
CHAMBERS GLOBAL PRACTICE GUIDES

Construction Law 2025

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Ireland: Law and Practice & Trends and Developments

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IRELAND



Law and Practice

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McCann FitzGerald LLP is a full-service law firm, with offices in Dublin, London, New York, and Bussels, that offers expert, forward-thinking legal counsel to clients. Its construction practice is the market leader in Irish construction law, advising on projects from planning, procurement and contract negotiation to risk analysis and dispute resolution. Its sectoral experience spans commercial, residential, infrastructure, engineering, energy, technology, pharmaceuticals, and food and beverages. Also renowned for expertise in construction disputes, the firm acts for clients in adjudication, mediation, arbitration, and court proceedings.

With the largest construction team in Ireland, McCann FitzGerald advises developers, contractors, consultants, funders, landlords, tenants, purchasers, bondsmen, utility providers, and professional negligence insurers. Its clients and projects have included Ballymore, Hammerson and Lioncor/Ronan Group Real Estate, MSD, PM Group, Jacobs Engineering, FuturEnergy Ireland, Gore Street, the National Paediatric Children's Hospital, the Land Development Agency, Transport Infrastructure Ireland, Dublin Airport Authority, Statkraft, the Housing Finance Agency, and Irish Water.

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1. General

1.1 Governing Law

Construction law in Ireland is governed by common law and relevant legislation. The most pertinent statutory provisions are set out below.

Building Control Acts 1990–2021 (the “Building Control Acts”)

The Building Control Acts impose obligations to erect buildings in accordance with building regulations. The legal requirements designed to ensure the safety, health, and welfare of people in and around buildings are governed by the Building Control Acts and are enforced by the building control authorities. Under the Building Control Acts, the relevant government minister is entitled to make regulations relating to the construction of buildings. The Building Control Acts also set out penalties for those who are guilty of an offence under building regulations.

Building Regulations 1997–2024 (the “Building Regulations”)

The Building Regulations, issued pursuant to the Building Control Acts, are a set of legal requirements designed to ensure the safety, health and welfare of people in and around buildings. Compliance with these regulations is mandatory

for all new buildings, extensions, and significant alterations to existing buildings. The Building Regulations have twelve parts, as follows.

- structure;
- fire safety;
- site preparation and resistance to moisture;
- materials and workmanship;
- sound;
- ventilation;
- hygiene;
- drainage;
- heat producing appliances;
- stairways, ladders, ramps and guards;
- fuel and energy conservation; and
- access and use.

Each of these requirements to the regulations is supported by technical guidance documents. The guidance documents are non-statutory guides which provide a route to demonstrating prima facie, compliance with the Building Regulations.

Building Control Regulations 1997–2025 (the “Building Control Regulations”)

The Building Control Regulations are in place to ensure effective public oversight of compliance with the Building Regulations, and include a

mandatory procedure that, if followed correctly, supports compliance with the technical Building Regulations. The Building Control Regulations set out various certificates that must be lodged with a building control authority before the commencement of works and at completion. It is the responsibility of the owner of the works to ensure compliance, and any failure to do so can result in enforcement action by the building control authority or criminal liability. The Building Control Regulations also mandate certain statutory appointments which must be made by the building owner, including the appointment of an assigned certifier, design certifier, and a nominated builder.

Safety, Health and Welfare at Work (Construction) Regulations 2013

The Safety, Health and Welfare at Work (Construction) Regulations 2013 (the “*Construction Regulations*”) were introduced under the Safety, Health and Welfare at Work Act 2005 and govern the health and safety of construction activities. These regulations place specific duties on various parties involved in construction projects, including clients, designers, contractors and project supervisors. The person or entity procuring works is required to appoint competent project supervisors for both the design phase (the Project Supervisor for the Design Phase, or PSDP) and construction stages (the Project Supervisor for the Construction Stage, or PSCS).

The Construction Regulations require the allocation of resources for health and safety management and that a safety file be maintained and handed over upon completion. Failure to comply with the Construction Regulations can result in criminal penalties for the entity procuring the works.

Separately, Section 17 of the 2005 Act requires any person procuring the construction of works to appoint competent persons to ensure that the project is designed and constructed to be safe and without risk to health, both when built and when subsequently used. It is generally accepted that the appointment of a competent PSCS and PSDP satisfies an employer’s obligations as regards Section 17.

Construction Contracts Act 2013

The Construction Contracts Act 2013 (the CCA) was introduced to ensure fair and timely payment practices in the construction industry, reduce the risk of payment disputes, and improve cash flow for contractors. The CCA applies in both the public and private sectors to most construction contracts over EUR10,000 irrespective of whether the parties to the construction contract have selected the laws of another jurisdiction as the governing law. The CCA mandates that construction contracts include clear payment terms. If the contract does not specify payment terms, the CCA provides default payment terms. Payments must be made within 30 days of the payment claim date unless otherwise agreed. It is not possible to contract out of the CCA, and it will override any inconsistent payment terms. The CCA contains a statutory adjudication process for resolving payment disputes. This process is designed to be fast and cost effective, providing a binding decision within 28 days of the referral to adjudication. Either party can refer a payment dispute to adjudication at any time.

1.2 Standard Contracts

Public Sector Construction Contracts

For construction projects which are procured by public bodies, or where more than 50% of the cost of the project is funded by the exchequer, the government published public works forms of contract are generally required. These forms

of contract also include the associated procurement documentation, in line with the requirements of European Union procurement law. Amendments are generally not permitted to the Public Works contracts, unless prior dispensation has been granted by the Government Construction Contracts Committee (GCCC).

The most commonly used public works contracts are:

- building/civil engineering works designed by the employer; and
- building/civil engineering works designed by the contractor (the “*Public Works Contracts*”).

Designers on public projects are generally engaged under the Standard Conditions of Engagement published by the GCCC used for the appointment of professional consultants.

Some observers find that the Public Works Contracts impose an excessively rigid framework and transfer a considerable portion of risk onto contractors. There has been a growing trend recently for public authorities to seek dispensations to adopt the NEC4 form of contract for public projects. This approach is frequently favoured because it promotes collaborative working relationships and encourages a more equitable distribution of risk.

Private Sector Construction Contracts

There is no mandatory form of contract for private-sector projects, and the choice of contract will largely be dependent upon the preference of the parties and the nature of the works.

RIAI Forms of Contract

The most prevalent standard-form contracts used are the following contracts published by

the Royal Institute of the Architects of Ireland (RIAI):

- the blue form, which is a lump-sum contract where quantities do not form part of the contract; and
- the yellow form, which is a re-measurable contract (the “*RIAI Contracts*”).

In standard form, the RIAI Contracts are build-only contracts, and must be amended to be used for a design-and-build arrangement. The RIAI Contracts are often heavily revised based on a schedule of amendments.

International Forms of Contract

The following overseas forms of contract are also often used in Ireland.

