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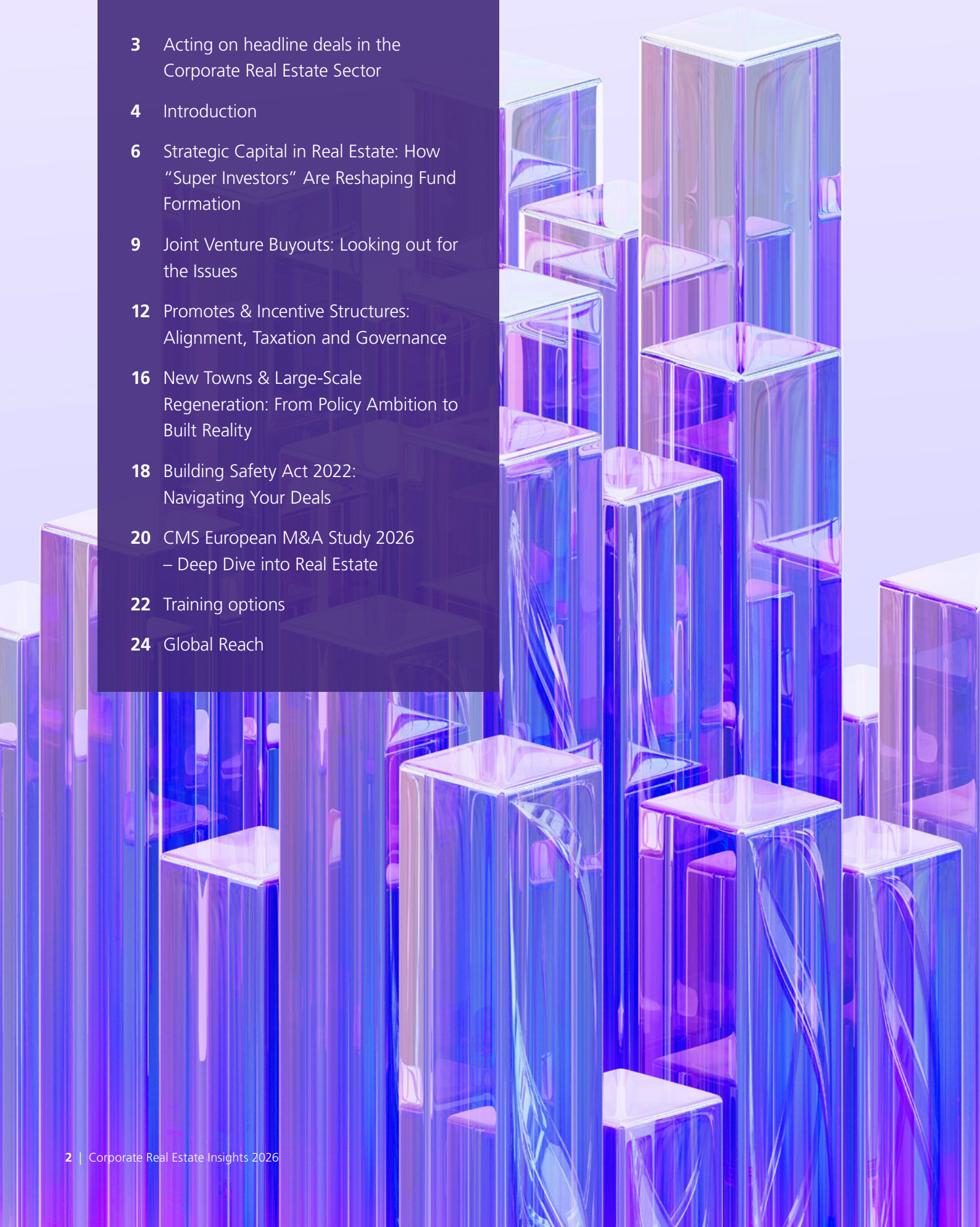
Corporate Real Estate Insights

Trends, Strategies, and Shifts in Corporate Real Estate

2026

Contents



Acting on headline deals in the Corporate Real Estate sector

CMS recently advised on the following key deals:

Aldar, the leading Abu Dhabi-based real estate developer, on the expansion of its strategic joint venture with Dubai Holding. The transaction adds two landmark development sites in Dubai with a combined gross development value exceeding AED 38bn.
(Press release)

Allianz, a consortium of Allianz investors, managed by PIMCO on the sale of their 31.3% interest in the European Outlet Mall Venture (EOMV) a pan-European designer outlet platform to Aware Super.

Brookfield and Maori Capital on the creation of an APAC regional platform, established as a JV, for the development and management of cold storage real estate assets across Asia, including the seed acquisition, financing, and redevelopment of an industrial property.
(Press release)

Columbia Threadneedle Investments on the disposal of a portfolio of assets, including its majority stake in Lefdal Mining Datacenter (LMD), a high quality Norwegian data centre campus, to 3i Infrastructure plc.
(Press release)

Hammerson on the buyout of the 50% stake owned by its joint venture partner, CPP Investments, in Birmingham's Bullring and Grand Central shopping centre. The acquisition gives Hammerson full ownership of two of the UK's top shopping hubs. Developed in 2003, the Bullring is a top five shopping centre in the UK, featuring 1.3 million sq. ft. of prime retail space in Birmingham. The Bullring and Grand Central attract a combined annual footfall of approximately 47m. (Press release)

Savills, one of the world's leading real estate advisory firms, on its acquisition of global real estate investment bank Eastdil Secured Holdings, LLC for an enterprise value of $1.112bn. The transaction significantly enhances Savills' positioning in capital markets advisory and transforms its standing in real estate investment banking.
(Press release)

Introduction

Welcome to the second edition of our Corporate Real Estate Insights series, a publication designed to showcase the breadth and depth of our Corporate Real Estate (CRE) expertise across the UK, Europe, the Middle East, APAC and beyond. Our specialist real estate offering is the largest in Europe, with excellent coverage more widely internationally. CMS is uniquely positioned to advise clients on the full spectrum of corporate real estate matters, drawing on the collective experience of more than 800 lawyers in more than 45 countries. That global footprint is complemented by deep cross-disciplinary capability, bringing together specialists in M&A, equity capital markets, joint ventures, structured transactions, real estate finance, tax and regulatory matters to deliver seamless, commercially driven advice for clients operating in a complex market.

