The Paradox of Commercial Real Estate Debt

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Introduction

One of the many lessons offered from the current economic crisis in the United States is that a well-functioning real estate market is built upon a robust debt market. Just as access to real estate capital serves as a lubricant to development, lack of capital forestalls entry to integrated real estate markets. In the evolving world economy, the marketing of domestic debt products to international investors—and the eventual development of mortgage-backed securities investments—is predicated on an established domestic-debt market. Indeed, real estate investors in countries with a

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mature real estate market demand debt financing in a developing country as a prerequisite to investment. The irony of this resolute insistence on debt is that in developed countries, “hard debt” levels have declined despite the close interconnection between the debt market and the secondary mortgage market.\(^3\)

The secondary market for commercial real estate debt has spawned the growth of what I call “disguised equity” financing in several forms, including a type of lending commonly referred to as “mezzanine lending.”\(^4\)

In terms of secured lending, mezzanine lending is riskier than mortgage lending but is less risky than straight equity contributions.\(^5\) This is because the mezzanine loan is not secured by the real estate, but is instead secured by the owner’s stake in the real estate firm.\(^6\) Upon default, the lender may take over the owner’s equity position in the firm.\(^7\) Lenders and borrowers in the United States have entered this mezzanine market when, for example, debt leverage ratios have been constrained and availability of mortgage debt is limited.\(^8\)

Curiously, investors in a developing real estate market frequently eschew equity financing and demand that a developing real estate market make available debt financing, though these same investors readily accept quasi-equity financing (in the form of mezzanine lending) when contemplating investments in highly developed and sophisticated markets.

As developing economies attempt to position themselves as participants in the international real estate markets, debt financing, or the lack thereof, continues to divide the players from the spectators.\(^9\) In this paper I will first give a brief explanation of the importance of secured debt in real estate financing using the market in the United States as an example. Next, I will discuss the legal, economic, and political structures necessary for a functioning debt market. The next step in this comparative analysis includes an assessment of those countries that have successfully transi-

\(^3\) Indeed, one possible saving grace of the commercial real estate market in the United States, as compared to the residential market, is the limitation on loan-to-value ratios (LTVs). As LTVs continue to erode, it is possible that the commercial market will become mired in confusion like its residential counterpart.


\(^6\) *Dequity*, supra note 4, at 240.

\(^7\) *Id*.

\(^8\) See Theodore Sprink, *Mezzanine Financing: Bridging the Funding Gap*, 19 TITLE ISSUES 1, 2 (2007) (noting that mezzanine financing is needed when there are “borrowers without sufficient traditional collateral to access necessary capital and there are many highly qualified investors attracted to filling the gap between debt and equity”).

tioned out of an equity-based market and are now participants in the international sphere, focusing on Poland. The next section provides a comparative analysis focusing on Latin America and including Brazil, Mexico, and Argentina. Completing the circle and highlighting the paradox, I will explain mezzanine lending, emphasizing its equity-like attributes. Finally, I will examine the question of whether a market can "leapfrog" the debt market and jump from equity financing straight to mezzanine financing.

I. Importance of Commercial Debt Financing and the Origins of the U.S. Mortgage Debt Market

A. Importance of Commercial Debt Financing

Financial leverage is the ratio of long-term debt to total capital invested. Increasing leverage intensifies an owner's gain or loss through use of borrowed funds. It likewise intensifies risk because net operating income services the debt payment. From an investor's perspective, however, debt financing not only allows an owner to diversify a portfolio by investing in several projects, but it also produces a more attractive cash yield (assuming positive leverage). This is especially true with non-recourse financing, which limits the extent of borrower loss to the equity investment.

Debt financing in real estate is almost universally secured by a mortgage. If the borrower defaults, the lender has the right to sell the property (i.e., foreclose on it) and use the proceeds to repay the loan. Securing the loan lowers the cost of the transaction by simultaneously increasing the lender's enforcement rights in the event of nonpayment and restraining future borrowing that may lessen the likelihood of repayment. In essence, the real estate fundamentals of a transaction become more predictable, thus decreasing the overall risk. Obviously, the ability to

11. Id. at 445-46.
12. See id. at 479-80.
13. Jeanne A. Calderon, Mezzanine Financing and Land Banks: Two Unconventional Methods of Financing Residential Real Estate Projects in the 21st Century, 29 REAL EST. L.J. 283, 283 (2001). By using borrowed money to finance the property, an investor gets a larger cash yield on equity infusion. For example, assuming a $10 million property with a $1.5 million net operating income, the cash yield on an all cash purchase would be 15%. However, if the investor borrows $9 million at 8% interest, the cash yield is 67.2% [($672,000 (cash flow after debt service) / $1,000,000 (cash payment)).
15. See Dequity, supra note 4, at 237.
recoup the collateral is crucial in structured financing.\textsuperscript{18} As will be discussed later in this paper, this reliance on debt financing is constrained in developing markets for many reasons, including past financial crises and economic or political instability.\textsuperscript{19}

B. Origins of the U.S. Mortgage Debt Market

While U.S. mortgage law certainly has its roots in British jurisprudence, significant differences emerged early in the development of U.S. mortgage law.\textsuperscript{20} Generally speaking, American mortgage law hinges on the notion of granting a security interest in the land rather than a conveyance of title and thus limits the lender's right to pre-judgment possession.\textsuperscript{21} As one commentator notes, a borrower's equity right of redemption illustrates U.S. courts' reluctance to transform the essential debt relationship into a fee interest.\textsuperscript{22}

Prior to the 1930s, mortgage lending was relatively constricted by high loan-to-value (LTV) requirements and short amortization periods that limited borrowers' access to capital.\textsuperscript{23} Central-government-market intervention, however, changed the landscape in 1934 when the federal government created the Federal Housing Administration to spur the residential market to insure mortgage loan repayment, thus reducing the risk of default for the originating lenders.\textsuperscript{24} This reduced risk encouraged banks to require a smaller down payment and to permit a longer loan repayment period.\textsuperscript{25} Capital flowed quickly into the residential market. In 2007, total originations in the residential mortgage market was estimated at $2.39 trillion.\textsuperscript{26} Likewise, there has been astounding growth in the commercial real estate market. From approximately $147 billion in 1970, the market grew to $402 billion in 1980 and to over $3.2 trillion in 2007.\textsuperscript{27} Growth in the

\textsuperscript{18} Rating agencies enhance the rating of a security that is collateralized. See Petrina R. Dawson, Ratings Games with Contingent Transfer: A Structured Finance Illusion, 8 DUKE J. COMP. & INT'L L. 381, 382-83 (1998).

