



DOING BUSINESS IN IRELAND

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CONTENTS

Introduction	03
Why Invest in Ireland	04
Establishing your Business in Ireland	06
Working in Ireland	10
Real Estate Considerations	15
Data Protection	19
Intellectual Property Protection in Ireland	23
How Hayes can help you	25



INTRODUCTION

Ireland is a thriving business base for overseas companies from a wide range of sectors.

Here, we highlight the key considerations for setting up and running your business presence in one of Europe's most business-friendly environments.

Hayes is a long-established and highly respected Irish commercial law firm combining local and international expertise and insight. We are known for our strong, partner-led service ethos and focus on building and maintaining long-standing client relationships.

Our bespoke service meets the needs of all types and sizes of businesses, providing high

quality advice and expertise in key areas – including business, M&A and reorganisations, foreign direct investment, employment, property, media, healthcare, banking and insolvency law. We work with clients in all sectors, including leading international retailers, technology, healthcare, real estate, media and advertising groups, insurers, indemnifiers, banks, financial institutions, accountancy firms, public bodies and private individuals.

Hayes is ready to be your guide and adviser on all aspects of setting up and running your business in Ireland. For more information on the firm and our range of services, see [hayes-solicitors.ie](https://www.hayes-solicitors.ie)



WHY INVEST IN IRELAND

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Ireland has firmly established itself as one of the most attractive global destinations for business investment. Combining a dynamic economy with a skilled workforce, world-class infrastructure, and an exceptional quality of life, Ireland offers a compelling, future-ready environment for companies looking to expand or relocate.



Whether you're a multinational corporation or a high-growth startup, here's why Ireland should be your investment destination of choice:

The Economy

Ireland boasts one of the most open and competitive economies in the world. As a committed member of the European Union and the Eurozone, Ireland provides seamless access to the EU's 450+ million consumers. Its pro-business environment, competitive corporate tax rate, and consistent economic growth have made it a preferred European hub for sectors such as technology, pharmaceuticals, financial services, and advanced manufacturing. With a stable political system and a reputation for regulatory transparency, Ireland provides a secure and predictable base for international investment.

Talent

Ireland has one of the youngest and most educated workforces in Europe. Over 50% of adults aged 25-34 have a third-level qualification, and the country continues to invest heavily in education and training to meet the evolving needs of global industries. The availability of multilingual, tech-savvy talent—coupled with a strong culture of innovation—makes Ireland an ideal location for businesses that require high-performance teams.

Infrastructure

Ireland offers a highly connected and modern business infrastructure. With advanced digital networks, widespread access to high-speed broadband, and ongoing investment in smart infrastructure and energy systems, Ireland supports the needs of 21st-century businesses. Key cities such as Dublin, Cork, Limerick, and Galway are well-served by international airports and efficient transport systems, ensuring excellent global and regional connectivity.

Quality of Life

Ireland is consistently ranked among the best countries in the world for quality of life. It combines a rich cultural heritage with stunning natural landscapes, safe communities, and a high standard of healthcare and education. The country also offers a vibrant arts and entertainment scene, making it attractive for international talent and their families. This balance between professional opportunity and personal well-being makes Ireland not just a great place to do business, but a great place to live.

ESTABLISHING YOUR BUSINESS IN IRELAND

Ireland's modern and flexible corporate legal framework offers a range of structures for setting up your business for success.

Incorporation

Ireland offers a straightforward process for incorporation. The principal legislation governing companies is the Companies Act 2014, which sets out various company types suited to different business needs. The main company types are:

- Private company limited by shares (**LTD**): The most popular type for inward investment, providing flexibility and limited liability to shareholders.
- Designated activity companies (**DACs**): This structure is often favoured by financing companies, family businesses, and specialised entities like fund management firms or joint ventures.
- Public limited companies (**PLCs**): Engages in trading, investing, manufacturing, reporting, complying, fundraising, exporting, and expanding globally which offers shares to the public.
- Unlimited companies (**ULCs**): Similar to an LTD but can only trade in the industry or activity specified in the objects clause, and where the shareholders do not enjoy limited liability.

Other forms of organisation are available for business and investment/fund structuring, including: partnerships (i.e. general partnerships); limited partnerships (LPs); investment limited partnerships (ILPs); unit trusts (such as UCITS) and Irish collective asset-management vehicles (ICAVs).

Incorporation – Key Requirements

The Companies Registration Office (CRO) handles applications for incorporation of businesses in Ireland. Your application must meet five key requirements.

- **Company name:** Ensure your chosen name is available and adheres to the CRO guidelines. A company name can be reserved for a new company or an existing company that is changing its name.
- **Directorship residency requirement:** Irish law mandates that at least one director is resident in a European Economic Area (EEA) member state. (See below for exceptions and alternative arrangements).
- **Registered office:** An official registered address in Ireland is required for all companies (this does not have to be a business location).
- **Constitution:** A company's constitution must be prepared and submitted to the CRO outlining the company's governance structure.
- **Share capital:** Most company types must issue shares at incorporation and ensure compliance with statutory capital requirements.

Incorporation is typically completed within five business days from submission of a completed application, which is facilitated by the CRO's efficient online filing platform.

