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GUIDE TO INVESTING AND WORKING IN IRELAND



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TABLE OF CONTENTS

1. IRISH CORPORATE VEHICLES.....	3
2. PARTNERSHIPS	10
3. BRANCHES OF OVERSEAS ENTERPRISES	10
4. REGISTRATION OF BUSINESS NAMES.....	13
5. BANK ACCOUNTS	13
6. LETTERHEAD REQUIREMENTS	14
7. TAXATION IN IRELAND	15
8. INTERNATIONAL FINANCIAL SERVICES IN IRELAND.....	33
9. GOVERNMENT DEVELOPMENT AGENCIES	37
10. MERGER CONTROL AND COMPETITION LAW IN IRELAND	40
11. EMPLOYMENT LAW.....	43
12. DATA PROTECTION.....	50
13. INTELLECTUAL PROPERTY	51
14. ELECTRONIC COMMERCE	54
15. PROPERTY	54
16. PENSIONS.....	58
17. CONSUMER LAW	60

Note: This document is intended to give general guidance only. Specific legal or taxation advice should be sought on any particular matter.

GUIDE TO INVESTING AND WORKING IN IRELAND

1. IRISH CORPORATE VEHICLES

1.1 Types of Companies

A company is treated as a legal person or entity, distinct from its shareholders, with its own rights and liabilities. Therefore, in general, shareholders in limited liability companies are not exposed to creditors claims, their liability being to pay only the amount agreed to be paid by them on their shares or otherwise to be contributed to the assets of the Company.

A foreign enterprise wishing to conduct its business in Ireland through the medium of a body corporate may do so in one of the following forms set out below.

The principal type of companies which can be established in Ireland are:-

1.1.1 Private Company Limited by Shares

The predominant vehicle used in the conduct of business in Ireland is the private company limited by shares. Such a company may be formed speedily.

In a private company limited by shares, the minimum number of members is one. The definition of private company was amended by the Investment Funds, Companies and Miscellaneous Provisions Act 2006 (the "2006 Act"), so that the maximum number of members for a private limited company is now 99. The new legislation was signed into law on 24 December 2006 although this particular amendment is deemed to be effective from 1 July 2005.

There is no minimum capitalisation requirement. Members' liability is limited to the amount of share capital contributed by them. In a private company limited by shares the members' right to transfer shares is restricted and invitations to the public to subscribe for shares or debentures of the company are prohibited. The 2006 Act however provides that the following offers shall not constitute an offer of shares by a company to the public where such an offer of shares is addressed to:

- (a) qualified investors, or

- (b) 99 or fewer persons, or
- (c) both qualified investors and 99 or fewer other persons.

The relevant terminology used shall have the same meaning as it has in the Regulations Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No 324 of 2005).

The 2006 Act further specifies those offers of debentures which are not to be regarded as constituting an invitation or offer to the public.¹

A private company limited by shares may be formed with only one member or, if formed with more than one member, can convert into a single member company. A single member company may choose to dispense with the holding of an annual general meeting. However, a single member company must have at least two directors and a secretary. A single member company is often the most suitable vehicle for inward investors due to the reduced administration requirements and the elimination of the requirement for nominee shareholders.

1. The following offers of debentures are not to be regarded as constituting an invitation or offer to the public:

- (a) an offer of debentures addressed solely to qualified investors,
- (b) an offer of debentures addressed to fewer than 100 persons, other than qualified investors,
- (c) an offer of debentures addressed to investors where the minimum consideration payable pursuant to the offer is at least €50,000 per investor, for each separate offer,
- (d) an offer of debentures whose denomination per unit amounts to at least €50,000,
- (e) an offer of debentures where the offer expressly limits the amount of the total consideration for the offer to less than €100,00
- (f) an offer of those classes of instruments which are normally dealt in on the money market (such as treasury bills, certificates of deposit and commercial papers) having a maturity of less than 12 months.

1.1.2 A Company Limited by Guarantee not having a Share Capital

This is a public company and accordingly it must have a minimum of seven members. Members' liability is limited to the amount they have undertaken to contribute to the assets of the company, in the event it is wound-up. This amount is normally specified in the Memorandum of Association and is subject to a minimum of €1.

As a company limited by guarantee does not have a share capital, members are not required to purchase any shares in the company. Charitable organisations and other not for profit bodies find this form of company to be a suitable vehicle as it secures the benefits of separate legal personality and limited liability. However, there is no requirement to raise funds from members.

1.1.3 Public Limited Company

In a public limited company (plc) the minimum number of shareholders is seven but there is no maximum limit. Because of the absence of a maximum limit on the number of shareholders and the absence of restrictions on transferability of shares a plc has been the vehicle most commonly used to obtain a listing on a stock exchange. Such companies have minimum capitalisation requirements (currently €38,100) of which 25% must be paid up and are subject to more onerous disclosure and reporting requirements than private companies. In most other respects, plcs are similar in nature and form to private limited companies. In practice, plcs are seldom used by inward investors due to the minimum capitalisation requirement and the need to have at least seven shareholders.

1.1.4 Unlimited Companies

In an unlimited company there is no limit on members' liability. If the company is wound up, creditors may have recourse to the shareholders in respect of liabilities that may be owed by the company which the company had failed to discharge. A minimum of two shareholders is required in such a company.

1.1.5 UCITS

A UCITS (an Undertaking for Collective Investment in Transferable Securities) may be incorporated as a public limited company under the Companies Acts 1963 to 2006. Unlike plcs referred to above, the minimum number of shareholders is just two. The purpose of a UCITS is the collective investment in transferable securities of capital raised from the public that operates on the principle of risk-spreading. The Irish Financial Services Regulatory Authority must authorise all registrations of UCITS that wish to carry on activities within the State.

1.1.6 EEIGs

An EEIG is a European Economic Interest Group. It is a mechanism by which businesses within the EU can engage in cross border commerce. An EEIG facilitates or develops the economic activities of its members. A minimum of two and up to a maximum of twenty members is permitted in an EEIG. Members may be companies or natural persons, from different member States. The manager of a grouping may be a natural person or a corporate body.

1.1.7 European Company

The European Communities (European Public Limited-Liability Company) Regulations 2007 (S.I. 21 of 2007) which give full effect to the European Company Statute were enacted on 22 January 2007. The Regulations set out the basis for registration of a European Company – known formally by its Latin name of ‘Societas Europae’ (SE) - in Ireland.

The European Company Statute was adopted at EU level on 8 October 2001 by Regulation EC 2157/2001 (directly applicable in Member States), which establishes the relevant company law rules. It is a new legal instrument based on European Community law that gives companies in EU Member States the option of forming a European Company or SE. An SE can operate on an EU-wide basis and is governed by Community law directly applicable in all Member States. The overall purpose of the Statute is to make it easier for undertakings to operate across the EU. Use of the European Company Statute framework is optional.

Directive 2001/86/EC on worker involvement addresses the employment law aspects of the SE and the *European Communities (European Public Limited-Liability*

Company) (Employee Involvement) Regulations 2006 transpose the provisions of that Directive into Irish law. These provide that a new SE cannot be registered without first negotiating with employees on their involvement in the Company, whether through information and consultation and/or, in certain circumstances, participation at board level.

1.2 Forming a Company

Most companies, particularly private companies limited by shares, can be formed speedily with little expense or bureaucracy. In order to do so it is necessary to file with the Companies Registration Office:-

a copy of the memorandum and articles of association signed by the initial shareholder(s);

a statutory form (Form A1) signed by the initial shareholder(s), the initial directors and the initial secretary;

the prescribed incorporation fee (currently €100 for a private company limited by shares); a bond of €25,395 (where there is not at least one Irish resident director)(see paragraph 1.7 below).

1.3 Capital Duty

Capital duty on allotments of shares has been abolished with effect from 7th December 2005.

1.4 Regulation of Irish Companies

Companies are, in the main, regulated by the Companies Acts 1963 to 2006 (“the Companies Acts”) and subordinate legislation

1.5 Constitutional Documents

Every company must adopt a set of Memorandum and Articles of Association. The Memorandum of Association, a company's primary constitutional document, must record the Company's name, objects, capital and state whether the liability of its members is to be limited or unlimited. Articles of Association detail the company's internal management rules.

1.6 Accounting and/or Disclosure Requirements

All Irish incorporated companies must after incorporation file certain information with the Irish revenue commissioners, including its name, registered office, nature of the business, and relevant tax residency.

The Companies Acts require particulars concerning a wide range of matters including the identity of directors and secretary and changes thereof, changes in authorised and issued share capital and the like to be filed by Irish incorporated companies in a public registry called the Companies Registration Office.

Every company must, on an annual basis, adopt financial statements comprising, inter alia, a profit and loss account and balance sheet.

Companies (other than unlimited companies) must file in the Companies Registration Office an annual return, having annexed thereto their financial statements in the prescribed form.

The format and content of the financial statements are set by the Companies Acts and other regulations with the overriding requirement being that they show a true and fair view of the company's financial position at the end of the accounting period and of its profit and losses for that period.

Companies whose turnover is below certain levels (currently €7.3m with effect from 24th December 2006) and whose gross assets are below certain levels (currently €3.65m, with effect from 24th December 2006) (and which meet certain other conditions) are not required to have their financial statements audited. The obligation

to file those unaudited financial statements with the Companies Registration Office remains.

If a company does not file its annual return with Companies Registration Office on time, the company may be struck off the register of companies and dissolved. The Companies Registration Office is pursuing a policy of strict enforcement through a mixture of substantial late filing penalties and regularly striking off of companies that are delinquent in their annual return filing obligations from the register of companies. Directors also face prosecution and the threat of being the subject of a restriction order for non-filing of annual returns.

1.7 Board of Directors and Other Officers

Every Irish company must have at least two directors and a secretary (who may be one of the directors). There is no requirement for a director to be an Irish citizen.

An Irish company must have at least one Irish resident director or, in the absence of an Irish resident director, it will be required to post a bond in the amount of €25,395. The bond requirement can be satisfied using bonds arranged via insurance companies. The premium payable for a two-year bond is approximately €1,600 and is non-refundable. The bond, if required, must be lodged with the incorporation papers in the Companies Registration Office.

A director can, with some exceptions, only hold up to 25 worldwide directorships. Companies in the same group are treated as one for the purposes of this provision.

Neither a body corporate, an undischarged bankrupt, nor the Company's auditor can act as a director of a Company.

A director has a number of general duties under Irish company law. One of the most important of which is that he/she must exercise skill, due diligence and care in the discharge of his/her functions and comply with various specific duties under the Companies Acts. The duties of directors are dealt with in some greater detail in a separate memorandum on duties of directors which can be found on our website.

A director may be held personally liable for the debts of a Company, potentially without limit on the amount of such liability, and/or be convicted of a criminal offence if he/she

is a party to reckless or fraudulent trading or certain other specified breaches of the Companies Acts.

2. PARTNERSHIPS

2.1 Partnerships Generally

A partnership is the relationship which exists between two or more persons carrying on business in common with a view to making a profit. Generally, partnerships are between individuals. However a partnership may exist between individuals and companies and between companies alone. The partnership entity does not have a legal personality separate to that of its partners. The partnership does not enter into contracts in its own name, however, but in the names of its partners. Subject to the terms of any agreement governing the partnership the assets of the partnership generally belong jointly to the persons making up the partnership and each partner is generally jointly and severally liable for the debts of the partnership. Generally, partnerships prepare accounts showing the results of the partnership business but, except for limited partnerships (see below), partnerships are not obliged to file these accounts in any public registry.

