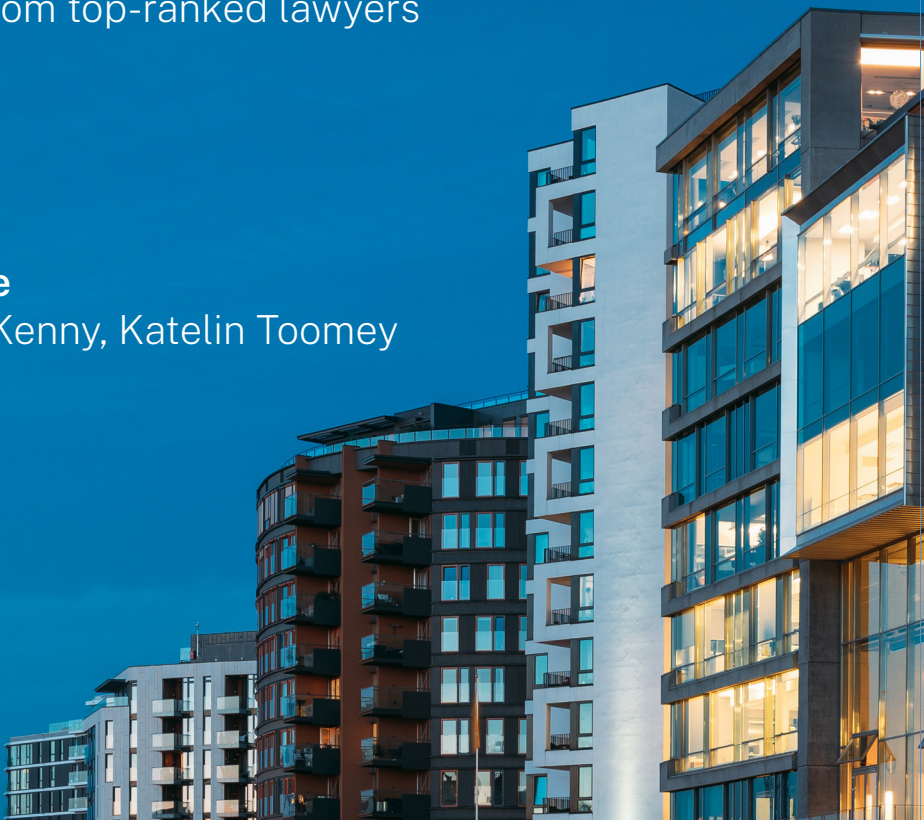

CHAMBERS GLOBAL PRACTICE GUIDES

Real Estate 2024

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Ireland: Law & Practice

Diarmuid Mawe, Craig Kenny, Katelin Toomey
and William Fogarty
Maples Group



IRELAND



Law and Practice

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Maples Group advises global financial, institutional, business and private clients on the laws of Ireland as well as the British Virgin Islands, the Cayman Islands, Jersey, Luxembourg and the Marshall Islands through its leading international law firm, Maples and Calder. With offices in key jurisdictions worldwide, the Maples Group has specific strengths in corporate, commercial, finance, investment funds, real es-

tate, litigation, and trusts. The real estate team at Maples Group Dublin has specialist legal knowledge across the full spectrum of commercial property sectors. The team works closely with our tax, finance, corporate and funds colleagues to provide the legal expertise necessary to efficiently structure and deliver significant real estate transactions.

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IRELAND LAW AND PRACTICE

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1. General

1.1 Main Sources of Law

The main source of Irish real estate law is statute. The key legislative provisions are set out in:

- the Land and Conveyancing Law Reform Act, 2009 (the “2009 Act”);
- the Registration of Title Act, 1964 (the “1964 Act”);
- the Registration of Deeds and Title Act, 2006;
- the Landlord and Tenant Acts, 1967-2019 (the LTA); and
- the Residential Tenancies Acts, 2004–2022 (the RTA).

The other main source of Irish real estate law is case law, derived from judgments of the Irish courts.

1.2 Main Market Trends and Deals

The year 2023 was a challenging one for real estate markets across Europe, and the Irish market was no different. We expect 2024 to be a year of recovery, with interest rates stabilising and ultimately declining.

The dominant asset classes in the Irish real estate market are currently office, residential (including social and affordable housing), industrial and retail. Within those classes, the largest deals in Ireland involved large-scale residential multi-family developments, property redress schemes (PRS) and student accommodation schemes, logistics portfolios and regional retail parks and shopping centres.

The Irish office market has been dominated by a “flight to quality”, with developers, building owners and occupiers collaborating to meet environmental, social and governance (ESG) objectives and comply with net zero targets and impending

EU regulations. The demand for Grade A sustainable office space will continue to split the market, leading to an increase in the refurbishment and retrofitting of older assets.

Ensuring adequate and affordable housing is a key concern of the Irish government which is being addressed through the “Housing for All” plan. To achieve its housing objectives for 2022–2030, the government aims to deliver 312,750 homes, comprising 88,400 social, 53,800 affordable or cost rental and over 170,000 private units, with a state investment of EUR40 billion. As a result, this sector has strong growth prospects for 2024.

The Irish retail sector has demonstrated its resilience with consumer confidence and retail sales increasing throughout 2023. Several new international entrants to the Irish market are seeking retail space with, for example, Swedish retailer Arket and Chinese retailer Icicle due to open their first Irish stores in Dublin in 2024. High-end retail centres performed well in 2023 with, for example, The Blanchardstown Centre securing new leases with leading brands such as Lego, Calvin Klein, Tommy Hilfiger and Nike in the past year.

There is no doubt that the impact of rising inflation, increases in interest rates and the resultant uptick in associated property costs have induced a period of price discovery in Irish real estate. However, inflationary pressures have now eased somewhat, and interest rates appear to have stabilised, with a marginal reduction expected throughout 2024.

Ireland remains the European Union’s fastest-growing economy and an excellent place to invest and do business. It offers a high degree of economic and political stability with the benefit

of a common law legal system and a favourable tax structure that is relatively easy to understand. Ireland is strongly aligned with the EU and benefits from the common trade area and access to talent from across Europe.

