A Guide to Doing Business in Ireland

Dublin London New York Palo Alto

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1 INTRODUCTION

Over 1,000 international companies serve their European market from Ireland. These companies are involved in a wide range of activities and sectors including technology, pharmaceuticals, biosciences and manufacturing. The attraction of Ireland as an investment location can be attributed to the positive approach of successive Irish governments to the development of inward investment, its membership of the European Union (EU), a very favourable corporate tax rate and a skilled and flexible labour pool.

The purpose of this publication is to provide an introduction to the major business and legal issues to be considered by foreign companies in establishing business operations in Ireland. The discussion under each heading is not intended to be an exhaustive analysis but rather to provide general observations and guidance to the many questions we have encountered from clients doing business in Ireland.

Particular businesses or industries may also be subject to specific legal requirements not referred to in this guide. In addition, certain projects may require specialist advice from one or more of our dedicated groups, for example our Projects and Construction Group, Banking and Financial Services Group, Asset Management Group, Structured Finance and Derivatives Group or Insurance Group.

For this reason, specific advice should always be sought in connection with particular transactions. If the reader has questions about topics discussed, we would be happy to provide additional information.

The law is stated as of 1 September 2009.

2 WHY INVEST IN IRELAND?

Ireland has succeeded in attracting some of the world's largest companies to establish operations here. The list of multinationals currently operating in Ireland includes some of the largest companies in the worldwide technology, pharmaceutical, biosciences, manufacturing and financial services industries.

There are a number of key reasons:

- Ireland's low corporate tax rate – corporation tax on trading profits is 12.5 per cent which does not breach EU or OECD harmful tax competition criteria;
- Regulatory, economic and people infrastructure of a highly-developed OECD jurisdiction;
- Benefits of EU membership and of being an English–speaking jurisdiction in the euro-zone;
- As a common law jurisdiction, our legal system is similar to that of the US and the UK;
- Provision of a specific tax credit for research and development activity;
- Very limited transfer pricing rules; and
- An extensive and expanding double tax treaty network with close to 50 countries, including the UK and the US.

3 IRELAND: AN OVERVIEW

Population

Based on a preliminary report prepared following completion of the 2006 nationwide census, the population of Ireland now exceeds 4.2 million people. Ireland has one of the youngest population profiles in the EU.

Geography

Ireland is an island situated off the north west of the European continent. Dublin is the capital city and has a population of over one million people. Dublin is on the east coast and is one hour by air from London and 90 minutes from Paris and Brussels. Cork, Limerick and Galway are the other major cities.

Political and legal system

Ireland is a stable parliamentary democracy with a written constitution and two houses of parliament. While the President is the constitutional Head of State, the powers and functions of the Presidential office are largely ceremonial. The Government is elected for five-year terms and controls the legislative and political process. Ireland is a member of the EU and the United Nations. Irish law is based on common law, legislation, the Irish Constitution and EU law and we have a very similar legal system to the United Kingdom and the USA.

Northern Ireland, as part of the United Kingdom, operates in a separate political system. This publication does not address legal and commercial issues that arise there.

Economy

The currency of Ireland is the euro (Ireland and Malta are the only English speaking members of the eurozone). Economic growth rates have in recent years been consistently among the highest of OECD countries. Government policy has been directed towards the creation of a stable economic environment that is supportive of the needs of business. Over the last 10 years, the number employed in industry and services has increased steadily and expansion has been particularly rapid in the areas of computer

software/hardware, electronic engineering, food, pharmaceutical, healthcare and consumer products.

Transport Infrastructure

The island of Ireland has four international airports (Dublin, Belfast, Shannon (near Limerick) and Cork) and a number of large ports. There are also regional airports in Donegal, Galway, Kerry, Knock, Sligo and Waterford. Most European cities are accessible within two to three hours flying time. International and internal transport services are well developed. Structural funds from the EU have been used to upgrade the network of main and secondary roads linking the major population centres.

Financial Infrastructure

Ireland has a very well developed and sophisticated banking and financial services infrastructure with established experience in handling the requirements of overseas companies. The sector is regulated by the Financial Regulator which was established in 2003 and has taken on the financial services supervisory functions from the Central Bank of Ireland to promote the best interests of users of financial services.

Ireland: A statistical and geographical overview

1. Destination of Exports Jan - Nov 2008

EU	62.4 %
USA	19.2%
Switzerland	3%
China (including Hong Kong)	2.7%
Japan	1.9%
Malaysia	1.2%
Rest of world	9.6%

Source: OECD Factbook 2008

2. Annual Average Real GDP Growth Rate 2000 - 2006

Ireland	6.1%
UK	2.7%
Germany	1.3%
Netherlands	1.8%
USA	2.6%
France	2%

Source: OECD Factbook 2008

3. Workforce under 25 in the year 2010 and 2015

Country	2010	2015
USA	34.4%	33.5%
Ireland	34.1%	33.2%
France	30.4%	29.7%
United Kingdom	30.4%	29.5%
Netherlands	29.6%	28.6%
Czech Republic	26.1%	24.3%
Germany	24.9%	23.4%
Japan	23.3%	22.1%

Source: Population division of the Department of Economic and Social Affairs of the United Nations Secretariat, World Population Prospects: The 2006 Revision

4. Labour Productivity (PPP) - GDP per person employed per hour. (US$)

Ireland	47.40
USA	46.02
Netherlands	41.51
Germany	39.87
UK	37.68
Spain	35.18
Japan	31.60
Hungary	24.59

Source: IMD World Competitiveness Yearbook 2008

5. Skilled Workforce - Science and Technology graduates per thousand in the 20-29 age group.

Ireland	23.2
France	19.6
UK	16.2
USA	10.2
Germany	8.2
Portugal	6.3
Netherlands	5.8

Source: Eurostat 2003

6. Population Demographics for Island of Ireland

Age	%
0-14	20.6
15-24	14
25-44	32.5
45+	32.9

Source: CSO, 2008 Estimates

7. Increase in exports by sector for January - November 2008 up from 2007

Chemical materials	35% increase
Medical and pharmaceutical products	12% increase
Professional, scientific and controlling apparatus	30% increase
Petroleum products	41% increase

Source: External Trade, CSO 2008

8. Increase in exports by country for January - November 2008 up from 2007

China	21% increase
Malaysia	52% increase
USA	2% increase
Spain	9% increase
Poland	34% increase

Source: External Trade, CSO 2008

4 GRANTS AND OTHER FISCAL INCENTIVES

The Irish government actively encourages overseas companies to choose Ireland as a European base. Part of the incentive package offered can be the availability of state financial assistance, in the form of grant assistance, to defray start-up or other costs.

4.1 What incentives are available from Government for inward investment in Ireland?

In October 2006, the European Commission (Commission) approved a revised "Regional Aid Map" for Ireland, as part of a wider review of regional aid across the enlarged EU. The Regional Aid Map defines the regions of an EU Member State which are eligible for regional investment aid (that is, aid based on the geographic location of the project) and establishes the maximum permitted levels of aid in such regions. Under the new Regional Aid Map, the Irish regions which continue to be eligible for regional State aid are the Border, Midland and Western region, the South East, certain small islands, the counties of Clare, Limerick, North Tipperary and Kerry and certain parts of Cork. From the beginning of 2009, however Clare, Limerick, North Tipperary, Kerry and Cork are eligible for regional aid to small and medium sized enterprises (SMEs) only.

Prior to the 2006 review of Regional Aid Map, all areas in Ireland were entitled to some form of regional investment aid. Going forward, businesses in Dublin and much of Mid Eastern Ireland, which are no longer entitled to regional aid, may still be entitled to other forms of aid including aid for research, development and innovation (R&D&I), training, environmental protection or aid to SMEs, where the conditions laid down by the Commission for such categories of aid are met.

The Investment and Development Agency (IDA) and Shannon Development are the primary grant-awarding bodies to foreign inward investors. The IDA is the primary state-sponsored agency with responsibility for the promotion and development of foreign investment into Ireland. Shannon Development grants are confined to projects in the Shannon region. A third body, Údarás na Gaeltachta, is responsible for encouraging investment in the Irish (Gaelic) speaking areas of Ireland. A variety of grants are available and can be specifically tailored to meet the needs of each

company. Cash grants do not have to be repaid save in certain agreed circumstances. Each proposed investment is assessed by the relevant grant authority against a number of criteria. The level of grant payable is generally determined through negotiation. Further information can be obtained by visiting the websites of the IDA (www.ida.ie) and Shannon Development (www.shannon-dev.ie).

4.2 **What type of grants are available from the IDA?**

In the case of regional aid, aid may be given in the form of capital grants for the acquisition of fixed assets (that is, site purchase and development, buildings and new plant and equipment). In certain cases, aid may also be available for the acquisition of intangible assets such as patent rights, licences and know-how. The subsequent disposal of grant-aided assets is invariably restricted by agreement. Alternatively, regional aid may also be granted in the form of employment grants which are linked to the amount of each full-time and permanent job created and will vary depending on the location of the project and the activities to be undertaken.

In areas no longer eligible for regional aid, certain companies may be eligible to apply for grants towards the cost of major training initiatives, the development and expansion of an R&D facility, or "innovation" projects such as aid to new innovative enterprises or innovation in services. Companies can also apply for aid for environmental protection initiatives and aid to support certain risk capital investments.

4.3 **What is the application procedure for IDA grants?**

The process can take a number of weeks and involves the preparation and submission of a formal business plan to the IDA, together with subsequent meetings and negotiations between the applicant and the IDA. In order to be considered for grant incentives, an applicant must satisfy the IDA that the financial assistance is necessary to ensure the establishment or development of the operation and that the investment proposed is commercially viable and will provide new employment.

If the application is approved and an incentive package is agreed, a grant agreement is then entered into between the IDA, the Irish entity (see Section 5 below) and/or its promoter/parent company. This contract sets out the terms on which the grant aid is given and

will vary from case to case. However, the following key provisions are reasonably standard:

- a commitment by the promoter (typically the parent company) that the development of the operation will be in accordance with the proposals submitted, including the projected number and type of jobs to be created;
- the agreement will specify the financing required from the promoter and the manner in which it is to be provided. The IDA will nearly always require that the amount of the grant aid received is matched by an equal amount of equity investment by the promoter. The IDA's preference is that this matching equity equivalent be in the form of ordinary share capital or common stock and the IDA insist that at least 25 per cent of the equity equivalent comprises share capital or paid up stock;
- a prohibition on a change of control of the parent company or Irish entity without IDA consent; and
- provision for the repayment of the grants if the Irish project fails to achieve employment targets, ceases to carry on business or if there is a breach of the terms of the grant agreement. Current IDA policy extends the contingent obligation to repay the grant for a period of five years from the date of the last grant payment.

