

IN-DEPTH

# Real Estate Law

UNITED KINGDOM - ENGLAND & WALES



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# Real Estate Law

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Contributing Editor

**John Nevin**

Slaughter and May

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*In-Depth: Real Estate Law* (formerly The Real Estate Law Review) provides an invaluable overview of how key real estate markets across the globe operate and how they react to major world events. With a focus on recent developments, it analyses the legal frameworks governing real estate ownership and transactions in each jurisdiction, while also offering an incisive outlook of potential future trends.

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# United Kingdom - England & Wales

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## Summary

INTRODUCTION

OVERVIEW OF REAL ESTATE ACTIVITY

FOREIGN INVESTMENT

STRUCTURING THE INVESTMENT

REAL ESTATE OWNERSHIP

LEASES OF BUSINESS PREMISES

YEAR IN REVIEW

OUTLOOK AND CONCLUSIONS

ENDNOTES

## Introduction

### i Ownership of real estate

The two main types of ownership of real estate in England and Wales are freehold and leasehold. Freehold is, in effect, absolute ownership for an indeterminate period, whereas leasehold is a right to possession and use of land for a limited period; the landlord retains its interest and grants the leasehold interest to the tenant for the term of the lease. Ownership of land also includes ownership of any buildings or other structures attached to the land and, as a general rule, includes the subsoil beneath and the airspace above the land.

Generally, freehold interests are more attractive to investors because they are not subject to termination and there are fewer restrictions on the owner, whereas a tenant is constrained by the terms of a lease. That said, long leasehold interests are often held for investment purposes. In central London, in particular, properties may be owned by the Crown Estate, trusts, charities or other entities that may choose not to dispose of their freehold interests as a matter of policy and will instead grant long leases. It is also common for leaseholds to be used when structuring joint ventures, and other arrangements and structures where owners wish to retain an element of control by imposing positive covenants.

A leasehold property held as an investment should be distinguished from an occupational lease, which is typically granted for up to 15 years subject to a market rent, and therefore has a negligible capital value. An investment leasehold interest will most likely be granted for a term of between 99 and 250 years, at a premium. There are generally fewer onerous obligations on the tenant of a leasehold property held as an investment. The income generated from most investment properties is in the form of rent paid under occupational leases.

A relatively new form of land ownership called commonhold was introduced in England and Wales by the Commonhold and Leasehold Reform Act 2002. Commonhold comprises a freehold unit within a larger development and membership of the company that manages the common parts. As such, commonhold is suitable for residential flats as well as commercial developments such as shopping centres. However, its use has not been adopted by the property industry and it remains a rarity. The government continues to promote commonhold as a viable alternative to leasehold.

### ii System of registration

Most freehold and long leasehold titles are registered at the Land Registry; however, a number of unregistered titles remain, and these will generally only become registered once there has been a dealing with the land that triggers a requirement for 'first registration'. Trigger events include sales, mortgages and leases granted for more than seven years. Until a trigger event occurs, titles usually remain unregistered. Registration fees are payable, calculated by reference to the type of transaction and the price paid.

Registration at the Land Registry provides a state guarantee of title. Compensation is payable if loss is suffered because of a mistake on the register. Therefore, there is no separate US-style title insurance regime. The registered title has a unique title number

and identifies the extent of the land on a plan. The register also provides details of the property, including any rights that benefit it, and identifies the owner and any rights or matters adversely affecting the property, including financial charges. It also includes the purchase price at which the owner acquired the property and the purchase date, if done so through an asset as opposed to a share purchase. If the property is leasehold, brief details of the lease are included. Various short leases and rights of occupation are not, however, required to be registered in their own right. These and some other non-registrable interests will bind a purchaser and should be uncovered by the purchaser's due diligence process. Accordingly, the information on the register cannot be treated as being comprehensive. Documents and other information held by the Land Registry are widely available to the public, although it may be possible to protect certain commercially confidential provisions for a limited period.

The government has introduced a register of the beneficial owners of overseas companies acquiring or owning real estate in the United Kingdom. The Economic Crime (Transparency and Enforcement) Act 2022 came into force in March 2022 and means that an overseas entity must have complied with the registration and annual updating requirements before it can become the registered owner of UK property. The registration requirement also applied to overseas entities that already owned UK property. Failure to comply with the new regime is a criminal offence. There are also ongoing plans to introduce a system of electronic conveyancing to facilitate the online buying and selling of property. These have been accelerated by HM Land Registry as a result of the increasing significance of e-commerce and the rapid development of e-signatures. However, a number of legal and technical issues need to be addressed, including the risk of fraud and the threat of cyber-attack, if a secure and effective electronic system is to replace the existing process.

### **iii Choice of law**

Dealings with real estate in England and Wales are covered by the law of England and Wales. Although a contract may include an express choice of governing law, which in general the courts uphold, English law still applies to the transactional formalities that involve English and Welsh real estate.

Real estate law in England and Wales is different from real estate law in Scotland, Northern Ireland, the Channel Islands and the Isle of Man, and thus specialist advice is required where these jurisdictions are involved. Because of tax planning, property ownership vehicles are often incorporated in the Channel Islands, although the benefits of holding UK real estate through offshore vehicles have declined markedly since April 2019, when non-residents were brought fully within the scope of capital gains tax on disposals of all forms of UK real estate.

## **Overview of real estate activity**

### **i Overview of the market**

It is extremely unfortunate that this edition of *Real Estate Law* is once again dominated by bad news. After more than two years of the pandemic, the world is now faced with the

devastating reality of war in Europe and the Middle East. As the war in Ukraine approaches its third year, it remains difficult to see a satisfactory and peaceful resolution to the conflict in the short to medium-term. This pessimism extends to the Israel-Gaza war and the inevitable increased instability in the wider region. Real estate investment confidence has been knocked and there has been a marked decrease in real estate investment activity. In short, political and economic uncertainty has destroyed the optimism and confidence present following the covid-19 pandemic. Russia's invasion of Ukraine accelerated the introduction of a number of sanctions and other measures aimed at economic crime. The Economic Crime (Transparency and Enforcement) Act 2022 provides for a new beneficial ownership register for overseas entities holding UK real estate, the strengthening of unexplained wealth orders and the more effective enforcement of sanctions. All overseas companies owning UK property will need to register, and update on an annual basis, details of their beneficial ownership. This additional administrative burden has not, of itself, deterred legitimate overseas investors from acquiring UK property. Fortunately, the United Kingdom's real estate markets have traditionally proved to be remarkably resilient in difficult times, offering a safe haven to investors in times of political and economic instability. In particular, non-listed real estate companies tend to weather geopolitical uncertainty relatively well, and real estate is often considered to be a good hedge against inflation.