1.3 Proposals for Reform

Electronic Conveyancing

There has been a move towards the use of electronic signatures for the acquisition of real estate, but procedures to deal with electronic signatures have not yet been implemented by the Land Registry so original wet ink signatures are still required for most documents dealing with real estate. See **2.3 Effecting Lawful and Proper Transfer of Title** for further detail on the use of electronic signatures.

Reform of Planning Law

The Planning and Development Bill 2023 (the “Planning Bill”)

The Planning Bill aims to modernise and reform planning law in Ireland. The reforms include:

- significant restructuring and resourcing of the current planning appeals board, An Bord Pleanála (the “Bord”), which will be renamed *An Coimisiún Pleanála*;
- the introduction of statutory timelines for decision-making, including for *An Coimisiún Pleanála*;
- new strategic ten-year development plans for local authorities;
- reform of the planning Judicial Review; and
- new provisions for urban development zones.

The bill is currently making its way through the legislative process and it is hoped that it will be enacted by Q2 2024.

Irish Funds Review 2030

This review highlighted the importance of institutional funding for the ownership of commercial and residential property and supported the maintenance of both the real estate investment trust (REIT) and Irish real estate funds (IREF) regimes in their current form. It is proposed that the leverage limits in the IREF regime be aligned with the Central Bank’s macroprudential limits and that reinvestment conditions and leverage limits in REITs be more flexible.

2. Sale and Purchase

2.1 Categories of Property Rights

The categories of property rights that can be acquired in Ireland are as follows:

- freehold title, which confers absolute ownership; or
- leasehold title, which confers ownership for the period of years granted by the relevant lease.

2.2 Laws Applicable to Transfer of Title

Historically, Irish law was based on legislation predating the establishment of the Irish State. The 2009 Act replaced much of the old law and modernised conveyancing practice. The 2009 Act is the main statute applicable to the transfer of title in Ireland and applies to all asset classes, including residential, commercial, industrial, offices, retail, and hotels. The RTA govern the residential landlord and tenant sector, and the LTA govern the commercial landlord and tenant sector.

2.3 Effecting Lawful and Proper Transfer of Title

When ownership of a property is registered in the Land Registry, the deeds are filed with the

Land Registry and all relevant particulars are entered on folios that form the registers that the Land Registry maintains. In conjunction with the folios, the Land Registry also maintains maps (referred to as filed plans). Both folios and filed plans are kept in electronic form.

The Registry of Deeds provides a system of voluntary registration for deeds that affect property. The purpose was to give priority to registered deeds over unregistered but “registrable” deeds. There is no statutory obligation to register a deed in the Registry of Deeds, although failure to do so may result in a loss of priority.

Tailte Éireann (which launched in March 2023) is the state organisation responsible for the registration of property transactions in Ireland and encompasses both the Land Registry and the Registry of Deeds. *Tailte Éireann* also provides national mapping and surveying infrastructure and a property valuation service for Ireland.

Title insurance is used in property transactions in Ireland but is not widespread.

While the use of electronic signatures has increased in Ireland, in part due to the COVID-19 pandemic, the transfer of Irish real estate is still required to be effected by way of original wet ink signature. The Electronic Commerce Act 2000 (the “E-Commerce Act”) governs the use of electronic or digital signatures in Ireland. Previously, interests in land were specifically excluded from the ambit of the E-Commerce Act. However, the Electronic Commerce Act 2000 (Application of Sections 12 to 23 to Registered Land) Regulations 2022 (the “Regulations”) amended the E-Commerce Act and allowed for the legal recognition of the electronic execution of documents dealing with interests in registered land. Notwithstanding the Regulations, practice has

not yet changed in Ireland as the Land Registry – while welcoming the introduction of the Regulations – has clarified that it is not currently in a position to accept electronic or digital signatures on documents submitted to it for registration. Ultimately, Land Registry practice will dictate whether electronic signatures are acceptable on documents relating to real estate interests. An exception to this is the contract for sale which may be executed by electronic signature. While it was possible to use an electronic signature to execute contracts previously, the 2023 Law Society of Ireland General Conditions (the “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 the General Conditions, this condition can be amended in a contract for sale by a special condition.

2.4 Real Estate Due Diligence

A buyer’s lawyer will investigate the seller’s title to the property pre-contract to ensure the buyer will acquire a good marketable title. The underlying principle is one of caveat emptor (“buyer beware”).

The Law Society of Ireland produces a template contract for sale for property transactions. This requires the seller to list the documentation and searches to be provided in relation to the property and incorporates the General Conditions. The General Conditions make assumptions about the property and place certain disclosure obligations on a seller, which the seller can only exclude by inserting a bespoke special condition in the contract for sale. In this way, the buyer should be on notice of any deviations from the template. In commercial property transactions, it is normal for the seller to seek to limit the warranties being provided in the General Conditions. Where the

seller's knowledge of the property is limited (eg, in an enforcement sale), it is usual to limit many of the warranties.

The buyer's lawyer also carries out searches against both the seller and the property.

2.5 Typical Representations and Warranties

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. These warranties can be excluded or amended by way of special condition by agreement between the parties.

In addition to any specific disclosures, sellers often limit the warranty provided in respect of planning and building control compliance by reference to documentation and certificates of compliance with planning and building regulations in the seller's possession and provided to the buyer. Where the property is being sold in an enforcement scenario (ie, by a receiver, a liquidator or a mortgagee), it is common for many of the warranties contained in the General Conditions to be expressly excluded or varied/limited by reference to knowledge. While parties are free to negotiate the terms and warranties provided in a contract for sale, generally speaking the COVID-19 pandemic has not resulted in new warranties or representations being provided.

Parties to a contract for sale are also free to negotiate whether any of the representations and warranties included will be subject to certain limitations or caps on liability, or if they have a limited validity period. Where no such period is

included, the time period in which proceedings must be brought in respect of a breach of the contract defaults to the provisions of the Statute of Limitation 1957 – that is, six years from the date the action accrued where the agreement was executed as a simple contract, or 12 years where the contract was executed as a deed.

There are also implied covenants as to ownership on the part of the seller, which are detailed in the 2009 Act.

