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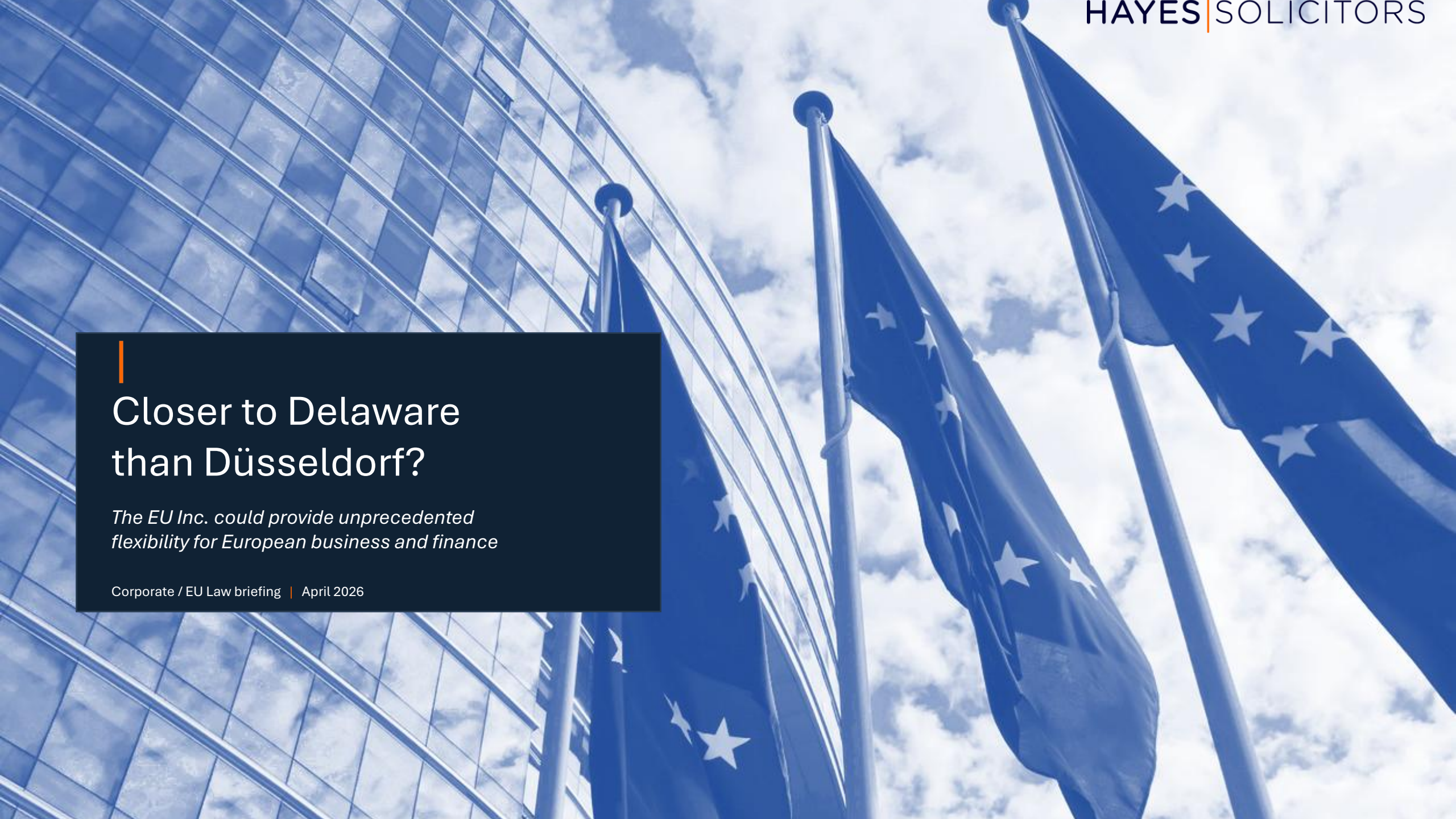

# Closer to Delaware than Düsseldorf?

*The EU Inc. could provide unprecedented flexibility for European business and finance*

Corporate / EU Law briefing | April 2026

# In Brief

*A proposed EU company type with a substantially harmonised corporate rule book.*

- **Optional new company form:** The EU Commission has proposed a new EU company type, called the "EU Inc."
- **Significant divergence from Irish principles:** no minimum capital; no mandatory undistributable reserves; solvency-based approach to distributions.
- **Commercial relevance beyond startups:** These features could provide decisive advantages to companies well beyond the intended user base of innovative startups and scaleups.
- **Possible pressure for domestic reform:** The EU Inc. is probably the first harmonised EU company type to offer a clear edge over domestic Irish company types.
- **Still highly contingent:** While the proposal is in its earliest stages, and may never come into effect, it may prompt Irish law to evolve in response.