EEA-Resident Director Requirement

Irish company law requires that at least one company director is a resident of an EEA member state (any of the EU member states plus Iceland, Liechtenstein and Norway). However, there are a few alternative compliance routes available. Where a company does not appoint an EEA-resident director, it can instead post a bond to the value of €25,000. The bond serves as a financial security that can be called upon if the company fails to meet financial penalties under Irish company or tax law. The bond typically covers a two-year period and can be obtained from insurance providers, with a premium of approximately €1,500. This option is commonly used by non-EEA companies that are looking to comply with Irish requirements without appointing a local director.

Alternatively, a company may apply for a certificate from the CRO that the company has a real and continuous link with an economic activity in Ireland. This option is less frequently used since it is available only to companies already incorporated and engaged in business in Ireland (and requires confirmation from the Irish tax authorities to this effect). However, where it applies, it eliminates the requirement to have either an EEA-resident director or a bond.

Key Post-Incorporation Compliance Obligations

- **Annual return and financial statements:** All Irish companies are required to file annual returns and, where applicable, audited financial statements. Non-compliance can result in penalties or, in severe cases, the company's strike-off from the register.
- **Statutory registers and minute books:** Companies must maintain statutory registers, including those for members, directors, and beneficial owners.
- **Beneficial ownership:** Irish companies must comply with the EU's Anti-Money Laundering Directives, requiring disclosure of beneficial ownership to the Central Register of Beneficial Ownership (a restricted register not currently accessible by the general public).

Corporate Governance and Compliance

Irish corporate governance standards are rigorous and clearly set out in law, balancing the interests of stakeholders with operational flexibility. Irish companies operate under a unitary board structure with directors' duties codified by the Companies Act 2014. Key duties include acting in good faith in what the director considers to be the interests of the company, avoiding conflicts of interest and exercising independent judgement. Directors must also ensure compliance with various statutory obligations, including the maintenance of accounting records, oversight and approval of statutory financial statements and disclosure of interests.

Companies with securities admitted to listing on a market and companies that carry out regulated financial activities are typically obliged to adhere to one or more further governance codes. These include:

- UK Corporate Governance Code published by the Financial Reporting Council.
- Irish Corporate Governance Code published by Euronext Dublin.
- Central Bank of Ireland codes:
 - Corporate Governance Requirements for Insurance Undertakings
 - Corporate Governance Requirements for Credit Institutions
 - Corporate Governance Requirements for Investment Firms and Market Operators.

Mergers and Acquisitions

Ireland has a vibrant market in mergers and acquisitions (M&A), fostered by the country's business-friendly legal environment.

Competition Law

M&A involving Irish businesses is subject to domestic and EU merger notification rules. Under domestic competition law, mandatory notification is triggered if the:

- Aggregate turnover in Ireland of the undertakings involved exceeds €60m
- Turnover in Ireland of each of two or more of the undertakings involved exceeds €10m.

Media mergers must be notified whether or not they meet these thresholds.

Investment Screening

Ireland has recently introduced an investment screening regime, which empowers the Irish government in certain cases to prohibit or impose conditions on FDI (foreign direct investment) transactions according to a range of security and public order criteria.

The regime is administered by the Inward Investment Screening Unit at the Department of Enterprise, Tourism and Employment and includes a mandatory notification obligation for investments or acquisitions by third-country undertakings (from non-EEA countries or Switzerland) involving the following key areas:

- Critical infrastructure
- Critical technologies and dual use items
- Supply of critical inputs, including energy or raw materials, as well as food security
- Access to sensitive information, including personal data, or the ability to control such information
- The freedom and pluralism of the media.

In practice, the regime has operated efficiently since its commencement in January 2025. The Department has demonstrated a pragmatic approach, issuing 'no screening required' letters in appropriate cases, typically within approximately two weeks. Where formal screening is required, clearance has generally been received within approximately 45 calendar days on average - considerably swifter than the statutory maximum of 90 days.

Parties should be aware that determining whether certain transactions fall within the scope of the sensitive sectors can present challenges, particularly regarding 'critical infrastructure'. In borderline cases, precautionary filings may be advisable to ensure compliance with the mandatory notification requirements. Looking ahead, further clarity, harmonisation, and standardised deadlines across Ireland and other EU member states is expected with the revised EU FDI Regulation.

International Investment and Tax Structuring

Ireland's competitive corporate tax rate for trading companies and favourable holding company regime continue to attract global businesses. The default corporate tax rate of 12.5% but some large multi-national companies with revenues up to €750m have a 15% corporate tax rate in place. (introduced in response to the Global Anti-Base Erosion Rules of the OECD BEPS Project).

Companies benefit from Ireland's extensive double taxation treaty network, tax incentives for R&D, and other reliefs such as the Knowledge Development Box (KDB).

Subsidiary Company or Branch?

Incorporating an Irish subsidiary is the preferred option for most overseas businesses. However, some groups prefer to establish a branch in Ireland as a branch structure has fewer compliance and financial reporting obligations and can be cost-effective to wind up.

The key differences between incorporating a subsidiary and establishing a branch are shown here.

