

# MICHAEL F DOLAN & CO.

Certified Public Accountants

Park House, 41 Main St.,  
Loughrea, Co. Galway  
T- 091 - 841518  
F- 091 - 842663  
E - michael@michaelfdolan.ie  
www.michaelfdolan.ie

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## COMPANIES ACT 2014 PART 2

Since our last article the Companies Act, 2014 has commenced and is operating for just six weeks. Despite some hiccups the Companies Registration Office have managed the transition very well and are processing registrations quite well.

On the other hand, companies have not yet built up any momentum in actively converting to either an 'LTD' or a Designated Activity Company (DAC). To date (31 July) out of an active population of 192,554 live companies a total of 1,183 companies have actively converted to a new corporate form. As predicted, 1,150 of these have become 'LTD's with no main object clause and capacity to become single director. Whereas only 33 have converted to being a Designated Activity Company with 5481 'film' companies and other tax driven entities being prominent.

To continue our summary of CA2014, you should be aware of the following:

### Key changes to Companies Limited By Guarantee (without share capital) (CLG)

- Will continue to be the corporate form for many charities, management companies, sports clubs and 'not for profit' organisations generally.
- May have a single member
- May become Audit Exempt (- but not if a member objects)
- Can dispense with holding of physical AGM ONLY where there is a sole member

One notable innovation, that CLG's can now convert into LTD's. However, now that CLG's can also become exempt from Audit it is debatable as to how many will take this option.



Continued



**Key changes to Public Limited Companies (PLC's)**

Public Limited Companies represent a very small percentage of the number of companies registered in the Republic of Ireland.

- May have a single shareholder (New)
- Minimum issued Share Capital of €25K before commencing to trade (down from €38,092)
- Can dispense with physical holding of AGM ONLY where there is a sole member/shareholder
- Directors must prepare a 'Compliance Statement'

**Key changes to Unlimited Companies (ULC's)**

The most common form of Unlimited Company will be the Private Unlimited Company having a share capital.

- May have a single shareholder
- Will be able to reduce share capital and make distributions
- Can dispense with holding of physical AGM ONLY where there is a sole member/shareholder
- Directors do NOT need to prepare a 'Compliance Statement' if company meets the requirements

Another notable innovation is that Unlimited Companies will be able to convert to Limited and then back again – provided accounts are filed in CRO. Previously companies could only convert to Limited/Unlimited on a one time only basis.

**Summary Approval Procedure**

A standardised 'Summary Approval Procedure' has been introduced which will simplify how companies will deal with, what were previously restricted or prohibited transactions, specifically:

- Financial Assistance in purchasing own shares (Previously required a S60 Declaration)
- Reduction in Share Capital (Previously required application to High Court)
- Variation of Capital in re-organisations
- Treatment of pre-Acquisition losses/profits in holding company
- Loans to Directors/connected parties
- Mergers of Private Companies (now permitted, as well as divisions)
- Members Voluntary Winding Up (Previously required statutory declaration on Form 12)

**Directors Duties**

For the first time the duties of Directors have been codified and are set out in one location in legislation. It should be noted that these duties apply to ALL Directors, including De facto Directors and Shadow Directors.

**Offences now categorised**

Offences are now categorised on a scale of 1 to 4 as follows:

- Category 1 – Conviction on indictment/ imprisonment of up to 10 years/ or a fine of up to €500k or both
- Category 2 – Conviction on indictment/5 Years/ up to €50k or both
- Category 3 – Summary Offence/Six Months/Class A fine or both
- Category 4 – Summary Offence – Class A fine only
- Class A fine = not exceeding €5K

For example, not displaying a company's name "in a conspicuous position" is a Category 4 offence (S.49 CA 2014), whereas the

failure to notify the Registrar of Companies of any increase/decrease in share capital is a Category 3 offence (S92/93 CA2014).

At the higher end of the scale, mutilation or falsification of a book or document relating to a company's affairs is a Category 2 offence (S. 877 CA 2014) along with a restricted/disqualified person acting in relation to a company (S855 CA2014) and entering into any arrangement which breaches the rules on loans to Directors/Connected persons (S239 CA2014)

Intent to defraud creditors is a Category 1 offence (S722 CA2014)

**Directors Compliance Statements**

This obligation was first introduced in 2003 but never commenced as it was considered to be too onerous. It has now been re-introduced.

