M&A Taxation Services

Chestnut refinancing
Tax Structure Report

Strictly private and confidential

2 May 2013

pwc

The Parties listed in Appendix 13

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Dear Sir/Madam,

Proposed refinancing of the Chiswick Park Unit Trust ("CPUT") and the Chiswick Park Six Unit Trust ("CP6UT") held by BRE/ Europe 5Q S.a.r.l. and its subsidiaries (the "Group") ("the "Transaction")

We report on the proposed refinancing of the Chiswick Park Unit Trust ("CPUT") and the Chiswick Park Six Unit Trust ("CP6UT") held by BRE/ Europe 5Q S.a.r.l. and its subsidiaries (the "Group") ("the "Transaction") in accordance with our contract dated 16 April 2013 (Appendix 13).

The Report includes numbers and amounts based on the information that has been provided to us in the transaction funds flow prepared by you. Accordingly, we assume no responsibility or liability for detriments which may arise if these numbers prove to be incorrect.

Our advice will be based on the law, regulations and guidance applying at the date the services are provided. We will not monitor or be responsible for the effects of any subsequent changes in law, regulations or guidance.

This report does not purport to address all possible tax consequences that may be relevant to investors and lenders. Furthermore this report does not deal with all tax issues related to any interest held by management in the Company. Therefore lenders, investors and management are advised to satisfy themselves as to the tax consequences for them of their ownership of shares in, or loans owing by, the Company.

Save as described in the contract or as expressly agreed by us in writing, we accept no liability (including for negligence) to anyone else or for any other purpose in connection with this report and it may not be provided to anyone else.

Yours faithfully

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP

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Executive summary

Executive summary (1 of 2)

Background

- The BREP Funds acquired Chiswick Park, a UK office park, on 23 March 2011. The site consisted of 9 completed buildings (Buildings 1, 2, 3, 4, 5, 9, 10, 11 and 12, (together the "Main Estate")), two further plots (plot 6 and plot 7) in a development stage and two auxiliary sites, Colonial Drive and Manor Gardens.
- The Main Estate was acquired within the Chiswick Park Unit Trust (a Jersey Property Unit Trust) ("CPUT"), the units of which were acquired by two Luxembourg tax resident special purpose vehicles, Chestnut 1 Sarl and Chestnut 2 Sarl, (together the "CPUT Unitholders"). The acquisition was financed with senior debt of £303m, mezzanine debt of £61m and £131m of BREP equity advanced by way of shareholder debt. Part of the senior debt principal has been repaid since the original acquisition, leaving £293.5m outstanding.
- Plot 6 was then transferred to the Chiswick Park Six Unit Trust (a Jersey Property Unit Trust) ("CP6UT"), the units of which were acquired by two Luxembourg tax resident special purpose vehicles, Chestnut 3 Sarl and Chestnut 4 Sarl (together the "CP6UT Unitholders"), both of which are in the same corporate group as the CPUT Unitholders. A new property, Building 6, has been constructed on plot 6, financed by third party bank debt of £46.1m and BREP equity of £30.6m.
- Plot 7, Colonial Drive and Manor Gardens have been sold to entities outside of the existing banking groups and are not part of the proposed refinancing.
- It is now proposed that the existing senior debt and mezzanine debt will be fully refinanced and the BREP shareholder debt will be partly refinanced by a senior facility of £400m and a mezzanine facility of £200m, to be provided by third party lenders.

Holding structure

- The original acquisition was made through a Luxembourg holding structure wholly owned by BRE/Europe 5Q Sarl. Details of the current corporate and financing structures are shown on pages 7 to 9.

Proposed restructure and refinancing

- A new Luxembourg holding company will be inserted into the holding structure to accommodate the new senior and mezzanine security arrangements. Chestnut 3 Sarl and Chestnut 4 Sarl, holding CP6UT, will be transferred in to the main holding structure and the units in CPUT will then be transferred from Chestnut 1 Sarl and Chestnut 2 Sarl to Chestnut 3 Sarl and Chestnut 4 Sarl. Chestnut 1 Sarl and Chestnut 2 Sarl will then be transferred out of the banking groups. Details of the proposed new structure are shown on page 11.
- New senior debt of £197.6m and £46.6m will be advanced to CPUT and CP6UT, respectively, to refinance the existing senior debt in those entities. The remaining senior debt of £155.8m will be advanced to the Chestnut 1 Sarl and Chestnut 2 Sarl (£77.9m to each) and used to repay the existing senior debt and fees in those entities of £56.0m and to repay the original mezzanine facility and fees of £64.3m, via repayment of their intercompany debts owed to BRE/Chestnut PledgeCo Sarl. The new senior debts will then be novated to Chestnut 3 Sarl and Chestnut 4 Sarl as part of the consideration for the transfer of units in CPUT.
- Mezzanine debt of £200m will be provided to BRE/Chestnut New MezzCo Sarl and on-lent to the Chestnut 3 Sarl and Chestnut 4 Sarl, via BRE/Chestnut PledgeCo Sarl, on broadly identical terms, save for a small interest rate margin. Chestnut 3 Sarl and Chestnut 4 Sarl will then use the new mezzanine funds to repay £35.0m of the total BREP shareholder debt finance and to part finance the acquisition of units in CPUT.
- The profit realised by Chestnut 1 Sarl and Chestnut 2 Sarl on the sale of their units in CPUT (c.£94m) will also be repatriated to the BREP Funds.

Executive summary (2 of 2)

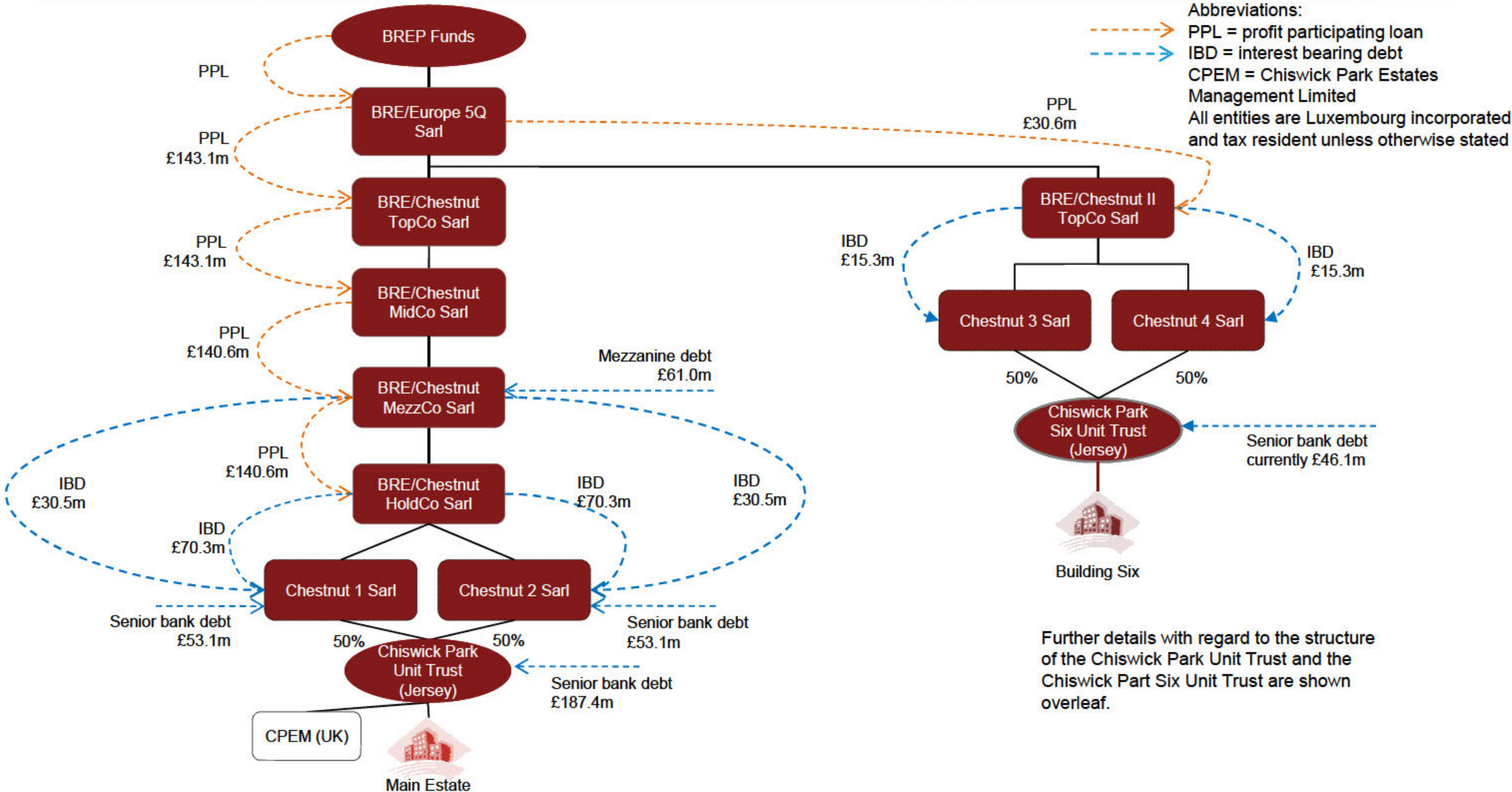
UK tax

- Chestnut 3 Sarl and Chestnut 4 Sarl will be subject to UK income tax on their UK property business profits by virtue of their interest in CP6UT and, following the restructure, their interest in CPUT.
- In calculating the UK property business profits, interest costs incurred on the senior debts provided to CPUT, CP6UT and Chestnut 3 Sarl and Chestnut 4 Sarl (following the debt novation) should be deductible in full. Interest costs on the on-lent mezzanine debts provided Chestnut 3 Sarl and Chestnut 4 Sarl should also be deductible in full. Interest costs incurred on the shareholder debts owed by Chestnut 3 Sarl and Chestnut 4 Sarl following the restructure should be deductible to the extent that the quantum of debt and the interest rate applied do not exceed that which would be lent by a third party without a guarantee at the time of the refinancing.
- Although the senior debt interest paid by CPUT and CP6UT should be considered to have a 'UK source' for the purposes of withholding tax ("WHT"), interest payments by CPUT andCP6UT to Deutsche Bank AG, London Branch under the senior facility agreement should not be subject to UK withholding tax under statutory exemption.
- There is a risk that the senior debt interest paid by Chestnut 3 Sarl and Chestnut 4 Sarl and the mezzanine debt interest paid by BRE/Chestnut New Mezzco Sarl could be considered to have a UK source due to the fact that the senior and mezzanine facility agreements are governed by English law and are secured on UK assets.
- Although we consider this risk to be low due to the tax residence of the borrower and the location of the assets held by the borrower, we recommend that the mezzanine lender, a company resident in Luxembourg, applies for clearance from HMRC that it is entitled to receive interest payments gross under the terms of the Luxembourg-UK double tax treaty as this will clarify the position.
- In the event that interest paid by Chestnut 3 Sarl and Chestnut 4 Sarl under the senior facility agreement were considered to have a UK source, interest payments to Deutsche Bank AG, London Branch should not be subject to UK WHT under statutory exemption.
- Payments of interest by Chestnut 3 Sarl and Chestnut 4 Sarl on the BREP shareholder loans should not be subject to UK WHT on the basis that the interest should not be considered UK source.
- CPUT and CP6UT have opted to tax their respective properties and VAT should be accounted for on the rental income on each property. VAT incurred by these entities on associated costs should be recoverable.

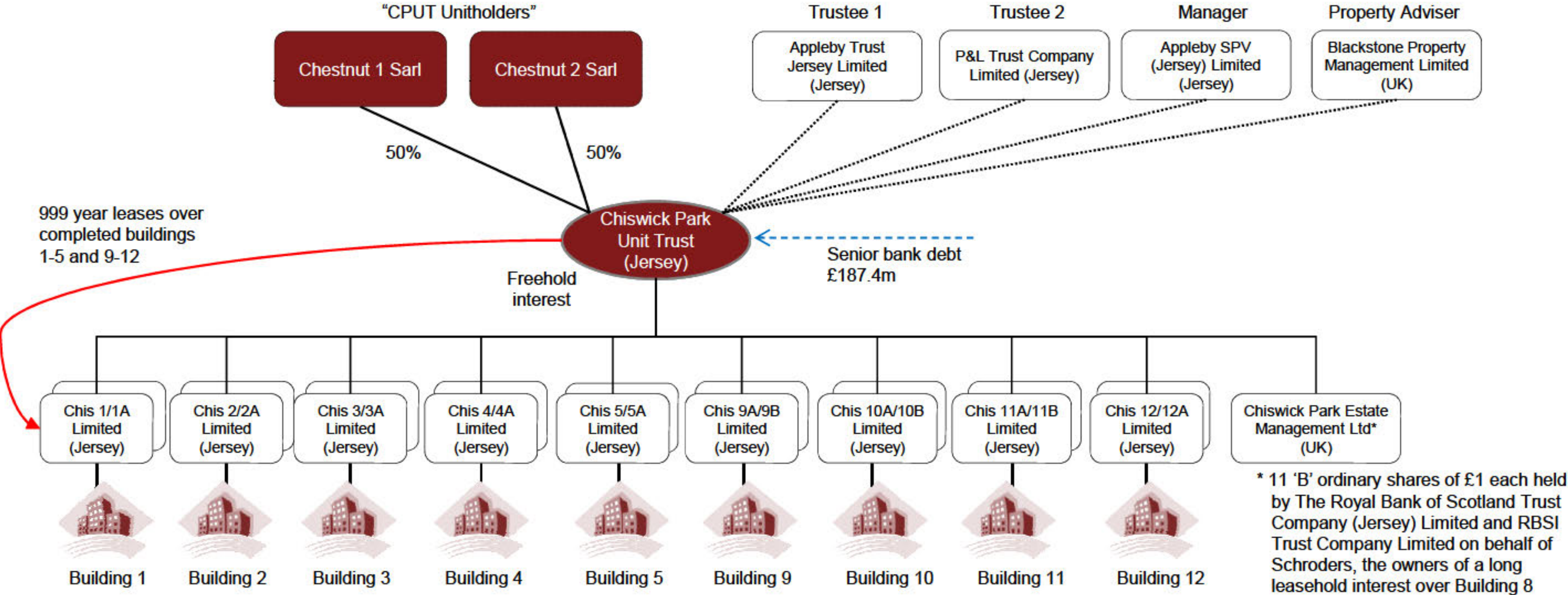
Luxembourg tax

- Income and capital gains derived by the Unitholders from the UK properties should be exempt from Luxembourg taxes under the provisions of the Luxembourg-UK Double Tax Treaty. Repatriation of profits through the holding structure should not be subject to Luxembourg WHT.
- The Luxembourg tax treatment of the PPLs, the income arising in the Luxembourg unitholders from the properties, the tax transparent treatment of CPUT and CP6UT, the debt-to-equity ratio, the use of GBP as functional currency and the Luxembourg tax residency of the Luxembourg companies was agreed with the Luxembourg tax inspector in Advance Tax Agreements ("ATAs") on 23 March 2011 (in respect of the main estate and its holding structure) and 21 November 2012 (in respect of Building 6 and its holding structure). These ATAs will be updated post-closing of the refinancing to reflect the restructuring set out in this report.
- A transfer pricing study was carried out to determine the appropriate taxable margin to be realised by the Luxembourg financing companies in the structure and was agreed with the Luxembourg tax inspector in an Advance Pricing Agreement ("APA") on 23 March 2011. This APA will be updated post-closing of the refinancing to reflect the terms of the new financing structure.

Current main estate and Building 6 financing structures



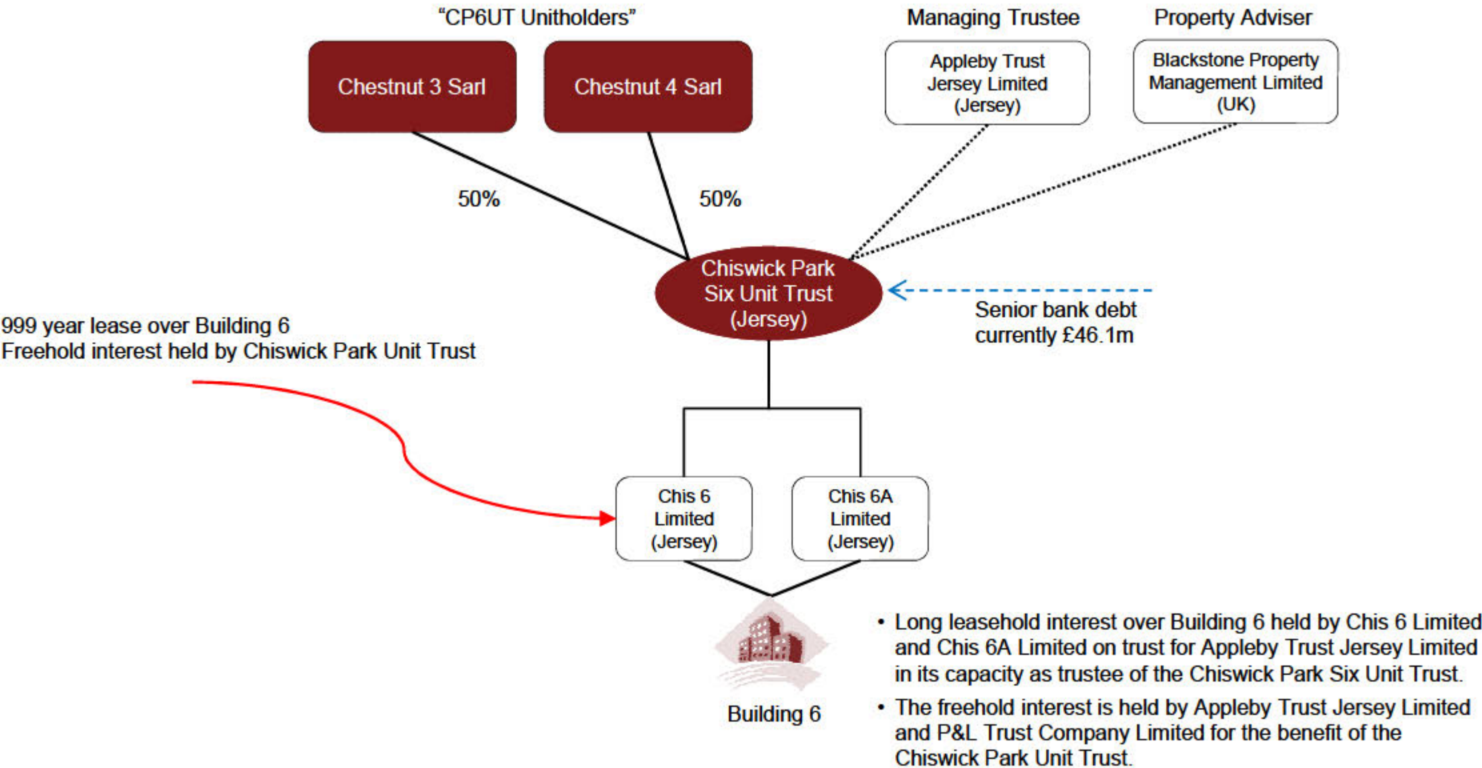
Current structure of the Chiswick Park Unit Trust



