

# MHC TIMES

Website Compliance

A Public Affair

Selling Your Business

Focus on Real Estate

Innovation and Entrepreneurship



Mason Hayes+Curran



Mason Hayes+Curran

## Editor's Welcome



Ailbhe Gilvary

Out with the old and in with the new! Welcome to the first issue of MHC TIMES produced from our new office in Barrow Street, Dublin 4. The move has been long anticipated but thanks to the diligence, patience and attention to detail of so many people, and in particular our partner Kevin Hoy, it was utterly painless. We look forward to welcoming you all here at our new offices in the near future.

In this issue, you will find a profile on our real estate department. This introduces you to the key people and identifies some exciting developments in this area. This marks a new trend for MHC TIMES and so in future issues, we will focus on other units / departments.

*Ailbhe Gilvary*

# MHC TIMES

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# Managing Partner's Diary

## Ireland

Ireland continues its seemingly endless pattern of economic growth and expansion. Government tax receipts continue to beat forecasts, quarter by quarter. Although the economy seems ever more robust, the corresponding challenges facing Ireland become even more stark and apparent. The need for enhanced and better focused investment in the national health service, and in roads and other infrastructure becomes more and more apparent as time goes by. The country simply must match and exceed the legitimate expectations of its citizens and business community in these matters, and our government faces real challenges in securing their delivery.

## Mason Hayes+Curran

In April of this year Mason Hayes+Curran shut the doors on its six old office buildings in Dublin 2, and moved to our new state-of-the-art headquarters in Dublin's south docklands. We now inhabit South Bank House, a magnificent and bright building of the highest quality, with some of the best views in Dublin. We are dispersed over five working floors, two conference floors and one general amenity floor containing a café, gymnasium and other features. The contrast with our previous accommodation could not be more marked. The morale of our staff is at an all time high, and we are experiencing new efficiencies in our work methods, to the real benefit of our clients and our staff. We have moved our art collection to South Bank House, and have purchased several new pieces in recent months, to further enhance the style and atmosphere of our new workplace. The artistic highlight of our building is a brand new Corban Walker sculpture installation which graces our building atrium, to dramatic effect.

## Real Estate

One of the features of Ireland's current economic condition is the incredibly active and busy real estate market we are experiencing. Mason Hayes+Curran's real estate department is headed by Declan Curran. In this issue he, together with his colleagues Vanessa Byrne, Elizabeth Roche and Sharon van Sinderen write about aspects of their business, and some particular features of our local real estate market. They work in a vibrant and growing economic sector and are alert to many new types of business opportunity in Ireland and abroad, which are available to Mason Hayes+Curran's client base.

## Public Affairs

Mason Hayes+Curran always seeks new opportunities to better serve the needs of its markets. We have recently taken the innovative step of establishing a public affairs and lobbying business under the leadership of Dr. Brian Hunt. Although public affairs and lobbying are recognised practice areas for many U.S. and British law firms, our offering is innovative in the context of the Irish market. Brian Hunt and his team give a comprehensive government and parliamentary communications and lobbying service, together with deep legislative drafting expertise. They have excellent political and administrative connections, and real expertise in how to achieve concrete results for their clients.



Declan Moylan

## Sponsorship and Support

Over the past few months we have supported and initiated two very significant business projects. First, we have supported the DCU Ryan Academy for Entrepreneurship in its summer 2006 Visiting Professor lecture series. The Academy, supported by Mason Hayes+Curran, arranged for six distinguished U.S. based business academics to teach masterclasses at the Academy, targeted at Ireland's business and entrepreneurial sectors.

Secondly, Mason Hayes+Curran has entered an alliance with the MBA Association of Ireland, the association for Irish-based MBA graduates. This arrangement involves the provision by Mason Hayes+Curran of educational and business support to MBA graduates establishing or expanding Irish-based businesses. Mason Hayes+Curran thus demonstrates its interest in and commitment to the education and prosperity of Ireland's young business persons and entrepreneurs.

## Recruitment and Expansion

Our new location presents us with the opportunity of expanding our business through a targeted recruitment process. We can offer lawyers joining Mason Hayes+Curran a work environment of style and efficiency, as well as great career paths in one of Ireland's most innovative law firms. You can expect to hear about significant recruitment developments in future editions of MHC Times.

Declan Moylan  
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## A Public Affair...



