Doing Business in Ireland

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Ireland has a common law legal system. The Constitution of Ireland 1937 provides the foundation for legislation, government and the administration of justice.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

The government encourages foreign investments and the tax regime is particularly favourable. Authorisations from regulatory bodies in certain sectors (including banking, financial services and telecommunications) are required.

3. Are there any exchange control or currency regulations?

There is no exchange control. However, the Minister for Finance can restrict financial transfers between Ireland and other countries provided the restriction conforms with EU law (Financial Transfers Act 1992). There are, for example, restrictions on financial transfers involving Iran, Iraq, Liberia and Sudan, among other countries, and also transfers involving terrorist groups.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

There are several government agencies responsible for promoting investment. Various grants and investment incentives are available from these agencies, depending on the nature, size and location of the proposed investment.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- **Registration formalities (including timing).**
- **Minimum (and maximum) share capital.**
- **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).**
- **Any restrictions on the rights that can attach to shares.**
- **Any restrictions on foreign shareholders.**
- **Management structure and any restrictions on foreign managers.**
- **Directors' liability.**
- **Parent company liability.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of business vehicle used by foreign companies is a private limited liability company.

- **Registration formalities.** To obtain a certificate of incorporation from the Companies Registration Office (CRO), a company must:
  - pay a fee of EUR100 (as at 1 October 2010, US$1 was about EUR0.7) or EUR50 if the CRODisk scheme (an electronic incorporation scheme) is used to incorporate the company;

- file the company's memorandum and articles of association (articles); and
- file Form A1 which contains details of:
  - the company name;
  - its registered office;
  - its principal activity;
  - the directors and secretary; and
  - subscribers and their shares.

A private company can be incorporated within ten working days under the *Fé Phráinn* system (a quick incorporation scheme), provided the memorandum and articles are in a form approved by the CRO. It takes three to four weeks to incorporate any other type of company.

A private company can be incorporated within five working days under the CRODisk, but is only open to members of the *Fé Phrainn* scheme. The memorandum and articles must also be in a form approved by the CRO.

To register for corporation tax, value added tax (VAT) and pay as you earn/pay related social insurance (PAYE/PRSI) (a method of collection of tax on payments to employees), Form TR2 must be filed with the Revenue Commissioners.

- **Share capital.** A company's authorised share capital can be any amount but, in practical terms, not less than:
  - EUR1 for single member private companies; or
  - EUR2 for multi-member private companies.

  Public limited companies have a minimum share capital requirement of EUR38,092.
- **Non-cash consideration.** Shares can be issued for non-cash consideration, subject to the approval of the company's board of directors and, often, its shareholders.
- **Rights attaching to shares.** Generally there are no restrictions on rights that can attach to shares. However, the articles can provide for various classes of shares and specify the rights attaching to them.
- **Foreign shareholders.** There are no restrictions on foreign shareholders, except in certain regulated sectors (*see Question 2*).
- **Management structure.** Private companies must have one secretary and a minimum of two directors. The secretary can be one of the directors. A corporate body cannot act as a director. At least one director of the company must be resident in a member state of the European Economic Area (EEA); however, this requirement does not apply where the company holds a bond, in the prescribed form, to the value of EUR25,394.76.

  There are no restrictions on foreign managers or directors, provided they are legally working in Ireland.
- **Directors' liability.** A director can be liable for the acts of the company. Directors must act in good faith and in the company's best interests. They must carry out their functions with due care, skill and diligence. A director can also be liable in tort for negligent behaviour.

  Directors can potentially be criminally liable for contravening the company's obligations in respect of transactions with directors and for failure to disclose related party transactions in the company accounts.

  Directors can be held criminally liable for certain crimes, including fraud and breach of environmental laws and health and safety legislation.
- **Parent company liability.** Parent companies are not, in general, liable because each company is a completely separate entity (unless, for example, a parent company guarantees a loan or the subsidiary has unlimited liability).
- **Reporting requirements.** Companies must provide certain information to the CRO, including:
  - the memorandum and articles;
  - details of the registered office;
  - details of directors and secretary;
  - any allotment, redemption or reduction of share capital; and
  - annual returns (involving the filing of audited annual accounts).

EMPLOYEES

6. What are the main laws regulating employment relationships?

Employment protection laws in Ireland apply to all employees working in Ireland, whether from Ireland, EEA or outside of the EEA. Whether these laws apply to Irish employees working abroad depends on the:

- Employment contract.
- Nature of the employee's posting abroad.

