

RESTRICTIONS ON MEDICAL CARE CENTRES (MVZ) IN GERMANY – NEW HURDLES FOR GERMAN HEALTHCARE INVESTMENTS?

On 23 November 2018, the Federal Council of Germany (*Bundesrat*), the representative body of the federal states (*Länder*) in the federal legislative process, commented on a draft bill¹ which proposes profound changes to the regulation of medical care centres (*Medizinische Versorgungszentren*, "MVZ"). MVZs are often used as platforms for financial investments into the German healthcare sector. The implementation of the Council's amendments would lead to significant restrictions on MVZ structures which are based on hospital ownership.

SEVERE RESTRICTIONS ON HOSPITAL-BASED MVZ

The core of the Federal Council's statement relates to the ability of authorised hospitals to establish MVZs. Under the current legal framework, any authorised hospital can establish MVZs with no limitation on any specific medical specialisation or geographical expansion. As a result, hospitals have regularly been used as investment vehicles allowing investors to set up MVZ structures for a wide range of medical specialisations across Germany. The preparation and resolution of the draft bill adopted by the German government on 26 September 2018 had already been accompanied by lobbying from some stakeholders in the healthcare market: some voices pushed for far-reaching constraints aimed at limiting investor activity in the healthcare sector, in an apparent attempt to curb competition from highly specialised and efficient healthcare providers funded by such investors. The Federal Council's proposal seems to reflect this line of reasoning, with the aim of preventing monopolisation in the area of medical care in order to avoid the alleged risk of reducing access to healthcare, especially in underserved regions.

In rejecting the draft bill's original concept to limit only the ability of providers of dialysis services to establish MVZs in a different area of medical specialisation, the Federal Council has instead sought further restrictions on authorised hospitals. First, the authorised hospital should only be able to establish MVZs in its own geographical area. This would considerably limit the

Key issues

- The German Federal Council has called for far-reaching restrictions on the ability of hospitals to establish medical care centres (MVZs).
- Hospitals would only be entitled to establish MVZs within the same geographical area and the same area of medical specialisation.
- If these proposals were to become law, investments into MVZ structures by private equity investors and healthcare companies could become less attractive.
- The law would provide for grandfathering rules for existing MVZs, but exit cases for existing MVZ structures might be adversely affected.
- The draft bill is likely to undergo further modification during the next steps in the legislative process.

¹ The "Law for Earlier Doctor's Appointments and Better Medical Care" (*Gesetz für schnellere Termine und bessere Versorgung; TSVG*)

potential of MVZ structures for geographical expansion and complicate supra-regional and nationwide buy-and-build strategies. Second, hospitals would only be allowed to establish and operate MVZs in their specific areas of medical specialisation. Since authorised hospitals used as a platform to set up versatile MVZ structures are usually not characterised by a broad range of medical specialisations, this constraint would make investments in versatile MVZ structures more difficult and costly – and potentially unattractive.

If the Federal Council's proposals were to become law then existing MVZ structures would enjoy grandfathering. However, this would only apply to the current status of such MVZ structures, i.e. a further expansion of existing MVZ structures would be restricted. The possibility of acquiring existing MVZ platforms would continue, but the selling investor's exit case could become less attractive due to the constraints for further growth under the new rules.

AVOIDING MARKET-DOMINANT POSITIONS

In addition to this specific proposal, the Federal Council has also proposed to take further measures against monopolisation in the healthcare sector to ensure nationwide access to the healthcare service. The Federal Council has not made any specific proposals for future measures so far. How these could look in practice therefore remains unclear, but the tendency appears to be that the growth of healthcare provider chains is to be restricted: this has the potential to affect the organic growth of such chains, and not just growth through acquisitions. If this were to become law, buy-and-build strategies in this sector could face additional restrictions and thus become less attractive (beyond the "normal" antitrust barriers against monopolies).

NEXT STEPS IN THE LEGISLATIVE PROCESS

Following its recent consultation in the Federal Council, the German government will soon publish a statement addressing the Federal Council's proposals. Thereafter, readings and discussions in the German parliament will follow, including a hearing of interested parties before the healthcare committee of the German Federal Parliament (most likely at the end of January 2019) as well as another consultation by the Federal Council (expected for March 2019). These steps in the legislative procedure could lead to further adjustments to the draft bill, in particular with respect to the Federal Council's tightening proposals.

Against the backdrop of these developments, and since the specific scope of the changes to the current regulations are far from clear, investors would be well advised to closely monitor developments and the public discussions which will ensue.

CONTACTS



Peter Dieners
Partner, Co-Head – Global
Healthcare, Life Sciences &
Chemicals

T +49 211 4355 5468
E peter.dieners
@cliffordchance.com



Frederik Mühl
Partner, Corporate
Private Equity

T +49 69 7199 1743
E frederik.muehl
@cliffordchance.com



Carolin Kemmner
Senior Associate, Corporate
Healthcare

T +49 211 4355 5488
E carolin.kemmner
@cliffordchance.com

Diese Publikation dient der allgemeinen Information und ersetzt nicht die Beratung im Einzelfall. Wenn Sie Fragen haben oder weitere Informationen wünschen, wenden Sie sich bitte an die Autoren oder Ihren üblichen Ansprechpartner bei Clifford Chance.

www.cliffordchance.com

Clifford Chance, Königsallee 59, 40215
Düsseldorf

© Clifford Chance 2018

Clifford Chance Deutschland LLP ist eine Limited Liability Partnership mit Sitz in 10 Upper Bank Street, London E14 5JJ, registriert in England und Wales unter OC393460. Die Gesellschaft ist mit einer Zweigniederlassung im Partnerschaftsregister des Amtsgerichts Frankfurt am Main unter PR 2189 eingetragen.

Die nach § 5 TMG und §§ 2, 3 DL-InfoV vorgeschriebenen Informationen finden Sie unter: www.cliffordchance.com/deuregulatory

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.