Real estate was hit extremely hard by covid-19 and the recovery trajectory has varied from sector to sector. Retail and leisure were already in serious decline and have continued to suffer. Hopes of a swift bounce back have been thwarted as the UK economy continues to flirt with recession, and the cost-of-living crisis has crushed consumer confidence and stifled business optimism. Surging prices and limited growth raised fears of a return to the stagflation of the 1970s. Post lockdown, the sentiment that the situation is not the fault of any particular party holds true, and landlords, tenants and their respective funders are continuing to work together to find a sustainable solution as difficult times look set to continue for some time to come. Little or no economic growth following on from covid-19 is proving a challenge for a cash-strapped government. The Ukraine war effort and the global victims of catastrophic humanitarian and climate change events are also, of course, laying claim to any available funds.

COP28 took place in the United Arab Emirates at the end of 2023. In addition to being an obvious casualty of climate change, the built environment is also a major contributor to the problem. The built environment accounts for at least 25 per cent of the UK greenhouse gas emissions and yet there remains a sense that property continues to be under-represented. Nonetheless, there is now a sense that environmental, social and governance (ESG) compliance has gained traction and is finally receiving the industry's full attention. Although there is still plenty of work to do, investors, landlords, tenants and their respective lenders are starting to pull together in the same direction. Collaboration and in particular the sharing of data are essential. It is important to remember that much remains to be done and short-term economic and political upheaval should not mean the abandonment of long-term thinking on sustainability. One issue for real estate is the continued lack of a global baseline: the plethora of standards, while well-intentioned, can be confusing, particularly to overseas investors. It will also be interesting to see how far the government rows back on climate measures as Sunak and Hunt prepare for 2024's general and London mayoral elections.

The office sector is still in the process of a major reset. New working practices have had a profound effect on the market as occupiers across the spectrum continue to re-evaluate

their UK and global office requirements. Unsurprisingly, economic and political uncertainty means that the office letting market has been, in general, subdued and volumes remain down. Despite this, larger corporates and professional firms have continued to see the need for a landmark headquarters building to identify with their brand, and international law firms have been particularly active.<sup>[2]</sup> The focus has been on using existing space differently. A return to the office must be a positive experience with attractive amenities and facilities to offset the appeal of working from home and the drudgery of the commute. The London office market offers flexibility to occupiers adjusting to new ways of working. In addition to landmark headquarters buildings, flexible short-term serviced office space continues to prove attractive as businesses settle on their preferred working model. Unsurprisingly, real estate investment volumes have also been adversely affected by persistent economic and political instability. As you might expect, investment volumes continue to be dominated by overseas capital. Continued interest from overseas investors suggests that London and the wider United Kingdom remain high on the shopping lists of global investors looking for value and security. Indeed, the weakness of the pound has created buying opportunities for those investors transacting in US dollarpegged currencies. Those fortunate to be sitting on stockpiles of cash will also be able to move swiftly as rival bidders are tested by challenging debt financing conditions.

Although the construction pipeline is reasonably strong, much of the new office space has been pre-let, helping to maintain healthy competition for new space. Outside of London, the regions will continue to benefit from the government's levelling-up objectives, although the abandonment of the HS2 link between Birmingham and Manchester is disappointing and has opened old wounds about the north-south divide. Continued decentralisation will benefit cities such as Manchester, Leeds, Edinburgh and Birmingham. Those regional cities offering a strong talent pool combined with attractive amenities have proved particularly attractive for occupiers and investors. Appetite for UK property is no longer totally focused on London, and knowledgeable overseas investors have continued to look further afield for opportunities. Although London will undoubtedly retain its attraction as a key global city in which to live, work and do business, rapidly evolving technology and flexible working practices mean that not everyone needs to be in the head office all of the time. While major businesses are still likely to look for a flagship central London headquarters building, that building may well be smaller than before and repurposed away from simply providing as much desk space as possible.

Sustainability is becoming increasingly important as landlords, tenants and funders come under pressure to achieve ESG targets. As ESG strategies develop, occupiers have become more willing to contribute to the associated costs to protect brand reputation and attract and retain the best talent. This has focussed demand on new developments allowing an occupier to impose its green credentials as part of its corporate identity. The majority of new take up is for buildings with high sustainability credentials and a BREEAM rating of 'very good' or higher. Proptech has become a key part of the race to net zero, helping to make buildings smarter and better connected, as well as improving environmental efficiency. For instance, digital twin technology will help predict the use, performance and energy requirements of buildings, new developments and, ultimately, towns and cities. This increased use of data and technology in turn emphasises the importance of cyber security and the sector's vulnerability to hacking, cybercrime and cyber warfare or terrorism. In addition to the proliferation of proptech start-ups, established property companies will need to enhance their offering by tapping into sophisticated new skill sets, which extend well

beyond traditional operation and maintenance. The British Property Federation's merger with the UK PropTech Association underlines the significance of innovation for an industry facing rising costs and a plethora of regulatory controls, as well as the transition to net zero. Landlords, tenants and funders are working together as meaningful green lease provisions and green financings start to become a reality, replacing earlier token statements of intent and accusations of 'green washing'. The sector must remain alert to the risk of applying a 'green sheen', which can be best mitigated against by harnessing data, committing to transparency and ensuring that claims or statements are clear and not misleading. A two-tier market has emerged with increasing vacancy rates in second-hand space and modern, safe and sustainable buildings with a broader social purpose and up-to-date amenities in the right location letting at a premium. Although the focus is often on new state-of-the-art developments, the vast majority of the United Kingdom's existing stock does not meet current expectations, and the real challenge is how best to refurbish and repurpose older buildings in a way that is economically viable. A significant amount of office stock is at risk of obsolescence, based on energy performance, connectivity and functionality. The continued focus on regeneration is admirable but policymakers must be mindful of the problems associated with the resulting second-hand space. There is a real danger of inadvertently recreating the problems that regeneration seeks to address.

Rental values in the co-working sector have improved as a result of the back-to-the-office migration. The demand for flexible space will remain, and serviced offices have become an essential requirement for fledgling businesses as well as a key part of the occupation strategy of larger occupiers needing flexibility and the ability to move staff quickly. In difficult times, businesses are having to trade higher rents for limited or no capital costs. Despite the continuing woes of WeWork, the co-working sector has become an established part of the market, including the development of sub-markets as operators have sought to establish niche appeal. The sector will continue to be driven by demand for good quality office space, available on flexible terms and in well-located, safe and sustainable office buildings with top facilities and state-of-the-art connectivity.