If the contract does not specify the governing law and jurisdiction, the usual European conventions will apply, and the deciding issue will be where the employee habitually carries out his duties. The exclusion of mandatory employee protection laws through a choice of law clause effectively operating to the employee's detriment is not permitted.

Employment law is primarily governed by:

- The Constitution of Ireland 1937.
- Irish Statutes and EU law.
- Common law (including contract law).
- Statutory mechanisms put in place by the state to regulate certain sectors, including:
  - Registered Employment Agreements (REAs);
  - Joint Labour Committee Decisions (JLCs);
  - collective bargaining agreements;
  - custom and practice in the workplace and workplace rules.

The primary legislation regulating employment relationships include:

- Unfair Dismissals Acts 1977 to 2007.
- Employment Equality Acts 1998 to 2007.
- National Minimum Wage Act 2000.
- Terms of Employment (Information) Acts 1994 to 2001.
- Maternity Protection Acts 1994 to 2004.
- Minimum Notice and Terms of Employment Acts 1973 to 2005.
- Protection of Employees (Part-Time Workers) Act 2001.
- Protection of Employees (Fixed-Term Workers) Act 2003.
- Directive 2001/23/EC on safeguarding employees' rights on transfers of undertakings, businesses or parts of undertakings or businesses (Transfer of Undertakings Directive).

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

While a written contract of employment is not required, employers must provide employees with a written statement of certain terms and conditions of employment within two months of starting employment. The minimum mandatory requirements are set out in the Terms of Employment (Information) Act 1994.

Most employers choose to put a written contract of employment in place. This contract comprises both its express written terms and implied terms. Terms are implied by:

- Statute, for example, the employer's duty of care and the employee's duty of fidelity.
- Custom and practice in the workplace (for example, sick pay and overtime procedures).

The employee and employer can agree terms and conditions individually or through collective bargaining. Collective agreements can be given legal standing by the Labour Court under a registration process which can result in REAs.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation or consultation rights except as follows:

- In an undertaking employing 50 employees or more, employees are entitled to establish an information and consultation forum. Establishing a forum is not mandatory unless certain criteria are met in accordance with the Employee (Provision of Information and Consultation) Act 2006.
- Employees must be consulted on collective redundancies (*Protection of Employment Act 1977*).
- Employees must be informed of certain matters under the Transfer of Undertakings Directive and consultation must take place where measures are envisaged as part of that process.
- Employees of certain state-owned commercial bodies have representation/participation rights at board level under the Worker Participation (State Enterprises) Act 1977.

9. How is the termination of individual employment contracts regulated?

Under Irish unfair dismissal legislation, all dismissals are automatically deemed unfair and it is a matter for the employer to justify the substantial grounds for its decision to dismiss (except in constructive unfair dismissal cases where the burden of proof is reversed and the employee must justify his decision to resign).

The unfair dismissal legislation generally applies to all employees who have completed one year's continuous service (including any notice entitlement). However, if the employee claims unfair dismissal on certain grounds (such as trade union membership or activities, pregnancy or denial of entitlements under maternity legislation), the requirement of one year's service is waived.

Acceptable grounds for dismissal are those relating to the employee's:

- Capability.
- Competence.
- Qualifications.
- Conduct.
- Contravention of statute.
- Redundancy.

However, a "catch-all" provision also allows for employers to advance other substantial grounds.

There is no requirement to pay an employee severance in the event of a dismissal, unless it arises by reason of redundancy. In redundancy scenarios, the Redundancy Payments Acts 1967 to 2007 set out the criteria for:

- Entitlement to a statutory redundancy payment.
- The payment amount.
- The various rules for calculating the payment.

In basic terms, statutory redundancy is calculated as two weeks' pay per year of service plus one additional "bonus week", with a week's pay capped at a maximum of EUR600. In most cases, the employer will also qualify for a rebate from the state of 60% of the statutory redundancy cost.

Where an employee alleges unfair dismissal, a claim can be brought before either:

- A Rights Commissioner.
- The Employment Appeals Tribunal.

The claim must be made within six months of the date of dismissal, but this can be extended to 12 months in exceptional circumstances. The unfair dismissal regime operates separately to an employee's right to bring a common law claim before the civil courts (for example, for breach of contract). However, the employee cannot recover damages in both forums.

Remedies for unfair dismissal include:

- Reinstatement.
- Re-engagement.
- Compensation.