This year had started with fresh optimism in the CRE sector, but events in the Middle East and the wider geopolitical climate has tempered market sentiment. We are however continuing to see resilient asset classes continuing to attract investment, such as the living sector, along with significant pan-European transactions in logistics and industrial portfolios.

We have continued to be at the forefront of the most significant transactions in the market, with a high level of innovation and pragmatism shown by our team to deliver on deal execution and to guide our clients through uncertain times. We have advised on public takeovers, cross-border M&A, large-scale JVs and the structuring of real estate investment platforms. We act for a diverse client base, including institutional investors, sovereign wealth funds, private equity, REITs, developers, and corporates, supporting them through every stage of the real estate lifecycle – from acquisition and development to exit and restructuring.

This publication brings together six articles addressing some of the key themes shaping the corporate real estate landscape – building upon discussions had with clients and industry participants at a roundtable and breakfast event hosted by CMS earlier in the year.

We open with the growing influence of "super investors" — multi-managers, secondaries platforms, sovereigns and large pension funds — and how they are reshaping real estate capital formation. As blind pool fundraising slows, they are driving more collaborative, sector focused platforms with tailored governance and economics, having important implications for both sponsors and investors.

Our second article looks at JV buyouts, drawing on themes from our recent client roundtable. We consider the legal, tax, valuation and practical issues that arise and the friction points that commonly emerge between partners, as well as the expanding role of warranty and indemnity insurance in enabling buyouts and cleaner exits where traditional warranty protections are limited.

We then examine promotes and incentive structures. This article outlines the main models — equity promotes, performance fees, carried interest and growth shares and considers how the new carried interest tax regime, effective from April 2026, is reshaping negotiations on upside, risk allocation and governance, including crystallisation and clawbacks.

Our fourth article looks at new towns and large-scale regeneration, now back in focus as the government targets 1.5 million new homes. We consider delivery models (including Development Corporations and alternative consenting routes), infrastructure constraints (energy connectivity and grid capacity) and funding options such as Tax Increment Financing, with lessons from public-private partnerships on balancing local authority control and investor flexibility.

We then address the Building Safety Act 2022 and the transaction risk it creates beyond the asset. We highlight how remediation obligations can extend across corporate groups in acquisitions, platform investments and restructurings, and set out a practical approach to managing exposure through due diligence, structuring, contractual protections and insurance.

Finally, we examine the CMS European M&A Study 2026 through a corporate real estate lens, drawing on a record dataset of over 600 CMS-advised deals to review current deal trends – from purchase price mechanisms to the continued rise of warranty and indemnity (W&I) insurance and key shifts in risk allocation – highlighting notable differences across European jurisdictions.

Recognising the importance of knowledge sharing and capability building, this edition includes details of the bespoke training our team can deliver on a range of corporate real estate topics, including JVs, corporate wrapped M&A and private REITs. These sessions are designed to give your teams practical, up-to-date insight into the structures and strategies that underpin today's most active areas of the market.

We hope this edition provides useful and thought-provoking reading. As always, we welcome your feedback, including suggestions for topics you would like us to cover in future editions.

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Strategic Capital in Real Estate: How “Super Investors” Are Reshaping Fund Formation

In a constrained and increasingly illiquid fund-raising environment, a narrow cohort of deep-pocketed allocators is shaping how real estate capital is structured and governed. These ‘super investors’ – multi-managers, secondaries platforms, sovereigns and large pension funds – have emerged as critical liquidity providers in a period marked by constrained fund-raising, valuation resets and reduced participation from traditional LPs. Their scale, underwriting capability and appetite for thematic, programme level exposure have positioned them as pivotal backers for managers seeking certainty and strategic capital.

The new dynamic: from blind pool to collaborative platforms

Traditional commingled fund raising has slowed, influenced by macro-economic uncertainty, tighter capital allocation frameworks among institutional investors and a more disciplined approach to capital deployment. In response, managers are increasingly shifting away from broad blind pool offerings towards structures that are expressly designed around the investment mandates of individual for a small group of investors.

These large, long-term institutional investors are now seeking platform solutions that align with their specific programme objectives rather than generic discretionary vehicles. Several themes are emerging:

— **Sector-led specialisation:** These investors prefer managers with a demonstrable track record in targeted, high-conviction and operational sectors – such as living, logistics / industrial, specialist retail and data centres / digital infrastructure – where expertise can be leveraged to build conviction portfolios.

— **Collaborative architecture:** Their mandates increasingly favour platforms that give them the ability to shape investment strategy, calibrate risk limits and maintain clear oversight of deployment activity, rather than accepting a "one size fits all" blind pool approach.

— **Deployment certainty:** Seed assets or pre-identified pipelines have now become a competitive necessity. The ability to deploy swiftly differentiates managers, reduces blind-pool risk and enables programme-level scaling.

Governance: moving beyond classic LP protection

As part of the quid pro quo for providing significant strategic capital, investors routinely seek enhanced governance rights that extend beyond the typical protections in traditional co-mingled funds. These may include:

— **Strategic oversight and consent rights:** Investors frequently negotiate specific consent or consultation rights over key aspects of the platform's strategy, including investment parameters, leverage limits, asset selection criteria and exit horizons. These rights may apply to material deviations from the agreed mandate or to specified thresholds for portfolio concentration or risk.

— **Customised investment policy frameworks:** Strategic platforms are often governed by detailed investment policies or strategic guidelines developed jointly by the sponsor and the investor. These frameworks establish agreed 'guardrails' around risk and return parameters while preserving sufficient flexibility for the manager to execute its strategy.

— **Enhanced reporting and transparency:** Large investors increasingly require more granular reporting than standard quarterly fund reporting. This may include asset-level performance data, detailed risk and leverage metrics, ESG compliance reporting and other operational data, often delivered on more frequent reporting cycles.