\textsuperscript{19} See infra Part II. See generally Malcolm Knight, Developing and Transition Countries Confront Financial Globalization, 36 FIN. & DEV. 32, 32-33 (1999).

\textsuperscript{20} Ann M. Burkhardt, Lenders and Land, 64 Mo. L. Rev. 249, 266-268 (1999).

\textsuperscript{21} See id. (citing various statutes and case law to this effect).

\textsuperscript{22} Andrew R. Berman, "Once A Mortgage, Always a Mortgage"—The Use (and Misuse of) Mezzanine Loans and Preferred Equity Investments, 11 STAN. J.L. BUS. & FIN. 76, 86-88 (2005) [hereinafter Once a Mortgage].

\textsuperscript{23} LTV generally were 50%-60% on first mortgages. DANIEL IMMERGLUCK, CREDIT TO THE COMMUNITY: COMMUNITY REINVESTMENT AND FAIR LENDING POLICY IN THE UNITED STATES 36 (2004).


\textsuperscript{25} Burkhardt, supra note 20, at 272-73.


commercial market, like the residential market, was fueled by central government intervention. In 1990, financial institutions held most of the $1.1 trillion in mortgages. In response to the debt crisis, the U.S. government created the Resolution Trust Corporation (RTC), which securitized commercial mortgages that traditional lenders owned.

Between 1991 and 1995, the RTC securitized $18 billion in loans, with $14 billion in the first two years alone. This restructuring of loan income flow opened the doors of Wall Street finance to local real estate markets. Private investment companies entered the market, further fueling its growth. In 2007, commercial mortgage-backed securities (CMBS) and other pools were estimated to hold 28% of the $3.2 trillion mortgage market.

Currently, the repercussions of a seizing residential mortgage market ripple through the economic crisis that continues to grip U.S. and international financial markets. These economic problems, however, are not condemnations of mortgage securitization as a system, but are instead cautionary tales of straying far afield from the primary business of sound mortgage lending and accurate risk assessment. Mortgage underwriting criteria that disregard the borrower's ability to repay, so-called "NINJA" loans, portend disaster when these loans are the basis for rating the payment flow to bondholders. Similarly destructive are the dizzying array of derivatives that spun off of the securitization framework, each, like a bad photocopy, carrying less and less value as compared to the original but still maintaining the fiction of comparable value. Still, although the artifacts surrounding the market, namely asset-backed paper that supported warehousing and spinning off the tranches into commercial debt obligations (CDOs), have crumbled, the fundamental soundness of the underlying mortgage structure is not in question. Securitization of these mortgages awaits origination of solid quality loan products.

In contrast to the dubious lending scenarios of the residential market, in the commercial loan arena, the lasting influence of the securitized market on commercial lending is that the rating agencies pushed down the

29. Id. at 523.
30. Id. at 527-528.
31. Id. at 528, 531.
32. Id. at 528-29.
34. No Income No Job or Assets.
36. Commercial debt obligations provide a good example.
acceptable LTV ratio. Whereas the imposition of the secondary market served to raise the residential LTV above the historical 60%-70%, the same market pushed down the commercial LTV levels from 80%-90% to 65%.

Borrowers, due to their unquenchable thirst for leverage, as illustrated above, sought out what has come to be known as mezzanine debt. Mezzanine debt is not secured by the real estate asset but by the interest in the borrowing entity. Upon default on this debt, the mezzanine lender does not foreclose on the asset. Rather, the lender "forecloses" on the equity interest of the borrower and takes over the ownership interest—i.e., the equity. This sets up a notion of equity as a substitute for debt. We will return to this idea when discussing the project capitalization pressures faced in developing countries.

II. Foundations of a Functioning Debt Market

A strong market is constructed upon three foundational pillars: legal protections, political stability, and economic stability. Once this footing is in place, market fundamentals can be addressed. Strong real estate essentials of supply and demand clearly will determine the robustness of the market. Translating this market strength into access to capital remains the goal.

39. Dequity, supra note 4, at 235.
40. Id. at 240.
41. Id.
42. Id.
43. See infra Part III.
45. See Renaud, supra note 44, at 8.
A. Legal Protections

As one commentator has noted, though economic deficiencies in a particular market may pose transaction costs, legal deficiencies can serve as a complete transactional bar. The ideal legal environment should promote and assure transparency in the legal process to achieve stated economic goals, thus assuring that the investor receives the benefit of the bargain. Sometimes the underlying legal system itself may pose problems. For example, civil law jurisdictions rely more on formal legal codes than on equitable principles. In crafting the legal parameters of a new debt market, the scarcity of legal precedent, the uncertainty of legal precedent, or both could introduce novel challenges. Leaving aside the potential primary limitations of a given legal environment, a functioning mortgage market relies on transparency of rights in several fundamental spheres, including title, landlord-tenant, and foreclosure.

Title registration identifies the mortgaged property and assures ownership. An owner cannot pledge an asset if title is open to conjecture. Title problems are fatal flaws as the ownership of the property must be unassailable for the risk to be underwritten correctly. Countries with historically bad land title records, whether through political design, sheer incompetence, or corruption, struggle to construct an effective mortgage market.

47. Id. at 553.
48. See Lina Aleknaite, Why the Fruits of Capital Markets are Less Accessible in Civil Law Jurisdictions or How France and Germany Try to Benefit from Asset Securitization, 5 DePaul Bus. & Com. L.J. 191, 194 (2007); Dawson, supra note 18, at 384 (noting that for this reason civil law countries are less successful at implementing asset securitization than common law countries); see also Loic Chiquier, Olivier Hassler & Michael Lea, Mortgage Securities in Emerging Markets 33 (The World Bank, Policy Research Working Paper No. 3370, 2004) (“The development of a satisfactory legal framework for mortgage securities is... often complex and time consuming (often requiring further amendments), notably in civil code legislative environments where the concept of a trust may be missing as a convenient, flexible and bankruptcy-remote special vehicle to issue mortgage backed securities.”).
49. While areas such as tax law, bankruptcy law, and securities law are obviously important, these areas operate above the basic requirements noted here. For the importance of these other areas see Dvorak, supra note 46, at 554-69.
52. Id. (noting Peruvian government’s inability to garner foreign investment in company where legal title to assets was unclear).
53. See id. at 349-61 (arguing that a lack of property recording systems results in undervalued capital assets and hinders finance by analyzing property law in Peru, Indonesia, Haiti, Argentina & Russia); Dwight M. Jaffee & Bertrand Renaud, Strategies to Develop Mortgage Markets in Transition Economies 8 (The World Bank, Policy Research Working Paper No. 1697, 1996) (discussing post-Communist countries in Eastern Europe and noting “land property boundaries were not drawn up and recorded at the time of construction under the state system... [and, therefore] [l]oans secured by real estate lending suffer especially from the legacy of poor land titling.”).
Likewise, predictable landlord-tenant laws bolster the mortgage market. In a commercial loan, the lender underwrites on the basis of future and existing net operating income (NOI). The NOI is generated through rents and leases in the property. Fluctuations and uncertainty in the NOI stream threaten the stability of the loan. Therefore, leases must guard against such fluctuations by binding the tenant to payment and limiting tenants' rights to terminate. In entering the mortgage market, countries with very pro-tenant environments labor under the weight of this legal impediment.

