PRESS RELEASE

CMS Hasche Sigle
Partnerschaft von Rechtsanwälten
und Steuerberatern mbB

Arndt Hellmann
Head of Public & Media Relations
Lennéstraße 7
10785 Berlin

T +49 30 20360 1208
F +49 30 20360 1299
E arndt.hellmann@cms-hs.com
www.cms-hs.com

Date	5 October 2015
Page	1 of 3
Subject	CMS European Real Estate Deal Point Study 2015

CMS European Real Estate Deal Point Study 2015:

European property market sees continuing trend towards seller-friendly contract clauses

Stuttgart – The upturn in the European real estate transactions market is continuing. After the lows of 2008 and 2009, a steady increase in the importance of portfolio transactions and a significant downward trend in retail property have been features of the past five years. The market is also seeing more international investors, with the lowest proportion to be found in the German-speaking countries. There are strong signs that the European market is becoming more seller-friendly overall. For its CMS European Real Estate Deal Point Study 2015, international law firm CMS analysed contract clauses relating to 675 real estate transactions it advised on in 13 countries, making it possible to identify regional differences and trends. The study evaluated transactions in a pan-European context and comes after four previous CMS Real Estate Deal Point Studies which focused on the German property market.

“The analysis provides an overview of current best practice in property purchase agreements, in relation to both asset and share deals. It reflects the behaviour of strategic buyers and sellers as well as private equity investors and private investors with regard to the inclusion of specific contractual conditions,” said Dr Volker Zerr, partner in the Real Estate & Public division at CMS Germany.

Investors from outside Germany are driving package acquisitions

The study reveals that the proportion of portfolio transactions increased steadily over the period from 2010 to 2014. While these transactions made up 25 per cent of all evaluated real estate transactions in 2010, the proportion reached a peak of 30 per cent in 2014. The proportion of portfolio transactions in the German-speaking countries is the highest in Europe, at 28 per cent. “The increasing activity of international investors is likely to have been one reason for the rise, as they boosted their European property portfolios by making package acquisitions,” said Dr Dirk Rodewoldt, partner and head of the international Real Estate & Construction Practice Group at CMS. After accounting for 38 per cent of transactions in 2013, last year there was more investment by foreign buyers than by domestic investors for the first time in the past five years. The proportion of international investors was 53 per cent. Broken down by region, the figures of 31 per cent in Germany and Austria, and 2 per cent in Switzerland, are the lowest in Europe, while Eastern Europe saw the highest proportion, at 62 per cent. Office properties have been the dominant asset class in Europe over the past five years, with their market share averaging 45 per cent. By contrast, retail properties declined significantly from 31 per cent in 2011 to 13 per cent in 2014, although retail transactions continued to top the statistics in Western European countries, accounting for 29 per cent of the market. The most notable trend is in logistics transactions: their proportion has risen steadily from 5 per cent in 2011 to 18 per cent in 2014.

Warranty and liability agreements give sellers the advantage

The agreement of contractual limitation periods for warranty claims has become increasingly common in the past five years. These deviate from statutory regulations and in most cases specify shorter timeframes in which buyers are able to make a claim. Transactions without such clauses reached their highest level in 2011, at 56 per cent, while the figure was at its lowest in 2014, at 29 per cent. In parallel with this, the proportion of particularly short limitation periods (6 to 12 or 12 to 18 months) has risen significantly in the past two years (to 12 per cent and 17 per cent in 2014, respectively). “This indicates a clear trend towards a more seller-friendly market overall,” said Zerr. Transactions in Western European countries are most likely to include a mechanism for securing warranty claims (51 per cent). The increase in limits on liability is also a seller-friendly trend. *De minimis* clauses, which specify an amount below which the buyer cannot assert warranty claims, were agreed more often in 2014 than the average for the previous four years. The proportion of deals that included this type of minimum claims limit was 39 per cent in 2014. Basket clauses, which prevent the parties from making minor claims, were used in 23 per cent of transactions in 2014, making them much more common than in the previous year (17 per cent). These two clauses are used particularly frequently in the Eastern European countries. Sellers are also increasingly able to negotiate a contractually agreed liability cap. Caps were applied in 48 per cent of the deals analysed in 2014 – the highest level to date.

Follow us on Twitter: https://twitter.com/CMSHascheSigle

About CMS Hasche Sigle:

CMS Hasche Sigle is one of Germany's leading commercial law firms. Proven specialists provide innovative advice that covers every conceivable national and international requirement.

More than 600 lawyers, tax advisers and notaries support German and international companies across a wide range of different industries. Clients include successful SMEs, global corporations and public institutions. CMS Hasche Sigle has offices in eight major business locations in Germany, as well as in Brussels, Moscow, Beijing and Shanghai.

For more information, please visit www.cms-hs.com.

About CMS:

Founded in 1999, CMS is a top 10 international law firm, the largest in Europe, based on the number of lawyers (Am Law 2013 Global 100) and offers specialist advice in many different fields. With 59 offices in 33 countries across the world, employing over 3,000 lawyers, CMS has longstanding expertise both at advising in its local jurisdictions and across borders. CMS acts for a large number of Fortune 500 companies and the FT European 500 and for the majority of the DAX 30.

CMS provides a wide range of expertise across 19 expert practice and sector areas including Banking and Finance, Commercial, Competition, Corporate/M&A, Dispute Resolution, Employment, Energy, Intellectual Property, Lifesciences, Real Estate, TMC and Tax.

For more information, please visit www.cmslegal.com.

CMS offices and associated offices: Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Geneva, Glasgow, Hamburg, Istanbul, Kyiv, Leipzig, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Mexico City, Milan, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Rio de Janeiro, Rome, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.