4.4 Once approved for IDA grant aid, how and when is it paid?

Grants are paid once the relevant expenditure is incurred. When a claim for a grant payment is received by the IDA, it is assigned to a designated executive in their grants administration department who liaises with the client company to make sure that the grant is paid as quickly and efficiently as possible. In order to claim grants, the company is usually obliged to provide certain specified information to the IDA including, for example, copies of signed employment contracts confirming the appointment of full-time permanent staff for the payment of employment grants. An auditors' certificate is also usually required to support all claims for the payment of grants. It is therefore important for the company to maintain adequate records to facilitate this process.

5 ESTABLISHING IN IRELAND: COMPANY FORMATION; MERGERS AND ACQUISITIONS; REDOMICILIATIONS

5.1 What type of Corporations are available under Irish law?

Essentially there are two basic types of company in Ireland, private companies and public companies. The vast majority of companies registered in Ireland are private companies limited by shares and they are by far the most popular form of business entity for inward investment projects. The shareholders of a private limited company have limited liability. The other principal form of company is a public limited company, which is typically used where securities are listed or offered to the public. The recently introduced European Company or *Societas Europea* ("SE") is treated as a public company under Irish law but is not yet widely used in the EU.

5.2 What is the procedure for incorporation and how long does it take?

In order to incorporate the most frequently used entity (a private company limited by shares), certain documents must be filed with the Irish Companies Registration Office (CRO). The information which must be furnished to the CRO includes details of the proposed name of the entity, the shareholders, directors and company secretary of the new company. The directors and secretary must all sign a consent to act and acknowledge their obligations under Irish law. The completed documentation together with the memorandum and articles of association (the constitution and bye-laws) of the new company are lodged with the CRO. Once the company is incorporated, these documents are made available for public inspection.

Under an express incorporation scheme it is possible to incorporate a company within five working days. Outside of such scheme it can take approximately two to three weeks for a company to be incorporated.

5.3 Can we choose any name we want for an Irish company?

Not necessarily, as there are restrictions on the choice of company name. The CRO may refuse a name if it is identical to or too similar to a name already appearing on the register of companies, if it is offensive or if it would suggest State sponsorship. Names which are phonetically and/or visually similar to existing company

names will also be refused by the CRO. This includes names where there is a slight variation in the spelling. It is generally recommended that company names include extra words so as to create a sufficient distinction from existing names.

Registration does not give the company any proprietary rights in the company name. As well as searching the Register of Companies, it is also important to check any proposed name against the names on the Irish Business Names Register and Irish and EU Trade Marks Registries(and any other registers, depending on where it is proposed to carry on business). This is to ensure that the proposed company name does not conflict with an existing business name or trade mark, since the person claiming to have a right to that name or mark could take legal action to protect its interest.

It should also be noted that certain names cannot be used unless approved by relevant regulatory bodies. For example, the words "bank", "insurance", "society" and "university" cannot be included in a company name unless prior permission is obtained from the relevant Government department(s).

5.4 **Can we reserve a company name in advance?**

Company names may be reserved for a period of up to 28 days in advance of incorporation.

5.5 **Is the company obliged to carry on an activity in Ireland?**

A company will not be incorporated in Ireland unless the company will, when registered, carry on an activity in Ireland. A declaration confirming this must be completed and filed with the incorporation documents at the CRO.

5.6 **What is the management and governance structure of an Irish company? Are there residency requirements for directors and officers?**

5.6.1 ***Management and governance structure***

The management of a company is nearly always delegated to the company's board of directors. All companies must have at least one secretary and a minimum of two directors, one of whom is required to be an EEA resident (see below). The secretary may also be one of the directors of the company. A

body corporate may act as secretary to another company, but not to itself. A body corporate may not act as a director. The directors of a company have wide responsibilities under Irish law. They are obliged to act in the best interests of the company and to ensure that the company acts in compliance with Irish company law. There are specific legal requirements governing conflicts of interest, substantial property transactions between directors and companies and the disclosure of directors' interests (directly or indirectly) in the shares or debentures of a company or a company within that group (including the ultimate parent company). Directors should familiarise themselves with their duties under Irish law. The Office of the Director of Corporate Enforcement has published an information booklet on the subject entitled 'The Principal Duties and Powers of Company Directors', and a copy is available to download from their website at www.odce.ie.

5.6.2 ***Resident Director***

At least one of the directors of an Irish company must be a resident of a Member State of the European Economic Area (EEA). Member States of the EEA comprise all member states of the EU and Iceland, Liechtenstein and Norway. In so far as it is the person's residence in Ireland that falls to be determined, a person must have been present in the State for a period amounting in aggregate to 183 days or more during the 12 months or 280 days over the 24 months (excluding 30 days or less in any one year) preceding the date of incorporation of the company in order to qualify as "resident".

An EEA resident director is not required where the company posts a bond in the prescribed form, to the value of €25,395. The bond provides that, in the event of a failure by the company to pay a fine imposed in respect of an offence under company law or a penalty under tax legislation, an amount of money up to the value of the bond will be paid by the surety in discharge of the company's liability. The bond facility is available from a number of insurance companies in Ireland. The premium payable for a two year bond is approximately €1,600 and this is non-refundable.

In addition, a company is not required to have an EEA resident director (or a bond in lieu) where the company holds

a certificate from the CRO confirming that the company has a real and continuous link with one or more economic activities that are being carried on in Ireland. This option is only open to companies post-incorporation.

5.7 Post-incorporation, what are the filing (and related) obligations?

The following is a brief summary of the principal obligations. Further details can be provided on incorporation. Fines and other sanctions can be imposed on a company and any officer of a company where the relevant obligations are not met.

5.7.1 *Maintenance of statutory registers, minute books and books of account*

Various statutory registers and books of account must be maintained by a company under Irish company law. The registers required include: the register of members, register of directors and secretaries, register of directors' and secretaries' interests in shares and debentures and a register of debenture holders. A company is also obliged to keep minutes of its general meetings and the directors are also under an obligation to keep minutes of directors' meetings. Certain registers are open to inspection by members of the general public.

In addition, Irish company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period. In preparing those financial statements, the directors are required to:

(a) select suitable internationally recognised accounting policies and then apply them consistently;

(b) make judgements and estimates that are reasonable and prudent; and

(c) prepare the financial statements on a going concern basis, unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company. The directors must ensure that the financial statements are prepared in accordance with either International Financial Reporting Standards (IFRS) or with accounting standards generally accepted in Ireland. The consolidated financial statements of EU listed companies that are incorporated in Ireland or elsewhere in the EU must be prepared in accordance with IFRS.

5.7.2 ***Is a statutory audit required?***

The annual financial statements of Irish companies are required to be audited by a registered auditor, subject to limited exceptions. The audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgments made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

There are exemptions from audit for certain smaller companies that are not part of a group.

Irish legislation requires auditors to report to the relevant authority certain instances of their clients, or officers, committing indictable offences under Irish company law and to report any suspicions of theft, fraud or money laundering in their client companies.

5.7.3 ***Annual return filing with audited financial statements***

At least once a year, a company must deliver an annual return to the CRO. The annual return contains details of the company's directors and secretary, its registered office, details of shareholders and share capital. The annual return is required to be made up to the company's annual return date (ARD) and filed with the CRO within 28 days of that date. A company's first ARD is the date which is six months after its incorporation. It is possible to change, and in some cases extend, a company's ARD.

A company's audited financial statements must also be annexed to a company's annual return except the first annual return. Smaller companies may file abridged financial statements that provide less information than the annual financial statements prepared for the shareholders. In addition an Irish company that is a subsidiary of an EU parent may file the consolidated financial statements of the parent instead of its own financial statements provided that the EU Parent company guarantees the liabilities of the Irish subsidiary. A further optional exemption to the consolidation obligation applies where the Irish company is itself a subsidiary of another undertaking established outside the EEA (so, for example, an Irish holding company whose parent in turn is a listed US company). Where certain conditions are satisfied the non-EEA parent company's group accounts (together with the Irish company's stand alone accounts) can be filed as an alternative to the Irish company filing consolidated accounts. The filing of audited financial statements does not apply to certain categories of private unlimited companies.

5.7.4 *Obligation to publish company name and directors details on business communications of the company*

A company must ensure that its name, registered address and registered number is mentioned on all business letters of the company and in all cheques, invoices and receipts of the company. This information for private limited companies and public limited companies must also be displayed on the company's website and certain electronic communications (for example, email, letters and electronic order forms). The names of directors and their nationality (if not Irish) must be included on all business letters on or in which the company's name also appears. A company is also required to paint or affix its name in a conspicuous place, in legible letters, on the outside of every office or place in which its business is carried on.

5.7.5 *Business name*

Where a company uses a business name that is different from its legal name, the business name must be registered by that company with the Irish Registrar of Business Names.

5.8 What about foreign incorporated companies trading in Ireland?

5.8.1 *Branch operations*

Any foreign company trading in Ireland that has the appearance of permanency, an independent Irish management structure, the ability to negotiate contracts with third parties and a reasonable degree of financial independence is considered a branch under Irish company law. There are certain procedures set down for the registration of branches in Ireland involving the submission and authentication of memorandum and articles of association, and in certain situations, the filing of annual accounts.

In some cases it may make sense from a tax perspective to establish a foreign branch in Ireland, rather than incorporate a separate legal entity. If trading losses are likely to arise following the initial establishment in Ireland, such losses may be capable of being offset against the profits of the parent company in the parent company's home state. If it is envisaged that the operations in Ireland would continue to be loss making, then a branch may be preferable until such time as the operation becomes profitable. The most advantageous structure will only be identified after careful consideration of the proposed business, its relationship with the business of the foreign parent company and the projections for the profitability of the business in the future.

5.8.2 *Place of business in Ireland*

A foreign company carrying on business in Ireland from a fixed address, not being a branch, must file a copy of its constitutional documents, together with a list of directors of the company and the address of its established place of business in Ireland, with the CRO.

5.9 Establishing in Ireland by way of merger and/or acquisition

There are a number of mechanisms by which a business may establish a presence in Ireland aside from simply incorporating a company here. A presence might be established by acquiring an existing company; acquiring the business and assets of an existing company or merging with an existing Irish company.

5.9.1 *Share Purchase vs Asset Purchase*

The advantage of an asset acquisition over a share purchase is that the acquiring entity can choose which assets and liabilities it acquires – with a share purchase all of the assets and liabilities of the target company are acquired. Prior to an acquisition of either assets or shares, a due diligence exercise is carried out on behalf of the acquiring entity. Items on the due diligence checklist may include tax considerations; employment law matters, real estate considerations and a review of the general asset and liability profile of the target company. In advance of the acquisition, any required third party consents would need to be obtained, for example, from the shareholders of the target company, relevant grant authorities (such as IDA, Forfas and Enterprise Ireland), regulatory authority (if engaged in a regulated industry) bankers, third-party contractors of the target company and the Irish Competition Authority.

