

Commercial Real Estate in Ireland: Overview

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THE COMMERCIAL REAL ESTATE MARKET

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

The Irish real estate market performed far better than expected in 2021, particularly in Q3 and Q4 once lockdown restrictions eased and investors were able to travel to inspect premises. Over EUR5.5 billion was invested in the Irish real estate market in 2021.

There were record levels of investment in the industrial and logistics sector throughout 2021 and this asset class appears set to continue to perform well in 2022 and beyond. Ireland's specialisation in pharmaceuticals and information technology has been a significant factor in the demand for industrial and logistics space. The impact of Brexit and COVID-19 supply issues have also prompted businesses to localise their supply chains.

Demand for office space also increased significantly throughout 2021 and concerns about the future of the physical office seem unfounded. While there has been a shift to a hybrid working model in Ireland the importance of the physical office remains. Dublin's biggest employers seek to increase their footprint with quality office space for their businesses. 30% of the total amount invested in the Irish commercial property market during 2021 comprised office properties, with more than EUR741 million invested in this sector in Q4 alone. Two high profile office transactions in 2021 were the letting of more than 19,797m² at the Sorting Office in Dublin 2 to TikTok and the pre-letting of 26,802m² to KMPG at Harcourt Square in Dublin 2. Most Irish businesses have returned to the office in 2022 on a flexible/hybrid basis.

The retail sector also performed better than expected in 2021, particularly in the latter half of 2021, and there has been a good recovery in transactional activity. Consumer confidence, retail sales and footfall all increased quarter on quarter throughout 2021. The Omicron COVID-19 variant does not appear to have dampened consumer demand. There are also several new international entrants into the market seeking retail space with, for example, Lululemon having opened its first Irish stores on Grafton Street in Dublin in December 2021 and Pret A Manger due to open its first store on Dawson Street in Dublin in 2022.

Investment in the private rented sector (PRS) in Ireland remains robust despite the COVID-19 pandemic and continues to attract interest from investors. Residential investments accounted for 40% of total investment in the Irish real estate market in 2021. 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.

There was an increased focus on Environmental, Social and Governance (ESG) issues and wellness considerations in the Irish real estate sector in 2021, and this has continued into 2022. Investors are seeking high quality sustainable and environmentally friendly buildings and are willing to pay a premium for them.

The logistics and PRS sectors are expected to remain strong due to the current demand for high-quality residential accommodation

and logistics space. Demand for retail and office space is expected to increase as the economy continues to recover and society learns to live with COVID-19. Demand for alternative investments such as film studios, life sciences, senior living, and data centres is also expected to increase, as investors seek varied opportunities. Ireland is expected to remain a strong choice for foreign investors due to its status as a native English-speaking EU member state, with a favourable tax regime and an open and transparent legal system.

REAL ESTATE INVESTMENT

Investment Structures

2. What entity types and acquisition structures do investors typically use for real estate investment in your jurisdiction?

Common Entity Types

Investors use the following entities to acquire real estate assets:

- Irish companies.
- Non-Irish companies.
- Real estate investment trusts (REITs).
- Irish-regulated funds.
- Irish-regulated partnerships.

Institutional investors typically use Irish-regulated funds such as qualifying investor alternative investment funds (QIAIFs) for Irish real estate transactions. QIAIFs are regulated by the *Central Bank of Ireland*. QIAIFs can be established as any of the following:

- Irish collective asset management vehicles (ICAVs).
- Unit trusts.
- Investment companies.
- Common contractual funds.
- Investment limited partnerships.

The ICAV has been the most popular structure for a QIAIF investing in real estate in Ireland in the last number of years, due to the tax advantages it provided. However, an ICAV is now subject to a 20% withholding tax on profit distributions and is exposed to a deemed income tax charge of 20% if it has debt costs above certain thresholds. ICAVs remain common but their popularity for Irish real estate investment has decreased in recent years.

International investors also use non-Irish resident companies (such as Luxembourg companies). Institutional investors can also use public limited companies (PLCs). The liability of members in a PLC is limited to any amount unpaid on their shares.

Private investors may seek to use a QIAIF to invest in high value Irish real estate. However, more commonly private investors use other non-regulated corporate structures, such as private companies limited by shares, PLCs, or designated activity companies. The use of Irish limited partnerships (under the 1907 Limited Partnership Act) has increased in recent years, as investors

seek to pool capital and benefit from the flexibility of partnership taxation.

Real Estate Investment Trusts (REITs)

REITs are available in Ireland. There are only a small number of Irish REITs in the market, since a number have been acquired by third parties and ceased to be listed companies. If a REIT ceases to meet the criteria to qualify for REIT tax treatment, there is a deemed disposal of the REIT's assets, unless the REIT has been operating for at least 15 years.

A REIT is a type of PLC. If it meets certain criteria, a REIT is not liable for corporation or income tax on its property rental income or property profits, or capital gains tax on disposals of assets of its property rental business.

Common Acquisition Methods

Irish real estate can be acquired by private sale or by auction. Online virtual auctions have become more common, where all relevant documentation is uploaded to a datasite for prospective buyers to review in advance of the auction and bidding occurs online.

The most common method of acquiring real estate in Ireland is through an asset purchase using the Law Society pro forma Contract for Sale. The contract for sale is amended in each case to reflect the terms of the transaction and the type of property involved.

Real estate assets can also be acquired by way of a share purchase using a share purchase agreement. Such an agreement includes warranties and indemnities in relation to the real estate asset. Any disclosures which the seller needs to make in relation to the property warranties are set out in a disclosure letter which should be provided with the share purchase agreement.

Sources of Finance and Investment

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

Institutional investors and private investors are active in the market (see *Question 2*).

Historically, the Irish real estate market was limited to domestic investors and lending institutions. In recent years, the main investors in the market have been from outside Ireland. While initially US investors were the most prominent, European (particularly German) and Asian funds have become more active in the Irish real estate market in recent years.

Ireland's corporate tax rate of 12.5% on residential construction profits has encouraged international investors to establish residential development companies in Ireland, particularly in Dublin. A new minimum global corporate tax rate of 15% is due to be implemented in 2023, for companies with global annual revenue of more than EUR750 million.

Restrictions on Foreign Ownership and Occupation

4. Are there restrictions on foreign ownership or occupation of real estate (including foreign ownership of shares in companies holding real estate)? Are there restrictions on foreign lending, security, and guarantees to buy or occupy real estate in your jurisdiction?

Foreign Ownership of Real Estate

There are no restrictions on foreign ownership and occupation of real estate in Ireland. This includes direct foreign ownership of real estate in Ireland (by companies and individuals) and indirect foreign ownership (of shares in companies holding real estate in Ireland).

