Corporate Real Estate Insights

Trends, Strategies, and Shifts in Corporate Real Estate

2025

Contents

Save the Date

We're pleased to announce our upcoming *Corporate Real Estate (CRE) – Breakfast & Roundtable Discussions*, taking place on **Tuesday 24 February** at our CMS London office.

Join us for a morning of engaging conversation and networking with peers from across the industry. Formal invitation to follow.

Acting on headline deals in the Corporate Real Estate sector

In the last 12 months, CMS advised on the following key deals:

LondonMetric
on the purchase of Logistics Asset Management Newco Ltd who have acquired the business of Logistics Asset Management LLP, the Investment Advisor to Urban Logistics. (Press release)

A consortium of investors, including APG
on their exit from the European Outlet Mall Fund and spin-off of selected Designer Outlet Mall assets into a newly-formed joint venture. The assets comprised in the new joint venture, valued at c.€3bn, are managed by McArthurGlen. (Press release)

Norges Bank Investment Management on its significant joint venture of The Pollen Estate, one of London's most historic property portfolios. (Press release)

Redevco BV
a Dutch real estate investor, developer and operator, on its £518m acquisition of a portfolio of 16 retail parks in England and Wales from Oxford Properties. (Press release)

Primary Health Properties
on its £1.79bn recommended shares and cash offer for Assura plc. Assura is a leading diversified healthcare UK REIT, specialising in the development, investment and management of primary care centres, hospitals and other specialist healthcare properties. (Press release)

Scandic Hotels Group
on its framework agreement with a consortium comprising Pandox AB and Eiendomsspar AS (the consortium) to acquire the hotel operating business of Dalata Hotel Group Plc (Dalata). (Press release)

Introduction

Welcome to the inaugural edition of our Corporate Real Estate Insights series, a new 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. With the largest real estate specialist team in Europe and 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 over 800 lawyers in more than 45 countries. Our integrated approach brings together market-leading capabilities in M&A, equity capital markets, joint ventures, structured transactions, real estate finance, tax, and regulatory matters, enabling us to deliver seamless, commercially focused solutions for clients operating in an increasingly complex and globalised market.

This first edition arrives at a time of renewed momentum and transformation in the CRE sector. Our team has been at the forefront of some of the most significant and innovative transactions in the market, advising on public takeovers, cross-border M&A, large-scale joint ventures, 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.

In this publication, we bring together a series of thought leadership articles that reflect some of the current themes and challenges shaping the corporate real estate landscape.

We open with a practical guide to operational real estate investment strategies, examining the rise of manager-led platforms in sectors such as hotels, healthcare, student accommodation and data centres, and the critical importance of due diligence, structuring, and governance in these operationally intensive asset classes.

This is followed by an in-depth analysis of the recent surge in UK listed real estate M&A activity, exploring the drivers behind the wave of public-to-private transactions. This article looks at the growing influence of US and cross-border capital, and the impact of regulatory reforms on deal execution and board strategy.

We also delve into the evolving world of transactional risk management, with a feature on the increasing use of synthetic warranty & indemnity (W&I) insurance in corporate real estate deals. This article explains how synthetic W&I is unlocking transactions in challenging scenarios – such as distressed sales and competitive auctions – by providing buyers with protection where traditional warranties are unavailable.

We then look at the CMS European M&A Study 2025 through a real estate lens, with a review of current deal trends, how these have evolved and the key differences across jurisdictions. Our final article focussing on the proposed new carried interest arrangements going through the legislative process and its practical consequences.

Recognising the importance of knowledge sharing and capability building, this edition also includes a dedicated page on the training options available from our team. We offer bespoke training on a range of topics, including joint ventures, corporate wrapped M&A, and private REITs, designed to equip your teams with the technical and commercial skills needed to navigate today's market with confidence.

We hope you find this first edition both insightful and practical, and we look forward to sharing further insights and market intelligence in future editions, as we continue to support our clients in navigating the opportunities and challenges of the corporate real estate market. We would welcome your feedback on our Corporate Real Estate series, including on topics you'd like to see covered in future editions.

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Operational Real Estate: Investing in the Manager

Operational real estate (OPRE) merges traditional property investment with active operational management. Sectors like hotels, build-to-rent (BTR), student housing (PBSA), healthcare, data centres, and life sciences derive their value from intensive management.

Unlike more conventional real estate, where landlords will typically receive passive rent, OPRE relies on operational performance. This is driven by managers who oversee service delivery, staffing, customer experience, and branding. With interest rates depressing yields, investors have looked to the more operational sectors in search of returns that may not be available elsewhere.