- Applies to all PLC's (*Except investment companies*)
- Applies to LTD's/DAC's/CLG's which have a turnover €25m+ and a Balance Sheet total of €12.5m+
- Directors must declare compliance with 'relevant obligations' (*i.e. where failure to comply would be a Category 1/Category 2 or Tax law offence*)

The Directors annual report must contain a statement which acknowledges that they are responsible for securing the company's compliance with its 'relevant obligations' Failure to comply is a Category 3 Offence i.e. maximum fine of €5,000 and/or maximum prison sentence of 6 months (summary conviction only).

**Other changes of note**

- Audit Committee now required for 'large' private companies i.e. Bal. Sheet €25M+ and T/O €50m+
- Loans TO Directors/connected persons must be in writing with terms set out otherwise presumed to be repayable on demand AND attract interest. Loans FROM Directors must also be in writing with terms set out otherwise may be considered as a 'gift' and may not rank with creditors.
- Audit Exemption for small Groups i.e. combined t/o less than €8.8m, b/s €4.4m, 50 employees
- Audit Exemption for 'dormant' companies in a Group
- Increase in penalties where not keeping proper books leads to insolvency
- Voluntary Strike Off now on a statutory basis – However ALL Directors must sign application
- No Annual Returns/Accounts required where Voluntary Strike Off/Member Voluntary Liquidation commenced
- Company Secretary must have relevant qualifications/expertise
- CRO Penalty Fees Waiver arrangement to cease – Application must be made to District Court. Audit Exemption will be restored IF application is successful
- Liquidators must be formally qualified

For further details please see the CRO's Website under the heading 'Whats New 2015'

[www.cro.ie/About-CRO/Contact-Us/Whats-New](http://www.cro.ie/About-CRO/Contact-Us/Whats-New)

[sean@formations.ie](mailto:sean@formations.ie)



**Tax Tip**

It is never too early to start planning for a Tax Efficient retirement... with most industries starting to see a pick up in business... it is important to put a plan in place to ensure your hard work pays you dividends in the future.... Talk to us today and get the ball rolling!

**START UP RELIEF FOR ENTREPRENEURS (SURE)**

If you are interested in starting your own company you may be qualify for the Start Up Relief for Entrepreneurs (Sure) which is a tax relief incentive scheme. Depending on the size of your investment you may be entitled to a refund of income tax (capped at 41% of your investment) paid over the 6 years prior to the year in which you invest.

Some of the key criteria which must be satisfied are:

1. Establish a new company to carry on a qualifying trade
2. Have mainly PAYE income (Employment Income) in the previous 4 years.
3. Take up full time employment in the new company
4. Invest cash into the new company by way of purchase of new shares

Talk to us today if you think you might be entitled to a refund or indeed if you are starting a business be sure and get the right advice from the outset.



**NEW SUBSISTENCE RATES**

Civil Service Subsistence rates have been changed with effect from 1 July 2015.

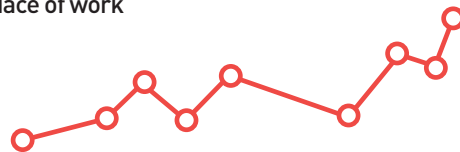
TABLE OF DOMESTIC SUBSISTENCE RATES EFFECTIVE FROM 1 JULY 2015

Overnight Allowances			Day Allowances	
Normal Rate	Reduced Rate	Detention Rate	10 hours or more	5 hours but less than 10 hours
€125.00	€112.50	€62.50	€33.61	€14.01

Amendments have been introduced to the application of rates as follows:

The distance requirements provide that:

- An overnight allowance which covers a period of up to 24 hours from the time of departure, as well as any further period not exceeding 5 hours, will only be payable free of tax in respect of an absence which is necessarily spent overnight at least 100km away from the employee's home and normal place of work and
- A day allowance, which applies to a continuous absence of 5 hours or more, will only be payable free of tax where the absence is not at a place within 8 km (as opposed to 5 km) of the employee's home or normal place of work



**NEW TAX CLEARANCE PROCEDURE**

An electronic Tax Clearance (eTC) will be introduced from 1 January 2016, whereby all applications for tax clearance will be made through the new electronic Tax Clearance system. The up-to-date tax clearance status of customers will be available to be checked online by Public Service Bodies, taxpayers and their agents on an ongoing basis as required.

