The Acquisition and Leveraged Finance Review

Fifth Edition

Editor
Marc Hanrahan

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THE ACQUISITION AND LEVERAGED FINANCE REVIEW

FIFTH EDITION

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PREFACE

In the early 1980s, leveraged loans and high-yield bonds began to be used to finance leveraged buyouts (LBOs) and other acquisition transactions. Those were simpler times. Back then, leveraged finance was principally a US phenomenon. The annual aggregate amount of leveraged loans and bonds issued in a year was a few tens of billions. Some of today's top-tier private equity shops were just getting started, and were certainly not household names. The documentation and relevant legal issues, while significant, were a fraction of those that are involved in leveraged finance today.

My, how things have changed. While loans and bonds are still a standard feature of the leveraged finance product menu, they have taken on different shapes and flavours, and additional financing products have been developed and are now widely used. The number of participants in leveraged finance has grown massively, and a large number of the players are now based in Europe and Asia. In addition to banks and institutional investors, direct lenders have now joined the party. Standard documentation for most types of leveraged finance has at least doubled in size. The amount of leveraged loans issued in 2017 for M&A exceeded US$300 billion in the US alone,[1] with the LBO M&A subset posting the second-highest year ever of issuances at US$126 billion (a 44 per cent increase compared to 2016).[2]

While there have been ups and downs, of course, for leveraged finance over the past 40 years (most notably during the financial crisis), leveraged finance used to support acquisitions has become a very big business and is almost certainly here to stay (and probably grow).

This volume is intended to contribute to the knowledge base of lawyers who participate, or aspire to participate, in leveraged finance used for acquisitions. It will hopefully provide an overview and introduction for the novice and be a ready resource for an active practitioner who needs to know about relevant laws and practices in jurisdictions around the world.

Thanks to my partners Casey Fleck and Doug Landy, and my associate Gabi Paolini, for their help in editing the volume and preparing the Introduction that follows.

Marc Hanrahan
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New York, NY
November 2018

1 *2017 U.S. Primary Loan Market Review*, LSTA Loan Market Chronicle 2018, p. 20.
2 *What's Market: 2017 Year-End Trends in Large Cap and Middle Market Loan Terms*, Practical Law Finance, 1 February 2018.

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Chapter 12

IRELAND

Catherine Duffy and Robbie O'Driscoll[1]

I OVERVIEW

Acquisition financing in Ireland typically consists of third party debt (usually by way of senior loans, but sometimes involving mezzanine or second lien debt), together with shareholder debt contributed by the shareholders or sponsors. High-yield bonds have not been a typical feature of acquisition financings in Ireland to date.

Historically dominated by local banks, the Irish lending landscape has changed significantly since the financial crisis. The traditional banking sector is now much smaller, with the remaining banks typically having a reduced risk appetite. This has led to the emergence of a number of direct lenders as significant providers of capital in the Irish market. While the focus of these lenders has predominantly been on the financing of property acquisitions and developments, many of these lenders have also provided financing for leveraged and acquisition financings. Bank finance however remains the most common source of third-party acquisition financing in the Irish market.

While many deals involving an Irish target will be governed by Irish law, larger multi-jurisdictional financings (particularly those involving non-Irish lenders or syndicated facilities) will typically be governed by the laws of another jurisdiction (usually English or New York law).

II REGULATORY AND TAX MATTERS

i Licencing requirements

Generally it is not necessary for a lender to be licensed before lending to a company in Ireland. Lending to a natural person may trigger a licencing requirement, but this is unlikely to be relevant in most leveraged and acquisition financings.

Ireland does not have any particular licensing or eligibility requirements for agents or security trustees and, provided that the agent or security trustee is not also carrying on banking business or other regulated activities in Ireland, there will be no requirement for it to be licenced in Ireland.

1 Catherine Duffy is a partner and Robbie O'Driscoll is a senior associate at A&L Goodbody. The authors would like to thank Richard Marron and Peter Maher for their assistance with the preparation of this chapter.

