

PERE Glossary

Private Equity Real Estate Commonly Used
Legal and Industry Terms



Mayer Brown's Real Estate Markets Practice

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ABC	Anti-bribery and corruption. Used to describe (i) <i>ABC</i> laws, e.g., UK Bribery Act and the US Foreign Corrupt Practices Act, etc., (ii) <i>ABC</i> provisions being contractual provisions imposed by a party on its counterparties to reduce the risk of bribery and corruption and (iii) <i>ABC</i> procedures by which financial intermediaries make appropriate checks in order to comply with <i>ABC</i> laws. Often used interchangeably with <i>FCC</i> , however <i>FCC</i> is a wider term that would also include <i>sanctions law/procedures</i> .
AGGREGATE CLAIM THRESHOLD (WARRANTY CLAIMS)	In a <i>sale and purchase agreement</i> the threshold amount that must be exceeded by all warranty claims before any claim can be brought against the seller. There are two different types – hurdle and deductible. Hurdle: once the aggregate value of the claims exceeds the threshold, the seller will be liable for the full amount. Deductible: once the aggregate value of the claims reaches the threshold, the seller is only liable for the excess.
AGGREGATOR	A <i>fund manager</i> whose main role is (or is perceived to be) aggregating capital and investing in the market. The usage often implies that an <i>aggregator</i> can only obtain <i>beta returns</i> as opposed to a manager that adds value to the investments and therefore is more likely to obtain <i>alpha returns</i> .
ALPHA RETURN	A return higher than the general market performance (<i>beta</i>).
ALTERNATIVE INVESTMENT CLASSES	Asset classes outside <i>mainstream real estate investment classes</i> . At the time of this glossary (2019), examples would be student housing, self-storage, senior living and data centers
AML	Anti-money laundering. Used to describe (i) <i>AML</i> laws, i.e., laws designed to stop the practice of bringing into the banking system income generated through illegal actions, (ii) <i>AML</i> provisions being contractual obligations imposed by a party on its counterparties to reduce the risk of money laundering and (iii) <i>AML</i> procedures by which financial intermediaries make appropriate checks in order to comply with <i>AML</i> laws.

APARTMENT/FLAT/ UNIT	An <i>apartment</i> (American), a <i>flat</i> (British) or a <i>unit</i> (Australian), being a self-contained residential dwelling that occupies only part of a building, generally on a single story.
ASSET DEAL	A real estate transaction where a purchaser purchases the real estate directly, as opposed to purchasing the shares or other equity interest in an entity that holds the real estate.
ASSET MANAGEMENT	<p>The process of managing buildings with a focus on financial matters, maximising the return on investment and value of the property (for example, deciding the <i>tenant mix</i> and positioning of the building and undertaking refurbishment projects), as opposed to <i>property management</i> which concentrates on the day-to-day operations and maintenance of a property.</p> <p>Asset management services would typically include: production of asset level business plans and strategy, refurbishment projects, appointment of third party service providers at asset level and reporting activities at asset level.</p>
BAD BOY ACTS	Criminal offences, wilful default and/or fraud, committed by an individual. Typically used in the context of <i>key person</i> provisions whereby <i>bad boy acts</i> of the <i>key person</i> of a <i>fund manager</i> can allow the investors to replace the <i>fund manager</i> .
BETA (RETURN)	A return in line with general market performance.
BLIND POOL FUND	<p>A fund that does not have any assets at the time the investors commit to invest in the fund. As a result, the investors will not know what assets they are ultimately buying, and instead they are trusting the ability of the manager of the fund to acquire assets in accordance with the investment parameters set out in the <i>information memorandum</i>.</p> <p>Sometimes <i>blind pool funds</i> may have a pipeline of potential deals or <i>seed assets</i> being one or two deals already in the fund (at which point it is not a true <i>blind pool fund</i> but a <i>seeded fund</i>).</p>
BLOCKER	An entity (usually a form of corporation) used by investors via which investments are made into a fund in order to limit or avoid certain adverse tax or regulatory consequences of investing directly in the fund.

COMMONLY USED TERMS MEANING

BUSINESS INTERRUPTION INSURANCE

Insurance that replaces income lost as a result of certain events that interrupt the operations of the business, such as a fire or a natural disaster.

CAP (WARRANTY CLAIMS)

In an SPA there is typically a *cap* on the seller's liability in respect of the representations and warranties it has given in the agreement. The *cap* on this liability is often negotiated as a percentage of the purchase price (anywhere from 5% to 100%).

CAP RATE OR CAPITALIZATION RATE

See *yield*. *Net operating income* (usually *stabilized*) divided by property value. A shorthand method of comparing valuations of properties – low cap rate would indicate a high price, and a high cap rate would indicate a cheaper price. Less sophisticated than using a *discounted cash flow* (DCF) valuation method which takes into account fluctuation income streams.

CARRIED INTEREST

See *Promote*.

CASH TRAP

A situation that may arise in some jurisdictions (e.g., the PRC) where (i) a company is only allowed to remit profits (as defined under local accounting rules) and the accounting definition of profits does not capture all the cash that the company has generated (for example, the accounting treatment of depreciation can reduce "profits" but is a non-cash item), and/or (ii) there are rules controlling the remittance of cash outside the jurisdiction. As a result, some of the cash generated is trapped in the company and cannot be paid out as a dividend or remitted outside of the jurisdiction.

