

# Contents

<i>Foreword</i> .....	v
<i>Acknowledgements</i> .....	vii
<i>Preface</i> .....	ix
<i>List of Abbreviations</i> .....	xxv
<i>Table of Statutes</i> .....	xxxiii
<i>Table of Statutory Instruments</i> .....	xxxix
<i>Table of European Legislation</i> .....	xli
<i>Table of Cases</i> .....	xliii
 <i>Real Estate Finance – An Overview</i>	
<b>Chapter 1 The Globalisation of Real Estate</b> .....	1
Introduction .....	1
Origin and growth of the real estate marketplace .....	1
Real estate: the sectors .....	5
Valuation issues .....	17
The emergence of real estate as a separate asset class .....	18
Conclusion .....	19
<b>Chapter 2 The Real Estate Cycle</b> .....	21
Introduction .....	21
Determinants of demand and supply .....	21
Cycle measures and baskets .....	30
The sustainable market .....	34
Shadow cycles .....	37
Conclusion .....	37
<b>Chapter 3 Evolution and Convergence of Global Real Estate Capital Markets</b> .....	39
Evolutionary themes in real estate finance .....	39
Equity capital markets and the global dispersion of real estate ownership .....	40
Debt capital markets and the disintermediation of mortgage credit .....	45
Synthetic MBS and CMBS: virtual capital markets .....	50
Implications of the sub-prime crisis .....	54
Conclusion .....	56

<b>Chapter 4 Real Estate Investment and Risk Analysis</b> .....	57
Introduction .....	57
How to invest in real estate .....	58
Reasons for investing in real estate .....	59
Risk associated with real estate investing .....	64
Typical real estate investment analysis .....	82
Conclusion .....	88

### *UK Real Estate Finance*

<b>Chapter 5 Financing UK Real Estate – What Makes UK Land an Attractive Security?</b> .....	89
Introduction .....	89
Some history .....	89
What makes property an attractive asset? .....	90
Financing property – types of land which can be traded .....	93
Financing property – mortgages and security over land .....	97
Conclusion .....	102
<b>Chapter 6 Financing and Developing of UK Land</b> .....	103
Introduction .....	103
Construction contract frameworks and how they provide protection to banks .....	103
Security over construction documents .....	109
Real estate development agreements .....	121
Other construction finance issues .....	124
Conclusion .....	125
<b>Chapter 7 Valuing UK Real Estate</b> .....	127
Introduction .....	127
Principles .....	127
Methodology .....	128
Consistency and accuracy in valuations .....	137
Conclusion .....	143
<b>Chapter 8 Real Estate Finance: Balance Sheet Lending</b> .....	145
Overview .....	145
The balance sheet loan documentation .....	145
Parties .....	147
Documentation and key terms of the financing .....	152
Conclusion .....	175
<b>Chapter 9 A UK Lender's Perspective of Real Estate Finance</b> .....	177
Introduction .....	177
Appetite for real estate finance .....	177
The cost of real estate finance debt .....	180

How lenders seek to manage their risk profile .....	183
A banker's view of yields and value-risk .....	187
Key uncertainties and risks in the real estate finance environment .....	189
Conclusion .....	190
Supplement to Chapter 9: Basel II and Capital Requirements: an Overview .....	191
<b>Chapter 10 Health of the UK Commercial Real Estate Lending Market</b> ..	195
Introduction .....	195
Structure of outstanding loan books 2007 .....	197
Securitisation of real estate debt .....	205
Annual lending activity .....	208
Loan terms .....	211
Conclusion .....	224
<b>Chapter 11 Owning and Acquiring UK Real Estate with Debt: a Property Investor's Viewpoint</b> .....	227
Introduction .....	227
Why use debt? .....	227
Process .....	228
Selecting a real estate lender .....	233
Document negotiation .....	236
Refinancing .....	241
Conclusion .....	242
<b>Chapter 12 Managing UK Real Estate and Real Estate Loans</b> .....	245
Introduction .....	245
The administration of a real estate loan .....	246
The servicing agreement .....	251
Control rights .....	254
The servicing standard .....	257
Servicing overrides .....	260
Conclusion .....	261
<b>Chapter 13 Tax Issues in Real Estate Finance Transactions</b> .....	263
Introduction .....	263
VAT .....	266
Stamp duty land tax .....	269
Deductibility of interest .....	271
Transfer pricing .....	275
Withholding tax – Cross-border transactions and double tax treaty issues .....	276
Non-Resident Landlords Scheme .....	277
Conclusion .....	278

