The Real Estate Law Review

Twelfth Edition

Editor
John Nevin

The Law Reviews

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Twelfth Edition

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John Nevin

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PREFACE

This time last year the world's focus was still on the covid-19 pandemic as the dominant issue affecting us all. Tragically, just as we were starting to see light at the end of the tunnel, the much-hoped-for fresh start was stopped in its tracks by the war in Ukraine. The past 12 months have been dominated by war in Eastern Europe and the ensuing global humanitarian, economic and political fallout. The stability and certainty craved by all currently remains a distant hope.

Following on from COP26 in Glasgow, this year the focus was on Sharm El Sheikh for COP27. Once again, some key world leaders were notable by their absence and there remains the sense that more could and should have been achieved. This year, a further focus was acknowledging the developed world's contribution to the climate problem, and a new loss and damage fund was agreed upon to help meet the climate change costs suffered by the world's poorer nations. It has been accepted that something needs to be done, and that includes in the property industry. The built environment accounts for at least 25 per cent of the UK's greenhouse gas emissions, and significant changes are necessary if net zero targets are to be met. To date, the focus has been on high-profile new developments with eye-catching environmental, social and governance credentials. How to deal with the much larger stock of older, lower-value and underperforming buildings remains a bigger challenge.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012; Brexit seems but a distant memory, as a pandemic was swiftly followed by war in Europe and a cost of living crisis. These have truly been unprecedented times. This 12th edition of *The Real Estate Law Review* will, perhaps more than ever, continue to prove its worth by giving readers an invaluable overview of how key markets across the globe operate and how they react to major world events. The covid-19 pandemic and the war in Ukraine have both served as stark reminders that it is not possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 25 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effects on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

Covid-19 has not gone away but we have learned to live with it. The pandemic's legacy will be its lasting effect on how we live, work and play, and on each and every aspect of the global real estate market. More immediate headwinds include the very real risk of a long and deep recession, soaring inflation, rising interest rates, the withdrawal of government

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lockdown support, failing consumer confidence, increasing costs, a critical shortage of labour and materials as well as ongoing supply chain problems. On a more positive note, the property industry has traditionally proved to be resilient, and covid-19 demonstrated its ability to adapt to difficult and challenging times. The United Kingdom will be anxious to maintain its position at the top of global shopping lists as investors look for relatively safe havens for their investment capital. London and the regions seem certain to remain attractive to overseas investors looking for investment opportunities, both in the traditional real estate investment markets and also the rapidly evolving alternative asset sectors. The next few years will undoubtedly be challenging as we continue on the journey to recovery, but opportunities will arise, and real estate will remain a key part of global investment strategies. Knowledge of the global real estate markets will prove key to identifying and making the most of buying opportunities.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this 12th edition of *The Real Estate Law Review*. I would also like to thank the members of *The Law Review* team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2023 and beyond.

John Nevin
Slaughter and May
London
February 2023

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Chapter 9

ENGLAND AND WALES

John Nevin[1]

I INTRODUCTION TO THE LEGAL FRAMEWORK

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 between five and 20 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 has indicated that it plans to, once again, attempt to promote commonhold as a viable alternative to leasehold.

1 John Nevin is a partner at Slaughter and May.

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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 will 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 requirements before it can become the registered owner of UK property. The registration requirement also applies to overseas entities that already own 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 plans seem likely to be accelerated by the Land Registry as a result of the increasing significance of e-commerce and the rapid development of e-signatures.

iii Choice of law

Dealings with real estate in England and Wales will be covered by the law of England and Wales. Although a contract may include an express choice of governing law, which in general the courts will uphold, English law will still apply in relation 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.

