

Real Estate Joint Venture Promotes and the Distribution Waterfall Provisions

A Practical Guidance® Practice Note by Kris Ferranti, Clifford Chance US LLP



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This practice note by Kris Ferranti of Clifford Chance US LLP provides an in-depth examination of the promote and distribution waterfall provisions commonly used in real estate joint venture agreements. It explains how these mechanisms align the interests of sponsors and investors by structuring profit allocations based on performance thresholds, typically measured through internal rate of return (IRR) benchmarks. The discussion covers the calculation of available cash, preferred returns, and promotes, as well as the distinctions among hard and soft hurdles, cumulative and compounding preferences, and levered versus unlevered IRRs. The note also analyzes critical investor protection tools, including clawbacks, holdbacks, and forfeiture provisions, which mitigate risks associated with premature or excessive promote payments. Complex structures such as programmatic joint ventures,

multi-tier waterfalls, and promote crystallization for long-term holds are explored in detail, along with considerations for multilayered promotes involving GP funds. Finally, the piece highlights key tax implications arising from promote structures and provides a sample waterfall distribution clause illustrating the application of these concepts in practice. Attorneys advising sponsors, investors, or joint venture partners will find this a comprehensive and practical resource for drafting, negotiating, and analyzing promote mechanics in real estate ventures.

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Kris Ferranti has extensive experience representing a diverse range of clients, including financial institutions, sovereign wealth funds, investment funds, family offices, and individual and institutional investors and developers in complex commercial real estate transactions.

His experience spans real estate acquisitions, dispositions, joint ventures, development projects, foreign investment, financings, ground and space leasing, real estate fund and co-investment formation, and LP investments into funds.

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