The International Comparative Legal Guide to:

Real Estate 2019

14th Edition

A practical cross-border insight into real estate law

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1 Real Estate Law

1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.

Irish law was historically based on old legislation which predates the establishment of the Irish State in 1922, such as the Conveyancing Acts, 1881–1911 (the "**Conveyancing Acts**") and the Settled Land Acts, 1882–1890. The Land and Conveyancing Law Reform Act, 2009 (the "**2009 Act**") replaced much of the old law, including the pre-1922 statute law, and modernised the law and conveyancing practice. There is modern legislation governing registration of title (Registration of Title Act, 1964 (the "**1964 Act**") which was modified by the Registration of Deeds and Title Act, 2006 (the "**2006 Act**")) to facilitate the increasing computerisation of the property registration system in this jurisdiction and succession law (Succession Act, 1965).

There is extensive statutory protection afforded to family property in particular, which affects conveyancing practice (e.g. the Family Home Protection Act, 1976). This is partly due to the fact that Ireland has a written Constitution enshrining certain fundamental rights which override any other law, including legislation. Thus it is not uncommon to find legislation declared by the domestic courts to be unconstitutional and, therefore, null and void.

1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

Irish property law is essentially based on both legislation and common law.

1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

There are no international laws of direct relevance to real estate in this jurisdiction. However, as Ireland is a common law jurisdiction, court decisions made in other common law jurisdictions (such as the UK) are often accepted as having persuasive authority by the Irish judiciary.

2 Ownership

2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

There are no legal restrictions on the ownership of real estate by non-resident persons in this jurisdiction. However, anti-money laundering legislation requires that a number of checks be carried out on a potential buyer, and the identity of the buyer, the source of funds and the ability to fund the acquisition of real estate will need to be verified.

3 Real Estate Rights

3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

Irish property can be held under freehold title which confers absolute ownership, or a leasehold title which confers ownership for the period of years granted by the relevant lease and held from the owner of the freehold or the owner of the superior leasehold title in the relevant property. A leasehold interest is based on a contractual relationship between the lessor/landlord and the lessee/tenant.

The quality of the title to land generally falls into four categories, namely:

- Absolute title.
- Possessory title.
- Qualified title.
- Good Leasehold title.

3.2 Are there any scenarios where the right to land diverges from the right to a building constructed thereon?

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. Typically, the owner of land is also the owner of any buildings erected on the land. However, there is no impediment to having different owners.

3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split? Are there any proposals to change this?

There is a split between legal title and beneficial ownership of property in Ireland. The 2009 Act provides that the entire beneficial interest in property passes to the buyer on the making of an enforceable contract for the sale or other disposition of land. The beneficial interest in property can also be held through a traditional "off-title" trust.

In respect of registered land, the Land Registry does not recognise a split between legal title and beneficial ownership and only the legal owner of property will be recorded in part 2 (the ownership section) of the folio. A beneficial owner may, however, protect his or her interest in the property by registering a caution or an inhibition against the folio in question. The purpose of a caution is to obtain notice of dealings by the registered owner so that the cautioner has an opportunity to assert his or her unregistered right(s). An inhibition, on the other hand, operates as a restriction on registration that prevents all registrations except those made in compliance with the terms thereof.

There are currently no proposals to change the split between legal title and beneficial ownership of property in Ireland.

4 System of Registration

4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

The Property Registration Authority (the "**PRA**") is the State body responsible for the registration of property transactions in Ireland and the system of registration of title (ownership) to land in Ireland.

The PRA is a statutory body established on 4 November 2006 under the provisions of the 2006 Act.

The main functions of the PRA are to manage and control the Land Registry and the Registry of Deeds and to promote and extend the registration of ownership of land.

The Land Registry was established in 1892. When ownership is registered in the Land Registry, the deeds are filed with the Land Registry and all relevant particulars concerning the property and its ownership are entered on folios which form the registers maintained in the Land Registry. In conjunction with folios, the Land Registry also maintains maps (referred to as filed plans). Both folios and maps are maintained in electronic form.

The Registry of Deeds was established in 1707 to provide a system of voluntary registration for deeds affecting land and to give priority to registered deeds over unregistered but registrable deeds. There is no statutory requirement to register a document in the Registry of Deeds, but failure to do so may result in a loss of priority. The effect of registration is generally to govern priorities between documents dealing with the same piece of land. The primary function of the Registry of Deeds is to provide a system of recording the existence of deeds affecting unregistered property. When a deed is lodged in the Registry of Deeds it must be accompanied by the relevant application form (in a prescribed form) which is a summary of the essential information of the relevant deed.

4.2 Is there a state guarantee of title? What does it guarantee?

A title registered in the Land Registry is guaranteed by the state. The Land Registry indemnifies any person who suffers loss through a mistake made by the Land Registry. A buyer, therefore, can accept the folio as evidence of title without having to read the relevant deeds. However, the State does not guarantee the conclusiveness of boundaries or the area of the relevant property as identified on the Land Registry maps.

It should be noted that the Registry of Deeds does not guarantee the effectiveness of a deed nor does it interpret a deed, but only records the existence of the deed. The registration of a deed in the Registry of Deeds governs priorities.

4.3 What rights in land are compulsory registrable? What (if any) is the consequence of non-registration?

Any unregistered property (Registry of Deeds) purchased in the State after 1 June 2011 is subject to compulsory first registration in the Land Registry.

Registration is also compulsory where land is bought under the Land Purchase Acts or where land is acquired after 1 January 1967 by a statutory authority.

4.4 What rights in land are not required to be registered?

Except as set out in question 4.3, there is no requirement that documents or titles be registered, but it is good conveyancing practice that deeds be registered in either the Registry of Deeds or the Land Registry in order to preserve the priority of the deed.

In the case of registered land, there are certain rights which must be registered in the Land Registry to gain protection; otherwise these rights will not be protected against a *bona fide* buyer for value without notice (e.g. rights of residence, restrictive covenants, leases for a term exceeding 21 years). Section 35 of the 2009 Act provides that an easement shall be acquired at law by prescription only on registration of a court order under section 35. Section 35(4) of the 2009 Act provides that the order shall then be registered in the Registry of Deeds or Land Registry as appropriate.

Section 37 Civil Law (Miscellaneous Provisions) Act 2011 amended the 2009 Act and the 1964 Act to enable the PRA to register easements without a court order where there is no disagreement between the parties concerning entitlement to an easement or profit.

There are also a number of burdens which affect registered land without registration, such as public rights and occupational tenancies for terms not exceeding 21 years.

4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probationary period following first registration.

As noted at question 3.1, the quality of the title to registered land generally falls into four categories, namely:

- Absolute title: This is the best type of title to land that can be acquired in Ireland.
- Possessory title: This category of title is granted where an applicant does not have paper title to land but is in occupation of the land and/or in receipt of the rents and profits issuing from the land.

- Qualified title: This category of title is granted where an applicant can only establish title for a limited period and/or where the title is subject to reservations.
- Good Leasehold title: This category of title applies where the Land Registry has not investigated the title of the lessor to grant the lease to the applicant. Note that if the superior title is already registered, then the lessee will be registered with an absolute title.

4.6 On a land sale, when is title (or ownership) transferred to the buyer?

The legal title usually passes when the purchase price is paid to the seller and the buyer takes delivery of the transfer deed. To complete the effective transfer of ownership of registered land, it is necessary to register the transfer in the Land Registry.

Section 52 of the 2009 Act provides that the entire beneficial interest in property passes to the buyer on the making of an enforceable contract for the sale or other disposition of land; however, it is not uncommon for this statutory provision to be disapplied or contracted out of in the contract for sale (particularly if a long period of time is anticipated between signing and completion).