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# Introducing the EU Inc.

*A proposed EU company type with a substantially harmonised corporate rule book.*

The EU Commission has unveiled the "EU Inc.", a proposed EU company type intended to supplement existing national company types subject to a substantially harmonised corporate rule book. For Irish founders, corporates and practitioners, the proposal deserves attention – not because it will necessarily reach the statute book in its current form, but because of the questions it raises about the future direction of EU and Irish company law.

The target audience for the proposal, which is set out in a proposed EU regulation (the Proposal)[1], is innovative startups and innovative scaleups. However, the Commission emphasises that the EU Inc. will be "open to anyone who deems it fit for their business model"[2]. In practice, the EU Inc. may have applications well beyond its intended user base.

In many Member States, the EU Inc's advantages of speedy incorporation and "digital-by-default solutions" may represent real improvements over domestic formalities – particularly jurisdictions where the involvement of a notary public is a requirement for a company's formation and throughout its lifecycle. Ireland, in contrast, has a modern, flexible company law and relatively streamlined registration procedures, which means that these advantages are likely to be more limited.[3]

Instead, the areas where the EU Inc. challenges Irish domestic legal forms are more fundamental: capital, distributions and winding up. In each of these areas, the EU Inc. departs significantly from established Irish corporate principles – for example:

(a) No minimum capital (compared with the €25,000 requirement for domestic public limited companies)

(b) No mandatory undistributable reserves, save for nominal share capital (which itself is not mandatory – i.e. where an EU Inc. decides to issue shares with no par value)

(c) A solvency-based approach to approving distributions; and

(d) A simplified winding-up procedure for qualifying EU Inc. companies.

Rather than a comprehensive survey of the Proposal, this note will highlight key areas where the EU Inc. takes a substantively different approach to Irish law. The discussion is accompanied by an important caveat: the Proposal may not be adopted in its current form or at all. Readers familiar with the EU's uneven history with harmonised company types (see sidebar) will appreciate that a healthy degree of scepticism is warranted.

> *"The EU Inc. will be "open to anyone who deems it fit for their business model."*

# A. No Minimum Capital

*The absence of a minimum capital requirement is noteworthy because the vehicle also has public company characteristics.*

On the face of it, the fact that the EU Inc. will not have a minimum share capital is not particularly noteworthy, especially for a company type aimed at startups and scaleups.

However, in its present form the EU Inc. has all the key features of a public company: its shares can be admitted to trading on a market and are freely transferable by default, and (it appears) that it can make offers of its securities to the public. The Proposal facilitates the listing of EU Inc. companies on junior equity markets and provides an option for Member States to authorise admission to regulated markets.

For nearly fifty years, public limited liability companies in the EU have been subject to a minimum subscribed capital of €25,000.[4] However, the Proposal states that no minimum capital requirement will apply to the EU Inc. – it is unclear how this apparent conflict is to be resolved.

**Sidebar – EU Company Types: Past, Present and Future**

Commentators have made the point that the EU Commission has had an uneven record with harmonised EU corporate vehicles. Early proposals for a European Association[5] and a European Mutual Society[6] foundered, while entities like the European Economic Interest Grouping (EEIG)[7], the European Cooperative Society (SCE)[8], and – most noteworthy – the European public company (SE)[9] arrived on the statute book and entered into practice.

The EU entity that is closest in motivation to the EU Inc. is the European private company (SPE)[10]. The SPE was proposed as a private company type, aimed at small and medium-sized enterprises. However, the SPE differed markedly from the EU Inc., particularly in its status as a private company. The SPE ultimately fell victim to disagreements between Member States over capitalisation, "real seat" doctrine and the issue of employee participation. The proposal was quietly withdrawn in 2014.[11]

The question of whether the proposed EU Inc. can avoid the fate of the SPE to become a popular choice for incorporation will turn on whether it can satisfy a key need or avoid a key obligation when compared to the domestic law in a particular Member State. For example, it is understood that legal arbitrage explains the popularity of the SE in Germany (where conversion into an SE can freeze the existing level of employee participation or even prevent its introduction[12]) and Czechia (driven by an early wave of SE shelf companies and similar employee participation concerns[13]).