	Incorporation of a Subsidiary	Establishment of a Branch
Legal Status	Separate legal entity.	Not a separate legal entity, operates as an extension of the company (the external company) in Ireland.
Legal Rights and Obligations with Respect to Operations in Ireland	No substantive differences.	No substantive differences.
Formalities for Incorporation / Registration	Details of the new company to be filed at the CRO, together with the company constitution.	Details of the branch to be filed at the CRO, together with the key constitutional and accounting documents in respect of the external company (with certified translations if not in English).
Registered Persons	The company must register at least one director and a secretary (who must be a separate person to the director). No nationality / residence requirements, but if the company does not have at least one EEA-resident director, then it must provide a bond to the value of €25,000 or a certificate of real and continuous link with one or more economic activities being carried on in Ireland.	The external company must register each of its directors and secretary and any other persons who are authorised to represent the company in dealings with third parties and in legal proceedings. The external company must name and addresses of a person resident in Ireland who is authorised to: <ul style="list-style-type: none"> Accept service of documents required to be served on the external company; and Ensure compliance with the provisions of Irish company law that apply to external companies.
Filing of Accounts	Statutory financial statements to be prepared and audited (if an audit exemption does not apply). Statutory financial statements to be publicly filed together with the company's annual return in each year.	Not required to prepare separate statutory accounts for the branch. A copy of the accounting documents of the external company which it is required to prepare and, if applicable, make public in its country of incorporation are to be publicly filed at the CRO in Ireland in each year.
Taxation*	In principle an Irish subsidiary company must pay corporation tax in Ireland on its worldwide profits (generally with credit for any overseas taxes paid).	Depending on the rules in its home jurisdiction, the external company may be subject to corporate tax on the results of its Irish branch (generally with credit for tax paid in Ireland).

*Note: Hayes do not advise on taxation but works closely with expert tax advisers.

WORKING IN IRELAND

Employment law in Ireland is based on contract law but with significant legislative provisions from both domestic and EU law that shape the employment relationship.



Hiring Employees in Ireland

Any formal employment relationship typically begins with a written contract setting out the agreed terms which also meet specific statutory requirements. Employers are legally obliged to provide a written statement of core terms within five days of an employee commencing work, followed by a more detailed statement within one month. This must include information such as job title, place of work, pay, working hours, and

notice periods. There are also specific statutory protections for atypical workers in Ireland, including part-time workers, fixed-term workers and agency workers.

Beyond individual contracts, workers who are represented by a trade union or are in a particular economic sector may have their pay or working conditions set out in a Collective Agreement, Employment Regulation Orders, Registered Employment Agreements or Sectoral Employment Orders.

Who Needs a Visa / Work Permit?

Workers from a country outside the EEA, the UK or Switzerland need permission to work in Ireland. An application for an employment permit is required for workers from outside these jurisdictions.

Employment permits are governed by the Employment Permits Act 2003 – 2024, which sets out the types of permits available and any eligibility criteria necessary to obtain a permit.

The main employment permits are:

- General Employment Permit
- Critical Skills Employment Permit
- Intra-Company Transfer Permit
- Dependant / Partner / Spouse Employment Permit.

Once a worker who requires a permit has received a job offer and employment contract, they must include these documents in their application, along with evidence of their job qualifications, work experience, and proof of their employer's registration with the Revenue Commissioners and the Companies Registration Office (CRO). Additional documentation may be required and is determined by the type of permit that is being sought. A Labour Market Needs test may also be required for some permits.

Processing times and eligibility criteria vary, and it is important to consider immigration requirements early in the planning process, as work permit applications must be submitted at least 12 weeks prior to the proposed start of a worker's employment.

Working Time, Leave and Benefits

Working time and breaks are regulated by the Organisation of Working Time Act 1997 which governs that, with certain exceptions, the maximum number of hours that an employee should work in an average working week is 48 hours. Employees also have specified entitlements regarding daily and weekly rest breaks and night work.

The Act also sets out the annual leave entitlement for employees. Full-time employees are entitled to a minimum of 20 days annual leave each year, and 10 public holidays. An employer and employee can agree longer annual leave entitlements.

The Sick Leave Act 2022 governs an employee's entitlement to statutory sick pay (Statutory Sick Leave), setting maximum pay levels and the allowable number of days per year. The legislation has increased the number of days of statutory sick pay on a phased basis since its introduction in 2023. The current entitlement of 5 days was expected to increase to 7 days in 2025, and 10 days in 2026, but has remained unchanged at 5 days. This pause is a result of consultations with business owners and representative organisations about the commercial impact of further sick leave increases. The government has not clarified when or if further increases will apply.

Statutory sick pay is paid by the employer at 70% of an employee's normal pay up to a maximum of €110 a day, provided that the employee has 13 weeks' continuous service and be certified as unable to work by a registered medical practitioner. If an employer offers a more generous sick pay scheme, an employee's payment during sick leave is addressed under the employer's scheme. Statutory sick pay is available to all qualifying employees, including those on probation or undergoing training, apprentices and agency workers. More information is available through the Department of Social Protection, through their Citizens Information service.

Statutory Leave

In the Irish jurisdiction, employees are entitled to periods of leave pursuant to statute, including:

- Maternity leave
- Paternity leave
- Adoptive leave
- Parent's leave
- Parental leave
- Domestic violence leave
- Carer's leave.

In addition to annual leave and public holidays as mentioned above.

More information on maternity benefit and other family benefits is available through the Department of Social Protection, through their Citizens Information service.

