

PRESS RELEASE

**CMS Reich-Rohrwig Hainz
Rechtsanwälte GmbH**
Gauermannngasse 2
1010 Vienna
Austria

cms.law

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Subject **Alliancing Contracts as an Alternative Contract Model?**

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

Construction and infrastructure projects: CMS supports the “forging of alliances”

So-called alliancing contracts, which focus on a cooperative contract design and an equally cooperative project execution, are still extremely rare in Austria. This alternative contract model offers many advantages, especially for complex construction and infrastructure projects, as experience in other countries has shown. Last week, the great untapped potential of alliancing contracts was examined and discussed in detail at a CMS Business Breakfast in the "Managing Complexity" series.

The increasing complexity of construction and infrastructure projects means that delays, additional costs and excessive numbers of claims are often inevitable. Conventional construction contracts lack the means and incentives to encourage the contracting parties to meet such challenges cooperatively. Creatively substantiating claims is rewarded, but solving problems is not. That is why new approaches and models are required – “even if this involves a complete paradigm shift”, as Nikolaus Weselik, Partner at CMS Vienna, highlights right at the beginning of the event as an essential characteristic of the alliancing contract. “Leaving behind the typical recriminations of the past and instead solving problems jointly and in partnership by bundling competencies definitely constitutes a novel approach in the construction industry and infrastructure,” Weselik says.

The high-calibre panel, comprising representatives from ASFINAG, Flughafen Wien, ÖBB Infrastruktur, PORR, STRABAG, TIWAG-Tiroler Wasserkraft, iC consulenten Ziviltechniker and Arcadis Germany, also agreed that a cultural shift was necessary to foster acceptance of alliancing contracts, and that such a change had not yet occurred in Austria, with a few exceptions. However, the CMS Business Breakfast also emphasised that there is ever more movement in the matter, with both clients and contractors showing more interest in and openness to the promising model of alliancing contracts. Despite starting from different positions, this is reason enough to discuss the topic. Especially since, according to CMS experts, it seems likely that any legal hurdles under Austrian law can be cleared.

Proven alternative based on the Australian model

Alliancing contracts were pioneered in Australia and New Zealand, where around one third of all civil engineering and infrastructure projects are already being tendered as alliancing contracts. In Europe, the UK and Finland adopted this partnership-based contract model very early. But, as Oliver Bartz from the planning and consulting firm Arcadis reported, a wide variety of projects in Germany – from a conference hotel to a district development project and to a port project – have enjoyed extremely positive experience with models of this kind.

One reason why experts believe that the development towards more alliancing contracts could still take some time in Austria is – from an organisational point of view – the existing culture of contract management. Employees and managers responsible for construction and infrastructure projects are focused on completely different things than cooperative project implementation.

With appropriate legal advice, it will also become possible to tender alliancing contracts in conformity with the Federal Procurement Act.

With combined forces

Anyone contemplating the use of alliancing contracts, does so mainly because of their obvious advantages. According to Thomas Hamerl, partner at CMS Vienna, the advantages stem not just from the joint risk-bearing of a project, but also "from a leaner organisational structure, a significant reduction of planning errors through the early involvement of executing companies into the design, the participation of all parties in the project's success and a unique style of conflict management." So, the option of going to courts is usually precluded – except in extraordinary, contractually specified cases – and replaced with mechanisms to resolve problems alternatively.

CMS Tool 4 Alliancing

Companies working within the framework of alliance agreements increasingly require legal advice on the award and scope of services, the legal definition of project requirements and key result areas, the legal design of remuneration models and the contractual regulation of the conflict resolution process. Public clients need new solutions to ensure they act in compliance with public procurement law, emphasises Thomas Hamerl. With the *CMS Tool 4 Alliancing*, these consulting services can be accessed either as a complete package or separately by booking individual modules.

A picture of the panel of prominent representatives for use free of charge is available [here](#).

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Contact:

Kristijana Lastro

Head of Marketing & Communications

T +43 1 40443 4000

E kristijana.lastro@cms-rrh.com

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