Where the acquiring entity is purchasing the entire issued share capital of an existing Irish company, the transaction is documented by a share purchase agreement which, if it includes any warranties, will typically be supplemented by a disclosure letter and an instrument of transfer of the shares. The parties to a business and asset transfer will typically enter into an asset transfer agreement which documents the assets to be transferred and the consideration payable while the transfer of particular assets may need to be documented separately, for example, the transfer of land, the novation of third-party contracts or the transfer of intellectual property.

5.9.2 *Scheme of Arrangement*

Irish companies may also be acquired by way of a court approved scheme of arrangement under Irish company law. A scheme of arrangement is a statutory procedure provided for under Irish company law, whereby a company may make a compromise or arrangement with its shareholders and creditors which is sanctioned by the Irish High Court. They are rarely used in an acquisition context.

5.9.3 *Merging with an existing company*

A legal framework to enable cross-border mergers between public or private limited liability companies from member

states in the EEA was formally introduced into European law by Directive 2005/56/EC on Cross-Border mergers of Limited Liability Companies (the **"Directive"**). The Directive has been implemented in Ireland.

This relatively new form of cross-border merger, more commonly found in civil law jurisdictions, occurs when all of the assets and liabilities of one or more companies are automatically transferred to another company by way of universal succession and the transferor company is dissolved without going into liquidation. Universal succession means that the transferor company avoids the need to execute and record separate agreements for each asset or liability that they transfer.

A merger can be effected in one of three ways: by acquisition, by formation of a new company, or by absorption (which relates to the assimilation of a wholly-owned subsidiary). The merger process is a useful restructuring tool which may in some cases be attractive in facilitating pan-European restructurings.

5.9.4 ***Migrations / Redomiciliations***

There are four principal ways in which a corporate migration to Ireland can be effected:

- migrate the tax residence of the existing holding company to Ireland by transferring its central management and control to Ireland;
- incorporate a new Irish legal entity and effect a share for share exchange with the existing foreign holding company. In circumstances where the foreign entity has been established in a common law jurisdiction, the share for share exchange could be effected by means of a court sanctioned scheme of arrangement in the home country of the existing foreign entity;
- merge an existing company incorporated in a Member State of the EEA into a newly formed Irish company; and
- convert an entity incorporated in an EU member state into a Societas Europaea (SE) and subsequently move

its registered seat to Ireland or alternatively merge the existing foreign entity into a new Irish registered SE.

The most suitable migration model would depend on the facts and circumstances in each particular instance and tax considerations in the existing home jurisdiction would be a primary driver in the planning process. Migration of tax residence alone may not achieve the desired result and may in fact create a tax liability in some cases (for example, the UK imposes an exit tax on companies migrating their tax residence out of the UK). In the majority of cases, it would also be necessary to establish a new Irish entity as it is not possible under existing Irish company law to transform or "continue" an existing foreign entity into an Irish entity, unlike in certain civil law jurisdictions.

5.9.5 *Are there any Takeover Rules applicable?*

The Irish Takeover Panel Act 1997, Takeover Rules, 2007 (**"Rules"**) provide the main regulatory framework for the conduct of takeovers of public companies in Ireland. The Rules are administered by the Irish Takeover Panel (the **"Panel"**) which will have jurisdiction on the basis that a target is an Irish incorporated public company whose securities are listed on a recognised Stock Exchange. The Panel operates principally to ensure fair and equal treatment of all shareholders in relation to takeovers (whether by way of scheme of arrangement or general offer).

6 TAXATION

For more than 50 years, corporate tax incentives have been the cornerstone of the strategy pursued by successive Irish governments to encourage inward investment into Ireland. This focused and unwavering commitment to implement fiscal policies aimed at encouraging inward investment makes Ireland one of the pre-eminent countries in and through which to do business in Europe.

6.1 What are the tax benefits of doing business in Ireland?

The primary benefit, from a tax perspective, of doing business in Ireland is Ireland's standard Corporation tax rate of 12.5 per cent. The 12.5 per cent rate has been approved by the EU and applies to active profits and is not dependent on securing incentives, rulings or other tax holidays.

In recent years the introduction of an attractive holding company regime, the availability of improved credits for research and development expenditure and most recently the introduction of tax relief for the acquisition costs of IP and other intangibles, has greatly enhanced Ireland's attractiveness from a tax perspective. The Irish Government has also repeatedly reaffirmed its commitment to the 12.5 per cent rate of corporation tax and has shown a renewed willingness to further enhance the Irish tax system to attract inward investment. The following recent changes to the Irish tax system emphasise this commitment, for example:

- Since 2008, dividends received by an Irish holding company from EU resident companies and companies resident in jurisdictions which have a tax treaty with Ireland (Treaty Countries) are now taxed at the rate of 12.5 per cent (rather than 25 percent) where such dividends are paid out of trading profits;

- The R&D tax credit regime (see below) was further enhanced in 2008 by introducing increased flexibility for the use of R&D tax credits. Such credits can now be used against profits from the preceding accounting period, and if an excess still remains two years after the credit arose, can be repaid to the taxpayer;

- The introduction of a relief for the acquisition of intellectual property and other intangibles in 2009, allows capital expenditure on intangibles to be amortised or depreciated against taxable income;

- A new regime for start-up companies was introduced in 2008 which allows companies a three year “holiday” from Irish tax, where a company’s tax liabilities are less than €40,000 (marginal relief also exists up to €60,000);

- A number of domestic exemptions (including dividend withholding tax and interest withholding tax) were extended in 2008 and now confer the benefit of exemptions not only to persons resident in Treaty Countries, but also to persons resident in jurisdictions which have signed a double taxation treaty with Ireland and that treaty has not yet been fully ratified; and

- The remittance basis of taxation for individuals was expanded and relaxed and now allows Irish tax resident and non-domiciled individuals earning in excess of €100,000 to avail of the remittance basis of taxation where income is earned from an Irish employment.

6.2 What kind of activities qualify for the 12.5 per cent rate?

Broadly, the current corporation tax regime involves the characterisation of income into two streams, with all trading income (broadly equivalent to active income) taxable at 12.5 per cent and all non-trading income (broadly equivalent to passive income) taxable at 25 per cent.

Practically all active business pursuits will qualify for the 12.5 per cent rate. The 12.5 per cent rate is available to practically all business sectors, making Ireland attractive in business sectors which may not have traditionally regarded Ireland as a location from or through which to do business. The only issue in most cases will be whether the activity conducted in Ireland comprises the “carrying on of a trade” in Ireland for tax purposes. Since the introduction of the 12.5 per cent rate, it is clear that the latest generation of inward investors in Ireland include investors from industry sectors which may not have traditionally considered Ireland as a potential low tax platform. The objective underpinning such investment is to avail of the possibilities presented to

unbundle the traditional value chain and locate appropriate profit generating functions in Ireland.

Examples of activities in the traditional value chain which are capable of being unbundled and carried on in Ireland include:

- management activities (for example legal, accounting, human resources, finance and reporting etc.);
- financial activities (for example cash management, banking, insurance and risk management);
- e-business (for example CRM, procurement and distribution, supply chain management, marketing and selling);
- technical activities (for example technical support, data management, security);
- research and/or development activities;
- ownership and exploitation of intellectual property; and
- distribution activities.

Ireland operates a self-assessment system for various taxes, including corporation tax. However, in certain circumstances, a taxpayer can request an opinion from the Irish Revenue Commissioners ("Revenue") on the tax consequences of a particular transaction in advance of the transaction taking place. Revenue have established a process whereby they will give an opinion as to a taxpayer's entitlement to the 12.5 per cent rate. Opinions given by Revenue are not legally binding and it is open to Revenue officials to review the position when a transaction is complete and all the facts are known.

6.3 Why choose Ireland?

Tax legislation affecting international business is becoming more complex and sophisticated each year. In particular, it is becoming increasingly difficult for multinational companies to preserve the tax advantages of locating in a low tax country. In order to be attractive to the international business community, therefore, a low tax jurisdiction must be able to offer more than a low rate of tax. It is for this reason that Ireland is a particularly attractive location for multinationals. For example, the decision concerning the choice of locations for carrying on technology enabled activities often turns

on the perceived advantages and disadvantages between tax havens and onshore low tax locations such as Ireland. The obvious advantage of a tax haven is the absence of any local corporation tax on profits. The obvious disadvantage of choosing a tax haven is the absence of a tax treaty network. The less obvious disadvantages of choosing a tax haven include:

- constraints on creating the necessary economic infrastructure to which value and ultimately profits can justifiably be attributed; and
- the general drive at EU and OECD level against harmful tax competition and tax havens in particular.

In contrast, Ireland combines the benefits of:

- an extensive tax treaty network;
- a low corporation tax environment which does not breach EU or OECD harmful tax competition criteria;
- the regulatory and economic infrastructure of a highly-developed OECD jurisdiction;
- the benefits of EU membership (eg Irish regulation generally suffices as a European passport for goods and services); and
- the physical and people infrastructure to enable the construction of profit generating centres defensible by reference to functions, risks and tangible assets of the Irish operation.

Apart from the low rate of corporation tax, other key tax benefits of locating in Ireland include:

(a) No withholding tax on interest payments to EU/treaty countries;

(b) No withholding tax on dividends to EU/treaty countries;

(c) An extensive and expanding double tax treaty network;

(d) A comprehensive unilateral foreign tax credit system;

(e) No controlled foreign corporation rules;

(f) No specific code of transfer pricing rules;

(g) No specific code of thin capitalisation rules;

(h) No capital gains tax exit charge for EU/treaty countries;

(i) An exemption from capital gains tax in respect of the disposal of shareholdings in qualifying companies;

(j) No companies registration taxes (capital duty);

(k) A corporation tax credit of 25 per cent for incremental research and development (R&D) expenditure;

(l) A corporate tax relief for the acquisition cost of IP and other intangibles; and

(m) No custom duties on Irish goods on their importation into other parts of the EU.

We set out below the current list of Countries with which Ireland has a Double Taxation Treaty

Australia	Austria	Belgium
Bulgaria	Canada	Chile
China	Croatia	Cyprus
Czech Republic	Denmark	Estonia
Finland	France	Germany
Georgia*	Greece	Hungary
Iceland	India	Israel
Italy	Japan	Korea (Republic of)
Latvia	Lithuania	Luxembourg
Macedonia*	Malaysia	Malta*
Mexico	Moldova*	Netherlands
New Zealand	Norway	Pakistan

Poland	Portugal	Romania
Russia	Slovak Republic	Slovenia
South Africa	Spain	Sweden
Switzerland	The Republic of Turkey*	United Kingdom
United States	Vietnam	Zambia

Treaties with Georgia, Macedonia, Malta, Moldova and the Republic of Turkey have been signed, but have not yet been fully ratified.

