MAYER • BROWN

Real Estate Update
February 23, 2010

Sold: The Return of Seller Financing for Commercial Real Estate?*

Since late 2008, the global financial markets have been under incredible, and perhaps unprecedented, strain. Lenders have decreased their lending activity, in part as a result of the collapse in value of commercial mortgage-backed securities and derivatives.

Despite the credit crisis and the general lack of credit from third-party lenders, owners of commercial real estate assets may need or desire to sell them and generate liquidity in their portfolios in the near term. For example, owners of real estate assets may need to sell to generate cash for business operations, for debt repayment, or to satisfy redemption requests from their investors.

"Seller financing," which was last popular during the period of high interest rates in the late 1970s and early 1980s, may provide a means to bridge the financing gap facing buyers and sellers of commercial real estate assets in today's market. As the term is used in this article, seller financing is a transaction in which the seller makes a secured loan to the buyer to finance a portion of the property's purchase price. The two most common forms of seller financing are loans secured by a lien on the underlying real estate (for example, traditional mortgage loans) and mezzanine loans (loans secured by a pledge of the ownership interests in the purchasing entity). Contracts for deed, in which the seller conveys title to the buyer on receipt of the purchase price, may be another available seller-financing option, but they are generally not used in the commercial real estate context and are beyond the scope of this discussion.

In the right circumstances, seller financing can increase the number of qualified buyers and potential transactions. Negotiations of interest rate, maturity date, and other loan terms in seller financing permit creativity in deal making and the potential for "win-win" outcomes. Sellers that finance sale transactions may be able to close more quickly than an institutional lender, because the seller will likely not need to conduct the same amount of due diligence on the collateral as a third-party lender. Certain creditworthy buyers may be able to use seller financing to acquire real estate with more favorable financing terms than those of other lenders.

This article explores the practical, strategic, economic, legal, and tax issues that sellers and buyers of commercial real estate assets should consider when deciding whether to engage in a seller- financing transaction. It also considers the use of seller financing in the context of the sale of an asset that is subject to a defaulted mortgage.

Deciding Whether to Become a Lender

As a threshold matter, each seller must consider its reasons for selling, its need for liquidity, whether it has the power and authority to become a lender, and how it will service any seller-financed loan.

First, a seller should evaluate its reasons for selling an asset in the current environment. For example, is it attempting to discharge property debt that it is unable to refinance? Is it trying to generate liquidity for its overall portfolio? Or, perhaps less likely, is it attempting to convert its real estate assets into a portfolio of loans that are secured by real estate? For example, if the cash proceeds from the sale of a commercial real estate asset are sufficient to repay the existing debt on that asset, the seller may be willing to use the cash to first repay the outstanding loan, then accept payment of any remaining proceeds over time in the form of a loan, particularly if the loan is for a short term with

* This article originally appeared in the magazine *Property & Probate* (January/February 2010 issue)

limited extension rights. But, if a seller is looking to generate liquidity for its overall portfolio, then the seller must determine the extent to which it may be able to monetize its interest in its seller-financed loan by selling all or part of its interest in the loan on the secondary market.

Before engaging in lending activity, a seller also must review its organizing documents, joint venture agreements, fund agreements, upper-tier debt agreements, and statutory and regulatory obligations, as applicable, to confirm that it is permitted to make and hold loans. To the extent that a seller does not have authorization, it must amend or otherwise modify its organizational documents or obligations. Further, as discussed below, each seller must ensure that it complies with applicable lending laws, including state licensing, restrictions on collections practices, and other lender obligations.

Finally, a seller must consider the extent to which it has the underwriting and monitoring capability to effectively originate and service individual loans or a loan portfolio. To the extent that a seller focuses its efforts on owning and managing real estate assets, the seller needs to either build its internal capabilities or find an appropriate loan servicing agent. A sophisticated seller, however, may be able to service a limited number of loans.

Seller-Financing Structures

If the threshold questions of necessity, power and authority, and servicing capability are satisfactorily addressed, then a seller should consider the structure of a seller-financing transaction.

The key variables in determining the appropriate structure of a seller financing transaction are the percentage of the purchase price that the seller must receive in cash at closing and the percentage of the purchase price that the buyer is prepared to pay in cash at closing.

