



Mason Hayes+Curran

Ireland as a Business Location



SPRING 2011



As managing partner of Mason Hayes+Curran, it gives me great pleasure to introduce you to this edition of 'Ireland, As a Business Location'. This has been prepared by Mason Hayes+Curran to assist businesses considering investment in Ireland.

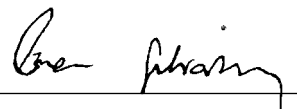
Ireland has a lot to offer the inward investor, with everything from attractive and stable corporate tax rates to a highly motivated and skilled workforce. These factors, amongst others, have led to Ireland becoming one of the most successful locations for foreign investment in the last decade, as many companies have recognised the strategic importance of Ireland as an entry point to the European market.

Mason Hayes+Curran is a top tier Irish law firm and is committed to promoting Ireland as a location for business investment. To this end, we have established representative offices in both New York and London, two of Ireland's most important conduits for inward investment.

As a full service business law firm, we understand the many and varied challenges that corporations face when locating in a foreign country and have the necessary skills to assist you during your initial set-up and for your ongoing legal requirements.

I hope that you find this publication useful. If I can be of any further assistance to you, please feel free to contact me.

Yours sincerely,



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Advantages of Ireland as a business location

Ireland is one of the most popular and profitable locations for multinational corporations wishing to invest in Europe.

These corporations are involved in a wide range of activities in sectors as diverse as IT, software development, financial services, pharmaceuticals, life sciences and international services. Ireland provides investors with high returns through a combination of one of the lowest corporate tax rates in the world of 12.5%, structured tax reliefs for research and development, a highly skilled and flexible workforce and a competitive cost economy.

Historically, corporations like Apple, AOL, Dell, eBay, PayPal, Facebook, Google, Hewlett Packard, IBM, Microsoft, Xilinx, Oracle and Yahoo! have chosen to establish major European, Middle Eastern and African ("EMEA") hub operations in Ireland. Pharmaceutical, medical device companies and other businesses such as Baxter Healthcare, Dow Chemicals, Boston Scientific, Johnson & Johnson, Pfizer, Kelloggs and Schering have also recognised the attractiveness of the country as a base to serve the European market of over 490 million consumers, one of the largest consumer markets in the world.

During the recession, numerous corporates have taken steps to restructure their international affairs through an Irish holding company. Various economic, political and other factors caused many enterprises to dismantle structures located in Cayman, Bermuda and other tax haven locations. As the continual stream of tax anti-avoidance legislation in the US, UK and other relative high tax locations has grown, many corporates have reached a tipping point that has driven them to seek shareholder approval to restructure their affairs through a fiscally attuned holding company located in Ireland, using its low tax onshore OECD white listed and common law attributes. The publicly known groups which have restructured their ultimate holding company into Ireland include Accenture, Henderson Group, Ingersoll Rand, James Hardie, Seagate, Shire, UBM, Willis Group Holding Limited, WPP and XL. Where a merger or acquisition is anticipated, the transaction can be structured to give group tax benefits that would not otherwise accrue to the target of the acquisition.

Ireland is also one of the principal global hubs for the location of investment funds and financial services investment.

The law in Ireland is interpreted and developed by the Irish Courts. The four main sources of law in Ireland are:

- (i) common law;
- (ii) legislation;
- (iii) the Irish Constitution; and
- (iv) European Union ("EU") Law.

Ireland has proven itself through several decades as a profitable location for corporates establishing in Europe. The key advantages are:

- pro-enterprise culture;
- low corporate tax;
 - 12.5% on profits from Irish trades and certain dividends paid out of foreign trading profits
 - exemption from corporation tax on dividends paid to other Irish corporates and on certain dividends received from non-resident corporates
 - 25% on capital gains
 - 25% on passive income and profits from non-Irish trades
 - tax reliefs and enhanced tax credit system for research and development
 - tax depreciation available for purchased Intellectual Property

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- tax depreciation for plant and equipment available over 8 years
 - full tax depreciation for certain energy efficient equipment in year of purchase
 - capital gains tax exemption of disposal shares in companies resident in Ireland and certain overseas countries
 - foreign tax credit pooling provisions for certain dividends and interest receivable
 - domestic exemptions and treaty relief from withholding tax on dividends, interest and royalties paid to certain non-residents
 - unilateral relief for foreign tax suffered on foreign dividends, interest and royalties
-
- no controlled foreign company ('CFC') rules;
 - no exchange controls;
 - highly skilled, English-speaking workforce;
 - member of the EU and Euro currency zone providing easy access to EU internal market;
 - only English speaking Euro currency zone member;
 - generous cash employment and research and development grants from Government agencies, access to grants from EU agencies;
 - pro-active, up-to-date business legislation and approach to regulation generally, and in particular in e-business and intellectual property; and
 - easily accessible from mainland Europe and North America



Investment incentives in Ireland

Agencies

The Irish Government agencies, the Industrial Development Agency Ireland ('IDA') and Enterprise Ireland promote business development in Ireland. While Enterprise Ireland is mainly concerned with the promotion of local Irish industry, the IDA deals with attracting foreign investment projects to locate in Ireland.

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There are particular areas in Ireland – the Shannon region (South-West) and the 'Gaeltacht' areas (where Gaelic, the Irish language, is spoken) which have extra specific incentives above and beyond the normal investment incentives provided by IDA.

The IDA has offices in Dublin and across the regions. It also has overseas offices in the United States, Europe and the Asia-Pacific region. The IDA has different specialist divisions dealing with electronics, engineering, healthcare, life sciences, international services, financial services and consumer products.

Grants

The grants available from the IDA are cash payments to businesses which become repayable only where the grant terms are broken within a five year period (or, in a very exceptional case, ten years), or where the business terminates.

Grants are given for both manufacturing activities and internationally traded services. These grants include capital grants, employment grants, research and development grants and training grants.

The IDA can make available specific grants or a combination of grants (i.e. a 'grant package') which will frequently be calculated as an overall amount of grant per job, based on the number of jobs to be created by the grant-aided project.

While the criteria will vary from industry to industry, the typical criteria applied to determine the availability of grants include:

- location within Ireland;
- likely employment/skills levels;
- the value level of the business;
- long-term stability of the industry concerned; and
- suitability of the project to Ireland's long term industrial policy.

The key factors underpinning a total grant package will be the number of sustainable jobs to be created by the corporation, the location, and the value level of the business.

Every form of grant assistance will be linked to a specifically approved project.



Business structures in Ireland

Companies and branches

The main vehicles for setting up a business in Ireland are:

- an Irish-incorporated private limited liability corporation ('private company'); or
- an Irish-registered branch of a non-Irish corporation.

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Incorporating a new Irish corporation or registering a branch of a non-Irish corporation is a quick and inexpensive procedure. Mason Hayes+Curran's company secretarial department provides a range of corporate secretarial, registration and administrative services. The company secretarial department has an arrangement for 'fast track' incorporation and registration procedures with the Irish Companies Registration Office.

Financing of corporations

Financing of Irish corporations can be by way of debt, subscription for shares, and, in some circumstances, contribution of capital without the issue of shares. At present, there are no thin capitalisation rules in Ireland and therefore an Irish corporation can be financed with a minimum amount of issued shares (e.g. €1).

A tax of 1% (stamp duty) is generally payable by the purchaser of shares in an Irish corporation, which is calculated by reference to the higher of the market value or consideration paid. Transfers of shares for a consideration or where the market value of the shares is less than €1,000 are exempt from stamp duty. This tax does not generally apply to the issue or transfer of shares in non-Irish corporations with an Irish branch.

There is an exemption from this stamp duty for Irish companies with US-quoted ADR programmes.

Classes of shares issued by corporations in Ireland include ordinary shares (equity share capital), preference shares with a fixed or fluctuating coupon and redeemable shares. Shares must be issued with a par value - usually €1, but the par value can be any amount in any currency. Irish corporations can, subject to certain formalities being observed, redeem and/or repurchase their shares out of distributable profits and reserves. On a repurchase of shares by a company, there could be a stamp duty charge of 1% on the transfer, where the transaction is not appropriately structured.

There are no requirements for minimum payment of dividends or interest. A 20% withholding tax can apply to payments of dividends or interest, but there are a wide range of exemptions from such withholding taxes. Exemptions are generally available where the recipient is tax resident in an EU country or a country with which Ireland has a double tax treaty.

Management of corporations

The day-to-day management of an Irish company is normally carried out by a board of directors. Every Irish corporation must have at least two directors and a company secretary (who may be one of the directors). A corporate entity may act as company secretary but the directors must be natural persons. Otherwise, there is a requirement to have at least one director who is resident in a member state of the European Economic Area (E.E.A.) or an insurance bond to the value of €25,395.

The day-to-day management of a non-Irish corporation which has a registered branch in Ireland will be regulated by the law of where that corporation was incorporated. There is no requirement in Ireland that there be any particular officers of a corporation with a branch, but there is a requirement for an Irish resident process agent for such a corporation.

Each Irish corporation must hold an annual general meeting, principally to consider the accounts of the corporation which will contain the auditors' and directors' reports. This requirement can be dispensed with where (as is often the case), the Irish corporation has one shareholder only.

Auditors

By law, every Irish corporation (except in one set of circumstances as set out below) must appoint an auditor who will report to the shareholders on the accounts prepared by the directors. Auditors must generally be members of the major accounting bodies in Ireland, Scotland or England and Wales. All the major international accounting firms have member or affiliate firms in Ireland.

A company does not have to have its accounts audited where specified conditions are met. These include (amongst others):

- (i) turnover must not exceed €7.3m;
- (ii) balance sheet total must not exceed €3.65m;
- (iii) average number of employees must not exceed 50;
- (iv) the company is not a parent undertaking or subsidiary undertaking; and
- (v) the company's annual return for the current and previous calendar year must be filed with the Companies Registration Office within the time periods specified in the Irish Companies Acts.

Corporations incorporated in Ireland and branches registered in Ireland are obliged to publicly file accounts. Corporations are entitled, in certain circumstances, to incorporate as private unlimited corporations to avoid such disclosure. Small and medium-sized limited corporations may prepare short-form profit and loss accounts and are free from the obligation to disclose particulars of turnover in audited accounts.

Partnerships

Another form of business structure encountered in Ireland is the partnership which is the default method of carrying on business between two or more persons (including corporate entities). A partnership can exist without formal registration. Partners have unlimited liability. Such an entity is often regulated by a partnership deed and in the absence of such a deed the Partnership Act 1890 applies. This legislation contains provisions that are not appropriate to carrying on a modern business.

There are no specific capital structure requirements for partnerships prescribed by Irish law.

Limited partnerships are also permitted under the Limited Partnership Act 1907. For limited partnerships a distinction is drawn between general partners who manage the firm's business and have unlimited liability and limited partners who invest fixed amounts of money in the partnership, but who are not liable for its debts and obligations beyond the amount of their capital investments. Although a general partner has unlimited liability, it is possible for a limited liability corporation to be the general partner. Limited partnerships are relatively uncommon.

Irish corporations

To form an Irish corporation, all of the following must be delivered to the Companies Registration Office:

- a memorandum of association, setting out the name, objects and initial authorised share capital;
- a set of articles of association, setting out rules for internal management;
- a form A1 setting out details of directors, secretary, registered office issued share capital and activity which the company is being formed to engage in; and
- €100 incorporation fee (or €50 where incorporated online).