Taken together, these mechanisms reflect a shift toward collaborative oversight, enabling investors to meet internal governance requirements while maintaining alignment with the sponsor's investment process.

Economics: rebalancing fees and long-term alignment

The economic arrangements underpinning these strategic platforms also differ in important respects from traditional private real estate funds, including:

Fee architecture

Given the scale and bespoke nature of commitments, investors commonly negotiate fee structures that depart from conventional economics. These may include significant base fee discounts, fee tiering and fee caps linked to portfolio growth.

These arrangements reflect investor sensitivity to blind-pool risk and slower deployment timelines, both of which can erode net returns under traditional fee models.

Revenue sharing and sponsor economic participation

A notable development is the increasing participation of strategic investors in the broader economics of the sponsor's platform. This can take several forms:

— **Direct GP-stake investment:** In some cases, investors acquire an equity stake in the sponsor's management business or a dedicated platform entity. This provides them with a share of management fee / operational revenue and carried interest generated across relevant mandates, aligning the investor's interests with the long-term growth of the sponsor's platform, even where return is driven by third party capital.

— **Synthetic economic participation:** Alternatively, investors may negotiate synthetic participation rights, such as contractual revenue sharing or fee offsets against what they would otherwise pay - effectively crediting management or performance fees back to the investor to align economics with delivered performance.

These mechanisms allow strategic investors to benefit from both the underlying asset returns and the manager's economic engine, creating deeper alignment in interests and potentially sharing in sponsor success across a broader platform footprint.

Execution considerations for sponsors

For sponsors designing strategic capital platforms, successful execution typically requires the coordination of several interrelated structural, legal and operational workstreams.

- **Structuring:** At the structural level, sponsors must determine the appropriate platform architecture - whether a closed-ended fund, evergreen vehicle, separate account or JV structure. The investment policy must be sufficiently clear to satisfy investor governance requirements while preserving the flexibility required for effective portfolio management.
- **Governance:** Governance arrangements also require careful calibration. While strategic investors may seek meaningful approval rights, sponsors must ensure that these mechanisms do not unduly slow investment execution. Clear allocation policies and conflict-management frameworks are particularly important where sponsors operate multiple strategies with overlapping mandates.
- **Economics:** Economic design requires similar care. Fee structures must appropriately incentivise both deployment and long-term value creation, while any GP stake arrangements or revenue-sharing mechanisms must be properly ring-fenced and structured to comply with regulatory requirements.
- **Tax:** Tax structuring is another critical component, particularly where the economic architecture spans multiple entities, jurisdictions and investor types.
- **Merger control:** Significant strategic partnerships between large organisations may trigger merger control considerations which are not typically an issue in fully discretionary commingled fund products.
- **Operational considerations:** Finally, operational readiness is essential to the credibility of any new platform. Sponsors typically need to prepare seed assets or pipelines for transfer, assemble comprehensive due-diligence materials and implement robust data, ESG and performance reporting systems capable of meeting investor expectations from the outset.

Our perspective: what this trend means for the market

The growth of strategic capital partnerships appears to reflect a structural shift in real estate capital formation rather than a temporary response to a challenging fundraising cycle.

Sponsors able to demonstrate specialist sector expertise, clear thematic value-creation strategies and credible seed portfolios and deployment pipelines are increasingly well placed to secure large-scale anchor commitments. At the same time, a willingness to embrace more tailored governance and economic arrangements is becoming an important differentiator.

For investors with the scale and conviction to shape platform terms, these partnerships provide access to differentiated strategies, enhanced oversight and deeper economic alignment with sponsors. Together, these dynamics are contributing to a more collaborative and bespoke model of capital formation, which is likely to continue reshaping market practice in the years ahead.

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Joint Venture Buyouts: Looking out for the Issues

JV buyouts have become an increasingly prominent feature of the real estate investment landscape. Whether driven by divergent investment horizons, strategic re-alignment, or disputes or deadlocks between partners, the decision to exit a JV relationship raises a host of legal, tax, valuation and practical considerations that are often far more complex than parties initially anticipate.

The Contractual Framework: Theory Versus Practice

The starting point for any JV buyout is the underlying JV documentation. These documents typically contain detailed provisions addressing exit mechanics, including rights of first offer and first refusal, lock-in periods, pre-emption rights, drag / tag, puts / calls, and more exotic mechanisms such as Russian roulette or Mexican shoot-out provisions.

In practice, however, these provisions are rarely invoked in their pure contractual form, at least in respect of non-hostile buyouts. Most such buyouts ultimately come down to commercial negotiation and agreement on value. While a non-hostile, negotiated buyout is always preferable, hostile scenarios do arise, particularly following alleged defaults or material disagreements between the partners. Prospective JV investors should therefore consider all adversarial possibilities from the outset when negotiating the terms of the JV documents, even when relationships are amicable.

Misalignment between JV documents and management arrangements can also be problematic in a JV buyout context. While the principal JV documents may be comprehensive and carefully drafted, the accompanying management agreements sometimes fail to adequately address all eventualities or termination events. This becomes particularly problematic when a JV partner is also the manager or operator of the venture. A poorly drafted or misaligned management agreement can provide a manager with significant leverage, enabling them to delay or complicate the buyout process and extract additional value.

Tax as a Central Driver

Tax considerations are frequently the single most important factor shaping the structure and execution of a JV buyout. In the UK real estate context, many JVs are structured as English limited partnerships due to their tax transparency and flexibility in accommodating the JV terms. Below the partnership level, underlying property assets will typically be held in SDLT "wrappers" to facilitate enhanced returns on exit.

JV partners may have divergent or incompatible tax requirements in relation to the level at which the exit should occur. Requirements around avoiding UK tax filing obligations where there are non-UK investors involved can also give rise to issues. Where there is or may be a conflict between the requirements of the JV partners, early tax structuring advice is essential. In these instances, it may be advisable to hardwire the buyout / exit routes into the JV documentation at inception, whether through reserved matters, specific exit mechanisms or prohibitions linked to investor tax profiles. Attempting to resolve these issues at the point of buyout often leads to deadlock or inequitable outcomes.