- The yellow book, red book, and, to a lesser extent, silver book forms of contract produced by the International Consulting Engineers (FIDIC) (the “*FIDIC Contracts*”), particularly for large-scale infrastructure and energy projects.
- The forms of contract, both design-and-build and build-only contracts, issued by the UK’s Joint Contracts Tribunal (JCT), are often amended to be used for Irish projects, usually when either the employer or contractor is a UK-based entity familiar with these contract forms.
- The use of the New Engineering Contracts (NEC) produced by the UK Institution of Civil Engineers (“*NEC Contracts*”) is gaining traction in Ireland on both public and private projects due to these contracts’ focus on collaboration and cooperation. The NEC Contracts cater to engineering projects, but can also be adapted to cover building works. The contracts are considered collaborative, aiming to prevent costly disputes.

Private Sector Consultant Appointments

Most consultant appointments in the private sector are bespoke, but based on an industry standard form. On smaller-value projects, the Standard Condition of Engagement for Consultancy Contracts produced by Engineers Ireland is sometimes used.

2. Parties

2.1 The Employer

The employer in a construction project in Ireland can be any of: i) a state body; ii) an incorporated entity; iii) an unincorporated entity; or iv) individual persons.

An employer's typical duties are imposed both under statute and under the terms of the contract, and its obligations typically include the following.

- Producing or procuring the drawings and specifications or its requirements for the works.
- Paying the contractor for works it has carried out in line with the terms of the contract and the CCA.
- Complying with its obligations under the Construction Regulations, which include:
 - (a) appointing a PSDP at or before the start of the design process;
 - (b) appointing a PSCS before construction work begins; and
 - (c) maintaining safety files and any information received in relation to them.
- Ensuring the works comply with the Building Regulations.
- Ensuring compliance with the Building Control Regulations, which will include:
 - (a) appointing an assigned certifier, design certifier and nominated builder;

(b) ensuring that all required certificates and notices are lodged with the relevant building control authority.

- Securing planning permission and any other permits required for the works.
- Granting possession of the site.
- Issuing instructions in a timely manner.

In general, an employer has the right to:

- the completion of the works for which the contractor has been paid;
- require the contractor to rectify any defects which arise during works;
- terminate the contract due to a breach or otherwise depending on the terms of the contract; and
- have the works completed by a specified date for completion.

Contracting Structure

The employer engages a contractor to carry out and complete works pursuant to the requirements of the building contract. Depending on the type of contract entered into, an employer may engage a design team which will remain responsible for the design of the works. Alternatively, the employer may engage the contractor as a design-and-build contractor, in which case the contractor will take on the design risk.

An employer often requires its written consent to be given prior to the appointment of any subcontractors and/or may provide an approved list of subcontractors. Building contracts usually hold the contractor liable to the employer for works carried out by its subcontractors. After the contractor engages the relevant subcontractors, direct legal relationships between the employer and subcontractors will usually be established through the provision of collateral agreements.

An employer will have a direct contract with a financier to facilitate the financing of a project (see 2.4. **The Financiers**).

2.2 The Contractor

Contractors in Ireland are typically incorporated building contracting companies or engineering companies.

A contractor's typical duties include:

- carrying out the works, in accordance with the works specification or requirements provided by the employer;
- ensuring the works are built in accordance with the Building Regulations, free from defects and, where any defects become apparent, rectifying these;
- building the works in accordance with the agreed time frames;
- ensuring the works are built in accordance with the Building Regulations, free from defects and rectifying defects which become apparent;
- ensuring that the works are complete by the specified date for completion;
- if the contractor is appointed as the nominated builder for the purpose of the Building Control Regulations, which is typically the case, co-operating with the assigned certifier and issuing, or contributing to the issuing of, various certificates both during the works and at completion; and
- if the contractor is appointed as PSCS, which is usually the case, managing and co-ordinating health and safety matters during the construction stage.

Generally, the contractor has the right to:

- payment, in accordance with the terms of the contract and pursuant to the CCA;

- an extension of time to complete the works and/or adjustments to the contract price, upon the occurrence of specified events, as set out in the contract; and
- suspend the works pursuant to the terms of the CCA in the event of non-payment by the employer.

Contracting Structure

The contractual relationship between the employer and contractor arises out of the building contract. See 2.1 **The Employer** for further analysis on the relationships between an employer and contractor.

A contractor will engage subcontractors to work on a project (as required), as described in 2.3 **The Subcontractors**.

A contractor's relationship with the design team will vary depending on the nature of the contract. If the contractor is responsible for works only, the contractor will generally not have any contractual relationship with the design team, but will often be required to co-ordinate and co-operate with the latter. A member of the design team will often be identified as the contract administrator of the building contract. If the contractor is a design-and-build contractor, it will either appoint the design team directly or the design team appointments will be novated from the employer to the contractor.

Often, contractors will have a direct contractual relationship with a financier through the provision of a collateral agreement, as described in 2.4 **The Financiers**, which a financier will usually need the employer to procure.

2.3 The Subcontractors

Entities performing subcontract works are typically incorporated entities or sole traders pro-

viding specialised services. A subcontractor will generally be one of several subcontractors appointed by a contractor for a project.

The particulars of the relationship between a contractor and subcontractor are usually delineated in a subcontract, and will be similar to a contractor's rights and responsibilities with respect to the employer under a main contract. Contractors will typically try to pass down liabilities and obligations from the main contract to the subcontract.

Contracting Structure

Subcontractors do not have direct contractual relationships with the employer. However, it is often a requirement of a building contract that the contractor procures the execution of collateral agreements from specified subcontractors in favour of an employer to create a contractual relationship between the employer and subcontractor. Subcontractor collateral agreements typically provide for the possibility for an employer to step in to the subcontract in lieu of the contractor upon the termination of the contractor under the main contract, or where the subcontractor seeks to terminate the subcontract.

An employer may also have an element of control with respect to subcontracting under the main contract, which will often grant the employer approval rights over the appointment of subcontractors. Employers will sometimes nominate or specify subcontractors that the contractor is required to engage.

Depending on the obligations of the employer to its financier, the contractor may also be required to procure collateral agreements from certain subcontractors in favour of the financier,

thereby creating a direct contractual relationship between the subcontractors and financier.

A subcontractor appointed by a contractor does not typically have any contractual relationship with design team members.

2.4 The Financiers

Funding of construction projects is generally obtained from domestic or international financial institutions or private equity funds. State and semi-state entities also fund key infrastructure and social housing projects.

A financier's rights will originate from a financing agreement with the borrower (typically the employer). Financiers usually reserve the right to approve the form of building contract, design team appointments and other ancillary agreements. Under the financing agreements, the financier will typically take security over the works, other assets of the borrower and construction contracts to which the borrower is a party. A financier will often appoint a project monitor who will be entitled to attend various site meetings, receive progress reports, and monitor payments to the contractor and design team.

Contracting Structure

Financiers will have a direct contractual relationship with the borrower, usually the employer, through the finance documents. A financier will have no initial direct contractual relationship with the contractor, design team, and subcontractors, but the finance agreements will generally oblige the borrower to ensure that those parties enter into a collateral agreement with the financier, thereby creating a contractual nexus. The collateral agreements in favour of the financier typically provide step-in rights to the financier.