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II OVERVIEW OF REAL ESTATE ACTIVITY

Overview of the market

Following the devastating global impact of the covid-19 pandemic, Putin's invasion of Ukraine has become the latest major world event to dominate the political and economic landscape. Global political risk and a hardening of the macroeconomic environment have overtaken the pandemic as the main factors affecting confidence in real estate markets. In case we forget, the implications of the UK leaving the EU also continue to rumble along in the background. Coming out of lockdown heralded a very welcome resurgence in activity as investors started to embrace a return to pre-pandemic conditions and take advantage of investment opportunities. However, on 24 February 2022, Russia's invasion of Ukraine served as a terrible reminder of the lurking menace of political instability and its effect on world politics and the global economy. Difficult times call for strong and stable government. Unfortunately, the UK has had anything but, as Johnson was replaced by Truss who was swiftly replaced by Sunak. It is hoped that Sunak and Hunt have sufficient support to implement the long-term and meaningful policies necessary to steer the UK through difficult times including, potentially, its longest-ever recession, while avoiding the unhelpful distractions that plagued their predecessors.

It is extremely unfortunate that this edition of *The Real Estate Law Review* is once again dominated by bad news. After more than two years of the pandemic, and its heartbreaking toll on human life, the world is now faced with the devastating reality of war in Europe. Tragically, despite heroic resistance from Ukraine it has become increasingly difficult to see a satisfactory and peaceful resolution to the conflict in the short to medium-term. In addition to the humanitarian crisis, Putin's invasion of Ukraine has, of course, had a significant effect on the European economy. 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 at the start of the year. The UK has arguably been less affected than mainland Europe, where Germany and countries closer to the conflict have borne the brunt. In addition to any direct exposure to Russian real estate, there is also the more complicated issue of extricating deal structures from Russian-backed ownership and financing. The war has led to 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. Although the introduction of the new legislation was accelerated by the war in Ukraine, much of it had been planned for some time. All overseas companies owning UK property will need to register details of their beneficial ownership. However, this is not expected to create an onerous burden for legitimate overseas investors seeking to acquire UK property and is unlikely, in itself, to deter investment. The UK'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 had already been hit extremely hard by covid-19 with a sharp decline in values across most sectors. Retail and leisure were already in serious decline and have suffered the most, as footfall fell off a cliff. Hopes of a swift bounce back have been thwarted as the UK economy officially entered into recession, and the ensuing cost of living crisis has crushed consumer confidence and stifled business optimism. Surging prices and limited growth have

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raised fears of a return to the stagflation of the 1970s. Squeezed property companies have already been caught in the middle with their tenants unable or unwilling to pay rent and their funders continuing to look for interest and loan repayments. A significant amount of arrears had already accrued since the start of lockdown in March 2020 as businesses were forced to close or cut back operations. The government's covid-19 tenant protection measures have come to an end and landlords are now, at least in theory, free to take enforcement action. However, the message 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. The pain of an economic recession following on from covid-19 is proving a challenge for a cash-strapped government to deal with. The Ukraine war effort and the global victims of catastrophic climate change events are also, of course, laying claim to any available funds. The Truss/Kwarteng mini budget proved to be a short-lived and misguided attempt to prompt an economic miracle by cutting taxes and borrowing more. Their successors, Sunak and Hunt, have managed to stabilise the financial markets by setting the UK on a much more realistic and sustainable course with tax rises and spending cuts.

Following on from COP26 in Glasgow, the great and the good descended on Sharm El Sheikh in Egypt for COP27. Again, certain key world leaders were absent and the UK's new Prime Minister only decided to attend at the last minute. Much of the focus at COP27 was on reaching a deal to provide funding for the climate change costs suffered by the world's poorer nations with agreement reached on a new loss and damage fund. The increasing frequency of extreme climatic events and the resulting damage and devastation are of concern to us all but, as is often the case, it is the developing world that is often the hardest hit. 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's 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. A more fundamental concern revolves around the UK's large stock of older, lower value and underperforming buildings where radical energy efficiency improvement works are unlikely to be economically viable without government funding. 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.