Dr Brian Hunt

### Burden of Legislation

The volume of legislation in Ireland, as in many countries, is rapidly growing, with businesses increasingly burdened with finding ways of accommodating new regulations and indeed watching for and understanding what they have to do in order to remain compliant. This has arisen due to governments of recent times becoming progressively more dependent upon legislation as a means of giving effect to policy decisions.

This in no way reflects on the current administration, but rather, is a trend which has been evolving for several years now. The burden of regulation on business is such that it has now reached the stage where it is impacting on businesses ability to grow, and in turn, Ireland's competitiveness. This view is supported by successive surveys which show the level of impact which this increased tendency towards regulation is having.

To give an indication of the scale of the legislative burden which businesses face today, last year alone, over 900 statutory instruments were made, compared with about 500 in 2000, so the volume of statutory instruments has almost doubled in a five year period. Whilst the number of Acts being enacted on an annual basis remains relatively stable, Acts are growing in their size and complexity.

### White Paper

However, the outlook is surprisingly positive. The "Better Regulation Agenda" which began with Delivering Better Government in 1996, all the way up to the O.E.C.D. Report in 2001 on Regulatory Reform in Ireland, has given rise to the Government's White Paper entitled Regulating Better which was published in 2004.

The White Paper proposed a number of key initiatives, some of which have the potential to reduce the burden of regulation on business.

### Alternatives to Regulation

In view of the persistent volume of legislation, one of the proposals contained in the White Paper is designed to place the obligation on Departmental officials to consider alternatives to regulation. While this might not in itself be a radical or new proposal, it does seem to indicate that the authors of the White Paper found considerable evidence in existing legislation, which showed that alternatives had not been considered. In advocating this, the Taoiseach envisaged a "greater recourse to information campaigns, taxes, incentives, fines and other policy instruments." And he cited the plastic bag tax as a perfect example of such a measure.

Before any proposal for primary legislation can be put before Government, the proposal must be scrutinised in accord with the terms of the Quality Regulation Checklist which is appended to the Cabinet Handbook. The first question in the Checklist gives an indication of its importance:

"Is the proposed legislation and/or regulation absolutely necessary? Is the problem correctly defined and can the objective be achieved by other means (i.e. improved information, voluntary schemes, codes of practice, self-regulation, procedural instructions)?"

The Checklist contains 5 further points against which draft secondary legislation could equally be tested. Particularly in view of the rate at which the body of statutory instruments is growing, an exercise such as this would have a real contribution to make in ensuring that the only statutory instruments which are made are those which are not only necessary, but justified.

The making of regulations, and the preparation which precedes the making, is not required to be subject to the same rigors as a proposal for a Bill. In order to help stem the growth-rate of secondary legislation, it is hoped that the Better Regulation process will give rise to a situation whereby any proposal for a statutory instrument must first be tested against the Quality Regulation Checklist, in the same way as proposals for primary legislation must.

### Consultation on Draft Legislation

Also as a direct result of the White Paper, Government Departments are becoming more open in how they approach policy making. In July 2005, the Taoiseach also launched a document entitled Reaching Out: Guidelines on Consultation for Public Sector Bodies.

The document is designed to guide public servants through the various steps involved in embarking on a consultation process, as well as advice on how to manage the process as well as assessing the results.

Before finalising any significant new piece of draft legislation, Government Departments invariably embark on a formal consultation process. That gives businesses and other parties an opportunity to assess how the proposed law might impact on them, and to propose changes.

Examples of Bills which have been the subject of recent consultation include, the Building Control Bill, the Intoxicating Liquor (Codification) Bill, the Electronic Communications Bill, and most recently, the Medical Practitioners Bill.

### Regulatory Impact Assessments

Another way in which Government Departments have changed their approach to policy making is through what is known

as “Regulatory Impact Assessment”. In plain terms, what this means is that before making significant new laws, Government Departments must actively consider the impact which a new law will have on its intended audience.

In July 2005, the Taoiseach launched a document entitled Report on the Introduction of Regulatory Impact Analysis (RIA). Its publication marks the completion of the pilot phase in RIA, and the development of a model of RIA for use across the Civil Service.

The Report indicates that a two-phase approach to RIA will be adopted. The first phase, known as a Screening RIA, is applied in all cases where RIA is required. The second phase, or Full RIA, will only be utilised in relation to more significant proposals.

It is envisaged that RIAs will be prepared by the officials charged with overseeing the introduction of particular regulatory proposals. It states that the Screening RIA should apply to all primary legislation which proposes changes to the regulatory framework apart from the Finance Bill and some emergency, security or criminal legislation. The Screening approach is also expected to be used for significant Statutory Instruments. In circumstances where the Screening RIA suggests that the proposals are particularly significant in terms of costs or impact, a Full RIA should then be conducted.