2.5 The Designer

The design of projects in Ireland is usually prepared by incorporated entities of professional consultants but with certain elements of the works also designed by specialist subcontractors. Where a design-and-build contractor is engaged, it will take on primary responsibility for the design of a project.

A professional team in Ireland will usually be comprised of professional consultants appointed to carry out the design, as well as other entities appointed as assigned certifier and design certifier pursuant to the requirements of the Building Control Regulations and a PSDP pursuant to the requirements of the Construction Regulations.

Designers are generally required to:

- ensure the works are designed in accordance with the Building Regulations and any planning permission;
- carry out the design using reasonable skill and care, or, occasionally, ensure that the design is fit for purpose;
- procure and maintain an agreed level of professional indemnity insurance for an agreed period following the completion of the works;
- execute and deliver to the assigned certifier all necessary certificates required under the Building Control Regulations;
- ensure that they do not specify any materials that are deleterious to the works; and
- prove that they own the intellectual property rights in their design, and provide the employer with a licence to use the design.

Contracting Structure

The relationship that designers have with the contractor and the employer will depend on the method of contracting used for a project. In a traditional contract, the employer appoints the

design team, and the design team will have no contractual relationship with the contractor.

Where a design-and-build contract is used, the contractor will appoint the design team itself, or the design team will be engaged by the employer and novated to the contractor. In both scenarios, the designers will typically enter into a collateral agreement with the employer to ensure that the employer has a direct contractual link to the designers.

3. Works

3.1 Scope

The scope sets out the list of works, materials and services to be provided and performed by the contractor. It will typically contain designs, drawings and specifications. In some contracts (eg, for engineering projects) the scope will specify performance outcomes which must be met, and these will be measured against specified performance metrics.

The aim of the scope is to obtain a mutual understanding of each parties' obligations. In a design-and-build contract, the requirements for the works are sometimes framed in broader terms as the contractor will be ultimately responsible for the design of the works. In a construct-only contract, the employer sets out more detailed specifications to be provided by the contractor. The scope of works always forms part of the contract, and the contractor is required to build (and design, as applicable) in accordance with the scope. The scope of works is generally only subject to change by way of variations, or, occasionally, if there is a provision for design development during the project.

3.2 Variations

Under common law, unless there is an express contractual provision permitting the employer to vary the works, the employer is generally not entitled to instruct a variation without the contractor's consent. Most construction contracts do permit an employer to instruct a variation. A variation under a construction contract is generally proposed by the employer, but a contractor generally also has the right to propose variations. Following a variation instruction, a contractor will often be required to provide the employer with a detailed assessment of the time, cost, and programme implications of the variation. The employer may agree to the extension of time and contract price adjustments proposed, in which case the variation will proceed on this basis. An employer may be entitled to instruct a variation in the absence of an agreement on costs, in which case the price may be valued as follows:

- by reference to rates in a pricing document;
- on the basis of rates for similar work in the locality at the time the variation is instructed;
- or
- on the basis of a fair and reasonable valuation.

Time-related costs are often evaluated by the rates for preliminaries and overheads included in a pricing document, or by reference to any agreed daily rate of delay cost.

3.3 Design

The design and construction stages of the works can be combined or separated. Most works are carried out using the traditional method of contracting wherein the employer appoints and retains the design team. Under this method, the contractor does not take responsibility for the

design except for any design carried out by its specialist subcontractors.

Where a design-and-build contracting method is used, the contractor takes overall responsibility for both the design and construction of the project, including any design prepared by designers engaged by the employer who are then novated to the contractor.

3.4 Construction

During the construction of the works, the contractor is usually responsible for the management of the works including the provision of materials, resources, and subcontractors. On more sophisticated engineering projects, there might be multiple-package contractors appointed who are then managed by a construction manager on behalf of the employer. Employers' responsibilities during the construction process are generally confined to providing clarifications on design specifications and providing access to the site.

A subcontractor will be responsible for its specific works package, with the contractor having overall responsibility for its subcontractors.

3.5 Site

Unless a contract expressly provides otherwise, the common law position is that the contractor assumes responsibility for ground risk. The RIAI Contracts are silent on the issue, but the Public Works Contracts have an option for an employer to take some of the risk in relation to unforeseen ground conditions or to pass the entirety of the risk to the contractor.

Most employers will look to pass all responsibility for ground risk to the contractor. The employer might provide geotechnical surveys, and it is not uncommon for contractors to then

seek to rely on these. This reliance can give rise to entitlements for extension of time relief and adjustments to the contract price if conditions that differ from those outlined in a survey are discovered. Other contracts may provide time and cost relief if unforeseeable ground conditions are discovered without reference to a survey. Employers often include a warranty to the effect that the contractor has had an opportunity to inspect the site.

Construction contracts often provide for an extension of time in favour of the contractor if the works are delayed due to an archaeological discovery.

3.6 Permits

An employer is responsible for securing planning permission for a project and ensuring that certificates required under the Building Control Regulations are filed, although the employer may engage professionals to carry these out on its behalf. The types of other licences required will be dictated by the nature of the project. Responsibility for the procurement of other necessary licences or permits is often governed by the terms of a building contract. The following are common permits required:

- crane oversail licence;
- for energy projects – grid connection agreement, licence to generate and authorisation to construct;
- waste licences; and
- road closing licence.

3.7 Maintenance

The contractor is responsible for the maintenance of the works until practical completion. This then transfers to the employer at completion.

Generally, post-completion maintenance obligations are not included in construction contracts. However, for engineering projects, the employer will often enter into a separate maintenance agreement with an EPC (Engineering, Procurement, and Construction) contractor to maintain the asset for a specified period following completion of the works.

3.8 Other Functions

Contractors are typically only engaged to carry out the construction, and sometimes the design, of a project. An employer may engage a project manager to manage the overall project and a separate entity to operate an asset once complete. However, these entities will rarely be instructed to assist with other functions, such as the procurement of finance.

3.9 Tests

On most building projects, testing of specific elements of the works will be undertaken/overseen by the consultant for the relevant element and, if the tests are successfully passed, the consultant will inform the contract administrator who, in turn, will issue the relevant completion certificate/payment certificate.

On more complex projects involving an engineering component and/or supply and installation works, procedures similar to those set out in FIDIC forms of contract will apply wherein a contractor must pass tests on completion. After this, the works are taken over, with further tests carried out.

3.10 Completion, Takeover and Delivery

Construction contracts will generally set out detailed criteria to be met for works to be certified as being complete or having reached practical completion. Practical completion will not occur unless the works can be taken over and used for

their intended purpose except for any outstanding defects or snags of a trivial nature. Most contracts will also require the contractor to provide various documents at practical completion.

Takeover, as a separate process to completion, generally only occurs in contracts which require tests on completion, with the tests generally being as set out in **3.9 Tests**.

The Building Control Regulations require that a building/works be placed on a statutory register with accompanying documentation before the works can be opened, used, or occupied.

