

# Setting up operations *in Ireland*





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# Introduction

## Setting up operations in Ireland

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More than 1,200 multinational companies have chosen Ireland as their platform for international expansion, employing almost 230,000 people in Ireland as of January 2019. This includes some of the world's largest companies from sectors such as technology, life sciences, financial services and fintech, internet, engineering and business services. Many of these companies are undertaking strategic activities in Ireland including advanced manufacturing, research and development (R&D) and global business services.

Ireland's ability to continually attract foreign multinationals is a testament to the breadth of incentives available to prospective investors, as well as its sophisticated, but flexible, business environment. Key incentives for foreign investors include the positive attitude of the Irish Government towards promoting foreign direct investment (FDI), Ireland's committed membership of the European Union, its highly skilled and English-speaking workforce, its favorable corporate tax regime and the general ease of doing business in Ireland.



## Why Ireland

At A&L Goodbody, we have partnered with countless multinationals to guide them through the full range of legal, tax and commercial issues that arise when establishing or expanding operations in Ireland.

We have compiled this Guide as a general overview of the key issues that our clients typically encounter and we hope you will find it useful as you expand into Ireland and beyond.



### FLEXIBILITY

Ranked 1st in the world for flexibility and adaptability of workforce



### INVESTMENT INCENTIVES

Ranked 1st in the world for investment incentives



### YOUNG & DIVERSE WORKFORCE

Youngest population in Europe



### COMPETITIVE

Ranked 12th most competitive economy in the world



### EFFICIENCY

Ranked 2nd in the world for efficiency of large corporations



### ACCESSIBLE

Five international airports and five regional airports



### TRACK RECORD

Leading international technology, life sciences & financial services companies choose Ireland



### CORPORATE TAX

12.5% corporate tax rate



### 500M CONSUMERS

Access to a European market of 500m consumers



### ENGLISH SPEAKING

Only English speaking country in the eurozone and committed member of the EU



### REAL GDP GROWTH

Ranked 1st in the World for Real GDP growth



### VALUE ADD

Ranked 1st in the world for value added in knowledge and technology intensive industries





Ireland's attractive value proposition, combining talent, track record, technology and a 12.5% corporate tax rate, continues to resonate strongly with foreign investors. Other factors that continue to cement Ireland's reputation as a leading jurisdiction for foreign investment are described below.

### Economy

Ireland is a small, highly globalized economy, with a large exporting sector, and a significant number of multinational corporations.

Over the past decade, Ireland's economy has grown at a rate consistently among the highest of OECD countries. The Irish economy entered its eighth year of economic growth in 2018, with growth in consumer spending, tax revenue, building and construction, manufacturing and services.

The Irish Government is keen to ensure that there are very few barriers to entry for international trade or investment. Through organizations like IDA Ireland (the Irish Government's inward investment promotional agency), the Irish Government seeks to foster a pro-business environment which has led to the country being one of the most open economies in the world. Ireland has been ranked first in the world for investment incentives and is ranked as the best country in Western Europe to invest in.



In the 2019 IMD World Competitiveness Yearbook, Ireland ranked seventh out of the 63 countries benchmarked globally, making it one of the most attractive business locations in the world.

### Demographics

**Numbers:** Ireland's population is currently in excess of 4.9m people, more than a third of whom are under 25 years of age. This makes Ireland the youngest population in the EU. Our young workforce is capable, highly adaptable and well-educated.

The United Nations ranked Ireland third in the 2019 Human Development Index Ranking out of 189 countries, reflecting excellent education levels and high GNI per capita.

56% of Irish 25 to 34 year olds have a third-level degree which ranks higher than any other country in the EU, ranking fourth globally, and which is well above the OECD average of 44%.

**Language:** English is the principal language spoken in Ireland, making it the only eurozone country in which English is the principal language.

**Cultural diversity:** Ireland's young population is also culturally diverse. Net migration has been positive in Ireland for five consecutive years, with 12.7% of the population now being international. Ireland has proportionally the third highest international workforce in Europe and over half a million Irish residents speak a foreign language fluently.

Ireland remains an attractive location for young, educated people, ranking third globally for attracting high-skilled personnel. Companies such as Google employ people from over 65 countries speaking more than 50 languages in Ireland.

### Infrastructure

**Telecommunications:** Ireland has one of the most advanced and competitive telecommunications infrastructures in Europe. Large investments in recent years have resulted in state-of-the-art optical networks with world-class national and international connectivity.

**Transport:** The past decade has seen the implementation of Transport 21 in Ireland, a €34.4bn national transport

investment programme, which has resulted in a rapid improvement in Ireland's road and motorway network.

Ireland has 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. 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.

### Talent and education

Ireland's education system is among the best in the world. The United Nations ranks Ireland's quality of education sixth globally.

The Irish Government has put a number of programs in place to address the demand for skilled employees required by companies in Ireland. For example, the Government's Technology Skills Action Plan and National Skills Strategy 2025 aims to make Ireland a global leader for technology talent and skills.

### Political & legal system

Ireland is a stable parliamentary democracy. The head of the government is the Taoiseach (prime minister). The President serves as head of state and has a largely ceremonial role.

The Irish 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. Ireland is a committed member of the EU with 85% of the country's population being supportive of Ireland's EU membership. Ireland's membership of the EU means that EU law and decisions made by the Court of Justice of the European Union are also enforceable and effective in Ireland.

# 01



Ireland overview

### Labor costs

Since 2008, Irish labor costs have remained relatively stable compared to a number of EU countries which have experienced significant increases in wages and salaries during this period. On average, salaries in Dublin are approximately 20-30% lower than in London and the difference can be up to 50% lower in locations outside of Dublin. In return, OECD figures show Ireland as first in the world for labor productivity.

### Tax

The key features of Ireland's tax regime that make it one of the most attractive global investment locations include:

- Corporate tax rate of 12.5% which applies to all Irish corporate trading profits.
- Generous tax incentives for research and development and an excellent intellectual property regime.
- Access to an extensive double taxation agreement network.
- Effective zero tax rate for foreign dividends.
- Open and transparent regime which complies fully with OECD guidelines and EU competition law.

More detail on Ireland's tax regime is set out in [Chapter 3](#).

### Real estate

Most inward investment projects will involve the acquisition of some interest in Irish real estate by way of purchasing or leasing premises. To meet the increasing real estate demands of the growing international business community in Ireland, there are currently a significant number of new office construction projects underway. Dublin offers more competitively priced commercial rent than many European locations such as London, Paris, Geneva and Zurich, with commercial real estate costs up to 50% lower than London.





Incorporating a company in Ireland is a straightforward and inexpensive process, with minimal red tape. Incorporation applications are processed by the Irish Companies Registration Office (CRO), which is the central repository for public statutory information regarding Irish companies.

### Incorporating an Irish company

#### What is the main type of entity used by multinational companies doing business in Ireland?

The vast majority of multinational companies choose to do business in Ireland through a private company limited by shares (LTD). The main advantage of using an LTD is that shareholders enjoy limited liability and the on-going compliance burden is low compared with a public limited company.

Some multinational companies choose to do business in Ireland through unlimited liability companies. The principal advantage of using an unlimited liability company is that it can offer privacy and flexibility from a corporate governance and compliance standpoint in certain areas. The principal disadvantage is that the shareholders could theoretically be exposed to unlimited liability for the company's debts in the event of insolvent liquidation.





*A body corporate can act as company secretary and many multinational companies opt to delegate this function to professional company secretarial service providers.*

Other multinational companies opt to incorporate a public limited company (**PLC**) in Ireland. The advantage of using a PLC is that it can be traded on a public market, such as the main market of the Irish Stock Exchange or the New York Stock Exchange or NASDAQ. In that context, PLCs were the vehicle of choice in the inversion transactions that were a common feature of the Irish corporate/M&A landscape in previous years.

In addition to the above, foreign companies can also do business in Ireland through certain other company types or alternatively through branches or partnerships.

### What is involved in the incorporation process?

Incorporating a company in Ireland is straightforward. Once the proposed shareholder(s) and officers have been identified, the applicant(s) must prepare an incorporation application (**Form A1**). The Form A1 must be filed at the CRO, together with the company's constitutional document (being a one-document constitution in the case of a LTD; and a memorandum and articles of association for all other company types) which sets out the company's parameters and regulations. If the company will have no EEA-resident director (see further below), a non-resident bond must be obtained from a local insurer in Ireland and this must also be filed with the incorporation paperwork.

Where the CRO's express incorporation scheme is used, a company can be incorporated in as few as three to five business days.

### What is the management structure of an Irish company?

Under Irish company law, the management of the business of the company is delegated to the board of directors (subject to any contrary provisions in the company's constitution and/or any directions given by resolution of the shareholders).

An LTD may have as few as one director (other company types must have at least two). However, for practical, logistical and internal governance reasons, most Irish subsidiaries of multinational companies will typically appoint at least two directors to their boards.

At least one of the directors must be resident of a member state of the European Economic Area (**EEA**) (that is, the EU, plus Iceland, Liechtenstein and Norway) or alternatively the company must obtain and file at the CRO a non-refundable insurance bond to the value of €25,000 (the purpose of the bond is to secure the company's compliance with its Irish company law obligations). A company can also avoid the EEA resident director requirement where it obtains a certificate from the CRO confirming that it has a real and continuous link with one or more economic activities in Ireland.

Every Irish company must also have a company secretary. The company secretary is essentially the chief administrative officer of the company and is responsible for maintaining (or procuring the maintenance of) the company's statutory records. The directors of the company have a duty to ensure that the secretary has the skills necessary to enable him or her to carry out his/her duties. A body corporate can act as company secretary and many multinational companies opt to delegate this function to professional company secretarial service providers.

### How is the share capital of an Irish company typically structured?

Irish companies can have as few as one shareholder. The nominal share capital of an LTD can be as large or as small as the shareholder(s) wishes and many multinationals will incorporate a single-member Irish subsidiary with a paid-up share capital as low as one share of €1.00. The capital can be in any currency denomination, although typically it is expressed in Euro.



## 02

Establishing Irish operations



*A director will not be held liable for breach of duty for a mere error of judgment where he/she has otherwise acted honestly and responsibly with regard to the company.*

Shares of different classes can be issued and the rights and restrictions attaching to the different classes will be set out in the company's constitution.

A PLC must have a share capital of at least €25,000, of which at least 25% of the nominal value and the entire premium must be paid up.

### Are there any restrictions regarding choice of company name?

An LTD must include the word "Limited" or "Ltd" (or the Irish language equivalent – "Teoranta" or "Teo") in its name. The CRO may refuse a name if it is identical to, or too similar to the name of an existing company, if it is offensive or if it would suggest Irish State sponsorship. Names which are phonetically and/or visually similar to existing company names will also be refused by the CRO. A company name may be reserved for a period of up to 56 days in advance of incorporation. Note that registration does not give the company any proprietary rights in the company name.

### How are Irish companies typically funded?

As mentioned, an LTD can be incorporated with a paid up share capital of as low as €1. Post-incorporation, there are many options for providing additional funding to the company, if required, including share subscriptions, loans from the shareholders or external sources and capital contributions. You should speak to your legal and tax advisors prior to engaging in any funding transaction to ensure that the transaction is completed in accordance with applicable company law requirements.

### How does a company set up a bank account in Ireland?

Generally, the company will be required to complete a form of bank mandate which must be formally approved by a

resolution of the directors in accordance with the bank's requirements. As part of the account opening process, the company will be required to comply with the bank's "know-your-client" requirements, in line with Irish and EU anti-money laundering legislation.

### Directors' duties

#### What are the fiduciary duties of a director of an Irish company?

The directors of an Irish company are subject to a range of fiduciary duties under Irish law, which are codified in the Irish Companies Act 2014 (the **Companies Act**). These duties include:

- the duty to act in good faith and in the best interests of the company
- the duty to act honestly and responsibly
- the duty to act in accordance with the company's constitution and exercise his/her powers only for purposes allowed by law
- the duty not to use the company's property, information and opportunities for his/her own benefit
- the duty not to restrict his/her power to exercise independent judgment
- the duty to avoid conflicts of interest
- the duty to exercise the care, skill and diligence of a reasonable person

Directors are also subject to a number of statutory duties under the Companies Act.





A director will not be held liable for breach of duty for a mere error of judgment where he/she has otherwise acted honestly and responsibly with regard to the company. Attendance at regular board meetings will be an important factor in demonstrating that a director has discharged his/her fiduciary duties.

## Can an Irish company indemnify its directors against liability?

The extent to which an Irish company can indemnify directors is limited. An Irish company may only indemnify a director for liability that does not involve negligence, default, breach of duty or breach of trust. Any provision whereby an Irish company purports to indemnify a director for such matters will be unenforceable. With that in mind, directors of Irish companies will frequently obtain a broader indemnity from another non-Irish company in the group (e.g. a US holding company) and/or any existing group directors and officers insurance coverage will be extended to cover their Irish directorships.

## Board and other meetings

### How many board meetings do we need to hold every year?

Irish company law does not prescribe a minimum number of board meetings to be held each year. However, the number of meetings must be sufficient to enable the directors to discharge their fiduciary duties to the company. Depending on a company's activity levels, quarterly board meetings are generally considered good practice.

Irish company law permits telephonic board meetings (subject to the provisions of the company's constitution) and also allows the directors to make unanimous written decisions in lieu of a board meeting. Minutes should be taken of all resolutions passed and proceedings taking place at board meetings and placed on the company's minute books.

## Are there any other mandatory company meetings?

An Annual General Meeting (**AGM**) of the shareholders must be held once in every calendar year. Usual business transacted at the AGM is the presentation of statutory financial statements, review by the members of the company's affairs, the election and re-election of directors and the re-appointment of auditors.

## Post-incorporation obligations

### What are the principal company law compliance obligations that will apply to the company post-incorporation?

#### Maintenance of statutory registers

An Irish company must maintain various statutory registers, including a register of members, register of directors and secretaries, register of directors' and secretaries' interests in shares and debentures, register of debenture holders and register of beneficial owners. Certain of these statutory registers are open to inspection by the public on request.

An Irish company is now obliged to take certain steps to:

- i. hold accurate information in respect of its beneficial owners and
- ii. maintain a beneficial ownership register.

This information on an Irish company's beneficial ownership register will also be publically available on the Central Register of Beneficial Ownership, in accordance with EU anti-money laundering legislation.

More information on this can be found in our guidance note [here](#).

A company also has to keep minutes of its general meetings and the directors are obliged to keep minutes of all directors' meetings.

### Maintenance of accounting records

An Irish company and its directors are obliged to keep adequate accounting records to ensure that the accounts of a company are up to date, accurate and allow the financial position of the company to be determined with reasonable accuracy. It is an offence for a director or any other officer to destroy or interfere with a company's books and records.

### Preparation of annual audited financial statements

The directors must arrange for the preparation of financial statements for each financial year which give a true and fair view of the state of the affairs of the company's assets, liabilities, financial position and profit or loss for that period. The directors must ensure that the financial statements are prepared in accordance with either International Financial Reporting Standards (IFRS) or in accordance with the Companies Act and accounting standards generally accepted in Ireland. The financial statements must be laid before the company's shareholders at its annual general meeting and will be publicly filed in the CRO. There are exemptions from the audit requirement for certain smaller companies or groups of companies and dormant companies.

