

THE REAL ESTATE  
LAW REVIEW

ELEVENTH EDITION

Editor  
John Nevin

THE LAWREVIEWS

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# PREFACE

Since a mystery disease, then known as 2019-nCoV, first appeared in Wuhan back in December 2019, coronavirus (covid-19) has continued to be the dominant global issue. The covid-19 pandemic has affected the economy like nothing this generation has previously experienced. Every major jurisdiction has been forced into a series of lockdowns, with the very real possibility of more to come. Fundamentally, the pandemic has been a terrible human tragedy with, at the time of writing, more than 250 million cases globally and over 5 million deaths. Although there is still some way to go, we are starting to see light at the end of the tunnel. The covid-19 pandemic will undoubtedly affect the global economy for some time to come. It will also leave its mark on how we live, work and play, including on each and every aspect of the global real estate market.

Another global event saw the great and the good, as well as a healthy number of protestors, converge on Glasgow for COP26. Despite the absence of some key world leaders and criticism that more could have been achieved, key pledges have been made to fight the climate change emergency. The year 2021 may be remembered as the year the world finally acknowledged that something needs to be done and now. The built environment accounts for more than its fair share of carbon emissions and the property industry is beginning to wake up to the fact that significant changes are necessary. How we design, build and use buildings is an important part of the transition towards net zero carbon. Environmental, social and governance (ESG) has finally become a very real issue with all parties, from governments through landlords, tenants and funders to individual workers, having a vested interest.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012, but nothing more significant than the covid-19 pandemic, a truly global crisis. This eleventh edition of *The Real Estate Law Review* will continue to prove its worth by providing readers with an invaluable overview of how key markets across the globe operate and how they react to major world events. The covid-19 pandemic and COP26 have served as reminders that it is not possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 24 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effect on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

The covid-19 pandemic is a truly global issue affecting every jurisdiction and, of course, its real estate market. Although it has been overshadowed by the covid-19 pandemic, Brexit and

the associated economic and political fallout from leaving the European Union has continued to be a concern for the UK economy and its property industry. Rising costs, a critical shortage of labour and materials as well as crippling supply chain issues have threatened to destabilise the post-pandemic recovery. On a positive note, investment volumes have bounced back and we are seeing increased interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. Although global real estate investment has picked up, the recovery has been uneven across countries, markets and sectors. The United Kingdom will be anxious to maintain its position at the top of global shopping lists. The world's growing cache of investment capital is likely to prompt a surge in investment activity once international travel and business confidence stabilises. The United Kingdom seems certain to remain attractive to overseas investors looking for a safe haven for their funds. The next few years will undoubtedly be challenging as we continue on the journey to recovery, but opportunities will arise, and real estate will remain a key part of global investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this eleventh edition of *The Real Estate Law Review*. I would also like to thank the members of the *Law Review* team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2022 and beyond.

**John Nevin**

Slaughter and May

London

February 2022

# IRELAND

*Diarmuid Mawe, Craig Kenny and Katelin Toomey*<sup>1</sup>

## I INTRODUCTION TO THE LEGAL FRAMEWORK

Ownership of real estate in Ireland may be held as either freehold or leasehold title. Freehold title confers absolute title on an owner whereas leasehold title confers ownership for a term of years as granted by the lease. Leasehold title is based on the contractual relationship between the freehold owner (the lessor) and the leasehold owner (the lessee). During the term of a lease, the freehold owner holds what is known as the ‘freehold reversion’ and, on the expiry of a leasehold term, the title reverts to the freehold owner unless the leasehold owner has a right to acquire the freehold interest in the property and it chooses to exercise this right. Such a right is referred to as ‘buying out the ground rent’ and is only available in particular circumstances; for example, permanent buildings must be on the land, if the buildings have been altered or reconstructed that alteration or reconstruction did not cause the buildings to lose their original identity, the buildings were not erected in contravention of a term or covenant of the lease and at least one of seven other criteria as set out in the Landlord and Tenant (Ground Rents No. 2) Act 1978, as amended by the Landlord and Tenant (Ground Rents) (Amendment) Act 2019, must be met.