Irish contracts do not typically include a concept around the delivery of works.

3.11 Defects and Defects Liability Period

There is no legally prescribed minimum or maximum length of time for which a defects liability period (DLP) should last. Most standard-form contracts also leave the DLP length to be decided by the parties. It is common for a DLP to last between six and 12 months, although this period can often extend to two years. During a DLP, a contractor is contractually obliged to rectify any defects or snags notified by the employer. If the contractor fails to comply with such instructions an employer may be entitled to:

- appoint an alternative contract to rectify the defects at the contractor's expense; and/or
- deduct any retention held from the contractor.

It should be noted that while the expiry of a DLP relieves the contractor of an obligation to rectify defects notified thereafter, it does not usually extinguish a contractor's liability for defective works. Liability under a building contract or design appointment will typically run for six or

12 years. Further details on limitation periods are set out in **9.2 Restricting Remedies**.

4. Price

4.1 Contract Price

The most common pricing method used in Ireland on larger commercial contracts is a lump sum (fixed-price) contract wherein the contractor bears responsibility for quantities. A lump-sum contract is typically accompanied by a schedule of rates which assists with the valuation of variations. Other pricing methods used include:

- remeasurable contracts, in which a contractor will receive payment based on a measurement of the work actually completed, based on pre-agreed rates;
- guaranteed maximum-price contracts, with a fixed maximum value for the works, which will apply regardless of the costs incurred by the contractor; and
- cost-plus contracts, wherein the contractor recovers the actual costs of project plus an agreed fee or percentage for profits and overheads.

Milestone payments are often specified in a designer's professional appointment, but are rarely used in a construction contract.

4.2 Indexation

Clause 15 of the Public Works Contracts include a price-variation mechanism that allows for adjustment to the contract price based on a change in material and labour costs which is calculated by reference to index figures published by the Central Statistics Office of Ireland.

The RIAI Contracts do not contain any indexation, but clause 36 of the contracts provides

for adjustment to the contract sum where the price of labour and materials increases after the execution of the contract. However, clause 36 is typically amended at the behest of the employer so that the contractor takes on most – if not all – of the risk for price fluctuations.

4.3 Payment

Late or Non-Payment

Under the CCA, contractors and designers have the right to suspend works or services in the event of late payment, and will also be entitled to refer the matter to statutory adjudication. Parties may also have a contractual right to suspend works or services for late or non-payment, together with an entitlement to charge interest until the payment is made. Contracts may also provide for termination rights if money remains unpaid following the suspension.

Advance Payments

Advance payments are often made where long lead items are required on a project, and to assist with the contractor's cash-flow. These payments will often only be made if the contractor provides an advance payment bond and/or vesting certificates to the employer which confirms that ownership of the goods is conferred upon the employer.

Delayed Payments

Other than retention, delayed payments are not a typical feature of Irish construction contracts.

Interim Payments

Most building contracts provide for interim payments, generally on a monthly basis.

4.4 Invoicing

Typically, a contractor is required to provide a progress statement at set intervals, detailing the work carried out to date. Following the receipt of

this statement, the employer will typically issue an interim certificate which outlines the amount due to the contractor and, if the amount is lower than that claimed by the contractor, it will usually be accompanied by an explanation for the difference. The amount certified for payment will be paid within an agreed period thereafter. All invoicing and payments provisions in construction contracts will be subject to the requirements of the CCA.

5. Time

5.1 Planning and Programme

Building contracts usually require a contractor to provide a detailed programme of works, which is then agreed with the employer. This programme shows the planned order and timeline for performing the works. The programme typically divides the works into distinct elements and outlines the timing and key dates for each.

The programme often does not form part of the binding contract documents because it is a flexible management tool that must be regularly updated to reflect changes in site conditions, design, or sequencing, whereas contracts focus on binding outcomes such as completion dates and deliverables. Making the programme a contract document would require formal amendments for every change, would increase the contractor's risk, and could lead to disputes if discrepancies arise.

5.2 Delays

Where the contractor is delayed due to default of the employer or other event for which an extension of time entitlement will arise, the contractor usually must notify the employer within a specified time frame of the event and provide detailed particulars in order to claim an extension of time

and/or an adjustment to the contract price. In engineering projects, where the FIDIC Contracts are often used, a contractor is often required to give advanced warning of any potential delay.

Where the works are delayed due to contractor default, the employer may have an ability to instruct the contractor to accelerate the works and will usually be entitled to levy liquidated damages against the contractor if a completion date is missed.

Concurrent delay occurs when both employer and contractor events cause delay at the same time. Irish law does not have extensive case law on this but generally follows the English “*Mal-maison approach*” ie, if both parties contribute to the delay, in the absence of wording to the contrary, the contractor is entitled to an extension of time (even if there is also a non-relevant concurrent delay) but not to compensation for loss and expense during the period of concurrent delay. Most standard-form contracts do not explicitly deal with concurrent delay except for the Public Works Contracts, which explicitly state that contractors cannot recover costs for delay if one or more causes of the concurrent delay is/are not a compensation event(s), and the 2017 edition of the FIDIC Contracts, which acknowledges a contractor’s entitlement to time relief.

5.3 Remedies in the Event of Delays

The usual remedy available to an employer in the event of delay by a contractor is the application of liquidated damages at a pre-agreed rate (usually a fixed sum per day/week of delay), often expressed as the employer’s sole and exclusive remedy for delay. The agreed rates must be a genuine pre-estimate of the employer’s loss and, if not, the relevant provision may be deemed an unenforceable penalty clause. If there is no liquidated damages clause, or it is set aside, an

employer can still claim general damages for delay as damages that flow naturally from a breach of contract – provided the employer can prove the loss suffered.

In the case of delay caused by the employer, the contractor is usually entitled to an extension of time or the costs arising from the delay, subject to compliance with obligations around mitigation and notification.

5.4 Extension of Time

Most contracts contain an exhaustive list of delay events which entitle a contractor to an extension of time, and typically include:

- variations;
- force majeure;
- delay caused by the employer; and
- adverse weather events.

Contractors are generally required to notify the employer upon the occurrence, or within a specified time period, of such delay events. A requirement to provide notifications within prescribed time periods is often a strict condition precedent to the ability to claim an extension of time.

The assessment of the extension of time will depend on the wording of the contract, although most contracts simply provide that the extension will be “*fair and reasonable*”.

5.5 Force Majeure

Force majeure only applies if, and to the extent that, it is provided for in the contract. Where an event of force majeure occurs, the general approach is for an extension of time to be granted, a suspension of the requirement to perform contractual obligations, and a corresponding relief from liquidated damages. However, force majeure may also be grounds for termination of

an agreement if it persists for a specified period. There is generally no adjustment to a contract price due to force majeure.

The unamended RIAI Contracts provide for force majeure relief, but do not define force majeure. However, many bespoke contracts will prescribe a thorough list of force majeure events, and these events often must be: i) unforeseeable; ii) beyond a party's control; and iii) those with consequences that are impossible to avoid, despite exercising reasonable care.

