Ireland

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THE CORPORATE 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?

Despite the economic challenges, Ireland continues to attract substantial multinational businesses as a key location within and through which to do business, and the number of international businesses establishing and expanding operations here continues to grow. Many technology, financial and pharma companies have established their Europe, Middle East and Africa (EMEA) or European headquarters in Ireland, with companies such as Google initially leasing premises before investing in acquisition and development of purpose-built premises to support expansion.

Budget 2012 reduced stamp duty rates on commercial property, introduced a capital gains tax incentive scheme and removed uncertainty in the market by confirming that proposed legislative interference with existing upwards-only rent review provisions would not proceed. These measures, together with the value available, are enticing international investors, resulting in an increase in transactional activity in the Irish investment market. Significant investment property transactions completed in 2012 include:

- Sale of Riverside II, a fully let office building in the Dublin Docklands to a German property fund for over EUR35 million (as at 1 September 2012, US$1 was about EUR0.8).
- Sale by the National Asset Management Agency (NAMA), of One Warrington Place, Dublin 2 to a US investor for over EUR27 million. (NAMA was established in December 2009 as one of a number of initiatives taken by the Irish government to address issues which arose in Ireland’s banking sector.)

Over the last 12 months the number of receiverships, examinerships, liquidations and corporate restructurings occurring in Ireland has continued to grow, with banks, receivers and NAMA making significant portfolios of property assets, large multi-use developments and individual high value properties available for sale and letting. Banks are also reducing exposure to Irish real estate by selling significant loan portfolios.

Acquisition of residential developments by professional investors is an emerging trend, with both Irish and international investors acquiring entire apartment blocks/development schemes. The sale of the Alliance Building, a Dublin apartment block with over 200 units to international real estate investment firm, Kennedy Wilson, for EUR40 million is the highest value property transaction in the Irish market in 2012 (as at September 2012).

Activity in the office sector has been somewhat dampened in recent months due to concerns about Eurozone stability and attractive terms offered to tenants to remain in existing buildings. Significant lettings over the last 12 months include:

- A lease of office premises in excess of 35,000 square feet at Burlington Plaza, Dublin 4 to BSkyB.
- The acquisition by LinkedIn of its European headquarter space comprising 55,344 square feet of office premises in a prime Dublin city centre location.

In recent months activity has increased in the industrial market, predominantly in the form of leasing. An emerging sector within this market is data centres for cloud computing and modern data storage.

The retail letting market has been transformed into a tenant’s market in recent years, with shorter term leases and break options now being the norm and upwards-only rent reviews banned in new leases since 1 March 2010. While trading conditions remain challenging, the market is showing signs of stabilisation.

REAL ESTATE INVESTMENT

2. How is real estate investment carried out in your jurisdiction and what structures do investors use?

Common structures

Property is often acquired either by way of direct purchase or through a company acquisition. Previously, company acquisition was a more attractive option from a stamp duty perspective, however, following the reduction in stamp duty on non-residential property in the budget for 2012, this is no longer the case. Sellers have tended to use special purpose vehicles (SPVs) for investment and development properties. The market and transaction structures have become quite flexible over recent years, with new structures such as qualifying investment funds (QIFs) also being used to acquire property.

REITs

REITs are not generally available in Ireland at present. However, it is possible that they will be introduced in the near future.

Institutional investors

Transaction structures enjoy a great degree of flexibility (see above, Common structures). Despite the economic challenges, Ireland remains an attractive market for both institutional and private investors (see Question 1).
Private investors
See above, Institutional investors.

REAL ESTATE LEGISLATION

3. What is the main real estate legislation that applies in your jurisdiction?

A major reform of property law in Ireland took place in 2009 with the introduction of the Land and Conveyancing Law Reform Act 2009 (2009 Act), which aimed to consolidate and modernise Irish property law and has resulted in significant amendments to the pre-existing legislation. Apart from the 2009 Act, the main statutes of relevance are:

- Registration of Title Act 1964.
- Family law legislation including 2010 Act regarding right of civil partners and cohabitants.
- Multi-Unit Developments Act 2011.
- Property Services (Regulation) Act 2011.
- Succession Act 1965.
- Value Added Tax Consolidation Act 2010.

In addition to the above, the common law also plays an important role in the interpretation of statutes and in the determination of disputes regarding property.

TITLE TO REAL ESTATE

4. What constitutes real estate in your jurisdiction? Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate in Ireland comprises all immovable property. This includes land and any buildings or fixtures on the land.