Foreclosure laws are possibly the single most important body of jurisprudence in terms of their effect on the mortgage market. At its core, the market depends on the ability of the lender expeditiously to realize the value of its investment by first taking possession of the property and then selling the property to pay back the loan. If the legal infrastructure is weak, investors will avoid the market due to risk aversion. If this occurs, the loans will not be underwritten as secured debt, and the market will grind to a halt.

Several Latin American countries recently have streamlined and updated their mortgage foreclosure laws. Argentinean law now allows non-judicial foreclosure and the use of summary judgment when utilizing judicial foreclosure. Changes in Mexican law have allowed lenders to speed up the foreclosure process, from five years to six months, thus preserving value in the asset. The Brazilian process is now more efficient because property can be held in the name of an independent trustee instead of the borrower. The lender can use non-judicial foreclosure,

55. Id.
57. Id. at 529.
60. Id. at 527.
62. Securitization of debt requires underwriting discipline to reassure investors. See Subordinated Rolling Equity, supra note 16, at 529 (“Underlying the entire securitized transaction is the income stream produced by the mortgages in the pool. Not surprisingly, preservation of the income stream is critical to the success of the securitization. The overwhelming importance of the income stream reduces the real estate to a fungible commodity. It is not the real estate that is being securitized, it is the cash-flow.”).
64. Id. at 271.
66. Poindexter & Vargas-Cartaya, supra note 63, at 273.
which shortens the timeframe from a maximum seven years to a much more manageable six-to-twelve months.67

B. Economic Foundation

The pressures of inflation and interest rate risk pose major economic threats to a robust mortgage market.68 This is generally true in any market, but the impact of these pressures is especially pronounced in countries experiencing economic volatility. For example, fluctuating inflation rates make it very difficult to determine the true interest rate.69 While a floating interest rate may ameliorate the problem, this solution is hardly ideal in a commercial real estate setting without appropriate caps and reset limitations. This is because the operating income that provides the cash flow to cover the debt is comprised of rents that tenants pay.70 When the rents are fixed through the lease agreements, the cash flow is likewise limited, setting up a disastrous situation in the event of an interest rate reset.

One answer may be to peg the target country’s currency to a more stable external currency. However, as the experiences in Argentina71 (2002), Brazil72 (1999), and Mexico73 (1994) demonstrate, when the target country’s economy fails to perform as well as the country to which the currency is pegged, either the peg must be adjusted or the target currency will become overvalued.74 The overvaluation of the target currency sets the stage for catastrophe when the local currency eventually is unpegged and devalued, as happened in each of the above-referenced countries. As one commentator has noted, “currency risk does not go away merely because one’s domestic currency is pegged to the foreign currency.”75 Concealing the true cost of borrowing in this way encourages excessive indebtedness by lenders and borrowers alike.76 Even worse, problems arising from banking unsoundness tend to show up in developing economies

67. Id. at 272.
75. Id. at 35.
76. See id. at 39.
suddenly and with little warning. As these problems take hold, investor confidence typically declines quickly, leading to disastrous runs on banks.

C. Political Risk

The most obvious political risks are political changes that may inhibit the enforceability of the mortgage contract. Unstable political environments undermine long-term investor confidence that is crucial to mortgage financing. Sovereign risk includes direct risks, such as a moratorium on payment of certain types of debt, or indirect risks, including changes in monetary policy that affect inflation and interest rates. The concept of sovereign risk likewise extends to acts of violence and terrorism that inhibit confidence in the market. Insurance against political and sovereign risk is available. Like any other type of insurance, however, the cost may effectively render the transaction too expensive.

A more subtle, but nonetheless important, political risk is bureaucracy. Like legal considerations, bureaucracy snafus inhibit the transparency needed for a functioning mortgage market. With bribery at one end of the spectrum and inefficiency at the other, dealing with governmental agencies in connection with the issuance of permits, zoning, and title registry is an important development aspect. Corruption, for example, signals to investors instability and poor quality investment potential, thereby impeding the likelihood of foreign investment. The cumulative effects of bureaucracy can be dire for business. For example, jumbled bureaucracy means that it can sometimes take up to five years to foreclose on a commercial mortgage in Argentina.

III. Transitional Economies' Access to International Real Estate Investors

Laying the foundation of legal, economic, and political framework signals only the beginning of a local market's entrance onto the international

77. See Knight, supra note 19, at 33.
78. Id.
80. See Poindexter & Vargas-Cartaya, supra note 63, at 282-83.
81. See id. at 284.
scene. Strong real estate fundamentals—supply of product and sufficient demand for product—constitute the driving forces. Before discussing the specific cases of Latin American countries and their push onto the international market, it may be useful to contrast a country that evolved from a non-existent market to a robust and somewhat stable international player: Poland.

Post-communist Poland has undergone financial crises, changes in political regimes, and frequent economic instability. It was difficult for owners to leverage properties with debt and transaction volume was minimal. The recent Polish market, however, looks very different. Ownership can be financed with mortgage debt and one can even find the beginnings of a secondary mortgage market. Foreign investors are locating offices in Poland (e.g., GE Commercial Real Estate).

