



Bundesverband Deutscher
Kapitalbeteiligungsgesellschaften

Press Releases

Mitigation of the revised German Foreign Trade Act

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The German Government has announced that the planned revision of the German Foreign Trade Act (Außenwirtschaftsgesetz - AWG) will be clearly mitigated. The 'Grand Coalition' of Christian Democratic Union/Christian Social Union (CDU/CSU) and Social Democratic Party (SPD) thus followed a proposal that had been introduced in the legislative process already at an early stage by the German Private Equity and Venture Capital Association (*Bundesverband Deutscher Kapitalbeteiligungsgesellschaften e.V. – BVK*). Pursuant to this proposal, a foreign investor other than from the EU countries or the European Free Trade Area (EFTA) wishing to acquire a German company shall now achieve legal certainty generally within one month. Thus, the procedure runs parallel to the merger control procedure. According to the current wording of the bill, the issuance of a clearance certificate has been merely a discretionary decision and not been subject to any deadlines. The revised text now provides for a legal claim for a clearance certificate in straightforward cases. Furthermore, the certificate will in the future be deemed issued unless examination proceedings are opened within one month of filing the application.

According to the information service of the German Bundestag "*Heute im Bundestag*", a representative of the German Government presented a wording assistance prepared by the Ministry of Economics (*Wirtschaftsministerium*) for the parliamentary groups in the Economic Affairs Committee (*Wirtschaftsausschuss*) on Wednesday. The CDU/CSU parliamentary group spoke of reasonable amendments and protested against the impression that the Act was aimed at keeping investors at bay. The SPD parliamentary group emphasised in particular that the legal claim for the clearance certificate was not only set out in the declaration of the legislative intent of the bill but was now also expressly incorporated into the Act.

The German Private Equity and Venture Capital Association had presented its amendment proposal regarding the revised German Foreign Trade Act in a consultation with the Economic Affairs Committee on 26 January 2009. In this respect, we were supported decisively by Dr. Rainer Traugott of Linklaters, Munich, who is a member of the Association's Working Group Law & Tax (*Arbeitsgruppe Recht & Steuern*). Permira was also represented in the consultation as an expert. Dr. Jörg Rockenhäuser presented the proposal as well. He impressively explained the high significance of an amendment to the revised German Foreign Trade Act for the security of transactions.

The German Private Equity and Venture Capital Association thus managed to achieve transaction security for its members within one month in the case of business acquisitions and sales by or to non-EU foreigners. We have had intense discussions for one year with the Ministry of Economics, the parliamentarians and the Federal Chancellery (*Kanzleramt*) working towards this result. Our commitment has fully paid off. SPD and CDU/CSU intend to give final consideration to the revised bill in the next sitting week already, so that the Act may then pass its Second and Third Readings by the German Bundestag still in the first quarter.