Protections in respect of historic tax risks may be resisted by the selling JV partner, particularly if selling to a partner that carried out the tax compliance on behalf of the JV (as to which see below). Where the tax requirements of the buyout require the buying partner to acquire the selling partner's investing entity in the JV (typically their limited partner in the JV partnership) the buying partner should expect a full suite of tax protections given that entity was outside the JV perimeter.

Valuation Disputes and Pricing

Valuation disagreements represent a significant point in JV buyouts, particularly in default or hostile exit scenarios. Disputes frequently arise over the calculation of the JV's net asset value (NAV) or fair market value, the appropriate methodology to be applied and adjustments for items such as latent gains, arrears or service charge voids.

Best practice dictates that JV documentation should contain clearly drafted and detailed valuation methodologies with robust fallback mechanisms, including expert determination provisions that specify the identity, qualifications and terms of reference for any valuer. We have seen in recent transactions parties have adopted a fixed pricing approach for simplicity, with limited post-completion true-ups confined to discrete items such as arrears or service charge voids and NAV adjustments applied only where necessary.

Approach to latent gains warrants particular attention, as it can materially affect the economics of a buyout. The approach to latent gains should ideally be addressed at the point of establishment of the JV, with sufficient flexibility built in to accommodate the tax profiles of potential future buyers, whether REITs or funds that have made exemption elections.

Consideration will also need to be given to any funding that may have been advanced by one JV partner and not the other, for example emergency funding, and this should be factored into any pricing.

The Expanding Role of Warranty and Indemnity Insurance

A significant number of JV buyouts are now backed by W&I insurance. The reasons for this development are compelling. W&I insurance facilitates clean exits, addresses concerns about the continued covenant strength of selling JV partners, particularly funds or vehicles approaching wind-down, and simplifies transaction document negotiations by removing the need for protracted discussions over warranty caps, baskets and survival periods.

JV buyouts do, however, create unique knowledge complications in the W&I context. When the buying JV partner is the operational JV partner, it is effectively conducting due diligence (DD) on itself, which raises obvious issues around the scope of the buying JV partner's knowledge and the extent to which that knowledge should be imputed to them. W&I insurers and brokers have developed a range of solutions to address these challenges, including the establishment of separate buy-side DD teams and synthetic knowledge exclusions (where the buying JV partner has knowledge of the JV's operations).

In hostile buyout scenarios where a selling JV partner refuses to provide warranties, buying JV partners increasingly rely on synthetic warranties provided solely through W&I insurance. Synthetic cover may be available where there is robust DD, a clean data room and rationale for proceeding on this basis. Additionally, where title insurance is required by the buying JV partner or specific risk areas are identified through DD, title insurance or specific risk insurance may be an option at a premium.

Due Diligence Expectations and Co-operation

DD expectations of each partner in a JV buyout may differ materially. In a typical corporate acquisition, a buyer will expect to conduct comprehensive DD across operations, financials, tax, contracts, and litigation. In a JV buyout, the position is more nuanced. DD on the JV itself may be truncated, particularly where the buyer has been operating the venture and already has intimate knowledge of its affairs. However, full DD will remain essential for obtaining W&I insurance.

DD co-operation is a major friction point in hostile exits, not only between the JV partners themselves but also in obtaining information from outgoing managers, lenders and operational teams.

Explicit DD co-operation obligations are recommended in JV documentation to avoid deadlock on DD. Without such provisions, buying JV partners may find themselves unable to obtain the information necessary to undertake the DD required to complete the buyout or satisfy W&I underwriters.

Practical Challenges

The successful execution of a JV buyout involves numerous considerations beyond the principal transaction documents. Where the exiting JV partner is also the manager, a new manager will need to be appointed, new management agreements negotiated and arrangements for incentives and promote or carried interest addressed. To the extent not owned by the JV, assignments of intellectual property will need to be secured and employment issues (for example, matters related to the Transfer of Undertakings (Protection of Employment) Regulations 2006) may arise.

In hostile buyouts, selling JV partner managers may delay or frustrate the DD and handover processes, creating additional cost and complexity.

Change of control consents are another frequent consideration. Depending on the JV structure and assets involved, the transaction may trigger requirements for third party lender consents, landlord consents at the asset level, consents from operating

partners or service providers, antitrust clearances or compliance with listed entity governance consents.

Key Takeaways

The complexity of JV buyouts demands early planning and cross-disciplinary coordination. A JV partner contemplating a buyout should engage legal, tax and valuation advisers at the earliest opportunity to identify constraints and potential points of friction, such as documentation or structural restrictions, valuation, conducting DD and negotiations on the transaction documentation.

At the inception of the venture, management agreements should be aligned with the principal JV documentation to avoid creating leverage for managers in hostile exit scenarios. Valuation provisions should be drafted with precision, specifying definitions, methodology, expert appointment procedures, and fallback mechanisms. Buyout or specific exit structures should also be considered at the outset, particularly where investors have differing tax requirements or internal restrictions.

JV documentation should include robust DD co-operation obligations, warranty packages covering title, capacity and solvency, and clear mechanisms for W&I procurement and premium allocation.

W&I insurance is a highly effective tool that, when combined with proper DD and clear contractual provisions, can significantly enhance transaction certainty and facilitate smoother buyouts. Its growing use in JV buyouts reflects its value in addressing practical challenges and enabling parties to complete buyouts that might otherwise prove difficult to complete.

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Promotes & Incentive Structures: Alignment, Taxation and Governance

Performance incentives remain a key feature of corporate real estate JVs and fund platforms and continue to be a hotly negotiated topic between investor(s) and management. In recent developments, the changing tax landscape is expected to have a substantial effect on the current approach to structuring incentives.

Drawing on themes from our recent client roundtable, this article examines current market practice, evolving tax treatment and the governance considerations shaping negotiations. Promotes and carried interest arrangements are continuing to adapt to a changing regulatory and commercial environment.