No distinction is made between title to land and title to buildings where they are in the same ownership.

Evidencing title

5. How is title to real estate evidenced?

There are two systems of registration of title to property in Ireland. Since 2006 both come under the auspices of the Property Registration Authority (PRA) where all of the records have been digitised and many services are provided online.

The Land Registry operates a registration of title system. Title to a property is registered in a document called a folio. Each folio has a unique identifying number under the relevant county in which it is located. Titles registered in the Land Registry are guaranteed by the state (see Question 8).

The Registry of Deeds provides for the registration of documents only and is not proof of title to a property but does give priority to a registered deed. The Registry of Deeds has no responsibility for the effectiveness or validity of the deed.

In recent years there has been an ongoing programme to move away from the older and limited system of recording deeds in the Registry of Deeds, to the more modern and comprehensive title registration system provided through the Land Registry. Registration in the Land Registry is now compulsory throughout the Republic of Ireland.

Information in the public register

6. What are the main information and documents registered in the public register of title?

In the Land Registry, title to property is registered in a document called a folio (see Question 5). The Folio is split into three sections:

- Part 1 provides the details of the property to include description, location, and land registry plan reference. Details of property previously transferred from the folio are also contained in Part 1.
- Part 2 contains details of the registered owners and the quality of the title.
- Part 3 contains details of all burdens registered against the property. These would include charges, rights of way, fishing and sporting rights or similar.

The Land Registry is a public registry and copies of Land Registry folios can be viewed at the PRA offices or online on payment of the relevant fee.

In the Registry of Deeds, the registration of the deed is recorded and the original deed returned to the applicant. Only the Registry application form (previously, memorial) is retained by the Registry. Anyone can search the index of names by name or property address and certified copies of all memorials/application forms can be obtained on payment of the relevant fee. The information contained in a memorial/application form includes:

- The date of the deed.
- The nature of the deed.
- Details of the parties to the deed.
- A description of the property affected by the deed.

While not title registers, the new commercial leases database and residential property price register established under the Property Services (Regulation) Act 2011 contain publicly available details of lease terms and house prices. The tenant under a commercial lease granted on or after 3 April 2012 is the party required to submit information to the Property Services Regulatory Authority at three separate points in the life of the lease:
Title insurance is available and is used in situations where there are defects on title such as missing title deeds. Previously, premiums for such insurance were very high due to a dearth of insurers in the market, however, levels have reduced in recent years as more insurers have entered the market.

**Tenure**

9. How can real estate be held (that is, what types of tenure exist)?

Since commencement of the 2009 Act the only ownership interests in real property are:

- **Freehold.** The freehold owner owns all the property (property and buildings).

- **Leasehold.** Leasehold title is based on the lease contract which specifies a period of ownership of the property and often restricts the use of the property by the tenant. A business tenant can acquire a statutory right to a new tenancy in certain circumstances. An ownership interest under a lease can be held and would normally be a lease at a nominal rent for a term of 500 or 999 years.

The quality of title generally falls into three categories, namely:

- Absolute title.
- Possessory title.
- Qualified title.

**SALE OF REAL ESTATE**

**Main stages and documents**

10. What are the main stages and documents in the sale of real estate?

**Marketing**

The property is usually marketed on behalf of the seller by an agent who advertises the property and advises on the market value of the property.

**Commercial negotiation**

In commercial property transactions the parties often appoint agents to act on their behalf and the commercial terms are negotiated between the parties and their respective agents. Once the commercial terms are agreed, they are reduced to a non-binding heads of terms document.

**Pre-contractual arrangements**

Between heads of terms being agreed and a binding contract being signed the parties may put in place exclusivity agreements and confidentiality agreements but their use is not widespread.

**Sale contract**

Once the contract has been negotiated and agreed, the buyer signs the contract (in duplicate) and returns it to the seller, along with the deposit due under the contract (typically 10% of the purchase price). The seller then signs both parts of the contract and returns one of them to the seller.
When legally binding
A binding contract exists once the signed contracts have been exchanged and the contract deposit is paid. The deposit is normally held by the seller’s solicitor as stakeholder pending completion of the sale. Normally completion occurs four to six weeks after signing of the contract.

Registration
On completion of the sale, the seller delivers the deed of assurance and the original title documents to the buyer in exchange for the balance of the purchase price. The buyer must then pay the appropriate stamp duty on the deed to the Revenue Commissioners and obtain an electronic stamp certificate.