*Real Estate Financing Techniques*

<b>Chapter 14 Shariah Compliant Real Estate Operations and Finance</b> . . . . .	281
Introduction . . . . .	281
The basic Shariah rules . . . . .	282
Permissible forms of ownership and use of real property . . . . .	286
Conventional leasing v Shariah leasing ( <i>Ijara</i> ) . . . . .	287
<i>Sukuk</i> – Shariah compliant leverage . . . . .	288
The Shariah scholar and advisor process . . . . .	290
Conclusion . . . . .	292
<b>Chapter 15 Sale and Leaseback</b> . . . . .	293
Introduction . . . . .	293
Commercial background . . . . .	294
UK tax issues . . . . .	299
Corporation tax . . . . .	300
Capital gains . . . . .	301
Capital allowances . . . . .	303
VAT . . . . .	306
Stamp taxes . . . . .	309
Accounting issues . . . . .	313
Conclusion . . . . .	314
<b>Chapter 16 European Mortgage-Backed Securitisation</b> . . . . .	315
Introduction . . . . .	315
MBS: the basics . . . . .	315
Overview of the European mortgage market . . . . .	322
Transparency challenges ahead . . . . .	326
Challenges of the originate-to-distribute model . . . . .	333
Conclusion . . . . .	335
<b>Chapter 17 US Mortgage-Backed Securitisation</b> . . . . .	337
Introduction . . . . .	337
Overview . . . . .	337
Historical development of property finance . . . . .	339
The basic US MBS structure . . . . .	346
Basic US securitisation structure . . . . .	347
MBS and mortgage covered bonds . . . . .	349
2008 developments in the US covered bonds market . . . . .	351
Why securitisation? . . . . .	352
Types of mortgage-backed securities and their buyers . . . . .	356
Conclusion . . . . .	358
<b>Chapter 18 Commercial Real Estate Collateralised Debt Obligations</b> . . . . .	359
Introduction . . . . .	359
A primer on CDOs and CRE CDOs . . . . .	360

Key structural aspects of CRE CDOs . . . . .	364
Coverage tests and investment criteria . . . . .	373
Portfolio management considerations . . . . .	374
Tax considerations in CRE CDOs . . . . .	376
Credit support and hedging . . . . .	378
Credit default swaps and synthetic CDOs . . . . .	379
The future of CRE CDOs . . . . .	380
Conclusion . . . . .	380

*Real Estate Financing Vehicles*

<b>Chapter 19 Real Estate Funds</b> . . . . .	383
<i>Part 1: The Emergence of Global Real Estate Funds</i> . . . . .	383
Introduction to real estate funds . . . . .	383
Types of real estate funds . . . . .	386
Characteristics of real estate funds . . . . .	392
Liquidity and valuation issues . . . . .	394
The case for and against unlisted real estate funds . . . . .	400
Issues for the future . . . . .	404
Conclusion . . . . .	405
<i>Part 2: Development of US Real Estate Funds</i> . . . . .	407
Introduction . . . . .	407
Comparison of US real estate funds and REITs . . . . .	407
Introduction and growth in the US . . . . .	408
Registration in the US under the Investment Company Act of 1940 . . . . .	409
Boom period from 1999 to 2007 . . . . .	409
H2 2007/2008 credit crisis and its consequences . . . . .	410
Socially responsible investing in real estate . . . . .	414
Green investments . . . . .	414
Role of public pension fund financing . . . . .	416
International real estate investments by US investors . . . . .	416
US investment overseas . . . . .	417
Conclusion . . . . .	418
<b>Chapter 20 Real Estate Investment Trusts</b> . . . . .	419
<i>Part 1: The Emergence and Development of US Real Estate Investment Trusts</i> . . . . .	419
Introduction . . . . .	419
Overview and brief history of US REITs . . . . .	420
REIT types and structures . . . . .	424
US tax rules governing US REITs and their shareholders . . . . .	431
Conclusion . . . . .	434
<i>Part 2: Real Estate Investment Trusts within the UK and Europe</i> . . . . .	436
Introduction . . . . .	436
The UK REIT regime . . . . .	436
Property authorised investment funds ('PAIFs') . . . . .	441