Payroll, Tax and Pensions

The National Minimum Wage Act 2000 sets the minimum wage, which applies to most employees in Ireland. Details of the current rates can be found through the Department of Enterprise, Tourism and Employment, through their Citizens Information service.

Irish employers are responsible for managing employee's PAYE (Pay as You Earn) which involves the deduction and remittance of the following, directly from their employees' salary / wages:

- Income tax
- PRSI (Pay Related Social Insurance)
- USC (Universal Social Charge).

Employers are required to remit these sums to the Revenue Commissioners (the Irish tax and customs agency).

Pension

Employers are not currently required to provide or contribute to an occupational pension scheme. If the employer does not have a pension scheme, the employer must provide access to a personal retirement savings account (PRSA) once an employee has completed six months' service.

An auto-enrolment pension savings scheme was introduced in January 2026. It is aimed at employees who are not currently part of a pension scheme. Auto-enrolment is run and managed by the National Automatic Enrolment Retirement Savings Authority (NAERSA) and supervised by the Pensions Authority. More information is available through the Department of Social Protection, through their Citizens Information service.

Health & Safety Obligations

Under the Safety, Health and Welfare at Work Act 2005 (as amended), an employer is required to ensure, as far as reasonably practicable, employees' safety, health and welfare at work. An employer is required to carry out a risk assessment of the workplace and prepare a written safety statement. Compliance is overseen by the Health and Safety Authority (HSA).

Employment Equality

Discrimination is covered by the Employment Equality Acts 1998-2024. Discrimination is prohibited on the following nine grounds, known as "protected characteristics" as follows:

- Gender
- Civil status
- Family status
- Sexual orientation
- Religion
- Age
- Disability
- Race
- Membership of the Traveller community.

Direct discrimination is where an employee (or candidate for employment), is treated less favourably than a comparator at work (or seeking access to work), on any of the above nine protected grounds. It cannot be excused or justified in any circumstances. Indirect discrimination is where apparently neutral practices or policies arise at work, which discriminate in their effect against an employee or class of employees with a protected characteristic. Indirect discrimination may be objectively justified by an employer, if it can be shown to be motivated by a legitimate aim, and a necessary and proportionate way to achieve the said aim.

Workplace Investigations

An employer in Ireland will need to have robust policies in place to deal with internal investigations including workplace grievances, disciplinary procedures, whistleblowing etc. Employers in the digital world have further obligations to employees as regards consideration of flexible or remote working, the right of an employee to disconnect, and safeguards in relation to use of social media, AI, as well as their privacy and data protection rights. At a minimum, an Employee Handbook should be put in place with policies and procedures on grievances and disciplinary matters, bullying and harassment, dignity at work, data protection, the right to disconnect, and a health and safety policy.

Industrial Relations and Collective Bargaining

In Ireland, trade unions and industrial relations are governed by the Constitution, the Trade Union Acts 1871 – 1990, and the Industrial Relations Acts 1946 – 2015 as well as various EU and international law provisions.

Employees have a constitutional right to join a trade union, but an employer cannot be compelled to recognise or negotiate with a trade union. The system of industrial relations in Ireland is voluntary in nature with voluntary recognition of trade unions and collective bargaining. In the event of a dispute, the Labour Court and Workplace Relations Commission may be involved in conciliation or adjudication processes.

Most collective bargaining in Ireland tend to focus on the public sector, with the State and unions representing public sector employees engaging in multi-year deals to allow the government to plan future budgets and to avoid annual negotiations.

The EU Adequate Minimum Wages Directive was published on 19 October 2022 was transposed into Irish law on 15 November 2024 and it creates an obligation to promote and strengthen workers' rights to engage in collective bargaining on wage-setting, and to take appropriate measures to protect the exercise of the right to collectively bargain on wage-setting.

TUPE (Transfer of Undertakings)

The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) (commonly referred to as "TUPE" regulations) govern the transfer of undertakings in Ireland. The purpose of the Regulations is to protect employees if the business in which they are employed transfers. The employees must be wholly or mainly connected to the business or the part of the organisation that is transferring.

Employees gain two categories of protection in addition to retaining certain rights under the Regulations:

1. Employees are protected against dismissal that is connected to the transfer.
2. On automatic transfer, an employee transferring to a new employer creates a requirement for the new employer to inherit the employee's prior service, rights, liabilities and any obligations which apply to the employee.

Employers are restrained from making substantial, detrimental changes to an employee's working conditions, which could be deemed to be terminating an employee unfairly. Termination of an employee under the Regulations will entitle them to bring a claim to the Workplace Relations Commission (WRC) under the Regulations or the Unfair Dismissals Act 1977 – 2015. This does not restrict an employer from dismissing a transferred employee for other legitimate reasons arising from the needs of the organisation.

There is a maximum award of four weeks remuneration for breach of the information and consultation requirements contained in the TUPE regulations, and a maximum of two years' remuneration for any other breach.

European Works Councils

European Works Councils (EWCs) were established by the European Works Councils Directive (Directive 2009/38/EC) and transposed into Irish law via the Transnational Information and Consultation of Employees Act, 1996 (TICEA). They are bodies created to facilitate consultation and information sharing between large multinational businesses and European employees in relation to transnational issues (e.g. business performance, corporate restructures, collective redundancies).