The office sector is still in the process of a major reset. Covid-19 had a profound effect on the market as occupiers across the spectrum were forced to re-evaluate their UK and global office requirements. Unsurprisingly, the perfect storm of covid-19 followed by recession 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

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law firms have been particularly active.[2] Although there has been some right sizing, the feared large-scale downsizing by corporate occupiers has failed to materialise and there is less vacant space than previously envisaged. 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. Although there has been some resurgence in investment activity since the last edition, this followed record lows during lockdown and the uptick has slowed in recent months in the face of the gathering economic storm. Investment transactions have been dominated by overseas capital, while activity from UK buyers has tended to focus on smaller lots. The Asia Pacific region continues to be the dominant source of investment capital followed by North America. Continued interest from overseas investors suggests that London and the wider UK 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 dollar-pegged 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, including confirmation of the Northern Powerhouse and HS2 rail projects. Continued decentralisation will benefit cities such as Manchester, Leeds, Edinburgh and Birmingham. Birmingham, together with the wider Midlands area, is enjoying a boost from this year's Commonwealth Games and the legacy opportunities that follow the staging of a major international event. 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 in a competitive labour market. This will focus demand on new developments, allowing an occupier to impose its green credentials as part of its corporate identity. For example, the lease of Jones Lang LaSalle's new Docklands offices will contain the first legally binding green lease provisions on the Canary Wharf Estate. The majority of new take up is for buildings with high sustainability credentials and

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, Reed Smith, Meagher & Flom, Travers Smith and others on their new London headquarters moves.

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a BREAAM 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 example, 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. 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 claims or statements made 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 letting at a premium. Although the focus is often on new state-of-the-art developments, the vast majority of the UK'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. 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. A quick stroll down some of the UK's once prosperous high streets quickly illustrates the problem.

The co-working sector absorbed an immediate lockdown hit, particularly in central London. Rental values have since improved, initially in the wider market and ultimately in core office locations following the start of the back-to-the-office migration. The demand for flexible space will remain, and serviced offices have become an essential requirement for fledging 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. The co-working sector has become an established part of the market, including through 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.

The covid-19 pandemic has caused the UK population to rethink its 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 live and work and the market is changing 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 wellbeing, 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.

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Other than work–life balance, affordability is affecting the residential market, with rising interest rates and a widening gap between wages and soaring inflation. Other factors include concerns about cladding and the safety of taller blocks of flats, and a shortage of new homes coming to market. The country's housing crisis continues as successive governments have failed to meet new build targets. Each year, the government sets a target of 300,000 new homes that it routinely fails to meet. The UK's rising population will ensure that residential property will continue to provide opportunities for investors. Unfortunately, a combination of Brexit, 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. 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 become tougher in 2023 as economic pressures, higher finance costs and less favourable tax and legislative regimes for buy-to-let landlords start to have a cumulative effect. Overseas investors in residential property are now also subject to a 2 per cent stamp duty land tax (SDLT) surcharge 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.

With the exception of the major supermarkets and established online retailers, it has continued to be a particularly difficult time for the UK's retail sector. A succession of household names have continued to join the seemingly endless list of casualties in a sector struggling even before the pandemic. Yawning gaps on the high street, a 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 a significant change in customer habits. 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. For example, John Lewis has entered into a new residential rental homes joint venture with abrdn as part of its ambition to build 10,000 new homes over the next decade. The government has also proposed measures to help rejuvenate high streets and town centres. 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. Pop-up retail and food outlets that can adapt quickly to events and demand have become an established part of the market.

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While London's West End has benefited from a gradual uptick in international and domestic 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 ensuing cost of living crisis means the pressure is back on for retail and leisure operators as 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 on-shoring production capability and shortening supply chains should also enhance the UK industrial market and boost local economies. The UK 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. 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 UK 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 UK and Europe remain significantly behind the US 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. 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 has largely weathered the storm now students have returned to campus. 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

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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 are required.

Perhaps not surprisingly, there has been a surge of interest in the life sciences sector, with the Oxford–Cambridge arc attracting the most attention. 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 and leisure sector has been desperate for a return to healthy occupancy rates. Confidence in the travel industry is essential, with a steady flow of foreign tourists required to fill an increasing number of available beds, particularly in London where a number of major new hotel projects are in the pipeline. 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. The long-suffering night club and live entertainment sectors, although now open, have had to cope with confusing health and safety requirements, as well as local authorities and communities that have become accustomed to a quieter life. 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 recent 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. 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 be at the top of the pecking order as investment opportunities come to market.

