



Your World First

C'M'S'

Law . Tax

# CMS European Real Estate Deal Point Study 2018

October 2018

# Table of contents

Real Estate Investment		Limits on liability	24
Market 2017/2018	3	<i>De minimis</i> clauses	24
Summary	4	Basket clauses	27
Overview of 2017 results	5	Liability caps	29
Asset classes	8	Exclusion of liability in the event of knowledge	32
Contract partners	11	Methodology	34
Purchase price	13	Client-focused thought leadership initiatives	35
Purchase price adjustment	13	About CMS Real Estate	36
Payment protection	15	Contacts	37
Warranty and guarantees	17	Where can I find CMS?	38
Warranty provisions	17		
Objective and subjective guarantees	18		
Reference date for warranties	19		
Limitation periods (existing buildings)	21		
Security for warranty claims	22		

## Disclaimer

The results of the study and/or this report and the conclusions presented therein do not necessarily reflect the views of the lawyers or employees of CMS Hasche Sigle involved in preparing the study and/or this report. A total of 1,377 real estate transactions were evaluated for the study and/or this report. There are inevitably many differences between the individual agreements and the clauses they contain. Individual provisions were categorised in order to allow the results to be compared, a process that required a degree of subjective discretion. Although certain trends can be identified in the study and/or this report, each transaction exhibits individual features that have not been included or referred to in the study and/or this report. As a result, the conclusions of the study and/or this report are subject to a number of important reservations that are not expressly disclosed in the study and/or this report.

Reliance on this study and/or this report is at the user's own risk. CMS Hasche Sigle and its lawyers cannot accept any liability that may result from such action.

Copyright in the study and/or this report is held by CMS Hasche Sigle. Any sharing or publication of the study and/or this report requires the written consent of CMS Hasche Sigle. The study and/or this report are protected by copyright and may only be used for personal purposes. Any reproduction, distribution or other use of the study and/or this report in whole or in part (e.g. on the Internet) requires the prior written consent of CMS Hasche Sigle. If the results of the study and/or this report are used with the prior written consent of CMS Hasche Sigle, CMS Hasche Sigle must be identified as the author.

Use and sharing of this study and/or this report are subject to German law.  
The place of jurisdiction is Berlin, Germany.

# Real Estate Investment Market

## 2017 / 2018

The European investment market once again had a very strong year. At EUR 234 bn, total investment volume was only 3% below the record level seen in 2015. This figure also represents an increase of 7% year-on-year.

In addition to the ongoing lack of alternative investment opportunities, along with favourable financing conditions, the positive economic environment in Europe was the primary reason behind the high demand for real estate investment. Falling unemployment figures, buoyant consumer sentiment and rising GDP boosted confidence in 2017, particularly among international investors, and drove up their investment activity. Despite the uncertain outcome of the ongoing EU exit negotiations, the UK also remained attractive for investors.

Limited supply acted as a constraint, however. The resulting further increase in real estate prices has led to historically low yields in some cases. Rather than causing investors to abandon the real estate market, the focus has switched to specialist properties which offer higher yields than traditional office and retail assets. In particular, healthcare facilities, hotels and student apartments have all come to the fore. The existing excess demand also triggered a significant rise in the number of transactions involving development projects.

The consistently positive trend has continued in 2018. The latest figures from the first half of the year support the view that despite the trade dispute with the US and a possible end to low interest rates, a downturn in the European investment market is unlikely this year. The confidence of investors in real estate as an investment remains intact.

The new CMS European Real Estate Deal Point Study 2018 now includes more than 1,300 transactions. Compiling the study involved comparing the transactions on which we advised in the period 2010 to 2017, enabling us to highlight developments and trends.

We hope that you will find our study helpful in your work in the real estate investment sector. Any feedback is very welcome.