## Your Role in Shaping Legislation

With Government Departments now willing to listen to parties which are interested in their policy making and legislative activities, businesses now have an opportunity to reduce, and in some instances, reverse, the negative impact which some legislation might otherwise have on their business.

In order to be effective, communicating a message to a political audience is more likely to be successful if it is communicated in a way which policy makers and legislators understand. In practical terms, this means that where a Government Department invites views on a piece of draft legislation, a submission to that Department should not only feature a critical analysis of the draft legislation but crucially, it should also feature a series of draft amendments to the Bill, which seek to remedy the areas of concern. Those amendments should be accompanied by reasoned arguments for their acceptance.

For the first time in many years, clients are being afforded an opportunity to contribute to the shaping of legislation, or the policy thinking behind that legislation. Consequently, there is little point in complaining that a particular piece of legislation is somewhat onerous or draconian, if the opportunity to contribute to the shaping of that legislation, was ignored.

## Public Affairs Team at Mason Hayes+Curran

Clients have increasingly been coming to us, asking if we will conduct a review of proposed or existing legislation, with a view to formulating proposals for change, which reflect the concerns of the individual client, which can then be put to the relevant Government Department.

It is in that context that Mason Hayes+Curran has established a public affairs practice to service the needs of our clients. One of the core functions of any lawyer is to advocate on behalf of his or her client; and so it follows then that advocating a client's cause and articulating his or her concern is one of the core functions of the public affairs team.

Other aspects of our work include:

- Advising clients on how to formulate their message for a political audience;
- Making sure that the client's message is communicated to policy makers and politicians – through meetings, presentations, briefing documents;
- Drafting amendments to legislation to reflect the client's concerns and arguing for their acceptance;
- Monitoring the emergence of new policy ideas, and preparing submissions to feed into the shaping of policy in Government Departments;
- Monitoring activities in the Dáil and Seanad, as well as at EU level;
- Localisation advice to international companies locating in Ireland, providing guidance on the regulatory environment, government priorities, and the workings of the political system.

Whilst lawyers have traditionally advised on the enacted law which governs our clients, one of the focus areas of the public affairs team is very much on advising clients on how to influence and shape policies and laws before they become set in stone and enacted.

Though relatively recently established, the team has already attracted a number of high-profile clients, and has made representations on behalf of our clients to Ministers of State, Departmental officials, Oireachtas Committees, as well as members of the opposition.

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# Grooming your business for sale



Suzanne McNulty

The process of grooming a business for sale involves taking a thorough and critical look at your business through the eyes of a potential purchaser. This allows you to identify weaknesses, devise solutions, maximise strengths and eliminate any possible surprises before a prospective purchaser comes on the scene. The purchaser will not be prepared to take on any risk and one should always assume that it will carry out a thorough investigation and use any weaknesses uncovered in negotiations on price and terms. The key to negotiating a good deal is to be prepared before going to market. The following are some general guidance tips on grooming to help you get your house in order.

## Trading Relationships

Review customer and supplier relationships and record any informal arrangements in writing. Make sure that these relationships will continue after the sale.

Analyse customer and supplier profiles. Over-reliance on any particular business relationship is a weakness. Focus on diversifying.

Re-tender supplier contracts where possible in order to reduce costs and drive profits up.

## Tax Review

Ensure all taxes are paid up to date and any tax reliefs available to the business are being claimed and utilised to maximum effect.

## Financial Review

Accurate and complete records are essential. Assess the balance sheet for items that can be removed or restated to reflect the true economic value of the business. Where accelerated depreciation has been used, obtain current market valuations. Implement a system for the effective management of receivables and reduce risk of bad debt.

Prepare a business plan to facilitate keeping the business focused and demonstrating future potential. Scrutinise your customers and their respective spend over the last three years to identify growth areas.

## Employee Review

Review management and employee teams and eliminate or minimise any shortcomings. A strong management team which will guide the company through the change of ownership will impress a purchaser. Consider putting in place an equity participation scheme for key employees to keep them motivated and reduce the risk of them leaving if the business is sold.

Formalise contracts of employment with each employee and include appropriate non-compete and confidentiality provisions. Where the business owns or develops intellectual property, provisions should be included in the contracts of employment to ensure that all ownership rights vest in the business.

## Legal Review

Collate your legal paperwork including licences, permits, leases, title to property, contracts, insurance policies and make sure everything is up to date and readily available for review.