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ii Sanctions, anti-corruption and money laundering

While not specific to leveraged and acquisition financings, general anti-corruption and anti-money laundering laws will apply.

Lenders must comply with anti-money laundering and anti-terrorism financing requirements under the Criminal Justice (Money Laundering and Terrorist Offences) Act 2010. The Criminal Justice (Corruption Offences) Act 2018 came into force on 30 July 2018. This Act repeals and replaces previous legislation on anti-corruption and bribery (the Prevention of Corruption Acts 1889 to 2010), consolidating Irish law on anti-corruption into a single piece of legislation.

iii Reporting requirement

Notwithstanding that there may be no licensing requirement in Ireland, lenders will be required to make statistical reports to the CBI under the Credit Reporting Act 2013, which requires lenders to provide specific information in respect of credit exceeding €500 where the borrower is resident in Ireland or the governing law of the loan agreement is Irish.

iv Withholding tax

Like the UK and many other European jurisdictions, Ireland imposes withholding tax on payments of interest, currently at a rate of 20 per cent. Withholding tax is imposed on payments of interest that have an Irish source. Interest will typically have an Irish source if the borrower is Irish resident or an Irish branch or if the loan is secured on Irish real estate.

However, withholding tax can be reduced or eliminated pursuant to a number of exceptions. In particular, in the case of cross-border interest payments, interest will be exempt if it is paid:

a on quoted Eurobonds;

b by a company in the ordinary course of business to a company resident in an EU Member State (other than Ireland) or in a country with which Ireland has entered into a double taxation treaty, provided that either the country generally imposes a tax on the interest receivable by the company or the interest is exempted under the relevant tax treaty. This exemption will not apply where it is paid in connection with a trade or business carried on in Ireland by the payee;

c by a securitisation qualifying company to a person resident in an EU Member State (other than Ireland) or in a country with which Ireland has entered into a double taxation treaty, except where it is paid in connection with a trade or business carried on in Ireland by the payee; and

d on certain wholesale debt instruments for which the term is less than two years.

Ireland has a comprehensive network of double taxation treaties. There are currently 74 countries with which Ireland has signed comprehensive double taxation agreements, of which 73 are currently in effect.

v Deductibility of interest

A deduction is generally available for interest incurred by a company for the purposes of its trading operations. However, in certain circumstances an interest payment made by a company may be reclassified as a distribution for tax purposes, and no tax deduction will be available to the company in that instance.

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A deduction is often available for interest incurred on borrowings of a company for the acquisition of shares of a trading company or of a company that holds shares in trading companies, or for lending to such companies, subject to certain conditions being satisfied.

Several conditions are required to be satisfied, including that the borrowing company must beneficially own, directly or indirectly, more than 5 per cent of the relevant company, and must share at least one director with the company or a connected company. Restrictions apply to the recovery of capital by the borrower from the company, and anti-avoidance measures deny the interest relief in certain circumstances.

III SECURITY AND GUARANTEES

i Forms of guarantees and security

Guarantees

Upstream, downstream and cross-stream guarantee and security packages are available and widely used in leveraged and acquisition financings involving Irish companies. Unlike many jurisdictions, guarantees are not typically required to be limited by way of guarantee limitations.

A guarantee must be in writing and signed by the guarantor to be enforceable under Irish law.[2] A guarantee is a contract and so is subject to the general principles of contract law including that there must be consideration unless the guarantee is executed as a deed. Guarantees are often executed as a deed to remove any concerns about the adequacy of the consideration.

Prescribed warnings must be included in a guarantee where the Central Bank of Ireland's Consumer Protection Code 2012 and the SME Regulations[3] apply. These are unlikely to be relevant in most leveraged and acquisition financings.

