

Guide to Investing and Working in Ireland

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Guide to Investing and Working in Ireland

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

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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 types 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 (SI No 324 of 2005).

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Geographical Overview of Ireland

Population Demographics (2008 - Central Statistics Office)

Age	%
0-14	20.6
15-24	14
25-44	32.5
45+	32.9

Labour Productivity – GDP per person employed per hour (US\$) (2008 – IMD World Competitiveness Yearbook)

Ireland	47.40
USA	46.02
Holland	41.51
Germany	39.87
UK	37.68
Spain	35.18
Japan	31.60
Hungary	24.59

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, like a two member private limited 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.

1.1.2 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

¹The 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 €100,000 (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.

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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 2009. A UCITS may be established as an investment company, a unit trust or a common contractual fund and must, by virtue of the UCITS Directive, be open-ended. 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 Central Bank of Ireland must authorise all registrations of UCITS that wish to carry on activities within Ireland.

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 (SI 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 Europaeae" ("**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 and the local law requirements of the country in which the company is registered. 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:

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- 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 and which is sworn before a practising solicitor or person able to administer an oath;
- the prescribed incorporation fee (currently €100 if filed in hard copy and €50 if filed electronically); a bond to the value of €25,395 at a premium of €1,287.50 (where there is not at least one director resident in the European Economic Area "EEA")(see paragraph 1.6 below).

1.3 Regulation of Irish Companies

Companies are, in the main, regulated by the Companies Acts 1963 to 2009 (the "**Companies Acts**") and subordinate legislation.

1.4 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.

1.5 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, shareholders 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.

All companies (other than UCITS) must file in the Companies Registration Office an annual return, having annexed thereto their financial statements in the prescribed form. Certain unlimited companies are not required to file financial statements.

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 24 December 2006) and whose gross assets are below certain levels (currently €3.65m, with effect from 24 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 companies that are delinquent in their annual return filing obligations with the Registrar of Companies.

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Directors also face prosecution and the threat of being the subject of a restriction order for non-filing of annual returns.

1.6 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 director resident in the EEA or, in the absence of such, 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 €1,287.50 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.

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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;

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- 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.

Companies incorporated in other EU Member States may provide certain investment services in Ireland by the establishment of a branch in Ireland. We refer you to the section on the Regulation of Financial Services in Ireland for more information on this subject.

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;

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- 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);
- registered number;
- place of registration of the company (i.e. registered in Ireland); and
- address of the registered office.

Since the European Communities (Companies) (Amendment) Regulations 2007 (SI No. 49 of 2007) came into force on 1 April 2007 the requirements now extend 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:

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- 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.

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responsive to
clients' needs and a
team that is
particularly well
versed*
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7 TAXATION IN IRELAND

7.1 Company Taxation

7.1.1 Liability for Corporation Tax

(a) Liability

Subject to certain exemptions and reliefs, every company that is tax resident in Ireland is liable to pay corporation tax in Ireland charged on total profits wherever arising.

In addition, non-tax resident companies are also are liable to pay corporation tax on total profits insofar as such profits are attributable to an Irish branch or agency

(b) Residency

A company is deemed to be tax resident in Ireland if it is incorporated in Ireland or if a company's central management and control are situated in Ireland (i.e. location where major policy decisions are taken).

(c) Rates of Corporation Tax

The applicable rate of corporation tax depends largely on the category of income to which the tax is to be applied. The current standard rate of corporation tax of 12.5% is applied in respect of all trading income. A higher rate of 25% is applied in respect of non-trading income and certain activities including working minerals, petroleum activities and dealing in or developing land, other than construction operations.

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Previously, a special rate of 10% was applied to the trading profits of qualifying manufacturing companies and to certain qualifying companies operating in the IFSC and the Shannon Airport Zone. However this special rate ceased to apply on 31 December 2010 and the standard rate of 12.5% is now applicable.

It is important to stress that the current corporation tax regime in Ireland has been approved by the EU.

(d) Assessment of Liability

Corporation tax operates on the basis of a self-assessment system however a prior opinion in respect of the tax consequences arising from particular proposed transaction may be sought from the Revenue Commissioners in certain circumstances.

Corporation tax is assessed on the taxable profits of a company for an accounting period, at the rate of tax in force during such 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.

7.1.2 Incentives / Reliefs

(a) Start-Up Companies Relief

In 2008 a new corporation tax incentive was introduced in respect of new or start-up companies which commenced trading in 2009 onwards. The effect of the incentive is to exempt new/start-up companies from corporation tax for a period of three years from the date of commencement of business in the event that they meet certain conditions.

The Finance Act 2011 has extended this relief for new companies starting up in 2011. The value of the relief is based on the amount of employer's PRSI paid by a company in an accounting period, subject to a maximum of €5,000 per employee and an overall limit of €40,000. If the amount of qualifying Employer's PRSI paid by a company in an accounting period is lower than the reduction in the corporation tax liability, the relief will be based on the lower amount. Furthermore, the legislation includes anti-avoidance measures whereby a new company set up to perform activities which would constitute part of the existing trade of an associated company of the new company, is excluded from the exemption.

(b) Capital Allowances

Generous tax allowances are available in relation to expenditure incurred in respect of: plant and machinery; industrial buildings; and trading, excess and capital losses. The extent of relief available depends on the particular industry and the eligibility and type of expenditure in question. In particular, the scheme introduced by the Finance Act 2008 to allow 100% capital allowances in the year of purchase on qualifying energy-efficient

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equipment bought for the purposes of the trade has been extended by the Finance Act 2011 for a further 3 years.

Group Relief may also be applied which allows the offset of certain trading losses, excess charges, excess management expenses and capital asset transfers, where a "tax group" is deemed to exist. Such a "tax group" is only considered to exist where there is a 75% direct or indirect relationship between an Irish tax resident company and an Irish branch of a company based in the European Economic Area ("EEA").