Identify all intellectual property owned or used by the business and ensure all licences are in place. Make sure that all trademarks and patents owned by the business are registered and all filings are up to date.

Review all existing and potential litigation in order to ensure adequacy of any contingent liabilities that might arise.

Audit compliance with any legislation applicable to the business for example, health and safety, environmental, data protection and consumer related legislation.

Bring all company statutory books up to date and ensure all statutory filings have been made in the Companies Registration Office.

Put a confidentiality agreement in place before disclosing any information to a purchaser about your business.

## Professional Advice

The business should not be adversely affected by the sale process so that value is maintained. Choosing a team of professionals (solicitors, accountants, corporate financiers, tax advisors) will enable the continued operation of the business and the sale process to run in tandem. They will be able to:

- advise on valuation;
- advise on transaction structures and the taxation implications;
- assist in identifying and contacting prospective purchasers;
- put the legal paperwork in place to implement the chosen structure;
- advise on the pitfalls and protect your best interests;
- manage the sale process;
- assist in negotiations and completion of the deal.

## Conclusion

Never underestimate the magnitude of what you are taking on. Fail to prepare... prepare to fail.

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Mason Hayes+Curran

# Real Estate

## Introduction

Boom or bust? What will the next 12 months bring? Will the three recent interest rate increases and the prospect of three further increases slow activity in the real estate sector? Will the increased supply of houses and apartments be sufficient to meet the apparently insatiable demand? Who knows? Like the boy who cried wolf, economists have been predicting a slow down for years. Certainly there does not appear to be any slow down from what we can see. Demand for development sites and opportunities remains strong. Developers are looking at novel ways of acquiring properties. Hotels groups, supermarkets and petrol stations have all been targets for those seeking to realise profit from the properties owned by these enterprises. The companies are worth more for development than they are as going concerns! In any event a lot of money has been expended over the past few years in the acquisition of development sites which will ensure continued activity in the construction sector for the foreseeable future. Hopefully this will continue to keep all of us here in the real estate department of Mason Hayes+Curran gainfully employed.

The Registration of Deeds and Title Act 2006 has recently been enacted and shortly the Land and Conveyancing Law Reform Bill 2006 will become law. These pieces of legislation are important steps in trying to drag conveyancing practice kicking and screaming into the 21st century. They are intended to facilitate a move towards E-conveyancing which is something we here in Mason Hayes+Curran welcome. The next edition of MHC Times will contain an article highlighting the principle changes effected by the legislation.



Declan Curran

Head of Real Estate



# Real Estate Investment Trusts



Sharon van Sinderen

On 14 December 2005, the British Government published for consultation, draft legislation to enable the creation of UK real estate investment trusts (REITs). Final draft legislation appeared in the 2006 Finance Bill and companies will now be able to join the new REITs regime from 1 January 2007.

## What is a REIT?

A REIT is a close-ended company or trust that holds, manages and maintains real estate for investment purposes. A REIT allows investment in professionally managed portfolios of real property held for long-term benefit.

The UK-REIT is expected to win widespread support and attract a wave of investment into real estate in the UK.

## Why REITs?

The current framework of property investment means that investing in commercial property is restricted to investors who are capable of investing hundreds of thousands of pounds.

REITs will improve liquidity for real estate transactions because shares will be traded rather than assets. Shares will be primarily traded on major exchanges, making it much easier to buy and sell REIT shares than to buy and sell real estate in the private market.

As a result, the REIT will allow the UK public to invest their savings in managed property funds. Investors can invest in a balanced portfolio as even a small sum can be spread across many properties.

The other main attraction is of course that REITs are fully tax transparent quoted vehicles.

REITs will be able to distribute the majority of their income to investors without taxation at a corporate level provided that certain conditions are met.

As REITs must distribute 90% of their taxable income as dividends to shareholders they instill confidence in the marketplace. Historically, REITs have low volatility, tend to be stable and offer an attractive return to investors and because there is no minimum investment requirement REITs will be open to all.

## What will a REIT look like?

- A REIT will need to ring-fence investments in real estate forming a tax-exempt business and distribute at least 90% of net income profits from such business to investors.
- At least 75% of REIT activity must relate to a “qualifying property letting business” both by reference to profits and assets.

- A REIT must hold a minimum of 3 properties. A single property must not exceed 40% of the value of all the properties.
- A REIT must have no other borrowings apart from normal commercial loans.

There are a barrage of conditions to be met by a company in order for it to qualify for conversion to REIT status, and some of these are listed below.