5.6 Unforeseen Circumstances

There is no legislation in place covering unforeseen circumstances in construction projects, and any relief arising from these would be governed by the terms of the contract. Unforeseen circumstances which affect a project are generally governed by force majeure provisions.

In many contracts, particularly where FIDIC Contracts are used, a party's entitlement to relief for ground or site conditions might be linked to such conditions being unforeseeable as of the date of the contract.

5.7 Disruption

Disruption often refers to something that impedes the usual progress of the works, leading to reduced productivity, even if it does not necessarily delay the project. Standard-form contracts tend not to expressly provide for the issue of disruption or its consequences. In the Public Works Contracts the contractor's ability to bring a disruption claim is explicitly excluded, and only delay costs incurred from agreed lists of compensation events will be recoverable by the contractor. Time relief is generally confined to where works are delayed and does not usually extend to disruption.

Where one party disrupts another from performing its obligations under a contract, the courts have previously implied terms into construction contracts which can ground a claim for disruption in contract law. To ground a claim for disruption, the contractor will need to be able to point to detailed records which it has maintained. A contractor needs to be able to identify the direct effect caused by the disruption.

6. Liability

6.1 Exclusion of Liability

Under Irish law, liability cannot be excluded for:

- death or personal injury; or
- loss or damage arising due to fraud or fraudulent misrepresentation.

The Sale of Goods and Supply of Services Act 1980 provides for certain conditions in business-to-consumer construction contracts – eg, that goods will be of merchantable quality and that services will be provided with due skill and care. Liability for a breach of such implied terms can only be excluded in a business-to-consumer contract if such exclusions are fair and reasonable and brought to the attention of the consumer.

6.2 Wilful Misconduct and Gross Negligence

Both gross negligence and wilful misconduct are established common law principles but have been subject to limited consideration by the Irish courts. Neither term is defined in any legislation.

Under common law, wilful misconduct has the meaning of what a reasonable person would think the parties involved intended it to have within the terms of the contract.

The general common law understanding of gross negligence is that there is no clear distinction between negligence and gross negligence. This position was reaffirmed by the Irish Supreme Court case of *ICDL v European Computer Driving License foundation Ltd* (2012) 3 IR 327 which held that, while gross negligence was not a defined concept within Irish contract law, the court would endeavour to interpret it as a matter of contract construction. Gross negligence was interpreted to be “*degree of negligence*” where the duty of care involved has not been met “*by a significant margin*”.

References to wilful misconduct and gross negligence typically only arise in limitation on liability clauses wherein they are typically excluded from any limitation on liability.

6.3 Limitation of Liability

Contractors and designers often seek to limit their liability to a specified monetary amount. For contractors, that amount is often, but not always, set at the value of the contract. Designers typically seek to limit liability to an amount equivalent to the level of professional indemnity insurance held. As a matter of law, liability for (i) death or personal injury; or (ii) fraud; cannot be limited. Most limitation on liability clauses will generally state that these liabilities are not limited and typically also carve out the following from the limitation on liability:

- liability for damage to third party property;
- wilful default or gross negligence;
- claims arising from a breach of warranty as regards intellectual property rights; and
- in the case of a contractor, loss or damage to the works to which the all risks insurance is intended to respond.

Some construction parties often seek to introduce a net contribution clause which limits liability for damages in proportion to their own responsibility, rather than being held jointly and severally liable with other wrongdoers for the entire loss. This is often resisted by employers and financiers.

An employer’s liability is often limited to paying the agreed contract price as may be adjusted for variations and other agreed events throughout the project.

7. Risk, Insurance and Securities

7.1 Indemnities

Indemnities are generally put in place to reimburse an indemnified party should a particular type of known liability arise, and which stems from third-party claims against the indemnified party. Informed construction parties will generally resist wide indemnities for a simple breach of contract. Indemnities are generally drafted in favour of the employer, and indemnity obligations would typically include indemnities for:

- damage to third-party property;
- death or personal injury;
- causing a nuisance to third parties;
- a breach of warranties in respect of intellectual property rights; and
- putting the employer in breach of a notified third-party agreement.

7.2 Guarantees

In Irish construction projects, bonds and guarantees are key instruments used to manage financial risk and ensure performance.

A performance bond is typically provided by a contractor’s surety (usually a bank or insurer) to

guarantee completion of the works, or payment of damages for contractor default. These bonds are generally for between 5% and 15% of the contract price and are often on-demand or conditional – with the latter requiring proof of default on the part of the contractor. Conditional bonds are more common in the Irish market as they are cheaper for contractors to procure.

An advance payment bond secures the repayment of upfront funds provided by the employer, such as prepayments for materials, if the contractor fails to deliver the materials.

A parent-company guarantee is often used where the contractor is a subsidiary. It provides reassurance that the parent company will fulfil the contractual obligations if the subsidiary fails. This is particularly important where the subsidiary has limited financial standing.

Retention bonds may be used as alternatives to withholding retention money. These allow the employer to receive full payment if the contractor fails to comply with its defects liability period obligations.

7.3 Insurance

The types of insurance usually procured for construction projects are:

- professional indemnity insurance covering defective design and other professional negligence;
- public liability insurance covering loss or damage to third parties due to negligence;
- employers' liability insurance covering injury to employees; and
- all-risks insurance, procured by the contractor or employer, covering loss or damage to the works (for the full reinstatement value plus a contribution towards demolition costs and

professional fees) during the course of the works and, often, the defects liability period as well.

Other less common insurances taken out include non-negligence insurance, an owner-controlled insurance programme and latent defects insurance.

7.4 Insolvency

The insolvency of a party to a construction contract will usually entitle the counterparty to terminate the contract. An employer will generally be entitled to call on any performance bond following the termination of the employment of a contractor for insolvency.

7.5 Risk Sharing

Irish contracts generally seek to allocate risk to a specific party, but the sharing of responsibility for certain risks is becoming more common – particularly with the increased use of NEC Contracts and their focus on co-operation and collaboration.

Examples of where risks are shared include:

- ground conditions – a contractor may bear the risk for foreseeable ground conditions with the employer being responsible for unforeseeable conditions;
- price-variation clauses used in the Public Works Contracts, which allow for shared risk of material price increases or inflation; and
- design-and-build arrangements in which an employer may appoint certain designers and retain the risk for their design with the balance of the design risk being placed on the contractor.

8. Contract Administration and Claims

8.1 Personnel

Personnel who are critical to the performance of the project are often agreed by the parties, identified in the contract and referred to as “*key personnel*”.

The terms of the contract will usually require the contractor to ensure the named person(s) remains on the project and not be removed without the consent of the employer. Employers often have the right to instruct the removal of individuals for misconduct or incompetence.

8.2 Subcontracting

Employers will often agree a list of specific subcontractors to be appointed by a contractor with a right of approval for any further subcontractors to be added. The contractor will always remain responsible for the works and/or design carried out by its subcontractors, and will be liable to the employer for any loss or damage arising from subcontract works.