2.2 Limited Partnership

A limited partnership is a particular type of partnership which permits some of the partners to benefit from limited liability. Such a partnership comprises of at least one general partner who has unlimited liability and one or more limited partners. The total number of partners in a limited partnership cannot exceed 50 partners. Limited partners are liable for partnership obligations only to the extent of the cash and property they contribute. If the general partner is a limited company, the limited partnership is obliged to file its accounts for public record with the Companies Office. A partnership, limited or general, is required to register the business name of the partnership with the Registrar of Business Names

3. BRANCHES OF OVERSEAS ENTERPRISES

An overseas enterprise promoting an undertaking in Ireland may choose to conduct business through a branch rather than establishing an Irish company. Depending on

whether the overseas enterprise operates in Ireland through a "place of business" or a "branch", the regulations applying to it differ.

3.1 Establishing a "Place of Business"

A body incorporated outside Ireland and which establishes a "place of business" in Ireland, must be registered under Part XI of the Companies Act 1963, within one month of the establishment of a place of business in Ireland.

The Companies Acts require that any foreign enterprise establishing a place of business within Ireland must, within one month of such establishment, deliver to the Companies Registration Office, the following:-

- A copy (and if not in English, a certified English translation) of its charter, statutes, memorandum or other constitutional document certified to be correct either by the government official who has custody of the original or by a notary public or by an officer of the company in the presence of a notary;
- A list of the directors and secretary, together with their addresses, occupations and nationalities;
- The names and addresses of at least one person resident in Ireland authorised to accept service of process on behalf of the company and also the address of the principal place of business of the company within Ireland.

Forms to be lodged with the Companies Registration Office must be signed by the person resident in Ireland who is authorised to accept service of process and, where changes in the particulars required to be filed occur, supplemental documents must be filed by that person.

3.2 Operating as a "Branch"

If a company incorporated outside Ireland establishes a "branch" in Ireland it must be registered under the EC (Branch Disclosures) Regulations 1993 ("Branch Disclosure Regulations") within one month of the establishment of the branch in Ireland.

The regulations apply to the equivalent of Irish limited liability companies, incorporated in another state, which establish a branch in this state. There are some differences

between the requirements imposed on a company from a member state of the European Union and companies from other countries.

It is likely most places of business established in Ireland by overseas limited liability companies are in fact branches, and in those cases the provisions of the Branch Disclosure Regulations will apply instead of Part XI of the Companies Act 1963.

The Branch Disclosure Regulations require that a foreign company establishing a branch within Ireland must, within one month of such establishment, deliver to the Companies Registration Office the following:-

- A certified copy of the charter, statutes or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company;
- A copy of the certificate of incorporation of the company;
- Copies of the latest accounting documents;
- Details of the name and legal classification of the company;
- Place of registration of the company;
- Registered number of the company;
- Name of branch (if different from company name);
- Address of the branch;
- Activities of the branch;
- List of particulars of persons authorised to represent the company, the extent of their powers in relation to the company and whether they can represent the company alone/jointly;
- List of persons in Ireland authorised to accept service of process on behalf of the company;
- List of persons in Ireland responsible for ensuring compliance with the regulations.

All companies, including private companies, operating a branch in Ireland, are required to file accounting documents. Accounting documents are the accounts of the company for the period including, if it has one or more subsidiaries, any consolidated accounts of the group, any annual report of the directors for the period, the report of the auditors on the company's accounts and any report of the auditors on the director's report.

4. REGISTRATION OF BUSINESS NAMES

A foreign enterprise which establishes a place of business or a branch in Ireland will have to register its business name under the Registration of Business Names Act 1963. A company trading under a name other than its own name must register its trading name on the Register of Business Names. It is important to note that registration of a business name affords no protection in respect of the name registered. The Registrar of Business Names does not compare the business name with any mark registered or applied on the Register of Trade Marks or any company name registered on the Register of Companies and therefore registration of a business name does not afford any right of priority to or exclusivity of use to any name.

5. BANK ACCOUNTS

The following documentation is generally required to open a bank account in Ireland;

- Bank mandate
- Original Certificate of incorporation
- Memorandum and Articles of Association
- Certified list of directors and registered office by the company secretary confirming names, dates of birth, occupations, residential and business addresses of Directors
- Details of the shareholders of the company
- Verification of the identity of the shareholders, directors and all signatories on the Account
- A copy of each director's and signatory's current passport and/or driving licence; and
- Proof of directors' and signatories' permanent address.

Individual financial institutions may have more extensive and/or different rules particularly in relation to its "know your customer" obligations.

6. LETTERHEAD REQUIREMENTS

6.1 Companies

A company established under the Companies Acts must have at least the following particulars stated in legible characters on all business letters on which the company's name appears:-

- each director's forename (or initials) and present surname;
- any former forenames and surname;
- nationality (if not Irish).

From 1 April 2007, the European Communities (Companies) (Amendment) Regulations 2007 (S.I. No. 49 of 2007), will now extend this requirement to all limited liability companies operating websites and issuing electronic communications.

The new disclosure requirements for company websites and e-communications in full are:

- the name of the company and its legal form;
- the place of registration of the company and the number with which it is registered and the address of the registered office;
- in the case of a company exempt from the obligation to use the word "limited" or "teoranta" as part of its name, the fact that it is a limited company;
- in the case of a company which is being wound up, the fact that it is so;
- if, on any letters or order forms there is reference to the share capital of the company, the reference shall be to the paid-up share capital.

6.2 When Operating Through a 'Place of Business'

An overseas enterprise establishing a place of business in Ireland must have at least the following particulars stated in legible characters on all company billheads, letters, notices, etc:

- name of company;
- place of registration i.e. registered in Ireland;
- registration number;
- registered office;

- the name of the company and whether it is a limited liability company;
- the name of the country in which the company is incorporated;
- if applicable, the fact that the liability of the members of the company is limited;
- directors' names and former names; and
- directors' nationality, if not Irish.

6.3 When Operating Through a Branch

Every letter and order form used by a branch of an overseas company shall bear at least the following particulars:-

- The place of registration of the company;
- The number with which it has registered;
- The legal classification of the company;
- The address of its registered office;
- In the case of a company which is being wound-up, the fact that it is; and
- The place of registration of the branch and its registration number.

7. TAXATION IN IRELAND

7.1 Corporation Tax

Subject to certain exemptions and reliefs, corporation tax is charged on all profits, wherever arising, of companies resident in the state, and profits of non-resident companies insofar as those profits are attributable to an Irish branch or agency.

7.1.1 Rate of Tax

The standard rate of corporation tax on trading income is currently 12.5%. However, a 25% rate is chargeable on certain income chargeable under:-

- Case III (e.g. discounts, foreign income, interest on government securities);
- Case IV (e.g. royalties, miscellaneous income);
- Case V (rental income from land and buildings in the state).

The 25% rate also applies to income from activities which consist of working minerals, petroleum activities and dealing in or developing land, other than construction

operations. Where income of a trade is partly attributable to such activities and partly to other activities, the income is to be apportioned to determine the amount to be charged at each rate. However, such apportionment is not required between land-dealing and construction activities in circumstances where a company deals in land which it has fully developed. In such circumstances, income of the company from dealing in the land will be taxed at the standard rate of corporation tax.

Finally, except where such income is taxable at the standard rate of corporation tax as set out above, a 20% rate of tax applies to income of a company from dealing in residential development land.

7.1.2 Basis of Assessment

Corporation tax is assessed on the profits of a company's accounting period at the rate of tax in force during the accounting period. Where the rate of corporation tax changes during an accounting period, the profits of that period are apportioned on a time basis and taxed at the appropriate rate for the purpose of determining the corporation tax charge for the whole accounting period. An accounting period is a period of not more than 12 months and is normally the period for which a company makes up its accounts.

7.1.3 Payment of Corporation Tax

"Preliminary tax", that is, an amount of tax not less than 90 per cent of the tax ultimately found to be due for an accounting period is payable in two instalments. For accounting periods ending on or after January 2006 all preliminary tax is payable one month before the company's accounting period ends. Any balance of tax period concerned – due 9 months after the end of the period. Any payment which would otherwise be payable after the 21st of a month must be paid by the 21st of that month.

7.1.4 Dividends and other Distributions

Dividends and other distributions (including certain types of interest) are not deductible in computing trading income. Dividends and other distributions paid by a company resident in the state are not chargeable to corporation tax when received by a company resident in the state. The Finance Act 2004 implements EU Council Directive 2003/123/EC and provides that the payment of dividends between certain EU

companies is not subject to withholding tax. Further changes introduced by the Finance Act 2004 are to lower the shareholding threshold to be considered a “parent company” from 25% to 5% and also that Irish branches of companies from other EU member states will be entitled to the same reliefs as Irish resident companies where they receive dividends from their subsidiaries (see also dividend withholding tax at paragraph 7.4 below).

7.1.5 Interest and other Annual Payments

A company is normally entitled to deduct payments of interest (other than interest treated as a distribution), royalties and other annual payments made by it in computing its corporation tax liability. In certain circumstances the company may have to deduct income tax from the payments and account for it to the Revenue Commissioners.

7.1.6 Patent Royalties

Full relief from corporation tax is allowed in respect of royalties derived by an Irish resident company in respect of a patent if the work leading to the grant of the patent was carried out in the state. The royalties must be paid in connection with a manufacturing process or by a party unconnected to the company to qualify for relief. Relief from income tax is, in certain circumstances, available to shareholders in respect of all or part of any distribution made by a company out of its patent royalty income.

7.1.7 Company Capital Gains

Capital gains, other than gains from development land, are included in a company's profits for corporation tax purposes and are charged to corporation tax under a formula that takes into account the rate of capital gains tax. Gains by companies from disposals of development land are chargeable to capital gains tax and are not, therefore, included in profits chargeable to corporation tax (see section on capital gains tax at paragraph 7.6 below).

A company which ceases to be resident in the state is treated as having disposed of all of its assets at their market value when it so ceases. This means that any capital gains which arise as a result of this disposal are charged to tax.

Assets which continue to be used in Ireland by a branch or agency of the company or where the company is ultimately controlled by residents of a tax treaty partner country are not subject to this provision.

7.1.8 “Ten Per Cent” Scheme

Profits derived from certain activities carried on within the state were chargeable to corporation tax at an effective rate of 10 per cent (the “ten per cent” scheme). Qualifying activities included the manufacture of goods, certain service activities carried on at Shannon Customs-Free Airport Zone, the provision of financial services to non-residents by companies in the International Financial Services Centre (IFSC) in Dublin. Entitlement to this 10 per cent rate has now ceased *except* in the following scenario:

- in cases benefiting from the 10% scheme, where the trade was being carried out on or before 23 July 1998 or where it was approved for grant assistance by an industrial development agency on or before 31 July 1998;

in which case, the company will qualify for the 10 per cent rate until 31 December 2010:

7.1.9 Disposals of Subsidiaries – Companies Capital Gains Tax Exemption

The Finance Act 2004 provides for an exemption from companies capital gains tax for disposals by a company of shareholdings above certain minimum values and percentage levels in subsidiaries which are resident in an EU country or a country with which Ireland has a double tax treaty provided certain conditions are met. The exemption will not be available where the shares derive most of their value from “specified assets” (e.g. Irish land or mineral rights).