Registering a business name

The registration of a business name is obligatory if any individual, partnership or any body corporate carries on business under a name other than its own name. Specifically registration is required if:

- an individual uses a business name which differs in any way from his/her true surname. So it would be required if, for example, Mr. John Murphy traded as 'Murphy Builders' but not if he traded as 'Murphy' or 'John Murphy';
- a firm uses a business name which differs in any way from the true names of all partners; or
- a company uses a business name which differs in any way from its full corporate name.

The particulars for registration are required to be filed in the Companies Registration Office within one month of the date of the adoption of the business name. The official fee for business name registration is currently €40 (or €20 where registered online).

Registration of a business name does not prevent another person or entity from seeking to register the same business name. However consideration should be given in these circumstances to the law of passing off.

Non-Irish corporations

A non-Irish corporation which establishes a branch (which includes any place of business) in Ireland must register with the Companies Registration Office. This is done by filing the following:

- a Form F12 if the corporation is registered in Europe / F13 if the corporation is registered outside Europe;
- a copy of the corporation's certificate of incorporation, charter and by-laws and its most recently available audited accounts;
- particulars of the directors and secretary;
- details of the corporation's address in Ireland;
- the name and address of one or more persons resident in Ireland and authorised by the corporation to ensure compliance with the regulations, pursuant to which the branch is registered in Ireland; and
- €60 (being the current filing fee and €15 for each change in details required to be filed).

Non-Irish corporations must register with the Irish Revenue Commissioners within 30 days of commencing to trade in Ireland. Profits derived by the Irish branch are subject to Irish corporation tax.



Taxation benefits of structuring business in or through Ireland

Ireland is recognised in Europe and around the world as a major inward investment location. Ireland has a leading reputation as an onshore EU OECD white-listed location. It is a key EMEA hub for the financial services, information technology, e-commerce, gaming and pharmaceutical sectors. It has a growing profile as the holding company EU location of choice and a location from which to own intellectual property. In the financial sector, Ireland is a world-leading location for asset and structured finance, insurance and investment funds.

In common with all other EU Member States, Ireland uses a sophisticated toolkit of tax rates, exemptions, allowances, credits and reliefs to attract various activities to its shores. At the epicentre of this regime is a 12.5% corporation tax rate for almost any trading activity carried out in the State, an exemption from tax for certain investment funds and share portfolio income, and an ability to structure cross-border transactions, including big ticket leasing, through Irish corporate and other vehicles so as to utilise Ireland's extensive double tax treaty network. Ireland currently has signed comprehensive double taxation agreements with 62 countries, of which 54 are in effect. The countries with which Ireland has a double taxation agreement outside the EU are: Australia, Bahrain, Belarus, Bosnia Herzegovina, Canada, Chile, China, Croatia, Georgia, Hong Kong, Iceland, India, Israel, Japan, Republic of Korea, Kuwait, Macedonia, Malaysia, Mexico, Moldova, Montenegro, Morocco, New Zealand, Norway, Pakistan, Russia, Serbia, Singapore, South Africa, Switzerland, Turkey, United Arab Emirates, United States of America, Vietnam and Zambia.

A company which is tax resident in Ireland is liable to tax at 12.5% on trading activities carried on in the State and in respect of dividends from certain foreign trading subsidiaries. A system of onshore pooling of foreign tax credits enables credit for foreign tax, including withholding taxes on profits out of which dividends have been paid, to eliminate the incidence of Irish tax.

Moreover, Finance Act 2010 introduced provisions which exempt dividends forming part of trading income of trading portfolio shareholdings. This exemption is particularly attractive for insurance companies and other financial institutions in receipt of dividend income on shares that represent less than 5% of, broadly, a company's issued share capital.

A 25% corporate tax rate applies to passive income, certain land dealing and oil, gas and mineral exploitation. Non-trading activities subject to tax at 25% are typically outside the scope of the new Irish transfer pricing regime. Set out below are various examples by which Ireland's tax regime may be used for differing businesses and other activities.

i. Ireland as a European, Middle East and African ("EMEA") Hub

Numerous US and foreign corporates use Ireland as a location from which to develop their EMEA hub. Trading activity commensurate with the substance of the operations generates profits taxable at 12.5%. Foreign tax risks are minimised by ensuring that the EMEA hub is centrally managed and controlled from Ireland and activities associated with overseas tax presences are limited. The incidence of 12.5% tax is reduced through the use of foreign tax credits, Ireland's intellectual property regime and research and development credits (see below).

Foreign secondees are attracted to the EMEA hub by a mechanism that enables a portion of their Irish employment taxes to be refunded (see below for further details).

ii. Ireland as an Intellectual Property Location

Many corporates, especially in the pharmaceutical and e-commerce sectors, establish an intellectual property exploitation trade in Ireland that is taxable at 12.5%. This base is eroded through the use of Ireland's intellectual property box. This uses three features of the Irish tax system:

- Tax depreciation for intangible assets,
- Relief for withholding taxes and credit for foreign taxes,
- Research and development credit.

Tax Depreciation for Intangible Assets Acquired from Related / Third Party Entities

Tax depreciation is available for the capital expenditure incurred on intangible assets used for the purposes of a trade of the company. The tax write-off is available in line with the standard accounting treatment or, alternatively, companies can opt for a 15 year fixed write down of 7% per annum and 2% in the final year.

Relief is available where the intangible asset is acquired from either a foreign affiliate or a third party acquisition. Where intangible assets are transferred within a capital gains tax group, the acquiring company is entitled to claim the allowances provided that capital gains tax group relief is not claimed by the company transferring the assets.

The definition of intangible asset is very broad and includes patents, brands, trade names, copyrights, supplementary protection certificates and certain authorisations for the sale of medicines and associated rights and goodwill which is directly linked to an asset specified in the definition.

Finance Act 2010 broadened the definition of assets qualifying for this relief to include computer software ("end use" type) acquired for the purposes of its commercial exploitation. Secret processes or formulae or other secret information concerning industrial, commercial or scientific experience (whether protected by patent, copyright or a related right) are now also included within the definition of intangible assets. In addition, Finance Act 2010 entitles certain costs incurred on the application for the grant or registration of a patent, registered design, design right or invention, trade mark, trade name, trade dress, brand, brand name, domain name, service mark, publishing title, copyright or related right to qualify for this relief.

There is no clawback of the relief where the assets are sold more than 10 years (previously 15 years) after the beginning of the accounting period in which the asset was first provided unless it results in a connected company claiming the allowances. The company must prepare accounts under IFRS or Irish GAAP.

The relief is capped at 80% of the trading related income. This cap is an aggregate of both capital allowances and any related interest expense.

Relief for Withholding Taxes and Credit for Foreign Taxes

In general, Ireland imposes withholding tax on royalty payments paid to non-residents where it is a patent royalty or one where the royalty is regarded as “pure income profit”.

Where Irish withholding tax applies, all of Ireland’s double taxation treaties either substantially reduce or entirely eliminate Irish withholding tax on royalties paid to a non-resident treaty jurisdiction. Furthermore, relief from withholding tax may also be available under the EU Interest and Royalties Directive in respect of intra-EU transactions.

In addition to the above, Finance Act 2010 introduced unilateral relief for foreign tax suffered on royalties received from abroad. This generally results in no further liability to Irish tax arising as Ireland’s tax rates are normally lower than the payor’s jurisdiction.

The Irish tax authorities have also issued a practice statement as part of a suite of incentive measures to increase Ireland’s attractiveness as a location for intellectual property. The practice statement, which took effect from 26th July 2010, allows patent royalties to be paid by an Irish tax resident company to a foreign company, including an entity that is resident in a non-treaty jurisdiction, without Irish withholding tax, i.e. patent royalties can be paid to Cayman/ Bermuda Companies free of withholding tax.

It should no longer be necessary to use back to back conduit structures by using locations such as Luxemburg or Malta.

The previous requirement was that 20% withholding tax was required to be operated on payment of patent royalties where it was being paid to a patent holder who was resident in a non EU/DTA State.

This change, which is being introduced by administrative practice, directly follows the change in Finance Act 2010 which exempted Irish companies from having to deduct withholding tax on paying patent royalties to a company resident in an EU/DTA State. Accordingly, this removes the requirement to rely on a treaty provision and, in some cases, can produce a better result than a specific treaty provision.

The exemption from the requirement to deduct withholding tax is available in the following circumstances:

- the recipient is the beneficial owner of the royalty payment and is a company which is neither resident in the State nor carrying on a trade in the State through a branch or agency; and
- the royalties are payable in respect of a foreign patent under a licence agreement that is executed in a foreign territory and subject to the law and jurisdiction of a foreign territory; and
- the payment is made in the course of the Irish paying company’s trade and the payment is not part of a back to back or other conduit arrangement.

A foreign patent is defined as a patent originally registered outside the State in relation to an invention developed outside the State. Advance approval is required from the Irish tax authorities and the application should be made to the tax office of the Irish company paying the royalty.

Research and Development Credit

Ireland offers a tax credit equal to 25% of certain incremental research and development (“R&D”) expenditure, where the R&D activity is carried on either in Ireland or the European Economic Area. The R&D tax credit is calculated by reference to the in-house R&D costs above the base year spend of 2003. The R&D credit is used to directly reduce the corporate tax liability of the company and where the R&D credit exceeds the corporation tax for the year in which the expenditure was incurred, the excess can be:

- carried back against prior year tax liability;
- carried forward indefinitely for offset in future tax years; or
- be claimed as a refund in 3 instalments over a 33 month period. (the amount of the refund is limited to the greater of either the corporation tax paid by the company for the proceeding 10 accounting periods or the payroll liabilities (i.e. PAYE, PRSI and levies) accounted for by the company in the accounting period in which the qualifying R&D expenditure was incurred).

The R&D credit is also available in respect of expenditure incurred on the construction (including refurbishment) of a building where R&D activities carried on by a company in that building over a 4 year period represent at least 35 per cent of all activities carried on in that building. The credit allowed is in proportion of the use of the building for R&D purposes over that 4 year period. A claw back arises where within 10 years of the accounting period in which the expenditure on the building was incurred, the building is sold or ceases to be used by the company for R&D purposes.

iii. Ireland as a Holding Company Location

As the international pressure against the use of tax haven locations intensifies, Ireland is attracting considerable attention as a holding company location of choice. The key drivers behind such moves are as follows:

- The Irish tax regime provides a platform for multi-nationals to own shares in subsidiaries through Ireland without attracting an incidence of Irish tax liabilities on dividends or capital gains;
- Irish holding companies are not exempt to Irish corporation tax. They can obtain the benefit of Ireland’s network of double tax treaties. Holding companies resident in tax havens have limited access to a network of treaties to reduce or eliminate withholding taxes.
- In accordance with the Treaty of Rome, Ireland’s tax regime only seeks to tax corporates in respect of activities carried on in the State. It does not seek to tax profits of companies resident in other jurisdictions. Accordingly, unlike other EU Member States, Ireland does not have a controlled foreign companies’ regime.
- Stamp duty at 1% on transfer of shares in a company tax resident in Ireland may be avoided by either incorporating the holding company outside of Ireland, but maintaining central management and control in Ireland, or using an Irish incorporated company with American Depository Receipts or the equivalent.

iv. Ireland as a Location for Financial Services

a) Ireland as a location for Funds

Ireland offers an attractive regime in which to domicile regulated investment funds and is a preferred location for fund administration, custody and management. An Irish fund can be established as one of the following legal structures:

- Investment company;
- Unit trust;
- Common contractual fund; and
- Investment limited partnership.