The Property Registration Authority governs the registration of land in Ireland and manages and controls both the Registry of Deeds and the Land Registry.

The Registry of Deeds was established in 1707 and provides a system of voluntary registration for deeds affecting real estate. The effect of registration is to govern priorities between documents that relate to the same property, and accordingly failure to register a deed in the Registry of Deeds may result in a loss of priority. The registration of a deed in the Registry of Deeds is not proof of ownership and, in contrast to registered property, the underlying title must be fully investigated to determine ownership and to ascertain whether a property has a ‘good and marketable’ title. The Registry of Deeds does not investigate title; it merely records the existence of deeds. Property registered in the Registry of Deeds is referred to as ‘unregistered property’.

The Land Registry was established in 1892. When a title is registered in the Land Registry, the deeds are lodged with the Land Registry and particulars in relation to the property and its ownership are entered on a folio that forms the register maintained by the Land Registry. The Land Registry also maintains maps (referred to as filed plans) in relation to each property registered with it. Both folios and maps are maintained in electronic form. A title registered in the Land Registry is guaranteed by the state; however, this guarantee

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<sup>1</sup> Diarmuid Mawe is a partner and head of commercial property, Craig Kenny is a partner and Katelin Toomey is a professional support lawyer at Maples Group.

relates to the title only and does not extend to the filed plan or the boundaries of the property outlined on the filed plan. As a result of the state guarantee, a buyer can accept the folio as evidence of title without having to investigate the underlying title deeds. Property registered in the Land Registry is referred to as 'registered property'.

Generally, the choice of law for a transaction dealing with Irish real estate is Ireland, and the parties to a transaction will agree that the transaction will be governed by Irish law and that the Irish courts will have exclusive jurisdiction to settle any disputes arising from the transaction. It is usually agreed that any proceeding, suit or action arising out of or in connection with the transaction is brought in the courts of Ireland.

## **II OVERVIEW OF REAL ESTATE ACTIVITY**

Activity throughout 2021 in the Irish real estate sector surpassed all expectations. A recent report found that Dublin was the fifth busiest real estate market in Europe between the end of 2020 and the third quarter of 2021 with more than €3 billion invested. There has been significant activity in the private rented sector (PRS) throughout 2021, and it accounted for 54 per cent of all sales in Q3 of 2021 and 54 per cent of activity in the first three quarters of 2021 with a total of €415 million transacted.

There has also been a significant increase in demand for office space quarter-on-quarter in 2021. Of the total €3.48 billion invested in the Irish commercial real estate market during the first three quarters of 2021, 26 per cent was made up of office accommodation. It appears that concerns about the future of the office were unfounded as many of Dublin's biggest employers continue to grow their office footprints and, despite the increase in people working from home, demand has increased significantly for office accommodation in the city centre.

The Dublin industrial and logistics sector is also thriving with investment hitting record levels during 2021 with €450 million invested in the first three quarters of 2021, accounting for 13 per cent of total investment in that period.

Another sector that has seen strong recovery since the covid-19 pandemic restrictions were lifted at the end of the second quarter of 2021 is the retail sector. It accounted for 14 per cent of total investments in Q3 of 2021 – the first time it has accounted for more than 10 per cent of sales since Q1 of 2019, and this volume is expected to continue. There is also a significant increase in letting activity, including in relation to anchor units, which is very encouraging. A full recovery of the retail sector is expected in 2022.

Investment spend in the Irish real estate sector for 2021 will comfortably exceed €4.5 billion, which is a remarkable result considering the challenge of Brexit and the covid-19 pandemic throughout 2021. The availability of finance in the Irish market remains good. Some lenders are adopting a more cautious approach and may seek additional guarantees or other assurances to bolster the security package being provided by a borrower. Overall, the outlook for 2022 appears positive with both the Irish real estate sector and the Irish economy experiencing a robust recovery.