Irish law distinguishes between guarantees and indemnities. A guarantee is a secondary obligation, which is dependent on the existence of the primary obligation. An indemnity is an undertaking as an independent obligation to make good a loss and will be enforceable even where the obligation guaranteed is not. Therefore, it is typical in leveraged and acquisition financings for a guarantee to be drafted as a guarantee and indemnity, in which case the distinction can be ignored in practice.

Security

Ireland is a creditor-friendly jurisdiction that allows creditors to obtain comprehensive security at a reasonable cost and, in principle, a creditor can take security over any assets belonging to an Irish company.[4] While a security interest can take multiple forms under Irish law, the typical types of security interest provided in leveraged and acquisition financings are:

a charge: This is an agreement between a debtor and a creditor to make an asset available to the creditor to satisfy an underlying debt. This is the most common form of Irish security interest and is typically used in leveraged and acquisition financings for real

2 Section 2 of the Statute of Frauds (Ireland) 1695.

3 Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015.

4 Certain limited categories of company may be prohibited from creating security over certain types of assets (e.g., regulated entities may be prohibited from creating security over client monies).

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estate, shares, intellectual property and bank accounts. A charge may be fixed or floating in nature. A fixed charge is a charge which attaches immediately upon execution of the security document to a specific asset or class of assets. A floating charge does not take effect immediately but will 'float' over the asset or assets and remain dormant until a defined event occurs or the creditor gives notice, or both. A purported fixed charge may be recharacterised by a court as a floating charge where the chargor retains significant ability to deal with the asset; however, unlike in England, the Irish courts have tended to look to the contractual terms (and not to the conduct of the parties) in determining whether a purported fixed charge should be recharacterised as a floating charge; and

b assignment: This is the transfer of legal or beneficial ownership of an asset by a debtor to a creditor, together with a right for the debtor to have the asset reassigned to it once the underlying debt has been repaid. It is typically used for intangible assets such as debts and other receivables. An assignment can be legal or equitable.

Typically in leveraged and acquisition financings, a debenture (general security agreement) will be provided by an Irish company creating (1) fixed charges and assignments over certain classes of assets and (2) a floating charge over all present and future assets of that company. Irish law permits security to be created over future assets, so security created under a debenture should automatically attach to newly acquired assets of an Irish company. Where security is created over real estate registered with the Property Registration Authority (PRA), an additional security agreement in the form prescribed by the PRA is required.

The concept of a trust is recognised in Ireland, and the use of a security trustee, who will hold security on trust for a changing group of lenders, is well established in the Irish market.

Third-party security is not uncommon, and is generally seen as workable as a matter of Irish law. This would most typically be encountered in relation to security granted by a shareholder or holding company that is not an obligor over shares it holds in or loans it has made to an obligor.

Security over non-Irish assets can be created under an Irish law-governed security document entered into by an Irish company. To what extent this security will be effective will depend on the nature of the secured asset and the laws applicable to the asset in its location. It is prudent to create security over non-Irish assets under a security document governed by the laws of the jurisdiction where those assets are located (particularly where those assets are of material value).

Filings and notifications

Security created over most types of assets by an Irish company must be registered with the Irish Registrar of Companies within 21 days of its creation, otherwise the security will be void against a liquidator and other creditors of the relevant company.[5]

Security created over real estate in Ireland should be registered with the PRA. Depending on the type of asset security is created over, additional filings may be required or desirable. For example, intellectual property may need to be registered in the relevant Irish or European

5 Section 409 of the Companies Act 2014. Exceptions apply for security created over, amongst other things, cash, shares, bonds and debt instruments.

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registries. Security over a movable asset such as an aircraft, ship or rolling stock may be required to be registered in the state of registration or, if different, the state where the asset is located or operates from.

