RONAN DALY JERMYN SOLICITORS

update

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RDJ Named Company of the Year

Welcome to the summer 2005 edition of our newsletter. The six months since our last newsletter has been a very exciting time for the firm with the highlight being the achievement of RDJ being named Esat BT Cork Company of the year.

The annual award, presented at the Cork Chamber of Commerce Annual Dinner, recognises the most outstanding business in the region with regard to performance, growth, innovation and benefit to the local economy. It is the first time the honour has been given to a professional services firm and underlines a significant year of growth and achievement for RDJ, in which we achieved a number of milestones, including passing the 100 employee threshold.

Pictured from l to r: Peter Sutherland, Guest Speaker, Anne O'Leary, Corporate Sales Director, Esat BT and receiving the award for Cork Company of the Year John Dwyer, Managing Partner, Ronan Daly Jermyn at the Cork Chamber of Commerce Annual Dinner.

We are delighted to join a list of illustrious past winners, which include TCH, Musgrave Super Valu, O'Callaghan Properties, 96 FM and Apple Computers.

In being presented with the award the firm was cited as being an outstanding law firm who has made a major contribution to commerce in the Cork area, with an innovative and forward thinking approach to business.

The award recognises the superbly talented team we have here at RDJ and on behalf of everyone in the firm, I would like to take this opportunity to thank everyone who contributed to us winning this award, which would not have been possible without the goodwill and support of our clients and business colleagues. A sincere thank you is due to all of you.

John Dwyer

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1. VAT on Property Changes in Finance Act 2005

By John Cuddigan, Head of Tax

Sale of Freehold in property let under a long term lease

Under normal rules, the letting of property under a long term lease (10 years or more) will take the property outside the 'VAT net' resulting in a sale of the reversionary or freehold interest not being liable to VAT. However, where, following the grant of the long term lease, the property was 'developed' by the long term tenant, this previously had the effect of making a subsequent sale of the freehold or reversionary interest liable to VAT. The difficulty created by this was that the purchaser was not entitled to recover this VAT thereby making VAT an actual cost. This position arose even if the tenant was not entitled to recover the VAT on the development work.

Finance Act 2005 now provides that the freehold or reversionary interest will not be brought back into the 'VAT net' so long as the development (carried out following the grant of the long term lease) was not carried out by, on behalf of, or to the benefit of, the person disposing of the freehold or reversionary interest. Regulations are due to be published by Revenue to outline when development will be considered to be carried out by, on behalf of, or to the benefit of a person. Pending publication of those Regulations, care should be exercised by owners of commercial properties to ensure they are not caught in this 'VAT trap'.

Short Term Leases of Property

Prior to Finance Act 2005, a person who acquired or developed property for taxable purposes was entitled to recover VAT on the acquisition or development costs. Where subsequently the property was let under a short term lease (less than 10 years) by the person, any VAT recovered on the original acquisition or development was repayable to the Revenue (as a short term letting was deemed to be an exempt appropriation of the property). The advantage, in an era of rising property prices, was that as the property was now outside the VAT net, no VAT had to be charged on a subsequent sale of the freehold or reversionary interest. This interpretation is disputed by Revenue but the legislation is fairly clear on the result.

Finance Act 2005 now provides for significant changes in the VAT treatment of short term lettings of property where the owner was entitled to recover VAT originally on the acquisition and/ or development of the property. Under the new provisions, on the grant of the short term letting, a 'deductibility adjustment' will be made on the person granting the lease. This adjustment effectively requires the person to repay to the Revenue an amount of VAT previously recovered, the amount of which depends on the length of time since the property was acquired and/or developed.

The legislation also confirms that the grant of the short term lease is not to be deemed an exempt appropriation of the property for VAT purposes. On a subsequent sale or long term lease of the property, VAT will be chargeable on the sale price/capitalised value of the long term lease. However, at that time, an amount of VAT can be reclaimed by the person disposing of the property.

Example:

An electrical goods retailer purchases premises in March 2000 paying VAT on the purchase, carrying out development on the property in March 2002. Due to a change in circumstances, the entire property is let under a short term lease in March 2006 to a third party. The retailer will be obliged to repay VAT to the Revenue equal to 80% of the total VAT recovered on the acquisition and development of the property on the grant of the short term lease. On a subsequent sale of the property, VAT will be chargeable on the full sale price. A certain amount of VAT can be reclaimed at that point arising from the original acquisition and development of the property. However, this amount of VAT will be less than the amount of VAT repaid to the Revenue so a mismatch will occur.