## **III FOREIGN INVESTMENT**

Foreign investment is prevalent in the Irish real estate market. Initially foreign investors were predominantly from the United States; however, there has been an increase in recent years in European and Asian investors. There are no restrictions on ownership of real estate assets by foreign investors in Ireland. Both domestic and foreign investors need to comply with

anti-money laundering requirements and provide information to verify their identity, the source of funds and the ability to fund the acquisition. Ireland's favourable tax system, as well as its status as the only native English-speaking EU Member State post Brexit, makes Irish real estate an attractive choice for foreign investors. Ireland actively promotes foreign investment and Ireland's inward investment promotion agency (the IDA) is a non-commercial, semi-state body promoting foreign direct investment into Ireland through a wide range of services. The IDA's portfolio offers a wide range of options from greenfield sites to office solutions. The IDA's main objective is to encourage investment into Ireland by foreign-owned entities.

#### **IV STRUCTURING THE INVESTMENT**

The following investment structures are the most popular ones that are currently used in Ireland for the acquisition of real estate.

##### **i Irish companies**

The three most common forms of Irish companies used by investors to acquire real estate are a private company limited by shares (LTD), a designated activity company (DAC) and a public limited company (PLC). An LTD, a DAC and a PLC are all separate legal entities and have the capacity of a natural person and may sue or be sued in their own names.

An LTD, DAC and PLC must all be registered with the Irish Companies Registration Office (CRO). The differences between the three are as follows.

##### ***LTD***

An LTD has full capacity to undertake all activities without restrictions and specific objects do not need to be set out in its constitutional documents. The members' liability in an LTD is limited to the amount, if any, unpaid on the shares that they hold if the LTD is wound up. An LTD may have a single director.

##### ***DAC***

In contrast to an LTD, there are restrictions on the activities that a DAC may undertake. The constitutional documents of a DAC set out its objects, and a DAC only has the power to undertake these activities and is restricted in this way. The members of a DAC have liability in two ways if a DAC is wound up:

- a* the amount, if any, that is unpaid on the shares they hold; and
- b* the amount that they have undertaken to contribute to the assets of the company, in the event that it is wound up.

DACs must have at least two directors.

##### ***PLC***

Some institutional investors also use PLCs to acquire Irish real estate. The liability of members in a PLC is limited to the amount unpaid (if any) on shares held by them. PLCs must have at least two directors.

**ii Real estate investment trust**

A real estate investment trust (REIT) is a type of PLC that was introduced in Ireland in 2013 to facilitate collective investment in real estate. A REIT is a tax-efficient structure, and if it fulfils certain criteria it will not be liable for corporation tax or income tax on its real estate profits, real estate rental income or capital gains tax on disposals of certain real estate assets in Ireland. The Finance Act 2019 limited the previous provisions that allowed a REIT to avoid any latent capital gains tax exposures when it ceased to be within the regime so that the provisions apply only where REITs have been in operation in the jurisdiction for a minimum of 15 years. A REIT must also be registered with the CRO.

**iii Non-Irish companies – a Luxembourg company**

International investors frequently use non-Irish companies such as Luxembourg companies to acquire real estate in Ireland.

**iv Irish regulated partnerships**

Limited partnerships are also used to acquire Irish real estate assets. A limited partnership must consist of at least one general partner and one limited partner. A partnership does not have a separate legal personality. A general partner is liable for all debts of the partnership whereas a limited partner is liable for its contribution only and is not liable for debts beyond this. Frequently, the general partner is itself an LTD. A limited partnership must be registered with the CRO.

