

Commercial Real Estate in Ireland: Overview

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REAL ESTATE INVESTMENT

Investment Structures

1. 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.
- Irish real estate investment trusts (REITs).
- Irish-regulated funds.
- Irish- partnerships.

Institutional investors historically used 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 was previously the most popular structure for a QIAIF investing in real estate in Ireland, 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 now typically use non-Irish resident companies (such as Luxembourg companies).

Private investors commonly 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 for certain transactions involving individuals, as investors seek to pool capital and benefit from the flexibility of partnership taxation.

Real Estate Investment Trusts (REITs)

REITs are available in Ireland, however they are not commonly used. 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.

There is currently only one Irish REIT in the market (the breakup of which is currently being considered). Several other REITs existed previously, however these were 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.

Entities which are classified as REITs under other jurisdictions' laws (such as UK REITs) are treated as non-Irish resident companies for Irish tax purposes and have no special Irish tax treatment.

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 data site 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 of Ireland's 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. The current version of the Law Society Contract for Sale is the 2023 General Conditions.

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.

Restrictions on Foreign Ownership and Occupation

2. 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 (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

3. 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 4*) 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/Recording System

Tailte Éireann is the state body responsible for the registration of title to real estate in Ireland under the Tailte Éireann Act 2022 which merged the Property Registration Authority, Ordnance Survey Ireland and the Valuation Office into one body (Tailte Éireann). It provides a system of registration of ownership to land in Ireland and manages the Land Registry and the Registry of Deeds.

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. <https://www.tailte.ie/registration/>

The Law Society of Ireland and Tailte Éireann 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 most documents dealing with real estate.

An exception to this is the Contract for Sale, which can be executed by electronic signature subject to the parties' agreement.

While it was possible to execute a Contract for Sale using electronic signatures previously, the 2023 General Conditions provide express confirmation of the parties' consent to electronic exchange of contracts, the use of counterparts and the potential to use electronic signatures. As with all general conditions, this condition can be amended in a contract for sale by a special condition.

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

Main Information and Documents

The Land Registry maintains folios of registered property (see *Question 3*) 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 3*) 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.

5. Is there a state guarantee of title? Are authorities that manage public title registration/recording 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 3*) 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).

Types of Tenure

6. 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.

Condominium Ownership/Equivalent

The Irish structure comparable to condominium ownership is a residential apartment complex with an owner's management company (OMC). Frequently an OMC owns the freehold title to an apartment block including the common areas and the freehold of the apartments themselves. The apartments are sold by way of long leases and the OMC retains the freehold title. The apartment owners contribute to the maintenance of the common areas and to common services by payment of a management fee.

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).

Several other burdens affect registered land without registration, such as public rights, the rights of individuals in occupation, and leases 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

7. 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.

Exchange and Completion/Closing

8. 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 can 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.

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 solicitor's 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, the 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.

Environmental Issues

9. 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 2022.
- 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 can 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.

REAL ESTATE TAX

Stamp Duty/Transfer Tax

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

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

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. This applies to residential houses or duplexes but not to apartments.

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 various conditions. To qualify for this refund, construction must commence by 31 December 2025 and within 30 months of the date of the transfer of the land. The building work must also be completed within two years.

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.

However, transfers of shares or interests in corporate entities (including Irish and non-Irish incorporated companies) and partnerships may be subject to a 7.5% stamp duty where the entity derives over 50% of its value from Irish land, which is:

- Intended for development.
- Held:
 - as trading stock; or
 - with the sole or main object of realising a gain on disposal.

This provision is subject to various conditions, including that the transfer is one that transfers control of the land.

In addition, transfers of shares in companies holding residential property can be subject to the 10% rate if the underlying property held is of a type which attracts that rate (see above, *Who Pays*).

Tax on Seller's Profits/Gain

11. Is tax imposed on a seller's profit or gain on a sale of real estate? Are there any exemptions? Does it apply to a transfer of shares in a company holding real estate?

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 standard rate is 33%. 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 must agree and discharge its capital gains tax liability 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).

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 four 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.

The 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 entire 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.)

Value Added Tax (VAT) or Equivalent

12. Is VAT (or equivalent) payable on a sale of real estate? Who pays? 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

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

13. 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 (or owner if the property is unoccupied) of a business premises. The local authority determines the amount of commercial rates payable.

Local authorities may provide for an abatement of rates in respect of vacant properties; however, this is dependent on the local authority in question and varies between the different authorities.

REAL ESTATE FINANCE

Secured Lending Involving Real Estate

14. 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 usually require borrowers to provide each of the following forms of security:

- 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)* under 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 3*) 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

A registration fee of EUR40 is payable to the CRO to register a charge.

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. Currently if a charge is registered electronically in the Land Registry the application fee is waived. This is to promote the use of e-registration.

Tax is not charged on the creation of security. However, the Revenue Commissioners must be notified in writing by a charge holder when an Irish company creates a fixed charge over its book debts, and any

subsequent transferee of that charge must also notify the Revenue Commissioners of the transfer of that charge.

Lenders' Remedies

15. 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 23*).

REAL ESTATE LEASES

Negotiation of Leases

16. 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 2022. Residential premises for let must also meet certain standards under the Housing (Standards for Rented Houses) Regulations 2019.

Rent Payments

17. 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 may also be linked to changes in the Consumer Price Index.

18. 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%.

19. 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

20. 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 under 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 executing a deed of renunciation for it to be valid.

Disposal

21. 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 (Affiliate) 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 the tenant entity under a lease is sold by way of a share sale, there is no change to the tenant entity and accordingly this does not affect the provisions of the lease. If the lease is 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.

22. 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*.

Landlord's Remedies and Tenant's Insolvency

23. 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.

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 permitted 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, 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 can 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 before liquidation, and any claim for dilapidations, will rank as unsecured debt. Commercial rates due for the 12 month period before 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.

PLANNING AND DEVELOPMENT CONTROLS

24. In what circumstances can local or state authorities purchase property compulsorily (expropriation/ eminent

domain)? Is the purchase price or compensation based on market value?

Compulsory Purchase/Expropriation

The following bodies can purchase business premises compulsorily:

- Local authorities and other state entities.
- 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. NAMA's 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.

25. 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 2023 (Planning Acts) in their municipal districts.

The independent national planning appeals board, *An Bord Pleanála*, determines planning appeals (see *Question 26*). 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.

26. 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.

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- *Chambers Global Practice Guide: Real Estate 2021 and 2022*