What does it mean for investors to acquire a stake in the manager? Investing in the manager, whether through direct acquisition, joint venture, or platform investment, offers access to these capabilities and potentially higher, more diversified returns. It also brings greater complexity, as success depends not only on property value, but also on people, systems, and commercial execution.

OpCo / PropCo Explained

A key feature in OPRE is the separation of the asset-owning entity (PropCo) from the operational business (OpCo). The PropCo receives rent or capital growth, while the OpCo runs the business, from hotel bookings to managing healthcare facilities. Sometimes, these are vertically integrated, or linked through shared ownership or contractual arrangements. The manager may be a related party or independent – there is no one-size-fits-all.

Investing in the manager means investing in the OpCo. This includes acquiring operational contracts, licences, brand IP, people, and processes. Management agreements typically form the basis of the relationship between the PropCo and the OpCo. They often involve service fees, performance metrics, and brand licensing.

Due Diligence: Beyond the Asset

Investing into or acquiring the OpCo requires significantly broader due diligence. For the PropCo, diligence will cover title, leases, planning, the physical condition of the assets, as well as the status and affairs of the company (with the assumption being that its only activity is holding title to the asset).

However, the OpCo introduces additional layers:

- **Contracts:** key agreements, such as management contracts, supplier terms, and service arrangements, must be reviewed to establish their transferability, and to identify any termination clauses or change-of-control provisions.
- **Financials:** the OpCo may be valued on earnings, not asset base. A review of EBITDA, cost structure, and forecasts could be essential, particularly in cases where earnings are subject to volatility or seasonality.
- **Employment:** operational success links to staff. Key employment contracts, pensions, and continuity planning are critical, particularly where specific individuals drive performance.
- **Intellectual Property & Tech:** brands, booking systems, and databases often sit within the OpCo. It is essential to confirm ownership, licences, and cyber/data compliance.
- **Regulatory Compliance:** many OPRE sectors are regulated. For example, healthcare may involve CQC registrations, while data centres and managers of living assets face data protection obligations. Due diligence should cover ongoing compliance, disputes, and sector-specific licences.
- **Insurance & Risk:** Both valuation and deal structuring should factor in the adequacy of operational insurance policies, claims history, and sector-specific liabilities. Cyber insurance, for example, will be relevant in a way that it may not be for the PropCo.

Structuring the Transaction

The structure of the investment depends on the investor's goals and tax strategy. Typical routes include:

- **Equity Acquisition:** Buying shares in the OpCo and/or PropCo, either for full control or a strategic stake. A minority position in an OpCo that manages assets for multiple third-party investors would provide insight into the sector and access to the fee income, without taking on the responsibility of running the business. Alternatively, full control would be more desirable if the OpCo is captive and only manages the investor's assets.
- **Joint Ventures / Platforms:** Partnering with an existing manager to scale operations while retaining specialist expertise.
- **Management Buy-In or Buy-Out (MBI/MBO):** Supporting a team to acquire or carve out the OpCo, often with performance-based incentives.

You will also need to consider transitional arrangements, particularly if there is a change in management. Similarly, there are effects on employees, tax efficiency (e.g. VAT, capital allowances and providing services across jurisdictions), as well as transaction documents that need to address the operational risks that have been identified.

Conclusion – Where Value Truly Lies

As investor appetite shifts towards specialised and operationally intensive sectors, the role of the manager will only become increasingly important. Platforms with strong governance, adaptable teams, and proven models are increasingly attractive. For legal advisors, this means integrating real estate, corporate, tax, and regulatory expertise seamlessly. In OPRE, the asset may be the foundation of the deal, but it is often the manager who brings it to life. Investing in the operator is no longer a niche strategy; it is becoming a core component of value creation and is increasingly common among the strategies of institutional investors.

Please contact us if you require advice on the legal and commercial considerations of acquiring an operational real estate manager, or assistance in determining the best approach for your investment strategy.

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Listed Real Estate Takeovers: A Market Surge with Momentum

The UK public M&A market has entered a period of remarkable resurgence in 2025, with activity levels not seen since the pre-pandemic era. Listed real estate companies are at the forefront of this activity with bids in this sector making up 17% of firm offers announced in H1 2025. The sector, long recognised for its cyclical nature and sensitivity to macroeconomic shifts, is experiencing a wave of opportunistic bids and strategic repositioning. This renewed momentum is driven by persistent valuation gaps, robust cross-border interest, sector specific growth opportunities, and an increasingly supportive regulatory environment for dealmaking.

What is driving the surge?

There are a number of factors at work:

Valuation gaps

Many UK-listed real estate companies continue to trade at material discounts to their net asset value (NAV), with some reporting discounts to NAV per share as wide as 40%. Both private equity and strategic bidders have noticed this persistent undervaluation and are seeking to capitalise on the difference between public market pricing and underlying asset values. This dynamic is reshaping the competitive landscape for real estate professionals, with listed vehicles becoming prime targets for acquisition or consolidation. However, average discounts are narrowing as the surge in public M&A removes companies with wider discounts from the market.