# B. Capital Maintenance

*A proposed EU company type with a substantially harmonised corporate rule book.*

A highly flexible approach to company capital is an area where the EU Inc. presents a challenge to Irish domestic principles. Conventional capital maintenance rules only apply to an EU Inc. to the extent that it chooses to build up its capital – as demonstrated in the following features:

(a) shares are not required to have a nominal value (i.e. it is possible to issue no par value shares), unless the articles of association provide otherwise[14]

(b) where shares are issued with a nominal value, the contribution to capital for each share on subscription is limited to that nominal value (i.e. no amount is held as a reserve in respect of share premium)[15]

(c) amounts subscribed for shares other than nominal value may be contributed to capital or not, or a combination of both[16]

(d) any consideration for shares that is not contributed to capital is not subject to restriction and is freely distributable[17]

(e) a reduction of share capital can be carried out on the basis of a shareholder resolution supported by a solvency declaration (a procedure that is limited to private companies in Ireland – PLCs must obtain confirmation from the High Court).[18]

The key change is the removal of the nominal value requirement (item (a)). When taken with the freedom to treat amounts subscribed for shares as not forming part of legal capital (item (c)), this effectively allows an EU Inc. to opt out of legal capital entirely.

The resulting flexibility could make the EU Inc. an attractive entity for operating groups and stacked financing structures; these are scenarios where significant value typically needs to be transferred around a group. Share premiums will not result from share for share or share for asset exchanges between EU Inc. companies, and the absence of mandatory undistributable reserves means that routing dividends between group companies can take place without regard to domestic capital maintenance principles.

This flexibility will be particularly attractive to providers of private capital and designers of private equity deal structures. For these users, the attractive features are capital flexibility and the ability to implement equity structures that facilitate equity waterfalls, ratchets, preferred and sweet equity. The flexible capital structure also facilitates investments using instruments such as SAFEs, KISSs, warrants and redeemable shares.

The Proposal does not provide much in the way of reasoning for these radical changes, other than the general statement that the EU Inc. should provide greater capital flexibility for fundraising.[19] Nevertheless, the idea of easing or abolishing capital maintenance rules has been current in common law countries for some time – reflecting the idea that such rules impose significant costs on companies while doing little to protect their creditors.[20] Several non-US English-language jurisdictions have adopted no par value shares on either a mandatory or optional basis.[21] In major US commercial jurisdictions, such as Delaware, New York, and California, which have either abolished par value shares or made them optional,[22] capital maintenance rules are described as having "lost virtually all of their significance and force".[23]

It will be interesting to see whether this particularly innovative feature of the Proposal survives the EU's co-decision process. If it does, it could have a deep impact on corporate practice in Ireland and across the EU.

# C. Distributions

*The move from a realised-profits to a solvency-based rule may be the most commercially significant shift.*

The Proposal also provides a simpler criterion for assessing what profits are capable of being distributed to shareholders. The existing Irish formula is that dividends may only be paid out of accumulated, realised profits net of accumulated, realised losses. In contrast, distributions by an EU Inc. will be subject to simple balance sheet and solvency tests, affirmed by a unanimous statement of the directors.[24]

