

CMS European survey shows significant shift in M&A agreements

Submitted by: Clarity Communications

Wednesday, 3 June 2009

CMS, a leading European provider of legal and tax services, has published the CMS European M&A Survey 2009. Based on rigorous analysis of data compiled from 494 M&A agreements completed in Europe in 2007-2008, the survey reflects a shift towards more risk adverse transactions for buyers.

“As expected, the economic downturn is having a significant impact on the terms of M&A transactions in Europe,” said Thomas Meyding, Head of CMS Corporate. “Not only are we witnessing a reduction in pricing and valuations, but we’re seeing sale agreements shifting risk increasingly away from buyers and on to sellers.”

The huge amount of data was compiled from transactions where CMS firms were involved and the results provide insights across Europe. Key conclusions include:

- a rise in the popularity of ‘earn-outs’
- a rise in material adverse changes (MAC) clauses which nearly doubled in the second half of 2008 compared to the first half;
- an increase in seller’s liability caps, which climbed during 2007 and 2008; and
- Longer time periods for general warranties, as well a greater prevalence of equity capital warranties.

“It all points to a buyers’ market,” says Meyding. “But the specifics of the survey can be extremely useful for both buyers and sellers considering M&A transactions in the current climate - which our data trends suggest will become even more risk adverse in 2009.”

The data also breaks down by regions in Europe highlighting, among other things, a more frequent use of purchase price mechanisms in the UK, less common use of escrow (or similar) accounts in German speaking countries and arbitration as the main dispute resolution process in Central & Eastern Europe. The report data is broken down into Benelux (The Netherlands and Belgium), Central & Eastern Europe (Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Russia, Slovakia and Ukraine), France, German speaking (Austria, Germany and Switzerland), Southern Europe (Italy and Spain) and the United Kingdom.

The survey also compares trends in Europe against similar data from the USA and Canada revealing significant cultural and regulatory differences leading to, among other things, more use of Material Adverse Change clauses in the US than in Europe.

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