Notes

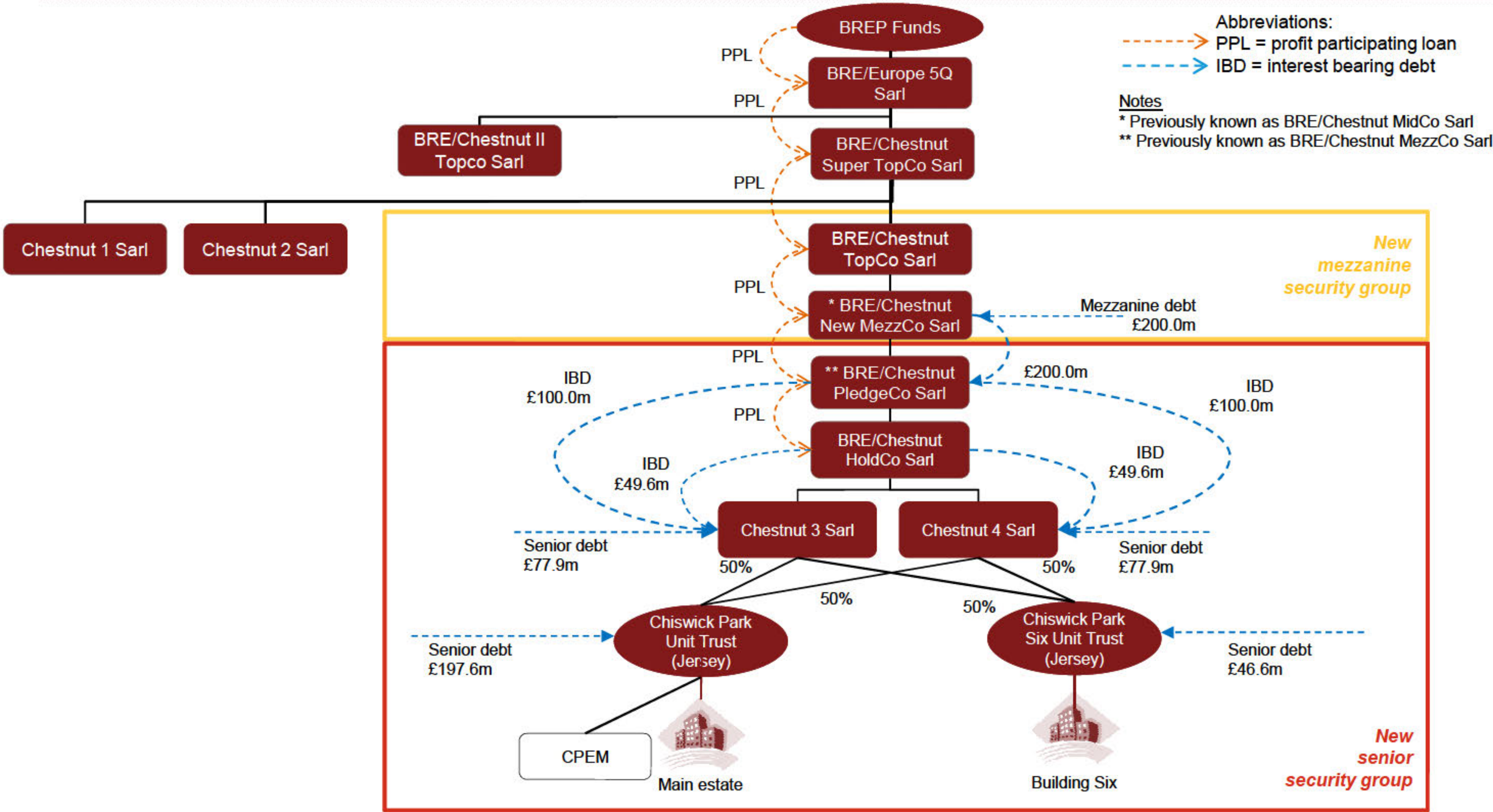
- The freehold interest is held by Appleby Trust Jersey Limited and P&L Trust Company Limited for the benefit of the Chiswick Park Unit Trust.
- Long leasehold interests over the nine completed buildings are held by separate nominee companies on trust for the trustees of the Chiswick Park Unit Trust.
- A long leasehold interest over Building 6 is held by Chis 6 Limited and Chis 6A Limited on trust for Appleby Trust Jersey Limited in its capacity as trustee of the Chiswick Park Six Unit Trust (see overleaf).
- A Long leasehold interest over Building 7 is held by Appleby Trust Jersey Limited in its capacity as trustee of the Chiswick Park Seven Unit Trust prior to the sale of the units in Chiswick Park Unit Trust.
- A long leasehold interest over Building 8 is held by Schroders Exempt Property Unit Trust.

Current structure of the Chiswick Park Six Unit Trust



- Long leasehold interest over Building 6 held by Chis 6 Limited and Chis 6A Limited on trust for Appleby Trust Jersey Limited in its capacity as trustee of the Chiswick Park Six Unit Trust.
- The freehold interest is held by Appleby Trust Jersey Limited and P&L Trust Company Limited for the benefit of the Chiswick Park Unit Trust.

Proposed new financing structure



Proposed refinancing steps

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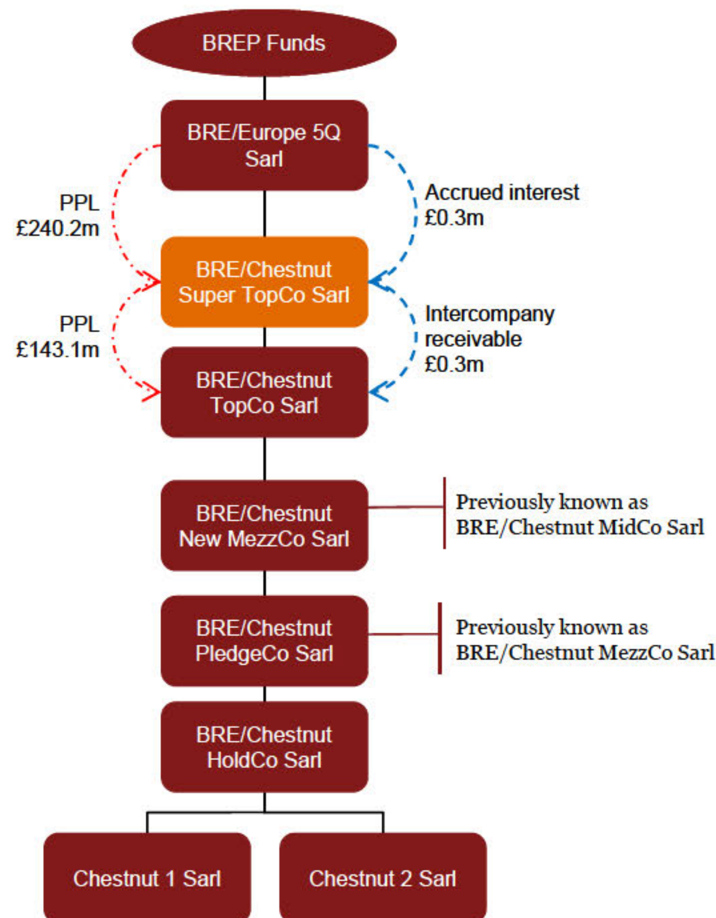
Step 1 – BRE/Chestnut Super TopCo Sarl is inserted into the main estate holding structure (1 of 2)



Overview

- In order to accommodate the new senior and mezzanine security arrangements, an additional Luxembourg holding company, BRE/Chestnut Super TopCo Sarl was inserted between BRE/Europe 5Q Sarl and BRE/Chestnut TopCo Sarl.

Steps

1.1 BRE/Europe 5Q Sarl established BRE/Chestnut Super TopCo Sarl, a Luxembourg incorporated company with minimum share capital, and funded it with cash of £15k under a PPL facility.

1.2 BRE/Europe 5Q Sarl transferred its shares and PPL receivable in BRE/Chestnut TopCo Sarl to BRE/Chestnut Super TopCo Sarl at market value (£15k for the shares and £240,169,616 for the PPL). Cash consideration of £15k was provided for the acquisition of the shares and consideration for the PPL receivable was provided by way of the issue of a PPL from BRE/Chestnut Super TopCo Sarl.

1.3 BRE/Europe 5Q Sarl assigned its accrued interest receivable of £286,192 relating to the PPL owed by BRE/Chestnut TopCo Sarl to BRE/Chestnut Super TopCo Sarl for £286,192 with the consideration for the assignment left outstanding on intercompany account.

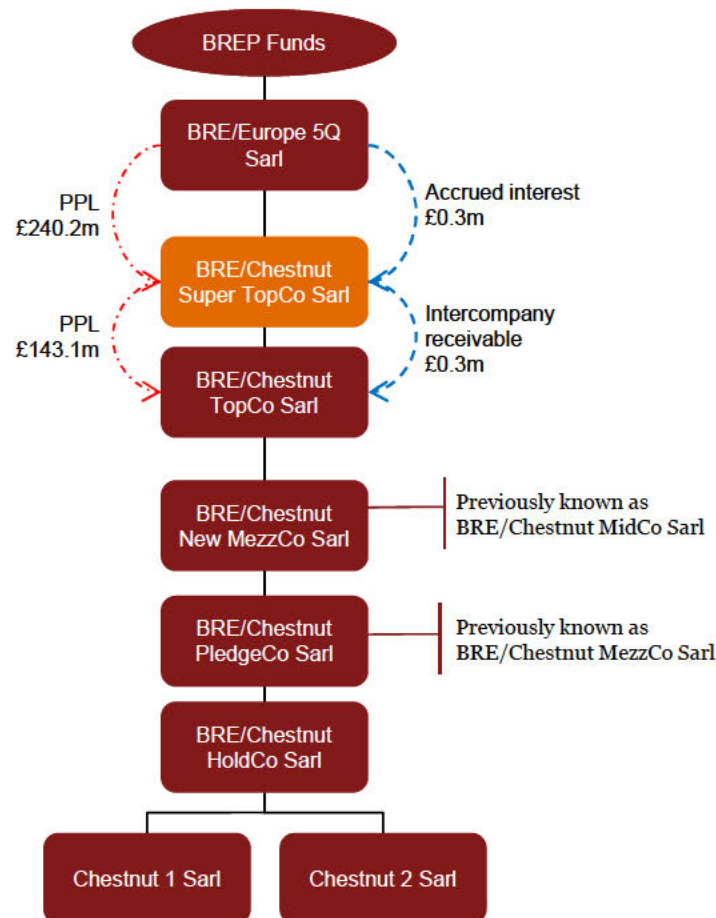
1.4 BRE/Chestnut Midco Sarl changed its name to BRE/Chestnut New MezzCo Sarl.

1.5 BRE/Chestnut MezzCo Sarl changed its name to BRE/Chestnut PledgeCo Sarl.

Timing

- Completed prior to closing of the refinancing.

Step 1 – BRE/Chestnut Super TopCo Sarl is inserted into the main estate holding structure (2 of 2)



Tax Summary

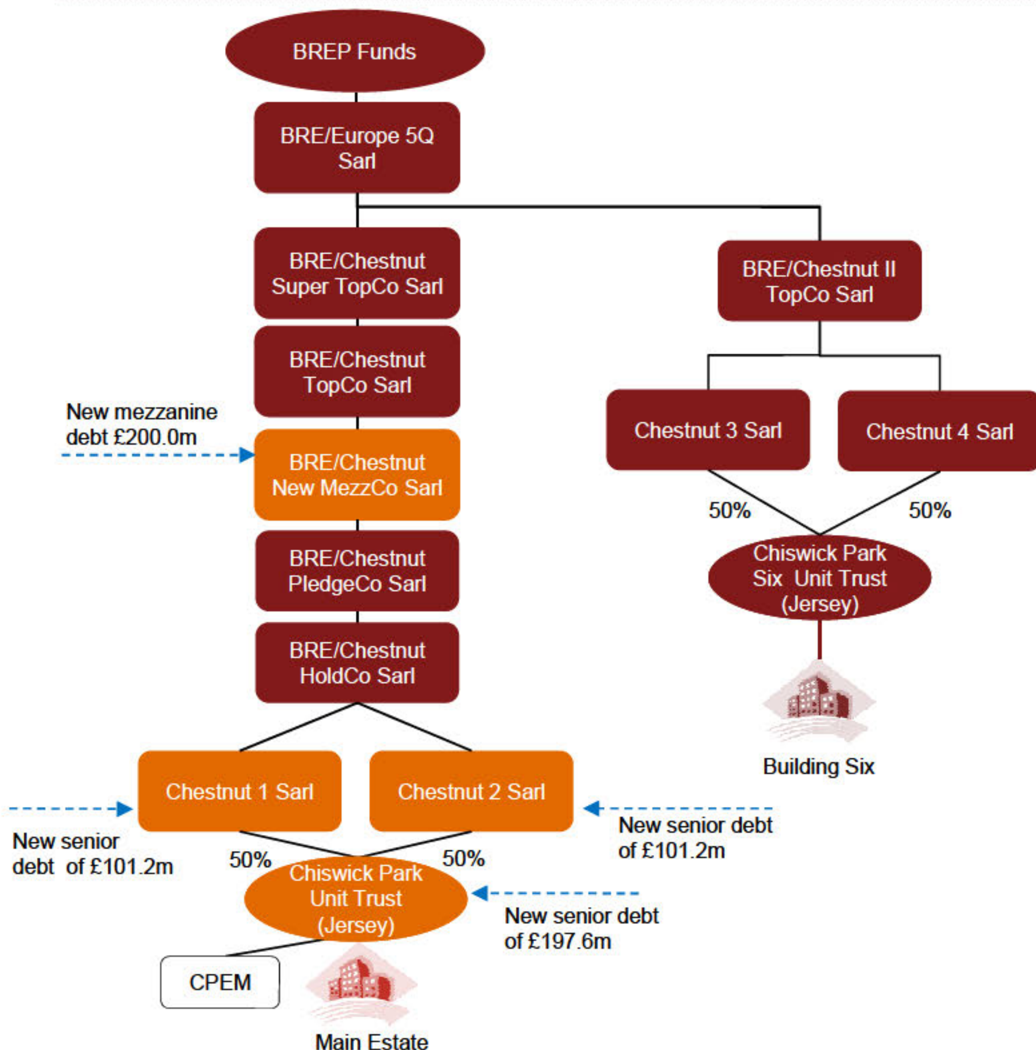
Luxembourg tax

- BRE/Europe 5Q Sarl should not realise any gain on its sale of shares in BRE/Chestnut TopCo Sarl as any increase in the underlying investment should be allocated to the PPL between BRE/Europe 5Q Sarl and BRE/Chestnut TopCo Sarl.
- Any gain on the PPL between BRE/Europe 5Q Sarl and BRE/Chestnut TopCo Sarl should be offset in full by a variable interest charge on the PPL issued to the BREP Funds.
- BRE/Chestnut Super Topco Sarl will be Luxembourg tax resident by virtue of central management and control of the company being exercised in Luxembourg. Operational guidelines for maintaining tax residency are set out in Appendix 8.
- See 'Luxembourg taxation of the holding structure' at Appendix 4 for further details.

US tax

- BRE/Chestnut Super TopCo Sarl is intended to be a transparent entity. Form 8832, Entity Classification Election is required to be filled out in order to elect BRE/Chestnut Super TopCo Sarl as transparent and as such be treated as a disregarded entity, wholly owned by BRE/Europe 5Q Sarl. This election should be filed within 75 days of formation.

Step 2 – the new senior and mezzanine debts are drawn down



Overview

- Chestnut 1 Sarl, Chestnut 2 Sarl and CPUT enter into the new senior facility agreement for a total debt principal amount of £400m. BRE/Chestnut New MezzCo Sarl enters into the new mezzanine facility agreement for a total debt principal amount of £200m.

Steps

2.1 New senior debt of £400.0m is drawn down by CPUT, Chestnut 1 Sarl and Chestnut 2 Sarl in the amounts set out below.

Borrower	New senior debt amount (£)
CPUT	197,594,416
Chestnut 1 Sarl	101,202,792
Chestnut 2 Sarl	101,202,792
Total	**400,000,000**

2.2 New mezzanine debt of £200m is drawn down by BRE/Chestnut New MezzCo Sarl.

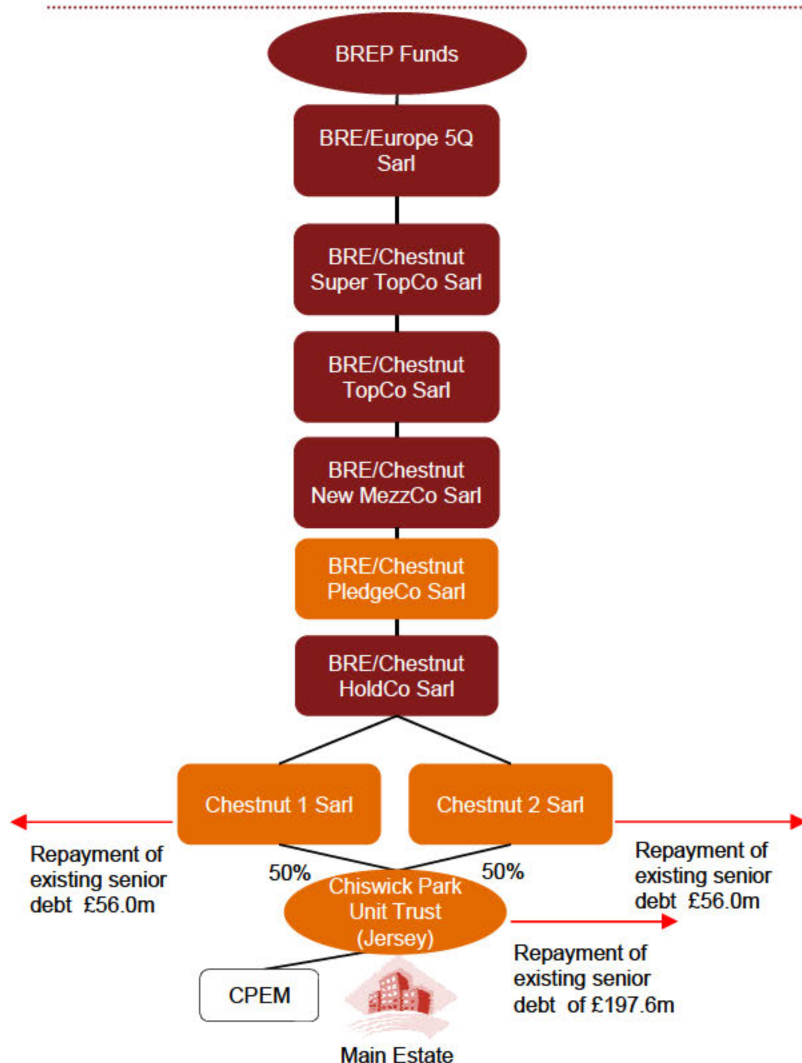
Timing

- At closing. Steps 2-8 completed simultaneously.

Tax summary

- There should be no adverse tax consequences resulting from the drawdown of the new senior and mezzanine funds.

Step 3a – the existing CPUT senior debts are repaid



Overview

- The existing senior debt used to finance the original acquisition of CPUT is repaid.

Steps

3a.1 CPUT, Chestnut 1 Sarl and Chestnut 2 Sarl use £309,554,833 of the new senior debt funds to repay in full their existing senior debt obligations (including accrued interest to the date of closing and fees) as set out in the table below.