4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

Priority is accorded by virtue of the date of registration of an instrument, rather than the date of execution of the instrument. In the Registry of Deeds (unregistered land), priority is determined by the serial number allocated to the instrument pursuant to the 2006 Act. 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.

As regards registered land, the 1964 Act makes provisions for two classes of rights or burdens that affect registered property. Section 69 burdens may be registered on a folio and include charges, liens and easements created by express grant. Section 72 burdens, on the other hand, are those which affect registered land without registration, for example, leases for a term less than 21 years and customary rights. Section 69 burdens rank in priority according to their date of registration whilst section 72 burdens rank as of their date of creation. Registered section 69 burdens rank in priority to subsequently created section 72 burdens, while section 72 burdens rank in priority to subsequently registered section 69 burdens. Judgment mortgages are dealt with separately and are subject to any right or incumbrance affecting the judgment debtor's lands, whether registered or not, at the time of their registration.

It is worth noting that a priority entry may be made by an intending purchaser, lessee, or chargee of property affording them priority over other registrations in respect of the folio for a period of 44 days from the date of registration of the priority entry. If the transaction protected by the priority entry is not lodged in the PRA within the priority period, it loses the priority conferred by the priority entry. A priority entry can be renewed following the expiry of the 44-day period.

5 The Registry / Registries

5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

Please refer to question 4.1 above.

5.2 How do the owners of registered real estate prove their title?

Owners of registered real estate generally prove their title via the Land Registry folio, which is *prima facie* evidence of title. The legal owner of the registered property is recorded in part 2 (the ownership section) of the folio. In circumstances where real estate is sold onwards whilst an application for registration of ownership is still pending in the Land Registry, the owner will typically produce the transfer instrument as evidence of their title, in addition to the folio. A Land Registry search will reveal applications or dealings pending against the folio in question.

5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

Transactions cannot be completed between parties electronically. Once completed, the details of a transaction relating to registered real estate can be submitted to the Land Registry for registration electronically. Once the application has been submitted electronically, the Land Registry will issue a pre-lodged dealing number, which will protect priority for 21 days. However, the actual documents must be physically lodged in the Land Registry in order for the dealing number to go live and ultimately to effect the completion of the registration.

The documents that typically need to be provided to the Land Registry to effect registration of an ownership right are as follows:

- the Land Registry application form;
- the transfer instrument; and
- the appropriate fees.

The Land Registry maintains an electronic database which can be accessed electronically.

The concept of electronic conveyancing, or e-conveyancing, was first proposed by the Law Reform Commission in Ireland in 2006 and, since then, both the Irish Government and the Law Society of Ireland have engaged in consultations and established a Task Force in order to ascertain how e-conveyancing can be regulated and implemented in the future.

5.4 Can compensation be claimed from the registry/ registries if it/they make a mistake?

Compensation can be claimed from the Land Registry but not from the Registry of Deeds. Please refer to question 4.2 above.

5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate and is this achieved by a search of the register? If not, what additional information/process is required?

Any member of the public is entitled to search the Registry of Deeds index on payment of the prescribed fee.

In the Land Registry, members of the public can inspect the index of names, the index of lands and the folios (including maps) on payment of the prescribed fees. Applications pending registration can only be inspected by the lodging party or the registered owner of the property or by a prescribed category of persons.

A buyer, through his/her lawyer carrying out pre-contract diligence, can obtain all the information they might reasonably require regarding encumbrances and rights affecting land from the seller's lawyer.

Bonded law searchers are typically used by lawyers to carry out Registry of Deeds and Land Registry searches in Ireland.

6 Real Estate Market

6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

The relevant 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. In commercial real estate 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.

Between heads of terms being agreed and a binding contract being signed, the parties may put in place exclusivity agreements and confidentiality agreements (which is becoming more widespread in the sale of commercial real estate). A seller's lawyer is responsible for drafting contracts, dealing with pre-contract enquiries raised by the buyer's lawyers, replying to requisitions on title, redeeming mortgages/charges and distributing the balance of sale proceeds to the seller. A buyer's lawyer investigates the title, raises requisitions on the title, drafts the purchase deed, conducts closing searches, attends the closing appointment and stamps and registers the title.

Surveyors and/or architects may be engaged before the buyer signs contracts to carry out a structural survey of the relevant property. Depending on the nature of the transaction, an environmental expert may also be engaged to provide an environmental report in respect of the property.

In the sale of commercial real estate asset portfolios, the commercial and legal due diligence is usually facilitated by providing interested parties with access to information contained in an online data-room. Before access is granted, the interested parties will typically be required to execute a non-disclosure agreement.

6.2 How and on what basis are these persons remunerated?

Selling Agents – normally charge a percentage of the sale price. The Property Services (Regulation) Act 2011 seeks to regulate property services provided by auctioneers, estate agents and management agents. The agent must issue a letter of engagement which among other things must set out the amount or the rate of any commission or any other fee payable by the client under the agreement.

Lawyers – no standard/fixed price. Fees are normally commensurate with the value of the property/work involved. Irish lawyers are obliged to set out the basis of their charges under section 68 of the Solicitors Amendment Act 1994.

Surveyors – no standard/fixed price. Fees are normally commensurate with the value of the property/work involved.

Environmental Experts – no standard/fixed price. Fees are normally commensurate with the value of the property/work involved.

6.3 Is there any change in the sources or the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

Investor appetite for Irish real estate has been very strong in 2018, with a particular focus on residential development, purpose-built student accommodation and hotel investment. Non-bank lenders continue to be very active in the Irish market.

The profile of investors looking for opportunities in the Irish market is relatively consistent, led mainly by European institutional buyers; however, Asian investors are starting to make a mark in this jurisdiction, most notably in the office sector.

Foreign Direct Investment remains crucial for Ireland and this jurisdiction continues to be an attractive real estate investment opportunity for a number of reasons including its strong economic backdrop, levels of occupational activity and the potential for further rental growth.

6.4 What is the appetite for investors and/or developers to invest in your region compared to last year and what are the sectors/areas of most interest? Please give examples.

The commercial real estate market has been strong in Ireland in 2018. One of the largest transactions in 2018 was the disposal of Eir's headquarters at Heuston South Quarter (HSQ) for a reported €176 million by US Fund Northwood.

The retail market has also performed relatively well despite concerns about Brexit. The sale of Westend Retail Park at Blanchardstown for approximately €148 was the highest value retail investment transaction in the first nine months of the year.

In terms of off-market transactions, IPUT traded its office at No. 40 Molesworth Street with State Street's ownership of Deloitte House, Earlsfort Terrace, an office asset swap reported at €160 million.

Investor appetite for residential development and the hotel sector is increasing as noted at question 6.3 above. Approximately €400 million of development land sales were completed in the first half of 2018. Co-living concepts and PRS/Build to Rent schemes are becoming increasingly mainstream, accounting for 25% of investment spend in the first half of the year, with a strong appetite to forward fund/forward commit. A major deal in this sector was Kennedy Wilson's acquisition of 247 apartments and 3.97 acres of development land at the Grange, Stillorgan, Dublin from NAMA-appointed receivers for a reported €160 million.

The hotel/licensed market has been robust this year with the value of hotel deals more than tripling with a value of approximately €263 million to the end of August 2018 compared to last year. Notable disposals include the Hilton Dublin Airport Hotel, Citywest Hotel, Saggart and the Radisson Blu, Sligo.

6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

Stamp duty for commercial property was increased from 2% to 6% in Budget 2018; however, this does not appear to have had a significant impact on investment in commercial property over the past year.

The 4% stamp duty rebate scheme that was introduced last year in respect of land purchased to develop residential property has encouraged residential development, particularly in the PRS Sector.

