

property within the Bill needs careful consideration as this letter outlines in the following comments.

Definition of Land

The Bill fails to make any distinction as regard as to the type of Land and is all encompassing; consequently there is no distinction between Commercial Land and Residential Land.

Section 2: Definitions of “Advised Market Value” & “Advised Letting Value”.

The definitions as currently drafted in Section 2 of the Act introduce new definitions into Irish Law of 'Advised Market Value' and 'Advised Letting Value'.

In commercial property the two most important definitions that exist are the internationally agreed and accepted definitions of 'Market Value' and 'Market Rent'. The importance of these definitions (and their differences to Advised Market Value and Advised Lending Value) were detailed in our earlier submission on the 21st May 2009.

It is important that Ireland does not adopt definitions that deviate from the internationally accepted definitions given that such definitions have evolved over many decades and are now accepted by professional bodies internationally as best practise.

These definitions are recognised by the property profession internationally including The European Group of Valuers Associations (TEGoVA) and the International Valuation Standards Committee (IVSC), and are acknowledged as best practice internationally by the International Stock Exchange for the Listing of Companies, the International Banking Community and International Accounting Standards Board.

It is also important to note that the draft NAMA legislation proposes to adopt the term 'Market Value' as set out in the RICS 'Red Book' in the valuing and acquisition of distressed property assets. This approach reaffirms the SCS view in relation to the importance of the adoption of the 'Red Book' Market Value definition within the Property Services (Regulation) Bill 2009. This would then mean that the Irish Government would be applying a consistent approach to Market Value definitions throughout all legislation.

Section 54: Statement of Advised Market Value

In the normal course of events, an instruction to carry out a valuation on a commercial property means that one is assessing the Market Value of that property. The figure quoted represents the value of the property capable of being realised if the property were offered for sale in the open market, on that date.

It is important to distinguish between commercial and residential property valuations.

Dependent on the type of commercial property, the nature and extent to which investigations and enquiries have to be made before any valuation can be provided are extensive – and has no resemblance to the level of enquiries on residential property.

The variables that impact on the value of residential focus on comparables in close proximity to the subject land and are unmistakably apparent to professionals undertaking such valuation on a day to day basis.

The tables below seek to give some insight to the variances between land type and outlines the factors that impact the value of commercial and residential property for sale and letting purposes i.e. Market Value and Market Rent. It is evident that the level of due diligence which is necessary for the valuation of commercial property greatly exceeds that required for the valuation of residential property. The task of providing a valuation is very subjective.

Whilst the Society notes the enabling element in Section 54 to agree a longer period to provide a valuation, the 7 day period for undertaking this process as detailed in Section 54 of the Bill is unlikely ever to be met by those valuers conducting valuations on commercial property.

A Chartered Surveyor undertaking a valuation of property has a duty of care to both his client, the vendor and any potential purchaser (third parties) of the property and must undertake and comply with standards as set out in the Red Book. As was evidenced in recent case law, failure to do so leaves that individual and firm exposed to legal action for any loss incurred by the purchaser.

Factors Impacting Value During the Sale Process

Sale of Commercial Property

- Completion of Terms of Engagement letter with Client
- Inspection and measurement of Property.
- Complete information request of Client.
- Surveyors will undertake and seek conformation of the following by way of example
- Planning & planning related items such as Planning Permission, Architects opinion of compliance & fire certificate, BER certificate, Compliance with interim schedule or schedule of Dilapidations and costs for same, any Contamination issues.
- If occupied details of the various tenancies including sight of leases for review to ascertain (term length, break clauses, repairing obligations, rent review pattern, alienation provisions, permitted user, service charge provisions, guarantee provisions, restrictive clauses).
- Tenant Covenant and strength assessment, payment history, Companies office search etc.
- Age & Condition of the Building
- Special purchaser considerations.
- Recent and historic comparable Transactions of similar property type and assessment of Current Market Rent.
- Request conformation of Property Title from clients Solicitor.
- Collateral Warranties available (new build)
- Complete review of the above and check compliance with Red book practice Statements.
- Advise client of initial Valuation range thereafter Valuation issues
- Prepare Valuation of property on basis stated in term of engagement sign and date valuation, client discussions on method of Sale for the property with Client seeking instructions, after receipt of client instructions the Property offered for sale.

Sale of Residential Property

- Completion of Terms of Engagement letter with Client
- Inspection and measurement of Property.
- Identify similar properties in the nearby vicinity to subject land.
- Complete information request of Client. i.e. BER certificate, copy planning permission and Architects certificate of compliance or exemption as the case may be.
- Service Charge details if multi-let
- Request conformation of Property Title / Management Company Structure from clients Solicitor.
- Prepare Valuation of property and discuss price range and method of Sale for the property with Client seeking instructions, after receipt of client instructions is the Property offered for sale.