During the 1980s, Warsaw was filled with empty lots and under-utilized office space. Some compared attempts to attract foreign capital to develop this property with "promoting property 'on the moon.'" Although theoretically possible, mortgage financing was economically unfeasible as interest rates hovered around 52%. From a political perspective, there were questions of title because property often was under the control of local governments. This governmental entanglement exacerbated already complex bureaucratic interactions. Furthermore, there


92. Id.


94. Poland re-established local governments in 1990 and transferred most urban land and housing stock to them under the Act on Local Autonomy and implementing regulations. See Cheryl W. Gray et al., *The Legal Framework for Private Sector Development in a Transitional Economy: The Case of Poland* 4 (The World Bank, Policy Research Working Paper No. 800, 1991). State and local governments were then permitted to sell the land pursuant to the amendments to the Land Use and Expropriation Act of 1990. See id.

95. The land registration system was incomplete and in disarray, hindering mortgage financing. See id. at 6. Moreover, with notaries in short supply, land transaction documents were difficult to notarize. Id.
were no standard underwriting procedures guiding LTV ratios and debt service guidelines.  

Conditions began to change during the mid-1990s. Just as in the United States, governmental and quasi-governmental entities were behind the initial formation of the Polish market. The World Bank, U.S. Agency for International Development, European Bank for Reconstruction and Development, and other international funding agencies prepared programs totaling $2.6 billion aimed at creating a Polish mortgage market. Although there still are hurdles—such as the long lag time for title registration, which sometimes can last up to six months—Poland has implemented transformative systemic changes.

The first steps were stabilizing the economy and reforming institutions. Economic stabilization required restraining inflation and attaining market equilibrium. Institutional reform involved liberalizing foreign trade, introducing a market economy, introducing institutions, and privatization. Creating a mortgage market initially involved defining private property rights in the Polish constitution, reprivatizing property, creating a functioning land registration system, updating the notary system, and deregulating land use laws regarding planning, building standards, and rent control. One commentator has written that, in hindsight, the decisive factors in these changes included “rapid commercialization of the banking sector and intense competition among banks; ... participation of foreign institutions; ... poor interest of the authorities in the mortgage loan system and, as a consequence, avoidance of failure of experiments and subsidies; [and] perceptible, progressing stabilization and consumer optimism in the largest cities.” From 2004 to 2006, foreign investment in Polish property doubled to approximately $3.5 billion. As the nation stabilizes and modernizes, Polish real estate is becoming a more secure form of foreign investment.

Turning our attention to real estate markets still on the path toward development, Latin American economies are as varied as their distinctive local cuisine, geography, and languages. To a certain degree, though, most of these developing countries have encouraged capital market liberalization and financial regulation, while discouraging distortion of fiscal policies

98. Goodman & Jostmeier, supra note 93, at 70-76.
99. Id.
102. Id.
103. See Gray et al., supra note 94, at 4-7.
104. See Laszek, supra note 88, at 69.
and disadvantageous tax schemes.\textsuperscript{106} In fact, financial markets have begun to grow in this region.\textsuperscript{107} In 2003, the total amount of mortgage- and asset-backed securitization rose to $5.6 billion, up from $3.9 billion the previous year.\textsuperscript{108} Nonetheless, the region lags behind other real estate markets in access to sophisticated global capital.\textsuperscript{109} To better understand the range of development, it is helpful to contrast Mexico, Brazil, and Argentina.

A. Mexico

Mexico has the world's eleventh largest population and is currently the thirteenth largest economy.\textsuperscript{110} Even so, in and around 1994, the year in which Mexico's economy was devastated by the devaluation of the Mexican peso, U.S. investors were highly reluctant to enter the Mexican real estate market.\textsuperscript{111} Subsequently, "interest rates that once were almost 100 percent have declined precipitously, inflation is at about 4 percent, and [there has] been a flood of activity by U.S. companies."\textsuperscript{112} Since the crisis, numerous economic policies allowed the economy to rebound and opened the markets to foreign investors.\textsuperscript{113} Mexican central bankers instituted mandates to increase transparency of the government's monetary policy decisions, stabilize the currency, and lower inflation.\textsuperscript{114} These measures were successful and resulted in economic growth and enhanced foreign direct investment.\textsuperscript{115}

Mexico's economy "has been transformed since the 1980's as a result of economic liberalisation and joining the North American Free-Trade..."

\textsuperscript{106} These factors have been noted as real estate drivers in Latin America. \textit{See} Betrand Renaud, \textit{The 1985 to 1994 Global Real Estate Cycle: An Overview}, 5 J. REAL ESTATE LIT. 13, 13-44 (1997).

\textsuperscript{107} \textit{See} LORE & COWAN, supra note 2, § 2:24.

\textsuperscript{108} Id.

\textsuperscript{109} As an example, less than 6% of CMBS securitized offerings were in property outside the United States and Europe. \textit{See} Commercial Mortgage Sec. Ass'n, CMBS Issuance by Country, in \textit{Compendium of Statistics}, supra note 27, at 6.


\textsuperscript{112} Id. at 36-37.


\textsuperscript{114} See id.

Agreement (NAFTA)." This agreement allowed preferential market access for the United States, and the geographic proximity to the United States allowed Mexico to become closely integrated in the production and distribution system of U.S. industry, thereby raising property values. This proximity distinguishes Mexico from other Latin American economies and provides the real estate market in Mexico with significantly more investor interest for commercial properties and new real estate development. Mexico is geographically distant from most large Latin American economies, and this distance keeps the country insulated from the volatility of countries undergoing crisis. Thus, although not fully separate from currency crises in Brazil, Argentina, and Chile, Mexico has emerged as a safer haven for investors. As the capital markets integrate and become more global, however, this distance will become insignificant.

In the present market, Mexico’s open economy is attractive to investors. Indeed, Mexico currently rates strongly on a number of business environment measures, including its political and institutional environment, macroeconomic stability, market opportunities, private enterprise and foreign investment policies, the foreign trade and exchange regime, tax system, financing, labor market, and infrastructure. Along with real estate fundamentals, real estate investors scrutinize these country-wide criteria before deciding on entering a foreign market and undertaking investment risk.

Economic fundamentals are strong, with statistics as of 2007 reflecting a low unemployment rate of 3.2%, GDP forecasts predict a modest 3.2% growth for 2007 and inflation at a low 4.1% in 2006. This economic strength carries over to the real estate market and attracts investors who are betting on macroeconomic and local growth. Also, a decrease in interest rates has contributed to favorable macroeconomic variables and helped maintain stability in the market.

Given the proximity and standardization of the Mexican real estate market, properties in Mexico are often included in U.S. CMBS securitizations, as underwriting standards make pooling across borders easier.
The advent of a public securitization market lowers the cost of capital for commercial development in Mexico, as it has in the United States, by increasing standardization and efficiency in underwriting.\textsuperscript{126} This indicates that the Mexican real estate market has matured significantly and has increased the liquidity of real estate while lowering debt prices.