For Irish companies over a certain size (balance sheet of over €12.5m and turnover which exceeds €25m), the annual financial statements must include a directors' compliance statement in which the directors must acknowledge responsibility for securing compliance by the company with tax law, and certain company law provisions; and confirm that certain things have been done or provide explanations as to why those things have not been done.

### Preparation of annual return

Irish companies are obliged to publicly file an annual return with the CRO once a year. This document contains details of the company's directors and its issued share capital. The timing of the annual return filing depends on the company's annual return date (ARD). The first ARD for a new company will be the date which is six months after its incorporation. The annual return must be filed within 28 days of the ARD, although it is possible to change and in some cases extend a company's ARD. Subject to limited exceptions, the audited financial statements must be annexed to the annual return (other than the first annual return). These will become publicly available information on the company's file at the CRO.

### Display of company name and other details

The company's name, registered office address, registered number and the name and nationality (if not Irish) of all directors must be included on all business letters. This information (excluding director's names) must also be included on the company's website. The company name must be stated in all notices and other official publications, bills of exchange, promissory notes, endorsements, checks, orders for money or goods, invoices, receipts and letters of credit. The company name must also be displayed on the outside of every office or place in which its business is carried on and at its registered office.



### Cash repatriation

There are several ways in which an Irish company can return cash to its shareholders including: loans, share buy-backs and redemptions, share capital reductions and dividends. You should speak to your legal and tax advisors prior to engaging in any repatriation transaction to ensure that the transaction is completed in accordance with the applicable procedures and rules set out in the Companies Act.

### Other matters

Various transactions and activities that the company may engage in from time to time may require specific notifications to be made to the CRO and/or other statutory bodies, including but not limited to:

- change of directors, secretary or auditors
- changes in share capital (increase or reduction of share capital, transfer of shares etc.)
- change of name
- amendment of constitution
- change of company status (limited to unlimited private to public, etc.)
- significant transactions with the company's directors
- provision of financial assistance (loans etc.) in connection with the acquisition of shares in the company or its holding companies
- changing the company's financial year end

### Dissolving a solvent Irish company

Dissolving a solvent Irish company is a relatively straightforward administrative procedure. There are two principal options available - members' voluntary liquidation and voluntary strike-off. Where there are EU or Irish companies in the group, it may also be possible to dissolve the company in the context of a domestic or cross-border merger. For more information on these restructuring options, please contact a member of the [A&L Goodbody team](#).

### Grants and other incentives

#### Are there any grants or assistance available when establishing in Ireland?

IDA Ireland is Ireland's inward investment promotional agency with national responsibility for promoting foreign direct investment into Ireland. With offices across the US and worldwide, IDA Ireland can offer invaluable practical and logistical assistance to multinational companies considering establishing Irish operations.

In addition to practical assistance, IDA Ireland can, in certain cases, offer grant assistance to multinational companies establishing or expanding their Irish activities. For the most part, grant assistance is linked to job creation and is contingent on the company submitting a formal business plan to IDA Ireland. Any potential grant aid is negotiated on a project-by-project basis and is subject to approval of the board of IDA Ireland. Total grants are subject to ceilings as dictated by EU state aid rules.

For more information on IDA Ireland and the assistance that they can offer to multinational companies, please visit their website at: [www.idaireland.com](http://www.idaireland.com).



Ireland has for many years used tax incentives as a powerful tool to attract inward investment; and has been extremely successful in this regard, particularly in terms of US investment. Key to that success is the 12.5% rate of corporation tax on trading profits.

To complement the 12.5% rate, Ireland has introduced tax legislation intended to make Ireland an attractive location for holding companies and regional headquarters, particularly for EMEA operations (e.g. no capital gains tax on gains from the sale of certain shares and reduced tax on foreign dividends). Other key tax benefits of investing in Ireland include:

- tax relief on the acquisition cost of Intellectual Property (IP) and other intangibles
- a general R&D tax credit system giving an effective tax deduction of 37.5% for qualifying expenditure
- the first OECD compliant patent box regime (the Knowledge Development Box (KDB) with 6.25% effective tax rate on profits arising from certain types of IP)
- extensive domestic exemptions from withholding tax on interest and dividend payments
- no withholding on royalties paid to EU/Treaty countries and potentially on payments to non- EU/non-Treaty countries
- no thin capitalization rules
- no capital duty
- a wide, and growing, treaty network







### Taxation rates overview

<b>Corporate tax</b>	<b>12.5%</b>	Applies to trading income (including qualifying foreign dividends paid out of trading profits)
	<b>25%</b>	Applies to all other income (including non-trading income and non-qualifying foreign dividends)
<b>Capital Gains Tax</b>	<b>0%</b>	Participation exemption on qualifying share sales
	<b>33%</b>	Standard rate for gains (subject to various reliefs/exemptions)
<b>Customs duty</b>	<b>Various</b>	No duty on Irish goods moving intra-EU. Various rates apply to goods being imported from outside the EU
<b>Stamp duty</b>	<b>1-2%</b>	Payable on certain documents relating to, e.g. transfers of residential property and share sales (subject to various reliefs/exemptions)
	<b>7.5%</b>	Payable on certain transfers of non-residential property
<b>Tax treaties</b>	<b>74</b>	74 treaties signed with 73 currently in effect with many major business jurisdictions
<b>Value Added Tax</b>	<b>23%</b>	Standard rate
	<b>13.5%</b>	Heating fuel, electricity, building services, hotels, restaurants, catering services etc.
	<b>9%</b>	Entertainment, tourism and hospitality sectors, newspapers, sports facilities and e-books etc.

### Corporate taxation Residence

A company incorporated in Ireland is tax resident in Ireland unless, under the terms of a double tax treaty, it is considered to be tax resident elsewhere.

A non-Irish incorporated company may still be resident in Ireland for tax purposes if it satisfies the central management and control test. Factors important to satisfying the test include the location at which the meetings of the board of directors take place and the tax residence of the directors of the company.

### Principles and rates

Corporation tax is charged at 12.5% on profits of a trade carried on at least partly in Ireland subject to certain exceptions while non-trading income (e.g. investment income) is taxed at 25%.

There is no statutory definition in Irish tax law as to what constitutes a “trade” although the UK courts have set down a number of general principles which are broadly followed. The primary characteristics of a trade are operational substance, profit motive, the taking of risk to generate a profit, dealing with a number of (ideally third party) customers, etc.

The concept of “trading” pre-supposes a certain level of activity by the company – it must be actively engaging in its business and deriving profits from its business, rather than simply passively receiving investment income. However, the “trading” analysis is not industry or function specific – any revenue-generating activities can potentially qualify as “trading” activities benefitting from the 12.5% rate. In addition to traditional activities such as manufacturing, many multinationals with decentralized models locate activities ranging from back office to marketing/customer support functions in Ireland, availing of the 12.5% rate. Examples of such activities include:

- treasury/cash management functions (including insurance, hedging and risk management)
- IT/technical support and data management
- supply chain management
- IP management and exploitation
- marketing/customer support activities
- back office functions (such as legal, finance and HR)
- R&D activities

Any gain made on the disposal of a capital asset of a company is taxed at 33%.

#### Taxation of non-resident companies

Subject to applicable double tax treaty provisions, a non-resident company carrying on business in Ireland through, for example, a branch will be liable to corporation tax on its branch profits. If the company has no taxable presence in Ireland (e.g. no branch) it will be subject to income tax on any Irish source income it has.

A non-resident company is generally outside the scope of Irish capital gains tax except for example on disposal of Irish real estate.

#### Taxation of dividends paid to foreign corporate shareholders

As a general rule, dividends and other distributions paid by Irish resident companies are subject to 25% dividend withholding tax (**DWT**). However, there are wide domestic exemptions applying. For example, there is no DWT on dividends paid to a non-Irish tax resident company (i) which is resident in an EU Member State or a country with which Ireland has a double tax treaty, provided that company is not controlled by any person or persons resident in Ireland, or (ii) which is ultimately controlled by a person or persons resident in an EU Member State or a country with which Ireland has a double tax agreement.

#### Taxation of foreign dividends received by Irish companies

Ireland does not give a participation exemption for dividends from foreign companies but instead operates a foreign tax credit system. In taxing foreign sourced dividends, credit is generally available for any foreign withholding taxes suffered and for underlying taxes on profits out of which the dividend is paid.

Broadly speaking:

- Foreign dividends paid by companies resident in the EU or in tax treaty countries out of trading profits are taxed at 12.5%.
- Dividends paid out of trading profits by a company resident in a non-treaty country are taxed at 12.5% where the company paying the dividend is a 75% subsidiary of a quoted company.
- The 12.5% rate also applies to “portfolio” dividends (where there is a holding of not more than 5%) from EU/treaty partner country regardless of whether paid out of trading profits.

- Otherwise, foreign dividends paid by companies resident in the EU or in tax treaty countries out of non-trading profits are normally taxed at 25%.
- Taxation of interest paid to foreign corporate shareholders
- Interest paid by an Irish company to a non-Irish resident is subject to interest withholding tax, currently at the rate of 20%.

However, there are wide domestic exemptions from this withholding tax. For example, where the interest is paid by an Irish company in the ordinary course of its trade to a company which is tax resident in an EU Member State (other than Ireland) or a country with which Ireland has signed a double tax treaty and that country imposes a tax that generally applies to foreign source interest. This assumes, however, such interest is not paid in connection with an Irish branch trade or business.

#### Taxation of royalties paid to foreign corporate shareholders

Patent royalties are eligible for a domestic withholding exemption where the payments are made by a company in the course of a trade or business to a company resident in an EU Member State (other than Ireland) or in a tax treaty country. The payments must be made for bona fide commercial reasons to a company in a territory that generally imposes a tax on royalty payments receivable from outside that territory. The exemption does not apply where the royalties are paid in connection with a trade carried out in Ireland through a branch or agency by the receiving company.

In addition to the statutory exemptions from withholding on patent royalties, a further category of exemption can be obtained under an administrative statement of practice issued by the Irish Revenue Commissioners (the Irish tax authority).



Permission for payment of patent royalties without deduction of tax can be applied for where the recipient is not resident in the EU or in a tax treaty country once a number of conditions are satisfied. The royalty must be paid in respect of a non-Irish patent by a company in the course of its trade, and under a licence agreement executed and subject to law outside Ireland. There are restrictions on the recipient company, which must be the beneficial owner of the payment, and must be neither resident in Ireland nor carrying on a trade in Ireland through a branch or agency (even if that branch or agency is unconnected with the royalty payment).

Withholding is not imposed on other forms of royalties (e.g. copyright), nor on payments such as aircraft lease rentals unless exceptionally the payments could be regarded as “annual payments” - payments in the nature of pure income profit.

#### Thin capitalization rules

Ireland does not have thin capitalization rules, so that a company can be primarily debt-financed. However, there are certain restrictions on interest deductibility – e.g. where the interest is “connected with” shares in the company, is “excessive” or is paid to a 75%+ non-EU parent company.

#### CFC rules

Ireland introduced controlled foreign company (CFC) rules

in line with the EU Anti-Tax Avoidance Directive (ATAD) requirements from 1 January 2019. ATAD allows Member States to determine whether the income of a CFC should be attributed to its parent using one of two options. Ireland has opted for option B.

Option B attributes undistributed income arising from non-genuine arrangements put in place for the essential purpose of obtaining a tax advantage. It focuses on bringing the income that is artificially diverted from Ireland to a low tax jurisdiction back into the Irish tax net. There are a number of exclusions from the scope of the CFC charge. For example, the CFC charge does not apply where securing a tax advantage was not the essential purpose of the arrangement giving rise to the CFC's income or where the CFC has profits of less than €75,000 or low value activities.

In addition Ireland has certain “close company” rules which, in certain cases, can attribute a gain of a foreign subsidiary to the Irish company.

#### Transfer pricing rules

In 2019, Ireland revised its transfer pricing rules to bring the rules in line with the 2017 OECD Transfer Pricing Guidelines (the **2017 Guidelines**). The new rules take effect for accounting periods beginning on or after 1 January 2020 and provide that what constitutes an “arm's length price” will be determined in accordance with the 2017 Guidelines. In addition, the changes mean:

- Irish transfer pricing rules now apply to certain non-trading transactions, certain larger capital transactions and to previously “grandfathered” transactions that were agreed pre-1 July 2010
- there are enhanced Irish transfer pricing documentation requirements in line with the 2017 Guidelines

- the Irish Revenue Commissioners may invoke a “substance over form” provision to disregard and recharacterise a transaction in certain circumstances
- subject to the execution of a Ministerial Order, Irish transfer pricing rules will apply to transactions involving small and medium enterprises (SMEs).

#### Exit Tax

Pursuant to the ATAD, Ireland introduced exit tax provisions in Finance Act 2018 (which provisions were subsequently broadened pursuant to Finance Act 2019). The measures provide that where:

- a company migrates its tax residence from Ireland, or
- a company transfers assets from its Irish permanent establishment to its head office or to a permanent establishment in another territory or transfers a business (including the assets of a business) carried on by an Irish permanent establishment to another territory, it will be deemed to have disposed of and immediately reacquired the assets at market value.

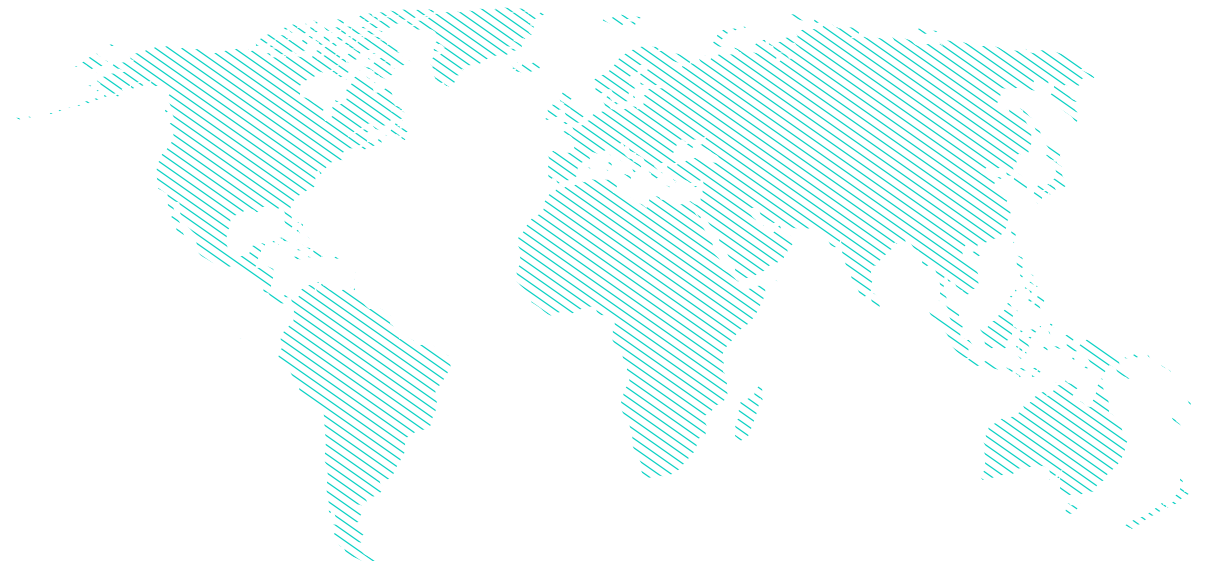
The deemed disposal and reacquisition will be regarded as a chargeable event giving rise to a chargeable gain (or loss), subject to tax at a rate of 12.5%. The charge will not apply where Ireland retains taxing rights on a subsequent disposal of the assets (i.e. where they remain within the charge to Irish tax).