Factors Impacting Value During the Letting Process

Letting of Commercial Property

- Completion of Terms of Engagement letter with Client
- Inspection and measurement of Property.
- Complete information request of Client.
- Surveyors will undertake and seek conformation of the following by way of example
- Planning & planning related items such as Planning Permission, Architects opinion of compliance & fire certificate, BER certificate, Compliance with interim schedule or schedule of Dilapidations and costs for same, any Contamination issues.
- Recent and historic comparable Transactions of similar property type and assessment of Current Market Rent.
- Existence of Special Purchaser
- Offer client advice on prevailing market conditions via the term length, break clauses, repairing obligations, rent review pattern, alienation provisions, permitted user, service charge provisions, guarantee provisions, restrictive clauses etc
- Offer client advice on what tenant incentives will need to be offered to secure a letting and those prevailing in the current market.
- Offer client advice on what tenant Covenant and strength assessment and agree what references will be required from perspective tenants i.e. trade and bank references, 3 years trading accounts, other landlord references dealing with payment history, compliance with lease covenants, repairing obligations etc
- Complete review of the above and check compliance with Red book practice Statements.
- Prepare Valuation of property on basis of Market Rent and discuss rent range and method for letting the property with Client seeking instructions, after receipt of client instructions is the Property offered for Letting
- Request client to brief solicitor acting on their behalf and to have Draft lease and booklet of title and pre lease enquiries available.

Letting of Residential Property

- Comparables in nearby vicinity to subject land.
- Condition Survey.
- BER certificate.
- Service Charge if multi-let
- Landlord's Registration to Private Residential Tenancies Board.

The SCS notes the range of exemptions outlined in section 3 and the provision for other regulations to be made under section 91.

The SCS strongly recommends that the inclusion of commercial land in this Bill is removed and to ensure that the Bill encompasses only what it was intended to from the outset, i.e. the residential property market.

Section 55: Relevant Price Range

Section 2 of the Bill defines 'relevant price range' and means, '*a price range where the difference between the upper limit of such valuation and the lower limit of such valuation is not more than 10 per cent of such lower limit*'.

The Society has two primary concerns with this aspect of the Bill which are that:

1. It requires a valuer and every selling agent to somehow apply formidable foresight in determining with unrealistic precision, the price at which a property will sell for on the open market. This is materially unreasonable and clearly unworkable in practice.
2. It takes no account of the cyclical nature of the property market and the impact this has on values. In a good commercial property market a sale or leasing transaction can often be executed from start to finish in 3 to 4 months, whilst in a downturn (such as the one we are currently experiencing) it is taking as long as 12 months or more to complete property transactions. This means that there may be substantial difference - much more than 10% - from a valuation undertaken at the start of this process to the final sale price achieved at the end, for example in the 12 month period from December 2007 to December 2008 commercial property values in Ireland fell by - 39.6% (Source: Jones Lang LaSalle Irish Property Index)

The mandatory valuation standards followed by SCS members details the extensive and rigorous process undertaken by members when undertaking a valuation.

Due to the mandatory status of these standards, the SCS can provide assurance of the adherence of their own members to the rigours of these valuation standards.

**RICS Valuation Standards
(PS 6.1 Minimum Content of Valuation Reports)**

Minimum content of valuation reports

The report must clearly and accurately set out the conclusions of the valuation in a manner that is not ambiguous, misleading, or create a false impression. It must also deal with all the matters agreed between the client and the member in the terms of engagement and include the following minimum information, except where the report is to be provided on a form supplied by the client:

- (a) identification of the client;
- (b) the purpose of the valuation;
- (c) the subject of the valuation;
- (d) the interest to be valued;
- (e) the type of property and how it is used, or classified, by the client;
- (f) the basis, or bases, of the valuation;
- (g) the date of valuation;
- (h) disclosure of any material involvement or a statement that there has not been any previous material involvement ;
- (i) if required, a statement of the status of the valuer;
- (j) where appropriate, the currency that has been adopted;
- (k) any assumptions, special assumptions, reservations, any special instructions or departures;
- (l) the extent of the member's investigations;
- (m) the nature and source of information relied on by the member;
- (n) any consent to, or restrictions on, publication;
- (o) any limits or exclusion of liability to parties other than the client;
- (p) confirmation that the valuation accords with these Standards;
- (q) a statement of the valuation approach;
- (r) a statement that the valuer has the knowledge, skills and understanding to undertake the valuation competently;
- (s) the opinions of value in figures and words;
- (t) signature and date of the report.