In the simplest case, the purchaser pays a portion of the purchase price, for example, 50%, with its own cash and the seller finances the remaining 50% of the purchase price. This structure is most likely to be used by funds or other entities that own real estate assets subject to little, if any, debt. Alternatively, the buyer may borrow a portion of the purchase price from a third-party lender, which is secured by a first priority lien on the asset, and another portion of the purchase price from the seller, which is secured either through a second priority lien on the asset or by a pledge of the ownership interests in the buyer. As an example of this deal structure, a third-party lender loans 50% of the purchase price secured by a mortgage on the property in first position, the seller loans 30% to 40% of the purchase price secured by a mortgage in second position (or as a mezzanine loan), and the buyer provides cash at closing of 10% to 20%. In this example, the seller receives 60% to 70% of the purchase price at closing and the buyer obtains an aggregate loan-to-value ratio of 80% to 90%.

With the cumulative leverage of both a senior loan and a junior loan, a buyer may be able to maintain a relatively high debt-to-equity ratio (with the potential to earn greater yields on its equity investment) and may be more likely to enter into commercial real estate transactions in today's tight credit market. Given its increased default risk as a junior lender, a seller may be able to charge a higher interest rate than the senior lender, which may provide a net economic gain.

If a seller wants to sell multiple assets, it should consider setting up a program with third-party lenders that are willing to lend in first position and permit the seller to finance the purchase price gap with a junior loan. By doing so, the seller may be able to pre-negotiate the intercreditor agreement and subordination agreement that the lender and seller should require and present a prospective buyer with a complete financing solution during the negotiations of the purchase agreement.

Choice of Asset

A seller should consider several factors when deciding whether to offer an asset for sale in a seller financing transaction. To a large degree, the buyer, seller, and third-party lender all want the asset to be as financially healthy as possible, because a strongly performing asset increases the likelihood of both equity returns and debt repayment. In addition, if the existing loan secured by the property is not yet due, the seller must have the right to prepay it without a significant penalty. The seller should also understand whether any other contractual payments are due on the sale of the property. Unless the seller (or the seller's parent) is

willing to contribute equity at the closing or the seller- financed loan is sold as of the closing, the cash proceeds from the sale must be sufficient to discharge the existing debt. If the cash proceeds received by the seller from the buyer's equity contribution and the buyer's third-party lender are insufficient to repay the existing debt on the property, a seller can attempt to generate additional cash by selling a portion of the seller-financed loan at the time of the closing; however, the purchase and sale agreement should not obligate the seller to do so. Given present market conditions, the authors believe that it is very unlikely that this solution will work in practice. Alternatively, it may be possible to convince the senior lender to accept partial payment of its debt, to allow the buyer to assume the remaining portion of the loan, and to allow junior liens to attach at closing. The existing lenders should be contacted as early as possible to determine the feasibility of this option.

Monetizing the Seller's Interest

A seller has two basic options to monetize or otherwise realize the economic benefits of its interest in a seller-financed loan: hold the loan to maturity or sell part or all of the loan on the secondary market (either simultaneously with or after the closing of the property's sale). A seller may be willing to wait to be repaid if, for example, the loan is short-term or the seller is not relying on the sale to generate present liquidity. Conversely, if a seller desires or needs to sell part or all of its interest in the loan, the loan should be structured to allow the seller to receive a price as close as possible to the par value of the loan and avoid material discounts.

The seller has at least four potential ways of selling its interest in the loan: sell the entire loan at one time, syndicate the loan (that is, enlist at least one additional lender to make a part of the initial loan to the buyer and receive its own note), form a joint venture to originate (or later acquire) the loan, or sell participation interests in the loan. A seller should be able to minimize discounts to the par value of the loan by selling the entire loan at one time, as any discounts associated with such a sale should be based only on the condition of the asset and the creditworthiness of the buyer. Discounts to par value also should be modest or nonexistent if the seller syndicates the loan or forms a joint venture with another party to make the loan, because the buyer or holder of such interests has recourse to the asset and the borrower (through the provisions of the applicable loan or joint venture agreement) and is involved in the initial underwriting and pricing of the transaction. The potential for discounts is likely to be greatest in the sale of participation interests in the loan because the participation buyer's rights to the economic benefits of the loan are only contract rights with the seller, and as a result, the risk that the seller will default may cause the price of such participation interests to be discounted from their par value.

It may be difficult, if not impossible, for the seller to mitigate certain factors that can influence the value of the seller-financed loan on the secondary market. For example, to the extent that purchasers of such interests desire for a loan to be "seasoned" (that is, to have been on the books for a period of months or years with a good payment record), the price of interests in a relatively unseasoned loan can be discounted if an adequate borrower payment history has not been established. Similarly, although the seller has the capability to choose the property being sold and is in control of the decision of whether to offer seller financing to any particular buyer, the seller cannot control changes in either the asset or the buyer after the closing.