Ireland's 12.5% corporate tax rate on residential construction profits has led to an increase in the number of international investors establishing residential development companies, particularly in the Dublin area.

The Dublin office market continues to benefit from relocations due to the uncertainty around Brexit with particular growth in the serviced office sector.

The introduction of a vacant site levy, in order to promote the development of vacant under-utilised sites in urban areas has led to an increase in the disposals of sites for development.

The introduction of tax reforms in 2017 and 2018 which negatively impacted Irish regulated funds focused on Irish property (so-called Irish Real Estate Funds or "IREFs") has led to a decline in the popularity of such structures. There are now fewer tax advantages to larger non-Irish investors which has, together with the recovery of the domestic investor sector, led to an increase in the number of Irish based buyers of Irish property.

7 Liabilities of Buyers and Sellers in Real Estate Transactions

7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

To ensure consistency in drafting and avoiding protracted negotiations, the Law Society of Ireland produces a *pro forma* contract for sale for use in real estate transactions, which is designed to give a fair balance of rights between buyers and sellers.

The contract for sale:

- Contains a memorandum of the agreed terms of the sale (parties, price, description of property, and completion date).
- Lists the documentation and searches to be provided by the seller.
- Incorporates the Law Society of Ireland General Conditions of Sale (the "**General Conditions**"). The 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. The General Conditions were updated in 2017 for use in respect of transactions commencing on or after 3 January 2017.

The General Conditions deal with formalities such as:

- The seller's title.
- The identity and condition of property.
- Possession.
- The disclosure of notices.
- Planning and development.
- Completion of the sale, completion notices and interest due if completion is delayed.
- Rescission of the contract.
- Forfeiture of deposit and resale.
- Risk.
- Boilerplate issues such as apportionment, time limits, notices and arbitration.

The special conditions of sale are typically negotiated between the parties and reflect the nature of the transaction. For commercial real estate transactions, it is normal for the seller to seek to limit the warranties being provided. Where the seller's knowledge of the property is limited, for example, a sale by a receiver, liquidator or mortgagee, it is usual to exclude or limit many of the warranties contained in the General Conditions.

Another formality that will need to be adhered to is the Conveyancing Conflict of Interest Regulation which prohibits the same firm acting for both the seller and buyer in real estate transactions, with certain very limited and defined exceptions.

7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

The underlying principle is one of *caveat emptor* (buyer beware). The buyer must be satisfied from its own due diligence that good marketable title to the relevant property is being offered by the seller.

The principle of *caveat emptor* is diluted somewhat by the General Conditions which place a number of warranties and disclosure requirements on the seller. For instance, the General Conditions include numerous warranties relating to matters such as notices, planning compliance, boundaries, easements and identity and the existence of any other interest in the relevant property. These warranties can be excluded or amended by agreement between the buyer and the seller. In addition to any specific disclosures, sellers often limit the warranty provided in respect of planning compliance by reference to documentation and opinions/certificates of compliance in the seller's possession and produced to the buyer. Where the property is being sold in an enforcement scenario (by a receiver, liquidator or mortgagee), it is usual that many of the warranties contained in the General Conditions are excluded or limited by reference to the limited knowledge of the receiver, liquidator or mortgagee regarding the property. The warranties received a radical overhaul in the General Conditions 2017 edition prompted by the view that vendors were routinely excluding the relevant condition in its entirety or varying it to such a degree that, in effect, no warranty was being given. The new wording provides that a vendor warrants compliance with planning in respect only of his or her period of ownership.

7.3 Can the seller be liable to the buyer for misrepresentation?

Yes, a seller can be liable for misrepresentation. General Condition 33 of the General Conditions provides that a buyer shall be entitled to compensation for any loss suffered by the buyer in respect of the sale as a result of an error which includes any omission, non-disclosure, misstatement or misrepresentation made in the contract. However, as outlined above, a seller may attempt to exclude/vary this condition by inserting a special condition in the contract for sale stating that the buyer shall not rely on any representations made.

Statutory protection from fraud is provided by the 2009 Act, which makes it an offence for a seller to fraudulently conceal or falsify material information relating to the title.

7.4 Do sellers usually give any form of title "guarantee" or contractual warranties to the buyer? What would be the scope of these? What is the function of any such guarantee or warranties (e.g. to apportion risk, to give information)? Would any such guarantee or warranties act as a substitute for the buyer carrying out his own diligence?

As noted at question 7.2, by virtue of the General Conditions of the Contract for Sale the seller gives various contractual warranties in respect of the property for sale. It is typical for a seller to limit the scope of warranties through the careful drafting of Special Conditions in the Contract for Sale, in particular for commercial property. Despite the existence of warranties, a prudent seller

(or his legal advisers) will still carry out his own due diligence of the property as the principle of caveat emptor is at the heart of commercial property transactions.

There are typically implied covenants as to ownership contained in a purchase deed but there is no form of title warranty. However, a buyer's lawyer will investigate the seller's title to the relevant property to ensure a buyer will acquire a good marketable title. The buyer's lawyer also carries out a number of searches against both the seller and the property. The seller must explain and/or discharge any adverse matters resulting from the searches which affect the seller and/or the relevant property before the completion of the sale can occur.

7.5 Does the seller retain any liabilities in respect of the property post sale? Please give details.

As noted at question 7.3, a seller can be liable for misrepresentation or fraud.

A seller may also retain liability for any contractual terms or undertakings which survive the acquisition of the property and the completion of the sale.

A seller may be liable for penalties to Revenue in respect of local property tax should it fail to provide information about the chargeable value of the residential property to the purchaser or make a false statement regarding same to Revenue.

7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

The buyer is also responsible for discharging the following costs:

- Stamp duty.
- Surveyor/Architects' fees.
- Legal fees.
- VAT (if applicable).
- Registration fees.
- Commissioner for Oaths' fees.
- Search fees.
- Local Property Tax (apportioned).

8 Finance and Banking

8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

There are extensive differences between financing real estate as a corporate entity and as an individual, most notably from a practical and legal perspective.

Real estate lenders have little regard as to the residential status of an individual, as long as the real estate is situated in Ireland.

The principal Acts, Regulations and Central Bank Codes of Conduct concerning the financing of real estate are as follows (in each case reference is made to the primary provision as amended):

- Asset Covered Securities Act, 2001.
- Agricultural Credit Act, 1978.
- Bills of Sale (Ireland) Act, 1879.
- Central Bank Acts, 1942 to 2014.
- Central Bank Consumer Protection Code, 2012.
- Central Bank Reform Act, 2010.
- Central Bank (Supervision and Enforcement) Act, 2013.
- The Central Bank and Credit Institutions (Resolution) Act, 2011.
- Central Bank (Supervision and Enforcement) Act 2013 (section 48) Lending to Small and Medium-Sized Enterprises Regulations 2015.
- Companies Act, 2014.
- Consumer Credit Act, 1995.
- Conveyancing Acts, 1881–1911, the Land and Conveyancing Law Reform Acts, 2009 and 2013.
- Credit Union Act, 1997.
- Credit Union and Co-operation with Overseas Regulators Act, 2012.
- Credit Institutions (Stabilisation) Act, 2010.
- Criminal Justice (Money Laundering) Act, 2010.
- Code of Conduct on Mortgage Arrears, 2013.
- European Communities (Consumer Credit Agreements) Regulations, 2010.
- European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995.
- European Union (Bank Recovery and Resolution) Regulations, 2015.
- European Union (Consumer Mortgage Credit Agreements) Regulations, 2016.
- European Union (Financial Collateral Arrangements) Regulations, 2010.

8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

A real estate lender will typically seek to protect itself from default by the borrower by obtaining a contractual suite of covenants, undertakings and representations and warranties from the borrower, the breach of which would lead to an event of default.