Applicants will apply for tax clearance in the new eTC system and will be given a **Tax Clearance Access Number** which they will give to the Public Service Body who needs to verify their tax clearance status.

The Public Service Body will use the PPSN/tax reference number and the Tax Clearance Access Number to verify - via the Revenue On-line Service (ROS) - that an applicant holds a tax clearance certificate.

Tax clearance certificates issued in the period from 1 April 2015 to 1 July 2015 will have an expiry date of 31 December 2015. While certificates issuing in the period from 1 July 2015 to September 30 2015 will have an expiry date of 31 March 2016.

Requests for tax clearance certificates during the ordinary course of business are becoming more prevalent, to that end if your business is tax compliant, an application for a tax clearance should be submitted as a matter of course as typically it can take at least 10 days to obtain same from Revenue.

**PAY AND FILE SUMMARY**

The following is a summary of upcoming pay and file dates:

**INCOME TAX**

Filing date of 2014 return of income (self-assessed individuals)	<b>31 October 2015</b>
Pay preliminary income tax for 2015 (self-assessed individuals)	<b>31 October 2015</b>
On-Line pay and file date for 2014 return of income	<b>12 November 2015</b>

**CAPITAL GAINS TAX**

Payment of Capital Gains Tax for the disposal of assets made from 1 January 2015 to 30 November 2015	<b>15 December 2015</b>
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**CORPORATION TAX**

Filing date for Corporation Tax returns for accounting periods ending in December 2014	<b>21 September 2015</b>
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# SHAREHOLDERS' AGREEMENT: A WISE PRECAUTION?

You're all set; the new company with the fantastic idea that will take off and make you all, like Delboy and Rodney, millionaires this time next year is good to go. As the meeting is wrapping up, the solicitor mentions a shareholders' agreement (well, he would, wouldn't he – looking for more fees...) and strongly advises you all to put one in place. Sure, what could possibly go wrong – you're all been pals for ages and this thing is gonna fly, so where's the need?

And so began a typical business voyage that, in many cases, ends in tears. With the benefit of hindsight, which is always 20/20 vision, what might have helped? Most involved in a bitter scrap with fellow shareholders, if asked, would probably admit that a series of ground-rules for running the company from the very start could have been very beneficial. Those ground-rules are often captured in a legal document which, once you cut through the herein's and wherefores, typically contains a lot of commonsense. Normally that legal document, where one exists at all, is a shareholders' agreement.

It won't come as a major revelation that a shareholders' agreement is, well, an agreement between the shareholders of a company. It is a contract between the shareholders and, often, the company itself (which, after all, is a separate legal entity). Its purpose is to protect their investment in the company, to establish a fair relationship between them and govern how the company is run. Though it is impossible to cover off every eventuality, it should ideally have a methodology or framework on how to best deal with issues that could be contentious or acrimonious in the future if not pre-agreed.

Though there are many variations, the agreement will typically:

- ➔ Set out the shareholders' rights and obligations;
- ➔ Include rules re the issue of new shares or the sale/transfer of shares in the company, including new shareholder entry/departing shareholder exit;
- ➔ Describe how the company is going to be run (e.g. frequency of board meetings);
- ➔ Provide an element of protection for minority (and majority) shareholders and their relationships with each other and the company, as well as issues like keyman insurance or non-compete clauses; and
- ➔ Define how important decisions are to be made.

While a number of the issues referred to very briefly above may also be dealt with in other company documents (e.g. the articles of association), a major benefit the shareholders' agreement has over the articles is privacy – it is not, unlike the articles, a document that can be publicly accessed.

While the best time to set up a shareholders' agreement is usually when the company is being established, one can be put in place at any time. Clearly, whenever drafted, the exact provisions required will vary from company to company so it is wise to seek legal advice.



# LIVING CITY INITIATIVE



This is a scheme of property tax incentives for certain "special regeneration areas" (SRAs) in six Irish cities - Dublin, Cork, Limerick, Galway, Waterford and Kilkenny. Following receipt of EU State Aid approval, the scheme provides for tax relief for qualifying expenditure incurred on both residential and certain commercial refurbishment and conversion work that is carried out during the qualifying period (which is five years from 5 May 2015). Each local authority has further information (e.g. maps and boundaries) on their websites.