CATCH-UP

Once a fund or investment reaches its agreed *hurdle rate*, *catch-up* takes effect giving the manager a disproportionate percentage of profits until the profit split of its *carried interest/promote* has been reached.

CHANGE OF CONTROL

The event which causes a change in the person or entity that ultimately controls a company or other entity, i.e., if they lose the ability to control the majority of the board of directors or more than half the votes of shareholders.

CLOSED END FUND

A fund whose equity participations are not redeemable from the fund and new participations are prohibited by the fund documentation once the fund has held its final close (in contrast to *open ended funds*).

CLUB DEAL

A transaction where a group of investors join together to purchase an asset. This allows investors (which may be private equity funds or other institutional investors or family offices) to purchase larger and more expensive assets than each investor could acquire within the parameters of its own resources or funds under management. It can also operate as an alternative to a fund on a case-by-case basis.

The advantage to the investors compared to a fund is that the investors only get involved in a transaction that they have approved and there will be less management fees (and often none at all). The disadvantage is that the “club” can take a while to form and be too slow to move to execute deals. They also require more staff from an investor to manage than investment in a fund where the fund manager handles the execution of the deal.

CO-INVESTMENT

An investment made by a fund investor alongside the fund. Major investors can negotiate *co-investment* rights giving them the right to do this. This can benefit the fund in that it allows it to do bigger transactions without breaching restrictions in the fund's *investment memorandum* (e.g., restrictions on over exposure to a single deal or geography or investment theme). It benefits the investor as the fees on *co-investments* are less than those on investments made via the fund and also the investor has discretion not to make the investment at all (unlike in a fund where the manager has the discretion).

Generally managers would prefer the amount was committed to the fund directly as they have more discretion over investments (so can move faster) and the level of fees is higher.

CO-MINGLED FUNDS

Funds with commitments from more than one investor. As compared to making *direct investments*, the investors give up control over which particular investments are made but benefit from economies of scale, access to deals, deal execution, diversification and professional asset/investment management.

**COMPLETION/
CLOSING**

Completion (UK) and *closing* (US) is the point when documents transferring title to the real estate or shares in the real estate holding company are executed and delivered to the purchaser, usually in exchange for payment of the outstanding purchase price.

**COMPLETION
ACCOUNTS/
CLOSING
ACCOUNTS**

A set of financial statements prepared after *closing/completion* to determine the actual *net asset value* of the target company on the date of *completion/closing*. These accounts may or may not be audited, but are usually prepared or approved by a firm of auditors. These accounts are necessary because the purchase price of property holding companies is usually based on the *net asset value* of the company (with some adjustments), but some components of the *net asset value* will not be capable of being exactly determined on the day of *completion/closing* (for example, receivables, bad debts, etc.). Once the *completion/closing* accounts are finalized there is a *true up* to reflect the difference between the *net asset value* of the target company estimated on the day of *completion/closing* and the *net asset value* as at the *completion/closing* date finally determined by the *completion/closing accounts* (See *True Up*).

**CONDOMINIUM
OR CONDO**

A residential unit in a building divided into several units that are each separately owned, and such owners jointly own the common areas and the land forming the lot on which the building stands (as opposed to an *apartment*, the owner of which may not have any interest in the land).

**CONDUCT
OF BUSINESS
PROVISION**

In an *SPA*, a set of restrictions on how the business of a property owning company may be run between the signing of the *SPA* and *completion* or *closing*, e.g., signing up a new tenant or entering into a new loan agreement.

CONVERTIBLES

Bonds, debt instruments or preferred shares that can be converted into common stock or ordinary shares.

CORE FUND	<p>A <i>PERE</i> fund that invests in core real estate assets, such as mature fully tenanted buildings in established districts in a jurisdiction with transparent and respected property rights.</p> <p>INREV defines “<i>core fund</i>” to mean “a fund which invests mainly in income producing investments. The fund will use low leverage, have no or very low development exposure and generate a high proportion of return through income”.</p>
DATA ROOM	<p>Locations where documents are placed to enable purchasers to conduct <i>due diligence</i>. Can take the form of virtual <i>data rooms</i> (VDRs) which allow online access to the documents by the purchaser’s representative.</p>
DE MINIMIS CLAIM THRESHOLD (WARRANTY CLAIMS)	<p>The value threshold that any single <i>warranty claim</i> must achieve before it can be brought against the seller under an <i>SPA</i>. Designed to prevent nuisance claims.</p>
DEADLOCK	<p>A situation where shareholders in a company cannot agree on fundamental issues. <i>Deadlock</i> breaking provisions are included in <i>shareholders’ agreements</i> to stipulate what happens if a <i>deadlock</i> arises.</p>
DEBT FUND	<p>A fund where the invested assets are debt instruments, typically <i>mezzanine debt</i>.</p>
DEBT TO EQUITY RATIO	<p>The ratio of <i>debt to equity</i> of a company, which is a measure of a company’s financial <i>leverage</i>. A company with a higher <i>debt to equity ratio</i> is more highly leveraged and is a higher risk for lenders.</p>
DEED OF TAX INDEMNITY	<p>A document that seeks to allocate risks between the seller of a company and the purchaser, pursuant to which the seller indemnifies the purchaser for any unexpected tax liabilities of the target company in respect of the period prior to <i>completion/closing</i>.</p>
DEPOSIT (AT RISK)	<p>Money given by the purchaser to the seller on signing of an <i>SPA</i> or other legally binding contract (or more rarely an informal document such as an <i>MOU</i> or <i>LOI</i>), which may, in specified circumstances, be forfeited if the transaction does not close.</p>
DEPOSIT (NOT AT RISK)	<p>Money given by the purchaser to the seller on signing of an informal document such as an <i>MOU</i> or <i>LOI</i>, which will be returned to the purchaser if the contract does not close for any reason.</p>