The new provisions contain formulae under which the deductibility adjustments are calculated. They can produce unusual and (perhaps) unintended results, mainly at the expense of a taxpayer caught in this situation. In many circumstances, the use of a waiver of exemption may provide a preferable route to incurring a VAT cost in such circumstances although there is some doubt whether this route can be taken under the new provisions.

The new provisions are effective from 1 May 2005 under the ministerial order (SI no. 225/2005) which was passed on 28 April 2005.

Transfer of a Business

On the transfer of assets of a business in connection with the transfer of the business, no VAT is usually chargeable where the transfer occurs between taxable persons as it is deemed not to be a supply of goods. In such cases, real property will not give rise to a VAT charge even where it is otherwise chargeable to VAT. A subsequent disposal of the property would however be liable to VAT as the property is not taken out of the 'VAT net' if it is transferred in connection with the business.

Finance Act 2005 now restricts this treatment (of there being no supply of goods) to where there is a transfer to a taxable person of a totality of assets, or part thereof, of a business, even if the business has ceased trading, where those assets constitute an undertaking or part of an undertaking capable of being operated on an independent basis.

Therefore, the deemed non-supply of goods will only extend to an effective transfer of the assets of a business as a going concern. The transfer of properties without the other business assets is unlikely to be sufficient. It is crucial to get the VAT treatment right. For a purchaser who pays VAT on acquiring assets of a business, where the non-supply treatment should apply, he or she will not be able to recover this VAT. Equally, a vendor who does not charge VAT on the disposal of assets erroneously will be liable to Revenue for the VAT. The result of the change will be that Revenue clearance will be required for many business asset sales.

Holiday Lettings

Finance Act 2005 now restricts the 13.5% rate of VAT to 'genuine' holiday lettings from July 2005. Revenue are due to publish regulations on the type of accommodation which will qualify for the rate. For persons who may have been paying VAT at the 13.5% rate on provision of accommodation to visitors or travelers (who might not include tourists), the changes may lead to VAT having to be charged at the standard rate of 21%. Such persons may have to take certain administrative steps to ensure the legislative changes do not affect their entitlement to VAT previously recovered.

2. Update on Collaborative Law Training

By Rosemary Horgan,
Partner, Family Law Dept.

M.K Ghandi said that the true function of a lawyer was to unite parties driven asunder. The Collaborative Law Process is a new dispute resolution model in which each spouse retains a solicitor to help them to negotiate an outcome which they consider, following independent advice, to be fair and acceptable to them. Both the clients and the solicitors must agree to work together respectfully, honestly and in good faith to try and find a solution which both parties feel is fair and reasonable and which they are prepared to agree to. The approach is a problem solving one. There must be full and mutual disclosure of all assets. In Collaborative Law, each party is working towards solving their legitimate needs rather than taking up positions. Each party tries to achieve a "win win" solution. No-one may go to Court or even to threaten to do so when they are working within the Collaborative Law process. Should the process end, then both solicitors are disqualified from any further involvement in the case. The solicitors engaged for a Collaborative Law representation may never, under any circumstances, go to Court for the clients who retained them in a contentious capacity or as witnesses to such litigation.

If a client wishes to proceed through the Collaborative Law process, then both sides must sign a legally binding agreement to disclose all documents and information that relate to the issues, early, fully and voluntarily. Open and honest disclosure of assets is essential. "Hide the ball" and "stonewalling" are not permitted and if one side perceives that this is happening then the process breaks down. If it becomes clear that one party is not proceeding in good faith then the solicitor must withdraw from the process and may not continue to represent the client.

A Collaborative Law Separation/ Divorce, is not a guarantee to a client that there will be full and honest disclosure of all assets and income anymore than the conventional litigation process can guarantee that to a client. If there is any doubt about the honesty and good faith of the party, then it may well be that the collaborative approach will not work. A client generally knows whether their spouse or partner is basically honest. Many clients say that they want a system of conflict resolution which maintains integrity and involves achieving not only their own goals but finding a way of achieving the reasonable goals of all the parties in the family. It is often expressed by a desire to achieve an outcome which is 'fair'.