Competition between private equity and strategic bidders

Private equity interest in the sector remains strong. Funds such as Blackstone and KKR are attracted by the potential for value creation through operational improvements and asset repositioning, as well as the opportunity to acquire companies at favourable entry points. At the same time, listed strategic bidders – often themselves real estate investment trusts (REITs) or diversified property companies – are stepping up their activity. The most active of these is LondonMetric Property which has successfully completed two takeovers in 2025, and four since 2023. An increasing number of these strategic bidders are willing to use their own shares as consideration. In 2025, 63% of firm offers for real estate companies involved listed paper. This approach can be particularly appealing to institutional investors, who are keen to retain exposure to the sector and participate in future upside from synergies and portfolio rationalisation, with some commentators suggesting that we have now reached the lowest point in the property valuation cycle.

Cross-border activity: US capital leads the charge

Cross-border M&A has become a defining feature of the 2025 landscape for UK listed real estate companies. US private equity bidders account for a significant share of inbound activity in 2025, representing 25% of firm offers for real estate companies. In addition to the opportunity to acquire high quality portfolios at a discount, they are drawn to the UK market because of its scale, transparency, and liquidity. They also see sector-specific growth opportunities in healthcare (driven by demand for infrastructure), logistics (driven by e-commerce) and student accommodation (driven by demographic changes). This influx of foreign capital is intensifying competition for assets and driving innovation in deal structures and tactics.

Regulatory reforms: streamlining transactions and unlocking value

Recent reforms to the UK Listing Rules are impacting real estate M&A, as will the changes to the prospectus regime expected in January 2026. Both the abolition of the requirement for shareholder approval of Class 1 transactions (effective from 29 July 2024) and the proposed increase in the prospectus threshold for secondary issuances (effective from 19 January 2026) are highly relevant for listed real estate companies. The latter will see the threshold increase from 20% to 75% of existing securities, or 100% in the case of a closed-ended investment fund. These changes allow listed strategic bidders to pursue larger, transformational deals more quickly and with less execution risk. For real estate boards and advisers, it is now critical to understand and leverage these regulatory shifts in order to develop a successful deal strategy.

Sector hotspots and mid-cap focus

Within the real estate sector, mid-cap listed companies (valued under £500m) are attracting the lion's share of attention. These companies often suffer from low share liquidity and limited analyst coverage. This makes them more susceptible to undervaluation and unsolicited approaches. The current environment is also seeing a rise in early-stage announcements, as bidders seek to test market sentiment and engage with boards more strategically.

Key issues for listed real estate boards and stakeholders

As deal activity intensifies, listed real estate boards must sharpen their focus and prioritise the following to protect value and stay ahead in an increasingly complex and competitive market:

— **Defence ready:** With unsolicited bids on the rise, boards must ensure their defence strategies are robust and up to date. This includes regular valuation reviews, stakeholder mapping, and scenario planning for potential approaches.

— **Stakeholder engagement:** Institutional investors are increasingly influential in determining deal outcomes, particularly where share consideration is involved. It is essential to engage with key shareholders early and transparently.

— **Regulatory navigation:** The evolving regulatory landscape demands close attention, from disclosure obligations to foreign investment screening. Real estate companies must respond fast to new requirements and potential activist involvement.

— **Speed and certainty:** With competition intensifying, bidders are prioritising clean and de-risked execution. We expect to see more pre-bid stake building, an even greater focus on irrevocable undertakings to support bids and early engagement with key shareholders (in some cases ahead of the target board being approached). For targets, this means being ready to respond quickly and credibly to approaches.

Looking ahead: opportunities and challenges

We expect that UK listed real estate companies will continue to play an outsized role in the UK public M&A market (on both bid and target side). Attractive valuations, regulatory tailwinds, sector-specific growth opportunities and sustained cross-border interest are likely to drive further consolidation and strategic repositioning. However, boards and stakeholders must remain vigilant, as the market is also expected to be characterised by increased competition, regulatory complexity, and the potential for contested or hostile situations. We have seen this with Primary Health Properties' successful competitive bid for Assura and Tritax Big Box REIT's competitive bid for Warehouse REIT, both advised on by CMS.

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Synthetic W&I Insurance: Can it unlock Corporate Real Estate Transactions?

In recent years, there has been a significant shift in how transactional risks are managed in corporate real estate transactions. Most transactions now involve warranty and indemnity (W&I) insurance, whereby the seller gives the warranties and indemnities in the share purchase agreement (SPA) but, in the event of a claim, the buyer's recourse is against the W&I insurer (rather than the seller). The key difference with synthetic W&I insurance is that the seller does not need to give the warranties and indemnities in the SPA in the first place.