DEVELOPER	An entity that forms or acquires a site and then arranges for the building or re-development of real estate on that site.
DEVELOPMENT RISK	Risks associated with the development of real estate, including cost of site formation, obtaining planning permission, financing, construction risk, long lead times and risk over market value of finished product and attractiveness to tenants/purchasers. Many <i>PERE</i> funds are restricted to the amount of <i>development risk</i> they can take.
DIRECT INVESTMENTS	Investments made by directly purchasing a real estate asset (or shares in a holding company that owns such assets) as opposed to investing via a real estate fund. <i>Club deals</i> are often a form of direct investment.
DISCLOSURE LETTER	In the context of the sale and purchase of shares or stock in a private company, a formal letter issued by the seller to the purchaser setting out (1) which warranties in the <i>SPA</i> are not correct (specific <i>disclosures</i>) and also often (2) deeming certain other matters as being disclosed (and therefore the purchaser is unable to rely on the warranties in respect of such matters) such as things on public registers (land registry or company registry) or available in the <i>data room</i> or bundle of documents made available to the purchaser during their <i>due diligence</i> exercise (general <i>disclosures</i>).
DISCLOSURES	(1) The items that were made known by the seller to the purchaser before the signing of a formal <i>SPA</i> and referred to or specified in the <i>disclosure letter</i> or (2) matters deemed disclosed by the disclosure letter (e.g., public records). The purchaser cannot bring a warranty claim in respect of a matter formally disclosed.

DISCOUNTED CASH FLOW (DCF) VALUATION METHOD

A method of valuing an asset by calculating all estimated future cash flows and discounting these amounts by an assumed discount rate (for example, the cost of capital) to give the present values of each future cash flow. The sum of the present value of all future cash flows, both incoming and outgoing, is the net present value (NPV) which gives the value of the asset using the *DCF* method.

Using *DCF* analysis to compute the NPV takes, as input, cash flows and a discount rate and gives, as output, a present value. The opposite process takes target cash flows and a price (present value) as inputs, and provides as output the discount rate which is the target *IRR*.

DRAG ALONG RIGHT

The right of a shareholder in a *shareholders' agreement* to force all the other shareholders to join in the sale of a company when they sell their own shares. This is a valuable right as there is usually a discount on the price of shares if only a minority interest is sold. The *drag along right*, if exercised, means there is no such discount as 100% of the shares will be for sale.

DUE DILIGENCE

An investigation into the affairs of a target company, including title to the underlying assets, potential legal liabilities, and confirmation of facts asserted by the seller, etc.

EARNEST MONEY

A “*not at risk*” deposit made by a potential purchaser to a seller indicating the purchaser’s good faith in an arrangement, which often allows the purchaser time to conduct *due diligence* during an agreed *exclusivity period*, during which the seller agrees not to sell the asset to any other person.

ENBLOC SALE

A sale of an entire building.

ENCUMBRANCE

A mortgage or other security over a property given in favour of a lender or other creditor.

ESCROW AGENT

An entity that holds a *deposit* in trust for both the purchaser and the seller pending *completion* or *closing* of the transaction.

EXCHANGE

A stage of the transaction process where a formal legally binding contract is signed (so called because the contracts would traditionally be physically exchanged at that time and each party would have one original signed by the other).

EXCLUSIVITY PERIOD The period for which the seller has given an undertaking not to sell the property or target company to anyone other than the potential purchaser to whom the undertaking has been given (usually in an *MOU* or *LOI*).

EXIT The disposal of an investment by an investor, either by disposal of the real estate asset directly or by the sale or listing on a public exchange of all or part of the shares in an entity that directly or indirectly owns the asset.

FCC Financial crime compliance; *FCC* procedures are the compliance procedures of a financial institution to help prevent bribery, corruption and money laundering and payments to sanctioned parties.

FEEDER FUND A fund which does almost all of its investments through a master fund (and sometimes through more than one master fund) rather than directly. This feeder-master structure is used to meet tax and regulatory requirements of certain classes of investors (for example investors from a particular country), or permit different fee arrangements to be charged to different classes of investors as the management fees are charged at the feeder level.

FINAL CLOSE In relation to a *closed end fund*, the final round of commitments received by the fund prior to the end of the fundraising period set out in the fund documentation after which the fund is closed to new commitments.

FINANCIAL ASSISTANCE The assistance given by a company (the target in an acquisition) for the purchase of its own shares or the shares of its holding companies. This assistance includes granting a security interest over real estate assets owned by the target company. Financial assistance is restricted in some jurisdictions (for example, Hong Kong) which prevents a mortgage over the real estate assets of the target company (if incorporated in such a jurisdiction) being used to finance the acquisition unless certain procedures are followed.