#### Wide treaty network

Ireland has a wide network of treaty partners. Comprehensive double taxation agreements have been signed with 74 countries (see [page 18](#)), 73 of which are currently in effect. The agreements generally cover direct taxes, which in the case of Ireland includes income tax, corporation tax and capital gains tax.

## List of 74 countries with which Ireland has signed a Double Taxation Agreement as at 1 March 2021

(of which 73 are currently in force)



Albania	Canada	France	Japan	Moldova	Romania	Thailand
Armenia	Chile	Georgia	Kazakhstan	Montenegro	Russia	Turkey
Australia	China	Germany	Korea	Morocco	Saudi Arabia	Ukraine
Austria	Croatia	Ghana	Kuwait	Netherlands	Serbia	United Arab Emirates
Bahrain	Cyprus	Greece	Latvia	New Zealand	Singapore	United Kingdom
Belarus	Czech Republic	Hong Kong	Lithuania	Norway	Slovak Republic	United States
Belgium	Denmark	Hungary	Luxembourg	Pakistan	Slovenia	Uzbekistan
Bosnia & Herzegovina	Egypt	Iceland	Macedonia	Panama	South Africa	Vietnam
Botswana	Estonia	India	Malaysia	Poland	Spain	Zambia
Bulgaria	Ethiopia	Israel	Malta	Portugal	Sweden	
	Finland	Italy	Mexico	Qatar	Switzerland	





### Personal taxation

The tax treatment of an individual depends on whether the individual is considered resident, ordinary resident and/or domiciled in Ireland. Broadly speaking, an individual is “resident” in Ireland if he/she spends 183 days in Ireland in a calendar year. A “day” refers to presence at any time during the day. An individual is ordinarily resident in Ireland where he has been resident in Ireland for each of the three preceding years. Domicile is broadly speaking the individual's natural home unless a new domicile is acquired.

### Taxation of employees – operating payroll taxes

Employment income is subject to a system known as Pay As You Earn (PAYE) which provides for the deduction at source by an employer of employee taxes i.e. income tax, the Universal Social Charge (USC) and Pay Related Social Insurance (PRSI), on that income.

**Income tax** is charged at two rates. For the tax year 2021, the standard rate is 20% and the higher rate is 40%. The amounts (in Euro) beyond which the higher rate is relevant are as follows:

	€
Single Person	35,300
Married Couple (one earner)	44,300
Married couple (two earners)	70,600

**USC** is payable on gross income of individuals in addition to income tax. For the year 2021 the following rates apply:

€	%
First 12,012	0.5
Next 8,472	2
Next 49,560	4.5
Remainder	8

**PRSI** contributions in respect of employed individuals are paid partly by the employer and partly by the employee as follows:

PRSI	€
Employer	11.05
Employee	4

### Taxation of employees - special assignment relief programme

An employee assigned to work in Ireland by their existing employer for a period of at least one year may be entitled, subject to certain conditions being satisfied, to claim a deduction from their employment income tax liability under the Special Assignee Relief Programme (SARP).

The purpose of SARP is to attract mobile talent by reducing the equalization cost to companies of assigning skilled individuals and key decision makers from abroad to take up positions in Ireland. SARP offers relief from income tax on 30% of the employee's income between €75,000 and €1,000,000.





## Personal tax implications of residence and domicile

Resident	Ordinarily resident	Domiciled	Liable to Irish income tax on
Yes	Yes/No	Yes	Worldwide income
Yes	Yes/No	No	Irish source income; foreign employment income to the extent duties of the employment are performed in Ireland; and other foreign income to the extent that it is remitted into Ireland.
No	Yes	Yes	Worldwide income with the exception of: income from a trade or profession no part of which is carried on in Ireland; income from an office or employment, all the duties of which are carried on outside Ireland (apart from incidental duties); and other foreign income, provided that it does not exceed €3,810.
No	Yes	No	Irish source income and foreign income to the extent it is remitted to Ireland. Income from the following sources is not liable to Irish income tax, even if remitted to Ireland: income from a trade or profession no part of which is carried on in Ireland; income from an office or employment, all the duties of which are carried on outside Ireland (apart from incidental duties); and other foreign income, provided that it does not exceed €3,810.
No	No	Yes/No	Irish source income and income from a trade, profession or employment exercised in Ireland.

## Other taxes

### Stamp duty and capital duty

Stamp duty applies to documents implementing certain transactions and is payable within 30 days of signing. Broadly speaking, transfers of non-residential property are subject to stamp duty at 7.5% while transfers of Irish shares are subject to stamp duty charged at 1%. There are exemptions from stamp duty in certain cases, including for qualifying IP and certain financial instruments while various reliefs apply in the case of company reconstructions and intra-group transfers. There is no capital duty on the issue of shares by an Irish company.

### Capital Gains Tax (CGT)

Irish tax resident companies are subject to tax on their chargeable gains while non-Irish tax resident companies are outside the scope of Irish CGT except on the disposal of certain specified assets (e.g. Irish real estate). The current rate of CGT is 33% and broadly applies to the difference between the sale proceeds and acquisition costs. In certain circumstances, such as transactions between connected parties, market value attribution rules will apply to deem the disposal to be for a consideration equal to the market value of the asset. There are various reliefs from CGT on the transfer of assets intra-group and in the context of company reconstructions and mergers.



**Value Added Tax (VAT)**

VAT applies to the supply of goods and services by businesses and to the importation of goods into Ireland. The standard rate is currently 23% but a broad range of goods and services benefit from lower rates (currently 13.5% and 9%), zero rating and exemption. There is a relatively broad application of exemption to outsourced services in the financial services industry which is particularly important. VAT group registration is also available and widely used in the financial services industry in particular.

**Capital Acquisition Tax (CAT)**

CAT arises in instances where individuals become beneficially entitled to property, either by way of a gift or inheritance. The charge generally arises where

- the donor (giver) is resident or ordinarily resident in Ireland
- the donee (recipient) is resident or ordinarily resident in Ireland or
- the subject matter of the gift or inheritance is situated in Ireland. Special rules apply to non-domiciled donors and donees. The CAT rate is currently 33% and is applied above certain tax free thresholds. Where CGT and CAT arise on the same event, a credit may be available in respect of the CAT liability.

**Customs duty**

Intra-EU transfers of goods are free of customs duties. Goods imported from outside the EU may be subject to customs duty, the rate of which can depend on various factors including the tariff classification of the goods and their origin, this can include importation of goods from the UK, subject to the appropriate rules of origin

# 04

## Employee relations



Irish labor law is broadly shaped by the laws of the European Union. Generally, Ireland implements European legislation on a “minimum standards” basis which means Irish labor laws are more flexible than other European countries

Employers in Ireland enjoy broad freedom of contract with limited statutory requirements relating to minimum wage, vacation entitlements, maximum working hours and rest breaks. Legislative protection is afforded to employees in the areas of dismissals and redundancies.

Employees who perform their role in Ireland are afforded the protections of the mandatory laws of Ireland, notwithstanding the choice of law which governs their employment contract.

The Workplace Relations Commission (the **WRC**) is the body responsible for adjudicating the majority of employment law disputes in Ireland. It is a two-tiered system – all employment complaints are dealt with by an Adjudication Officer in the first instance, with a right of appeal to a three member Labour Court. There is no provision for awarding costs to the successful party, and accordingly parties to all employment complaints at the WRC bear their own costs.

The WRC provides a mediation service to any complaint which the WRC deems may be capable of resolution. Each party to a complaint has an absolute right to object to mediation being used.



The form of mediation used depends on the nature of the complaint, the parties and the mediation officer; however, in general it is done either by a series of phone calls or a mediation hearing.

The Irish Constitution also informs Irish employment law. All employees have a constitutional right that the procedures followed in an employment matter are applied fairly and in accordance with natural justice. Additionally, every individual has a constitutional right to join a union of their choice. However, there is no obligation on employers to “recognize” trade unions and employers are not required to enter into negotiations or agreements with trade unions in relation to their employees. It is for this reason that many US corporations in Ireland do not have unionized employees.

## The regulation of the employment relationship

Employment law in Ireland is regulated by a combination of Irish and European Union laws. Some of the most important of these are as follows:

<b>Written contract of employment</b>	Employers are obliged to provide a written statement of relevant and important work information (such as identity of employer, working hours, salary, benefits and duties of employment) within a specified timeframe. Most employers comply with this requirement by incorporating the required terms and conditions into the employee’s contract of employment.
<b>Maximum working week</b>	48 hour maximum average working week, calculated over a reference period of four months.
<b>Vacation entitlements</b>	Employees accrue paid vacation based on time actually worked, subject to a statutory minimum of four working weeks (20 days) for full-time employees. Employees are also entitled to a paid day off or an additional day’s pay in respect of Irish public holidays (currently nine in total).
<b>Protected leave</b>	<p>Ireland provides for statutory leave in a number of situations. While employers are not obliged to pay employees during maternity, adoptive or paternity leaves, many do pay basic salary (less the State benefit) during all or part of the basic portion of the leave, depending on the industry.</p> <p><b>Maternity Leave</b> - 26 weeks’ basic leave, with an option to take an additional 16 weeks’ unpaid leave (giving a total entitlement of 42 weeks’ maternity leave). A State maternity benefit payment is payable by the Department of Employment Affairs &amp; Social Protection during the 26 weeks basic leave. The payment is currently capped at €245 per week.</p> <p><b>Adoptive Leave</b> - 24 weeks’ basic leave, with an option to take an additional 16 weeks’ unpaid leave (giving a total entitlement of 40 weeks’ adoptive leave). A State adoptive leave benefit payment is payable by the Department of Employment Affairs &amp; Social Protection during the 24 weeks basic leave. The payment is currently capped at €245 per week.</p> <p><b>Paternity Leave</b> - two weeks’ leave. A State paternity benefit payment is payable by the Department of Employment Affairs &amp; Social Protection for the two weeks’ leave. This payment is currently capped at €245 per week.</p> <p><b>Carer’s Leave</b> - 104 weeks’ unpaid leave. Available to employees with over one year’s service to take care of a “relevant person”. Eligibility to take the leave is strictly subject to the Department of Employment Affairs &amp; Social Protection formally approving the employee’s application to take the leave.</p> <p><b>Parental Leave</b> - 22 weeks unpaid leave. Available to employees with over one year’s service to take care of a child in respect of whom they are the natural or adoptive parent or in loco parentis. In most cases the child must be under 12 years old. The leave must be taken in blocks of at least six weeks (unless employer consents to taking the leave in less than six week blocks).</p> <p><b>Parent’s Leave</b> – two weeks’ leave. Available to employees during the first year of their child’s birth or adoption. A state parent’s benefit is available from the Department of Employment Affairs &amp; Social Protection, which is currently capped at €245 per week.</p>

## Employment equality

Irish legislation prohibits discrimination in relation to access to employment, promotional opportunities, equal pay, working conditions, training or experience, dismissal and harassment (including sexual harassment) on any of the following grounds: sex, civil status, religion, age, race, disability, family status, sexual orientation and membership of the Traveller Community (the **Protected Grounds**).

Discrimination is defined as treating one person in a less favorable way than another person based on any of the Protected Grounds and exposes the employer to a potential claim under the Employment Equality legislation, irrespective of whether the individual becomes an employee. Irish law protects employees from direct discrimination, indirect discrimination, harassment and victimization.

## Transfer of undertakings (commonly referred to as TUPE)

The Transfer Regulations (or **TUPE**) can be a relevant consideration for parties to a business sale, acquisition, reorganization, restructuring or outsourcing.

Broadly speaking, if TUPE applies to an acquisition of a business (or part of a business), it transfers the employees of that business from one employer to the other (generally from the seller to the buyer). The employees of that business transfer on their existing terms and conditions (with a limited exception in relation to pensions), with their accrued service preserved, and also with the benefit of any collective agreement which was in force immediately prior to the transfer. In addition to the above, all pre-existing liabilities also transfer with any transferring employees.

TUPE will only apply where there is transfer of a business (or a distinct part of a business), from one employer to another (as a result of a legal transfer or merger), and the transferring business retains its identity following the transfer. By way of example, TUPE would not apply to the acquisition of a business by way of share sale, because there would be no change to the employing entity.

If TUPE applies, both parties are obliged to inform the employees affected by the transfer. Consultation obligations arise where measures are envisaged in relation to the employees.

If TUPE applies, all dismissals connected to the transfer are deemed to be unfair. However, a buyer is permitted to reduce the workforce (as required) post-transfer, if it can demonstrate that the dismissals are for economic, technical or organizational reasons (commonly referred to as the ETO Defense).



## Notice of termination

Employees are statutorily obliged to give an employer a minimum of one week's notice of termination, and employers are obliged to provide an employee with a minimum notice of termination (ranging from one week to eight weeks) depending on the employee's length of service.

However, in practice, most employers in Ireland provide for longer notice provisions in the contract of employment. The length of notice generally depends on the employee's role, seniority and the length of time it would take the employer to replace the individual. In addition to providing longer notice provisions in the contract, employers also often reserve the right to pay in lieu of notice, and to put the employee on garden leave in the event that notice is served by either party.

In circumstances of gross misconduct, the employee may be summarily dismissed without notice, following a disciplinary process.

## Unfair dismissal

"Employment at will" does not exist as a concept in Ireland and employees are protected against dismissal without cause. A dismissal is unfair, unless an employer can prove that it was fair. For further information, see the "Termination of Employment" section on the [next page](#).

## Redundancy/severance

Irish legislation provides specific protection for employees, where their position ceases to exist and they are not replaced. It mainly covers situations where there is a reduction in the number of employees in a business. However, it may also include a reorganization or restructuring, where the duties of an employee are to be undertaken by other employees, or transferred to other teams. In cases of redundancy, it is vital that a genuine and valid redundancy situation exists, and that any selection process is fair.

The specific statutory rights for employees being made redundant are as follows:

- an entitlement to statutory redundancy pay (calculated on the basis of two weeks' pay per year of service plus one weeks' bonus pay (a week's pay is capped at €600)) provided the employee has two years continuous service
- paid time off to look for alternative employment or arrange training

Depending on the industry, employers may pay enhanced severance terms, subject to the employees signing waiver agreements, however this is not mandatory.

## Collective redundancy

Where a "collective redundancy" situation arises, specific statutory consultation obligations and notifications to the Minister for Employment Affairs and Social Protection and to the employees are triggered for the employer. These obligations and notification requirements apply to employers with a workforce of 21 employees or more.

A "collective redundancy" is one that involves making a specified number of employees redundant (i.e. at least five) within a 30 consecutive day period. A failure to comply with the notification and consultation requirements is very serious and could result in substantial penalties.