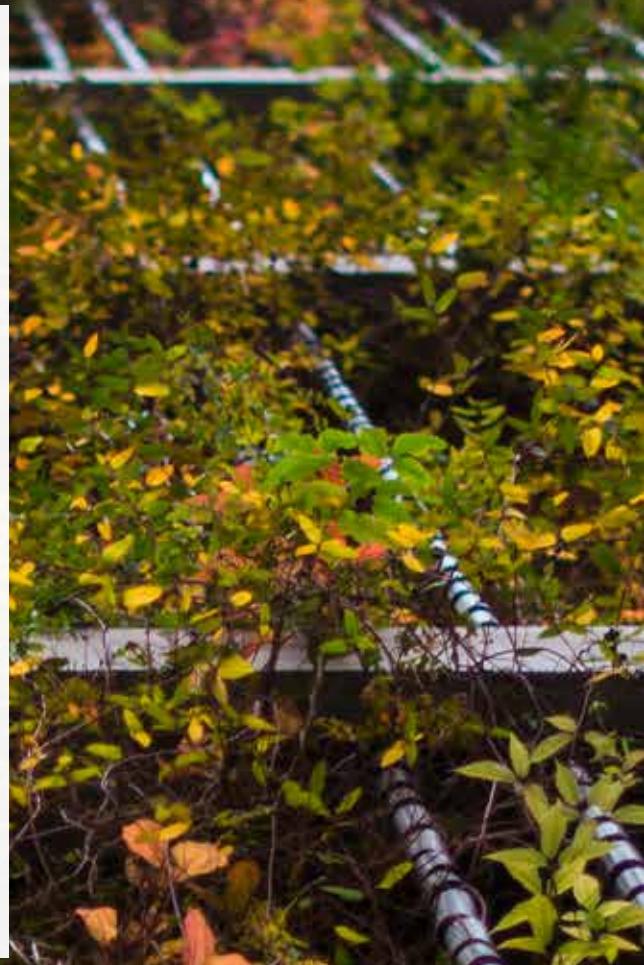
A handwritten signature in blue ink that reads "Volker Zerr".

Dr. Volker Zerr, MRICS  
Partner

# About CMS

## Real Estate

With the largest commercial real estate team in Europe and one of the biggest worldwide, CMS is well positioned to help investors, funders, developers, landlords and occupiers navigate all aspects of the real estate market and maximise their assets. Whatever the size and scope of your project or deal, with almost 800 Real Estate lawyers in 41 countries we have the resources to meet your needs quickly and efficiently, offering deep local expertise. We have been active in real estate in our markets for decades, so we understand the culture, the economic context, the local legal context and the history.