7.1.10 Research and Development – Tax Credit

The Finance Act 2004 introduced a 20% tax credit on a company’s incremental expenditure in the European Economic Area (“EEA”) over defined base levels on research and development (R&D) carried out in the EEA. The tax credit is capable of being applied against a company’s corporation tax liability for the current year with unused credit capable of being carried forward to subsequent years. The base year

expenditure against which qualifying incremental expenditure on R&D is measured under the scheme has been fixed at 2003 levels until 2009. Expenditure incurred by companies under 51% common ownership can be aggregated and allocated in the proportion nominated by the taxpayer. The definition of R&D in the Finance Act 2004 has been supplemented by guidance notes issued by the Revenue Commissioners which are available on its website (www.revenue.ie). The R&D credit regime has been extended by the 2006 Finance Act to cover capital expenditure on qualifying plant and equipment (previously the only type of capital expenditure which was covered by the R&D credit regime was expenditure on qualifying buildings). The Revenue Commissioners have been given the power to consult an independent expert to assess whether the taxpayer's expenditure qualifies as R&D expenditure for the purposes of this tax credit.

7.2 Income Tax

Subject to certain exceptions and exemptions, income tax is chargeable on all income arising in the state to individuals, partnerships and unincorporated bodies.

7.2.1 Individuals

An individual who is resident, ordinarily resident and domiciled in the state is liable to income tax in respect of his/her total income wherever arising. He/she is entitled, however, to claim certain credits and allowances.

An individual who is not resident in the state is normally liable to income tax in respect of income arising to him/her in the state. Residents of countries with which Ireland has double taxation treaties (see paragraphs 7.9 below) may be entitled, in certain circumstances, to exemption from Irish income tax. In general, however, where income remains fully or partially taxable in the state and in any of the treaty countries, the tax charged in the source country is allowed as a credit against the tax charged in the other country on the same income.

A non-resident individual who is an Irish citizen, or, having been resident in the state, is now resident abroad for health reasons, may be entitled to a measure of income tax relief. Similar relief is also available to residents of other member states of the EU and residents of most of the countries with which Ireland has double taxation agreements.

An individual who is resident in Ireland and who works outside Ireland and the UK for a certain minimum period in a tax year may be entitled to an income deduction. The amount of the deduction is related to the time spent working abroad.

In 2005 and previous years, a person resident in the State but who was not domiciled or ordinarily resident in the State was only liable to Irish income tax on income arising outside Ireland and the United Kingdom as was remitted to the State. This favourable remittance basis of income tax for Irish resident but non domiciled or not ordinarily resident individuals is substantially restricted with effect from 31 March 2006. The remittance basis no longer applies to employment income under a foreign contract of employment, to the extent that the duties of the employment are exercised in Ireland. The foreign employer is required to register and account for the relevant deductions at source for Irish income tax and social insurance. If necessary, it will be possible to obtain an advance approval from Irish Revenue Commissioners regarding the percentage of employment income that relates to duties carried on in Ireland. For this purpose, employment income includes non-cash benefits in kind.

An individual is resident in Ireland in a tax year if he/she spends 183 days or more in Ireland in that year or spends an aggregate of 280 days in Ireland in that year and the previous tax year. Presence in a tax year by an individual of not more than 30 days in the state is not reckoned for the purpose of applying the two-year test.

An individual who has been resident in Ireland for three consecutive tax years becomes ordinarily resident in Ireland from the beginning of the fourth tax year. An individual who has been ordinarily resident in Ireland ceases to be so at the end of the third consecutive year in which he/she is not resident.

7.2.2 Partnerships

A partnership as such is not chargeable to income tax. Each partner is chargeable individually to the tax referable to his/her share of the partnership income.

7.2.3 Unincorporated Bodies

Income tax is normally chargeable on the entire income of an unincorporated body at the standard rate.

7.2.4 Companies

Non-resident companies are liable to income tax in respect of any income arising in the state which is not charged to corporation tax.

7.2.5 European Economic Interest Groupings (EEIGs)

An EEIG is treated for tax purposes, in the same way as a partnership. Each member of the EEIG is chargeable individually to his or her share of the income of the EEIG.

7.2.6 Exemption from Income Tax

There is a provision for exemption from income tax, subject to conditions of certain profits or income. The principal exemptions are from income tax on:

- incomes below certain thresholds;
- income derived from certain leasing of farm land;
- certain earnings of writers, composers and artists;
- interest on savings, certificates, savings bonds and instalments saving schemes, subject to certain upper limits on holdings;
- the discount on certain non-interest-bearing government securities, and the premium on certain others;
- investment income arising from the investment of compensation payments made by the courts, or under an out-of-court settlement, in respect of personal injury claims where the individual is permanently and totally incapacitated from maintaining himself/herself as a result of the injury.

7.3 Deposit Interest Retention Tax (DIRT)

A retention tax, at the standard rate of 20 per cent, must be deducted at source by deposit takers (e.g. banks, building societies, Post Office Saving Bank etc.) from interest paid or credited (annually or at more frequent intervals) on deposits. For other interest a 23 per cent rate applies. The retention tax does not apply to:

- Interest on deposits beneficially owned by non-residents, or companies; and Deposits of persons who are entitled to exemption from tax – charities and pension funds.

Deposit takers are not required to make returns to the Revenue Commissioners of those to whom payments of interest subject to deduction of retention tax have been made. The payment of retention tax at the standard rate by individuals liable to income tax at the higher rate is regarded as satisfying the individual's full liability to tax in respect of the deposit interest from which it was deducted.

A refund of retention tax is only available to individuals aged 65 years or over or permanently incapacitated who would not otherwise (because of personal reliefs, age exemption etc.) be liable to income tax on the relevant interest.

7.4 Dividend Withholding Tax

Withholding tax at the standard rate of income tax applies to dividend payments and other distributions made by an Irish resident company, except where the person beneficially entitled to the dividend or distribution is one of the following categories:

- an Irish resident company;
- an Irish resident pension fund, approved retirement fund, approved minimum retirement fund, charity or approved amateur or athletic sports body;
- permanently incapacitated individuals who are exempt from income tax in respect of income arising from the investment of compensation payments made by the courts, or under out-of-court settlements, in respect of personal injury claims;
- the trustees of "qualifying trusts" (trust the funds of which were raised by public subscriptions on behalf of individuals who are permanently incapacitated from maintaining themselves) who are exempt from income tax in respect of income arising from the investment of trust funds;
- permanently incapacitated individuals who are exempt from income tax in respect of payments received from such qualifying trusts and in respect of income arising from the investment of such payments;
- thalidomide victims who are exempt from income tax in respect of income arising from the investment of compensation payments made by the Minister for Health and Children or the "thalidomide victims foundations";
- a person, other than a company, resident for tax purposes in another EU member state or in a country with which Ireland has a tax treaty;
- a company resident in another EU member state or a country with which Ireland has a tax treaty and which is not controlled by Irish residents;

- a company which is ultimately controlled by persons who are resident in another EU member state or in a country with which Ireland has a tax treaty;
- a company the principal class of the shares of which (or of a company of which it is a 75% subsidiary) is substantially and regularly traded on one or more recognised stock exchanges in another EU member state or in a country with which Ireland has a tax treaty;
- a company which is wholly owned by two or more companies each of whose principal class of shares is substantially and regularly traded on one or more recognised stock exchanges in another EU member state or a country with which Ireland has a tax treaty;
- The Finance Act 2004 contains provisions exempting the payment of a dividend between certain EU companies from dividing withholding tax (see paragraph 7.1.4 above).

Irish individual shareholders are taxable on the gross dividend at their marginal rate, but are entitled to a credit for the tax withheld by the company paying the dividend. Repayments are made where the shareholder's tax liability is less than the tax withheld.

In the case of those non-resident individuals who are eligible for exemption for the withholding tax, entitlement to the exemption is established by the making of a declaration of non-residence which must be supported by a certification procedure (i.e. a certificate of tax residence from the tax authorities of the country in which the individual is resident for tax purposes). In the case of qualifying non-resident companies, entitlement to the exemption is also established by means of a declaration which must be supported by a certificate from the company's auditors of the company's status and in certain cases by a certificate of residence from the tax authorities of the country in which the company is resident for tax purposes.

Where a dividend payment or other distribution is made directly to an exempt shareholder by the company or by an authorised withholding agent, the shareholder is required to provide evidence of entitlement to the exemption to the company or the authorised withholding agent. If the dividend payment or other distribution is made through a qualifying intermediary, the evidence of entitlement to an exemption must be given to the intermediary.

7.5 Stamp Duties

The stamp duties chargeable in Ireland falls into two main categories. The first comprises the duties payable on a wide range of legal and commercial documents. The duties in this category are denoted by means of stamps affixed in or impressed on the document affected and, depending on the nature of the document, may be either ad valorem or of fixed amount. The second category comprises duties and levies payable by reference to statements. These duties and levies mainly affect banks and insurance companies and include a duty in respect of credit cards, charge cards, cash cards, debit cards and levies on certain insurance premiums and certain statements of interest.

The Finance Act 2004 introduces a broad exemption from stamp duty on the sale, transfer or disposition of intellectual property (which includes patents, trademarks, copyright, registered designs, design rights, domain names, inventions, supplemental protection certificates and plant breeder's rights). This new exemption which applies in respect of instruments executed on or after 1st April 2004 replaces an older much narrower exemption for certain international trade marks.

7.6 Capital Gains Tax

A capital gains tax is chargeable on the gains arising on the disposals of assets other than that part of a gain which arose in the period before 6 April 1974. Any form of property (other than the euro) including an interest in property (for example, a lease) is an asset for capital gains tax purposes.

7.6.1 Disposal of Assets

Disposal of an asset includes:

- a transfer by sale, exchange or gift;
- the settlement of an asset on trustees;
- the receipt of a capital sum derived from an asset (for example, compensation or insurance money in respect of the loss or distribution of an asset or for forfeiture or surrender of rights).

However, the death of the owner of an asset is not an occasion of charge in respect of that asset.

Disposals of assets between spouses are not an occasion of charge. However, an amendment to the inter spousal exemption effective as of December 2005 was introduced by the Finance Act 2006 so that a disposal to a spouse, separated spouse or former spouse who could not be taxed in Ireland on a gain arising on a subsequent disposal of the relevant asset in the year of assessment (for example if he/she were neither resident nor ordinarily resident in Ireland for the year of assessment) will no longer attract the exemption.

Where a disposal is made other than by way of an arm's length sale, the consideration is treated as equal to the market value of the asset at the date of disposal.

7.6.2 Persons Chargeable and the Extent of the Charge

Persons resident or ordinarily resident in the state for a year of assessment are chargeable to tax on gains arising in that year on the disposal of assets. This applies to all assets of such persons wherever situated. The charge extends to individuals, companies, trustees and other bodies of persons.

The charge to tax on gains arising to individuals resident or ordinarily resident, but not domiciled, in the state on the disposal of assets located outside the state and the United Kingdom, is confined to the actual amount of such gains received in the state.

Non-residents and non-ordinarily resident persons are chargeable to tax on gains arising on the disposal of immovable property and certain other assets situated in the state. These include land, minerals or mineral rights in the state (including the Irish area of the Continental Shelf) and assets used for the purposes of a trade carried on in the state through a branch or agency.

7.6.3 Basis of charge

The tax is charged for a year of assessment, that is, the year ending on 31 December.