(c) Research and Development ("R&D") Tax Credit

Since the Finance Act 2004 (as amended by the Finance (No. 2) Act 2008), Ireland has had an R&D tax credit scheme based on a company's incremental expenditure on R&D carried out in the EEA over defined base levels. The tax credit of 25% 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 had initially been fixed at 2003 levels until 2010, however the Finance (No. 2) Act 2008 extended this period to 2014, during which accounting periods the base year will remain 2003.

Additional incentive is provided by the provision that expenditure incurred by companies under 51% common ownership can be aggregated and allocated in the proportion nominated by the taxpayer.

In considering what activities constitute R&D for the purposes of gaining tax credit under the scheme, it is established that qualifying activities must be systematic or investigative or experimental, and, such activities must be conducted in an area of basic research or applied research or experimental development. 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 further extended by the Finance (No. 2) Act 2008 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). In addition, 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. Additionally, the definition of "expenditure on research and development" was further amended by the Finance Act 2011 to clarify that where expenditure is incurred on the provision of a specified intangible asset which qualifies for relief under the intellectual property expenditure relief, it shall not also qualify for additional relief under the R&D Tax Credit.

(d) Intangible Assets and Acquisition of Intellectual Property Relief

The Finance Act 2009 introduced a new capital allowance system for expenditure incurred on the acquisition of intangible assets. The effect of the scheme is such that capital expenditure incurred in respect of "intangible assets" after 7 May 2009 for the purposes of a trade, can be offset against taxable income or corporation tax

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purposes, either: in line with standard accounting treatment of intangible assets; or, over a fixed period of 15 years at a rate of 7% for the first 14 years with the remaining 2% of relief claimed in the final year.

To qualify for capital allowances under the scheme, the assets in question must be recognised as intangible assets under generally accepted accounting standards and must be included in the definition of "intangible" asset" contained in s291 A of the Taxes Consolidation Act 1997 e.g. patents, trade marks, brand names, copyrights, licences, computer software, domain names etc.

It is important to note that companies must ensure active involvement with the newly acquired intangible assets by engaging in active "trade" with such assets. In addition, while qualifying expenditure may be incurred by a group company or a connected person, tax relief is not available where expenditure incurred exceeds that which would have been payable between independent persons in an arm's length transaction.

(e) Patent Royalty Exemption

Previously, full relief from corporation tax was allowed, subject to certain limitations and qualifications, in respect of royalties up to a ceiling of €5 million in any one year 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. However, this exemption was abolished by the Finance Act 2011, with effect from 24 November 2010, pursuant to the terms of the National Recovery Plan 2011-2014.

The abolition also extends to distributions made by a company out of formerly exempt patent royalty income on or after 24 November 2010.

(f) 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.

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.

(g) Transfer Pricing Rules

The Finance Act 2010 introduced new transfer pricing rules in Ireland based on the "arm's length" principle as established by the Organisation for Economic Co-Operation and Development

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(OECD). Essentially the rules apply to inter-company trading transactions (e.g. intra-group transfers of trading stock, provision of management services etc) between associated persons, whereby such transactions must be carried out on an arm's length basis. Alternatively any understated profits will be taxed at the applicable rate of corporation tax. An exception is generally provided in the case of non-trading transactions.

Exemption from transfer pricing rules is provided in respect of small and medium enterprises, as defined in the EU Commission Recommendation of 6 May 2003 (i.e. provided such entities have less than 250 employees and either a turnover less than €50 million or assets of less than €43 million).

(h) Employment and Investment Incentive ("EII")

The Minister for Finance announced in Budget 2011 that the existing Business Expansion Scheme ("BES") is to be replaced as the EII. The aim of the EII is to ensure that existing tax relief under the BES is fully targeted at job retention and creation. The legislative basis for the EII scheme is contained in the Finance Act 2011. It is however important to note that the implementation of the EII scheme is pending approval from the EU.

Changes to be made to the existing BES by the EII include: the removal of qualifying trade limitations so that it is to be opened up to the vast majority of small and medium-sized entities; the simplification of the certification process for qualifying companies; the increase of the lifetime company investment limit from €2 million to €10 million; the increase in the annual amount which a company may raise from €1.5 million to €2.5 million; and, the availability of a further 11% of tax relief at the end of the holding period provided the qualifying company has either increased the number of employees since the initial investment was made, or the company has increased its R&D expenditure.

*Well versed in
employment law,
property disputes,
banking litigation
and IP matters*
Chambers Europe 2009

7.1.3 International Incentives

(a) Disposal of Subsidiaries CGT Relief

Ireland has become a highly attractive base for holding companies due to the introduction of tax relief by the Finance Act 2004 which 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).

(b) Foreign Dividends

Further attractiveness for Ireland as a base for holding companies is provided by the existence of generous incentives regarding dividends and other distributions (including certain types of interest).

The standard 12.5% corporation tax rate applies to income received by an Irish resident company from a trading company

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subsidiary which is resident in an EU member state or a country with which Ireland has a tax treaty, provided such dividend has been received out of trading profits (or at least 75% of profits are trading profits). If dividend income is received from a non-tax treaty resident company or profits are non-trading profits, a higher rate of 25% will apply.

Additional incentive is provided by the implementation of EU Council Directive 2003/123/EC by the Finance Act 2004, which provides that the payment of dividends between certain EU companies is not subject to withholding tax.

The Finance Act 2004 further served to increase the scope of the exemption through the reduction of the shareholding threshold to be considered a "parent company" from 25% to 5% and also through the provision 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.

(c) Foreign Tax Credits / Repatriation of profits

The Irish taxation system provides that Irish resident companies are liable to pay corporation tax on their worldwide income i.e. including that of foreign based branches or agencies. However, such foreign branches or agencies may in turn also be liable to pay foreign taxes in the country in which they are based. To avoid any possible double taxation, Ireland introduced a pooling mechanism whereby any foreign tax paid may be offset as a credit against the Irish corporation tax liability. Such credit is limited to the Irish tax on the income item and any foreign tax not credited in the period in which it is paid cannot be carried forward for credit in subsequent periods.