The two regulated fund regimes in Ireland are:

- Undertakings for Collective Investment in Transferable Securities (“UCITS”); and
- Non-UCITS.

A UCITS fund must be an open-ended fund and can avail of a “single passport” throughout the EU for the sale of its units/shares. This means that UCITS, once established and regulated in Ireland, can be sold to the public in all of the EU Member States once the appropriate notifications have been made to the local authorities.

The non-UCITS regime is an attractive investment vehicle for fund managers who wish to target sophisticated investors, namely institutional and high net worth individuals. Certain funds which employ more complex investment strategies posing greater risk may not be permissible under the UCITS regime but can be set up as a non-UCITS fund. The term “non-UCITS” is generally used to describe all authorised Irish investment funds which are not UCITS.

The qualifying investor fund (“QIF”) has become one of Ireland’s most successful non-UCITS as QIF’s offer flexibility for alternative investments e.g. hedge funds, fund of hedge funds, private equity funds, real estate investment funds. QIF’s are only open to certain investors e.g. the minimum subscription per investor in a QIF is €100,000 and investment in a QIF is limited to:

- an investor who is a professional client within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive) (“MiFID”); or
- an investor who receives an appraisal from an EURO credit institution, a MiFID firm or a UNITS management company, that the investor has the appropriate expertise in the scheme; or
- an investor who certifies that they are an informed investor by providing the following:
 - confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or
 - confirmation (in writing) that the investor’s business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the scheme.

In order to meet the requirements of existing fund providers and become a more attractive location for alternative investments, the Irish Central Bank can now authorise a QIF, on a filing basis only, within 24 hours of submission of the relevant documentation.

Regulated funds benefit from the following attractive tax provisions:

- they are exempt from tax on their income and gains irrespective of an investor's residency. This allows investors returns to roll up on a gross basis;
- under domestic legislation, no withholding tax is applied on income distributions or the redemption of units by a fund to a non-Irish resident investor, provided a relevant declaration is in place to demonstrate that the investor is not an Irish resident. It is not necessary for an investor to be resident in a country with which Ireland has a double tax treaty to avoid withholding;
- no Irish stamp duty is applied on the establishment, transfer or sale of units or shares in an Irish regulated fund; and
- many of the services provided to a fund are exempt from VAT, e.g. investment management, administration and custodial services.

Ireland recently introduced new fund re-domiciling laws under the Companies (Miscellaneous Provisions) Act 2009 which provides a streamlined process for a non-Irish corporate fund re-domiciling to Ireland. These provisions were introduced to facilitate existing Irish fund managers to relocate non-Irish funds to Ireland. The process involves the filing of registration documentation with the Irish Companies Registration Office and simultaneously applying for authorisation as a regulated fund with the Irish Central Bank. Funds can be re-domiciled to Ireland with the avoidance of an Irish taxable event for the Investors however, the Investors' local tax consequences would need to be considered. If appropriately structured, no charge to Irish stamp duty should arise on either the transfer of the assets in the fund or on the exchange of units in the fund.

In June 2009, the European Council of Ministers approved the UCITS IV Directive which was published on 17 November 2009 in the Official Journal of the European Union. The UCITS IV Directive contains a number of enhancements to the existing UCITS regime. Some of the main features of the UCITS IV Directive include:

- the introduction of a management company passport scheme whereby a management company authorised by its home Member State is allowed to provide a full range of collective portfolio services to UCITS established in another Member State of the European Union. Subject to certain investor protection constraints, the cross-border merger of all types of UCITS is now allowed and is recognised by each Member State. This should enable the consolidation of domestic and international funds which would provide pooling opportunities for the taking advantage of economies of scale, thereby offering cost savings and enhanced returns;
- the Directive will allow for feeder funds to pool assets into a single master fund under the master feeder provisions;
- a new Regulator to Regulator notification procedure is being introduced to remove administrative obstacles and delays relating to the cross-border funds distribution process;
- a new standard summary information document known as the "key investor information" is being introduced to replace the simplified prospectus. The key investor information document is intended to be a briefing document, written in a non-technical format, prior to the investors making the subscription and relevant investment. The aim of the new briefing document is to enable the investor to reach their investment decision on a more informed and timely basis; and
- specific measures are being introduced which are designed to improve communication between regulatory authorities in the Member States.

In addition to the above, Finance Act 2010 introduced changes with the intention of enhancing Ireland's competitive position in the funds industry. One such change was the easing of the administration burden on non-resident declarations forms whereby the Revenue Commissioners can grant investment undertakings approval from the requirement to obtain and maintain declarations of non-Irish tax resident unit-holders where Revenue are satisfied that the investment undertaking has appropriate measures in place to ensure that the relevant unit holders are not resident or ordinarily resident in Ireland.

b) Ireland as a location for Asset Finance

The Irish tax regime has been a key driver in the growth of the asset finance industry, particularly aircraft leasing, the highlights of which are:

- a standard rate of corporation tax of 12.5% on trading profits;
- tax depreciation for equipment is allowed to be claimed over 8 years i.e. 12.5% per annum. This essentially allows for accelerated tax depreciation as the economic life of aircraft is substantially longer;
- no withholding tax is imposed on equipment lease rentals paid to non-residents;
- access to Ireland's extensive double taxation treaty network which generally contain advantageous withholding tax provisions on equipment leasing;
- no charge to Irish stamp duty arises on the transfer of ownership of aircraft;
- for aircraft lessors, VAT leakage does not arise on aircraft leasing as the aircraft lessor generally enjoys full recovery of VAT on costs associated with the aircraft leasing business;
- through domestic law exemptions, no withholding tax is applied on interest and dividends paid to non-residents located in the EU or a country with which Ireland has a double taxation treaty;
- chargeable gains arising on the disposal of plant and machinery used in the course of a leasing trade can be included in the company's trading income;
- where a lease-in/lease-out company is not regarded as trading for Irish tax purposes, the company would be subject to Irish tax at a current rate of 25% on its lease profit margin and after deduction of certain revenue expenses relating to the lease e.g. audit fees etc. As the company is not carrying on a trade in Ireland, it would typically be outside the scope of the new Irish transfer pricing regime; and
- finance Act 2011 extended the assets qualifying for securitisation under Section 110 to plant and machinery acquired by the SPC whose business is the leasing of plant and machinery (see Ireland as a location for Securitisation and Structured Finance SPC's for further details).

Short Term Asset Leasing

An alternative taxing mechanism for lessors of certain short-term assets (i.e. assets which have a predictable useful life that does not exceed 8 years) is available. A lessor company may claim all such income to be computed for tax purposes under accounting rules rather than under existing tax rules. This results in the "interest element" of lease payments being taxed with no entitlement to capital allowances (i.e. tax depreciation). The alternative mechanism does not change the amount of tax paid but allows a more even spread of the tax over the lease period.

To date, it is not possible to claim this alternative method of taxation for assets leased under operating leases. However, Finance Act 2010 extended the alternative taxing mechanism to operating leases where a number of conditions are met. This election provides for the lessor to be taxed on the accounting profit of those leases. In brief, where a lessor company elects for this treatment, the new

provisions apply to operating leases of short life assets which are in excess of a threshold amount. The threshold amount is calculated by reference to the size of the lease portfolio.

Where the lessor company is a member of a group, the threshold amount is calculated on a group basis and represents the total value of all short life assets let on an operating lease which are owned by the group at the end of the preceding accounting period for which the election is made. This essentially means that the new treatment will apply only to increases in the portfolio of assets held by the group. The existing tax treatment will continue to apply to amounts below the threshold.

Foreign Currency and Non-Trading Lessors

Finance Act 2010 introduced changes for companies whose activities include the leasing of plant and machinery but are not carrying on sufficient activities to be regarded as carrying on a trade. The amendments enable such companies to compute their capital allowances and losses in their functional currency thereby eliminating potential foreign exchange gains/losses resulting on the conversion of accounting profits into Euro.

c) Ireland as a location for Securitisation and Structured Finance SPC's

Ireland is a key location for cross bordered structured finance transactions. Irish tax law includes favourable provisions for qualifying Special Purpose Companies ("SPC's") who hold and/or manage, or have an interest (including a partnership interest) in qualifying assets including, in the case of plant and machinery acquired by the SPC, a business of leasing that plant and machinery. Qualifying assets include:

- shares, bonds and other securities;
- futures, options, swaps, derivatives and similar instruments;
- invoices and all types of receivables;
- leases and loan and lease portfolios;
- hire purchase contracts;
- bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments;
- carbon offsets;
- contracts for insurance and contracts for reinsurance;
- commodities (tangible assets other than currency, securities, debts or other assets of a financial nature) which are dealt in on a recognised commodity exchange; and
- plant and machinery.

The main conditions to satisfy, in order to be a qualifying SPC, are that the company must be Irish tax resident and the de-minimis asset value limit in respect of the first securitisation transaction carried out by the SPC is €10M.

The SPC is typically taxed in Ireland at a corporation tax rate of 25%. However, critically, the return paid on certain profit participating loan notes is tax deductible. The net effect is that an SPC can avail of Ireland's double tax treaty network to avoid withholding tax at a current rate of 20% on interest payments (other than short interest) paid by the SPC to non-residents. There are domestic law exemptions from withholding tax on interest paid on Quoted Eurobonds or on interest paid by the SPC to a resident in another EU member state or a country with which Ireland has a double tax treaty.

Finance Act 2011 restricts the deduction for profit participating interest payments to circumstances where the interest is paid:

- i) to a person who is tax resident in Ireland,
- ii) to a pension fund, government body or other tax exempt person resident for tax purposes in a Member State of the European Communities or a jurisdiction which has a double tax treaty having force of law with Ireland, or on completion of the procedures, will have force of law in Ireland (i.e. a "Relevant Territory"),
- iii) to a person resident for tax in a Relevant Territory which generally applies tax to foreign source profits, income or gains (without a reduction calculated based on the amount of the payment),
- iv) on either a Quoted Eurobond or a Wholesale Debt Instrument, or
- v) the interest payment has been subject to Irish withholding tax.

The proposed changes do not impact existing arrangements in place as at 21 January 2011.

A "Quoted Eurobond" means a security which is;

- issued by a company;
- quoted on a recognised stock exchange; and
- carries a right to interest.

As a taxable Irish resident company, the qualifying SPC is entitled to take advantage of Ireland double tax treaty network and the EU directives. Ireland currently has 62 double tax treaties in place, of which 54 are in effect. The countries with which Ireland has a double tax treaty outside the EU are: Australia, Bahrain, Belarus, Bosnia Herzegovina, Canada, Chile, China, Croatia, Georgia, Hong Kong, Iceland, India, Israel, Japan, Republic of Korea, Kuwait, Macedonia, Malaysia, Mexico, Moldova, Montenegro, Morocco, New Zealand, Norway, Pakistan, Russia, Serbia, Singapore, South Africa, Switzerland, Turkey, United Arab Emirates, United States of America, Vietnam and Zambia. Negotiations for new treaties with Armenia, Panama, Saudi Arabia and Thailand have been concluded and are expected to be signed shortly. Negotiations for new treaties with Argentina, Azerbaijan, Egypt, Tunisia and Ukraine are at various stages.

