

THE REAL ESTATE  
LAW REVIEW

TWELFTH EDITION

Editor  
John Nevin

THE LAWREVIEWS

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John Nevin

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# PREFACE

This time last year the world's focus was still on the covid-19 pandemic as the dominant issue affecting us all. Tragically, just as we were starting to see light at the end of the tunnel, the much-hoped-for fresh start was stopped in its tracks by the war in Ukraine. The past 12 months have been dominated by war in Eastern Europe and the ensuing global humanitarian, economic and political fallout. The stability and certainty craved by all currently remains a distant hope.

Following on from COP26 in Glasgow, this year the focus was on Sharm El Sheikh for COP27. Once again, some key world leaders were notable by their absence and there remains the sense that more could and should have been achieved. This year, a further focus was acknowledging the developed world's contribution to the climate problem, and a new loss and damage fund was agreed upon to help meet the climate change costs suffered by the world's poorer nations. It has been accepted that something needs to be done, and that includes in the property industry. The built environment accounts for at least 25 per cent of the UK's greenhouse gas emissions, and significant changes are necessary if net zero targets are to be met. To date, the focus has been on high-profile new developments with eye-catching environmental, social and governance credentials. How to deal with the much larger stock of older, lower-value and underperforming buildings remains a bigger challenge.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012; Brexit seems but a distant memory, as a pandemic was swiftly followed by war in Europe and a cost of living crisis. These have truly been unprecedented times. This 12th edition of *The Real Estate Law Review* will, perhaps more than ever, continue to prove its worth by giving readers an invaluable overview of how key markets across the globe operate and how they react to major world events. The covid-19 pandemic and the war in Ukraine have both served as stark reminders that it is not possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 25 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effects on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

Covid-19 has not gone away but we have learned to live with it. The pandemic's legacy will be its lasting effect on how we live, work and play, and on each and every aspect of the global real estate market. More immediate headwinds include the very real risk of a long and deep recession, soaring inflation, rising interest rates, the withdrawal of government



lockdown support, failing consumer confidence, increasing costs, a critical shortage of labour and materials as well as ongoing supply chain problems. On a more positive note, the property industry has traditionally proved to be resilient, and covid-19 demonstrated its ability to adapt to difficult and challenging times. The United Kingdom will be anxious to maintain its position at the top of global shopping lists as investors look for relatively safe havens for their investment capital. London and the regions seem certain to remain attractive to overseas investors looking for investment opportunities, both in the traditional real estate investment markets and also the rapidly evolving alternative asset sectors. The next few years will undoubtedly be challenging as we continue on the journey to recovery, but opportunities will arise, and real estate will remain a key part of global investment strategies. Knowledge of the global real estate markets will prove key to identifying and making the most of buying opportunities.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this 12th edition of *The Real Estate Law Review*. I would also like to thank the members of *The Law Review* team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2023 and beyond.

**John Nevin**

Slaughter and May

London

February 2023

# IRELAND

*Diarmuid Mawe, Craig Kenny and Katelin Toomey*<sup>1</sup>

## I INTRODUCTION TO THE LEGAL FRAMEWORK

Ownership of real estate in Ireland may be held as either freehold or leasehold title. Freehold title confers absolute title on an owner whereas leasehold title confers ownership for a term of years as granted by the lease. Leasehold title is based on the contractual relationship between the freehold owner (the lessor) and the leasehold owner (the lessee). During the term of a lease, the freehold owner holds what is known as the ‘freehold reversion’ and, on the expiry of a leasehold term, the title reverts to the freehold owner unless the leasehold owner has a right to acquire the freehold interest in the property and it chooses to exercise this right. Such a right is referred to as ‘buying out the ground rent’ and is only available in particular circumstances; for example:

- a* permanent buildings must be on the land;
- b* if the buildings have been altered or reconstructed, that alteration or reconstruction did not cause the buildings to lose their original identity;
- c* the buildings were not erected in contravention of a term or covenant of the lease; and
- d* at least one of seven other criteria as set out in the Landlord and Tenant (Ground Rents) (No. 2) Act 1978, as amended by the Landlord and Tenant (Ground Rents) (Amendment) Act 2019, must be met.