Where a fixed charge over book debts or receivables is created by an Irish company, a notice should be filed with the Irish Revenue Commissioners within 21 days of its creation, as failure to do so may impact on the secured creditor's level of recovery.[6]

For a security interest created by way of assignment, to create a legal as opposed to equitable security interest, a notice of the assignment must be served on the counterparty.[7] There is no time frame within which this notice must be served. It is not necessary to require the counterparty to acknowledge the notice; however, it would be desirable to obtain the counterparty's acknowledgement where the notice requires the counterparty to carry out or refrain from carrying out certain actions in respect of the secured assets.

ii Limitations on the grant of guarantees and security

Corporate benefit

The Companies Act 2014 (the Companies Act) largely abolished the law of *ultra vires* (i.e., the rule that a company may not act for a purpose not expressly or impliedly provided for in its memorandum of association).

However, it is a general principle of Irish law that the directors of an Irish company must exercise their powers in what they consider to be the best interests of the company (i.e., there must be a commercial justification or benefit for what the directors do). Where a company enters into a transaction that does not benefit it, the transaction will be void. Irish courts have typically taken a pragmatic approach to corporate benefit, and there is helpful Irish case law that supports the view that, when considering what corporate benefit results from a transaction, consideration may be given to the benefits that accrue to the group of companies of which the company in question is a member and not just to the company itself.

Financial assistance

Section 82 of the Companies Act prohibits any Irish company from giving financial assistance for the purpose of an acquisition of shares in the company or its holding company, unless an exemption applies or unless validated by the 'summary approval procedure'.

Where the financial assistance is being given by a company that is a private company, it can avail of the 'summary approval procedure' (whitewash) which will validate the giving of financial assistance by that company. This involves, among other things, the directors making a declaration that in their opinion the company will be able to pay its debts and liabilities in full as they fall due in the 12 months following the giving of the financial assistance. In addition, certain exemptions are available, including an exemption for refinancings.

6 Section 1001 of the Taxes Consolidation Act 1997.

7 Under Section 28(6) of the Supreme Court of Judicature (Ireland) Act 1877, the requirements for a legal assignment are: (1) express notice in writing must be given to the debtor; (2) the assignment must be in writing under the hand of the assignor; (3) it must be of the whole of the debt; and (4) it must be absolute and not by way of charge.

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Where the company is a public company or is a subsidiary of a public company, it may not avail itself of the whitewash procedure, but other exemptions may apply.[8]

iii Clawbacks and preferences

There are provisions of the Companies Act which allow for transactions entered into by an Irish company to be set aside. These include:

a improperly transferred assets: Where a company is being wound up, the High Court may, if just and equitable, order the return of assets the subject of a disposal (including by way of security) where such disposition had the effect of perpetrating a fraud on the company, its creditors or its members.[9] There is no time limit within which an improper transfer can be challenged;

b unfair preference: Any conveyance, mortgage or other act relating to property of a company, which is unable to pay its debts as they become due, within six months of the commencement of a winding-up with a view to giving such creditor (or any surety or guarantor of the debt due to such creditor) a preference over its other creditors, will be invalid.[10] Case law (under the equivalent provision of the previous Companies Act) indicates that a 'dominant intent' must be shown on the part of the company to prefer that creditor over other creditors. Furthermore, this Section is only applicable if at the time of the relevant act, the company was already insolvent. Where the conveyance, mortgage, etc. is in favour of a 'connected person' (such as a director), the period is extended to two years. If a transaction is held to be an unfair preference, a liquidator or receiver of the company may recover the money paid or property transferred to the creditor, or may have the security set aside; and

c invalid floating charge: A floating charge created within the 12 months before the commencement of the winding-up of a company will be invalid except to the extent of monies actually advanced or paid, or the actual price or value of goods or services sold or supplied, to the company at the time of or subsequently to the creation of, and in consideration for the charge, or to interest on that amount at the appropriate rate or unless the company was solvent immediately after the creation of the charge.[11] Where the floating charge is created in favour of a 'connected person', the 12-month period is extended to two years.