There is no requirement for the disclosure of the ultimate beneficial owners of real estate. Since 2019, businesses in Ireland have been obliged to disclose details of the beneficial ownership of that business for inclusion on Ireland's Central Register of Beneficial Ownership. The European Union (Anti-Money Laundering Beneficial Ownership of Trusts) Regulations 2021 require trustees of express trusts, including trusts of land, to maintain a beneficial ownership register which records the details of each beneficial owner, and to register details of each beneficial owner with the Irish Revenue Commissioners, which maintains this information on the Central Register of Beneficial Ownership of Trusts.

Foreign Lending, Security and Guarantees

There are no restrictions on receiving finance from and granting security to foreign lenders to buy/occupy real estate in Ireland.

There are no restrictions on foreign parties providing security or guarantees to buy/occupy real estate in Ireland.

If repayments under a security document include Irish-source interest payments, a 20% withholding tax applies to those payments in Ireland. Foreign lenders meeting certain requirements (qualifying lenders) can receive Irish-source interest payments free from the 20% withholding tax. Qualifying lenders include:

- Certain foreign banks.
- Companies resident in the EU for tax purposes.
- Companies in jurisdictions that have agreed a double tax treaty with Ireland and certain other treaty lenders.

TITLE TO REAL ESTATE

Title Registration

5. How is title to real estate evidenced? What is the system for public registration/recording of title? Is electronic access and electronic conveyancing available?

How Title is Evidenced

The Land Registry governs property with registered title (registered property). When property ownership is registered in the Land Registry, the deeds are filed with the Land Registry and the particulars of the property and its ownership details are entered on folios, which form the registers maintained by the Land Registry (see *Question 6*) along with maps (filed plans). Folios and filed plans are maintained by the Land Registry in electronic form. Title to registered property is generally evidenced by the Land Registry folio for the property.

Registration in the Land Registry is compulsory for any unregistered property (Registry of Deeds) purchased in Ireland after 1 June 2011.

The Registry of Deeds governs property with unregistered title (unregistered property). It provides for the voluntary registration of

deeds that affect property, and gives priority to registered deeds over unregistered deeds. There is no statutory obligation to register a deed in the Registry of Deeds but failure to do so can result in a loss of priority.

A full review of the documents of title, including the root of title and the chain of title, is required to evidence title to unregistered property.

Public Registration/Recordation System

The *Property Registration Authority of Ireland (PRA)* is responsible for the registration of title to real estate in Ireland. The PRA is a statutory body established under the Registration of Deeds and Title Act 2006. Its primary functions are to manage the Land Registry and the Registry of Deeds, and to promote and extend the registration of property ownership in Ireland.

Electronic Access and Conveyancing

Access to copies of folios and filed plans is available electronically and it is also possible to carry out certain conveyancing searches electronically.

The Law Society of Ireland and the PRA are currently working on the development of an electronic conveyancing system. However, this has not yet been implemented.

There has been a move towards the use of electronic signatures for the acquisition of real estate through the Electronic Commerce Act 2000 (Application of sections 12 to 23 to Registered Land) Regulations 2022. However, procedures to deal with electronic signatures have not yet been implemented by the Land Registry, so original wet ink signatures are still required for the vast majority of documents dealing with real estate.

6. What are the main information and documents registered/recorded in the public registration/recordation system? Can confidential information or documents be protected from disclosure?

Main Information and Documents

The Land Registry maintains folios of registered property (see *Question 5*) which contain the following:

- A description of the property.
- Details of the ownership of the property.
- The category of title applicable to the property.
- Details of burdens affecting the property.
- Details of easements benefitting the property.

The Registry of Deeds records the priority of deeds registered with it that affect unregistered property (see *Question 5*) and a description of those deeds. It does not record or maintain any other information.

Confidential Information

Searches of the Land Registry and the Registry of Deeds, and copies of folios in the Land Registry and memorials lodged in the Registry of Deeds, are publicly available.

Copies of the underlying title documents can only be obtained from the Land Registry by the property owner or with the owner's consent, or by a party with a legal interest in the property, for example, the owner's personal representative or a person who is a party to the document. In this way, confidential information is protected from disclosure.

7. Is there a state guarantee of title? Are authorities that manage public title registration/recordation systems liable for title registration errors? Is title insurance available and is it commonly used?

State Guarantee of Title and Compensation

Title to property registered in the Land Registry (see *Question 5*) is guaranteed by the state, and the Land Registry indemnifies anyone who suffers loss due to a mistake made by the Land Registry. Therefore, a buyer can accept a folio as evidence of title without having to review the underlying title deeds. However, the state does not guarantee the conclusiveness of boundaries or the area of the relevant property as identified on Land Registry maps.

Title Insurance

Title insurance is available in the Irish market, but it is not commonly used. Typically, title insurance is usually only obtained if there are:

- Missing title deeds (which may include insuring against unknown covenants in missing documents).
- Identified defects on the title (such as restrictive covenants impacting on the development potential of a property).

8. How can real estate be held (that is, what types of tenure and other main ownership rights exist over land)?

Freehold Title/Absolute Ownership

Real estate can be held as freehold title. Freehold title confers absolute ownership.

Leasehold Title

Real estate can be held as leasehold title. Leasehold title confers ownership for the term of years granted by the lease. Leasehold title is based on the contractual relationship (the lease) between the lessor and lessee.

It is possible to hold both freehold title and leasehold title jointly as either tenants in common or joint tenants.

Other Rights

Rights, interests, and burdens that can be created or attach over real estate include mortgages and charges, leases, easements, wayleaves, and covenants (both positive and negative).

In the case of registered land, certain rights must be registered in the Land Registry to gain protection, otherwise they will not be protected against a bona fide buyer for value without notice (for example, rights of residence, restrictive covenants, and leases for a term exceeding 21 years). A number of burdens affect registered land without registration, such as public rights, the rights of individuals in occupation, and tenancies for terms not exceeding 21 years. Such burdens are known as "section 72 burdens", as they are dealt with by section 72 of the Registration of Title Act 1964.

In the Registry of Deeds (unregistered land), priority is determined by the serial number allocated to the instrument. Registered instruments have legal priority over unregistered instruments or instruments registered later in time. An exception applies where the owner of a registered instrument had actual notice of a prior unregistered or unregistrable instrument.

SALE OF REAL ESTATE

Preliminary Agreements

9. What types of preliminary agreements are typically used in the sale of real estate and are they legally binding?

In Irish commercial real estate transactions, agents are usually appointed by the buyer and the seller. The commercial terms of the transaction are negotiated between the parties and their agents.

Once the commercial terms are agreed, they are recorded in a non-binding heads of terms document.

