

SETTING UP OPERATIONS IN NORTHERN IRELAND

A GUIDE TO INVESTING IN NORTHERN IRELAND

LEGALLY PRIVILEGED AND CONFIDENTIAL



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01 / INTRODUCTION

SETTING UP OPERATIONS IN NORTHERN IRELAND

Northern Ireland has a highly educated, English-speaking workforce, an excellent infrastructure with advanced telecoms and transport networks, a competitive cost environment and very attractive incentive packages for those seeking to invest in local business. Over 1,000 foreign investors and a multitude of investors from the rest of the UK have chosen to locate here. Outside of Greater London, Northern Ireland has continuously been one of the most successful regions in the UK for attracting inward investment based on the number of projects won on a per capita basis.

Following Brexit, Northern Ireland is uniquely placed as a bridge for investors into Europe. As a member of the United Kingdom, Northern Ireland benefits from the political and financial stability of a G7 country.

Northern Ireland also remains within the EU single market under the terms of the Northern Ireland protocol and the recently agreed Windsor Framework. As a result, businesses in Northern Ireland have unrestricted access to two of the world's largest economies.

A&L Goodbody is a leading corporate law firm located in Belfast, Northern Ireland, headquartered in Dublin, Ireland and with offices in London, New York and San Francisco. These offices are supported by initiatives specific to other jurisdictions, including China, India, Germany and Canada. This enables us to provide a 24/7 service to our international clients and is why we are regularly engaged to advise foreign investors on setting up operations in Northern Ireland.



02 / NORTHERN IRELAND OVERVIEW

POLITICAL & LEGAL SYSTEM

Northern Ireland is one of the four countries that form the United Kingdom, one of Europe’s most open and flexible business environments. The Northern Ireland Assembly is the devolved legislature for Northern Ireland, responsible for making laws on transferred matters and for scrutinising the work of Ministers and government departments. The Northern Ireland Executive is the devolved government for Northern Ireland with responsibility for many issues, including economic and social matters, agriculture and rural development, education, health, culture, arts, social services and public safety.

The UK does not have a constitution; rather it is a common law jurisdiction. Northern Ireland derives its legislation from four sources, namely common law, European law, UK legislation from the

Westminster Parliament and legislation from the Northern Ireland Assembly.

The Northern Ireland judicial system, which is based on the English common law tradition, is similar (but not identical) to that of the US. The common law system in place is transparent and upholds the sanctity of contracts, with an independent judiciary and the right of appeal to the UK supreme court on important matters of law.

Northern Ireland is uniquely placed as a member of the EU common market, with unrestricted access to the UK internal market, two of the world’s largest and most stable economies. Northern Ireland also benefits from a largely transparent land border with Ireland, which allows for free movement across the island.



02 / NORTHERN IRELAND OVERVIEW

ECONOMY

Northern Ireland is a small, highly globalised economy, with a large manufacturing exporting sector, and a significant number of multinational corporations invested in fintech, cyber security, professional services, pharmaceuticals and financial services.

The Northern Ireland economy has recovered faster than the rest of the UK following the downturn during the COVID-19 pandemic. Recent statistics from the NI Composite Economic Index show that Northern Ireland's economy grew in Q4 2022 and Q1 2023 and is now 6.3% above its pre-COVID level whereas the UK, more broadly, was still marginally below its pre-pandemic levels over the same period.

SUPPORT FOR INVESTORS

Foreign Direct Investment (**FDI**) is a key focus of local government and is considered key to progression and development of the economy. Northern Ireland has a strong track record in attracting FDI. Outside London, Northern Ireland is now the leading UK region for attracting inward investment.

Software and IT, business and professional services and financial services account for a large percentage of new jobs created by FDI in recent years. In software development, Northern Ireland is the most successful

region in Europe in attracting FDI and is the top destination globally for financial services technology investment. According to Invest Northern Ireland figures, investor satisfaction levels are noticeably high, with 75 per cent of new investors having already reinvested.

As part of the Department for the Economy, Invest Northern Ireland's role is to grow the local economy and provide strong governmental support for businesses by effectively delivering the Government's economic development strategies.