There has been a recalibration of the relationship between home and work. For many, working from home has become the new normal. Rapid advances in technology mean that long commutes to and from the office have ceased to be an essential, and time-consuming, part of the working day. As the distinction between office and home life becomes increasingly blurred, workers and their employers, at least for the time being, have a choice as to where they work and live and the market has changed to reflect this. The property industry will need to monitor working practices closely as the balance between working from home and personal attendance at the office begins to settle. It is no longer possible simply to move to new offices and expect the workforce to follow: push has become pull. The focus is now very much on what employees want and their individual well-being, both in terms of new developments and the reinvention of existing space. To a certain extent offices have also started to come to workers, with new schemes in Elephant and Castle, Brixton, Vauxhall and other less fashionable parts of London. A long-term commitment to social values and the local community is essential if these neighbourhood working schemes are to prove successful in the long term. Requirements on developers to provide affordable working or community space are becoming part of the planning process, in much the same way as the provision of affordable housing as an integral part of residential schemes.

Other than work-life balance, affordability is affecting the residential market, with the end of negligible interest rates and a widening gap between wages and inflation. The



country's housing crisis continues as successive governments have failed to meet new build targets and a rising population will ensure that residential property will continue to provide opportunities for investors. Unfortunately, a combination of global inflationary pressures, covid-19 and war in Ukraine has led to increased building costs and slow construction progress, with delays in the supply of building materials and difficulties in ensuring the availability of a skilled and unskilled workforce. A combination of rising costs, a fall in sales and pressure on pricing suggests that housebuilders may pause projects and sit on their development land banks until conditions start to look more promising. In particular, the viability of the affordable element of new developments has been undermined by higher margins. More affordable homes are urgently required and there needs to be greater focus on social and economic factors in deciding where these should be built. Affordable housing and build-to-rent will make up a larger share of new developments and institutional investors are now alive to the opportunities. The anticipated growth of the retirement or later living sector could free up valuable housing stock as older owners are given the option of a dignified down-sizing. In difficult times, high-net-worth individuals have started to return to the capital's super-prime market, prompting optimism for the previously deflated central London residential investment market. Commentators will also keep a close eye on the UK political climate as the government seeks to achieve stability ahead of the next general election, which is due before January 2025. The wider residential market will remain tough in 2024 as economic pressures, higher finance costs and less favourable tax and legislative regimes for buy-to-let landlords continue to have a cumulative effect. Overseas investors in residential property are also subject to a 2 per cent stamp duty land tax (SDLT) surcharge (which the Labour party have announced they will increase, should they form the next government) that comes on top of the existing 3 per cent surcharge for additional properties and the 15 per cent rate for those buyers using corporate vehicles. The residential letting market has been dominated by a shortage of available properties pushing up rents and stretching affordability in key locations.

With the exception of the major supermarkets and established online retailers, it has continued to be a difficult time for the United Kingdom's retail sector. A succession of household names has continued to join the seemingly endless list of casualties in a sector struggling even before the pandemic. Yawning gaps on the high street, an unwelcome proliferation of American candy stores and empty shopping centres stand as testament to a sector that has changed beyond all recognition. Traditional retailers have been forced to adapt to the changing habits of their customers, while online retailers and delivery companies have benefited from the growth of e-commerce. Investors will continue to rethink how they see retail assets and there will be a renewed focus on repurposing available space for residential, logistics, leisure and other more innovative uses. A number of major high street retailers have confirmed plans to diversify and to repurpose upper floors of flagship stores as offices or for residential purposes. Despite high vacancy rates, there is some cause for optimism as a number of value operators have confirmed plans to expand and smaller independent operators have the opportunity to take prime space vacated by larger chains on flexible and affordable terms. There are some positive signs on Oxford Street, the United Kingdom's most famous shopping street, with the repurposing of vacant retail buildings and the return of HMV to its original home, replacing an American candy store. Pop-up retail and food outlets that can adapt quickly to events and demand have become an established part of the market.

While London's West End has bounced back with the return of office workers and visitors, the city remains much quieter as workers continue to stay at home. Those workers returning are at their highest concentration in the middle of the week, and the city is noticeably quieter on Mondays and Fridays. This has made it difficult for the coffee shops and other businesses dependent on a consistent flow of customers to build up a proper head of steam. Restaurants and bars have, however, struggled to find staff in a tight labour market. For those fortunate enough to survive lockdown, the ongoing cost of living crisis means the pressure is still on for retail and leisure operators as costs continue to rise and discretionary consumer spending falls back.

The industrial sector continued to attract investment and well-located, high-specification distribution centres in the right locations continued to benefit from the boom in e-commerce. Logistics has been a rare success story with online retailers looking to expand and refine their distribution networks as the pandemic accelerated the demise of traditional retail. Despite indications that hard-pressed consumers have reined in their online spending, the sector has proved to be an attractive target for investment capital with logistics assets high up on the wish lists of a range of overseas and domestic investors. In addition to good road and rail connections, an acute labour shortage means that the availability of a pool of skilled and unskilled workers has become an important factor in choosing viable locations. The process of onshoring production capability and shortening supply chains should also enhance the UK industrial market and boost local economies. The United Kingdom offers plenty of opportunities for specialist manufacturing businesses seeking to take advantage of rising costs associated with existing supply chains, as well as helping customers to reduce their carbon footprint. The challenge lies with the existing development pipeline and the lack of available new stock. It has been a boom time for a television and film industry looking to catch up on a backlog of content. Out of adversity comes opportunity, with large vacant retail units offering opportunities for repurposing as studio space. Generous tax breaks combined with production facilities and a pool of available talent continue to make the United Kingdom an attractive filming location. Although pressures on disposable income may mean that new take-up for streaming services peaked in lockdown, a huge amount of new material is still required just to keep pace with existing schedules. There has also been an increase in hyperscale data centres, although the United Kingdom and Europe remain significantly behind the United States and China in this sector.

Alternative assets have become an established part of the investment market, alongside the traditional office, retail and industrial sectors. The build-to-rent boom continues as institutional investors look to increase their market share, and there has been an increase in the number of new projects in the construction pipeline, both in London and the regions. This investment is timely as traditional buy-to-let landlords continue to exit a sector traditionally dominated by a larger number of smaller private investors. Institutional investors are likely to be more conscious of the ESG agenda as well as the need to provide uniformly high standards of accommodation in the face of increased regulatory scrutiny. A number of high-profile private equity-backed investment vehicles have signalled an intention to develop and operate new tech-enabled build-to-rent neighbourhoods, underlying the growing significance of technology-led platforms in the sector. Despite operational difficulties, confidence remains high for operators in the specialist retirement living and student housing sectors, where major institutional investors are looking to increase their portfolios. Purpose-built student accommodation is another attractive sector for investment capital. Although demand from private equity and institutional investors

remains high for quality stock in strong regional cities, compressed yields are leading to more speculative development funding as investors look for value in the student accommodation market. The retirement living sector has much further to go if it is to emulate the North American, Australian and New Zealand models and meet the needs of an ageing population. Later living developments must provide an attractive community in which to live that adapts to provide care as the need arises. The focus to date has been on high-end luxury later living schemes in expensive locations, but demographics confirm that more affordable options offer scalable opportunities for growth.