A seller can be liable for misrepresentation. General Condition 29 of the General Conditions provides that a buyer will be entitled to compensation for any loss suffered as a result of an error, which includes any non-disclosure, misstatement, omission or misrepresentation made in a contract for sale. However, as outlined above, a seller may seek to exclude or vary this condition by inserting an appropriate special condition in the contract for sale.

Representation and warranty insurance is available in the Irish market. However, it is not frequently used as part of real estate transactions, except where real estate is being acquired by way of a corporate rather than an asset acquisition.

2.6 Important Areas of Law for Investors

An investor should ensure that the title to the property is good and marketable, that the property complies with the Local Government (Planning and Development) Acts 1963 to 1999 and the Planning and Development Acts 2000 to 2023 (together, the "Planning Acts") and environmental laws, and that the property has all the necessary easements for access and services. Investors will also need to ensure they understand the application of Irish tax law.

2.7 Soil Pollution or Environmental Contamination

A buyer may have secondary liability for soil pollution or environmental contamination. If the person or entity that caused the pollution or contamination cannot be identified, the current owner or occupier of the property could become liable under the applicable environmental legislation for remediation. It is therefore important that environmental due diligence be carried out by a buyer where compliance with environmental laws is a concern.

2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

The Planning Acts govern planning and zoning matters in Ireland and regulate the zoning and permitted uses of areas through a variety of development, sustainability, landscape conservation and special amenity plans.

Each local authority has a development plan that sets out the planning policy of the local authority for a six-year period. This is due to change to a ten-year plan under the Planning Bill.

A buyer's solicitor should carry out a planning search as part of the planning due diligence, and this search should specify the zoning applicable to the property.

The State Authorities (Public Private Partnership Arrangements) Act, 2002 (the "2002 Act") enables local authorities to enter into joint-venture public private partnership (PPP) arrangements with the private sector. A PPP is an arrangement between the public and private sector for the provision of infrastructure or services. Under this model, contractors in the private sector become long-term providers of a service, rather than merely building an asset upfront. This allows

local authorities to plan resources and monitor services, rather than provide them directly.

2.9 Condemnation, Expropriation or Compulsory Purchase

Local authorities and other state entities, the National Asset Management Agency (NAMA) – a body established by the Irish government in 2009 to function as a "bad bank" acquiring property loans from Irish Banks – and the Industrial Development Agency (IDA) – Ireland's inward investment promotion agency – all have the ability to purchase lands compulsorily in connection with their statutory functions.

Local authorities can compulsorily acquire lands in the following circumstances:

- where property is derelict and poses a danger in the community;
- for the purpose of developing infrastructure; and
- for conservation/preservation purposes.

NAMA has extensive statutory powers to acquire land compulsorily where this is necessary to allow NAMA to fulfil its statutory function and derive the best value from the property assets secured to it.

The IDA also has the ability to acquire property compulsorily for the purpose of industrial development. A key function of the IDA's role is acquiring land for development purposes, so the IDA's statutory power to acquire land compulsorily is quite broad.

2.10 Taxes Applicable to a Transaction

A transfer of Irish real estate and certain other property, including shares, is liable to stamp duty payable to the Irish Revenue Commissioners ("Revenue"). Stamp duty is charged on the con-

sideration payable for the property, or the market value in certain instances. Usually, the buyer is liable for the payment of stamp duty, although both parties can be liable in certain transactions, such as voluntary transfers.

Where an instrument is liable to stamp duty, a stamp duty return must be filed online via the Revenue's e-stamping system within 44 days. Failure to file and pay within this period will result in late filing and interest charges.

The rate of stamp duty payable on the transfer of non-residential (commercial) property is currently 7.5%.

The rate of stamp duty on transfers of residential property is 1% on considerations up to EUR1 million and 2% on consideration over this threshold. Since May 2021, an increased rate of 10% stamp duty applies if ten or more residential units are acquired in a 12-month period. This measure was enacted to discourage large-scale residential acquisitions. The increased rate applies if the units are in one development/area or are located in different areas throughout the country. It does not apply to apartment units.

Where non-residential property is transferred and subsequently utilised for the construction of residential accommodation, a stamp duty refund is available, which effectively reduces the rate from 7.5% to 2%. This scheme is subject to several conditions including that construction must have commenced by 31 December 2025 and within 30 months of the date of transfer of the land.

Stamp duty on the transfer of Irish shares is generally charged at 1% of their value. Transfers of shares or interests of corporate entities (including Irish and non-Irish incorporated companies)

and partnerships can be subject to 7.5% duty where the entity derives over 50% of its value from Irish land intended for development, held as trading stock, or held with the sole or main object of realising a gain on disposal. This provision is subject to a number of conditions, including that the transfer is one that transfers control of the land. Transfers of minority holdings may not be impacted. Transfers of entities holding certain residential property may also be subject to the 10% rate of stamp duty outlined above.

Stamp duty exemptions are available for transfers of property between group companies and on certain transfers of property between spouses, civil partners, and cohabitants.

2.11 Legal Restrictions on Foreign Investors

All investors, including foreign investors, need to comply with anti-money laundering legislation.

A new law, the Screening of Third Country Transactions Act 2023 (the "2023 Act") is due to come into force in the second quarter of 2024. This will establish Ireland's first regime for screening investments from third-party countries (ie, those outside the EEA and Switzerland) in certain Irish industries that could pose a risk to the state's security or public order, in conjunction with an EU regulation. The industries include energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure. Transactions falling within the scope of the act will need to be notified to the Minister for Enterprise, Trade and Employment in advance and will require the consent of the minister to proceed.

3. Real Estate Finance

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions are financed by banks and non-bank lenders advancing both senior and mezzanine debt to fund the acquisition and development of commercial property.

The choice between bank financing or financing by alternative lenders is influenced by the commercial terms on offer. Alternative lenders are not subject to the regulatory restraints imposed on banks, so have a different appetite for risk. There is a trend towards alternative lenders providing development finance at much higher loan-to-value ratios than banks. Such financing is usually made available at a higher margin with prepayment, arrangement and exit fee mechanisms, as well as equity interests in the transactions.