Here we explain how a synthetic W&I policy differs from traditional W&I insurance, as well as some key points of which buyers should be aware. We also consider how other innovative insurance-based solutions have overcome transaction risks that may otherwise have caused deals to fall over.

Synthetic W&I Insurance

Synthetic W&I insurance differs from its traditional counterpart in a fundamental way. Standard W&I policies are underpinned by warranties and indemnities given by the seller in the SPA, However, synthetic W&I insurance provides cover based on a set of warranties that are not actually given by the seller. Instead, these warranties are "synthesised" by the insurer, often in situations where the seller is unwilling or unable to provide them.

The use of synthetic W&I has only recently become more widespread as a greater range of insurers are now willing to offer the product. Synthetic tax covenants have been around for a while, but a fully synthetic W&I product that removes the seller from the warranty negotiation and W&I process entirely has only become more widely available in recent years. By removing the seller from the process, it can bridge a gap that might otherwise cause the transaction to fail.

When might Synthetic W&I Insurance be used?

The use of synthetic W&I insurance is most prevalent in transactions where the seller is unable or unwilling to provide warranties. This can occur in a variety of scenarios. For example, in insolvency sales, administrators or liquidators are typically unable to give warranties due to their limited knowledge of the asset and their statutory duties. We have also seen this product used in pre-formal insolvency sales where the lending bank drives the transaction, but the borrower retains ownership of the assets. While the borrower may be willing to facilitate the sale for the lending bank, they will not take on the transactional W&I risk in doing so.

Another circumstance where synthetic W&I insurance is gaining traction is in competitive auction processes. Sellers seeking a "clean exit" may offer only limited or no warranties, instead relying on synthetic W&I insurance to give buyers the assurance they need to proceed. This can help to streamline negotiations and facilitate a smoother transaction process.

We have also seen synthetic W&I policies used on public-to-private transactions, in which buyers would not traditionally receive warranty or indemnity protection.

What are the key differences?

— **No warranties in the SPA** – The warranties and indemnities are all contained in the W&I policy.

— **Extent of warranties** – Warranties under a synthetic W&I policy are more limited. While they would cover matters of fact, such as title to assets, financial statements and tax, they are unlikely to cover warranties relating to third parties, awareness, statements of opinion or general compliance matters.

— **Greater negotiation with the insurer** – Often insurers will provide a pre-agreed synthetic warranty package, which is then subject to ongoing negotiation with the insurer during the diligence process.

— **No disclosure process** – As the seller does not give any warranties, it does not need to make any disclosures to qualify the warranties. The insurer does not have the knowledge of the target business to make specific disclosures, itself but the W&I policy will typically include a customary list of general disclosures.

— **Great emphasis on due diligence and underwriting process** – The absence of disclosure causes insurers to place great emphasis on robust due diligence. While sellers can avoid needing to undertake a disclosure process, a well organised data room and comprehensive Q&A based due diligence are a pre-requisite for synthetic W&I insurance.

— **No residual liability for the seller** – With traditional W&I, the seller may have residual liability in the event of fraud or willful non-disclosure. This would not be the case with synthetic W&I.

— **No "policy enhancements"** – As all the warranties are contained in the policy itself, there are no policy enhancements such as "knowledge scrapes" (i.e. removing any seller knowledge qualifies) or other variations to the SPA terms.

Cost and Timescales

The absence of the negotiation of the warranties with the seller may speed up the SPA negotiation process. The same is true for the absence of a disclosure process being required of the seller. However, the greater emphasis on due diligence and the need for more extensive negotiation of the W&I policy with the insurer will require more time than a traditional W&I process.

The costs of a synthetic W&I policy are typically 25 to 50% more than that of a traditional policy (for the same level of cover). Underwriting fees will also be higher due to the increased work required by the insurer.

Not all insurers are willing to provide synthetic W&I, and they may not offer it in all jurisdictions or for all asset classes. Therefore, if you desire a synthetic W&I solution, it is advisable to speak to an experienced broker early in the process so that they can assess feasibility and gauge market appetite.