Between heads of terms being agreed and exchange of a binding contract for sale, the parties can also enter into exclusivity agreements and confidentiality agreements. These types of agreements are becoming more widespread in the Irish market and are legally binding.

Sale Contract

10. Briefly outline the typical main provisions of a commercial real estate sale contract and main real estate provisions of a typical share purchase agreement.

Commercial Real Estate Sale Contracts

The Law Society of Ireland produces a pro forma contract for sale for use in real estate transactions, which is designed to provide a fair balance of rights between buyers and sellers.

The contract for sale includes:

- A memorandum of the agreed terms of the sale (for example, parties involved, price, description of property, and completion date).
- A list of the documentation and searches to be provided by the seller.
- The *Law Society of Ireland General Conditions of Sale (General Conditions)*. The General Conditions include various warranties concerning the property. They impose disclosure obligations on a seller which the seller can only exclude by inserting special conditions (see *Question 12*). Accordingly, the buyer will be on notice of any deviations from the standard contract. The General Conditions require the buyer to investigate and satisfy itself as to the title to the property pre-contract.
- Any bespoke special conditions (for example, conditions relating to missing title documents or the planning position in relation to a property).

Share Purchase Agreements: Real Estate Provisions

A share purchase agreement relating to a company that owns real estate will include warranties (see *Question 12*) in relation to the real estate. Any disclosures against those warranties should be set out in a disclosure letter provided with the share purchase agreement. The share purchase agreement will also contain:

- Descriptions of the parties and the properties.
- Details of any conditions relating to the properties.
- Details of completion deliverables.
- Definitions confirming the purchase price and completion date.

Due Diligence

11. What real estate due diligence is typically carried out before an acquisition?

Due diligence typically involves:

- Investigation of the seller's title to the property to ensure the buyer will acquire a good marketable title (conducted by the buyer's lawyer).
- Searches against the seller and the property (conducted by the buyer's lawyer).
- Explanation and/or discharge of all acts appearing on the searches that affect the seller and/or the property (conducted by the seller's lawyer).
- Due diligence on the value added tax (VAT) profile of the property, and an assessment of the application of Irish tax law to the acquisition of the property (conducted by the buyer's tax advisers).
- Physical survey of the property by an architect, engineer, or surveyor, as well as planning due diligence by a planning consultant and environmental due diligence by an environmental expert (conducted on the buyer's behalf).
- Environmental due diligence if non-compliance with the environmental laws is a concern (see *Question 14*), since Ireland does not have a dedicated register of contaminated land (conducted by an environmental expert on the buyer's behalf). If engaged, an environmental expert can provide an environmental report on the property.

Sellers' Warranties

12. What real estate warranties are typically given by a seller to a buyer in the sale of commercial real estate? What are the main limitations on warranties, for example, qualified by knowledge and disclosure?

The General Conditions (see *Question 10*) contain various contractual warranties in respect of a property, including in relation to:

- Notices affecting the property.
- Planning compliance.
- Boundaries.
- Easements.
- Identity of the property.

These warranties can be excluded or amended by inserting a special condition into the contract for sale, on agreement between the parties.

In commercial property transactions, a seller will typically seek to limit the warranties provided in the contract for sale. For example, sellers often seek to limit the planning compliance warranty by reference to the planning and building compliance documentation exhibited in the documents schedule of the contract for sale.

If the property is sold in an enforcement scenario (for example, in a sale by a receiver, liquidator, or mortgagee), it is usual to exclude or limit many of the warranties that otherwise apply under the General Conditions.

Real estate warranties in a share purchase agreement are also qualified by specific and general disclosures against the warranties in the disclosure letter.

Liability

13. Does a seller have any statutory or other liability to the buyer in a disposal of commercial real estate?

A seller can be liable for misrepresentation. General Condition 29 of the General Conditions provides that a buyer is entitled to compensation for any loss the buyer has suffered as a result of an error made by the seller, which includes any non-disclosure, misstatement, omission, or misrepresentation made in a contract for sale. However, a seller may seek to limit General Condition 29 by inserting a special condition into the contract for sale (see *Question 10*), stating that the buyer is not entitled to rely on any representations made by the seller.

In addition, it is a criminal offence under the Land and Conveyancing Law Reform Act 2009 (LCLRA 2009) for a seller to fraudulently conceal or falsify material information relating to the seller's title to the property.

Environmental Issues

14. Briefly outline the environmental legislation and potential liability in a purchase of real estate. Is it common to carry out environmental due diligence and obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

Environmental Legislation and Liability

The Environmental Protection Agency, the Office of Environmental Enforcement and local authorities are responsible for environmental compliance. The main laws governing environmental matters are the:

- Environment (Miscellaneous Provisions) Act 2015.
- Environmental Protection Agency Acts 1992 to 2011.
- Waste Management Acts 1996 to 2011.
- European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018.
- Water Services Acts 2007 to 2017.
- Air Pollution Acts 1987 and 2011.

Liability for environmental contamination on real estate is not limited to the polluter, although the polluter is likely to be pursued in the first instance by the relevant authority.

Secondary liability can extend to the owner or occupier of the property affected due to the principle of strict liability which applies under Irish environmental law. This may be the case where the owner did not cause the contamination, or even where the owner did not own the property when the contamination occurred. An owner or occupier may also be liable for part or all of the cost associated with the clean-up where the entity responsible is not in a financial position to pay.

Environmental Due Diligence and Insurance

If there are environmental concerns in respect of a property, it is usual to carry out environmental surveys and searches. Crucially, a buyer will want to avoid any secondary liability for the remediation of environmental issues. If there are no specific environmental concerns, it is not usual to carry out environmental surveys and searches.

Environmental insurance may be required, depending on the environmental issue concerned.

Environmental Issues in the Sale Contract

Sellers typically seek to exclude liability for environmental issues under a contract for sale. If there is a risk that a property may be affected by environmental issues, a buyer should seek to either:

- Have the issue remedied pre-completion.
 - Obtain an indemnity from the seller under the contract for sale.
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15. What types of liability can a buyer inherit relating to the real estate? Can a seller retain liability relating to the real estate after the sale?

Buyer Inheriting Liability

A buyer can inherit liability for issues relating to the property as its new owner, particularly if there is an ongoing breach of legislation relating to the property. The principle of buyer beware (*caveat emptor*) applies to the acquisition of real estate in Ireland, so comprehensive due diligence is conducted by the buyer (see *Question 11*).

Seller Retaining Liability

Subject to any terms or special conditions negotiated under the contract for sale, a seller may retain liability after the sale relating to the period when the property was owned by the seller.