3.2 Typical Security Created by Commercial Investors

A lender will provide finance secured over the relevant property that will be registered as first-ranking in the appropriate property registry, thereby securing priority of the security for the lender's benefit. Where a lender is providing finance for development purposes, it would be normal for them to receive collateral warranties from the members of the professional team, such as architects, designers and engineers, as well as step-in rights.

3.3 Restrictions on Granting Security Over Real Estate to Foreign Lenders

There are no restrictions on the granting of security over real estate to foreign lenders or repayments to foreign lenders. Pursuant to the Companies Act 2014 (the CA), the directors of an Irish company have the authority to exercise

the company's power to borrow and to mortgage or charge its property, subject to Irish law and its constitutional documents. The 2023 Act will affect foreign lenders in certain situations, and they should understand its implications. See **2.11 Legal Restrictions on Foreign Investors** for further details on the 2023 Act.

3.4 Taxes or Fees Relating to the Granting and Enforcement of Security Registration of Security

A fee of EUR40 is payable in respect of the registration of security with the Companies Registration Office (the CRO). It is a statutory requirement for security created by an Irish company to be registered with the CRO within 21 days, and registration must be completed electronically. Failure to comply may only be remedied by a costly court application.

The creation of security does not attract tax, although a written notification must be made to Revenue by both the charge-holder and any subsequent transferee of that charge where a company creates a fixed charge over its book debts.

Withholding Tax

Where repayments under a security document or loan agreement include interest payments with an Irish source, a 20% withholding tax must be applied to the payments in Ireland. Numerous exemptions are available to companies that make payments of Irish-source interest to foreign lenders. Foreign lenders, which are "qualifying lenders", should be entitled to receive Irish-source interest payments free from the withholding tax; qualifying lenders include certain foreign banks, companies that are resident for tax purposes in the EU or in jurisdictions with a double tax treaty agreement with Ireland, and certain treaty lenders.

Capital Gains Tax

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 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 Revenue unless the seller provides a clearance certificate. A capital gains 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 at the date of the transfer agreement (currently EUR500,000 or EUR1 million if the asset sold is a house or an apartment).

The current rate of capital gains tax is 33%.

Registration Fee

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

3.5 Legal Requirements Before an Entity Can Give Valid Security

The CA prohibits the provision of financial assistance by an Irish company in the form of a guarantee, security or otherwise to a person that is purchasing or subscribing for shares in the company or its holding company. There is a vali-

dated procedure by which financial assistance may be approved in advance, and the approving documentation must be filed with the CRO by the company within the prescribed time.

The CA contains a prohibition on Irish companies providing guarantees or security in relation to the debts or obligations of its directors (or directors of its holding company) or persons connected to those directors (including family members and spouses). There is an exemption from this prohibition if the debts or obligations relate to a group company.

There is a general requirement that Irish companies derive benefit from transactions into which they enter.

3.6 Formalities When a Borrower Is in Default

Appointing a Receiver

A receiver is typically appointed by a secured creditor under contractual powers granted by the debtor under the security document. The receiver's function is to take possession of the secured assets (including any real estate) and discharge any unpaid indebtedness from the realisation proceeds.

The CA provides that a receiver of the property of a company can do all things necessary or convenient to achieve the objectives for which they were appointed. The CA specifies powers that a receiver may exercise (in addition to the powers conferred on them by the order or instrument pursuant to which they were appointed, or any other law).

It is also possible to apply to the High Court to have a receiver appointed over assets – for example, if a trigger event set out in the security document for the appointment of a receiver

has not occurred, but the secured assets are in jeopardy.

Registering Security Interests

Before certain security interests created by a company can be valid and have priority over subsequent security interests, they must be registered in the CRO within strict time periods, or the charge may be rendered void against the liquidator and any creditor of the company, and priority will be lost. Where a certificate of charge has been issued by the Registrar, it is conclusive evidence that the charge has been registered. The priority of charges runs from the date of filing, and not from the date of creation of the charge.

Priority of Charges

The rules on the priority of charges take effect subject to the rules on priority contained in any other enactment governing the priority of such charges. Consequently, the priority of charges created by companies over real estate will be determined in accordance with the order in which they are registered in the Land Registry or the Registry of Deeds, as the case may be.

Enforcement and Realisation of Security

The timeframe for the successful enforcement and realisation of security on property in Ireland can vary greatly. If the borrower is co-operative, the enforcement process can proceed smoothly, especially where possession is voluntarily surrendered. If the borrower is not co-operative, however, the process can take time and may involve court applications, particularly if the validity of the security is challenged or if possession is not voluntarily surrendered. If a receiver is appointed over the assets of a company, certain statutory filing and advertising requirements must be adhered to.

The situation can be more complex where security is over a principal private residence, and certain conditions set out in the 2009 Act will have to be complied with when enforcing the security. Where the consent of the borrower is not forthcoming, a court order will be required prior to a lender possessing or selling a property. These requirements can cause delays in a lender enforcing its security.

An Irish company (or its directors, creditors and shareholders holding at least 10% of the company's paid-up voting share capital) may petition the High Court to appoint an examiner in circumstances where that company is unable (or is likely to be unable) to pay its debts but where there is a reasonable prospect of the survival of the company. During the period that an examiner is enquiring into the affairs of a company, a moratorium prevents secured creditors from enforcing their security without the consent of the court.

The government has not sought to restrict a lender's ability to foreclose as a result of the COVID-19 pandemic.

3.7 Subordinating Existing Debt to Newly Created Debt

As set out in **3.6 Formalities When a Borrower Is in Default**, a real estate lender must register the charge/mortgage with the CRO to perfect security. Once the security is perfected, newly created debt cannot obtain priority over existing debt, other than by agreement.

The priority of debt can also be structured through the following:

- contractual subordination;
- structural subordination; or
- intercreditor arrangements.

3.8 Lenders' Liability Under Environmental Laws

Lenders may be reluctant to enforce security in circumstances where the borrower has environmental liabilities due to the application of the principle of strict liability under Irish environmental legislation. There is a risk in these circumstances that a lender may be liable under environmental laws for environmental contamination despite not having caused the contamination.