Absent further fact-specific investigation, it is quite difficult to know the terms under which a particular seller-financed loan may be sold. Evidence suggests that investment funds and other purchasers of debt are beginning to increase their rate of acquisition of loans in the secondary market. Given the number of distressed real estate projects, however, such buyers may look first to acquire distressed debt at a substantial discount before looking to purchase seller-financed debt at minimal discounts. As a result, a seller may need to hold its seller-financed loan longer than it would otherwise desire.

Loan Documentation

Regardless of which monetization strategy the seller wishes to use, the seller should document its loan as if the seller were a third-party lender to avoid discounting the price of the loan in the secondary market because the loan was not made on "market" terms. Accordingly, a seller should obtain not only a note and a mortgage

on the sold property but also a lender's title insurance policy with appropriate endorsements; a guaranty from a creditworthy party (which, depending on the structure of the transaction, can be either a nonrecourse carve-out guaranty or a payment guaranty); an environmental indemnity; an assignment of leases and rents; opinions from borrower's counsel; financial covenants and special purpose entity restrictions; subordination, nondisturbance, and attornment agreements; and escrows for taxes and insurance premiums. If the seller is a junior lender, it also may want to insist that all operating revenues be placed in a lockbox subject to a deposit control agreement to give it a security interest in the rents and profits from the property. The terms of such an agreement would need to be negotiated with the buyer's senior lender. Mezzanine loan documents should include typical mezzanine lender protections, such as a pledge of the ownership interests of the property-owning entity; special purpose entity covenants; and the requirement that independent directors approve certain entity decisions. In certain circumstances, particularly when the seller knows that it will not attempt to market its interests in the loan or if the loan is short-term with limited extension rights, it may be possible for the seller to accept less than the full set of documents. The seller also might accept certain provisions that are not customarily contained in third-party loan documents. These efforts can facilitate speed and efficiency in the transaction but should be done only after consultation with legal counsel.

In negotiating the transaction, the seller will find it very important that the seller retain the unencumbered right to sell syndication and participation rights in the note, security instrument, and the other loan documents; that the promissory note and security instrument contain a "due on sale" provision, which provides that the loan is immediately due and payable on the direct or indirect sale or future encumbrance of the property or a change in control of the buyer; and that a credit-worthy entity guarantee the debt to the extent possible given the structure of the transaction.

A sophisticated buyer, on the other side of the transaction, may realize that seller financing provides unique leverage points that it can work to its advantage and that would not be available had it borrowed from a third- party lender. For example, a common provision in a real estate purchase and sale agreement allows the buyer to sue the seller for damages on a breach of the seller's representation or warranties (often capped at a certain amount). In the context of a seller-financing transaction, a buyer may seek to "secure" its ability to recover any such damages by negotiating a set-off provision in the promissory note. If the representation is incorrect and the buyer suffers certain damages, this set-off provision allows the buyer to reduce the amount it owes under the promissory note by the damages instead of being required to sue the seller. A seller must be cautious when granting such a right because these rights are not commonly included in third-party loans. As an alternative to a set-off right, a seller may be able to provide the buyer with a guaranty of its representation and warranty obligations from an acceptable entity. To the extent a set-off right is ultimately included in the loan documents, the seller may be able to limit the discount on sale of the loan that would result from the set-off right by guaranteeing to pay to the loan purchaser any shortfall of the loan proceeds that results from the buyer's exercise of the set-off right. In the alternative, the loan documents could provide that the offset is limited to the portion of the loan that is retained by the seller.

Similarly, a buyer can resist giving the seller, as lender, a full environmental indemnity on the theory that the buyer should not assume liability for conditions that the seller created or controlled during the seller's period of ownership. Again, the seller will want a customary environmental indemnity so that the loan will be on market terms; however, it may have to consider giving greater environmental protections to the buyer in the purchase agreement than it normally would provide.

Regulatory Considerations

A seller may be subject to state or other regulatory requirements. For example, at least 13 states (Arizona, Arkansas, California, Florida, Hawaii, Maryland, Minnesota, Nevada, New York, North Dakota, Rhode Island, South Dakota, and Vermont) have lending licensing requirements that may be applicable. See Ariz. Rev. Stat. § 6-971 et seq.; Ark. Code Ann. § 23 39-502 et seq.; Cal. Fin. Code § 22000 et seq.; Fla. Stat. § 494.001 et seq.; Haw. Rev. Stat. § 454-1 et seq.; Md. Code Ann., Fin. Inst. § 11-501; Minn. Stat.