## Consultation

As a result of our European Union membership, Ireland has implemented legislation imposing obligations on employers to consult with its employees in the situations set out below – the first two scenarios are the most common situations that require employers in Ireland to consult with their employees.

- **TUPE** – as noted previously, where TUPE applies, the transferor and transferee in the context of a business transfer must inform (and in certain situations consult with) representatives of the employees that are affected by the transfer.
- **Redundancy** – as noted previously, employers must consult with employees in all redundancy situations (both collective redundancies and individual redundancies). Employers are required to consult on the proposal to restructure the role (or make the required reductions in the workforce), prior to making a final decision in relation to the redundancy of that role. This is on the basis that employers must act in a reasonable manner and follow fair procedures in relation to any dismissal, including a redundancy. As part of the consultation, employers should also consider any alternative roles which might be available and consult with employees about such alternative roles before making a final decision in relation to redundancy.
- **European Works Councils** – multinational organizations which employ at least 1,000 employees throughout the EU, of which at least 150 are employed in each of two EU member states, may be required to establish European Works Councils to inform and consult on a

range of management issues relating to transnational developments within the organization.

- **Request to consult** – a business employing at least 50 employees is required to put in place a process to inform and consult with its employees where such a request to do so is made by 10% of employees (subject to a minimum of 15 and a maximum of 100 employees – the “employee threshold”).

## Termination of employment

Dismissal of employees is regulated by statute and the employment contract. All employers are obliged to have in place a disciplinary procedure setting out the steps to be followed by an employer in dealing with issues of concern such as conduct and performance. The procedure must be fair and allow not only for the employer to bring issues of concern to the attention of the employee, but also for the employee to defend him or herself before any decision is made as to disciplinary action. Failure to follow fair procedures, and/or establish a fair reason for dismissal, may lead to a finding of unfair dismissal against the employer notwithstanding the giving of notice of termination.

The primary piece of legislation governing the dismissal of staff is the Unfair Dismissals Acts 1977 – 2015 (the **Unfair Dismissal Acts**). The Unfair Dismissal Acts provide that every dismissal is deemed to be unfair unless it is based on one of the fair grounds for dismissal:

- |                           |   |
|---------------------------|---|
| 1. capability             | 5. competence of the employee                         |
| 2. conduct                | 6. statutory prohibition                              |
| 3. qualification          | 7. some other substantial reason justifying dismissal |
| 4. redundancy of the role |   |

The Unfair Dismissal Acts provide that the onus is on the employer to show that not only was the dismissal for a fair

reason, but also that fair procedures are followed in effecting the dismissal. The extent of fair procedures to be followed will depend on the circumstances and the reason for effecting the dismissal.

Subject to a number of limited exceptions, the Unfair Dismissal Acts apply only to employees who have at least one year’s service.

Employees may bring a claim for discriminatory dismissal under the Employment Equality Acts where their dismissal is connected with one of the nine Protected Grounds (see [page 23](#)). There is no minimum service pre-requisite to bring this claim.

The maximum compensation available under the Unfair Dismissal Acts is (i) two years’ remuneration (or five years’ remuneration in the case of dismissal connected to whistleblowing); (ii) re-engagement; or (iii) re-instatement.

As an alternative to a statutory unfair dismissal claim, an employee may also take a wrongful dismissal action in relation to a breach of contractual rights. Wrongful dismissal is an action at common law which is taken by an employee in circumstances where a contract is terminated by the employer and the employer fails to comply with an express or an implied term in the employee’s contract of employment.

Damages would usually be something in the order of what the employee would have been entitled to had the contract not been unlawfully terminated.

In Ireland there is also a risk of an employee applying to the High Court for an employment injunction, often to prohibit their employer suspending, dismissing or otherwise disciplining them on the basis that fair process and/or natural justice has not been afforded to the employee. The costs of defending such an injunction can be very high, with the potential for costs awards being made against the unsuccessful party.



## Protected Disclosures Act 2014

The Protected Disclosures Act 2014 (the **Protected Disclosure Act**) introduced pan-sectoral whistleblowing protection for the first time in Ireland. The Protected Disclosure Act applies to a wide variety of workers, including employees, contractors, agency workers, and members of the Garda Síochána (the Irish police force). The legislation promotes the disclosure of information relating to wrongdoing in the workplace by offering protection for all workers from penalization in circumstances where they make a protected disclosure. “Relevant wrongdoings” is broadly defined by the legislation and includes the commission of an offence, a miscarriage of justice and non-compliance with a legal obligation which comes to their attention in the workplace.

## Equity incentives

Equity incentives are a well-established means of compensating employees in Ireland. Many multinationals are able to extend their existing plans into Ireland without having to make many changes to the key terms. Market practice concerning equity incentives in Ireland is strongly influenced by international

trends, particularly US and UK practice. Practice can also vary by sector e.g. banking and financial institutions have curtailed cash-based bonuses and are using more share based arrangements with elements of deferral and forfeiture.

Options or other conditional rights to acquire shares in a company (such as restricted stock units or “RSUs”) are the most common means by which senior management equity incentives are structured in Ireland. Equity in the form of shares remains an attractive proposition for companies compared to cash due to the fact that share-based compensation, where the shares are in the employer or a company controlling the employer, remains exempt from employer social security charges (**PRSI**). This results in a saving of 11.05%. However, tax legislation offers only limited opportunities to minimize the employee’s exposure to income-based charges (income tax, universal social charge, employee PRSI) where incentives are awarded on a discretionary basis. There are some tax efficient schemes set out in legislation, but these must be available to all employees, or are limited to small unquoted companies.

Given the limited scope to avail of statutory tax reliefs for executive schemes, other structures have evolved that aim to minimize tax by bringing the value delivered into the Capital Gains Tax regime. Ireland’s Capital Gains Tax rate (currently 33%) compares favorably to the charge on income (up to 52% for employees).

## Pension, death and disability benefits

Outside of any contractual commitments, there is currently no legal obligation on an employer to establish a pension plan for employees based in Ireland. There is also no obligation to provide death or disability benefits. However, the Government has indicated its intention to legislate for auto-enrolment to private occupational pension plans (under

which it is likely that an employer would have a statutory obligation to make contributions). No implementation date has yet been set and it is unclear what the contribution rate might be. Under the Irish Pensions Act 1990, where an employer does not provide an occupational pension plan or, where it provides a plan but (i) eligibility for that plan is limited; or (ii) the waiting period for entry exceeds six months; or (iii) the plan does not allow for payment of additional voluntary contributions by employees, the employer must provide access to a standard personal retirement savings account (**PRSA**). PRSAs are available from life offices, banks and investment firms. There is no obligation on an employer to pay contributions to a PRSA.

Occupational pension plans are often established voluntarily by employers and may be established on a defined benefit or defined contribution basis. Defined contribution pension plans are now more common as the benefits provided under such plans are determined by the amount of contributions paid in, investment return achieved and annuity rates at retirement. Unlike defined benefit pension plans, there is no guarantee as to a specific level of retirement benefit and so no funding liability for an employer can arise beyond the obligation to pay contributions at the prescribed rate. Occupational pension plans are nearly always established under trust in order to be capable of approval by the Irish Revenue Commissioners, conferring significant tax advantages for the sponsoring employer and the employees.

In addition, larger employers often provide employees with death in service and disability benefits. In order to provide lump sum death in service benefits in a tax efficient manner a trust structure is required and, for this reason, they are often provided as part of an occupational pension plan. Disability benefits, however, are provided through separate long term disability arrangements. In both cases, the benefits are usually insured with a life office.



An EEA national may work in Ireland without any need for a work permit. For non-EEA nationals, there are a number of options available.

Subject to limited exceptions, non-EEA nationals require an Employment Permit from the Department of Enterprise, Trade, and Employment (**DETE**) before commencing employment in Ireland. There are nine different types of permits which may be applied for depending on the type of employment involved.

We have set out below a high level summary of the most popular forms of permits:

- 1. Critical skills permit** - reserved for employment in highly skilled roles or occupations where there is a perceived skills shortage in Ireland, with the aim of encouraging permanent residency. Eligible occupations include ICT professionals, engineers, scientists, health professionals, accountants, management consultants etc. Eligibility for such a permit requires the following: (i) a job offer of at least two years; and (ii) an annual salary of €64,000 or more (salaries between €32,000 and €64,000 may be accepted for roles on the DETE's critical skills occupations list and where the individual holds a relevant degree qualification or higher).

A critical skills permit is valid for two years, and on expiration, the employee may apply for "Stamp 4" permission to remain and work in the State without an employment permit. This permission is renewable on an annual basis. Once the individual has legally resided in Ireland for five years, they may then be eligible to apply for Irish citizenship.

Spouses and partners of critical skills permit holders have an automatic right to work in Ireland.





2. **Intra-company transfer employment permits** - key staff and management, as well as qualifying trainees, of a multinational company can be temporarily transferred to an Irish branch of the company with this permit.
3. **General employment permit** - this may be used where the role in question fails to satisfy the criteria for a Critical Skills Employment Permit. However, applications for this permit can be subject to delay as roles must be advertised in a specific manner for 28 days in advance of a permit application as part of a “labour market means test”.
4. **Contract for services employment permits** - this enables the transfer of non-EEA employees to work in Ireland whilst remaining employed under their contract of employment outside of the State.
5. **Internship employment permits** - this permit is available to full time students, enrolled in third level education outside of the State, who are required to undertake an internship or work experience in Ireland as part of their course.

Legally resident dependents, spouses or partners of employees with permits may also apply for specific employment permits to allow them work in Ireland.

### Application process

The employer or the employee can apply for a permit by submitting the appropriate completed application form (including a signed contract) together with supporting documentation and appropriate fees. Fees for employment permits vary but are generally €1,000 for a 24-month permit and €500 for a six-month permit.

### Visas

In addition to the requirement to hold an employment permit, certain non-EEA nationals may also require an entry visa before entering Ireland. This cannot be applied for until the individual has secured their employment permit (as necessary).

### Trusted Partner Initiative

Employment permits are ordinarily processed within two to six weeks of application. However, where employers are likely to require multiple work permits, it is possible to sign up for a fast-track scheme, known as the Trusted Partner Initiative. For employers with “Trusted Partner” status, processing time is reduced to approximately one to four weeks



Like the US, Irish real estate law derives from and is largely similar to English real estate law. The law in Ireland was modernized with the enactment of the Land and Conveyancing Law Reform Act 2009.

### Nature of ownership

Property in Ireland is generally held under either freehold title or long leasehold title.

A freehold title amounts to absolute ownership of the land and all of the buildings on the land.

A long leasehold title confers ownership for the period of years granted by a lease and in Ireland leases for terms of anywhere from 200 years to 999 years are common. The leasehold interest of a tenant is derived from the superior interest of the landlord (which may be freehold or a superior leasehold interest) and this interest is subject to the rent, covenants and the conditions contained in the lease. The rent reserved under long leases is generally nominal in nature and frequently not demanded – reflecting the fact that the economic interest of a party holding a long leasehold interest in a property is for all intents and purposes the same economic interest as that held by a freehold owner.





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### Foreign ownership

There are no legal restrictions on the ownership or leasing of real estate by non-resident entities in this jurisdiction. However, professional service firms (including lawyers and real estate agents) in Ireland are required to carry out standard anti-money laundering checks prior to commencing work for new clients, whether the entity is domestic or foreign.

Where a foreign company is party to a property transaction, a legal opinion may also be required from local counsel in the jurisdiction of that company confirming, for example, that the transaction documents have been correctly executed by the company in accordance with the laws of its jurisdiction of incorporation.

### To buy or to let?

The majority of inward investment projects will require the acquisition of commercial real estate and the main decision to be made is whether to purchase a property or alternatively seek to enter into a lease. Occupiers will obviously often prefer to lease an office building or floors within a building rather than purchase the building as leasing provides greater flexibility. There is also increasing availability of co-working space in the larger urban areas – where space can be licensed from WeWork and similar operators.

### Process for leasing commercial real estate

The process for leasing commercial real estate in Ireland is similar to that in the UK. Commercial agents acting for the landlord and the tenant will agree heads of terms which will document the parties to the lease, the annual rent, the term (including any break option) and any other points which have been commercially agreed. Lease terms vary depending on the

nature of the property, the availability of suitable space and the bargaining power of the parties. A brief summary of some of main points are set out below:

- The term of the lease will vary and could be for up to 20 years. Typically, lease terms in Ireland have been longer than those in Europe but there has been a downward trend.
  - Tenants will often seek to negotiate break options into a lease which provide the tenant with an ability to terminate the lease early. This right can either be on one or more fixed dates or on a rolling basis and may be subject to certain conditions. The conditions in the break option should be carefully negotiated by the tenant to avoid difficulties when exercising the break option.
  - Most commercial leases in Ireland are on an FRI (full repairing and insuring) basis, which means that the tenant will be subject to full repairing obligations. These obligations will be imposed directly by a repairing covenant entered into by the tenant or, in the case of a multi-let development indirectly through the payment of a service charge.
- This will include reimbursing the landlord for repair work to the structure and common areas of the development. In the case of recently developed property, the landlord may provide the tenant with collateral warranties to address concerns regarding design and construction defects.
- Tenants are responsible for the payment of rent and all outgoings in respect of the property during the term of the lease including local authority rates, insurance and service charges (if applicable). Depending on the nature of the property, tenants may be offered incentives to enter into the lease such as a rent-free period or a contribution from the landlord towards the cost of the tenant's fit-out works.





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- Typically, if the lease is for a term of over five years, one would expect to see provisions dealing with the review of the annual rent payable at five year intervals in a lease. While historically Irish leases contained rent review provisions on an “upwards only” basis, the Irish Government introduced legislation in 2009 which rendered ineffective the “upwards only” element of any rent review provision in a lease. For leases entered into after 28 February 2010 the rent is usually reviewed to open market rental value at the time of the review on an upwards/downwards basis. However, if taking an assignment of a pre-2009 lease, the incoming tenant may still be bound by existing “upwards only” rent review provisions.
- There is a specific Irish statutory provision which provides that a landlord cannot unreasonably withhold consent to a tenant applying for consent to assign its lease to a third party. The tenant must, however, prove that the proposed covenant is sufficient to pay the rent and other outgoings under the lease.
- A commercial tenant that has been in continuous occupation for a minimum of five years has a statutory right to a new tenancy (subject to certain exclusions

which would include planning permission of the landlord to rebuild or reconstruct the premises). The statutory right to a new tenancy applies to all commercial property. However, contracting out is permitted and landlords often make it a pre-condition for relatively short term leases

- There is a register in Ireland which contains details of commercial lease terms. Tenants who have entered into commercial leases on or after 1 January 2010 must submit information to the commercial lease register which is operated by the Property Services Regulatory Authority. This register contains details of the annual rent payable under the lease and other key details such as information regarding rent reviews, capital contributions and rent-free periods.

### Process for purchasing commercial real estate

The process for purchasing commercial real estate is also similar to that in the UK. Ireland was deemed to have had the eight most transparent real estate market in the world and fourth most transparent in Europe according to the JLL Global Real Estate Transparency Index 2020. Ireland scored particularly highly in the “Transaction Process” category finishing in joint 1st place in Europe.