The residential element provides tax relief for owner-occupiers, by way of a deduction from their total income, of 10% per annum of qualifying expenditure over a ten-year period. Relief is only available where the property is the claimant's only or main residence and the work done on the building is more than 10% of its market value. There is no provision to carry forward unused relief beyond ten years and no clawback of relief already claimed if sold/otherwise ceases to be used as claimant's residence during the ten-year "tax life". Other conditions need to be met, including getting a letter of certification from the local authority.

The commercial element provides for tax relief over a seven-year period by an annual accelerated capital allowance of 15%

of qualifying expenditure for six years and 10% in the seventh year. It is available to both owner-occupiers and landlords, whether companies or individuals. The work done on the building must be more than 10% of its market value and it applies only to the refurbishment or conversion of premises for the provision of retail or other services within the State. EU State Aid rules provide that the maximum level of actual tax relief for any individual project is capped at €200,000 - i.e. a maximum spend of €1.6 million for a company taxed @ 12.5% and €400,000 for an individual. There is no provision to carry forward unused relief beyond seven years and there is a clawback if sold/otherwise ceases to be used for a qualifying purpose during the seven-year "tax life". The commercial relief, which is subject to the High Earner Restriction, cannot be claimed by property developers.

While this is a very good idea in principle, it remains to be seen whether it will achieve its stated objective (city centre regeneration). The conditions attaching to each scheme (i.e. commercial and residential) may mean the number of qualifying projects is likely to be low.

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## Workers can now accrue annual leave while on long-term sick leave

The Minister for Business and Employment has announced that from 1 August 2015, workers will be able to accrue annual leave when they are on long-term sick leave. Under the new legislation, workers will be able to carryover such accrued leave for a period of 15 months after the leave year in question.

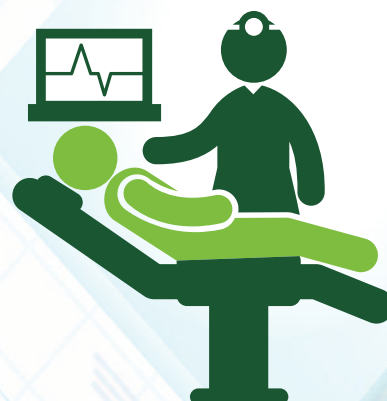
The new legislation is in response to Court of Justice of the European Union rulings on accrual of annual leave entitlements during sick leave.

The amendment to the legislation was made by way of section 86(1) of the Workplace Relations Act 2015. It will have the following effects:

- Statutory annual leave entitlement accrues during a period of certified sick leave.
- An annual leave carryover period of 15 months after a leave year will apply to those employees who could not, due to illness, take leave during the relevant leave year or during the normal carryover period of 6 months

- On termination of employment, payment in lieu of untaken accrued annual leave will apply to leave which was untaken as a result of illness in circumstances where the employee leaves the employment within a period of 15 months following the end of the leave year during which the statutory leave entitlement accrued.

This brings the Organisation of Working Time Act into line with recent rulings of the Court of Justice of the EU.





# BUYING FROM A RECEIVER

Many properties advertised for sale, by way of private treaty, best bids or auction, bear the tag "Acting on the instructions of a Receiver". Such a tag should immediately heighten the warning Caveat Emptor or "Buyer Beware".

Receivers are typically appointed by a bank pursuant to the bank's mortgage. Once appointed, the receiver takes possession of the charged assets and in many cases those assets are realised by way of sale. Notwithstanding the fact that a Receiver is appointed by the bank (in the vast majority of cases) the Receiver acts as agent of the borrower. Receivers must exercise great care when disposing of property and have a duty and obligation to secure the best price possible.

When a Receiver issues a Contract for Sale of a property it usually contains many pages of special conditions not normally found in a standard contract. Essentially the purpose of these special conditions is to exclude many of the warranties and representations that a purchaser would generally expect to receive when buying a property. Some examples of the Special Conditions include:

1. Warranty as to Planning & Building Regulations - Normally it is necessary for a vendor to satisfy a purchaser (and its lender) that the property substantially complies with the Planning Acts and Building Regulations. A Receiver contract will usually specifically exclude this warranty.
2. Warranty as to Boundaries and issues relating to Easements, Rights of Way or Access - Generally a

Receiver contract will exclude warranties in respect of boundaries or third party rights. This is because the Receiver has no personal knowledge of the property and is acting only as agent of the borrower.