Harry Blakelock at Lockton comments that *"We have experienced a shift in dynamics whereby sellers are looking to limit the amount of contractual protection they offer to a buyer not only through nil recourse structures under the SPA, but also through not providing any warranty protection at all. This has led to sellers either pre-packing synthetic W&I policies for the benefit of bidders or buyers looking for a synthetic solution independently of the seller. The appetite from the market for this type of solution varies with a smaller pool of insurers willing to participate in this type of structure. Those that can, will typically require a full due diligence package with a fulsome Q&A process between the commercial parties and a well-populated VDR. The due diligence process undertaken by a buyer is of particular importance and a satisfactory buy-side due diligence package matching the scope of the synthetic warranties commissioned by the insurers is paramount. Pricing is insurer dependent but as a guide we typically see this at around 25 to 50% higher than a more standard W&I programme."*

Other insurance-based solutions

In addition to synthetic W&I products, we have also advised on transactions where insurance-based solutions resolved deal risk issues which might, in the absence of insurance, have otherwise led to the deal aborting. This has ranged from specialist tax-risk insurance to bespoke litigation risk solutions (including whereby the insurer acquired the target company following the hive-up of the property and so retained any residual risk). We have also seen insurance solutions placed in respect of risks associated with potential liability orders under the Building Safety Act 2022.

Conclusion

While not a panacea, synthetic W&I is a valuable solution for transactions where traditional warranties are unavailable. It helps to facilitate deals and manage risk in an ever-changing market. As insurers and brokers continue to refine their offerings, synthetic W&I insurance will likely become an increasingly important feature of corporate real estate transactions, especially for sales of distressed assets. It can mitigate risks, allowing corporate transactions that might otherwise falter to be completed successfully.

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CMS European M&A Study 2025 – Deep dive into Real Estate

Earlier this year CMS published the 17th edition of its European M&A Study, offering a comprehensive analysis of market trends and deal points from private M&A transactions across Europe in 2024. This year's report draws on an extensive dataset of 582 deals on which CMS advised in 2024 (a record number of transactions analysed for one year), reflecting the depth and breadth of CMS's European corporate practice.

The Study included 49 deals in the Corporate Real Estate sector, a higher number than 2023, but down on the average of previous years from the high point of 2019. This reflected macro economic trends with real estate transactional activity subdued by continuing inflationary pressures and relatively high interest rates. Approximately 40% of deals were reported in the UK, 20% in CEE and 14% in Norway and Sweden (the Nordics). In this article we have summarised some of the key findings as they relate to Corporate Real Estate transactions.

Purchase Price Mechanisms

The Study reveals an uptick in the use of purchase price adjustment (PPA) mechanisms in 2024, with PPAs being used in 65% of Real Estate transactions analysed, significantly up on 2022 and 2023 but consistent with the longer term trend. Across all sectors covered by the Study, PPA clauses have become standard in a significant minority of deals, with such clauses being more prevalent in Real Estate deals. This is particularly the case in larger Real Estate transactions, with PPAs (typically completion accounts mechanisms) used in 86% of transactions in the €25–€100m range, rising to 90% in deals over €100m. PPAs were market standard in the UK, France and CEE (over 90% of transactions) but much less so in, for example, Germany, Austria and Switzerland, reflecting the fact that the majority of deals in these jurisdictions are asset deals (or smaller corporate deals).

Earn-Outs

The use of earn-out provisions in Real Estate deals remained relatively limited compared to the wider market where their use has steadily increased over the last decade to be found in 25% of deals in 2024. This is unsurprising given the asset based nature of Real Estate transactions. Where earn-outs were agreed, the most common criteria for assessment were financial metrics such as EBIT and EBITDA, consistent with broader market practice. The duration of earn-out periods typically ranged from 12 to 24 months.

Liability Caps

Liability caps for warranty claims have continued to trend downwards, particularly on higher value transactions, likely reflecting the increasing use of Warranty & Indemnity (W&I) insurance in Real Estate transactions. In 2024, 70% of Real Estate deals valued in excess of €100m featured liability caps of €1 or less than 10% of the purchase price. That figure dropped to 25% for deals in the €25–€100m range and 8% for deals below €25m. For transactions in the €25–€100m range the most common liability caps (in 33% of deals) were in the range of 10–25% of the purchase price; for the sub €25m deals the most common liability cap (in 28% of deals) was the total purchase price, recognizing that in deals of that size W&I insurance is less likely to feature. These trends have remained broadly stable over a ten year period, reflecting the maturity of the W&I market in Real Estate transactions, particularly in the UK.

Warranty & Indemnity Insurance

The use of W&I insurance remains a defining feature of M&A transactions, particularly in larger Real Estate transactions. In 2024 W&I insurance was used in 70% of Real Estate transactions exceeding €100m, and in 42% of transactions in the €25–€100m range. Unsurprisingly it was used in only 8% of transactions in the sub €25m range. More generally in the European M&A market the frequency of W&I insurance has increased steadily over the past decade, with competitive pricing and broader market acceptance driving adoption. In deals where W&I insurance was used, liability caps for sellers were typically lower, and limitation periods for warranty claims were often extended beyond 24 months. Pricing has generally fallen in line with the wider M&A market with insurance premia on 30% of Real Estate deals now below 0.5% of the purchase price.