A real estate lender will provide finance that is secured over the relevant property. The real estate lender will then require that the security is registered as first ranking in the appropriate property register, thereby securing priority of the security for the benefit of the real estate lender.

Where a lender is providing finance for development purposes, it would be normal for the lender to receive collateral warranties from the members of the professional team such as architects, designers and engineers. The lender will also typically appoint its own project monitor (at the cost of the Borrower).

8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

The powers of mortgagees under mortgages are derived from a combination of the terms of the mortgage itself and the law (including certain relevant statutory provisions). Generally, the same principles apply in relation to enforcement against companies as apply to individuals. Various methods of enforcing security over real property are available and the ability to avail of these will depend on the circumstances of each case.

In respect of security granted prior to 1 December 2009, there is no requirement on a mortgagee to go to court to exercise the remedies available to it, provided the borrower does not challenge the enforcement of the security. However, the 2009 Act contains certain provisions in relation to security granted on or after 1 December 2009, which compel a lender to go to court to seek an order for possession and an order for sale. These provisions can be and are usually expressly contracted out of for security taken over commercial real estate but they cannot be contracted out of in respect of residential housing loans. Therefore, in the case of housing loans and security taken over residential real estate on or after 1 December 2009, a mortgagee does have to go to court to get an order for sale and possession. A court appearance can be avoided if the borrower gives written consent to the sale not more than seven days before the power of sale is exercised.

The implementation of the 2009 Act repealed certain of the old statutory provisions that had applied prior to 1 December 2009 (most notably parts of the Conveyancing Acts and the 1964 Act). The belief was that the rights and powers conferred on the existing mortgagees by these statutory provisions had already been "acquired, accrued or incurred" by mortgagees by virtue of the provisions of the Interpretation Act, 2005 and therefore the existing mortgagees could continue to rely upon those provisions. A number of high-profile decisions by the Irish courts resulted in a concern in the market that, in essence, the statutory rights which were appealed could not have been "acquired" by existing mortgagees. The Land and Conveyancing Law Reform Act, 2013 was implemented to fill this lacuna by confirming that certain provisions of the Conveyancing Acts and the 1964 Act will continue to apply to mortgages which predate the enactment of the 2009 Act and therefore remove the uncertainty in the market.

Certain provisions of the 2009 Act enable a mortgagee, where it has reasonable grounds for believing a mortgagor has abandoned a mortgaged property and urgent action is required to prevent deterioration, to apply to court for an order authorising the mortgagee to enter into possession of the mortgaged property.

8.4 What minimum formalities are required for real estate lending?

The usual practice is for the terms of a property loan to be recorded in a formal agreement. For big-ticket transactions, institutions will usually adapt a suitable Loan Market Association ("**LMA**") precedent for the transaction. Use of an LMA precedent makes the negotiation of terms more efficient. However, lenders, including banks, continue to use bespoke loan agreements for smaller transactions.

If a company has created a charge over real estate, to perfect the security, a relevant filing must be lodged with the Irish Companies Registration Office ("**CRO**") within 21 days of the creation of the security. This typically takes the form of a Form C1. If not registered within this time frame, the security will generally be void against any liquidator or third party creditor.

The Companies Act, 2014 (the "**2014 Act**") introduced changes to the procedure in relation to the registration of charges: the one-stage procedure; and the two-stage procedure. The one-stage procedure is similar to the previous regime under the Companies Act, 1963 (the "**1963 Act**"), while the two-stage procedure involves filing an initial notice of a company's intention to register a charge, followed by a second filing within 21 days of receipt of the first by the CRO, confirming the creation of the charge. The purpose of the latter procedure is to remove the "blind spot" which exists for 21 days after a charge has been created, during which it may not appear on CRO searches. Under the 2014 Act, priority of registration speaks from the date of registration at the CRO and not the date of creation of the charge itself, as was previously the case under the 1963 Act.

In addition, it is generally accepted that registration is the appropriate perfection mechanism in respect of security interests over real estate in Ireland. The specific formalities in relation to real estate in Ireland depend on whether the land is registered or unregistered (refer to section 4 above). There are no specific time limits in respect of the registration of security in the Registry of Deeds or at the Land Registry, albeit a delay or failure to register may impact on priority.

8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

If there are other lenders, the parties will typically structure the priority of debts in the following ways:

1. Contractual subordination

Contractual subordination is common in Ireland. It occurs where the senior lender and the subordinated lender enter into an agreement as a result of which the subordinated lender agrees that the senior debt will be paid out in full before the subordinated lender receives the payment of the subordinated debt. The subordinated lender is contractually subordinated to the senior lender.

2. Structural subordination

Structural subordination is also possible depending on the particular terms of a transaction. Structural subordination arises where one lender (the senior lender) lends to a company in a group of companies which is lower in the group structure than another lender (the subordinated lender).

3. Inter-creditor arrangements

Inter-creditor arrangements are common in Ireland, depending on the nature of the particular transaction. Typical parties include a senior lender, a junior lender, an inter-group lender and a borrower. Typical terms in an inter-creditor agreement include provisions as to priorities, standstill, representations and warranties and covenants.

As outlined at question 8.4 above, a real estate lender must register the charge/mortgage with the Irish Companies Registration Office in order to perfect the creation of the security.

8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

The answer depends on whether the security is created by a company or by an individual or partnership.

A charge created by a company over its assets (save for certain types of financial asset such as bank accounts, financial instruments and claims and rights derivative thereof) must be registered with the CRO within 21 days of its creation in accordance with the procedures set out in the 2014 Act.

The 2014 Act also sets out the circumstances in which a charge created by a company which is, or is on the brink of insolvency, may be set aside. A charge created by a company in the onset of insolvency may be set aside where it constitutes an improper transfer of its assets to the detriment of its creditors or a liquidator of its assets. A floating charge created by a company when it is insolvent may be set aside to the extent that no consideration is provided for it. In this regard certain hardening periods apply depending on whether the floating chargee is connected with the company (e.g. a director or person connected to a director, etc.).

A charge created by an individual or partnership may be set aside if it constitutes a fraud on its creditors and in this regard the test is the same as applies to corporate security – namely whether the transaction is an improper transfer of assets to the deprivation of creditors. Where an individual or partnership creates non-possessory security over chattels, this must be registered in accordance with the Bills of Sale legislation – the requirements of which are problematic.

There are numerous protections afforded to residential mortgagors under Irish law and onerous obligations are placed on lenders in terms of enforcing their security. Much of the regulation is focused on ensuring fairness and transparency to the mortgagor. The following provisions should be considered in determining the enforceability of any residential security:

1 European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000

If a term of the relevant security is heavily weighted against the mortgagor, it will be considered "unfair" and in violation of the Unfair Terms in Consumer Contracts Regulations. This will affect the value of all or part of the lender's security.

2 European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (as amended)

If the security is entered into without the lender and the mortgagor being simultaneously present it may be regarded as a distance contract and come within the scope of the Distance Marketing Regulations, if the mortgagor is a consumer. Under these regulations the security may be rendered unenforceable if the lender failed to give certain information to the mortgagor before a binding contract was entered into, such as, details of certain contractual terms and conditions and the total fee to be paid by the mortgagor.

3 Protection of the Family Home

As noted in question 1.1, extensive statutory protection is afforded to family property in Ireland which renders the enforcement of security over family homes more difficult for lenders. In Irish law, a family home is a dwelling in which a married couple ordinarily resides. Under the Family Home Protection Act 1976 (as amended) a spouse who does not own the family home must give prior written consent to any disposal of an interest in the family home, including by way of mortgage. If this consent has not been given or was ineffective, any transaction disposing of the family home is at risk of being set aside at the instance of the non-owning spouse within certain time limits.