The buyer’s solicitor will then arrange for the deed of assurance to be lodged for registration in the Land Registry. Where title to the property is unregistered title, a first registration application to the Land Registry is required.

When title transfers
Legal title usually passes when the purchase price is paid to the seller and the buyer takes delivery of the deed of assurance. To complete the effective transfer, it is necessary to register the transfer in the Land Registry.

The beneficial interest in the property passes on signing the contract for sale unless provided otherwise.

Seller’s liability to the buyer
11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

The underlying principle is one of caveat emptor (buyer beware) and the buyer’s solicitor needs to be satisfied from a review of the copy title furnished before contract that good and marketable title to the property is being offered.

However, to ensure consistency in drafting and avoid protracted negotiations, the Law Society of Ireland produces a pro forma contract for sale for use in property transactions which is designed to give a fair balance of rights between buyers and sellers. The Contract for Sale incorporates a set of General Conditions of Sale. These general conditions make a number of assumptions about the property and place certain disclosure obligations on a seller which the seller can only exclude by inserting special conditions. This way, the buyer is on notice of any deviations from the standard contract. Special conditions are tailor-made for the nature of the transaction and the property and seek to limit warranties being provided by the seller in the general conditions.

In addition, it is an offence for a seller to fraudulently conceal or falsify material information (section 60, Land and Conveyancing Law Reform Act 2009).

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

The buyer’s solicitor carries out a full investigation of title documents relating to the property. This includes due diligence of non-ownership documentation such as that relating to planning permission(s) or development of the property.

The buyer should also engage a surveyor to carry out a full investigation of the structure of the property to identify any matter of concern.

The buyer’s solicitor also carries out a number of searches against both the seller and the property including in relation to:
- The Land Registry/Registry of Deeds records.
- Planning.
- Bankruptcy.
- Sheriff’s Office records.
- Any judgments.
- Information at the Companies Office.

The seller’s solicitor must explain any matters of concern resulting from the searches and may have to arrange for the discharge of any encumbrances affecting the property before the completion of the sale.

Sellers’ warranties
13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

The warranties normally provided are contained in the general conditions of the contract for sale and relate to matters such as notices, planning compliance, boundaries, easements and identity and the existence of any other interest in the property. These warranties can be excluded or amended by agreement in the special conditions of the contract (see Question 11).

Inheriting liability
14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it?

Generally an owner or occupier cannot inherit liability for matters relating to the real estate if they occurred before it bought or occupied it. However there are some exceptions:
- Leases generally include a provision whereby the tenant must comply with legislation affecting the use of the property and indemnify the landlord against breach.
- Where a lease is being assigned, if the previous owner has failed to comply with its obligations under the lease (such as the obligation to repair or decorate the property) the assignee may become liable unless it seeks an indemnity in this regard from the assignor.
- Under environmental legislation a person who causes or knowingly permits the contamination of property is liable to clean it up. However, if this person cannot be found after reasonable enquiry, the current owner may become liable.
The current owner may also become liable for non-compliance with planning and building control legislation. Generally the enforcement period under planning legislation is seven years from the date of the unauthorised development.

If the property is acquired through a purchase of shares in the company that owns the property, all of the company’s liabilities including tax and environmental liabilities are inherited.

Arrears of local authority rates can become the responsibility of the buyer or tenant and so need to be addressed in the contract for sale/lease negotiations.

Retention of liability after disposal

15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it?

Generally a seller or occupier does not retain any liabilities relating to the real estate after it has disposed of it but where there are potential liabilities, for example, for environmental matters, this would normally be addressed in the contract for sale.

In relation to local authority rates, however, these are payable in respect of most commercial property and liability for payment of rates rests on the occupier of the property on the date the rate is set, usually year commencement. Therefore, primary liability remains with the party who was in occupation on the relevant date.

Seller and buyer costs

16. What costs are usually paid by the buyer? What costs are usually paid by the seller?

The distribution of the costs in each case is a matter for negotiation. However, as a general rule the following applies.

Buyer’s costs
The buyer is responsible for:
- Its own agent’s and solicitor’s costs including disbursements such as search fees.
- The costs of any surveyor/architect which it engages to inspect the property before the sale.
- The costs involved in registering its title to the property post-completion.
- The payment of any stamp duty (see Question 18).