Perhaps not surprisingly, there has been a surge of interest in the life sciences sector, with the Oxford–Cambridge arc attracting the most attention. Life sciences are also a key part of Canary Wharf's transformation to a mixed-use destination following a series of high-profile office relocations. Innovation hubs thrive on shared technology and a dynamic talent pool and must compete on a global platform. Once established, they in turn boost investment in housing, ancillary offices, infrastructure and leisure facilities. Next-generation science, innovation and technology will become a key part of the real estate market as well as the wider economy. The hotel sector has enjoyed healthy occupancy rates with good numbers of leisure and business travellers and the welcome return of corporate conferences. London has performed particularly well, and the pipeline of major new hotel projects is strong. Opportunities can be found in a squeezed pub sector where some leading pub chains have expressed an interest in expanding their estates and have taken advantage of buying opportunities. Alternative real estate assets seem likely to offer opportunities as investors are forced to be more flexible in their quest for growth in this rapidly evolving and increasingly important sector.

It has been a difficult year for the UK lending market with an increase in defaults, restructurings and refinancings. The retail and leisure sectors have been particularly badly hit. Banks are anticipating problem loans and have reconstituted their bad bank structures to work out portfolios of non-performing mortgages. Businesses will struggle with increased levels of debt and face liquidity problems, particularly if interest rates remain high in line with expectations. Borrowers have become accustomed to historically low interest rates and the series of quick-fire increases is likely to prove painful for many. Development loans have been adversely affected by delays and defaults on construction contracts where shortages of labour and materials, as well as persistent supply chain issues, have led to significant delays and cost overruns. This has also fed into an increase in lending costs. Despite caution in the banking sector, it is hoped that an already diverse lending market will help maintain liquidity. A significant development has been the emergence of green financing to support developments and activities with a green or broader social purpose. Sustainable finance has become an established component of lender and corporate business strategies. The real estate finance market has to some extent been supported by borrowers needing to refinance. Inevitably, a protracted period of economic stress will prove to be too much for a number of borrowers and there will be increased opportunities for investors in distressed assets and mortgage debt. Cash buyers are likely to remain at the top of the pecking order as investment opportunities come to market. Despite the collapse of Silicon Valley Bank, First Republic Bank and Signature Bank of New York, fears of a new financial crisis proved to be unfounded and UK banks remain well capitalised and in good shape to deal with financial stress.

The world has become a very different place over the past few years. We have not witnessed global events of this magnitude in modern times. As covid-19 finally eased into

the background, the much-needed surge in activity across all sectors has been stopped in its tracks by economic and political uncertainty fuelled, first, by illegal Russian activity in Europe and, more recently, by heightened tension in the Middle East. However, it is not all doom and gloom as UK real estate traditionally provides investors from around the world with a relatively safe haven for their capital. Inflation, favourable exchange rates, still relatively low interest rates, more realistic pricing and the attraction of a secure yield will ensure the continued attraction of UK real estate for global investors. The real estate industry as a whole has traditionally proved to be resilient, helped by its multiple markets and sub-markets. One sector's pain is always potentially another sector's gain. The increasing breadth and availability of up-to-the-minute data should help investors, occupiers and funders adapt quickly and make the most of opportunities as they arise.

## Foreign investment

Subject to complying with the requirements of the new register of overseas entities, investors can own, sell, charge and lease real estate in England and Wales without any legal restrictions. A legal opinion may be required to confirm that an overseas investor has legal power to enter into a transaction involving property in England and Wales, to deal with the property and to execute the relevant documents and have its title registered at the Land Registry.

## Structuring the investment

A number of alternative structures are available for direct or indirect investment in real estate in England and Wales. The decision as to how best to structure an investment is likely to be influenced by tax considerations, and it is important to ensure that appropriate advice is sought, taking into account both UK tax legislation and that of the investor's own jurisdiction. There are, however, advantages and disadvantages to each structure, which may also prove critical depending on the investor's particular objectives.

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### i Corporate entity

A company can hold assets in its own name and create floating charges. There is potential for flexibility in terms of share structure and there can be the advantage of limited liability. More generally, corporate entities are widely recognised and can promote a strong and legitimate identity. Nonetheless, there is a lack of confidentiality in comparison with other investment structures and the added administrative burden of complying with the relevant regulatory framework. There is also a lack of tax transparency, making a regular company (whether based in the United Kingdom or offshore) less attractive for tax-exempt or tax-advantaged investors.

## ii General partnership

Whereas property co-ownership is not in itself sufficient, the active, joint management of property may constitute a partnership; it is a matter of substance rather than form. A main advantage from the perspective of tax-exempt or tax-advantaged investors is transparency for direct tax purposes (although a partnership is generally less tax efficient than a corporate from a transfer tax perspective), while the main disadvantage is the unlimited liability of the partners.

## iii Limited partnership

In a limited partnership, investors will be limited partners who are only liable to the extent of their investment. This limited liability is particularly advantageous when coupled with the tax transparency that, to an extent, is offered by a limited partnership. However, a limited partnership must comply with the Limited Partnerships Act 1907, and a limited partner should not become involved in the management of the partnership. This may prove to be unduly restrictive for investors looking to actively manage their real estate investments, although in practice matters can usually be arranged to obviate this restriction. The limited partnership regime has been modernised by the introduction of a new private fund limited partnership to help meet the needs of fund managers.

## iv Limited liability partnership

Limited liability partnerships (LLPs) are governed by the Limited Liability Partnerships Act 2000 and combine limited liability for members with the tax transparency of a partnership. LLPs are not subject to the same restrictions as limited partnerships, and partners are able to actively manage the business of the LLP. Furthermore, an LLP is a body corporate (having a legal entity separate from that of its members), so there are no issues as to the legitimacy of floating charges. If the LLP is a collective investment scheme, it must be operated by an authorised person in accordance with the Financial Services and Markets Act 2000 (FSMA).

## v Property unit trust

A property unit trust is an open-ended fund that allows pooled investment on a generally more tax-efficient basis than a corporate or a partnership. A unit trust is governed by a trust deed and, as such, may be an unfamiliar structure to certain overseas investors. One drawback may be the need for authorisation under FSMA. Offshore unit trusts are popular and can provide further tax advantages because of their offshore status (albeit such advantages have been largely curtailed since April 2019); Jersey property unit trusts (JPUTs) in particular have been used extensively in recent years and many properties remain held in JPUT structures and interests in JPUT can still be traded free of UK transfer taxes. However, there may still be local regulatory supervision, and the fact that the trust must be managed outside the United Kingdom may be undesirable for certain investors and difficult to achieve.