In a Collaborative Law Separation/ Divorce, it is only when all of the issues have been agreed that the case is ruled in Court as a consent matter. The method relies upon the parties engaging solicitors who have trained in the Collaborative Law method. It also depends on the parties engaging joint neutral advisors (accountants, business advisors, child psychologists). Each party may also need a 'coach' or 'counsellor' to help them to deal with the personal dynamic of the breakdown. They must understand the dynamic of family dissolution and the physical and psychological grief process with this inevitably entails.

We often find that clients come to solicitors seeking immediate drastic action to be taken on days where they feel very let down. A lot of interim applications are initiated in such days and can add to the length and ferocity of the dispute. In a Collaborative Law case the parties must agree that they will not in fact instruct their solicitor on these 'down days' but that they will try and maintain equilibrium during negotiation sessions. Negotiation sessions take place during four way meetings - the solicitors and clients all meet together and work through an agreed agenda. The clients control what goes on the agenda - the solicitors control the process and the items to be dealt with at each negotiation session. Success is built upon in each session until an overall agreement is reached.

Pictured from left to right at the UCC Collabortive Law two day training course is Deirdre O'Riordan, Solicitor, RDJ, US Attorney Pauline Tesler, Rosemary Horgan, Partner, RDJ and Paula O'Sullivan, Solicitor, RDJ

Many family law solicitors have undertaken the preliminary/ intermediate training in the Collaborative Law Process. The first training course was organised by Muriel Walls in Dublin in April 2004. Pauline Tesler, an American Attorney who has helped to pioneer this method in the US and has trained groups of lawyers in US and Europe was prevailed upon to come to Dublin and run a two day training course. The Course was overbooked with enthusiastic family law solicitors (60 participants from all over Ireland and some from London) who wished to acquire new skills – even if they were a little bit sceptical at first as to whether this 'utopian' method actually worked. Well, to our amazement we found that if we up skilled and shed adversarial behaviours learned over the years- it could in fact work! The US experience is that most clients prefer it. They are less unhappy having ended their marriage using this process. They perceive the process to be more fair and respectful than the litigation process- even where the litigation ends in settlement. Pauline Tesler pointed out that law suits against attorneys practicing Collaborative Family Law were non-existent in sharp contrast to the high level of professional negligence litigation in traditionally run family law litigation. Family lawyers themselves are happier operating Collaborative Family Law and Pauline's own practice has changed completely from litigation to Collaborative Family Law.

The second course in Ireland was held in February 2005 at the Glucksman Gallery, University College Cork. Pauline Tesler provided a comprehensive and enlightening 2 day training programme. The course was organised by the Cork Collaborative Law Committee and supported by the Southern Law Association and the Cork Family Lawyers Association. Frank Martin and Ursula Kilkelly of the Law Department in UCC were very supportive also and Pauline gave a lecture to law students in UCC. The training group consisted of solicitors from Cork, Kerry, Waterford, Wexford, Limerick and a group of UK solicitors who missed out on training days in London and Belfast. Unfortunately many solicitors who heard about the course too late were disappointed as the course was fully booked very quickly. A third intermediary course is in planning so watch this space!

Problem solving is not new to family law solicitors but this new process of achieving consensus is new and special skills must be acquired to operate in this way. It will only be possible to achieve a wave of Collaborative Law separation or divorce settlements if enough solicitors are trained in the Collaborative Law method.

3. Director of Corporate Enforcement Cracking Down on Non Compliance

By James O'Sullivan, Partner, Corporate Compliance Unit, Litigation Dept.

The Director of Corporate Enforcement continues his quest in pursuit of compliance with Company Law legislation. He is now a frequent visitor to the Courts seeking relief against non-compliant companies and company directors against whom he is seeking disqualification and restriction orders. Statistics show that 2363 cases were reported to the Director in 2004. Of these, 1578 were immediately dealt with and another 493 were sent for detailed investigation.

That the Director is seeking the assistance of the Court is borne out by the number of enforcement proceedings brought. 67 convictions were recorded in 2004, a 56% increase on the 43 recorded in 2003. Many of these resulted in directors either being restricted or disqualified from acting as such. Examples of the nature of the prosecutions include: fraudulent trading, failure to keep proper books of accounts, furnishing false information, failure to file annual returns, acting as a company director when restricted and acting as an auditor while unqualified.

In respect of those prosecutions noted above fines were generally imposed. In one particular case a District Judge imposed fines of €6500 on one individual. However, it is important to point out that the Courts have shown their willingness to impose custodial sentences and in three cases suspended sentences of between three and six months were imposed.