Seller’s costs
The seller is responsible for:
- Its own agent’s and solicitor’s costs.
- Any costs associated with obtaining land registry-compliant maps, building energy rating certificates or other costs incurred in preparing the property for sale and completing the transaction.

REAL ESTATE TAXES AND MITIGATION

17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate?

VAT on the sale of property in Ireland is a complex issue and the question of whether VAT is payable depends on the particulars of the transaction, the VAT history of the property and the parties involved. However, as a general rule the buyer is responsible for discharging any VAT liability and the current VAT rate applicable to property purchase is 13.5%.

VAT on leases is also complex in particular in relation to works carried out. Generally VAT is payable on the rental amounts at the current standard rate of 23% (see Question 32).

18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase and who pays?

The current rate of stamp duty on non-residential property is 2% of the entire consideration. It is a self-assessed duty and the relevant stamp duty return and payment must be made by the buyer to the Revenue Commissioners within 30 days of the date of the stampable instrument.

There are several reliefs and exemptions available in respect of corporate restructuring or intra-group transfers. Capital gains tax is payable by the seller on any gain on the disposal of property. Reliefs may be available and tax advice should be obtained. If a property is worth more than EUR500,000 it is necessary to produce a capital gains tax clearance certificate on or before completion of the transaction.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?

Previous structures to minimise stamp duty are no longer as relevant given the reduction in the stamp duty rate and decrease in property values.

HOLDING BUSINESS PREMISES

Climate change targets

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

Since 1 July 2008, a building energy rating (BER) certificate and advisory report must be supplied by all sellers/landlords to a prospective buyer/tenant when a building is constructed, sold or rented. A BER certificate is an energy label for buildings which rates the building from A1 (most efficient) to G (least efficient). The certificate details energy usage and carbon emissions based on heat loss through the building fabric (floors, walls, roof and windows) and energy required for ventilation, space heating, water heating and lighting.
There is no obligation to improve on a poor energy rating although certain buyers and tenants are now specifying a minimum rating as part of the transaction.

In addition, the European Union (Energy Performance of Buildings) Regulations 2012 contain obligations in respect of new construction (where a planning application is made at any time from 9 January 2013) regarding feasibility studies on energy efficiency and alternative energy systems.

### Third party outsourcing

21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties through outsourcing transactions?

This is common. The use of facility management companies or managing agents in commercial property is very widespread in Ireland and there are a number of companies that specialise in this area.

### Restrictions on foreign ownership or occupation

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

There are no restrictions on foreign ownership or occupation of real estate. However, anti-money laundering legislation requires that a number of checks be carried out on potential buyers and the identity of the buyer and ability to fund a deal will need to be verified.

Furthermore, if a foreign company is executing a deed, in order to register the deed the Land Registry will require confirmation that the execution of the deed of assurance was carried out in compliance with the laws of the relevant country. In this regard, it will be necessary to obtain written confirmation from local counsel that the deed was executed in accordance with the relevant laws.

Similarly, if a foreign company is entering into a lease or providing a guarantee in respect of a tenant’s obligations under a lease, it is usual for the landlord to require an opinion from a lawyer in the company’s jurisdiction which confirms the capacity of the foreign company to enter into the transaction and the valid execution of the relevant documents.

### Issues on change of control

23. Does change of control of a company affect its holdings of real estate?

In the case of freehold property, a change of control does not affect its holdings as the property is registered in the name of the company.

In the case of leasehold property, in rare cases the lease may contain a change of control provision that would necessitate the obtaining of landlord’s consent to the change in control.

### Compulsory purchases

24. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

Local authorities and various state bodies have statutory powers enabling them to issue compulsory purchase orders (CPOs) for certain specified purposes. Once a CPO is drawn up, notice is served on all persons with an interest in the relevant property. Where objections are lodged, a public enquiry is held to determine if the order should be confirmed.

Compensation is payable to all persons with an interest in the property. The assessment of compensation generally falls under a number of headings of claim to include the value of the land acquired and any diminution in value of any retained lands.

### Municipal taxes

25. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?

Commercial rates are levied by local authorities against business and commercial premises and the level of rates will be set by the relevant local authority or council. Water rates and waste water charges are also separately charged by local authorities and can be either a flat rate or metered.

It is possible to seek an exemption from payment of commercial rates where the property is vacant. The application is made to the relevant local authority or county council.

### REAL ESTATE FINANCE

26. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?