- It must be listed on a recognised stock exchange.
- It must be a body corporate tax resident solely in the UK. REITs will not be open to foreign companies.
- It must not be an open ended investment company or a “close company”.
- It's only issued shares must be ordinary shares of one class and these must be listed on a recognised stock exchange.

## REITs: The law firms' perspective

It appears that law firms in the UK are responding positively to the REITs phenomenon.

The move towards managed property funds such as REITs in the UK market means that property transactions are becoming increasingly complex and sophisticated. The role of the traditional law firm within real estate is changing and firms must now be in a position to provide corporate and tax advice as part of a versatile real estate team. For commercial property clients today, the real value of conveyancing transactions seems to be in the provision of clever structuring solutions that law firms can offer, rather than the actual conveyancing itself.

## The impact

It is expected that REITs will have a huge impact on the UK real estate sector. These recent developments in the UK lead us to the interesting prospect of an Irish REIT. However, many in the Irish property industry believe that if it is ever to happen in Ireland, it will be many years before REITs are introduced, probably due to the size of the Irish real estate market in comparison with markets abroad. However, there is nothing to prevent Irish investors investing in REITs overseas and in theory, at least, it seems a very attractive prospect.

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# Real Estate News

## Mason Hayes+Curran act in major windfarm projects

Mason Hayes+Curran real estate department recently acted for Nord Bank, in financing two major windfarm developments by Airtricity in the Republic. This is an exciting venture for our team, who are developing an unparalleled expertise in the area of renewable energy, and who were selected by Airtricity as their preferred legal adviser for the lender. The first development is a €60m project at Bindoo Windfarm, Co Cavan, while the second is a large windfarm development in Limerick.

## New opportunities for landlords and tenants

One of the major obstacles facing landlords and tenants, outside of the office sector, is the inability for parties to contract out of landlord and tenant rights. It has long been the view of parties to these commercial transactions, that in a commercial situation, contracting out of these rights should be permitted. The Civil Law (Miscellaneous Provisions) Bill, 2006, Section 57, seeks to enable any business tenant to contract out of its right to renewal of a lease under the Landlord & Tenant Act of 1980. This will enable landlords and tenants to enter into leases for longer periods, without the landlord giving renewal rights to a tenant.

## Retail development in Limerick

The real estate team is excited to be involved in a major retail shopping development in Limerick. Site assembly has almost concluded and the development is in the final planning stages. This sophisticated development will be one of the largest retail development centres ever in Ireland, with a strong interest already from high level, high quality tenants.

## HSQ launch

Mason Hayes+Curran recently acted for Rhatigan Commercial Developments in the purchase, and ongoing development of the HSQ site (formerly Westgate) near Heuston Station, Dublin 8. This is a landmark site in Dublin, and was one of Ireland's major property transactions of the year. Our work on this project is ongoing, including a launch of residential and commercial units.

## Daniel Liebeskind Theatre

The team has been instructed by the proposed operator of the new Daniel Liebeskind Theatre at Grand Canal in Dublin, which conveniently will be visible from the department's prime position on the fifth floor of South Bank House! This project is a dynamic one which we are excited to be involved in, working from the beginning and watching the project take roots as the theatre is developed.

## Retail work continues

We continue our work for a number of large retail clients in the Republic of Ireland, including Subway, fast growing into one of the largest franchises in Ireland.

## Point Theatre development

Mason Hayes+Curran were delighted to be appointed as Irish legal advisers for Live Nation, and are particularly delighted to be acting on their behalf in relation to the refurbishment of the Point Theatre, which is one of the major projects involved in the redevelopment of the Docklands Area.

## Mason Hayes+Curran attend Altana opening

An Taoiseach, Bertie Ahern was the guest of honour at the recent opening of the Altana Pharma plant in Cork. The real estate team acted for Altana in the acquisition of this site. Altana Pharma is an exciting client, not just for the real estate team but for the firm as a whole, given our expertise in the life sciences area.

## New Property Registration Authority

Conveyancing practice and procedure has long been seen by real estate lawyers in this jurisdiction as time consuming and confusing. The new Registration of Deeds and Titles Act 2006 is based largely on Law Reform Commission recommendations. It is a significant step towards modernising the conveyancing process and an important part of a larger reform which will ultimately lead to 'E-Conveyancing', or online, paperless conveyancing. Most importantly, it establishes a body called the Property Registration Authority, which will eventually replace both the Registry of Deeds and Land Registry. The main aim of the P.R.A. will be to promote and extend the registration of ownership of land.