Mexican real estate was the seventh largest destination of inter-regional capital in 2005, indicating the increasing prevalence of foreign investors.\textsuperscript{127} Furthermore, as the "financial markets have stabilised and matured, the Mexican real estate market has become increasingly sophisticated."\textsuperscript{128} In 2005, Mexican banks increased their mortgage lending by 50\% and tripled the issuance of mortgage-backed securities.\textsuperscript{129} In the same year, the Mexican legislature "approved a REIT-type vehicle known as 'FIBRAS'—the first vehicle of this type in Latin America."\textsuperscript{130} As a result, the real estate market has experienced rental growth recovery, and many international real estate players have capitalized on this strengthening of fundamentals and continued yield compression.\textsuperscript{131} Low vacancy rates and high demand for new products drove rents up 15\%-20\% from 2004-06.\textsuperscript{132} The vacancy rate for Mexico City Class A offices is about 8.15\%, and the current trend in commercial real estate is developing mixed-use projects.\textsuperscript{133} Also, many domestic and international companies have been purchasing office space in Mexico for corporate image purposes and because of the availability of infrastructure.\textsuperscript{134}

Mexico must address challenges that remain in this market to increase transparency and efficiency. Negotiating one's way through the Mexican "bureaucracy and getting the necessary approvals is an especially laborious process . . . [as well as] a problem in purchasing land, thanks to communal property laws dating back to 1917."\textsuperscript{135} Because of these inefficiencies, most international real estate investors form a joint venture with a local developer who can more easily navigate the bureaucratic hurdles.\textsuperscript{136} Currently, sixteen U.S. funds are investing in joint venture partnerships in Mexico, worth a total of $6.5 billion.\textsuperscript{137}

Mexico's economic policy and proximity to the United States provide economic stability that attracts foreign real estate investment and notably reduces international risk premium.\textsuperscript{138} The sovereign risk for the country is stable and "tight fiscal policies and good access to financing ensure that

\textsuperscript{126.} Carl Kane, \textit{Fundamentals of Commercial Securitization}, \textit{Mortgage Banking}, July 1, 1992, at 18.
\textsuperscript{127.} See Azcue, et al., supra note 110, at 6.
\textsuperscript{128.} Id.
\textsuperscript{129.} Id.
\textsuperscript{130.} Id.
\textsuperscript{131.} Id. at 8.
\textsuperscript{132.} See \textit{Cushman & Wakefield}, supra note 122, at 33.
\textsuperscript{133.} Id. at 27.
\textsuperscript{134.} Id.
\textsuperscript{135.} Field, supra note 111, at 38.
\textsuperscript{136.} See id. at 37.
\textsuperscript{137.} Id. at 32.
\textsuperscript{138.} Id.
the risk of debt-servicing difficulties is low..."139 Overall, the real estate market in Mexico is highly advanced relative to its Latin American neighbors, with sophisticated international real estate developers and financiers involved in the market.140 The government’s economic policy initiative was successful in helping the economy rebound after the crisis and open-market policies with the United States boosted investor confidence and interest in Mexico.141

B. Brazil

Brazil is the largest country in South America and controls about half of the GDP of the continent.142 According to economists, “Brazil will grow to be the world’s [eighth] largest economy by 2020 and the [fifth] largest by 2050.”143 This expansion will be the result of “favorable demographic trends.”144 Specifically, economists anticipate that a “younger working population . . . [will] increase the country’s productivity and drive economic growth.”145 From a real estate perspective, this creates inexhaustible demand for real property from businesses catering to the population.

Brazil’s economy fell into a deep recession with inflation soaring to an all-time high of 2,938% in 1990.146 The 1994 Real Plan, devised in the wake of the recession, created conditions for a more stable domestic economy.147 It introduced a new currency, tightened monetary policy while loosening fiscal policy, and created incentives to attract foreign investment.148 The plan was widely successful, but a growing deficit, overvaluation of the real, stock market losses, and rising interest rates followed a few years later.149 Brazil’s currency collapsed in the aftermath of the Asian Financial Crisis of 1997.150 In response, the IMF initiated a $41 billion bailout to help stem the tide.151 Unfortunately, it was unsuccessful, and the Central Bank of Brazil was forced to devalue the currency in 1999, allow the real to float, and tighten monetary control.152 The economy

139. See Mexico: Country Risk Summary, supra note 121, at 1.
140. See Azcue, et al., supra note 110, at 6.
141. See Slover, supra note 115, at 131–33.
142. See Field, supra note 111, at 32.
143. CUSHMAN & WAKEFIELD, supra note 122, at 3.
144. Id.
145. Id.
149. Id.
152. See Grabel, supra note 150, at 378.
improved until 2002, when inflation suddenly increased five-fold. Fiscal responsibility and macroeconomic stability, together with continued interest in the country by the financial community, helped improve economic fundamentals. One important impetus driving economic growth and stability was the sound macroeconomic policy framework that supported a sustainable decline in country risk.

The Brazilian economy recovered following its currency crisis; growth, combined with low inflation and strong economic policy, helped attract investors and foreign direct investment. A comparison of Brazil's inflation rate with that of Argentina clearly reflects Brazil's economy recovery. For example, in 2006, inflation in Brazil was about 3.4%, compared with 10% in Argentina. The Brazilian government has set the maximum inflation target at 4.5%, and inflation has been below this target since 2005. Brazil's strong external appeal has resulted in a strong currency, allowing for deflation and declining interest rates, which decrease the opportunity cost of capital and raise demand for money by households and foreign investors. Unemployment is high at around 8.0%, but this figure may be a reflection of the sheer size of the population and the inefficiencies of emerging economies.

Drivers for domestic demand remain positive, and GDP growth forecasts have risen steadily throughout the year, to 4.9% for 2007 and 4.3% for 2008. A Brazilian risk assessment states that the currency risk is stable, and "there remains the risk of volatility in the event of global financial market turbulence, but a prolonged overshooting is unlikely, given the confidence in policy framework, high real interest rates and strong external accounts." Given the improved macroeconomic environment, Brazil's currency risk has been at a record low in the past year, reducing the overall risk for real estate investing.