3.9 Effects of a Borrower Becoming Insolvent

Under Irish law, both the creation of security and the making of payments by a company within six months prior to it being placed into insolvent liquidation are liable to be set aside as an unfair preference if the company intended to prefer the creditor benefiting from the transaction over its other creditors. In the case of a connected person, the period is extended to two years and the transaction is deemed, unless shown to the contrary, to give that person preference over other creditors, and to be an unfair preference and accordingly invalid.

Where a company is being wound up, a floating charge on the undertaking or property of the company created within 12 months before the date of commencement of the winding-up (or two years if the floating charge is created in favour of a connected person) will be invalid, unless it is proved that the company was solvent immediately after the creation of the charge. This provision does not apply to:

- money actually advanced or paid, or the actual price or value of goods or services sold or supplied, to the company at the time of or subsequent to the creation of, and in consideration for, the charge; or

- interest on that amount at the appropriate rate.

3.10 Taxes on Loans

There is no requirement for either lenders or borrowers to pay recording taxes in connection with mortgage loans or mezzanine loans related to real estate.

4. Planning and Zoning

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

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

The relevant local authority is the entity responsible for controlling land use and occupation. An independent third-party appeals board, the Bord, is responsible for the determination of planning appeals. The Planning Bill aims to modernise this area of law. See **1.3 Proposals for Reform** for further details on the Planning Bill.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

The design and construction of buildings is regulated by the Building Control Acts 1990–2020, the Building Regulations 1997–2022 and the Building Control Regulations 1997–2021 (together, the “Building Regulations”). The Building Regulations provide for proper building standards, fire safety, workmanship, conservation of energy and access for people with disabilities.

4.3 Regulatory Authorities

The relevant local authority is the entity responsible for controlling land, building use and occupation.

The Bord is responsible for the determination of planning appeals.

Planning permission is required for any development of land or property unless the development is exempt from this requirement.

Planning permission may not be required for certain non-structural works to the interior of a building or for works that do not materially affect the external appearance of the structure. However, an application to the local authority for a Fire Safety Certificate or a Disability Access Certificate may be required in accordance with the Building Regulations.

The Building Regulations require a commencement notice to be lodged with the building control 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 do so cannot be rectified at a later date. A certificate of compliance on completion must be submitted to and registered by the building control authority before the building or works may be opened, occupied or used.

Certain licences may also be required, depending on the type of property and the type of development proposed.

4.4 Obtaining Entitlements to Develop a New Project

If the planning authority consents to an application for planning permission, it will issue a deci-

sion to grant planning permission and notify the relevant parties of its decision. An appeal of the decision can be submitted to the Bord within four weeks (such an appeal may be submitted by the parties involved or by third parties). The Bord has a statutory timeframe of 18 weeks from the receipt of an appeal in which to reach a determination.

A new planning process was introduced in 2022 for Large-Scale Residential Developments. This process involves a pre-application stage, an application stage, and an appeal stage. The Bord must reach a decision on an appeal within 16 weeks (this may be extended in certain circumstances). Increased housing supply is a focus under “Housing for All”, the Irish government’s housing plan to 2030.

4.5 Right of Appeal Against an Authority’s Decision

Anyone applying for planning permission or who has made written submissions or observations to the planning authority on a planning application can appeal a subsequent planning decision to the Bord; see 4.4 **Obtaining Entitlements to Develop a New Project** for further detail.

4.6 Agreements With Local or Governmental Authorities

As outlined in 2.8 **Permitted Uses of Real Estate Under Zoning or Planning Law**, the 2002 Act enables local authorities to enter into PPP arrangements with the private sector. Types of PPPs include:

- Design-Build-Finance-Maintain PPPs, which may be used to provide schools and similar infrastructure where the public sector has use of the asset but does not require the private partner to provide the service – for example,

in the case of a school, the public sector employs the teaching staff; and

- Design-Build-Finance-Operate-Maintain PPPs, which may be used in the case of a water-treatment plant where the private sector staffs the plant to ensure service delivery on behalf of the public sector contractor.

4.7 Enforcement of Restrictions on Development and Designated Use

The Planning Acts govern restrictions on development and permitted use. The procedure for planning offences is as follows:

- issue a warning letter;
- serve an enforcement notice; and
- institute legal proceedings.

The warning letter, which must be served within six weeks of receiving a complaint, gives a developer up to four weeks to rectify or make a submission in respect of the issue.

Any submission received from a developer or owner must be taken into account when deciding whether to serve an enforcement notice. An enforcement notice sets out the requirements of the local authority in order for the issue to be rectified by the developer/owner and contains a timeframe within which the work must be completed. Non-compliance with an enforcement notice is an offence, and the local authority may institute legal proceedings in the District Court.

In urgent cases, the local authority may apply to the Circuit or High Court for an order directing that particular actions take place or cease, as the case may be. The statute of limitations applies to planning enforcement for unauthorised development. Typically, this means that the period during which enforcement action can be taken for breach of a condition of a planning per-

mission is limited to seven years from the life of the planning permission (usually five years).

5. Investment Vehicles

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Irish companies, non-Irish companies (such as companies incorporated in Luxembourg), limited partnerships, REITs and Irish-regulated funds are used by investors to acquire real estate assets.

A REIT is a type of public limited company (PLC) that must meet certain criteria; it will not be liable to corporation/income tax on its property rental income or profits, or to capital gains tax on disposals of assets of its property rental business. A REIT must be in operation for a minimum of 15 years in order to avoid any latent capital gains tax exposures when it ceases to be within the regime. REITs are not commonly used in the Irish market, where just one remains.

Institutional investors historically used Qualifying Investor Alternative Investment Funds (QIAIFs) to acquire Irish real estate. QIAIFs are most commonly established as Irish Collective Asset-management Vehicles (ICAVs). Previously, ICAVs offered investors some tax advantages, but this has changed as they are now subject to a 20% withholding tax on profit distributions to investors and are exposed to a deemed income tax charge of 20% if they have debt costs above certain thresholds. As a result, ICAVs have not been as popular for Irish real estate investment in recent years.

5.2 Main Features and Tax Implications of the Constitution of Each Type of Entity ICAV

The ICAV is a corporate vehicle similar to an investment company and may be structured as an umbrella fund with segregation of liability between sub-funds.

The Instrument of Incorporation is the ICAV's constitutional document.