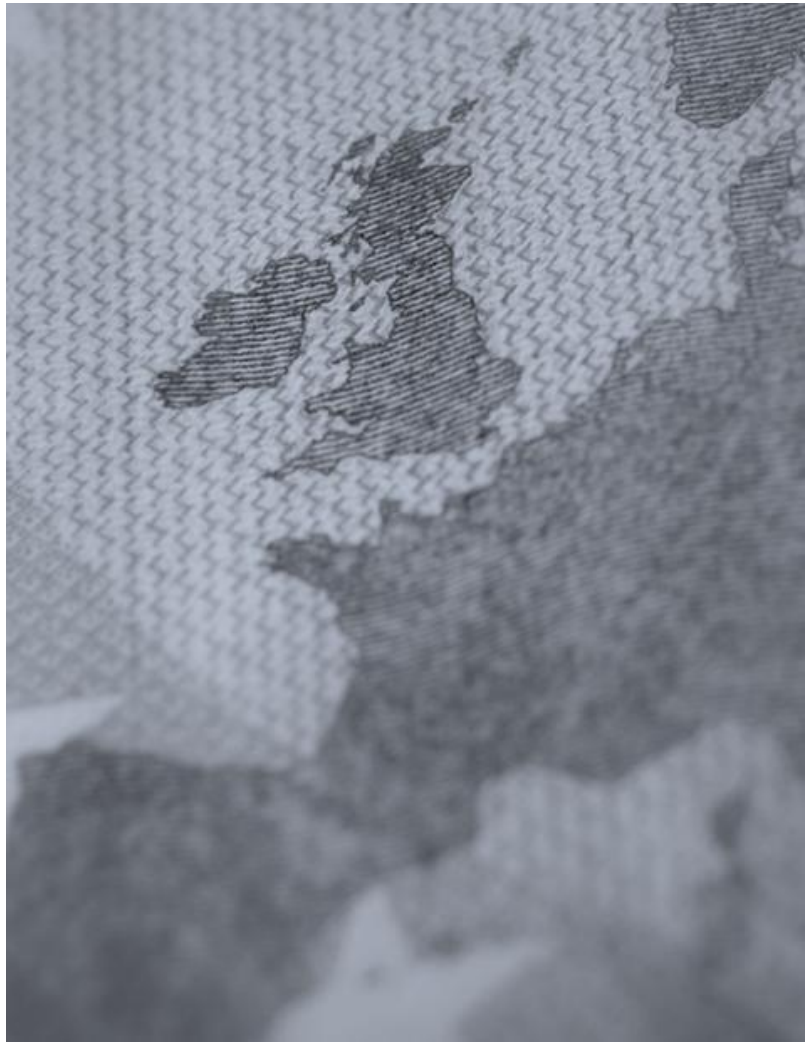
The proposal to implement a simple two-part solvency test backed by a directors' solvency statement mirrors a 2002 recommendation of the EU Commission's High Level Group of Company Law Experts[25] – though the latter proposal recommended further safeguards that: (i) the directors' solvency statement should be given in the form of a certificate; and (ii) distributions must only be given on the basis of audited accounts (both of which requirements are left ambiguous in the Proposal).

The overall effect is to bring the rules on distributions by an EU Inc. closer to US models, like California and Delaware, which are based on a simple solvency test.

However, increasing alignment with US models by relaxing the requirement will bring the EU Inc. into conflict with general EU rules on distributions by public companies,[26] and creates another apparent anomaly between the new initiative and existing law.

While it is worth noting the anomaly created by the Proposal for public companies, it should be noted that there is no equivalent EU restriction on distributions by private companies. It is sometimes urged that this represents an opportunity to simplify the requirements for distributions by private companies.[27] Adopting a less stringent private company standard arguably reverses the gold-plating of EU requirements in Irish company law, which applied the same standard to distributions by both public and private companies – something that was not required by the Second Company Law Directive.[28] A simple solvency test for distributions by private companies is an idea that could be considered on its own merits for adoption in Irish company law.

As in the case of capital maintenance, the proposed simplified distribution rules will make the EU Inc. a far more flexible vehicle for operating and financing structures.



# D. Simplified Winding Up

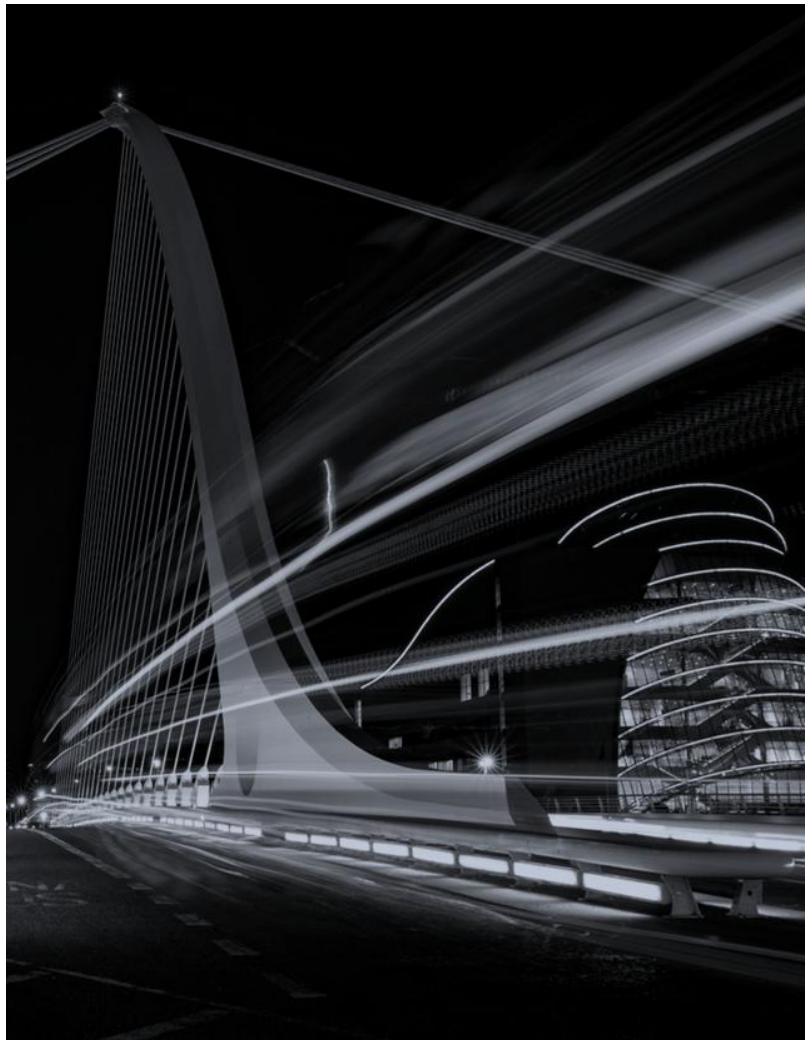
*For qualifying innovative startups, the insolvency process would be more debtor-friendly and more digital.*