7.6.4 Calculation of Gain

The chargeable gain is the amount of the consideration for the disposal of the asset reduced by “deductible expenditure”, that is the cost of its acquisition and certain enhancement expenditure. Deductible expenditure is adjusted for inflation (indexation relief) by applying to it a multiplier (based on the All Items Consumer Price Index). This adjustment is not made in respect of any expenditure incurred within one year of the date of disposal of the asset.

Indexation relief is available to all taxpayers, including companies and non-residents. However, there is no such relief in respect of inflation after 31 December 2002.

In the case of development land, indexation relief applies only to the current use value (generally the agricultural value) at the date of acquisition (or 6 April 1974 if the land was acquired before that date).

7.6.5 Exemptions and Reliefs

Various exemptions and reliefs from capital gains tax are provided, the most important are:

1. The first €1,270 of net gains by an individual in a year of assessment are exempt. In the case of a married couple this exemption is available to each spouse but is not transferable.
2. Gains realised on the following are not chargeable gains:
 - Irish government securities, including land bonds, prize bonds, savings, certificates and bonuses payable under the National Instalment Savings Scheme;
 - securities of local authorities, certain state-sponsored bodies and the European Union;
 - futures contracts based on government and other securities that are not chargeable assets for the purposes of capital gains tax;
 - life assurance policies and contracts for deferred annuities, unless purchased from another person etc.
 - chattels sold for €2,540 or less;
 - wasting chattels, such as private motor cars, animals;

- winnings from betting, lotteries and sweepstakes;
 - gains from accruing to superannuation funds, charities and bodies such as local authorities and trade unions;
 - works of art (valued at not less than €31,740) which have been loaned to an approved gallery for public display for a period of not less than six years;
 - a gain on a dwelling-house (including grounds of up to one acre) where the house has been used as an individual's only or main residence (or, under certain conditions, as the sole residence of a dependent relative) during the individual's period of ownership. In certain circumstances there may be a restriction on the relief or partial relief may be due.
3. A gain on the disposal of a business or farm by an individual aged 55 years or older for a consideration not exceeding €500,000 is exempt from capital gains tax.

Marginal relief applies where the consideration does not greatly exceed that amount. Where the disposal is made to a child of the individual (or, in certain circumstances, to a nephew or niece), the gain is exempt irrespective of the amount of the consideration.

This relief also applies to the disposal of a family business where the business is carried on through a family company or a group of companies having at their head a holding company which is a family company.

4. Roll-over relief on the disposal before 4 December 2002 of business assets is available where the proceeds of the disposal are reinvested in assets of the same kind of the purposes of the business.
5. Where an unincorporated business is transferred to a company in exchange for shares in the company, there is a deferral of the tax payable on the amount of the consideration taken in the form of shares in the company.
6. Roll-over relief also applies, subject to certain conditions, to an entrepreneur on any gains arising on the disposal before 4 December 2002 of shares or securities in an unquoted company if the proceeds of the disposal are reinvested in ordinary shares in another unquoted company.

7. Gains arising due to non-voluntary disposal of assets before 4 December 2002 may be deferred subject to conditions. This applies to compulsory purchase by the state and local authorities and to reorganisations of a company share capital and to company reconstructions and amalgamations.

7.7 Value-Added Tax

Value-Added Tax (VAT) is a general sales tax applied at all stages of production and distribution to the supply of taxable goods or services.

7.7.1 Registration

Persons supplying taxable goods or services in the course of furtherance of business must register and account for VAT if their turnover is in excess of certain limits. The main annual limits are:

- €27,500 for persons supplying services (€35,000 with effect from 1st March 2007);
- €55,000 for persons supplying goods (€70,000 with effect from 1st March 2007);

Persons established in the state whose turnover does not exceed the appropriate limit may opt to register.

7.7.2 Exemptions

Certain goods and services are exempt from VAT in general, persons supplying such goods and services, e.g. schools, universities and hospitals, are treated as being exempt for VAT purposes. This means that these persons must pay VAT on their purchases but they have no obligation or entitlement to register and account for VAT.

7.7.3 Rates

The rates of VAT are zero per cent, 4.8 per cent (on livestock and greyhounds), 13.5 per cent and 21 per cent, according to the goods or services in question.

7.7.4 Accounting for VAT

VAT registered persons, referred to as traders, are liable for VAT on all sales of taxable goods made or taxable services supplied by them within the state. In the case of transactions with other traders, invoices, showing the tax separately, must be issued.

Cumulative taxation is avoided by the system of allowing traders to credit the tax borne on their purchase against the tax payable on their sales. This credit is allowed to a trader in respect of all purchases for the business with a few exceptions – mainly motor cars, petrol, meals, entertainment expenses and goods or services used for purposes for which the trader in question is not taxable.

The normal taxable period for VAT is two calendar months (i.e. January/February, March/April and so on). A VAT return for each taxable period is due on the 19th day of the month following. Payment, as appropriate, must accompany the return.

Once a year, traders are required to provide a more detailed breakdown (known as the return of trading details) of their trading particulars, purchases and sales, broken down by VAT rate. Traders may, if they wish, nominate their own accounting period as the basis for this return.

Traders with low VAT liabilities may be permitted to make one annual VAT return: or by – annual or every four months (depending on the level of VAT liability) instead of the bi-monthly returns. Traders who opt to pay by direct debit can also avail of this facility. These traders must also provide the return of trading details.

7.7.5 VAT on Imports and Exports

With effect from 1 January 1993 the concept of imports and exports between member states of the EU was replaced by a new concept of intra-Community supplies. The main features of this scheme are:

- frontier controls, checks and formalities for tax purposes were abolished in respect of trade between member states;
- sales of goods between traders who are registered for VAT in different member states are zero-rated;

- payment of VAT at point of entry on goods from other member states was replaced by a system of postponed accounting whereby traders account for VAT in their VAT return, the taxable event being the acquisition of the goods in the state;
- traders are required to make periodic returns, showing the total value of their sales to customers in other member states.

Export sales (i.e. exports outside EU) are completely relieved of VAT.

Imported goods (from outside the EU) are liable to VAT at the rate applying to the sale of the same goods within the state. As a general rule VAT is payable at the point of importation. However, approved importers may participate in a deferred payment scheme in which case the tax is payable on the 15th day of the month following the month of importation.

Ireland operates a special VAT incentive for exporters. Entities located in Ireland that supply in excess of 75 per cent of their products to other EU locations or export to non-EU jurisdictions may qualify for authorisation to purchase most goods and services at the zero per cent rate of VAT. This can provide a substantial cash flow advantage for companies establishing their European Middle East and Africa region (EMEA) operations in Ireland.

7.8 Capital Acquisitions Tax

Capital acquisitions tax comprises gift tax, inheritance tax and discretionary trust tax.

7.8.1 Gift Tax and Inheritance Tax

Gift tax is charged on taxable gifts taken on or after 28 February 1974, and inheritance tax is charged on taxable inheritances taken on or after 1 April 1975. An inheritance is a gratuitous benefit taken on death and a gift is a gratuitous benefit taken otherwise than on a death.

The tax is charged on the taxable value of the gift or inheritance. The taxable value is arrived at by deducting from the market value of the property comprised in the gift or inheritance permissible debts and encumbrances and any consideration paid by the beneficiary.

Once the taxable value of the gift or inheritance has been determined the amount of tax payable depends on whether the appropriate tax-free threshold had been exceeded. Any excess over the tax-free threshold is charged to tax at a single rate of 20 per cent for both gifts and inheritances.

There are three different group thresholds, each one determined by the relationship between the beneficiary and the donor:

- (a) €478,155: this applies where the beneficiary is a child, or a minor child of a deceased child, of the donor. It also applies in certain circumstances to nephews and nieces of the donor and to parents who take an inheritance from a deceased child;
- (b) €47,815: included in this class are brothers, sisters, nephews, nieces and grandchildren of the donor;
- (c) €23,908: this applies to a beneficiary who does not come under either of the above class thresholds.

A gift or inheritance taken by a beneficiary is aggregated with all other gifts or inheritances taken by that beneficiary since 5 December 1991 which have the same group threshold as the current benefit.

Gifts or inheritances of Irish property are liable to tax whether or not the donor is resident or domiciled in Ireland. Foreign property is liable to tax where either the donor or the beneficiary is resident or ordinarily resident in Ireland at the relevant date.

Various exemptions from gift and inheritance tax have been provided for. For example, the first €3,000 (€1,270 on or before 31 December 2002) taken as a gift by a beneficiary from a donor in any one year is exempt from tax as are gifts and inheritances taken by one spouse from the other. There are exemptions in favour of certain charities, heritage property, superannuation benefits, and foreign donees of certain Irish government securities. Qualifying insurance policies, to the extent that they are utilised in the payment of certain gift tax or inheritance tax, are also exempt.

A gift or inheritance of a dwelling-house taken by a person residing in the house is exempt from tax provided certain conditions are met.

In addition to the exemptions various reliefs, which are subject to certain conditions being satisfied, apply e.g.:

- Agricultural Relief: This relief operates by reducing the market value of agricultural property
- Business Relief: This relief is granted by reducing the taxable value of business property.

7.8.2 Discretionary Trust Tax

A once off inheritance tax applies to property subject to a discretionary trust on 25 January 1984, or becoming subject to a discretionary trust on or after that date. The current rate of tax is 6%. In certain cases the 6% rate can be reduced to 3%.

An annual inheritance tax at the rate of 1% applies to property subject to a discretionary trust on 5 April in each year commencing with the year 1986.

7.9 Double Taxation Relief

Ireland has comprehensive double taxation agreements in force with 44 countries. The agreements generally cover income tax, corporation tax and capital gains tax (direct taxes). The current list of agreements is as follows: Australia, Austria, Belgium, Bulgaria, Canada, China, Cyprus, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, India, Iceland, Italy, Israel, Japan, Korea (Rep. Of), Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States and Zambia.

New agreements are being negotiated with Argentina, Chile, Egypt, Kuwait, Malta, Morocco, Singapore, Tunisia, Turkey and Ukraine. Also existing agreements with Canada, Cyprus, France and Italy are in the process of re-negotiation.

There is also legislation implementing the EC Parents-Subsidiaries Directive (90/435/EEC) (Taxes Consolidation Act 1997 section 831) and the EU Mergers Directive (90/434/EEC) (Taxes Consolidation Act 1997 sections 630-638) and the EU Arbitration Convention (European Communities Mutual Assistance in the Field of Direct Taxation Regulations 1978) (S.I.) No. 334 of 1978).

8. INTERNATIONAL FINANCIAL SERVICES IN IRELAND

A wide variety of internationally traded financial services are carried on from Ireland and two sectors that achieved significant international prominence over the last ten years have been the establishment and administration of mutual funds and securitisation structures.

8.1 Mutual Funds

The total funds administered in Ireland reached [US\$500 billion] at the end of [2004], of which [US\$435 billion] was administered through Irish registered mutual funds.

8.1.1 Common Forms of Mutual Funds

The Unit Trust and the Investment Company are the principal forms of mutual funds established in Ireland.

Irish law requires the division of responsibilities between the fund manager/administrator and the custodian, who is responsible for the safekeeping of the fund's assets.

All of the leading global custodians and fund managers/administrators have an active presence in Ireland.

8.1.2 Regulation of Mutual Funds

The Irish Financial Services Regulatory Authority is the responsible authority in Ireland for approving mutual funds that are offered to the public. The degree of regulation of investment and leverage parameters varies between retail investment structures and institutional investment structures.