Comparison of REITs and PAIFs .....	443
Market developments .....	444
Current issues and future developments .....	448
Suggested ways to reduce cost barriers for new REITs .....	449
Suggested ways to improve the likelihood of successful residential REITs .....	450
UK REITs – a summary .....	451
REITs in Europe – overview and history .....	451
Globalisation and scale .....	458
Development of a European REIT .....	459
European REITs conclusion .....	462
<b>Chapter 21 Offshore Real Estate Investment and Financing Vehicles</b> ....	<b>463</b>
<i>Part 1: Real Estate Investment and Financing Vehicles in the Channel Islands</i> .....	463
Introduction .....	463
Partnerships .....	463
Common partnership .....	464
Limited partnership .....	464
Companies – General .....	467
Private and public companies in Jersey .....	468
Par value/no par value .....	468
Limited liability .....	469
Incorporated cell/protected cell .....	471
Shareholder rights and relevant percentages .....	473
Registration, legal framework and establishment .....	475
Administration .....	476
Trusts introduction .....	477
Legal framework .....	477
Duties and powers of trustees .....	478
Types of trust common to both Jersey and Guernsey .....	479
Investment funds .....	480
Channel Islands Stock Exchange introduction .....	488
International recognition .....	488
Advantages of listing on CSX .....	489
CSX and UK REITs .....	489
Channel Island entities as special purpose vehicles ('SPVs') .....	489
Off-balance sheet structures .....	490
Structured finance transactions .....	490
Property unit trust .....	490
PUT compared with UK REIT .....	491
Conclusion .....	493
<i>Part 2: Real Estate Investment and Financing Vehicles in the Cayman Islands</i> .....	495
Introduction .....	495
Background on the Cayman Islands .....	495

Special purpose vehicles ('SPVs') .....	496
Indirect use of Cayman Islands companies .....	496
US tax treatment .....	497
Direct use of Cayman Islands companies .....	500
Mutual funds .....	500
Trusts .....	502
Listings .....	503
Security .....	503
Conclusion .....	504
<i>Supplement to Chapter 21 Part 2: Description of entities in use in the Cayman Islands</i> .....	505
Companies .....	505
Exempted or ordinary? .....	505
Exempted limited duration company .....	506
Good standing .....	507
Segregated portfolio companies .....	508
Legal form .....	508
Operation .....	509
Exempted limited partnerships .....	510
Exempted trusts .....	513
<i>Part 3: Offshore Real Estate Investment and Financing Vehicles – UK Tax Advantages and Pitfalls</i> .....	514
Introduction .....	514
Non-resident companies, partnerships, unit trusts – treatment under UK law .....	514
Treatment of UK investors .....	515
Anti-avoidance rules .....	517
Conclusion .....	520
<b>Chapter 22 Private Equity Real Estate Funds</b> .....	<b>521</b>
Introduction .....	521
Private equity real estate funds: business and legal terms .....	522
Structuring issues .....	531
Conclusion .....	532
<i>Indirect Real Estate Investments</i>	
<b>Chapter 23 Property Derivatives: The Next Generation Global Alternative Investment</b> .....	<b>533</b>
Introduction .....	533
The foundation .....	534
Property derivative structure and mechanics .....	543
Structured products .....	548
Risks, disadvantages, market impediments and the future outlook .....	549
Conclusion .....	551

<b>Chapter 24 Real Estate Subordinated Debt</b> .....	553
Introduction .....	553
Overview of AB debt structures .....	554
Why introduce AB Structures? .....	555
The common features of an AB Structure .....	556
Getting paid – waterfalls .....	560
The attraction of AB Structures .....	563
Controlling an AB Structure .....	564
Exiting a subordinate debt structure .....	566
2008 developments involving borrower/sponsor-affiliates .....	567
Conclusion .....	569