3. Warranty as to Notices Served in Respect of the Property - In a receiver sale the contract will exclude the obligation to disclose any notices served by any state or local authority in respect of the property, unless such notices have come to the Receiver's actual attention prior to a sale.

In short a Receiver contract will ensure there is no comeback against the bank, the borrower, the Receiver or the agents. In the event that a purchaser is financing the acquisition through a lending institution, then all of these qualifications and limitations must be brought to the lender's attention, and their agreement sought and obtained in writing, prior to the purchaser signing a contract.

As a result of the foregoing, purchasers should ensure that prior to any property purchase from a Receiver they have had their solicitor investigate title, that a survey has been carried out and that their lender has confirmed acceptance of the qualifications on title.

Whilst Receiver sales create opportunity there is an undoubted risk for purchasers which may have serious ramifications at some point in the future, in particular when they seek to sell the property.



## WHEN TO USE THE FINANCIAL SERVICES OMBUDSMAN

The Financial Services Ombudsman (“the Ombudsman”) is a statutory officer who deals independently with unresolved complaints from consumers about their individual dealings with all financial service providers.

It is important that you first let your financial service provider know that you are unhappy. It is best to put your complaint in writing and keep a copy of your letter. You must give your financial service provider an opportunity to look into your problem and allow them to try to reach a resolution. Under the Consumer Protection Code a financial service provider must seek to resolve any complaints with consumers, hence the requirement to follow this process.

Your financial service provider has 40 business days from the date you notified them of the issue within which to attempt to investigate and resolve your complaint. If your financial service provider cannot resolve your complaint within 40 business days it must inform you of the anticipated timeframe within which it hopes to resolve the complaint and must inform you that you can refer the matter to the Ombudsman.

After adhering to the above you may lodge a complaint with the Ombudsman which generally takes 35–45 days to issue a finding. Such a finding is a legally binding document and can only be appealed to the High Court.

## NEIGHBOURLY DISPUTES!!!

Boundary disputes between neighbours arise out of the issue of party structures and co-ownership. Party structures encompass many types of structures which appear on, or close to, the boundary between the two properties. They can also give rise to a myriad of legal and factual problems such as the ownership of the structure itself.

The general rule of common law is that, in the case of a party structure, there is a presumption that the adjoining property owners are tenants in common of the party structure. That is to say, each together with the other owns one undivided half of the party structure. This however is only a presumption and can arise when there is evidence that both adjoining owners exercised rights over it. Such a presumption can be rebutted.

The Land and Conveyancing Law Reform Act 2009 (“2009 Act”) deals with disputes relating to works to party structures but also with works to structures which are not party structures but are so built or placed that it would be difficult (if not actually impossible) to carry on the works without the co-operation of the neighbouring landowner. The typical example occurs where a building is built so close to the boundary line with the neighbouring property that the only way that works can be carried out to it is by access from the neighbouring property. The 2009 Act also provides for a court regulated dispute resolution mechanism to resolve any disputes which might arise from an uncooperative neighbour and an application may be made to the District Court for a “works order”, but there are various protections for the neighbour against abuse by a more domineering landowner.

## 2015 – A BUSY YEAR FOR EMPLOYMENT LEGISLATION

If the government’s legislative agenda for 2015 all goes to plan, this year could be the busiest year ever for employment legislation in Ireland.

The first item to be enacted is likely to be legislation to establish a Low Pay Commission. This new Commission will have a leading role in setting the national minimum wage by making recommendations to the Minister for Jobs, Enterprise and Innovation as to what the minimum wage should be.

In a separate development, the Industrial Relations Acts, are due for two separate pieces of amending legislation.

1. The first change will deal with the former registered employment agreement (REA) which were deemed unconstitutional by the Supreme Court in 2013. This system allowed employers and unions to make agreements relating to pay and conditions which, when registered by the Labour Court, became legally enforceable. A revised system will allow REAs within a single enterprise to be registered in a manner similar to the former system. Furthermore, registered employment orders (REO) will be implemented in respect of sector-wide pay-setting.
2. The second change will raise the profile of the Industrial Relations Act 2001 which provides a mechanism for trade unions to bring cases to the Labour Court on behalf of workers employed by companies who do not have a practice of collective bargaining negotiations, which may prompt a significant increase in litigation under its provisions.