Unregulated Structures

Private Company Limited by Shares (LTD)

A Private Company Limited by Shares (LTD) is a simplified entity that has the capacity of a natural person. The constitution of an LTD comprises one document. The LTD does not have an objects clause and has full unlimited capacity to carry on any legal business, subject to any restrictions in other legislation.

Designated Activity Company (DAC)

An Irish company may also be formed as a Designated Activity Company (DAC), which is a private limited company. The constitution of a DAC comprises a memorandum of association and articles of association. The memorandum of association sets out the objects of the DAC, and the DAC can do any act or thing stated in the objects.

PLC

A PLC is another type of Irish company, under which the liability of members is limited to the amount, if any, unpaid on shares held by them. Similar to a DAC, the constitution of a PLC comprises a memorandum of association and articles of association. The memorandum of association sets out the objects of the PLC, and the PLC has the capacity to do any act or thing stated in the objects.

A REIT is a type of Irish PLC aimed at facilitating collective investment in real estate. The constitution of a REIT comprises a memorandum of association and articles of association, with provisions typical of an Irish PLC. The articles of association will impose certain restrictions and obligations on the shareholders of the company to enable the company to qualify as an Irish REIT.

5.3 REITs

REITs are not commonly used in the Irish real estate market. See 5.1 **Types of Entities Available to Investors to Hold Real Estate Assets** for further details.

5.4 Minimum Capital Requirement

There is no mandatory minimum capital requirement for Irish private companies.

The Central Bank (CB) does not apply a minimum capital requirement for QIAIF ICAVs, which are externally managed by an alternative investment fund manager (AIFM). However, an internally managed QIAIF ICAV must have a minimum paid-up share capital equivalent to EUR300,000.

In addition, ICAVs structured as QIAIFs must apply a minimum initial subscription requirement of EUR100,000 per investor. Exemptions from this minimum subscription requirement can be sought by certain categories of knowledgeable investors, including the directors of the QIAIF, the investment manager and its senior employees.

5.5 Applicable Governance Requirements REITs

REITs must comply with the corporate governance provisions set out in the CA applicable to PLCs. In addition, any market on which a REIT's

shares are admitted to trade will have regulatory, listing and other relevant rules, as applicable.

ICAVs

An ICAV is represented by its board of directors (the “Board”), at least two of whom must be Irish-resident. The appointment of directors is subject to the prior approval of the CB, under its fitness and probity regime. The Board has a general fiduciary duty to ensure that the requirements of the ICAV Act 2015 are complied with, and remains responsible for the management of the ICAV and the supervision of all its delegates.

The Board must observe Irish Funds’ Industry Corporate Governance Code (the “Code”), which aims to ensure that the Board performs effective oversight of the ICAV’s activities. Among other subjects, the Code contains recommendations in relation to Board composition, which include the requirement for at least one representative of the AIFM/investment manager and at least one director to be fully independent of all service providers to the ICAV.

ICAVs are required to be audited annually and must also submit their annual reports and monthly statistical returns to the CB.

Each ICAV is required to appoint numerous regulated service providers to carry out various governance roles. Most significantly, the AIFM Directive requires that each QIAIF must identify an AIFM, which is the entity primarily responsible for the investment and risk management of the QIAIF, subject to the overall supervision of the Board.

It is also possible for an ICAV to be authorised as an internally managed QIAIF, whereby the Board assumes the responsibility as the AIFM.

Every ICAV must appoint an independent Irish-regulated depository to carry out multiple functions, including the safekeeping of assets, regulatory oversight and cash flow monitoring obligations. In addition, the depository must enquire into the conduct and management of the ICAV in each financial year and report to the shareholders.

5.6 Annual Entity Maintenance and Accounting Compliance

Annual maintenance and accounting compliance costs vary from structure to structure.

6. Commercial Leases

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

A person or entity may enter into either a lease or a licence with the owner of a property to occupy and use the property, without acquiring the property outright.

A licence is more suitable for shorter-term arrangements. A licensee under a licence does not obtain exclusive possession of the property, but rather has mere permission from the owner to enter the property.

In contrast, a lease confers a legal interest in the property to the tenant, and this interest may typically be assigned or transferred, subject to the requirement to obtain consent from the landlord.

6.2 Types of Commercial Leases

There are two main categories of commercial leases:

- 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, usually for ten years to 15 years.

6.3 Regulation of Rents or Lease Terms

Commercial leases are freely negotiable, subject only to statutory provisions. Recent Irish case law has emphasised that a court will not imply terms into a lease where it has been freely negotiated, even in the context of the COVID-19 pandemic. Generally, any rent arrears remain payable unless an alternative agreement is reached between the landlord and tenant.

Certain areas in Ireland have been designated as Rent Pressure Zones (RPZs). RPZs are located in parts of Ireland where rents are highest, and where households have the greatest difficulty finding affordable accommodation. RPZs now cover most urban areas in Ireland. Under current legislation, any increase in the rent charged on residential property cannot exceed general inflation, as recorded by the Harmonised Index of the Consumer Prices, or 2% per year pro rata, whichever is lower.

6.4 Typical Terms of a Lease

It is now unusual to have a lease with a term in excess of 15 years in the Irish market. Previously it was not unusual to have leases with terms of between 20 and 30 years.

In general, commercial leases in Ireland are full repairing and insuring leases, and a tenant will have full repairing obligations. The obligations are imposed directly by a repair covenant in the lease or, in the case of a multi-let development such as an office block, shopping centre or business park, the obligations may be imposed indirectly through a service charge that imposes an obligation on the tenant to reimburse the landlord for repair works carried out to the structure and common areas of the development.

Payment obligations are subject to agreement between the parties, although the most common payment is quarterly in advance.

The practice that developed during 2020 and 2021 of landlords agreeing to rent abatements or standstill arrangements for rent-free periods where premises were closed due to COVID-19 is no longer common practice, and landlords now generally refuse to include such provisions in newly negotiated leases.

With the increased focus on ESG factors in real estate transactions, green leases are becoming increasingly important and incorporate clauses that promote the sustainable operation and management of buildings. In January 2023, the Irish Property Working Group of The Chancery Lane Project published a suite of green lease clauses for use in commercial leases in Ireland. These clauses, or variations thereof, are expected to become increasingly permanent fixtures in the terms of a typical commercial lease.

