**Press release**

Vienna, 28. November 2011

**CMS Real Estate Deal Point Study 2011:** **Market recovery in real estate transactions**

Stuttgart / Vienna – 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.

It evaluated 245 deals concluded in Germany, Austria, Poland, Croatia and Bulgaria between the beginning of 2007 and mid-2011 in which CMS advised sellers, buyers or financing 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. Gregor Famira, partner and head of the Real Estate CEE division at CMS Reich-Rohrwig Hainz in Vienna. "The findings give all parties to a transaction specific points of reference for negotiations and drawing up contracts."

**Increase in Transaction Volumes**

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 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%.

**Portfolio Transactions and Share of Retail Transactions Up**

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 27% 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).

**Seller’s Market Trend Continues**

Gregor Famira: “ 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. Famira, 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 sellerfriendly

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.

**Differences in Contract Design: Germany, Austria – CEE**

* The crisis hit the region and was overcome later; also in Q4/2010, a comparatively high number of transactions which were primarily equity-financed were concluded in CEE. In early 2011, the need for equity capital was balanced.
* Investors look for more security; for a significantly larger share of transactions (70% compared to 40%), investors especially secure the payment of the purchase price via a directly enforceable instrument.
* Due diligence audits are more thorough, guarantee periods are shorter: only 25% of CEE deals have guarantee periods longer than two years (compared to 35% in Germany) and about a third of the cases analysed had periods shorter than 6 months (in Germany, this applies to only 10%).
* That the parties involved take a “closer look” is also reflected in provisions concerning non-liability of sellers in the case of faults (if the buyer was aware of / should have been aware of / would have been able to find the fault in the documents?): there are more detailed rules for such issues.
* And finally, there seems to be less trust in legal practice in CEE: rules are on average considerably more comprehensive and detailed.

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CMS Reich-Rohrwig Hainz is one of the founding members of CMS, the association of leading European legal firms and tax consultants. At present, CMS operates a network consisting of more than 700 partners, 2,800 lawyers and tax consultants, and a total of 5,000 employees working on behalf of its clients. www.cms-rrh.com

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High quality advice

Industry specialization

We combine deep local expertise and the most extensive presence in Europe with cross-border consistency and coordination.

CMS has a common culture and a shared heritage which make us distinctively European. CMS operates in 30 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. CMS is headquartered in Frankfurt, Germany.

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