The maximum award that can be awarded for an unfair dismissal is 104 weeks' remuneration, except in cases where the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007 applies. In this case, the award of damages can be up to five years' remuneration, depending on the employee's length of service. In civil cases, the court will award damages in accordance with the usual principles, depending on the nature of the claim.

Under contract law and statute, an employer or employee wishing to terminate employment must give the other party notice of termination. Notice should be the longer of contractual notice or statutory minimum notice. The length of the statutory minimum notice depends on the employee's length of service:

- 13 weeks to two years' service: one week's notice.
- Two to five years' service: two weeks' notice.
- Five to ten years' service: four weeks' notice.
- Ten to 15 years' service: six weeks' notice.
- 15 or more years' service: eight weeks' notice.

Under statute the employer is entitled to one week's notice from an employee who has been in continuous employment for 13 or more weeks.

10. Are redundancies/mass layoffs regulated? If so, please give details.

Redundancies are regulated by three primary pieces of legislation:

- The Redundancy Payments Act 1967 to 2007.
- The Protection of Employment Act 1977 to 2007.

- The Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act 2007.

The 1977 Act prescribes the procedures to be followed in a collective redundancy. This includes employee representation and a mandatory consultation process.

A collective redundancy arises if over any 30 consecutive days:

- Five employees are dismissed in an undertaking normally employing more than 20 and fewer than 50 employees.
- 20 employees are dismissed in an undertaking normally employing more than 50 but fewer than 100 employees.
- 10% of employees are dismissed in an undertaking normally employing more than 100 and fewer than 300 employees.
- 30 employees are dismissed in an undertaking normally employing 300 or more employees.

Under the Redundancy Payments Acts 1967 to 2007, a statutory redundancy payment is generally payable to employees who have completed more than 104 weeks' service. In basic terms, statutory redundancy is calculated as two weeks' pay per year of service, plus one additional "bonus week", with a week's pay capped at a maximum of EUR600. In most cases, the employer will also qualify for a rebate from the state of 60% of the statutory redundancy cost.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Nationals from non-exempt countries must obtain a visa before travelling to Ireland. Details of exempt and non-exempt countries can be obtained from the Department of Foreign Affairs (*www.dfa.ie*). Possession of a valid visa is essential for visa-required nationals, but it does not confer a right to work as there is a separate process for employment permits. Similarly the grant of an employment permit does not grant any entry or residency rights, and visa-required nationals must still comply with visa requirements after obtaining an employment permit.

The employment permits schemes are operated by the Department of Enterprise Trade and Innovation. Employment permits are required by all non-EEA/Swiss nationals (except for certain individuals, such as non-EEA spouses of EU citizens, for whom a separate process applies).

The Employment Permits Acts 2003 and 2006 establish a statutory regime governing employment permits. As a general principle for most employment permits, the employer must establish that it is not possible to fill the position with an Irish or other EEA national. Labour market tests apply for certain permits (that is, public advertising of the role within the EU for a specified period before considering a non-EEA/Swiss national for a permit). The department levies fees for permits which depend on the:

- Type of permit sought.
- Length of the permit.

Fees typically range from EUR500 to EUR1,500.

There are three primary types of permit:

- Green Cards.
- Work Permits.
- Intra-Company Transfer Permits.

The processing times, criteria, requirements and benefits of each permit type vary.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

Individuals are tax resident in Ireland for a particular tax year if they are present in Ireland either for:

- 183 days or more in that year.
- 280 days or more over that year and the previous tax year taken together.

An employee is not regarded as resident for any tax year in which he spends 30 days or less in Ireland.

13. What income tax or social security contributions must the following pay:

- **Tax resident employees?**
- **Non-tax resident employees?**
- **Employers, in relation to their employees?**

Tax resident employees

Employees are liable to income tax on their worldwide annual taxable income at:

- 20% on the first EUR36,400.
- 41% on the remainder.

In addition, Ireland imposes an income levy on gross income at between 2% and 6% depending on the level of income. The first EUR75,036 is subject to a 2% levy, the next EUR99,944 is taxable at 4% and the balance is taxable at 6%. Where an individual's income for a particular year is less than EUR15,028 he is exempt from the income levy.

There are individual tax credits, which vary depending on the employee's circumstances, and can be set off against their income tax liability.