Northern Ireland offers some of the most attractive incentive packages in Europe, with financial support for start-up, fledgling and growth businesses and comprehensive advice to ease the investment process. Investors into the province have access to a broad range of funding options, grants to support job creation, as well as a developing venture capital market.

INFRASTRUCTURE

In addition to Government initiatives, local infrastructure and costs are very attractive to foreign investors. Northern Ireland has the advantage of operating in the same time zone and regulatory environment as mainland UK. In terms of location, Belfast is a 90 minute drive from Dublin and flights operate regularly between Belfast and London.

Northern Ireland has access to five international airports in Dublin, Belfast, Shannon, Cork and Knock. It is possible to travel to most European cities within two to three hours flying time. Northern Ireland is also well connected by air to the US with many direct routes operating daily between US airports and Dublin, including to most major US cities on the East and West Coasts.

Northern Ireland offers a resilient digital network, providing high speed voice and data connections throughout the world. It is one of the first regions to operate and experience high speed, next generation services with the 40-gigabyte per second 'Kelvin' transatlantic and terrestrial telecommunications link between Northern Ireland, North America and Europe.

OPERATING COSTS

Northern Ireland's operating costs are significantly lower than the rest of the UK and Europe. A variety of business facilities are relatively inexpensive with prime office rents peaking at £25 per sq ft in some of the Greater Belfast area and £10 in other areas. Salaries are also lower, ranging from between 20% and 40% less than other locations in the rest of the UK and Ireland.

03 / ESTABLISHING A NORTHERN IRELAND OPERATION

INCORPORATING A LIMITED COMPANY

There are a number of business structures available in Northern Ireland, mirroring those available elsewhere in the UK. Private companies limited by shares (Limited, Ltd or Ltd) are by far the most common form of registered entity, benefiting from the limited liability of their members and flexibility afforded by the Companies Act 2006.

Partnership models are also popular and include general partnerships, limited partnerships and limited liability partnerships (**LLPs**). The latter are bodies corporate with separate legal personality (unlike a general partnership) and are more akin to companies than to partnerships, albeit with a number of significant differences from actual companies.

Other, less common structures are also available, for example, an unlimited company.

Two or more companies or entities may also come together via a Joint Venture (**JV**) for strategic reasons, such as pooling resources or expertise, saving costs and entering new markets either in terms of product or location. A JV may be purely contractual or a separate legal entity may be established. Recently there has been a rise in the use of special purpose vehicles (**SPVs**) such as private limited companies and LLPs for JV purposes, especially in the private equity industry.

Foreign Companies may also conduct business in NI through a branch or a place of business, the choice depending on the level of independence of the UK operation.



03 / ESTABLISHING A NORTHERN IRELAND OPERATION

FILING REQUIREMENTS

UK law imposes a number of requirements in relation to information which must be filed with the Registrar of Companies, the most important being in relation to accounts. Account filing requirements are subject to some exemptions, for example, for unlimited companies, for companies which qualify as being ‘small’ and for partnerships which are not LLPs.

The financial statements of most Northern Irish companies may be prepared in accordance with either International Financial Reporting Standards (**IFRS**) as adopted by the EU, or in accordance with generally accepted accounting standards in the UK (**GAAP**).

CORPORATE GOVERNANCE

The same or equivalent regulation applies to corporate entities in Northern Ireland as in England and Wales. In particular, the Companies Act 2006 applies directly to Northern Ireland. This means that Northern Ireland companies benefit from the legal and political stability of the UK.

A private limited company must have at least one director, at least one shareholder and a constitution in the form of articles of association. It need not have a company secretary. The shareholders are the ultimate owners of the company. Shareholders may or may not be entitled to receive a dividend on their shares depending on the constitution of the company and any decision of the board to declare a dividend (assuming that there are profits available).

Directors, or board members, manage the company, with limited matters only requiring shareholder approval. This is subject to a company’s articles of association or a shareholders’ agreement imposing additional approval requirements. Directors must comply with their fiduciary duties. Seven main statutory duties have been codified in the Companies Act 2006 and are supplemented by a number of common law duties.