## vi Real estate investment trust

On the basis of an investment structure first developed in the United States, real estate investment trusts (REITs) were introduced in the United Kingdom in 2007. REITs are tax-efficient, as they are exempt from tax on income and capital gains arising from property rental business; distributions of profits are treated as property income in the hands of the shareholders and are generally subject to withholding tax at 20 per cent. To gain REIT status, a company must comply with a number of conditions, including a requirement to be listed and either widely held or owned by specific types of institutional investors (such as pension funds), and have property rental business as its predominant activity.

### **vii Property authorised investment fund**

Property authorised investment funds (PAIFs) are, broadly speaking, an open-ended version of REITs. They are investment schemes that invest in property and are authorised under FSMA. A number of conditions apply for entry into the PAIF regime, including the need to carry on a property investment business and a genuine diversity of ownership condition. Unlike REITs, PAIFs can benefit from seeding relief from transfer taxes on the initial transfer of UK property.

### **viii Offshore vehicle**

Offshore vehicles can take advantage of lighter regulatory and tax regimes. As well as Jersey, popular offshore locations include the British Virgin Islands, the Cayman Islands, Guernsey, the Isle of Man and Luxembourg. UK corporation tax was extended to the UK property income of non-resident companies without a UK permanent establishment with effect from April 2020.

### **ix Listed property company**

Investing in a listed property company offers a popular means of investing in UK real estate. Listed property companies can benefit from a high profile and augmented credibility as well as greater liquidity. The drawbacks include stringent regulatory and filing obligations, and a general lack of confidentiality. In addition, listing may be costly and places extra pressure on the company management to perform. The investor also has limited control over the underlying real estate assets.

### **x Property joint venture**

Joint ventures allow parties to share risk, and therefore provide a particularly attractive investment structure while the availability of debt remains constricted and investors are keen to mitigate risk exposure. A property joint venture can be structured in whatever form the parties choose, and in many cases may involve more than two parties. Naturally, as well as sharing risk, parties share gains and management, so joint venture provisions need to be considered carefully.

## **Real estate ownership**

## **i Planning**

The planning administration in England and Wales primarily consists of local planning authorities (LPAs) and the Secretary of State for Levelling Up, Housing and Communities. The Mayor of London is also able to exercise specific planning powers at a London-wide level, including the power to decide strategically important planning applications. Planning administration is governed by a mix of government policy and statutes, the most important of which is the Town and Country Planning Act 1990. Under the 1990 Act, planning permission is required for development, a term that includes both works and changes of use, although certain forms of development are automatically granted planning permission (they have permitted development rights) under the Town and Country Planning (General Permitted Development) Order 2015. Separate planning controls exist for property in conservation areas and for listed buildings under the Planning (Listed Buildings and Conservation Areas) Act 1990. Third parties have a right to make representations about any planning application, which in turn must be considered by the relevant LPA. Applicants can appeal LPA planning decisions to the Secretary of State, in which case the Secretary of State will decide the application afresh and on its merits. Third parties have no such right of appeal, but they (and applicants) may appeal decisions of the Secretary of State to the courts on the grounds of legal error. LPAs have enforcement powers to deal with development that is carried out without or in breach of planning permission. The Planning Act 2008 contains a separate planning regime for nationally significant infrastructure projects, which are projects within the five general fields of energy, transport, water, wastewater and waste, as well as certain commercial and residential projects. A development consent order granted under the Planning Act 2008 provides a single consent for such projects, thereby removing the need for developers to seek planning permission and other related consents separately.

## **ii Environment**

The environmental issue of particular significance to investors is the contaminated land regime, which is set out in Part IIA of the Environmental Protection Act 1990, as amended by the Environment Act 1995. Contaminated land is land that is causing, or may cause, significant harm to the environment or human health. The regime also applies to water pollution. Local authorities are obliged to inspect their land to identify areas of contamination. Where land is deemed to be contaminated and is not being remediated voluntarily, the local authority or the Environment Agency (in England) or Natural Resources Wales (in Wales) is obliged to serve a remediation notice on the relevant persons requiring the clean-up, investigation and monitoring of the contamination. It is a criminal offence to fail to comply with a remediation notice. In general, those who cause or knowingly permit land to become contaminated are responsible in the first instance; however, if no such person can be identified, the current owners and occupiers of the site may be liable for remediation costs. While regulators in the United Kingdom do not take enforcement action as readily as in other jurisdictions, remediation costs can be substantial, and it is often necessary to obtain specialist advice when dealing with land that is or may be contaminated.

## **iii Tax**

## Value added tax

The starting point is that a supply of land (i.e., any sale, letting or licensing, or the grant or surrender of property rights such as rights of light) will be exempt from value added tax (VAT). However, the seller or landlord can exercise the 'option to tax', which will generally make any sale or letting of, or other dealing with, the property by that seller or landlord a supply subject to VAT at the standard rate, currently 20 per cent. Exercising an option to tax enables the seller or landlord to then recover any VAT charged on supplies of goods and services made to them in connection with the property concerned. In addition, certain supplies of land are subject to VAT regardless of whether an option to tax is made, such as where the sale involves a new commercial building completed within the past three years or an incomplete industrial or commercial building. Conversely, certain supplies (such as those of residential property) will not be subject to VAT even where an option to tax has been exercised but will in some cases benefit from zero-rating enabling a landlord, seller or developer to recover its VAT costs.

## SDLT

SDLT is a land transfer tax payable by the buyer or tenant on the acquisition of a chargeable interest and applies to any chargeable consideration payable by the buyer on a relevant transaction. It applies to all manner of transactions in land, including the sale of freeholds, the assignment, grant and surrender of leases and dealings in minor interests such as easements – although mere licences to occupy and security interests fall outside of its scope. The rate depends on the value of the transaction, and the highest rate for non-residential transactions is currently 5 per cent in respect of the part of consideration that exceeds £250,000. Residential properties are subject to rates ranging from 2 to 12 per cent for higher-value properties where the consideration exceeds £1.5 million; there is an additional 3 per cent charge on second homes and most buy-to-let properties and a further 2 per cent surcharge on purchases by non-UK residents, thus making for a marginal rate of up to 17 per cent. Where the buyer of a residential property worth more than £500,000 is a corporate vehicle, the rate of SDLT is 15 per cent and an additional annual charge may also apply. A new land transfer tax replaced SDLT on property transactions in Wales with effect from April 2018, which, following the introduction of a similar tax in Scotland in 2015, leaves England and Northern Ireland as the two areas of the United Kingdom where SDLT remains in place. SDLT is also payable by reference to the rent in addition to any premium on the grant of a lease and is charged at banded rates of 1 and 2 per cent of the net present value of the rent payable for the term of the lease. A number of reliefs may apply, including group relief, sale and leaseback relief, acquisition relief, reconstruction relief and charity relief. It is important to consider how best to structure a transaction for SDLT purposes, although the introduction of various anti-avoidance provisions has made it increasingly difficult to implement tax-saving schemes. The government has confirmed that SDLT measures introduced to support the housing market, and first-time buyers in particular, will remain in place until 31 March 2025.