**v Irish regulated funds – the Irish collective asset-management vehicle**

Investors in the Irish real estate market have most commonly used Irish regulated funds, qualifying investor alternative investment funds (QIAIFs), to acquire Irish real estate. QIAIFs may be established as a number of different structures, including unit trusts, Irish collective asset-management vehicles (ICAVs), investment companies, common contractual funds and investment limited partnerships. The ICAV has been the most popular structure for a QIAIF investing in real estate in recent years.

The ICAV is a corporate vehicle similar to an investment company. The ICAV was specifically created for the Irish funds industry, and it is a more flexible structure from a corporate law perspective. An ICAV may be structured as an umbrella fund with segregated liability between sub-funds; as a result, many large-scale real estate investors use this structure to hold different real estate assets in different sub-funds under the same ICAV. The main advantage of QIAIFs (as set out above, the ICAV is a type of QIAIF) is that the usual restrictions of the Central Bank of Ireland (CBI) relating to asset diversification, borrowing and leverage are disapplied; for example, there are no borrowing or leverage limits for a QIAIF. This is because the CBI restricts the availability of QIAIFs to professional and institutional investors only, and a minimum subscription of €100,000 applies. Historically, regulated funds such as the ICAV offered some tax advantages; however, as a result of legislative changes in 2016 and 2019, this position has now changed. Such funds are subject to a 20 per cent withholding tax on profit distributions to investors and are exposed to a deemed income tax charge of 20 per cent if they have debt costs above certain thresholds. Although they remain common, the tax advantages of such structures have been eroded.

## V REAL ESTATE OWNERSHIP

### i Planning

The Local Government (Planning and Development) Acts 1963–1999 and the Planning and Development Acts 2000–2021 (the Planning Acts) govern land use and planning and zoning matters in Ireland. Planning permission is required for the development of property or for a material change of use unless the development is categorised as ‘exempted development’ under the Planning Acts. Generally exempted developments are limited to small developments below a certain square footage. Failure to obtain planning permission where required may lead to enforcement by the planning authority under the Planning Acts. There are three enforcement mechanisms under the Planning Acts:

- a* criminal prosecution;
- b* the enforcement notice procedure or an enforcement action; and
- c* a planning injunction.

To obtain planning permission, an applicant must apply to the relevant local planning authority providing all necessary documentation, including any maps and drawings. A public notice of the proposed development must also be made, and this can be done by placing a notice in a local newspaper and erecting a site notice at the property. Generally, a planning authority makes a decision in relation to an application for planning permission within eight weeks of receipt of same. If the application for planning permission is refused, then this decision may be appealed to an Bord Pleanála (the Planning Appeals Board – an independent third-party planning appeals board). If a decision to grant the application for planning permission is made, then third parties may appeal this decision to an Bord Pleanála. If no appeals have been lodged by third parties within the relevant time frame, then a final grant of planning permission will be issued by the planning authority.

### ii Environment

Usually the entity that caused environmental contamination will be liable for the contamination and any clean-up required in respect of it. However, in some circumstances an owner or occupier of property on which environmental contamination has occurred may be held liable due to the principle of strict liability that applies under Irish environmental laws. This may be the case where the owner did not cause the contamination or even where the owner did not own the property at the time the contamination occurred. An owner or occupier may also be liable for part of the cost or even the entire cost associated with the clean-up where the entity responsible is not in a financial position to pay. As a result, where compliance with environmental laws is a concern, a buyer should appoint an environmental expert to provide a report on the property to ensure that it does not inherit any environmental liability. Sellers frequently seek to limit liability for any environmental issues under the contract for sale and, for this reason, a buyer should either insist that any environmental issues identified are dealt with prior to completion or alternatively an indemnity from the seller could be obtained under the contract for sale. There is also a risk that lenders that enforce security may become secondarily liable for environmental contamination. As a result, lenders may be reluctant to enforce security where environmental issues exist in relation to the secured asset.