Acquisitions have been generally financed by bank financing secured against the property, but this is difficult to secure in the current market. Where bank financing is obtained, significant equity contributions are required by banks.

In recent times there has been a marked increase in buyers that do not require significant levels of funding.

27. How is real estate commonly used to raise finance?

Most commonly the asset is charged as security in favour of the lender. In addition or alternatively, the rental income or other benefit derived from the asset may be charged.
28. What are the most common forms of security granted over real estate to raise finance? How are they created and perfected (that is, made valid and enforceable)?

The most common forms of security are:
- Legal mortgage or charge over the freehold or leasehold real estate.
- Floating charge over the assets held by a company from time to time. While such a charge does not attach to any specific asset, it crystallises and becomes a quasi-fixed charge on the happening of any specific event of default.
- Assignment over rental income.

To perfect the above forms of security the original (or, where both parties sign Form C1, a certified copy) of the security document must be lodged for registration in the Companies Registration Office together with Form C1 within 21 days of creation of the security interest. If not registered within this time frame the security will generally be void against any liquidator or third party creditor. It is also necessary to register the mortgage/charge in the Land Registry or Registry of Deeds, where appropriate.

29. Is real estate securitisation common in your jurisdiction?

While not very common in Ireland, real estate securitisation is likely to be considered with more interest in the context of large portfolio sales.

REAL ESTATE LEASES

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable?

Commercial leases are freely negotiated and in contrast with the contract for sale which is a set form, there is no template lease. However, under landlord and tenant legislation, any attempt to impose a total ban on assigning or sub-letting is not permitted and will be interpreted as a ban on assignment/sub-letting without the landlord’s consent. Similarly, any attempt to impose a total ban on the tenant altering the use of the property will be interpreted as a ban on such alteration without the consent of the landlord.

Up until recently landlords and tenants often negotiated certain concessions by way of side letter so that these would remain confidential or personal to the tenant. With the introduction of the commercial leases database, which requires the particulars of all leases and related documentation to be disclosed, there is maybe less inclination to enter into these side arrangements. Some landlords may be unwilling to grant concessions such as rent reductions which could be made public.

31. What are the formal legal requirements to execute a lease?

Under the Land and Conveyancing Law Reform Act 2009 a lease generally must be created as a deed. Accordingly, it must be in writing, expressed, executed and delivered as a deed. The execution requirements depend on whether the parties to the lease are individuals or corporate bodies.

Rent levels and reviews

32. How are rent levels usually reviewed and are there restrictions on this? Is VAT (or equivalent) payable on rent?

The lease provisions regarding rent review are subject to negotiation between the parties. However, for leases executed after 28 February 2010 there is a ban on upwards-only rent reviews. Generally leases provide for five yearly reviews of the rent.

A landlord can opt to charge VAT on the rent and whether a landlord will opt to do so depends on the VAT history of the property. Where VAT is payable, it is charged at the rate of 23% on the rent.

Length of term and security of occupation

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

Occupational leases have traditionally ranged from short term to 35 years but recent legislative changes and market forces are resulting in shorter term leases with the maximum term now being 15 to 25 years but with break options.

A tenant in continuous occupation of a property for business purposes for five years or more may acquire statutory rights of renewal, subject to meeting certain statutory criteria. As a result, short term leases were generally for a period of four years and nine months. Following legislative amendment in recent years, a tenant can now execute a deed of renunciation renouncing such statutory renewal rights. Accordingly, in circumstances where a tenant is willing to renounce its renewal rights, the preference for keeping short term leases at a four year and nine month term is no longer necessary.

In the current market, tenants are reluctant to enter into leases with longer terms or if they do so, they generally negotiate a right to break the lease after a certain period of time, generally five or ten years into the term.

Title/ownership leases are generally for 500 or 999 year terms.
Restrictions on disposal

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

This is typically a matter for negotiation between the landlord and tenant but the majority of leases contain a provision prohibiting assignment or sub-letting of the entire premises without the landlord's consent. There is a legislative restriction on a landlord imposing a total ban on assignment/sub-letting and any clause prohibiting alienation will be interpreted as prohibiting alienation without consent.

On assignment of a lease with the landlord's consent, the assignor has no further responsibility for complying with the lease and its liability ceases completely. In contrast with the UK, there is no practice in Ireland requiring an assignor to enter into an authorised guarantee agreement guaranteeing the performance of the new tenant under the lease.