As noted above, W&I insurance remains particularly prevalent in the UK, with W&I insurance used in 63% of UK Real Estate deals in 2024 (up on the ten year average of 55%). This is significantly ahead of the wider M&A market reviewed by the Study, where W&I insurance was used in 43% of deals in 2024. The UK figure compares to 14% in the Nordics, and 13% in CEE (down from the ten year average of 25%). In France and German speaking countries (Germany, Austria and Switzerland), the ten year averages are 5% and 6% respectively, reflecting the lack of take up so far of W&I insurance in Real Estate deals in these markets.

Limitation Periods for Warranty Claims

Limitation periods for warranty claims have shown a trend towards longer durations, again reflecting the use of W&I insurance. From a previous high point in 2018, limitation periods of greater than 24 months fell sharply in the following years. The position has reversed back to 2018 levels over the last two years, with periods of more than 24 months seen in more than 30% of Real Estate transactions. A limitation period of 18–24 months still remains the most common period however, appearing in 36% of deals (with a ten year average of 34%). Interestingly the longer period was most common in Spain, Portugal and Italy with 67% of transactions having periods of 24 months or more in 2024, compared to 33% in Germany, Austria and Switzerland and 28% in the UK.

Security for Warranty Claims

The requirement for security to support warranty claims, such as escrow accounts or bank guarantees, remains in the minority in Real Estate transactions, featuring in 27% of recorded deals in 2024 (up on the previous two years' average of 18%). Where used, the most common forms of security have been retentions from the purchase price and escrow accounts, featuring in almost two-thirds of deals where security is taken. Such mechanisms are most prevalent in smaller deals (where W&I insurance is less likely) with 54% of transactions having a form of security for claims being in the sub €25m range.

Material Adverse Change (MAC) Clauses

The inclusion of material adverse change (MAC) clauses in Real Estate transactions remains relatively unusual. The frequency of MAC clauses across all sectors reviewed by the Study was approximately 14%, with the Real Estate sector below this average at 10%. This is in stark contrast to US market practice, where MAC clauses are included in the vast majority of deals.

Conclusion

The CMS European M&A Study 2025 highlights a dynamic and evolving market for Real Estate M&A in Europe. The sector continues to attract strong investor interest, with deal structures and risk allocation mechanisms adapting to reflect changing market conditions. We look forward to seeing how these trends have developed in next year's Study.

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A New Chapter for Carried Interest: Where do Funds, JVs and Executives stand after the Draft Legislation

The UK's debate on carried interest has moved at speed since the Labour Government's first call for evidence in June 2024, the Autumn Budget 2024 and a second call for evidence in October 2024.

The Government's June 2025 response confirmed that neither a new statutory minimum holding period nor a mandatory co-investment requirement would be taken forward. Instead, the Government recommitted to bringing the carried interest rules within the income tax rules and to revisiting the average holding-period requirements under the existing income-based carried interest (IBCI) rules. Draft legislation was published on 21 July 2025 and the consultation on that closed on 15 September 2025. While tweaks to the legislation may (hopefully) yet emerge, the direction of travel is now clear. CMS have participated throughout the process and have been represented on the HM Treasury's Technical Working Group. This article summarises the current position and highlights the practical consequences for fund managers, executives and investors.

1. From capital to income: the new charging structure

A deemed trade

From 6 April 2026, all carried interest receipts (regardless of when the carried interest was first awarded and regardless of the underlying source of the carried interest, i.e. capital gains, interest, dividends, rental income, etc.) will be treated as trading income (under Chapter 2 of Part 2, ITTOIA 2005). An individual who provides "investment management services" in respect of an "investment scheme" will be deemed to be carrying on a trade whenever a sum of carried interest arises. The definition of services is widened so that investment advice and incidental activities are squarely within scope (draft section 23Q ITTOIA 2005), to address the First-tier Tribunal's decision in *Millican v HMRC* [2024] UKFTT 618 (TC). The definition of an "investment scheme" will be expanded beyond investment trusts and collective investment schemes to now include AIFs and therefore corporates which would previously have been outside its scope (unless an OEIC).

Two headline rates

1. **Qualifying carried interest** is taxed on 72.5 per cent of the amount realised. For an additional-rate taxpayer the effective combined income tax and NICs burden is 34.1 per cent. For those receiving carried interest where the underlying source is interest (e.g. credit funds), dividends or rental income (e.g. real estate funds), this will effectively result in a reduced tax liability.
2. **Non-qualifying carried interest** is taxed on the amount realised at normal rates (i.e. 45 per cent income tax plus 2 per cent NICs), giving an all-in headline charge of 47 per cent.