Employees can request that a multinational business set up a EWC if the company employs at least 1,000 employees in the EEA and a minimum of 150 employees in at least two Member States. Employee representatives from each EU or EEA Member State in which a business has employees make up the members of each EWC. They do not operate in conjunction with any national bodies established to address information or consultation with employees.

The Council of the European Union and the European Parliament recently reached an agreement to revise the directive, although it is yet to be formally adopted. The aim of this revision is to reinforce employees' rights in relation to the exchange of information and consultation between employers and European workers on transnational matters. The new directive seeks to provide clarity on the creation of EWCs while making the law governing EWCs more effective and easier to enforce through various amendments, including widening the scope of multinational employers obliged to engage in EWC agreements and providing objective criteria for to assess the confidentiality of information. Once adopted, Member States will have two years to transpose these changes into their national law.

Notice

Minimum notice periods are set out in the Minimum Notice and Terms of Employment Acts 1973 - 2005. The notice period is determined by an employee's continuous service and range from one week to eight weeks. The employer and employee may agree a longer contractual notice period.

Termination and Redundancy

The relevant legislation regarding unfair dismissal is the Unfair Dismissals Act 1977 - 2015. If an employee has one year's continuous service, dismissal will be deemed as unfair unless justified on one of several grounds including capability or competence, conduct, redundancy or a legal impediment. Regardless of length of service, certain dismissals are deemed automatically unfair, including in relation to pregnancy, maternity leave, discrimination, membership of a trade union or because of whistleblowing.

An employee will also need to be afforded the principles of natural justice and fair procedures. This means that the employer must follow a procedure that affords an employee certain rights such as notice of allegations, the opportunity to respond, representation, and an impartial procedure. The maximum award that an employee

may receive for unfair dismissal is two years' remuneration. However, an employee also has an entitlement to seek to restrain a termination by bringing an injunction application in the civil courts. The civil courts have the power to order that the termination is restricted pending the outcome of the unfair termination proceedings.

Redundancy however is a lawful way that employees can be terminated, if certain factors are met, for example, that there has been a reduction in work in an organisation, or fewer employees are required to carry out the work due to technological advancements. Upon redundancy, there is a minimum requirement to pay employees two weeks' pay per year of service, capped at €600 per week (plus one additional bonus week). There is also an obligation to inform and consult with employees if they are at risk of redundancy. Additional obligations arise in the event that a certain number or percentage of the workforce is being made redundant. This is referred to as 'collective redundancy' and carries additional obligations in relation to minimum consultation times and a notification to Government.

Increasingly we are seeing our clients' need for advice on post-termination restrictions, including confidentiality provisions, which typically form part of an employee's contract, and which are designed to protect a business' interests.



REAL ESTATE CONSIDERATIONS

Finding the right premises for your business is a key step. There are a number of detailed commercial property arrangements that should be considered.

Types of Ownership

Your choice of property ownership will depend on your business goals. The two main options are buying (which can either be the acquisition of the freehold or a long lease for example a 999-year lease) or leasing for a period up to 35 years (an Occupational Lease). While market factors are important, the substantial upfront costs and investment required to purchase commercial real estate can be prohibitive, often making an Occupational Lease a more flexible and attractive option. Depending on the nature of the property, a lease can prove much more restrictive in terms of the use and future development of the property. For example, if you purchase the freehold your use and development of the

property will generally only be subject to planning and other statutory requirements. If you lease a property, in addition to the planning and statutory requirements you will also need to comply with any Landlord conditions. The Landlord will most likely limit the permitted use of the property and prohibit any alterations without landlord consent. This means there is an additional layer of landlord approval required should you wish to change the use of or make any alterations to the property. The covenants in a 999-year lease will generally not be as onerous as those in an Occupational Lease. The decision to buy or lease property is a strategic one which cannot be made in isolation and should be determined by considering all aspects of your current and future business needs.

Purchasing Commercial Real Estate

The legal process for buying commercial real estate has five key steps.

Step One: Offer Accepted

The legal process begins once the purchaser's offer has been accepted by the vendor. An initial refundable deposit is paid to the estate agent acting for the vendor.

Step Two: Draft Contracts, Title Review, Surveys

The vendor's solicitor delivers draft contracts and copy title to the purchaser's solicitor to enable a thorough review of the title on offer. Usually, the purchaser's solicitor will raise queries to establish that the planning, title and access to the property are all in order. A detailed survey is also recommended to identify any potential issues or hidden costs with the property. The position in respect of commercial rates and rent will vary if the property is being sold with tenants or with vacant possession. If funding is required, the funder will usually have their own legal advisors and any queries they raise should also be addressed by the vendor's solicitor before contracts are binding. The principle of "Caveat Emptor" or "Buyer Beware" applies to the purchase of most property in the Republic of Ireland so it is important to carry out detailed due diligence before signing contracts to ensure that any remedial works or title rectifications required for the property can be resolved before the purchaser is obliged to proceed with the purchase. The vat implications of the transaction should be considered and agreed before contracts are signed.

Step Three: Contract Signed, Closing Date Agreed

Once the purchaser, their legal advisors and their professional teams are satisfied with the title and documentation on offer the purchaser signs the contract and pays the balance 10% deposit to the vendor's solicitor. The vendor then countersigns and at that stage there is a binding contract in place, and the deposit is usually no longer refundable unless the vendor fails to comply with the agreed terms. The closing date is agreed by the parties prior to exchanging the contract.