For noteholders resident in the EU or the countries listed above, no Irish income tax liability would arise on interest paid by the qualifying SPC. For noteholders not resident in the EU or countries with which Ireland has a double tax treaty, there is an unpublished Revenue practice whereby the Irish Revenue do not take action to pursue a liability for the Irish tax where such persons are not otherwise subject to tax in Ireland or do not seek to obtain a refund of tax in respect of other Irish source income which has been subject to Irish tax.

d) Ireland as a location for Insurance

In recent times, some of the leading players in insurance and reinsurance have re-domiciled their global headquarters to Ireland. A number of factors including the favourable tax regime in Ireland have been cited as the basis for this decision which includes a gross roll up system for life assurance companies. This allows policyholders' investments to grow tax-free throughout the term of the investment. A charge to tax is imposed at the time when payment is made to the policyholder, following the surrender or encashment of the policy. The investment return or growth is liable to tax at the current rates of 27% or 30% (depending on the nature of the payment) which the assurance company is required to deduct on payments to the policyholder. There are exemptions available from this tax charge where the policyholder is not resident for tax purposes in Ireland.

Ireland has also been the jurisdiction of choice for a large number of captive insurers due to its flexible pro-business regulation and favourable tax regime. For example, Irish authorised insurance and reinsurance undertakings are entitled to underwrite business in other EU member states thereby increasing the size of potential market for pan-European business. In January 2011, Ireland had 115 reinsurance undertakings authorised by the Irish Central Bank to carry on reinsurance business.

Ireland operates a different basis of taxation for companies engaged in life and/or non-life business. The Irish Revenue Authorities have issued detailed guidance outlining how Life Assurance businesses should be taxed. Life business of an assurance company is treated for Irish corporation tax purposes as though it was a separate business from any other business carried on by the company. The life business tax computation for proprietary companies is calculated as follows:

- the basis of computation is the transfer to the non-technical account;
- a proportion of the transfer to the fund for future appropriation (FFA) will be regarded as taxable shareholders' profits with the balance treated as belonging to the shareholders;
- the annual transfer to the shareholders' non-distributable reserve is taxable as it is regarded as allocated to the shareholders;
- the general tax rules apply to disallowable and allowable expenses; and
- a deduction is allowed for Irish dividend income included in shareholders' profits.

General insurance i.e. non-life business is taxed under the same rules as other trades carried on in Ireland however, there are some differences relating to the treatment of investment income, realisation of investments, technical reserves and the funded basis of accounting. For example, the Irish Revenue Authorities allow interest earned on investments integral to the trade e.g. investments kept for regulatory capital requirement purposes, to be regarded as trading income in computing the taxable profits of the insurance company. Such interest would therefore be subject to the standard corporation tax rate of 12.5% rather than the passive rate of 25%.

The general insurance levies are currently 3% (in the case of non-life premiums) and 1% in the case of life premiums. Finance Act 2010 introduced provisions to exclude pensions business and reinsurance business from the 1% life assurance levy. This proposal was very welcome in promoting Ireland as a jurisdiction for reinsurance business. The levies do not apply where the risk of the policy is deemed to be located outside of Ireland. The risk of a policy of insurance is deemed to be located in Ireland where:

- the insurance relates to either buildings or to buildings and their contents if the property is situated in Ireland;
- the insurance relates to vehicles of any kind registered in Ireland;
- in the case of policies of a duration of 4 months or less covering travel or holiday risks, if the policyholder took out the policy in Ireland; or
- in any other case, if the policyholder has his or her habitual residence in Ireland, or where the policyholder is a legal person other than an individual, if the policyholders' head office or branch to which the policy relates is situated in Ireland.

Dividends paid between Irish resident companies are exempt from Irish corporation tax. Finance Act 2010 extended this exemption to dividends received by an Irish resident company from foreign companies where the Irish company is taxed on this dividend income as trading income and the Irish company holds less than 5% of the share capital and voting rights in the foreign company. This will benefit companies in the insurance and banking sectors.

e) Ireland as a location for Islamic Finance

"Ireland Inc." is very aware of the importance of the financial services industry to Ireland and the role of Islamic finance in this industry. For example, the Irish Central Bank have established a dedicated team which is specialising in the authorisation of Shari'ah funds in Ireland. In addition, the Irish tax authorities issued a tax briefing in October 2009 outlining the tax treatment of Shari'a compliant products and structures within the funds, leasing and insurance industries.

This briefing noted, in respect of the tax treatment of Shari'a compliant products and structures in the sub-industries, the following;

Funds

The primary characteristic that distinguishes Islamic fund management from conventional fund management is its compliance with Shari'a law. A Shari'a Fund is required to appoint a Shari'a Board which advises the directors of the fund and the investment manager on all matter of Shari'a law and whether the proposed investments are Shari'a compliant.

The gross roll up taxation regime which applies to Irish regulated funds does not impose tax on profits or gains of the fund but requires the fund to deduct tax on the happening of certain chargeable events. These arrangements apply irrespective of whether the fund is Shari'ah compliant or a conventional fund. As Ireland is a leading international jurisdiction for the domiciling and servicing of investment funds, there has been a significant increase in Shari'ah compliant funds being domiciled and administered in Ireland. Industry companies in Ireland provide services to structures including, amongst others, Shari'ah funds promoted and managed by managers in Middle Eastern and North African countries which use Islamic financial instruments.

Ijarah (Leasing and Hire Purchase) Arrangements

Ijarah arrangements in relation to operating leases or hire purchase arrangements are to be taxed in the same manner as conventional operating lease or hire purchase arrangements. Ijarah Muntahia Bittamleek arrangements in relation to finance leases are to be taxed in the same manner as conventional finance lease arrangements. Accordingly, a company who accounts for the transaction as a finance lease under GAAP may elect, in respect of certain short term leases, to be taxed under the accounting rules rather than under existing tax rules with no entitlement to capital allowances being available.

A charge to stamp duty does not arise in relation to Ijarah (leasing and Hire Purchase) Arrangements where the asset involved does not comprise of immovable property or an interest in immovable property.

Takaful (Insurance) Arrangements

In relation to general Takaful (insurance) and Re-Takaful (reinsurance) arrangements:

- contributions received by a Takaful company from policyholders are treated as taxable income. Likewise, contributions received by a ReTakaful company from Takaful companies, as members of the ReTakaful arrangement, are to be treated as taxable income;
- the deductibility of expenses incurred by a Takaful or ReTakaful company for management, marketing, claims and commissions and any provisions in respect of same is treated in the same way as expenses incurred by a conventional insurance/reinsurance company;

- the deductibility of contribution payments paid to a Takaful or ReTakaful company is treated in the same way as an insurance or reinsurance premium for a conventional insurance or reinsurance arrangement; and
- a liability to stamp duty will arise in relation to policies of insurance or policies of life insurance issued under Takaful and ReTakaful arrangements where the risk of the policy is located within Ireland.

Finance Act 2010 also introduced legislation designed to ensure that certain Islamic or Shari'a compliant financial products, which are the same in substance as conventional products, are treated on an equal footing for tax purposes as conventional products. The transactions covered by the legislation include "credit" (akin to a credit sale or conventional loan arrangement), "deposit" and "investment" (akin to a structure finance arrangement) transactions. The legislation only applies to transactions entered into on an arms length basis and undertaken for bona fide commercial purposes.

v. Start Up Companies' Exemption

Ireland offers an incentive for new company start-ups. Certain start-up companies which commenced to trade on or after 1 January 2009 and whose final corporation tax liability for each tax year does not exceed €40,000, are exempt from corporation tax (including capital gains tax) in each of the first three tax years. Finance Act 2011 extended this incentive for qualifying companies which commenced to trade in 2011.

vi. Non-Irish Domiciled Individuals

Ireland offers a favourable tax regime for non Irish domiciled individuals as such individuals are subject to the remittance basis of taxation in Ireland (both for income and capital gains tax purposes). In brief this means that, with the exception of employments exercised in the State and Irish source income and gains, a non-Irish domiciled Irish tax resident individual is not subject to Irish income or capital gains tax on foreign source income or gains where the income or gains are not remitted into Ireland. This ensures that, with careful tax planning, the non-Irish domiciled individual can be largely outside the scope of Irish income and capital gains tax.

In addition, Ireland offers a favourable relief to non-Irish domiciled individuals who are assigned to Ireland from an EEA or Treaty resident employer. The qualifying employee can apply to the Revenue Commissioners to have Irish income tax on their Irish employment assessed on the greater of:

- the relevant emoluments earned and received in or remitted into the State; and
- an amount equal to €100,000 plus 50% of the relevant emoluments in excess of €100,000.

Income tax deducted at source by the Irish employer in excess of the income tax liability calculated on the above basis can be claimed as a refund by the relevant employee.

Green IFSC Initiative

On January 27th 2011, then Irish Prime Minister Brian Cowen announced the launch of the Green IFSC (International Financial Services Centre) Initiative. By supporting the establishment of the Green IFSC, Ireland is positioning itself as a leading financial services centre for the management of carbon and green finance, including the establishment of a Government supported International Carbon Standard (ICS) and associated Dublin International Voluntary Offset Registry (DIVOR). The key elements of the Green IFSC Initiative include:

The extension of the Irish Section 110 legislation which extends the definition of financial assets to include carbon offset specifically. Previously, Section 110 companies could deal in “greenhouse gas emissions allowances”, however Finance Act 2011 substituted “carbon offsets” for these allowances. Carbon offsets have been defined to mean;

- (a) an allowance, permit, licence or right to emit during a specified period, a specified amount of carbon dioxide or any other greenhouse gas as defined in Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC of 24 September 1996, where such allowance, permit, licence or right is issued by a State or by an inter-governmental or supra-national institution pursuant to a scheme which;
 - (i) imposes limitations on the emission of such greenhouse gases; and
 - (ii) allows the transfer for value of such allowances, permits, licences or rights;
- (b) an allowance, permit, licence or right to emit during a specified period, a specified amount of carbon dioxide or any other recognised greenhouse gas under a voluntary scheme sponsored by a State or by an inter-governmental institution ,or regulated commercial enterprise, where such allowance, permit, licence or right is subject to recognised independent periodic verification, monitoring and reporting; or
- (c) any right that is directly attributable to an allowance, permit, licence or right to emit within subparagraph (a) or (b).

The benefits of Section 110 companies are outlined in the “Ireland as a location for Securitisation or Structured Finance SPC” Section.

The Irish Government has agreed in principle to provide seed funding of €6.8m over 3 years to develop the concept with a view to creating green financial services jobs of approximately 7,000 over the next 5 years. The establishment of the Green IFSC sends out a clear message that Ireland continues to remain open for business and will remain a leading financial services centre for the management of carbon and green finance.

The Enterprise Agencies in partnership with the Green IFSC Steering Group are currently working on a detailed business plan which is due to be finalised by March 2011 which will then be presented to the Government for approval. With the considerable opportunities globally in green finance, carbon management and the growth of the green economy, Ireland through the Green IFSC Initiative is positioning itself as a world leader in this area and a country of choice for green financial services.



Ireland as a home member state under EU securities legislation

The Prospectus Directive and Transparency Directive

The EU Prospectus Directive 2003/71/EC is of importance to issuers of securities from non-EU countries (described as 'third countries' in the Directive), especially US issuers. In effect there is a federal securities law in Europe, but no federal securities regulator - the EU Member State whose regulatory authority is to regulate an issuer from 'third countries' is the issuer's 'home Member State'.