IV PRIORITY OF CLAIMS

i Priority of claims on insolvency

Typically the distribution of assets on winding-up of an Irish company would be as follows:

a fees, costs and expenses of a receiver;

b payment due to a fixed charge holder;

c super-preferential creditors (see below for further information);

---

8 In the context of an acquisition of an Irish public limited company, it should be possible to re-register the company as a private limited company, following which financial assistance could be given by the company and its Irish subsidiaries (see 'Acquisitions of Public Companies' below).

9 Section 443 of the Companies Act.

10 Section 604(2) of the Companies Act.

11 Section 597 of the Companies Act.

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d amounts certified by an examiner as liabilities of the company incurred during the protection period certified by the examiner as necessary to ensure the survival of the company as a going concern;[12]

e costs, charges and expenses of the liquidation (including the liquidator's fees, costs and expenses);

f any claim by preferential creditors (generally taxes, rates and employee entitlements);

g payment due to the holder of any floating charge;

h payment to unsecured creditors;

i claims of subordinated creditors; and

j monies due to shareholders by way of return of capital and surplus assets.

Within each category, all claims in that category must receive full payment before any proceeds are distributed to the creditors in the subsequent category.

A holder of a fixed charge will, however, rank behind the costs and expenses of an examiner which have been sanctioned by a court and debts that have 'super-preferential' status. In relation to such super-preferential debts, the holder of a fixed charge over book debts may be obliged by the Irish Revenue Commissioners to pay all or part of claims for arrears of income tax and VAT out of the proceeds of its charge.[13] However, if the charge holder has notified the Revenue Commissioners of details of the fixed charge within 21 days of the creation of the charge, then their liability is limited to liabilities incurred by the company after the Revenue has issued a notice of default to the charge holder.

It is possible (and customary) for secured creditors to agree amongst themselves on the order of application of the proceeds of enforcement of their security (see Section IV.ii, which follows this paragraph).

ii Subordination and intercreditor agreements

Contractual subordination is possible in Ireland and intercreditor agreements are commonly used to clarify the relationship between two or more classes of creditors.

Intercreditor agreements for Irish leveraged and acquisition financings tend to be based on the Loan Market Association's (LMA) standard form. This may be Irish law-governed or, in the context of larger multi-jurisdictional financings, may be governed by the laws of another jurisdiction. In smaller or less complicated transactions, the borrower's sponsors and the lenders may enter into a simple subordination agreement.

Unlike in England, the Companies Act gives statutory recognition to subordination to bind a liquidator in a winding up.[14] In addition, there is general agreement that customary subordination provisions (such as those found in the LMA's intercreditor agreement) should be enforceable between the contracting parties in Ireland.

Structural subordination is also possible and may be desirable depending on the particular terms of the transaction.

12 Examinership is a court supervised corporate recovery process available to insolvent (but potentially viable) companies. This provides a moratorium on creditor action for a period of time to enable the examiner appointed to the company to review the company's affairs, consider its viability and, where possible, formulate proposals for its survival.

13 Section 1001 of the Taxes Consolidation Act 1997.

14 Section 618(2) of the Companies Act 2014.

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V JURISDICTION

i Choice of law and jurisdiction

Some but not all loan and intercreditor agreements for leveraged and acquisition financings involving Irish companies are governed by the laws of a foreign jurisdiction (most frequently, English or New York law).

Rules governing the choice of law for EU Member States (such as Ireland) are determined by the Rome I Regulation[15] in the case of contractual obligations and the Rome II Regulation[16] in the case of non-contractual obligations. The Rome I Regulation provides that a contract shall be governed by the law chosen by the parties. Therefore, where a contract specifies that the laws of any jurisdiction shall apply, the Irish courts are bound to apply that choice. However, pursuant to Article 3(3) of the Rome I Regulation, where mandatory rights or protections afforded under Irish law do not exist under the laws of the chosen jurisdiction, the Irish court will afford those rights and protections to the relevant parties. The Rome II Regulation provides that non-contractual obligations shall be governed by the laws of the jurisdiction chosen by the parties. This is subject to exceptions that are largely (but not entirely) similar to those set out in the Rome I Regulation.