Step Four: Closing

On closing, the balance purchase funds are paid to the vendor's solicitor, closing searches are carried out, and the original title documentation is delivered to the purchaser. Keys are released to the purchaser.

Step Five: Stamp Duty and Registration

Once the purchase has completed, the purchaser's solicitor proceeds to pay stamp duty (currently at a rate of 7.5% of the purchase price for commercial property) to the Revenue Commissioners and obtain the necessary stamp certificate. The relevant deed of assurance (and mortgage if applicable) can then be lodged in Táihte Eireann to register the purchaser's ownership of the property.

Leasing Commercial Real Estate – an Occupational Lease

Property agents acting for the landlord and tenant trigger the legal process once they have negotiated agreed Heads of Terms for the leasing transaction.

Heads of Terms

Agreed Heads of Terms are not binding on either party – they set out the initial agreement before the formal contract – but they set out the blueprint for the main commercial terms of the lease. Generally, the more detailed and considered the heads of terms are, the less likely it is that lease negotiations will become protracted.

The main points in a typical Heads of Terms are:

Term

How long is the agreed term of the lease? Particularly for a new letting, tenants should consider whether they require a break option to allow early termination of the lease in certain circumstances. Often a break option will be personal to the tenant and recorded separately in a supplemental agreement.

Renewal Rights

The default position in Ireland is that in certain circumstances a tenant will accrue an automatic right to a new long lease at the end of their existing five-year continuous occupation of the premises. Heads of terms will usually confirm if a tenant has agreed to renounce this right through a Deed of Renunciation. There is no obligation on a landlord to grant a further lease if the tenant has executed a valid Deed of Renunciation.

Rent

These key questions should be considered when agreeing the rent:

- What is the annual rent?
- How and when is the rent paid?
- What is the interest rate on late payment of the rent?
- Is the rent inclusive or exclusive of VAT?
- When can the rent be reviewed and what factors can and cannot be taken into account when determining the reviewed rent?

Repairs

The Heads of Terms will confirm the extent of the tenant's repair obligations. The nature of the building and duration of the term will usually determine the extent of the tenant's repair obligations and confirm if the tenant is responsible for the repair and maintenance of solely the interior of the premises or both the interior and exterior. This obligation can be imposed directly on the tenant or it can arise via the payment of a service charge. It is always recommended that a detailed survey is carried out to identify any issues or defects with the building which could lead to either a substantial increase in service charges or a costly repair obligation. In many cases, a Schedule of Condition will be prepared to accurately reflect the condition the property is handed over in, as this may be the benchmark for the condition in which the premises should be returned.

Alienation

More and more businesses now require the flexibility to share space or sublet in response to changes in the market or their business needs. Landlord's consent may be required for businesses to either share with group companies, or to grant concessions of a limited portion of the premises to third parties. Where possible it is helpful to anticipate future business needs when negotiating a lease to avoid unnecessary applications for landlord's consent later.

Timelines

A key issue for tenants can be the timing of when they take possession and can commence trading from the premises. This can require a high level of coordination between multidisciplinary teams. There may be key retail windows or planning timelines which can't be missed and it is helpful if all parties are aware of any key dates as early as possible.

Sustainability

Sustainability provisions or "green clauses" are becoming more and more common in new leases. Many landlords have obligations to funders to improve or maintain the energy efficiency rating of buildings. It is important to clarify the extent of any tenant obligations in this regard and where possible ensure that any additional costs are either excluded or clearly identified.

Works

Works required to get the premises to the agreed tenant specification can determine the structure of the transaction. If extensive works are required, it is likely that an Agreement for Lease will be signed at the same time as the lease. The lease will then be held in escrow until the agreed works are complete. The Agreement for Lease may permit the tenant to occupy the premises and carry out works prior to the commencement of the lease. The Agreement for Lease will set out the terms agreed pending the commencement of the lease and will also specify if any landlord works are required and prescribe the timelines, approvals and documentation required from either party. The lease will not usually commence until the works are carried out and all the appropriate planning documentation has been provided to the landlord. Once all works are complete the landlord will release the lease from escrow, and it becomes binding on all parties. For less substantial works, the lease can be agreed simultaneously with a Licence for Works, which confirms the landlord's consent to the tenant's proposed works.

Additional Costs

The Heads of Terms will also address any additional expected costs, including:

- Service charges: The level of service charges will depend on the nature of the property, development and services provided
- Rates: (local authority property tax) – the tenant will usually be responsible for the rates from the date of occupation
- Insurance
- Stamp duty: payable at 1% of the annual rent with an additional set fee of €12.50 where a counterpart is required and a rent review provision included
- VAT.

Finalising the Lease

Once the Heads of Terms have issued the landlord's solicitor will prepare the first draft of the lease and any ancillary documents. Along with the first draft of the documents the landlord should provide prima facie evidence of title together with replies to pre-lease enquiries.

The process usually involves two or three turns of the documents before they are agreed. Once in agreed form, the tenant will usually sign first and pay the initial rent, stamp duty and any deposit to the landlord's solicitor. Once the landlord has stamped the lease the tenant will arrange to file a commercial lease return with the Property Regulatory Services Authority.