COMMONLY USED TERMS	MEANING
FIRST CLOSE	In relation to a <i>closed end fund</i> , the first round of commitments received by the fund sufficient to make the fund viable in the view of the <i>fund manager/sponsor</i> . Fundraising will continue until the <i>final close</i> .
FITWEL	An international building rating organization that evaluates and certifies buildings' ability to support health.
FORCE MAJEURE	An event outside of the control of the parties or for which they should not be held accountable – typically includes “acts of God” (such as extreme weather events or natural disasters) and certain human actions such as social unrest, armed conflicts and strikes.
FREEHOLD	The ownership of land and any buildings on it outright and in perpetuity (i.e., “free from any hold”). Often distinguished from <i>leasehold</i> land in which title reverts to the freeholder upon expiry of the lease period.
FUND FINANCE	Finance obtained at the fund level as opposed to at the asset level. <i>Fund finance</i> loans are granted to the fund and secured on the commitments of investors to the fund. It allows the fund to make investments more quickly as it can draw down on the <i>fund finance</i> facility before having to wait for investors to make their capital contribution. More controversially, it can allow the fund to increase its <i>leverage</i> over and above the finance it can obtain secured on individual assets (where lending would be restricted by <i>loan to value</i> limitations imposed by banks).
FUND MANAGER	The entity responsible for managing a fund and making decisions or recommendations related to the investments. As funds are often <i>limited partnerships</i> and are managed by the <i>general partner</i> , <i>fund managers</i> are often referred to as the “GP.”
FUND OF FUNDS	A fund that invests in other funds rather than directly into assets itself. <i>Fund of funds</i> managers now more commonly position themselves as <i>multi-managers</i> which often involve a mixture of strategies for a single investment mandate, including investment in other funds and <i>co-investment</i> alongside such funds as well as <i>separate accounts</i> .

COMMONLY USED TERMS	MEANING
FUNDAMENTAL WARRANTIES	In the context of the purchase of a company, warranties relating to (1) the capacity and authority of the seller to enter into the transaction, (2) the seller's title to the assets being sold (i.e., the shares) and (3) capitalization and share capital of the target company.
GFA (OR GROSS FLOOR AREA)	The total amount of floor area that is developed or can be developed on a site, including all common areas.
GP (GENERAL PARTNER)	The partner in a <i>limited partnership</i> who is responsible for the management of the partnership and responsible for all its debts and liabilities. In the context of a fund established as a <i>limited partnership</i> the GP would be the <i>fund manager</i> .
GRADE A OFFICE	Also known as Class A Office, the highest quality of office building in the relevant market both in terms of location and type of tenant. The term tends to include newer buildings with appropriate ceiling height and ducting, etc. but can also include older prestige buildings in a very good location which otherwise would not fall within the <i>Grade A</i> category on the specification of the building alone.
GRADE B OFFICE	Also known as Class B Office. A notch down from <i>Grade A Office</i> .
GRESB	The Global Environmental, Social and Governance Benchmark for Real Assets – an international organization that assesses the sustainability performance of buildings.
HURDLE RATE	The rate of return at which, once a fund reaches it, the manager starts to earn its <i>carried interest</i> or <i>promote</i> .
HVAC	Heating, ventilation and air-conditioning.

INDEMNITY VS CONTRACTUAL CLAIM

In many jurisdictions there are rules that set out how damages are calculated in the case of a claim for breach of contract and these apply in respect of a standard *contractual claim*. However, if a party agrees to indemnify the other party for breach of any contractual term or in respect of the occurrence of any event (which may not in itself be a breach of contract), then the party that has the benefit of the *indemnity* will be in a better position than under the rules relating to a standard *contractual claim*. For example, they may not need to prove a breach of contract (merely that the event for which the *indemnity* was given has occurred), the method of calculating damages may be more favourable and the indemnified party will not be under a duty to take steps to minimize their loss.

The distinction typically arises in the context of whether warranties in an SPA should be given by way of *indemnity* or not.

INDIRECT INVESTING

Investing via a fund as opposed to making *direct investments* in the real estate assets (or the shares of a real estate asset holding company).

INSOLVENCY

When an individual or organization can no longer meet its financial obligations as and when they fall due. It is a liquidity test as opposed to a *net asset value* test, and does not inevitably lead to a *liquidation*. A company could be insolvent but have a high *net asset value*.

INVESTMENT MEMORANDUM (IM)

Also called a *private placement memorandum*. A document setting out the investment strategy and track record of a fund and its management team and used to attract investors. It needs to comply with all relevant securities marketing rules.

INVESTMENT PERIOD

In relation to a fund, the period in which it is authorized to acquire assets under the fund documentation.

IRR (OR INTERNAL RATE OF RETURN)	<p>The most common way of valuing a return on a private equity fund. The <i>IRR</i> is equal to the discount rate used in a <i>discounted cash flow</i> valuation of a real estate asset's actual cash flows which reduces the net present value of such cash flows to zero. This method is a calculation of the <i>IRR</i> of the investment in the real estate asset in question. Alternatively the <i>IRR</i> can be calculated by reference to the cash flows paid and received by an individual investor, which can lead to different investors in the same asset achieving differing <i>IRRs</i> depending on the timing of their investments and when they are repaid.</p> <p>The <i>IRR</i> calculation is very time sensitive. The longer an asset is held, the harder it is to maintain a high <i>IRR</i>, and this leads to pressure on private equity funds to exit an asset as soon as possible once they have achieved an uplift in value. It is in sharp contrast to reporting the success of an investment by reference to a multiple of the original acquisition cost, which generally would increase over time.</p>
JOINT VENTURE AGREEMENT	<p>The same as a <i>shareholders' agreement</i>.</p>
JUNIOR DEBT	<p>A debt which ranks after other debts (<i>senior debt</i>) if a company falls into liquidation or bankruptcy (often takes the form of subordinated debt or <i>mezzanine debt</i>).</p>
KEY MAN/KEY PERSON	<p>The key executive in the management of a fund. Often specific obligations are placed on the fund to ensure the <i>key person's</i> continued involvement, and the investor is given rights to pull out of a fund or chose a successor in the event of the <i>key person's</i> departure.</p>
KYC OR KNOW YOUR CLIENT	<p>A process in which funds, banks and other financial intermediaries are required to know the ultimate beneficial owner of their investors or customers.</p>
LATENT DEFECTS	<p>A fault in the property that could not have been discovered by a reasonably thorough inspection upon completion of its construction. As a result, the <i>developer</i> remains liable to fix <i>latent defects</i> that arise during the defect liability period (usually 12 to 24 months) after the handover of the property.</p>