As is the case with commercial letting, the commercial property agents employed by the vendor and purchaser will agree commercial terms for the purchase of the property at the outset. Once the heads of terms, including the purchase price have been agreed, this document (which should be “expressly stated” to be non-binding and subject to contract) will subsequently form the basis of a separate and legally enforceable contract for sale which the parties will enter into for the sale of the property. The Law Society of Ireland has a standard form Contract for Sale which is widely used to cover the general contractual terms. The parties then agree special conditions which cater for the specific issues affecting the particular property.

The lawyer acting for the vendor is responsible for drafting the Contract for Sale and must also deal with any pre-contract due diligence enquiries. A 10% deposit is typically paid by a purchaser when signing contracts and, once contracts have been exchanged, the sale will usually complete within a few weeks. On the closing date, the balance of the purchase price is payable and the purchase deed is executed by the vendor which transfers title to the purchaser.

The parties should also account for the possibility that the purchaser may need to make a notification to the Competition and Consumer Protection Commission (the **CCPC**). Such an application is required in circumstances where a transaction involves the acquisition of an asset that constitutes a business to which a turnover (which includes rental income from a commercial property) is attributable. The below thresholds must first be satisfied before this mandatory obligation is triggered:

- aggregate turnover in Ireland of the companies involved is not less than €60m
- annual turnover in Ireland of each of the companies involved is not less than €10m

In 2019, the CCPC notification process took on average 25 working days before clearance was received (in cases where there were no issues). However, clearance can take longer in more complex cases (e.g. up to 120 working days or more) if, for example, the CCPC requests additional information.

It is standard practice for commercial properties to be sold without any warranties being provided as to the state and condition of the property or compliance with planning and environmental laws. In all cases, it is advisable for a purchaser to have a building survey carried out before signing contracts and, depending on the nature of the property, it may also be necessary to have planning and environmental issues investigated and reported on.





# 06

Real estate, planning and  
environmental

### Private Residential Sector

The Private Residential Sector (**PRS**) has experienced significant growth. PRS accounted for 44% of all commercial property transactions in the Irish market in 2019 with 2.36 billion euros invested in PRS (according to analysis by agent Hooke & MacDonald).

Transaction arch-types within this sector range from (i) portfolio acquisition of existing apartment/housing stock, (ii) mixed use and (iii) build-to-rent developments. Key considerations for this area (amongst others) include:

**Security of Tenure:** A tenant who has been in occupation for more than 6 months will have security of tenure. Tenants will have security of tenure for 4 years if a tenancy was created prior to 24 December 2016 or 6 years for tenancies created after that date (each, a Part 4 Tenancy). Parties cannot contract out of these legislative provisions but a landlord can terminate a Part 4 Tenancy in certain limited scenarios where certain specified grounds are met and the requisite notice is served on the tenant.

**Rental Controls:** The Irish Government has introduced rental controls for areas designated as a rent pressure zone (**RPZ**). If an area is designated as a RPZ, the rents within that area cannot be increased by more than 4% per annum for both existing and new residential lettings. These classifications are subject to certain very limited exemptions.

### Green leases

“Green leases” have become more common in the Irish market. In certain cases, standard commercial leases are being modified to include specific “green clauses”. Under these “green clauses”, the landlord and tenant agree (amongst other things) to co-operate in the monitoring and management of

utilities consumed and waste generated in the building with a view to the parties improving the energy efficiency of the building and benefitting from the consequent savings.

Many new office developments in Ireland are now being constructed in line with internationally recognised environmental standards. Buildings which have been developed to meet certain environmental standards may be granted environmental certifications such as the Building Research Establishment Environmental Assessment Method (**BREEAM**) and the Leadership in Energy and Environmental Design (**LEED**) certifications which we are seeing in the market (particularly for new build/refurbished properties). These certificates are an attractive offering for certain multinational companies which are bound by internal policies requiring them to minimize the company's footprint on the environment.

### Planning & building control

Any material change of use of property or construction on land must have permission from the local authority or the planning appeals board (**An Bord Pleanála**). Certain specified changes of use and limited forms of development are exempted.

Applications for planning permission are made to the local authority in the first instance. The application is available to the public for the purposes of receiving observations and submissions.

The applicant can appeal a refusal of permission and objectors can appeal a grant of permission to An Bord Pleanála. The legality (but not the planning merits) of planning decisions can be challenged in the High Court.

Several fast track procedures exist for strategically important developments: Parts of the State are designated “Strategic Development Zones (**SDZ**).” In these areas, the planning

authority must put in place a plan that prescribes in detail the development it envisages within the SDZ. The plan is subject to consultation. Once it is made, any member of the public, including any developer, not satisfied with the plan can appeal it (in whole or in part) to An Bord Pleanála. Where a plan is in force, the planning authority's usual discretion is curtailed. It must grant permission for any development that is consistent with the plan. There is no appeal to An Bord Pleanála for a grant or refusal of permission in an SDZ.

Applications for permission for certain large scale infrastructure developments must be made directly to An Bord Pleanála if certain criteria are satisfied. The developer is obliged to consult with An Bord Pleanála before applying for permission for any such development. An Bord Pleanála will consider whether the development would:

- be of strategic economic or social importance to the State or affected region
- contribute substantially to the fulfilment of any of the objectives in the National Planning
- Framework or any regional spatial and economic strategy affecting the area
- have a significant effect on the area of more than one local authority

If An Bord Pleanála is of the opinion that it would, the developer must apply directly to An Bord Pleanála for permission. If An Bord Pleanála is not of that opinion, the application must go to the local authority in the usual way.

Applications for permission for 100 residential units or 200 student bed spaces can also be made directly to An Bord Pleanála if certain criteria are satisfied. The developer is obliged to consult with An Bord Pleanála before applying for permission for any such development. An Bord Pleanála will review all of the proposed planning application documents. If it is of the opinion that the documents constitute a reasonable basis for an application, the application may be made directly to An Bord Pleanála. If it is not of that opinion, the developer will, as a matter of practice, revise the documents and reapply.

The developer must obtain an Opinion on Compliance from the architect or engineer who was responsible for overseeing the development upon completion of works pursuant to planning permission as a system of self-certification applies.

When buying or leasing a property in Ireland, it is important to obtain satisfactory evidence of compliance with planning permission and building regulations regarding the construction of the property and any significant post-construction works. Unlike the UK, there is no statutory

planning register which can be checked in isolation in order to verify that a building has been constructed in accordance with the relevant planning permission(s).

Building control regulations regulate the design and construction of buildings, their material alteration and extension, their services, fittings and equipment and certain material changes in use. They deal with, among other things, health, safety and welfare of users, accessibility for disabled persons and energy efficiency. Fire Safety Certificates and Disability Access Certificates must be obtained from the Building Control Authority in respect of the design of works before they commence. Once the relevant works have been completed the developer must obtain a Certificate of Compliance on Completion from an Assigned Certifier in order to verify that the works comply with building regulations. This certificate must be registered in the national Building Control Management System.



## Taxation

### Stamp duty

Stamp duty must be paid on instruments which result in the transfer of ownership of property. The current rates are:

- 1% of the consideration chargeable up to €1m euro and 2% for any consideration above €1m for transfers of residential property and
- 7.5% of the consideration chargeable for transfers of commercial property (with a refund entitlement which can potentially reduce the 7.5% rate to 2% where residential development, which satisfies certain conditions, occurs on development land within a specific timeframe).

Stamp duty is also payable on occupational leases and it is charged at 1% of the average annual rent (where the term of the lease does not exceed 35 years).

The 7.5% commercial property stamp duty rate also applies to certain transfers of shares (or the relevant equivalent interest) in companies (both Irish and non-Irish), funds and partnerships, where:

- the shares of such entities derive the greater part of their value from Irish immovable non-residential property; and
  - » a result of the transfer is to change the person or persons having direct or indirect control over the Irish
- immovable non-residential property and
- it would be reasonable to consider that the immoveable property concerned: (i) was acquired with the sole or main object of realising a gain from its disposal, (ii) is/was being developed with the sole or main object of realising a gain from its disposal when developed, or (iii) was held as trading stock.

### Value Added Tax (VAT)

VAT is a tax which applies to the supply of goods and the provision of services. The former includes the sale of property and the latter includes the letting of property.

Special VAT rules apply to property transactions and in very broad terms these can be summarized as follows:

- the sale of property regarded as “new” is subject to VAT at the low rate (currently 13.5%)
- the sale of property not regarded as “new” is not subject to VAT but the parties can opt for VAT to be applicable
- the letting of property is not subject to VAT but the landlord can opt for VAT to be applicable in which case VAT at the standard rate (currently 23%) applies to the rent.

The VAT treatment needs to be addressed in the contract for sale or letting agreement and the related provisions should clarify whether VAT is applicable and which party is responsible for bearing any related VAT costs.





Irish legislation gives significant protection to companies creating and managing their IP assets in Ireland. Patents, copyright, design rights and trade marks can be protected. The Commercial Court, a division of the Irish High Court, deals with major commercial and IP cases on an expedited basis and offers an effective way for businesses to enforce their IP rights.

### Patents

In order to be eligible for the grant of a valid patent, the invention must be new, involve an inventive step and be capable of industrial application.

Any person is entitled to make an application for a patent using the appropriate patent application form which must be submitted to the Intellectual Property Office of Ireland.

The owner of a registered patent is entitled to bring proceedings for the infringement of a patent if the patent is used by a third party without permission. Remedies available to the owner include an injunction to prevent the future use of the invention and an award of damages or an account of profits for infringement. Proceedings can be brought in the High Court, and either party can apply to have the proceedings entered into the Commercial Court.

Irish patents are valid for 20 years. Ireland also offers a “short-term” patent, valid for a maximum of ten years. To maintain a patent in force, annual renewal fees must be paid each year from the third year.



*In Ireland, there is no registration procedure for copyright works. Generally, the act of creating an original work creates the copyright.*

### Trade marks

A trade mark is any sign capable of being represented graphically which is capable of distinguishing the goods or services of one undertaking from those of other undertakings such as words, designs, logos, letters, numerals or the shape of goods or of their packaging.

To apply for an Irish trade mark, the appropriate trade mark application form should be completed and submitted to the Intellectual Property Office of Ireland

The owner of a valid Irish trade mark is entitled to bring proceedings for trade mark infringement in the Irish High Court and remedies available include injunctive relief to prevent the use of the trade mark and an award of damages. Either party to the proceedings can apply for the proceedings to be entered into the Commercial Court.

Registration is initially for a period of ten years from the date of registration but it can subsequently be renewed every ten years on payment of the renewal fee.

### Designs

A design is defined under Irish law to mean the appearance of the whole or a part of the product resulting from the features of the lines, contours, colours, shape, texture or materials of the product or its ornamentation. A design is protected by a design right to the extent that it is new and has individual character.

To apply for an Irish design, the design application form should be completed and submitted to the Intellectual Property Office of Ireland. Only the owner of the design can apply for a design registration. The owner can be the author of the design or the employer of the person who created the design, subject to any contract or agreement to the contrary.

An action for infringement of a design right may be brought in the High Court. The proceedings may be entered into the Commercial Court.

After registration of a design, protection is granted for five years. Protection can be renewed for four additional periods of five years each on payment of the renewal fee. If the design is not registered, the design is protected for three years from the date on which the design was first made available to the public.

### Copyright

Copyright protects original literary, dramatic, musical and artistic works, films and broadcasts, published editions of works, sound recordings, computer programs and databases.

A work is protected by copyright to the extent that the work is recorded in a certain form and to the extent that the work is original.

In Ireland, there is no registration procedure for copyright works. Generally, the act of creating an original work creates the copyright.

Remedies available for infringement of copyright include injunctive relief in order to prevent the unauthorised use of the protected work and an award of damages or an account of profits for infringement. The proceedings may be entered into the Commercial Court.

The duration of copyright protection varies according to the format of the work. For example, in the case of literary works, the duration will be 70 years after the death of the author of the work. However, in the case of broadcasts and the typographical arrangement of a published edition, the duration is 50 years from the date of first publication.

## E-commerce and Consumer Protection

The key legislation applicable in Ireland is as follows:

### Irish Acts

- Consumer Protection Acts 2007 to 2019 (**Consumer Protection Acts**)
- The Electronic Commerce Act 2000, as amended (**E-Commerce Act**)
- Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980, as amended (**Sale of Goods Acts**)

### Irish Regulations

- European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations 2015 (SI 343 of 2015) (**ADR Regulations**) and European Union (Online Dispute Resolution for Consumer Disputes) Regulations 2014 (SI 500/2015) (**ODR Regulations**), each as amended.
- The European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. 484 of 2013), as amended (**Distance Selling Regulations**).
- EC (Certain Aspects of the Sale of Consumer Goods and Associated Guarantees) Regulations 2003 (S.I. 11 of 2003) (**Consumer Guarantee Regulations 2003**).

- 'European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications Regulations 2011, (S.I. 336 of 2011), as amended (**e-Privacy Regulations**)).
- European Communities (Misleading Advertising and Comparative Marketing Communications Regulations 2007 (Misleading Advertising Regulations), (S.I. No. 774 of 2007), as amended (**Misleading Advertising Regulations**)).
- The European Communities (Directive 2000/31/EC) Regulations 2003, (S.I. 68 of 2003), as amended (**E-Commerce Regulations**).
- The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (S.I. 27 of 1995), as amended (**Unfair Terms Regulations**).

### European Law

- Regulation (EU) No. 910/2014 (**eIDAS Regulation**)

### Consumer Protection Acts or CPA

The CPA makes it an offence, resulting in a fine or a term of imprisonment (or both), for traders to engage in unfair, misleading or aggressive commercial practices which would cause the average consumer to make a transactional decision that they would not otherwise make. Examples of activities prohibited by the CPA include: misleading consumers as to price, characteristics and availability of a product; making false claims about products or services; displaying a quality standard or symbol without the necessary authorisation, or exercising aggression or undue influence so as to impair the average consumer's freedom of choice. The CPA also includes anti-pyramid scheme legislation, as well as specific rules on gift voucher expiration dates.

## The E-Commerce Act and the eIDAS Regulation

The E-Commerce Act 2000 provides for the legal recognition of electronic contracts and electronic signatures. It implemented the EU Electronic Signatures Directive 1999/93/EC (the **1999 Directive**), and some of the provisions of the E-Commerce Directive 2000/31/EC. The 1999 Directive was repealed by the eIDAS Regulation which came into force on 1 July 2016. The E-Commerce Act provides that (subject to certain exceptions), e-signatures have the same legal effect as 'wet-ink signatures'. The eIDAS Regulation similarly gives legal effect to the use of electronic signatures for the execution of documents but on an EU-wide basis and to better facilitate cross-border transactions. Due to the supremacy of EU law, where there is a conflict between the terms of the E-Commerce Act and the eIDAS Regulation, the eIDAS Regulation will take precedence. However, where the E-Commerce Act and the eIDAS Regulation differ and impose separate (rather than conflicting) requirements, both must be complied with.

### Sale of Goods Acts

The Sale of Goods Acts provide that a product must be "fit for a purpose", "as described" and "of merchantable quality". If a product sold does not fulfil these requirements, a consumer has the right to return it and to get a full refund, partial refund or repair of the product.