Directors’ duties apply equally to executive and non-executive directors, including so-called ‘shadow directors’ (namely any persons exercising a director’s role, albeit under a different name). Executive directors are responsible for the day-to-day running and management of the company and are remunerated as employees. Non-executive directors are often

not employees and are appointed to offer a more objective point of view on company strategy, performance, risk and employee matters.

Unlike other jurisdictions, such as Ireland, there is no requirement to have a Northern Ireland resident director or Northern Ireland resident shareholder.

The articles of association govern how the company should be operated and place restrictions on what it can and cannot do. Modification to the articles of association can only be made by shareholders passing a special resolution (which requires at least 75% to vote in favour). As noted above, particularly where private equity investment is involved, the shareholders may additionally enter into a shareholders’ agreement to govern the running of the company and their respective rights and obligations.

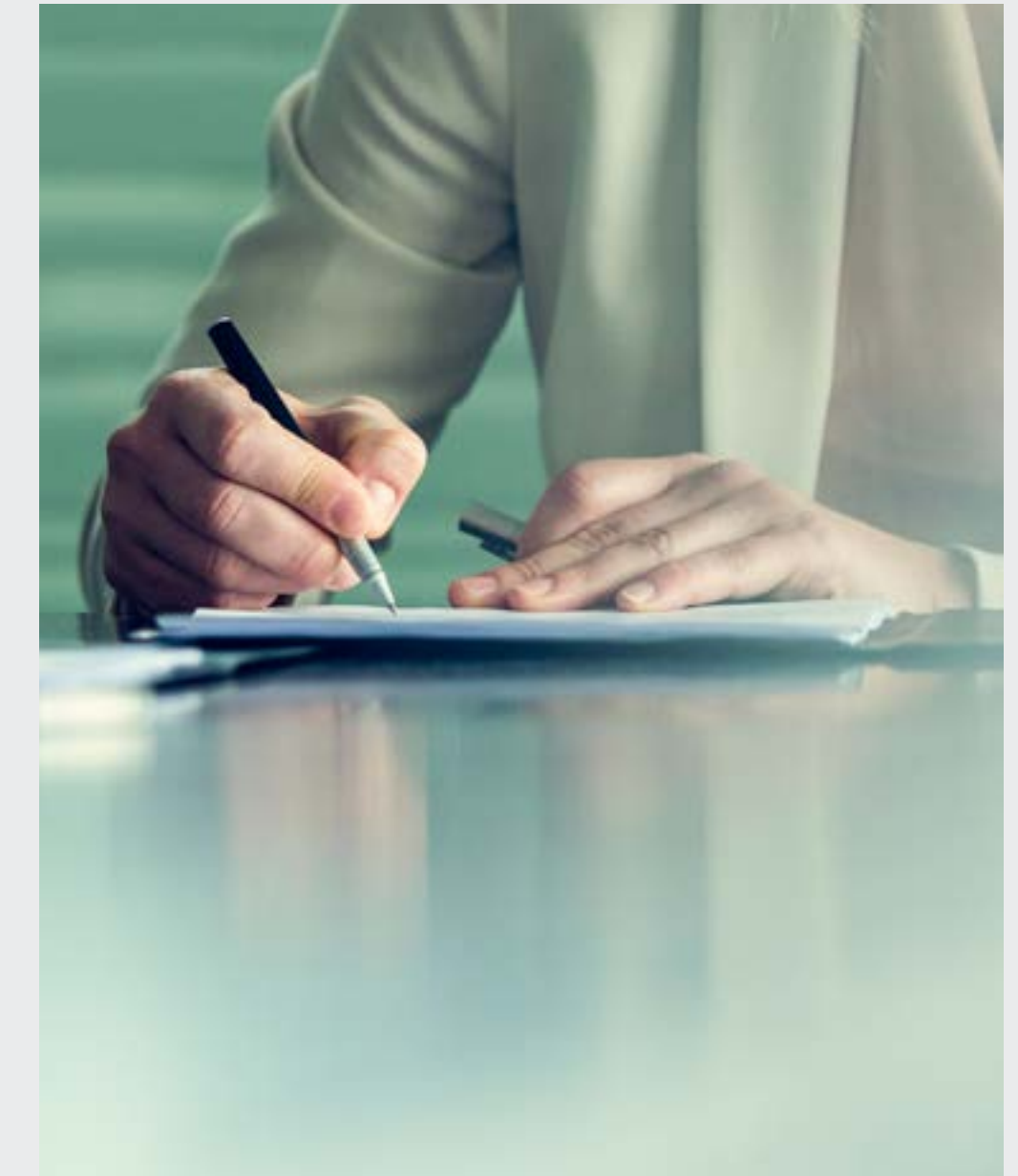
A private limited company cannot offer shares to the public. If it wishes to raise capital, it can do so by issuing more shares “off market” (subject to the provisions of its articles of association) or increase its gearing by taking out loan. Alternatively, it can convert itself into a public limited company and offer shares to the public, in which case it would usually seek admission of those securities to trading on a public market.