§ 56.01 et seq.; Nev. Rev. Stat. § 645E.020 et seq.; N.Y. Comp. Codes R. & Regs. tit. 3, § 401; N.D. Cent. Code § 13-04.1-01.1 et seq.; R.I. Gen. Laws §§ 19-14, 19-14.1; S.D. Codified Laws § 54-14-12 et seq.; and Vt. Stat. Ann. tit. 8, § 2200 et seq. In any particular seller-financing transaction (including a sale of a seller-financed loan) the seller should investigate and analyze such laws. In California, for example, subject to certain exceptions, a seller engaging in lending activity with a sufficient nexus to California (such as the location of the borrower or the property in California) must comply with the California Finance Lenders Law. Cal. Fin. Code §§ 22000 et seq. That law requires such lender to, among other things, obtain a license from the Department of Corporations, provide a statutory bond, cooperate with possible examinations of its books and records, and file annual financial statements. Cal. Fin. Code §§ 22100, 22101, 22106, 22109, 22112, 22156, 22159, 22715. Regardless of the jurisdiction, a seller should consult with appropriate legal counsel for any legal precautions it should take to minimize liability for its actions as a lender, including those in making or negotiating a ny loan commitment, letter of intent, or loan brokerage agreement.

In addition, to the extent that the seller sells participation or other interests in a seller-financed loan, the seller must determine whether the interests being sold are a "security," which requires either registration or an applicable exemption from securities laws.

Private Investment Funds

Private investment funds that own real estate face several important considerations. If the fund is subject to a stipulated liquidation date, the maturity of the loan should not extend beyond that date, unless the loan is sold either to an affiliate (subject to any applicable registered advisor restrictions) or a third party before the end of such liquidation date. The fund manager also should confirm that any proposed conversion of an equity interest in real estate to a debt interest is permitted under the restrictions and covenants of any fund-level debt and determine whether the proceeds from the loan are included for purposes of calculating the management fee (under the definition of invested capital or otherwise). In addition, the fund manager should determine how the loan proceeds will be characterized for purposes of the fund's distribution waterfall. Finally, to avoid holding plan assets subject to the Employee Retirement Income Security Act of 1974, as amended, funds with pension fund investors that operate as real estate operating companies or venture capital operating companies should consider the effect of a seller-financing transaction on the operating company status of the fund.

Tax Issues

Each party to a seller-financing transaction should engage tax counsel to identify tax concerns with the transaction. Some of the potential tax issues associated with seller-financing transactions are discussed below.

Unrelated Business Taxable Income (UBTI)

Both buyers and sellers must be cognizant of UBTI issues that arise in a seller- financing transaction. A U.S. tax-exempt entity that is a lender in a seller-financed sale generally should not recognize UBTI for interest income from the loan. But any fee income (for example, origination fees in respect of services) from the transaction may be subject to UBTI taxes.

Sellers also should be aware of the issues facing UBTI-sensitive buyers to avoid limiting the pool of potential buyers that can use seller financing. UBTI includes "debt-financed income," which includes income to the extent that it was derived through "acquisition indebtedness." Internal Revenue Code § 514(a)-(b). Generally, a UBTI sensitive buyer that borrows from a seller in a purchase transaction will incur "acquisition indebtedness," and the buyer will be liable for income taxes on the income of the property equal to the ratio of the average outstanding principal balance of the acquisition indebtedness to the average basis of the property during the taxable year. IRC § 514(a).

But certain "qualified organizations," for example, certain corporate pension funds and educational endowments (but not private foundations), can incur acquisition indebtedness for real property without incurring UBTI, provided that certain conditions set forth in IRC § 514(c)(9) are met. Among such

requirements are the following: the acquisition price of the property must be a fixed amount determined as of the date of acquisition (and not dependent on the financial results of the real property); the amount of the indebtedness (or any amount payable on the indebtedness), or the time for making any payment of any such amount, must not depend on the financial results of the real property; no more than 25% of the rentable floor space of the real property may be leased back to the seller or a person related to the seller; and any financing provided by the seller or a person related to the seller must be on "commercially reasonable" terms. (Neither IRC § 514(c)(9)(G) nor the Treasury Regulations provide specific guidance or a safe harbor regarding what constitutes commercially reasonable terms.) Note that the requirement of commercial reasonableness provides an independent tax reason for the seller to, in most instances, require loan documents that are similar to those found in third-party lending transactions. Depending on the facts and circumstances of each case and in conjunction with a thorough review by tax counsel, certain UBTI sensitive investors may be able to shield most, if not all, of the proceeds of a seller-financed transaction from UBTI taxes.