8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

Case law shows that borrowers have employed a large variety of arguments in seeking to frustrate enforcement action by a lender. These include:

(a) Demonstrating that the instrument appointing a receiver has not been executed in accordance with the security deed.

(b) Where the party enforcing the security has purchased the secured debt from an original lender, challenging the title of that person.

(c) Proving that the lender has not complied with the procedural requirements of the MARP process (see below).

(d) On appeal, establishing that the lower court did not engage with an Unfair Contract Terms analysis of the underlying loan/security documentation.

The Code of Conduct on Mortgage Arrears 2013 ("**CCMA**") is particularly relevant when it comes to the enforcement of residential security. Under this statutory code, lenders must operate a four-stage Mortgage Arrears Resolution Process ("**MARP**") when dealing with customers in arrears or pre-arrears. The four steps are: 1) communication; 2) financial information; 3) assessment; and 4) resolution. Mortgagors must be afforded considerable support from the lender as regards the repayment of their security and offered a variety of alternative repayment options. Lenders' compliance with the CCMA will be taken into consideration by the court in determining whether to grant a request to repossess. This code requires a high standard of behaviour from lenders and may frustrate attempts to enforce their security.

8.8 What is the impact of an insolvency process or a corporate rehabilitation process on the position of a real estate lender?

In general, where a bank encounters financial difficulty, the Central Bank of Ireland ("**CBI**") may apply to court for special measures to come into effect which are designed to preserve the business carried on by the bank (if possible), protect depositors and manage in an orderly fashion the bank's liabilities to bondholders and other creditors. These measures are taken pursuant to the European Union (Bank Recovery and Resolution Regulations 2015 ("**BRRD**")). If the bank is licensed by the CBI and is incapable of rescue then it will be wound up pursuant to the Credit Institutions (Stabilisation) Act 2010 ("**CISA 2010**") and CA 2014. This will entail the High Court appointing a liquidator to the bank. Whether the bank is subject to reconstruction or resolution pursuant to BRRD, or is in liquidation pursuant to CISA 2010/CA 2014, the insolvency officer will treat the loan as an asset of the bank and will seek to enforce the bank's rights against the borrower and any persons providing security for the loan. Accordingly, insolvency or corporate rehabilitation of the lender will not in principle have any impact on the liabilities of the borrower and security providers.

Where the lender is not subject to BRRD and CISA 2010/CA 2014, it could go into corporate rehabilitation under Ireland's "examinership" regime under CA 2014, or be subject to the appointment of a liquidator under CA 2014. In either case, the result is the same as above: the loan and its related security will be treated as an asset of the company and the company or its liquidator will look to recover/enforce in the usual way.

In an event of default a lender will usually proceed to appoint a receiver and manager over the borrower's assets. The receiver and manager is typically appointed pursuant to the terms of the charge; however, the 2009 Act also provides for the appointment of receiver by a mortgagee. The receiver will market the property and sale proceeds will be used to discharge the borrower's indebtedness.

8.9 What is the process for enforcing security over shares? Does a lender have a right to appropriate shares in a borrower given as collateral? If so, can shares be appropriated when a borrower is in administration or has entered another insolvency or reorganisation procedure?

The usual method of enforcing security over shares is for the lender to appoint a receiver. The power to appoint a receiver will be contained in a well-drafted security which will set out the receiver's powers – albeit where the chargor is an Irish company the receiver's powers will be implied by CA 2014 also. It is unusual for a lender to step in and sell charged shares: appointing a receiver (who is technically deemed to be an agent of the chargor) is invariably the preferred method because this insulates the lender from liability arising from how the charged assets are dealt with in an enforcement scenario. Most receivers will be specialist insolvency practitioners from a major accountancy firm in Ireland.

The remedy of foreclosure was abolished in Ireland pursuant to LCLRA 2009. Where the transaction is governed by the European Union (Financial Collateral Arrangements) Regulations 2016 ("**EUFCR**"), the collateral taker may agree with the collateral provider that the former may appropriate the collateral provided this is clearly agreed and the method for valuation of the collateral is also agreed. Real estate security would not be within the scope of the EUFCR albeit that "credit claims" comprising a loan portfolio secured on real estate could constitute collateral under the EUFCR.

9 Tax

9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

Ireland imposes stamp duty on transfers of Irish real estate and certain other property. The stamp duty is charged on the consideration payable for the property, or the market value in certain instances. Stamp duty is generally payable by the purchaser, although in certain transactions, such as voluntary transfers, both parties to a contract can be technically liable. There are provisions which apply to contracts to acquire land, as opposed to actual transfer documents, in cases where there is a "resting on contract" position.

The rate of stamp duty on transfers of residential property is 1% on consideration up to €1,000,000 and 2% on consideration over this threshold.

The stamp duty rate on transfers of non-residential (commercial) property is 6%.

Where non-residential property is transferred and is subsequently utilised for construction of residential accommodation, a stamp duty refund is available which effectively reduces the rate from 2% to 6%. This scheme is subject to a number of conditions.

Generally, the Purchaser of the property is liable for stamp duty which can be directly assessed.

9.2 When is the transfer tax paid?

Where an instrument is liable to stamp duty, a stamp duty return must be filed online via Revenue's e-stamping system.

The full amount of the stamp duty must be paid within 30 days of the date of execution of the instrument of transfer (typically the deed of transfer). In practice, Irish Revenue allow a further period of 14 days in which to file an e-stamping return and pay the stamp duty. Failure to file and pay within this 44-day period will result in late filing and interest charges.

In order to process a stamp duty return a tax reference number is required for both the seller and purchaser.

9.3 Are transfers of real estate by individuals subject to income tax?

The sale of real estate by an individual should not be subject to income tax unless that individual is carrying on the business of trading in properties.

However, the gains or profits on the disposal of Irish real estate by an individual may be subject to Irish capital gains tax. The current rate is 33%. An exemption from capital gains tax is available for individuals on the sale of the individual's principal private residence, subject to certain conditions.

9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

The sale of Irish real estate may be subject to Value Added Tax ("**VAT**"). As there are many variations and exemptions under the current Irish VAT regime, the VAT treatment should be addressed by the appropriate professional advisors pre-contract with the final agreed position reflected in the contract.

Broadly, the sale of land which has been developed in the previous 20 years, or buildings which have been developed or redeveloped in the previous five years ("new" property) will be subject to VAT. The sale of "old" property which falls outside these rules is exempt from VAT. In certain cases, where a sale would otherwise be exempt, the buyer and seller can agree that the sale will be subject to VAT in order to avoid a clawback of VAT previously recovered in respect of the relevant property by the seller. The first sale of residential property by the person who developed the property is always subject to VAT.

The rate of VAT on transfers of real estate is 13.5% (a VAT rate of 23% applies to VATable lettings).

9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

The sale of Irish real estate, or of unquoted shares in companies deriving the greater part of their value from Irish real estate, will be subject to Irish capital gains tax. The current rate is 33%. The gain is calculated on the proceeds of sale less acquisition and enhancement costs, and less the incidental costs of acquisition and the incidental costs of disposal.

Irish capital gains tax is subject to a withholding procedure. The buyer must generally withhold 15% of the consideration and pay this amount to Revenue unless the seller provides a tax clearance certificate from Revenue. A clearance certificate is automatically available on application to Revenue if the seller is resident in Ireland for tax purposes. 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 current at the date of the transfer agreement (currently €500,000 or €1,000,000 if the asset disposed of is a house).

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 four years. The relief applies to residential and non-residential real estate located within any EEA state acquired by an Irish resident during the period set out above.