If an employee has gross earnings of up to EUR18,512 per annum, the employer must make a contribution of 8.5% of the employee's earnings and the employee is not obliged to make any PRSI contribution. If an employee earns more, the employer must make a PRSI contribution of 10.75% on all of the employee's wages (not just the excess portion).

Generally, employees who have gross earnings in excess of EUR18,512 per annum pay a 4% PRSI contribution. Employees do not pay PRSI contributions on reckonable earnings in excess of EUR75,036 per annum. Generally, all employees who earn in excess of EUR6,604 per annum must pay a health levy of 4% on their earnings up to EUR75,036 per annum and 5% on any earnings in excess of that.

Company directors are not insurable as employees for the purposes of calculating PRSI contributions, and may consequently be entitled to reduced social insurance benefits.

Non-tax resident employees

In general, salaries derived by a non-tax resident employee from employment in Ireland can be taxable both in Ireland and in the employee's country of residence if the duties of employment are carried on in Ireland, subject to any relief provided by a double tax treaty.

Where an employee is assigned to Ireland from an EU member state, or a country with which Ireland has a social security totalisation agreement (such as that between Ireland and the US), for a temporary period (generally 12 months), the employee can remain subject to the social security in the country from which he is assigned. For all other countries, both the employee and the employer are liable for full PRSI contributions, although an application for an exemption can be made.

Employers

If an employee's earnings are EUR18,512 or more per annum, the employer's PRSI contribution is 10.75% on all of the employee's earnings from that employer and is not capped. If an employee's salary is below this limit, the employer's contribution is 8.5% per annum.

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

Companies resident in Ireland are charged corporation tax (*see Question 15*) on worldwide profits and capital gains (subject to any applicable double tax treaty). Companies incorporated in Ireland are automatically considered resident in Ireland, subject to certain exceptions. Where the exceptions apply or where the company is not Irish incorporated, the company will be regarded as resident in Ireland if it is centrally managed and controlled in Ireland. The terms of a double tax treaty can render an otherwise Irish resident company non-Irish resident by virtue of being resident in a treaty partner country.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Corporation tax

Companies resident in Ireland must pay corporation tax on worldwide profits and capital gains (subject to double taxation treaty relief).

The standard rate of corporation tax on Irish trading profits is 12.5%. To benefit from this rate, companies must derive income from a trade that is actively carried on in Ireland. The 10% rate which used to apply to profits arising from the sale of goods manufactured in Ireland has expired.

A rate of 25% applies to non-trading (for example, rental income and royalty income) and foreign source income. This 25% rate also applies to certain land dealing activities and income derived from working minerals and petroleum activities.

VAT

VAT is charged on certain imports and on goods and services supplied in Ireland in the course of business. VAT ranges from 0% to 21% depending on the product or service.

Stamp duty

Stamp duty is charged on certain documents executed in Ireland. The tax payable is either a fixed duty or a percentage of the value of the transaction (for example, 1% on share transfers and 1% to 6% on non-residential real property transfers).

Capital gains tax

A company must pay a tax on any gains it realises on the disposal of its capital assets at an effective rate of 25%. However, an exemption applies to disposals by a holding company of shares held by it in a subsidiary where:

- The subsidiary is resident in Ireland, the EU or a treaty state.
- The subsidiary is a trading company or group.
- The parent held a minimum of 5% of the shares of the subsidiary for a period of at least 12 months in the previous 24 months.

Disposals of assets relating to these shares (for example, options to dispose of or acquire the shares) are similarly exempt.

16. How are the activities of non-tax resident business vehicles taxed?

Non-resident companies must pay corporation tax on income arising from a trade carried out in Ireland through a branch or agency. Income received by a non-resident company which is not attributable to a branch or agency but which arises from an Irish source (for example, rental income or deposit interest) may be liable to Irish income tax subject to the provisions of any relevant double tax treaty. Irrespective of residence, stamp duty is charged on certain documents executed in Ireland or, wherever executed, which relate to any property situated in Ireland or any matter or thing done or to be done in Ireland.

17. Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
- **Dividends received from foreign companies.**
- **Interest paid to foreign corporate shareholders.**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders.**

- **Dividends paid.** Dividends paid by a resident company are generally subject to dividend withholding tax (DWT) at the standard income tax rate (currently 20%), unless both:
  - the shareholder falls within one of the categories of exempt shareholders (for example, EU or Irish treaty residents); and
  - the paying company has received all of the requisite documents before payment of the dividend.