8.1.3 Retail Funds

Ireland has adopted the UCITS Directive and all amending directives, permitting the cross-border marketing throughout Europe of funds that comply with the applicable

investment and borrowing requirements. Irish based UCITS funds accounted for [US\$343 billion] at the end of [2004].

8.1.4 Institutional Funds

Ireland employs a well regulated liberal regime for institutional funds and has become the jurisdiction of choice in Europe for hedge funds. Most of the global prime brokers have an active presence in Ireland.

8.1.5 Taxation of Mutual Funds

Mutual funds that are marketed to the public enjoy the following benefits:

- they are exempt from tax on income and gains arising from their investment activities;
- distributions are made free of withholding tax;
- no capital taxes apply; and
- non-resident investors are not chargeable to tax in Ireland by virtue of their investment in an Irish mutual fund.

8.1.6 Further Information

We refer you to our “Guide to Funds in Ireland” on our website for more detailed information on this subject.

8.2 Securitisation in Ireland

In recent years, Ireland has become a popular jurisdiction for the establishment of SPVs for securitisation and other structured finance transactions.

Examples of securitisation transactions that have taken place include:

- *Collateralised Debt Obligations (CDO's)*
- *Synthetic securitisations*
- *Commercial Mortgage Backed Securities (CMBS)*
- *Trade receivables financing*
- *Re-packaging*

There are many reasons why Ireland has become such a popular location for securitisation transactions:

- Ireland's favourable tax law allows the structures to be, in most cases, tax neutral.
- No withholding taxes on payments to Investors.
- Ireland has consistently introduced and refined its legislation in dealing with structured finance transactions so as to facilitate transactions, which have not previously been possible.
- Ireland has a large double taxation treaty network.
- Ireland's domestic infrastructure is capable of implementing even the most complex structured finance deals in a cost effective manner.
- Ireland is a member of the European Union (EU) and also of the Organisation for Economic Co-operation and Development (OECD), which means that Ireland is well situated as a location for SPVs as investors in some jurisdictions may want to purchase debt issued by EU/OECD issuers only.
- There are a number of institutions established in Ireland which provide corporate services, such as administration and company secretarial services, to SPVs.
- Complicated cashflow models can be managed by an Irish administrator as most international banks now have a presence in Ireland.

All of these factors combine to make Ireland a very attractive jurisdiction for the location of SPVs.

8.2.1 Corporation Tax

The SPV is taxed on its net profits as shown in its financial statements at 25%. There is no minimum profit figure and in practice it can be nominal. Thus there are provisions allowing for the deduction of expenses, the occurrence of bad debts, loss relief and most importantly for the making of interest payments free of withholding tax.

All typical expenses incurred in the SPV are deductible for Irish tax purposes.

8.2.2 Withholding Taxes

Payments of Interest by an SPV to any EU resident or any other residents of a treaty jurisdiction will not be subject to Irish withholding tax. This allows payments to non corporates such as Trusts, Government bodies, Individuals, Charities etc.

It should be noted that Ireland has an extensive network of double taxation treaties. (See paragraph 7.9 above).

There are also various other ways of avoiding Irish withholding tax e.g. for investors located in non-treaty locations. The most common method would be to structure the debt as an issue of quoted Eurobonds and provided certain conditions are met, there is a domestic exemption from withholding tax in respect of interest paid on such securities.

8.2.3 VAT Issues

As the SPV is engaged in activities which are VAT exempt, the SPV would not normally be entitled to recover any VAT incurred by it. However, where the asset portfolio of the SPV has a mix of EU and non-EU assets, a VAT recovery rate is usually determined based on the proportion of non-EU to total assets.

8.2.4 Company Law

Irish SPVs can be established as private limited companies for private placings or as public limited companies for public offerings.

However, the changes introduced by the 2006 Act (see paragraph 1.1.1 above) are of particular relevance for the structured finance and funds industry. In the case of public offerings, SPVs were previously required to incorporate as public limited companies or plcs due to the pre-existing definition of a private company and the broad definition of 'offer to the public' contained in the Prospectus Regulations. Due to the recent legislative changes introduced by the 2006 Act, certain SPVs will be able to operate as private companies and this is expected to reduce the cost of many securitisation transactions in terms of both time and money. The minimum capital requirement of approximately €40,000 which must be satisfied in order to establish a plc can now be

avoided and in general the incorporation of a private company is completed in a shorter time period than that of plc.

A private limited company can be established with a minimum capital of Euro 1 within 7 days from the date of filing and a plc can be incorporated within 15 days of filing. The minimum capitalisation for a plc is €38,100, as to which one quarter must be paid in and can be applied to defray expenses.

8.2.5 Offering of Securities

Transactions may take place in the form of public offers or private placings.

8.2.6 Further Information

We refer you to our Note on Securitisation in Ireland on our website for further information on this subject.

9. GOVERNMENT DEVELOPMENT AGENCIES

Inward investors may be able to avail of incentives administered by the state's government development agencies. IDA Ireland is the state agency with national responsibility for securing new foreign investment and focuses on a variety of sectors such as healthcare and pharmaceuticals, engineering and international and financial services.

A range of grant aids are available for foreign investors into Ireland including capital grants, research and development grants and employment grants. The availability of grant aid and the make-up thereof will depend of various factors and the location of the proposed project will have an important bearing. Grant aid is currently (with very limited exceptions) not available for inward investment projects in the Dublin area. The most attractive grant aid packages available are in the border, midland and western (BMW) region.

The role of the state agency Udaras na Gaeltachta is the economic, social and cultural development of the Gaeltacht (Irish speaking) regions of Ireland.

Enterprise Ireland is the state agency with responsibility for the promotion of indigenous business and industry.

FAS is the government agency responsible for Irish industrial recruitment and training.

9.1 Types of Grants Available from the IDA

9.1.1 Capital Grants

The cost of acquiring fixed assets can be subsidised by capital grants. The categories of fixed assets eligible for assistance are site purchase and development, buildings and new plant and equipment. The amount of such grants is subject to a maximum level determined by EU State Aid rules. Certain expenditure will not qualify for grant assistance. The subsequent disposal of grant-aided assets is invariably restricted by agreement.

9.1.2 Employment Grants

Employment Grants are the most common form of grant aid. These are available to companies who do not need to invest heavily in fixed assets but whose presence will create employment. The amount of grant paid is linked to the amount of each full-time and permanent job created and varies depending on the location of the project and the activities to be undertaken. The grant is usually payable in two separate instalments, the first on the execution of a signed employment contract with the employee and the second instalment due 12 months later provided the job is still in existence.

9.1.3 Training Grants and Research and Development Capability (R&D) Grants

Certain companies are eligible to apply for grants towards the cost of major training initiatives and the development and expansion of an R&D facility.

9.2 The Application Procedure for IDA Grants

The process can take a number of weeks and invariably involves the preparation and submission of a formal business plan to the IDA together with subsequent meetings and negotiations between the applicant and the IDA. In order to be considered for grant incentives, an applicant must satisfy the IDA that the financial assistance is necessary to ensure the establishment or development of

the operation and that the investment proposed is commercially viable and will provide new employment.

Where the application is approved and an incentive package agreed, a grant agreement is then entered into between the IDA, the Irish entity and its parent company. This contract sets out the terms on which the grant aid is given and will vary from case to case. However, the following key provisions are reasonably standard:

- a commitment by the promoter (typically the parent company) that the development of the operation will be in accordance with the proposals submitted, including the projected number and type of jobs to be created;
- the agreement will specify the financing required from the promoter and the manner in which it is to be provided. The IDA will nearly always require that the amount of the grant aid received is matched by an equal amount of equity investment by the promoter. The IDA's preference is that this matching equity equivalent be in the form of ordinary share capital or commonly at least 25 per cent of the equity equivalent comprises share capital;
- a prohibition on a change of control of the parent company or Irish entity without IDA consent;
- provision for the repayment of the grants if the Irish project fails to achieve employment targets, ceases to carry on business or if there is a breach of the terms of the grant agreement;
- where the aid package is notifiable to the EU Commission, the grant agreement will be conditional on EU Commission approval and on compliance with the EU Commission's decision in respect of the aid, if granted.

9.3 Payment of Approved IDA Grant

Grants are paid once the relevant expenditure is incurred. In order to claim grants, the grant aided entity is usually obliged to provide certain specified information to the IDA including, for example, copies of signed employment contracts in the case of employment grants. An auditors' certificate is also usually required to support all claims for the payment of grants. Retention of adequate records is thus important for this purpose.

10. MERGER CONTROL AND COMPETITION LAW IN IRELAND

10.1 Introduction

Irish competition law is contained in the Competition Act 2002 (the “2002 Act”). The 2002 Act regulates mergers and prohibits restrictive agreements and practises and abuses of a dominant position. Irish competition law is modelled on EU competition law as set out in Articles 81 and 82 of the EC Treaty and the EU Merger Control Regulation.

10.2 Merger Control

A merger must be notified to the Competition Authority if in the most recent financial year:-

- (i) the worldwide turnover of each of two or more of the undertakings involved in the merger is not less than €40 million; and
- (ii) each of two or more of the undertakings involved in the merger carry on business in any part of the Island of Ireland (North or South); and
- (iii) the turnover in the Republic of Ireland of any one of the undertakings involved in the merger is not less than €40 million.

As a result of the application of the above thresholds, transactions may require notification to the Competition Authority even where the transaction has no impact on the Irish market.

The above €40 million thresholds do not apply to “media mergers” which is broadly defined and would include any merger relating to newspapers, television or radio. As a result, media mergers need to be notified to the Competition Authority irrespective of the turnover of the parties.

A merger which does not meet the above thresholds is still subject to the general competition rules governing agreements and restrictive practises and abuse of a dominant position. Mergers which fall below the thresholds may be notified to the Competition Authority on a voluntary basis and if the merger is cleared, the general provisions of competition law under the 2002 Act are disapplied.

The definition of merger includes the creation of joint ventures which are to perform on an indefinite basis all the functions of an autonomous economic entity (known as full function joint ventures).

The 2002 Act provides civil and criminal sanctions for failure to comply with the notification requirements. Most significantly, title to any shares or assets involved in a merger requiring notification under the 2002 Act is deemed not to pass until the merger is approved (or deemed to be approved) by the Competition Authority.

The Competition Authority has one month within which to approve the merger or to launch a full scale second stage investigation which may involve a further period of three months. The Competition Authority may, in connection with a notification, (i) decline to make an order in connection with the proposal; or (ii) prohibit the proposed merger or (iii) approve the merger absolutely or conditionally.

Mergers which exceed given thresholds and therefore have a "community dimension" are regulated by the EU Merger Control Regulation. One distinct advantage of the EU Merger Control system is that it provides for one-stop shopping, i.e. a merger which is notified and cleared under the EU Merger Control Regulation is generally not subject to any of the national merger control systems.

10.3 General Competition Rules

The 2002 Act prohibits a wide range of anti competitive agreements or arrangements and abuse of as dominant position. The above prohibitions are broadly similar to and modelled upon Articles 81 and 82 of the Treaty of Rome. As noted above, the Competition Authority has taken the view that the above prohibitions may, in certain circumstances, also apply to mergers.