Negotiations for new agreements with Albania, Azerbaijan, Bosnia Herzegovina, Moldova, Serbia, Thailand have been concluded and are expected to be signed shortly. The Irish Revenue Commissioners are at various stages of negotiations for new agreements with Argentina, Armenia, Egypt, Kuwait, Morocco, Singapore, Tunisia, and Ukraine. The Irish Revenue Commissioners plan to initiate negotiations for further new agreements with other countries during the course of 2009 and 2010.

6.4 What is the general scope of Irish corporation tax?

6.4.1 *Charge to tax and residence*

Companies which are resident in Ireland for tax purposes are subject to corporation tax on worldwide income and gains. A non-resident company is chargeable to corporation tax on profits arising from a business conducted through a branch or agency in Ireland.

A company which is incorporated in Ireland will be regarded as tax resident in Ireland unless:

(a) the company or a related company is carrying on a trade in Ireland, and either:

(i) the company is ultimately controlled by tax residents of an EU Member State or a country with which Ireland has a double tax treaty, or

(ii) the company or a related company is quoted on a recognised stock exchange of an EU Member State or a country with which Ireland has a double tax treaty, or

(b) the company is treated as resident in a country by virtue of a double tax treaty entered into between that country and Ireland.

For those companies which fall within the above exceptions and for companies which are not incorporated in Ireland, tax residence is determined by reference to the place where the central management and control of the company abides.

In practice and in the absence of evidence to the contrary, the courts generally place considerable emphasis on meetings of the board of directors in determining who exercises the central management and control of a company. The reason for this is that, in general, the business of companies is managed by their directors and such management is normally conducted at meetings of the board of directors. If meetings of the directors, who actually manage the company's business in this manner are held in Ireland, the company would generally be regarded as centrally managed and controlled in Ireland.

In order to benefit from Ireland's tax treaties, companies must, in general, be residents of Ireland within the meaning of the relevant treaty.

6.4.2 *Computation of taxable income*

As previously mentioned, Ireland operates a self-assessment system for tax purposes. In general, the trading profits of a company are computed in accordance with general accounting principles. It is important, however, to take account of specific statutory provisions which may depart from the general accounting treatment. For example, only expenses which are incurred wholly and exclusively for the purposes of trading activities are allowable as a deduction in calculating the profits of a company for tax purposes. Also,

there are specific provisions relating to the deductibility of entertainment expenses, motor vehicle expenses, pre-trading expenses, provisions, interest and royalty payments.

Dividends paid by an Irish resident company are not deductible. Such dividends are regarded as "franked investment income" and therefore not taxable in the hands of another Irish resident company. Detailed rules relating to the deductibility of interest payments apply, subject to certain limitations, where interest is paid wholly and exclusively for the purposes of a trade by an Irish company, such interest will be deductible on interest. Interest may also be deductible in other limited circumstances where the loan is used for investment in other companies.

6.4.3 *Tax depreciation and loss relief*

Tax losses and tax depreciation are deductible in accordance with special rules. In general, the tax losses of a company which forms part of a tax group can be offset against taxable profits of another group company. For these purposes a group can include EU resident companies. Losses may also be surrendered between branches of EU companies and Irish subsidiaries. Provisions to allow for the surrender of losses from EU subsidiaries were introduced in Finance Act 2007. It should be noted that the concept of a group consolidated tax return or tax unity does not exist in Ireland.

6.4.4 *Research and development tax credit*

A corporation tax credit of 25 per cent for incremental qualifying R&D expenditure is available in Ireland. The tax credit is available in respect of qualifying R&D expenditure undertaken within the European Economic Area. This R&D tax credit is in addition to the existing deduction and capital allowances that may be available for R&D expenditure. Expenditure incurred by companies under 51 per cent common ownership can be aggregated and allocated to the members of the trading group in proportions nominated by the tax payer. The R&D tax credit is allowed against a company's corporation tax liability for the year in which it is incurred. Pursuant to new provisions introduced in 2008, excess R&D tax credits can now be carried back against a company's corporation tax liability in the accounting period

preceding the accounting period in which the qualifying R&D expenditure is incurred. Any excess R&D tax credit can also be carried forward against future corporation tax profits and importantly can now be claimed back as a refund from the Revenue Commissioners where it is not possible to utilise the credit in the two years following the accounting period in which the R&D tax credit arises.

6.4.5 ***Tax relief for acquisition costs of IP and other intangibles***

Some technical amendments to the onshore pooling regime were introduced in 2009 that provide that excess credits arising from dividend income taxed at 12.5 per cent can only be used to offset dividend income taxed at 12.5 per cent.

Capital expenditure incurred after 7 May 2009 on "intangible assets" (as defined) which are acquired for the purposes of a trade can be offset against taxable income for corporate tax purposes.

The tax relief available reflects the standard accounting treatment of the intangible assets and is based on the amount charged to the profit and loss account in respect of the amortisation or depreciation of the relevant intangible asset. Alternatively, the tax payer can opt to claim relief over 15 years at a rate of seven percent for the first 14 years with the remaining two percent of the relief claimed in the final year. The aggregate amount of relief, together with related interest expense, is limited in any one year to 80 percent of the trading income derived from the relevant intangible assets. Any unutilised relief may be carried forward indefinitely for offset against future trading income from the separate trade. The definition of intangibles for the purposes of the relief has been very widely drafted to include, amongst others, patents, inventions, industrial know-how, design rights in general, trademarks, copyright, licences or authorisations of any of these rights and, importantly, any goodwill directly attributable to any of these intangibles.

Activities relating to the management, development or exploitation of relevant intangible assets, including the sale of goods or services which derive the greater part of their value from such intangible assets, are deemed by the new regime to be carried on as a separate trade and any income from

such activity is assessed separately. In some cases, this may require an analysis of whether the sales of goods and services derive the greater part of their value from the underlying intellectual property or intangibles.

The regime specifically provides that where intangible assets are acquired from a group company in circumstances where such transferor would be entitled to Irish capital gains tax group relief, the acquiring company will be able to claim the new relief on the assets acquired only if both it and the transferring company elect to opt out of the group relief provisions.

Relief is not available for capital expenditure in respect of which tax relief is otherwise available or where the expenditure incurred exceeds the amount that would be payable between independent parties. Relief is also not available in respect of any expenditure incurred as part of a tax avoidance arrangement.

Software is not included in this relief, but a separate relief applies for the acquisition of software which is used for business purposes. Under the separate software relief capital expenditure incurred on software can, broadly speaking, be amortised for tax purposes over an eight year period at the rate of 12.5 per cent per cent on a straight-line basis.

6.4.6 *Incoming dividends*

Ireland operates a foreign tax credit system in respect of dividends received. Companies can mix or pool the credits for foreign tax on different dividend streams for the purpose of calculating the overall credit (called "onshore pooling"). Credit is available for withholding tax and underlying tax, including credit for many state, local and municipal taxes suffered in countries with which Ireland has a tax treaty but which taxes are not covered by the treaty (for example, US State taxes). This unilateral credit relief requires a shareholding of at least five per cent of the ordinary share capital in the foreign company. Excess credits can be carried forward for offset in subsequent accounting periods.

6.5 Attractive Holding Company and Headquarter Regime

Ireland offers an attractive tax regime for holding companies. The two main features of this regime are (a) a 'substantial shareholders' exemption from Irish tax on the sale of subsidiaries, and (b) an advantageous treatment of foreign dividend income.

Exemption from Irish Tax on Sale of Subsidiaries - Ireland's 'substantial shareholders' exemption relieves holding companies from Irish capital gains taxation on disposals of subsidiaries. Two main conditions apply; (a) the subsidiaries must be resident in the EU or in a country with which Ireland has a tax treaty, and (b) a minimum 5 per cent shareholding must have been held for a continuous period of at least 12 months within the previous 24 months.

Advantageous Treatment of Foreign Dividend Income - Generally, Irish holding companies can receive dividends from their foreign subsidiaries on an effective Irish tax-free basis (or with a very low effective rate of Irish tax). This is due to a combination of Ireland's low corporation tax rate and the availability of Irish credit relief for foreign taxes. The 12.5 per cent corporation tax rate applies to dividend income received by an Irish company from its foreign subsidiaries once (a) the subsidiaries are tax resident in the EU or in a tax treaty country, and (b) those dividends are paid out of 'trading' profits of the foreign subsidiaries. If the dividends are partially paid out of non-trading profits, then the 12.5 per cent still applies once (broadly speaking) at least 75 per cent of the profits are trading profits. A higher rate of 25 per cent applies to other dividend income (eg from a subsidiary not resident in a tax treaty country).

However, foreign withholding taxes and (once a 5 per cent shareholding is held) foreign underlying taxes may be credited (or set off) against this Irish tax liability. Onshore dividend mixing is also permitted so that excess tax credits can be pooled against other dividend income. Usually, sufficient foreign taxes are payable to fully offset the 12.5 per cent (or, as the case may be, the 25 per cent) Irish tax due. Where this is the case, no Irish tax is payable on such dividend income.

6.6 What about other taxes?

6.6.1 *Capital Gains Tax (CGT)*

Companies resident in Ireland for tax purposes are subject to corporation tax on their gains. Non-resident companies are chargeable to capital gains tax on disposals of certain specified assets, (for example, real estate situated in Ireland). The current rate of capital gains tax is 25 per cent. Taxable gains are calculated by deducting from the sale proceeds the costs incurred on acquiring the assets. There are significant reliefs from capital gains tax on the transfer of assets intra group and in merger/reconstruction situations.

As outlined above, the disposal of shares in a subsidiary company by an Irish holding company is, in certain circumstances, exempt from Irish capital gains tax.

6.6.2 *Value Added Tax (VAT)*

VAT operates as a turnover tax on all relevant supplies up to a point of final consumption or deemed consumption. This means that a taxable business must account for relevant VAT liabilities in respect of its Irish based taxable turnover but has the right to claim a deduction for VAT incurred on its own purchases, acquisitions and importations in respect of which Irish VAT is borne.

Ireland's VAT regime is dictated by EU legislation with the result that Ireland's VAT system is broadly in line with the pan-European harmonised system. The current rates of VAT are zero per cent, 5.2 per cent, 13.5 per cent and 21.5 per cent. The standard rate of 21.5 per cent is applicable unless one of the other rates is specified.