The Finance Act 2011 introduced a number of provisions to restrict companies from allocating certain relevant trade charges as they see fit in the computation of the credit due to such companies in respect of foreign tax paid on their income, thus narrowing the scope of protection open to such companies.

(d) Double Taxation Agreements

Ireland has comprehensive double taxation agreements in place with a vast number of countries. The agreements generally cover corporation tax, income tax, and capital gains tax (direct taxes). The current list of agreements in effect, as at September 2010, is as follows: Australia, Austria, Bahrain, Belarus, Belgium, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Israel, Italy, Japan, Korea (Republic of), Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, The Republic of Turkey, United Kingdom, United States, Vietnam and Zambia.

It has been agreed that the double taxation treaty signed with Hong Kong will become effective from 1 January 2012. Furthermore, agreements have also been signed with the following nations: Albania, Bosnia Herzegovina, Kuwait,

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Montenegro, Morocco, Singapore and UAE, and it is envisaged that these will come into effect in the near future.

Negotiations are also ongoing with a view to concluding double taxation agreements with Azerbaijan and Thailand, with further agreements with additional nations still at planning stage.

In the absence of a double taxation agreement to cover additional circumstances which may arise, certain legislative protections cover a wide variety of taxes on different types of income.

(e) Islamic Finance

“Islamic Finance” refers to any financial arrangement that is compliant with the principles of Islamic religious law (“**Shari’a**”). Islamic finance must comply not only with the laws of the land, as with conventional finance, but also with Shari’a. The Finance Act 2010 introduced a number of new legislative provisions to facilitate the introduction and development of Islamic Finance in Ireland and ensure harmonisation between Irish law and Shari’a.

As regards taxation, the Revenue Commissioners have introduced guidance outlining the tax treatment of various Shari’a compliant financial products and confirming that the tax treatment of these products should be the same as that applied to their respective conventional counterparts. This should serve to boost the profile and approve the attractiveness of Ireland as a base for Islamic Finance in the future.

Technically very good, meticulous, methodical, approachable and quick to react

Chambers Global 2010

7.2 Personal Taxation

7.2.1 Income Tax

The extent of an individual’s liability for income tax is determined on the basis of two criteria: (i) whether such individual is resident or ordinarily resident in Ireland; and (ii) whether such individual is domiciled in Ireland.

To qualify as an Irish resident for tax purposes, an individual must be in Ireland for a total of 183 days in any tax year, or, if the total number of days in that tax year and the previous tax year combined exceeds 280 days (provided more than 30 days are in each year). Currently, a person is considered to be present in Ireland for one day if they are in Ireland at any time during that day. The concept of an individual’s domicile is difficult to define, but can be broadly defined as an individual’s “natural home”. Such domicile may be changed by an individual.

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 but is ordinarily resident or domiciled 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 paragraph 7.1.3(d) above) 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.

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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 tax deduction. The amount of the deduction is related to the time spent working abroad.

In respect of a person resident in the State but who was not domiciled or ordinarily resident in the State, 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 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.

The Finance Act 2010 introduced a new domicile levy, whereby individuals who are Irish domiciled but are non-resident or non-ordinarily resident will be liable for a tax of a minimum of €200,000, if in respect of such individuals: their final Irish income tax liability is less than €200,000; their worldwide income is greater than €1 million; and whose Irish property is worth more than €5 million at 31 December in the year concerned.

7.2.2 Universal Social Charge

The Finance Act 2011 introduced a new Universal Social Charge (“**USC**”) which has somewhat simplified the tax system in Ireland levied on individual’s income in that it essentially combines two previously separate charges, the Income Levy and the Health Levy, into a single charge. A standard USC of 7% is levied on the income of all employees or self-employed individuals earning over €16,016, with a higher rate of 10% levied on non-employment income over €100,000. Certain deductions are included for medical card holders and individuals over 70 years of age.

7.3 Capital Taxation

7.3.1 Capital Gains Tax (CGT)

CGT, at a current rate of 25%, is chargeable on the gains made by individuals, trusts and unincorporated bodies arising on 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 real property is an asset for capital gains tax purposes.

As set out in paragraph 7.1.1 companies resident in Ireland are subject to corporation tax on their gains, however they may also be liable for CGT if the gain is made from the disposal of development land. Non-resident companies may also be subject to CGT on disposals of several specific asset types (e.g. real property situated in Ireland).

The chargeable gain is calculated on the basis of 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.

There are significant exemptions available from CGT. Individuals may be exempt from CGT in respect of a wide variety of situations including: gains accrued from the transfer of property from a spouse; gains accrued from the sale of government securities; gains accrued in the form of winnings from the lottery or gambling; payments received under pension schemes etc.

7.3.2 Capital Acquisition Tax (CAT)

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The group's experience and skill is praised as being as good as ... the larger firms and combined with their lean structure, providing excellent value

Legal 500, 2009

CAT essentially comprises gift tax and inheritance tax.

An inheritance is a gratuitous benefit taken on death while a gift is a gratuitous benefit taken otherwise than on a death. In both respects, CAT is a beneficiary based tax and is chargeable at a current rate of 25% of the value of such gratuitous benefit insofar as such gratuitous benefit is comprised of Irish situate assets and/or either the donor or the beneficiary are resident in Ireland.

There are a number of wide ranging exemptions and reliefs in respect of CAT, which are largely dependant on the nature of the relationship between the donor and the beneficiary (e.g. parent and child; step-father and step-child etc.), or the nature of the gratuitous benefit (e.g. a business; a farm; property etc.), or the domicile/residence of the individuals in question.

7.3.3 Stamp Duty

The stamp duties chargeable in Ireland fall 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 a stamp certificate 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 introduced a broad exemption from stamp duty in respect of instruments executed after 1 April 2004 effecting a sale, transfer or disposition, or a contract for the sale, transfer or disposition, of intellectual property (as defined in section 101 of the Stamp Duties Consolidation Act 1999). The definition of intellectual property is quite broad and includes: patents, trademarks, registered designs, design rights, domain names, inventions, trade name, trade dress; brand; brand name; service mark; publishing title; or any copyright or related right pursuant to the Copyright and Related Rights Act 2000.