Lastly, the Workplace Relations Bill 2014 is imminent. This will be the biggest reform of employment rights and industrial relations institutions ever enacted in Ireland. Many of its provisions relate to institutional issues, such as who will fill the roles in the new bodies and how contentious cases will be processed. The Bill will also make some changes to substantive employment legislation, most notably by providing that annual leave will accrue during periods of sick leave.

## CONSUMER RIGHTS BILL

The Consumer Rights Bill (“the Bill”) was unveiled by Minister for Jobs, Enterprise and Innovation Richard Bruton on the 25 May 2015 however it has a long road to travel before it becomes law.

The legislation, which now enters a consultative process, is ambitious and should make rights clearer to both consumers and businesses. It will deal with some of the more blatantly unfair practices that businesses have been getting away with.

Currently, there are virtually no laws governing gift vouchers and retailers can and do attach unreasonable terms and conditions to them. Under the Bill it is proposed that the application of an expiry date on gift vouchers will be banned. It is also thought that other stringent provisions imposed on retailers will be contained in the Bill however the exact detail is unknown thus far. The Bill will also deal with consumers who acquire goods as gifts, granting them the same rights as those who bought the goods. The Bill will also grant a person who pays to stream or download a film the same rights as if that person purchased the film on DVD in a shop.

A target enactment date for the Bill has been set for the middle of next year.

# DIRECTING YOUR OWN PENSION

**SELF-INVESTED PENSION ARRANGEMENTS** (sometimes referred to as Self-Administered or Self-Directed Pensions) are rapidly increasing in popularity and should form an essential part of pension recommendations. Self-Invested Pensions have long been popular amongst experienced investors. Transparent fee structures, investment choice and ease of access have led to this growth in popularity. More and more clients with the help of their Advisors are discovering that they need to take a more active interest in managing and growing their retirement funds.

Following a recent review of clients who were asked what had drawn them to Self-Invested Pensions, the top four answers: Control of their investment decision, transparent fees (invoiced in advance of deduction), Property Investment & Service.

Self-invested pensions are not a viable alternative for everyone but they do suit certain clients. They provide clients with the flexibility that is required to execute their financial plans in full without the need to compromise on investment due to the constraints of the traditional pension contracts. 'Self-Invested Pensions' are constrained by the Revenue rules on pension investing and not by the investment criteria of your provider.

Below is a sample of the investment choices available through Self invested pensions, detailing property as a potential investment.

- Direct Property investments (residential or commercial)
- Deposit Accounts
- Full suite of Insurers investments funds
- Choice of International investment managers
- Stockbroking firms
- Clients can use multiple investment platforms
- Private equity and limited loan note investments

## RESIDENTIAL & COMMERCIAL PROPERTY

In the last year there has been a notable resurgence in clients' expressing a preference to invest in both commercial and residential property. Ireland is now seen as a prime location for investment with both domestic and international investors attracted by both pricing levels and Ireland's improving economic outlook.

A Self-Invested Pension allows an individual to purchase and maintain a property investment using their pension funds. The pension holder sources their own property investment with the guidance of their Advisor and their Self-Invested Pension purchases the asset. The property is then held on the balance sheet of the individual's pension, be it a Company Sponsored Pension (SSAP), a Personal Pension (SIPP/PRSA) or a post retirement Approved Retirement Fund (ARF). The purchase costs and legal fees are deducted from the pension fund, as are any running/maintenance costs for the property. Any rental income generated from the leasing of the property goes back into the pension scheme gross of tax, and on resale of the property there is no CGT applicable on any capital appreciation on the property. On retirement property assets don't need to be sold and can be transferred across to a post retirement Approved Retirement fund or a Vested PRSA.

The majority of investments into property in the last couple of years have not utilised mortgage finance but borrowing is still allowed and available to Self-Invested Pension investors. All property purchases and property leases must be executed on an arm length basis as per Revenue rules.

[danny@newcourtrustees.ie](mailto:danny@newcourtrustees.ie)