154. See id.
155. See Scatigna & Tovar, supra note 65, at 75.
157. See Cushman & Wakefield, supra note 122, at 3.
158. See Banco Central Do Brasil, Historico de Metas para a Inflacao no Brasil [Historical Inflation Targets in Brazil], http://www.bcb.gov.br/Pec/metas/TableMetasResultados.pdf (last visited Dec. 26, 2009).
159. See Brazil Land Grab, supra note 156, at 10-13.
This strengthening of economic fundamentals has been accompanied by progress in the real estate investment market. Improvements in the structure and enforceability of lease contracts are enabling the securitization of lease receivables, thus providing new financing options for institutional investors and introducing a new source of capital for real estate investment. The structured finance market has recently improved.

The general legal framework for Brazil's structured finance market provides for two special purpose vehicles (SPVs): Fundos de Investimento em Direitos Creditórios (FIDCs)—asset-backed investment funds—and Certificados de Recebíveis Imobiliários (CRIs)—real estate-backed certificates. According to commentators, "FIDCs act as bankruptcy-remote entities separate from the originators of the assets that protect against an originator's creditors. CRIs provide for the isolation of assets and protection against seller/originator creditors, but not against fiscal and labor related claims of the securitization agent." These long-term-asset-backed debt alternatives are beginning to emerge and provide further alternatives for investing.

In 1997, the Brazilian Real Estate Financing System introduced the fiduciary lien on real estate loans, representing an alternative to traditional mortgages that are costly and difficult to recover in the event of default. This law also expedited real estate foreclosures, increasing the recovery value of entering foreclosure and establishing a fiduciary regime for receivables collateralizing a specific debt issue. These important regulations improve real estate market conditions for investors by increasing security for mortgage lenders and landlords.

Brazil's economic size and growth attracts aggressive real estate investors because of the potential for high returns. Prudential Real Estate Investors estimates the value of the high-grade commercial real estate market in Brazil at $497 billion, which makes it the largest in South

164. See Ana Beatriz Barbosa, Real Estate Acquisition in Brazil—A Brief Summary, MONDAY BUS. BRIEFING, Dec. 21, 2007.
166. Dan Shirai, Digging Up Real Assets, LATIN FIN., Apr. 1, 2007, at 20, 22 ("Real estate is another emerging asset class with enormous potential for deal flow. Last year, MBS accounted for . . . 8% [of securitizations] in Brazil, according to Standard Bank. . . . [V]olume [is expected] to multiply by several times through the use of CMBS and RMBS.").
169. See Dan Freed, U.S. Institutions Eye Brazilian Real Estate, INVESTMENT MANAGEMENT WEEKLY, April 24, 2006, at 1; Scatigna & Tovar, supra note 65, at 75.
171. See Kabance & D'Orazio, supra note 167, at 20.
America.\textsuperscript{173} The debt market is not well established, however, so high equity investments lower the yields of the properties.\textsuperscript{174} A majority of investors think "Brazil is about two or three years behind Mexico. Debt is increasingly available, and yields are coming down". Many of Brazil's corporate leases were negotiated a few years ago when the country's economy was weaker, so rents will have considerable room to rise as those leases roll over.\textsuperscript{175} Though debt accessibility is a challenge in the Brazilian real estate market, the debt market has shown growth recently.\textsuperscript{176} As in Mexico, developers face the challenge of navigating the bureaucratic laws of Brazil. Brazil also has "a complex system of federal, state, and municipal taxes, as well as tough environmental rules."\textsuperscript{177} Recently, developers have seen a change in the credit conditions in Brazil and most expect the availability of debt financing to increase further in the future, along with a continued decline in interest rates.\textsuperscript{178}

Given the low availability of debt financing in Brazil's history, the markets in the major areas of São Paulo and Rio de Janeiro have been characterized by owner-occupied real estate.\textsuperscript{179} Organic growth of the market, driven by companies looking for new, larger, and better located properties has resulted in many sale-leaseback opportunities.\textsuperscript{180} Though Brazilian pension funds historically have been major investors and owners of corporate real estate, recent legislation limiting pension fund allocation of assets to real estate has forced these large investors to sell properties.\textsuperscript{181} Overall vacancy for São Paulo is 12.5\%, and the lack of quality space is forcing many companies to move out of the central business districts.\textsuperscript{182} Demand is very strong in the market, but buying opportunities are limited.\textsuperscript{183}

The demographic characteristics and size of the country make potential growth of the economy very attractive to investors, who bet on the demand side of the real estate market. As seen in recent real estate transactions, multi-national real estate developers have created joint ventures to explore the opportunities in Brazil.\textsuperscript{184} Though the price of the property may be diminished to compensate for market risk, investors are able to

\textsuperscript{173} Id.
\textsuperscript{174} Freed, supra note 169, at 1-2.
\textsuperscript{175} Id. at 1.
\textsuperscript{176} Id.
\textsuperscript{177} See Field, supra note 111, at 38.
\textsuperscript{178} See Brazil Land Grab, supra note 156, at 10-13.
\textsuperscript{179} See id.
\textsuperscript{180} See id.
\textsuperscript{181} See id.
\textsuperscript{182} See id.
\textsuperscript{183} See Field, supra note 111, at 38.
\textsuperscript{184} See Brazil Land Grab, supra note 156, at 10-13.
\textsuperscript{185} See id. at 3, 7 (stating that the price of the property may be diminished to compensate for market risk, investors are able to
earn the return they want even without leveraging capability. Credit markets are improving and transaction volume continues to increase as investment funds come into the market for short- and long-term opportunities.

C. Argentina

Argentina has the third largest Latin American economy, behind Mexico and Brazil, and a population of 38.64 million. The country not only has undergone prolonged and recent economic crises that have slowed the development of a real estate market, but the country also has been infected by the crises in neighboring Latin American countries. From 1998 to 2002, Argentina’s economy was mired in recession and the country’s reliance on foreign investment compounded a fixed exchange rate system that limited the government’s ability to stimulate the economy. In 1999, “the devaluation of the Brazilian [r]eal dealt a major blow to Argentina’s exports as well as the incomes of Argentine real estate companies with Brazilian interests,” such as IRSA (Inversiones y Representaciones Sociedad Anónima). The economy grew unstable and fell into recession with a growing budget deficit, and the Argentine government defaulted on its sovereign debt. In 2001, the government devalued the Argentine peso as capital flight from the country continued, and, in 2002, the government eliminated the fixed peg of the peso to the U.S. dollar. The peso eventually recovered some of its value through an expansion of exports and a boost in demand for domestic products. The country rebounded to a limited extent, with GDP growing approximately 9% from 2002 to 2007. This growth, however, is expected to slow in the near future.