Any liability may have been dealt with in the contract for sale, and any special conditions (see *Question 12*) should be carefully reviewed to check the legal position. A seller can also provide a buyer with an indemnity for any known defect or breach, and will remain liable for any such defect or breach.

Exchange and Completion/Closing

16. When does the sale become legally binding? What are the main documents and formalities for exchange and completion/closing of the sale? When does title transfer? Is notarisation required?

When Legally Binding

The parties to a contract for sale become legally bound when the contract is executed and exchanged and the agreed contract deposit is paid by the buyer to the seller.

A contract for sale requires execution as a simple contract only and may be executed using an electronic signature.

Completion/Closing Documents

On completion, a deed of assurance must be executed by the seller as a deed. The formal requirements for the seller to execute a deed must be complied with for the deed of assurance to be legally valid (see *Question 3*).

The seller must provide various standard declarations on completion, such as a family law declaration, and a declaration relating to unregistered burdens affecting property registered in the Land Registry (*section 72, Registration of Title Act 1964*). These declarations must be sworn by the seller in the presence of an independent solicitor or commissioner for oaths. If the seller is a foreign entity, the declarations can be sworn in the presence of a notary public (notarisation is not required if the seller is an Irish entity).

Completion typically takes place at the seller's solicitors office.

After completion, the deed of assurance must be stamped by the *Revenue Commissioners*. The stamp duty return must be filed electronically within 30 days of execution, however in practice Revenue allows a further 14 days before late filing and payment charges are imposed.

If the property is registered property, the duly stamped deed of assurance must be lodged with the Land Registry. If the property is unregistered property, the duly stamped deed of assurance must first be registered in the Registry of Deeds, then an application for first registration of the property must be made to the Land Registry.

The main document required for a share sale is the share purchase agreement which includes warranties and indemnities in relation to the property being sold. Any disclosures which the seller needs to make in relation to the property warranties are set out in a disclosure letter which should be provided with the share purchase agreement. Once the share sale has completed the property will be owned by the buyer as there is no change in the owner entity as part of a share sale, merely a change of control.

When Title Transfers

There is a split between beneficial title and legal title under Irish law. The beneficial title to a property transfers to a buyer on exchange of the contract for sale (unless this is excluded in the contract for sale by a special condition).

The legal title transfers to a buyer on execution of the deed of assurance (see above, *Completion/Closing Documents*).

Notarisation

Notarisation is not required in Ireland.

REAL ESTATE TAX

Stamp Duty/Transfer Tax

17. Is stamp duty/transfer tax (or equivalent) payable on a purchase of real estate? Who pays, what are the rates and are there any exemptions? Does it apply to the transfer of shares in a company holding real estate and at what rate?

Stamp Duty/Transfer Tax

Stamp duty is payable on the purchase of Irish real estate. Stamp duty is charged on the consideration payable for the property (if the consideration payable reflects the property's market value) or the property's market value.

Who Pays and Typical Tax Rates

The buyer is usually liable to pay the stamp duty, although in certain transactions (such as voluntary transfers) both parties can be liable.

The rates of stamp duty are as follows:

- For commercial property, 7.5% of the consideration payable (irrespective of the amount of consideration payable).
- For residential property:
 - 1% on consideration up to EUR1 million;
 - 2% on consideration above EUR1 million; or
 - 10% on all units acquired, if ten or more residential units are acquired by one investor in a 12-month period.

Exemptions

If commercial property is transferred and subsequently used to construct residential accommodation, a stamp duty refund is available which effectively reduces the stamp duty rate from 7.5% to 2%, subject to a number of conditions. Budget 2021 extended the time allowed to commence construction work to qualify for this refund to 31 December 2022.

There is also a stamp duty exemption for transfers of property between intra-group companies and on certain transfers of property between spouses, civil partners, and cohabitants.

Transfer of Shares

Stamp duty on the transfer of Irish shares is generally charged at 1% of their value.

Transfers of shares or interests in corporate entities (including Irish and non-Irish incorporated companies) and partnerships may be subject to 7.5% stamp duty if the entity derives over 50% of its value from Irish land intended for development, held as trading stock, or held with the sole or main object of realising a gain on disposal. This is subject to a number of conditions, including that the transfer transfers control of the land.

Tax on Seller's Profits/Gain

18. Is tax imposed on a seller's profit or gain on a sale of real estate? What are the rates and are there any exemptions? Does it apply to a transfer of shares in a company holding real estate and at what rate?

Tax on Seller's Profits/Gain

A sale of Irish real estate, or of unquoted shares in companies deriving the greater part of their value from Irish real estate, is subject to Irish capital gains tax. The gain is calculated on the proceeds of sale minus acquisition and enhancement costs, and minus the incidental costs of acquisition and the incidental costs of disposal.

Irish capital gains tax is subject to a withholding procedure applicable to the seller's capital gains tax liability. The procedure requires the buyer to withhold 15% of the consideration and pay this amount to the Revenue Commissioners unless the seller provides a clearance certificate from the Revenue Commissioners. A capital gains clearance certificate is automatically available on application to the Revenue Commissioners if the seller is tax resident in Ireland. A non-resident seller will need to agree and discharge its capital gains tax liability in order to obtain a clearance certificate. This withholding procedure only applies to a buyer where the consideration payable to the seller exceeds the relevant threshold at the date of the transfer agreement (currently EUR500,000, or EUR1 million if the asset disposed of is a house or an apartment).

Typical Tax Rates

The current rate of capital gains tax is 33%.

Exemptions

A capital gains tax exemption applies to disposals of land acquired between 7 December 2011 and 31 December 2014 (inclusive), provided the land was held for at least seven continuous years. The relief applies to residential and non-residential real estate located in an EEA state acquired by an Irish resident during the period set out above.

A sale of a principal private residence is also exempt from capital gains tax, provided the seller lived in the property as their main residence and used the entirety of the property as their home.

Transfer of Shares

A transfer of shares in a company deriving the greater part of their value from Irish real estate (see above, *Tax on Seller's Profits/Gain*) is subject to capital gains tax. The same rate of 33% applies.

19. Are any methods commonly used to mitigate transfer tax liability on acquisitions of real estate, or tax on gains from the sale of real property?

Section 604A of the Taxes Consolidation Act 1997 provides for capital gains tax relief in relation to disposals of land or buildings

acquired in the period commencing on 7 December 2011 and ending on 31 December 2014 (see *Question 18*).

There are a limited number of methods used to mitigate transfer tax on real estate portfolios.

The general approach of the authorities is to limit and restrict opportunities for stamp duty mitigation.