The Property Registration Authority (PRA) governs the registration of land in Ireland and manages and controls both the Registry of Deeds and the Land Registry. The *Tailte Éireann Act 2022* was published in September 2022. The creation of *Tailte Éireann* will bring together land and property information services in the state, including registration, valuation and surveying. The Act provides for the dissolution of the PRA and Ordnance Survey Ireland and the transfer of the functions of those two bodies, together with the functions of the Commissioner of Valuation and the Boundary Surveyor, to *Tailte Éireann*. The impact of the Act is not expected to be significant as the Registry of Deeds and the Land Registry will remain the bodies responsible for the registration of title, albeit under *Tailte Éireann* and not the PRA.

The Registry of Deeds was established in 1707 and provides a system of voluntary registration for deeds affecting real estate. The effect of registration is to govern priorities between documents that relate to the same property. Accordingly, failure to register a deed in the Registry of Deeds may result in a loss of priority.

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<sup>1</sup> Diarmuid Mawe is a partner and head of commercial property, Craig Kenny is a partner and Katelin Toomey is a professional support lawyer at Maples Group.

The registration of a deed in the Registry of Deeds is not proof of ownership and, in contrast to registered property, the underlying title must be fully investigated to determine ownership and to ascertain whether a property has a 'good and marketable' title. The Registry of Deeds does not investigate title; it merely records the existence of deeds. Property registered in the Registry of Deeds is referred to as 'unregistered property'.

The Land Registry was established in 1892. When a title is registered in the Land Registry, the deeds are lodged with the Land Registry, and particulars in relation to the property and its ownership are entered on a folio that forms the register maintained by the Land Registry. The Land Registry also maintains maps (referred to as filed plans) in relation to each property registered with it. Both folios and maps are maintained in electronic form. A title registered in the Land Registry is guaranteed by the state; however, this guarantee relates to the title only and does not extend to the filed plan or the boundaries of the property outlined on the filed plan. As a result of the state guarantee, a buyer can accept the folio as evidence of title without having to investigate the underlying title deeds. Property registered in the Land Registry is referred to as 'registered property'.

Generally, the choice of law for a transaction dealing with Irish real estate is Ireland, and the parties to a transaction will agree that the transaction will be governed by Irish law and that the Irish courts will have exclusive jurisdiction to settle any disputes arising from the transaction. It is usually agreed that any proceeding, suit or action arising out of or in connection with the transaction is brought in the Irish courts.

## **II OVERVIEW OF REAL ESTATE ACTIVITY**

Investment in the Irish real estate investment market increased 40 per cent in the first three quarters of 2022 compared with 2021. The total investment volume in the market during this period reached €4.9 billion.

While this volume demonstrates the strength of the Irish real estate investment market, inflation, interest rates and the cost of debt are now in sharp focus as well as the energy crisis, geopolitical conflicts and ongoing supply chain disruptions. Fortunately, the Irish economy is in a relatively strong position to deal with these issues, with a low level of unemployment, strong household savings and corporate balance sheets. The longer-term inflation expectations are anticipated to be slightly above historical norms.

We anticipate that the top trends in the Irish commercial real estate market for 2023 will be hybrid work; sustainability; environment, social and governance (ESG); and a focus on the private rented sector (PRS) owing to the commitments made by the Irish government in respect of residential accommodation with its Housing for All plan. Ireland remains an excellent place to invest and do business. The availability of finance in the Irish market remains good, although some investors are adopting a more cautious approach to borrowing because of the increase in interest rates.

Ireland offers a high degree of economic and political stability with the benefit of a common law legal system and a favourable tax structure that is relatively easy to understand, as well as low unemployment figures. Ireland is strongly aligned with the European Union and benefits from the common trade area and access to talent from across Europe.