### ADR Regulations and ODR Regulations

The ADR Regulations and the ODR Regulations require that traders selling goods or services online must provide a link on their websites to the European Commission's online dispute resolution platform. Traders must also include their email address on their website so that consumers have a first point of contact in the event of a dispute and must inform consumers if the trader is obliged to follow any alternative dispute resolution scheme.



### Distance Selling Regulations or DSRs

The DSRs transposed Directive 2011/83/EU on Consumer Rights into Irish law and revoked previous related legislation. The DSRs apply to businesses which sell goods or services to consumers by means of on-premises, off-premises (e.g. when a trader visits a consumer's home) or distance contracts. Distance contracts include those concluded by telephone, email, fax, catalogue or teleshopping. There are a number of contracts outside the scope of the DSRs, including contracts for financial services and certain construction contracts.

The DSRs require certain pre and post contractual information to be provided to the consumer, without which the contract will not be enforceable against the consumer. The DSRs also provide for a 'cooling off period' of 14 days after a distance or off-premises contract has been concluded, in which a consumer can cancel the contract without giving a reason and obtain a refund. Consumers must be informed of their right to cancel the contract and be provided with the model cancellation form as set out in the DSRs. The 14 day cancellation period can be extended by up to 12 months if a trader does not inform the consumer of their right to cancel.

### Consumer Guarantee Regulations 2003

These Regulations give effect to Directive 1999/44/EC on the sale of consumer goods. They apply in addition to the Sale of Goods Acts and the Unfair Terms Regulations, requiring goods sold under a business to consumer contract to be in conformity with that contract.

In the case of a lack of conformity, the Regulations entitle a consumer to require the seller to bring the goods into conformity free of charge by repair or replacement, or an appropriate reduction in price, or rescission of the contract with regard to those goods. In the first place, the consumer may require the seller to repair or replace the goods unless this is impossible or disproportionate.

Any lack of conformity discovered within 6 months from the date of delivery of the goods shall be presumed to have existed at the time of delivery of the goods. Any contractual terms waiving or restricting the rights of a consumer under these Regulations will not be binding on the consumer.

### E-Commerce Regulations

The E-Commerce Regulations apply to businesses operating online when engaging with both consumers and other businesses. The E-Commerce Regulations require businesses to:

- provide certain general information to customers on their website
- ensure commercial communications (including unsolicited commercial communications) are clearly identified as such
- supply certain information prior to an order being placed and the contract being concluded electronically
- provide a receipt of the order without undue delay and by electronic means.

### E-Privacy Regulations

The e-Privacy Regulations impose strict legal obligations in respect of the use of personal data for direct marketing, including by electronic means, in addition to penalties for unsolicited communications for direct marketing purposes. The Regulations also set out rules relating to the use of cookies. These Regulations are set to be replaced by a new EU e-Privacy Regulation which is expected to enhance the confidentiality of communications and update the rules on cookies and unsolicited electronic marketing. The text of the new Regulation is under negotiation at the European Council. There is no date for when it is expected to come into force, however it is unlikely to be agreed before 2021.

### Misleading Advertising Regulations or MARs

The MARs prohibit traders from engaging in misleading marketing communications (i.e. any form of representation made by a trader about a product or service which would include all website statements). The MARs also prohibit comparative advertisements (i.e. any form of representation made by a trader that explicitly or by implication identifies a competitor of the trader or a product offered by such a competitor) which are misleading or confusing. A misleading marketing communication is one that deceives or is likely to deceive those to whom it is addressed in relation to the existence, nature or main characteristics of a product, and therefore is likely to affect the trader's economic behaviour, or for any reason it injures or is likely to injure a competitor.

### Unfair Terms Regulations

The Unfair Terms Regulations provide that any unfair terms in a contract concluded between a seller of goods or supplier of services and a consumer are not binding on the consumer where the contract has not been individually negotiated. An example of an unfair term is one which would allow the seller or supplier to unilaterally alter the terms of the consumer contract without a valid reason which is set out in that contract.

### New Consumer Rights Directive

The European Commission has adopted a new consumer law Directive (2019/2161), aimed at ensuring greater transparency of online marketplaces. It introduces rules to make it clearer whether products are being sold by a trader or private individual, and the submission of fake reviews or endorsements will be prohibited. In addition, sellers will not be able to advertise fake price reductions, and price comparison sites will need to inform consumers about the ranking criteria. The new rules will also enforce consumer rights by ensuring compensation for victims of unfair commercial practices and imposing penalties in cases of "mass harm situations" affecting consumers across the EU. The new Directive amends Directive 93/13/EEC on unfair terms in consumer contracts, Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices and Directive 2011/83/EU on consumer rights. Ireland has until November 2021 to transpose the Directive into Irish law.

### The Irish Regulator: the Competition and Consumer Protection Commission (CCPC)

The CCPC, established in 2014, is a statutory body that, amongst other things, defends consumer interests and enforces consumer legislation. The CCPC operates a business section of its website to assist businesses in understanding their obligations under Irish consumer law.



The EU General Data Protection Regulation (GDPR) applies in Ireland. It provides strong protection to the privacy of individuals with regard to the processing of their personal data.

### The GDPR

The GDPR became applicable in Ireland (and across the EU) on 25 May 2018. It introduced substantial changes to data protection law, 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. Ireland has enacted the Data Protection Act 2018 which implements derogations permitted under the GDPR.

As an EU-wide law, the GDPR makes it easier for multinational companies operating across the EU to comply with data protection law. It provides for a 'one stop shop' whereby multinational companies only have to deal with one data protection supervisory authority, located in the EU Member State of their main establishment. Supervisory authorities in other EU Member States can be involved in certain cases. The GDPR enhances the rights of individuals and the information to be given to them regarding the processing of their personal data.



## GDPR: Scope and key points

The GDPR has an extra-territorial scope. This means it applies to both data controllers and data processors established in the EU, and to those outside the EU, where they offer goods or services to, or monitor, EU data subjects. A data controller collects and determines the purposes and means of processing personal data. A data processor is responsible for processing personal data on behalf of a data controller. Some key points to note:

### The concept of privacy by design and by default

- this is the principle that organisations must embed data privacy into their operational processes and ensure that data protection is no longer an after-thought.

The concept of accountability - this requires controllers and processors to be able to demonstrate how they comply with the GDPR. Detailed records of processing activities must be kept and appropriate technological and organisational measures (e.g. encryption), must be implemented to ensure, and demonstrate, that processing is performed in accordance with the GDPR.

**Rights of individuals or 'data subjects'** - these rights include a right to data portability, and a right not to be subject to a decision based on profiling, in certain circumstances. Data subjects now have more control over the processing of their personal data. A data subject access request can only be refused if it is manifestly unfounded or excessive, in particular because of its repetitive character.

**Increased responsibility for data processors** - before the GDPR, data processors had limited responsibility. The GDPR imposes direct statutory obligations on them, which means they are subject to direct enforcement by supervisory authorities, fines, and compensation claims by data subjects. However, a processor's liability will be limited to the extent

that it has not complied with its statutory and contractual obligations. The GDPR sets out the mandatory terms which must be included in contracts involving data processing.

**Administrative fines** - supervisory authorities have wide-ranging powers to enforce compliance, including the power to impose significant fines. Under the GDPR, breaches of data protection law can lead to fines of up to €20m or 4% of total worldwide annual turnover of the preceding financial year. In addition, data subjects can sue for monetary or non-monetary damages (i.e. distress).

## Transfers of personal data outside the EEA

**Overview:** The GDPR prohibits the transfer of personal data from the EU to third countries (i.e. countries outside the EEA) unless that country ensures an adequate level of protection. Transfers are also permitted to third countries where "appropriate safeguards" are in place to protect the transferring data (see below for more details). Where a country is not considered to have an adequate level of protection and in the absence of appropriate safeguards, transfers to that country may only take place in certain specified and limited situations.

**Appropriate Safeguards:** Appropriate safeguards for transfers of personal data outside the EEA include EU-approved contractual provisions (known as Standard Contractual Clauses or **SCCs**) - and Binding Corporate Rules (**BCRs**). As of 25 March 2022, an agreement in principle on a new Trans-Atlantic Data Privacy Framework ("Privacy Shield 2.0") has been reached between the EU and US. This new framework will establish a new two-tier redress system to investigate and resolve complaints, including a Data Protection Review Court, as well as a new set of rules and binding safeguards to limit access to data by US intelligence authorities. It is anticipated that this will soon provide for appropriate safeguards and transfer mechanisms for Trans-Atlantic data flow.



# 08

## Privacy and data protection

### E-privacy

Strict legal obligations exist in respect of the use of personal data for direct marketing. The GDPR acknowledges that direct marketing is a legitimate use of personal information, however, there are separate rules governing electronic marketing (phone, fax, text message, email) which are set out in the EC (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011. These Regulations impose penalties for unsolicited communications for direct marketing purposes. They also set out the law as it applies to the use of cookies. These Regulations are due to be replaced by a new EU e-Privacy Regulation which is expected to enhance the confidentiality of communications, and update the rules on cookies and unsolicited electronic marketing. The text of the new Regulation is under negotiation at the European Council. It is not clear as of yet when the Regulations will be agreed, however it provides for a transitional period of two years following its entry into force.

### The Irish regulator: The Data Protection Commission

The Irish regulator, the Data Protection Commission is responsible for upholding the data protection rights of individuals and enforcing the obligations of data controllers and data processors under the GDPR.





Ireland is home to an unrivalled number of the world's leading life sciences and biotech companies operating in areas such as pharmaceuticals, biotechnology, medical devices and diagnostics across the R&D, production and distribution sectors.

This includes the top ten global biopharma companies and thirteen of the top fifteen medical technology companies. It also includes a number of companies born in Ireland, such as ICON plc, as well as leading multinationals, such as Medtronic, Jazz Pharmaceuticals and Alkermes plc, who have in recent years chosen Ireland as their global base. The continued growth and future success of this sector in Ireland is supported by the focus and investment of the Irish Government, State agencies (in particular IDA Ireland), academic and research institutions and the investment community.

### Regulatory regime

The supply and manufacture of medical products and devices in Ireland is largely regulated by EU Directives, which have been transposed and supplemented in Ireland by national legislation, or by EU Regulations that have direct effect. Depending on the type of activity being carried on by a life sciences company in Ireland, prior regulatory authorization may be required. The principal regulator for the life sciences and biotech industry in Ireland is the Health Products Regulatory Authority (the **HPRA**). The HPRA boasts an international reputation for regulatory compliance and works closely with businesses and other certification agencies to achieve trouble-free compliance for life sciences companies doing business in Ireland.





## Manufacturing medicinal products

A manufacturer's/importer's authorization (**MIA**) is required in order to manufacture medicinal products for use by humans or animals in Ireland. Manufacturing activities in this context includes manufacturing, processing, primary or secondary packaging, batch certification, quality control, as well as importation of a medicinal product from outside the EEA.

In Ireland, applications for an MIA are submitted to the HPRA. An MIA will only be granted if the applicant has at its disposal suitable and sufficient premises, equipment, facilities, staff, manufacturing operations and arrangements for quality control, record keeping, handling, storage and distribution and must demonstrate compliance with the principles of Good Manufacturing Practice (**GMP**). The applicant must have permanently and continuously at its disposal the services of at least one "Qualified Person". A Qualified Person must have certain minimum qualifications defined in law and this person is responsible for ensuring that each release of medicinal products complies with the law and applicable regulatory requirements. A wholesale/distribution license may be required in addition to a MIA in certain circumstances depending on the activities being carried on.

Wholesale/distribution activities include procuring, holding, supplying medicinal products within the EEA or exporting products outside the EEA.

## Marketing medicinal products

A marketing authorization (**MA**) is required before a medicinal product is placed on the market in Ireland. An application for a MA must be made to the HPRA or, where appropriate, the European Medicines Agency (**EMA**). There are a number of different application procedures for obtaining an MA and the applicable procedure will depend in each case on the type of medicinal product in question and the countries in which it will be marketed.

## Compliance with post-marketing obligations

Irish and EU legislation require a MA holder (**MAH**) to comply with pharmacovigilance obligations. These obligations require an MAH to:

- employ a qualified person to establish and maintain the system of pharmacovigilance, maintain a pharmacovigilance system master file and operate a risk management system
- maintain a detailed record of all suspected adverse reactions to a medicinal product and report such reactions to the EudraVigilance database within 15 days in cases of serious suspected adverse reactions or 90 days in cases of non-serious suspected adverse reaction.
- submit periodic safety update reports to the HPRA or EMA containing information regarding the risk- benefit balance of a medicinal product
- ensure that sufficient supplies of a product are provided to pharmacies
- ensure a product's information contains the most current scientific knowledge

Regulation (EU) 2019/5 has extended the provision of financial penalties for non-compliance beyond the MAH. Legal entities

that are part of the same economic entity as the MAH, or exert a decisive influence over the MAH or are involved in, or could have addressed, the non-compliance can now be liable for non-compliances and subject to financial penalties.

## Packaging, labelling & advertising of medicinal products

EU rules, which have been incorporated into Irish law, regulate the packaging and labelling of medicinal products in Ireland. These rules require certain information, such as storage instructions, expiry dates and method of administration, to be contained on the packaging of a product. The proposed labels and packaging for a product must be submitted to the HPRA for approval when applying for an MA.

Advertising prescription-only medicines or controlled drugs to the general public is prohibited in Ireland.

The advertising of medicinal products that are not the subject of a marketing authorization is also prohibited.

Advertising authorised medicinal products to healthcare professionals is permitted where certain essential information is included in the advertising regarding the product and the MAH.

The Irish Pharmaceutical Healthcare Association's (**IPHA**) Code of Practice for the pharmaceutical industry prohibits its members from supplying, offering or promising any gift, pecuniary advantage or benefit- in-kind to a person qualified to prescribe or supply medicinal products. Other forms of support are allowed provided they are for educational purposes, for the benefit of patient care and inexpensive. Pharmaceutical companies may give free samples to healthcare professionals. However, samples must be provided on an exceptional basis and must not exceed four per year.



### The IPHA Industry Code

Promotes greater transparency in this area by requiring that direct and indirect transfers of value from pharmaceutical companies to healthcare professionals and organizations are documented and publicly disclosed by IPHA member pharmaceutical companies.

### Medical devices

The supply and manufacture of medical devices in Ireland is largely regulated by EU Directives, which have been transposed and supplemented by national legislation. The HPRA is the competent authority in Ireland for medical devices. Its role is to regulate medical devices on the Irish market to ensure that they meet the safety requirements of the national and EU legislation. The National Standards Authority of Ireland is the notified body in Ireland responsible for carrying out conformity assessments for the purposes of CE and other certifications applicable to medical devices. Its role is to develop and promote standards for the medical device industry.