04 / KEY REGULATIONS

Generally speaking for a Northern Ireland subsidiary, there are no significant trade or investment barriers and no restrictions on the transfer of capital or repatriation of profits.

Some key sectors are subject to tight regulation (which applies across the UK as a whole), most of which are attributable to the implementation of EU Directives and/or Regulations. Much of this has been retained following Brexit, although it is possible that the UK could seek to diverge towards a lower regulation environment.

The key objective of regulation in these sectors is to guarantee the smooth operation of markets and, above all, the protection of customers. Sectors covered include the financial services industry and utilities such as energy, water and telecommunications. Specialist regulatory bodies have been set up with responsibility to enforce rules in their respective sectors.



04 / KEY REGULATIONS

THE NATIONAL SECURITY AND INVESTMENT ACT (NSI)

This is a key piece of UK-wide legislation which may affect inward investors. The NSI gives the government powers to scrutinise and intervene in business transactions, such as takeovers or to protect national security. The government can scrutinise and intervene in certain acquisitions that could harm the UK's national security. They can impose certain conditions on an acquisition and in rare cases may unwind or block an acquisition completely.

Investors who are planning an acquisition of a qualifying entity, in one of 17 defined sensitive areas of the UK economy, may need to get approval from the government before completing it. This is called a notifiable acquisition. Completing a notifiable acquisition without approval will mean the acquisition is void and may mean that the acquirer is subject to civil or criminal penalties.

BRIBERY AND CORPORATE CRIME

The Bribery Act 2010 applies across the UK, including Northern Ireland, and covers four types of offence, namely:

- a general offence of paying a bribe
- a general offence of accepting a bribe
- a specific offence prohibiting the bribery of foreign public officials
- a corporate offence of failing to prevent bribery (subject to a defence of having 'adequate procedures' in place to prevent such bribery).

The Bribery Act applies in addition to pre-existing UK-wide anti-money laundering and fraud legislation, principally the Money Laundering Regulations 2007, the Fraud Act 2006, the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Anti-Terrorism Crime and Security Act 2001. Many provisions apply to all legal persons, individual and corporate, so fines can be imposed not only on corporate entities but also on individual directors, managers and officers, who can also be imprisoned for up to 14 years. It is therefore important that all businesses take appropriate measures to ensure compliance with bribery and corporate crime legislation.

FINANCIAL SERVICES REGULATION

The financial services industry is regulated by the Financial Services and Markets Act 2000 and its subsidiary legislation (**FSMA**). Two regulatory bodies, the Financial Conduct Authority (**FCA**) and the Prudential Regulation Authority (**PRA**), are primarily responsible for the enforcement of FSMA. Under FSMA any person who carries on a regulated activity or purports to do so must be authorised by the FCA or PRA or benefit from an exemption. A business that breaches requirements under FSMA may commit a criminal offence, agreements may become unenforceable and the regulators may impose a fine or require the payment of compensation to customers. It is therefore important to establish in advance whether a proposed business activity may fall within FSMA's remit.

