

UK Real Estate Sector Legal Update for In-house Lawyers

22 November 2024

Agenda

1. Brief Overview
2. Regulatory
3. Litigation
4. Restructuring
5. Tax
6. Construction
7. IPT
8. Planning
9. Q&A

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Regulatory Update

Trends in real estate as an investment class a regulatory overlay

UK Green Taxonomy Consultation launched

- Early signs of intention from Labour Government
- Reconfirms manifesto commitment to make net zero transition plans mandatory
- Consultation open until early February

The eventual taxonomy can be expected to cover:

- Environmentally sustainable construction
- Environmentally sustainable renovation and retrofit
- Construction and renovation activities which, whilst not yet sustainable, are aligned to a credible transition

Due diligence in construction supply chains:

- Good governance requirements for the supply chain for certain Real Estate funds
- Upcoming CSDDD, our biggest corporate clients are starting to prepare for full value chain DD in respect of adverse human rights and environmental impacts

Key recommendations for best practice/future compliance:

- Negotiate DD, human rights and environmental provisions into development, construction and property management contracts and sub-contracts now
- Start to implement basic DD in respect of key indicators of adverse human rights, employment conditions and environmental issues throughout supply/value chain

Litigation Update

Overview

Renters' Right Bill

- **Currently, an assured shorthold tenancy (“AST”) can be terminated via s21 notice**
 - No fault or reason to be given
 - Little as 2 months' notice to the tenant
- **Key Provisions**
 - Abolishment of ASTs and use of section 21 notices
 - Move to periodic tenancies
 - Landlords will have to rely on statutory grounds to recover possession
 - The notice period required by the Landlords, in general, increases
- **Article:** [Spotlight on: Renters Reform | DLA Piper](#)

Misrepresentation

- **Loreley Financing (Jersey) No 30 Ltd v Credit Suisse Securities (Europe) Ltd [2023] EWHC 2759**
 - **Transaction:** Loreley purchased Notes worth \$100 million from Credit Suisse, which were part of a synthetic collateralised debt obligation transaction
 - **Allegations:** Loreley claimed that Credit Suisse made false representations about the quality and risk of the Notes and underlying securities (RMBS)
 - **Misconduct:** Loreley alleged that Credit Suisse was aware of misconduct in the RMBS market, which affected the credit quality of the Notes
 - **Claims:** fraudulent misrepresentation, negligence, and unlawful means conspiracy
- **Key Points**
 - Mere assumption based on conduct is insufficient
 - To meet the “reliance” threshold, there must be an “awareness” of the representation upon which you rely

Litigation Update – continued

Penalties

Houssein v London Credit Ltd [2024] EWCA Civ 721

- Claimant owned a portfolio of residential properties
- Defendant was an unregulated moneylender
- The parties entered into a loan agreement. The contractual rate of interest was 1% per month. However, interest at 4% per month was payable on an event of default or late payment
- Lower court found the higher interest rate to be a penalty
- Court of Appeal granted the appeal and found the lower court had not applied the correct test or asked the 'correct questions'.
The questions that should have been asked include:
 - What is the nature and extent of the innocent party's interest in the performance of the relevant obligation?
 - Is the secondary obligation out of all proportion to the legitimate interest of the innocent party?
 - Is the secondary obligation extravagant or unconscionable?