The Finance Act 2008 enacted provisions to allow the introduction of online stamping of instruments. These provisions have been utilised by the Revenue Commissioners through the successful introduction of the "E-Stamping" regime in January 2010.

7.3.4 Customs and Excise Duties

As a member of the European Union (EU), Ireland allows duty-free importation of goods from other EU member states, while goods imported from non-EU member states are subject to customs duty at the appropriate rate as specified by the EU's Common Customs Tariff. Excise duty is chargeable in Ireland on a number of specified products including motor fuel, alcoholic beverages, motor vehicles, tobacco products etc. In certain limited circumstances relief may be available in respect of customs and excise duties.

7.4 Additional Taxes

7.4.1 Value Added Tax (VAT)

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capable and highly
responsive
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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 up to the stage of final consumption or deemed consumption.

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 (i.e.: > €75,000 in respect of goods; > €37,500 in respect of services; or > €41,000 in respect of Intra-EU acquisitions). Such taxable persons must account for VAT on their business purchases and inputs however tax credit is given for VAT in respect of their outputs. As such, the VAT burden is essentially borne by the end consumer.

The chargeable rate of VAT is determined in accordance with the EU system and the applicable rate depends on the type of product or service in question. The current VAT rates in Ireland are: 21% - standard rate applied to all products and service not specifically chargeable at another rate; 13½% - chargeable on a number of types of goods including heating fuel, electricity, restaurant services etc.; 4.8% - chargeable on livestock, hire of horses, live greyhounds; 0% is chargeable on exports and goods including school books, oral human medicine, shoes etc; and, a large number of services are VAT exempt including financial, insurance, medical, optical and dental services.

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

Irish domiciled funds are valued at €861 billion as at 30 June 2010, having grown by 16 per cent during 2009².

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 Central Bank of Ireland 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.

² Irish Funds Industry Association, Industry Statistics 2010.

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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. As of June 2010, the Net Asset Value of Irish registered UCITS was €682 billion representing 79% of Irish registered funds³.

8.1.4 Institutional Funds

Ireland is a major international fund domicile and employs a well regulated regime for institutional funds and has become the jurisdiction of choice in Europe for hedge funds. Over 350 fund promoters from across five continents have chosen Ireland as their location to establish and service their investment funds, making Ireland a global hub for investment funds.

8.1.5 Taxation of Mutual Funds

Mutual funds 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 "**Funds Guide**" 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;*

³ See footnote 2.

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Chambers Europe 2008

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.

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.

8.3 Regulation of Financial Services in Ireland

The Markets in Financial Instruments Directive and related Irish legislation (MiFID) establishes a single European market for financial services and provides a regulatory framework for activities that come within the definition of investment services' under MiFID.

MiFID overhauls previous legislation in the European market for financial services. The wide reaching scope and the obligations imposed by MiFID will be of particular interest to issuers, stockbrokers, portfolio managers, corporate finance firms and derivative providers in particular.

The main objectives of the MiFID are:

- Broadening the range of regulated investment services;
- Standardising the procedure for the "European Passport" and extending its scope;

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*LK Shields
Solicitors punches
above its weight on
the financial
services side ...
and acts for an
impressive roster
of clients*

Legal 500, 2010

- Increasing competition by the introduction of multilateral trading facilities (known as "MTFs"), systematic internalisers etc.;
- Higher levels of protection for investors, ensuring market transparency and integrity;
- Imposing defined rules with regard to conduct of business, conflict of interest, transaction reporting and "best business execution"; and
- Ensuring "maximum harmonisation" of measures and rules implemented by competent authorities within Member States.

In essence, its underlying policy is to improve the regulatory framework governing the European Community's investment services industry.

The Central Bank of Ireland, in its supervisory role, is responsible for the oversight and monitoring of the implementation of MiFID in Ireland.

A fundamental starting point for firms is to look at whether their proposed activities will come within the definition of 'investment services' and accordingly, within the scope of MiFID. Irish companies that wish to provide services that are regulated by MiFID would first require to be authorised by the Central Bank of Ireland.

A Company incorporated in other EU Member States may 'passport' its MiFID regulated investment services into Ireland by way of provision of services directly from the Member State in which it is regulated or alternatively it may set up a branch in Ireland from which to carry out its regulated activities. In relation to the setting up of branches, we also refer you to the section on "**Branches of Overseas Enterprises**"

We refer you to our "**Guide to MiFID**" on our website for more detailed information on this subject.

9 GOVERNMENT DEVELOPMENT AGENCIES

Inward investors may be able to avail of incentives administered by Ireland's government development agencies. IDA Ireland is the national state-sponsored agency charged with responsibility for securing new foreign investment into Ireland and focuses on a variety of sectors such as healthcare and pharmaceuticals, digital media, 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 including the volume and quality of employment created and the location of the proposed project will also 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.

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.

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Solicitors scores
points for its
superb explanation
of procedural
particularities and
efficient
performance
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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, Development and Innovation (RD&I) Grants

IDA Ireland works closely with companies to ensure they have the facilities, resources and supports needed to establish and expand their RD&I operations in Ireland. IDA also helps ensure that these progressive companies continue to flourish through the provision of grants towards the cost of major training initiatives and the development and expansion of RD&I facilities in Ireland, for eligible companies.

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 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.

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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 important for this purpose.

9.4 Additional State-Sponsored Agencies

Udaras na Gaeltachta is a state-sponsored development agency charged with the promotion of the economic, social and cultural development of the Gaeltacht (Irish speaking) regions of Ireland.