Borrower	New senior funds (£)	Existing senior debt repayment, interest and fees (£)	New senior debt fees and related amounts (£)	Funds remaining (£)
CPUT	197,594,416	(197,594,516)	-	-
Chestnut 1 Sarl	101,202,792	(55,983,059)	(3,116,358)	42,103,375
Chestnut 2 Sarl	101,202,792	(55,983,059)	(3,116,358)	42,103,375
Total	**400,000,000**	**(309,554,833)**	**(6,232,716)**	**84,206,750**

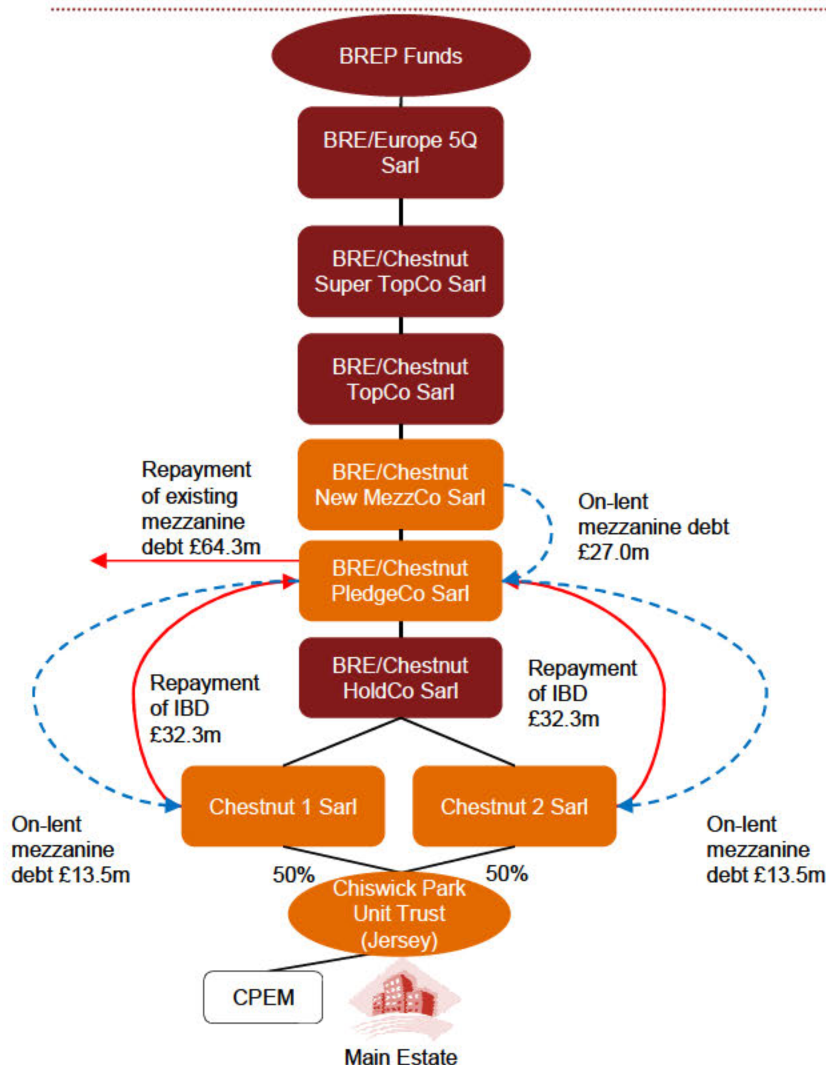
Timing

- At closing. Steps 2-8 completed simultaneously.

Tax summary

- There should be no adverse tax consequences of repaying the existing senior debt.

Step 3b – the existing mezzanine debts are repaid



Overview

- The existing mezzanine debt used to finance the original acquisition of CPUT is repaid.

Steps

3b.1 BRE/Chestnut New Mezzco Sarl on-lends £27,036,543 on new mezzanine finance to BRE/Chestnut Pledgeco Sarl. BRE/Chestnut Pledgeco Sarl on-lends £13,518,272 to each of Chestnut 1 Sarl and Chestnut 2 Sarl.

3b.2 Chestnut 1 Sarl and Chestnut 2 Sarl each uses £18,819,261 of their remaining £42,103,375 new senior debt funds along with the £13,518272 funds received at step 3b.1 to repay the £32,337,533 intercompany debt, accrued interest and fees they owe to BRE/Chestnut PledgeCo Sarl.

After this step each of Chestnut 1 Sarl and Chestnut 2 Sarl has £23,284,114 of senior debt funds remaining.

3b.3 BRE/Chestnut PledgeCo Sarl uses the funds of £64,675,066 received at Step 3b.2 to repay in full the amount of £64,349,175 it owes under the existing mezzanine facility (including accrued interest to the date of closing and fees).

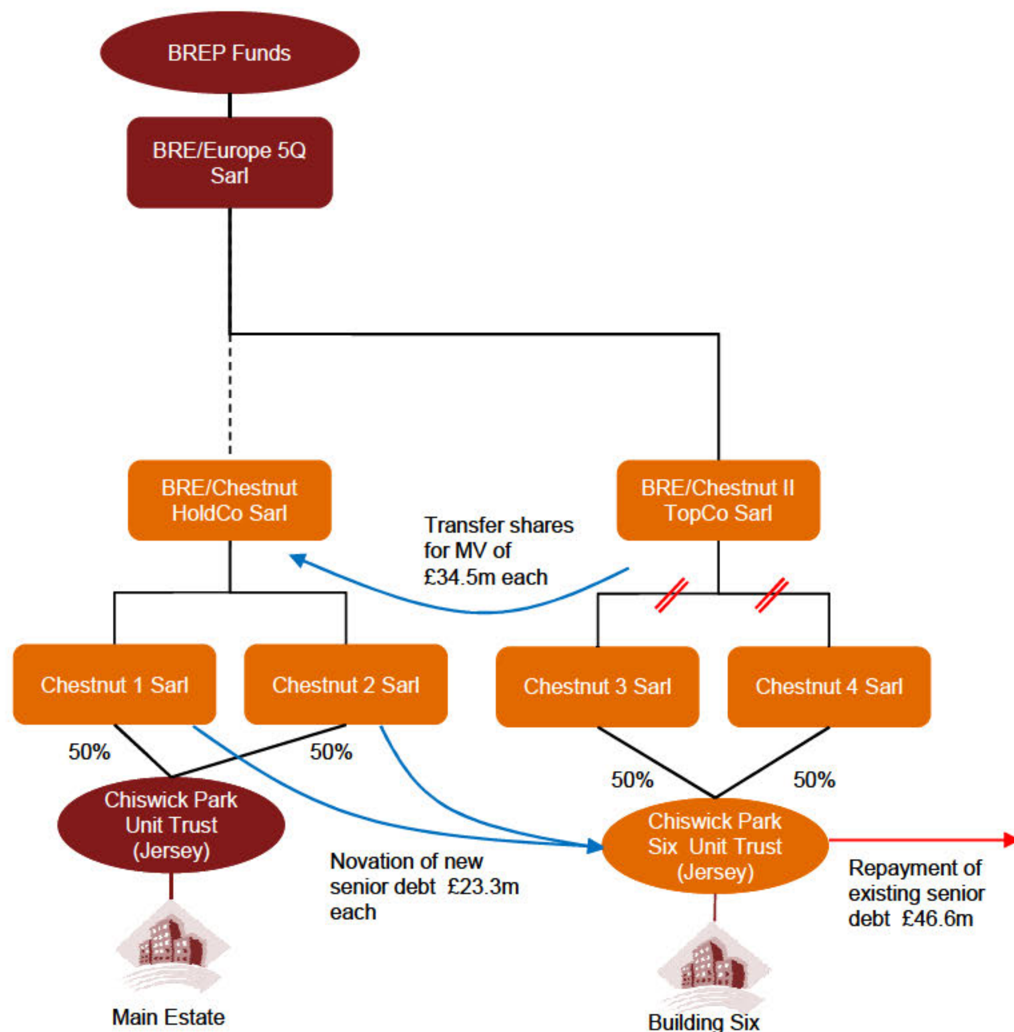
Timing

- At closing. Steps 2-8 completed simultaneously.

Tax summary

- There should be no adverse tax consequences of repaying the existing mezzanine debt.

Step 4 – the existing CP6UT senior debt is repaid and the shares in Chestnut 3 Sarl and Chestnut 4 Sarl are transferred to BRE/Chestnut Holdco Sarl (1 of 2)



Overview

- Chestnut 1 Sarl and Chestnut 2 Sarl on-lend part of the new senior debt funds to CP6UT to enable it to repay in full its senior debt obligations. The shares in Chestnut 3 Sarl and Chestnut 4 Sarl are then transferred to BRE/Chestnut Holdco Sarl.

Steps

4.1 Chestnut 1 Sarl and Chestnut 2 Sarl each lend the remaining new senior debt funds of £23,284,114 to CP6UT.

4.2 CP6UT uses the funds from Step 4.1 to repay in full its existing senior debt obligations (including accrued interest to the date of closing and fees) of £46,568,228.

4.3 New senior bank debt of £23,284,114 is novated from each of Chestnut 1 Sarl and Chestnut 2 Sarl to CP6UT in satisfaction of the inter-company loans created at Step 4.1. Chestnut 1 Sarl and Chestnut 2 Sarl are each left with £77,918,678 of new senior bank debt after this step.

4.4 BRE/Chestnut HoldCo Sarl acquires the shares in Chestnut 3 Sarl and Chestnut 4 Sarl from BRE/Chestnut II TopCo Sarl at market value of £34,529,101 each. Consideration for the transfer is left outstanding on intercompany account.

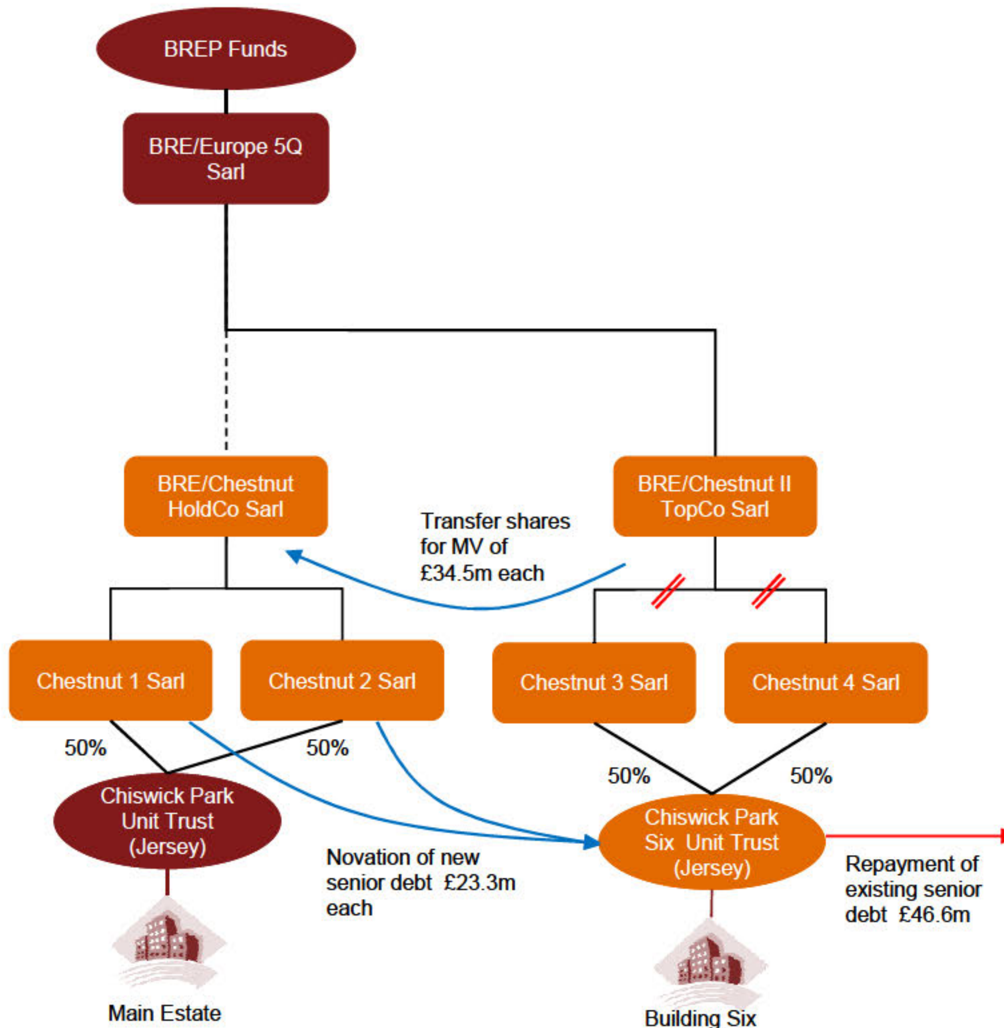
Timing

- At closing. Steps 2-8 completed simultaneously.

Tax summary

- There should be no adverse tax consequences of repaying the existing shareholder debt.

Step 4 – the existing CP6UT senior debt is repaid and the shares in Chestnut 3 Sarl and Chestnut 4 Sarl are transferred to BRE/Chestnut Holdco Sarl (2 of 2)



Tax summary (continued)

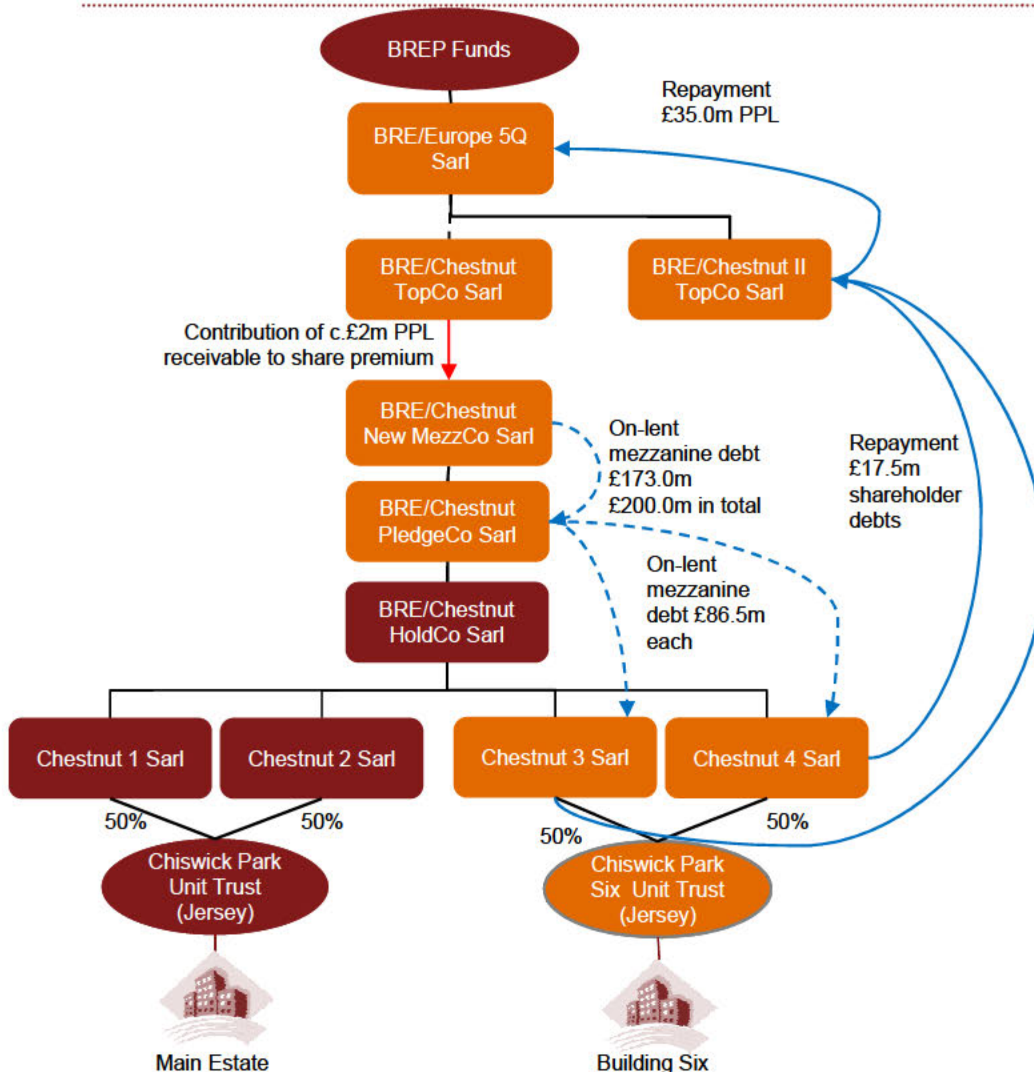
Luxembourg tax

- The gain realised by BRE/Chestnut II TopCo Sarl on the sale of shares in Chestnut 3 Sarl and Chestnut 4 Sarl should be exempt from tax in Luxembourg as BRE/Chestnut II TopCo Sarl should meet all the conditions necessary to benefit from the participation exemption in respect of these shareholdings.
- Any gains on the sales of shares should not be subject to tax in the UK provided that BRE/Chestnut II Topco Sarl is not resident in the UK and does not use the shares as part of a trade carried on in the UK through a permanent establishment, subject to the potential application of the 'transactions in land' rules. These rules should not apply to the sales of shares by BRE/Chestnut II Topco Sarl as a charge under the transactions in land rules should be precluded under the UK:Luxembourg double tax treaty by virtue of Article XIII(3) which gives Luxembourg the right of taxation over a disposal of shares by a Luxembourg resident. See further details in Appendix 11.
- The acquisition of the shares in Chestnut 3 Sarl and Chestnut 4 Sarl, as Luxembourg-incorporated companies, should not be subject to UK stamp duty provided the documents of transfer are executed and retained offshore.
- The acquisition of shares in Chestnut 3 Sarl and Chestnut 4 Sarl should be outside the scope of VAT.

US tax

- All entities below BRE/Europe 5Q Sarl are disregarded for US tax purposes, this step is therefore disregarded for US tax purposes.

Step 5 – Chestnut 3 Sarl and Chestnut 4 Sarl repay existing their shareholder debt owed to BRE/Chestnut II TopCo Sarl (1 of 2)



Overview

- Chestnut 3 Sarl and Chestnut 4 Sarl repay their shareholder debt to BRE/Chestnut II TopCo Sarl using part of the new mezzanine funds.
- Part of the PPL between BRE/Chestnut Topco Sarl and BRE/Chestnut New Mezzco Sarl is capitalised in order the holding structure meets the capital risk requirements for Luxembourg financing companies as set out in the transfer pricing circular issued by the Luxembourg tax authorities.

Steps

5.1 BRE/Chestnut New MezzCo Sarl on-lends the remaining new mezzanine funds of £172,963,457 to Chestnut 3 Sarl and Chestnut 4 Sarl (£86,481,728 each) via BRE/Chestnut PledgeCo Sarl on economic terms broadly equal to the terms of the external mezzanine debt.

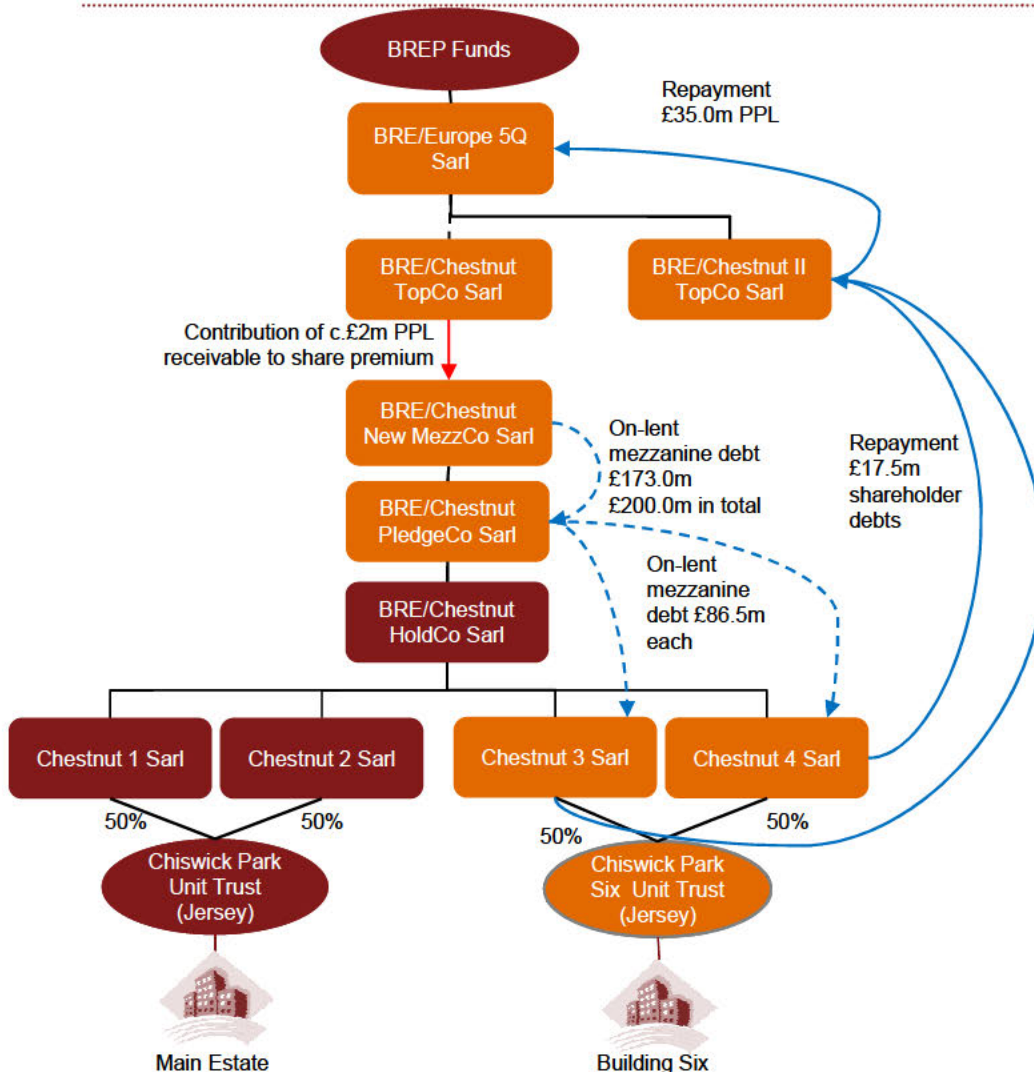
5.2 Chestnut 3 Sarl and Chestnut 4 Sarl each use £17,507,216 of the funds received at Step 5.1 to repay their £17,507,216 debts (principal and any accrued interest) owed to BRE/Chestnut II TopCo Sarl.