Measures have also been taken to reduce stamp duty mitigation in some types of corporate sales. Stamp duty on shares is generally charged at 1%. Therefore, there was an advantage to structuring an acquisition as a corporate sale. However, transfers of corporate entities and partnerships can now be subject to 7.5% stamp duty (see *Question 17, Transfer of Shares*). This shows the activist nature of the authorities to reduce stamp duty mitigation, even in bona-fide cases.

If commercial property is transferred and subsequently used to construct residential accommodation, a stamp duty refund is available which effectively reduces the stamp duty rate from 7.5% to 2% (see *Question 17*).

There is scope for stamp duty mitigation in relation to newly constructed commercial property. Often, an undeveloped site is transferred and a separate building agreement entered into. Provided the site transfer and building agreement are not interlocked (that is, the site transfer is not contingent or dependent on the building agreement) stamp duty should only be chargeable on the consideration for the site transfer. There has been an increased interest in such planning in recent years.

Value Added Tax (VAT) or Equivalent

20. Is VAT (or equivalent) payable on a sale of real estate? Who pays? What are the rates? Are there any exemptions?

VAT/Equivalent

A sale of new commercial property is subject to VAT at 13.5%. A property is "new" if either:

- It has been developed in the last 20 years.
- The buildings on it have been developed or redeveloped in the previous five years.

A sale of other commercial property ("old" property) is exempt from VAT. The seller and buyer can agree to make the sale subject to VAT, to avoid a clawback of VAT which the seller may have previously recovered.

A first sale of residential property by a person who developed it in the course of a business is always subject to VAT.

Who Pays and Typical Tax Rate

Sellers are generally responsible for collecting and paying VAT to the tax authorities where applicable. The rate of 13.5% applies where commercial property is subject to VAT.

VAT is generally included in the purchase price where it is being charged.

Exemptions

Transfer of business relief applies to a sale of property that is let or has been let, if the buyer intends to continue to let the property and the sale is to an accountable person for VAT purposes (a person who must register and account for VAT).

If transfer of business relief applies to a sale of an old property, no VAT adjustment (a capital goods scheme adjustment) will arise for the seller. The buyer takes over the property's VAT obligations under the capital goods scheme from the seller.

If transfer of business relief applies to a sale of a new property, the seller may be able to claim a further VAT input credit if it was not entitled to recover all the VAT incurred on the acquisition or development of the property.

Municipal/Local Taxes

21. Are municipal/local taxes paid on the occupation or ownership of business premises or business ownership? Are there any exemptions?

Local authorities impose commercial rates on the occupier of a business premises. The local authority determines the amount of commercial rates payable.

An exemption from commercial rates can be obtained if the property is vacant and an application for relief is made to the local authority.

CLIMATE CHANGE ISSUES

22. Are there targets or incentives to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

A Building Energy Rating (BER) certificate and advisory report must be provided by all sellers/landlords to prospective buyers/tenants when a building is constructed, sold, or rented. A BER certificate rates the building from "A1" (most efficient) to "G" (least efficient). Certain categories of buildings, such as protected structures, are exempt from obtaining a BER certificate.

EU member states including Ireland must ensure that all new buildings (both commercial and residential buildings) are nearly zero-energy buildings (*Directive 2010/31/EU on the energy performance of buildings*). The Directive defines a nearly zero-energy building (NZEB) as a building with a very high energy performance and a significant part of its energy requirements met by renewable sources, ideally produced onsite or nearby.

The EU Commission published a proposal in December 2021 to revise the directive to provide for zero-emission buildings (ZEB) in place of NZEBs. The ZEB requirement (once enacted) would apply from 1 January 2030 to all new buildings. 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.

Under the European Union (Energy Performance of Buildings) Regulations 2019, all new homes must, among other things:

- Have a typical BER of A2.
- Be 70% more energy efficient than 2005 performance levels.
- Emit 70% less carbon dioxide than 2005 performance levels.

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

There are currently no statutory requirements for contracts for sale, leases, or agreements for lease to contain covenants to observe certain environmental or energy efficiency standards.

However, there is an emphasis on "green leases." References to *Leadership in Energy and Environmental Design (LEED)* requirements in some commercial leases in Ireland, particularly of new or substantially refurbished buildings, are increasingly

common. LEED is an international green building certification programme recognising best-in-class building strategies and practices, in accordance with the US Green Building Council guidelines. Further, a BER certificate and advisory report must be provided by a seller or landlord on the sale or letting of premises (subject to certain exemptions).

There is an increased focus on environmental issues and sustainability in the Irish real estate sector, and a "greenium" is payable for high quality sustainable assets. If an asset is a sustainable asset, this is likely to be called out in the contract for sale or lease. Obligations relating to the green status of a building or premises may be imposed on a tenant in such a lease.

REAL ESTATE FINANCE

Secured Lending Involving Real Estate

24. Briefly outline the typical security package required by lenders in relation to commercial real estate lending. How are the most common forms of security interest relating to real estate created and perfected? Is there a mortgage tax/registration fee?

Typical Security Package

Lenders generally require:

- A debenture that incorporates a fixed charge over the property and, if the borrower is a corporate entity, any book debts of the borrower entity.
- A security assignment of all material contracts relating to the property.
- A charge over any rent accounts or other bank accounts relating to the property.
- A floating charge over all assets of the borrower entity (if the borrower is a corporate entity).

Common Forms of Security: Creation and Perfection

Security over the assets of an Irish company must be registered with the *Irish Companies Registration Office (CRO)* pursuant to the Companies Act 2014. To perfect the security, registration must be completed electronically within 21 days of creation of the security. Failure to register can only be remedied by a costly court procedure.

Registration of security over real estate assets must also be completed in the Registry of Deeds or Land Registry (see *Question 5*) to perfect the security and secure priority of the security interest.

A charge over real estate should be in writing and executed as a deed.

Mortgage Tax/Registration Fees

Tax is not charged on the creation or registration of security over real estate in Ireland.

A registration fee of EUR175 is payable to register security in the Land Registry and a fee of EUR50 is payable to register security in the Registry of Deeds.

A registration fee of EUR40 is payable to the CRO to register security over the assets of an Irish company.

The *Irish Revenue Commissioners* must be notified in writing by the charge holder when an Irish company creates a fixed charge over its book debts. A subsequent transferee of the charge must notify the Irish Revenue Commissioners of the transfer of that charge.

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

A loan agreement typically includes various covenants from the borrower, as well as conditions precedent and conditions subsequent to be fulfilled by the borrower.

If the secured asset is subject to occupational leases, the loan agreement usually contains covenants restricting the borrower from granting new leases or amending the terms of the existing leases without the lender's consent.

A lender will also require an independent valuation of the secured real estate, and will check that the borrower's insurance over the real estate asset is sufficient.

26. Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

Lender Liability

A lender that enforces its security and takes possession of the property can incur environmental liability if there are environmental issues at the property, even if they have not been caused by the lender. This is due to the principle of strict liability under environmental legislation (see *Question 14*). Lenders may therefore be reluctant to enforce security where the borrower has environmental liability or environmental issues exist on the secured property.

Lender Protection

If compliance with environmental legislation is a concern, a lender will usually require environmental due diligence and may engage an environmental expert. Depending on the circumstances, if there are environmental issues the lender is likely to favour appointing a receiver rather than taking possession of the property for sale as a mortgagee in possession.

Lenders' Remedies

27. Briefly outline the main remedies for lenders in relation to secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

Lenders' Remedies

On the occurrence of an event of default, a lender can appoint a receiver over the secured real estate. The provisions of the charge usually provide for the appointment of a receiver in a default scenario and the LCLRA 2009 also provides for the appointment of a receiver by a lender. The receiver will take possession of the secured real estate and market it with a view to a sale. Any sale proceeds will be used to discharge the borrower's indebtedness to the lender.

The High Court can also appoint a receiver. This can occur, for example, even if an event of default under the security document has not occurred but the secured assets are in jeopardy.

For security granted on or after 1 December 2009, due to the LCLRA 2009, a lender must initiate court proceedings for an order for possession and an order for sale. These provisions can be (and typically are) expressly contracted out of in relation to security over commercial real estate. However, they cannot be contracted out of in relation to residential housing loans.

Therefore, for security taken over residential real estate on or after 1 December 2009, a lender must initiate court proceedings to enforce the security. A court appearance can only be avoided if the borrower provides written consent to the sale no more than seven days before the power of sale is exercised.

For security granted before 1 December 2009, a lender is not required to initiate court proceedings to exercise its remedies in relation to the security, provided the borrower does not challenge the enforcement of the security.

Effect of the Borrower's Insolvency

The order of payments on the insolvency of an Irish company is set out in the Companies Act 2014. Assets subject to fixed security are not dealt with in the insolvency process and the holder of the fixed security has direct recourse to the charged assets.

A borrower's insolvency does not impose a stay on enforcement proceedings unless an examiner is appointed to a borrower. Examinership imposes a moratorium which prevents secured creditors from enforcing their security without the consent of the court (see *Question 39*).

28. Briefly outline key additional issues for lenders in relation to construction and development projects.

A lender providing finance for construction and development purposes normally requires collateral warranties from the members of the borrower's professional team (such as architects, designers, and engineers).

A lender will also appoint its own project monitor to monitor the project (at the borrower's cost) and require step-in rights.

Other Real Estate Financing Techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

Real estate securitisation has become more common in the Irish real estate market in the last few years. Irish banks now tend to resort to repossession only as a last resort. Securitisation offers a better result for distressed borrowers. In most cases, borrowers whose loans are sold continue to benefit from the same rights and protections as they enjoyed before the loan sale.

More niche lenders are entering the Irish market, and securitisation forms a large part of their business model. Securitisation assists lenders in raising capital and sharing risk. By providing a repackaging and resale market for debt, it decreases the cost of debt financing.

Sale and leaseback transactions are also relatively common in the Irish commercial real estate market. A seller sells a property to a buyer. On completion, the seller enters into a lease with the buyer under which the seller becomes the tenant of the property under the lease, usually on a long-term basis. This is attractive to some owners, as it allows them to sell the asset and realise cash for it while remaining in occupation, while the buyer obtains a long-term investment.

REAL ESTATE LEASES

Negotiation and Execution of Leases

30. Are commercial lease provisions regulated or freely negotiable? Which legislation applies?

Commercial lease provisions are freely negotiable between the parties, subject to certain statutory provisions in the Landlord and Tenant Acts 1967 to 2019 (LTAs).

Leases of residential premises for less than 35 years are regulated by the Residential Tenancies Acts 2004 to 2021. Residential premises for let must also meet certain standards under the Housing (Standards for Rented Houses) Regulations 2019.

31. Are there formal legal requirements to create and execute a lease? How are leases executed by a company, a partnership, and individuals?

Formalities for Leases

The Landlord and Tenant Law Amendment Act, Ireland 1860 (known as Deasy's Act) provides that a lease for a period of more than one year must be in writing and executed as a deed. Leases of registered property for a term exceeding 21 years must be registered in the Land Registry in order to gain protection.

Execution Requirements

Where a company is executing a deed, the requirements for execution are set out in its constitutional documents. Generally, for an Irish company to execute a document as a deed, two directors, or one director and the company secretary, must sign the document and the common seal of the company must be affixed. These requirements can be amended by the company's constitutional documents.

For an individual to execute a deed:

- The document must be signed by the individual.
- The individual's signature must be attested by a witness.
- The witness must be present when the individual signs the deed (or the individual can acknowledge their signature in the presence of the witness).

A partnership is not a separate legal entity, therefore the execution requirements for individuals must be followed where the partnership consists of individuals.

Limited partnerships are also used in the Irish market. The general partner of a limited partnership is usually a limited liability company. In this case, the requirements for the execution of deeds by that company must be complied with.

Rent Payments

32. At what intervals is rent usually paid in a business lease? How are rent levels usually determined and reviewed?

Rent Payment Intervals

The rent payment intervals are agreed between the parties and accordingly are subject to change. The most common payment obligation is quarterly in advance.

Rent Review

Typically, a commercial lease provides for rent reviews to open market rent every five years and the rent can increase or decrease. All rent review provisions in commercial leases must be on an upwards or downwards basis (*LCLRA 2009*). Rent review

provisions in a commercial lease can also be linked to changes in the Consumer Price Index.

33. Is stamp duty and VAT (or equivalent) payable on rent?

Stamp duty is payable on commercial leases at a rate of 1% of the average annual rent. The tenant must pay the stamp duty.

A landlord can opt to tax a commercial lease and charge VAT on the rents but is not obliged to do so. The VAT rate for lettings is 23%.

34. Is a rent security deposit or other security usually required by the landlord?

A rent security deposit may be required by a landlord if the landlord believes that the tenant's financial covenant is insufficient. A rent security deposit does not need to be managed in a certain way. However, payment of the deposit and conditions relating to its use and maintenance are usually dealt with in a rent deposit deed between the landlord and the tenant. There are no limits on the amount of a rent security deposit and this is open to negotiation between the parties.

A landlord may also request other forms of security such as a guarantor of the obligations of the tenant (or a bank guarantee).

Length of Term and Security of Occupation

35. Is there a typical length of lease term or restrictions on the duration of a lease? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

Length of Lease Term

Commercial leases are generally a short-term lease (with a lease term of up to five years) or a long-term lease (with a lease term of between ten to 25 years).