### III FOREIGN INVESTMENT

Foreign investment is prevalent in the Irish real estate market. There are no restrictions on ownership of real estate assets by foreign investors in Ireland. Both domestic and foreign investors need to comply with anti-money laundering requirements and provide information to verify their identity, the source of funds and the ability to fund the acquisition.

Ireland's favourable tax system, as well as its status as the only native English-speaking EU Member State post-Brexit, makes Irish real estate an attractive choice for foreign investors. Ireland actively promotes foreign investment, and Ireland's inward investment promotion agency (IDA) is a non-commercial, semi-state body promoting foreign direct investment into Ireland through a wide range of services. The IDA's portfolio offers a wide range of options from greenfield sites to office solutions. Its main objective is to encourage investment into Ireland by foreign-owned entities.

### IV STRUCTURING THE INVESTMENT

The following investment structures are the most popular ones that are currently used in Ireland for the acquisition of real estate.

#### **i Irish companies**

The three most common forms of Irish companies used by investors to acquire real estate are a private company limited by shares (LTD), a designated activity company (DAC) and a public limited company (PLC). An LTD, a DAC and a PLC are all separate legal entities, have the capacity of a natural person, and may sue or be sued in their own names.

LTDs, DACs and PLCs must all be registered with the Irish Companies Registration Office (CRO). The differences between the three are as follows:

#### ***LTD***

An LTD has full capacity to undertake all activities without restrictions, and specific objects do not need to be set out in its constitutional documents. The members' liability in an LTD is limited to the amount, if any, unpaid on the shares that they hold if the LTD is wound up. An LTD may have a single director.

#### ***DAC***

In contrast to an LTD, there are restrictions on the activities that a DAC may undertake. The constitutional documents of a DAC set out its objects, and a DAC only has the power to undertake these activities and is restricted in this way. The members of a DAC have liability in two ways if a DAC is wound up:

- a* the amount, if any, that is unpaid on the shares they hold; and
- b* the amount that they have undertaken to contribute to the assets of the company, in the event that it is wound up.

DACs must have at least two directors.

## **PLC**

Some institutional investors also use PLCs to acquire Irish real estate. The liability of members in a PLC is limited to the amount unpaid (if any) on shares held by them. PLCs must have at least two directors.

### **ii Real estate investment trust**

A real estate investment trust (REIT) is a type of PLC that was introduced in Ireland in 2013 to facilitate collective investment in real estate. A REIT is a tax-efficient structure, and if it fulfils certain criteria it will not be liable for corporation tax or income tax on its real estate profits, real estate rental income or capital gains tax on disposals of certain real estate assets in Ireland.

The Finance Act 2019 limited the previous provisions that allowed a REIT to avoid any latent capital gains tax exposures when it ceased to be within the regime so that the provisions apply only where REITs have been in operation in the jurisdiction for a minimum of 15 years. A REIT must also be registered with the CRO. There are only a small number of Irish REITs remaining in the market, as a number have been acquired by third parties and companies that have ceased to be listed.

### **iii Non-Irish companies – a Luxembourg company**

International investors frequently use non-Irish companies such as Luxembourg companies to acquire real estate in Ireland.

### **iv Irish regulated partnerships**

Irish limited partnerships are also used to acquire Irish real estate assets. A limited partnership must consist of at least one general partner and one limited partner. A partnership does not have a separate legal personality. A general partner is liable for all debts of the partnership whereas a limited partner is liable for its contribution only and is not liable for debts beyond this. Frequently, the general partner is itself an LTD. A limited partnership must be registered with the CRO.

### **v Irish regulated funds – the ICAV**

Historically investors in the Irish real estate market used Irish regulated funds. In particular, they used the Irish collective asset-management vehicle (ICAV), a type of qualifying investor alternative investment fund to acquire Irish real estate.

The ICAV is a corporate vehicle similar to an investment company. Historically, regulated funds such as the ICAV offered some tax advantages; however, as a result of legislative changes in 2016 and 2019, this position has now changed. Such funds are subject to a 20 per cent withholding tax on profit distributions to investors and are exposed to a deemed income tax charge of 20 per cent if they have debt costs above certain thresholds. Although they remain common, the tax advantages of such structures have been eroded.