5.3 BRE/Chestnut II TopCo Sarl repays £35,014,362 of the PPL and accrued interest it owes to BRE/Europe 5Q Sarl.

5.4 BRE/Chestnut Topco Sarl contributes c.£2m of its £143m PPL receivable to BRE/Chestnut New Mezzco Sarl as a contribution to share premium.

The terms of the PPL between BRE/Chestnut Topco Sarl and BRE/Chestnut New Mezzco Sarl, namely the limited recourse clause, will be amended to comply with the Luxembourg TP Circular, so that 1% or equivalent of EUR 2 million of equity is effectively put at risk.

Step 5 – Chestnut 3 Sarl and Chestnut 4 Sarl repay existing their shareholder debt owed to BRE/Chestnut II TopCo Sarl (2 of 2)



Steps (continued)

- The limited recourse clause of the PPL between BRE/Chestnut New MezzCo Sarl and BRE/Chestnut PledgeCo Sarl will be amended to fully limit the risk at the level of BRE/Chestnut PledgeCo Sarl.

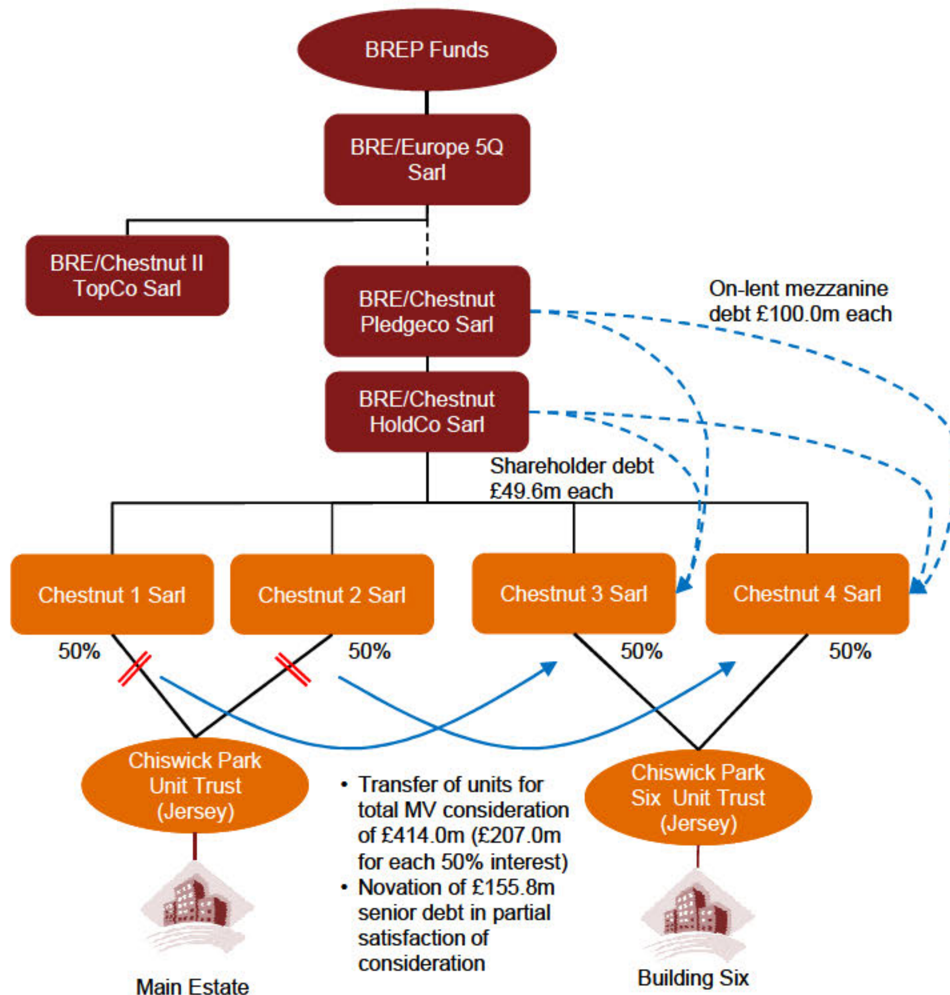
Timing

- At closing. Steps 2-8 completed simultaneously.

Tax Summary

- There should be no adverse consequences resulting from the drawdown of the mezzanine funds and the repayment of the interest bearing shareholder loans owed to BRE/Chestnut II TopCo Sarl.
- See 'Luxembourg taxation of the holding structure' at Appendix 4 for details regarding the tax treatment of the PPL financing.

Step 6 – Chestnut 3 Sarl and Chestnut 4 Sarl acquire the units in CPUT (1 of 4)



Overview

- Chestnut 3 Sarl and Chestnut 4 Sarl acquire the units in CPUT. The new senior debts owed by Chestnut 1 Sarl and Chestnut 2 Sarl, along with part of their shareholder debts, are novated to Chestnut 3 Sarl and Chestnut 4 Sarl in partial settlement of the consideration for the transfer of the units in CPUT.

Steps

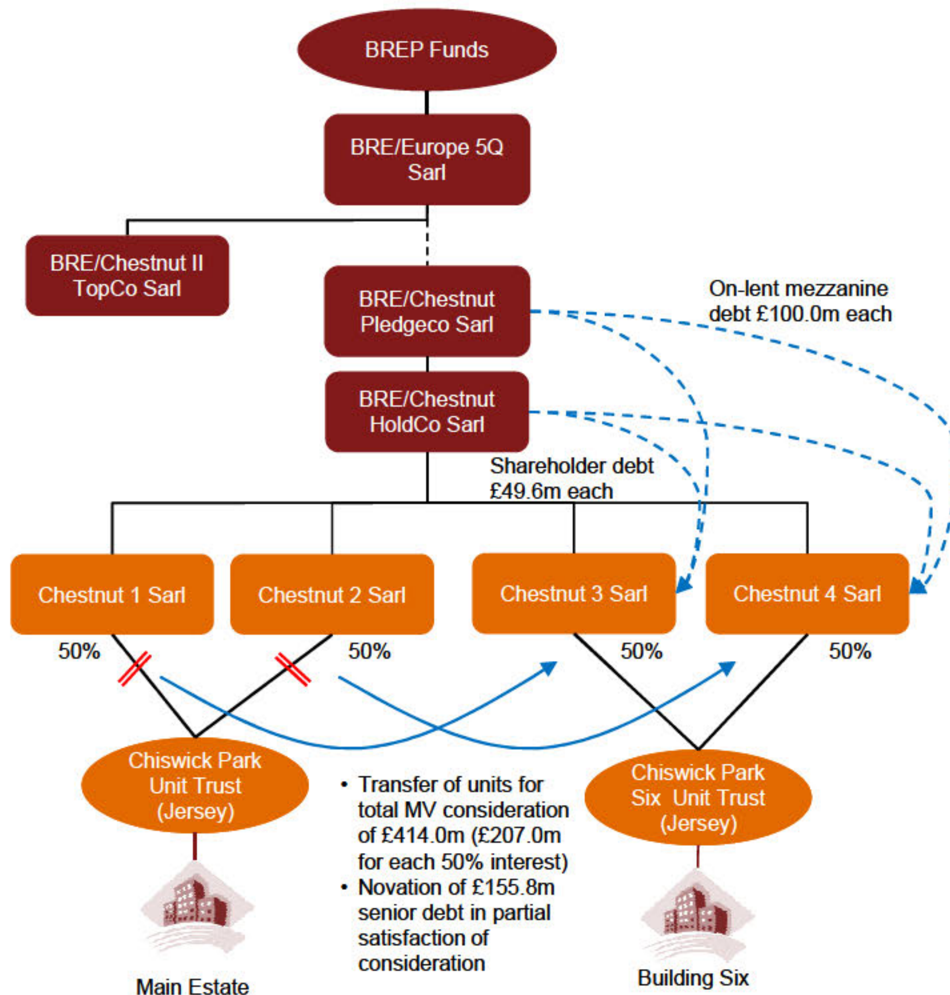
6.1 Chestnut 3 Sarl and Chestnut 4 Sarl acquire the units in CPUT from Chestnut 1 Sarl and Chestnut 2 Sarl, respectively, at market value of £207,042,788 each (£414,085,576 in total). Consideration for the acquisition of units is satisfied by way of:

- cash payment using the part of the funds remaining from the mezzanine on-loan (£65,963,827 by each of Chestnut 3 Sarl and Chestnut 4 Sarl);
- novation to Chestnut 3 Sarl and Chestnut 4 Sarl of the new senior bank debt owed by Chestnut 1 Sarl and Chestnut 2 Sarl (£77,918,678 each);
- novation to Chestnut 3 Sarl and Chestnut 4 Sarl of the on-lent mezzanine debt of £13,518,272 owed by Chestnut 1 Sarl and Chestnut 2 Sarl arising at step 3b.1; and
- novation to Chestnut 3 Sarl and Chestnut 4 Sarl of shareholder debt and senior debt arrangement fees of £49,642,011 owed by each of Chestnut 1 Sarl and Chestnut 2 Sarl.

6.2 Chestnut 1 Sarl and Chestnut 2 Sarl enter into joint elections with Chestnut 3 Sarl and Chestnut 4 Sarl under s.198 CAA 2001 in order to set the transfer values for capital allowances purposes on the sale of units in CPUT (to be notified to HMRC within 2 years from the date of the acquisition of units in CPUT by Chestnut 3 Sarl and Chestnut 4 Sarl).

- After this step the only debts owed by Chestnut 1 Sarl and Chestnut 2 Sarl are shareholder debts of £29.1m each (plus any accrued interest).

Step 6 – Chestnut 3 Sarl and Chestnut 4 Sarl acquire the units in CPUT (2 of 4)



Timing

- At closing. Steps 2-8 completed simultaneously.

Tax summary

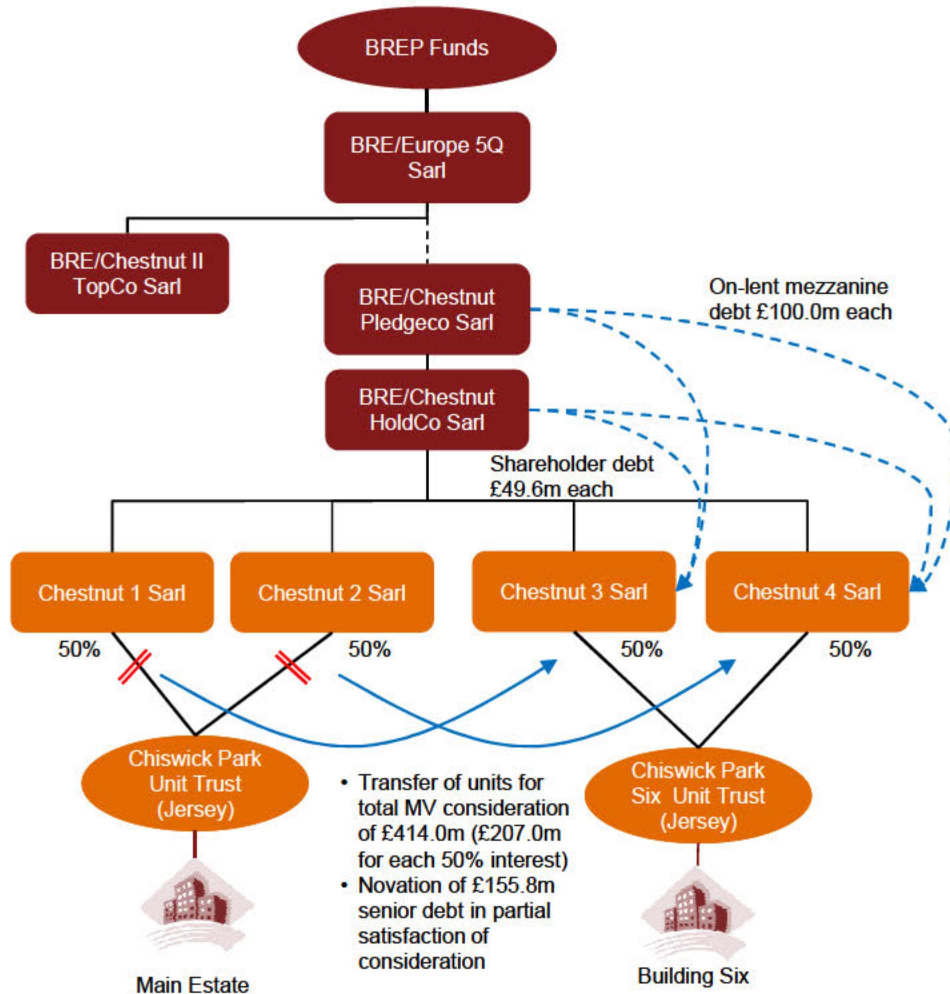
Luxembourg tax

- CPUT should be transparent for Luxembourg tax purposes (confirmed in the ATA). Therefore, a disposal of the units of CPUT should be seen by the Luxembourg tax authorities as a sale of UK property, with the taxing rights allocated to the UK under the provision of the Luxembourg-UK Double Taxation Treaty and as agreed in the ATA.

UK tax

- Any gains on the sale of units in CPUT should not be subject to tax in the UK provided that Chestnut 1 Sarl and Chestnut 2 Sarl are not resident in the UK and do not use the units as part of a trade carried on in the UK through a permanent establishment, subject to the potential application of the 'transactions in land' rules.
- The transactions in land rules could apply in this case if the sole or main intention of Chestnut 1 Sarl and Chestnut 2 Sarl (or another member of the group) on their acquisition of the units in CPUT was to realise a gain from disposing of the property, rather than holding the property for letting as an income producing investment.
- On the basis that there has been no development of any of the properties in CPUT and the sale of the units in CPUT is not to a third party but rather to another group member in order to facilitate the refinancing of the group's investments, we consider that the risk of the transactions in land rules applying to tax a gain on the sale of the units in CPUT to be low. See further details in Appendix 11.

Step 6 – Chestnut 3 Sarl and Chestnut 4 Sarl acquire the units in CPUT (3 of 4)

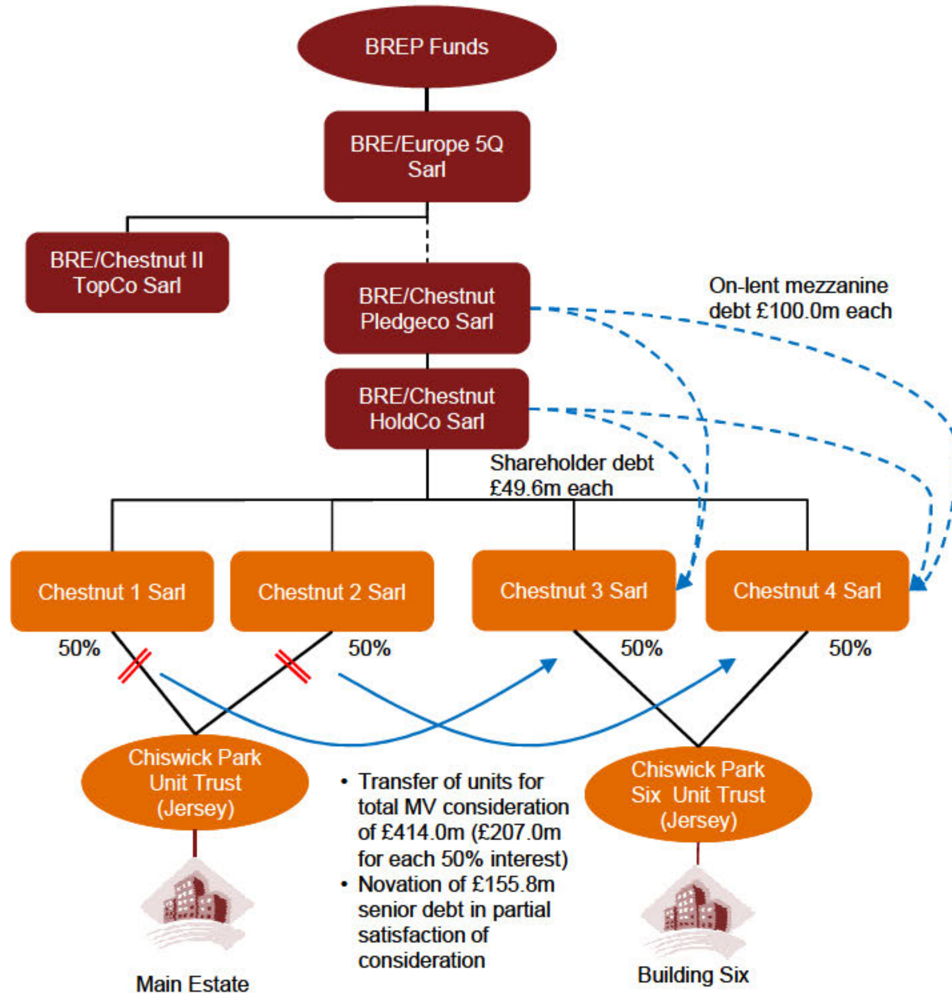


Tax Summary (continued)

UK tax (continued)

- Should a charge under the transactions in land rules apply, the person liable for any tax is the person whose income it is, which in this case should be Chestnut 1 Sarl and Chestnut 2 Sarl.
- Any UK property business losses incurred by Chestnut 1 Sarl and Chestnut 2 Sarl prior to the date of transfer of the units in the CPUT will be lost as they will cease their UK property businesses upon sale of the units in CPUT.
- Herbert Smith have provided an opinion to the Group stating that CPUT qualifies as a "collective investment scheme" under FSMA 2000. On the basis that the property of CPUT is held on trust for the benefit of the unit holders (as stated at clause 2.2 of the CPUT trust deed), CPUT should qualify as a "Unit trust scheme" under FSMA 2000 and for stamp taxes. Therefore, the transfer of units should not give rise to any UK stamp taxes liabilities.
- The transfer of the units in CPUT should be outside the scope of UK VAT.
- Chestnut 1 Sarl and Chestnut 2 Sarl will transfer their capital allowance pools to Chestnut 3 Sarl and Chestnut 4 Sarl with the value of the allowances transferred fixed under joint elections.
- On the assumption that Chestnut 1 Sarl and Chestnut 2 Sarl make full writing down allowance claims in the period to date of transfer of the units in CPUT and the capital allowances are transferred to Chestnut 3 Sarl and Chestnut 4 Sarl at tax written down value at the date of transfer, the estimated aggregate capital allowances pools transferred to Chestnut 3 Sarl and Chestnut 4 Sarl should be c.£31.6m and c.£44.0m, respectively. See 'UK taxation of Chestnut 3 Sarl and Chestnut 4 Sarl' section for further details.