2. The new "qualifying" test – 40-month average holding period

Recognising that some of the concerns around the original IBCI rules had moved on (especially in relation to credit funds) and the IBCI rules had not been fully tested because of the carve out for employment-related securities, the existing IBCI rules have been recast and incorporated into a new and more generous average holding period (AHP) test. In order to be qualifying carried interest, a fund's aggregate investments must be held for at least 40 months on average. This is measured by reference to the period from acquisition to disposal of each asset, weighted across the whole portfolio.

Where the average holding period is less than 36 months, none of the carried interest will be qualifying; there is a sliding scale between 36 and 40 months.

There will no longer be a carve out where the carried interest is employment-related.

The draft legislation makes three key amendments, aimed particularly at credit funds and fund of funds:

1. **T1/T2 back-dating and post-dating.** To address the difficulties caused by the fact that a credit fund will often (i) make its investment in a number of different tranches over time, and (ii) dispose of that investment in a number of disposals over time, the new rules identify a single date, T1, on which all investments are treated as made, and a date, T2, on which all disposals of those investments are treated as happening. Very broadly, T1 is the date at which the fund first makes a "significant debt investment" in the borrower group of at least £1m or 5% of the total amounts raised or to be raised from external investors in the fund. All debt and equity investments in the borrower group made after T1 are backdated and treated as made on T1. T2 is the date on which the credit fund has disposed of at least 50% of the greatest amount it had invested at any one time in associated investments. Any associated investments disposed of before T2 are treated as disposed of on T2.
2. **Extended pre-payment relief** so that secondary loan positions benefit from the existing 40-month "deemed holding" for primary loans where a borrower (unexpectedly) repays ahead of schedule.
3. **Commercial override** – a restructuring or refinancing will not be treated as a disposal where there is no substantive change in economic exposure.

3. Territoriality and the non-resident executive

Subject to the application of any appropriate double tax treaty, non-UK tax residents (as determined under the statutory residence test, noting that in certain circumstances an individual may be treated as UK tax resident with less than 60 days in the UK) will be within the new trading income charge to the extent that their carried interest receipts are attributable to UK workdays.

For individuals subject to the new 4-year FIG regime, the non-UK trade part of qualifying carried interest will be treated as qualifying foreign income and therefore eligible for tax relief.

A day will count as a UK workday if the individual spends more than 3 hours performing investment management services in the UK (whether or not under the arrangements in question) on that day. Services performed whilst travelling to or from the UK will be treated as being carried on overseas, beginning with when the individual boards the aircraft, ship or train, and ending with when they disembark.

For qualifying carried interest only, certain safe harbours are introduced:

— All workdays **before 30 October 2024** are automatically treated as non-UK workdays.

— Any workdays in a tax year in which the executive is non-resident and performs **fewer than 60 UK workdays** are deemed to be non-UK workdays.

— Once an individual has been non-UK resident for **three consecutive years** (each with less than 60 UK workdays), all earlier workdays are deemed non-UK workdays.

For **non-qualifying carried interest** the safe harbours do not yet apply, leaving open the uncomfortable possibility that a single UK workday could taint the entire receipt. We understand that a number of respondents have pressed the Government to extend the safe harbour. Whether Treasury officials accept that point will hopefully become clear before the Finance Bill is laid before Parliament in early 2026.

Interestingly, the effect of deeming carried interest receipts to be profits from a trade may mean there is a mismatch in the classification of the receipt in the UK and the other jurisdiction. How this is resolved following the Supreme Court decision in *Fowler v HMRC* [2020] UKSC 22, which placed limits on the statutory fiction created by a deeming provision of UK tax, remains to be seen. HMRC seem to take a position which is at odds with their own arguments in Fowler.

4. Timing, compliance and cash-flow

— **Real-time PAYE is out; self-assessment is in.** The Government has confirmed that carried interest will not be subject to withholding. Instead, any amounts must be reported on the individual's self-assessment return by 31 January following the tax year in which it arises.

— **Payments on account.** Carried interest taxed in one year will automatically form the basis of the next year's payment on account instalments. Executives whose carried interest will be lumpy will need to **proactively engage with HMRC** to reduce payments on account to avoid substantial over-payments.