## V REAL ESTATE OWNERSHIP

### i Planning

The Local Government (Planning and Development) Acts 1963–1999 and the Planning and Development Acts 2000–2022 (the Planning Acts) govern land use and planning and zoning matters in Ireland. Planning permission is required for the development of property or for a material change of use unless the development is categorised as ‘exempted development’ under the Planning Acts. Generally, exempted developments are limited to small developments below a certain square footage.

Failure to obtain planning permission where required may lead to enforcement by the planning authority under the Planning Acts. There are three enforcement mechanisms under the Planning Acts:

- a* criminal prosecution;
- b* the enforcement notice procedure or an enforcement action; and
- c* a planning injunction.

To obtain planning permission, an applicant must apply to the relevant local planning authority providing all necessary documentation, including any maps and drawings. A public notice of the proposed development must also be made, and this can be done by placing a notice in a local newspaper and erecting a site notice at the property.

Generally, a planning authority makes a decision in relation to an application for planning permission within eight weeks of receipt of the application. If the application for planning permission is refused, this decision may be appealed to An Bord Pleanála (the Planning Appeals Board – an independent third-party planning appeals board). If a decision to grant the application for planning permission is made, third parties may appeal this decision to An Bord Pleanála. If no appeals have been lodged by third parties within the relevant time frame, a final grant of planning permission will be issued by the planning authority.

### ii Environment

Usually, the entity that caused environmental contamination will be liable for the contamination and any clean-up required in respect of it; however, in some circumstances an owner or occupier of property on which environmental contamination has occurred may be held liable because of the principle of strict liability that applies under Irish environmental laws. This may be the case where the owner did not cause the contamination or even where the owner did not own the property at the time the contamination occurred. An owner or occupier may also be liable for part of the cost or even the entire cost associated with the clean-up where the entity responsible is not in a financial position to pay.

As a result, where compliance with environmental laws is a concern, a buyer should appoint an environmental expert to provide a report on the property to ensure that it does not inherit any environmental liability. Sellers frequently seek to limit liability for any environmental issues under the contract for sale and, for this reason, a buyer should either insist that any environmental issues identified are dealt with prior to completion or alternatively an indemnity from the seller could be obtained under the contract for sale. There is also a risk that lenders that enforce security and take possession of a property may become secondarily liable for environmental contamination. As a result, lenders may be reluctant to enforce security where environmental issues exist in relation to the secured asset.

### **iii Tax**

Stamp duty is payable on the acquisition of Irish real estate. It is payable in respect of both commercial property and residential property. Stamp duty is charged on either the consideration paid for a property or on the market value of the property in circumstances where the consideration does not reflect the market value. The current rate of stamp duty for residential properties is 1 per cent on consideration up to €1 million and 2 per cent on any consideration over €1 million; however, since May 2021, where 10 or more residential units are acquired in a 12-month period, an increased rate of 10 per cent stamp duty applies to all units acquired. The stamp duty rate for commercial properties is 7.5 per cent.

Where non-residential property is transferred and subsequently utilised for construction of residential accommodation, a stamp duty refund is available that effectively reduces the rate from 7.5 per cent to 2 per cent. Budget 2023 extended the time allowed to commence construction work to avail of this refund to the end of 2025. This scheme is subject to a number of conditions.

A 7.5 per cent stamp duty charge will also apply on the sale of shares in entities where the entity derives over 50 per cent of its value from Irish land that is intended for development, held as trading stock or held with the sole or main object of realising a gain on disposal. This provision is subject to a number of conditions.

A buyer is generally the party that is liable to pay stamp duty; however, in some circumstances (such as voluntary assurances), both parties may be liable.

### **iv Finance and security**

Lenders in the Irish real estate market usually require the following security:

- a* a debenture that incorporates a fixed charge over the real estate asset and any book debts of the borrower entity;
- b* a security assignment of all material contracts pertaining to the real estate asset;
- c* a charge over any rent accounts or other bank accounts relating to the real estate asset; and
- d* a floating charge over all assets of the borrower entity, where the borrower is a corporate entity.