DATA PROTECTION

As all organisations will deal with personal data to some extent, compliance with data protection law is an essential part of carrying out business in Ireland.

Data protection laws regulate how individuals' personal data is handled and set out a series of obligations on organisations who process personal data. A breach of data protection laws can lead to fines of up to €20 million euro or 4% of worldwide turnover – whichever is the greatest – and, in certain circumstances, may result in criminal prosecutions.

Data Protection Legislation

The Irish data protection regime comprises the General Data Protection Regulation (the GDPR), the Irish Data Protection Act 2018 and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (the ePrivacy Regulations). The Data Protection Commission (DPC) is the Irish data protection supervisory authority.

Key Definitions

Data protection regulations address the rights and obligations associated with:

- **Personal data:** Any information about an identified or identifiable living individual. It can cover information such as name, date of birth, email address, physical characteristics or location data.
- **Processing:** Data protection law regulates the processing of personal data. Processing means using the data in any way, including collecting, storing, retrieving, consulting, disclosing, erasing or destroying personal data.
- **Data controller:** A data controller is an individual, body or organisation that decides how and why personal data is processed. Most obligations under data protection law fall on controllers.
- **Processor:** A processor is an individual, organisation or body who processes data on behalf of a controller. The GDPR sets out specific duties for a processor.
- **Data subject:** A data subject is the person to whom the personal data relates.

Data Protection Principles

The GDPR lays down several key principles which organisations must comply with when processing personal data. These core obligations on controllers are:

- **Lawfulness, fairness and transparency:** Personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. The controller must only process personal data on the basis of one or more of the legal grounds set out in Article 6 of the GDPR.
- **Purpose limitation:** Personal data must only be collected for specified, explicit and legitimate purposes. It must not be further processed in any manner incompatible with those purposes.
- **Data minimisation:** Personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

- **Accuracy:** Personal data must be accurate and, where necessary, kept up to date.
- **Storage limitation:** Personal data must not be kept in a form which permits data subjects to be identified for longer than is necessary for the purposes for which the data is processed.
- **Accountability:** The controller is responsible for, and must be able to demonstrate, compliance with the data protection principles.

Key Obligations of Data Controllers and Processors

Data controllers and processors must comply with the following requirements:

- **Privacy notices:** The GDPR requires that when a data controller collects an individual's personal data it makes certain information available to the individual. This is generally done through a privacy notice. A privacy notice / policy will contain various information including why the organisation needs someone's personal data, what it plans to do with it, how long it is going to keep it, and if it will share the data with anyone else.
- **Data processing agreements:** When appointing a processor, data controllers must enter into a written contract imposing obligations on the processor including relating to data security and confidentiality. The clauses that are required to be included in such a contract are set out in Article 28 of the GDPR.
- **Data Protection Officer:** In certain circumstances, data controllers and processors are required to appoint a Data Protection Officer. For example, this requirement applies where a controller or processor, processes, as part of their core activities, medical information of individuals.
- **Records of processing activities:** Data controllers and processors are required to maintain records of data processing operations covering areas such as processing purposes, data sharing and retention.

- **Data Protection Impact Assessment (DPIA):** Data controllers are required to conduct DPIAs before undertaking any processing that presents a specific risk to data subjects by virtue of its nature, scope or purposes.
- **Notification of personal data breach:** Data controllers are required to notify personal data breaches to the DPC within 72 hours of becoming aware of the breach, unless there is no risk to the rights and freedoms of the individual. Data controllers must also notify individuals about a breach of their personal data, whether the breach results in a high risk to the rights and freedoms of the individual.

Data Subject Rights

Data subjects have rights under data protection law, to keep them informed and in control of the processing of their personal data. These rights are:

- **Data access right:** A right to request access to and / or a copy of the personal data a controller holds about the individual.
- **Right of rectification:** The right to request correction of any incomplete or inaccurate data.
- **Right of erasure:** The right to request a controller to delete or remove personal data where there is no good reason for the controller continuing to process it.
- **Right to objection:** The right to object to a controller processing the individual's personal data in certain circumstances.
- **Right of restriction:** The right to request that a controller restrict or suspend its processing of the individual's personal data in certain circumstances.
- **Right of data portability:** The right to request a controller to transfer certain personal data to the individual or his or her chosen third party in a structured, commonly used, machine-readable format.

International Data Transfers

In order to transfer personal data outside of the EEA, data controllers and processors must comply with Chapter V of the GDPR. This requires that certain transfer mechanisms be put in place to ensure that any personal data transferred is protected to a level that is essentially equivalent to that guaranteed by the GDPR. The two most common transfer mechanisms used by organisations are EU Commission Adequacy Decisions and Standard Contractual Clauses (SCCs).

Adequacy Decision: this means that the European Commission has decided that a non-EEA country ("third country") ensures an adequate level of data protection. The effect of an adequacy decision is that personal data can flow from the EEA to a third country without any further safeguard being necessary. In other words, the transfer is the same as if it was carried out within the EU.

Standard Contractual Clauses: SSCs are model data protection clauses that have been approved by the European Commission. They set out specific data protection safeguards to ensure that personal data continues to benefit from a high level of protection when transferred outside the EEA.