A key feature that may be attractive to founders is the debtor-friendly approach to insolvency for EU Inc. companies that qualify as "innovative startups".[29] This removes the balance sheet test for solvency, leaving as the sole criterion the inability to pay debts as they mature or fall due.[30]

Simplified winding up proceedings do not require the involvement of an insolvency practitioner. In certain cases, the debtor itself may take charge of preparing the list of creditors and the realisation of assets. This reflects the principle that "the debtor should remain in possession of the business' assets and affairs throughout the simplified winding up proceedings."[31] Other features of the simplified process include fully digital filing, a simplified claims process and stay of enforcement and realisation of assets through interconnected EU-wide electronic auction systems.

However, these advantages will not apply to EU Inc. companies that are not innovative startups, for which the insolvency process principally remains a matter of domestic law. On this basis, providers of debt finance will continue to face different national rules when dealing with EU Inc. companies in situations of financial distress.

> *"The debtor should remain in possession of the business' assets and affairs throughout the simplified winding up proceedings."*



# Conclusion

*The proposal may be the first harmonised EU company form to offer a clear edge over domestic Irish vehicles in key areas.*

The most anomalous attribute of the EU Inc. is its status as a public company – some of the features highlighted above make it an unusual alternative to the PLC as listed vehicle. In particular, the Proposal would remove or make optional capital maintenance rules that are typically more restrictive for public companies.

Multiple-vote share structures are also expressly facilitated, aligning the Proposal with the EU Directive on Multiple Voting Rights32 that is due to be transposed by 5 December 2026. However, it is worth noting that the Proposal goes further than the Multiple Voting Rights Directive by reasoning that multiple-vote structures "may allow founders to protect the company against hostile takeovers". The latter justification is expanded on in the Q&A document which states that "EU Inc. companies may also choose to make the transfer of shares subject to conditions" as a means for founders to "stay in control of their vision and prevent hostile takeovers".33

Facilitating takeover defences by listed companies would represent a significant departure from the principle of board neutrality expressed in the Takeover Directive34, as transposed in Ireland via the Irish Takeover Rules.35 Overall, the theme of the EU Inc. as a listed vehicle appears underdeveloped and would benefit from more thought before it can be regarded as a workable proposition.

The EU Inc. is an intriguing proposal – probably the first harmonised EU company statute that offers a clear edge over domestic Irish law company law in key areas of practice. While it faces a long and uncertain road to adoption, strong demand should be anticipated among a potential user base of founders, sponsors and corporates looking for a highly flexible company type that can be established quickly, is recognised widely and can raise, manage and distribute its capital without the "rigidities and complexities"36 of historical capital maintenance rules. Whether that demand ultimately materialises will depend on the final shape of the legislation – and on whether Irish law itself evolves in response.

> *"The EU Inc. is probably the first harmonised EU company statute that offers a clear edge over domestic Irish company law."*

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# Key Contacts

For further information, please contact:

**Ken Casey**
*Partner, Head of Corporate*
kcasey@hayes-solicitors.ie

**David Mangan**
*Partner, Corporate*
dmangan@hayes-solicitors.ie

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