In general, VAT is applicable to all imports of goods from outside of the EU and to the supply of goods and services within Ireland. Goods exported to businesses situate elsewhere in the European Community and to businesses or individuals situate outside the European Community will generally attract the zero per cent rate of VAT. Many categories of services supplied to customers located outside of Ireland may not be chargeable to Irish VAT as the place of supply may be deemed to be outside of Ireland.

Ireland operates a special VAT incentive for exporters. Entities located in Ireland that supply in excess of 75 per cent of their products to other EU locations or export to non-EU jurisdictions may qualify for authorisation to purchase most

goods and services at the zero per cent rate of VAT. This can provide a substantial cash flow advantage for companies establishing their Europe Middle East and Africa (EMEA) region operations in Ireland.

6.6.3 *Stamp duty/capital duty*

The charge to Capital duty on the issue of shares in a limited company in Ireland has been abolished, with effect from 7 December 2005.

Stamp duty arises on written instruments that are executed in Ireland or any written instrument relating to Irish property. The rate of stamp duty varies. Generally the transfer of shares attracts a one per cent rate of stamp duty, whilst transfers of commercial land and buildings attracts stamp duty of up to six per cent. There are significant reliefs from stamp duty on the transfer of assets intra group and in merger/reconstruction situations.

6.6.4 *Custom duties*

Customs duties are essentially EU taxes charged on the importation of goods from non-EU countries. The EU operates a common system of customs duty. Applicable rates vary greatly depending on the class of goods in question. A number of classes of goods, including goods within the computer and IT sector, are liable to the zero per cent rate of duty. A number of reliefs exist including the ability to import goods for processing and onward exportation beyond the EU free of customs duties.

6.6.5 *Payroll Taxes*

Employment income in Ireland is subject to a withholding tax known as the Pay As You Earn (PAYE) system. This PAYE system must be operated by employers and is effectively designed to equate the tax withheld by the employer with the final liability of the employee in respect of his/her employment income for the relevant tax year.

Recently introduced provisions seek to ensure that tax that should be deducted under the PAYE system is in fact deducted. These provisions deal with the use of intermediaries and non-resident employers, situations where

domestic and foreign employment are involved and the position of mobile workers.

Pay Related Social Insurance (PRSI) is another payroll tax operated by employers. Unlike PAYE, however, PRSI is paid partly by the employer and partly by the employee. The employer's contribution is generally 10.75 per cent of the relevant employee's salary, whilst employees generally pay 4 per cent of their salary subject to a ceiling of €75,036. Employees pay an additional health contribution levy of 4 per cent of their salary on earnings up to EUR75,036 and 5 per cent on earnings over EUR75,036. Employees will also pay an income levy of 2, 4 or 6 per cent depending on the amount of income earned.

6.7 What issues arise for individuals employed in Ireland?

The tax treatment of an individual for Irish tax purposes will depend on whether they are Irish resident, ordinarily resident and/or Irish domiciled.

Where an individual is resident, ordinarily resident and domiciled in Ireland, they will be taxable on their worldwide income and gains, regardless of their source.

If a person is resident and ordinarily resident but not domiciled, then liability to income tax is limited to Irish source income, income from an employment contract in respect of which the duties of such employment are exercised in Ireland and worldwide income to the extent remitted to Ireland. Similarly, if a person is resident but not ordinarily resident and not domiciled, then liability to income tax is limited to Irish source income, income from an employment contract in respect of which the duties of such employment are exercised in Ireland and worldwide income to the extent remitted to Ireland. The liability of a person who is either resident or ordinarily resident, but not domiciled, in Ireland to capital gains tax is limited to Irish source gains and worldwide gains to the extent remitted to Ireland.

The Irish rules have recently been amended such that for the tax year commencing 1 January 2009 a person will be resident for the day if they are present in Ireland at any time during a day whereas previously a person was only treated as resident in Ireland for a day if he/she was present in Ireland at midnight. In an ongoing

situation, it will be possible for an individual to spend up to 139 days in Ireland in a tax year without becoming Irish resident.

The legal concept of domicile and a definitive explanation of its meaning is beyond the scope of this briefing note. However domicile could be broadly defined as a person's natural home. Every individual is born with a domicile of origin. It is possible for a person to lose their domicile of origin and acquire a domicile of choice. Likewise it is possible for an individual to lose their domicile of choice and revive their domicile of origin. Domicile is an important concept under Irish law as it is relevant not only for tax purposes but also for determining the rules of succession, discussed further below."

6.8 Remittance Basis

The remittance basis of taxation describes how for certain tax resident individuals, income tax and capital gains tax ("CGT") on foreign income and capital gains are only liable to Irish tax, to the extent that such income and gains are actually remitted to Ireland as opposed to on an arising basis.

In Ireland, the remittance basis may be claimed by an individual who is either:

(a) resident but not domiciled in Ireland in a given tax year; or

(b) is an Irish citizen and is tax resident in Ireland, but not ordinarily resident in Ireland in a given tax year.

From an administrative perspective, it remains sufficient to rely on non-remittance and there is no formal requirement to elect.

6.9 Capital Acquisitions Tax ("CAT")

It is important for any non-domiciled person considering moving to Ireland to note the potential exposure to CAT.

CAT is the generic name for the tax imposed on gifts and inheritances in this jurisdiction, which is charged at 25 per cent. CAT is a beneficiary based tax and is imposed on any Irish situate assets comprised in a gift or inheritance and where, at the time of the gift or inheritance, either the donor or beneficiary is resident in Ireland. The level of tax imposed will depend on the degree of relationship between the beneficiary and the disponer.

There is a statutory relief for non-domiciled individuals. They will not be deemed to be resident for CAT purposes unless they have been resident for five consecutive tax years at the relevant time. In such a case, non-domiciled Irish residents will be within the Irish CAT charge on their worldwide estates, as will any trusts of which they are the settlor.

7 EMPLOYMENT AND LABOUR LAW

Irish employment law has been considerably influenced by Ireland's membership of the EU, with most Irish employment legislation now based on EU Directives. Recent legislation has strengthened the rights of employees while maintaining a competitive labour market.

7.1 What rights arise at commencement and during the course of employment?

7.1.1 *What information must be provided?*

There are various statutory provisions which require specific information to be given to employees. Each employee is entitled to a written statement of their terms and conditions of employment. An employee must also receive written details of the procedure which will be followed if the employee is going to be dismissed. Employees are also entitled to written statements showing the gross wages payable and the nature and amount of deductions applied.

7.1.2 *Is there a minimum wage?*

All employees over the age of 18 are entitled to the national minimum hourly rate of pay currently fixed at EUR 8.65 per hour unless they fall into a category to which a sub-minimum hourly rate of pay applies. Sub-minimum rates apply to employees under the age of 18, job entrants who enter employment for the first time after the age of 18 and trainees.

7.1.3 *What about restrictions on working time?*

The maximum average hours that an employee may work is 48 hours per week, not including rest or lunch breaks. Employees are entitled to rest periods of at least 11 consecutive hours in every 24-hour period and must have at least one weekly rest period of 24 consecutive hours. This rest period must include a Sunday unless the employer specifically provides otherwise in the contract of employment. There are significant exceptions to the rules on working time for various categories of workers.

7.1.4 ***Is there employment equality legislation?***

Discrimination on the following grounds is prohibited regarding both terms and conditions of, and access to, employment: gender, marital status, family status, sexual orientation, religious belief, age, disability, membership of the travelling community and race.

7.1.5 ***What about part-time workers?***

Discrimination against part-time employees is prohibited. Part-time workers must not be treated in a less favourable manner than comparable full-time workers solely because they work part-time, unless different treatment can be objectively justified.

7.1.6 ***What about fixed term workers?***

Discrimination against employees on fixed term or specified purpose contracts is prohibited. Fixed term workers must not be treated in a less favourable manner than comparable permanent employees unless such difference in treatment can be objectively justified.

7.1.7 ***What are the statutory leave entitlements?***

Every full time employee is entitled to four weeks (20 days) paid annual leave per year. In addition to paid holiday leave, employees are also entitled to maternity, parental, force majeure, carers, adoptive leave, and health and safety leave. There is usually no obligation to pay an employee while he or she is on such types of leave, although you may choose to do so depending on the circumstances. Employees are also entitled to nine further paid leave days annually for public holidays (or payment in lieu of same, depending on the circumstances).

7.1.8 ***What is the position with health and safety?***

There is a duty on employers to provide for the safety, health and welfare of employees. This includes obligations to provide a workplace that is safe so far as reasonably practicable, safe plant and machinery and suitable protective clothing or equipment. Employers are also obliged to prepare a ‘safety statement’. This is a report setting out how

employers intend to secure the health, safety and welfare of its employees in the workplace and to provide for safety representatives chosen from employees.

7.1.9 ***Must employers pay sick pay?***

Employers are not obliged to provide sick pay but, if a sick pay scheme is in place, all employees must generally be entitled to it equally.

7.2 What rights arise on termination of employment?

7.2.1 ***How much notice must we give to terminate an employee?***

Where either an employee or an employer wishes to end a contract of employment, minimum terms of notice apply where there has been continuous service of at least 13 weeks. The notice period to be given by an employer depends on the employee's length of service. It varies from one week, applicable where an employee has been employed for up to two years, to eight weeks notice, applicable where an employee has been employed for 15 years and upwards. Employees, on the other hand, are only obliged to give notice of one week, irrespective of their length of service. These are, of course, only the minimum prescribed terms and the parties may agree a longer period of notice by contract.

7.2.2 ***Are all employees entitled to redundancy?***

An employee is entitled to a redundancy payment where he or she has worked continuously for two years or more and is either dismissed by reason of redundancy or is laid off or kept on short time for a given period of time. Statutory entitlement is two weeks per year of service plus one bonus week. Employers often make an ex gratia payment along with the statutory payment but it is not obliged by law. Certain formal procedures must be observed. Employees must be given at least two weeks notice of redundancy. Certain additional rules and consultation requirements apply where an employer is considering a number of redundancies at the same time.

7.2.3 *Is there unfair dismissal legislation?*

Where an employee is unfairly dismissed, he or she has a right to compensation, reinstatement or re-engagement under the Unfair Dismissals Acts. Unfair dismissal legislation applies to those employees who have at least one year's continuous service. The legislation also covers instances where an employee is constructively dismissed (that is where the employer's behaviour was such that the employee was forced to leave). Material variation of an employee's contract of employment without his or her consent may constitute constructive dismissal.

Employers must apply fair procedures when dismissing an employee (for example, warnings must be given except in circumstances amounting to gross misconduct). The employee must be heard and a fair and proper investigation into the circumstances leading to the dismissal must be carried out.