The length of the term of the lease is freely negotiable between the landlord and the tenant.

Security of Occupation

If a tenant of business premises has continuously occupied the premises for at least five years, then pursuant to the Landlord and Tenant (Amendment) Act 1980 (1980 Act) it obtains a statutory right to a new tenancy (known as a business equity) unless the tenant has renounced its renewal rights.

A renunciation of renewal rights is usually completed by a deed of renunciation entered into by the landlord and the tenant when the lease is entered into. Usually, market conditions and the parties' bargaining power determine whether a deed of renunciation is executed by the tenant. Under the 1980 Act, a tenant must obtain independent legal advice when entering into a deed of renunciation in order for it to be valid.

Disposal

36. What restrictions typically apply to the disposal of the lease by the tenant?

Assignment and Subletting of the Lease

A commercial lease usually restricts the tenant's ability to assign or sublet the lease without the landlord's prior written consent.

The LTAs provide that a landlord cannot unreasonably withhold consent to an assignment or subletting of the whole of the leased premises. If the disposal provisions of the lease and of the LTAs conflict, the LTAs prevail. Generally, a commercial lease contains an absolute prohibition on the assignment or subletting of part of the leased premises.

Group Sharing

The tenant may seek to agree a concession with the landlord allowing it to share possession with a company in the same corporate group. This is a matter for negotiation between the parties, and depends on the tenant's bargaining power and market forces. If such a concession is granted, a landlord will usually require the tenant to notify details of any group company sharing possession and ensure that the group company does not obtain renewal rights.

Legal Reorganisation or Transfer/Sale of the Tenant

If there is a legal reorganisation of the tenant, this may affect the lease, depending on the terms of the reorganisation. For example, if it is intended for a new tenant entity to take the lease, then generally the landlord's consent will be required.

If a tenant entity is sold in a share sale, the tenant entity does not change and the lease is not affected. A provision in a lease prohibiting or restricting a change of control of the tenant is quite rare in Irish leases.

If the tenant's obligations under the lease are guaranteed, and the release or replacement of the guarantor is required by the tenant on a transfer/sale of the tenant entity, this will need to be agreed with the landlord. In these circumstances, a landlord will usually require a replacement guarantor of similar financial standing.

37. Does a landlord or tenant retain any liability under the lease after the lease is assigned?

Landlord's Retained Liability

Generally, a commercial lease will provide that the landlord and tenant remain liable for antecedent or pre-existing breaches that occurred before the lease was assigned by the tenant.

Tenant's Retained Liability

See above, *Landlord's Retained Liability*.

Repair and Insurance

38. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of improvements carried out to the premises during the lease?

Repair

Commercial leases in Ireland are normally full repairing and insuring leases. A tenant has extensive repair obligations, usually in the form of a covenant in the lease to keep the premises in good repair.

If the leased premises are part of a larger building or estate, the tenant may also be required to contribute to a service charge, to reimburse the landlord for repair and maintenance works carried out by the landlord to the common areas of the building/estate which the landlord has responsibility for.

Insurance

A landlord normally insures the leased premises and the tenant reimburses the landlord for the premium by paying insurance rent.

Where the leased premises form part of a larger building or estate, the landlord is responsible for insuring the common areas and structural parts of the building or estate.

Typical risks insured against for property damage are fire, flooding, storm, malicious damage, subsidence, and lightning. Terrorism insurance is also available in the Irish market.

Ownership of Lease Improvements

The LTAs provide that, in certain circumstances, a tenant who makes improvements to a premises is entitled to compensation from the landlord for the improvements on termination of the lease, provided that the improvements add to the letting value of the leased premises and are suitable to the character of the building.

The amount of compensation can be agreed between the landlord and the tenant. In default of agreement, the amount can be determined by a court.

Landlord's Remedies and Tenant's Insolvency

39. What remedies are available to a landlord for a breach of the lease by the tenant? On what grounds can the landlord usually terminate the lease? What is the effect of the tenant's insolvency?

Landlord's Remedies and Grounds for Termination

A landlord can sue the tenant for breach of its contractual obligations under the lease. Alternatively, a landlord can forfeit the lease if there is a forfeiture clause in the lease and the tenant has breached the terms of the lease. It is standard practice in Ireland for commercial leases to contain forfeiture clauses.

Forfeiture is an equitable remedy and a landlord should proceed with caution when deciding whether to forfeit a lease. Forfeiture can be effected without a court order if the landlord re-enters peaceably (forcible re-entry constitutes a criminal offence). If a tenant resists re-entry, a landlord may need to initiate court proceedings to seek an ejection order. Tenants can apply to the court for relief against forfeiture.

The government published a voluntary Code of Conduct between Landlords and Tenants for Commercial Rents (Code) in 2020 to facilitate discussions between landlords and tenants impacted by COVID-19, providing that parties should act in good faith and in an honest and transparent manner. The Code applied until 30 April 2022.

Recent case law suggests that the Irish courts are reluctant to order the winding up of a company for non-payment of a debt if the debt is entirely attributable to COVID-19 restrictions. While an Irish court is likely to sympathise with a tenant in difficulty due to COVID-19, this does not mean that a tenant can simply decline to pay rent, as the Code provides that any tenant who can pay full rent should do so.

Case law also suggests that the courts are reluctant to imply any terms into a contract where it has been freely negotiated between the parties, despite the unexpected impact of the COVID-19 pandemic on many Irish businesses. The lease itself is always the primary focus of a court when determining disputes between landlords and tenants.

If there is a guarantee in the lease, a landlord may look to the guarantor to remedy the tenant's breach. Alternatively, if the tenant has paid a rent deposit, the landlord may be allowed to use all or part of the rent deposit to remedy the breach.

Usually, a lease terminates on the expiry of the term or on the exercise of a break option by the tenant or the landlord. If the tenant breaches the terms of the lease the landlord can forfeit the lease, resulting in early termination of the lease.

Effect of the Tenant's Insolvency

Generally, the forfeiture provision in a lease also allows a landlord to forfeit the lease if the tenant becomes insolvent.

If there is a guarantee in the lease and the tenant becomes insolvent, the landlord can require the guarantor to take a new lease on the same terms as the existing lease for the length of the term remaining under the existing lease.

The Companies Act 2014 deals with the various insolvency processes which Irish companies can enter into, including examinership, liquidation, and receivership.

Where a tenant is facing insolvency but there is a reasonable prospect of the survival of the company as a going concern the company can enter into an examinership process. Under this process, the company is placed under the protection of the High Court for up to 100 days. The liabilities of the company are suspended on the commencement of the examinership and a scheme of arrangement may restructure those liabilities, including liabilities under a lease. During the protection period, the exercise of all contractual rights against the company in examinership are suspended, for example no action can be taken by a landlord to repossess the property during this period.

