

MAYER • BROWN

Accessing US Real Estate: Investing in Public REITs

Investment in US Real Estate & Debt
ULI/Mayer Brown Seminar
Frankfurt, Germany

28 January 2010

David Malinger
Partner
+1 312 701 8662
dmalinger@mayerbrown.com

Mayer Brown is a global legal services organization comprising legal practices that are separate entities ("Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia.

Accessing US Real Estate: Investing in Public REITs

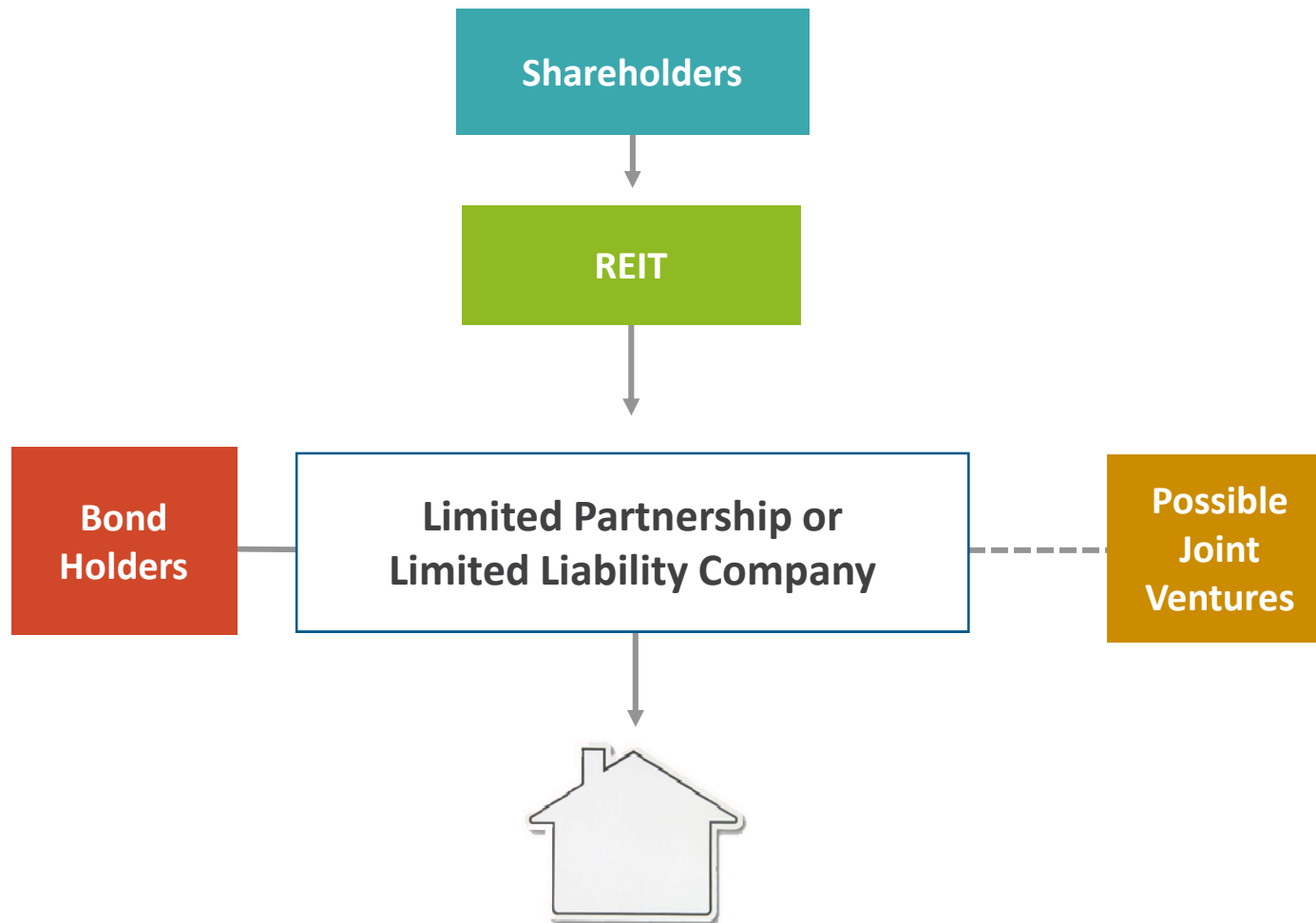
- Share prices of US Public REITs had fallen more than 40% in 2008 through Q1 2009
- Share prices of US Public REITs finished 2009 up more than 20% from their lows
- US Public REITs raised more than US\$20 billion in 2009 (largest amount since 1997)

US Public REITs Stabilize Balance Sheets

- Stated Use of Proceeds by the US Public REITs in 2009 capital raising:
 - General corporate purposes including the repayment of debt
- Other REITs are building their capital reserves for future acquisitions
- Warrants to purchase equity in REITs have been issued in connection with joint venture investments between REITs and investors

Diversified Investment

Example REIT Structure



Diversified Investment

- Joint Venture and Fund Investments are in a single asset or discrete pool of assets
- Equity Investments in a REIT provide investment in a much broader portfolio of assets
- Investment is subject to the overall performance of the REIT
- Preferred Equity Investments allow for a stated return
- Common Equity Investment subject to market volatility and overall performance of the REIT

Investor Rights in Negotiated Transactions

- Depending on the size of the investment, Investors have received representation on the Board of Directors of the US Public REIT
- In connection with Preferred Equity Investments Investors may negotiate restrictive covenants relating to debt coverage ratios and other matters
- Registration Rights for the resale of the shares
- Waiver of Ownership Limitations (typically restricting ownership of shares to under 10%)

US Regulatory and Reporting Requirements

- US Securities and Exchange Commission Regulations require disclosure of beneficial ownership of 5% or more a security by a single holder or group of holders
- NYSE Euronext Rules require shareholder approval of certain issuances:
 - Issuances of shares to an existing holder of 5% or more of the shares outstanding before the issuance
 - Issuances of shares equal to or in excess of 20% of the voting power or number of shares outstanding before the issuance