LEASEHOLD	The right to have exclusive possession of a property over a period, usually a long period, of time. In some jurisdictions (namely the PRC) there is the concept of “land use right” which is similar.
LEED	The Leadership in Energy and Environmental Design standard, a rating system devised by the United States Green Building Council to evaluate the environmental performance of a building and encourage market transformation towards sustainable design. Different levels of <i>LEED</i> compliance obtain a different rating from silver and gold to platinum based on a points system for commercial building projects.
LEVERAGE	<p>A measure of the amount of debt used in a project. Usually expressed as the percentage of the total investment amount comprising borrowings from a third party (i.e., excluding <i>shareholder loans</i>) – e.g., 50% <i>leverage</i> would mean that the purchaser funded the acquisition with 50% equity (the providers of which are given shares in the target vehicle) and 50% debt (e.g., bank borrowing or mezzanine funding, the providers of which have a right to repayment of the loan plus interest).</p> <p>As debt ranks ahead of equity in a <i>liquidation</i>, but does not share in the upside of the project, the use of <i>leverage</i> greatly increases the returns of the equity holder, but also increases the risks.</p>
LIMITATION PERIOD (WARRANTY CLAIMS)	The period (specified in an <i>SPA</i>) after which a purchaser is time barred from bringing a claim against the seller for breach of warranty or other potential claims under the <i>SPA</i> .
LP (LIMITED PARTNER)	An investor in a fund which is in the form of a <i>limited partnership</i> . LPs have limited liability for the debts of the partnership (similar to how a shareholder has limited liability for the debts of a company), but loses such protection if they are involved in the management of the <i>limited partnership</i> . As a result, management of a <i>limited partnership</i> is left to the <i>general partner</i> .

LIMITED PARTNERSHIP

A form of partnership with two types of partner – *general partners (GPs)* who are responsible for the management of the partnership and liable for all of its debts and liabilities and *limited partners (LPs)* who are not so liable provided they are not involved in the management of the partnership.

Limited partnerships are commonly used as vehicles for funds because of various tax and regulatory reasons.

LIQUIDATION

The process of bringing a business entity to an end, disposing of its assets and using the proceeds to pay off all creditors, to the extent there are funds to do so, and distributing any surplus to its shareholders (or other equity holders).

LOAN COVENANTS

Covenants given by a borrower to a lender in a loan agreement requiring the borrower to do or not do certain things. Breach of a covenant may result in the loan being called and becoming immediately repayable.

Typical covenants for real estate-related loans include minimum/maximum *Loan to Value Ratio (LTV)*, *Debt Service Coverage Ratio (DSCR)* and *Interest Service Coverage Ratio (ISCR)*.

LOAN TO VALUE RATIO (OR LTV)

The loan amount divided by the appraised value of the underlying property, expressed as a percentage.

LOCK UP PERIOD

Same as an exclusivity period. A period in which the seller has agreed it will not sell the property to a third party, or, depending on the wording of the clause, not enter into any discussions for sale of the property to a third party. A common term in an *LOI* or *MOU*.

LOI OR LETTER OF INTENT

Same as an *MOU*. A document that sets out the basic commercial terms of a transaction but whose provisions are mostly not intended to be legally binding, other than provisions covering exclusivity, confidentiality and the requirement of the purchaser to pay a *deposit*. Usually replaced by a formal *SPA* once *due diligence* has been completed and the final terms of the *SPA* finalized.

LPA (LIMITED PARTNERSHIP AGREEMENT)

An agreement between the partners of a *limited partnership* that determines how the partnership is governed and the respective obligations of each partner. In the context of *PERE* it is the document pursuant to which the LPs agree to make their capital commitments to the fund, and which sets out the fees payable to the *fund manager* (as *GP*).

M&E

Mechanical and electrical equipment

MAIN CONTRACTOR (CONSTRUCTION)

Also known as the prime contractor or general contractor. The *main contractor* has overall responsibility to build the building in a construction project in accordance with the design provided by the architect and as set out in the construction contract it enters into with the employer/developer. The *main contractor* enters into contracts with the various specialist sub-contractors necessary for the project.

MAINSTREAM REAL ESTATE INVESTMENT CLASSES

Traditionally, the mainstream investment classes were office, retail, residential and industrial. To which is now commonly added logistics (to some a sub-set of industrial) and hospitality/hotels.

MATERIAL ADVERSE CHANGE (MAC) CLAUSE

In the context of an *SPA*, a clause allowing the purchaser to walk away from the transaction following the occurrence of a defined *material adverse change* or *MAC*. What constitutes a *MAC* can be a matter of some discussion, ranging from physical damage to the building (affecting a certain percentage of the *GFA*) or adverse regulatory and economic factors.