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 Russian activity in Europe. 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 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

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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.

III FOREIGN INVESTMENT

Subject to complying with the requirements of the new register of overseas entities, investors are able to 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.

IV 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 dictated by tax considerations, and it is important to ensure that appropriate tax advice is sought, taking into account both UK tax legislation and that of the investor's own jurisdiction. There are, however, a number of advantages and disadvantages to each structure, which may also prove critical depending on the investor's particular objectives.

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 UK 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. The main advantage is tax transparency, 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. 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.

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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 and is tax-efficient. 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 that 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 stamp 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 Property authorised investment fund

Property authorised investment fund (PAIFs) are open-ended investment schemes that invest in property and are authorised under FSMA. The PAIF regime allows gross dividends to be paid, and was introduced to make property attractive to tax-exempt investors. 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. PAIFs benefit from SDLT seeding relief.

vii Offshore vehicle

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

viii 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.

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ix 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 specified types of institutional investor (such as pension funds), and have property rental business as its predominant activity.

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.

V 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 are able to 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.

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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 the property by that seller or landlord a supply subject to VAT. The standard rate of VAT is currently 20 per cent. The landlord or seller can then recover the VAT charged on supplies of goods and services made to him or her in connection with the property concerned. In addition, supplies of land are generally subject to VAT if the sale involves a new commercial building completed within the past three years, or an incomplete industrial or commercial building. Supplies 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 transactional tax payable by the buyer on the acquisition of a chargeable interest, and applies to any chargeable consideration payable by the buyer on a relevant transaction. 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 that 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, from April 2021, 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 costing 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 transaction 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 the tenant on the rental element of a lease

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on grant, 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. Limited types of transactions are normally exempt from SDLT, including mortgages and personal licences to use or occupy land. 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 will come 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. As part of the 2022 Autumn Statement, the government has announced a new package of business rate reliefs to support smaller businesses as well as those in the struggling retail, hospitality and leisure sectors. 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.

VI 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 have become more common recently. 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-geared 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

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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*[3] 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-operative Group Foods Ltd v. A&A Shah Properties Ltd*,[4] 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*,[5] 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*,[6] 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 a number of measures to protect tenants adversely affected by covid-19, including a moratorium

3 [2011] EWCA Civ 904.
4 [2019] EWHC 941 (ch).
5 [2016] EWHC 529 (ch).
6 [2019] UKSC 46.

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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 will 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 is expected to rise to band B or better by 2030. A significant amount of existing commercial 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 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.

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VII DEVELOPMENTS IN PRACTICE

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 have been introduced at breakneck speed and there will, no doubt, be some technical and practical issues as the new registration regime comes into play. 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 will apply 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 have 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. Companies House will be writing to existing owners informing them of the registration requirement. The registration requirement also applies to overseas entities that have disposed of registered land after 28 February 2022.

In addition to the initial application for registration, every registered overseas entity will be 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, but 'nil returns' are required. The beneficial ownership information required mirrors that under the existing persons with significant control regime for UK companies and LLPs. Significantly, the focus is on the beneficial ownership of the registered proprietor and not the underlying property. Similar regimes will 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. It is expected that the registration and associated verification process will be conducted by specialist service providers, and input from advisers in the relevant jurisdictions is likely to be required. In addition to discrete property acquisitions, disposals and lettings, the new regime will need to be considered on financings, refinancings and corporate transactions involving overseas entities. Those overseas entities owning or proposing to acquire UK property should already be considering the new registration requirements.

ii Plans for reform of the private rented sector

The government has published a white paper on the private rented sector. The paper 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

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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. 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 white paper 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. Full details of the government's plans will be contained in the Renters' Reform Bill.

iii Commercial property relationships during the covid-19 pandemic

Commercial premises, particularly in the hospitality, leisure and retail sectors, have been badly hit by covid-19 and many were forced to cease trading during periods of enforced lockdown. These businesses form a fundamental part of the economy and have a crucial role to play if the UK is to recover from the post-pandemic recession. The government acknowledged this by introducing measures to protect tenants from enforcement action in respect of covid-19-related rent arrears.