### **iii Tax**

Stamp duty is payable on the acquisition of Irish real estate. It is payable in respect of both commercial property and residential property. Stamp duty is charged on either the consideration paid for a property or on the market value of the property in circumstances where the consideration does not reflect the market value. The current rate of stamp duty for residential properties is 1 per cent on consideration up to €1 million and 2 per cent on any consideration over €1 million; however, since May 2021, where 10 or more residential units are acquired in a 12-month period, an increased rate of 10 per cent stamp duty applies to all units acquired. The stamp duty rate for commercial properties is 7.5 per cent. Where non-residential property is transferred and is subsequently utilised for construction of residential accommodation, a stamp duty refund is available that effectively reduces the rate from 7.5 per cent to 2 per cent. Budget 2021 extended the time allowed to commence construction work to qualify for this refund to 31 December 2022. This scheme is subject to a number of conditions. A 7.5 per cent stamp duty charge will also apply on the sale of shares in entities where the entity derives over 50 per cent of its value from Irish land that 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. A buyer is generally the party that is liable to pay stamp duty; however, in some circumstances (such as voluntary assurances), both parties may be liable.

### **iv Finance and security**

Lenders in the Irish real estate market usually require the following security:

- a* a debenture that incorporates a fixed charge over the real estate asset and any book debts of the borrower entity;
- b* a security assignment of all material contracts pertaining to the real estate asset;
- c* a charge over any rent accounts or other bank accounts relating to the real estate asset; and
- d* a floating charge over all assets of the borrower entity, where the borrower is a corporate entity.

A lender will be focused on ensuring that its security can be registered as a first ranking charge against the real estate asset and that there are no prior charges already registered that will not be discharged prior to completion.

## **VI LEASES OF BUSINESS PREMISES**

Commercial leases in Ireland are generally categorised as either short term or long term. A short-term lease is a lease with a term of up to five years and a long-term lease is a lease with a term of between 10 and 25 years. It is unusual in the current market to have a lease with a term in excess of 25 years. The terms of a commercial lease are freely negotiable between the parties and the rent, the terms of any rent reviews and tenant covenants will all be subject to commercial agreement.

A long-term commercial lease usually contains rent review provisions providing for the review of rent every five years. The review provisions may either be linked to 'open market rent' or may be based on changes in the consumer price index. Prior to the enactment of the Land and Conveyancing Law Reform Act 2009 (the 2009 Act), a lease could provide for an 'upward only' rent review (i.e., a review mechanism where the reviewed rent could



increase only and would never be less than the original contracted rent). However, since the commencement of the 2009 Act, rent review provisions must be on an upwards or downwards basis, meaning that the rent can either increase or decrease in line with the market rent or the consumer price index on each review of the rent. Where a lease that postdates the 2009 Act contains an upward only rent review provision, it will be read as if that provision provided for a rent review on an upwards or downwards basis. This provision of the 2009 Act may not be contracted out of.

While the terms of the lease will dictate a tenant's liability under it, generally speaking a tenant under a commercial lease will provide numerous covenants, including in relation to the payment of rent, insurance rent, service charge and other outgoings, repair, decoration, alterations, alienation, user and compliance with statutory obligations and notices. Most commercial leases in Ireland are known as full repairing and insuring leases (FRI leases). Under an FRI lease, a tenant takes on extensive covenants in relation to the repair of the premises. These obligations may either be by way of a direct covenant in the lease or where the premises forms part of a building or an estate that the tenant may covenant to pay a service charge to the landlord as a contribution towards the costs incurred by the landlord in repairing and maintaining the common areas of the building or estate. A landlord usually insures the premises, and the tenant refunds the landlord this cost by paying insurance rent.