After an initial recovery, the Argentine economy is not faring as well as

185. Freed, supra note 169, at 2 (yields can reach "as high as 20% without leverage").
186. See Morilha, supra note 172, at 1.
187. See CUSHMAN & WAKEFIELD, supra note 122, at 8.
189. See id.
190. Id.
191. See id.
its Latin American counterparts after their economic crises. The Argentine economy "is still showing positive growth and expansion although at a slower pace than previous years. The lack of investment makes this growth unsustainable over the long term." GDP growth in 2006 and 2007 was strong at around 8%, but expected growth for 2008 declined and is at 6.8%. Furthermore, despite the government's effort to lower inflation, sharp increases in prices continue to be one of the most challenging issues facing the economy for future years. Inflation soared into double-digits in 2006, and shows few signs of decline. This high inflation is one of the risks that deter investors from the commercial real estate market in Argentina, and it eliminates the possibility of a sensible debt market to leverage properties.

The real estate market remained inactive until 2004. The current real estate market can be characterized by low vacancy rates and an increase in recycling of Class B/C buildings. Class A vacancy rates continue to remain below 5% and are expected to increase to a level between 10%-15% with the introduction of new developments. Although local investors have increased their activity, few international investors are active participants in the Argentine real estate market. In short, most of the "real estate investment in Buenos Aires continues to be a speculative undertaking."

Argentina, like other Latin American countries, is known for laws providing the tenant with more benefits than the landlord. The tenant has early termination rights, the standard being a six-month notice with no penalties, which continue to "pose a risk for office investors." Furthermore, the leases have short three-year terms that need to be renegotiated as the currency depreciates, are indexed to inflation, or are denominated in U.S. dollars. This short-term contract requires frequent tenant searches


197. CUSHMAN & WAKEFIELD, supra note 122, at 8.

198. See Mussa, supra note 195, at 18; Factbook, supra note 194.

199. See CUSHMAN & WAKEFIELD, supra note 122, at 8 (noting that there are significant problems in Argentina with trying to keep down inflation).

200. See Factbook, supra note 194.

201. See CUSHMAN & WAKEFIELD, supra note 122, at 9.


203. See CUSHMAN & WAKEFIELD, supra note 122, at 8.

204. See id. at 9.

205. See id.

206. CB RICHARD ELLIS, MARKET OUTLOOK: BUENOS AIRES OFFICE INVESTMENT MARKET 3 (2007) (noting that a "volatile economy and tenant friendly laws" prevent formation of conditions favorable to "investment into income producing assets.") [hereinafter MARKET OUTLOOK].

207. See id.

208. See id.

209. See CUSHMAN & WAKEFIELD, supra note 122, at 9.
and increases the risk for the property owner, who has to re-lease and may be burdened with unoccupied space for long periods of time. The frequent options to purchase or rights of first refusal held by many tenants present even more problems.

The industrial and retail markets face a similar lack of investment and quality space. Vacancy rates in these property sectors continue to decline, and there is high demand for space. In the retail market, "the most important shopping malls have tenant waiting lists and landlords choose their next tenant based on their probable sales." Thus, although there is significant shortage in supply, the risks of the market are too high for foreign investors to pour money in to create new developments; they tend to propose build-to-suit projects to eliminate tenant risk.

This situation is exacerbated by the lack of a debt market in Argentina. Real estate capitalization rates need to be high enough to warrant a full equity investment or the developers will not be able to reap the yields with leverage. The government offers the only available debt, which is unsecure and offered at prohibitively high interest rates. It is not accretive to borrow against the property and most investors pay with full equity. The real estate market also is fairly illiquid, with low transaction volume due to the risks of the market. The low liquidity makes it difficult for owners to sell properties and for developers to have reliable exit strategies. This makes market prices very challenging to predict because few properties are marked-to-market by going onto the seller’s block.

IV. Paradoxical Financing

In these emerging economies—and especially in countries less integrated into the global capital market, such as Argentina—predicating investment on the creation of a debt market continues to hinder further growth. Even if legal mechanisms, such as an unassailable mortgage, can be developed, the economic realities of uncertainty limit their use. To compensate for the lack of debt, many structures employing equity have

210. See Market Outlook, supra note 206, at 3-4.
211. See id.
212. See Cushman & Wakefield, supra note 122, at 9.
213. See id.
214. Id.
215. See id.
216. See Deal & Rosso, supra note 188, at 19.
218. See Deal & Rosso, supra note 188, at 42.
219. See id. at 17-18.
220. See id.
221. See id. at 83-84.
222. See id. at 18.
223. See id. at 40.
224. In fact Argentina has just such a security device. The Spanish word for these mortgage-like instruments is “hipoteca.” U.S. lawyers would immediately recognize the similarity. See Guillermo A. Moglia Claps & Julian B. McDonnell, Secured Credit and
evolved to simulate debt and allowed real estate investment to continue, albeit at a slow pace.\textsuperscript{225} Hence the paradox: in the absence of leverage, these markets are too risky for low risk investors, but the returns on the unleveraged market are not high enough for high risk investors.

Attracted by the strong fundamentals of the commercial real estate market in Argentina, local and regional investors purchase commercial property using creative investment financing structures to bypass the inaccessible debt market and maximize risk-adjusted returns.\textsuperscript{226} However, many foreign players are discouraged by the multiple risks of the Argentine market.\textsuperscript{227} The high interest rates for long-term commercial loans in Argentina range from 16\% to 20\%.\textsuperscript{228} This high cost of capital is prohibitive for many investors. Therefore, these investors must turn to equity, which they often use in an attempt to replicate debt.