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The home Member State of a third country issuer is triggered by that issuer doing one of two things:

- making a public offer of securities into an EU Member State (on or after 31 December, 2003);
or
- making an application to list securities for the first time on a regulated market in an EU Member State.

The home Member State is decided by which of these two things is first done, and is the Member State where the offer was made or securities admitted to trading as the case may be.

Where an offer of securities was made between 31 December, 2003 and 30 June, 2005, for it to have the effect of choosing a home Member State, the offer had to be one which was considered to be a public offer under local law at that time also.

For a listing to have the effect of choosing a home Member State, the listing had to be live as of 1 July, 2005.

US issuers have generally come across the Prospectus Directive in the context of employee share offers. An employee stock purchase plan offer will generally be considered an offer to the public. However, an offer of non-transferable employee stock options or restricted stock will generally not be.

There are two distinct kinds of home Member State:

- the home Member State in connection with the issue of equity securities (i.e. shares) and retail debt securities (debt with a unit price of less than €1,000) – this is chosen once only; and
- the home Member State in connection with the issue of wholesale debt – debt with a unit price of €1,000 or more. This is chosen by the issuer on a case by case basis from the EU Member States where the debt is to be listed or offered.

The key points are:

- where the securities offered on or after 31 December, 2003 or applied to be listed are equity securities (i.e. shares or debt convertible into issuer shares) or debt securities with a unit value of less than €1,000, then the choice of home Member State is permanent and irrevocable;
- where the securities offered on or after 31 December, 2003 or applied to be listed are (non convertible) debt securities with a unit value of €1,000 or more, then the choice of home Member State applies only with respect to those offered or listed securities.

What have US companies been doing?

In order to forestall permanent entrapment in the wrong EU Member State, some companies have sought explicitly to opt into jurisdictions where English is the working language and in which they feel that the regulatory authorities will be more accustomed to the process.

Ireland has been perceived as particularly advantageous as a home Member State on account of a listing procedure that is quicker and less expensive than in other EU member states.



Trade regulation: importing and exporting law

Exporting goods

Customs formalities must be completed by the exporter or its agent on exporting goods to non-EU countries (known as 'third countries'). All the necessary documentation (e.g. licences and invoices) required to clear the goods through customs should accompany the declaration.

An EU regime for the control of exports of dual-use items and technology was introduced in 2000. This was updated in 2009.

There is also Irish export legislation which contains a detailed list of military goods and technology which are subject to export control. The military list includes a small number of items of military goods and technology which are subject to control for reasons of national policy.

Some degree of control of exports from Ireland has been retained for the following reasons:

- to regulate the export of 'dual-use' items – i.e. items which have both civilian and military uses – for the production, delivery etc. of nuclear and other weapons of mass destruction;
- to regulate the export of military goods and technology to countries whose behaviour is considered a threat to international or regional peace; and
- to comply with restrictions imposed by the United Nations ('UN'), EU and Organisation for Security and Co-operation in Europe ('OSCE') on exports to particular countries in order to bring about a change in the behaviour of the governments of these countries.

Irish exporters need to apply for a licence when exporting the following categories of goods and technology:

- military goods and technology specified in the Schedule of the Control of Exports (Goods and Technology) Order 2009;
- highly sensitive dual-use items (i.e. items listed in Annex IV of EU Council Regulation 428/2009);
- non-sensitive dual-use items where the country of destination is outside the EU and is not one of certain exempted countries;
- items covered by UN or EU sanctions against particular countries; and
- items subject to the provisions of the catch-all clause in the Irish legislation.

The Control of Exports (Dual Use Items) Order 2009 S.I. No. 443 of 2009 imposes a licensing requirement in respect of brokering of both Annex I and non-Annex I dual-use items where the items are or may be intended, in their entirety or in part, for use in connection with WMD (Weapons of Mass Destruction) or missiles capable of delivering WMD; or if the purchasing country or the country of destination is subject to an arms embargo and the items are or may be intended, in their entirety or in part, for a military end-use. Under the Control of Exports (Brokering Activities) Order 2011, from May 2011 there is also a licensing requirement on brokering activities related to goods and technology listed on the EU Common Military List.

There are also restrictions on the transit of dual-use items.

Importing goods

Goods imported into Ireland from countries outside the EU may be subject to customs formalities. Goods must be presented to customs by the person who brought them into Ireland or by his agent.

Presentation of goods to customs means notification to the customs authorities of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities. This is done in Ireland by means of a summary declaration ('Report') being made at the time of arrival, either electronically or by hard copy.

Goods presented to customs have the status of goods in temporary storage until they are assigned a customs approved treatment or use. Temporary storage facilities must be approved by customs, and security may be required to cover any duty/tax liability which may arise while the goods are in temporary storage.

When the goods are covered by a summary declaration, the formalities needed for them to be assigned customs approved treatment or use must be carried out within:

- 45 days from the date on which the summary declaration is lodged, in the case of goods carried by sea; or
- 20 days from the date on which the summary declaration is lodged, in the case of goods imported other than by sea.

Customs-approved treatment or use of goods may be any one of the following:

- placing of goods under a customs procedure;
- entry of goods into a free zone or into a free warehouse;
- re-exportation from the customs territory of the EU;
- destruction; or
- abandonment to the Irish Exchequer.

All goods intended to be placed under a customs procedure must be covered by a declaration for that procedure.

The following are customs procedures:

- release for free circulation;
- transit;
- customs warehousing;
- inward processing;
- processing under customs control;
- temporary admission;
- outward processing; or
- exportation

Certain customs procedures allow for goods to be imported for a specific purpose without payment of all or part of the import duties provided the goods remain under customs control for the duration of the customs procedure authorisation.



Electronic communications and e-commerce

Ireland's approach to the regulation of electronic communications and e-commerce activities is light, flexible and supportive of business.

The Irish government has promoted Ireland as a global digital hub and has strongly encouraged the development of e-commerce in Ireland. The electronic communications market has been fully liberalised for a number of years and the sector is now regulated by the Commission for Communications Regulation ('ComReg').

In July 2000, the Irish government passed into law, the Electronic Commerce Act which sets out a formal legal framework for conducting business electronically. Considered more business-friendly than the equivalent legislation in the UK, the Electronic Commerce Act 2000 provides for:

- legal recognition of electronic signatures;
- use of electronic contracts in commercial and non-commercial dealings;
- prohibition of fraudulent use of electronic signatures;
- registration of domain names; and
- accreditation and supervision of service providers.

The Electronic Commerce Act 2000 was supplemented by the Electronic Commerce Regulations 2003 which set out a number of obligations for e-commerce providers to enhance the confidence of e-commerce end users.

More than any other European country, Ireland has acted as a magnet for high-tech companies for more than a decade. The Irish electronic communications industry has been central in enabling this due to the industry's liberalisation and the need for expanded electronic communications services (wireless and otherwise) to deal with continuing Irish economic growth.

ComReg, has placed the maintenance and facilitation of competition at the core of its agenda. To start a telecommunications business, all one needs to do is to notify ComReg. There is freedom of entry. ComReg also provides the framework for the introduction of new services such as 3G. In 2002, 3G licences were granted to three mobile operators in Ireland (Hutchison 3G (Ireland) Limited, O2 Communications Limited and Vodafone (Ireland) Limited). A fourth 3G licence was subsequently issued to Meteor Mobile Communications Ltd.

Ireland also increasingly provides for wireless broadband access and continues to allocate spectrum for the delivery of value-added services. The delivery of broadband services to the customer can be achieved over many different transmission platforms, such as copper wire, cable, fibre or radio. Numerous Fixed Wireless Access ('FWA') licenses have been issued by ComReg to facilitate the roll out of wireless broadband.

ComReg also expects to liberalise spectrum in the valuable 800 MHz and 900 MHz bands in the near future to make it available for advanced mobile broadband services. This will significantly enhance the range and quality of mobile broadband services available to Irish businesses.



Regulated industries, activities and regulatory authorities

A number of business activities in Ireland are regulated or supervised with the principal ones being set out in the Appendix. We have focused in this section on one of Ireland's greatest success stories over the past 25 years, the International Financial Services Centre.

International Financial Services

The Central Bank of Ireland (the 'Central Bank') in Dublin has developed into a significant worldwide centre for a wide range of financial services activities. Driven initially by a package of substantial tax incentives, the IFSC has grown to an extent that the 250 global financial institutions that operate in this area now employ around 25,000 people. Many of the world's leading financial institutions have now established in the IFSC, providing a broad range of financial services in the following areas:

- investment funds;
- banking and asset finance;
- treasury management;
- finance leasing;
- captive insurance;
- asset management;
- fund administration and custody;
- securities trading; and
- securitisation.

The Central Bank of Ireland (the "Central Bank") is the regulator of financial services activities in Ireland. The appeal of establishing an international financial services operation in Ireland is based on a unique combination of the Irish legal and regulatory system, the specialists skills and expertise of its workforce, the country's pro-business approach, low taxation, infrastructure and government support.

Over half of the world's top 50 banks have operations in the IFSC. Typical banking activities in the IFSC include asset financing, aircraft leasing, international lending and loan syndications, bond and commercial paper issuance, global treasury, investment and corporate banking, structured finance, back office activities, credit card operations, management of client treasury functions and securitisation.

Some of the global treasury activities carried out at the IFSC include: inter-group lending/financing, cash pooling, netting, cash management, market pricing, exchange and interest rate risk management and cross-border leasing.

Over a quarter of the IFSC companies are involved in insurance-related operations, particularly captive insurance and reinsurance.

Investment funds

One of the main sub-sectors of international financial services operating in the IFSC is investment funds. Ireland presents the international investment funds community with an unparalleled set of attractions both as a domicile for investment funds and as a centre from which to administer, market and service funds domiciled in other international locations.

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The corporate and non-corporate vehicles which can be used for regulated collective investment schemes, or funds, are as follows:

- unit trusts;
- investment companies with variable capital;
- investment limited partnerships; and
- common contractual funds.

Certain investment restrictions will apply to regulated investment funds, to the nature and spread of their investments and on the use of derivative instruments unless they market solely to sophisticated investors. Each fund must have an Irish custodian, certain minimum administrative activities must be performed in Ireland and each director, promoter, investment manager, manager and general partner must be approved by the Central Bank, including the approval of any replacement. Each fund must also publish a prospectus or placing memorandum and must submit periodic and annual accounts to the Central Bank.

The two regulated fund regimes in Ireland are:

- Undertakings for Collective Investment in Transferable Securities (“UCITS”),
- Collective investment schemes other than UCITS (“non-UCITS”).

UCITS

A UCITS fund must be an open-ended fund and can avail of a “single passport” throughout the EU for the sale of its units/shares. This means that UCITS, once authorised and regulated in Ireland, can be sold to the public in all of the EU Member States, and increasingly in areas such as the Far East, Latin America and the Middle East, once the appropriate notifications have been made to the local authorities.

Because of the necessity to comply with a common European standard, UCITS are regarded as the most highly-regulated funds. UCITS have evolved and built on earlier success by extending the range of permitted investments to include money market instruments, bank deposits, other collective investment schemes and financial derivative instruments. Legislative developments over the past three years have enabled UCITS to avail of new product opportunities, including strategies combining leverage and derivatives. UCITS can now viably compete with structured notes, unit-linked life products and unregulated funds but in a framework with enhanced governance, compliance and transparency. This has not been lost on hedge fund managers who are increasingly seeing UCITS as an opportunity to bring a product to investors who need a more regulated product.