## Conveyancing Reform

Another exciting piece of legislation for real estate lawyers is the Land and Conveyancing Law Reform Bill 2006. This most far reaching piece of real estate legislation, if enacted, will abolish many ancient land law principles and practices which have been in existence for centuries. The Bill also aims to simplify the law in relation to easements and rights of way, trusts of land, co-ownership. The law in relation to Mortgages will also be simplified and improved.

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Elizabeth Roche

# Commercial Office Development



Vanessa Byrne

In a commercial office project the real estate lawyer's input can be broken down into four stages:

- Site Assembly;
- Design Phase;
- Construction Phase; and
- Negotiating the Leases.

## Site Assembly

In the early stage of development issues arise as to who holds the title to the land and what is the most efficient way for the developer to acquire title, i.e. either by outright purchase, lease or licence. At this stage it will be vital to consider issues such as zoning, access roads, existing buildings on site, the environmental condition of the site, access to services, rights of way and easements to ensure the full development value of the site can be realised. Tax planning will be important now and different structures may be considered to minimise Stamp Duty and VAT costs.

## Design Phase

At the design phase planning permission will come to the fore. The professional team should be on board at this stage and will have a vital input in terms of obtaining a planning permission which maximises density and marketability of the scheme.

The developer/owner of the commercial office project will need to produce evidence that all planning permissions have been complied with in full and that all financial contributions have been paid before any tenant will take possession, and vitally, start paying rent. At this stage the requirements of the funding banks should be considered as they will want to have a sign off and approval on Letters of Appointment for all of the professional team including architects, engineers, quantity surveyors, project managers and will require Collateral Warranties in their favour. It will also be necessary to obtain warranties for the main contractor and any sub-contractors.

A tenant of the office development will typically seek Collateral Warranties in their favour so these issues should be addressed at an early stage.

## Construction Phase

During the construction the lawyers and project managers need to communicate to advise on progress and how the building programme is advancing in order that clear communication with would-be purchasers and tenants can be maintained. Practical or substantial completion will be important trigger dates so all sides need to be geared up for the relevant handover events. If a tenant is doing their own fit out they may be seeking access to the construction site to

commence this and insurance issues as between the builders all risks cover and the tenant will have to be addressed. The developer and tenant will often enter into a Development Agreement to govern the relationship during the Design and Construction Phase.

The developer will also enter into a Building Contract with a Building Contractor who has very often tendered successfully for the construction work.

## Negotiating the Lease

Usually the negotiating of the terms of the lease under which the tenant will occupy will have been an ongoing event happening simultaneously with the Design Phase and Construction Phase. If the tenant has specific fit out requirements and the building is being built to their specific needs an Agreement for Lease will be entered into governing these issues. An office development may have single or multi occupancy tenants. The tenants bargaining power may be stronger if they are taking a whole building. Ideally the developer/landlord wants each tenant to occupy under a full repairing and insuring lease for a term of 20 years or more. This is essential to protect the value of the development.

## Co-ordination

The legal team and the project management team need to understand each others roles. It is useful for both sets of professionals to meet on site early and to identify key areas as well as appreciate the project on the ground. Regular meetings throughout the project are highly recommended to keep both sets of professionals fully apprised of each others issues.

The project manager will often have a co-ordinating role with regard to the other professionals and so needs to understand the legal paperwork that will be required to cover issues such as appointments of professionals, collateral warranties in favour of tenants and funders and the nuances of the Building Contract and generally the legal paperwork in terms of how financial risks are split as between all of the parties.

Ideally the legal team will come on board at the very beginning of the process. If the Building Contract has already been signed it may be very difficult to satisfy the bank's requirements in terms of step in rights and collateral warranties and getting the funding through can be an uphill battle.

It is also much more attractive in terms of bringing in investors and tenants if there is a well documented history of how the transaction is progressing in terms of signed building contracts, appointments, evidence of PI cover and collateral warranties as well as the more usual property planning and title documentation.

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## An Innovative Sponsorship



In 2006 Mason Hayes+Curran was involved in an exciting sponsorship with DCU Ryan Academy for Entrepreneurship. This partnership involved sponsoring a series of masterclasses presented by world renowned business faculty professors to the DCU Ryan Academy. The overall theme for this year's Visiting Professor series was innovation and the need for Irish businesses to become more entrepreneurial in their quest for increased growth. Each Visiting Professor looked at innovation from a different angle and challenged the assembled audience of Irish business persons to think differently in their day-to-day business operations.