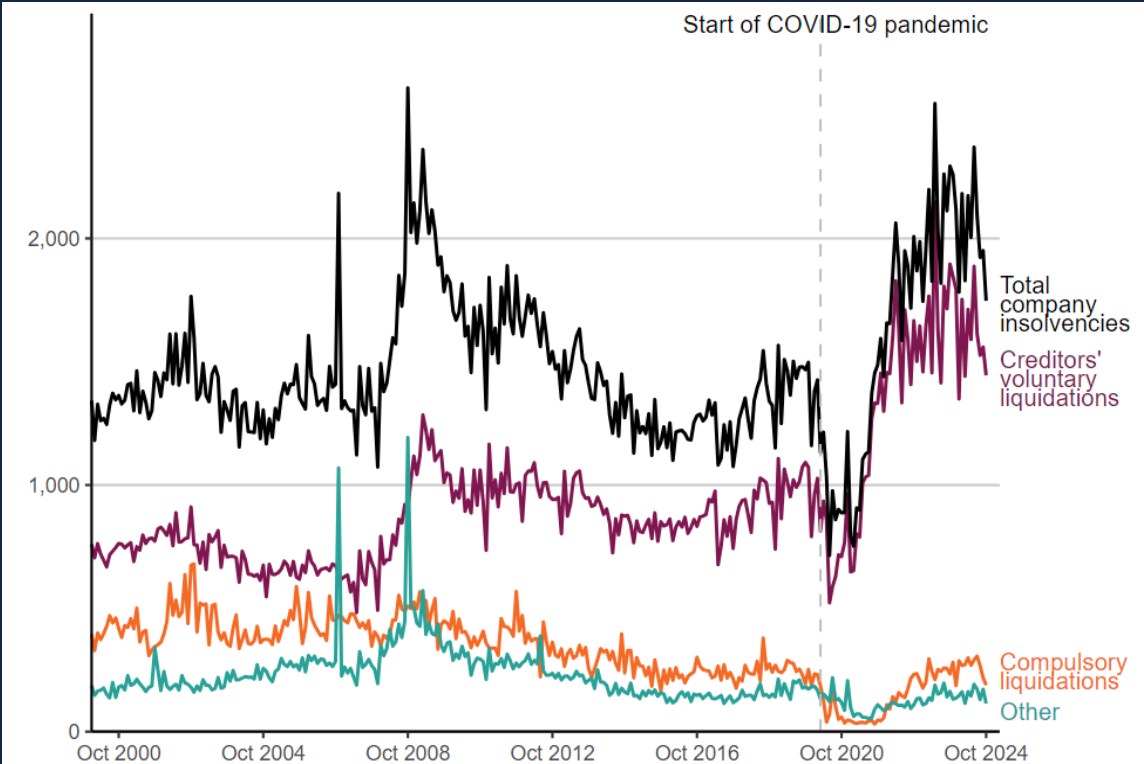
Restructuring Update

What we are seeing in the real estate market

- Increase in distress in the real estate market, particularly in the UK office market
- Rise in real estate focused insolvencies – retail, hospitality and construction
- High costs of borrowing plus rise in inflation
- Impending wall of loan maturities
- Traditional lenders more cautious, private equity leading the way in refinancing
- Remains a strong demand for the best commercial real estate assets

What the data is telling us

Monthly company insolvencies by type of process



Company insolvencies by industry

Industry	2014	2021	2022	2023	Jan – Sept 2024
Construction	2,856	2,580	4,167	4,388	3,096
Retail trade	1,152	930	1,803	2,219	1,484
Food & beverage	1,487	1,542	2,522	3,474	2,482
RE activities	531	414	720	748	550

Deals in the market

Fürst Group

Project Lietzenburger Straße Holdco Sarl implemented a market leading RP for the restructuring of the Fürst Group's financial creditors, consisting of creditors under approximately EUR 1 billion of bonds and loans governed by German Law.

New money and reduction of debt burden to allow construction project to continue.

We advised the plan company.

Fitness First

Gym group Fitness First successfully implemented an RP, despite significant opposition from the group's landlords.

The RP enabled the group to avoid insolvency and right-size financial and operational liabilities including rents.

We advised the Fitness First Group.

Revolution Bars

Advised Revolution Bars Limited, a subsidiary of Revolution Bars Group Plc (Revolution) on its Sanctioned Restructuring Plan under Part 26A of the Companies Act 2006.

The plan allows Revolution to amend and extend secured lending facilities, exit leases of loss-making sites, and secure rent reductions for others.