Non-UCITS

The non-UCITS regime is attractive to fund managers who wish to target sophisticated investors, namely institutional and high net worth individuals. Certain funds, which employ more complex investment strategies posing greater risk, may not be permissible under the UCITS regime but can be set up as a non-UCITS fund. The investor profile will dictate the regulatory parameters of the non-UCITS fund and can be broken down into three categories according to the relevant target investor market:

- the retail investor,
- the professional investor; or
- the qualifying investor (institutional/high net worth).

Qualifying Investor Funds (“QIFs”) are one of Ireland’s most popular types of non-UCITS, as QIFs offer flexibility to employ alternative investment strategies e.g. hedge funds, fund of hedge funds, private equity funds, real estate investment funds. QIFs are only open to certain investors i.e. the minimum subscription per investor in a QIF is €100,000 and investment in a QIF is limited to:

- An Investor who is a professional client within the meaning of the MiFID; or
- An appropriately accredited knowledgeable investor; or
- An investor who appropriately certifies that they are an informed investor.

In order to meet the requirements of existing fund providers and become a more attractive location for alternative investments, the Central Bank can now authorise QIFs, on a filing basis only, within 24 hours of submission of the relevant documentation.

Recent Developments

Ireland recently introduced new fund re-domiciling laws under the Companies (Miscellaneous Provisions) Act 2009 which provides a streamlined process for a non-Irish corporate fund re-domiciling to Ireland. These provisions were introduced to facilitate existing fund managers to relocate non-Irish funds to Ireland. The process involves the filing of registration documentation with the Irish Companies Registration Office and simultaneously applying for authorisation as a regulated fund with the Central Bank.

In June 2009, the European Council of Ministers approved the UCITS IV Directive (Directive 2009/65/EC) (the “Directive”) which was published on 17 November 2009 in the Official Journal of the European Union. The Directive contains a number of enhancements to the existing UCITS regime. Some of the main features of the UCITS IV Directive include:

- the introduction of a management company passport scheme whereby a management company authorised by its home Member State is allowed to manage UCITS established in another EU Member State;
- subject to certain investor protection constraints, the cross-border merger of all types of UCITS is now allowed and will be recognised by each Member State. This should enable the consolidation of domestic and international funds which would provide pooling opportunities to take advantage of economies of scale, thereby offering cost savings and enhanced returns;

- the Directive will enable feeder funds to pool assets into a single master fund under the master-feeder provisions;
- a new 'Regulator to Regulator' notification procedure is being introduced to remove administrative obstacles and delays relating to the cross-border distribution process;
- a new standard summary information document known as the "key investor information document" is being introduced to replace the simplified prospectus. The key investor information document is intended to be a briefing document, written in a non-technical format, giving investors meaningful information prior to them making a subscription. The aim of the new briefing document is to enable the investor to reach their investment decision on a more informed and timely basis; and
- specific measures are being introduced which are designed to improve communication and exchange of information between regulatory authorities in the Member States.

Having enhanced the product itself by virtue of previous directives, the intention of the Directive is to improve the environment in which that product operates. Facilitating fund mergers, improving the framework for cross-border distribution and introducing the management company passport are all intended to reduce cost, improve economies of scale and facilitate easier distribution. This will only enhance the strength of the UCITS product and confirm its position as the global brand of choice for regulated collective investment. The implementation deadline for the Directive across all Member States is July 2011.



Intellectual property ('IP')

IP and its proper commercialisation is the key to unlocking economic value. If strategically managed and carefully planned, IP rights can provide an invaluable tool for almost any business. Ireland's IP law can be split into five principal rights – copyright, patents, plant varieties, designs and trade marks.

Copyright

The Copyright and Related Rights Acts 2000 to 2007 govern copyright law in Ireland.

Ireland's copyright law is technology neutral in its terminology to ensure that it does not become weakened or antiquated by emerging technologies.

Under Irish law, copyright subsists in i) original literary, dramatic, musical or artistic works; (ii) sound recordings, films, broadcasts or cable programmes; iii) the typographical arrangement of published editions and (iv) original databases. There is also a sui generis right in respect to databases, known as the 'database right'.

The term of copyright is, in general, 70 years after the death of the author, but this varies by the type of work involved. Where the identity of the author is not known, the term is 70 years from the date the work was first made lawfully available to the public.

Irish legislation specifically identifies computer programs as being capable of copyright protection. The owner of the copyright in a computer program possess a number of exclusive rights. These include rights to:

- copy the program;
- make the program available to the public;
- make an adaptation of the program; and
- authorise or license others to use in whole or in part any part of the computer program.

Irish legislation also provides authors with moral rights in their works.

Ireland is a party to the Berne Convention.

Patents

The Patents Act 1992 (as amended) brought Irish law into line with the European Patent Convention.

Patentability requires that the invention:

- be new;
- contain an inventive step; and
- be capable of industrial application.

The life of a patent is 20 years however, in Ireland it is possible to apply for a short term patent which lasts for a 10 year period. An invention can be patented as a short term patent if it is new, susceptible of industrial application and it is not clearly lacking a inventive step. There are special provisions for pharmaceutical patents which can extend the patent period.

Ireland is a party to the Paris Convention.

Plant Varieties

Plant varieties may be protected under the Plant Varieties (Proprietary Rights) Act 1980 and 1998.

Ireland is a member of UPOV (International Union for the Protection of New Varieties of Plants).

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Designs

The Industrial Designs Act 2001 modernised Irish design protection. The Act broadened the definition of 'design' and provided that a design must be new and have individual character.

Other main changes are:

- the maximum period of protection for designs registered under this Act is 25 years;
- the capacity to file a multiple application, consisting of up to 100 designs provided they all belong to the same class of the Locarno system of international classification. In cases of ornamentation, they are not restricted to the same class; and
- the applicant may permit publication of the design upon registration or request deferment of publication for up to 30 months from the filing date or where priority is claimed from the priority date.

Trade marks

Trade marks are protected under common law by way of action for passing off and also under statute by the Trade Marks Act 1996 as amended, which implements European legislation aimed at harmonising trade mark law throughout the EU.

A trade mark is used to identify particular goods and/or services as having a certain origin. It is usually a word or logo but it can be almost anything, as long as it is capable of being reduced to graphic form, including a sound, smell or shape.

Although unregistered trade marks may sometimes give rise to rights which the law will protect under the tort of passing off, this can be uncertain and consequently difficult and expensive to enforce. The most sensible course of action is to register your trade mark(s).

You should always consider conducting searches before launching a product in a new territory to check who has prior rights which could be used to take legal action against you and/or your distributor.

Under EU trade mark law it is possible to apply for Community Trade Mark ('CTM') protection, which, if granted, gives protection in every EU country just by making a single application.

Ireland has ratified the Madrid Protocol and it is possible to file an 'International Registration' designating 'Ireland' or 'from Ireland'.

Data protection

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The privacy of individuals about whom personal data is kept is governed by the Data Protection Acts 1988 and 2003, which oblige persons or bodies who are in control of personal data to comply with basic data protection principles and where applicable, to register as a 'data controller' or a 'data processor' with the Data Protection Commissioner. The Data Protection Acts confer rights on individuals, as well as responsibilities on those who control and process personal data.

Irish data protection legislation sets out detailed rules concerning the processing of personal data. Processing of personal data means performing any operation or set of operations on data whether or not by automatic means, and includes:

- obtaining, recording or keeping personal data;
- collecting, organising, storing, altering or adapting personal data;
- retrieving, consulting or using personal data;
- disclosing personal data by transmitting, distributing or otherwise making it available; or
- aligning, combining, blocking, erasing or destroying personal data.

Under the Data Protection Acts, data controllers must ensure that data is collected fairly, kept and processed only for a specified and lawful purpose, and is not kept longer than is necessary for that purpose. Data controllers must take appropriate measures to maintain the security of the data. Prior to processing any personal data, data controllers will need to ensure that certain pre-conditions are satisfied.

The transfer of data from Ireland to outside the European Economic Area is also governed by the Data Protection Acts. They provide that personal data may not be transferred to a third country outside of the EEA unless that third country ensures an adequate level of protection in relation to the processing of data or unless certain other conditions are met.

An important development in the area of data protection law is the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 (the 'Regulations')(as amended). These Regulations were introduced in order to give effect to an EU Directive and have introduced new rules to allow companies to lawfully engage in direct marketing.

Any person engaging in direct marketing in Ireland must adhere to these Regulations or face prosecution by the Data Protection Commissioner. The new Regulations concern communications that are not requested by the recipient, known as 'unsolicited communications', where they are made for the purpose of direct marketing, by means of a publicly available electronic communications service.

Data protection law is highly regulated by European and Irish law. Any companies considering doing business in Ireland must carefully work out policies for handling personal data in order to ensure compliance with these rules.

Registration of an Irish domain name (.ie)

The '.ie' name is Ireland's website domain.

In general, companies applying for a domain name must be able to prove a 'real and substantive connection' with Ireland. For example - the applicant must show that it is incorporated in Ireland or incorporated outside Ireland with either a 'place of business' or a 'branch' in Ireland.

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Generally, an applicant can register a domain name for any of the following provided the applicant complies with the relevant evidential requirements:

- personal name;
- corporate name;
- registered trade mark name;
- registered business name;
- association name;
- media publication name; or
- a discretionary name.



Employment Law

Statute, common law and the Irish Constitution all have a bearing on the employment relationship in Ireland. Most statute law is driven by our membership of the European Union (EU) and although there are differences between how many Member States of the EU have interpreted and implemented various pieces of employment law, what sets Ireland apart from most of our European counterparts is the distinct absence of works councils and, in particular, the lack of almost any obligation to inform and consult with employees.

The Right to Work in Ireland

Non-EEA nationals (other than Swiss) require permission to work and reside in Ireland. Permission for more senior employees with salaries in excess of €60,000 is relatively easy to get. In addition, the Department of Enterprise, Jobs and Innovation operates an intra company transfer scheme whereby senior management and key personnel earning in excess of €40,000 who have been working for the foreign entity for over a year can be transferred to work in the Irish operation for up to five years.

The Regulation of the Employment Relationship

Contract of Employment

The employment relationship in Ireland is governed by the express and implied terms of the employment contract. An employer is required to give certain information to employees in writing but this information is generally incorporated into an employee's written contract of employment in any event. The contract of employment can also contain provisions in relation to intellectual property, confidential information and post termination non-competition and non-solicitation restrictions.

Irish statute and common law also imply provisions into the employment contract for example, in relation to holiday entitlement (a minimum of 20 days leave for most employees plus 9 public holidays), maternity, adoptive and parental leave (during which periods an employer has no current obligation to pay employees) minimum notice (on a graduating scale dependent on service up to a maximum of 8 weeks), the mutual obligation of trust and confidence, the mutual duty of fidelity and good faith etc.

Non-Discrimination

Employees in Ireland have statutory protection from discrimination on nine distinct grounds – gender, age, race/nationality, religion, marital status, family status, disability, sexual orientation and membership of the ethnic Traveller community. The principle of non-discrimination applies in relation to access to employment, terms and conditions of employment, training and promotion. Ireland has a statutory equality tribunal which hears discrimination related cases for which most awards are capped at two years' remuneration.

