

PRESS RELEASE

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Page 1 of 3

Subject On 14 May, CMS Reich-Rohrwig Hainz hosted a panel discussion on M&A

**CMS Reich-Rohrwig Hainz
Rechtsanwälte GmbH**

Gauermanngasse 2
1010 Vienna
Austria

T +43 1 40443-4000
F +43 1 40443-94000
E presse@cms-rrh.com
www.cms-rrh.com

What Role Does Corporate Compliance Play in M&A Transactions? CMS Offered Answers to This and Other Questions at a High-Profile Panel Discussion

While 2013 was marked by a slight decline in the global M&A market and the transaction value of all deals dropped by 3 percent compared to the previous year, CMS sees signs that activities will significantly increase again in 2014. But for 60 guests, this was not the only reason to attend the panel discussion hosted by CMS Reich-Rohrwig Hainz and get an insider's view on corporate compliance in M&A transactions. After all, the increasing number of regulations was only one of many topics discussed.

What are current trends in contract design, especially with regard to risk allocation between buyer and seller? When do managing directors, executive and supervisory board members have to assume liability in M&A transactions? Or in other words: which rules or minimum standards have to be observed to prevent liability? These are some of the questions discussed by **Rudolf Jettmar**, head of the **Austrian Financial Reporting Enforcement Panel**, **Günter Ofner**, board member and CFO of **Flughafen Wien AG**, **Marc-Steffen Hennerkes**, Managing Partner **Lead Equities**, and Peter Huber, Managing Partner CMS Reich-Rohrwig Hainz.

Host Peter Huber was unambiguous about liability risks for managers, "If a person violates explicit legal stipulations and prohibitions, fails to disclose a conflict of interest or to obtain an adequate basis of information in the course of an M&A transaction, he is not protected by the business judgement rule, but is personally liable for his actions." Furthermore, board members, managing directors and members of supervisory boards have faced increasingly strict laws regarding criminal embezzlement, as only recently shown by the decision in the Libro case rendered by the Austrian Supreme Court. A person who grossly overpays or knowingly assumes responsibility for unusual risks in an M&A transaction might not only face civil liability charges but also criminal prosecution.

Moreover, the audience learned about the results of the most recent CMS European M&A Study, which was also presented at this CMS event. Among other things, the study shows that regional differences in deal structures still remain across Europe. Central and Eastern Europe, for instance, usually sees the most MAC (material adverse change) clauses, which allocate the risk of adverse changes occurring

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between the conclusion of the deal and the transfer of the company to the seller. France has the lowest liability caps for warranty claims of the buyer, but warranty periods are much longer than in other European countries. De minimis and basket provisions for warranty claims, which aim to prevent inefficient claims for small and minuscule sums, are, for instance, standard in the UK. Present throughout Europe, where it has permeated all major markets, CMS has continuously identified relevant developments in the European market and provides the study results to clients every year.

About the CMS European M&A Study 2014

The M&A study, which was only recently published, was already conducted for the sixth time and offers an insight into legal regulations applying to merger and takeover contracts. The analysis has so far covered 2,068 M&A contracts of non-listed European companies that were concluded between 2007 and 2013. In 2013 alone, CMS conducted 344 transactions. This constitutes a small increase compared to 2012 – in contrast to the globally declining M&A market, where especially in Europe the transaction value dropped by 12 percent compared to the previous year. The contract data aggregated in the study are not publicly available and are based on transactions in which CMS acted as an advisor to either the buyer or the seller.

A selection of pictures from the event is available for free download at <http://sites.cms-rrh.com/downloads/events/140514/presse/index.html>

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Contact:

Mag. Kristijana Lastro

Head of Marketing & Communications

T +43 1 40443 4000

E kristijana.lastro@cms-rrh.com



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