The submission by an Irish company to the jurisdiction of the courts of another jurisdiction will generally be upheld by the Irish courts.

Irish courts do not automatically give leave to serve process on parties located outside Ireland even where that party has agreed to submit to the jurisdiction of the Irish courts, so it is customary to require foreign obligors to appoint an Irish person as its agent for service of process in Ireland.

ii Enforceability of foreign judgments

In accordance with the Brussels Regulation,[17] a judgment made by the courts of an EU Member State can be enforced in Ireland as if it had been delivered in Ireland, but it may be necessary to obtain an order of the Irish courts in order to do so. Such an order will generally be made; however, the Irish courts can refuse to recognise a foreign judgment in certain situations, including if: (1) it would be manifestly contrary to public policy in Ireland; (2) the defendant was not properly served with the proceedings in sufficient time to arrange for their defence; or (3) the judgment is irreconcilable with a judgment given between the same parties in Ireland.

Judgments granted outside of the EU will generally also be recognised and enforced in Ireland subject to obtaining an order of the Irish courts. In respect of such judgments, in order to be enforceable, such judgment must, amongst other things: (1) be for a definite sum of money; (2) be final and conclusive; and (3) have been given by a court of competent jurisdiction.

15 Regulation (EC) No. 593/2008 on the law applicable to contractual obligations.

16 Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations.

17 Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

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Any order of the Irish courts may be expressed in a currency other than euro in respect of the amount due and payable but such order may issued out of the Central Office of the Irish High Court expressed in euro by reference to the official rate of exchange prevailing on the date of issue of such order.

VI ACQUISITIONS OF PUBLIC COMPANIES

The financing of the acquisition of an Irish public company involves additional issues for lenders relative to the acquisition of a private company.

i Regulation and bid structure

Public takeovers in Ireland are regulated by the Irish Takeover Panel Act 1997, which established the Irish Takeover Panel (the Panel), the Irish Takeover Rules (the Takeover Rules) and the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006. The Takeover Rules have the force of law and are administered by the Panel. The Panel has the power to issue rulings and directions which themselves have the force of law. The Takeover Rules apply to public companies incorporated in Ireland whose shares are, or have in the previous five years been, traded on the Irish Stock Exchange (including ESM which is the Irish equivalent to London's AIM), the London Stock Exchange (including AIM), the New York Stock Exchange and NASDAQ.

There are two principal methods of acquiring control of a public company in Ireland: (1) a general public offer to all shareholders of the target to purchase the shares (a tender offer); or (2) a scheme of arrangement (a scheme). In a tender offer, the bidder makes an offer directly to the shareholders of the target and largely controls the process. A scheme is driven primarily by the target and requires the approval of the Irish High Court. Schemes have tended to be the favoured transaction structure in recent years for recommended offers. Subject to certain changes required as a result of different procedures and time frames applicable to a scheme, most of the Takeover Rules apply in an equivalent manner to a scheme as to a tender offer.

ii Key financing related issues

The key issues that arise under the Takeover Rules on the financing of a public company takeover are as follows:

a certain funds: Where the consideration for an offer is cash or includes a cash element, the offer document must include a cash confirmation, usually from the bidder's financial adviser, that the bidder has sufficient resources available to satisfy acceptance of the offer in full. Any debt required for the offer must be fully and, save in respect of conditions relating to the closing of the offer, unconditionally committed prior to the bidder making a firm intention to make an offer. As in the UK, if a cash confirmation proves inaccurate, the Takeover Panel can direct the person who made the statement to provide the necessary funds. Therefore, fundable commitment or long-form finance documentation will in practice be required to be in place on or before an offer announcement is made;

b confidentiality: It is a fundamental aspect of the Takeover Rules that absolute secrecy must be maintained until a bid is announced; this applies to both hostile and recommended bids. The Takeover Rules are restrictive in terms of the extension of the 'circle of knowledge' and Panel engagement is typically required earlier in the process than in the UK. There is no equivalent to the UK 'Rule of Six' (which requires bidders

