



Liability of managing director due to erroneous information in share deal - M&A

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: A so-called share deal involves the purchase of company shares. The buyer of company shares generally has an interest in receiving guarantees for individual or all information provided by a seller. The objective here is to minimise the risk which is associated with a share deal. However, if the transferor is a shareholder who is not involved in the management of the company, then the potential buyer is in most cases only able to receive the information from management itself.

According to the German Act on Limited Liability Companies (GmbHGesetz), the managing directors must clarify all relevant information to the shareholders of the limited liability company, since they generally have the required legitimate interest in the information in question. Failing this, it is not readily possible for the shareholder requesting information to estimate the warranty risk for the sale of shares or determine the price for his share in the business.

For the purposes of information disclosure, management does not have to give any guarantees if it could thereby be rendered personally liable. However, it can be instructed by the shareholders' meeting to issue to the potential buyer the necessary information, yet this does not have any binding effect.

The question of liability could cause problems in cases where management provides erroneous information, as the seller of the shares is liable to the purchaser for false and incomplete information. Since the company is the obligor with respect to the right to information, the managing directors are not personally liable for erroneous information; rather, there arises a claim for damages on the part of the shareholder against the entire company, which can in turn make a claim on the relevant managing director(s). Yet damages against the company will ultimately only be approved if the transferring shareholder is in fact claimed against and he then takes action against the company.

Furthermore, determining the scope of the respective damages claims is problematic. In case of doubt, it is therefore advisable to draw on legal assistance.

A lawyer experienced in tort and corporate law, as well as in the field of M&A, shall assess on a case-by-case basis whether and in what amount damages claims exist where appropriate. In addition, he can help assert and enforce possible claims.

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Anlage: Bild

