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PRESS RELEASE

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Subject	CMS Real Estate Deal Point Study

4th CMS Real Estate Deal Point Study:
Upturn in real estate transactions market continues

Stuttgart – The German market for property transactions has recovered significantly since the low in 2008 and 2009, returning in the process to the more seller-friendly provisions that prevailed before the onset of the economic and financial crisis. Real estate investment should also remain very attractive in the current year, with correspondingly high capital inflows into the market expected.

Those are the key findings of the fourth CMS Real Estate Deal Point Study, for which CMS Hasche Sigle systematically analysed the contract clauses relating to around 360 transactions on which the law firm has advised in the past five years.

"The number of transactions has increased substantially since 2009 with the result that we can now not only expect a stable market, but one that will continue to make progress," said Dr Volker Zerr, real estate expert and partner at CMS Hasche Sigle. The key reasons are the general improvement in the economic situation and good financing terms, he added. "The results highlight clear market trends in the categories examined – asset classes, purchase price financing, warranties and guarantees, and limits on liability."

Well-filled coffers

Thanks to the economic recovery, it has become significantly easier to obtain external funding. The proportion of debt-financed transactions dropped to about one third in the midst of the crisis but has increased significantly again in subsequent years, climbing to over 70% in

2013. Recent years have also seen a high level of interest from equity-rich investors such as institutional investors, closed-end funds and family offices.

German investors dominate

When broken down by origin of the transactions, the trend towards the dominance of domestic investors is continuing. While the proportion of international players was still around two thirds in 2008, only one third of buyers now come from outside Germany.

Core properties in strong demand, continuing high number of office property deals, increasing activity in the residential and logistics segments

There has been growing demand for long-lease core properties since 2010. This entails a rising proportion of single-property transactions and a decline in portfolio transactions to about one third.

Between 2009 and 2012, the proportion of office real estate transactions rose steadily. In 2013, a good one third of all deals involved office properties. The number of deals involving residential property has also seen a fresh increase, almost doubling to 26% since 2011. Logistics properties are also becoming increasingly important – their share of transactions has risen constantly since 2009, averaging 8% most recently. In contrast, the proportion of retail properties is falling slightly, following a boost in the years 2009 to 2011.

Sellers in a stronger position

Sellers in the real estate market are now more likely to get their way. This can be seen in clauses that provide for a threshold or minimum limit for guarantee claims by the buyer (*de minimis* and basket), for example. Their present level of about one third is appreciably above the 2009 figure (about 10%). Liability caps are also being agreed far more frequently, having risen from less than one third of deals in 2009 to about two thirds. Dr Volker Zerr commented: "One reason for this is that sellers now have a strong negotiating position, so they are more often able to restrict the amount of their liability for warranties."

Sellers also benefit from the favourable trend in limitation periods. The proportion of transactions with contractual limitation periods above 18 months for warranty claims has remained at a constantly high level, averaging two thirds in the past four years. Over the same period there has been a fall in the proportion of transactions in which no limit on the statutory limitation period was agreed. Sellers have been able to insist on a reduction in almost all cases. Transactions with a limitation period of 12 to 18 months remained about the same, at

16% on average, while deals with a short limitation period not exceeding 12 months were down by half, from 14% in 2012 to 7% in 2013.

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