9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Yes. Currently, stamp duty on the transfer of Irish shares deriving their value from real estate is charged at 1% of their value.

Transfers of corporate entities (such as Irish and non-Irish companies) and partnerships can be subject to 6% duty where the entity derives over 50% of its value from Irish land which is intended for development, held as trading stock, or held with the sole or main object of realising a gain on disposal. This provision is subject to a number of conditions, including that the transfer is one which transfers control of the land. Minority holdings may not be impacted.

Disposals by non-Irish residents of shares and securities which derive their value from Irish real estate are subject to capital gains tax. Disposals of shares or securities which are quoted on a stock exchange are exempt from this charging provision.

9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

A buyer of Irish real estate will request completion of standard Law Society Pre-Contract VAT Enquiries by the seller. These are intended to provide the buyer with a history of the VAT treatment of the relevant property. Buyers should also satisfy themselves that any previous transfers of the property have been duly stamped.

10 Leases of Business Premises

10.1 Please briefly describe the main laws that regulate leases of business premises.

Historically, Ireland has had special legislation governing the relationship between landlords and tenants, e.g., the Landlord and Tenant Law Amendment Act, 1860 (commonly referred to as Deasy's Act).

Since the establishment of the Irish State, a comprehensive and very wide-ranging code of landlord and tenant legislation has been enacted.

Commercial business leases are freely negotiated subject only to statutory provisions.

The introduction of the Commercial Leases Register now requires the particulars and terms of all leases and related documentation to be disclosed on a public register.

In 2011, the draft Landlord and Tenant Law Reform Bill was published. While not yet enacted, the Bill is worthy of note as the objective is to consolidate and modernise much of the general law of landlord and tenant under one act going forward, including landlord and tenant obligations and their enforcement, statutory rights and termination.

10.2 What types of business lease exist?

Typically, a business lease falls into two categories: a lease on a short-term basis for a term of up to five years; or a lease on a medium- to long-term basis, which would generally be considered a term from 10 years to 25 years.

10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

The term of a lease of business premises has traditionally ranged from short-term up to 35 years, but recent legislative changes and market forces are resulting in shorter term leases, with the maximum term now being 15–20 years (typically including break options exercisable during the term). The structure of a typical medium- to long-term (10–25 years) commercial lease usually follows the same traditional format which, in addition to securing rent payments to the landlord, also passes the cost of maintaining, insuring and occupying the relevant property from the landlord to the tenant. This allows the landlord to enjoy the rent without deduction.

In most cases, tenants will seek to negotiate an option to break or terminate the term of the lease, i.e. after five or 10 years of the term. Any business lease granted for a term in excess of five years would typically have a provision for the periodic review of rent to the current open market rents.

Most business leases in Ireland are of a full repairing and insuring nature, whereby the tenant will be subject to extensive repairing obligations. These will be imposed directly by a repairing covenant entered into by the tenant or, in the case of a multi-let development like an office block, shopping centre or business park, indirectly through a service charge regime which will include reimbursing the landlord for repair works carried out to the structure and common areas of the relevant development.

Usually the provisions of a business lease place restrictions on a tenant's contractual right to assign or sub-let without the landlord's prior written consent. Under Section 66 of the Landlord and Tenant (Amendment) Act, 1980, a landlord cannot unreasonably withhold consent which will override the contractual terms of any business lease.

Sharing a business premises with companies in the same corporate group is generally a matter for negotiation between the landlord and tenant but it is commonplace for leases to have such a provision permitting such sharing of occupation, subject usually to a requirement to notify the landlord and provided that the sharing is by way of licence only.

It is less common to see provisions in a lease relating to reorganisation or change of control of the tenant. Again, these are matters for negotiation. While landlords will generally agree on request to provisions allowing sub-letting to or sharing space with a group company without consent, it is rare that a landlord will permit assignment to a group company without consent. Normally, there are no restrictions on the change of control of a tenant company included in a lease.

10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Typically, rent paid in respect of Irish real estate will be subject to Irish taxation on account of it having an Irish source, regardless of the identity or location of the landlord. An Irish resident company is taxable at 25% on rental profits, and a foreign company is taxable at 20%. Income tax is applied to rent received by individuals.

In the case of a commercial/business lease, a landlord can elect to apply VAT, in which case VAT applies to the rent at the relevant rate (currently 23%).

Stamp Duty is incurred by the tenant on business leases. Stamp Duty is currently levied at 1% of the average annual rent (for commercial/business leases not exceeding a term of 35 years) with an additional fixed charge of €12.50 if the commercial/business lease contains a rent review clause. There is an additional Stamp Duty charge of €12.50 for each counterpart of the business/commercial lease.

10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

Usually, a business lease is terminated by the expiry of the term or the exercise of a break/termination option or by agreement between the landlord and the tenant, i.e. by surrender.

It is standard practice for a business lease to contain a re-entry clause, entitling a landlord to forfeit the lease for breach of obligation by the tenant. The procedure in the case of the non-payment of rent (and other payments for this reason usually reserved as rent, e.g. service charges and insurance premiums) is straightforward, but rather more complicated (including service of notice on the tenant) in the case of breach of the other covenants in the lease. Re-entry can, however, be effected without a court order, if done peaceably; forcible re-entry is, on the other hand, a criminal offence. If the tenant is still in occupation and resists re-entry, the landlord must seek an ejectment order from the court. The tenant, any sub-tenants and third parties like mortgagees can apply to the court for relief against forfeiture, which will only be granted on terms designed to correct the default inducing the forfeiture and to protect the landlord's interest in the future.

A commercial tenant who has been in continuous occupation for a minimum period of five years has a statutory right to a new tenancy (known as the business equity), and, in certain circumstances, to compensation for improvements made or for disturbance. Contracting-out of the business equity is permitted and landlords typically require a tenant to renounce their entitlement to claim a new tenancy prior to signing a new commercial/business lease. However, it may be the case that market conditions will, at times, enable a tenant to resist pressure to provide such a renunciation.

10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

On the 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.

10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

There are currently no specific "green obligations" commonly found in leases in Ireland.

The European Union (Energy Performance of Buildings) Regulations 2006–2012 and Statutory Instrument No. 243 of 2012 introduced the requirement that all buildings being sold or let must have a Building Energy Rating ("**BER**") Certificate with certain limited exceptions. The aim of the rating is to inform prospective buyers and tenants of the energy performance of the building. The Building Energy Rating Certificate is accompanied by an Advisory Report which contains recommendations for improving the energy performance of the relevant building.

10.8 Are there any trends in your market towards more flexible space for occupiers, such as shared short-term working spaces (co-working) or shared residential spaces with greater levels of facilities/activities for residents (co-living)? If so please provide examples/details.

Co-working spaces are on the rise in Ireland with companies such as TCube Dublin and DoSpace CoWorking offering such facilities in Dublin city centre. Co-working spaces appear to be particularly popular with start-up companies finding their feet and last year, international firm Savills launched a new website specifically dedicated to listing providers of co-working and shared office spaces. Flexible office providers accounted for over 15% of take-up in lettings in the Dublin market in the first half of 2018.

As noted at question 6.4 above, co-living concepts including PRS/Build to Rent schemes are becoming increasingly popular in Ireland.

11 Leases of Residential Premises

11.1 Please briefly describe the main laws that regulate leases of residential premises.

The Residential Tenancies Acts 2004–2016 (the "**RTA**") is the primary legislation governing leases of residential premises in Ireland (not exceeding a term of 35 years). Rented properties must also meet the standard prescribed under the Housing (Standards for Rented Houses) Regulations 2008 and the Housing (Standards for Rented Houses) (Amendment) Regulations 2009 as regards the conditions thereof and the facilities available.

11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?