Section 55: Restrictions on Property Negotiations & the Selling Price

It is widely accepted international practice that active negotiations between agents acting on behalf of a seller and purchaser and lessor and lessee are a normal part of the process of sale and lease of land. In its provision that a licensee must not discuss or publish an estimate of the selling price which is below the advised value, Section 55 of the Bill seeks to turn this established practice of active negotiation on its head, without, in the view of the SCS, a full awareness of the consequences in the property market which such fundamental changes will have.

Section 55 seeks to prohibit the quoting of an estimated sales price which is less than the AMV. In practice the vendor has the right to choose the price or level at which they will sell their property.

For example; A Georgian office building in Fitzwilliam or Merrion Sq may have a Market Value of €3 to €3.5m depending on variable factors. If a Valuer provides a Market Valuation of say €3m, it seems that the owner/ vendor now prohibited from selling his property at less than €3m. Let us say the vendor wishes to secure an immediate and quick sale and instructs an agent to sell for €2.5m. In practice the vendor has the right to choose the price or level at which they will sell their property consequently Section 55 is unworkable in reality.

Section 55 seeks to force a vendor to reveal the price at which they will sell their property at, this is an interference with the vendors established right to sell their property at a level of their choosing and reduces the prospect of a vendor achieving a price which is greater than the AMV.

For example, a Georgian office building in Fitzwilliam or Merrion Sq may have a Market Value of €3 to €3.5m depending on variable factors. If a Valuer provides a Market Valuation of say €3m, is the vendor now limited to achieving a sales figure of €3m by quoting an AMV of €3m when there may be purchaser willing to buy at €3m plus.

A further example is as follows:

A Pension Fund Company operates a fund on behalf of 40 policy holders which is now closed to new entrants. The policyholders (members of the fund) are entitled to an annual dividend paid from the rent. In addition policyholders are entitled to encashment provisions.

The Pension Fund Company administers the fund and engages external Valuers for valuation and day to day management of the properties. The Fund comprises of 15 properties acquired 10 years ago. These

individual properties are a mix of offices, retail and industrial/warehousing. They are fully occupied by tenants of good covenant and are held on long leases. Rents are fully paid up and the annual rent role from the 15 properties is €9.7 m and the portfolio of properties when last valued for accounting purposes were valued at €97.5m.

A number of policy holders have sought early encashment of part of their shareholding and the fund need to raise €40m and must sell a number of properties to raise the necessary funds to meet this cash call.

The current financial crisis and the lack of liquidity in financial markets have led to uncertainty over realisable values of the properties identified for sale. The properties identified for sale represent a balanced mix of properties and range in Market Value between €36m and €47m depending on variables which influence value. The properties will be offered for sale as a single lot or on an individual basis which may give rise to sales ranging between the above figures.

A fund manager's duty (e.g. to pension fund holders) to maximise returns within the fund's pre-determined risk parameters, could well be jeopardised by the imposition of artificial barriers to transact within a range around a valuation funds typically hold assets for a large number of clients, reflecting different risk profiles, and time horizons. There is often a requirement to buy assets at the top of a cycle, and to sell at the bottom of the cycle. In each case, valuations are less reliable than in a "normal" market, and there may often be a stronger compulsion to transact, whether or not this can be done within a margin of the valuation, fund management criteria may require a fund to transact at other than market value (e.g. because of stock-specific or sector risk) certain funds have a limited life span, and assets may have to be bought or sold within a time constraint, raising potential issues again of acting within margin.

Having regard to the provisions of Section 55 as proposed and it becomes even more apparent this section is not workable. Such scenarios are realistic and place the fund manager and valuer in an invidious position and consequently they are highly exposed to legal actions by vendors and purchasers and policyholders alike.

Of further and greater concern arises over the implications of commercial land being disposed of by NAMA. A valuer will be prohibited from offering land at any level below Market Value, or from achieving a price in excess of an AMV quote thus minimising any upside for the tax payer. Again this raises further questions over the workability of this Section.

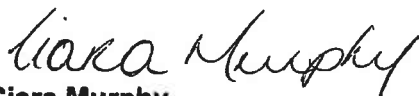
Section 56 provides for an investigation by the authority as to the reasonableness of the AMV and the method used by which it was arrived at. This is simply unworkable. The task of providing a valuation is highly subjective and subject to a host of variable factors as previously set out and is not a mathematical science or formulas.

The Authority should not have unfettered powers in this regard.

I trust that the above comments may be of assistance to you. Representatives of the SCS would appreciate the opportunity to meet with the relevant officials to expand further on the points highlighted above.

I look forward to hearing from you in due course.

Yours sincerely



Ciara Murphy
DIRECTOR GENERAL