Termination

Under common law, the employment relationship can be terminated for good reason or no reason so long as an employee is given notice in accordance with his/her contract of employment. If however the termination is on grounds of conduct, an employee has a right to fair procedures and natural justice which essentially means that he/she has the right to have his/her conduct investigated and he/she must be given the right to respond before a decision to dismiss is made.

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Under statute law and subject to a few exceptions, employees with over one year's service are protected from dismissal. In order to effect a dismissal fairly and avoid liability under the unfair dismissals legislation, an employer must follow a process before dismissing an employee. This process differs dependent on whether the reason for dismissal is conduct or competence related or whether it is on grounds of redundancy. Compensation for unfair dismissal can be up to two years' remuneration but capped at the employee's financial loss.



Construction

The Construction Industry in Ireland has changed dramatically in the last number of years. Output in the industry decreased sharply from a peak of €38 billion in 2007 to a projected €7 billion for 2011. Notwithstanding this dramatic contraction there are still many opportunities in the Irish Construction Industry. A significant area of growth over the coming years will relate to water infrastructure. Ireland lags considerably behind its European counterparts in terms of its water systems. Furthermore, Ireland is obliged under the terms of the IMF rescue package to commence charging for water usage. Infrastructure works on a massive scale will therefore be required over the coming years. Other areas of growth will be waste infrastructure as well as renewable forms of energy and the associated works to facilitate grid connection.

Much of these infrastructure works will be centrally funded. There is a suite of documents known as the GCCC contracts in Ireland which must be used where a project is funded mainly from central funds. There are five main forms of contract together with consultant appointments, tender guidelines and forms of sub contract. The contracts are obligatory where more than half of the funding is coming from the central exchequer. There are rules and guidelines and therefore input from local professionals is required in determining whether this form of contract must be used. These are fixed price lump sum contracts which pass much of the risk to contractors. The contracts contain stringent notification and reporting requirements which must be strictly adhered to. It is highly advisable therefore to seek local professional advice before entering such contracts and also in managing them. Our Construction team has vast experience dealing with these contracts and can assist clients in the preparation, review and negotiation of contracts.

Investors undertaking privately funded projects in Ireland will usually encounter one of two forms of construction contract. The first is the Royal Institute of Architects of Ireland (RIAI) 2002 edition which is used for building projects. The contract is well established and provides an understood mechanism for dealing with risk sharing, division of roles, dispute resolution, collateral warranties and delay and disruption. Sub contractors are usually engaged under the Construction Industry Federation (CIF) Sub Contract 5th Edition. The second form of contract encountered is the Institute of Engineers of Ireland (IEI) form of contract which is primarily used in civil projects and is therefore less common since the introduction of the new government form of contracts (below). Both the FIDIC international forms and the JCT contracts are often encountered in Irish construction projects. Contracts are usually heavily amended and therefore it is essential to seek local advice prior to entering contracts.

Like most of Europe, Public Private Partnerships (PPP) are widely used in Ireland and have been used as the mechanism to fund most large infrastructural projects here. Many of the bidding consortia have overseas participants. The award by the Irish government of such contracts is governed by EU procurement legislation and the thresholds set out in the relevant EU directives will apply. We regularly advise clients through all stages of the procurement process.

The recent turmoil in the construction industry has inevitably led to an increased number of disputes. The majority of construction contracts used in Ireland provide for conciliation and arbitration as an alternative means of dispute resolution. In recent times, however, an increasing number of construction disputes are being dealt with by way of traditional litigation as a result either of the fact that no contracts are in place or the fact that debts exist which can only be dealt with by way of litigation. A Construction Contracts Bill is currently in the legislative process. If enacted it will see the introduction of Adjudication as a mandatory form of dispute resolution in construction contracts. This draft legislation is largely based on the UK legislation.

Our commercial litigation team have considerable experience in dealing with construction disputes and assists clients in managing and resolving disputes as early as possible and in the most cost effective manner possible.



Useful contacts in Ireland

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Central Bank of Ireland

PO Box 599, Dame Street, Dublin 2

Tel: 353 1 224 6000 | Website: www.centralbank.ie

Central Statistics Office

Skehard Road, Cork

Tel: 353 21 453 5000 | Website: www.cso.ie

Chambers of Commerce in Ireland

17 Merrion Square, Dublin 2

Tel: 353 1 661 2888 | Website: www.chambers.ie

Commission for Communications Regulation ('ComReg')

Block DEF, Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1

Tel: 353 1 804 9600 | Website: www.comreg.ie

Commission for Energy Regulation

The Exchange, Belgard Square North, Tallaght, Dublin 24

Tel: 353 1 400 0800 | Website: www.cer.ie

Companies Registration Office

Parnell House, 14 Parnell Square, Dublin 1

Tel: 353 1 804 5200 | Website: www.cro.ie

Data Protection Commissioner

Canal House, Station Road, Portllington, Co. Laois

Tel: 353 57 868 4800 | Website: www.dataprotection.ie

Department of Enterprise, Jobs and Innovation

23 Kildare Street, Dublin 2

Tel: 353 1 631 2121 | Website: www.deti.ie

Department of the Environment, Community and Local Government

The Custom House, Dublin 1

Tel: 353 1 888 2000 | Website: [www.viron.ie](http://www.environ.ie)

Department of Finance

Government Buildings, Upper Merrion Street, Dublin 2

Tel: 353 1 676 7571 | Website: www.finance.gov.ie

Department of Foreign Affairs and Trade

80 St. Stephen's Green, Dublin 2

Tel: 353 1 478 0822 | Website: www.dfa.ie

Enterprise Ireland

The Plaza, East Point Business Park, Dublin 3

Tel: 353 1 727 2000 | Website: www.enterprise-ireland.com

Environmental Protection Agency

P.O. Box 3000, Johnstown Castle Estate, Co. Wexford

Tel: 353 53 916 0600 | Website: www.epa.ie

Irish Business and Employers Confederation ('IBEC')

Confederation House, 84/86 Lower Baggot Street, Dublin 2

Tel: 353 1 605 1500 | Website: www.ibec.ie

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Industrial Development Agency Ireland ('IDA Ireland')

Wilton Park House, Wilton Place, Dublin 2

Tel: 353 1 603 4000 | Website: www.idaireland.com

Institute of Directors in Ireland

Heritage House, Dundrum Office Park, Dundrum, Dublin 14

Tel: 353 1 296 4093 | Website: www.iodireland.ie

Irish Stock Exchange

28 Anglesea Street, Dublin 2

Tel: 353 1 617 4200 | Website: www.ise.ie

Mason Hayes+Curran

South Bank House, Barrow Street, Dublin 4

Tel: 353 1 614 5000 | Website: www.mhc.ie

The Competition Authority

Parnell House, 14 Parnell Square, Dublin 1

Tel: 353 1 804 5400 | Website: www.tca.ie



Mason Hayes+Curran Profile

Firm Overview

Mason Hayes+Curran is a full service business law firm with offices in Dublin, New York and London. We are a dynamic firm with great strength and depth and are focused on meeting our client's needs. The firm currently employs 50 partners and over 260 personnel.

At Mason Hayes+Curran we have a tradition of consistently delivering excellent advice. We provide a broad range of legal services to multi-national, institutional and government clients. We are one of Ireland's leading law firms, dealing with more than 3,500 clients and over 12,500 live matters. Our solution-driven approach to business challenges, which combines commercial awareness with intellectual rigour, consistently exceeds client expectations.

In 2010 we were ranked in the top five in Ireland for Mergers and Acquisitions by Mergermarket. Over the past 12 months we have been lead advisors on two of Ireland's largest public offerings Skillsoft and Dragon Oil. Currently we advise five of the main regulatory organisations in Ireland which includes ComReg and the Ombudsman. We are the lead advisor to the government on Grangegorman, the largest urban regeneration project in Europe.

Our work frequently extends beyond Ireland and we were one of only two firms in the European Commission review of Intellectual Property and technology transfer. The result of this work will be published by the Commission in spring 2011.

Our clients cross a variety of industries from technology to healthcare and include organisations such as ebay and the HSE. Although we have deep skill sets in target industries, the diversity of our practice means that we bring a fresh and dynamic approach to every organisation that we advise.

The twin cornerstones of our success and growth are our dedication to the efficient provision of quality legal services and the maintenance of close, friendly and uncomplicated lawyer/client relationships. Our clients feel that their particular legal needs will be prioritised and dealt with professionally.

Our dedication to the highest standards in law is demonstrated by our support of the UCD Peter Sutherland Law School and the Mercy Law Centre. We are significant sponsors of both initiatives as we believe that Mason Hayes+Curran have an important role to play in the development of our knowledge economy and ensuring that adequate legal support is available to those who need it most.

The ethos of Mason Hayes+Curran is to approach every aspect of our business with an unrivalled dynamism and dedication, to continually strive for the betterment of ourselves and those around us. Our continuous focus on building international connections has resulted in over 40% of referrals coming from overseas and in our appointment as the preferred legal services provider of many multi-nationals operating in Ireland. Further evidence of our international focus was the establishment in 2009 of a French Desk. We have lawyers with foreign language competence including French, German, Hungarian, Italian, Irish, Japanese, Mandarin, Polish, Portuguese and Spanish.

Mason Hayes+Curran is a progressive and confident firm, regarded as approachable and easy to do business with. Client retention and the development of meaningful client relationships is a key focus. Time, care and attention are paid by each client relationship lawyer who views their client as a long term business partner.

People

Emer Gilvarry will be reappointed as Managing Partner in April 2011 and was previously head of the Litigation Department. Her area of expertise is in dispute resolution with an emphasis on shareholder disputes and dissolution of partnerships. She is recognised as a skilled negotiator and expert at project managing complex conflicts involving multiple parties. Emer continues to advise business clients on shareholder agreements, executive and consultancy contracts and the contentious issues that flow from such agreements. She is a regular speaker at leading domestic and international legal conferences including Managing Partners Forum, American Bar Association, International Bar Association and the Law Society of Ireland. Emer is a contributor to the Irish chapter of the International Expatriate Employment Handbook. She is a member of the Boards of the Coombe Hospital, the Friends of St Luke's and the UCD Michael Smurfit Graduate Business School.

Declan Moylan is the Chairman of Mason Hayes+Curran having ended his nine year tenure as Managing Partner in April 2008. His practice focuses on enterprises coming to do business in Ireland, advising on their corporate and real estate requirements. Other recent practice highlights include his appointment by two leading Irish institutions to review and report on their governance. He represents many American and British entrants to the Irish market. "The Lawyer" magazine selected Declan as one of its leading 100 lawyers in Europe in 2007. Declan is active in a number of international business and legal associations, including the International Bar Association. He is a regular speaker at legal and business events at home and abroad.

i-Law: (all-Ireland legal alliance)

Mason Hayes+Curran has an all-Ireland alliance with the leading Belfast firm, Carson McDowell, under the name 'i-Law'. This offers a further 40 lawyers and support staff and allows Mason Hayes+Curran to offer an all-Ireland legal proposition to international clients. The i-Law alliance jointly advises two of the cross-border bodies established under the Good Friday Agreement, the Food Safety Promotion Board and Waterways Ireland.

Premises

Mason Hayes+Curran relocated to a new nine storey, 61,000 square-foot building in Barrow Street, Dublin 4 in April 2006. The purpose built building is Mason Hayes+Curran's flagship headquarters and is situated in Dublin's docklands where many of the new global giants such as Google are headquartered for Europe. The office employs many advanced technologies to improve the efficiency of many work practices and has seen Mason Hayes+Curran as the first major Irish law firm to implement an open-plan office environment.