Core Incentive Models

Equity Promotes

Equity promotes remain among the most widely used mechanism for incentivising management in real estate JVs. In this structure, managers hold an equity stake and participate in any upside. This is often tied to agreed performance thresholds and once these hurdles are met, management receives a disproportionate share of profits, which is intended to reflect their role in the success of the JV.

Promotes are typically implemented through a dedicated share class and a manager generally makes a modest capital contribution. Hurdles are often tiered based on IRR, equity multiple or NAV linked metrics with promote percentages increasing as performance improves. Any profit arising to a manager is typically taxed as income.

Performance Fees

Performance fees remain a widely used alternative in JVs where an equity participation is not preferable or attractive. These operate as a service-based incentive, with management compensated for achieving defined metrics such as IRR, NAV growth, or rental uplift under the contractual management arrangements, without the need for the manager to provide any capital to the JV.

However, unlike an equity promote, performance fees will always be treated as income and typically attract VAT. While a performance fee structure may be simpler to implement than an equity promote, they may be less advantageous for a manager from a tax and profit participation perspective, and for investors where VAT on fees is irrecoverable.

Carried Interest

Carried interest structures, commonly used in real estate fund structures, are continuing to be a popular form of incentive. In summary, management receives a share of profits above a preferred return, typically structured through a multi-stage waterfall with catch-up provisions. Historically, these arrangements benefitted from capital gains treatment and a lower personal tax rate. But tax and regulatory developments are creating a significantly evolving landscape.

The New Tax Landscape: A Structural Reset

The new carried interest regime, effective from April 2026, represents a significant shift in tax treatment for individual recipients. Under the long-standing BVCA Memorandum of Understanding (MoU), the value of carried interest allocated to individuals was not taxed as an upfront employment benefit, and future returns were treated as capital, subject to capital gains tax (CGT) rates. Timing was critical: establishing carried interest at inception preserved MoU treatment, while late allocations risked losing that protection and triggering additional tax liabilities, especially on grant. Under the new rules, returns received by individuals providing investment management services will be treated as income arising from a trade, regardless of the source and type of profit share.

A 72.5% multiplier softens the impact by effectively taxing only part of the return for "qualifying" carried interest. This results in an effective rate of c.34%. While this aligns the UK more closely with EU jurisdictions, it still represents a meaningful rate increase compared to the most recent capital gains treatment of 28%.

To be qualifying carried interest, assets must be held for greater than 40 months on average. For value add or shorter term programmes, this represents a structural challenge and one prompting sponsors to re-examine waterfall design and timing. Importantly, no grandfathering applies. Existing carry interests will fall under the new regime if paid after April 2026, accelerating conversations around restructuring incentive frameworks.

Growth Shares: A Rising Alternative

Growth shares, where management participates only in value generated above a defined threshold, can offer an alternative to traditional carried interest. If structured outside of an investment scheme, gains may qualify for capital gains tax treatment at the prevailing rate for such assets. This is unlikely to be an option for fund structures, but may be appropriate for corporate JVs.

However, challenges remain. Management must typically pay full market value for the shares, creating funding and valuation hurdles, and the absence of BVCA MoU protection increases HMRC scrutiny of the structure, including both valuation and alignment considerations.

Focus on Corporatised Real Estate Joint Ventures and How Commercial Practice Is Evolving

Given that each JV is often unique in respect of many contributing factors, it is therefore to be expected that the commercial negotiations in relation to incentives is also often different on a case by case basis. However, we have set out below a few of the key topics that are often the subject of negotiation on each JV and sometimes some of the stickiest points to resolve in relation to the transaction as a whole.

— **Crystallisation:** Crystallisation remains one of the most sensitive commercial points, determining when and how management realises value. In single-asset JVs, promotes are typically crystallised on a capital event, either a sale or restructuring. But in programmatic multi-asset JVs involving a considerable development pipeline, these may push parties toward non disposal triggers, which introduce fresh complexity.

— **Stabilisation-based crystallisation:** Where development managers seek to exit upon letting, leasing, or other stabilisation milestones, promote payments may be triggered even without a liquidity event occurring. This raises the inevitable question: who funds the promote? Investors often resist early crystallisation absent cash proceeds, but developers increasingly argue that stabilisation represents the completion of their value creation arc and their profits should be realised on achievement of the stabilisation thresholds.

— **Refinancing:** Refinancings can create paper gains, raising questions about whether those gains should trigger promote payments. In one JV example, a refinancing would have triggered promote, but investors elected not to distribute proceeds due to withholding tax considerations. This introduced IRR distortions, leading the parties to agree that undistributed proceeds should nonetheless be "deemed distributed" for promote calculation purposes.

— **Asset-by-asset vs whole-programme:** Managers often prefer asset-by-asset crystallisation to avoid profits in one asset being diluted by underperformance elsewhere, whereas investors prefer portfolio wide crystallisation to preserve overall alignment and ensure early promote payouts are later trued up.

True Ups and Clawbacks

Where promotes crystallise early, true-up and clawback mechanisms are essential to maintain alignment over the life of the investment. Any promote paid early should be re-measured at the end of the programme, with clawbacks governed by clear repayment schedules and enforcement provisions to ensure fairness between investors and management.

Managing Conflicts

Equity based promotes inherently introduce governance tension because management often holds shares and voting rights in the JV vehicle. In practice, several recurring issues arise:

— Promote hurdles may unintentionally influence management's voting behaviour, especially on matters affecting timing of exits, refinancing, or risk appetite.

— Where management has an equity interest, JV documents increasingly include conflict mitigation mechanisms, such as:

- reserved matters tied to investor consent;
- disenfranchisement in respect of matters where promote outcomes are directly impacted; and
- strengthened reporting and transparency protocols.

Cross Default and Forfeiture

Cross-default provisions are another sensitive point of negotiation. In multi asset JVs, a default relating to a single asset could under a strict formulation wipe out promote across the entire platform, which is viewed as disproportionate. Similarly, market practice is crystallising around a distinction between bad acts (fraud, wilful misfeasance, gross negligence), which typically trigger immediate forfeiture of all promote rights, and technical/administrative breaches (late reporting, procedural errors), which are treated with proportionate consequences.