5. What managers should be doing now

1. **Consider when carry will arise** – and whether it will be subject to the existing regime or the new regime from April 2026.
2. **Audit historic work-patterns** – non-resident partners must map back UK workdays to understand any potential apportionment under the new rules.
3. **Model fund-level AHP** – credit and real estate debt funds, in particular, should run the new T1/T2 calculations to see whether their executives will qualify for the 72.5 per cent multiplier.
4. **Review GP and carried interest vehicles** – consider whether existing ERS elections remain fit for purpose and whether partnership agreements should be revisited.
5. **Revisit waterfalls** – many partnership agreements allow the fund manager to allocate sources of income profits and gains such that carry participants receive capital rather than income; for qualifying carry, this may no longer be necessary or attractive.
6. **Accounting for tax** – consider the expected stream of carry and how the tax payment profile (i.e. payments on account) is expected to work and prepare to make any requests for adjustments.
7. **Engage with the legislative process** – although the consultation window for the draft legislation has closed, there may be continuing ways to engage with the legislation. Draft guidance is also expected in the coming months and we hope HMRC will take into account constructive comments.

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Key Features, Benefits, and Challenges

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Takeover Dynamics from an External Investment Manager's Perspective

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Key issues at acquisition, development, holding, and disposal stages

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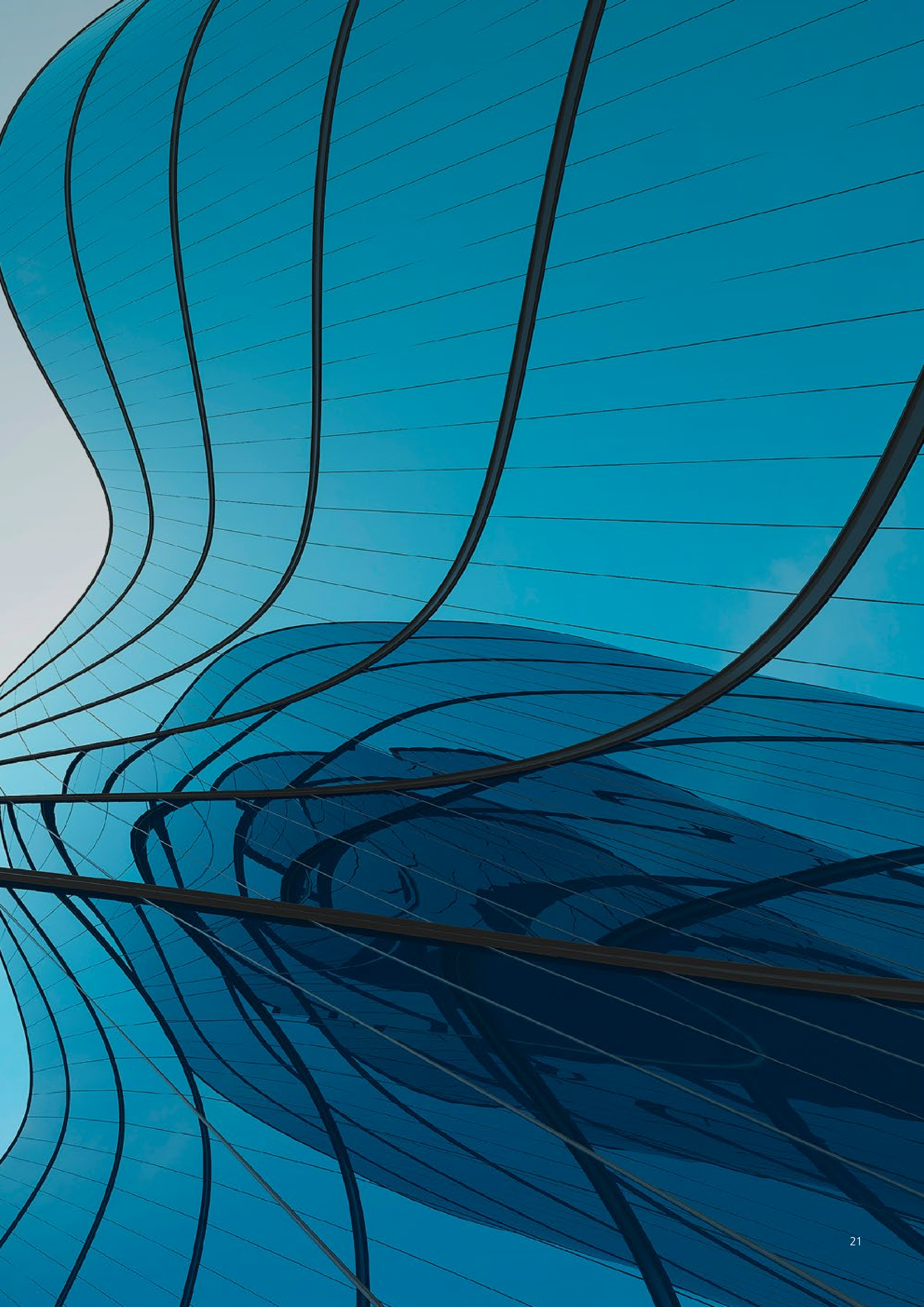

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