Sections 4 and 5 are the key provisions of the 2002 Act. Section 4 (1) of the 2002 Act prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which as their object or effect of prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State. An undertaking is defined as a person being an individual, a body corporate or an unincorporated body of persons engaged for gain in the production, supply or distribution of goods or the provision of a service. An agreement, decision or concerted practice which infringes the above prohibition is void and

unenforceable unless exempted. An exemption is only applicable where specified conditions are met or where the Competition Authority has issued a declaration of exemption which automatically exempts a defined category of agreements.

A breach of Article 81(1) or 82 of the EC Treaty is also an offence under the 2002 Act.

The Competition Authority is empowered to issue guidance notices on the application of the 2002 Act and has issued notices which specify that a defined category of agreement, decision or concerted practice does not fall foul of Section 4(1) of the 2002 Act.

Section 5 of the 2002 Act prohibits a company which occupies a dominant position in a relevant market from abusing that position. There are no provisions for the grant of an exemption in respect of an abuse of a dominant position.

An undertaking which is guilty of an offence is liable for a fine of up to €4,000,000 or 10% of the turnover of the undertaking in the financial year ending in the 12 months prior to the conviction. If the undertaking is an individual such as an unincorporated sole trader, the individual is exposed to fines up to the same level and in certain cases to a term of imprisonment of up to 5 years.

The 2002 Act also imposes personal liability on certain persons within an undertaking including its directors. If an undertaking is committing an offence and the doing of the acts that constituted the offence are being authorised or consented to by a person who is a director, manager or other similar officer of the undertaking or a person who purports to act in such a capacity, that person as well as the undertaking is guilty of an offence and is liable for the same sanctions. A director whose duties includes the making of decisions that to a significant extent could have affected the management of the undertaking or a person who purports to act in any such capacity is presumed, until the contrary is proved, to have consented to the doing of the acts by the undertaking.

Any third party who is aggrieved by the agreement, decision, concerted practice or abuse of a dominant position may initiate proceedings against the parties and/or the directors and other senior managers claiming various remedies including damages. The Competition Authority is also given the right under the 2002 Act to take proceedings against the parties for breach of section 4(1) or (5) of the 2002 Act and seek an injunction or declaration.

The members of a body corporate are also liable as if they were directors of the body corporate if the affairs of the body corporate are managed by the members.

The Competition Authority has been granted wide investigative powers under the 2002 Act which includes conducting a “dawn raid” (an unannounced visit) at the premises of the undertakings on foot of a warrant issued by a judge. The Competition Authority may carry out such investigations on his own initiative or on foot of a complaint. The jurisdiction to listen to and act upon complaints from the public is very attractive to potential litigants who do not wish to incur the substantial costs involved in bringing a case before the courts.

11. EMPLOYMENT LAW

11.1 Background

One of the features which distinguish contracts of employment in Ireland from contracts of employment in certain other jurisdictions is the extent to which they are regulated by statute. The employment relationship is regulated from its inception by various pieces of legislation.

11.2 Terms and Conditions of Employment

The Terms of Employment (Information) Act 1994 – 2001 provides that an employer must within two months of the commencement of employment, provide the employee with a written statement of the terms and conditions of his/her employment. These terms and conditions make up the employee’s Contract of Employment. This Contract of Employment should be signed on behalf of the employer and should also be signed by the employee. It should contain all the essential terms attaching to the employment. It should set out the date of commencement of the employment, to whom the individual will report, the place of employment, salary and all other benefits, hours of work and the nature of the position. It should also deal with issues such as holidays, sickness procedure and maternity procedures (where applicable). It should also set out the notice required to be given by the employee and the employer in the event that either party should wish to terminate the Contract of Employment. The notice which is required to be given by the employer/employee in the event the employment agreement is being terminated by either party may not be less than the

notice period provided for under the Minimum Notice and Terms of Employment Acts, 1973-2001. The notice entitlement of the employee under this legislation runs, on a sliding scale, from a minimum of one weeks notice, where the employee has 13 weeks service up to a maximum of eight weeks notice where an employee has 15 years or more service. The employee is required to give one weeks notice to the employer under the above legislation.

Employees must also be supplied within 28 days of commencing employment with a document setting out the procedure which an employer will follow if the employee is to be dismissed.

An employee should be advised of the place of work. However, attempts to relocate employees at a distance from their original employment or to unilaterally alter their job position should be treated with caution as in certain circumstances an employee may claim that he has been constructively dismissed.

Irish employment legislation regulates a number of other areas which are relevant to the contract of employment, to include minimum breaks and rest periods, minimum weekly working hours, restrictions on night work and additional payment for working on Sundays.

11.3 Trade Unions

Employers are not obliged to enter into agreements with, or negotiate with trade unions in relation to their employees. Irish employees have a right to join a trade union if they wish and at the same time a right not to join a trade union.

11.4 Safety

Irish and EU safety, health and welfare legislation has become increasingly important for employers. Employers must do all that is reasonably practical to ensure that any risk to the safety, health and welfare of an employee is avoided. Employers must have a safety statement identifying all hazards existing in the workplace and the procedures in place for avoiding risks from such hazards arising for employees.

11.5 Bullying, Harassment and Sexual Harassment

All employers should have in place and enforce a suitable code of conduct to deal with allegations of bullying, harassment and sexual harassment in order to avoid liability in respect of such conduct. Employers should have an established procedure permitting employees the opportunity to raise complaints and the procedure for investigating any such complaints. Four Codes of Practice exist in respect of bullying, harassment and sexual harassment in Ireland.

11.6 Discipline/Dismissal

The Unfair Dismissals Acts 1977 - 2007 provide redress to employees who have been dismissed from their employment. Section 6(1) provides that the dismissal of an employee is deemed to be unfair unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal. The Acts further provide however that a dismissal shall be deemed “ not to be an unfair dismissal, if it results wholly or mainly from” one of a number of specified grounds including capacity, competence, conduct and redundancy. Employees enjoy a high level of protection from the courts and other regulatory bodies and it has been shown on many occasions that it is not enough for an employer to show that he had fair grounds to dismiss an employee. The employer must show that he acted reasonably and treated the employee fairly (by following fair procedures) prior to making the decision to terminate the employee's employment.

Employers must have a disciplinary procedure setting out the steps to be followed by the employer when dealing with issues of concern such as conduct or performance. Any such procedure must be fair and permit the employer to bring issues of concern to the attention of the employee and for the employee to defend such issues before any decision is made as to disciplinary action. Dismissal should generally only occur after fair procedures have been applied which would include warning the employee and granting the employee an opportunity to improve. Failure to provide fair procedures and to have good grounds for dismissal may lead to a finding of unfair dismissal against the employer. A statutory code of practice is in place in Ireland in respect of disciplinary procedures.

An employee must have 12 months service in order to avail of the protection afforded by the Acts save in certain circumstances.

11.7 Redundancy

The Redundancy Payment Acts 1977-2007 provide for the payment of compensation by employers to employees who are dismissed by reason of redundancy provided relevant conditions are met by the employee. An employer is usually entitled to reclaim 60% of the statutory redundancy payment from a redundancy fund administered by the State. An employee will be regarded as dismissed by reason of redundancy in circumstances such as:-

- when the employer has ceased to conduct the business in the place where the employee was employed;
- when the requirements of the business have changed;
- when the business requires fewer employees;
- when the work now requires someone with different qualifications.

The redundancy lump sum payment to which a qualifying employee is entitled to is calculated based on the number of years the employee has been employed.

An employee must have at least 104 weeks continuous service with the employer to qualify for a statutory redundancy payment.

11.8 Non-Discrimination

The Employment Equality Acts 1998 to 2007 (“the Acts”) prohibit discrimination based on the following nine distinct grounds:-

- gender;
- marital status;
- family status;
- sexual orientation;
- age;
- disability;
- race;
- religion; or
- membership of the travelling community.

In general, an employer is held responsible for the actions of employees arising out of and in the course of their employment. It is essential, therefore, that all staff who are likely to deal with matters such as job applications/interviews are aware that

discrimination on these grounds is unlawful. An employer is not permitted to discriminate, on any of the grounds set out above, against either an employee or a prospective employee in relation to:-

- (a) access to employment;
- (b) conditions of employment;
- (c) training or experience for or in relation to employment;
- (d) promotion or re-grading; or
- (e) classification of posts.

Unlike under the Unfair Dismissals Act, there is no minimum period of service to be met by an employee before a claim can be brought under the Employment Equality Acts.

The Protection of Employees (Part Time Work) Act 2001 and the Protection of Employee (Fixed-Term Work) Act 2003 prohibits employers from discriminating against employees in part time positions or fixed term positions.

11.9 Transfer of Employees

Detailed rules apply regarding the treatment of employees where a business is being transferred from one employer to another. In essence, the obligations which the original employer had towards his employees will be taken over by the new employer. This includes rights arising from the employee's contract of employment and collective agreements. Both the previous and new employer are obliged to inform their respective employee representatives of the reasons for the transfer, the implications of the transfer and the measures envisaged to be taken in relation to the affected employees in good time before the transfer is carried out.

11.10 Working Time Provisions

The Organisation of Working Time Act 1997 sets out the statutory rights for employees in respect of rest, maximum working time and holidays.

The Act provides for a statutory minimum period of four weeks of paid annual leave for full-time employees. In addition, employees are entitled to nine paid public holidays

each year. Where employees work less than 1365 hours per leave year the Act sets out details of how their leave should be calculated.

The Act further provides that an employee may work a maximum average working week of 48 hours and averaging may be balanced out over a 4, 6 or 12 month period depending on the circumstances. In general an employee may not “opt out” of the maximum weekly working hours limit.

11.11 Maternity Leave

Under the terms of the Maternity Protection Acts 1994 and 2004 employees are entitled to 26 consecutive weeks maternity leave, subject to certain conditions. The Acts also provide for an additional 16 consecutive weeks as additional maternity leave. The employer is not obliged to pay an employee during maternity or additional maternity leave but the employee may be eligible for maternity benefit from the Department of Social Welfare.

In addition, an employee is entitled to such time off as is necessary from her normal working time, without loss of pay, to attend medical or related antenatal or postnatal appointments. Pursuant to the 2004 Act the employee and her spouse are also entitled to time off for certain antenatal classes.

After taking maternity leave the employee is generally entitled to return to work with the same employer in the same job and under the same contract of employment. Dismissal on grounds of pregnancy or for the exercising of rights under the Acts is prohibited.

There is no entitlement to paternity leave under Irish law.

11.12 Parental Leave

The Parental Leave Act 1998-2006 entitles each parent (natural or adoptive) of children aged 0-8 (or 0-16 in the case of a child with a disability) to 14 weeks of unpaid leave from employment.

11.13 Carer's Leave

The Carer's Leave Act 2001 (as amended) allows employees to take up to 104 weeks unpaid leave if they wish to care personally for persons who require full time care and attention. An employee must have one years service to qualify. The Department of Social, Community and Family Affairs will objectively assess whether the person to be cared for is a "relevant person" for the purposes of determining whether the provisions of the Act apply.

11.14 Force Majeure Leave

Force Majeure Leave is provided for under the Parental Leave Act 1998-2006. This entitles employees to paid leave for up to three days in any twelve month period, or five days in any period of 36 consecutive months whereby because of a sudden injury or illness, affecting a member of the employee's immediate family, that employee's presence to assist that family member is indispensable. This leave specifically excludes bereavements.