Subcontracts are generally not as detailed as main contracts except for significant subcontract packages on larger, more sophisticated projects. However, most experienced contractors will seek to pass down risk from their main contract with the employer to their subcontracts.

8.3 Intellectual Property

Designers and contractors with design responsibility will generally warrant that they own the intellectual property in the design but will grant the employer an irrevocable licence to use the intellectual property for all purposes connected to the works. The warranty is usually accompanied with an indemnity in favour of the employer for any alleged breach or infringement of third-

party intellectual property rights. The designer will generally not be liable for use of the intellectual property for any purpose other than that for which it was prepared or provided.

9. Remedies and Damages

9.1 Remedies

Typical employer remedies are as follows:

- damages for breach of contract;
- termination rights usually accompanied by a right to call on a performance bond or parent-company guarantee;
- an indemnity for damages/injury to third party property or persons;
- liquidated damages for delay; and
- the right to insist on the rectification of defects during the contract and a defect-liability period (which may be accompanied by right to keep retention).

Typical contractor remedies include:

- extension of time for delays caused by the employer or events outside the control of the contractor;
- suspension of the works for non-payment of fees under the CCA, which may be accompanied by a contractual right to termination; and
- the right to payment and, following a variation or other agreed events, an increase in the contract price.

Typical designer remedies are as follows:

- the right to payment and additional payment if required to perform additional services;
- termination rights for employer insolvency; and

- suspension rights for non-payment of fees under the CCA.

9.2 Restricting Remedies

Other than as set out at **6.1 Exclusion of Liability**, **6.3 Limitation of Liability**, **9.3 Sole Remedy Clauses** and **9.4 Excluded Damages**, construction contracts do not typically restrict the remedies available to a party. However, contracts will often contain express wording restricting the ability of a party to bring proceedings against its counterparty for breach of contract after an agreed number of years. Limitation periods are usually either six or twelve years, but are generally being dictated by the nature and cost of the project. In the absence of express wording, the liability period for a breach of contract, pursuant to the Statute of Limitations Act 1957, is twelve years (from the date of the breach) if the contract is executed under seal or as a deed, or six years (from the date of the breach) if the contract is executed under hand.

9.3 Sole Remedy Clauses

Sole remedy clauses are not common, with contracts often expressing that parties' common law rights, rights under statute and/or equitable remedies are reserved. It is not unusual, however, for liquidated damages to be an employer's sole remedy for delay.

9.4 Excluded Damages

Under common law, a party can recover damages for breach of contract only to the extent that those losses arise naturally from the breach, or, if the specific damages or losses were within the reasonable contemplation of both parties at the time that they contracted. Parties to construction contracts will sometimes also expressly exclude liability for indirect and consequential loss.

9.5 Retention and Suspension Rights

Retention Clauses

Retention is a common feature of Irish construction contracts as it offers security to employers that a contractor will comply with its defects liability period obligations. Generally, half of the retained amount is released at practical completion, with the balance released following the defects liability period. Occasionally, a retention bond is provided in lieu of retention.

Suspension Clauses

There is a statutory right for a contractor to suspend works under the CCA for non-payment. This right can be set out in the contract, which often provides the employer with suspension rights as well.

9.6 Termination

Determination by Employer

A contract will typically list several instances in which an employer can terminate the engagement of a contractor, but will generally always allow for termination for an un-cured breach of contract or where the contractor becomes insolvent. Following termination due to contractor default, the contractor is typically required to vacate the site with the employer being entitled to appoint a replacement contractor to complete the works at the contractor's expense. The employer will usually be able to call on any performance bond following termination for fault.

If an employer is entitled to terminate for convenience, the employer may not be able to call on a performance bond and the contractor may recover payment for completed work along with demobilisation costs and an element of profit.

Determination by the Contractor

A contractor is usually permitted to terminate its engagement under the contract due to the insol-

vency of the employer or persistent non-payment. A contractor's termination rights may be subject to the rights of a financier or other third party under a collateral agreement to step in to the building contract after the contractor gives notification of its intention to terminate the employer.

10. Dispute Resolution

10.1 Regular Dispute Resolution

The Irish courts are the primary institutions for the purpose of dispute resolution in Ireland. In descending order, the five tiers are:

- the Supreme Court;
- the Court of Appeal;
- the High Court;
- the Circuit Court; and
- the District Court.

In limited circumstances, the Irish courts may refer a dispute to the Courts of Justice of the European Union if the dispute involves interpretation of European Union law.

10.2 Alternative Dispute Resolution

The following alternative-dispute resolution procedures are often utilised in construction disputes in Ireland:

- *Conciliation* a voluntary confidential dispute-resolution process where an independent third party assists disputing parties in reaching a negotiated settlement. If a negotiated settlement is not reached, the conciliator will issue a determination which can be rejected by either party. If a party does not reject the determination within a prescribed time period, the decision will become binding.

- *Mediation* a confidential, consensual process where an independent mediator facilitates a negotiation between the parties in an attempt to reach a mutually acceptable outcome governed by the Mediation Act 2017.
- *Adjudication* a streamlined, statutorily mandated dispute resolution mechanism under the CCA that provides an independent, binding determination on payment disputes within a short time frame, typically within 28 days, to maintain cash flow and limit project delays.
- *Arbitration* a private binding dispute-resolution process where an independent arbitrator determines the dispute with procedures governed by the Arbitration Act 2010.

Other

- *Expert determination* – a consensual process whereby an agreed independent expert resolves technical disputes quickly issuing a binding decision on defined matters under the contract without court or arbitration procedures.
- *Project boards* – bodies established under a specific contract where disputes may be brought in the first instance.

The contract may specify an order of process for dispute resolution – eg, that a dispute should first go to a project board, and then to conciliation, before escalating to the courts. However, a contractor will always have recourse to adjudication under the CCA for payment disputes, irrespective of the contractual provisions.

Trends and Developments

Contributed by:

Barrett Chapman, Sinéad Martyn, Pádraig Godfrey and Sam McMahon

McCann FitzGerald LLP

McCann FitzGerald LLP is a full-service law firm, with offices in Dublin, London, New York, and Brussels, that offers expert, forward-thinking legal counsel to clients. Its construction practice is the market leader in Irish construction law, advising on projects from planning, procurement and contract negotiation to risk analysis and dispute resolution. Its sectoral experience spans commercial, residential, infrastructure, engineering, energy, technology, pharmaceuticals, and food and beverages. Also renowned for expertise in construction disputes, the firm acts for clients in adjudication, mediation, arbitration, and court proceedings.

With the largest construction team in Ireland, McCann FitzGerald advises developers, contractors, consultants, funders, landlords, tenants, purchasers, bondsmen, utility providers, and professional negligence insurers. Its clients and projects have included Ballymore, Hammerson and Lioncor/Ronan Group Real Estate, MSD, PM Group, Jacobs Engineering, FuturEnergy Ireland, Gore Street, the National Paediatric Children's Hospital, the Land Development Agency, Transport Infrastructure Ireland, Dublin Airport Authority, Statkraft, the Housing Finance Agency, and Irish Water.