Enterprise Ireland is the Irish state-sponsored agency with responsibility for the promotion of indigenous business and industry. Particular emphasis is placed on the manufacturing and internationally traded services sectors. Through various funding and support programmes, Enterprise Ireland helps businesses to start-up, innovate, expand and ultimately, to achieve global success

FÁS is the government agency responsible for Irish industrial recruitment and training. FÁS aims to enhance the skills and competencies of individuals and enterprises in order for Ireland to further develop as a competitive, inclusive, knowledge-based economy. It strives to do this through the provision of tailored training and employment programmes that suit employers and employees needs alike.

Shannon Development is an agency which focuses on investing its resources in planning and developing initiatives of a significant scale, innovation and impact aimed at encouraging development in the Shannon Region including the continued development of Ireland's Shannon Free Zone, Business and Technology Park.

10 MERGER CONTROL AND COMPETITION LAW IN IRELAND

10.1 Introduction

Irish competition law is contained in the Competition Acts 2002 to 2010. The Competition Act 2002 (as amended) (the "**2002 Act**") regulates mergers and prohibits restrictive agreements and practices and abuses of a dominant position. Irish competition law is modelled on EU competition law as set out in Articles 101 and 102 of the Treaty on the Functioning of the European Union 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:

- 10.2.1 the worldwide turnover of each of two or more of the undertakings involved in the merger is not less than €40 million; and
- 10.2.2 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
- 10.2.3 the turnover in the Republic of Ireland of any one of the undertakings involved in the merger is not less than €40 million.

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business angles
and provide
practical advice
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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 are 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 practices 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 not applied.

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 a dominant position. The above prohibitions are broadly similar to and modelled upon Articles 101 and 102 of the Treaty on the Functioning of the European Union. 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 have as their object or effect, prevention, restriction or distortion of competition in trade in any goods or services in Ireland or in any part of Ireland. 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 101(1) or 102 of the Treaty on the Functioning of the European Union 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

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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 were 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 include 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 or Section 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 include 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 Non-Discrimination

Employers when advertising for employees and interviewing and deciding whom to employ, must not discriminate on certain grounds, including an individual's sex or marital status. Further grounds include religion, age, race, disability, family status, sexual orientation and membership of the travelling community. Discrimination is also prohibited with regard to conditions of employment, training for or in relation to employment, promotion or classification of posts.

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high-quality
competition to win
lucrative
instructions*
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The Protection of Employees (Part Time Work) Act 2001 and the Protection of Employees (Fixed-Term Work) Act 2003 prohibits employers from discriminating against employees in part time positions or fixed term positions.

11.3 Terms and Conditions of Employment

An employer must within two months of the commencement of employment, provide the employee with a written statement of the terms and conditions of employment. This document should be signed on behalf of the employer and the employee. The employment agreement or other document setting out the terms of employment should contain all the essential terms attaching to the employment. The Terms of Employment (Information) Act 1994 – 2001 lists the terms and conditions which by law must be furnished in writing to the employee. These include, inter alia, the date of commencement of the employment, to whom the individual will report, the place of employment, salary and payment intervals, hours of work, whether overtime is paid and the nature of the position. It should also deal with issues such as holidays, sickness procedure and payment (if any) while absent due to illness and the notice required to be given by the employee and the employer to terminate the contract.

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 provides for a number of other matters which include minimum breaks and rest periods, minimum weekly working hours, restrictions on night work, additional payment for working on Sundays and advice should be sought in relation to such issues.

11.4 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. Once an employee is in employment, he cannot be required either to join or to leave a trade union.

11.5 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.

11.6 Sexual Harassment

All employers should have in place and enforce a suitable policy to deal with allegations of sexual harassment so as to minimise liability in respect of such conduct. Employers should have an established procedure so that employees may bring complaints which will be investigated. Numerous codes of practice exist in respect of sexual harassment.

11.7 Discipline/Dismissal

The Unfair Dismissals Acts 1977 to 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. Those grounds include capacity,

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competence, conduct and redundancy as fair grounds for dismissal. 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 (including applying fair procedures) prior to taking 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 respect of disciplinary procedures.

An employee must have 12 months service in order to avail of the protection afforded by the Acts save for specified exceptions to this rule where dismissal is for a particular prohibited reason such as pregnancy or trade union membership.

Employees unfairly dismissed by their employers may bring a claim to the Employment Appeals Tribunal and be awarded compensation of up to two years gross remuneration, re-instatement or re-engagement.

11.8 Redundancy

The Redundancy Payment Acts 1977 to 2007 provide for the payment of a statutory lump sum 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 Ireland. An employee is regarded as dismissed by reason of redundancy where:

- the employer has ceased to do the business for which the employee was employed in the place the employee was employed;
- the requirements of the business for work of a particular kind in the place where the employee was employed has ceased or diminished;
- the business requires fewer employees;
- the work will now be done differently and the employee does not have the necessary training or qualifications;
- the work will be done by someone who is also capable of doing other work for which the employee is not sufficiently qualified or trained.

The minimum redundancy lump sum payment to which a qualifying employee is entitled is calculated as follows:

- two week's pay for every year of employment;
- one week's pay in addition to the above.

In calculating a week's pay an upper limit of €600.00 per week is placed on weekly gross earnings for statutory redundancy purposes.

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The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 prevents large scale compulsory replacement of workers in Ireland by lower paid workers. The Act also makes a number of amendments to existing redundancy, equality and unfair dismissals law. The Act provides for the establishment of a Redundancy Panel to decide if such redundancies constitute exceptional collective redundancies. This Act also increases compensation for unfair dismissals in an exceptional redundancy situation up to a maximum of five years' gross remuneration in certain circumstances.

11.9 Employment Equality Acts 1998 to 2007

The Employment Equality Acts 1998 to 2007 (the "Acts") prohibit discrimination on nine distinct grounds. The grounds on which discrimination is prohibited are:

- 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 its 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.

Likewise, a provider of agency work (i.e. an employment agency) is not permitted to discriminate against an agency worker in relation to the above.

It should be noted that the Equality Act 2004 brings self-employed persons and partners in partnerships within the scope of the Acts.