Two new EU regulations which came into force in May 2017 will modernise and replace the existing medical devices regime. Both have a staggered transitional period. Elements of both became binding within six months but full application for Regulation 2017/745 on Medical Devices (**MDR**) was three years (26 May 2020) and for Regulation 2017/746 on In-Vitro Diagnostic Devices (**IVDR**) is five years (26 May 2022). In light of COVID-19 and the pressure on national health authorities and manufacturers of medical devices, the implementation date for the MDR has been pushed to 26 May 2021. The implementation date for the IVDR remains the same. The aim of these new regulations is to establish a modernised and more robust EU legislative framework to ensure better protection of public health and patient safety. The new rules will impose tighter controls on high-risk devices, requiring a pool of experts at EU level to be consulted before placing the device on the market. They will also make vital information regarding medical devices more easily available. The HPRA is in the process of drafting a detailed implementation plan for the two Regulations.

### Clinical trials

The conduct of clinical trials on investigational medicinal products in Ireland is governed primarily by EU Directives, which have been incorporated into Irish law.

A new clinical trials regulation (the Clinical Trials Regulation) entered into force in June 2014, the aim of which was to simplify and harmonize the way in which clinical trials are authorized and regulated in the EU. The timing of its application depends on the development of a fully functional EU clinical trials portal and database, which will be confirmed by an independent audit. In December 2019, EMA's Management Board endorsed to commence the independent audit of the system in December 2020. The Regulation will be applicable six months after the Commission publishes a notice

of this confirmation which is currently expected to occur in 2021. It is expected to fully replace the existing clinical trials regime in 2022, following a three year transitional period.

The existing EU clinical trials Directive will be repealed on the day of entry into application of the Clinical Trials Regulation. It will, however, still apply three years from that day to:

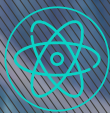
- clinical trials applications submitted before the entry into force of the Clinical Trials Regulation
- clinical trials applications submitted within one year after the entry into force of the Clinical Trials Regulation if the sponsor opted for old system

### Defective or inadequate products

Consumer products are also subject to general Irish and EU laws regarding product safety.

The European Communities (General Product Safety) Regulations 2004 (the 2004 Regulations) (which implement a related EU Directive) impose a duty on manufacturers to ensure that products placed on the market are safe and do not pose a risk to the health or safety of consumers. It is notable that the 2004 Regulations do not cover medicinal products and medical devices, which fall under separate EU legislation. A supplier of goods also has obligations under the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980, as amended, including a duty to ensure that goods are of merchantable quality.

The Liability for Defective Products Act 1991, as amended, (which also implements an EU Directive) provides for strict liability if a product is found to be defective. The producer, importer or any party that holds itself out as a producer by placing their name or trade mark on a defective product, may be liable for damage or injury caused.



## Brexit

On 31 January 2020 the UK formally left the EU. The transition period began immediately on 1 February 2020 and is due to end on 31 December 2020. The EMA and the UK's Medicines and Healthcare Products Regulatory Agency (**MHRA**) released information for drug makers and medical device companies regarding the transition period and future relationship between the EU and UK confirming the following:

- EU pharmaceutical law will continue to apply to the UK through the transition period that will run from 1 February 2020 to 31 December 2020.
- MAHs and applicants may remain based in the UK, as can their qualified persons for pharmacovigilance (**QPPVs**), pharmacovigilance system master files (**PSMFs**) and quality control testing sites during the transition period and have until the end of the period to make any necessary changes to their authorized medicines to ensure they comply with EU law.
- The UK will no longer be able to participate in EU institutions and their decision making and that no UK representatives will participate in EMA scientific meetings, working parties or the agency's Management Board.
- For devices certified by UK notified bodies, it must be confirmed that the certified devices transfer to an

EU-27 notified body by 31 December 2020 and that there is a plan for continued certification.

- For devices manufactured in the UK or with UK Authorised Representatives, an authorised representative must be designated in an EU-27 Member State by 31 December 2020.
- Information reporting to MHRA for medical devices, including for serious adverse events, will remain unchanged during the transition period.
- Negotiations on the terms of future trade between the EU and the UK will continue during the transition period and until 31 December 2020. Unless special arrangements are agreed, the UK will become a third country:
  - » The EU pharmaceuticals and medical device regulatory regime will no longer apply to the UK at the end of the transition period. The movement of pharmaceuticals, medical devices and related products and services, as well as people between the EU and the UK will become more difficult.
  - » EU funding of Research & Development in UK universities and institutions will likely be cut.
  - » EU research programmes will likely no longer involve UK institutions.

During the transition period, in respect of MA applications, the UK will not be able to act as Reference Member State (**RMS**) in Mutual Recognition Procedure

(**MRP**)/ Decentralised Procedure (**DCP**), but the UK can participate in MRP/DCP as Concerned Member State (**CMS**).

UK MAHs must now select a RMS based in the EU/ EEA and ensure that the MAH is also based in the EU/ EEA. As a committed member of the EU and eurozone, Ireland offers an unrivalled value proposition for life sciences companies doing business in the EU in a post-Brexit marketplace. This includes:

- No fee to change RMS from UK to Ireland.
- An experienced regulator that will deliver a simple and efficient process for all requests to switch RMS for all product types (for example allowing the inclusion of multiple products in one request where applicable).
- Efforts to ensure existing joint labels with the UK are maintained and that multilingual labels with other EU markets are developed.

It will be necessary to time manage the switch in RMS. It can only occur when there are no open regulatory activities for a product. All planned regulatory activity with products requiring a change in RMS must take into account the expected duration of the procedures and ensure the RMS change is completed by the end of the transition period. It is important to keep the progress of the transition period negotiations under close review and to assess the implications if any for your business.





**Life sciences companies in Ireland:**  
A snapshot



# 10

## Fintech



Ireland has a long established track record for both financial services and technology. With over 430 financial services companies and over 37,000 people employed in technology companies in Ireland today, it is unsurprising that the country has emerged as a growing international fintech hub

Homegrown success stories like TransferMate, Realex Payments and CurrencyFair operate alongside global financial services behemoths, including First Data, Visa and Paypal, in areas such as payments, lending, wealth management, crowdfunding, distributed ledger technology and blockchain.

There are a variety of reasons why so many fintech companies choose to set up operations and are thriving in Ireland. Some of the key reasons are outlined on the next page.





# 10

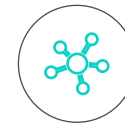
Fintech

## What makes Ireland a great location for fintech?



### GOVERNMENT SUPPORT

Government strategy to drive growth and provide ongoing support in this sector



### WELL DEVELOPED FINTECH ECOSYSTEM

Dedicated industry bodies, organizations and incubators help to support and develop the regulatory, commercial and community ecosystem for the fintech sector



### TRACK RECORD

US fintech leaders like First Data, Visa, Paypal and Stripe have significant operations in Ireland



### STRONG DOMESTIC START-UP SCENE

Homegrown success stories like TransferMate, Realex Payments and CurrencyFair have made waves internationally



### FUNDING & INCENTIVES

Government and private funding options available



### REGULATORY PASSPORTING

Fintech companies licensed by the Central Bank of Ireland (CBI) benefit from regulatory passporting across the EU



### SKILLED & EDUCATED TALENT POOL

Tailored fintech qualifications and courses are offered by many Irish universities and educational bodies



### STRONG FINANCIAL SERVICES INDUSTRY

400+ financial services companies employ 40,000+ people



### TECHNOLOGY

Top 10 'Born on the Internet' and all of the top 10 global software companies are in Ireland





# 10

Fintech

## Government support for the fintech industry

The Irish fintech industry has been and remains a priority for the Irish government. In 2015, the Irish government's first five year strategy for developing the country's International Financial Services Sector (**IFS2020**) was launched. In April 2019, the Government launched Ireland for Finance: The strategy for the development of *Ireland's international financial services sector to 2025* as a successor to IFS2020. The IFS2025 strategy seeks to take account of current and future developments, while also exploring potential challenges and opportunities, especially the potential impact of technology.

IFS2025 aims to make Ireland a leading location for specialist international financial services and aims to have 50,000 people in direct employment in the sector by 2025.

The strategy is structured around the following pillars:

1. **Operating environment:** ensuring the policy, culture and legislative conditions underpinning international financial services will support growth.
2. **Technology and innovation:** providing a collaborative approach to addressing emerging challenges and opportunities.
3. **Talent:** having skilled people to meet the demands of the international financial services sector including meeting needs for new and changing skills.
4. **Communications and promotion:** ensuring that Ireland's offering is communicated to those looking to invest in Ireland.

These pillars will be supported by three horizontal priorities: regionalization, sustainable finance and diversity.

Fintech is also a priority sector for Enterprise Ireland - the government organization responsible for the development and growth of Irish companies in world markets. Enterprise Ireland now has a dedicated fintech team in Dublin that manages more than 220 companies with internationally focused business strategies. It has been involved in multiple initiatives to support the development of the fintech sector in Ireland, including the coordination of a number of fintech trade missions in the US and beyond. It has also supported a number of investor networks focused on fintech start-ups.

Equally, from an international perspective, fintech is a priority sector for IDA Ireland – the government arm responsible for attracting foreign direct investment to Ireland. Key investments have been secured by IDA Ireland from US fintech leaders like Mastercard, Stripe, YapStone and Equifax in the past five years.

As well as the practical support and mentorship offered by government organizations like Enterprise Ireland and IDA Ireland, the Irish government through its various arms has made a number of funding options available to companies operating in the fintech space – see further under “Funding & Incentives” on [page 56](#).



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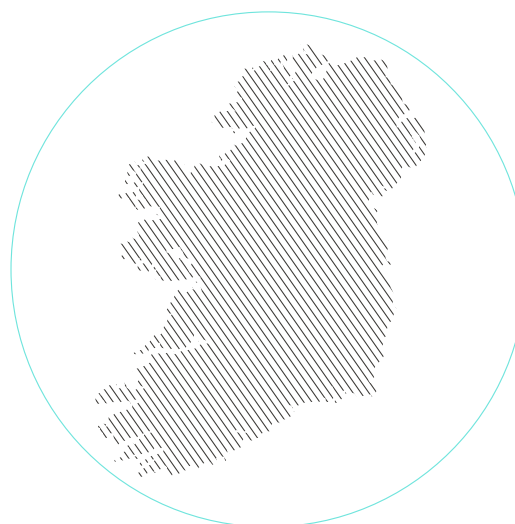
Fintech

### Track record:

A snapshot of the international fintech industry in Ireland

CROWDFUNDING	
invoicefair	:fund:it
MoneyCrowd	FUND SME
REGTECH	
GOVROOT	fenergo
regbot	AXIOMSL
ViClarity	sedicii
AQMETRICS	CORLYTICS

DISTRIBUTED LEDGER TECHNOLOGY & BLOCKCHAIN				
	arc-net	BLOCKNUBIE	CONSENSYS	coinbase
CIRCLE	LivingOffset	WACHSMAN PR	AID:Tech	



WEALTH MANAGEMENT	LENDING
MyWallSt	AREX
moneycube	leveris
GRID FIRMEX	trezeo
MyMoneyPlatform	FUTURE FINANCE
raisin.	Kabbage

PAYMENTS						
Revolut	mastercard	Google	f	stripe	Apple Pay	PayPal
AFEX	Elavon	Bitnet	First Data.	TransferMate	fire	



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Fintech

## The Irish fintech ecosystem

With at least 7,000 people currently employed by the fintech industry in Ireland, a number of key organizations, incubators and other support mechanisms have emerged in recent years to support and further develop this growing sector.

### Industry organizations

- **The Fintech and Payments Association of Ireland (FPAI)** is the main trade association representing fintech and payments businesses in Ireland. The FPAI aims to develop the regulatory, commercial and community ecosystem in which fintech and payment companies operate, and was established by a number of stakeholders active in the Irish fintech sector in early 2015.
- **Fintech Ireland** is an independent, non-profit organization, the stated mission of which is to lead the promotion, support and facilitation of the Irish fintech scene. Fintech Ireland regularly collaborates with other organizations internationally to run events in Ireland.
- **Blockchain Ireland** is a combined effort of the government and Irish-based companies, led by the IDA Blockchain Expert Group to promote and share information on blockchain in Ireland. Blockchain Ireland aims to promote the country as a blockchain centre of excellence, attracting international companies to make use of Ireland's well-developed technological and research sectors to support their blockchain projects.

### Regulatory Engagement

- **Central Bank of Ireland Innovation Hub:** Launched in April 2018, the CBI's innovation hub has facilitated over 166 engagements with firms and stakeholders, with over 92% of engagements with firms being with unregulated firms, and over 70% with SMEs. The Innovation Hub provides for open and active engagement with firms innovating in financial services, with these firms having a direct and dedicated point of contact at the CBI to ask questions on the authorizations process, the regulatory framework, or to have a conversation with the CBI on their product or service outside of more formal regulatory interactions. The Innovation Hub also allows the CBI to enhance its intelligence of how innovation in financial services is developing; leading to a well-informed and sophisticated regulator in the fintech space.

### Incubators and accelerators

- **Dogpatch Labs** operates a co-working space for scaling technology start-ups. Located in the heart of Dublin's Digital Docklands, it houses over 45 companies. While catering to all types of tech start-ups, Dogpatch Labs entered into a partnership with Ulster Bank in 2015 as part of the bank's aim to develop its fintech arm. Ulster Bank has opened an offsite innovation hub at Dogpatch Labs, where they work with partners to build new products and solutions for the banking sector. Members of Ulster Bank's innovation team mentor and learn from Irish fintech start-ups, as well as host regular fintech hackathons.





# 10

Fintech

- The **Digital Hub** is another Irish tech incubator. Since 2003, hundreds of companies have progressed through the Digital Hub's enterprise cluster and have gone on to create thousands of jobs in the Irish digital economy. The National Digital Research Centre (**NDRC**) is part of the Digital Hub, and includes programs such as (i) NDRC launchpad, (ii) NDRC Catalyser and (iii) NDRC Venture Lab. The NDRC works with close to 1,000 entrepreneurs and 40 early stage companies each year. Some of its notable alumni are household names, such as Kavaleer, Lincor, MTT, Slack and Stripe.
- The **NadiFin Fintech Accelerator Program** is run by MiddleGame Ventures, with the support of Enterprise Ireland and the Fintech & Payments Association of Ireland. This program provides up to 12 early stage fintechs with the chance to compete, through a series of workshops held in Dublin and Luxembourg, for a €100,000 investment from MiddleGame Ventures. The workshops are tailored to help early stage fintechs scale their business for profitable growth.
- **Bank of Ireland's** "startlab" program is an incubator program that aims to educate, connect and scale tech start-ups. Each program runs for a six-month period where start-ups meet with key speakers, coaches and mentors to help grow and scale their company. Its third startlab, launched in Dublin in November 2017, is exclusively fintech - focused.
- **Citi Accelerator Hub** is a co-working space for fintech start-ups located in Citi's offices in the Financial District in Dublin. Participating start-ups have access to Citi's mentoring network for advice and support, as well as industry meetups and networking events.
- Run by Accenture Ireland, the **Fintech Innovation Lab** includes mentors from some of the country's largest financial and tech institutions, including Allied Irish Bank, Bank of Ireland, FEXCO, Google, PayPal, State Street, Citi, Realex Payments and Ulster Bank.
- **MasterCard Labs** "StartPath" program provides a four-month program and office space in MasterCard's Dublin office which is its global technology HQ.
- **NovaUCD**, operating out of University College Dublin's university campus, offers mentoring and workspaces to start-ups from a range of disciplines.
- **Dublin City University's Ryan Academy** runs the Propeller Venture Accelerator program for early-stage technology start-ups. Offering €30k seed funding to entrepreneurs, the three-month, accelerator provides start-ups with office space and access to over 80 mentors from the wider Irish and international business community.