A lender will be focused on ensuring that its security can be registered as a first-ranking charge against the real estate asset and that there are no prior charges already registered that will not be discharged prior to completion.

## **VI LEASES OF BUSINESS PREMISES**

Commercial leases in Ireland are generally categorised as either short term or long term. A short-term lease is a lease with a term of up to five years, and a long-term lease is a lease with a term of between 10 and 25 years. It is unusual in the current market to have a lease with a term in excess of 25 years. The terms of a commercial lease are freely negotiable between the parties, and the rent, the terms of any rent reviews and tenant covenants will all be subject to commercial agreement.

A long-term commercial lease usually contains rent review provisions providing for the review of rent every five years. The review provisions may either be linked to 'open market rent' or may be based on changes in the consumer price index. Prior to the enactment of the Land and Conveyancing Law Reform Act 2009 (the 2009 Act), a lease could provide

for an 'upward only' rent review (i.e., a review mechanism where the reviewed rent could increase only and would never be less than the original contracted rent); however, since the commencement of the 2009 Act, rent review provisions must be on an upwards or downwards basis, meaning that the rent can either increase or decrease in line with the market rent or the consumer price index on each review of the rent. Where a lease that postdates the 2009 Act contains an upward only rent review provision, it will be read as if that provision provided for a rent review on an upwards or downwards basis. This provision of the 2009 Act may not be contracted out of.

While the terms of the lease will dictate a tenant's liability under it, generally speaking a tenant under a commercial lease will provide numerous covenants, including in relation to the payment of rent, insurance rent, service charge and other outgoings, repair, decoration, alterations, alienation, user and compliance with statutory obligations and notices. Most commercial leases in Ireland are known as full repairing and insuring leases (FRI leases).

Under an FRI lease, a tenant takes on extensive covenants in relation to the repair of the premises. These obligations may either be by way of a direct covenant in the lease or where the premises forms part of a building or an estate that the tenant may covenant to pay a service charge to the landlord as a contribution towards the costs incurred by the landlord in repairing and maintaining the common areas of the building or estate. A landlord usually insures the premises, and the tenant refunds the landlord this cost by paying insurance rent.

A tenant may be entitled to security of tenure of a premises where one of three equities applies. The first equity is based on the occupation of a business premises and is the one most frequently used by commercial tenants seeking the renewal of a commercial lease. A tenant may be entitled to business equity where it has been in occupation of a business premises for more than five years and it has not renounced its right to a new tenancy. Legal advice must be obtained by a tenant renouncing its renewal rights in order for such a renunciation to be valid. The respective bargaining power of the landlord and the tenant will dictate whether a deed of renunciation is required when a commercial lease is entered into. Practically speaking, one of the effects of the five-year qualifying period for business equity is that certain leases of business premises will provide for a term no longer than four years and nine months to prevent this entitlement from arising.

The second equity is based on long occupation and may apply (subject to certain criteria being fulfilled) if a premises has been in continuous occupation by a tenant for upwards of 20 years. This equity applies to commercial premises and to some residential premises (depending on when the residential tenancy commenced).

The third equity is improvements equity and may apply where a tenant has carried out extensive improvements to a premises. This equity is not invoked often in practice as the improvements must be of an extensive nature to qualify.

There is increased focus on green leases in Ireland recently because of environmental concerns, a collective responsibility (and indeed desire) to become more energy and environmentally efficient and increased scrutiny on ESG requirements. Broadly, a green lease is a standard form commercial lease that contains additional provisions relating to the improvement and management of the sustainability and environmental performance of a premises. The exact provisions will vary from lease to lease; however, at a minimum, matters such as waste and water management, the use of sustainable materials and provisions relating to the environmental performance of the premises are usually covered by a green lease.