11.15 Information and Consultation Act 2006

The Employees (Provision of Information and Consultation) Act 2006 implements Council Directive 2002/14/EC into Irish law. The Act is being introduced on a phased basis and applies to undertakings with at least 150 employees since 4 September 2006; to undertakings with at least 100 employees from 23 March 2007, and finally to undertakings with at least 50 employees from 23 March 2008. It gives employees in an undertaking the right to request their employer to put in place an information and consultation procedure. At least 10 percent of the workforce in an undertaking must request this for the employer to be obliged to comply with the request. The information and consultation procedure may then be voluntarily agreed upon or failing this the standard rules for information and consultation provided for in the Act, will apply.

11.16 Payments to the Employee

The method of wage payment and the regulation of circumstances in which employers may make deductions or receive payments from an employee's wages are governed by the Payment of Wages Act, 1991.

The National Minimum Wage Act 2000 provides that the national minimum wage is €8.65 per hour with effect from 1st July, 2007.

There is no obligation to pay an employee absent from work due to illness/injury unless this is provided for under a collective agreement or under the contract of employment. However, illness benefit may be payable to the employee by the Department of Social and Family Affairs during periods when an employee is unfit for work due to illness.

11.17 Non EEA Nationals Working in Ireland

An employer in Ireland is prohibited from employing a non-EEA national without first having obtained the relevant permission to do so. Citizens from within the EEA who intend to work in Ireland do not require such permission.

Ireland was one of the few countries that decided not to impose restrictions on citizens from the new EU-10, and as such they do not need to obtain an employment permit to work in Ireland. However, subject to limited exceptions, nationals of Bulgaria and Romania require an employment permit to work in Ireland.

There are various procedures applicable in Ireland in relation to the employment of a non-EEA national depending on the particular circumstances. The following types of employment permit arrangements are available:-

1. The Green Card Scheme;
2. The Work Permit Scheme;
3. The Intra Company Transfer Permits; and
4. The Spousal/Dependant Permits.

All citizens of non-EU countries whether they have acquired permission to work in Ireland or not are subject to immigration control at the point of entry into Ireland. Some citizens may, depending on their nationality, need to obtain an entry visa before entering Ireland.

12. DATA PROTECTION

Data protection law in Ireland is governed by the Data Protection Acts 1988 and 2003 ('the Acts'). The Acts govern the collection, processing, storing and disclosure of personal data in Ireland. The Acts apply to data controllers and data processors. A data controller is any person who, either alone or with others, controls the contents and use of personal data. A data processor is a person who processes personal data on behalf of a data controller. 'Personal data' is defined very broadly in Irish law and includes any data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in or is likely to come into the possession of the data controller.

Irish data protection law regulates dealings in personal data in both electronic and manual form.

The primary obligations under the Acts are placed on data controllers who must, amongst other things, ensure that they collect and process personal data in a fair manner. All data processors and, in certain circumstances, data controllers are required to register with the Data Protection Commissioner in Ireland. The Acts apply to data controllers established in the State but also to data controllers who are neither established in the State nor within the EEA but who make use of equipment located in the State for processing purposes (unless that equipment is used solely for the purpose of transit through the State).

One matter which is important to note is that there is no exemption from data protection law in relation to the employer/employee relationship. This has particular implications for multinational companies who have operations both within and outside the European Economic Area. Therefore, if it is envisaged, for example, that personal data may be exported from within the EEA to a country outside the EEA, the consent of the data subject (i.e. the person about whom the personal data is held) must usually be first obtained.

13. INTELLECTUAL PROPERTY

Intellectual property rights (which consist mainly of patents, copyrights, trade marks, industrial designs, trade secrets, confidential information and know-how) are governed and protected in Ireland by various different pieces of legislation.

Significantly the transfer and disposal of intellectual property is the subject of a recent exemption from stamp duty (see paragraph 7.5 above).

13.1 Patents

Irish law on patents is contained in the Patents Act 1992. There are two types of patent protection available in Ireland namely, an Irish long term patent which lasts for 20 years and an Irish short term patent which lasts for 10 years. The criteria for patentability of a short-term patent are less stringent than for a long-term patent.

The right to a patent belongs to the inventor or to his successor in title. An invention is patentable if it is new, involves an inventive step and is susceptible of industrial application.

In order to be effective as to third parties, assignments and licenses of patents must be recorded with the Patent Office.

13.2 Copyright

Copyright in Ireland is governed by the Copyright and Related Rights Act 2000. Copyright subsists in all original literary, dramatic, musical and artistic works, sound recordings, films broadcasts, and cable programs; the typographical arrangements of published editions; and original databases.

There are no registration or deposit formalities to obtain copyright protection in a work.

Copyright generally subsists in a work for a period of 70 years from the year of death of the author. Copyright is transferable inter vivos, by testamentary disposition or by operation of law. Full copyright protection is afforded to citizens and residents of foreign countries which are a party to certain copyright conventions.

The Copyright and Related Rights Act 2000 introduced moral rights into Irish law for the first time. These include the paternity right - the right to be identified as the author of a work and the integrity right - the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would prejudice his or her reputation, which also applies in relation to an adaptation of the work. There is also a right not to have a work falsely attributed to you as author.

13.3 Trade Marks

In Ireland trade marks are protected at common law by the action of passing off and by statute by the Trade Marks Act 1996 ('the 1996 Act').

A trade mark in Ireland is registerable in respect of both goods and services. A trade mark is registerable if it is capable of distinguishing the goods or services of one undertaking from those of other undertakings. It must also be capable of being represented graphically. Trade marks may consist of, inter alia, words, designs, letters, numbers, sounds and the shape of the goods or their packaging. Trade marks which lack distinctive character or which contain descriptive words may not be registered. If, however, they have acquired a secondary meaning through use they may become registerable.

The 1996 Act provides for an initial term of a trade mark of 10 years renewable for further periods of 10 years thereafter. In order to be effective as to third party, assignments and licences of trade marks must be recorded with the Patent Office.

Existing side by side with the national system of registration is the Community Trade Mark, available since 1996, which is a unitary mark providing protection in all member states of the European Union.

Ireland is a signatory to the Madrid Protocol under which one application for registration of a trade mark may be made in a single language to a single office and that application may designate any number of countries (from those which are a party to the Madrid Protocol) in which trade mark protection is sought. In order to make such an application through the Irish Patent Office, the applicant must have an Irish trade mark registration or prior trade mark application in Ireland.

13.4 Industrial Designs

Industrial designs are protected in Ireland by the Industrial Designs Act 2001. A design may be registered if it is new and has individual character.

Industrial designs may also be protected by the unregistered design right arising under European law. Applications for registered Community Design rights are accepted by the Office of Harmonisation in the Internal Market (OHIM) in Alicante, Spain.

14. ELECTRONIC COMMERCE

The Electronic Commerce Act (the "2000 Act") was enacted in order to provide a legal framework in Ireland for the effective operation of electronic commerce. The 2000 Act partially implements both the Electronic Commerce Directive (Directive 2000/31/EC) and the Electronic Signatures Directive (Directive 1999/93/EC). The remaining provisions of the Electronic Commerce Directive relating to the provision of Information Society services were implemented by the European Communities (Directive 2000/31/EC) Regulations 2003 ("2003 Regulations") which came into force on 24th February, 2003.

As a result of the 2000 Act, Irish law now recognises the validity of:-

- electronic contracts;
- electronic contracts and digital signatures;
- electronic originals and production of electronic originals;
- electronic writing and information.

The 2003 Regulations lay down that "information society services" provided by an Irish service provider to a person in another member state must comply with the applicable Irish law for that service. The applicable law of the importing member state may not then be applied to the "information society service" in question.

In addition, Ireland has implemented the Distance Selling Directive in the form of the European Communities (Protection of Customers in Respect of Distance Communications) Regulations 2001. These regulations specify the information a customer must be given before concluding a contract, require written confirmation of the contract and allowing for a cooling-off period.

15. PROPERTY

15.1 Buying or Leasing

An interest in property may be acquired by buying it outright, leasing it, or buying the remainder of the term of an existing lease.

Depending on the nature of the interest, the owner will have different rights and duties in relation to the land. It is not unusual that one piece of land may have several interests of different kinds, owned by different people at the same time, e.g. a landlord, a tenant and a sub-tenant.

Ireland operates a land registration system where a person's interest in property is registered on a public register. In certain cases, this ensures that an owner's interest in property is documented and protected (by a State guarantee).

It is important to consult a solicitor as soon as a suitable property has been identified. In the case of an existing building, a surveyor or engineer should inspect the building at an early stage to ensure it is free from costly defects.

To sell a property, the parties enter into a detailed written contract to transfer the interest in the property from the seller to the buyer. Before this is signed, the solicitor for the buyer will investigate the title to the property to ensure that it is in order. The maxim *caveat emptor* ("*let the buyer beware*"), applies to the purchase of property. Any problems with the title generally follow the property and so become the responsibility of the buyer, including any pre-existing capital tax liabilities, environmental or planning problems.

If a financial institution is providing finance for the purchase of a property, the property itself will usually be the security for the loan. The financial institution will occasionally require that its own solicitor check the title to the property, but will often rely on the opinion of the purchaser's solicitor.

There is usually a deposit of 10% paid on the signing of the contract. The balance is paid on completion which usually takes place a short period later.

When buying property, the buyer pays a once-off tax known as stamp duty (between 3% and 9% for residential property and between 1% and 9% for non-residential property of the purchase price, depending on the category of the buyer and the value of the property).

There is no restriction on a non-national purchasing or leasing property.

15.2 Planning Permission

Planning permission is required before an owner can develop buildings or land, or change their existing use. Applications are made to the local planning authority.

Before an owner applies for planning permission he/she must publish his/her intention to do so in a newspaper which has a circulation in the same district as the relevant property. He/she must also place a notice on the property stating the nature of the proposed development.

An initial application must be accompanied by prescribed plans, drawings and maps of the proposed development. The planning authority may look for further details from the applicant.

Objections from members of the public may be submitted in writing before the decision is made.

A planning authority may grant permission unconditionally, or subject to conditions, or it may refuse permission. This decision must be made within eight weeks of the completed submission.

The applicant or any member of the public (provided they made written submissions or observations at the initial planning application stage) may appeal a planning decision to An Bord Pleanála (The Planning Board) within four weeks of the decision. Any party to an appeal may request a public oral hearing, but the Board has the discretion whether to hold such a hearing. The appeals process generally lasts for about four months.

Planning permission generally expires if it is not implemented within five years. The document granting permission will indicate this.

15.3 Commercial Leases

The rent payable for offices in Ireland are quoted on a net basis, i.e. rent quoted per square foot or square metre will exclude toilets, columns, radiators, etc. Several other European countries measure on a gross basis.

In practice, commercial leases are most commonly granted for a term of 25 years. There is no automatic right to “break” the lease, although this is a matter for negotiation between the landlord and the tenant.

Rent reviews normally occur at five yearly intervals and generally result in an increase in rent. Many leases provide for “upward only” reviews of rent.

A once-off tax, known as stamp duty, of 1% of the annual rent is payable.

The occupier is liable for municipal rates.

There may be a VAT charge on the creation of a new lease or on disposal of an existing lease. This is usually paid by the lessee/tenant.