Other Special Types of Sellers

In addition to U.S. tax-exempt entity sellers, other types of sellers may need to take into account special tax considerations in seller-financing transactions.

If, for example, a non-U.S. person is a lender in a seller-financing transaction and this non-U.S. person is treated as engaged in an active U.S. lending trade or business with respect to the loan, any income from such loan can constitute income that is effectively connected with a U.S. trade or business (ECI). A non-U.S. person will be subject to a maximum rate of 35% on any ECI and will be required to file a U.S. federal income tax return.

Moreover, if an entity that is treated as a real estate investment trust (REIT) for U.S. federal income tax purposes is a lender in a seller-financing transaction, such entity must analyze whether the loan is structured as a "qualifying asset" that generates "qualifying income" for purposes of maintaining REIT status under IRC § 856.

Original Issue Discount

The original issue discount rules of IRC § 1274 also may apply to seller financing transactions. If these rules apply, the seller would recognize interest income, and the debtor would recognize interest expense based on an economic accrual concept. Specifically, the IRS can impute interest to a seller in a seller-financing transaction if the "redemption price" of the debt is deemed to exceed the "issue price" of the debt (as determined under IRC §§ 1273(a)(2), 1273(b), and 1274(a)). If, for example, a loan does not require current interest payments that are at least equal to the applicable federal rate of interest at the time the debt is issued, additional interest would likely be imputed under the original issue discount rules. In addition, cash payments made by borrowers to lenders (designated as interest or points, for example) may cause original issue discount tax liability. Treas. Reg. § 1.1273-2(g)(2)(ii).

Installment Sale Rules

As a general rule, the installment sale provisions of the IRC provide that a seller may have the ability to recognize the gains associated with a sale of a real estate asset over time and thus defer the payment of some or all of its capital gains tax liability on the sale of that asset. IRC § 453. Under certain circumstances, however, a seller may be required to pay interest on the deferred tax liability, which may mitigate the economic benefits of such deferral. IRC § 453A.

Unincorporated Business Taxes

A seller may be liable for unincorporated business taxes payable in certain jurisdictions as a result of a seller financing transaction. In New York City, income derived by unincorporated businesses (such as individuals, partnerships, and limited liability companies) is subject to taxation. New York City Admin. Code § 11-501 et seq. If a seller makes more than one loan per year, there is a risk that the seller or its affiliates might be considered to be in the business of making loans and thus subject to tax. Id. § 11-502. If a seller considers a seller-financing transaction originated or negotiated in New York City, or for an asset located in New York City, it should pay careful attention to the facts and circumstances to determine whether the seller would be deemed to be in the business of lending and, if so, whether an exemption applies.

Similarly, the District of Columbia imposes unincorporated business taxes on the income derived by partnerships, limited liability companies, and other noncorporate entities in the District of Columbia. D.C. Code Ann. § 47-1808.01 et seq. Accordingly, the determination of whether the tax applies to any particular entity is solely based on the applicable facts and circumstances, including the number of transactions that the entity conducts in the District of Columbia.

Seller Financing for REMIC Short Sales

One new type of seller financing can be used for troubled real estate assets with defaulted mortgage loans. Given the troubled capital markets, lenders holding foreclosure property are discovering that, to sell the property, they need to offer seller financing.

In its simplest form, the lender or syndicate of lenders holding the defaulted loan forecloses and likely acquires title to the property at the foreclosure sale, or obtains title directly from the borrower through a deed in lieu of foreclosure. Thereafter, the lender or syndicate (now, the titleholder of the property) sells the property and offers seller financing to the new buyer of the property. The lender would have more flexibility in structuring its seller financing than the seller financing described above because there would be no existing mortgage loan with a third-party lender to consider.