6.5 Rent Variation

Usually, a commercial lease will provide for a rent review periodically throughout the lease, generally at five-yearly intervals. The rent may be either increased or decreased (the 2009 Act prohibits “upward-only” rent-review clauses from February 2010, but not with retrospective effect). Commercial landlords and tenants employ certain mechanics on occasion to control the variation in the rent – for example, a fixed or stepped rent over the term of a lease may be provided for, or the rent may be linked to the variation in the Consumer Price Index.

6.6 Determination of New Rent

Usually, rent is reviewed upwards or downwards to market rent and agreed between the landlord and tenant. If agreement cannot be reached

between the parties, the lease may provide for referral to an expert or an arbitrator for determination.

6.7 Payment of VAT

In the case of a commercial/business lease, a landlord may elect (but is not obliged) to charge VAT on the rents, in which case VAT applies at the relevant rate (currently 23%).

6.8 Costs Payable by a Tenant at the Start of a Lease

Stamp duty is payable on commercial leases at 1% of the average annual rent. It is the tenant's responsibility to discharge the stamp duty. A tenant may also be obliged to pay insurance rent, any initial service charge contribution and, if commercially agreed, a deposit.

6.9 Payment of Maintenance and Repair

A landlord or management company will normally maintain common areas in a multi-let building or estate and recoup the costs from the tenants through a service charge.

6.10 Payment of Utilities and Telecommunications

Normally, a tenant is responsible for all outgoings consumed on the premises, and these are usually metered and paid directly by the tenant to the provider. Utilities and telecommunications consumed on the common areas are normally paid by the landlord and recouped from the tenants via a service charge.

6.11 Insurance Issues

The landlord will usually insure the property, and the tenant will refund the amount of the premium to the landlord as insurance rent under the lease. Typical risks insured against for property damage are fire, flooding, storm, malicious damage, subsidence and lightning. Terrorism insurance is

also available in the Irish market. Some tenants and businesses have recovered costs under business interruption insurance, depending on the terms of the relevant insurance policy.

In 2022, the Irish Commercial Court issued its third judgment in favour of the claimants in a case taken by a group of publicans against a large insurance group in Ireland in relation to the non-payout of proceeds in respect of business interruption insurance due to closures necessitated by the COVID-19 pandemic. The decision was presided over as a test case for the jurisdiction and should offer greater clarity for policy drafters seeking to bring certainty as to the level of risk assumed by insurers providing business interruption cover.

6.12 Restrictions on the Use of Real Estate

A lease will contain a user clause outlining the permitted use of the property by the tenant. If a tenant wishes to change the permitted use, the consent of the landlord is generally required (legislation provides that such consent may not be unreasonably withheld).

6.13 Tenant's Ability to Alter and Improve Real Estate

Depending on the provisions of the lease, a tenant may be permitted to alter or improve the property, usually subject to the landlord's consent and the tenant's obligations on yield-up of the premises, which normally include returning the property to its original condition. Structural alterations are generally prohibited, with internal non-structural alterations permitted subject to the prior written consent of the landlord.

6.14 Specific Regulations

The RTA govern leases of residential property in Ireland, provided the term does not exceed

35 years. Any residential property for lease must meet certain standards under the Housing (Standards for Rented Houses) Regulations 2019. The LTA govern leases of industrial, office, retail or hotel space.

6.15 Effect of the Tenant's Insolvency

Commercial leases usually include a provision entitling a landlord to terminate a lease by way of forfeiture if the tenant becomes insolvent. If the obligations of the tenant under the lease are guaranteed by a guarantor, the guarantor may be required to take a new lease on the same terms as the previous lease for the length of the term remaining.

6.16 Forms of Security to Protect Against a Failure of the Tenant to Meet Its Obligations

Normally, where a tenant's covenant strength is less than that required by a landlord, the landlord will seek a guarantor for the obligations of the tenant (or a bank guarantee or cash deposit).

6.17 Right to Occupy After Termination or Expiry of a Lease

Where a commercial tenant has been in continuous occupation for a minimum period of five years, it will obtain a statutory right to a new tenancy unless it has renounced its statutory rights. A lease term will expire automatically and so, while a landlord is not required to serve notice on a tenant to ensure the tenant vacates a premises, in practice, where a deed of renunciation has not been executed by a tenant, a landlord will be in contact with the tenant to arrange an orderly yield-up of the premises and ensure compliance by the tenant with the covenants in the lease and, in particular, with the repair and yield-up obligations.

6.18 Right to Assign a Leasehold Interest

Usually, the provisions of a commercial lease contain restrictions on a tenant's right to assign or sublet the lease without the landlord's prior written consent. Under the LTA, a landlord cannot unreasonably withhold consent to the assignment or subletting of the entirety of a premises; this provision overrides the contractual terms of any business lease. The assignment or subletting of part of a premises is usually prohibited under the terms of a commercial lease.

6.19 Right to Terminate a Lease

Generally, a commercial lease is terminated by the expiry of the term or the exercise of a break option, or by agreement between the landlord and the tenant.

Usually, a commercial lease contains a re-entry clause, which entitles a landlord to forfeit the lease where the tenant breaches an obligation. Forfeiture is an equitable remedy and can be effected without a court order, if done peaceably; however, forcible re-entry is a criminal offence. The landlord should seek an ejectment order from the court if the tenant remains in occupation and resists re-entry by the landlord.

6.20 Registration Requirements

A commercial lease for a period in excess of one year is required to be in writing but need not be executed as a deed. However, it is advisable to have a lease executed as a deed.

Leases can be registered in the Registry of Deeds, although this practice is no longer widespread.

Leases with a term in excess of 21 years should be recorded with the Land Registry. A new leasehold folio will be opened in respect of the lease

provided that the term of the residue of the lease at the time of registration exceeds 21 years.

Leases for a term not exceeding 21 years do not need to be recorded and can affect registered land without registration.

6.21 Forced Eviction

As previously stated, a commercial lease may be terminated by forfeiture. While this can be effected without a court order, in some circumstances a court order will be required – for example, if the tenant refuses to vacate the property. A court application can take from six to 12 months.