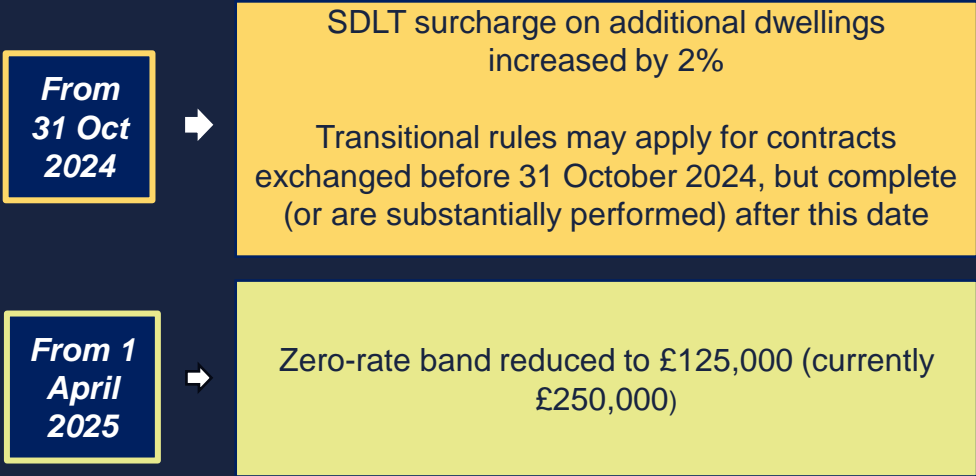
Tapi Carpets

Advised Tapi Carpets and Floors on its acquisition of Carpetright, along with its brand and 54 of its UK stores in a transaction that will save over 300 jobs across its operation.

The transaction was executed through a prepackaged administration with the team advising Tapi Carpets and Floors.

Tax Update

SDLT – Changes to Rates for Residential Property



Employer National Insurance Contributions

From 6 April 2025...



Reserved Investor Fund (RIF)

The government has confirmed it will introduce the Reserved Investor Fund (Contractual Scheme) (RIF)

- What is it?**
A new unauthorised UK funds vehicle to promote investment into UK real estate.
- When will it be imposed?**
Legislation will be introduced before the end of the current tax year.
- What are the potential benefits?**
Tax benefits include effective exemption from CGT on disposals by the RIF, transparency for income tax and no SDLT unit transfers

Business Rates

- The government noted its intention to reform the business rates system going forwards:
- Intention to introduce permanently lower multipliers for retail, hospitality and leisure properties** (“RHL”) with a rateable value under £500,000 from April 2026-7
 - Freezing small business multiplier in 2025-6** and safeguarding over a million properties from inflationary bill increases

Corporation Tax and Capital Allowances

The government released a Corporate Tax Roadmap , and several of its commitments are relevant to those in the real estate sector. Some examples include...	(1) Corporation tax rate capped at 25% for the life of this Parliament
	(2) Full expensing and £1 million AIA maintained
	(3) Potential further reforms to UK’s rules on transfer pricing, permanent establishments and Diverted Profits Tax

Carried Interest

From 6 April 2025-6	
Capital gains tax rates on carry to increase to 32% (from 28%)	Interest income and dividend tax rates on carry to remain at 45% and 39.35% respectively
From April 2026	
Flat tax rate of 34.625% (including Class 4 NICs) on capital gains, interest income and dividends (at the highest rate)	Further reforms likely after Consultation

SDLT – Changes to Rates for Residential Property

From 31 Oct 2024

→

SDLT surcharge on additional dwellings increased by 2%

Transitional rules may apply for contracts exchanged before 31 October 2024, but complete (or are substantially performed) after this date

From 1 April 2025

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Zero-rate band reduced to £125,000 (currently £250,000)



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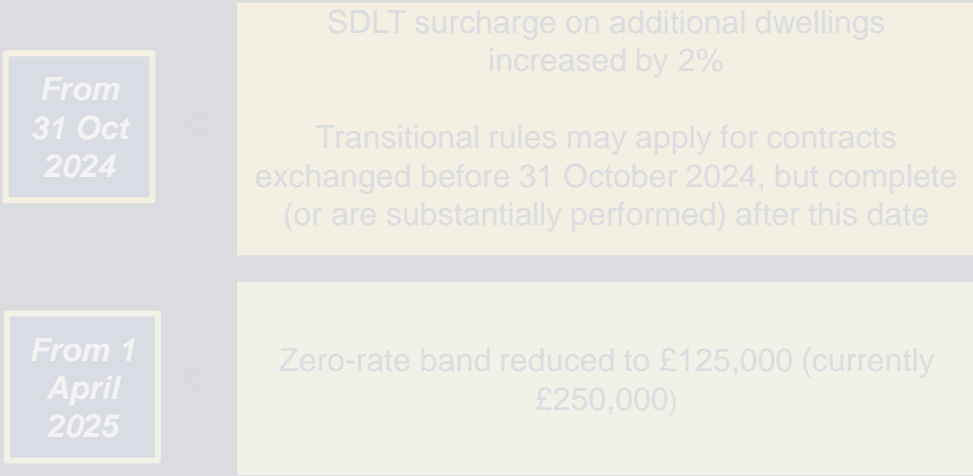
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Construction Update