  Most non-resident shareholders resident in the EU or a double tax treaty country that is exempt from DWT will also be exempt from liability to Irish income tax on the dividends.

- **Dividends received.** Corporation tax of 25% generally applies to dividends received. The lower 12.5% rate is available in respect of dividends paid out of trading profits of companies resident in an EU member state or a country which has a double taxation treaty with Ireland. For a portfolio shareholding (such as a shareholding of 5% or less, aggregated on a gross basis), irrespective of whether the profits out of which the dividend is paid are derived from trading profits, the 12.5% rate is also available for dividends received by an Irish resident company from:
  - an investment in a company resident in the EU; or
  - a country which has a double taxation treaty with Ireland.

  Ireland also operates a flexible system of foreign tax credits (including pooling) both under its tax treaty network and a system of unilateral credits (which apply even where the income concerned is derived from subsidiaries resident in countries with which Ireland does not have a double tax treaty).

- **Interest paid.** Interest paid to non-residents can be subject to withholding tax and/or income tax. In general, unless an exemption applies, an Irish resident company must deduct withholding tax at the standard rate of income tax (currently 20%) on making payments of interest. Numerous domestic exemptions exist, including exemptions for:
  - interest paid on commercial paper and certain listed bonds;
  - interest paid to residents of EU member states (other than Ireland); and
  - most countries with which Ireland has a double taxation treaty.

  Directive 2003/49EC on interest and royalty payments, implemented in Ireland, abolishes withholding tax on interest and royalties payments made by a company in one EU member state to its associated company resident in another EU member state.

- **IP royalties paid.** Payments made for intellectual property rights are not subject to withholding tax with the exception of patent royalties. A withholding obligation of 20% applies to patent royalties and certain annual payments, subject to relief under applicable tax treaties, which in most cases reduces the withholding to nil. Residual liability is also reduced to nil under most treaties.

  An exemption from withholding tax applies to royalty payments from an Irish trading company to a non-Irish company which is resident in an EU or treaty state which taxes royalties receivable in that state from foreign sources. These payments will not be taxed in Ireland provided they are both:

  - made for bona fide commercial reasons; and
  - not made in connection with a trade or business that is carried out in Ireland through a branch or agency of the company receiving the payment.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

Ireland does not have thin capitalisation rules. However, Ireland does have rules which treat interest payments to certain non-EU resident associated companies as distributions.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Ireland does not have any controlled foreign company rules.

20. Are there any transfer pricing rules? If so, please give details.

Ireland recently implemented a transfer pricing regime that applies to arrangements concluded on or after 1 July 2010 where the:

- Arrangement involves a supply and acquisition of goods, services, monies or intangible assets.
- Parties to the arrangement are connected.
- Relevant transaction is taxed as part of the trading activities of either or both parties.
- Effect of the arrangement is to result in the understatement of profits that are subject to tax in Ireland.

If the transfer pricing regime applies to an arrangement, the arm's-length value of any transaction between the parties to the arrangement must be determined and the transaction will be taxed on the basis of the arm's-length value.

The transfer pricing regime does not apply to small-to-medium enterprises (SME). An SME is determined on a group basis. A corporate group qualifies as an SME if the group both:

- Employs fewer than 250 employees.
- Has a turnover of less than EUR50 million or balance sheet assets of less than EUR43 million.

21. How are imports and exports taxed?

The taxation of imports and exports depends on whether goods are imported or exported within the EU or outside.

VAT is charged on goods and services supplied in the course of business. VAT is also generally payable on imports. Credit is given for VAT to registered traders and so generally it is ultimately borne by the final consumer.

Exports are zero rated for VAT, except those exported to unregistered persons in the EU. The place of supply of certain services is subject to the "reverse charge mechanism".

Customs and excise duties are generally levied on imports from outside the EU. The rate of duty depends on the precise nature and circumstances of the import.

22. Is there a wide network of double tax treaties? If so, please give details.

Ireland has signed comprehensive double tax treaties with 59 countries, of which 49 are in effect, including treaties with the United States, Germany and Japan. Ireland generally grants the benefit of treaties on their signature pending ratification.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

Irish competition rules are based on EU competition law and are contained in the Competition Act 2002, which prohibits all restrictive arrangements between undertakings and abuse of a dominant position by one or more undertakings in any market in Ireland. Infringements of Irish competition can be challenged under criminal and civil law but in practice only serious cartel infringements are prosecuted under the criminal standard where the potential sanction is a fine for the undertakings concerned and the possibility of a fine and/or imprisonment for senior officers of the undertaking concerned. Unlike the European Commission and most competition authorities of the EU member states, the Irish Competition Authority does not have the power to:

- Reach a finding of infringement which is binding on an undertaking by administrative decision.
- Impose administrative fines.