04 /
KEY REGULATIONS

COMPETITION AND ANTI-TRUST

Great importance is attached to free competition, including between domestic and non-domestic businesses. Legislation prohibits certain anti-competitive practices and in particular, the exploitation of a dominant position.

Following Brexit, the European Commission in the EU has ceased to have jurisdiction over completion matters in the UK. Instead, this now resides with an independent regulator the Competition and Markets Authority in the UK. As regards Northern Ireland, in certain circumstances, where a transaction could result in a lessening of competition across the island, the Irish competition authorities may also claim jurisdiction.

Mergers, acquisitions or joint ventures may be subject to merger control rules and a transaction may be subject to either the application of the national competition regime depending on the size and geographical reach of the businesses concerned.

Competition law prohibit agreements, concerted practices and decisions of trade associations which appreciably restrict competition within the UK. Examples include agreements between competitors to fix prices, to share markets or customers, or to limit production or sales.

Sanctions for breach of UK competition law for companies include fines of up to 10% of annual group worldwide turnover. The Enterprise Act 2002 introduced criminal penalties for individuals involved in 'hardcore' cartel activity and the possibility of disqualification of company directors.

DATA PROTECTION

The EU General Data Protection Regulation (**GDPR**) came into effect on 25 May 2018. It introduced substantial changes to data protection laws, including an extra-territorial scope, new concepts (such as privacy by design and by default and the concept of accountability), along with severe financial penalties for non-compliance.

Following Brexit, the UK retained the GDPR into domestic legislation to ensure unimpeded data flows between the UK and EU, particularly in order to underpin free trade. It is possible that as the EU could continue to develop its data protection laws that this position could begin to diverge.

05 / REAL ESTATE, ENVIRONMENTAL AND PLANNING

LONG LEASEHOLD AND LEASES

Property law in Northern Ireland is largely based on similar concepts to English property law, with some laws deriving also from Irish common law and statutes. This has resulted in a distinct and unique set of rules and procedures. Recent years have seen debate regarding potential reforms to Northern Irish land law, however, it seems unlikely that English and Northern Irish laws in this area will mirror each other in the near future.

There are two parallel registers for land in Northern Ireland: the Registry of Deeds for registration of documents dealing with land (primarily used in relation to unregistered land), and the Land Registry which deals with the registration of ownership of land.

As in England and Wales, it is possible to hold a freehold or a leasehold interest in land. Long leasehold of 999 years and over is the most common form of land ownership in Northern Ireland, but of course occupational leases for shorter terms are also available.

Property transactions can attract a charge to VAT and/or Stamp Duty at the applicable rate if the relevant criteria are satisfied. The rates in Northern Ireland mirror the rest of the UK in this respect.

Leases for terms of 25 years and under, at an open market rent, are most common for commercial occupiers and practical in terms of their day to day business requirements. For the most part, Northern Irish practices involving commercial leases follow the English practice, however, some Northern Irish specific legal points arise and investors/occupiers should seek advice as to what these may be, depending upon their circumstances.

The structure of a typical medium to long term commercial lease (10 to 25 years) includes extensive provisions for rent review, service charges, insurance, guarantees and other standard provisions. Commercial Landlord and Tenant law in Northern Ireland is more tenant friendly than in England and Wales in some respects. For example, a tenant can get rid of any continuing liabilities (be that for rent, service charges) once it has assigned a lease with the written consent of the landlord and served notice of assignment.

There also is no equivalent of the English 'authorised guarantee agreement' in Northern Ireland, whereby an outgoing tenant would guarantee an incoming one. Rather, the tenant gets a full release upon lease assignment as above.



05 / REAL ESTATE, ENVIRONMENTAL AND PLANNING

ENVIRONMENTAL

Environmental law in Northern Ireland is not as highly developed as in England and Wales, although many principles are the same in both jurisdictions given that much environmental legislation derives from the EU. For example, Northern Ireland is subject to the same Energy Performance Certificate regime as in England and Wales and property owners have the same duties to obtain a certificate. Similar permits are also needed for regulated industries.

Environmental policy and regulation are both the functions of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, with the Environment Agency being an executive agency of the Department, rather than an independent regulator as in England and Wales.