Unlike under the Unfair Dismissals Acts 1977 - 2007, there is no minimum period of service to be met by an employee before a claim can be brought under the Employment Equality Acts 1998 - 2007.

An employer is not entitled to have rules or instructions or to operate practices that would result in discrimination in relation to the matters set out above.

11.10 Transfer of Employees/TUPE

Detailed rules may apply regarding the treatment of employees where a business is being transferred or outsourced from one employer to another. In essence, the obligations the original employer had towards his employees may have to be taken over by the new employer. This includes rights arising from the contract of employment and collective agreements. Both the previous and new employer are obliged to inform the representatives of their respective employees of the reasons for the transfer, the expected date of 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 and in any event 30 days before the transfer takes effect.

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11.11 Holidays

The Organisation of Working Time Act 1997 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.

11.12 Maternity Leave

Under the terms of the Maternity Protection Acts 1994 and 2004 (as amended) employees are entitled to a minimum of 26 weeks basic maternity leave, subject to certain conditions. There is also an entitlement to 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 Protection for the 26 weeks of basic maternity leave.

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.

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. Termination of employment for any reason is void if made while the employee is on maternity leave.

11.13 Parental Leave

The Parental Leave Acts 1998 and 2006 entitles parents to 14 weeks of unpaid leave from employment for each child. The leave must be taken before the child reaches eight years of age or 16 years in the case of a child with a disability.

Employees must have one year continuous service and comply with certain notice requirements to avail of this leave.

11.14 Provisions of Information and Consultation Act 2006

Pursuant to the Employees (Provision of Information and Consultation) Act 2006, which applies to undertakings with at least 50 employees, employees have the right to require their employer to put in place an information and consultation arrangement, where at least 10 percent of the employees request that such agreement be implemented. Where no agreement is entered into voluntarily, the Act provides that standard rules for the provision of an information and consultation forum will apply, subject of course to the requisite number of employees seeking such an arrangement in the first place.

11.15 National Minimum Wage

The National Minimum Wage Act 2000 describes how the national minimum wage will operate. The current national minimum wage is €8.65 per hour.

11.16 Carer's Leave

The Carer's Leave Act 2001 allows employees with one year continuous service, the right to avail of 104 weeks unpaid leave if they wish to care personally for a person who requires full time care and attention. The Department of Social Protection will objectively assess whether the person to whom care is to be given is a relevant person for the purpose of the Acts.

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12 NON EEA NATIONALS WORKING IN IRELAND

12.1 Working Visas/Work Permits

All European Economic Area (EEA) nationals (i.e. member states of the EU plus Iceland, Lichtenstein and Norway) are allowed to work in Ireland without requiring Work Permits. Non-EEA nationals require differing types of permission depending on their circumstances. Some nationalities may, in addition to a work permit, require a visa to enter Ireland and same may need to be applied for in the Irish embassy in the country where the employee resides.

Access to the Irish Labour market is still restricted for nationals of Bulgaria and Romania. Accordingly such nationals continue to require a work permit to take up employment in Ireland. However the requirements apply only to the first 12 months continuous employment in Ireland. Thereafter such nationals are free to work in Ireland without a work permit.

It is an offence under the Employment Permits Acts 2003 and 2006 for both the employer and/or the employee, if a non EEA national is in employment without an appropriate permit.

12.2 Procedures for New Applications

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 now available:

- The Work Permit Scheme;
- The Green Card Scheme Permits
- The Intra Company Transfer Permits;
- The Spousal/Dependant Permits; and
- The Graduate Permit.

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.

12.2.1 Work Permits

Work permits are issued for occupations with salaries of over €30,000. Work permits are granted for an initial period of two years which can be renewed for a further period of three years. A stringent labour market test requires employers to advertise in local and national newspapers for at least three days in addition to registering positions with FAS (a national employment agency). It is only in very exceptional circumstances that work permits will be granted for salaries under €30,000.

A list of occupations for which work permits will not be granted remains in place and should be checked regularly as it is subject to change from time to time.

12.2.2 Green Card Permits

Green Cards are essentially employment permits available to most occupations with annual salaries of over €60,000. In certain limited circumstances, Green Cards may be granted for positions with annual salaries of between €30,000 and €60,000 but this is limited to listed professions. There is no labour market needs test required prior to the application for a Green Card which is issued for an initial period of two

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years following which it can be renewed indefinitely and permanent residency can be sought.

12.2.3 Intra-Company Transfer Permits

Intra-Company Transfer Permits are now available to senior management, key personnel or those undergoing a training programme who are earning a minimum annual salary of €40,000 and have been working for at least 12 months with the overseas company prior to the transfer. The scheme is designed to facilitate the transfer of such senior personnel who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch. Intra-Company Transfer Permits will initially be granted for a period of 24 months but are renewable thereafter subject to a maximum stay of five years.

12.2.4 Spousal/Dependent Permits

This scheme allows the spouses and dependents of employment permit holders (whether Green Card, Work Permit or Intra-Company Transfer Permit) who are entitled to reside here to apply for work permits. In such circumstances, no labour market needs test is applicable, no application fee applies and the spouse is permitted to apply in respect of most occupations. If however the existing Work Permit holder applied for their first Work Permit on or after 1 June 2009, their spouse or dependent will be required to apply for a normal Work Permit in their own right according to standard work permit eligibility criteria, including a labour market needs test, they are restricted to vacancies in eligible job categories and payment of the standard application fee is required.

12.2.5 Graduates

Third level students may apply to remain in Ireland for a period of six months following receipt of examination results to allow them sufficient time to seek employment. Thereafter, if their search for employment is successful, either a Green Card or Work Permit may be applied for dependent on the circumstances.

12.3 Business Permission

Any non-EEA national who wishes to pursue a business activity in a capacity other than as an employee must first obtain Business Permission from the Minister for Justice & Law Reform. There are some limited exceptions to this requirement.