Step 6 – Chestnut 3 Sarl and Chestnut 4 Sarl acquire the units in CPUT (4 of 4)

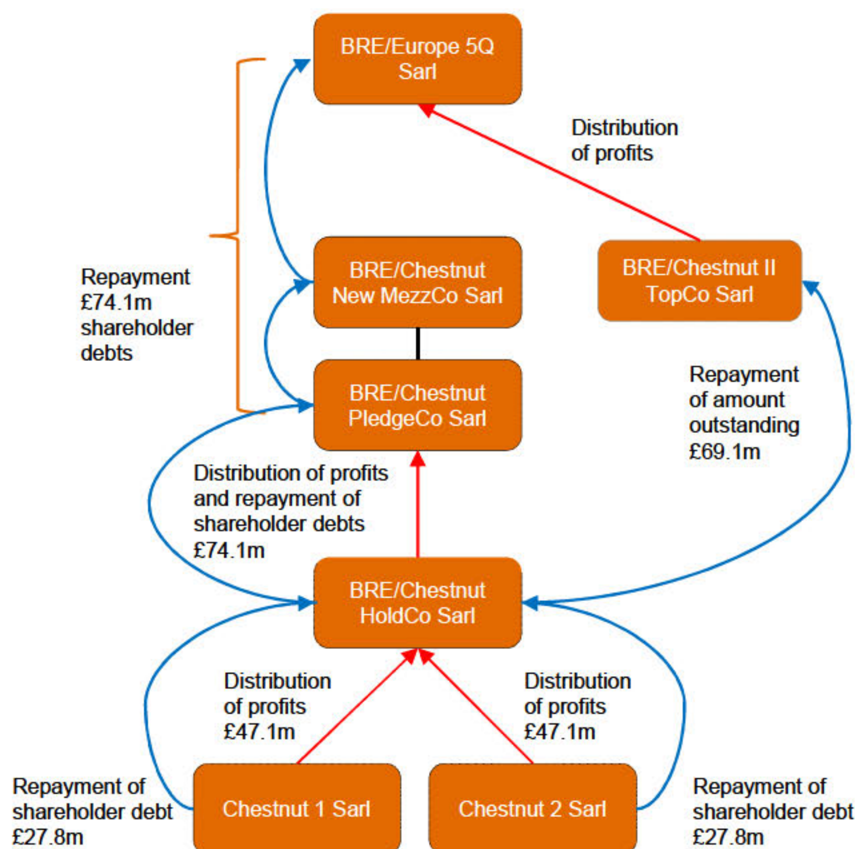


Tax Summary (continued)

US tax

- All entities below BRE/Europe 5Q Sarl are disregarded for US tax purposes, this step is therefore disregarded for US tax purposes.

Step 7 – Chestnut 1 Sarl and Chestnut 2 Sarl repay their shareholder debts and distribute profits



Steps

7.1 Chestnut 1 Sarl and Chestnut 2 Sarl each uses the cash proceeds from the sale of units in CPUT to repay the remaining £27,824,434 shareholder debt and accrued interest it owes to BRE/Chestnut HoldCo Sarl.

7.2 Chestnut 1 Sarl and Chestnut 2 Sarl each distributes the profits of £47,105,256 realised on the sale of units in CPUT to BRE/Chestnut HoldCo Sarl by way of a distribution and repayment of its share premium account (£924,258).

7.3 BRE/Chestnut HoldCo Sarl repays the £69,058,202 it owes to BRE/Chestnut II TopCo Sarl arising from the acquisition of shares in Chestnut 3 Sarl and Chestnut 4 Sarl at Step 4.4

7.4 BRE/Chestnut HoldCo Sarl uses the remaining proceeds to pay a dividend and repay part of the PPL principal owed up the holding structure to the BREP Funds. The total amount repatriated as a dividend and debt repayment is £74,128,187.

- After this step Chestnut 1 Sarl and Chestnut 2 Sarl have no outstanding debts owed to third parties or other group members.

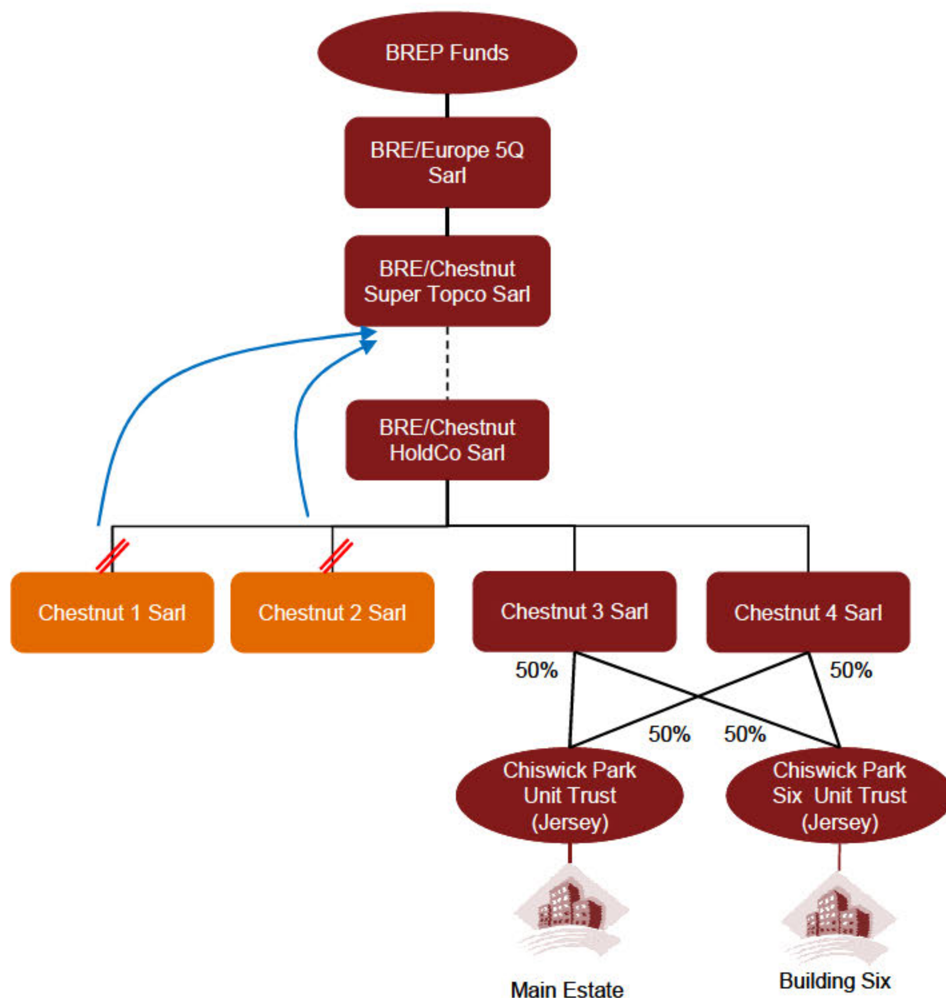
Timing

- At closing. Steps 2-8 completed simultaneously.

Tax Summary

- There should be no adverse consequences of the repayment of the interest bearing shareholder loans and PPLs.
- The distribution of profits from Chestnut 1 Sarl and Chestnut 2 Sarl to BRE/Chestnut Holdco Sarl and from BRE/Chestnut II Topco Sarl to BRE/Europe 5Q Sarl should not be subject to tax in Luxembourg as, in ease case, the conditions of the participation exemption should be met.

Step 8 – the shares in Chestnut 1 Sarl and Chestnut 2 Sarl are transferred out of the new banking groups (1 of 2)



Steps

8.1 The shares in Chestnut 1 Sarl and Chestnut 2 Sarl are transferred from BRE/Chestnut Holdco Sarl to BRE/Chestnut Super Topco Sarl for market value consideration of £15,000.

Timing

- At closing. Steps 2-8 completed simultaneously.

Tax Summary

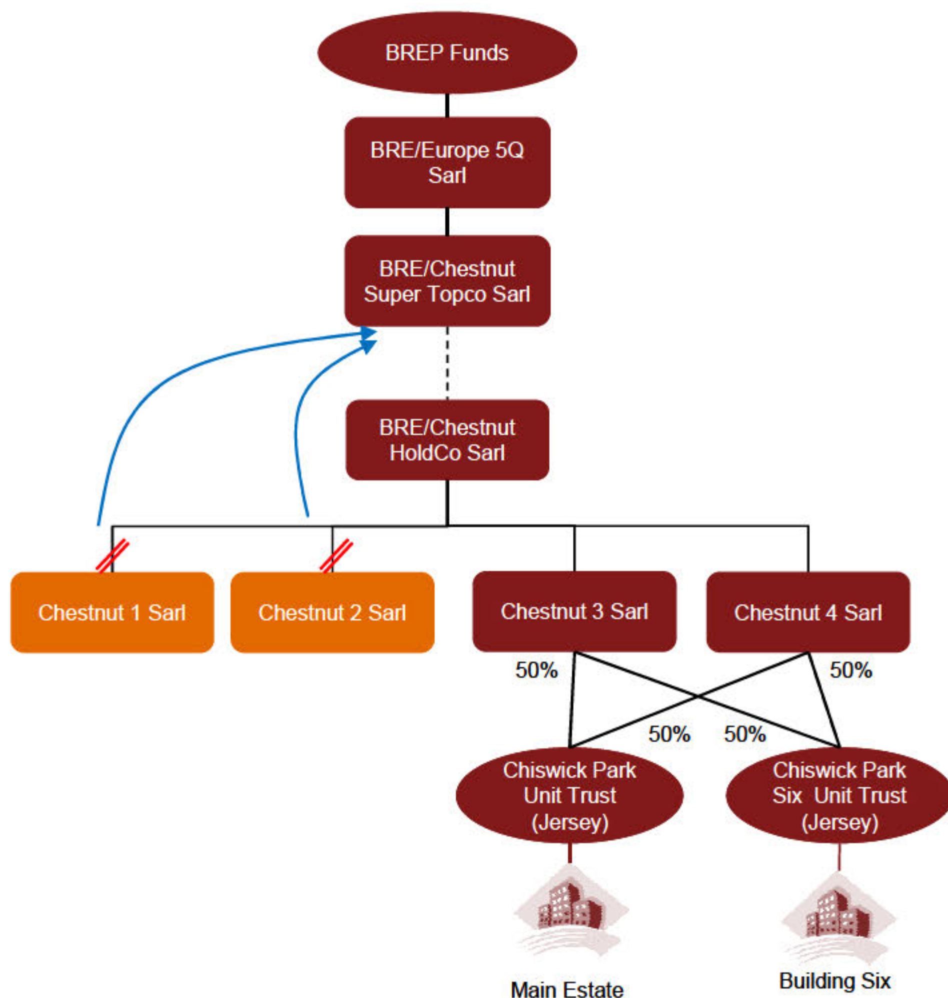
Luxembourg tax

- There should be no adverse tax consequences of the sale of shares in Chestnut 1 Sarl and Chestnut 2 Sarl from BRE/Chestnut Holdco Sarl to BRE/Chestnut Super Topco Sarl.

UK tax

- Chestnut 1 Sarl and Chestnut 2 Sarl are subject to UK income tax on their UK property business profits derived by way of their interest in CPUT. None of the companies in the new senior and mezzanine banking groups (i.e. BRE/Chestnut Topco Sarl and its subsidiaries) should be subject to secondary liabilities in respect of UK income taxes to which Chestnut 1 Sarl and Chestnut 2 Sarl are liable as there should be no tax provisions under which a UK income tax liability of Chestnut 1 Sarl or Chestnut 2 Sarl could be imposed on, or recovered from, any other entity. The UK taxes to which Chestnut 1 Sarl and Chestnut 2 Sarl are liable should be limited to income tax on their UK property business profits and UK withholding tax on any UK source interest paid to overseas residents. These are considered further below.
- With regard to the profits of the UK property businesses carried on by Chestnut 1 Sarl and Chestnut 2 Sarl , the person liable for tax on those profits is the person receiving or entitled to them, i.e. Chestnut 1 Sarl and Chestnut 2 Sarl.

Step 8 – the shares in Chestnut 1 Sarl and Chestnut 2 Sarl are transferred out of the new banking groups (2 of 2)



Tax Summary (continued)

UK tax (continued)

- With regard to interest income received by companies in the new senior and mezzanine banking groups from Chestnut 1 Sarl and Chestnut 2 Sarl, if that interest is considered to be 'UK source' and subject to UK withholding tax, the obligation to withhold tax is that of the payer of the interest. The recipient's liability is limited to the amount deducted at source by virtue of s.815 Income Taxes Act 2007.
- There are a number of secondary liability provisions in relation to UK corporation tax but Chestnut 1 Sarl and Chestnut 2 Sarl should not be subject to UK corporation tax on the basis that they are not resident in the UK and are not carrying on a trade through a UK permanent establishment.

US tax

- All entities below BRE/Europe 5Q Sarl are disregarded for US tax purposes, this step is therefore disregarded for US tax purposes.

Appendices

Appendices **29**

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UK taxation of the JPUTs (1 of 2)

UK income tax

- CPUT and CP6UT, (together, the "JPUTs") are formed under the law of Jersey. In order to determine the UK tax status of the JPUTs it is necessary to consider the characteristics of trusts governed by English law and then to see to what extent those characteristics are shared by the JPUTs. However, Jersey trust law draws almost exclusively on English law and leading counsel has advised in particular cases that for most purposes a JPUT is likely to be regarded as having the same legal effect in Jersey as a trust expressed in similar terms under English law.
- Under English law a trust is regarded as a bare trust if all of the beneficiaries (i.e. the unit holders in the case of a JPUT) could, if acting together, determine the trust and direct the trustees as to how to deal with the trust property. Several leading counsels have confirmed in conference that JPUTs are bare trusts. Indeed, s.43(3) of the Trusts (Jersey) Law 1984 states that, "notwithstanding the terms of the trust, where all the beneficiaries are in existence and have been ascertained and none are interdicts or minors they may require the trustee to terminate the trust and distribute the trust property among them".
- Therefore, as the JPUTs are formed under Jersey law, they should be bare trusts by reference to English law principles.
- For the avoidance of doubt any statements in the trust deeds, to the effect that the unit holders have no interest in the capital held by the trusts, do not affect this analysis: if all unit holders, acting together, wish to terminate the trust, they are entitled to do so (Saunders v Vautier (1841) 4 Beav 115).
- Based on our review of the JPUTs' trust instruments and the comments above, the JPUTs should be bare trusts for UK income tax purposes. As a result, the JPUTs should be transparent for income purposes, with the income of the JPUTs (driven by the underlying partnership interests) directly attributable to, and assessable on, the Unitholders as if the JPUTs did not exist. No withholding tax arises when the JPUTs make distributions to their unit holders.
- HMRC clarified the treatment of "bare trusts" generally in a press release of 20 January 1997. In that press release they acknowledge that prior to 6 April 1996 some trustees of bare trusts themselves accounted for income tax on income received. However, HMRC stated that they "will no longer expect trustees to account for tax in such circumstances because there is no entitlement in law for trustees to deduct tax from income arising to bare trusts".

UK capital gains tax

- For capital gains tax purposes the JPUTs are treated as if they were companies and the unit holders are treated as if they held shares in those companies. Therefore, on the basis that the JPUTs are resident in Jersey and are not carrying on a trade through a UK permanent establishment or agency, no liability to UK capital gains tax should arise in the JPUTs on a sale of their UK properties.
- See Appendix 8 for details regarding maintaining the JPUTs' non-UK resident status. It is important that the guidelines set-out therein are adhered to in order to avoid the risk of the JPUTs becoming UK resident or a UK PE or agency being deemed to arise in respect of the activities of the JPUTs.

UK taxation of the JPUTs (2 of 2)

UK VAT

- CPUT and CP6UT are registered for VAT through its trustees. Where a property is held by a JPUT, it is standard practice for the trustees to be registered on behalf of the JPUT and for them to exercise the option to tax also on behalf of the JPUT. VAT returns are completed on behalf of the JPUT and the unitholders in the JPUT are not VAT registered.

UK taxation of Chestnut 3 Sarl and Chestnut 4 Sarl (1 of 6)

Non-resident landlord scheme

- Chestnut 3 Sarl and Chestnut4 Sarl are non-UK tax resident companies, receiving UK rental income by virtue of their holdings of units in CPUT and CP6UT, UK tax transparent unit trusts.
- Chestnut 3 Sarl and Chestnut 4 Sarl will be subject to UK income tax at 20% on the taxable profits of their property rental business. They have both received approval under the NRL scheme to receive rents from both Building Six and the main estate without the deduction of UK income tax by the letting agent, Broadgate Estates Limited, which is the "prescribed person" under the terms of the NRL scheme, from 1 April 2013.
- The tenants do not have any obligation to operate the NRL Scheme (and therefore, no obligation to withhold tax) as they will make payments to the UK letting agent.
- In arriving at the income of Chestnut 3 Sarl and Chestnut 4 Sarl chargeable to UK income tax, expenses incurred by Chestnut 3 Sarl and Chestnut 4 Sarl , CPUT and CP6UT for the purposes of the UK property business will be deductible from the rental income, including interest on the senior, mezzanine and part of the shareholder debts, subject to transfer pricing restrictions – see further details below.
- Further details relating to the NRL Scheme including application, conditions and ongoing filing obligations are outlined in Appendix 10.

Debt financing

Senior debt – CPUT and CP6UT

- Interest deductions in respect of the new senior debt financing provided to CPUT and CP6UT (in the case of CP6UT, after the novation of that debt at Step 4.3) should be available when calculating the UK property business profits of Chestnut 3 Sarl and Chestnut 4 Sarl as these debts are taken on to refinance debts originally used for the acquisition or construction of property held by the JPUTs and the third party nature of the senior debt means that the UK transfer pricing rules should not operate to restrict tax deductions.

Senior debt – Chestnut 3 Sarl and Chestnut 4 Sarl

- The prevailing view, one shared by us and Tax Counsel in similar situations, is that interest expenses incurred by a unit holder in acquiring units in a unit trust is deductible for income tax purposes against the unit holder's share of property business income represented by its units. This is because the unit holder is borrowing to acquire a share in an undivided pool of assets (real property), the profits of which are regarded for income tax purposes as belonging to the unit holders.
- Therefore, interest deductions in respect of the new senior debt provided to Chestnut 3 Sarl and Chestnut 4 Sarl should available when calculating the UK property business profits of those companies as the debt is taken on as part of the consideration for the acquisition of the units in CPUT and the third party nature of the senior debt means that the UK transfer pricing rules should not operate to restrict tax deductions..

UK taxation of Chestnut 3 Sarl and Chestnut 4 Sarl (2 of 6)

Debt financing (continued)

Mezzanine debt

- Interest deductions should be available in respect of the interest bearing debt that on-lends the mezzanine debt from BRE/Chestnut Pledgeco Sarl to Chestnut 3 Sarl and Chestnut 4 Sarl as the debt is:
  - used to refinance existing shareholder debts in Chestnut 3 Sarl and Chestnut 4 Sarl that were used to fund the acquisition of units in CP6UT);
  - taken on as part of the consideration for the acquisition of units in CPUT; and
  - used to part fund the acquisition of units in CPUT,

  and the terms of the on-lent mezzanine debts replicate the terms and interest rate on the third party mezzanine debt borrowed by BRE/Chestnut New Mezzco Sarl.

BREP funding

- Interest deductions in respect of the shareholder loans owed by Chestnut 3 Sarl and Chestnut 4 Sarl to BRE/Chestnut Holdco Sarl should be available when calculating the UK property business profits of the Chestnut 3 Sarl and Chestnut 4 Sarl as these debts were taken on as part of the consideration for the acquisition of the units in CPUT. The deductions for tax purposes should be available to the extent that the quantum of debt and the interest rate applied do not exceed that which would be lent by a third party without a guarantee at the time of the refinancing.
- Deductions may, therefore, be available for some proportion of the interest costs on those interest bearing loans if, for example, it can be showed that comparable offers were available for additional external finance at the time of the refinancing. It should be noted that the presence of a guarantee from members of the senior or mezzanine banking groups in any other offer of finance should not prevent such offer being treated as an appropriate benchmark of arms length terms as the provider(s) of such guarantees have no other assets on which to call upon to satisfy their obligations and so we would not expect the guarantees to significantly affect the principal economic terms of the offer.

Withholding tax on interest

- The obligation to deduct tax from interest paid on an overseas loan depends on the source of the interest. If the interest has a UK source tax must be deducted, if it does not then tax should not be deducted.
- Whether or not interest has a UK source depends on all the facts and on exactly how the transactions are carried out. HMRC consider the most important of factors in deciding whether or not interest has a UK source to be the residence of the borrower and the location of its assets.
- Other factors to take into account are:
  - the place of performance of the contract and the method (and location) of payment;
  - the competent jurisdiction for legal action and the proper law of contract;
  - the residence of the guarantor and the location of the security for the debt.