As regards contamination, common law principles prevail. In summary, a person who allows pollution to escape from his land can be liable in negligence, nuisance and under certain principles established by case law. Generally speaking, there is no liability for a new owner of land in respect of which there has been historical pollution. Liability should attach to a new owner only if it bought land knowing there was pollution, pollutants were continuing to leach and appropriate action was not taken.

PLANNING

In Northern Ireland, since 1 April 2015, planning is now largely dealt with at local level. The Review of Public Administration created 11 new “super councils” which have the responsibility of planning in their local areas. All applications for local and major development must therefore be made to the relevant district council for determination.

Applications for regionally significant development must still be made to the Department of Agriculture, Environment and Rural Affairs. Applications must be determined by the relevant district council or the Department, as the case may be, in accordance with the provisions of the Regional Development Strategy, the Strategic Planning Policy Statement, relevant Local Area Plans and Supplementary Guidance. Decision-making must also take into account all material planning considerations, for example, European and UK Government policy, environmental impact, access and the provision of infrastructure. This also includes public representation and objection.

One of the main challenges for developers is the requirement for engagement with local communities.

For major developments, for example, proposals for more than 50 houses and/or retail development greater than 1,000 square metres gross floor-space, this will be mandatory. This requirement places heavy emphasis on engaging with local communities in developing major proposals before planning applications are formally submitted.

Development includes the making of any material change in the use of any buildings or other land. Planning permission is required for material changes of use. Pursuant to the Planning (Use Classes) Order (Northern Ireland) 2015, a number of the most common land uses are grouped into various ‘classes’. A change in use between activities within a class is not considered to be ‘development’ and therefore planning permission is not required. An example of where planning permission is not required would be when changing the use of a building from general industrial to use as a storage or distribution centre.

As in England and Wales, other consents may also be needed for any development proposal, the most obvious being building control approval, which is the responsibility of the local council.

06 / INTELLECTUAL PROPERTY

UK Intellectual Property legislation extends to, and is applied in, Northern Ireland as it is across the rest of the UK. Below is an overview of some of the main forms of intellectual property rights enforceable in the UK, namely patents, copyright and registered and unregistered trade marks.

PATENTS

A patent is a means of protecting an invention. For an invention to be patentable in the UK, it must be:

- new
- involve an inventive step
- be capable of industrial application
- not fall within an excluded category.

Only UK patents are enforceable in the UK. Patents may be obtained by filing a patent application directly with the UK patent office, filing an application with a receiving office under the Patent Co-operation Treaty (**PCT**) and including the UK in the list of designated countries or filing an application with the European Patent Office under the European Patent Convention (**EPC**) and including the UK in the list of designated countries.

The entitlement to a UK patent is determined by who is the first to file the relevant patent application and not by reference to who was the first to make the invention. A UK patent generally lasts for a maximum of 20 years from its filing date.



06 / INTELLECTUAL PROPERTY

COPYRIGHT

Copyright protection is given to original works and it arises automatically upon their creation. Traditionally for a work to be an 'original work', it must have originated from the author by his skill and labour. The amount of skill and labour required is fairly low and there is no need for the work to achieve any form of literary or artistic merit. The categories of works capable of being protected by UK copyright law include literary works, dramatic works, musical works, artistic works, films and broadcasts. The works, which are generally most relevant to commercial activities, are literary works, including computer programmes, books, manuals and databases.

REGISTERED TRADE MARKS

A registered trade mark is a sign that distinguishes the goods or services of one business from those of another. It must be distinctive and not be identical or similar to an earlier registered mark relating to identical or similar goods/services.

UNREGISTERED TRADE MARKS

In addition to the above protection for registered trade marks, there is also a form of protection in the UK for unregistered trade mark rights. Any goods or services sold in the UK in the course of business will generate 'goodwill'. In general terms, a UK court might assist the owner of goodwill which attaches to a part of their business in preventing a third party from selling goods or offering services in a manner that misleads consumers into believing the goods or services are those of the owner.