## Rates



The occupier of a business property is responsible for the payment of business rates, which fund local government expenditure and are calculated by reference to the rateable value of the property. Rateable values are usually assessed every five years. The latest revaluation came into effect on 1 April 2023. Following a significant reduction in the relief available, business rates are generally payable on empty properties, and this has become a significant issue for owners in sectors with high numbers of vacant units. The government has in recent years prioritised business rate reliefs to support smaller businesses as well as those in the struggling retail, hospitality and leisure sectors, with a further package of measures announced as part of the 2023 Autumn Statement. It has also promised a long-overdue review of the existing business rates regime.

#### **iv Finance and security**

Lenders will generally require security over real estate, the best form of which is a charge by way of legal mortgage. It is necessary to register a mortgage over land at the Land Registry. If the company giving the security is registered at Companies House, the security must also be registered at Companies House within 21 days of creation. The mortgage will typically impose restrictions on the ability of the borrower to deal with the property and obligations on the borrower to preserve the value of the security. Security is also commonly taken over the rental income derived from occupational leases, as well as over any ancillary insurance, construction and other contracts of benefit to the charged property.

### **Leases of business premises**

In general, the landlord and tenant are free to agree the terms of a commercial lease. The law does not prescribe a particular form or the contents of a lease and, subject to the tenant's security of tenure and the government's tenant protection package, there are relatively few statutory provisions affecting the landlord and tenant relationship under a commercial lease. The RICS Code for Leasing Business Premises seeks to encourage fairer and more flexible terms for tenants but, despite industry endorsement, remains voluntary, at least for landlords and tenants. Traditionally, the industry has not enjoyed a reputation for being customer-driven, and leases have tended to be lengthy, complex and onerous for tenants. This is, however, changing as owners seek to meet the needs of their occupiers. The position for commercial leases should be contrasted with that for residential leases, where statute plays a significant role.

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## **i Term**

Leases can be granted for a wide range of terms. Leasehold interests held for investment purposes are normally held on long leases for a term of between 99 and 250 years. Historically, occupational leases were granted for a term of 20 or 25 years; however, shorter terms of 10 years or less are now common. A tenant of an occupational lease may also require a right to determine the lease before the end of the term. For example, the tenant of a 10-year lease may have a contractual right to determine or break the lease at the end of the fifth year of the term.

## **ii Rent increases**

The property industry has traditionally required five-yearly upward-only rent reviews to the open market rental value of the property. This guarantees a minimum return of no less than the original rent for the remainder of the term of the lease, even if market rents have fallen. Although there has been some pressure on the property industry to offer leases on more flexible terms, it is still very rare to see rent review provisions that allow for the rent to go up or down in line with the market. However, it is not uncommon for a tenant to have a break right linked to the first rent review. An alternative form of rent review is indexation, for example in line with the retail price index or the consumer price index, but this too is often on an upward-only basis. Fixed uplifts in the rent are another possibility, and changes to the rent can also be restricted by agreed caps and collars. An element of the rent, particularly in the retail sector, may also be calculated by reference to turnover. A combination of insolvency procedures, such as company voluntary arrangements (CVAs) and restructuring plans, and the covid-19 pandemic has accelerated the focus on turnover rent structures. Many existing leases of retail premises have been re-gearred to include an element of turnover-based rent. This trend will continue as the retail and leisure sectors look for a viable business model in the aftermath of covid-19. This, in turn, will increase the significance of data and technology in the landlord and tenant relationship. VAT may be charged on the rent if the landlord has exercised the option to tax. This is only a real problem for tenants whose VAT status means that they are not able to recover all of the tax incurred.

## **iii Tenant's right to sell and change of control**

There are likely to be restrictions on the tenant's ability to sell, charge, underlet or share occupation of the property without the landlord's consent. In a typical occupational lease, consent must not be unreasonably withheld. In considering applications for consent, the landlord will be keen to ensure that a tenant of good covenant strength is responsible for paying the rent. Provisions restricting a change of control of the tenant itself are, however, rare.

## **iv Tenant liability and security for payment of rent and performance of covenants**

The Landlord and Tenant (Covenants) Act 1995 (LT(C)A) introduced a regime whereby tenants of new leases (granted on or after 1 January 1996) are released from liability on

an assignment of the lease. The tenant's guarantor is also released at this point. This is in contrast to the previous regime, whereby the tenant and its guarantor remained liable for the duration of the term of the lease under the doctrine of privity of contract, even after an assignment of the lease. The doctrine continues to apply to old leases (granted before 1 January 1996). The LT(C)A also introduced authorised guarantee agreements (AGAs), which provide the landlord with a guarantee from the outgoing tenant for the incoming assignee's obligations under a new lease. The AGA is for the duration of the assignee's term only, so that when the lease is assigned again, the original tenant is released from all liability. The decision in *K/S Victoria Street v. House of Fraser (Stores Management) Ltd and others*<sup>[3]</sup> confirmed that, although an existing tenant's guarantor cannot guarantee the liability of an incoming assignee, it can guarantee the outgoing tenant's obligations under an AGA given by that tenant in respect of the assignee. This has been considered by the High Court in *Co-operativeGroup Foods Ltd v. A&A Shah Properties Ltd*,<sup>[4]</sup> where it was held that the guarantor's obligations amounted to a guarantee of the tenant's obligations under the AGA and were enforceable. In *EMI Group Limited v. O&H Q1 Limited*,<sup>[5]</sup> the court confirmed that a purported assignment of a lease to the tenant's guarantor was void and of no effect. A landlord will also consider other security, including a rent deposit or bank guarantee.

### **v Repair and insurance**

A tenant of business premises will usually be expected to be responsible for all liabilities in respect of the property, including maintenance and repair costs. Where a property is multi-let, those costs are recovered through a service charge. The landlord generally insures the property but recovers the cost of the premiums from the tenant. As a result, leases of business premises are often known as full repairing and insuring (FRI) leases. An FRI lease is important for the UK real estate investment market, as it allows the landlord to receive a clear income stream without incurring any expense itself in relation to the property. Liability for any wants of repair typically crystallises at the end of the term when the landlord prepares a schedule of dilapidations. The tenant may also be required to reinstate any alterations made to the premises during the term.

### **vi Collateral warranties**

For investors in a property that has been recently constructed, collateral warranties provide investors, funders, tenants and other third parties with a contractual link that can be used to enforce the performance of the duties of the professional and construction teams. Third parties can also be given equivalent rights under the Contracts (Rights of Third Parties) Act 1999.