Use of premises within a corporate group

35. Can tenants usually share their business premises with companies in the same corporate group?

This is generally a matter for negotiation between the landlord and tenant and leases often have a provision permitting sharing by companies within the same group, subject to a requirement to notify the landlord and provided that the sharing be by way of licence only.

Repair and insurance responsibilities

36. Who is usually responsible for keeping the leased premises in good repair?

This is a matter for commercial negotiation and depends on the term of the lease and the type and extent of the property being demised. Often with a shorter term lease the tenant is responsible for repairing and maintaining the internal, non-structural parts of the property but the landlord retains responsibility for structural repairs. In a multi-tenant building the landlord seeks to recover any costs associated with this through the service charge.

Long term leases are often full repairing and insuring leases (FRI), under which a full structural and non-structural repair obligation is imposed on the tenant.

37. Who is usually responsible for insuring the leased premises?

This depends on a number of factors including the term of the lease and the type and extent of the property being demised.

In a long term/ownership lease of an entire building, responsibility generally remains with the tenant. With a shorter lease, or a lease of a unit or part of a building, the landlord generally insures and the tenant must pay the cost of the insurance premium.

Grounds for termination

38. On what grounds can the landlord usually terminate the lease? Can the tenant terminate the lease in certain circumstances?

Landlord
Most leases entitle a landlord to terminate a lease in the event of a tenant's insolvency (see Question 39). The landlord will also be entitled to terminate (and take court action for breach of contract) if the tenant fails to comply with its obligations under the lease, including failure to pay rent or if the tenant is withholding following the expiration of the term of the lease.

Tenant
There is no general statutory entitlement for a tenant to terminate a lease during the term. Accordingly, in the current climate, tenants are reluctant to enter into long leases without having a break option or a number of break options over the course of the term.

Leases also often contain a clause permitting a tenant to terminate in circumstances where the building has been destroyed and has not been reinstated by the landlord within a specified period.

Tenant's insolvency

39. What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

Most leases contain a provision entitling the landlord to terminate the lease in the event of the tenant's insolvency.

A guarantor may be obliged to take a new lease on the same terms for the remainder of the original lease term.

Under insolvency law, if a liquidator is appointed to wind-up a tenant company, it has a right to make an application to court to disclaim the lease. Any person interested in the matter must be notified of the application to disclaim, for example a sub-lessee or a bank having a security interest in the lease. The court will look at the balance of the benefits to the liquidation of permitting the disclaimer and the impact on the parties who would be affected by the disclaimer. It is for the liquidator to satisfy the court that the balance lies with the disclaimer.

Planning Law

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

The principal legislation governing planning comprises the Planning and Development Acts 2000 to 2011. There is also a wealth of secondary legislation including regulations and orders, which are designed to complement these Acts.

Each local authority is responsible for monitoring compliance with planning laws in relation to property in its area and for making decisions regarding applications for planning permission. An independent third party appeals board, An Bord Pleanála
41. What planning consents are required and for which types of development?

Generally, planning permission is required for any development of land or property, unless the development is specifically exempted from this requirement. The term “development” includes the carrying out of works (building, demolition, alteration) on land or buildings and the making of a material change of use of land or buildings.

Permission may not be required for certain non-structural works to the interior of a building or for works which do not materially affect the external appearance of the structure. However, compliance with Building Regulations must be considered and a Fire Safety Certificate may be required.

It is also necessary to serve a commencement notice on the local authority under the Building Control Acts 1990 and 2007 prior to commencing works.

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

**Initial consents**

The local authority for the area in which the development is to take place is responsible for considering the planning application and for the grant or refusal of planning permission.

**Third party rights**

Any party can make a written submission or observation in relation to a planning application within five weeks of the date of the submission of the application.

Within four weeks of a planning decision being issued, any party who made a written submission or observation in relation to the application can appeal the decision to An Bord Pleanála (see Question 40). There are certain limited circumstances in which a third party can appeal even where they did not make any submissions or observations in relation to the application.

**Public inquiries**

These are not very common. However, public oral hearings are sometimes held, particularly in relation to large/strategic infrastructure projects.
**Initial decision**

The minimum period for determination of an application for planning permission is five weeks beginning on the date of receipt of the application. However, decisions are rarely issued on the expiration of this five-week period.

Generally a valid and complete application for planning permission is dealt with within eight weeks from the date of receipt of the application. However, this period can vary, particularly if the local authority seeks further information from the applicant.