This type of unlawful activity is called 'passing off' and the protection extends not only to trade marks but also to the get-up and overall 'look and feel' of a product. As the protection arises automatically through trading activities, no registration of rights is required.

E - COMMERCE

The key regulations governing the conduct of e-commerce cover the UK as a whole. These regulations mainly apply to businesses engaged (with both consumers and other businesses) in selling and/or advertising goods and services over the internet, by e-mail, or via text messaging. It also includes businesses that store or convey electronic content for customers. The key provisions require businesses to:

- provide specific information to customers about the business
- comply with certain requirements in relation to concluding online contracts
- clearly identify any 'commercial communications', the underlying business making the communication and the details of any promotional offers/competitions
- ensure that any unsolicited commercial communications sent by e-mail are clearly and unambiguously identifiable as such.

07 / TAXATION

The UK taxation regime, for the most part, extends to Northern Ireland. Northern Ireland is not a low tax jurisdiction but, as part of the UK, is still globally competitive and there are various potential tax advantages to a company establishing a presence in Northern Ireland.

Corporation tax rate setting powers have been devolved to the Northern Ireland Assembly, which is unique within the UK. These powers have not yet been used but it is widely anticipated that Northern Ireland will establish a corporation tax rate below that of the UK, which currently stands at 25 per cent. This remains one of the lowest tax rates within the OECD.

In addition, other potential tax advantages are available, such as:

- Substantial shareholdings exemption on disposals of subsidiaries by NI holding companies.
- Tax relief for foreign dividends.
- Generous tax reliefs for expenditure on Research & Development.

- Extensive Double Tax Treaty Network.
- Generous Income and Capital Gains tax incentives and reliefs for entrepreneurial investment.
- Maximum 20% withholding tax rate on interest/royalty payments with the potential for a 0% rate.
- Industry standard Transfer Pricing Rules.
- No withholding tax on dividends.

The UK-wide 'Patent Box' legislation also extends to Northern Ireland. This enables companies to apply a lower rate of Corporation Tax on profits earned after 1 April 2013 from their patented inventions, which is one of the most generous schemes in the world.

08 / GOVERNING LAW AND DISPUTE RESOLUTION

APPLICABLE LAW

Much of the law and regulation which applies to Northern Irish businesses is the same or similar to that in England and Wales (English legislation either applying directly in Northern Ireland or Northern Ireland legislation replicating that in England and Wales). This provides a well-established legal and regulatory environment for investors. In terms of those areas where Northern Irish legislation differs to that in the rest of the UK, some key issues of which investors should be aware are highlighted in the remainder of this guide.



08 /
**GOVERNING LAW AND
DISPUTE RESOLUTION**

COURT PROCESS

The choice of court in Northern Ireland for civil proceedings largely depends on the value of the claim. Whereas in England and Wales the Civil Procedural Rules (**CPR**) govern the conduct of civil disputes, in Northern Ireland, the Rules of the Court of Judicature apply. These rules are similar to those in existence in England and Wales prior to the introduction of CPR.

The County Court is a general term covering the Small Claims Court, District Judges Court and County Court. There are seven County Court Divisions in Northern Ireland. In general, the Small Claims Court deals with actions with a value of less than £3,000 and the County Court with those less than £30,000. There may be a right to appeal a County Court decision to the High Court or to the Northern Ireland Court of Appeal on a point of law. The Magistrates' Court has a limited civil function which includes applications for particular licenses and certain types of debt cases.

The High Court in Northern Ireland generally deals with claims with a value of over £30,000 (and no upper limit). It is divided into three divisions: Chancery Division, King's Bench Division and Family Division. The Chancery Division deals with, among other things, actions concerning partnerships and companies, bankruptcies and enforcement of mortgages and other securities. The King's Bench Division deals with personal injury, breach of contract, defamation and all other business not specifically assigned to another division. A case within the King's Bench Division can also be allocated to the Commercial Court, which is designed to expedite the progression of disputes arising out of business transactions. The Commercial List is an attractive forum for businesses and financial institutions.