7.3 Do rules apply on the transfer of employees?

Detailed rules apply regarding the treatment of employees where a business (or assets pertaining to the business) is being transferred from one employer to another. The rules do not apply to a share transfer. In essence, the obligations the original employer had towards his employees will be taken over by the new employer. This includes rights arising from the contract of employment, collective agreements and legislation. Both the previous and new employer are obliged to inform their respective employees of the reasons for the transfer, the implications of the transfer, and the measures envisaged to be taken in relation to the affected employees, in good time before the transfer is carried out. The employer is also obliged to consult with employee representatives.

7.4 What about industrial relations?

Whilst employees in Ireland have a right to join a trade union, employers are not obliged to recognise trade unions for collective bargaining purposes (although where collective bargaining does not take place, employers may alternatively be obliged to deal indirectly with unions under the auspices of the Labour Relations Commission or the Labour Court). Depending on the number of employees an employer has in EU Member States, an employer may be required to establish a European Works Council facilitating

employee access to management information of a non-sensitive nature. Again depending on numbers, an employer may also be required to establish a local works council which will also facilitate access to such information. The EU Social Charter requires the establishment of workers' councils by larger employers, who employ at least 1,000 employees in the EU and which have undertakings in two or more Member States of the EU which employ at least 150 employees. However, such local works councils are relatively powerless in comparison to works councils in some European civil law jurisdictions. Irish employees do not have any voting rights or any rights to veto any decisions of the employer and information which must be shared with works councils is limited to non-sensitive information.

7.5 Employee benefits and pensions

An employer may wish to provide its employees with employee benefits such as life insurance, pensions, private health insurance, sick pay and share incentive schemes. There is no legal obligation in Ireland to provide any of these benefits, save for pensions, where it is obligatory for all employers to offer access to a Personal Retirement Savings Account (PRSA) to all of their employees, unless each employee has access to an Occupational Pension Scheme (OPS) within six months of being employed. There is no obligation on an employer to contribute to a PRSA on behalf of an employee.

PRSA products are available from life assurance companies, banks and other investment firms. Each product has to be approved by both the Pensions Board and the Revenue Commissioners before they can be sold. An OPS can either be on a defined benefit or a defined contribution basis. Most larger Irish employers provide one or other such scheme, with varying contribution levels and eligibility criteria.

7.6 Cross-border pension schemes

Under current cross-border pension schemes legislation, Irish employers are able to establish arrangements (or adapt existing arrangements) to permit inclusion of employees of subsidiary companies or businesses established in other EU Member States which have also implemented the EU Pensions Directive and which will allow Irish employers (and employees) to make contributions on a tax exempt basis to a pension scheme established in another

EU Member State. Foreign employers established in other EU Member States are also able to make contributions to pension schemes established in Ireland.

Irish-based pension schemes that wish to operate across EU borders (that is, to accept contributions in respect of members located in other EU Member States) must obtain prior authorisation from the Irish Pensions Board. Trustees of Irish-based schemes are required to furnish information to the Irish Pensions Board in relation to cross-border employers. Detailed notification requirements are now prescribed in regulations. The regulations also provide details of the regulatory requirements for approval of cross-border arrangements.

The legislation allows multi-national employers with operations in Europe to establish a company or branch in Ireland which in turn would sponsor an occupational pension arrangement. That arrangement could then seek authorisation from the Irish Pensions Board to accept contributions from overseas employers located in other EU Member States.

7.7 Do we need employment permits for non-EEA nationals?

Most non-EEA nationals require an employment permit to work in Ireland. As a result, employers should always confirm a prospective employee's authority to work in Ireland prior to commencement of employment. There are various types of employment permits which are available namely: work permits, green card permits, intra-company transfer permits and spousal/dependent permits. The preferred permit in each case will depend on the particular circumstances. There is usually a fee for permit applications (in most cases €1,000 for a two year permit) and applications can take several months to process. In some cases, for example work permits, advertisement of the vacancy is required prior to submitting the application. Therefore, applications should be prepared well in advance of the anticipated start date. Employees who work under an employment permit are entitled to the protection of employment legislation in Ireland in the same way as Irish or EU nationals.

There are severe penalties for employing a non-EEA national without the appropriate employment permit. If found guilty of such an offence fines up to a maximum of €250,000 can be imposed on the employer and/or imprisonment up to a maximum of 10 years.

8 REAL ESTATE PROPERTY, CONSTRUCTION, PLANNING AND ENVIRONMENTAL LAW

Most inward investment projects will involve the acquisition of some interest in Irish real estate, with associated regulatory issues including applications for planning permission, building control approval and environmental licences or permits also likely to arise. There are generally no restrictions on foreign individuals or corporations purchasing or leasing land.

Depending on the nature of the project, it may be necessary to retain the services of a property consultant (who can assist with the identification and valuation of any proposed site or property), an architect/engineer to carry out structural surveys or to design a facility and environmental consultants who may be needed to carry out environmental assessments. It is also important for purchasers to liaise with local authorities and utility companies to ensure that there is adequate infrastructure (particularly drainage) and that there will be adequate utilities for the intended project.

8.1 What is the process for the purchase of commercial property?

The purchase of commercial property, having agreed the purchase price with the vendor or his agent, and, if required, paid a booking deposit, involves the preparation of a contract for sale of the property and the payment of a deposit (typically around 10 per cent of the overall purchase price), followed some weeks later by the execution of the deeds of transfer. The transfer of property in Ireland would be dealt with by real estate lawyers who investigate the vendor's title and ability to sell the property, carry out searches of the local authority registers and advise as to the necessary structural surveys and environmental assessments required. The purchase of property can take a number of weeks from the date of an initial offer to formal completion.

8.2 What is the process for the leasing of commercial property?

Up until the end of June 2008 a lease of commercial property would normally have been for a term of up to either four years and nine months (so that the lessee would not have an automatic right of renewal at the end of the lease) or between 20 and 35 years. However, since then changes to the VAT regime (see below) and landlord and tenant legislation (allowing all business tenants to renounce renewal rights), mean that in theory it should now be

open to all tenants to take a lease for any term between 1 and 35 years.

There is no automatic right to "break" the lease. However, it may be possible to negotiate an entitlement to break the lease after years 10 or 15 of a 20 year term, subject in certain circumstances to payment of a compensatory penalty. Such an entitlement is commonly known as a "break clause". Rent reviews also normally occur at five yearly intervals. In Ireland, such reviews are always upwards, resulting in an increase in rent. Such provisions are a matter for negotiation between the landlord and the tenant. Leases in Ireland are usually on a "full repairing and insuring" basis, that is the tenant is liable for the full cost of repairing and insuring the property.

8.3 What are the property taxation issues?

8.3.1 *Stamp duty*

Stamp duty is payable by the purchaser of commercial property on the purchase price at a sliding scale of up to six per cent of the purchase price. Stamp Duty on the same sliding scale is also payable by a lessee on any premium paid for the grant of a lease and at a rate of one per cent of the annual rent where the term of the lease does not exceed 35 years or is indefinite, and six per cent of the annual rent where the term exceeds 35 years but does not exceed 100 years, and 12 per cent of the annual rent for terms exceeding 100 years.

8.3.2 *Value Added Tax*

The VAT regime in respect of property was changed completely on 1 July 2008. The amount of VAT recovery available is a material factor in considering the VAT implications of renting or buying property in Ireland.

If acquiring a freehold interest in property, the age of the building, its history in terms of occupation and development, and the VAT status of any lettings are all factors which may go to determining whether VAT is payable on acquiring a freehold interest. Even if VAT exempt, both parties may jointly opt to charge VAT on the transaction, currently at the rate of 13.5 per cent.

All leases granted after 1 July may attract VAT on the rental payments at the current rate of 21.5 per cent. The Landlord has the option as to whether or not to charge VAT on the rent.

8.3.3 ***Rates***

Rates are a form of local taxation which applies to commercial property only. Local authorities in Ireland raise rates on the basis of property valuations (rateable valuations) provided to them on request by the Valuation Office. The Valuation Office is the State property valuation office. The amount payable (which can be substantial) is based on the rateable valuation of the property and paid to the local authority. Rates are normally increased annually in line with the annual rate of inflation.

8.4 When is planning permission required?

Planning permission is required before land or buildings can be developed or the existing use or appearance of land or buildings can be changed. Initial consultation with the local planning authority is recommended. Public notice must be given, after which an application for planning permission is submitted by the engineer/architect to the local planning authority. It may also be necessary to prepare an environmental impact statement (EIS).

The local planning authority may grant or refuse planning permission or grant permission subject to certain conditions (which is quite common). Certain rights of appeal exist and members of the public may object in writing before any decision is made. Generally speaking, planning permission can take up to eight weeks to obtain from the date of completed submissions being made and, once granted, is still subject to appeal within one month of the decision. If an integrated pollution control (IPC) licence is required, this will also have an impact on the timing for any other planning applications. The appeals process generally lasts for about four months but complex appeals on major projects (which often involve oral hearings) can take longer. Planning permission has a life span of five years.

8.5 What environmental consents or permits are needed?

The Environmental Protection Agency of Ireland (EPA) operates the institutional framework for the control of environmental pollution

in Ireland. Depending on the nature of the project, an IPC licence may be required. The IPC licensing regime covers air, water, solid waste and noise pollution. If an IPC licence is not required, it may still be necessary to apply to the local authority for a water discharge permit or an air emission licence. It is also obligatory to provide for the disposal of any waste produced by the project. Different regimes apply to the disposal of hazardous and non-hazardous waste.

8.6 Construction

Many large scale inward investment projects involve the construction of purpose built facilities on green field sites. Construction and civil engineering projects in Ireland are nearly always governed by the general conditions produced by either the Royal Institute of Architects in Ireland (RIAI) or the Institute of Engineers in Ireland (IEI) as varied or amended by the parties in a particular transaction. There are two usual types of construction contract:

(a) Main Contractor With Quantities, where the price for the work is based upon a bill of quantities which describes the work fully in detail;

(b) Main Contractor Without Quantities, where the price is based upon work shown on drawings and in specifications.

Inward investors frequently use their own nominated subcontractors for key specialist elements.

Generally, a manufacturer/inward investor will appoint its own design team, including an architect, quantity surveyor, structural engineer, mechanical and electrical engineer and a project manager (frequently the quantity surveyor), and will have a direct contractual relationship with those persons. Contracts where the contractor designs and constructs the building are also reasonably common in Ireland. However, there is no standard form for such contracts and the terms are very much a matter for negotiation between the parties.

The project manager will usually have responsibility for conducting the tendering/procurement process with prospective contractors.

9 INTELLECTUAL PROPERTY, TECHNOLOGY, TELECOMMUNICATIONS AND MEDIA

Substantial efforts have been made at a political level to establish Ireland as the preferred location for e-commerce and other technology industries and there has been heavy government investment in the area.

