



## **Key points of the legislation concerning the acquisition of German enterprises by foreign investors (Amendment of the German Foreign Trade and Payments Act and the implementing regulation)**

### **1. Scope of application**

The legislation is applicable to investors from outside the EU who wish to acquire 25% or more of the voting rights of a German company. In order to avoid circumvention of the legislation, investors from within the EU may be subject to an examination if a shareholder from a third country holds 25 % or more voting rights of the EU company. Investors from member states of the European Free Trade Association (EFTA) are treated like investors from within the EU. The legislation is not limited to specific sectors or enterprises of a certain size.

### **2. Criteria for limiting an acquisition**

An acquisition may only be restricted or prohibited if it threatens public policy or public security as established by Articles 46 and 58 of the EC Treaty and interpreted by the European Court of Justice. Therefore a restriction or prohibition is only possible in rare and exceptional cases.

### **3. Procedure**

In order to minimize the bureaucratic burden, no formal registration or notice is required. The Federal Ministry of Economics and Technology may itself decide to initiate a review of the investment within three months of the signature of the purchase agreement. Should a review take place, the purchaser must submit all the necessary information concerning the acquisition. The Ministry may subject the acquisition to certain conditions or prohibit the acquisition within two months of receipt of the information. If the Ministry does not take any action within this period of time, the acquisition may not be examined thereafter.

In order to obtain legal certainty as soon as possible, the investor may request a legally binding certificate of non-objection from the Ministry prior to the acquisition, stating that the investment does not constitute a threat to public policy or public security. If the Ministry does not launch a formal review within one month of receiving the investor's application in writing for a certificate of non-objection, the certificate is deemed to have been issued.