Those arrears accrued during periods of legally mandated closure were ring-fenced to allow landlords and tenants to work together to reach a negotiated settlement as to how those arrears were to be dealt with. A new legally binding arbitration process was introduced to cover those situations where an agreement could not be reached. Either party could refer the issue of what the tenant should be obliged to pay to an arbitrator who could decide

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as to what, if any, relief the tenant should be entitled. In making an award, the arbitrator was required to preserve the viability of the tenant's business but not at the expense of the landlord's solvency.

The regime was supported by a Code of Practice that was intended to encourage open and fair negotiations between the parties and also support the arbitration regime. The Code also contained a summary of the mandated closures and those business sectors affected together with a helpful summary of the arbitration process. The Code applied to all rent arrears accrued since March 2020 and not just to those that were ring-fenced.

As anticipated by the British Property Federation, the majority of commercial landlords and tenants had already reached agreement as to how to share the pain of covid-19 arrears and the number of disputes referred to arbitration was limited. It is hoped that the spirit of collaboration present during lockdown will continue, as many tenants continue to feel the pressure of difficult economic conditions, particularly in the hospitality, leisure and retail sectors. The arbitration regime, although now over, amounted to a significant piece of statutory intervention in an industry where, CVAs and restructuring plans notwithstanding, the parties have been traditionally bound by the terms of their lease.

iv Covid-19 rent arrears awards made under new arbitration scheme

As it transpired, only a handful of arbitration awards were made under the Commercial Rent (Coronavirus) Act 2022 covid-19 arrears arbitration scheme. The arbitration scheme was introduced to deal with disputes relating to the payment of ring-fenced arrears accrued during periods of enforced lockdown. One of these related to an arbitration reference made by Signet Trading Ltd, the owner of the H Samuel and Ernest Jones high street jewellery brands. The tenant was seeking relief in respect of £450,000 of rent payable under the lease of its headquarters office. The tenant argued that its headquarters were ancillary to its retail business and the offices had been adversely affected by the closure of its retail outlets. The arbitrator found in favour of the landlord. The business carried on by the tenant at its office headquarters had not been required to close. Accordingly, it was not adversely affected by covid-19 for the purposes of the Act, and the arrears were not ring-fenced and were not protected by the Act.

VIII OUTLOOK AND CONCLUSIONS

Recent events have confirmed that more than ever it is impossible to predict the future. Although it is clear that covid-19 in some shape or form will remain with us for some time to come, political instability and economic uncertainty have taken over as the dominant forces affecting the UK real estate markets. The UK has had three prime ministers over the past 12 months. including Liz Truss, whose seven weeks in charge is the shortest tenure in British history. The country is desperate for a stable government capable of formulating and implementing sound economic policies. Russian actions have reminded a world emerging from lockdown of the importance of global political stability. The ongoing occupation of Ukraine has demonstrated the fragility of world peace and also the complexity of global economics as we seek to wean ourselves off Russian oil and gas. The world cannot afford to be blackmailed by Russia, or any other power, and over-reliance on a particular commodity or source is no longer an option.