Conclusion: Incentives in a More Complex Market

As set out above, there are a number of different factors, including the changing tax landscape, which mean that incentive structures are being redesigned to reflect greater scrutiny, longer hold periods and more sophisticated capital partners. Whether through promotes, carried interest, performance fees or growth shares, the market is moving decisively toward:

— clearer governance;

— stronger downside protections; and

— more deliberate and transparent alignment of interests.

Incentives remain a powerful tool, but their design requires a nuanced blend of tax awareness, commercial negotiation and long term strategic planning.

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New Towns and Large-Scale Regeneration: From Policy Ambition to Built Reality

Against a backdrop of acute housing need and renewed political commitment, new towns and large-scale regeneration projects are re-emerging as a central pillar of the UK's development strategy. With the government pledging 1.5 million new homes and a dedicated taskforce now prioritising candidate sites, the ambition is clear — but the path from policy to built reality is far from straightforward.

Historical Context and Policy Evolution

New towns in the UK have initially emerged in response to acute housing needs, particularly in the post-World War 2 era. The contemporary policy landscape reflects a similar dynamic—addressing housing shortages and stimulating economic growth.

Today, new towns encompass traditional greenfield developments, bolt-on expansions to existing settlements and brownfield regeneration, including former industrial or airfield sites such as Cherwell near Oxford. Each typology raises distinct issues around land assembly, community engagement, and any delivery framework must be sufficiently flexible to accommodate them all.

Development Corporations and Consenting Routes

The government is increasingly exploring Development Corporations to centralise control and coordinate planning across multiple local authorities, drawing on models such as the Olympic Development Corporation. However, there is industry concern that imposing Development Corporations can undermine pre-existing land assembly consenting efforts and agreements.

A more flexible consenting framework is widely preferred, and several options are available, namely:

- Traditional planning applications (often fastest where a single, supportive, local authority is involved)
- Special Development Orders (SDOs) (fast but resource-intensive, and requires deep government buy-in, not often used)
- Development Consent Orders (DCOs) (efficient at decision stage but may be slow pre-submission due to significant front loading; consents can be rigid unless parameters are built in which allow the project to evolve)
- Planning Permission in Principle (supported by proposed national policy changes)
- Safeguarding policies akin to those used for major infrastructure projects.

Given that new towns may take decades to build out, during which time policy, market conditions and environmental standards will shift materially, the sector has emphasised the need for consenting frameworks that allow projects to evolve rather than constraining delivery through rigid early-stage permissions.

Energy and Utilities: The Hidden Blocker

Energy connectivity and utilities are often a critical blocker for new town development. Power scarcity is most acute in the South East, with greater capacity in the North and Scotland, and OFGEM consultations and the National Energy System Operator heavily influence

allocation — yet new towns lack a coordinated lobbying voice in those processes. Competition from data centres compounds the challenge, with neighbouring developments objecting to planning applications to secure their own grid connections.

In response, developers are increasingly shouldering responsibility for last-mile infrastructure, including private wire, microgrid and on-site generation systems. These decentralised solutions, however, bring their own challenges: developers must replicate contractually the protections offered by regulated networks and navigate the complexities of supplying occupiers without triggering licensing obligations. Beyond energy, water scarcity and drainage moratoriums at sites such as Norwich and Cambridge have emerged as further blockers.

Bridging the Funding Gap: From Five-Year Cycles to Decades-Long Horizons

New towns require multi-phase delivery over decades, demanding long-term funding certainty that sits uncomfortably with five-year government spending cycles. Innovative models are emerging: Tax Increment Financing (TIF) borrows against future tax receipts, while Revolving Infrastructure Funds (RIF) reinvest sales receipts to fund successive phases. European models, particularly from the Netherlands, deploy early-stage public capital to catalyse private investment. However, affordability constraints mean that funding structures predicated on commercial returns may be less effective where a significant proportion of delivery comprises affordable housing.

Public-Private Partnership: Lessons from Brent Cross Town

Brent Cross Town, a partnership between Barnet Council and Argent, offers valuable lessons on public-private dynamics in large-scale regeneration. Barnet Council retained land ownership and rights to development proceeds through phased project agreements. Institutional investors then funded substantial portions of the project delivery.

Local authorities often impose strict controls on build-out, use and partner selection that can clash with investors' needs for flexibility and exit. Forfeiture rights for non-compliance, for example, pose significant downstream issues for plot purchasers and funding structures. The Brent Cross Town project underscores the importance of balanced governance — local authority flexibility to attract institutional capital, sustained trust-building and frameworks that ensure delivery while making developments investable.

Looking Ahead

Delivery at the scale envisaged by government will require progress on multiple fronts: stronger advocacy in energy sector reform consultations, rigorous assessment of TIF and RIF models in a UK context, flexible consenting frameworks that can adapt over decades-long build-out periods, and robust contractual templates for decentralised energy solutions.

Underpinning all of this is the need for public-private partnerships built on balanced governance — structures that protect the public interest while offering investors the certainty required to commit capital at scale. The challenges are formidable, but with the right delivery frameworks there is a genuine opportunity to translate policy commitment into transformative development on the ground.

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Building Safety Act 2022: Navigating Your Deals

The Building Safety Act 2022 (BSA) has fundamentally reshaped the allocation of risk in UK residential and mixed use real estate transactions. While its policy objective is clear – to ensure that responsibility for remediating building safety defects rests with those best placed to fund them – its practical impact is being felt most acutely in corporate acquisitions, platform investments and group restructurings.

For developers, investors and funders, the BSA introduces a regime of extended, and in some cases unexpected, liability. Exposure is no longer confined to the entity that owns or developed a building. Instead, liability can attach across corporate groups, long after works were completed.

Against that backdrop, understanding how BSA risk arises, how it can be inherited through transactions, and how it can be managed in practice has become a core component of deal execution and underwriting in the UK real estate market.