## Industry events

In recognition of Ireland's growing reputation as a global fintech hub, it was selected as the host location for a number of high profile international industry events, including the Annual Blockchain for Finance Conference (2019), MoneyConf (2018) and the Fintech Innovation Summit (2018).

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Fintech

## Fast growing Irish fintech:

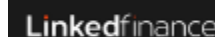
*Home grown success stories*



CurrencyFair allows individuals and businesses to exchange currencies and send funds to bank accounts worldwide. Funded in 2010, it surpassed the US\$1bn barrier in facilitated currency transactions by 2016.



Fenergo offers solutions for client life-cycle management, anti-money laundering, regulatory compliance and client data management. In February 2020, it's latest funding round raised a total of US\$80m. Its backers include ABN Amro Ventures and DXC Technology.



Linked Finance is Ireland's first peer-to-peer lending platform, offering Irish SME's an alternative to borrowing from the banks. Linked Finance uses technology to connect SMEs with lenders who want to support Irish businesses and earn returns. In 2019 Linked Finance hit the milestone of having lent over €100m to Irish SMEs since its launch.



Swrve is a global leader in cross-platform customer interaction for sales, marketing and operations. Swrve processes over 12bn user events a day, and partners include Salesforce and Oracle, with investors including Netgear and Summit Bridge Capital. As of March 2018, Swrve raised a total of US\$76.1m.



Future Finance provides smart, fair and flexible loans for students in Europe. Founded in 2013 by Brian Norton and Vishal Garg, its aim is to fund Europe's €50bn+ annual education finance gap. Now the largest and fastest growing non-government student lender in Europe, it has raised US\$459m across six funding rounds. Future Finance was also listed as a top 100 global fintech company in the Fintech 100 2018.



Leveris is a software company that offers a full-service, modular, banking-as-a- platform (BaaS) solution for traditional banks, new market entrants and consumer brands entering the banking and lending space. Leveris is headquartered in Dublin, with research and development centres in Prague and Minsk. Leveris was also listed as a top 100 global fintech company in the Fintech 100 2017.



MyWallSt (formerly Rubicoin) is a financial investment tools maker designed to transform individuals into investors through its 'Invest' and 'Learn' apps. MyWallSt is a graduate of the Nova- UCD incubator in Dublin. In 2017, it announced further funding from existing backers Enterprise Ireland and the Motley Fool, and has been integrated into Robinhood since 2015, which allows users to immediately start investing. As of November 2018, MyWallSt raised over US\$8.5m in funding.



Depositify provides escrow services to landlords, tenants and letting agents. Founded in 2014, Depositify has quickly expanded in the US security deposit market. For example, in September 2019, Depositify signed a partnership deal with Fortune 500 company Assurant. It has also completed numerous funding rounds, the most recent of which raised \$2m.



Flender is a peer-to-peer platform which helps people borrow and lend money via their social circles, while allowing businesses to raise funds through their own customers. Flender leverages existing connections in order to increase trust between borrowers and lenders, lowering default rates. The Dublin-headquartered startup, whose backers include former EY Entrepreneur of the Year award winner Mark Roden and ex-Irish rugby international Jamie Heaslip, funded more than €13m in SME loans and secured a €75m funding line to provide loans to Irish businesses in 2019.

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Fintech

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The Irish innovation sector has experienced incredible growth since we began working with the Ireland Strategic Investment Fund in 2012. We're proud to continue this great relationship and work with a growing roster of Ireland's best tech companies.

John China, President of SVB Capital | Source: ISIF Press Release, July 2019

## Funding & incentives

### Government funding & incentives

In addition to an attractive and stable corporate tax regime (see further details in [Chapter 3](#)), the Irish government through its various arms offers funding and grant support that may be available to fintech companies doing business in Ireland.

#### IDA Ireland

In addition to providing logistical and practical support to multinational companies investing in Ireland, IDA Ireland, can in certain circumstances offer grant assistance. For more on the grant assistance offered by IDA Ireland to multinational companies, please see [Chapter 2](#).

#### Enterprise Ireland

Enterprise Ireland provides equity funding to start-ups across a range of sectors, including fintech, at both early stage, via their €50k Competitive Start Fund (CSF) program, and the high-potential start-up (HPSU) stage. Fintech is a key focus area for Enterprise Ireland, and in 2019 it announced the launch of the Ireland Smart Tech Fund in association with the Dublin Business Innovation Centre.

This fund is expected to reach a final close of €30m by the end of 2020. The fund will mainly target B2B companies in areas such as fintech, cybersecurity, healthcare, ICT, smart grid digital transformation and medical devices.

#### Ireland Strategic Investment Fund

The Ireland Strategic Investment Fund (ISIF) is an €8bn sovereign development fund with a statutory mandate to invest on a commercial basis to support economic activity and investment in Ireland. ISIF has a long-term investment strategy, and therefore can act as a source of "permanent" or "patient" capital that can work to a longer-term horizon than most participants in the market.

€4.1bn

ISIF commitment to date

ISIF has made a number of high profile investments in US companies and funds in recent years, including Silicon Valley Bank (SVB), Vectra, Atlantic Bridge, Polaris Partners, Lightstone Ventures, Sofinnova Ventures, Highland Capital Partners and Arch Venture Partners.

In July 2019, ISIF and SVB announced that SVB intends to commit a further \$300m in loans and credit facilities to technology and life science companies in Ireland by 2024.

When combined with the \$226m previously committed by SVB, this additional commitment will bring SVB's total commitment to Irish innovation companies to \$500m by 2024.

#### National Digital Research Centre

The National Digital Research Centre (NDRC) is an organization which sources early-stage companies at the concept stage to invest and work with. In March 2020, the NDRC launched its most recent three month accelerator program, during which it plans to invest up to €130,000 in a number of start-ups. With offices in Dublin, Galway and Waterford, the NDRC has a history of supporting early-stage Irish fintechs. The NDRC's most notable successes include Chasing Returns and Trezeo.

#### Private funding

The private funding sector is also increasingly active in Ireland, with a number of Irish fintech firms securing significant investments recently. Dublin-based Fenargo closed an \$80m investment round in early 2020. In addition, Future Finance and Immedis raised \$30m and \$28m respectively in 2019.

#### Crowdfunding, initial coin offerings and token sales

Most Irish fintech start-ups are raising funding through traditional funding mechanisms such as venture funding, government supported funding and debt.

For example, the Irish Department of Finance recently estimated that crowdfunding constitutes only 0.33% - 0.4% of the SME finance market in Ireland; compared with 12% in the UK. Equally, despite the massive global surge in capital raising through initial coin offerings and token sales throughout 2017, there have been few ICOs and token sales carried out by Irish companies to date.





# 10

Fintech



*The support from the IDA team combined with the proactive engagement from local universities caught our interest. The existing community of Fintech and RegTech companies and the deep pool of multi-lingual tech and financial talent became evident as we investigated further.*

Peter Tierney, Global Head of AxiomSL's RegCloud business  
Source: IDA Ireland Press announcement, January 2020

## Talent Pool

Today in Ireland there are approximately 42,000 people employed within financial services, and more than 100,000 working within technology.

From engineering talent to financial services expertise, Ireland offers a deep and diverse talent pool for the fintech industry. To bolster this existing talent pool, educational initiatives have been launched by universities and educational institutions across the country to help cultivate the next generation of fintech talent.

- In 2020, **Dublin City University's Business School** launched a unique micro credential fintech course, Fintech Financial Innovation. The course is geared towards financial and technology professionals looking to upskill, and focuses on the main themes of fintech such as crowdfunding, peer-to-peer lending, blockchain, cryptocurrencies, banking and payments.
- **Skillnet Ireland** in collaboration with **Dublin City University** launched Ireland's first Master's in Blockchain (Distributed Ledger Technologies) in 2019.
- **The National College of Ireland and Dublin Business School** provide full time undergraduate and graduate level degrees in fintech, focusing on Markets & Services, Quantitative Financial Modelling, Fintech: Ecosystem & Innovation, Fintech Regulation (Regtech), Data Analytics & Visualization, Advanced Fintech Operations, Fintech: Machine Learning Applications and Distributed Ledger Technology.
- Irish universities regularly host hackathons, for example in 2018, the Dublin Business School hosted a Blockchain hackathon in partnership with Comtrade, a leading dynamic technology company, focused on potential application blockchain technologies in the aviation industry.

## Regulation of fintech businesses in Ireland

Ireland does not currently have a specific regulatory regime for fintech businesses and some fintech businesses may fall outside the Irish regulatory ambit.

The Central Bank is the regulator for financial services in Ireland. Depending on whether or not a company is deemed to be a regulated entity (as defined in legislation), fintech businesses may require prior authorization from the Central Bank to conduct business in Ireland.

Payment institutions, electronic money institutions, investment companies and money transmission businesses are examples of business models which may require authorization in Ireland.

Financial regulation in Ireland derives primarily from EU law and requirements, and generally speaking, fintech companies authorized by the Central Bank can benefit from regulatory passporting across the EU. Once authorized in Ireland they can offer their products and services across other EU member states without the need for further authorization in the relevant member state.

Depending on the nature of the business being carried out, fintech companies may be subject to the European Union (Payment Services) Regulations 2018, which govern payment institutions, and/or the European Communities (Electronic Money) Regulations 2011, which authorize an undertaking to issue E-Money. Fintech businesses may also be subject to consumer protection legislation and Central Bank codes of conduct, as well as anti-money laundering and data protection legislation.



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Fintech



*Ireland has a credible and experienced regulator in the CBI and provides access to a sophisticated financial services ecosystem with the deep pool of staff, managers, professional advisers and service providers that we're looking for as we grow operations.*

Patrick de Courcy, SVP of Payoneer  
Source: IDA Ireland Press announcement, February 2020



### The Central Bank of Ireland

A key component of a successful and attractive jurisdiction for the location of financial services activities is a strong and independent regulator, with international credibility.

The Central Bank carries out its functions in the context of a harmonized approach to financial regulation across the EU. The Central Bank is committed to providing a high-quality, fair and transparent authorization process for all applicants. It is open to engaging with firms and has the resources, including dedicated professional teams, to deal with any increase in authorization applications, particularly in light of Brexit.

The Central Bank's focus is on the risk to consumers from fintech developments, and on protecting consumers where an activity is not yet regulated. That being said, the Central Bank has been publicly supportive of the fintech movement in Ireland and its Director of Consumer Protection has recently stated that "*there is an exciting opportunity for fintech firms to contribute in a positive way to protecting consumers and enabling greater access and availability of financial products and services*".





# 11 | Aircraft leasing



14 out of the top 15 aircraft lessors have operations in Ireland. Ireland is one of the most popular jurisdictions for aircraft leasing, some of which are outlined below.

## Specific tax benefits

Aircraft lessors can avail of a number of tax benefits:

- An active aircraft lessor can benefit from Ireland's 12.5% corporate tax rate.
- A trading lessor may claim capital allowances (tax depreciation) in respect of capital expenditure incurred by it on the acquisition of aircraft owned by it which is leased out (provided that the burden of wear and tear of the equipment falls directly on the lessor where the lessee is a carrying on a trade). Annual capital allowances (tax depreciation) are granted at the rate of 12.5% (i.e. an eight year write- down period), regardless of the anticipated life of the aircraft.
- The definition of "qualifying assets" under the Section 110 tax regime extends to aircraft assets.
- Lease rentals are not subject to withholding tax in Ireland. Accordingly, rental payments can be paid gross from Ireland.
- No value added tax applies to lease rentals in most cross-border aircraft finance transactions.
- No stamp duty arises on sales, leases or mortgages of aircraft (or any interest in such assets). No stamp duty will arise on any title transfer by way of delivery, or on any instrument creating a security interest over any assets (e.g. a mortgage, security agreement or security assignment).







- Advantageous tax rules apply to the hiring of overseas staff (Assignment Relief Programme).
- Ireland's excellent double tax treaty network of 73 countries is a key attraction for the aircraft leasing business in Ireland.

### Expertise

Ireland's long association with leasing has led to it becoming a centre of excellence and one of the major attractions of Ireland as a jurisdiction is the availability of professionals with high levels of expertise and who are very experienced in many types of structures and transactions.

### Regulation

The leasing of aircraft is not a regulated industry in Ireland. For all Irish companies, including aircraft leasing companies, the principal legislation governing the incorporation of companies in Ireland is the Companies Act.

### Cape Town Convention

Ireland was an early contracting state to the Cape Town Convention on Interests in Mobile Equipment and Aviation Protocol (the **Convention**) and its terms have the force of law before the Irish courts. Accordingly, any security agreement constituting an international interest within the meaning of the Convention which has been created by an Irish mortgagor or created in respect of an Irish registered aircraft can be registered in the International Registry.

Ireland has also adopted the Cape Town Convention Alternative A insolvency remedy, which is a regime that is substantially similar to the long established Chapter 110 insolvency remedy in the US.

### Customs duties

Customs duties are not relevant with regard to an aircraft lessor unless the aircraft is physically brought into Ireland. Even where this occurs, an exemption will generally be available on the basis of an "end user authorization". This applies equally to spare parts and to engines.

### Irish Aviation Authority

The Irish Aviation Authority is one of the most respected aviation authorities worldwide and is highly ranked for its safety oversight. Many aircrafts operated outside of Ireland are registered on the aircraft register maintained by the Irish Aviation Authority.

### GATS

Ireland continues to be a leader in innovation in the industry. ALG and other key industry stakeholders have worked with the Aviation Working Group to develop the Global Aircraft Trading System (**GATS**). GATS aims to increase efficiencies in the trading and related financing of aircraft subject to leases by:

- making use of trust structures, so that existing leases may be left in place without the need for notations, assignments or lease amendments
- effecting transactions through a wholly electronic system using standardised electronic documents
- recording transactions on an electronic ledger
- permitting parties to retain and strengthen legal protections and rights, including through electronically recording conditions to transactions and managing the satisfaction or waiver of those conditions online. GATS is designed to reduce the burdens on airlines, lessors and financiers and generally to effect trades in an efficient, secure and predictable manner.

The GATS platform went live on 1 June 2020.



## Why A&L Goodbody?

From our offices in Ireland, UK and the US we have partnered with countless international companies, from global enterprises to fast growing venture-backed start-ups, to seamlessly guide them through the full range of legal, tax and commercial issues that arise when doing business in Ireland. Leveraging this expertise and know-how, we can provide innovative, but cost effective, legal solutions to support you and your business as you embark on your path to international expansion.

As the first Irish law firm to open an office in the US in 1978, A&L Goodbody has a long-standing history of successfully working with leading global corporations and high growth companies on their Irish operations and activities.







## Key contacts

Our team of dedicated international expansion experts in Ireland and the US are available within your time zone to answer questions and provide real-time support and expertise as you move forward with your expansion plans.

To find out more about how we can help you and your business in relation to your Irish activities, please contact any of the following members of International Expansion Team or your usual contact at A&L Goodbody.

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