A tenant may be entitled to security of tenure of a premises where one of three equities applies. The first equity is based on the occupation of a business premises and is the one most frequently used by commercial tenants seeking the renewal of a commercial lease. A tenant may be entitled to business equity where it has been in occupation of a business premises for more than five years and it has not renounced its right to a new tenancy. Legal advice must be obtained by a tenant renouncing its renewal rights in order for such a renunciation to be valid. The respective bargaining power of the landlord and the tenant will dictate whether a deed of renunciation is required when a commercial lease is entered into. Practically speaking, one of the effects of the five-year qualifying period for business equity is that certain leases of business premises will provide for a term no longer than four years and nine months in order to prevent this entitlement from arising. The second equity is based on long occupation and may apply (subject to certain criteria being fulfilled) if a premises has been in continuous occupation by a tenant for upwards of 20 years; this equity applies to commercial premises and to some residential premises (depending on when the residential tenancy commenced). The third equity is improvements equity and may apply where a tenant has carried out extensive improvements to a premises; this equity is not invoked often in practice as the improvements must be of an extensive nature in order to qualify.

There has been a move towards green leases in recent years particularly in relation to leases of new or refurbished premises. These leases frequently include reference to Leadership in Energy and Environmental Design (LEED) requirements. LEED is a certification system developed by the US Green Building Council to encourage the construction of energy efficient buildings.

## **VII DEVELOPMENTS IN PRACTICE**

### **i Flexibility in the office market**

Prior to the outbreak of the covid-19 pandemic, the Dublin office market benefitted from numerous relocations of companies seeking to move their European headquarters due to Brexit. Ireland is in a unique position as the only native English-speaking European Union

Member State following Brexit and this trend is expected to continue into 2022. Demand for office accommodation in the city centre has increased significantly throughout 2021 and concerns around the future of the office appear to be unfounded with many global employers seeking office space in the capital. The shift to a hybrid working model is likely to benefit flexible office providers where companies may have part of their office space on a flexible basis to accommodate hybrid and remote working.

## **ii The future for retail and the high street**

Throughout 2021 there has been a significant increase in activity in the Irish retail sector with further improvement during the third and fourth quarters. Consumer confidence, retail sales and footfall have all increased quarter-on-quarter throughout 2021. There are also several new international entrants to the market seeking retail space, with both Lululemon and Canada Goose opening their first Irish stores on Grafton Street in December 2021.

Despite the noticeable improvement over the latter part of 2021, some tenants still struggled to meet rental payments during 2021. The voluntary code of conduct introduced by the government in 2020 attempts to assist with these issues. This code has now been extended until 30 April 2022. The aim of the code is to encourage and facilitate engagement between landlords and tenants impacted by the covid-19 pandemic. The code sets out that all parties should act in good faith and in an honest and transparent manner. It is a voluntary code without statutory basis and does not alter the commercial arrangements between parties; it merely encourages good communication to resolve any potential issues. Overall the outlook for retail in 2022 is very positive with consumer confidence, spending and footfall set to continue to increase.

## **iii The private residential sector**

Investment in the PRS in Ireland remains robust despite the covid-19 pandemic, and the residential sector continues to attract strong interest from investors. In fact, more than half of total investments in the Irish commercial property market in the first three quarters of 2021 comprised residential investments.

There is a shortage of high-quality residential accommodation throughout Ireland, and this is a focus of the current government. A housing budget of €5.5 billion was announced as part of Budget 2022. Key areas for the housing budget include building on the commitments in Budget 2021 in relation to social housing, homelessness provisions and rental measures. Energy efficiency improvements to social housing are also on the agenda.

The government has also introduced other incentives in relation to the construction of residential accommodation in recent years, including:

- a* a fast-track planning procedure in relation to the construction of residential accommodation where the time limits for approval of planning permission have been greatly reduced;
- b* a stamp duty refund is available where non-residential property is transferred and is subsequently used for construction of residential accommodation; the refund effectively reduces the stamp duty rate from 7.5 per cent to 2 per cent. Budget 2021 has extended the time allowed to commence construction work to 31 December 2022 in order to be eligible for this refund. This scheme is subject to a number of conditions; and
- c* the Help to Buy scheme for first-time buyers of new homes has been extended by Budget 2022 to 31 December 2022.