**Appeals**

If the planning authority consents to the application for permission it will furnish a Decision to Grant Planning Permission which is not a full permission. Once the planning authority notifies the relevant parties of its decision, the applicant and any third party who made a submission or observation in relation to the application have four weeks within which to appeal this decision or any conditions attached to it. If there is no appeal then the planning authority will furnish a formal grant of planning permission at the end of the appeal period.

*An Bord Pleanála* has a statutory objective to determine appeals within 18 weeks of receipt of an appeal.

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**REFORM**

43. Are there any proposals to reform real estate law in your jurisdiction?

As outlined above, property law in Ireland has recently undergone a major reform with the introduction of the Land and Conveyancing Law Reform Act 2009. There is a continued move towards modernising conveyancing in Ireland and efforts are being made to move towards e-conveyancing. The recent extension of compulsory registration to all counties in Ireland also aims to develop a modern and efficient registry of land ownership in Ireland.

There are also proposals to update and consolidate all landlord and tenant legislation.

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**ONLINE RESOURCES**

**W** [www.oireachtas.ie](http://www.oireachtas.ie)

Description. Website of the Houses of the Oireachtas (Irish Parliament), providing access to Acts of the Oireachtas and Bills from 1997 to date. This is a reliable source for primary legislation, as enacted, provided by the Oireachtas, but the printed version published by government publications remains the official version of all legislation.

**W** [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

Description. The electronic Irish Statute Book (eISB), an unofficial source provided and maintained by the Office of the Attorney General, comprises the Acts of the Oireachtas and statutory instruments from 1922 onwards, together with the legislation directory, a tool for tracking amendments to legislation.
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**Contributor Details**

**Ronan McLoughlin**

Qualified. Ireland, 1997

**Areas of practice.** Commercial real estate; corporate occupier requirements; property developments.

**Recent transactions**

- Advised SAP on expansion of its office premises in Dublin and Galway.
- Advising Hewlett-Packard in relation to the sale, development and lease-back of a stand-alone facility in Galway comprising offices and data centre.
- Advised BSkyB on its lease of new office/customer support centre premises in excess of 35,000 square feet in Dublin 4.
- Advised Trinity College Dublin on the development of its new Biosciences Building and mixed office and retail scheme in Dublin city centre valued in excess of EUR120 million.
- Advised State Street on Irish property aspects of acquiring Bank of Ireland Asset Management.

**Cara O’Hagan**

Qualified. Ireland, 1999

**Areas of practice.** Commercial real estate; corporate occupier requirements; property developments.

**Recent transactions**

- Acting for Google in the expansion of its Irish office portfolio by over 225,000 square feet over multiple locations, including acquisition of Montevetro, Gasworks House and Gordon House in Dublin 4.
- Acting for Quest Software regarding the development of its office headquarters in Cork.
- Advising an international pharma company on the proposed expansion of its manufacturing facility.
- Advising Xerox on the sale of industrial premises at the Xerox Technology Park, Dundalk and lease of office space in County Dublin to eBay/Paypal.
- Advising a multinational IT company on the acquisition of a site for a data centre development.

**Marguerite Gallagher**

Qualified. Ireland, 2007; New York State, US, 2007; England and Wales, 2010

**Areas of practice.** Commercial real estate; corporate occupier requirements; property developments; distressed property.

**Recent transactions**

- Acting for Hewlett-Packard in relation to the sale, development and lease-back of a stand-alone facility in Galway comprising offices and data centre.
- Acting for Nando’s Chickenland, a multinational restaurant chain, regarding its ongoing expansion in Ireland and advising on its existing locations throughout Ireland.
- Acting for a multinational pharmaceutical company on the disposal of its existing facility and acquisition of alternative space.
- Acting in connection with a number of high profile receiverships and liquidations.
- Advising participating lending institutions regarding completion of NAMA due diligence reports.
The first rule of success
Surround yourself with the best

The success of any law firm can be measured by the quality of its people and its clients. We have the best of both.

Cara O’Hagan, Partner and Head of our Commercial Property Department, leads a team of experienced lawyers, advising on the property and commercial real estate requirements of international companies and financial institutions doing business in and through Ireland.

Matheson. The law firm of choice for international companies and financial institutions doing business in and through Ireland.

Contact Cara at cara.ohagan@matheson.com or your usual contact at Matheson.