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The firm's E&P Group is one of the largest in Ireland, with deep and extensive knowledge across the sector, including in respect of the application process, challenges to planning approvals, and environmental assessment. Sinéad has significant experience advising on the development of large infrastructure projects from project inception to implementation, including in respect of judicial review challenges. She is a former chairperson and current council member of the Irish Environmental Law Association and lectures on planning and environmental law for the Law Society and Trinity College Dublin.

IRELAND TRENDS AND DEVELOPMENTS

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Commercial Development

There have been modest improvements in occupier and investor demand within the Irish commercial development sector. Irish property indices show that the third and fourth quarters of 2024 generated the first positive quarterly returns since June 2022.

Demand in the office sector is increasing, particularly from companies seeking to expand or upgrade the quality of their offices. There was a reported 60% increase in office space transacted in 2024 versus the previous year. It is expected that demand for office space will continue to be headed by professional services firms, along with internet communication technology firms and healthcare. Sustainability is still a leading concern for the office sector, which is shown to prioritise sustainable building credentials more than any other sector in commercial real estate. Preference for office space with the highest sustainability scores, particularly in Dublin city centre, will remain a key trend for both occupiers and investors. Buyers are increasingly seeking reputable energy efficiency ratings such as the Leadership in Energy and Environmental Design (LEED) and the Building Research Establishment Environmental Assessment Method (BREEAM) certifications.

The supply of office space has also increased, with many pre-pandemic projects coming to completion in 2024. The rate of vacancy for office space has increased to 16%, the highest since 2014 and one of the highest vacancy rates in Europe. However, vacancy rates relating to A-rated buildings are expected to fall throughout the next two years with the pipeline of office projects relatively narrow. Reports suggest that 62% of office development projects expected to complete throughout 2025 and 2026 are already pre-let. Limited supply, particularly of higher sus-

tainability buildings, could become a concern for the market post-2026. This could potentially lead to a renewed interest in retrofitting older stock offices where the lead-in time might be less than for a new project. However, retrofitting faces viability issues, particularly if coupled with a requirement for a high sustainability score.

Retail development continues to draw the largest amount of investment in the sector, owing, particularly, to the trading of various large-scale shopping centres. Revival in market demand and the growing potential for high returns will likely see continual committed investment in the Irish retail real estate sector. Aside from the brick-and-mortar stores, the sustained mass movement of retail to online e-commerce creates a rising demand for industrial space. Logistics and warehousing facilities in Ireland are in particularly high demand due to the country's role as a major distribution hub for Europe. However, a current shortage in supply of industrial space results in increasing rental prices and decreasing square footage secured by occupiers.

Social Housing

Ireland's population has been disproportionately outgrowing its housing supply, resulting in changing targets and inconsistent projections for housing suppliers to aim towards year after year. The government's recent approval of the Final Revised National Planning Framework sets the target of building an additional 50,000 homes per annum to 2040, a sharp increase from the previous target of 33,000 homes per annum to 2030 noted in its Report of the Housing Commission last year. As this figure increases, so does the requirement for social housing. The Housing Commission has set a target to increase the proportion of social and cost-rental housing to 20% of national housing stock. Government figures indicate that some progress is being made to

increase the supply of social housing: a total of 10,595 new homes were added to social housing stock in 2024, with 7,871 new builds, 1,501 acquisitions, and 1,223 leases. However, this figure fell short of the government's 2024 target of 12,930.

As seen by the increasing figures in relation to overall housing targets, a key number that needs to increase gradually is the 7,871 new builds that have been added to the country's social housing sector. There are several key players in the social housing sector who are responsible for housing delivery, some of which are listed as follows: the Land Development Agency (LDA); the Housing Finance Agency (HFA); and Approved Housing Bodies (AHB).

The LDA aims to facilitate housing provision generally. Under the Land Development Agency Act 2021, the LDA:

- manages and develops certain relevant public lands and prepares that land for development to facilitate the provision of housing for the public good; develops housing on relevant public land; manages and provides housing for rent and or purchase;
- develops local authority sites for housing; and
- acquires relevant public lands.

The HFA provides finance to AHBs for the acquisition and development of social housing projects. AHBs are bodies approved under the Housing (Miscellaneous Provisions) Act 1992 to provide financial assistance for the building, purchase or renovation of housing. Following a steady exodus of international investors from the Irish residential property market over recent years, AHBs and the HFA have become a significant feature of the Irish residential property with many developers increasingly opting to sell

entire developments to an AHB rather than individual purchasers. The HFA lends to AHBs at competitive financing rates which enables developers to avoid high financing costs when selling to an AHB through a forward-funding arrangement.

In May 2024, the Report of the Housing Commission was published, identifying key principles for reforming Ireland's overall housing policy. The Commission was tasked with reviewing the wide-ranging challenges to housing delivery in Ireland and considering the formulation of a long-term (post-2030) housing policy, building on the suggested changes outlined in the government's *"Housing for All"* action plan and related government policies. The Report is a key starting point when assessing the potential future developments of Ireland's social housing sector. The Commission suggested industry members avail themselves of diversified sources of finance in the sector, including new sources of private and non-profit finance. The Report called for the increasing of the HFA's remit to act as a debt placement agency to better raise and allocate finance amongst borrowers. The Report also suggests differentiation must be made between the funding of large and small AHBs, with increased funding allocated to larger AHBs with a greater role in future output. The Report also suggested that larger AHBs should be encouraged to build on their own land, ending the over-reliance on turnkey developments and acquisitions.

Renewable Energy

Ireland's renewable energy market is undergoing rapid growth. The significant ramp-up of investment in the sector is in answer to mounting pressure to achieve national and global sustainability targets. The recently published Programme for Government reaffirms Ireland's commitment to a 51% reduction in emissions from 2018 to

2030 and net-zero emissions by 2050. In addition, the Programme for Ireland, together with the recent government approval of the Climate Act Plan 2025, reaffirms Ireland's ambitious targets of 9GW of onshore wind capacity, 8GW of solar capacity, and at least 5GW of offshore wind capacity connected to the grid by 2030. These targets all serve a wider goal to supply 80% of electricity demand by renewables by 2030. In response, there has been major development in the renewable energy sector in Ireland, particularly in both wind and solar power. Construction of the first new offshore wind projects is likely to commence by the end of this decade.

Ireland currently has around 1.5GW of installed solar capacity, with several new projects expected to commence in 2025. These farms will help move the country closer to its goal of 8GW of installed solar capacity by 2030.

Onshore wind farms continue to be the leading generator of renewable energy in Ireland, providing more than a third of Ireland's electricity demand. Ireland reached a key milestone of achieving over 5GW of onshore wind capacity at the end of 2024, meaning Ireland is closer than halfway to its Climate Action Plan target of 9GW by 2030.