This asset class remains attractive for investors due to the high yields and stability of same.

**iv Record levels of investment in the industrial and logistics sector**

In the first three quarters of 2021, €422 million was invested in the Irish industrial and logistics sector and 2021 was the strongest year on record for industrial investment in Ireland. Ireland's specialisation in pharmaceuticals and information technology has been a significant factor in the demand for industrial and logistics space. Activity is also being led by demand from occupiers who are seeking to respond to the impact of Brexit and the covid-19 pandemic by localising their supply chains. This momentum is expected to continue into 2022.

**v Forward funding**

Forward fund and forward sale structures continue to be frequently used in the Irish real estate market. These structures aim to spread development risk, create new investment opportunities and may provide a potential stamp duty saving for buyers. In a forward funding structure, a borrower will purchase a site from a developer and enter into a contract with that developer to carry out a development. The borrower will obtain financing, and the loan funds will be used by the borrower to pay the development costs of the developer. This structure should be distinguished from a forward sale structure where an investor enters into an agreement with a developer to acquire a site once the development of the site has completed. These structures are frequently used in the acquisition and development of PRS sites.

**vi Focus on energy efficiency**

The focus on energy efficiency remains in Ireland, and various initiatives are in place to promote energy efficiencies.

Since 2006, a building energy rating (BER) certificate and advisory report must be provided by all sellers and landlords to prospective buyers and tenants when a building is constructed, sold or rented. These requirements apply to both residential and commercial buildings with the exception of certain categories of building, such as protected structures. A BER certificate rates the building from A1 (most efficient) to G (least efficient).

Since December 2020 under EU law, all EU Member States, including Ireland, must ensure that all new buildings (both commercial and residential buildings) are 'nearly zero-energy buildings'. Directive 2010/31/EU on the energy performance of buildings defines a nearly zero-energy building as a building with a very high energy performance that has a significant part of its energy requirements met by renewable sources, which are ideally produced on site or nearby. One of the requirements under Directive 2010/31/EU is that all new homes must have a BER of A2, be 70 per cent more energy efficient than 2005 performance levels and emit 70 per cent less carbon dioxide than 2005 performance levels.

As previously mentioned, there has been a move towards green leases in Ireland, and adherence to LEED requirements is now frequently a condition of commercial leases of new or refurbished buildings. There has also been a move towards sustainable finance. The European Union is focused on building a financial system to support a low-carbon, more resource-efficient and sustainable economy, which should lead to increased investment in longer-term sustainable activities.

## **VIII OUTLOOK AND CONCLUSIONS**

In 2011, the draft Landlord and Tenant Law Reform Bill was published. While not yet enacted and with no indication as to when (or if) this Reform Bill will be enacted, it is still worthy of note as its objective is to consolidate and modernise much of the general landlord and tenant law under one act, including landlord and tenant obligations and their enforcement, statutory rights and termination.

There are no significant legal reforms anticipated in the Irish real estate market in 2022. The focus will almost certainly be on the continued recovery from the impact of both the covid-19 pandemic and Brexit. It is anticipated that both the logistics and the PRS sectors will remain strong due to the current demand for high-quality residential accommodation and logistics space and that demand for retail and office space will continue to increase. Ireland is expected to remain a strong choice for foreign investors in the European Union due to its status as a native English-speaking EU Member State, with a favourable tax regime and an open and transparent legal system.

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Diarmuid Mawe is head of the commercial property group at Maples and Calder (Ireland) LLP, the Maples Group's law firm, and advises on all types of commercial property transactions. He has extensive experience advising institutional clients on all property law aspects involved in the acquisition, management and disposal of real estate assets. Diarmuid also specialises in commercial landlord and tenant law, advising some of the country's largest landlords and tenants on their commercial property portfolios.

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