To obtain Business Permission the following criteria must be met:

- The proposed business must result in the transfer to Ireland of capital in the minimum sum of €300,000;
- The proposed business must create employment for at least 2 EEA nationals for a new project, or at least maintain levels of employment in an existing business;
- The proposed business should add to the commercial activity and competitiveness of Ireland;
- The proposed business must be a viable trading concern to support the applicant and any dependents; and
- The applicant must be in possession of valid identity documents and be of good character.

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13

There are additional requirements when submitting an application to include the requirement to prepare a business plan endorsed by a firm of accountants or a financial institution involved in venture capital.

DATA PROTECTION

Data protection law in Ireland is governed by the Data Protection Acts 1988 and 2003, as amended (the "DPA"). The DPA govern the collection, processing, storing and disclosure of personal data in Ireland. 'Personal Data' is defined broadly 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. It should be noted that the DPA draw a distinction between Personal Data and sensitive personal data. 'Sensitive Personal Data' means personal data which relates to:

- (a) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject;
- (b) the data subject's membership of a trade union;
- (c) the physical or mental health or condition or sexual life of the data subject;
- (d) the commission or alleged commission of any offence by the data subject; or
- (e) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings;

and before Sensitive Personal Data may be processed by a data processor, the explicit consent of the data subject to the processing must be obtained.

Irish data protection law regulates dealings in Personal Data (which includes Sensitive Personal Data) in both electronic and manual form and will, for example, include personal data consisting of CCTV footage.

The DPA 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.

The primary obligations under the DPA are placed on data controllers who must, amongst other things, ensure that they collect and process Personal Data in a fair manner.

The DPA apply to data controllers that are companies incorporated in Ireland, branches established in Ireland but also to data controllers who are neither established in Ireland nor within the European Economic Area ("EEA") but who make use of equipment located in Ireland for processing purposes (unless that equipment is used solely for the purpose of transit through Irish territory).

Certain data controllers (including banks, financial and credit institutions, internet access providers and telecommunications network and service providers) are required to register with the Data Protection Commissioner in Ireland. One matter which is important to note is that there is no exemption from data protection law in relation to sharing data amongst group companies or in the employer/employee relationship. This has particular implications for multinational groups of companies, including those who have operations both within and outside the EEA.

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14 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.

Ireland is a signatory to The International Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works and so grants the same protection in respect of intellectual property rights to other convention signatories as it gives to its own nationals.

In certain circumstances confidential information, know-how and trade secrets are protected by common law automatically, but they may also be protected contractually.

Significantly the transfer and disposal of intellectual property is the subject of an exemption from stamp duty, as introduced by the Finance Act 2004 (see paragraph 21 above).

14.1 Patents

There are two types of patent protection available in Ireland depending on the nature and complexity of the invention. An Irish long term patent lasts for 20 years and an Irish short term patent lasts for 10 years. The criteria for patentability of a short-term patent are less stringent than for a long-term patent. A full-term patent and a short-term patent may not co-exist for the same invention.

Although Irish legislation expressly excludes “computer programs” from inventions which may be protected by Irish patents, this exclusion had been interpreted narrowly and patents may be secured for certain programs by protecting their underlying process.

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.

Ireland has ratified the European Patent Convention (EPC) and the Patent Co-Operation Treaty (PCT). Patents enforceable in Ireland can be applied for through the European Patent Convention (EPC) and the Patent Co-Operation Treaty (PCT) systems, as well as the Irish Patents Office.

There is such right as a European patent, but the EPC system allows applicants to secure patent rights in a number of European countries by way of filing a single application to the European Patent Office and nominating the European countries of their choice in the application. Similarly an applicant can apply through the PCT system by means of a single application designating specific member states. Each successful application under the EPC or PCT system will result in national patents in the chosen jurisdictions.

See Section 7.1.2(e) for details about patent royalty treatment.

14.2 Copyright and Databases

Irish laws give copyright protection to 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.

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The Copyright and Related Rights Act 2000 (the "**2000 Act**") 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.

The 2000 Act also introduced a property right in a database (a 'database right') which may exist where there has been substantial investment in obtaining, verifying or presenting the contents of the database. A database right exists in addition to the copyright that subsists in original databases. Furthermore, a database right will exist even where all or some of the contents of the database are not themselves protected by copyright. The database right will subsist for fifteen years from the end of the calendar year in which the database was completed; that period may be extended for a further fifteen year period in certain limited circumstances.

14.3 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 as amended by the Patents (Amendment) Act 2006 (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 against a third party, assignments and licences of trade marks must be recorded with the Irish Patents 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 Patents Office, the applicant must have an Irish trade mark registration or prior trade mark application in Ireland.

14.4 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. Once registered, a design is protected for a term of five years, which is renewable up to a maximum of twenty-five years.

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.

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15 ECOMMERCE

As a result of the Electronic Commerce Act 2000 Act, Irish law recognises the validity of electronic contracts; digital signatures and electronic writing. That Act partially implemented the Electronic Commerce Directive 2000/31/EC and the Electronic Signatures 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 24 February 2003.

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 certain of the consumer protection laws that Ireland has enacted deal specifically with the protection of consumers in the online environment.

16 CONSUMER LAW

16.1 Background

There are quite a number of Irish consumer protection laws, many of which originate at EU level and are then implemented in Ireland. We provide advice on this area regularly, including by drafting or localising many different contracts. Most claims from consumers are dealt with in the Small Claims Court, the District Court, or at most, the Circuit Court due to their relatively low value.

The principal pieces of consumer legislation in Ireland are as follows:

- The Consumer Protection Act 2007;
- The Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980;
- The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000;
- The Consumer Credit Act 1995;
- The European Communities (Protection of Consumers in Respect of Contracts made by means of Distance Communication) (Amendment) Regulations 2010; and
- The European Communities (Misleading and Comparative Marketing Communications) Regulations 2007.

There are also quite a number of pieces of consumer protection legislation relating to specific products or services such as financial services, alcohol, airfares and insurance.