No, the RTA applies.

11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant's rights to remain in the premises at the end of the term; and (d) the tenant's contribution/obligation to the property "costs" e.g. insurance and repair?

(a) Length of Term

In Ireland, a typical residential tenancy agreement would be for a contractual term of 12 months.

(b) Rent Increases/Controls

A fundamental provision of the original RTA 2004 is that a landlord may not set rent at an amount greater than the market rent for the tenancy in question at the time. "Market Rent" is defined as the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling on the basis of vacant possession and having regard to: (i) the other terms of the tenancy; and (ii) the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area. In late December 2016, rent predictability measures were enacted under the Planning and Development (Housing) and Residential Tenancies

Act 2016 for an initial period of three years in an effort to control the rise in rents in the parts of the country (mainly urban areas such as Dublin and Cork) where rents are highest and rising and where households have greatest difficulties in finding accommodation they can afford. In these areas, known as "Rent Pressure Zones", rents will only be able to rise according to a prescribed formula by a maximum of 4% annually, subject to certain limited exclusions. The new measures regarding Rent Pressure Zones are at all times subject to the aforementioned overriding principle that rents may not be set at a level higher than the prevailing market rate. The Residential Tenancies (Greater Security of Tenure and Rent Certainty) Bill 2018 is currently before the Government for consideration and if enacted, all administrative areas in the State, that are not at present designated as such, will be deemed to be Rent Pressure Zones, for a three-year period. In addition, under the proposed legislation, annual increases in rent will be limited to increases in the annual rate of inflation, as measured by the All Items Consumer Price Index published by the Central Statistics Office.

(c) Tenant's Rights to Remain in the Premises at the End of the Term

Part 4 of the RTA 2004 gave tenants the right to stay in rented accommodation for up to four years in total, following an initial six-month period. The term of tenure has recently been increased to a total of six years in respect of tenancies created from 24 December 2016. These security of tenure provisions are commonly known as "Part 4 tenancies". After the first Part 4 tenancy has passed, a new Part 4 tenancy begins entitling the tenant to remain in the dwelling for a further six-year term. Where a tenant is in occupation under a fixed-term contractual tenancy, the tenant can notify the landlord that it is availing of the security of tenure provisions and is claiming a Part 4 tenancy prior to the expiry of the contractual term.

(d) Tenant's Contribution/Obligation to the Property "Costs"

Under the RTA, it is generally the landlord's responsibility to effect and maintain insurance in respect of the structure of the dwelling. The tenant is not obliged to contribute to insurance costs under the RTA, save where the premium payable under such policy of insurance has been increased as a result of any act of the tenant or any act of another occupier or visitor to the dwelling which the tenant has permitted, in which case the tenant is obliged to pay the landlord an amount equal to the amount of the increase in premium.

The cost of repairs is also generally the landlord's responsibility under the RTA, save where the tenant has caused deterioration to the dwelling that is beyond normal wear and tear. In these instances the tenant is obliged to make good such damage at his or her own cost.

11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?

Where the tenant is in occupation under a contractual tenancy or lease, the tenancy can only be terminated where the tenant is in breach of the terms of the tenancy. Where the tenant has exercised the security of tenure under Part 4 of the RTA and claimed a Part 4 tenancy, termination by the landlord will then only be permissible in the following circumstances:

(a) the tenant has failed to comply with any of his or her obligations in relation to the tenancy;

(b) the dwelling is no longer suitable to the accommodation needs of the tenant and of any persons residing with him or her, having regard to the number of bed spaces contained in the dwelling and the size and composition of the occupying household;

(c) the landlord intends, within three months after the termination of the tenancy, to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling;

(d) the landlord requires the dwelling or the property containing the dwelling for his or her own occupation or for occupation by a member of his or her family;

(e) the landlord intends to substantially refurbish or renovate the dwelling or the property containing the dwelling in a way which requires the dwelling to be vacated for that purpose; or

(f) the landlord intends to change the use of the dwelling or the property containing the dwelling to some other use.

If termination of the tenancy by the landlord is permissible under the RTA, a valid notice of termination must be served on the tenant in order for the landlord to achieve vacant possession. The minimum notice period required will depend on the duration of the tenant's occupation. In order to be valid, the notice must comply with the following requirements:

- be in writing;
- be signed by the landlord or his or her authorised agent;
- specify the date of service of the notice;
- state the reason for the termination (where the tenancy has lasted for more than six months or is a fixed-term tenancy);
- specify the termination date and also that the tenant has the whole of the 24 hours of this date to vacate possession of the dwelling; and
- state that any issue as to the validity of the notice or the right of the landlord to serve it must be referred to the residential tenancies board within 28 days from the receipt of the notice.

12 Public Law Permits and Obligations

12.1 What are the main laws which govern zoning/permitting and related matters concerning the use, development and occupation of land? Please briefly describe them and include environmental laws.

The Planning and Development Acts 2010–2017 (the "**Planning Acts**") govern planning and zoning matters. The Planning Acts regulate the zoning of areas through a variety of development, sustainability, landscape conservation and special amenity plans. Most of the functions reserved by the Planning Acts are exercised by the local authority in the area where the relevant property is situated. There are currently 31 local authorities in Ireland, each a planning authority for the purposes of the Planning Acts, responsible for monitoring and enforcing compliance with planning laws in relation to property in its area and responsible for making decisions regarding applications for planning permission. Where suitable grounds for appeal exist, the decision of the planning authority, including conditions imposed, may be appealed by the applicant to *An Bord Pleanála* (the Planning Appeals Board).

The main laws which govern zoning and related matters are as follows:

- Planning and Development Acts 2010–2017.
- The Housing Acts 1966–2014.

The main laws which govern environmental matters are as follows:

- The Environment (Miscellaneous Provisions) Act 2015.
- The Environmental Protection Agency Acts 1992–2011.
- The Waste Management Acts 1996–2011.
- European Union (Environmental Impact Assessment) Regulations.

- The Water Services Acts 2007–2015.
- The Air Pollution Acts 1987 and 2011.
- The Building Control Acts 1990–2007.
- The Building Regulations 1997–2014.
- The Building Control Regulations 1997–2015.
- The Wildlife Acts 1976–2012.
- Petroleum (Exploration and Extraction) Safety Act 2010.
- The Finance (Local Property Tax) (Amendment) Act 2015.
- The Climate Action and Low Carbon Development Act 2015.

12.2 Can the state force land owners to sell land to it? If so please briefly describe including price/ compensation mechanism.

Local authorities can compulsorily acquire lands in limited circumstances such as (1) where a site is derelict and poses a danger in the community, (2) for the purpose of developing infrastructure, and (3) for conservation/preservation purposes. Where property is compulsorily acquired by a local authority, compensation is payable to all persons with an interest in the lands. The assessment of compensation generally falls under a number of headings of claim to include the value of the land acquired, compensation for disturbance and any diminution in value of any retained lands.

Section 158 of the National Asset Management Agency Act, 2009 (the "**NAMA Act**") outlines NAMA's powers to acquire land compulsorily in certain circumstances where the compulsory acquisition is necessary to allow NAMA to deal with the property charged to NAMA.

Section 16 of the Industrial Development Act, 1986 (the "**IDA Act**") enables the Industrial Development Agency (the "**IDA**") to acquire lands either compulsorily or by agreement for the purpose of industrial development. A large part of the IDA's role, under legislation, is acquiring land for development and, as a result, the IDA's power to compulsorily acquire land was considered broad. However, in a recent decision of the Supreme Court delivered in November 2015, this view was somewhat curtailed. The IDA sought to compulsorily acquire land for which it had no immediate use so that if and when a particular undertaking should seek to develop the land, it would be immediately available at such time. The court, considering the constitutional protection given to property rights and applying the appropriate principles of construction, held that the IDA Act does not confer any power on the IDA to acquire lands not required for immediate use, but which might be utilised at some future time.