A revised liability framework

Primary responsibility for building safety sits with the current building owner. That starting point, however, is only part of the story. The BSA enables remediation costs to be recovered from a much wider group of participants, including developers, contractors, construction product manufacturers and associated corporate entities.

In practice, this creates a cascading allocation of liability that can extend beyond the immediate asset owner. This approach is reinforced by significantly extended limitation periods and remedies that go beyond traditional concepts of contractual and corporate separation.

Expanded routes to liability

The BSA has materially extended the scope of the Defective Premises Act 1972 (DPA), significantly increasing long tail liability risk for parties involved in residential development. Limitation periods now extend to 30 years retrospectively and 15 years prospectively, and claims may arise not only from new construction but also from works carried out to existing dwellings. The DPA is not limited to fire safety issues and applies to any defect rendering a dwelling unfit for habitation.

Extending liability across groups

A key feature of the BSA – and one with particular relevance for corporate real estate transactions – is its ability to extend liability beyond the original developer through Building Liability Orders (BLOs) and Remediation Contribution Orders (RCOs). These allow courts and tribunals to impose liability on associated entities, including parent and sibling companies, where it is considered "just and equitable".

Association is defined broadly and can capture companies that have been part of the same group at any point since the relevant works commenced. Importantly, changes in ownership do not automatically sever this connection, meaning that historic exposure may be inherited through corporate acquisitions.

Implications for transactions

From a transactional perspective, the BSA introduces material (and often non-obvious) secondary liability risk. Crucially, this risk is not confined to owners of residential assets. A buyer acquiring a company with no obviously in-scope assets may nonetheless face exposure through association with former group companies that undertook development.

That said, this remains an evolving area of law, with the boundaries of secondary liability continuing to be shaped by a developing body of case law and a deliberately broad judicial discretion.

Managing BSA risk

In that context, managing BSA exposure starts with an acceptance that, for buyers, it may be impossible to completely eliminate BSA risk and, for sellers, enhanced due diligence should be expected. Buyers should look beyond the target entity itself to understand historic and current group structures, focusing on residential development activity, construction product manufacture and any known or potential BSA claims.

Contractual protections remain an important tool. However, extended limitation periods and the difficulty of quantifying potential exposure mean that indemnities from the seller may not provide a workable solution for either party. Warranty and indemnity insurance can assist, but it is not a panacea, and BSA risk will still require careful judgement on policy limits, both in terms of duration and quantum.

Post completion restructuring may also assist in managing future exposure.

Conclusion

The BSA is designed to ensure that responsibility for remediation ultimately rests with financially capable parties, even where that requires courts and tribunals to look beyond traditional notions of ownership and contractual privity. For market participants, this means that building safety risk is no longer asset specific, nor easily ring fenced.

While BSA exposure is unlikely to be eliminated entirely, it can be managed. Informed due diligence, careful analysis of historic group structures, targeted contractual protections, the considered use of insurance and thoughtful post completion structuring all play an important role in mitigating risk.

As case law and policy continue to develop, the BSA will remain a defining feature of transactions. Parties that engage with the issue early, and treat building safety as a core transactional risk rather than a residual compliance point, will be best placed to navigate their deals successfully.

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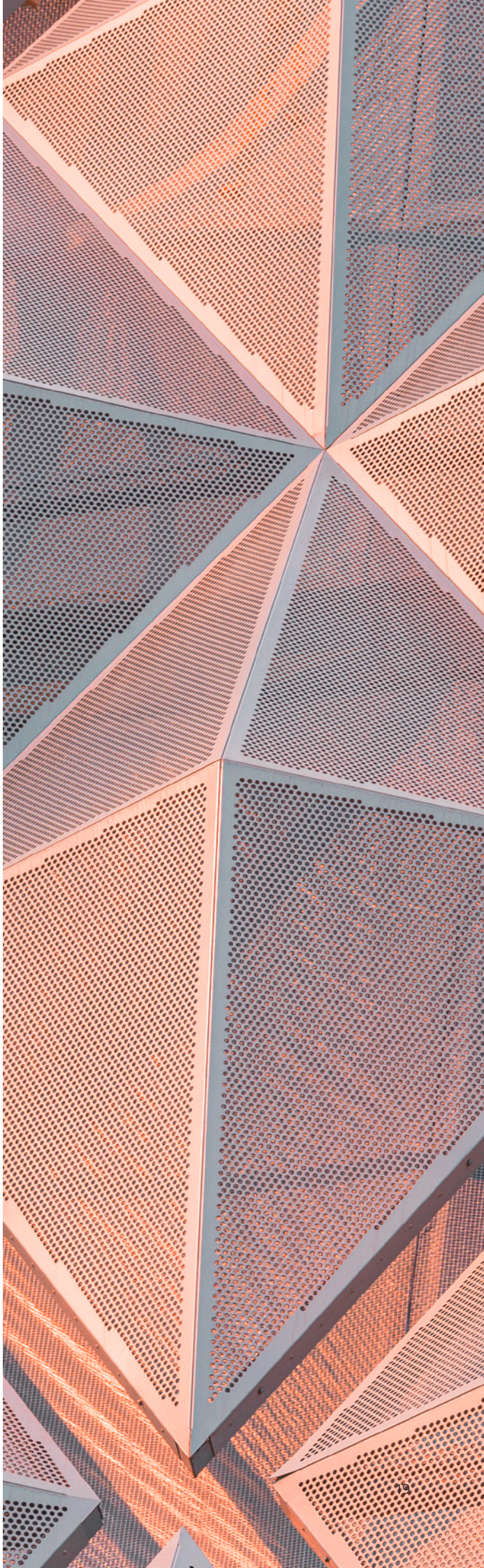


CMS European M&A Study 2026 – Deep Dive into Real Estate

In March this year, CMS published the 18th edition of its European M&A Study, analysing market trends and deal points from private M&A transactions across Europe in 2025. The report draws on a record dataset of 601 deals on which CMS advised – a record number for the fifth consecutive year. The real estate sector accounted for approximately 11% of those deals, up from 8% in 2024 and broadly in line with the ten-year average of 12%. In this article, we summarise the key findings as they relate to corporate real estate transactions.