9.1 What is patent protection regime like in Ireland?

Patent protection in Ireland will (a) in the case of a full-term patent, last for a period of 20 years from the date of filing, and (b) in the case of a short-term patent, last for a period of 10 years from the date of filing, subject to the payment of renewal fees.

Although Irish patent legislation specifically excludes "computer programs" from patentability, this exclusion had been interpreted very narrowly. As with the European Patent Convention (see below), the Irish Patent Office has permitted computer software to be patented provided it meets the general criteria for patentability under the Patent Act 1992.

Ireland has ratified the European Patent Convention (EPC) and the Patent Co-Operation Treaty (PCT). Patents can therefore be applied for through the PCT system, the EPC system, or through the Irish Patents Office. The EPC system enables applicants to secure patent rights in a number of European countries by way of filing a single application to the European Patent Office. When granted, this application results in a bundle of national patents in each of the countries which the applicant has designated. The PCT system operates in a similar manner to the EPC system, allowing for a single application designating as many member states as desired and resulting in the grant of a bundle of national patents.

In addition, Ireland has been a signatory to The International Convention for the Protection of Industrial Property ("the Paris Convention") since 1925, pursuant to which each Convention country must grant, as regards intellectual property rights, the same protection to nationals of all other Convention countries as it grants to its own nationals.

9.2 What about copyright?

Irish copyright law is in line with the copyright laws of many other EU countries with provision for moral rights, performers rights, rental and lending rights and database rights (see below). Irish law also specifically protects copyright in computer software, as a literary work.

There are no registration formalities in Ireland in order to obtain copyright protection. The statutory period of protection for most copyright works lasts, in the main, until the expiration of 70 years after the date of death of the author.

In addition to being a signatory to the Paris Convention (see above), Ireland is also a signatory to the Berne Convention for the Protection of Literary and Artistic Works, pursuant to which works originating in one Convention country are given the same protection in all other Convention countries as they grant to works of their own nationals.

9.3 Are databases protected in Ireland?

The EU Directive on the legal protection of databases has been implemented in Ireland. Irish law provides that copyright subsists in original databases, the period of protection lasting until 70 years after the death of the author, irrespective of the date on which the work is first lawfully made available to the public. Databases (irrespective of whether the database is a copyright work) are also protected where there has been a substantial investment in obtaining, verifying or presenting the contents of the database. The database right expires 15 years from the end of the calendar year in which the making of the database was completed.

9.4 Is there legislation on industrial designs?

Irish law gave effect to Directive 98/71/EC on the Legal Protection of Designs and to the Geneva Act of The Hague Agreement concerning the International Registration of Industrial Designs. Protection for registered designs lasts for a maximum period of 25 years, renewable at five-year intervals.

In addition, Ireland benefits from the introduction of the Registered Community Design Right and the Unregistered Community Design Right, which were introduced into Ireland in 2002.

The Registered Community Design system offers a single unitary right covering all Member States of the EU. The substantive requirements for valid registration are that the design must be new and must have individual character. The total term of protection is 25 years, renewable at five-year intervals.

The substantive requirements for protection are generally the same as for the Registered Community Design, except that in this case no registration is required. An unregistered Community Design Right exists for a period of three years from the date the design is first made available to the public within the EU in such a way that, in the normal course of business, the disclosure could reasonably have become known to the circles specialised in the sector concerned, operating within the EU.

In addition, Ireland has implemented EC Council Directive (87/54/EEC) on the Legal Protection of Topographies of Semiconductor Products, which affords protection to the design and the layout of the elements composing a semi-conductor product. The right to protection generally commences when the topography is first fixed or encoded and lasts for ten years.

9.5 **Can we fully protect our Trade Marks in Ireland?**

An owner of a trade mark, service mark or logo may seek protection under Irish statute by registering the mark/logo on the Irish Trade Marks Registry. A registration lasts for a period of ten years and can be renewed for further ten-year periods provided the renewal fee is paid.

Whilst statutory protection extends only to the jurisdiction of Ireland, Ireland is one of the EU Member States in which a Community Trade Mark (registered in the Office for Harmonisation of the Internal Market in Alicante, Spain), if registered, will be effective.

Also, Ireland has ratified the Madrid Protocol. This Protocol allows for a single application for a trade mark registration to be filed at the Trade Mark Registry of any country which is a party to the Protocol and to request that the application be extended to such other countries which are a party to the Protocol as the applicant may designate.

An international registration produces the same effects as an application for registration of the mark made in each of the countries designated by the applicant.

In addition to statutory protection, the goodwill in unregistered marks and logos can be protected by way of the common law tort of passing off.

Matheson Ormsby Prentice's Trade Mark Group provides a fully integrated trade mark service. We advise on trade mark strategy as intellectual property lawyers seeking the best protection solution for our clients. Our trade mark filing practice, MOP Trade Mark Advisers, then implements that strategy and manages trade mark portfolios on client instructions. If an opposition or a dispute arises in relation to any trade mark or brand our lawyers manage its resolution.

9.6 Confidential information and trade secrets

Other than the indirect protection afforded by data protection legislation (see section 9.8), there is no statutory regulation regarding the disclosure of confidential information and trade secrets in Ireland. Confidential information and trade secrets can be protected by contractual provision or, in the absence of contractual provision, by an action in common law for breach of confidence.

9.7 Has Ireland legislated for e-commerce?

Ireland's primary e-commerce legislation is found in the Electronic Commerce Act 2000 (the "**Act**") which implemented the EU Electronic Signatures Directive (1999/93/EC) and some aspects of the EU Electronic Commerce Directive (2000/31/EC). The Act not only gives legal recognition and legal admissibility to electronic signatures but also to information in electronic form generally. Specifically it addresses electronic writing, electronic witnessing, electronic documents, electronic originals and electronic contracts. In addition, the Act contains provisions dealing with the requirements for the retention and production of electronic information and provides default rules for determining when electronic communications are deemed to be sent and received. The Act also makes provision for the accreditation and supervision of certification service providers and has provisions dealing with their liability.

The European Communities (Directive 2000/31/EC) Regulations 2003 (the "**2003 Regulations**") implement those remaining provisions of the EU Electronic Commerce Directive which were not already implemented by the Act. The 2003 Regulations are relevant for any individual, company or enterprise operating "information society services" (such as internet, website and other electronic commerce activities).

The European Communities (Protection of Consumers in Respect of Contracts made by Means of Distance Communications) Regulations 2001 (the "**2001 Regulations**") implemented the EU Directive on Distance Selling (97/7/EC) which aimed to harmonise the laws in respect of distance contracts for consumers throughout the EU. The 2001 Regulations apply to all businesses that sell goods or services to consumers 'at a distance', for example on the internet, interactive digital television, mail order, telephone and fax, subject to certain exceptions (eg contracts relating to financial services or contracts for the sale of land).

The Directives on Electronic Money Institutions (Directive 2000/28/EC and 2000/46/EC), which were transposed into Irish law by the EC (Electronic Money) Regulations 2002 (the "**E-Money Regulations**"), introduced a regulatory regime for entities issuing electronic money. E-Money is defined in the E-Money Regulations as a monetary value as represented by a claim on an issuer which is (i) stored on an electronic device; (ii) issued on receipt of funds of an amount not less in value than the monetary value issued; and (iii) accepted as a means of payment by undertakings other than the issuer. The Irish Financial Services Regulatory Authority is responsible for the authorisation and supervision of Electronic Money Institutions.

The European Communities (Distance Marketing of Consumer Financial Services) Regulations, 2004 (as amended by the European Communities (Distance Marketing of Consumer Financial Services) (Amendment) Regulations 2005) (the "**EC Regulations**") give effect to EU Directive 2002/65/EC which regulates the distance selling of financial services. The EC Regulations set out what pre and post-contractual information must be provided to the consumer, permits a 'warming up' period before a contract for financial services can be concluded and provides for a 'cooling off' period before the contract can be finalised. The EC Regulations also prohibit certain forms of direct marketing for financial services including cold calling and inertia selling and

regulates the use of other forms of direct marketing for financial services. For the EC Regulations to apply to a particular contract between a supplier and a customer, the supplier of such financial services must comply with all of its obligations under the EC Regulations.

The European Communities (Companies) (Amendment) Regulations 2007 (the "**2007 Regulations**"), which transpose Directive 2003/58/EC into Irish law, extend requirements that certain information be included on hard copy company letterhead and order forms to electronic communications (for example, e-mail correspondence). The 2007 Regulations also provide that certain company information (for example, the place of registration and company registration number) must also be set out on the company's website.

9.8 What about Irish law on data protection/privacy?

Ireland has a comprehensive legislative data protection regime derived from EU law. The principal legislation, the Data Protection Act 1988 gave effect to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. The Data Protection Act 1988 has been amended by the Data Protection (Amendment) Act 2003, which implements the EU Data Protection Directive (95/46/EC).

The Data Protection Acts 1988 and 2003 (the "**DP Acts**") set out a legal framework which specifies a number of data protection principles that must be complied with when personal data is processed. Additionally, certain conditions must be met in order for such processing to be "legitimate" (which conditions differ depending on whether the personal data in question is sensitive or non-sensitive in nature). A number of rights are conferred on data subjects to access personal data relating to them and to have incorrect or misleading personal data corrected, rectified or erased. Specific conditions apply to direct marketing, security, automated individual decision making processes and the control of transfers of personal data from Ireland outside of the EEA.

The EU Directive on Privacy and Electronic Communications (2002/58/EC) has now been implemented into Irish law by various Regulations. These Regulations set out in some detail the data protection standards that apply in the case of electronic communications networks (including telecommunications, internet

and email networks) particular issues of security, privacy and direct marketing. Spam (originating in the EU) sent to natural subscribers which is contrary to the Regulations is illegal and those who contravene these rules can be prosecuted by the Data Protection Commissioner.

The Criminal Justice (Terrorist Offences) Act 2005 provides for the retention of telecommunications data by communications service providers for the purposes of the prevention, detection, investigation or prosecution of crime, including terrorist offences, or the safeguarding of the security of the Irish State. The Garda Commissioner (that is, the head of the police force in Ireland) may request a service provider to retain, for a period of three years, traffic data or location data or both for any of the above purposes.

9.9 Are there any import/export/dual-use controls?

Yes; the European Communities (Control of Exports of Dual-Use Items) Regulations 2000 as amended apply, which are administered by the Licensing Section of the Irish Department of Enterprise, Trade and Employment.

10 HEALTHCARE, PHARMACEUTICAL AND BIOSCIENCES

Ireland has established itself as one of the leading locations for foreign healthcare, pharmaceutical and biotechnology investment. In establishing such operations in Ireland, a few preliminary questions should be addressed.