MATURE BUILDING

A building which is substantially, or fully, occupied by tenants of the appropriate type. Also called a "stabilised building".

MEZZANINE DEBT

Projects or acquisitions are usually financed by a mixture of debt and equity. *Mezzanine debt* is a hybrid that falls between the two offering with a higher return than *senior debt*, but carrying higher risk as it will rank behind the bank in terms of security or on a *liquidation*. On the other hand, it offers lower returns and less risk than equity. May involve an equity kicker on top of interest if certain valuation targets are met.

MIRROR FUND	A fund entity created to track the performance of another fund. Typically used because the structure or location of the principal fund may not be suitable for investors from a particular jurisdiction who therefore invest in the <i>mirror fund</i> instead.
MIXED USE DEVELOPMENT	A development that blends residential, commercial (i.e., office and/or retail), cultural and/or entertainment uses, where those functions are physically and functionally integrated. For example, a shopping mall at basement and podium level with an office tower or a hotel and residential towers on top.
MOU	Memorandum of understanding – same as an <i>LOI</i> .
MULTI-FAMILY	A class of residential real estate being a building containing multiple separate housing units for rental, where ownership of the building remains with one owner.
MULTI-MANAGER	The term <i>multi-manager</i> is often used interchangeably with <i>fund of funds manager</i> . However, strictly speaking there is a difference. Typically a multi-manager is a fund manager who invests a single mandate from an investor into a number of property funds or investment vehicles/opportunities as opposed to a <i>fund of funds manager</i> who runs a co-mingled fund from multiple investors and that fund then invests in a range of other funds.
NAMING RIGHTS	The right to name a building, often granted by the building owner to a major tenant.
NET ASSET VALUE (NAV)	In respect of a business entity, its assets less its liabilities, calculated in accordance with relevant accounting principles.
NET EQUIVALENT YIELD	The average of the net initial yield and reversionary yield, time weighted to represent the yield of a property based upon the timing of the receipt of income.
NET INITIAL YIELD (NIY)	The net operating income of the property divided by the gross property value.
NET OPERATING INCOME (NOI)	The gross operating income of a property for the period less operating expenses.

NOTARY	A person licensed by the government to perform acts in legal affairs, in particular witnessing signatures on documents. In some jurisdictions the transfer of real estate or shares requires notarial recording. The form and the scope of the notarial profession varies with local legal systems.
OFFSHORE COMPANY	In relation to a real estate transaction, a company incorporated in a different jurisdiction to the location of the real estate it directly or indirectly owns. In a <i>PERE</i> ownership structure it is common to have onshore companies owning the real estate asset but an <i>offshore company</i> to own the onshore company. Upon exit the seller can then sell shares in the <i>offshore company</i> , and there is also flexibility for loans to be borrowed at the offshore or onshore level.
OFFSHORE LOAN	A loan made to an <i>offshore company</i> in the corporate structure.
ONSHORE LOAN	A loan to an onshore company in the corporate structure.
OPEN ENDED FUND	A type of private equity fund that does not have restrictions on the amount of equity or units the fund can issue, and individual investors can exit without the fund being wound up. It requires the fund to maintain sufficient liquidity in order to be able to process exits by investors.
OPERATOR	An entity that operates a real estate-related business, for example, hotel, office or retail mall management, or provider of logistics or self-storage services or a <i>developer</i> , as opposed to an investor. Often transactions involve cooperation between an <i>operator</i> and an investor.

OPPORTUNISTIC FUND	<p>A fund following a high risk high return strategy, for example, targeting investments in an immature or less than transparent market (such as emerging economies) but with high growth potential and often involving high degrees of <i>leverage</i>.</p> <p>INREV defines an opportunistic fund as “A fund which typically uses high leverage, has a high exposure to development or other forms of active asset management, and will deliver returns primarily in the form of capital appreciation. The fund may invest in any markets or sectors, and may be highly focused on individual markets or property types.”</p>
PENSION FUNDS	<p>A fund or scheme established to provide retirement income to individual investors. Also known as super-annuation funds.</p> <p><i>Pension funds</i> seek long term income to match their long term liabilities so are active institutional investors in real estate, either as an <i>LP</i> in a fund, or via a <i>separate account</i> or, in the case of those large enough to have their own investment teams, <i>direct investments</i>.</p>
PERE	<p>Private equity real estate. Typically, private equity real estate investing involves the acquisition, financing and direct ownership of real estate (or indirect ownership via the acquisition of shares in a <i>special purpose vehicle</i> acting as a holding company) or real estate operating business through some form of pooled fund investment vehicle or via a <i>separate account</i>.</p>
PLACEMENT AGENT	<p>Assists fund sponsors in raising capital into the fund.</p>
PLATFORM ACQUISITION	<p>The purchase of an entity that includes an operating business, for example, an <i>operator</i> of a self-storage business; as opposed to a <i>special purpose vehicle</i> that merely holds assets, for example, the entity that owns the self-storage locations.</p>
PRIVATE PLACEMENT MEMORANDUM (PPM)	<p>See <i>investment memorandum</i>.</p>