15.4 Tax and Property

It is not proposed to discuss the tax implications of property transactions at length in this guide. However, the following should be noted:

- Where any transaction exceeds a consideration of €500,000 Capital Gains Tax Clearance must be obtained from the Revenue Commissioners prior to completion of any such sale.
- Where a lease of property which has been developed or redeveloped in whole or in part since 31st October 1972 takes place the application of the VAT legislation must be considered. This can give rise to a serious cash flow problem if a VAT invoice is produced on the granting of for instance a commercial lease even though no capital sum is paid. The issue of VAT in relation to commercial leases is of considerable importance. VAT may also be chargeable on the purchase of developed property and VAT issues should be carefully addressed prior to entering a contract.
- Stamp duty is chargeable at a rate operating on a sliding scale (from 1% to 9% on non-residential property and 3% to 9% on residential property) of the higher of market value or consideration on a sale of land. Certain de minimis thresholds

apply below which stamp duty is non-chargeable. It is important to note that the stamp duty is payable on the market value and not on the value attributed to the property in any given transaction.

- Residential Property Tax was abolished in 1997, but still must be accounted for on sales of residential property where the tax may have applied prior to 1997.
- Capital Acquisitions Tax / Gift Tax applies to property where property is transferred by way of gift or voluntary transfer or at a value less than the open market value. This tax is payable by the person acquiring the property as they are deemed to benefit from the "gift". A standard rate of tax of 20% applies but certain exemptions are available dependent upon the relationship between the Transferor and Transferee, particularly with regard to transfers between family members.

16. PENSIONS

Employers are generally not required to contribute to pension plans in Ireland on behalf of their workforce. However, access to pension arrangements are mandatory within 6 months of joining service. Pension benefits are generally provided by employers. The issue of the level of benefits and scope of coverage is currently subject to much public debate and employees are alive to this issue. Employees who benefit from pension arrangements are provided with specific information and this requires publication of members' booklets and financial information relating to their arrangements.

The Pension Acts impose extensive obligations on those dealing with pension schemes including trustees, employers, auditors and actuaries. The Pension Acts are intended to regulate pension schemes, protect pension scheme members by setting standards for schemes and implement the principle of equal treatment for men and women in pension schemes. The Acts provide for minimum funding standards, disclosure of information and the establishment of a regulatory agency, the Pensions Board.

A Personal Retirement Savings Account ("PRSA") is an investment vehicle used for long term retirement provision by employees, self employed, homemakers, carers, unemployed, or any other category of person.

Pension benefits are provided via a contract (usually PRSAs) or a Scheme (usually a trust based plan).

Employers setting up a new business in Ireland usually offer Defined Contribution Schemes or PRSAs to which they contribute as well as providing death-in-service benefits on an insured basis.

17. CONSUMER LAW

17.1 Background

Irish consumer protection law is largely of recent development. Initially, it reflected legislative developments in the United Kingdom but now the principal influence comes from EU legislation. Most claims are dealt with in the Small Claims Court, the District Court, or at most, the Circuit Court due to the relatively low value of such claims. The principal pieces of consumer legislation in Ireland are as follows:-

- The Sale of Goods Act 1893;
- The Consumer Information Act 1978;
- The Sale of Goods and Supply of Services Act 1980;
- The European Communities (Misleading Advertising) Regulations 1988;
- The Liability for Defective Products Acts 1991;
- The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000;
- The Consumer Credit Act 1995;
- The European Communities (General Product Safety) Regulations 1997;
- The European Communities (General Product Safety) Regulations 2004;
- The European Communities (Requirements to Indicate Product Prices) Regulations 2002;
- The Regulations on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees 2003;
- The Consumer Protection Act 2007.

17.2 European Communities (Late Payment in Commercial Transactions) Regulations 2002

The European Communities (Late Payment in Commercial Transactions) Regulations 2002 provide that an implied term is inserted into every commercial transaction concluded after 7 August 2002 whereby penalty interest will become payable if payments for the commercial transaction are not made within 30 days, unless otherwise specified in a contract. The rules apply to both public and private sector contracts, so long as they do not involve a consumer. If a contract is silent on payment terms and interest rates for late payments, a payment is regarded as late after 30 days and the chargeable interest rate for late payment is to be the current

European Central Bank interest rate plus seven percentage points. A supplier is entitled to a fixed fee for recovering late payment. If the parties agree alternative terms they must be fair otherwise they may be unreasonable.

17.3 The Consumer Information Act 1978

A high level of accuracy is required in respect of the trade descriptions used in the supply of goods and the provision of services. Any person who in the course of any trade, business or profession applies any false or misleading trade description to goods is guilty of an offence, as is any person who sells or exposes for sale, or has in his possession for sale in the course of any trade, business or profession any goods to which a false or misleading trade description is applied.

Trade description has a wide meaning and includes any description, statement or other indication of goods. An oral statement may amount to a trade description. Effectively, the Consumer Information Act 1978 imposes a positive duty of care on traders in respect of the level of accuracy required and information provided. The Director of Consumer Affairs is the consumer watchdog and his powers have been extended by recent legislation. The Director can apply to the High Court for banning orders to curtail misleading practices in the field of advertising and the provision of information to consumers and is able to prosecute offences referred to in the legislation.

The Consumer Information Act 1978 affects the character and contents of consumer contracts by obliging businesses to be truthful in advertisements and negotiations leading to the formation of a contract.

17.4 Sale of Goods and Supply of Services Act 1980

Although the underlying principle in any transaction relating to the sale of goods is that of caveat emptor ("*let the buyer beware*"), under the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980, several conditions and warranties will be implied into contracts for the sale of goods, which include:-

- *Goods should correspond with their description.*
A sale of goods by description will occur where the buyer is purchasing an item

on display on a counter or shelf, provided that the item is sold as an item corresponding to a description. The term description is very wide and covers matters including ingredients, measurements, quantity etc. A selection of items on a shelf may be a sale by description and the markings on a package or labels may form part of a description.

- *Goods should be of merchantable quality.*
Goods are of a merchantable quality if they are fit for the purpose for which goods of that kind are commonly bought and as durable as it is reasonable to expect having regard to any description applied to them, the price and all other relevant circumstances.
- *Goods should be fit for the purpose for which they are sold.*
If the buyer makes known to the seller any particular purpose for which the goods are being purchased, there is an implied condition that the goods supplied are reasonably fit for that purpose.

The implied rights of a consumer under the Sale of Goods and Supply of Services Act 1980, cannot be taken away in consumer transactions. In fact, it is an offence for a retailer to do certain things, which imply that the consumer does not have these rights if displayed on business premises, or if published in an advertisement, or appearing on goods themselves or in any document (e.g. a receipt).

Making such unqualified statements as “money will not be refunded” or “only credit notes will be given for goods returned”, each tending to indicate that the consumer’s right to receive back the price against a return of the goods is being curtailed, is therefore a criminal offence.

A retailer’s liability to consumers may be limited in specific cases:-

- The retailer can draw the consumer’s attention to faults in a product e.g. by labelling them “shop soiled”, “seconds”, “imperfect” etc. The consumer cannot claim in respect of defects brought specifically to his attention.
- Where goods are incorrectly described by, for example, words on a package, the retailer can block out the offending description or otherwise make it clear to the consumer that the description is not true.
- If the consumer indicates that the goods are going to be used for a particular purpose, the retailer can, in certain circumstances, express doubt as to whether the goods can be used in that way.

- Retailers are not responsible for defects, which arise through the misuse of the goods by the consumer, except where the buyer has been given to understand that the goods may be used in that particular way.

17.5 European Communities (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003

These Regulations give additional protection to a consumer in addition to the existing consumer protection granted by the Sale of Goods and Supply of Services Act 1980 and the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995. The Regulations provide for the following:-

- the liability of retailers for statements made on the specific characteristics of goods;
- the reduction of the price of the goods as a remedy open to consumers in certain circumstances;
- the liability of retailers in relation to incorrect installation of the goods even where the goods were installed by the consumer following inappropriate instructions; and
- if the goods have a guarantee, consumers have a right to obtain a written guarantee at the time of purchase with details on how to make a claim under the guarantee, the duration of the guarantee and the territorial scope of the guarantee.

17.6 European Communities (Misleading Advertising) Regulations 1988

The 1988 Regulations give the Director of Consumer Affairs the power to request any person engaged in misleading advertising to discontinue or refrain from so doing. Any person, including the Director, may seek an injunction prohibiting advertising without having to prove actual loss or damage nor to show recklessness or negligence on the part of the advertiser. The Regulations increase the powers of the Director to include wide-ranging powers of search and inspection of company's financial records in order to discharge the Director's functions.

17.7 European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000

The fundamental aim of these Regulations is to invalidate terms in consumer contracts for the supply of goods and services where the terms have not been individually negotiated, and certain terms are deemed unfair according to prescribed criteria. The Director of Consumer Affairs is given a role in enforcement of the Regulations. The Director may apply to the High Court for an order prohibiting the use or continued use of any term in a contract, which is adjudged by the court to be an unfair term, without prejudice to the right of the consumer to rely on the provisions of the Regulations in any court. The effect of the Regulations is that those engaged in business who deal with consumers should be careful about the terms and conditions that they offer to customers. The Regulations considerably increase the rights of consumers and also have an impact on oral contracts and contracts partly written and partly oral. The Regulations apply to a wide range of contracts including sale of goods (e.g. in shops and supermarkets).

17.8 European Communities (Requirements to Indicate Product Prices) Regulations 2002

These Regulations relate to consumer protection in the indication of the prices of products offered to consumers. The Regulations apply to most products for sale by “traders” to consumers. Such products are required to indicate the selling price (final price including VAT and all other taxes) and the unit price of that product. The indication of the selling price and of the unit price must be unambiguous, easily identifiable, legible and in proximity to the product. A trader includes any natural or legal person who sells or offers for sale products, which fall within his commercial or professional activity.

A trader may offer products for a reduced sale price by reference to a reduction by a fraction or percentage of the previous price indicated, by a general notice or other visible means provided that the particulars are unambiguous, easily identifiable, visible and legible.

A person guilty of an offence under these Regulations shall be liable on summary conviction to a €3,000 fine.

17.9 The Consumer Protection Act 2007

The Consumer Protection Act 2007 was signed into law on 21 April 2007. Most of the provisions of the Act came into force on 1 May.

The Act provides for the establishment of a National Consumer Agency and for transposition of the Unfair Commercial Practices Directive (Directive 2005/29/EC). The National Consumer Agency ("the NCA") has been given new powers and functions in addition to those it inherited from the Office of the Director of Consumer Affairs ("the ODCA"). The NCA possesses greater enforcement powers and resources than the ODCA. The risks of non-compliance with consumer legislation are therefore greater.

The Act regulates transactions between traders (persons acting in the course of their trade, business or profession) and consumers (persons acting for purposes unconnected with their trade, business or profession). It prohibits:

- Unfair commercial practices, which would impair the consumer's ability to make an informed choice;
- Misleading commercial practices; and
- Aggressive commercial practices. These are practices involving coercion, harassment or undue influence.

A specific range of "blacklisted" misleading commercial practices and aggressive commercial practices that are unfair in all circumstances. These include "bait" advertising, prize draw scams and pyramid schemes; pretending that you are a signatory of a code of practice when you are not, or leading consumers to believe that you are about to close down when you are not.

Consumers can personally sue the company for damages arising from particular breaches as well as any officers who consented or connived in the breach. A number of criminal offences are created by the Act and proceedings may be brought up to two years after the commission of the offence. A director who consented or connived in the act complained of may also be prosecuted. In addition, there is an obligation on the NCA to publish a list of all traders who were fined or penalised which could potentially damage a trader's goodwill.

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