**ALTERNATIVE DISPUTE
RESOLUTION**

In keeping with England and Wales, alternative dispute resolution mechanisms such as mediation, adjudication and arbitration are becoming increasingly popular. These options are often less expensive than litigation. Mediation can be attempted at any stage of a dispute and often the courts will direct the parties to consider mediation as opposed to litigation. If a dispute is not resolved through mediation, the parties are generally free to proceed with litigation. Arbitration is a procedure for resolving disputes privately, in which both sides agree to be bound by the decision of an independent arbitrator. Adjudication is widely-used in the construction industry, with parties to a construction contract enjoying a statutory right to refer disputes to adjudication.

09 / EMPLOYMENT

Northern Ireland's population is one of Europe's youngest and fastest growing with Invest Northern Ireland estimating that over 40% are aged 29 or under and nearly 60% are under the age of 40. The province also boasts one of the best education systems within the United Kingdom and consequently has comparatively high levels of literacy and numeracy with large numbers of highly educated individuals.

EMPLOYEE RELATIONS

Employee relations are traditionally stable with relatively little strike action. The region is less heavily unionised than elsewhere in the UK. The employment arena is an area in which Northern Ireland has adopted its own legislation perhaps more predominantly than in other areas. In many respects, however, there is a broadly comparable body of employment law in Northern Ireland to that in England and Wales. Recent changes in respect of the tribunal systems, statutory procedures, collective redundancy and qualifying periods for employment based claims have resulted in increased divergence between the two jurisdictions in certain areas.



09 /
EMPLOYMENT

EMPLOYMENT RIGHTS

The Employment Rights (Northern Ireland) Order 1996 (**ERO**) governs the provision of employment contracts, termination of employment and protections against unfair dismissal. Pursuant to the ERO, an employee must receive a written statement of the main particulars of their employment as a minimum, including hours, rate of pay and place of work.

Additional terms are implied by statute (such as the Working Time Regulations (Northern Ireland) 1998) and under common law.

With respect to termination of employment, an employer must give an employee at least one week's notice after one month's employment and thereafter one additional week's notice for each completed year of service, rising to a maximum of 12 weeks' notice (subject to a longer period of notice if this is provided for in the contract of employment).

EQUALITY

In terms of equality legislation, the same types of protections are afforded to protected groupings in Northern Ireland as in the rest of the UK. It is therefore illegal to discriminate against an individual directly or indirectly by reference to their age, sex, race, disability, part-time status, religious belief and/or political opinion.

In part due to the country's history, some enhanced employee protections are granted by the Northern Irish Codes of Practice in relation to areas such as discrimination on grounds of religious belief and political opinion and in respect of harassment. An employer with more than 11 employees is also required to provide annual returns in respect of the religious makeup of their workforce, with a view to promoting a balance in employment of the respective religious groupings in Northern Ireland. Almost all employment-related actions will be handled by the local Industrial Tribunal or the Fair Employment Tribunal.

TUPE

The Transfer of Undertakings (Protection of Employment) Regulations 2006, or TUPE as it is known, was implemented in Northern Ireland along with the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006. The regulations protect employees of a business which is being transferred and, by default, those affected employees will automatically transfer with the business. The entity purchasing the business will therefore inherit all rights, obligations and liabilities connected to those employees.

DEVELOPMENT OF THE LAW

Case law plays a significant role in employment law in Northern Ireland and tribunals are bound by previous decisions from the Industrial Tribunal and Fair Employment Tribunal in Northern Ireland together with the Northern Ireland Court of Appeal. Whilst decisions from the employment tribunals in England and Wales are not legally binding in Northern Ireland, seminal decisions (particularly from the higher courts and tribunals) are often considered to be of persuasive value.

10 / WHY A&L GOODBODY?

From our offices in Northern Ireland, Ireland, London and the US we have partnered with countless international companies, from global enterprises to fast growing venture-backed start-ups.

We have worked to seamlessly guide them through the full range of legal, tax and commercial issues that arise when doing business in Northern Ireland. Leveraging this expertise and know-how, we can provide innovative, and cost effective, legal solutions to support you and your business as you embark on your path to international expansion.

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