Insolvent Companies are also the focus of the Director's attention. Liquidators of a company in insolvent liquidation are obliged to report to the Director on its demise and on the conduct of any person who was a director of the company during the 12 months preceding its liquidation. In 2004, 624 reports were received by the Director. The Director also keeps a Register of Restricted Directors. That now lists 470 names as against 200 at the end of 2003.

As recently as the 15th March last the Director in one day before the High Court secured orders disqualifying six directors of companies that had been struck off the register of companies for failure to make annual returns. Three companies were involved and whilst there were three the case has become known as 'the Cautious Trading' case.

The facts of the cases were simple enough. Annual returns were due and had not been made. A prescribed notice under the 1982 Companies (Amendment) Act was served on each company. This letter stated that unless all outstanding annual returns were delivered to the registrar within one month of the date of the letter that a notice would be published in Irish Oifigiuil with a view to striking the company off the Register. Nothing was heard and the companies were struck off. By virtue of his powers under the Company Law Enforcement Act 2001 the Director brought applications to the High Court to have disqualification orders made against the directors of each of the three companies. Ms. Justice Finlay Geoghegan in her judgment reviewed the law on the disqualification and restriction of directors. She accepted the submissions of the Director that the relevant legal provisions permitting the taking of disqualification applications was indicative of a serious concern on the part of the Oireachtas about the practice whereby, to the detriment of creditors, insolvent companies were allowed by the directors to be involuntarily struck off the Companies Register.

The Court confirmed that a disqualification was generally justified where a director did not offer to the Court any exculpatory evidence either as to their involvement in the company, the circumstances leading up to its striking off or the outstanding liabilities of the company. Against that, the Court left the door open for directors to come and offer evidence as to their involvement in the Company and to show that the Company prior to it being struck off either had no liabilities or if they had that they had been discharged. Such appearance and evidence would be taken into account in deciding if a disqualification order was appropriate or what length it would take.

What is clear from the decision is that no appearance means disqualification! Whilst the legislation does not specify what the length of a disqualification order should be, the Court held that five years was the appropriate period.

This decision makes it clear that company directors can no longer abandon an indebted company, fail to comply with statutory filing obligations and leave the company to be involuntarily struck off.

Directors should be cognisant of their obligations and comply with them. Otherwise they face the wrath of the Director of Corporate Enforcement who, in a recent press statement, said 'It is now my intention to roll out a series of similar disqualification applications...'

4. Legal Revolution in Irish Retail Development Practices

By Pat Ahern and Margaret Ring, Partners, Commercial Property Dept.

As solicitors in the forefront of retail development in Ireland over the past 10 years, Ronan Daly Jermyn is well positioned to track how Irish developers and landlords have had to change their ways. This article will cover some notable changes in the area.

The explosion in the number of foreign multiple-outlet retailers investing in Irish developments has led to Irish developers having to adapt to their expectations, in that, for instance, the shops are bigger and higher.

These multiples often have service charge departments experienced in the ways of property management, and who demand and are now getting structures which work for the benefit of tenants as well as landlords, with transparency in the provision of services and the manner of charging for them.

The multiples are themselves very well versed in lease negotiation, and are not prepared to simply accept the text produced by a landlord. They engage solicitors and valuers who are equally adept. The multiples realise that their lease is a document which will govern the relationship with their landlord or its successors for possibly 25 years, and they have learned from experience that signing an unbalanced lease will give rise to problems down the line.

Irish Landlord and Tenant law does not always provide rules or sanctions in a black and white way. For instance, a landlord under a business lease cannot unreasonably withhold consent to a tenant's request for change of use of the premises, or for the assignment of the tenant's interest to another. Irish law does not allow the parties to definitively agree ways of dealing with these issues at the outset.

Collateral warranties are documents which afford a tenant a right to recover against the building contractor and the design team in respect of defects in the design and construction of a building. Up to relatively recently these warranties were rarely available. However due to pressure from the multiples and their advisors, builders and designers can no longer avoid providing warranties.

A hot topic at present is the extent to which terrorism insurance is available, the cost of same and the effect of its absence. Insurance companies are not readily offering cover against damage caused by terrorism, and even if cover is available, the insurance premium payable is high.

