

Real Estate
Rosling King LLP



Rosling King takes a look ahead for real estate finance

In little over a month, more than 24,000 people from the property world will descend on Cannes for MIPIM, the global property exhibition and conference event. As usual, there will be a tidal wave of prediction, analysis and crystal ball gazing.

Of course, the great issues such as the impact of the Trump presidency and Brexit will dominate conversation in the same way these have monopolised the political and media narrative to the point of exhaustion – and we’ve got a lot more of it to come.

What we do know is that we don’t know how these issues will work out. But what is a lot more certain is the legal landscape we will have to navigate in terms of real estate finance.

In the UK, real estate remained attractive during 2017 and lots of money (equity and debt) continued to chase assets. There are still no apparent indicators of an end to the cycle - such as the credit exuberance we saw before the last financial crisis - but the usual risks persist. So what does the future hold?

A gradual and relatively muted drive for transparency and anti-corruption has continued over the course of 2017 and is reaching a tipping-point that will impact investors and lenders a-like in the real estate finance space. The new EU Anti-Money Laundering Regulations (The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017) were laid before parliament in a snappy fashion (no doubt due to the snap election) on 22 June 2017 and came into force on 26 June 2017. These new regulations increase the obligations on incumbent investors and advisors to meet their KYC requirements and maintain accurate ownership registers. The requirements placed on trusts are particularly comprehensive now.

The transparency of financial affairs is something that has been on the UK Government’s agenda for some time. It has further gained traction due to the 2017 data leak that was the Paradise Papers, which involved the disclosure of some 1.4 terabytes of documents pertaining to a number of off-shore investment structures. This all reflects a legal and regulatory movement over the past decade in favour of there being no place for total secrecy and ensuring that we must now apply what some call “compliant confidentiality”. But it all makes sense. If the UK is to continue to thrive as a leading financial centre, attracting a range of investment, it will need to continue its push as an early adopter/promoter of this environment. However, an investor needs to be alive to the changes that this will bring.

This will include the UK Government’s plans to introduce a register of overseas legal entities that own or want to acquire property in the UK. Under these proposals, an overseas entity wishing to buy UK property (freehold or lease granted for 21 years or more) cannot register its title without complying with the new regime. A restriction will be placed on the title to ensure that any sale, long lease or charge cannot be registered without such a buyer being compliant. The consultation for these proposals ended on 17 May 2017 and the UK

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government is in the process of considering the responses. However, as we have seen unfold recently, there is appetite for this to proceed full steam ahead. In January 2018, facing the prospect of a House of Lords defeat due to proposals of a delay to the register, the UK government announced that draft legislation will be sped up and produced in summer 2018. The final bill will then go in front of parliament a year later. All indications would suggest that all going to plan, the register should take effect from 2021, becoming the first in the world of its kind.

Another change, that will perversely hit the foreign investment market at a time when the UK Government should perhaps be keeping them on-side, was the November 2017 budget announcement that from April 2019 all non-residents will be charged capital gains tax in relation to disposals of all types of immovable property in the UK. The change will extend the current rule applying to residential property and will capture all disposals of commercial property. The Treasury expects the move will collect £475m of additional tax by the end of 2023. Although there is likely to be a dampening effect of this on investment in the UK real estate market, the full impact is unclear.

This provision is currently in consultation and there is talk of there being an exemption for certain substantial shareholders and qualifying institutional investors. The consultation is set to run for 12 weeks until 16 February 2018. Foreign investors should expect a formal response in the summer, with legislation to be finalised by the end of the year and take effect from April 2019.

Scanning the distant horizon – at least until 2021 - there is the anticipated market change from the use in term lending of the London Interbank Offer Rate (LIBOR) to potentially the 'risk-free rate' of the Sterling Overnight Index (SONIA). Whilst this is a long way off, the Bank of England is keen to see this happen after the much-documented LIBOR scandal (plus the benchmark banks are unlikely to miss having to submit their LIBOR rates on a regular basis!). Given the far-reaching impact of this change - think about all the loan documentation in existence and collateral - parties need to start slowly but surely thinking about this now and what actions may need to be taken.

In terms of opportunities for the real estate market itself, the usual sectors remain in focus; with the housing crisis remaining high on the priority list with a variety of new products like the built-to-rent sector continuing to grow. Another issue for residential development investors and lenders alike to keep an eye on is the proposed long leasehold ban on almost all new-build houses. This goes hand in hand with a raft of additional proposals aimed at putting a stop to what the government deems to be unfair practices within the current residential leasehold market.

So, in many ways we are in uncharted waters and the winds are unpredictable, hence the need to plot a course very carefully and with a firm hand on the tiller.



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MIPIM

Rosling King will be attending MIPIM 2018. Please contact [Alex Pelopidas](#) if you would like to meet up and discuss how we can work together.