BSA 2022: Building control reform

- There are certain changes introduced by the Building Safety Act 2022 (BSA 2022) which affect **all** projects, not just those involving Higher Risk Buildings (HRBs)
- Principally, these changes are introduced by amendments to the Building Regulations 2010 (BR 2010)
- The amendments require appointment of **dutyholders** similar to those required under the Construction (Design and Management) Regulations 2015
- Whether the same entities can be appointed to both roles will depend on their **competence**, as defined by BR 2010 and in accordance with guidance produced by the HSE
- **Clients** must now prepare a statement on completion that confirms that, to the best of their knowledge, the project complies with building regulations

HRBs: Points to note

- New **gateway** processes are leading to substantial delays on projects:
 - Approvals of gateway two applications by the Building Safety Regulator (BSR) are taking up to **six months**
 - Some applications have sat with BSR for months before being rejected
- There is an impact on procurement, with potential for frontloading of costs:
 - Principal contractor and principal designer need to be **appointed at an early stage** to assist in preparation of documentation required to apply for gateway two
 - There are considerations as to whether to appoint the principal contractor under a building contract at an early stage (fixing price early) or under a pre-construction agreement (and hope you can still negotiate commercial price after approval)

New Cybersecurity laws in the EU and UK

NIS2 and the Cyber Security and Resilience Bill

NIS2 and the EU Digital Decade

- Setting the scene: **EU Digital Decade** and the **EU's Cybersecurity Strategy**
- **What is NIS2** and how does it differ from the first NIS Directive?
 - Enhanced **cybersecurity risk management controls** inc. supply chain
 - Significant **incident reporting** timelines (24 hours/ 72 hours/ 1 month)
 - **Management bodies** and personal liability
 - **Increased fines and enforcement**
- Implementation deadline for Member States: 17 October 2024

Who is in scope for NIS2 and why is this relevant to the Real Estate sector? Application to Data Centres

- **3 stage test to be in scope:** entity type, size and EU services
- **Data centres defined as:**
 - *“a service that encompasses structures, or groups of structures, dedicated to the **centralised accommodation, interconnection and operation of IT and network equipment** providing **data storage, processing and transport services** together with all the **facilities and infrastructures** for power distribution and environmental control”*
- **Special rules apply to data centres**
 - Data centres outside of the EU also in scope if services provided into the EU
 - Data centres benefit from “main establishment” concept for purposes of aligning to one version of Member State implementation
 - Likely to be designated as Essential Entities = increased exposure to supervision and enforcement
- EU Implementing Regulation (Oct 2024) defines a “significant incident” from the perspective of data centres

UK View

- Cyber security and resilience Bill to be introduced in 2025 and will be similar to NIS2, updating the current NIS Regulation.
- Data Centres have been designated as **critical national infrastructure** = enhanced government support in the event of critical incidents including set-up of a designated CNI data infrastructure team to monitor and anticipate potential threats.

Children – consumers of the future

Children represent a potentially lucrative market – early engagement in brand awareness to build recognition and affinity.

Examples

- Loyalty schemes
- Guest / customer databases including children's data
- Interactive games / competitions



TAKE CARE! Consider digital safety, ethics and data protection for children

Age-appropriate Application



Data Minimisation



Transparency



Policies and Standards



Planning Reforms

Overview

- Drivers of reform
- Early changes to national policy
 - Increasing housing supply
 - Greater focus on social rented tenure
 - Stronger policy support for economic development, especially in key areas that underpin growth sectors
 - Changes to Green Belt policy
- Likely effects of proposals
- Legislative change to follow

Q&A