### The visiting professors for 2006 included:

|                              |                          |
|------------------------------|--------------------------|
| Professor Joe Lassiter       | Harvard Business School  |
| Dr. Thomas Esselman          | Harvard University       |
| Professor Liam Fahey         | Babson University        |
| Professor Dan O'Neill        | Arizona State University |
| Professor Dennis Shaughnessy | Northeastern University  |



The masterclass series brought together a number of Irish business people from varied backgrounds to listen to experts within the innovation and entrepreneurial field. The events were considered to be an outstanding success.



## Mason Hayes+Curran News

### South Bank House

On Tuesday 18th April 2006 Mason Hayes+Curran made the move from Georgian Dublin to Dublin's rapidly developing south docklands area.

South Bank House comprises 60,000 sq. ft. of innovative open plan office space with state of the art technology to support our move from a traditional law firm atmosphere to the most modern law firm environment in Ireland.

Both clients and staff have been reporting on the pleasant and friendly atmosphere which pervades South Bank House, and the marked ease of adjustment by our staff.

Facilities at South Bank House include a staff dining facility (described recently in the Irish Times as a "funky café"), a staff gym, client training suite, library and a fifth floor garden terrace.



## MBA Association of Ireland



Mason Hayes+Curran has partnered with the MBA Association of Ireland (MBAAI) to offer a new range of services to emerging entrepreneurs.

Mason Hayes+Curran joined forces with Bank of Ireland, one of MBAAI's strategic alliance partners to deliver a regional roadshow on the legal and financial practicalities of establishing a business. Pictured above is Martin Kelleher and John Kettle of Mason Hayes+Curran with Denis McCarthy Chief Executive, MBAAI at a recent roadshow.

## Mason Hayes+Curran Football Team



Mason Hayes+Curran's soccer team had a somewhat mixed season in 2006. A number of transfer market coups early in the year promised a return to former glories for the lads. However, adherence to pre-season training and diets was somewhat scuppered by the move to the new building with its in-house café, serving chocolates and pastries. Some players found it hard to adjust to the pace of early season games and the poor start saw Mason Hayes+Curran miss out on the coveted top four play-off spots in the summer solicitors' league. The departure and retirement of some heavyweights plus the influx of new trainee blood indicate a bright 2007.

## Financial Services Golf Outing



The financial services department hosted its annual golf outing at The Royal Dublin Golf Club on 26th May last. As well as being a challenging links course, the club was founded by a group of Scottish bankers in 1885 so it was an appropriate location. Strong winds challenged the teams as they made their way around, but an enjoyable day was had by all. Pictured above is Kevin Hoy, head of financial services department with his (winning) team on the day.

## Is Your Website Legal?



Robert McDonagh

Have you conducted a legal audit of your website and online ordering procedures?

Nearly every business has a website, whether it is simply for information purposes or for selling goods or services. Yet, how many businesses are aware of the legislation which applies to websites and e-commerce transactions?

For example, a survey by the Irish Data Protection Commissioner of public sector websites in 2004 found that only 22% had adequate privacy statements compliant with the Data Protection Acts and the Electronic Communications Regulations. A majority of websites (56%) had no privacy statement at all. It is likely that similar if not higher figures apply to private sector websites.

A few important questions which you may want to consider are set out below:

- Do you own your website, or is, for example, the intellectual property in the website design retained by the designer? Paying for it does not necessarily mean you own it!
- Does your website bind you to fulfil orders that may be out of stock, or to provide goods and services at mis-quoted prices?
- Do you perform online consumer contracts within 30 days, as required by the Distant Selling Regulations, or have your contracts been drafted to negate this obligation?
- Did you know consumers can cancel certain online contracts within seven days without cause or cost (this period is longer for certain financial services transactions)?
- Are prices quoted on your website compliant with pricing legislation?
- Does your website contain the minimum prescribed information and conditions, as set out under the eCommerce Regulations?
- Does your website comply with the minimum procedural requirements prescribed by the eCommerce Regulations?
- If you sell electrical and electronic equipment online, does your website comply with the WEEE Regulations?
- Is your website accessible to persons with disabilities as required by equality legislation?
- Is your website factually accurate, or could it be construed as misleading advertising?
- Do you have a privacy statement on your website in a prominent place, to comply with the Data Protection Acts?