A standard lease will provide that the landlord will take out insurance cover (at the cost of the tenant) against a list of risks known as insured risks and if damage occurs due to one or more of such risks (but not uninsured or uninsurable risks), the landlord will agree to use the insurance proceeds to re-instate the property. Thus, if a Shopping Centre were to be damaged or destroyed by an uninsured risk (such as terrorism) the Centre would be re-built at the cost of the tenants through the Centre's service charge. This is considered by some of the multiples to be an unpalatable risk. This risk must be balanced against obliging a landlord to insure against terrorism at very expensive rates thereby increasing the service charge.

A developing trend is for anchor or quasi-anchor tenants to insist that their repairing obligations and the service charge provision specifically exclude any damage caused by uninsured or insurable risks. The question arises as to whether the landlord has a re-instatement obligation in these circumstances. One way to deal with this issue is to make it clear in the lease that while there is no obligation, the landlord may decide to re-instate at its own cost. The tenant is not allowed to surrender the lease until the agreed period for re-instatement has elapsed, which protects the landlord who will still have a tenant when rebuilding work is completed. If the landlord elects not to re-instate the tenant can surrender with immediate effect.

A landlord will only consider dealing with the issue in this way if the lease is still institutionally acceptable, meaning whether the landlord be able to sell its interest at full value to funds or other investors. The view of the large banks and pension funds (who have been canvassed by letting agents in the UK primarily) is that these clauses, in the context of changing world circumstances, have to be accepted. Although from a landlord's perspective it is better to avoid such a clause, nevertheless it will not render the scheme unmarketable. If the worst were to happen, rebuilding without any insurance proceeds would have horrendous cost implications for a landlord, making it unlikely that a scheme would be re-instated.

The multiples will want to ensure that the opening of a Centre fits in with their schedules so that a store is not fitting-out during a very busy season and that it can open with the correct season's stock. A multiple would probably not agree to open on the 1st January for example, as it is too early to stock spring stock and it will not open with sale stock. Thus at the early stages a developer will need to consult with its anchor tenants and agree a realistic date for the opening of a scheme. Certain anchor tenants will look for a relaxation of their obligation to open on the opening date of a scheme if the agreed opening date is delayed for any reason and they will often insist that they are not obliged to open if the opening date falls within certain periods.

Ronan Daly Jermyn acts for developers, landlords, tenants, banks and investors in large and small scale property developments and in all sectors. A recent highlight was acting for O'Callaghan Properties in the development of Mahon Point Shopping Centre.

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www.rdj.ie

5. An Insight into RDJ's role as the Legal Adviser to Cork 2005

By Adrian Wall,
Partner, Corporate and Commercial Dept

In early 2004 Ronan Daly Jermyn was chosen as the legal adviser to Cork 2005 European Capital of Culture. RDJ also became the first Cork-based firm to sponsor the designation. At the time of the announcement John Kennedy, Director, Cork 2005, described RDJ's broad range of legal services as invaluable to a project such as Cork 2005.

Upon being selected as advisers we drew together a specific team from our Corporate and Commercial Department to deal with this new project, involving lawyers from other specialist areas from within the firm, such as Commercial Property and Employment, when necessary. Since then the core team of Marianne Crowley, Sinead Corcoran and I have worked closely with our counterparts at Cork 2005 to manage and handle all their legal requirements.

As we were involved from the outset much of the initial work related to establishing and structuring matters as the Cork 2005 organisation began its operations. Since then we have provided legal support on a diverse range of matters.

Much of our input has related to the formal engagement of various parties participating in the Cork 2005 European Capital of Culture programme. We have been involved in a broad spectrum of work on this side. This has ranged from reviewing contracts provided by performing artists and musicians from overseas to formalising arrangements relating to the holding of public exhibitions. We have also been closely involved in structuring the arrangements relating to some of the more high profile items on the Cork 2005 calendar, including the opening event showpiece created by Waterford-based performance company Spraoi (The Awakening) and the loan of the Eighteen Turns Pavilion designed by Daniel Libeskind, which is on display at Fota House. We also drew up the pro-forma project agreement, which formed the basis for Cork 2005's commitment to various projects arising out of the response to their public call for submissions.

On the commercial front, we have been closely involved in sponsorship negotiations with the premier partner and with Cork 2005's official partners as well as providing support to the Cork 2005 executives in their discussions with other sponsors and suppliers. We have had the opportunity to assist Cork 2005 in the management and protection of its intellectual property rights and we continue to advise on intellectual property as they arise in the context of arrangements with participants.