Although flexible working practices will clearly become a more accepted part of how we work, lockdown has also confirmed that face-to-face contact is a key part of our working

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lives. It is not just the existing workforce that needs to be catered for but the generations to come. Physical presence in the office has traditionally been an essential part of the learning curve for those starting out on their careers or changing jobs. Remote working may prove to be an unsatisfactory substitute giving credence to those currently advocating greater attendance. It seems certain that employment lawyers and HR departments are going to be busy over the coming months and years as the tension between new employee expectations and traditional employer requirements continues on its journey towards a happy equilibrium. A slowing jobs market may also encourage a shift to higher attendance levels, where an employer's office footprint allows. Although fewer workers may need to be in the office, those workers will be more conscious of what the office has to offer. After a period of unexpected financial prosperity during lockdown, the financial world is waking up to the importance of networking and the need to create, build and maintain relationships if opportunities are to be identified and taken advantage of. The window of easy money has shut and is likely to remain closed for some time. Corporate owners will need to focus on how space can best be used. It is no longer sufficient to simply build an office and expect workers to fill it. Architects have been forced to focus on purpose rather than simply appearance. Tenants have finally become customers, and landlords need to become customer relationship managers with all parties actively engaged throughout the contractual term and beyond. The gap between new-build product and second-hand office space will widen and this will result in a repurposing of redundant buildings. Hybrid working has shifted the purpose of the built office environment as employers seek to provide an altogether better workplace experience. Confidence is key and offices must be seen as attractive places to work and play, particularly in London, which thrives on large numbers of talented people from all over the world wanting to work and live in a world-leading financial and cultural hub.

The industrial sector has fared best in the current crisis. Demand for logistics space remains strong to meet the requirements of internet shopping and UK-wide distribution. The post-Brexit spike in demand for commercial storage space and a move to refocus existing buildings for distribution and storage use has continued. The industrial sector has become the top performer and a new safe haven for investors. The boom in life sciences also seems set to continue. There has been a surge of interest in film and studio space as the industry seeks to catch up with consumer appetite for new content. With the exception of the major supermarkets, the retail and leisure sectors face an uncertain future and we will see further insolvencies and restructurings. Discount and value operators will take up some of the space vacated and there will be opportunities for new entrants and independents to take previously unattainable space at affordable rents. The pub sector is an obvious target for bargain hunters and chains planning to expand their footprint. Rental structures are likely to evolve further to enable landlords and tenants to share the pain and gain by reference to turnover and commercial success. The obtaining and sharing of data will become an increasingly important part of the landlord and tenant relationship, not only in relation to turnover rents but also to help meet respective ESG targets and ensure that space is used in the most effective and efficient manner. In difficult times, there is very little appetite for paying for empty or underutilised space. Although global travel restrictions have largely disappeared, it is likely that air travel will remain well below pre-pandemic volumes as rising costs and complex travel requirements continue to deter holidaymakers and businesses review their travel policies in the light of ESG strategies. The central London residential letting market has started to pick up as workers, students and tourists return to the capital. High debt costs, low yields and less favourable tax and regulatory regimes mean that institutional investors will continue to

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take market share from private landlords fleeing the residential sector. Demand for housing is likely to remain strong, although the pandemic may involve a rethink in the design and location of new developments. Those finding themselves working from home on a much more regular basis will continue to prioritise space over convenience.

A combination of covid-19 and Brexit had already led to intermittent problems in the supply chain, and issues associated with ensuring both a skilled and unskilled workforce have led to delays on construction projects. War in Ukraine has served to add to supply chain issues and increase costs further. Ukraine is a major supplier of key construction and manufacturing materials including copper, aluminium ore, bitumen, oil and neon. Before the war, Ukraine accounted for 70 per cent of global neon exports, an essential component of microchip production. Following significant delays and cost overruns, the Elizabeth line finally opened to coincide with the Queen's Platinum Jubilee, and the new line serves as a fitting and lasting tribute to Her Late Majesty. Crossrail 2, however, remains on ice as part of the funding agreement reached between the government and a cash-strapped Transport for London. The proposed expansion of Heathrow remains open to further political, environmental and economic debate. Supply chains are expected to shift to rail to counter an acute shortage of heavy goods vehicle drivers, a problem that has been brewing for a long time owing to declining pay and conditions in that sector. The UK's ongoing transport requirements will need a degree of re-evaluation once new patterns of living and working become established. As once-in-a-lifetime climatic events threaten to become more frequent, increased expenditure on flood defences and other infrastructure is required to limit the damage caused by such events and to enable much-needed development to occur on floodplains and in other vulnerable locations. Much will depend on the steps taken to stimulate the economy by a government saddled with increased debt and under pressure to address the cost of living crisis as well as supporting Ukraine's war effort. Hot on the heals from the ill-fated Truss/Kwarteng mini budget, the Sunak/Hunt Autumn Statement has confirmed £600 billion for infrastructure over the next five years, including the Northern Powerhouse and HS2 rail projects, the Sizewell C nuclear power plant and the rollout of gigabit broadband.