This approach is simple to structure if the lender or syndicate is a financial institution or other investor. If the lender holding the defaulted mortgage loan is a real estate mortgage investment conduit (REMIC), however, the approach raises other issues. A REMIC is a special purpose entity that holds a pool of commercial and/or residential mortgages in trust and issues securities in the pool of its assets to third-party investors. Under the tax rules governing REMICs, the trust that takes title to property in foreclosure or by deed in lieu of foreclosure generally must sell the property within three years. IRC §§ 860G(a)(8) and 856(e)(2). More importantly, under current tax law, when it sells the property, unlike a financial institution or other commercial lender, the REMIC cannot offer seller financing. For REMIC tax purposes, such seller financing would be treated as the origination of a new mortgage loan by the REMIC. Except in certain limited circumstances, the REMIC tax rules generally prohibit a REMIC from acquiring a new mortgage loan after the third month following the "start up date" for the REMIC. The "start up date" is the date the REMIC was established—that is, the date on which the REMIC issues all of its regular and residual interests. This "start up date" is probably long before the date the REMIC can acquire any property by foreclosure or deed in lieu of foreclosure. IRC §§ 860D(a)(4) and 860G(a)(9).

To permit a REMIC to avoid these problems in dealing with property subject to an existing, defaulted mortgage loan, the market has developed a different approach: the "short sale." When a short sale is used, instead of foreclosure or deed in lieu of foreclosure, the lending REMIC and the borrower under the defaulted loan arrange to have the borrower market and sell the property through a process acceptable to the lender. The REMIC-lender typically will act through a special servicer charged with addressing defaulted mortgage loans held by the REMIC. The lender must approve the selling broker and determine the terms of sale. One of these terms of sale is "seller financing"—that is, the REMIC requires the buyer to assume the existing loan on modified terms. On identification of the buyer, the existing borrower enters into a purchase agreement with the buyer in which the buyer agrees to buy the property subject to the existing debt, conditioned on the consent of the REMIC. On consummation of the sale, the REMIC (as lender) and the buyer restructure the existing debt (the "seller financing"). This approach results in the following significant benefits:

- The property can be sold without the REMIC having to be concerned about the three-year holding limitation under the REMIC tax regulations applicable to foreclosure property because the REMIC would not have held title to the property at any time.
- The REMIC can offer the so-called "seller financing" to consummate the sale. The REMIC tax rules do not prohibit the buyer of mortgaged property from acquiring the property subject to its existing indebtedness. Treas. Reg. § 1.860G-2(b)(3)(ii) and 1.860G-2(b)(5). Moreover, a REMIC has greater ability to modify a mortgage loan when it is in default (or imminent default) without incurring

adverse tax consequences. IRC §§ 860F(a)(2) and 860G(a)(3); Treas. Reg. § 1.860G-2(b)(3)(i). Those modifications, which would otherwise raise REMIC tax issues if they were entered into in connection with a loan that was not in default or imminent default, can include reducing the principal balance of the loan and modifying the maturity date, interest rate, or other payment terms under the loan.

A REMIC considering this approach must be mindful of what it will provide to the existing borrower to obtain its cooperation—such as an agreement to release guarantors. Of course, each party should consult with its own tax counsel to confirm the consequences of engaging in a short sale.

Summary

In these extraordinary times in the credit markets, buyers and sellers may be able to close the financing gap in the near term with the aid of seller financing. Experienced counsel can assist the buyer or seller in closing real estate transactions by examining the business, legal, tax, and financing issues from a strategic and a transaction-specific level.

Jeffrey A. Usow
Partner
+1.312.701.8612
jusow@mayerbrown.com

Jade Earl Newburn
Associate
+1.312.701.8985
jnewburn@mayerbrown.com

Mayer Brown is a leading global law firm with more than 1,750 lawyers worldwide, including approximately 1,000 in the Americas, 450 in Europe and 300 in Asia. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Rio de Janeiro, São Paulo, Washington
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai
EUROPE: Berlin, Brussels, Cologne, Frankfurt, London, Paris

ALLIANCE LAW FIRMS Mexico (Jáuregui, Navarrete y Nader); Spain (Ramón & Cajal); Italy and Eastern Europe (Tonucci & Partners)
Please visit our web site for comprehensive contact information for all Mayer Brown offices.
www.mayerbrown.com

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein.

IRS CIRCULAR 230 NOTICE. Any advice expressed herein as to tax matters was neither written nor intended by Mayer Brown LLP to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed under US tax law. If any person uses or refers to any such tax advice in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement to any taxpayer, then (i) the advice was written to support the promotion or marketing (by a person other than Mayer Brown LLP) of that transaction or matter, and (ii) such taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

© 2010. Mayer Brown LLP, Mayer Brown International LLP, and/or JSM. All rights reserved.

Mayer Brown is a global legal services organization comprising legal practices that are separate entities (the Mayer Brown Practices). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia. In Brazil Mayer Brown is in association with Tauil & Chequer Advogados, a Brazilian law partnership. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.