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# press release

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1/3

CMS Hasche Sigle Real Estate Deal Point Study 2011:

## **2010 saw market recovery in real estate transactions**

Stuttgart – The market for property transactions recovered over the course of 2010, with both the number of transactions and transaction volumes increasing significantly. Deal terms likewise reflect the improved market conditions. Those are the findings of the Real Estate Deal Point Study 2011, which CMS Hasche Sigle has just presented.

CMS Hasche Sigle is publishing its report on real estate transactions for the second time. The leading corporate law firm analysed almost 230 deals that took place between the start of 2007 and mid-2011 where it advised the vendors, buyers or finance partners.

"The study documents the behaviour of strategic buyers and sellers, private equity investors and private investors with regard to the inclusion of specific contractual conditions," says Dr Volker Zerr, who initiated the study. "The findings give all parties to a transaction specific points of reference for negotiations and drawing up contracts."

The transaction analysis for 2010 shows a sharp increase in the volume of agreements following substantial falls in previous years. The proportion of transactions **worth in excess of EUR 50 million** was 60% in the first half of 2010, more than four times greater than the 14% recorded in the previous six months. Although the proportion of transactions worth over EUR 50 million has declined in

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CMS Hasche Sigle is one of the leading commercial law firms. More than 600 lawyers serve their clients in nine major German commercial centres as well as in Brussels, Moscow and Shanghai. CMS is the organisation of independent European law and tax firms of choice for organisations based in, or looking to move into, Europe. CMS provides a deep local understanding of legal, tax and business issues and delivers client-focused services through a joint strategy executed locally across 29 jurisdictions with 54 offices in Western and Central Europe and beyond. CMS was established in 1999 and today comprises nine CMS firms, employing over 2,800 lawyers and is headquartered in Frankfurt, Germany.

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the meantime (falling to 38% in the second half of 2010 and 24% in the first half of 2011), the proportion of transactions **worth between EUR 25 and 50 million** has increased by some 20%.

Compared with the start of 2008, the proportion of portfolio transactions has risen sharply from 13% in 2008 to 46% in 2010. In the first half of 2011, this category accounted for 28% of transactions.

During the same period, the **proportion of retail transactions** more than doubled (from 21% in 2008 to 43% in the first half of 2011), while the proportion of **office transactions** remained roughly the same (37% in 2008 and 39% in the first half of 2011).

Dr Zerr: "The trend towards a seller's market seen since mid-2009 has become more established over the past year. For example, the proportion of deals with long limitation periods exceeding 24 months has halved from 50% at the end of 2009/start of 2010 to 25% by the end of June 2011." According to Dr Zerr, the proportion of transactions with a short limitation period of six to twelve months rose sharply from 7% to 25% over the same period.

Since 2009, buyers are also more likely to accept agreements that include seller-friendly ***de minimis* and basket clauses** (i.e. a threshold or minimum limit for guarantee claims by the buyer), for example, and rules on **liability caps**. In the first half of 2009, only 8% of all transaction agreements examined contained *de minimis* clauses. A year later, 50% of cases included this provision. Since that time, the proportion of transactions containing a *de minimis* clause has remained substantially above pre-crisis levels (43% in the second half of 2010 and 33% in the first half of 2011). Basket clauses hardly played any role in the first half of 2009, but in the first six months of 2011 they were used in 29% of transactions. The proportion of transactions with a liability cap was 23% in the first six months of 2009 and 46% in the first half of 2011.

## Contact at CMS Hasche Sigle:

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