- If your website uses cookies, have you adhered to the specific rules set down in the Electronic Communications Regulations?
- Do you have a web hosting agreement in place with the company that hosts your website, as required by the Data Protection Acts? What happens under it if your website goes down?
- Have you checked the reliability of your web hoster? If not, you may not have complied with your obligations under the Data Protection Acts.
- If your website server is located outside the European Economic Area, have you entered into a data transfer agreement in order to comply with the Data Protection Acts?
- Some websites are not structured in such a way as to legally bind purchasers to the applicable sales terms. Is yours?
- Are your terms and conditions unfair and, thus, unenforceable under the Unfair Consumer Terms Regulations?
- Do you need website terms of use?
- Do you engage in direct marketing? If so, are you doing so in compliance with the Data Protection Acts and Electronic Communications Regulations?

The eCommerce boom of the last decade has brought with it many benefits to society as a whole. Quick and easy access to information and the ability to transact business online has benefited many consumers and indeed businesses in their day-to-day activities. However, failing to address the above issues can have significant business and legal implications. For this reason, your online business activities and processes should be regularly reviewed to ensure you protect your interests. Otherwise, you may expose yourself to undue business losses due, for instance, to poorly constructed or non-binding terms and conditions or, in extreme cases, be subjected to prosecution and fines. The Data Protection Commissioner already illustrated his enthusiasm in this respect when he brought the first successful prosecution in Europe under the Electronic Communications Directive.

This article is a mere snapshot of the many issues pertaining to online business dealings. A more comprehensive article can be viewed at [www.mhc.ie](http://www.mhc.ie)

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## Closing argument...

A teacher collected well known proverbs.

She gave each child in her class the first half of a proverb and asked them to come up with the remainder of the proverb:

“Strike while the... insect is close.”

“Never underestimate the power of... ants.”

“Don't bite the hand that... looks dirty.”

“If you lie down with dogs, you'll... stink in the morning.”

“It's always darkest before... Daylight Saving Time.”

“You can lead a horse to water but... how?”

“No news is... impossible.”

“A miss is as good as a... Mr.”

“You can't teach an old dog new... maths.”

“Love all, trust... me.”

“The pen is mightier than the... pigs.”

“An idle mind is... the best way to relax.”

“Where there's smoke there's... pollution.”

“Happy the bride who... gets all the presents.”

“A penny saved is... not much.”

“Two's company, three's... the Musketeers.”

“Don't put off till tomorrow what... you put on to go to bed.”

“Laugh and the whole world laughs with you, cry and... you have to blow your nose.”

“Children should be seen and not... smacked or grounded.”

“If at first you don't succeed... get new batteries.”

“You get out of something only what you... see in the picture on the box.”

“When the blind leadeth the blind... get out of the way.”

And now for the Young Scientist of the year...

“When you breathe, you inspire. When you do not breathe, you expire.”

“H<sub>2</sub>O is hot water, and CO<sub>2</sub> is cold water.”

“Nitrogen is not found in Ireland because it is not found in a free state.”

“Water is composed of two gins, Oxygen and Hydrogin. Oxygen is pure gin. Hydrogin is gin and water.”

“Mushrooms always grow in damp places and so they look like umbrellas.”

“The pistol of a flower is its only protection against insects.”

“The tides are a fight between the Earth and moon. All water tends towards the moon, because there is no water in the moon, and nature abhors a vacuum. I forget where the sun joins in this fight.”

“A fossil is an extinct animal. The older it is, the more extinct it is.”

“Many women believe that an alcoholic binge will have no ill effects on the unborn foetus, but that is a large misconception.”

“Equator: A managerie lion running around the Earth through Africa.”

“Germinate: To become a naturalised German.”

“Magnet: Something you find crawling all over a dead cat.”

“Momentum: What you give a person when they are going away.”

“Planet: A body of Earth surrounded by sky.”

“Rhubarb: A kind of celery gone bloodshot.”

“Vacuum: A large, empty space where the pope lives.”

“Vacuums are nothing. We only mention them to let them know we know they're there.”

“Some oxygen molecules help fires burn while others help make water, so sometimes it's brother against brother.”

“Some people can tell what time it is by looking at the sun. But I have never been able to make out the numbers.”

“We say the cause of perfume disappearing is evaporation. Evaporation gets blamed for a lot of things people forget to put the top on.”

“I am not sure how clouds get formed. But the clouds know how to do it, and that is the important thing.”

“Clouds just keep circling the earth around and around. And around. There is not much else to do.”

“A monsoon is a French gentleman.”

“Isotherms and isobars are even more important than their names sound.”

“It is so hot in some places that the people there have to live in other places.”

“Wind is like the air, only pushier.”



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