COMMONLY USED TERMS	MEANING
PROFESSIONAL TEAM (CONSTRUCTION)	Architects, structural engineers, quantity surveyors and other professionals who are appointed in relation to a construction project and who are not employed by the <i>main contractor</i> or a <i>sub-contractor</i> . The <i>professional team</i> typically has a direct contract with the <i>employer/developer</i> .
PROMOTE	The fund manager's disproportionate share of profits in a fund (or a specific deal) once the profits in the fund (or deal) exceed a previously agreed hurdle. The hurdle will depend on the type of investment (i.e., lower for <i>core funds</i> and higher for <i>opportunistic funds</i>). Same meaning as <i>carried interest</i> .
PROPERTY MANAGEMENT	To be distinguished from <i>asset management</i> . <i>Property management</i> is managing the day-to-day operations of a property, including cleaning, maintenance, security, etc.
PROPTECH	A loose term to describe technology used to make real estate operations, design, construction and transactions more efficient.
RELIANCE LETTER	A letter by which a service provider may extend the group to whom they accept liability.
RENT ROLL	A register showing details of the leases of every tenant in a building, including the names of tenants, the actual amounts of rent and the term of the leases.
RE-POSITION (BUILDING)	A real estate investment strategy where the owner tries to improve the status of a building, for example, from a <i>Grade B</i> to a <i>Grade A</i> building, or from a fringe area to a core area, or as a specialized cluster of a certain type of tenant.
RESET – (AIR QUALITY ONLY)	A sensor-based and performance-driven certification program for indoor air quality of buildings.
RESUMPTION (OF LAND)	The compulsory acquisition of land by the government.
RETAIL FUND	A private equity fund that aims to invest in retail real estate assets, such as shopping malls. Not to be confused with a fund that is aimed at the mass market (i.e., retail) investors.

RETENTION	In an SPA the part of the purchase price that the purchaser holds back until the seller has performed certain specified obligations or other post-closing conditions are satisfied.
REVERSIONARY YIELD	The estimated long-term net operating income of the property divided by the gross property value.
RIGHT OF FIRST OFFER	In a <i>shareholders' agreement</i> , the right of an existing shareholder to be offered any shares that another shareholder wishes to sell (the selling shareholder) before the selling shareholder offers the shares to an outsider. If the existing shareholder declines the offer, then the selling shareholder may offer (and sell) the shares to an outsider on terms no more favorable than the offer to the existing shareholder, for an agreed period (usually around six months). Similar to the <i>right of first refusal</i> , it is a method of restricting the sale of shares in a joint venture company to a person the existing shareholders do not wish to partner with. However, it is generally considered more practical because the selling shareholder does not have to find a third-party purchaser before triggering the process.
RIGHT OF FIRST REFUSAL	In a <i>shareholders' agreement</i> , the right of an existing shareholder to be offered the right to purchase any shares that another shareholder (the selling shareholder) has agreed to sell to a third party, on the same terms as those offered to a third party. Like the <i>right of first offer</i> , it is a way of restricting the sale of shares in a joint venture company to a person the existing shareholders do not wish to partner with. However, it is generally less common than the <i>right of first offer</i> , because the <i>right of first refusal</i> requires the selling shareholder to find a buyer before they can trigger the process, and it is hard to find a committed buyer if they know that another shareholder has this <i>right of first refusal</i> .
SANCTIONS	<i>Sanctions</i> are internationally imposed prohibitions from dealing with or making payments to specific named (i.e., sanctioned) parties, e.g., in 2018, Iranian entities.
SEEDED FUNDS	A private equity fund that has already acquired some assets prior to the investors becoming committed to the fund. Seeded deals are financed by the fund sponsor's commitment.

SENIOR DEBT

Debt that gets paid back in priority to all other debt of the relevant borrower, usually provided by a licensed bank. *Senior debt* typically ranks higher in a *liquidation*, has better security, and as a result, a lower rate of interest, than other types of debt (e.g., *mezzanine debt* or subordinated debt which are examples of *junior debt*).

SEPARATE ACCOUNT

An investment account established by an investor with a third-party *fund manager*, but unlike a fund, there is only one investor, so no co-mingling and typically the manager would not have full discretion to make investments without the investor's specific consent. Usually has a lower fee structure than a *co-mingled fund*. Larger investors often like to blend investing in a *co-mingled fund* and then place a larger amount in a *separate account* alongside it (within the same manager as the fund) with *co-investment* rights (see *Co-investment*). This gives the investor a lower average level of fees and also more control compared to investing the full amount in the *co-mingled fund*.

SHAREHOLDERS' AGREEMENT (SHA)

An agreement between the shareholders of a company that describes how the company should be operated and outlines shareholders' rights and obligations. Generally it gives more power to the minority shareholders (including specific veto rights) than would be available under general law, as well as restrictions on the sale of shares, commitment to a business plan, funding commitments, exit rights and distribution *waterfalls*.

SHARE DEAL

The acquisition of real estate by acquiring the shares or stock of a *special purpose vehicle* that directly or indirectly owns the underlying real estate asset. To be contrasted with an *asset deal*, where the real estate asset is acquired directly.

SHAREHOLDER'S LOAN

A loan from a shareholder to a *special purpose vehicle* that directly or indirectly owns a real estate asset. Although technically a form of debt, economically, it is effectively equity (if the shareholders all provide such a loan pro rata to their shareholdings and on the same terms). It is often more convenient to finance a company through shareholder loans rather than subscribing for shares.