The Irish Government held its first offshore wind auction in 2023, awarding state contracts to four projects with a total combined capacity of over 3GW. Successful projects included the North Irish Sea Array Wind Farm (a joint venture between Statkraft and Copenhagen Infrastructure Partners), Dublin Array Offshore Wind Farm (a joint venture between RWE Renewables and Saorgus Energy Ltd) and Codling Wind Park (a joint venture between Olsen Seawind and EDF Renewables). A further two offshore projects were awarded an alternative route to market,

bringing the combined total capacity of all offshore wind projects to over 4GW. All six offshore wind farm projects have since submitted their respective planning applications. Pending successful determination, it is expected that five of these six projects will commence development before the end of this decade. In 2024, Ireland published its first draft sub-national, forward maritime spatial plan for future offshore renewable energy. On top of this, a second offshore wind auction run by the Irish Government is expected to take place later this year, procuring 900MW of offshore renewable energy.

It is likely we will see the renewable energy sector engaging further with new technologies, particularly in grid infrastructure and storage. There will be a greater focus on long-duration storage technologies and interconnectors, given their importance in developing a more resilient and efficient electricity grid. There has been ongoing work to accelerate reinforcement of the electricity grid, with a number of key projects in development. This includes the construction of new interconnectors such as the 500MW Greenlink Interconnector to Great Britain, which became operational this year, and the 700MW Celtic Interconnector to France, to become operational in 2027. This will be the first time the Irish grid will be directly connected to Europe, improving Ireland's energy security and allowing the export of Irish-generated power.

However, the rising momentum behind renewable infrastructure projects is currently bottlenecked by delays within the planning system and grid capacity issues. It is expected that with additional resourcing of the planning process, planning reform (as discussed below), and important judicial review decisions that will inform the path for other renewable energy pro-

jects, renewable projects will be able to move through the planning stages with greater speed.

Geopolitics and Foreign Direct Investment

As a small open market economy, Ireland is particularly exposed to global trade friction and supply-chain constraints. The close political and economic ties between Ireland and the US have been a key contributor to Irish economic prosperity since the 1980s. The Irish exchequer has benefitted greatly, particularly in recent years, from the corporate tax receipts of US multinational corporations located in Ireland. Any repatriation of US multinationals to the US could significantly hurt the Irish economy, not only through the loss of corporate tax revenues but also indirectly through reductions in inward investment, employment and income taxes. In particular, Ireland has benefited economically from the presence of large US technology and pharmaceutical companies, both from a tax revenue and inward investment perspective. Rising uncertainty may temper the appetite for inward investment and potentially lead to the pausing or reversing of plans by US multinationals to construct offices, manufacturing and other industrial facilities in Ireland.

International trade tensions, and tariffs in particular, have the potential to boost the cost of procuring materials for construction projects, thus impacting the viability of construction from a cost perspective. Should this occur, it is likely to have a negative impact on construction activity in Ireland. Tariff risk is also likely to become a key feature of negotiation in Irish construction contracts. Most construction contracts provide for an increase to the contract price if legislative enactments result in the imposition of new unforeseen tariffs or duties following the execution of the contract. It is likely that many clients will now seek to impose the risk of increased

costs due to increased tariffs on contractors or reach an accommodation with the contractor around the sharing of such risk.

Planning

In the delivery of infrastructure, housing, and renewable energy, planning delays are often recognised as a serious source of difficulty. Developers cite delays in the processing of planning applications, a high risk of judicial review challenge, and an unwieldy regulatory framework as examples of issues slowing delivery of much-needed projects. In response to this, the Government promised an overhaul of planning law to tackle these issues.

In October 2024, the Planning and Development Act 2024 (the “2024 Act”) was signed into law. This is the third largest piece of legislation enacted in the history of the State. As of the date of writing (May 2025) the majority of the 2024 Act remains to be commenced. The Government has published an implementation plan outlining its plans for commencement of various chapters of the 2024 Act from Q1 2025 on a phased basis. As commencement occurs on a phased basis this will slowly begin to repeal existing planning legislation, the Planning and Development Act 2000, in its entirety.

The 2024 Act will introduce changes to key areas, including:

- the plan-making process;
- renewal of the planning appellate body currently known as *An Bord Pleanála*
- changes and streamlining of the development consent process; and
- reform of the judicial review process.

These key changes are discussed in further detail below.

The changes to the plan making process include attempts to align the plan making process more coherently with the National Planning Framework, to ensure that development plans reflect plans and policies set at a strategic level. The 2024 Act also extends the life cycle of development plans from six to ten years, with the aim to give investors and developers greater certainty over zoning. The 2024 Act also provides for the replacement of local area plans with specific types of area-based plans, depending on the area involved.

The 2024 Act provides for *An Bord Pleanála* to be renamed *An Coimisiún Pleanála*, with a significant revision to the body's corporate structure. The new *Coimisiún* will have a greater separation of corporate, decision-making and governance functions. These changes arise as a result of reports and investigations carried out into the work of *An Bord Pleanála* in recent years which highlighted the need for a division of corporate and planning functions.

Changes to the development consenting process are intended to accelerate decisions on planning permission, with new mandatory timeframes introduced for decisions made by *An Coimisiún Pleanála*. Mandatory timeframes for planning decisions already exist in respect of decisions made by local planning authorities.

Reform of the judicial review system proved to be the most controversial aspect of the 2024 Act as it passed through the legislative process. At the commencement of the legislative process, the first Bill produced provided for sweeping changes to rights of access to the Courts and significant constraints to the ability of certain bodies to challenge planning decisions by way of judicial review. By the time the 2024 Act was enacted, these provisions had been significant-

ly diluted. The changes now introduced by the 2024 Act include the following.

- Removal of the initial requirement to seek the leave of the High Court prior to commencing a judicial review challenge (challenges can be commenced by way of notice for motion under the 2024 Act).
- Constraints on the ability of unincorporated bodies such as residents groups to take judicial review challenges (note these challenges can still be taken by the relevant individuals acting in their own names).
- Changes to the costs provisions for judicial review cases. The 2024 Act provides for an environmental civil legal aid scheme to be established to provide financial assistance to persons and organisations bringing proceedings. It also provides for a costs cap on judicial review challenges, with the intention that if an applicant is successful in their judicial review challenge they will only be entitled to payment of their legal costs at a capped cost.

Commencement of the 2024 Act has been slow. Primary planning legislation is supplemented by substantive secondary legislation (planning regulations), which outline details and specifics as to how the planning system operates. New planning regulations are awaited and much of the 2024 Act cannot commence pending the finalisation of these regulations. These regulations, once published, are expected to be of a similar, or longer length, than the regulations they will replace (the Planning and Development Regulations 2001, as amended), which run to over 600 pages.

The 2024 Act was long awaited, and was promised to deliver reforms to the planning system intended to reduce delays, increase efficiencies, and make it easier to deliver much-needed infra-

structure. Many of the changes introduced by the 2024 Act are welcome, and should make delivery of key infrastructure quicker. In general, however, the 2024 Act does not appear to be any simpler or more straightforward than its predecessor. With the introduction of any new legislation there is a process of settling in, and, given the length and complexity of the 2024 Act, we expect this to include a period of upheaval as the parties get to grips with the changes introduced.

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