

Leading / Thinking / Performing

Statutory Appraisals

In order to remain competitive, companies must continuously adjust to new market conditions. In this scope, companies are being acquired, disposed and mergers and contributions in kind take place or minority shareholders are indemnified within „Squeeze-Out“- regulations. In all cases, the business enterprise value or the value of non-cash capital contributions plays a pivotal role.

Motives for statutory business enterprise valuation generally involve a change in the corporate and shareholders' structure. The legislator has stipulated plenty of regulations in order to protect the minority shareholder. Emphasis is always placed on the value of the respective company or the company shares. For these appraisal motives, in Germany, one must consider especially the IDW S1 standard „Principles for the execution of business valuations“ and, if necessary, the IDW accounting comment IDW RS HFA 10.

Squeeze-Out

In case a company owns a minimum of 95% of all shares as the main shareholder, any share of a company can be paid out to the minority shareholders pursuant to §§ 327a - b German AktG, under consideration of an adequate cash compensation (Squeeze-Out). The basis for the determination of the amount of the cash compensation results from the valuation of the company.

Acquisition of a company

If a company intends to take over the majority of a listed company, conditions as laid down under § 1 German WpÜG apply and a public tender offer must be submitted. The tender offer is generally based on a business valuation.

Domination and profit and loss transfer agreement

If a company owns more than 75% of another company after an acquisition, there is the possibility to conclude a domination and a profit and loss transfer agreement in order to accelerate the integration into the company group. In compliance with the Companies Act (§§ 304, 305 German AktG), the minority shareholders should be offered adequate cash and equalization compensation. Both the cash and the equalization compensation are to be derived from a business enterprise valuation.

Mergers

In case a group structure is planned for a merger pursuant to §§ 2-122 German UmwG, the exchange ratio must be determined on the basis of two company evaluations. Further, cash compensation must be offered to those shareholders who objected to the merger resolution. The cash compensation should be based on a business enterprise valuation.





Demerger

In the scope of a planned demerger of a company unit, the exchange ratio of the shares and the amount of additional cash compensation (§ 126 I Nr. 3 German UmwG) need to be established on the basis of a business enterprise valuation.

Change of legal structure

When a change of legal structure is planned for strategic reasons, any shareholder who objected to the resolution authorization transformation must be offered a cash compensation pursuant to §§ 194 I Nr. 6 and 207 German UmwG.

Capital increase in return for contribution in kind

Capital increase in return for contribution in kind is effected either in form of company contributions or other non-cash contributions.

In case the increase of authorized capital respectively the nominal capital is planned through contribution of a company or company shares, in this connection the increase of shareholder's equity cannot be left behind the value of the capital increase. In order to determine this, auditors appointed by the courts consider business valuations.

In case the contribution in kind is the result of contribution of single assets, this requires the special expertise in the areas of real estate and machinery & equipment valuation. American Appraisal has a team of professionals with long experience in both areas, real estate and machinery & equipment valuation.



How American Appraisal can assist you

American Appraisal is the leading worldwide independent valuation firm. Our global network enables us to advise global players, leading medium-sized businesses and strongly growing technology companies in a professional way. In any of the above-mentioned cases, we assist you in form of a neutral expert or consultant.

We especially offer you:

- Objective business enterprise valuations
- Qualified real estate and machinery & equipment valuations
- Determination of adequate cash compensation
- Determination of fair indemnification payments
- Assistance in general meetings of shareholders
- Support for market price indications for tenders
- Negotiation with major shareholders
- Discussions with auditors appointed by court

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