# Contacts

## CMS Austria

**Dr Johannes Hysek, MRICS**

**T** +43 1 40443 3250

**E** johannes.hysek@cms-rrh.com

---

## CMS Belgium

**Bruno Duquesne**

**T** +32 2 74369 40

**E** bruno.duquesne@cms-db.com

---

## CMS Bulgaria

**Jenia Dimitrova**

**T** +359 2 92199 10

**E** jenia.dimitrova@cms-cmno.com

---

## Antonia Kehayova

**T** +359 2 447 1322

**E** antonia.kehayova@cms-rrh.com

---

## CMS Croatia

## CMS Serbia

**Gregor Famira**

**T** +385 1 4825 600

**E** gregor.famira@cms-rrh.com

---

## CMS Czech Republic

**Lukáš Hejduk**

**T** +420 2 96798 892

**E** lukas.hejduk@cms-cmno.com

---

## CMS France

**Aline Divo**

**T** +33 1 4738 5695

**E** aline.divo@cms-fl.com

---

## CMS Germany

**Dr Volker Zerr, MRICS**

**T** +49 711 9764 160

**E** volker.zerr@cms-hs.com

---

## CMS Hungary

**Gábor Czike**

**T** +36 1 48348 19

**E** gabor.czike@cms-cmno.com

---

## CMS The Netherlands

**Arnout Scholten**

**T** +31 20 3016 472

**E** arnout.scholten@cms-dsb.com

---

## CMS Poland

**Wojciech Koczara**

**T** +48 22 520 5583

**E** wojciech.koczara@cms-cmno.com

---

## CMS Spain

**Álvaro Otero**

**T** +34 91 4520 013

**E** alvaro.oter0@cms-asl.com

---

## CMS Switzerland

**Dr Stefan Gerster, LL.M., MRICS**

**T** +41 44 285 11 11

**E** stefan.gerster@cms-vep.com

---

## CMS United Kingdom

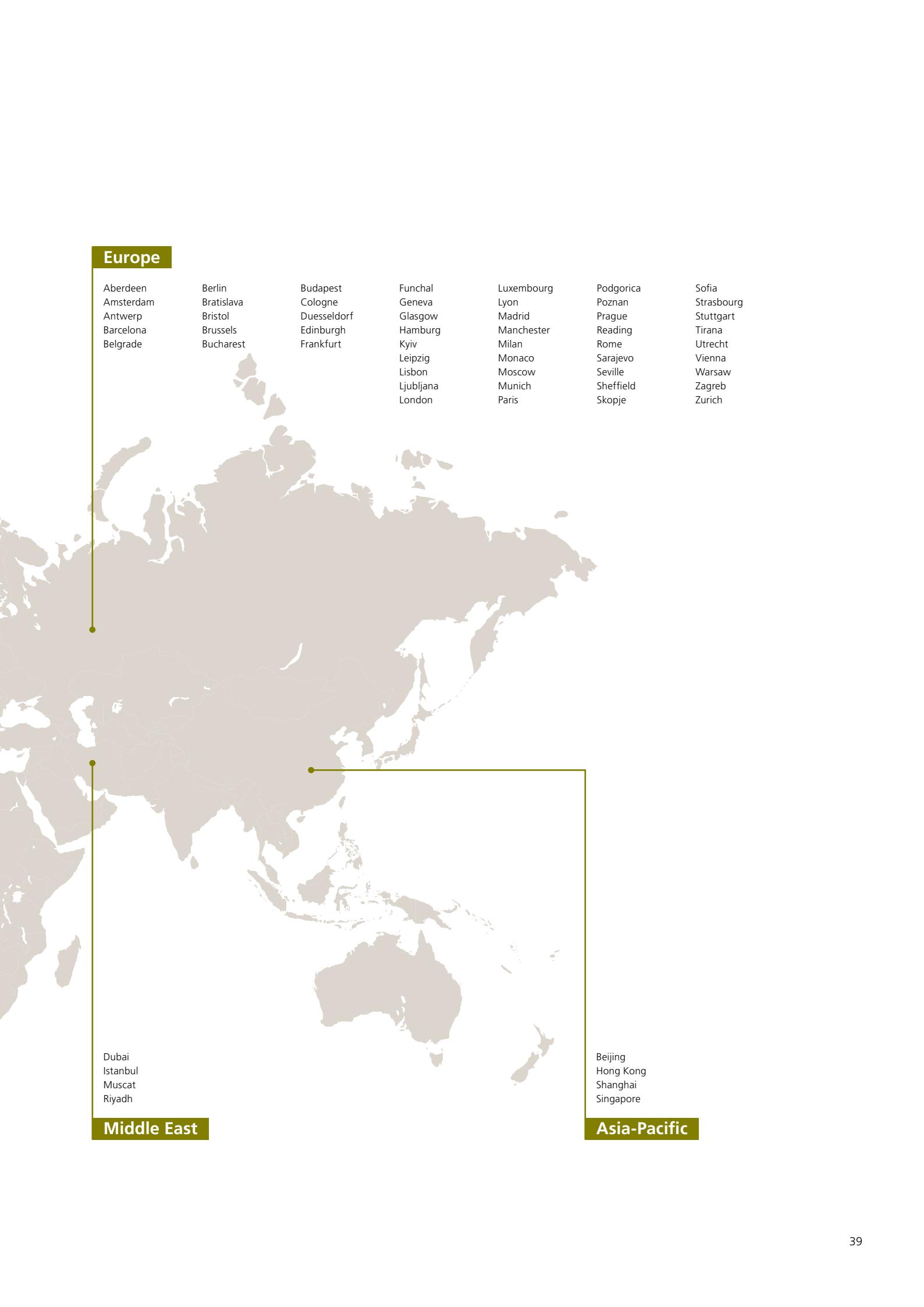
**Pranai Karia**

**T** +44 20 7367 2742

**E** pranai.karia@cms-cmno.com

# Where can I find CMS?







Law.Tax

**Your free online legal information service.**

A subscription service for legal articles on a variety of topics delivered by email.  
[cms-lawnow.com](http://cms-lawnow.com)



Law.Tax

**Your expert legal publications online.**

In-depth international legal research and insights that can be personalised.  
[eguides.cmslegal.com](http://eguides.cmslegal.com)

---

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

**CMS locations:**

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Monaco, Moscow, Munich, Muscat, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Riyadh, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

---

**cms.law**