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Table Moderators

Roundtable “Challenges of Public Cloud”



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Privacy and other challenges

- Compliance & regulatory risks
 - o GDPR compliance, especially with regards to US service providers
 - o Regulations on IT outsourcing and IT security (especially critical infrastructure and finance)
 - o Regulations caused by data categories (social data, health data, government data)
- Access risks caused by foreign legal situations and company structures (FISA & CLOUD-Act)
 - o German data protection authorities: Case-by-case assessment necessary

Privacy and other challenges (cont.)

- Loss of data & data availability:
 - o Restrictions by service provider
 - o Technical issues regarding connectivity (e.g. Azure failure in January 2023)
 - o Resulting in risks for business continuity
- Unauthorized access by
 - o Service Provider
 - o Unauthorized third parties
 - o Government institutions
- Trending Solution: *Sovereign Cloud*

M&A Issues

- What are we buying:
 - o Company owning cloud infrastructure
 - o Company providing cloud services
 - o Company using cloud infrastructure / services
- Should Due Diligence focus be different in each case? (importance of understanding the business in depth)
- Access to data for DD purposes permitted?
- Specific R&Ws and indemnities needed?

M&A Issues (cont.)

- Share deal vs Asset deal. Any relevant differences (e.g., data subject consents, permits/licenses, other)?
- Cybersecurity
 - o Types of risks (claims from data subjects, authorities and reputational damages).
 - o Is W&I insurance available in M&A deals on cloud companies?
Cybersecurity exclusions?
 - o Specific cybersecurity insurance policies available?
- FDI control on M&A deals
- Current developments in Germany regarding cloud business (e.g. Joint Venture SAP/Microsoft, partnership between Google & T-Systems)



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