UK taxation of Chestnut 3 Sarl and Chestnut 4 Sarl (3 of 6)

Withholding tax on interest (continued)

Senior debt - JPUTs

- Interest on the senior debt provided to CPUT and CP6UT should be considered "UK-source" as:
  - the assets of the borrowers (Building 6 and the main estate properties) are located in the UK;
  - the loan is secured on UK property;
  - the funds from which interest is paid (rental income from the properties) are derived in the UK; and
  - the senior facility agreement is governed by English Law.
- However, on the basis that the senior lender, Deutsche Bank London Branch, is a bank within the charge to UK corporation tax with regard to payments of interest under the senior facility agreement, interest payments from CPUT and CP6UT under the senior facility agreement should not be subject to UK withholding tax under statutory exemption.

Senior debt – Chestnut 3 Sarl and Chestnut 4 Sarl

- With regard to the interest paid by Chestnut 3 Sarl and Chestnut 4 Sarl under the senior facility agreement, the factors pointing towards the interest having an overseas source are:
  - the borrowers, Chestnut 3 Sarl and Chestnut 4 Sarl, are not resident in the UK;
  - the interest payments are made from a non-UK (Jersey) bank account; and
  - the assets of the borrower (the units in the JPUTs) are not located in the UK.
- The factors pointing towards the interest having a UK source are:
  - the loan is secured on UK property;
  - the senior facility agreement is governed by English law; and
  - the ultimate source of the funds used to pay the interest is rental income from UK property.
- The most important factors (residence of the borrower and location of its assets) both point towards the interesting being treated as non-UK source. However, there is a risk that HMRC may consider that the interest should be treated as UK source, primarily due to the fact that the senior facility agreement is governed by English law and is secured on UK assets.
- However, in the event that the interest were considered to have a UK source, on the basis that the senior lender, Deutsche Bank London Branch, is a bank within the charge to UK corporation tax with regard to payments of interest under the senior facility agreement, interest payments from Chestnut 3 Sarl and Chestnut 4 Sarl under the senior facility agreement should not be subject to UK withholding tax under statutory exemption.

UK taxation of Chestnut 3 Sarl and Chestnut 4 Sarl (4 of 6)

Withholding tax on interest (continued)

Mezzanine debt – BRE/Chestnut New Mezzco Sarl

- With regard to the interest paid under the mezzanine facility agreement, the factors pointing towards the interest having an overseas source are:
  - the borrower, BRE/Chestnut New Mezzco Sarl, is not resident in the UK;
  - the interest payments are made from a non-UK (Luxembourg) bank account; and
  - the assets of the borrower (shares in, and loan receivables from, BRE/Chestnut Pledgeco Sarl) are not located in the UK.
- The factors pointing towards the interest having a UK source are:
  - the mezzanine lender will have a charge over the properties (subordinated to the senior facility and via the "common" security held by the senior security agent);
  - the mezzanine facility will be governed by English law; and
  - the ultimate source of the funds used to pay the interest is rental income from UK property.
- As with the interest paid by Chestnut 3 Sarl and Chestnut 4 Sarl on the senior debt, the most important factors (residence of the borrower and location of its assets) both point towards the interesting being treated as non-UK source but there is a risk that HMRC may consider that the interest should be treated as UK source, primarily due to the fact that the senior facility agreement is governed by English law and is secured on UK assets.
- Although we consider this risk to be low, we recommend that the mezzanine lender applies for clearance from HMRC that it is entitled to receive interest payments gross under the terms of the Luxembourg-UK double tax treaty, as this will clarify the position.

On-lent mezzanine debt

- Interest paid on the loan that on-lends the mezzanine finance from BRE/Chestnut New MezzCo Sarl to BRE/Chestnut PledgeCo Sarl and the loans that on-lend the mezzanine finance from BRE/Chestnut PledgeCo Sarl to Chestnut 3 Sarl and Chestnut 4 Sarl should be considered non UK source as:
  - the borrowers are non UK resident;
  - the loan agreements will be governed by Luxembourg law;
  - the interest payments are made from a non UK (Luxembourg/Jersey) bank account; and
  - the loans are not secured on any asset located in the UK.

UK taxation of Chestnut 3 Sarl and Chestnut 4 Sarl (5 of 6)

Withholding tax on interest (continued)

BREP shareholder debts provided Chestnut 3 Sarl and Chestnut 4 Sarl

- Interest paid on the loan that on-lends the mezzanine finance from BRE/Chestnut New MezzCo Sarl to BRE/Chestnut PledgeCo Sarl and the loans that on-lend the mezzanine finance from BRE/Chestnut PledgeCo Sarl to Chestnut 3 Sarl and Chestnut 4 Sarl should be considered non UK source as:
  - the borrowers are non UK resident;
  - the loan agreements will be governed by Luxembourg law;
  - the interest payments are made from a non UK (Luxembourg/Jersey) bank account; and
  - the loans are not secured on any asset located in the UK.

SDLT

- CPUT does not need to continue to qualify as a "unit trust scheme" and "collective investment scheme" post acquisition in order to secure the exemption from SDLT on initial acquisition of the units (although it must apply on acquisition, as noted above). We recommend, however, that it continues as a unit trust scheme and collective investment scheme in order to allow a future purchaser to acquire the units free from SDLT.
- We understand it is the intention of the BREP Funds for the JPUTs to continue as a unit trust schemes and collective investment schemes throughout their period of ownership.
- Two common conditions of a "collective investment scheme" are:
  - there must be more than one unit holder; and
  - the “operator” of the scheme is independent of the participants or unit holders.
- The continued qualification of CPUT and CP6UT as unit trust schemes should be monitored.

VAT

- The JPUTs are registered for UK VAT and have opted to tax their interest in the properties.
- The rental income in relation to the opted properties is the only income of the JPUTs so they are a fully taxable businesses for VAT purposes and should account for VAT at the standard rate (20%) on the rental income they receive.
- VAT incurred on related expenses of the businesses should be recoverable.

Capital allowances

- Beneficiaries (the unit holders) of a unit trust are entitled to claim capital allowances in respect of qualifying expenditure incurred by the unit trust.
- Chestnut 3 Sarl and Chestnut 4 Sarl should be entitled to claim writing down allowances in respect of qualifying expenditure incurred by CP6UT on the construction of Building 6 to reduce their UK property business profits.

UK taxation of Chestnut 3 Sarl and Chestnut 4 Sarl (6 of 6)

Capital allowances (continued)

- Chestnut 1 Sarl and Chestnut 2 Sarl inherited a significant entitlement to capital allowances on acquisition of the units in the Chiswick Park Unit Trust in March 2011. Joint elections were signed with some of the sellers in order to set the disposal and acquisition values for capital allowances purposes. The acquisition values in respect of the capital allowances transferred from the remaining sellers was based on a just and reasonable apportionment of the purchase price.
- Chestnut 1 Sarl and Chestnut 2 Sarl will enter into joint elections with Chestnut 3 Sarl and Chestnut 4 Sarl in order to set the transfer values for capital allowances purposes on the sale of units in CPUT. The time limit for notification of the election to HMRC is 2 years from the date of the acquisition of the qualifying interest, which in this case is 2 years from the date of the acquisition of units in CPUT by Chestnut 3 Sarl and Chestnut 4 Sarl.
- On the assumption that Chestnut 1 Sarl and Chestnut 2 Sarl make full writing down allowance claims in the period to the date of transfer of the units in CPUT and the capital allowances are transferred to Chestnut 3 Sarl and Chestnut 4 Sarl at tax written down value at the date of transfer, the estimated aggregate capital allowances pools transferred to Chestnut 3 Sarl and Chestnut 4 Sarl should be c.£31.6m and c.£44.0m, respectively.

Luxembourg taxation of the JPUTs, Chestnut 3 Sarl and Chestnut 4 Sarl (1 of 2)

Corporate income tax

- Chestnut 3 Sarl and Chestnut 4 Sarl will be subject to tax on their worldwide income (subject to double tax treaty provisions) at a combined corporate income and municipal business tax rate of 29.22%.
- The JPUTs should be transparent from a Luxembourg tax perspective. For tax purposes, the balance sheet of the JPUTs should be consolidated with the balance sheet of its Luxembourg unit holders, as agreed in the ATAs dated 23 March 2011 (in respect of CPUT) and 21 November 2012 (in respect of CP6UT).
- Income and capital gains derived by Chestnut 3 Sarl and Chestnut 4 Sarl (by virtue of their interest in each JPUT) from real estate property located in the UK should be exempt from Luxembourg taxes under the provisions of the Double Tax Treaty between Luxembourg and the UK, as agreed in the ATA.
- In this case, the only income not derived from real estate property located in the UK should be interest earned on cash deposits.
- Therefore, on the basis that Chestnut 3 Sarl and Chestnut 4 Sarl do not undertake another business or investment activity the only income of the companies that should be taxed in Luxembourg is interest earned on cash deposits.
- Interest payments made by Chestnut 3 Sarl and Chestnut 4 Sarl to Deutsche Bank, London Branch should not be subject to Luxembourg WHT.
- There are no official debt-to-equity provisions in the Luxembourg tax law. Based on well established administrative practice, an 85:15 debt-to-equity ratio typically applies to the financing of shareholdings (see details in Appendix 5).
- However, there is no established administrative practice in Luxembourg applicable to the financing of Chestnut 3 Sarl and Chestnut 4 Sarl concerning their (deemed) investment in UK property, except that related party transactions must be on arm's length terms.
- Should the Luxembourg tax authorities question the thin capitalisation position of Chestnut 3 Sarl and Chestnut 4 Sarl and re-qualify a portion of the interest expense into deemed dividend, there should not be any effective Luxembourg tax impact. As all of the interest on the interest bearing loans provided to Chestnut 3 Sarl and Chestnut 4 Sarl should, for Luxembourg tax purposes, be allocated to the UK property business with no Luxembourg tax deduction, no Luxembourg withholding tax should apply as the recipient of the deemed dividend, if any, is by a Luxembourg tax resident company.

VAT

- Costs in relation to the financing, primarily professional advisory service fees from UK service providers, will primarily be charged to the JPUTs.

Luxembourg taxation of the JPUTs, Chestnut 3 Sarl and Chestnut 4 Sarl (2 of 2)

VAT (continued)

- Under EU VAT legislation, the place of supply of lender/financing services and of professional advisory services rendered to a non EU-established recipient is the place where that recipient is located.
- Consequently, the lender/financing services and the professional advisory services supplied to the JPUTs should be deemed to be supplied in Jersey and so should not be subject to any EU VAT. No Jersey GST is applicable to such costs.
- Chestnut 3 Sarl and Chestnut 4 Sarl are not registered for VAT in Luxembourg as they do not carry out any qualifying activities for VAT purposes. If they do not receive services from non-Luxembourg service providers on which they are liable to account for Luxembourg VAT (e.g. legal services, tax services), they will not have an obligation to register for Luxembourg VAT.

Minimum taxation

- From 1 January 2013, the minimum annual corporate income tax has been increased from €1,500 to €3,000 (€3,210 taking into account the solidarity surtax) and is applicable to all corporate entities having their statutory seat or central administration in Luxembourg and for which the sum of fixed financial assets, transferable securities and cash at bank exceed 90% of their total balance sheet, i.e. all of the Luxembourg companies in the structure including Chestnut 3 Sarl and Chestnut 4 Sarl.

Net wealth tax ("NWT")

- The NWT basis is known as "unitary value". It is set on 1 January of each year and determined by the difference between the assets and the liabilities against third parties usually to be taken into account for their fair market value with some exceptions. The NWT due is 0.5% of the rounded unitary value.
- Based on articles 23 (1) and 25 (2) (a) of the double tax treaty between Luxembourg and the UK, immovable property which is located in the UK and held by a Luxembourg company, including through tax transparent JPUTs, is only taxable in the UK and exempt in Luxembourg.
- Debt payables in relation to exempt assets are not deductible.
- With regard to Chestnut 3 Sarl and Chestnut 4 Sarl, a positive unitary value could be expected if any profits in the JPUTs and/or the companies themselves are not distributed by way of interim profit distributions before a year end.
- With regard to BRE/Chestnut PledgeCo Sarl, BRE/Chestnut HoldCo Sarl and BRE/Chestnut New Mezzco Sarl a positive unitary value could be expected if dividends received from their subsidiaries are not further distributed before a year-end, and/or other profits are not distributed (e.g. margins on financing activities) as dividends.
- At the level of other Luxembourg holding companies, a positive unitary value could be expected in case of profits (e.g. margins on financing activities) are not distributed as dividends before a year-end.

Luxembourg taxation of the holding structure (1 of 3)

PPLs

- The PPLs include a nominal fixed interest rate in order to secure their classification as debt instruments in Luxembourg. The PPLs should be treated as debt for income taxes purposes so that no interest payments should be re-qualified as dividend payments and Luxembourg withholding tax at a rate of 15% should not apply.
- The classification of the PPLs has been confirmed and agreed by the Luxembourg tax administration in an Advance Tax Agreement ("ATA") signed on 23 March 2011. This ATA, together with an ATA dated 21 November 2012 in respect of the Luxembourg structure for Building 6, confirms the debt classification of PPLs, GBP as a functional currency, the transparent treatment of the JPUTs for Luxembourg purposes and the fact that income from the underlying UK real estate will be exempt from Luxembourg taxation.
- The financing of participations is, in principle, subject to a debt-to-equity ratio of 85:15 in Luxembourg. However, economic borrowing to on-lend funding and pure borrowing to on-lend financing activities fall outside of the scope of this ratio, subject to agreeing the ATA with the Luxembourg tax administration.
- It has been agreed in the ATA that BRE/Europe 5Q Sarl, BRE/Chestnut Topco Sarl, BRE/Chestnut Midco Sarl and BRE/Chestnut Holdco Sarl are all in an economic borrowing-to-onlend position, the PPL provided to each company being economically linked to the PPL and equity provided to its subsidiary.
- It has been agreed in the ATA that BRE/Europe Mezzco Sarl is in a pure borrowing-to-onlend position with regard to its PPL and mezzanine financing.
- Following its insertion into the holding structure, BRE/Chestnut Super Topco Sarl should be in a economic borrowing to on-lend position as the PPL to BRE/Chestnut Super Topco Sarl should be considered to be economically linked to the PPL provided to, and equity in, BRE/Chestnut Topco Sarl.
- Therefore, no interest payments from BRE/Chestnut HoldCo Sarl, BRE/Chestnut PledgeCo Sarl, BRE/Chestnut New MezzCo Sarl, BRE/Chestnut TopCo Sarl, BRE/Chestnut Super TopCo Sarl or BRE/Europe 5Q Sarl should be re-qualified as dividend payments and Luxembourg withholding tax at a rate of 15% should not apply.

Taxable margin

- An arm's length margin needs to be realised by the Luxembourg companies on their financing activities. Such margin should be determined on the basis of the amounts involved and the risk borne by the companies. A Transfer Pricing circular has been issued by the Luxembourg tax authorities on 28 January 2011 (the "Circular") according to which a transfer pricing analysis is required for any new Advance Pricing Agreement ("APA") on back-to-back loan margins. An APA for the Luxembourg companies in the acquisition structure was obtained along with agreement of the ATA on 23 March 2011, the details of which are set out below.
- According to the Circular, the Luxembourg companies providing intra-group financing must have real substance in Luxembourg and must take a risk in the financing.

Luxembourg taxation of the holding structure (2 of 3)

Taxable margin (continued)

- Therefore the entity's own capital should be appropriate with regard to the functions performed. The equity should be effectively at risk and remuneration should be earned by the Luxembourg company that has put its equity at risk. The circular considers that the company takes a risk when it has capital corresponding to at least 1% of the nominal amount of the loans granted, up to a minimum capital requirement of €2m.
- The minimum capital requirement at risk must only be fulfilled at one level. This requirement will be met in BRE/Chestnut New Mezzco Sarl which has equity equivalent to, or greater than, the minimum capital requirement of €2m. BRE/Chestnut New Mezzco Sarl's risk will be limited through the means of the limited recourse clause in the respective PPL financing documentation.
- Therefore, on the basis that the operational guidelines in Appendix 8are adhered to, the relevant financing company in the holding structure, BRE/Chestnut New MezzCo Sarl, should have sufficient substance under the provisions of the Circular.
- In this structure, so that the equity does not finance a taxable asset (profit participating loans or shareholder loans), it is used to finance equity funding in BRE/Chestnut Pledgeco Sarl which, in turn, finances equity in BRE/Chestnut Holdco Sarl and then equity in Chestnut 3 Sarl and Chestnut 4 Sarl.
- A single margin has to be left in the structure, typically at the level of the company that has the minimum capital requirements i.e. BRE/Chestnut New MezzCo Sarl. However, the other companies involved in the back-to-back financing should earn a reward for their functions - a "handling fee" as a remuneration for their financing activity. The handling fees are to be considered as a gross amount and hence costs relating to the financing activity are tax deductible from it but the handling fee in each company should at least cover that company's operating expenses.
- A new APA will be agreed with the Luxembourg tax authorities to reflect the new mezzanine terms and the reduction of the outstanding PPL financing principal amounts.

Dividends

- Profits realised by Chestnut 3 Sarl and Chestnut 4 Sarl after the payments of interest on their intercompany debts can be distributed to BRE/Chestnut HoldCo Sarl.
- Such dividends should be exempt from tax in Luxembourg under the participation exemption provided that, broadly, BRE/Chestnut HoldCo Sarl holds (or undertakes to hold) the shares in the company making the distribution for more than 12 months. The period of 12 months will start as of the implementation of Step 4.4. See further details regarding the participation exemption in Appendix 8.

Luxembourg taxation of the holding structure (3 of 3)

Dividends (continued)

- Dividends received by BRE/Chestnut Holdco Sarl would then be distributed to, in turn, BRE/Chestnut PledgeCo Sarl, BRE/Chestnut New MezzCo Sarl and then BRE/Chestnut Topco Sarl. Those dividends should, again, be exempt from tax in Luxembourg under the participation exemption.
- Dividends received by BRE/Chestnut Topco Sarl will be repatriated to the BREP Funds as variable interest on the PPLs through BRE/Chestnut Super TopCo Sarl. As set out above, interest on the PPLs should not be re-qualified as dividend payments and, therefore, Luxembourg withholding tax at a rate of 15% should not apply.

Withholding tax

- Interest payments by BRE/Chestnut New MezzCo Sarl to the third party lender under the mezzanine facility agreement should not be subject to Luxembourg WHT.

Foreign exchange considerations

- As the financing arrangements in the structure are denominated in GBP, all Luxembourg companies (except BRE/Europe 5Q S.à r.l. As it also has activities denominated in EUR) have a GBP functional currency agreement as part of the ATAs dated 23 March 2011 and 21 November 2012 in order to avoid any taxable foreign exchange gains or losses in Luxembourg.
- Any taxable forex result in BRE/Europe 5Q S.à r.l. will be offset by PPL variable interest, under the terms of the PPL agreement.

VAT

- BRE/Europe 5Q S.à r.l. is already VAT registered in Luxembourg under the normal regime due to its management activity to other group entities.
- BRE/Chestnut Super TopCo Sarl, BRE/Chestnut TopCo Sarl, BRE/Chestnut New MezzCo Sarl, BRE/Chestnut PledgeCo Sarl, and BRE/Chestnut HoldCo Sarl qualify as VAT taxable persons in Luxembourg due to their financing activities.
- They are only required to register for VAT in Luxembourg under the simplified scheme and account for Luxembourg VAT at the standard rate (currently 15%) under the reverse charge mechanism if they receive services from non-Luxembourg service providers on which they are liable to account for Luxembourg VAT. Any Luxembourg VAT incurred would not be recoverable on the basis that these companies are making exempt supplies.
- They are not currently registered for Luxembourg VAT and if they do not receive services from non-Luxembourg service providers on which they are liable to account for Luxembourg VAT (e.g. legal services, tax services), they will not have an obligation to register for Luxembourg VAT.