This kind of relationship is somewhat unique in the legal sphere in Ireland. Cork 2005 has been able to draw from areas of expertise right across our firm and, for our part, we are pleased to be able to lend our support for what is such an important year for Cork and to act as advisers to a European Capital of Culture.

Hopefully this article will give you some sense of the diverse range of matters that we have been involved in. The working relationship that we have developed with the Cork 2005 team is very important to us and during the remainder of the year we hope to continue to handle what, for us, has been a challenging and interesting workload.

> "This kind of relationship is somewhat unique in the legal sphere in Ireland. Cork 2005 has been able to draw from areas of expertise right across our firm..."

6. Temporary Agency Workers Directive

By Darryl Broderick
Employment Law Unit, Litigation Dept.

A number of amendments have been made to the initial EU Commission proposal to extend employment law protection for Temporary Agency Workers. This article examines some of the amendments made at EU level since the initial introduction.

Current legal position in Ireland in relation to agency workers

In more recent times, legislation has been introduced that improved the status of agency workers and they now have many of the employment rights afforded to employees. For example, agency workers are afforded rights under the Unfair Dismissals legislation and the Employment Equality Act, 1998.

Under Irish Law, the position is that the person who pays the wages is considered to be the employer of the Agency worker. In most cases, this is the agency. However, for the purposes of exercising rights under the Unfair Dismissals legislation, the employer is deemed to be the client company.

Aim of the proposed Directive

its purpose is twofold:

- to ensure the protection of temporary agency workers and to improve the quality of temporary work by ensuring that the principle of non discrimination is provided to temporary workers.
- to establish a suitable framework to contribute to creating jobs and the smooth functioning of the labour and employment market.

Scope of the Directive

It will apply to contracts of employment/ employment relationships, between a temporary agency which is the employer and the worker who is posted to a client company to work temporarily under the supervision of the client company. Depending on how the Directive, once passed, is implemented in Ireland, "agency workers" who do not work under supervision, may not be covered.

The Directive will also apply to temporary agencies and client companies provided they are public or private undertakings engaged in economic activities whether or not they are operating for gain.

The Directive requires that member states shall not exclude from the scope of the Directive contracts of employment/ employment relationships involving part time workers, fixed term contract workers and persons on a posting at a client company.

The principle of non discrimination

Article 5 (1) of the Directive applies a principle of non-discrimination, stating that the basic working and employment conditions of temporary agency workers shall be, for the duration of their posting at the client company, at least those that would apply had they been recruited directly by the client company to do the same job.

Basic working and employment conditions are defined as working and employment conditions laid down by legislation and regulations and collective agreements relating to pay, the duration of working time, over-time, work breaks, rest periods, paid holidays, public holidays and night work.

Exceptions to the principle of non-discrimination

- Member states may provide for an exemption to be made (but only as regards pay) when temporary workers, having permanent contracts of employment with a temporary agency, will continue to be paid in the time between postings.
- The principle of non discrimination will not apply to pay in the case of assignments of less than six weeks.
- Member States may give the social partners at the appropriate level the option of concluding collective agreements which derogate from the principle of non-discrimination, as long as an adequate level of protection is provided for temporary agency workers.

Prohibitions and Obligations for Agencies and their Clients

Member States must take such action as is required to ensure that any clause banning or having the effect of preventing the conclusion of a contract of employment or an employment relationship between the client company and a temporary worker after his/her posting are null and void.

This would effectively stop employment agencies from imposing conditions in their contracts with client companies which prohibit the client from recruiting temporary workers supplied by that agency for a specified period.

It is usual for agencies to charge a fee if the agency worker is recruited by the client company – referred to as "temp to perm" fees. In future such fees must not adversely affect the temporary worker's chances of finding a permanent position.

Temporary agencies will not be permitted to charge workers any fees in exchange for arranging for them to be recruited by client companies or for concluding an employment contract with the client after the posting. Temporary workers are also to have access to social services, e.g. childcare facilities within the client company.

Temporary workers must be informed of any vacant posts in the client company.

Efforts must be made to improve training for the temporary workers both in the agency and in the client company. The Directive obliges the promotion of dialogue to allow a better understanding of where training opportunities would benefit all parties. In practical terms, it seems that agency workers will be able to put themselves forward for training opportunities in the agency and in the client company, and are entitled to have their proposals seriously considered.

