

PRESS RELEASE

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CMS Publishes the 3rd Annual European M&A Study

2011 study highlights return to more seller – friendly market

Leading European legal and tax advisor CMS has launched its third edition of CMS European M&A study 2011, which analyses exclusive data compiled from more than 1,000 of its own M&A deals since 2007, including some 300 deals in 2010 alone. It is a continuation of previous years' CMS European M&A Studies which clients said had "*real, substantial value*". The Study shows a clear shift back toward sellers, following last year's significant swing toward buyers.

"During 2010, we saw a definite increase in the overall pace of M&A transactions, which is continuing into early 2011," said Thomas Meyding, Head of the CMS Corporate Group. "The shift of contractual risks back to buyers is unlikely to reach the levels of 2007, before the financial crisis, but there are certainly swings back to sellers' market, as more investors are keen to do business."

The Study reports on key trends from 2010, including purchase price adjustments, locked box mechanisms, earn-outs, *de minimis* and basket provisions, liability caps and limitation periods. The Study also tracks trends over the four-year period 2007-2010. For instance:

- Earn-out periods became shorter, as demonstrated by 65% of such earn-outs being payable within 24 months compared with just 51% in 2009, indicating that sellers are banking on a quicker return;
- A 7% increase in 2010 from 2009 on deals featuring a repetition of all warranties on closing;
- A decline in the use of arbitration as the dispute resolution mechanism with just 32% of 2010 deals featuring an arbitration clause as against 40% in 2009.
- The proportion of deals with general warranty limitation periods exceeding 24 months has generally flatlined at around 27% since its peak in the second quarter of 2009, and declined notably in the last quarter of 2010;

"In China, We have sensed the same trend," commented by Dr Ulrike Glueck, Head of Corporate Practice CMS, China, "during the past year, the percentage of transactions where the liability cap exceeded 50% of the purchase price has declined when measured against the peak of the last two quarters of 2009. This study offers a comprehensive knowledge base with thorough analysis to China companies, who have been seeking expansion aggressively to global market through merger and acquisition.

Meanwhile, the Study highlights significant cultural and regulatory differences between Europe and the United States. Overall, the data points to contractual risk allocation beginning to swing back in favour of sellers after the buyer's market we observed in the first year post-Lehman. We also see growing evidence of US deal norms influencing European deals, for example a gradual shift against *de minimis* clauses and greater use of 'excess only' recovery where basket provisions were agreed upon.

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