The covid-19 pandemic and war in Ukraine have firmly put concerns about leaving the EU into perspective. Indeed, the all-encompassing effect of both events has to some extent levelled the post-Brexit playing field. For recovery to continue, the market needs certainty and, now that the covid-19 threat is largely contained, that certainty will only arrive once lasting peace is achieved in Europe. The much-anticipated surge in real estate investment activity as global covid-19 restrictions lift has been hamstrung by the war in Ukraine. Although there will inevitability be less activity than expected, opportunities in real estate undoubtedly remain. There is no shortage of global investment capital and it is reasonable to believe that UK real estate will continue to receive more than its fair share. London in particular will retain its position as a leading global city. However, competition will be strong and the UK must work hard to ensure that it remains attractive as a safe and secure place in which to live, invest and do business.

As the UK officially enters recession, economic forecasts have been revised downwards for 2023, and difficult economic times seem set to continue for some time to come. The real estate industry is by no means immune and there has been an uptick in insolvencies in the property and construction sectors. Although stock markets have suffered from instability since the start of the pandemic, the FTSE 100 has just about managed to steady itself above the psychologically important 7,000 barrier. Conflict in Europe, rising inflation, higher

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borrowing costs, ongoing supply chain disruption, product and labour shortages and the withdrawal of pandemic-related government support are persistent headwinds facing UK businesses. These ongoing issues will ensure that every corporate occupier will continue to re-evaluate how they operate and their property estate requirements. This in turn will lead to investment opportunities for agile investors in tune with the markets and constantly evolving trends.

The lifting of travel bans encouraged activity from overseas investors looking for an attractive destination for their pent-up capital, and investment volumes managed to reach pre-pandemic levels only to fall back as economic and political clouds gathered. Interest from Asian investors has been strongest, followed by that from North American investors. Although the appetite for deals remains strong, a greater understanding of each target sector and the underlying assets will be required. The skill is being able to identify those sectors of the market demonstrating chronic need combined with guaranteed demand. It is also important to remember that real estate remains a relationship-driven industry, and an ability to tap into property expertise is essential if investors are to blend successfully into the market. Some sectors have changed forever, and the real estate market will never be the same as it was before the pandemic. There has been a significant resetting of the UK's property requirements, and investors will need to show imagination when it comes to adapting to the new world order.

After a gloomy few years dominated by the covid-19 pandemic, war in Ukraine and alarming climate change events, it is sincerely hoped that next year's edition brings with it much more positive updates from the UK and the rest of the world. The importance of real estate as a global asset class is, however, 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 may prove to be key.

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ABOUT THE AUTHORS

JOHN NEVIN

Slaughter and May

John Nevin is a partner in the real estate group at Slaughter and May. He has considerable experience in a wide range of real estate work. He has acted extensively on acquisitions and disposals of all types of property interests, on significant development projects and on major lettings. His clients include investors, occupiers, developers, livery companies, hotel owners, house builders and banks. He is listed as a leading individual in the real estate section of *Chambers UK* 2023 and the commercial property: corporate occupiers and development sections of *The Legal 500* 2023, and as a notable practitioner in *IFLR1000* 2022, and is also listed in *Who's Who Legal: Real Estate* 2022.

SLAUGHTER AND MAY

One Bunhill Row
London EC1Y 8YY
United Kingdom
Tel: +44 20 7090 5088
Fax: +44 20 7090 5000
john.nevin@slaughterandmay.com

www.slaughterandmay.com

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