State-Funded Bodies
Transacting Real Estate

Kevin Hoy, Partner
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Estate Portfolio Management

Mason Hayes & Curran

Martin Bourke
Head of Estate Management
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Property Reform Background

- Property Reform is part of Public Service Reform Plans 2011-2013 and 2014-2016
- Property Asset Management Delivery Plan published in July 2013
- Outputs under that Plan include:
  - Protocols for intra-State Transfer and Sharing (DPER Circular 11/2015)
  - Policies for Acquisition and Disposal of Property (DPER Circular 17/2016)
  - An on-line mapping register of all property owned or leased by Public Service bodies (the State Property Register)
Three inter-linked Reform outputs

- While each of these three Property Reform outputs can stand on their own, they are interlinked, and the “Whole is greater than the sum of the parts”.

- The **Register** is useful in itself as an inventory but it is the piece that can facilitate more efficient use of the State Property portfolio.

- The **Protocols** on Transfer and Sharing are only of use if you know what surplus property is available. The State Property Register provides a platform to advertise surplus property.

- The **Policy** on Acquisition and Disposal ensures that decisions to acquire, dispose or hold are soundly based and take the wider State Property Portfolio view.
Second of the two Circulars issued, but it comes first as it is mainly about making the decision to dispose, acquire or retain.

Each State Body is responsible for managing its own property but should view publicly owned property from a State perspective rather than just that of the organisation.

The Policy promotes good management of Property through good decision making on acquisition and disposal including identifying surplus property.

The Policy looks for regular review of your property portfolio to:
- Identify surplus property (including parts of a property)
- Expanding or contracting needs
- Innovative ways of using or sharing property
Business Case Requirement

Good Decision Making

The Policy asks for a Business Case for an **Acquisition** or for the **Disposal** or the **Retention** of surplus Property

**Business Case:**
- Define the Objective or Need
- Explore Options
- Quantify Costs
- Identify Risks
- Decide on Preferred Option
- Make a Recommendation to the Decision Making Authority
Hierarchy of Disposal

Once a Property has been identified as Surplus then the methods of disposal should be considered in the following order:

1. Transfer or Share with another Public Body
2. Dispose on Open Market
3. Hold Property or Consider other uses (including licensing to Community)
If you have surplus property the first option for disposal is by way of transfer to another State body. “Advertise on Register for at least one month”.

If you need a property the first place to look is the State Property Register to see if another State body has a suitable surplus property.

If there is a match then the Protocol provides for an independent valuation by the Valuation Office which is binding on both parties.

The Protocol provides for a more efficient use of the State Property as the Property Portfolio can be viewed as a whole rather than as hundreds of subsets.

Property can be valued and transferred more efficiently. Conclude within six months as a rule.

It prevents State bodies competing against each other, and private interests for the same property.
40+ Properties in Portlaoise Town area
4 Surplus Properties
Summary

- Public bodies are required to adopt a more holistic view of State property

- Public bodies need to know their own governance arrangements

- The State Property Register is the first port of call once a decision has been made to acquire or dispose of property.

- The protocols provide guidance on the rules of engagement

- The ultimate objective is to ensure that State property assets are optimised for the benefit of the citizen.

- Get all necessary advices
State-Funded Bodies
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Nicola Byrne, Partner
6 September 2017
Background and Context

Public service reform plans pursuant to McCarthy Report

Objective of OPW chaired steering group

Recommendations of Property Asset Management Delivery Plan

- inventory of State property
- standardised transaction protocols
- title registration/perfection

Aim to achieve efficiency and sustainability
What’s New?

• Existing legal and regulatory environment
  – governing legislation
  – internal governance practices and procedures
  – directions, codes, regulations, guidelines and circulars

• Code of Practice for the Governance of State Bodies
  – revised and updated edition effective from 1 September 2016
  – new prior sanction requirement for material transactions
  – new provisions regulating property acquisition
  – new standardised protocols for property transactions

• Greater emphasis on accountability and transparency in efficient use of resources
Nature of the Rules

Strict legal effect?

Framework/guidelines for application of best practice

“Comply or Explain” feature
Application of the Rules

State bodies not defined
  – central Government departments
  – non-market State agencies, boards and regulators
  – local authorities
  – statutory education boards
  – commercial/semi-State bodies

Application criteria
  – legislation/statutory basis
  – directions, codes, regulations, guidelines and circulars
  – funding and financial statements
  – appointments
  – public service pension scheme
Real Estate Matters

(1) Property acquisition

(2) Intra-State transfer of property

(3) Occupational interests

(4) Portfolio management
(1) Property Acquisition

(A) New provision 8.22 of the Code
   – new prior sanction requirement for material transactions

(B) New provision 8.24 of the Code
   – new provisions regulating property acquisition

(C) DPER Circular 17/2016 – Policy for Property Acquisition
   – new standardised protocol for property acquisition
   – acquisition appraisal process
(2) Intra-State Transfer of Property

(A) New provision 8.22 of the Code
   – new prior sanction requirement for material transactions

(B) DPER Circular 17/2016 – Policy for Disposal of Surplus Property
   – new standardised protocol for surplus property disposal
   – disposal appraisal process
   – hierarchy of method of disposal

(C) DPER Circular 11/15 – Protocol for Intra-State Transfer
   – new standardised protocol for transfer between State bodies
   – streamlined disposal process
   – clawback of profit on future disposal
(3) Occupational Interests

(A) DPER Circular 17/2016 – Policy for Property Acquisition
   – new standardised protocol for lease acquisition
   – pro forma lease provisions

(B) DPER Circular 11/15 – Protocol for Intra-State Transfer and Sharing
   – new standardised protocol for transfer and sharing of property
   – methods of disposal of occupational lease
   – pro forma licence to occupy between State bodies
(4) Portfolio Management

(A) Key reform action identified in OPW Report

(B) New provisions 8.24(ix) and (x) of the Code

(C) DPER Circular 17/2016 – Policy for Property Acquisition
Takeaways

Aim to achieve efficiency and sustainability

Framework/guidelines for application of best practice

Consult legal advisor:
- property acquisition
- property disposal
- occupational lease
- sharing arrangements

Strong focus on ongoing portfolio management
Contact us

Kevin Hoy
Head of Real Estate
+353 1 614 2124
khoy@mhc.ie

Nicola Byrne
Partner
+353 1 614 5237
nbyrne@mhc.ie

Martin Bourke
OPW
+353 1 647 6353
martin.bourke@opw.ie

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