyer's offer more attractive in an auction when compared to other potential buyers' offers. W&I-Insurance is becoming so increasingly common; they are becoming a mandatory element of an offer during an auction process.

Insurers are developing the W&I-Insurance market and gaining experience in W&I claims. Policies are evolving from day to day and are providing a window for customized policies which include favorable conditions (e.g. in terms of retention or limitation of liability). Premiums are currently quite low due to the still emerging nature of the W&I-Insurance market and there is an oversupply of insurance policies.

Now is the perfect timing to acquire a German Life Sciences company while covering and facilitating the acquisition with W&I-Insurance cover. However, according to recent studies, the market for W&I-Insurance in Germany is soon to enter a more mature market phase. This is only one good reason for considering an acquisition of a German life sciences company sooner rather than later.

Lutz Angerer is a partner in Hogan Lovells' Munich office. Lutz is Head of the German Corporate/M&A practice group and the German Corporate Compliance Team. He also co-leads the Global Life Sciences Transactions Team and is a member of the firm's Global Life Sciences Leadership Team.

Our European Life Sciences Transactions Team

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