### *Real Estate Cross-Border Issues*

<b>Chapter 25 Title Insurance – an Aid to Cross-Border Real Estate Financing?</b> .....	571
Introduction: restless money .....	571
The territorial background .....	571
Asset reliability .....	573
Asset liquidity .....	574
Title insurance: exporting the concept .....	574
The effects of history: chickens and eggs .....	575
The beginnings: a brief account of title insurance .....	575
The world outside the US: Zone B .....	577
Time, money and assets in large volumes .....	578
The world outside the US: Zone C .....	579
Current industry structure .....	580
The US influence: benefits and problems .....	581
Risks and costs .....	582
What does title insurance cover? .....	585
What does this mean in practice? .....	585
The general rule and local application .....	587
An effective cross-border approach? .....	587
The country assessment .....	588
Local structures .....	588
Market demands .....	588
Underwriting: the mechanics .....	589
Future growth: problems and opportunities .....	590
The problems .....	591
The opportunities .....	591
Conclusion .....	592
<b>Chapter 26 Enforcement of Cross-Border Real Estate Security</b> .....	593
Principles of security .....	593
Taking effective cross-border real estate security .....	599
Exercising remedies/enforcement .....	601

Cross-border enforcement .....	614
Conclusion .....	622

### *New Opportunities – New Risks*

<b>Chapter 27 Foreign Direct Investment in Indian Real Estate</b> .....	625
Introduction .....	625
The growth of the Indian economy .....	626
Real estate law in India .....	628
FDI in the Indian real estate market .....	630
Other means of foreign participation in Indian real estate .....	637
Transparency in Indian real estate markets .....	639
Property titles in India – a legal minefield .....	640
Risk mitigation .....	642
Conclusion .....	643

<b>Chapter 28 Real Estate Finance in Russia</b> .....	645
Introduction .....	645
Russian real estate market .....	645
General real estate lending issues .....	646
Real estate security .....	649
Real estate – securitisation .....	657
Real estate investment funds in Russia .....	669
Conclusion .....	674

<b>Chapter 29 Real Estate Finance in Japan</b> .....	677
Introduction .....	677
General features at the real property holding vehicle level .....	677
Selection of real property holding vehicle and debt and equity structure .....	682
Security interest on real property and trust beneficial interest and the equity interest in a real property holding vehicle .....	686
CMBS and RMBS .....	690
J-REIT .....	690
Conclusion .....	692

<b>Chapter 30 Real Estate Finance and Investment in Brazil</b> .....	693
Introduction .....	693
The Brazilian real estate finance market – an overview .....	693
Regulation of foreign capital .....	695
Direct investment .....	696
Portfolio investment – fixed income – CRI, FIDC and the securitisation industry .....	697
Portfolio investment and variable income – the FII and the FIP .....	700
Real estate security .....	701
Other factors .....	704
Conclusion .....	704

## Contents

Chapter 31 Real Estate Finance in China and Hong Kong .....	707
China .....	707
Hong Kong Special Administrative Region .....	714
Glossary .....	719
Index .....	771

## List of Abbreviations

AAOIFI	=	Accounting and Auditing Organisation for Islamic Financial Institutions
ABCP	=	Asset-Backed Commercial Paper
ABS	=	Asset-Backed Securitisation
ABS CDO	=	Collateralised Debt Obligation backed by Asset Backed Securities
ADR	=	American Depository Receipt
AHML	=	Agency for Housing Mortgage Lending
AIF	=	Authorised Investment Fund
AIM	=	Alternate Investment Market of the London Stock Exchange
APUT	=	Authorised Property Unit Trust
AREA	=	Asian Real Estate Association
ATE	=	Additional Termination Event
BBA	=	British Bankers' Association
BBAIRS	=	British Bankers' Association of Interest Rate Swaps
BCO	=	British Council for Officers
BPF	=	British Property Federation
bps	=	basis points
CAA 2001	=	Capital Allowances Act 2001
CalPERS	=	California Public Employees' Retirement System
CBO	=	Collateralised Bond Obligation
CCJ	=	County Court Judgment
CDO	=	Collateralised Debt Obligation
CDS	=	Credit Default Swap
CEE	=	Central and Eastern Europe
CEREIF	=	Closed-End Real Estate Investment Fund
CFC	=	Controlled Foreign Company
CGT	=	Capital Gains Tax
CIC	=	Construction Industry Council