### **vii Termination**

If the tenant fails to pay the rent or is in breach of any of its other obligations, the landlord is entitled to bring the lease to an end by forfeiture; however, the tenant is given the opportunity to remedy the breach and can apply to the court for relief. The landlord's right to forfeit also normally applies if the tenant of an occupational lease becomes insolvent. In *Vauxhall Motors Ltd v. The Manchester Ship Canal Company Ltd*,<sup>[6]</sup> the Supreme Court confirmed that relief from forfeiture was also available in respect of possessory rights as

well as proprietary rights, in this case a right to discharge surface water into the canal. The government introduced measures to protect tenants adversely affected by covid-19, including a moratorium on forfeiture and other enforcement action. These measures have now all come to an end. However, in difficult times a landlord will normally be reluctant to terminate a lease and run the risk of an indefinite rental void compounded by business rates liability.

### **viii Security of tenure**

The Landlord and Tenant Act 1954 (LTA) provides security of tenure to tenants of commercial properties in England and Wales. If the property is occupied for business purposes, the tenant has the right to remain in occupation at the end of the term of the lease and is entitled to apply for the grant of a new lease on substantially the same terms; however, the landlord may be able to resist the grant of a new lease based on one of the grounds prescribed by the LTA. The most common ground relied on in practice is that the landlord plans to redevelop the property. This ground is not always easy to establish and, if the landlord is successful, the tenant may be entitled to compensation. Security of tenure can be a valuable statutory right for tenants and can have a significant effect on a landlord's plans for dealing with its property, including future redevelopment. It is possible for the landlord and tenant to agree to contract out of the security of tenure provisions of the LTA. To contract out, a notice must be served on the tenant explaining that security of tenure is to be excluded, and the tenant must make a declaration acknowledging this before the lease can be completed. Contracting out tends to be more common in relation to short-term leases. A recent reform ensures that tenants operating a business from home do not acquire security of tenure. The government has announced a review of commercial landlord and tenant legislation to ensure that the LTA remains fit for purpose in the context of modern business leases.

### **ix Energy efficiency**

The minimum energy efficiency standards (MEES) came into force in April 2018. Landlords are not able to grant new leases unless the property meets the required energy efficiency rating. The rating for a property is set out in its energy performance certificate. From April 2023, MEES also apply to all existing lettings. A property must have an energy efficiency rating of band E or better to meet the minimum standard. The minimum standard for commercial property is expected to rise to band B or better by 2030. A significant amount of existing stock does not currently meet this higher standard. If a property is substandard, the landlord must carry out energy efficiency improvement works unless one of the exemptions applies. Any relevant exemption must be registered and will normally last for five years. If the property is sold, the new landlord must register the exemption if it continues to apply. The main exemption is the seven-year payback exemption for commercial property, which applies where the cost of the relevant energy efficiency improvement cannot be recovered by way of energy savings over a seven-year period.

### **x Mixed-use developments**

Mixed-use developments are generally permitted in England and Wales and have become a key form of urban renewal. There are specific issues relating to mixed-use developments,

including increased levels of statutory protection for residential tenants. Residential tenants' rights include collective enfranchisement and individual lease extension rights, as well as the right of first refusal and protection in relation to service charges, building safety and the management of the property. In addition to affordable housing, developers are increasingly being required to provide affordable business or community space as a condition to the grant of planning permission.

## Year in review

### i Register for overseas entities now live

The Economic Crime (Transparency and Enforcement) Act 2022 was introduced in March 2022 with the aim of clamping down on money laundering. In addition to updating the existing sanction and unexplained wealth order regimes, the Act provided for a new beneficial ownership register for overseas entities. That register was introduced on 1 August 2022 and the related Land Registry regime was introduced on 5 September 2022. Driven by events in Ukraine, the measures were introduced at breakneck speed and there will, no doubt, be some technical and practical issues as the new registration regime becomes established. An overseas entity cannot be registered as the legal proprietor of land unless it is a registered overseas entity with an overseas entity ID. The regime is also retrospective and applies to overseas entities that became the registered proprietor of freehold or leasehold property on or after January 1999. The Land Registry will register a restriction on title preventing any unregistered overseas entity from selling, letting or charging that property unless it becomes a registered overseas entity. Existing owners had until 31 January 2023 to apply for registration. Applications for registration must be made to Companies House and the overseas entity must provide prescribed information about its beneficial ownership.

In addition to the initial application for registration, every registered overseas entity is subject to an ongoing obligation to update its beneficial ownership information every 12 months. The updating is not triggered by a specific change of control and 'nil returns' are required. The beneficial ownership information required mirrors that under the persons with significant control regime for UK companies and LLPs. The focus is on the beneficial ownership of the registered proprietor and not the underlying property. Similar regimes apply in Scotland and Northern Ireland.

Although the new register adds another level of administration and due diligence for property transactions, it is not expected to be a significant issue for most transactions involving overseas entities. Although many offshore holding structures do exist, changes to the UK tax regime mean the use of an offshore property holding vehicle has become less attractive in recent years. It is important to remember that registration is not just an administrative burden; failure to comply with the Act will constitute a criminal offence with implications under the Proceeds of Crime Act 2002. The registration and associated verification process is typically conducted by specialist service providers with input from advisers in the relevant jurisdiction. In addition to discrete property acquisitions, disposals and lettings, the new regime needs to be considered on financings, refinancings and

corporate transactions involving overseas entities. Those overseas entities proposing to acquire UK property should be aware of the registration and updating requirements.

## **ii Plans for reform of the private rented sector**

Following its white paper on the private rented sector, the government has published the Renters (Reform) Bill. The Bill is focused on promoting fairness for households renting their homes. Key points include the abolition of 'no-fault' evictions under Section 21 of the Housing Act 1988, requiring homes to be of a higher standard, a new residential tenancy structure and tenants being allowed to keep pets. After much speculation, Section 21 no-fault evictions for assured shorthold tenancies will be abolished. Assured shorthold and assured tenancies will be replaced by a new periodic tenancy. The tenancy will not have a fixed term and will automatically renew until terminated. Tenants will be able to determine the tenancy at any time by giving two months' notice. This means that they will have greater flexibility and will not be tied into liability throughout a fixed term. While tenants will have greater flexibility, the abolition of Section 21 will be a blow for landlords. Section 21 was introduced to make it easier for landlords of assured shorthold tenancies to recover possession on or after the end of a contractual term, simply by serving two months' notice and without the need to establish any ground for possession. This encouraged a wider range of property owners to enter the residential letting market. For example, where a property becomes empty for a relatively short period, such as if the owner is required to move for work or for personal reasons, or if market conditions favour letting rather than a sale. These part-time or accidental landlords may be less willing to make their properties available or seek to utilise shorter-term holiday let or Airbnb style arrangements.