Community and Environment

Mason Hayes+Curran has been involved with corporate social responsibility related initiatives since its inception. We work closely with the local community by sponsoring youth soccer and GAA teams, fundraising for local charities and we are strongly supportive of the Arts. Our Mason Hayes+Curran Art Collection is highly regarded and we work closely with the association Business to Arts to help foster positive relationships between the business and arts communities. We have a strong environmental ethos in the firm and a very active group of staff working to improve our efforts to contribute to a sustainable environment for all. Many of our partners are involved in a wide variety of pro bono work which is supported by the firm.

Departmental Structure

Mason Hayes+Curran is broadly structured into six core departments, each with a number of dedicated business units. This structure allows Mason Hayes+Curran to offer a full-service legal proposition to our clients with dedicated practice teams focused on particular areas of the law.

The six core departments are:

- Commercial
- Corporate
- Tax
- Financial Services
- Real Estate
- Litigation, including employment law

Practice Areas

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Commercial

Mason Hayes+Curran's commercial department has extensive experience and a wide practice in the areas of trade, competition, EU law, technology, electronic communications and regulated industries. The firm brings a realistic commercial approach to negotiating every type of business text, from standard terms and conditions of sale, to complex outsourcing agreements, to privatisation processes. The firm routinely advises on distribution contracts, agency contracts, procurement contracts, IT contracts and media contracts.

The outstanding highlight for the department over the past 12 months has been advising, in conjunction with our litigation department, Kerry Group plc in its successful High Court appeal against the decision of the Irish Competition Authority to veto Kerry Group plc's acquisition of Breeo Foods. This was the first ever appeal brought against a decision of the Competition Authority under the relevant legislation and was successful. As such it constituted a landmark decision.

Corporate

We define corporate work as transactional and securities law related activity.

Mason Hayes+Curran was one of the first Irish law firms to divide corporate and commercial work flows in to separate departments. This has resulted in Mason Hayes+Curran corporate department consistently out-performing comparably-sized law firms, both as to number and value of deals.

The corporate team, headed by David O'Donnell, has grown steadily over the last number of years with ten partners in this group and an appropriate network of support. The team has always been recognised as one that delivers the right results and one that can do this in a straight talking, business focused manner. Law serves the deal rather than the law driving the deal.

Mason Hayes+Curran is the only Irish law firm that acted in Ireland's two largest public company deals in 2009/2010. Mason Hayes+Curran acted as sole Irish legal adviser for Dragon Oil plc in the recommended Stg£1.2 billion offer by way of scheme of arrangement by Emirates National Oil Company and acted as the sole Irish legal adviser for Berkshire Partners, LLC, Advent International Corporation and Bain Capital Partners, LLC in their recommended \$1.1 billion offer by way of scheme of arrangement for Skillsoft plc.

The firm's corporate lawyers are active in M&A transactions, venture capital, cross border reorganizations, inward investment and equity capital markets.

Tax

Mason Hayes+Curran's tax department specialises in advising on cross-border transactions involving Ireland. We regularly structure corporate transactions to maximise the benefits of Ireland's low tax environment and double tax treaty network. We specialise particularly in developing and implementing business models that seek to maximise the benefits of Ireland's world-leading intellectual property tax regime.

We work closely with our financial services colleagues in advising on the tax benefits of locating funds in Ireland, conducting lease in/lease out activities in Ireland, and using Ireland as a location from which to issue tax deductible profit participating bonds and other debt issuances.

We also assist in structuring and drafting documentation for corporate debt issuance and in particular, the use of Dublin quoted Eurobond issuances to avoid withholding tax.

We provide tax advice to foreign nationals seeking to maximise the benefits of the Irish taxation regime for non-domiciliaries that enables foreign nationals to be taxed only on certain income and gains brought into the country, i.e. the Irish remittance basis of taxation.

Our clients include FTSE 100 listed companies, US quoted companies, many major banks and financial institutions and gaming, pharmaceutical and technology groups.

We regularly work with numerous overseas leading tax Counsel.

Financial Services

The financial services department advises on all aspects of banking, financial regulation and investment funds.

The banking unit advises lenders and borrowers on secured and unsecured loans, property finance, syndications, asset finance, acquisitions finance and regulatory aspects of the financial services industry in Ireland. In recent years, a growing area of our practice has been the provision of legal opinions on the enforceability against Irish companies of international security documents. The development of internet banking enables us to work closely with our clients in this rapidly changing area with a rounded and complete picture of the legal environment in which they operate.

The investment funds group advises on all aspects of investment fund law and regulation. In particular, we advise fund promoters on structuring, establishing and listing investment funds in Ireland and we advise and assist fund service providers in establishing operations in Ireland and provide ongoing legal advice as their business develops. Mason Hayes+Curran has been involved in the development of policy and regulation on behalf of the industry. The firm has particular expertise in the area of alternative investments and is committed to seeing Ireland's continued development as a domicile for hedge funds, to complement its now firmly-established reputation as a jurisdiction of choice for hedge fund administrators.

Litigation

The litigation department accounts for approximately 40% of Mason Hayes+Curran's business and covers many niche areas, including shareholders' rights, public law litigation (including judicial review, freedom of information and public procurement), intellectual property (or "IP") litigation, tracing actions, professional malpractice suits, competition (anti-trust) litigation as well as general commercial litigation. As regards approach, Mason Hayes+Curran believes in discussing with clients their overall objectives in any dispute or litigious matter with a view to tailoring a strategy which will most efficiently and effectively (and, in particular, cost-effectively) secure the achievement of those objectives.

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Real Estate

Mason Hayes+Curran's real estate department represents land-owners, individuals, developers, retailers, financial institutions, semi-state bodies, local and overseas property investors, companies and individuals.

The real estate practice spans a broad range of activities for clients in all sectors. This includes acting in the acquisition and disposal of residential and investment property and representing a large number of developers in a variety of residential, commercial and mixed developments. Our lawyers also act for a large state-sponsored, commercial and institutional client base in the acquisition, disposal and financing of investment properties, industrial sites and business premises.

The practice also includes advising an extensive client base on all aspects of landlord and tenant law, including the drafting and negotiation of commercial leases. We also represent developers in site assemblies, leases and other dealings.



How to contact us at Mason Hayes+Curran

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Catherine Allen	callen@mhc.ie	353 1 614 5254	Administrative Law
James Bardon	jbardon@mhc.ie	353 1 614 5041	Litigation
Declan Black	dblack@mhc.ie	353 1 614 5017	Insolvency / Litigation
Daragh Bohan	dbohan@mhc.ie	353 1 614 5315	Banking / Financial Services
Peter Bolger	pbolger@mhc.ie	353 1 614 5290	Commercial / Intellectual Property
Liam Brazil	lbrazil@mhc.ie	353 1 614 5005	Inward Investment / Corporate
Fionán Breathnach	fbreathnach@mhc.ie	353 1 614 5080	Investment Funds
Mark Browne	mbrowne@mhc.ie	353 1 614 5866	Investment Funds
Susan Bryson	sbryson@mhc.ie	353 1 614 5214	Construction
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Melanie Crowley	mcrowley@mhc.ie	353 1 614 5230	Employment / Migration
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Emer Gilvarry	egilvarry@mhc.ie	353 1 614 5075	Human Resources / Litigation
Edward Gleeson	egleeson@mhc.ie	353 1 614 2438	Litigation / Charities / Administrative Law
John Gleeson	jgleeson@mhc.ie	353 1 614 2428	Litigation / Healthcare
John Gulliver	ygulliver@mhc.ie	353 1 614 5007	Tax
Brian Horkan	bhorkan@mhc.ie	353 1 614 2320	Litigation
Kevin Hoy	khoy@mhc.ie	353 1 614 5812	Real Estate
Martin Kelleher	mkelleher@mhc.ie	353 1 614 5206	Life Sciences / Biotechnology

Name	Email	Telephone	Practice Area
Jeanne Kelly	jkelly@mhc.ie	353 1 614 5088	Data Protection / IP
John Kettle	jkettle@mhc.ie	353 1 614 5049	Commercial / Regulatory / Competition
Rory Kirrane	rkirrane@mhc.ie	353 1 614 5273	Construction
Nora Larkin	nlarkin@mhc.ie	353 1 614 5002	Private Client
Paul McDonald	pmcdonald@mhc.ie	353 1 614 2439	Education/Employment
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Appendix



Business activities,
regulated or supervised by
authorities in Ireland

Nature of business	Regulatory authority
Air Transport	Irish Aviation Authority, Minister for Transport and Minister for Communications, Energy and Natural Resources
Airports	Commission for Aviation Regulation, Minister for Transport and Minister for Communications, Energy and Natural Resources
Arms Manufacture (Import and Export)	Minister for Justice, Equality and Defence
Auditing	Irish Auditing and Accounting Supervisory Authority
Banking	The Central Bank
Biotechnology (products, food and hazardous substances)	The Irish Medicines Board, the Food Safety Authority and the Environmental Protection Agency
Broadcasting/Media	Broadcasting Authority of Ireland and Minister for Communications, Energy and Natural Resources
Building Societies	The Central Bank
Cattle Exports	Minister for Agriculture, Marine and Food
Competition Policy, Cartels and Merger Control	Competition Authority and Minister for Enterprise, Jobs and Innovation
Consumer Credit	Director of the National Consumer Agency
Customs	Revenue Commissioners, Customs Administration Unit
Employment Agencies	Minister for Enterprise, Trade and Employment
Energy, Electricity and Gas (including renewables)	Commission for Energy Regulation, Department of Communications, Energy and Natural Resources
Environment	Minister for the Environment, Heritage and Local Government
Exploration and Natural Resources	Minister for Enterprise, Jobs and Innovation and Minister for Communications, Energy and Natural Resources
Fisheries	Minister for Communications, Energy and Natural Resources, Sea Fisheries Protection Authority
Food	Food Safety Authority
Gambling	Revenue Commissioners
Gaming and lotteries	The Courts, the Garda Síochána (Police) and the Minister for Finance
Hotels	Currently Minister for Arts, Sport and Tourism
Insurance (life and non-life)	The Central Bank
Insurance Intermediaries	Minister for Enterprise, Jobs and Innovation, The Central Bank
Legal Services	Minister for Justice, Equality and Defence

Nature of business	Regulatory authority
Life Sciences	Minister for Enterprise, Jobs and Innovation
Medical Devices	Minister for Health and Children, Irish Medicines Board
Medicines and Drugs	Minister for Health and Children, Irish Medicines Board
Medical Services	Minister for Health and Children, Medical Council
Minerals	Minister for Enterprise, Jobs and Innovation
Postal Services	Commission for Communications Regulation
Precious Metals	Minister for Enterprise, Jobs and Innovation, Assay Master
Shipping & Marine	Department of Communications, Energy and Natural Resources and Marine Institute
Sport	Irish Sports Council and the Minister for Transport, Tourism and Sports
Stud Farms	Minister for Agriculture, Fisheries and Food
Telecommunications	Commission for Communications Regulation
Tourism	Minister for Tourism, Culture and Sport
Transport (Air, Road and Rail for Passengers and Haulage)	Minister for Transport
Water	Department of Environment, Heritage and Local Government

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