## VII DEVELOPMENTS IN PRACTICE

### i The Hybrid Office

Demand for office accommodation in Dublin city centre increased throughout 2022. The largest deal of Q3 2022 was the lease to TikTok at the Tropical Fruit Warehouse in Dublin, while the sales of the Salesforce headquarters and the Hibernia REIT portfolio also boosted office investment volumes. The office is now seen as a space to collaborate and share ideas.

Such a space must be fit for purpose and attractive to employees. Occupiers are now demanding increased flexibility in leases of office space as well as high-quality, modern, collaborative and sustainable space. Dublin offices have been one of the most sought-after real estate investments in Europe in recent years, with the exceptional Irish employment market and its multinational corporate tenant base increasing investor demand. Despite the rising cost of debt, investors are still seeking opportunities in Dublin and are prepared to bid at competitive prices.

### ii The future for retail and the high street

The Irish retail sector has demonstrated its resilience with consumer confidence, retail sales and footfall all increasing quarter on quarter throughout 2022. There are several new international entrants to the Irish retail market, with Lego, Russell & Bromley and Pret a Manager, among others, opening their first Irish stores in Dublin in 2022. Skechers and Mulberry are also due to open stores in the Grafton Street area in 2023. The vacancy rate on Grafton Street is expected to fall to 9.6 per cent by the end of 2022.

Investors may favour certain retail assets as the sector continues to recover with neighbourhood schemes, grocery-anchored schemes and retail parks remaining popular choices. Prime retail locations such as the Blanchardstown Centre have also performed very strongly with numerous new lettings, including a letting to global sportswear brand Nike, which has agreed a new long-term lease for a Nike Unite concept store, with possession due to commence in March 2023. Overall, the outlook for the retail sector in 2023 is positive.

### iii The PRS

The PRS in Ireland has been a very active sector over the past few years and it continues to attract strong interest from investors. Residential investments accounted for 31 per cent of total investment in the Irish real estate market in H1 of 2022. There is currently a shortage of high-quality residential accommodation in Ireland, and this is a focus of the current government with its Housing for All plan. Key areas for the housing budget in 2023 include social housing, homelessness provisions and rental measures. The government has also introduced other incentives in relation to the construction of residential accommodation in recent years, including the following:

- a A new planning procedure for large-scale residential developments consisting of 100 or more houses or 200 or more bed spaces in relation to student accommodation. The developer must engage in a pre-planning consultation with the local authority before the planning application is submitted. Applications should be made to local planning authorities in the first instance, which are then subject to appeal to An Bord Pleanála.
- b A stamp duty refund is available where non-residential property is transferred and is subsequently used for construction of residential accommodation. The refund

effectively reduces the stamp duty rate from 7.5 per cent to 2 per cent. Budget 2023 has extended the time allowed to commence construction work to the end of 2025 in order to be eligible for this refund.

- c The Help to Buy scheme for first-time buyers of new homes has been extended by Budget 2023 to the end of 2024. This asset class remains attractive for investors because of the high yields and stability of the same.

#### **iv Investment in the industrial and logistics sector remains at an all-time high**

The Dublin industrial and logistics market had its strongest ever quarter of take-up in Q3 2022. This was driven by pre-letting activity as the availability of premises in this market is limited. The vacancy rate at the end of Q3 was just 1.2 per cent across the top 35 business parks in Dublin. Investment volumes reached €90 million in Q3 2022 [and as a result, 2022 is on course to be the second-strongest year on record].

In one of the most noteworthy transactions of the quarter, Danish shipping and logistics company Maersk agreed to pre-let two units at Quantum Logistics Park in North Dublin. Ireland's specialisation in pharmaceuticals and information technology has been a significant factor in the demand for industrial and logistics space in this jurisdiction.

#### **v Focus on ESG and sustainability**

The focus on ESG and sustainability remains in Ireland, and various initiatives are in place to promote energy efficiencies.

Since December 2020, under EU law, all EU Member States, including Ireland, must ensure that all new buildings (both commercial and residential buildings) are 'nearly zero-energy buildings' (NZEBs). Directive 2010/31/EU on the energy performance of buildings defines an NZEB as a building with a very high energy performance that has a significant part of its energy requirements met by renewable sources, which are ideally produced on site or nearby.

