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Practice Group:
Finance

LMA launches new commercial real estate finance agreement

By Richard Hardwick

On Monday 16 April 2012 the Loan Market Association launched its recommended form of single currency term facility agreement for use in real estate multi-property investment transactions. The document has been produced in response to demand from market participants for a starting point for documenting real estate finance transactions in much the same way as such documents already exist for the investment grade and leveraged finance markets. Whilst facility agreements in real estate transactions have, for a long time, loosely followed the existing LMA forms, this is the first time that an agreement has been produced by the LMA solely for real estate transactions. The new document should help, particularly over time, to standardise the approach taken to real estate specific issues and should assist all parties by reducing the time spent negotiating boiler-plate type clauses.

The new document is largely based on the investment grade LMA term facility agreement. However, wording for normal real estate finance account requirements (such as general and rent accounts) have been included, along with representations, undertakings, financial covenants and events of default specific to real estate transactions.

It is important to note that the recommended form is only a starting point and has been drafted predominantly from a lender perspective - unlike the investment grade LMA documents which also had input from the Association of Corporate Treasurers to ensure a balanced view. Further, and unsurprisingly, the recommended form does not anticipate all possible structures and facilities. It is drafted on the basis that the transaction is for investment purposes only and not for the development of a property. It also assumes a structure whereby a parent company establishes subsidiaries (all of which are incorporated in England and Wales) and that finance is provided to those subsidiaries for the acquisition of one or more properties. Where these matters are not the case, changes will be required.

Comment

This is a useful step forward for the real estate finance market. Over time, it will produce a benchmark for and a consistency of approach between the various lenders in the market.

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