6.22 Termination by a Third Party

A commercial lease may not typically be terminated by a third party; it can only be terminated by the parties to the lease.

6.23 Remedies/Damages for Breach

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 deposit to remedy the breach, depending on the terms of the agreement governing the deposit.

7. Construction

7.1 Common Structures Used to Price Construction Projects

The most common basis for the pricing of construction contracts is a fixed-price sum, where the price includes the risks associated with the construction of the works, except to the extent excluded under the contract. Other forms of pricing are also used, such as re-measurable contracts (where the client takes the risk for the quantities needed for the works) or GMP (guaranteed

maximum price) contracts. GMP contracts can vary in how they are structured but they typically involve an open-book system subject to a shared allocation with the contractor, where the final contract price is below the GMP).

7.2 Assigning Responsibility for the Design and Construction of a Project

The client can assign responsibility for design and construction by:

- awarding a design-and-build (D&B) contract to a main contractor whereby it takes full responsibility for both design and construction, including the work of its external professional team and subcontractors; or
- appointing its own design team and entering into a build-only construction contract if it wishes to maintain more control over the design of the development.

Funders may prefer the D&B model, as it offers a sole point of responsibility for design and construction.

7.3 Management of Construction Risk

A contractor usually provides insurance-backed indemnities to the client as part of the construction contract. It has become more common for contractors to seek to limit their liability with a cap on their general liability under the contract and excluding certain damages, such as indirect and consequential damages and losses. Such exclusions have not become the market norm, but contractors are increasingly pushing for such concessions due to the strong market demand for experienced and capable contractors.

7.4 Management of Schedule-Related Risk

Most forms of construction contracts in Ireland make provisions for the application of liquidat-

ed damages if the contractor does not reach completion by the agreed date. The liquidated damages must be based on a pre-genuine estimate of the losses to be incurred by the client if the works do not complete on time and can be capped at a percentage of the contract value. In the event of delay due to the default of the contractor, the client is entitled to set off the liquidated damages against payments due to the contractor.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

It is normal for a client to seek the provision of a performance bond from the contractor as a form of security for the proper performance of the works, and this would typically be in addition to the retention by the client of a set percentage (normally 5%) of the payments to the contractor during the construction of the works. Depending on the financial robustness of the contractor, a parent company guarantee may also be required.

7.6 Liens or Encumbrances in the Event of Non-payment

The creation of liens and encumbrances is not common. It is noteworthy, however, that under the Construction Contracts Act 2013, contractors and subcontractors have a statutory right to suspend their works or refer a payment dispute to statutory adjudication in the event of non-payment of a due amount.

7.7 Requirements Before Use or Inhabitation

Under the Building Regulations, a building cannot be occupied or used until prescribed compliance documentation has been submitted to the relevant building control authority and entered onto the relevant statutory register.

8. Tax

8.1 VAT and Sales Tax

Sales of commercial property can be divided into two categories: sales of new property, and sales of old property.

In relation to new buildings, VAT must be charged at the rate of 13.5%.

A property is considered “new” where it has been developed in the previous 20 years, or where buildings on it have been developed or redeveloped in the previous five years. The first sale of residential property by the person who developed the property is always subject to VAT.

Sales of old property are exempt from VAT. In a VAT-exempt sale of property, to avoid a claw-back of VAT that the seller may have previously recovered, the seller and buyer may agree to make an exempt sale VAT-able and jointly opt to tax the sale of the property.

Exemptions

Transfer of Business applies to the sale of a property that has been let in the past, on the basis that the buyer intends to carry on the same sort of business as the seller (ie, letting the property), and will only apply provided the sale is to a person who is accountable for VAT purposes (ie, a person who is obliged to register and account for VAT).

Where the transfer of business relief applies to the sale of an “old” property, no VAT adjustment (known as a Capital Goods Scheme Adjustment) should arise for the seller, and the buyer will take over the property's obligations from the seller under the capital goods scheme.

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

8.2 Mitigation of Tax Liability

As mentioned in **2.10 Taxes Applicable to a Transaction**, where non-residential property is transferred and subsequently utilised for the construction of residential accommodation, a stamp duty refund is available, which effectively reduces the rate from 7.5% to 2%.

Stamp duty on the transfer of Irish shares is generally charged at 1% of their value. Previously, stamp duty was mitigated on large-scale acquisitions through selling the corporate vehicle holding the property; however, transfers of corporate entities and partnerships can be subject to 7.5% duty where the entity derives over 50% of its value from Irish land intended for development, held as trading stock, or held with the sole or main object of realising a gain on disposal. This provision is subject to a number of conditions, including that the transfer involves the transfer of control of the land.

There are stamp duty exemptions for intra-group transfers of real estate.

8.3 Municipal Taxes

Commercial rates are imposed by local authorities against businesses premises; the local authority determines the level of rates.

An abatement from the payment of commercial rates may be possible where a property is vacant, although this depends on the local authority in question and varies between the different authorities.

8.4 Income Tax Withholding for Foreign Investors

Tenants of non-resident owners of Irish property are obliged to withhold tax from rental income prior to remitting overseas, at the standard income tax rate of 20%. This can be avoided if the landlord has employed an Irish agent to collect the rents.

Non-resident individuals investing in Irish property are charged Irish income tax on taxable rental profits, on a fiscal-year basis. A non-resident individual or partnership is subject to rental income tax at between 20% and 41%. A non-resident company is subject to 25% tax on rental income, minus deductible rental expenses.

Capital gains tax is applicable at a rate of 33% on the gains made on a disposal of property in Ireland. If the seller is non-resident, this will only relate to the sale of specified assets.

8.5 Tax Benefits

Although, historically, Ireland did allow individuals to offset the cost of investment properties against their other income, such schemes were severely curtailed from 2007. There are now minor reliefs, such as the rent-a-room relief, which exempts up to EUR14,000 annually. Commercial landlords can claim tax depreciation (Capital allowances) on capital expenditure for fixtures and fittings. This is provided at a rate of 12.5% over eight years. Certain types of industrial buildings (eg, factories) can qualify for industrial building allowance at a rate of 4% over 25 years.

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