

PRESS RELEASE

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Real estate investment markets remain stable whilst buyers continue to catch up in contractual risk allocation

- *Logistics assets more popular than ever*
- *Demand from international investors reaches record high accounting for 55% of deals, with most international investors still being from within Europe*
- *Increased desire for security on the part of sellers continued to be a feature in 2021: share of transactions in which the buyer's payment obligations are secured reaches another record high*
- *Buyer-friendly trend in contractual risk allocation continues as seller-friendly provisions on limitation of liability continue to decline*

Stuttgart – The European real estate investment market appears to have largely recovered from the consequences of the COVID-19 pandemic in 2021. Compared to the pandemic-stricken previous year, total investment increased by around 15% to approximately EUR 270 billion, marking a return to the pre-crisis level.

Logistics assets performed particularly well last year, having become the focus of investors' attention due to their stable income flows and the ongoing growth of online shopping. Demand from international investors was also up again in 2021, with intra-European transactions being the rule. 2021 also brought a new record high in the number of transactions in which the buyer's payment obligations were secured. With regard to contract design, the buyer-friendly trend continued, as reflected especially by a decrease in de minimis and basket clauses as well as caps.

These are the key findings of the CMS European Real Estate Deal Point Study 2022. For the latest edition of this survey on the European real estate transaction market, international commercial law firm CMS systematically assessed and evaluated more than 2,200 real estate agreements on which it advised in countries across Europe from the beginning of 2010 to the end of 2021. Transactions are categorised as either “office”, “retail”, “logistics”, “residential” or “other”.

“European investment volumes remained strong in 2021. This was due partly to the ongoing good credit terms and partly to the continuing lack of alternative sources of return. Inflation, which continued to

rise in 2021, also had an impact on the performance of the real estate market and brought increased pressure of capital inflows for investors,” explained Dr Volker Zerr, a partner in the Real Estate & Public division at CMS Germany. “The direction of real estate investment in 2022 remains to be seen, not least due to the war in Ukraine,” continued Zerr.

Logistics assets more popular than ever

Office properties were a popular asset class in 2021 despite all the uncertainty surrounding the COVID-19 pandemic, although some market share was lost to logistics and residential. The slight downward trend in office transactions handled by CMS seen in previous years nonetheless continued, with their share declining from 30% in 2020 to 19%. The reason for the declining proportion of transactions in the office segment is likely to be two-fold, combining the lack of available core properties and the current uncertainty around the impact of hybrid ways of working on demand for office space.

The residential and logistics asset classes on the other hand were especially popular in 2021, each with a market share of 23%, compared to 22% and 19% respectively in 2020. One of the key factors for this trend was the stable income generated by residential and logistics properties, which is particularly attractive to investors. Logistics assets additionally benefited from the ongoing growth of online shopping, which was boosted recently by the COVID-19 pandemic and the related closure of retail shops, leading to an increased need for delivery and distribution centres.

High demand from international, mostly intra-European, investors

International investors were more active again last year: they accounted for 55% of deals in 2021, compared to 43% in 2020. In 2020, international investors had a difficult time, not least due to the impact of the COVID-19 pandemic. The associated travel restrictions meant that many international investors from other continents were forced to postpone their planned transactions. The property market seems to have recovered from these effects last year, with a new record 55% of transactions involving foreign investors. However, these foreign investors were mostly from within Europe; the number of intercontinental transactions remained below pre-pandemic levels in 2021.

Sellers seek security

An increased desire for security on the part of sellers continued to be a feature in 2021. The share of transactions in which steps were taken to ensure that the buyer met its financial obligations rose further in 2021. Sellers were granted security in more than two thirds of cases (70%). This trend is consistent with 2020, when an increased desire for security on the part of sellers was already apparent. In contrast, security was agreed in less than 50% of all transactions in the period from 2015 to 2018. The current high level is due in part to an increased desire for security on the part of sellers as a result of the COVID-19 pandemic; they were often uncertain about the buyer’s solvency going forward.

Buyers continue to catch up in contractual risk allocation

Buyers were able to catch up further in terms of contractual risk allocation. The proportion of transactions with seller-friendly de minimis clauses and basket clauses (i.e. clauses that provide for a threshold or minimum limit for guarantee claims by the buyer) stagnated or declined somewhat compared with the preceding years. In the previous year, after a noticeable decline, agreements aimed at limiting liability were made in 44% (de minimis clauses) and 41% (basket clauses) of cases. The share of deals with a basket clause fell further to 32% in 2021. As in 2020, a de minimis clause was included in 44% of the transactions analysed. A similar trend was seen in contractually-agreed liability caps.

Whilst the proportion of transactions with a cap was well over 60% in some cases in the years up to 2018, the percentage of agreements with a contractually-agreed maximum liability fell slightly from 56% in 2020 to 50%. CMS partner Zerr explains: *“The downward trend in agreements aimed at limiting liability shows that buyers have been able to prevail more often than in the previous years. The trend towards increasingly seller-friendly provisions thus seems to have been disrupted.”*

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Notes to editors:

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