Where a liquidator is appointed to a tenant company, a landlord's claim for outstanding rent or service charge payments, relating to the period prior to liquidation, and any claim for dilapidations, will rank as unsecured debt. Commercial rates due for the 12 month period prior to liquidation rank as a preferential claim. Where a liquidator chooses to occupy the leased premises after the commencement of the liquidation, rent and service charge payments incurred during that period are fully recoverable by the landlord, and are treated as an expense of the liquidation (ranking in priority above all creditors' claims). Despite a well drafted forfeiture clause contained in a lease, a landlord will not be in a position to forfeit a lease within the first year of the liquidation of a tenant provided the liquidator complies with the covenants of the lease. A liquidator may apply to court for leave to disclaim the lease if it considers it to be "onerous property."

If a tenant enters into receivership, a landlord is entitled to forfeit the lease on the appointment of a receiver to the tenant, provided there has been no express agreement to the contrary. Any arrears of rent or service charge payments that accrued before the appointment of the receiver will be difficult to recover, as the debt owed to the lender will be paid in priority to any arrears owed to the landlord.

40. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the leased premises? Can the tenant terminate the lease in certain circumstances?

Tenant Withholding Rent

Usually, a commercial lease provides that the rent is to be paid by the tenant without deduction, set-off, or counterclaim.

A commercial lease also usually provides that if the leased premises (or any part of them) are damaged or destroyed by an insured risk, payment of the rents in the lease (or a fair proportion of them) will be suspended until the leased premises have been reinstated.

If reinstatement is prevented for three years following the damage or destruction of the premises, most leases provide that the landlord or the tenant can terminate the lease on notice to the other party (if it has not already been terminated by frustration).

Tenant Terminating the Lease

See above, *Tenant Withholding Rent*.

A tenant may seek to surrender a lease. In this case, the agreement of the landlord will be required and where obtained a deed of surrender between the parties should be entered into.

A tenant may also have a break option under the lease entitling it to terminate the lease on a certain date, provided certain provisions are complied with in advance, for example that all rent is paid up to the break option date.

PLANNING AND DEVELOPMENT CONTROLS

41. In what circumstances can local or state authorities purchase business premises compulsorily (expropriation)? Is the purchase price or compensation based on market value?

Compulsory Purchase/Expropriation

The following bodies can purchase business premises compulsorily:

- Local authorities.
- The *National Asset Management Agency (NAMA)*, established by the government in 2009 to address the banking crisis by acquiring certain loans in exchange for government guaranteed securities.
- The *Industrial Development Agency (IDA)* (Ireland's inward investment promotion agency).

Local authorities have a general power of compulsory acquisition under the Housing Act 1966.

Local authorities can compulsorily acquire property in the following circumstances:

- If the property is a derelict or dangerous site.
- For the purposes of developing public infrastructure.
- For conservation.

NAMA can compulsorily acquire property under the National Asset Management Agency Act 2009 where required to fulfil its statutory functions. NAMAs powers to compulsorily acquire property are broad, but it can only compulsorily acquire property if it has first made a reasonable attempt to acquire the property by agreement.

The IDA can compulsorily acquire property for industrial development purposes and has broad powers to do this. The IDA can compulsorily acquire property even if the property is not immediately required but will, or is likely to be, required for the purpose of industrial development in future (*Industrial Development Acts 1986 to 2019*).

Compensation

Compensation for the compulsory acquisition of land is based on the market value of the land.

42. What authorities regulate planning control and which legislation applies?

Local authorities regulate planning control. They grant planning permissions and enforce the Planning and Development Acts 2000 to 2021 (Planning Acts) in their municipal districts.

The independent national planning appeals board, *An Bord Pleanála*, determines planning appeals (see *Question 44*). When a local authority decides to grant or refuse planning permission the applicant, or any party who made submissions relating to the decision, can appeal the decision to *An Bord Pleanála*.

The Planning Acts apply to strategic planning and zoning and regulate the zoning and permitted use of areas.

The Planning Acts provide that particular guidelines on architectural heritage protection must be complied with in relation to buildings with historic significance or protected structures, to prevent the deterioration of or loss or damage to architectural heritage.

43. What planning consents are required for building works and the use of a building?

Planning permission is required for all developments of property, unless the development is an exempted development under the Planning Acts.

Planning permission is also required for a material change of use of a property.

The design and construction of buildings must comply with the relevant planning permission and the Building Control Acts 1990 to 2020, the Building Regulations 1997 to 2014, and the Building Control Regulations 1997 to 2020 (collectively known as the Building Regulations).

Fire safety certificates and disability access certificates may be required for a newly constructed building under the Building Regulations.

44. What are the main authorisation and consultation procedures in relation to planning consents?

Initial Consents

Local authorities grant initial planning consents. Generally, a decision to grant or refuse planning permission is made by the local authority within eight weeks of receipt of the application. If the local authority requires further information, this timeframe can be extended.

It is a criminal offence to carry out development that requires planning permission without the requisite planning permission.

Third Party Rights and Appeals

Public participation is an important feature of the planning system in Ireland. Public notice of all planning applications must be made before making the application. A site notice must also be erected on the site for which planning permission is sought.

Applications for planning permission can be viewed by third parties. On payment of a EUR20 fee, third parties can make written submissions or observations on the application.

The local authority decision can be appealed to the independent national planning appeals board, *An Bord Pleanála*, within four weeks of the decision. Only the applicant, or a person who has made a written submission or observation to the local authority on the application, can lodge an appeal.

RECENT DEVELOPMENTS AND REFORM

45. Have there been any key recent developments in the real estate sector? Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

There are no current proposals to reform Irish real estate law to any significant degree. There has been a move towards the use of electronic signatures for the acquisition of real estate (see *Question 5*) but procedures to deal with electronic signatures have not yet

been implemented by the Land Registry, so original wet ink signatures are still required for the vast majority of documents dealing with real estate.

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Recent transactions. Diarmuid 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 from office, retail, PRS/BTR, and industrial assets.

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Publications.

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- *The Real Estate Law Review 11th edition Ireland.*
- *Chambers Global Practice Guide: Real Estate 2021 and 2022.*

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Publications

- *The Legal 500: Real Estate Country Comparative Guide 2021.*
- *The Real Estate Law Review 11th edition Ireland.*
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Publications

- *The Legal 500: Real Estate Country Comparative Guide 2021.*
- *The Real Estate Law Review 11th edition Ireland.*
- *Chambers Global Practice Guide: Real Estate 2021 and 2022.*