



Legal Competitiveness for International Tech

John Whelan, Head of the International Technology Group and Resident Partner San Francisco at A&L Goodbody shares some insights into Ireland's legal offering for the international technology sector.

The Irish economy grew 4.8% in 2014, the fastest pace in Europe, and the predictions for the rest of 2015 are looking pretty good too. The impact of such positive growth is no more evident than in the enormously successful technology sector in Ireland. Dublin is now simply referred to as the Silicon Valley of Europe, but whatever name one ascribes to the phenomenon, we continue year after year to break new ground on the international tech stage.

But how does our legal offering fit in with all of this? The answer is that there are a number of reasons why we compete at the highest level when it comes to providing a safe and secure legal environment for companies investing in Ireland. We offer many legal advantages over other jurisdictions and here is, in brief, the “top ten” so to speak, of the Irish legal landscape.

1 IP – the crown jewels

For most companies in tech or tech-related industries, intellectual property (IP) is a core asset. Some of the highest value global IP portfolios are licensed and managed through substantial Irish operations. Under Irish law an IP license can be on simple legal terms, be easily aligned with tax considerations, and is exempt from stamp duty. Valuable IP is licensed through a safe jurisdiction where global “best in class” IP legislation is in force. Under Irish contract and IP rules a US company can still continue to maintain full control over its global IP portfolio and IP strategy, notwithstanding that it may manage its non-US IP through operations in Ireland.

2 Data – the EU regulatory regime

Data is currently a hot topic for all companies doing business in Europe as EU institutions seek to harmonize data protection laws across Europe, and create greater centralization of regulation. The European General Data Protection Regulation is due to be adopted later this year. The enforcement and interpretation of data protection laws do however differ greatly from country to country. The Office of the Irish Data Protection



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Commissioner is internationally recognized as one of the best, and adopts a practical and transparent approach to regulation. The Office seeks to avoid having to use the force of law to prosecute, but instead encourages amicable resolution of complaints by voluntary, albeit strict, remedies.

3 Contract law – you choose

A US company will typically seek to ensure its European wide business is governed by one law and in one jurisdiction. Many multinationals choose Irish law and the Irish courts, a choice that will be respected by other European national courts. The Irish courts take a “hands off” approach to contracts, and will rarely if ever interfere with a commercial bargain made between parties. The result is that many multinational technology companies very effectively manage their European B2B activities, and enforce their contracts, through one familiar common law jurisdiction, and thereby largely avoid submitting to the different contract jurisprudence and rules of the 28 Member States of the EU.

4 Tax laws – the technology focus

Ireland’s competitively low corporation and IP tax rates are well known. The Revenue Commissioners in Ireland take a strict but

practical approach to the interpretation of the supporting laws. They allow companies to self assess, but also in many circumstances give the option to seek a “ruling” that will give a company comfort in relation to its tax planning. The Irish authorities, and ultimately the Irish courts, take an internationally acceptable and progressive view on the definition of IP, covering all relevant IP that a tech company will own or have licensed. Ireland has double taxation agreements with over 70 other countries. There is a significant government consultation under way in relation to Ireland’s “Knowledge Development Box” to be introduced later this year.

5 Employees – protection and availability

Irish employment law strikes the right balance between a business-friendly set of rules for employers, and protection of employees. Irish law does not compel employers to recognize trade unions. There are no restrictions on EEA nationals working in Ireland. One week’s statutory notice is required for termination of employment in the first two years (two weeks’ notice after that), and there is no statutory redundancy pay in the first two years. The regime is much simpler than others in Continental Europe.

6 Commercial Agents – navigating distribution channels

Technology Companies need distribution channels in Europe. A “distributor” can be initially engaged in jurisdictions by a US company, only to learn subsequently that the distributor qualifies as a “commercial agent” under the relevant national legislation of the distributor – with statutory rights being given to a commercial agent, particularly compensation on termination. Under Irish law the distinction between a distributor and a commercial agent is clear, and with its strict interpretation of choice of law and jurisdiction, Ireland is a good place for distribution management. Unlike other jurisdictions, Ireland did not implement the European option of the “indemnity” mandatory compensation for a commercial agent on termination of its contract.

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7 Real Estate – back by popular demand

The legal process in Ireland for the acquisition or rental of property is typically uncomplicated. Taking up corporate office space can be done by a standard services agreement, avoiding landlord and tenant laws. For start-up or early establishment, professional corporate office services are widely available. There has been a renewed focus on refurbishment and new development, particularly in the Dublin office sector making most office space in Dublin deserving of its location in “the Silicon Valley of Europe”.

8 Dispute Resolution – the Commercial Court

No company likes to think of disputes, but they happen as third parties let you down or seek to take advantage of your success. The Irish Commercial Court, a division of the High Court, is a specialist commercially focused court designed to facilitate international business. Actions are case managed and dealt with by experienced commercial judges. The Irish Commercial Court’s record of resolving over 90% of disputes in under one year is probably unmatched in Europe.

9 Corporate establishment – no red tape

Corporate and branch establishment is a straightforward process in Ireland when compared to other European jurisdictions. The World Bank’s “Doing Business” Report 2014 rates Ireland as the easiest place in the European Union to start a business. A new company can be established within 5 working days, and unlike in other European jurisdictions does not require the opening of a bank account. Once a company has been



incorporated, any subsequent changes are easily effected in the Companies Registration Office, such as the allotment of new shares, changing directors, or amending the company’s constitution.

10 Irish government legal policy – guaranteed

The legal offerings outlined above are of significant importance to the foreign direct investment in Ireland, and so too is Government policy. The Irish Government has a large number of law reform initiatives in play, on which they openly engage with international and domestic companies in public consultations. The new Companies Act 2014, effective as of 1 June 2015, has consolidated into one piece of legislation, all company legislation dating from 1963. There is a Copyright Reform Group

currently looking at how our IP laws might be advanced. These are just two examples. The legal environment will only continue to improve and compete, with this Government support in place.

Conclusion

There are many more legal benefits for international operations established in Ireland. These benefits have application across many industry sectors where IP and technology play an important role – from technology and communications to life sciences, to medical devices, to professional services and international online sales operations. Ireland has much to offer from a legal perspective.

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