Jersey taxation

- Jersey resident trustees are subject to Jersey tax on income at a rate of 20%.
- By statutory concession ('Concession 2') the trustees of Jersey settlements with all non-Jersey resident beneficiaries are not taxed on non-Jersey income. Rental income from UK properties is non-Jersey income.
- In this case, none of the beneficiaries are Jersey resident and therefore no Jersey tax liability should arise in relation to income generated by the underlying real estate.
- Chestnut 3 Sarl and Chestnut 4 Sarl should not be subject to Jersey tax on non-Jersey income.
- Goods and Services Tax ('GST') is charged on taxable supplies at a rate of 5% when Jersey entities have taxable supplies over a threshold of £300k per annum. Entities registered as International Services Entities ('ISE') are exempt from GST (they do not suffer or charge GST on taxable supplies). To register for ISE entities pay a flat rate annual fee (currently £200) to the Comptroller of Taxes.
- The administrators of the JPUTs or the trustees should register for ISE each year.

US taxation

- All of the assets and liabilities of the properties and disregarded entities are reported by BRE/Europe 5Q Sarl. Net taxable income from these entities, computed under US tax principles, would flow through the disregarded entities and BRE/Europe 5Q Sarl to the BREP Funds.
- In addition to the check-the-box elections, there may be additional annual compliance necessary depending on the US ownership of the entities in the structure.

Repatriation of profits

Payments due under the senior and mezzanine debts

Senior debt – JPUTs

- Interest payments on the senior debt borrowed by CPUT and CP6UT will be met directly out of the income received by those entities from the properties in the form of rental income and other property receipts.

Senior debt – Chestnut 3 Sarl and Chestnut 4 Sarl

- Interest payments on the senior debt borrowed by Chestnut 3 Sarl and Chestnut 4 Sarl will be met from funds distributed to those entities from CPUT and CP6UT.
- The timing of distributions from the JPUTs should be such that funds can be repatriated to Chestnut 3 Sarl and Chestnut 4 Sarl to meet interest payments on their loans due to the senior lender.

Mezzanine debt

- As the mezzanine debt is borrowed by BRE/Chestnut New MezzCo Sarl consideration should be given to repatriating profits to BRE/Chestnut New MezzCo Sarl so that it meets its interest and principal payment obligations.
- Chestnut 3 Sarl and Chestnut 4 Sarl will use funds from the JPUTs, after payments of interest and/or principal on the senior debt, to pay interest and/or repay principal on the intercompany mezzanine loans due to BRE/Chestnut PledgeCo Sarl.
- BRE/Chestnut PledgeCo Sarl will use receipts of interest and/or repayments of principal on the inter-company loans due from Chestnut 3 Sarl and Chestnut 4 Sarl to pay interest and/or repay principal on the inter-company loan due to BRE/Chestnut New MezzCo Sarl.
- BRE/Chestnut New MezzCo Sarl will use these receipts to fund payments of interest and/or repayments of principal on its mezzanine loan.

Repatriation of profits to BREP Funds

- Profits arising in Chestnut 3 Sarl and Chestnut 4 Sarl, after payments required under the senior and on-lent mezzanine loans, will be repatriated to the BREP Funds as follows:
  1. payments of interest and repayments of principal on the interest-bearing debts to BRE/Chestnut HoldCo Sarl;
  2. payments of interest and repayments of principal on the profit participating loans due from BRE/Chestnut HoldCo Sarl up through the acquisition structure to the BREP Funds; and
  3. any remaining profits will be distributed from Chestnut 3 Sarl and Chestnut 4 Sarl by way of dividends to, in turn, BRE/Chestnut HoldCo Sarl, BRE/Chestnut PledgeCo Sarl, BRE/Chestnut New MezzCo Sarl and the BRE/Chestnut Topco Sarl from which they would be paid up to the BREP funds as variable interest on the PPLs.

Operating guidelines for the trustees of the JPUTs

- From a UK tax perspective, it is imperative that the Trustees of the JPUTs make decisions and hold all meetings in respect of the JPUTs in Jersey.
- Under the general law test for UK tax a (non-UK established) entity is resident in that territory in which it is centrally managed and controlled.
- An entity is centrally managed and controlled in that territory in which the highest and most important decisions affecting the management and control of the entity are made. The boards of trustees of the JPUTs must have the final and highest decision-making authority over the assets of the JPUTs. Key decisions that the trustees must have control and authority over include (this list is not complete but provides an indication of the actions to be considered):
    - Acquisition or disposal of the properties;
    - Approval of loan finance or refinancing decisions;
- The Trustees should meet as regularly as necessary, and at least four times a year (ideally once every quarter). In order to minimise the risk that key decisions are taken in between normal trustee meetings by Trustees when they, for example, may not be in Jersey, it might be necessary (e.g. in order to make an urgent key strategic decision) for further meetings to be held as and when required in addition to the 'normal' meetings above.
- All trustees meetings should be held in Jersey and be fully documented with more than 50% of the directors of the Trustees physically present at the meeting in Jersey.
- The Trustees should continue to be resident in Jersey.
- The quorum for trustees meetings should require a majority of Jersey or non-UK resident directors to be in attendance for each meeting. To the extent that there are any directors that are UK resident they must be prepared to travel to board meetings in Jersey, rather than dialling in from the UK.
- The Trustees should have appropriate experience, qualifications and stature so as to execute the role of a trustee.
- Concise and accurate minutes must be kept of all trustee meetings, together with full supporting documentation including papers and Memorandums considered by the trustees. It will be important to ensure that decisions are not "anticipated" in a way which suggests that the trustees are merely rubberstamping decisions already made.
- We understand that the Trustees will be required to seek approval from the unit holders, Chestnut 3 Sarl and Chestnut 4 Sarl, in respect of certain key strategic decisions relating to the JPUTs. This should not affect the tax status of the JPUTs from a UK tax perspective on the basis that decisions are still being made offshore, either in Jersey or Luxembourg. Furthermore, it should not affect the status of the JPUTs from a Luxembourg tax perspective; they should continue to be tax transparent in respect of income and gains in Luxembourg.

Operational guidelines for the Luxembourg companies (1 of 2)

- From a UK tax perspective, it is imperative that all the Luxcos being Chestnut 1 ,Chestnut 2 , Chestnut3 and Chestnut 4 Sarl are at all times managed and controlled in Luxembourg to ensure that they benefit from any Luxembourg double tax treaty and do not become UK tax resident. The following operational procedures should be followed to minimise this risk.
- A company is centrally managed and controlled in that territory in which the highest and most important decisions affecting the management and control of the company are made. The board of directors must have the final and highest decision-making authority within the Luxcos. Key decisions that the directors must have total control over include (this list is not complete but provides an indication of the actions to be considered):
    - Acquisition or disposal of Units in the JPUTs
    - Approval of loan finance or refinancing decisions;
    - Review of the performance of the companies' investments.
- The directors must refrain from decision-making relating to the Luxcos' business outside of the properly constituted board meetings (during which the Luxcos' key strategic decisions need to be made, including decisions in principle to enter into key contracts and agreements).

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- The boards should meet as regularly as necessary, and at least once every 3 to 4 months. In order to minimise the risk that key decisions were taken in between normal board meetings by board members when in the UK, it might be necessary (e.g. in order to make an urgent key strategic decision) for further meetings to be held as and when required in addition to the quarterly meetings above.
- All company board meetings should be held in Luxembourg and be fully documented.
- Ideally more than 50% of the board members should be physically present at the meeting in Luxembourg with the remainder participating by proxy or by telephone but not from the UK.
- The majority of board members should not be resident in the UK.
- To the extent that there are any directors that are UK resident they must be prepared to travel to board meetings in Luxembourg, rather than dialling in from the UK.
- The quorum for board meetings should require a majority of Luxembourg or non-UK resident directors to be in attendance for each meeting.
- The directors should have appropriate experience, qualifications and stature so as to execute the role of director credibly.

Operational guidelines for the Luxembourg companies (2 of 2)

- The Luxcos' register and seals etc. should be kept in Luxembourg from where all company secretarial matters must be conducted. Concise and accurate minutes must be kept of all board meetings, together with full supporting documentation including papers and Memorandums considered by the boards. It will be important to ensure that decisions are not "anticipated" in a way which suggests that the boards are merely rubberstamping decisions already made. If the boards delegate authority to a sub-committee it will be important that the boards are not seen to be rubber stamping decisions of the sub-committee.
- Modern communications technology means that all participating members of the board do not necessarily need to be physically present in the same place for there to be an effective decisions making process. However, management and control must be exercised in Luxembourg. No person taking part should physically be present in the UK during the meeting.
- Proxies should be avoided where possible. These should only be used as a last resort rather than general practice.
- Any advisors to the Luxcos should only be in a position to make recommendations to the board or only perform work following the board's approval. The advisors should not be in a position to make key decisions.
- Negotiations in respect of any documents and/or contracts should ideally be by the directors (who are not UK resident) and not their agents. Practically, it may be necessary for the negotiations to be authorised by the directors and parameters agreed.

Luxembourg participation exemption

The Luxembourg domestic participation exemption provides for an exemption for dividends and capital gains realised upon the disposal of shares. The qualifying conditions under these rules are as follows.

Qualifying conditions

1) The distributing company/company being disposed ,is either:
   - a fully taxable resident capital company; or
   - a non-resident capital company that is fully liable to a tax corresponding to corporation tax. (Regarding this condition, the Luxembourg tax authorities have set the rule that the foreign tax must be assessed at a minimum rate of 10.5% on a taxable basis similar to Luxembourg); or
   - a capital company that is resident in another Member State of the European Union and is covered by the EU Council Directive of 30 November 2011 on the common tax treatment applicable to parent companies and subsidiaries of different Member States.
2) The receiving company/company disposing of shares, is either:
   - a capital company that is resident in Luxembourg and fully taxable; or
   - a Luxembourg domestic permanent establishment of a company that is resident in another Member State of the European Union and is covered by the EU Council Directive of 30 November 2011 on the common tax treatment applicable to parent companies and subsidiaries of different Member States; or
   - a Luxembourg domestic permanent establishment of a capital company that is resident in a state with which Luxembourg has concluded a double taxation treaty.
3) At the date on which the income is made available, the beneficiary holds or undertakes to hold the shares in question for an uninterrupted period of at least twelve months, and that during this period the holding rate does not fall below the threshold of 10%, or the acquisition price of:
   - €6m for the exemption of capital gains;
   - €1.2m for the exemption of dividends.

- Shareholdings qualifying for the dividend participation exemption also qualify for the Net Wealth Tax exemption.

Luxembourg Transfer Pricing Guidelines

- Transfer Pricing Circular n. 164/2 dated 28 January 2011 (the "Circular") applies to all Luxembourg entities that are principally engaged in intra-group financing transactions. Under the Circular, an Advance Pricing Agreement ("APA") to secure the remuneration on intra-group financing activities can now only be obtained if the following three conditions are fulfilled:
  - There is equity at risk at the Luxembourg company;
  - Substance requirements are met;
  - A transfer pricing ("TP") analysis has been performed.

Equity at risk

- The entity's own capital should be appropriate with regard to the functions performed (minimum of 1% of the financing amount or €2m). The equity should be effectively at risk. Remuneration should be earned by the Luxembourg company for investing the equity at risk.

Substance requirements

- A company engaged in intra-group financing activities will be considered having sufficient substance in Luxembourg, notably if the following requirements are met:
  - A majority of the members of the board of directors, directors, or managers having the ability to act on behalf of the entity, are either Luxembourg residents, or non-residents with a professional activity in Luxembourg (i.e. commercial activity, independent and professional activity, employment) and who are liable to tax in Luxembourg for at least 50% of their annual income.
  - Members of the board, directors and managers need to have the required professional knowledge to fulfil their duties correctly. Furthermore, they must have at least the capacity to act on behalf of the entity and to ensure the proper execution of all transactions.
  - Key decisions concerning the entity's management have to be taken in Luxembourg.
  - The entity needs to have at least a bank account in its own name either at a financial institution established in Luxembourg, or at a Luxembourg branch of a financial institution registered outside Luxembourg.
  - Upon submission of an APA, the entity must have met all the requirements related to the filing of tax returns.
  - The entity should not be considered a tax resident in another State.
  - The entity's own capital should be appropriate with regards to the functions performed (see above).

TP analysis

- To determine whether the remuneration earned by the Luxembourg financing entity is comparable with the remuneration earned between independent entities, a comparability analysis has to be performed. The remuneration will be based on the function performed by the financing entity, taking into account the assets utilised and the risk borne.
- We will perform this TP analysis once the financing figures of the shareholder loans are confirmed.

Non-resident landlord (NRL) Scheme (1 of 3)

Conditions for application

- Non-resident landlord ("NRL") companies can apply to receive their rent with no tax deducted on the basis that the following apply:
  - their UK tax affairs are up to date;
  - they have not had any UK tax obligations before they applied; and
  - they do not expect to be liable to UK income tax for the year in which they apply.

Filing Obligations

- A company will be required to file non-resident company self assessment tax returns covering the year to 5 April, which are due for filing by the following 31 January.
- In the first tax paying year, income tax will be due in one instalment on the 31 January filing deadline.
- For subsequent years, income tax will be due in three instalments. The first two are equal instalments based on the income tax paid in the previous year to 5 April due on 31 January during the tax year to 5 April and the following 31 July. The third instalment on any income tax owing is due 31 January that follows the tax year end 5 April.
- The NRL tax computations are required in principle to be prepared from accounts that comply with UK Generally Accepted Accounting Principles ("UK GAAP"). If the accounts of the company are prepared under Luxembourg Generally Accepted Accounts Principles ("Luxembourg GAAP") which differs in principle from International GAAP being the International Financial Reporting Standards ("IFRS"), then the tax computations should be prepared from accounts which have been adjusted for UK GAAP.

Letting Agent Obligations

- The letting agents of the non resident landlords must complete NRLY Annual Return (even if they have not deducted any tax under the Non-Resident Landlords Scheme).
- If all of the Unitholders are approved by HMRC under the NRL Scheme to receive rental income gross, the letting agent will not be required to calculate or pay tax on the rental income of the NRL.
- If approval for the landlord to receive rental income gross has not been confirmed by HMRC, the letting agent operating the NRL scheme must calculate and pay tax each quarter ending the last day of June, September, December and March.
- Within 30 days of each quarter end, the letting agents should calculate tax at the basic rate on the rental income less any deductible expenses (explained below) relating to that business.

Non-resident landlord (NRL) Scheme (2 of 3)

Letting Agent Obligations (continued)

- Rental income is calculated as rental income received in the quarter and rental income which was income which they had the power to receive and was paid away in the quarter at their direction to another person without being received by the letting agent.
- The letting agent should deduct from the rental income any deductible expenses, which they paid in the quarter and any deductible expenses which were paid away in the quarter at their direction by another person.
- The following expenses paid by the letting agent are normally deductible:
  - accountancy expenses (incurred in preparing rental business accounts but not for preparing personal tax returns);
  - advertising costs of attracting new tenants;
  - charges for inventories;
  - costs of rent collection;
  - Council Tax while the property is vacant but available for letting;
  - gardening;
  - ground rent;
  - insurance against loss of rents;
  - insurance claim fees;
  - insurance on buildings and contents.
  - interest paid on loans to buy land or property;
  - interest paid on loans to build or improve premises;
  - legal and professional fees;
  - letting agents' fees;
  - maintenance charges made by freeholders, or superior leaseholders, of leasehold property;
  - maintenance contracts (for example gas servicing);
  - provision of services (for example gas, electricity, hot water);
  - rates;
  - rental warranty and legal expenses insurance;
  - repairs which are not significant improvements to the property; and
  - water rates.

Non-resident landlord (NRL) Scheme (3 of 3)

Letting Agent Obligations (continued)

- Where the deductible expenses for any quarter exceed the rental income to be taken into account for the quarter, letting agents should treat the excess expenses as follows:
  - Carry Back
    - firstly, by carrying back excess expenses and deducting them from rental income of the same landlord for previous quarters in the same year to 31 March, taking later quarters before earlier quarters; and
  - Carry Forward
    - secondly, by deducting the balance of any excess from rental income of the same landlord received for subsequent quarters, taking earlier quarters before later quarters. The carry forward of excess expenses is not restricted to quarters within the same year to 31 March.
- Where an amount paid in a previous quarter becomes repayable as a result of a carry back, the amount repayable:
  - shall first be set-off from the total tax due in respect of other non-resident landlords for the same payment quarter as that in which the excess expenses arise; and
  - if they cannot set-off the repayable amount in this way, by claiming a repayment on form NRLQ.
- Tax should be paid by the letting agent within 30 days of each respective quarter end using form NRLQ.
- Following the 31 March year end, annual NRLY returns should be filed by 5 July.
- Where the letting agent has deducted income tax from the landlord's rental income, the letting agent should provide the landlord a tax deduction certificate (using NRL6) relating to the year ended 31 March by the following 5 July.

Transactions in land (1 of 2)

- Any capital gain on the sale of the properties, whether directly or indirectly via a sale of units or shares, may be subject to a UK income tax charge under the 'transactions in land' rules (ITA 2007, s.756). There are often tax benefits from realising profit by way of capital gains rather than trading profits and so these rules seek to target situations in which transactions take place with the intention of making a profit similar to that of a dealer in land but by a method which gives rise to a gain of a capital nature.
- For the rules to apply, the gain must first be 'of a capital nature [and must be] obtained from the disposal of the land …'.
- Land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over it, is effectively disposed of. If there is a disposal of the land and a capital gain arises from that disposal, the rules apply if any of these specific conditions apply (ITA 2007, s.756(3)):
  a) the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
  b) any property deriving its value from the land is acquired with the sole or main object of realising a gain from disposing of all or part of the land,
  c) the land is held as trading stock and
  d) the land is developed with the sole or main object of realising a gain from disposing of all or part of the land when developed.
- The transaction in land provisions also apply if land is developed within an SPV and it is the sole or main object of another person (for example the holding company) to realise a capital gain from an indirect disposal of the land when developed (for example through a sale of the shares in the developing SPV).

Sales of shares in Chestnut 3 Sarl and Chestnut 4 Sarl at Step 4.4

- The sales of the units in Chestnut 3 Sarl and Chestnut 4 Sarl are potentially within condition (d) if the Building 6 property is being developed with the sole or main intention of the sellers or other members of the group realising a gain from disposal of the property, rather than holding it as an income producing asset.
- However, the transactions in land rules should not apply to a sale of shares in Chestnut 3 Sarl and Chestnut 4 Sarl as any potential charge under the transactions in land rules should be precluded under the UK:Luxembourg double tax treaty by virtue of Article XIII(3) which gives Luxembourg the right of taxation over a disposal of shares by a Luxembourg resident.

Sales of units in CPUT at Step 6.1

- The sales of the units in CPUT by Chestnut 1 Sarl and Chestnut 2 Sarl are potentially within condition (b) if the units in CPUT were previously acquired with sole or main intention of those companies or other members of the group of realising a gain from disposal of the properties, rather than holding them as an income producing asset.

Transactions in land (2 of 2)

Sales of units in CPUT at Step 6.1 (continued)

- On the basis that the intention of Chestnut 1 Sarl and Chestnut 2 Sarl has been to hold the main estate properties for investment purposes and the sale of the units in CPUT is not to a third party but rather to another group member in order to facilitate the refinancing of the group's investments, we consider that the risk of the transactions in land rules applying to tax a gain on the sale of the units in CPUT to be low.
- Should a transactions in land charge apply, the person liable for any tax charged under the transactions in land rules is the person whose income it is and the general rule is that that person is the person who realises the gain (in this case, Chestnut 1 Sarl and Chestnut 2 Sarl). Any charge to UK tax for an entity within the refinancing group under the transactions in land rules should only arise if an entity in the refinancing group provided value to Chestnut 1 Sarl or Chestnut 2 Sarl, or alternatively provided Chestnut 1 Sarl or Chestnut 2 Sarl with the opportunity to realise the (capital) gain.
- As the units in CPUT were acquired by Chestnut 1 Sarl and Chestnut 2 Sarl from a third party and on the basis that Chestnut 3 Sarl and Chestnut 4 Sarl acquire the units at market value, no entities with the refinancing group should be treated as having provided Chestnut 1 Sarl or Chestnut 2 Sarl with value or the opportunity to make a gain. In addition, published HMRC guidance at BIM60335 makes it clear that these secondary liability provisions should only be used where a charge on the person realising the gain is not possible (for example, because they are a non-resident with limited UK assets but the opportunity to realise the gain has been provided by a UK resident).