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to consult the UK Takeover Panel before more than a total of six parties (including potential lenders) are approached about an offer). In Ireland, the Panel must be consulted when a potential bidder proposes to approach anyone other than individuals in its organisation who 'need to know' and its immediate legal and financial advisers; this means that the Panel should be consulted prior to approaching potential lenders;

c disclosure of terms: The offer document must contain a description of how the offer is to be financed, the source of the finance and the principal lenders or arrangers. If the payment of interest on, repayment of or security for, any liability (contingent or otherwise) will depend to any significant extent on the business of the target, the arrangements must be described in the offer document;

d equality of information: Under the Takeover Rules, information relating to an offer must be made equally available to all shareholders. If it is proposed that debt will be syndicated, it will be necessary to seek a derogation from Rule 20.1 from the Panel to permit any syndicate member who is a shareholder or intending shareholder of the target to participate in the debt syndicate and receive non-public information. In this case, the Panel will require that the lenders establish effective information barriers; and

e special deals with favourable conditions: The Takeover Rules restrict a bidder from making arrangements with shareholders of the target with favourable terms, except with the consent of the Panel. This can be an issue in syndication if potential lenders hold (or may hold) shares in the target. Again, the Panel may grant consent where effective information barriers are put in place.

iii Acceptance thresholds and squeeze-out

For a tender offer, the acceptance threshold would typically be set at 80 per cent or 90 per cent as the bidder will need to obtain this level of acceptances in order to rely on the compulsory acquisition (squeeze-out) procedure (the percentage depends on whether the Takeover Directive applies to the target and, if so, a 90 per cent threshold will apply). A bidder will typically reserve the right to reduce its acceptance condition.

As in the UK, lenders may be able to get comfortable with a minimum 75 per cent acceptance condition as this would allow the bidder to ensure that special resolutions are carried. Special resolutions are required, amongst other things, to amend the company's constitution and approve certain capital restructurings. 75 per cent of acceptances would also allow the bidder to delist the target and convert the target to a private company, which would allow the target and its Irish subsidiaries to give financial assistance in connection with the financing (subject to such companies availing of the summary approval procedure under the Companies Act).

For a scheme, the resolution to approve the scheme must be passed by a majority in number of the target company's shareholders representing 75 per cent in value of shareholders voting at the meeting (in person or by proxy). Provided that the resolution is passed and the approval of the Irish High Court has been obtained, the scheme is binding on all shareholders with no requirement to effect a squeeze-out.

VII THE YEAR IN REVIEW

After a number of years of significant growth following the financial crisis, 2016 and 2017 have seen a return to a more normalised level of merger and acquisition activity in the Irish

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market. In 2017, there were over 143 reported M&A transactions with an aggregate value of about €14 billion. This marked an increase in reported deal volume as compared to 2016, although deal value fell significantly with fewer mega-deals reported.

VIII OUTLOOK

In July 2018, the Irish Central Statistics Office announced that GDP growth for Ireland was 7.2 per cent in 2017, which is the fastest growth rate in Europe. The first half of 2018 has seen a very steady level of M&A activity, with 76 deals announced. As a result, we expect there to be a significant level of M&A activity in Ireland over the next year. However, there remains a high degree of uncertainty in relation to Brexit and the ongoing negotiations around the terms of the UK's withdrawal from the European Union.

As noted above, bank financing has typically been the main source of financing for leveraged and acquisition financings in the Irish market. We would expect to see alternative capital providers continuing to play an increasingly important role in the Irish market in the future.

No Irish legislative initiatives that would have an impact on the leveraged and acquisition financing market are expected in the coming year.

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