10.1 Is authorisation required to manufacture medical products in Ireland?

In order to manufacture (which includes total and partial manufacture, dividing up, packaging and presentation) medicinal products in Ireland, or to import medicinal products into Ireland from a country outside the EEA, a manufacturing authorisation is required from the Irish Medicines Board (IMB).

The IMB will only grant a manufacturing authorisation if an applicant has at its disposal suitable and sufficient premises, equipment, facilities, staff, manufacturing operations and suitable arrangements for quality control, record keeping, handling, storage and distribution. The applicant must have permanently and continuously at his disposal the services of at least one qualified person. The IMB recommends that any prospective manufacturer should meet with them for preliminary discussions prior to the commencement of any construction or ancillary works.

10.2 How are clinical trials regulated in Ireland?

The conduct of clinical trials for investigational medicinal products is governed by the European Communities (Clinical Trials on Medicinal Products for Human use) (Amendment) Regulations 2004 to 2006, which give effect to Directive 2005/28/EC and to further aspects of Directive 2001/20/EC (the Clinical Trials Regulations). Certain clinical trials outside the scope of the Clinical Trials Regulations are still regulated domestic legislation.

10.3 What marketing approvals and State consents must be obtained before the marketing of pharmaceutical products can be undertaken in Ireland?

All medicinal products must be authorised before being marketed in Ireland. An application for a national marketing authorisation (MA) is made directly to and granted by the IMB. For certain types of medicinal products, specified in Regulation (EC) 726/2004 and

Directive 2004/27/EC, an application for an MA must be made directly to the EMEA using the centralised procedure. The MA granted through this procedure will cover all EU Member States.

There are a number of key stages in the process and there are various timing implications, and applications to the IMB for a national MA tend to take on average 40 weeks. If a national MA application is rejected, the applicant can appeal to the IMB. MAs granted by the IMB generally last for five years and then need to be renewed. Applications for renewal must be made at least six months before the expiry of the existing MA. An MA can be revoked or suspended by the IMB in certain situations.

10.4 Is there a mutual recognition procedure?

A Mutual Recognition Procedure (MRP) application can be made to the IMB to mutually recognise an MA granted in another EU member state (reference member state (RMS)). The RMS provides an assessment report, the approved Summary of Product Characteristics (SmPC) and labelling and package leaflet to the IMB. The IMB must give a final national decision within 90 days of receipt of these documents. If the IMB decides to approve the application, then a national MA is issued by the IMB within 30 days of such approval.

Ireland may be nominated as the RMS during a Decentralised Procedure application for the granting of an MA in various Member States nominated by an applicant (concerned Member States (CMS)). The IMB prepares a draft assessment report, draft SmPC and draft labelling and package leaflet and forwards these to all CMS* within 120 days of the CMS validating the application. All CMS* have 90 days to approve the drafts. The IMB then sends the agreed documents to the applicant and the CMS.

The MRP is used when a medicinal product already has an MA in one or more EU member states. The Decentralised Procedure (DCP) is used when a medicinal product does not have an MA in any EU member state.

10.5 How is the labelling and packaging of medicinal products regulated?

The labelling of medicinal products in Ireland must comply with the Marketing Regulations, which give effect to Title V of Directive 2001/83/EC (as amended) without prejudice to Regulation 17 of the

Medicinal Products (Prescription and Control of Supply) Regulations 2003. Some medicinal products are governed by the Medical Preparations (Labelling the Package Leaflets) Regulations 1993 (as amended). Pharmaceutical, bio-technology and genetically modified organism products which are used for medicinal purposes will be regarded as medicinal products under Irish law.

10.6 **Are parallel imports of medicinal products into Ireland allowed?**

A parallel product can be distributed in Ireland if the importer obtains a Parallel Product Authorisation (**"PPA"**) or a Dual Pack Import Registration (**"DPR"**) from the IMB. The authorisation required depends on the characteristics of the medicinal product to be parallel imported. The PPA is granted for a maximum of five years and then it must be renewed at least once. A DPR is valid indefinitely, conditional upon the certain requirements being met.

10.7 **What about medical devices?**

The IMB is the competent authority for in-vitro diagnostic (IVDs) medical devices, general medical devices (MDDs) and active implantable medical devices (AIMDD). The role of the IMB is to ensure that all medical devices on the Irish market meet the requirements of the national legislation which transpose into Irish law the three EU Directives which form the core legal framework around medical devices: Directive 90/385/EEC concerning AIMDD, Directive 93/42/EEC concerning MdD and Directive 98/79/EC concerning IVDs (**"the Medical Devices Directives"**). These directives have been supplemented over time by six modifying or implementing Directives.

11 WHY MATHESON ORMSBY PRENTICE?

Matheson Ormsby Prentice is Ireland's largest corporate law firm with acknowledged expertise across the full spectrum of legal activities. With 74 partners and tax principals, more than 350 legal and tax professionals and a total staff of more than 550, we pride ourselves on our record of delivering focused, commercial advice and excellent service to our global client base. Our principal office is in Dublin and we also have offices in London, New York and Palo Alto, California.

We number among our clients many of the current Fortune 500 companies, and some of the largest Irish public, private and State owned companies, institutions and bodies. We regularly advise on the largest corporate transactions in Ireland and are consistently ranked as one of the leading law firms in Ireland by independently researched legal directories including the European Legal 500, Chambers Global and IFLR. Our references include the following:

"Dynamic and commercially focused" and importantly **"ready availability and responsiveness is a constant feature of service"**
Chambers Global 2009

"Excellent firm. If a similar quality were available in all markets, my life would be much easier"
International Law Office, Client Choice Award 2008 – Ireland

"Incredibly responsive. I wish more of my outside counsel were like them."
International Law Office, Client Choice Award 2007 – Ireland

"Head and shoulders above the rest and it is still going forward."
Chambers Global 2007

"Of all the law firms in Dublin, Matheson Ormsby Prentice is the best - merely in dealing with the challenges we face."
Chambers Client Report, May 2006

"Matheson Ormsby Prentice can always deliver on the big transactions."
IFLR1000 2006

The corporate focus of the firm is reflected in our structure. The firm comprises five principal departments:

- Corporate
- Taxation
- Banking and Financial Services
- Commercial Litigation and Dispute Resolution
- Commercial Property

In addition, the firm has 25 groups, many of them cross-departmental (and, in several instances, with an industry specific focus), which advise on specialist areas of the law, as follows:

- Alternative Investment Funds
- Commercial Contracts
- Corporate Offences, Fraud, White Collar Crime
- Corporate Restructuring and Insolvency
- EC, Competition and Regulatory
- Employment Pensions and Benefits
- Energy and natural Resources
- Entertainment and Media
- Healthcare
- Information Technology
- Insurance
- Intellectual Property
- International Business
- Inward Investment
- Life Sciences
- Maritime & Shipping
- Outsourcing and Contracted Services
- Planning and Environmental
- Private Equity
- Projects and Construction
- Public law, Regulatory and Investigations
- Regulatory Risk management and Compliance
- Retail and leisure
- Structured Finance
- Telecommunications

Our firm is structured to ensure that relevant legal specialisms are drawn together on complex transactions and matters in a manner which ensures the timely delivery of integrated legal advice and thus the effective implementation of business solutions. See our website for further information at www.mop.ie.

11.1 Our Inward Investment Group

Our Inward Investment Group is a leader in its field, advising many of the world's leading corporations and institutions on the legal and tax aspects of establishing operations and carrying on business in and through Ireland.

We have extensive experience in dealing with the government agencies and authorities that have a role to play in the establishment, taxation and regulation of different types of operations in Ireland. We have advised both the Investment and Development Agency of Ireland (IDA) and the Department of Finance on various matters concerning the legal and tax aspects of Ireland's inward investment infrastructure. We have also assisted these government agencies in the drafting of appropriate legislation to this end.

Our inward investment clients include some of the world's largest multinational corporations.

The Group is multi-disciplinary, drawing on the expertise of all relevant practice areas including corporate and commercial, tax, competition law, employment, pensions, property, construction, planning and environmental, intellectual property and information technology and banking and financial services.

Our approach in supporting in-house counsel of companies establishing operations in Ireland is to ensure accessibility and support at short notice with a particular emphasis on efficient same-day response where practicable.

The interaction between our offices in Dublin and London and our offices in New York and Palo Alto allows us to service the needs of clients across most major time-zones and on a real-time basis.

11.2 Our Corporate Department

The Corporate Department is the largest grouping within the firm and advises the firm's global client base on a broad range of complex corporate transactions and commercial law matters, working closely with other specialist groups and departments within the firm.

The Department has advised on many of the major corporate transactions that have occurred in Ireland over the last decade.

We are the only Irish law firm to have a dedicated International Business Group within our Corporate Department who are exclusively focused on servicing the needs of our international clients doing business in and through Ireland. We also have a senior corporate lawyer based in our New York office.

The Department advises on a wide range of matters and transactions, including:

- Mergers and Acquisitions
- Commercial Agreements and Arrangements
- Privatisations
- Private Equity
- Migrations and Reorganisations
- Re-Structurings
- Corporate Governance
- Flotations and Other Securities Advice
- Joint Venture and Strategic Alliances

11.3 Our Taxation Department

Our Tax Department is significantly the largest tax practice group amongst Irish law firms and is consistently ranked as the leading tax law firm in Ireland by the European Legal 500, the International Tax Review and various other international journals.

All of our tax partners, tax principals and more than half of our tax professionals have City of London or "Big 4" international accounting firm experience.

The Department advises many blue chip international corporations, bulge bracket merchant banks and financial institutions doing business in and through Ireland. We focus on the timely delivery and implementation of integrated leading edge tax advice. Our philosophy is "can do" – if there is a solution, we will find it and it will be practicable and capable of being implemented.

A large part of our practice involves advising on the taxation aspects of transactions on which other lawyers in the firm are working. However, in contrast to the tax departments of other Irish law firms, the Tax Department operates primarily as a "front-end" service – significantly more than half of our work is on transactions or advisory matters where our tax professionals have the sole or lead role.

We are the only Irish law firm to have a dedicated international tax group. This frequently involves advising on cross-border transactions in conjunction with tax counsel from other jurisdictions and we have committed considerable resources to building and maintaining good relationships with these lawyers. We are the only Irish law firm to have an Irish tax partner based in the US at our office in Palo Alto, California.

We provide a full range of taxation advisory services to multinationals, small and medium sized enterprises, private and publicly quoted companies and individuals. Areas of practice include:

- Corporate tax planning and advisory services for Irish and international companies
- Corporate tax planning and advisory services for inward investment into Ireland, including manufacturing, technology, international services, International Financial Services Centre and Shannon companies

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