Penalties

Member States are obliged to lay down rules and sanctions applicable in the event of infringements of national provisions enacted under this Directive and it obliges them to take all necessary measures to ensure that they are applied. The penalties must be "effective, proportionate and dissuasive".

It is likely that an employee who claims their employer is in breach of the national provisions under the Directive will be able to make a complaint to a Rights Commissioner who can award compensation of up to a maximum of two year's remuneration.

7. Firm News

Law and the Environment Conference 2005

Pictured at the recent Law and the Environment Conference 2005 held in UCC is conference speaker Finola McCarthy, Solicitor, Ronan Daly Jermyn, Joe Noonan, Noonan Linehan Carroll Coffey and Dr Aine Ryall, Faculty of Law, UCC.

Ronan Daly Jermyn hosts Breakfast Briefing on Property Syndication in Ireland

Ronan Daly Jermyn (RDJ), held a breakfast briefing on 14 April 2005, entitled Property Syndication – Current and Future Trends. The briefing featured two keynote speakers: Kevin Warren, Director, Warren Private Clients and John Cuddigan, Head of Tax, Ronan Daly Jermyn and was geared towards individuals, developers and businesses interested in syndication as a form of property investment.

Pictured at the briefing (L to R) is John Dwyer, Managing Partner, RDJ with Kevin Warren, Director, Warren Private Clients and John Cuddigan, Head of Tax, RDJ.

Ronan Daly Jermyn appointed to Legal Island Specialist Employment Law Team

Jennifer Cashman, Partner in the Employment Law Unit of Ronan Daly Jermyn has been appointed by Legal- Island to their team of specialist employment lawyers who write for its employment law email service.

Legal-Island is a leading training and information company working in both the Republic of Ireland and Northern Ireland, which specialises in all matters relevant to today's work force in both jurisdictions. The employment law email service is used by hundreds of companies in Ireland to keep appraised of developments relating to employment law.

Barry Phillips, Legal Director of Legal-Island said of Jennifer's appointment to the E-Team, "I'm delighted to have Jennifer on board. She's just what we need as she has an in-depth knowledge of her subject and yet a great ability to explain it clearly to non lawyers in a jargon free way."

Jennifer Cashman is a regular speaker at Legal-Island conferences such as their flagship event held in November 2004, "Annual Review of Employment Law 2004".

Recent Transactions

AVR Environmental Solutions

Pictured at the recent signing of the AVR Environmental Solutions non-hazardous waste joint venture between AVR-Safeway Limited and SWS were from left to right Remco Noordermeer, AVR- Safeway, Pat O'Flynn, AVR- Safeway, Jim Galvin, SWS Natural Resources, Adrian Wall, Partner, RDJ and Nicola Dowling, PJ O'Driscolls.

RDJ selected to join Institute of Directors' Legal and Tax Advisers Panels

In the past few months Ronan Daly Jermyn has been invited to join both the legal and tax adviser panels set up by the Institute of Directors (IOD). The panels feature a list of the IOD's preferred advisers to their members. IOD members include chairpersons, chief executives, directors (both executive and non-executive) and senior executives across a wide range of national, international and semi-state companies operating in Ireland.

Book Launch

Famine in Cork City by Michelle O'Mahony

This book was recently launched in our offices in the South Mall in Cork. Famine in Cork City tells a story that not only focuses on the Cork Workhouses but reflects what was happening in many areas of the country during the Famine. It describes the background to the introduction of the warehouse system in the British Isles, under the Poor Law. The author Michelle O'Mahony is a graduate of UCC and worked as a teacher of History and English for a number of years before moving into the legal sphere. She currently works as a Legal Secretary in the Commercial Department in RDJ.

Pictured at the launch is Lord Mayor, Councillor Sean Martin, Frank Daly, Senior Partner, RDJ, Michelle O'Mahony, Author and John Spillane, Mercier Press.

RDJ Sponsorship News

Pictured are some of the Ronan Daly Jermyn sponsored C of I Division 1 Ladies Team who have had a successful season. Not only did they get to the Munster Senior Cup final but they came an overall 2nd in the Munster Senior League and as a result got through to the Club Championship qualifiers. This is the first time that a women's team from Garryduff has achieved this. After beating Connaught Champions, Galway, to get into the final eight they were unfortunately knocked out in an away game against Ulster Champions, Pegasus from Belfast. The overall final Club Championship tournament was held on the May bank holiday weekend at the newly opened state of the art waterbase pitch in the Garryduff Sports Centre in Cork.

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