

Supervisory board checklist for mergers and takeovers

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The following points are particularly relevant for mergers and takeovers:

- What are the precise restructuring tasks? What is known; what is still open; what is assumed?
- What are the aims and motives behind the merger/takeover, from the employer's point of view?
- Is there a written merger concept? Was this presented to the works council/supervisory board?
- Are there reasons why a merger is necessary?
- Were the aims settled and possible alternatives discussed? What would a "stand alone" alternative mean for the enterprise?
- Feasibility: what must be taken into account during implementation of the planned measures (legal, economic, financial evaluation of the merger/takeover)?
- Has a due diligence audit been made of the takeover? What was the result of this audit?
- How will the deal be financed? Who will bear the burden of the financing?
- What competitive advantages are there at present? What are the strengths and weaknesses of both merger partners? The potential of both merger partners must be examined and evaluated. What will be the effects of the merger/takeover on the core competences of the enterprises concerned? Which areas of business will benefit, which will suffer?
- Where will all this lead? In what markets (country, customers) will the enterprise be active in the future? Where can the combined strengths of the new enterprise best make themselves felt and create something new and exceptional?
- Credibility and clarity should not be left out of account in the conception of a merger. An unrealistic statement on the subject will not obtain the agreement of the employees and will have the result that no one takes it seriously.
- Constant communication: what communications structures are necessary in order to bring off the merger/takeover successfully? What communications structure is suitable for the works council?
- When would the transaction best be carried out? As a result of the need to strengthen the core business or in the case of inherent or market necessities and with consideration of the financial situation?
- What form of collaboration is the most suitable (cooperation, takeover, merger)? This is the question of what form of enterprise collaboration would realise the entrepreneurial aims. Would cooperation in the form of a strategic alliance suffice or is a merger or an equity interest necessary?

- What are the risks of a merger? Who will be affected? What is the likelihood that these risks will in fact be realised?
- How will the merger/takeover be implemented at the enterprise or company-law levels? (New formation, assimilation, up-stream, down-stream, etc.)
- What will be the effects of the planned merger on the organisational unit, the “enterprise”? Will a new enterprise emerge from the merger or will an existing enterprise be “swallowed up” through the merger?
- What synergy effects might be anticipated from the merger? How detailed was the consideration given to the synergy effects? Have they been quantified, too? What must happen in order to make it possible to realise these synergy effects?
- What effects will there be on personnel – particularly in the case of the expected synergy effects? What proportion of the workforce will be winners, what proportion will be losers? Is there a concept concerning what can be done for the losers?
- What rules of procedure must be complied with (for example, preparation of a merger report, required resolutions, etc.)?
- What participation possibilities are there for the works council (participation in the supervisory board, legal possibilities within the framework of the works constitution act, other talks, participation in projects, etc.)?
- Have the labour law effects of the merger been clarified? What will happen with the existing enterprise agreements? Will the collective agreement be replaced?
- How will the structure of the works council change as a result of the merger?