Rather the Competition Authority must take enforcement action in the Irish Courts where a fine is only possible on successful criminal prosecution. In civil enforcement actions, the Competition Authority can seek a declaration that an infringement exists and an injunction to prevent its continuance but cannot seek damages. Private enforcement actions are also possible under Irish competition law where the claimant can seek injunctions and damages.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
- **How protected.**
- **How enforced.**
- **Length of protection.**

Patents

- **Nature of right.** For an invention to be patentable, it must (*Patents Act 1992*):
  - be susceptible to industrial application;
  - be new; and
  - involve an inventive step.

  The patent owner can prevent direct or indirect use of his invention by third parties without his consent.
- **How protected.** The Irish Patents Office (IPO) grants patents. The procedure varies in complexity. The cost varies depending on the procedure. The information to be included in an application is set out in the Patents Act 1992.
- **How enforced.** The patent owner can enforce the right in court. Remedies include:
  - damages;
  - an account of profits;
  - an injunction;
  - an order to deliver up or to destroy the infringing goods;
  - a declaration that the patent has been infringed.
- **Length of protection.** The patent can be granted for a full term (20 years) or for a short term (ten years).

Trade marks

- **Nature of right.** Trade marks are defined as any sign capable of being represented graphically which can distinguish goods or services of one undertaking from those of other undertakings. Trade marks provide a purely territorial right.
- **How protected.** Protection is obtained by application to the Controller of Trade Marks. The Trade Marks Act 1996 governs this area of law and provides a legal basis in domestic law for the Community Trade Mark, which provides EU-wide protection.
- **How enforced.** The method of enforcement and the remedies available are the same as for patents (*see above, Patents*), except that a declaration is not an available remedy for trade mark infringement.
- **Length of protection.** Protection lasts for ten years and is indefinitely renewable for ten-year periods, subject to the payment of fees.

Registered designs

- **Nature of right.** A design means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colour, shape, texture or materials of the product itself or its ornamentation. To be registrable as a design, it must be new and have individual character. The owner of the design can assert his rights against any third party who undertakes any act which is the exclusive right of the owner.
- **How protected.** A design is registrable if it is new and has an individual character (*Industrial Designs Act 2001*). Protection is obtained by registration under the 2001 Act in a register maintained by the Controller of Patents, Designs and Trade Marks.
- **How enforced.** The design owner can enforce the right in court. Remedies include damages, an injunction and an account of profits.
- **Length of protection.** Protection lasts for five years, renewable for successive five-year periods (up to a total of 25 years).

Unregistered designs

- **Nature of right.** Unregistered designs that are novel are protected by Regulation (EC) No. 6/2002 on Community Designs. For the unregistered design to come into existence, it must be made available to the public after 6 March 2002. Protection is limited to the prevention of copying.
- **How protected.** Designs which are made available to the public after 6 March 2002 are protected automatically.
- **How enforced.** The owner of the unregistered design can enforce the right in court against any third party who undertakes any act which is the exclusive right of the proprietor.
- **Length of protection.** Protection lasts for three years from the date on which the design was first made available to the public within the EU.

Copyright

- **Nature of right.** Copyright subsists in:
  - original literary, dramatic, musical or artistic works;
  - sound recordings;
  - films;
  - broadcasts or cable programmes;
  - typographical arrangement of published editions;
  - original databases;
  - computer-generated works;
  - copyright works in volumes, parts, and so on;
  - works not previously made available.

  The copyright owner can assert his rights against any party who undertakes any of the acts restricted by copyright without his consent.
- **How protected.** Protection subsists automatically on creation.
- **How enforced.** The copyright owner can enforce the right in court. Remedies include:
  - damages;
  - an injunction;
  - a delivery up order;
  - a seizure order;
  - a destruction order;
  - an account of profits.
- **Length of protection.** Protection lasts for the life of the author plus 70 years for copyright in a literary, dramatic, film, musical or artistic work, computer-generated, or in an original database. All of the other protections last for 50 years.