Purchase Price Adjustment Mechanisms

64% of real estate deals in 2025 used purchase price adjustment (PPA) mechanisms, remaining largely in line with the 2024 data. The use of PPAs varies greatly between European regions and was most popular in the Southern European countries, the UK and CEE. Cash and debt adjustments remained the predominant elements in calculating PPAs.

Warranty & Indemnity Insurance

W&I insurance continues to be a defining feature of M&A transactions, and real estate remains the sector in which W&I cover is used most frequently. In 2025, W&I insurance was used on 45% of real estate transactions – above the ten-year sector average of 27%. Across all sectors, W&I insurance was used on 59% of transactions over EUR 100m (down from 72% in 2024), compared with 40% of medium-sized deals and only 7% of smaller transactions.

Regionally, the UK remained the market most comfortable with W&I insurance at 70% of real estate deals, followed by the Benelux (60%), German-speaking countries (67%) and France (17%). W&I insurance is now considered firmly market-standard on corporate real estate deals, particularly in the UK on larger deals. The W&I insurance market is continuing to grow, with competitive pressure pushing pricing toward historic lows – a trend expected to continue into 2026.

Buy-side policies remained the norm at 96% of cases in 2025, although sellers increasingly agreed to fund some or all of the premium – now 42% of deals, up from 39% in 2024.

Risk Allocation: Liability Caps, De Minimis and Basket Clauses

The 2025 data on risk allocation points to a notable shift in favour of buyers across several key metrics, although the position is nuanced in the real estate sector.

In 2025, most deals across all sectors (58%) had liability caps set below 50% of the purchase price. For real estate specifically, that figure stood at 70% – the highest of any sector. At the narrower end, 43% of real estate deals had caps of up to 25%, compared with the CMS average across the various sectors of 35%. This increase in the frequency of caps up to 50% signals greater buyer protection on corporate real estate deals, likely reflecting the increasing maturity of the W&I insurance market and its effect on cap levels.

On the seller-friendly side, both de minimis and basket clauses saw increased use in 2025. Transactions with a de minimis clause rose to 73%, while basket clauses rose by 4% to 66%, reversing two years of decline.

Risk Allocation: Limitation Periods for Warranty Claims

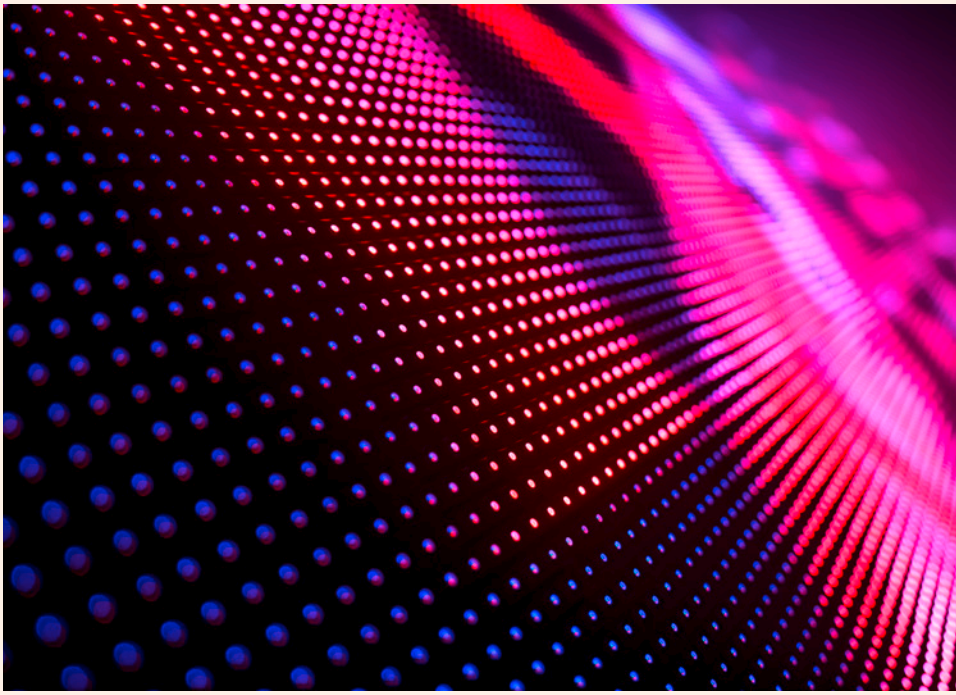
The real estate sector saw a material increase in transactions with longer warranty limitation periods in 2025. Deals with limitation periods of more than 24 months stood at 35% – up from the 30% in 2024 and well above the ten-year sector average of 21%. This is consistent with the wider CMS trend, where periods over 24 months reached a new peak of 32% across all sectors, confirming the post-2015 upward trajectory and indicating stronger buyer bargaining power. The trend was most pronounced on large deals, where limitation periods exceeding 24 months increased by 14% to 40%.

Material Adverse Change (MAC) Clauses

While MAC clauses continue to appear in CRE transactions, they remain comparatively uncommon, featuring in 12% of real estate deals in 2025, up slightly from 10% in 2024 but below the CMS average across the various sectors of 14%. This reflects the continued value placed on execution certainty in the real estate sector, where many transactions sign and complete simultaneously.

Conclusion

The CMS European M&A Study 2026 highlights a dynamic and evolving market for real estate M&A in Europe. W&I insurance continues to be used more frequently in real estate than in any other sector, confirming its status as market-standard. On risk allocation, the data points to a notable shift in favour of buyers – with longer warranty limitation periods and more frequent liability caps up to 50% (although increased use of de minimis and basket clauses suggests sellers have retained some leverage). MAC clauses remain comparatively uncommon at just 12% of deals, reflecting the sector's emphasis on execution certainty. As the market continues to adapt, we look forward to seeing how these trends develop in next year's study.



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Public M&A
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Key issues at acquisition, development, holding, and disposal stages

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