16.2 The Consumer Protection Act 2007

The Consumer Protection Act 2007 (the "**CPA**") provides for the establishment of a National Consumer Agency and for transposition of the Unfair Commercial Practices Directive (Directive 2005/29/EC) into Irish law.

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The CPA 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 is a very extensive piece of legislation which includes prohibitions of the following activities:

- 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 are listed in the CPA. 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 CPA 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.

16.3 **The European Communities (Protection of Consumers in Respect of Contracts made by means of Distance Communication) (Amendment) Regulations 2010**

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.

17 **PRODUCT LIABILITY**

The Liability for Defective Products Act 1991 implements Directive 85/374/EEC on liability for defective products. The legislation imposes strict liability on a product producer for damage caused wholly or partially by a defect in the product; Proving that the producer was negligent in manufacturing the product is not necessary.

A seller has a contractual responsibility to a buyer in respect of faults/ defects in any products sold under the Sale of Goods and Supply of Services Act 1980.

Under Irish common law a manufacturer of a product owes a duty of care to any person who may be foreseeably injured or damaged by the product he manufactures.

The European Communities (General Product Safety) Regulations 2004 prohibit the placing of dangerous products on the market.

Where the purchaser of a product is a consumer the consumer will be in a position to rely upon a number of consumer protection laws, some of which are listed in section 16 above.

There are also quite a number of pieces of legislation relating to specific products such as medical devices, food, animal products which apply in Ireland.

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18 PROPERTY

18.1 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 title registration system through the Property Registration Authority (the "PRA") where a person's interest in property may be 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). Since 1 January 2010, all property acquired since that date must be registered in the PRA (except in the Counties of Cork and Dublin).

Ireland also operates a document registration system through the Registry of Deeds where Deeds (as distinct from title) may be registered, priority obtained and third parties placed on notice of the existence of documents of title.

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 on the purchase monies paid (or the value of the interest passing). Where residential property purchases have been completed on or after 5 November 2007, the first €125,000 is exempt from stamp duty. Properties over €125,000 but under €1 million are charged stamp duty of 7% on the excess over €125,000. Properties over €1 million will be charged stamp duty of 9% on the excess over €1 million and 7% on the remainder between €125,000 and €1 million. Properties with a value of more than €125,000 but not exceeding €127,000 will not be liable for stamp duty. Also the current exemptions in relation to the first time buyers and buyers of new homes will continue to apply.

In relation to non-residential property stamp duty on purchases completed after 15 October 2008 is chargeable at a rate operating on a sliding scale from 1% to 6% depending on the value of the property.

There is no restriction on a non-national purchasing or leasing property, although additional consents may be needed by a non-national purchaser or corporation from outside the European Union.

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18.2 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.

18.3 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 terms between 5 and 35 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 resulted in an increase in rent. Given current market conditions, this may no longer be the case. New leases now provide for "downward" as well as "upward" reviews of rent.

A once-off tax, known as stamp duty, of 1% of the annual rent is payable. Increased rates of tax will apply in respect of leases having a term longer than 35 years.

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.

18.4 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.

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- The issue of VAT in relation to commercial leases is of considerable importance and VAT issues should be carefully addressed prior to entering into a contract. The Finance Act 2008 introduced an entirely new system of VAT for property transactions.
- Stamp duty is chargeable at a rate operating on a sliding scale (see 16.1) 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 25% applies where benefits have been obtained after 8 April 2009 but certain exemptions are available dependent upon the relationship between the Transferor and Transferee, particularly with regard to transfers between family members.

19 PENSIONS

Employers are generally not required to contribute to pension plans in Ireland on behalf of their workforce. However, access to pension arrangements is mandatory within 6 months of joining service. Pension and death in service benefits are generally provided by employers, as most employees expect pension to be provided in their remuneration package.

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, especially in light of the publication, in March 2010, by the Department of Social and Family Affairs of the National Pensions Framework (the Pensions Framework) which proposes fairly extensive changes to the Irish pensions landscape, both in the private and public sector. It is anticipated that the changes will take about 3-5 years to implement and it is likely that the changes will be implemented on an incremental basis. The Pensions Framework issued following extensive period of consultation with stakeholders.

The Pensions Framework proposes that the age at which entitlement to State pension will be raised from the current age of 65 to 66 in 2014, 67 in 2021 and 68 in 2028. This and the other proposals contained in the Pensions Framework are not yet law.

The Pensions Act (the "**Act**") imposes extensive obligations on those dealing with pension schemes including trustees, employers, auditors and actuaries. For example, employees who benefit from pension arrangements must be provided with specific information and this requires publication of members' booklets, annual benefit statements, annual scheme reports and financial information relating to their arrangements.

The Act is intended to regulate pension schemes, protect pension scheme members by setting standards for schemes and implement the principle of equal treatment which generally applies EU employment equality laws to pension schemes. The Act provides for a minimum funding standard for defined benefit pension schemes, disclosure of information obligations, the establishment of a regulatory agency, the Pensions Board, and a complaints forum, the Office of the Pensions Ombudsman. The Pensions Board monitors and supervises the operation of the Act and pensions development generally.

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The Pensions Ombudsman investigates complaints and disputes involving occupational pension schemes and Personal Retirement Savings Accounts (PRSAs).

Pension benefits are provided via a contract (usually a PRSA) or a pension scheme (usually a trust based plan). A PRSA is an investment vehicle used for long term retirement provision by employees, self employed, homemakers, carers, unemployed, or any other category of person.

Employers setting up a new business in Ireland usually offer a defined contribution benefits scheme or single member schemes to which they contribute as well as providing death-in-service benefits on an insured basis. Employees are also usually required to contribute.

At the end of 2009, there was a total active membership of about 850,000 in occupational pension schemes on the Pension Board's register and 170,000 PRSA contracts in place.

Ireland is in full compliance with the 2005 Pensions Directive. It is regarded as a country with a light regulatory touch and as a most suitable jurisdiction in which to site an EU wide cross border pension scheme capable of admitting employees who work anywhere in the EU.

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