The EU Commission published a proposal in December 2021 to revise the directive to provide for zero-emission buildings (ZEBs) instead of NZEBs. The ZEB requirement (once enacted) would apply from 1 January 2030 to all new buildings, and as of 1 January 2027 to all new buildings occupied or owned by public authorities. A ZEB is defined as a building with a very high energy performance, with the very low amount of energy still required fully covered by energy from renewable sources and without on-site carbon emissions from fossil fuels.

There has been a move towards green leases in Ireland. There has also been an increased focus on sustainable finance, and Ireland's financial sector is a leader in sustainable finance, contributing to a sustainable and prosperous economy. The European Union is focused on building a financial system to support a low-carbon, more resource-efficient and sustainable economy, which should lead to increased investment in longer-term sustainable activities.

## **VIII OUTLOOK AND CONCLUSIONS**

The Electronic Commerce Act 2000 (the E-Commerce Act) governs the use of electronic signatures in Ireland. Previously, interests in land were specifically excluded from the scope of the E-Commerce Act; however, the Electronic Commerce Act 2000 (Application of sections 12 to 23 to Registered Land) Regulations 2022 (the Regulations) were introduced in February 2022, and these regulations amended the E-Commerce Act by providing that it shall apply

to the law governing the manner in which an interest in registered land may be created, acquired, disposed of or registered. This amendment allows for the legal recognition of the electronic execution of documents dealing with interests in registered land. Notwithstanding the Regulations, practice has not yet changed in Ireland as the Land Registry, while welcoming the introduction of the Regulations, has clarified that it is not currently in a position to accept electronic or digital signatures on documents submitted to it for registration. Ultimately, Land Registry practice will dictate when electronic signatures are acceptable on documents relating to real estate interests.

The *Tailte Éireann Act 2022* was enacted in December 2022. This Act provides for the dissolution of the PRA and Ordnance Survey Ireland and the transfer of the functions of those two bodies, together with the functions of the Commissioner of Valuation and the Boundary Surveyor, to *Tailte Éireann*. The impact of the Act on real estate investors and lenders should not be significant as the Land Registry and the Registry of Deeds will remain the bodies responsible for the registration of title, albeit under *Tailte Éireann* following the enactment of the legislation.

Inflation, interest rates and the cost of debt are in sharp focus as well as the energy crisis, geopolitical conflicts and ongoing supply chain disruptions. A short slowdown in the Irish real estate market is anticipated owing to those issues; however, the longer-term outlook for the Irish commercial property market is positive. Ireland is expected to remain a popular choice for foreign investors in the European Union because of its status as a native English-speaking EU Member State, with a favourable tax regime and an open and transparent legal system, as well as low unemployment figures.

# ABOUT THE AUTHORS

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Diarmuid Mawe is head of the commercial property group at Maples and Calder (Ireland) LLP, the Maples Group's law firm, and advises on all types of commercial property transactions. He has extensive experience advising institutional clients on all property law aspects involved in the acquisition, management and disposal of real estate assets. Diarmuid also specialises in commercial landlord and tenant law, advising some of the country's largest landlords and tenants on their commercial property portfolios.

Diarmuid has many years of experience advising leading private equity and institutional clients on their respective property portfolios across all sectors of the Irish real estate market, including office, retail, private rented sector and build to rent, and industrial assets.

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Craig Kenny is a partner in the commercial property group at Maples and Calder (Ireland) LLP, the Maples Group's law firm, and specialises in all aspects of commercial property work, including the acquisition and disposal of investment property, commercial landlord and tenant, property finance, private rented sector (PRS) and build to rent (BTR) schemes and the property aspects of corporate transactions. He has also acted on loan portfolio transactions, where the loans are secured over commercial property. Craig has recently advised on the acquisition, development and disposal of PRS/BTR schemes on a forward funded and forward purchase basis. He has advised institutions, lenders, private equity investors, insolvency practitioners, and landlord and tenant clients.

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