Contract

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BRE/Chestnut Super TopCo S.à r.l.
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Chestnut 2 S.à r.l.
Chestnut 3 S.à r.l.
Chestnut 4 S.à r.l.
2-4 Rue Eugène Ruppert
L-2453

Appleby Trust (Jersey) Limited (as joint trustee of the Chiswick Park Unit Trust)
P&L Trust Company Limited (as joint trustee of the Chiswick Park Unit Trust)
13-14 Esplanade
St Helier
Jersey
JE1 1BD
Channel Islands

Appleby Trust (Jersey) Limited (as trustee of the Chiswick Park Six Unit Trust)
13-14 Esplanade
St Helier
Jersey
JE1 1BD
Channel Islands

together, ("The Parties")

Contract

PRIVATE & CONFIDENTIAL

The Blackstone Group International Partners LLP
40 Berkeley Square
London
W1J 5AL

BRE/Europe 5Q S.à r.l.
BRE/Chestnut Super TopCo S.à r.l.
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BRE/Chestnut New MezzCo S.à r.l.
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16 April 2013

Dear Sirs

Proposed financing of the Chiswick Park Unit Trust ("CPUT") and the Chiswick Park Six Unit Trust ("CP6UT") held by BRE/Europe 5Q S.à r.l. and its subsidiaries (the "Group") (the "Transaction")

Thank you for appointing PricewaterhouseCoopers LLP ("PwC") to assist you in connection with the proposed refinancing of the Chiswick Park Unit Trust ("CPUT") and the Chiswick Park Six Unit Trust ("CP6UT") held by BRE/Europe 5Q S.à r.l. and its subsidiaries (the "Group")(the "Transaction"). This Engagement Letter sets out the Services that we have agreed to provide, and the terms of our engagement.

PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT
T: +44 (0) 20 7583 5000, F: +44 (0) 20 7212 4652, www.pwc.co.uk

PricewaterhouseCoopers LLP is a limited liability partnership registered in England with registered number OC303525. The registered office of PricewaterhouseCoopers LLP is 1 Embankment Place, London WC2N 6RH.PricewaterhouseCoopers LLP is authorised and regulated by the Financial Services Authority for designated investment business.

We understand that, in connection with any debt financing of the Transaction, one or more lending institutions may wish to have access to our report. You may provide copies of our report to potential lenders on the basis outlined in clause F2.1.2 of the Terms of Business, which (among other things) requires you to make it clear to recipients that PwC does not assume any duty or liability to them. We will only be prepared to assume a duty of care to a lending institution if it agrees to be bound by the terms of an Assumption of Duty letter, in a form acceptable to us, between us and the Lead Bank (as defined in clause F5.5 of the attached Terms of Business).

1. The Services to be provided

1.1 Tax structuring advice

We will advise you on an appropriate tax structure for the Transaction. We will provide written commentaries on the technical issues involved and the steps necessary for the Transaction to be carried out in a way that gives effect to that structure. It is envisaged that this advice will include advice in relation to:

- Devising an appropriate structure to accommodate the refinancing;
- The tax treatment of shareholder debt and equity;
- The direct and indirect tax treatment of the principal fees and expenses related to the refinancing;
- Any relevant tax clearance, ruling applications, or additional documentation necessary for the implementation and confirmation of the tax treatment of the final structure; and
- Tax advice with regard to the entity classification for US tax purposes of entities within the acquisition structure.

We will provide our advice in the form of a Tax Structure Report.

Our tax structuring work under this Engagement Letter will not include implementation of the final steps; however we would be happy to advise you on such implementation, if required.

We are only advising on those issues which are set out in the Engagement Letter. You have not asked us to advise, as part of this engagement, on the implications of any other issues. If you require advice in relation to any other matters, let us know.

1.2 Refinancing agreements

In connection with our advice on tax structuring, we will also, if requested, review drafts of the refinancing agreements, including loan documents, prepared in connection with the steps of the refinancing to ensure the legal documentation is consistent with the tax structuring of the refinancing. However, we would do so as tax advisers and not as lawyers or legal draftsmen and responsibility for ensuring that the tax structure you intend to adopt is properly reflected in the agreements remains with you and your legal advisers.

1.3 Commitments regarding future services

If you are contemplating imposing or accepting any contractual term which would commit you to providing or obtaining any report from us (for example on a completion balance sheets or on

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Contract

compliance with loan covenants), please consult with us first; we can advise on the scope and wording of any such report and on the terms on which we would (or would not) undertake the work.

2. **The team**

Our team will be lead by Jonathan Hardwick who will be the Engagement Partner responsible for the Services we are to provide to you.

Please note, as set out in the introductory paragraphs of the attached Terms of Business, that we use the term "partner" in this letter and more generally to refer to our members (unless the context otherwise requires).

3. **Fees**

Our fees will be charged in accordance with our Terms of Business.

We will send our invoices to Jean-Francois Bossy and/or Appleby Trust (Jersey) Limited, as appropriate, whom we understand will be responsible for arranging payment in accordance with our Terms of Business.

4. **Terms of Business**

This Engagement Letter should be read in conjunction with the enclosed Terms of Business. The following amendments to the Terms of Business have been agreed between us:

- In clauses 5.1 and F1.3 the references to "out of pocket expenses" shall be deleted and replaced with "reasonable out of pocket expenses".
- The time period referred to in clause 7.2 is increased from three to six years.
- The limits of liability set out in clauses 7.3.1 and 7.3.3 will be amended to £5 million.
- Clause 3.2.5 is amended to read, "Subject to 3.1.1 above, and even once the Transaction is no longer confidential, we may only cite the performance of the Services to our clients, prospective clients or any other third parties after obtaining your prior written consent.".
- Clause 5.4 to be amended to read, "Payment is due within 30 days of receipt of the invoice. The amount billed will be payable regardless of whether or not the Transaction is completed.".
- The end of Clause 9.7 to be amended to include the following "except for any Contract Team Member who has responded to a general solicitation of employment not directly at the Contract Team Members or a Contract Team Member who has contacted a party on his or her own initiative without any solicitation by or encouragement from such party.".
- For the purposes of clause 11.27 of the Terms of Business, the Tax Structuring Services are those Services described under 'Tax structuring advice' of this Engagement Letter.

5. **Compliance with laws and regulations on anti-corruption**

We shall comply with all applicable laws and regulations on anti-corruption. In addition, in connection with this Engagement Letter and the performance by us of our obligations under this Engagement Letter, we represent, and warrant that we have not paid or delivered, or offered or promised to pay or deliver, and will not pay or deliver, or offer or promise to pay or deliver, any fee or any other thing of value to any Government Official for the purposes of corruptly influencing any act or decision of such Government Official in his or her official capacity to direct business to or otherwise

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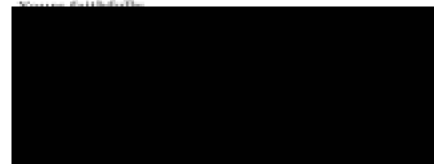
secure any improper advantage for any of the parties to this Engagement Letter. The term "Government Official" in this paragraph means any officer or employee of a government or any governmental department or agency, or any person acting in an official capacity for or on behalf of any such government or governmental department or agency. We shall take steps to ensure that any third party agent or representative utilised by us in connection with the performance of our obligations under this Engagement Letter is subject to the same representations and warranties set forth in this paragraph.

Acknowledgement and acceptance

This letter (including its Appendix and, in relation to those responsible for paying our fees, the written details of our fee arrangements) and the enclosed Terms of Business UK DDFI Version 2.2 (including Addendum) together form the Contract between us.

Please record your agreement to the terms of this Contract by signing the enclosed copy of this letter in the space provided and returning it to us.

Yours faithfully



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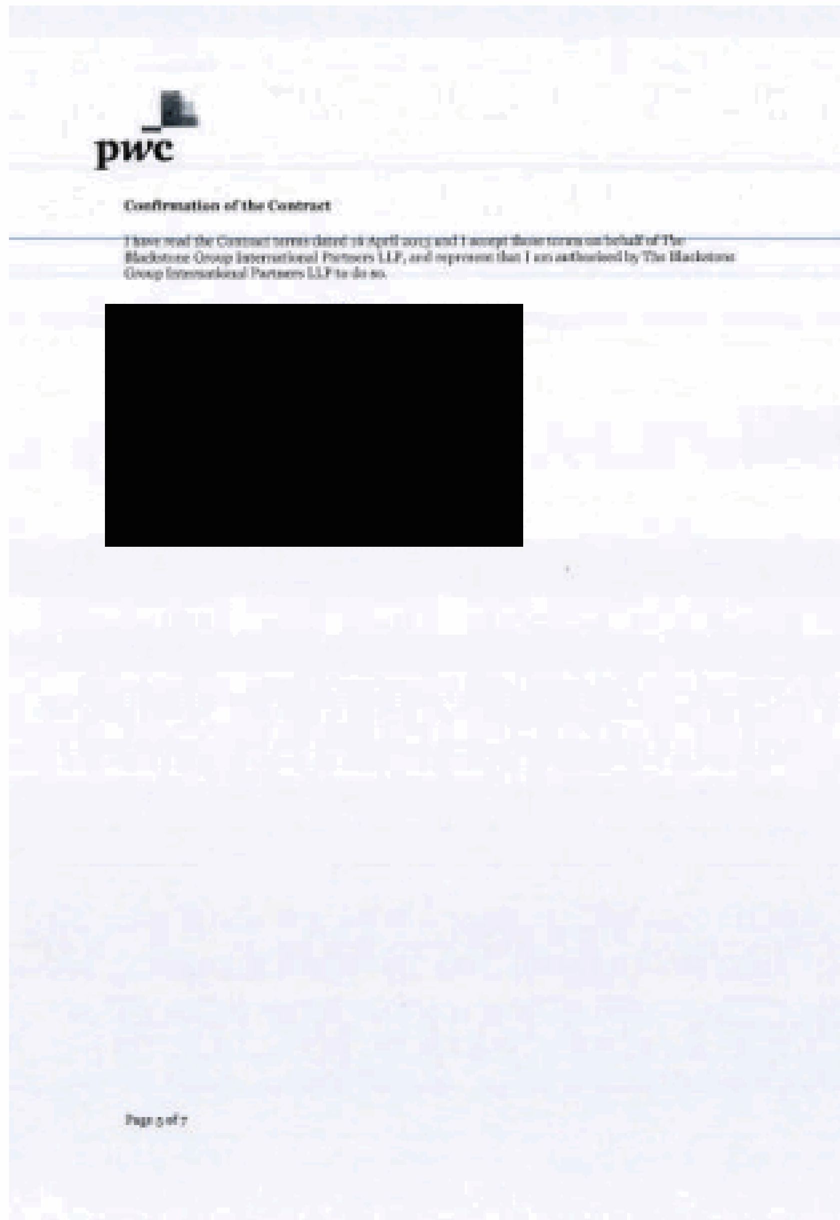

pwc

Confirmation of the Contract

I have read the Contract terms dated 16 April 2013 and I accept those terms on behalf of The Blackstone Group International Partners LLP, and represent that I am authorised by The Blackstone Group International Partners LLP to do so.

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pwc

I have read the Contract terms dated 16 April 2013 and I accept those terms on behalf of BRE/Europe 5Q S.à r.l., BRE/Chestnut Super TopCo S.à r.l., BRE/Chestnut TopCo S.à r.l., BRE/Chestnut New MezzCo S.à r.l., BRE/Chestnut PledgeCo S.à r.l., BRE/Chestnut HoldCo S.à r.l., BRE/Chestnut II TopCo S.à r.l., Chestnut 1 S.à r.l., Chestnut 2 S.à r.l. and Chestnut 3 S.à r.l., Chestnut 4 S.à r.l.

BRE/Europe 5Q S.à r.l.
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Chestnut 3 S.à r.l.
Chestnut 4 S.à r.l.

By: BRE/Management 5 S.A.

Contract

I have read the Contract terms dated 16 April 2013 and I accept those terms on behalf of Appleby Trust (Jersey) Limited (as joint trustee of the Chiswick Park Unit Trust) and P&L Trust Company Limited (as joint trustee of the Chiswick Park Unit Trust) and represent that I am authorised by Appleby Trust (Jersey) Limited (as joint trustee of Chiswick Park Unit Trust) and P&L Trust Company Limited (as joint trustee of the Chiswick Park Unit Trust) to do so.

Signed: ....

Name and position: ....

On behalf of Appleby Trust (Jersey) Limited (as joint trustee of the Chiswick Park Unit Trust) and P&L Trust Company Limited (as joint trustee of the Chiswick Park Unit Trust)

Date: ....

I have read the Contract terms dated 16 April 2013 and I accept those terms on behalf of Appleby Trust (Jersey) Limited (as trustee of the Chiswick Park Six Unit Trust) and represent that I am authorised by Appleby Trust (Jersey) Limited (as trustee of Chiswick Park Six Unit Trust) to do so.

Signed: ....

Name and position: ....

On behalf of Appleby Trust (Jersey) Limited (as trustee of the Chiswick Park Six Unit Trust)

Date: ....

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PRICEWATERHOUSECOOPERS

TERMS OF BUSINESS FOR DUE DILIGENCE

PricewaterhouseCoopers LLP, a limited liability partnership incorporated in England (number OC303525) and whose registered office is at 1 Embankment Place, London, WC2N 6RH ("PwC" or "we"), are pleased to set out the Terms of Business which will apply to the work we do for you. These Terms of Business and the Engagement Letter together form the Contract between us. The definitions used in these Terms of Business are set out in clause 11 below.

Unless otherwise indicated either expressly or by the context, "Partner" or "partner" means both in these Terms of Business and more generally in our dealings with you, a member of PwC in their capacity as such.

1 The Services

1.1 We will provide the services described in the Engagement Letter (the "Services"). The Services will be provided to assist you in your due diligence. We will use reasonable skill and care in the provision of the Services.

1.2 The Services will cover the areas agreed with you in the Engagement Letter. The Services will not include an Audit conducted in accordance with generally accepted auditing standards, an Examination of internal controls, or other Review or Assurance services. Accordingly, we will not express an Opinion or any other form of Assurance on the financial statements of the Target or any other financial information (including projections), or operating or internal controls of the Target. Except to the extent expressly agreed to the contrary, where we comment on the use of internet technologies in key business processes, we will do so as providers of due diligence services rather than as information technology specialists.

1.3 Our work will be based on information supplied to us. Except to the extent otherwise stated in our Report, our work will be carried out on the basis that such information is accurate and not misleading and we will not verify it or check it in any other way.

1.4 There is no guarantee that all matters of significance to you will be disclosed by our work. It is your responsibility to determine whether the areas we are to cover and the extent of verification or other checking included in the Services are adequate for your purposes and we make no representations in this regard.

1.5.1 Where the Services include consideration of any financial information about the future (projections) this clause 1.5 applies.

1.5.2 Our work will not constitute an Examination or Compilation engagement and we will not prepare projections. Where we comment on bases and assumptions underlying the projections, our Report may include tables aggregating quantified vulnerabilities, upsides and/or sensitivities in order to illustrate effects of possible alternative assumptions. Those tables should not be regarded as a restatement of Management's projections, or preparation of revised projections; they are provided as a means of summarising our comments to assist you in considering their implications for the Transaction.

1.5.3 In the event that the projections presented to us for comment are of such poor quality that suggesting adjustments in our Report would amount to preparation or re-preparation of projections, we will not propose adjustments but will discuss with you whether revised projections will be prepared for us to consider.

1.5.4 You acknowledge that when considering information presented in our Report, including likely future profitability and cash flows, it is your responsibility to consider our comments and make your own decision based on the information available to you.

1.5.5 Because events and circumstances frequently do not occur as expected, there will usually be differences between predicted and actual results, and those differences may be material. We take no responsibility for the achievement of predicted results.

1.5.6 Where the Services include Operational Services, we will comment on Management's view of potential operational improvements and savings, and may, exceptionally, comment on a possible alternative view. Our comments will be provided in the light of our business experience of operational matters but will not necessarily be based on direct experience of operations in the Target's or your specific industry or commercial sector. Our comments may not represent the optimal operational solution and there may be other, equally valid views. Further, the results which can be achieved will depend upon the detailed circumstances at the time and on the way in which planned operational improvements are implemented. We take no responsibility for the achievement of potential operational improvements.

1.6.1 The Services do not include the provision of legal advice or legal due diligence services and, except as provided in this clause 1.6.1, we make no representations concerning questions of legal interpretation. To the extent that any due diligence work on tax or tax advisory work involves the interpretation of tax law, we will report or advise on the basis of our understanding of the proper interpretation of tax legislation, court decisions, regulations and interpretations of the law in existence on the date stated in our Report or written advice (or, if no such date is stated, the date on which our Report or advice is signed) (the "Effective Date"). Changes in the law and/or its interpretation may take place before our advice is acted upon, or may be retrospective in effect; we accept no responsibility for reporting or advising on changes in the law or its interpretation which occur after the Effective Date.

1.6.2 This clause applies in the event that any tax information and/or advice provided to you in relation to the Services constitutes Other Written Advice under the Rules of US Treasury Regulations, Circular 230. Any such tax information and/or advice is not intended or written to be used for the purpose of avoiding penalties that may be imposed on the taxpayer, and it must not be used for any such purpose. In accordance with the Regulations, our Report(s) will include a notice to this effect. Further, our Reports will not be written to support the promotion or marketing of the Transaction or any other transaction or matters and should not be considered a Marketed Opinion under the Regulations.

1.7 You confirm that you do not require us to: make investment decisions; prepare a valuation of the Target; provide investment advice (which includes such services as recommending whether the Transaction should proceed and advising on price); determine levels of finance; act or negotiate on your behalf or act as management. These matters are your responsibility. On this basis, we do not consider that the Services amount to regulated activities for the purposes of the Financial Services and Markets Act 2000.

2 Reports

2.1 You agree not to use our Report for any purpose other than for the purposes of the Transaction.

2.2 In the course of providing the Services we may provide oral comments, or drafts of written reports, presentations, letters, schedules or hard or soft copies of computer models. As these represent work in progress and/or not our final findings, we do not assume a duty of care to you in respect of them. The final results of our work will be contained in our final Report.

3 Confidentiality and related matters

3.1 Responsibilities

3.1.1 We will treat Confidential Information as confidential. In respect of any Personal Data which you provide to us in connection with the Services, we will comply with our obligations under the Data Protection Act 1998 and keep such data confidential and secure.

3.1.2 You agree to treat all Reports as confidential. You agree not to pass our Reports to third parties by any means without our prior written consent.

3.1.3 In respect of any Personal Data provided to you by PwC in connection with the Services, you agree to comply with the Data Protection Act 1998, and in particular undertake to keep such data confidential and secure.

3.1.4 In respect of any Personal Data that you provide to us in connection with the Services, you confirm that processing such data in accordance with the terms of this Contract will not place PwC or any other PricewaterhouseCoopers Entity in breach of the Data Protection Act 1998.

3.1.5 The Personal Data provisions of clauses 3.1.1, 3.1.3 and 3.1.4 are for the benefit of and may be enforced by any Data Subject whose Personal Data is processed in connection with the Services, but only to the extent that the Data Subject would be entitled in the same or similar circumstances to enforce the equivalent provisions under the Data Protection Act 1998 against a UK Data Controller or UK Data Processor, as appropriate.

3.2 Disclosure

3.2.1 Nothing in clauses 3.1.1 or 3.1.2 requires either of us to keep confidential any information or document which:

(i) is or becomes generally available to the public other than as a result of a breach of an obligation under clause 3.1; or
(ii) is known to us prior to starting to provide the Services; or
(iii) is received from a third party who owes no obligation of confidence in respect of the information.

3.2.2 Notwithstanding clause 3.1.1 and 3.1.2, either of us may disclose information or documents to the extent that the disclosing party reasonably believes that disclosure is required by law or professional regulation.

3.2.3 You agree that we may share Confidential Information and Personal Data with other PricewaterhouseCoopers Entities and Contractors on the

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TERMS OF BUSINESS FOR DUE DILIGENCE

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PricewaterhouseCoopers

Terms of Business for Due Diligence – Financial Institution Addendum

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