SIDE CAR	In the context of <i>PERE</i> , it is used in the same way as a <i>separate account</i> with a right to co-invest alongside a fund. The name derives from the allusion to an investor in the side car investing alongside the manager riding the motorcycle.
SIDE POCKET	In the context of hedge funds, a <i>side pocket</i> is an account into which illiquid assets are placed for later disposal and only investors at the time of creation of the side pocket will share in the proceeds. In the context of <i>PERE</i> , it is often used interchangeably with a <i>separate account</i> or <i>side car</i> that has the right to co-invest alongside the fund.
SPA	Sale and purchase agreement (or sometimes share purchase agreement) (UK) or stock purchase agreement (US) – an agreement for the purchase of shares or stock in a company.
SPONSOR	The entity that sponsors the formation of a fund and provides the manager of the fund (the <i>GP</i>).
SPV OR SPECIAL PURPOSE VEHICLE	Company formed for a single specific purpose in connection with a transaction, for example, holding one real estate asset so as to allow the option on exit to sell the shares in the <i>SPV</i> (a <i>share deal</i>) as well as selling the asset directly (an <i>asset deal</i>).
STABILIZED OCCUPANCY	In respect of a new or renovated building whose construction has been completed, occupancy at a “normal” long-term level for a property of that type under competent management.
STRATA OWNED	Where ownership of the building is divided up with different owners owning different floors of the building (or parts of floors or multiple floors).
STRATA SALE	The sale of part of a building (for example, one whole horizontal floor of a building).
SUB-CONTRACTOR (CONSTRUCTION)	Hired by the main contractor in a construction project to perform a specific task as part of the overall project (for example, piling, engineering work, fit out works, etc.).
SUNSET PROVISIONS	A provision in an <i>SPA</i> setting a time limit within which once a claim is made the person making the claim must proceed to start formal litigation proceedings or their claim will be time barred.

SWFS OR SOVEREIGN WEALTH FUNDS

State, owned funds tasked with investing government assets outside of their home market. Active in PERE either as an LP in *co-mingled funds*, investors in *separate accounts*, or *direct investments* in their own right. SWFs often have different tax treatment than other investors and usually like to proceed with minimum publicity.

TAG ALONG RIGHT

In a *shareholders' agreement* the right of an existing shareholder to "tag along" on the same terms in the sale of shares to a third party by another shareholder (normally after the selling shareholder has been through the *right of first offer* or *right of first refusal* process). This prevents the existing shareholder from being left behind if its original partner sells out.

TENANT MIX

The quality and variety of tenants in a building. For example, in the case of a shopping mall, the amount of space given to fashion vs. food and beverage vs. entertainment, or luxury goods vs. mass market goods, etc.

TERM SHEET

A nonbinding agreement setting out the basic terms and conditions of a transaction or investment. Once the parties involved reach an agreement on the details laid out in the *term sheet*, a binding agreement or contract that conforms to the *term sheet* details is then drawn up. Similar to an *MOU* or *LOI*, but often not quite as formal (and often not signed).

TITLE INSURANCE

The indemnity insurance that protects the holder from financial loss sustained from defects in title to a property.

TRUE UP

A payment made either by the purchaser to the seller, or vice versa, in respect of the purchase of shares in a company, to reflect the difference between (i) the *net asset value* of the company assumed to be the case on the day of *completion/closing* and (ii) the *net asset value* as at the *completion/closing date* as determined by the *completion/closing accounts*. This is necessary where the purchase price of the company is based on its *net asset value* of the company (usually with some agreed adjustments).

USPAP	Valuation standards established through Uniform Standards of Professional Appraisal Practice in the United States. USPAP is maintained by the Appraisal Standards Board of the Appraisal Foundation.
VALUE ADDED FUND	<p>A fund following a strategy characterized by targeting underperforming and/or undermanaged properties, that the fund believes it can improve by better management (hence the phrase “value added”) as opposed to simply betting on a rising market.</p> <p>INREV defines <i>value added fund</i> as “A fund which may invest in any property type and deliver returns from a balance of income return and capital appreciation. The fund may allocate part of its investments in development. Typically it will also invest in forms of active management, such as active leasing risk, repositioning or redevelopment to generate returns through adding value to the property. The fund will use moderate leverage.”</p>
VOID RATE	A measure of the level of vacant space within a building. This can be calculated either by reference to the amount of vacant floor space or estimated rental value of the vacant space.
WARRANTY AND INDEMNITY INSURANCE (W&I INSURANCE)	Insurance the purchaser (or sometimes the seller) of a company takes out to cover any claims for breach of warranty by the seller that are discovered after <i>completion/closing</i> . Particularly useful in the context of PERE transactions where the seller is an end-of-life fund that will not have many (or any) assets following the disposal of the asset in question.
WATERFALL	A provision contained in a <i>shareholders’ agreement</i> or a <i>Limited Partnership Agreement</i> setting out the order in which distributions are made by the company/fund. Typically the investors will get their original stake back first plus a return until they reach the <i>hurdle rate</i> of return. Once this has been achieved, it is common for the <i>fund manager</i> to receive a return higher than their proportionate interest in the investment (i.e., their <i>catch up</i>), up to a certain limit.
WELL BUILDING STANDARD	An international certification program based on standards in relation to the impact that buildings have on the human health and wellness of its occupants.

YIELD

The rental or other income from a property divided by the value of the property. Can be expressed as "gross" (which excludes from the income calculation the costs of operating the property) or net (which deducts all costs from income). See *reversionary yield* or *net initial yield* for more sophisticated terms/definitions.

It is the same as a *cap rate* or *capitalisation rate*.



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