Confidential information

- **Nature of right.** Confidential information is information communicated in circumstances importing an obligation of confidence (for example, in the course of employment).
- **How protected.** Protection can arise automatically at common law or under contract.
- **How enforced.** The right is enforced by an action for breach of confidence, either under contract law or under tort law.
- **Length of protection.** Protection lasts for as long as the information remains confidential and there is a legitimate interest that requires protection.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

- **Agency.** Commercial agency is regulated by the European Communities (Commercial Agents) Regulations 1994 and 1997 (Regulations). Agency agreements must be evidenced in writing. The Regulations contain certain mandatory provisions which afford protections for commercial agents, in particular a right to compensation on the termination of the agency relationship.
- **Distribution.** Distribution agreements are a type of contract for sale. Therefore, suppliers' duties are set out in the Sale of Goods Act 1893, as amended by the Sale of Goods and Supply of Services Act 1980.
- **Franchising.** There is no single statute or code in Ireland which governs the law as it relates to franchising. The law of franchising is for the most part governed by:
  - the ordinary principles of contract law;
  - the laws relating to intellectual property;
  - in many instances, competition law.

  However, the Declaration in respect of Vertical Agreements and Concerted Practices (*Decision No. D/03/001 of 5 December 2003*) applies to all agreements or concerted practices entered into between two or more undertakings which operate for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties can purchase, sell or resell certain goods or services. The current declaration expired on 31 March 2010 and a draft declaration has been produced which will be published in December 2010. Existing agreements and concerted practices which comply with the existing declaration will continue to benefit from the existing declaration until 31 May 2011.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

E-commerce is regulated by the following legislation:

- The Electronic Commerce Act 2000, which regulates electronic signatures and advanced electronic signature as well as electronic forms of original information.
- The European Communities (Protection of Consumers in Respect of Contracts made by means of Distance Communications) Regulations 2001.
- Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.
- European Communities (Companies) (Amendment) Regulations 2007, which provides that basic company information is to be displayed on a company's website and electronic communications.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

Data protection is regulated by the:

- Data Protection Acts 1988 and 2003.
- European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003, as amended by European Communities (Electronic Communication Networks and Services) (Data Protection and Privacy (Amendment) Regulations 2008) (*SI 526, 2008*) (Data Protection Regulations).

The Data Protection Acts and the Data Protection Regulations are enforced and administered by the Irish Data Protection Commissioner. The Data Protection Acts require data controllers or data processors to comply with the data protection principles set out in Directive 95/46/EC on data protection.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

Product liability is regulated by:

- **The Liability for Defective Products Act 1991.** This implements Directive 85/374/EEC on liability for defective products (Product Liability Directive). Strict liability is imposed on a producer for damage caused wholly or partially by a defect in his product.
- **Common law.** A manufacturer of a product owes a duty of care to all those who may be foreseeably injured or damaged by his product.
- **Sale of Goods and Supply of Services Act 1980.** The Act gives legal rights to consumers in their dealings with retailers and service suppliers. Under the Act, goods must:
  - be of merchantable quality;
  - be as described;
  - be fit for their intended purpose; and
  - correspond to sample.
- **Consumer Protection Act 2007.** This Act updated and consolidated existing consumer legislation in Ireland and transposed Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market. It also established the National Consumer Agency, which has the power to enforce the product liability legislation.

  The product safety regime is set down by the European Communities (General Product Safety) Regulations 2004, which prohibit the placing of dangerous products on the market, and give rise to a criminal liability.

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Areas of practice. Employment and industrial relations.

Recent transactions

- Representing employers in contentious employment and industrial relations disputes and litigation.
- Advising employers on all matters arising out of the employer-employee relationship.
- Advising on the employment law aspects of commercial transactions and all other matters that can arise for an employer in conducting its business, such as the management of ongoing employee issues, termination of employment, fixed-term and part-time legislation, discrimination/equality issues and the implementation of appropriate HR policies, practices and procedures.

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- Advising US multinational on acquisition of Irish life sciences company.
- Advising Ireland's leading provider of online betting and gaming services on IT & IP matters.
- Advising several universities on large-scale collaborative research agreements.
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Recent transactions

- Advising a range of industries (including multinational pharmaceutical and medical device companies in particular) on establishing operations in Ireland and general corporate and commercial matters, governance, distributions and corporate re-organisations.
- Advising companies on pre-sale spin outs or hive downs of business divisions, including recently advising a large US multinational on the Irish aspects of a multi-billion dollar spin-out and subsequent sale of a division.
- Advising various companies on their business and contractual terms and on disputes arising in relation to them.