Following the abolition of Section 21, landlords will need to establish a ground for possession. One of these will be a new ground where the tenant has been in regular arrears over the term of the tenancy. A landlord will also be able to terminate the tenancy if the landlord plans to sell the property or intends to move into it. This should give landlords some degree of flexibility to juggle their portfolios to reflect their own plans. However, it will be interesting to see how easy it will be for a landlord to demonstrate an intention to sell or move into the property and how the legislation will prevent the new ground from being abused. By way of comparison, it is not easy for a landlord to establish the no fault grounds of opposition under the LTA to prevent a tenant obtaining a new lease of commercial premises.

Under the proposals, landlords will need to meet the new decent homes standard. Details of how these obligations will be implemented are awaited and it seems likely that there will be a phased introduction. The government also proposes to make it easier for families and those on benefits to obtain tenancies of residential property, and landlords will not be able to exclude prospective tenants on those grounds. In addition, landlords will only be able to exclude family pets if there are reasonable grounds to do so. The proposed reforms will also make it easier for tenants to move properties, including a potential ability to transfer rent deposits. There will also be restrictions on rent reviews to help prevent excessive rent increases. To reduce lengthy disputes, the government proposes to speed up the judicial process. A new ombudsman will be created to assist with dispute resolution, and a new portal will also help ensure that landlords are aware of their legal obligations. The government has confirmed that the ban on 'no fault' evictions will be delayed until a new court process is in place.

A Leasehold and Freehold Reform Bill has been introduced offering greater protection to homeowners. Measures include the abolition of leasehold houses and an increase in standard leasehold extensions for flats to 990 years. Although ground rents are no longer permitted in new leases, proposals to introduce retrospective measures in respect of existing leases are more controversial and will attract opposition from landlords, investors and funders in the residential sector.

### **iii Building safety**

Almost six years after the Grenfell Tower tragedy, the Building Safety Act 2022 introduced a new regime for building standards and safety in the United Kingdom. The focus is on high-rise residential and mixed-use towers, and the Act does not apply to all buildings in the United Kingdom. A number of issues will need to be considered on transactions involving residential or mixed-use properties, including the attractive build-to-rent and purpose-built student accommodation sectors.

All existing higher-risk buildings must have been registered with the Building Safety Regulator by 30 September 2023. All new and refurbished higher risk buildings will also need to be registered. A higher risk building is one of at least 18 metres in height or with at least seven storeys and containing two or more residential units. The Act restricts the ability of landlords to recover the costs of remediating fire and other safety defects in relevant buildings. For these purposes, a relevant building is one of at least 11 metres or with at least five storeys and containing at least two dwellings. Major housebuilders and developers have been required to join a Responsible Actors' Scheme and sign the developer remediation contract relating to the remediation of life critical fire safety risks in relevant buildings that they have developed or refurbished in the past 30 years. The Act introduces new ongoing duties for the management of fire and building safety risks in high-rise buildings. The relevant accountable person will have an ongoing duty to identify, mitigate and manage building safety risks. Accountable persons are landlords and freeholders responsible for repairing the building.

The Act confers powers on the High Court to grant a building liability order if it is 'just and equitable' to do so. The orders can be used to ensure that group company structures cannot be used to avoid liability in respect of building defects. A special purpose vehicle is often used to carry out a development project. The court has the power to extend the liability of the company responsible for the construction or refurbishment works to associated companies. This means that group companies are potentially liable for defects in buildings developed by an associated company. The new orders mean that the courts can look beyond the separate legal personality of the developer or building company and pierce the corporate veil to ensure that corporate structures cannot be used to avoid liability for building safety risks. Accordingly, building safety risks have become a contingent liability that needs to be considered in corporate transactions.

### **iv Going digital**

The Law Society has produced a draft new code for signing and exchanging contracts for the disposition of an interest in land, including sale agreements and agreements for lease. The new code reflects the increased use of technology as part of the conveyancing process for both commercial and residential transactions. The existing formulae that apply to the

exchange of contracts were last reviewed in 1996 and technology has had a significant effect on how property practitioners do business since then. Exchange is the key point on a property transaction when the parties commit to their respective obligations to sell and buy the property. Under Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the agreement must be in writing and incorporate all the terms in a single document. Typically, the solicitors exchange their respective clients' signed contracts. The Law Society's Conveyancing and Land Law Committee wants to create greater certainty regarding the transition to the electronic exchange of contracts, including the text of the contract, the methods of signing and exchanging, as well as the handling of deposits. A binding contract will not arise until exchange of contracts is effected under a proposed immediate exchange protocol or, in the case of a chain of transactions, under a proposed release of contracts protocol. A consultation has been launched on the new proposals. HM Land Registry is still working towards a digital conveyancing system for the commercial and residential property markets in England and Wales.

## Outlook and conclusions

Recent events have confirmed that more than ever it is impossible to predict the future. Although covid-19 has not completely gone away, political instability and economic uncertainty have taken over as the dominant forces affecting the UK real estate markets. The prospect of a 2024 general election, speculated to be in October but with rumours of it being called as early as May, adds to the uncertainty and the United Kingdom remains desperate for a stable government capable of formulating and implementing sound economic policies. Russian aggression in Ukraine and events in the Middle East have reminded the world of the importance of global political stability.

After a few gloomy years dominated by the covid-19 pandemic, war and alarming climate change events, it is sincerely hoped that next year's edition brings with it much more positive updates from the United Kingdom and the rest of the world. There is no shortage of investment capital waiting for a home and, after a quiet spell, pressure will mount on investment firms to return to the negotiating table and bank some profitable deals. Opportunities are out there, helped by sellers moving towards buyers with a more realistic pricing of assets and the availability of creative funding options, including joint ventures. The importance of real estate as a global asset class remains a constant, and it is expected that UK real estate markets will continue to prove resilient while adapting to rapidly changing demands. A flexible and diverse approach to investment will prove to be key.

## Endnotes

- 1 John Nevin is a partner at Slaughter and May. [^ Back to section](#)
- 2 Slaughter and May is pleased to have helped fellow law firms Clifford Chance, Linklaters, Allen & Overy, Baker McKenzie, McDermott Will & Emery, Kirkland & Ellis, Skadden, Arps, Slate, Meagher & Flom, Reed Smith, Travers Smith and others on their new London headquarters moves. [^ Back to section](#)
- 3 [2011] EWCA Civ 904. [^ Back to section](#)



4 [2019] EWHC 941 (ch). [^ Back to section](#)

5 [2016] EWHC 529 (ch). [^ Back to section](#)

6 [2019] UKSC 46. [^ Back to section](#)

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