12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Land/building use and/or occupation: As per question 11.1 above, the relevant local authority is the entity responsible for controlling land/building use and occupation. An independent third party appeals board, *An Bord Pleanála*, is responsible for the determination of planning appeals.

Environmental regulation: The Environmental Protection Agency (the "**EPA**"), the Office of Environmental Enforcement and local authorities are responsible for environmental regulation.

12.4 What main permits or licences are required for building works and/or the use of real estate?

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.

Planning 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, in accordance with Building Control Regulations, an application to the local authority for a Fire Safety Certificate may be required.

Generally the Building Control Regulations require a commencement notice to be lodged with the local authority prior to commencing works, together with plans and specifications, a preliminary inspection plan and various certificates and notices. It is an offence not to submit a Commencement Notice and failure to submit a Commencement Notice cannot be regularised at a later date. A Certificate of Compliance on Completion must be submitted to and registered by the local authority before the building or works may be opened, occupied or used.

In addition, certain licences may be required depending on the specific type of property and the type of development proposed. These include licences issued under the Environmental Protection Agency Acts 1992 to 2011 (the "**EPA Acts**"), the Water Services Acts 2007 to 2015 (the "**Water Services Act**"), the Air Pollution Acts 1987 and 2011 and the Waste Management Acts 1996 to 2011 (the "**WMA**").

Furthermore, health and safety legislation must be considered where individuals are engaged to carry out works at a property. The Safety, Health and Welfare at Work Acts 2005 and 2010 must be complied with for all building works.

12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

Planning permission is generally required for any development. However, a limited number of exemptions exist, e.g. public works, certain internal works, works to improve a private road and other specific exemptions. In addition, where a local authority fails to make a decision on a planning application within a specific time limit, default planning permission is deemed to have been granted pursuant to Section 23 of the Planning and Development (Amendment) Act 2010.

Where development occurs without planning permission having been obtained, a party can make an application for retention permission save for developments within the scope of the environmental impact assessment regime. If unauthorised development has taken place and the Planning Authority has not issued enforcement proceedings within seven years, it is prevented from doing so at a later date. Exceptions to this are contained in Sections 47 and 48 of the Planning and Development (Amendment) Act 2010 in respect of developments involving quarries and peat extraction.

12.6 What is the typical cost of building/use permits and the time involved in obtaining them?

Each local authority sets a fee for a planning application which is dependent on the class of development proposed and the type of permission being sought.

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

Public inquiries are not very common. However, public oral hearings are sometimes held, particularly in relation to large/strategic infrastructure projects. If the planning authority consents to the application for permission it will issue 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 issue a formal grant of planning permission at the end of the appeal period.

Recent planning legislation has offered a new fast-track planning process for large-scale housing developments called "strategic housing developments" for a limited period of time – up to 31 December 2019. Strategic housing developments will consist of 100 or more houses or 200 or more student bed-spaces on land zoned residential or mixed residential and other uses (provided housing constitutes at least 75% of total gross floor area of the development). Under this initiative applicants will undergo a detailed statutory nine-week pre-application planning process, including consultation with the relevant local planning authority and prescribed bodies, prior to the lodgement of a planning application with a new Strategic Housing Division of *An Bord Pleanála.* Upon lodgement, the local planning authority must send its opinions on the proposed development to *An Bord Pleanála* with a recommendation as to whether permission should be granted or refused or, propose amendments to the scheme. *An Bord Pleanála* is subject to a strict 16-week period in the determination of the application and if it fails to abide by this timeline, it must pay a penalty to the applicant.

Under the aforementioned recent legislation, an extension of duration of planning permission and the granting of a further extension of duration of permission by five years has been introduced for a limited period of time (again up to 31 December 2019) in circumstances where the local planning authority is satisfied that the 'relevant development' (20 or more houses) has not been completed due to circumstances beyond the control of the applicant. This avoids the cost and time of undertaking a repeat of the initial planning permission process.

12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate or development/change of use?

Currently, local authorities maintain a Record of Protected Structures (the "**RPS**"). Inclusion of these structures in the RPS means that they are legally protected from harm and all future changes to the structure are controlled and managed through the local development control process. Structures which are listed on the RPS are subject to more restrictive development conditions; therefore, types of work, which in another building would be considered exempted development, may not be exempted where the building is a protected structure. The local authority may issue a declaration under the Planning Acts determining the proposed works would be considered exempt from the requirement to obtain planning permission. However, a declaration cannot exempt any works which would otherwise require planning permission.

A search of the RPS will reveal if a structure is protected. If the structure is protected, this will limit or restrict the development potential of the structure.

12.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

Certain statutory bodies are required to publish periodic reports which identify specific properties which are hazardous or which do not comply with certain environmental requirements. However, Ireland has no dedicated register of contaminated land.

A potential buyer would always be advised to carry out its own due diligence where non-compliance with environmental law is a concern.

12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

Environmental clean-up is mandatory where a party breaches the provisions of the Environment (Miscellaneous Provisions) Act 2015 and the EPA Acts, the WMA and the Water Services Act. Sections 55 to 58 of the WMA may require that a person who is holding, recovering or disposing of waste be liable for the costs of clean-up and any costs incurred by the relevant regulatory authority in investigating an incident. A person found guilty of an offence under the WMA, the EPA Acts or the Water Services Act may face criminal prosecution.

12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

Since 1 July 2008, a 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). Since 9 January 2013, BER information must also be provided in advertisements for the sale or rental of property. The Regulations provide for exemptions for certain categories of buildings.

13 Climate Change

13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

The EU Emissions Trading Scheme ("**ETS**") came into operation on 1 January 2005. The scheme operates on a "cap and trade" basis. EU Member State governments were required to set an emissions cap for each installation in the scheme. The number of allowances allocated to each installation must be set down in the National Allocation Plan for the period in question, which must be approved by the European Commission.

The European Communities (Greenhouse Gas Emissions Trading) Amendment Regulations 2010 provided for the revised operation

of the EU-wide ETS since 2013. While the European Communities (Greenhouse Gas Emissions Trading) (Aviation) Regulations 2010 established a procedural framework for aircraft operators in Ireland to participate in the EU ETS. The EPA is the designated body for the purposes of the ETS in Ireland.

13.2 Are there any national greenhouse gas emissions reduction targets?

Ireland ratified the Kyoto Protocol on 31 May 2002, along with the EU and all other Member States. Ireland has adopted two National Climate Strategies in order to meet its commitments under the Kyoto Protocol to reduce its greenhouse gas emissions. These strategies seek to reduce emissions through a variety of measures. Under the Kyoto Protocol, the EU agreed to reduce greenhouse gas emissions to 8% below 1990 levels. Ireland committed to limit the growth in annual greenhouse gas emissions to 13% above 1990 levels by the period 2008 to 2012 and to at least 20% of 1990 levels by 2020 as part of its contribution to the overall EU target.

13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

There is a requirement under the Recast Energy Performance of Buildings Directive that all EU Member States, including Ireland, must ensure that all new buildings will be nearly zero energy buildings (that is, have high energy performance, with energy requirements to a significant extent being met from renewable sources) by 31 December 2020.

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Craig specialises in all aspects of commercial property work including the acquisition and disposal of investment property, commercial landlord and tenant, property finance, PRS and BTR schemes and the property aspects of corporate transactions. He has also acted on loan portfolio transactions, where the loans are secured over commercial property. Craig has recently advised on the acquisition, development and disposal of PRS/BTR schemes on a forward funded and forward purchase basis.

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