In Argentina, and often in Brazil, long-term debt financing is not a viable option for owners of commercial property.\textsuperscript{229} In these countries, the most commonly used structure for investing in real estate is direct ownership through full equity investment using a condominium structure for office buildings.\textsuperscript{230} Under this self-financing structure, "the buyer of an apartment or office floor will often pay a down payment around 5\% and approximately 50\% of the purchase price in monthly installments during construction, with the balance due [at] completion."\textsuperscript{231} This method compensates for the lack of debt and provides the developer with construction financing to reduce his own equity investment.\textsuperscript{232} With this structure, the developer invests in the property once, when about 20\% of the pre-sales are complete, and will then draw from the equity owners as construction progresses.\textsuperscript{233} The scheme mimics a construction loan with individual "lenders" providing a pool of equity to draw from as needed.\textsuperscript{234}

Once the office floor or unit is sold, the purchaser owns the real estate and has the right to rent and improve it, creating office buildings with ownership divided by floor, unit, and wing.\textsuperscript{235} Investors with substantial equity can invest in these countries without debt financing, but smaller players are unable to become active, reducing potential market growth. This investment structure offers an alternative to long-term financing and short-term construction loans, but also lowers the overall return for developers. Nevertheless, these sell-out schemes are profitable compared to

\begin{footnotesize}
\begin{thebibliography}{10}
\bibitem{225} See Deal \& Rosso, supra note 188, at 40-49 (outlining the availability of financing options, alternative financing schemes, and secondary markets).
\bibitem{226} Id. at 42-44.
\bibitem{227} See \textsc{Cushman \& Wakefield}, supra note 122, at 9.
\bibitem{228} See \textit{Argentina Interest Rates}, supra note 68.
\bibitem{229} See Deal \& Rosso, supra note 188, at 59.
\bibitem{230} Id. at 42.
\bibitem{231} Id.
\bibitem{232} See id. at 42-43.
\bibitem{233} See id.
\bibitem{234} See id.
\bibitem{235} See id.; see also Bergsman, supra note 179.
\end{thebibliography}
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leveraging a property with high-interest financing.\footnote{236}

The aforementioned paradox arises when foreign investors shy away from this type of equity financing, concluding that it would not produce a high enough return, while simultaneously shunning the market for being too risky for traditional debt leverage. In the present U.S. market, there is a large and robust mezzanine loan market that depends on the same principles of equity financing.\footnote{237} Obligors on the note are the equity holders of the borrower—not the mortgage borrower itself.\footnote{238} As such, in the event of default, the mezzanine lender "forecloses" on the equity in the borrower and would assume ownership of the property.\footnote{239} While the mortgage borrower owns the underlying real estate asset, the mezzanine borrower only owns the equity component in the mortgage borrower.\footnote{240}

Can these developing markets “leapfrog” the debt stage and go straight to mezzanine financing?\footnote{241} From an economic perspective, capital structure should not affect value, which should be independent of debt-versus-equity capitalization decisions.\footnote{242} In reality, however, target debt levels are most likely influenced by the probability of financial distress. Companies with higher risk—economic, political, or legal—should be expected to use less debt and, logically, more equity. This is exactly the position of real estate firms in these developing economies. Mezzanine financing cuts the middle path by opening up markets to third parties while acknowledging that the risk profile of the firm will not support debt.

The mezzanine lending market grew in the United States in response to the limitation on debt financing in many securitized transactions.\footnote{243} Just as mezzanine lending developed from limitations on debt financing in the United States, this type of systemized equity financing can begin to replace the reliance on debt in other countries. In fact, some have commented that equity investment is preferable to recipient nations in light of the risk- and loss-sharing mechanisms triggered by debt financing.\footnote{244} Mezzanine financing is closer to equity because the value of the “collateral”

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\begin{itemize}
\item \footnote{236} Id. at 42-43.
\item \footnote{238} Id.
\item \footnote{239} Andrew R. Berman, Risks and Realities of Mezzanine Loans, 72 Mo. L. Rev. 993, 995 (2007) [hereinafter Risks and Realities].
\item \footnote{240} This presupposes that any legal limitations on foreign ownership of firms do not impede foreclosure. Many Latin American governments now impose fewer limits on foreign ownership of business. See Ernest R. Larkins, Business Taxation in Latin America: Similarities, Trends, and Strategies, 11 J. Int'l Tax'n 22, 24 (2000).
\item \footnote{241} Franco Modigliani & Merton H. Miller, The Cost of Capital, Corporation Finance and the Theory of Investment, 48 Am. Econ. Rev. 261, 267–270 (1958). See also Dequity, supra note 4, at 243 (discussing concept as it relates to real estate firms).
\item \footnote{242} See Calderon, supra note 13, at 287.
\item \footnote{243} See Berman, supra note 13, at 288.
\item \footnote{244} See Buckley, supra note 74, at 41.
\end{itemize}
The Paradox of Commercial Real Estate Debt

2009

The choice between equity (current financing schemes) and debt (straight mortgage) is not dichotomous. There is a range of financing alternatives that exists between these poles. Mezzanine financing is one such choice. Unlike other commentators, I do not contend that mezzanine financing is a mortgage substitute. Rather, it offers an alternative to debt that will, nonetheless, allow investors in developing economies to participate in foreign investment. Clearly, the pricing must reflect the increased risk; foreclosing on an equity interest is not the economic equivalent of foreclosing on a real estate asset. While the price of a convertible security generally would reflect the likelihood of an increase in value, here it is the likelihood that the value will not decrease.

The fact remains that, despite legal changes that have been implemented in several developing economies, economic realities still preclude the growth of a robust mortgage market. Countries such as Argentina and, with fewer exigencies, Brazil and Mexico should consider implementing legal groundwork that would smooth the path for this type of financing. As a fundamental issue, restrictions on foreign ownership must be eradicated. The value of this financing is contingent upon the ability to foreclose on the equity interest. Next, legal and regulatory changes must occur to solidify the lien of the mezzanine lender on the equity interest. The foundational document in the United States is the UCC-1 Financing Statement. This document is filed in the appropriate state recording office and ensures that the lender’s lien is effective and superior to third-party claims. States should adopt and enforce requirements for such filings. In this way, markets that are closed to traditional debt financing still have the opportunity to access global capital.

Conclusion

Foreign investment will assist the real estate markets of developing nations in becoming competitive in the global marketplace. The market fundamentals, demand, and infrastructure are in place to set the stage for a real estate boom. The evolving global economy hungers for the marketing of domestic financing products to international investors. Debt is not

245. See Risks and Realities, supra note 240, at 995.
246. See Once a Mortgage, supra note 22, at 106.
247. See id. at 113.
248. See id. at 108 (providing good discussion of this point).
249. See Dequity, supra note 4, at 240.
250. See id. at 241.
251. See Deal & Rosso, supra note 188, at 39 (listing restrictions on foreign ownership in Brazil and Mexico).
252. See Once A Mortgage, supra note 22, at 107.
253. Id.
254. Id.
255. See LORE & COWAN, supra note 2, § 2:24.
the only path to access international capital. Though legal, political, and economic stability remain crucial building blocks, strong real estate fundamentals should prod the market toward exploring alternative methods of finance. As in the United States, when debt is not an alternative, the power of structured equity financing cannot and should not be dismissed.