Cookies

Where any website or application is deploying cookies or similar technology it must normally obtain consent from users to place and use cookies and other similar technologies on a user's computer or device, as required by the ePrivacy Regulations. Consent must be a clear, affirmative act, freely given, specific, informed, and unambiguous, as required by the GDPR.

However, the user's consent is not required where the cookie or other technology is strictly necessary to provide the user with the service they have requested – for example, cookies which may be needed to run essential functions on a website. The website or application owner must also provide users with easily accessible, clear, and comprehensive information on the type of cookies or similar technology they are using and the purpose for which they are using it.

Electronic Marketing

Electronic direct marketing involves the sending or making of unsolicited marketing communications, including by email, text message, phone or fax, to a recipient.

Under the ePrivacy Regulations, the organisation must have generally obtained the prior opt-in consent of the intended recipient, agreeing to receive such communications, before sending electronic direct marketing. There are two exceptions to this rule:

- Data controllers can send electronic direct marketing by text or email to their customers without explicitly having consent, but only if:
 - o they collected the contact details during the sale of a product or service
 - o they are marketing their own product or service
 - o it is a similar product or service to the original sale

- o the first marketing message was sent within 12 months of the original sale
- o the data subject was given a chance to object to receiving marketing messages, both at the time of the original sale and with each subsequent marketing message.
- Organisations can send electronic marketing to an individual at an email address which is primarily used for that individual's job without prior consent, but only if:
 - o the marketing communication is relevant to the person's job
 - o the individual is given an opportunity to opt out of receiving further communications.

Breach of the direct marketing rules is a criminal offence in Ireland and is one that is regularly prosecuted by the DPC.



INTELLECTUAL PROPERTY PROTECTION IN IRELAND

Irish and EU regulations offer strong protection for business information and ideas.

What is IP?

Information property (IP) describes a collection of legal rights concerning various types of information and ideas, that aim to protect creations and inventions resulting from intellectual activity in the industrial, scientific, literary or artistic fields. IP rights are property rights established in law to exclude others from using, without authorisation, your intellectual creations, allowing you to commercialise and exploit your innovative and creative ideas. Rights can either be 'registered' (following application to an official body), or 'unregistered' (they exist automatically regardless of registration).

IP Protection in Ireland

Ireland and the EU offer comprehensive IP protections for businesses and individuals. Strong IP rights include patents, trademarks, and designs registrable with the Irish Patents Office (the IPO). Additionally, businesses can secure EU-wide IP protection for trademarks and designs through registration with the European Union Intellectual Property Office (the EUIPO).

Patents

A patent is a time-limited IP protection giving its holder the right to exclude others from exploiting (making, using, selling, importing) the patented invention, except with the consent of the patent owner. A patent is a monopoly right and the invention must meet three basic criteria:

1. it must be novel
2. it is not clearly lacking an inventive step
3. it is capable of industrial application.

Once successfully registered with the IPO, the patent grants exclusive rights for up to 20 years for full-term patents and up to 10 years for short-term patents. European patents can be obtained

through the EUIPO, offering protection in multiple EU countries, including Ireland, for a maximum period of 20 years.

Trademarks

Businesses use trademarks to identify their goods or services and distinguish them from the goods and services supplied by other businesses. A trademark may consist of words, (including personal names), designs, logos, letters, numerals or the shape of goods / their packaging, or of other signs or indications that can distinguish the goods or services of one undertaking from those of others.

To meet registration criteria, a trademark must:

- Be capable of distinguishing goods or services of one business from those of other businesses
- Have a distinctive (as opposed to descriptive) character
- Not be contrary to statute
- Not be identical with or similar to a trademark that is already on the Trademark Register in respect of identical or similar goods.

Trademark registration can be obtained through the IPO to cover Ireland only, or through EUIPO to give protection in all EU member states. In each case, registration lasts for a period of 10 years and can be renewed indefinitely.

Where a trademark has not been registered with either the IPO or EUIPO, it may still be possible to protect the unregistered mark through the common law action of 'passing off'. To succeed with a claim for passing off, you will need to prove that:

- You have goodwill or reputation attached to the good or service in Ireland in the mind of the public
- Someone acted in a manner that is leading to or is likely to lead the public to believe the goods or services offered by that party are your goods or services
- You have suffered, or are likely to suffer, damage as a result.

Copyright

Copyright is the legal term describing the rights given to authors and creators to protect certain categories of work such as literary and artistic works. Where a third-party contractor or an employee of the business creates the relevant work, the default legal position is that the third party will own the copyright in that work. It is therefore advisable to provide for the ownership of any such copyright in all relevant contracts.

Businesses should ensure that they are not using any copyrighted work – such as an image from the internet – without first obtaining a licence to do so from the copyright owner. Failure to do so leaves the user open to a claim of copyright infringement.

Copyright is an automatic right in Ireland and there is no official registration system for copyright owners in this jurisdiction. Copyright takes effect as soon as the work is put on paper, film, or other fixed medium such as CD-ROM, DVD, etc. and lasts (usually) for a period of 70 years after the death of the original author in the case of artistic, musical dramatic and literary works. There is no separate registration process with EUIPO, in contrast to other IP rights.

Designs

In IP, design means the appearance of the whole or a part of a product resulting from the features of the lines, contours, colour, shape, texture or materials of the product itself or its ornamentation.

A registered design can protect three-dimensional (and possibly two dimensional) designs. As the owner of a registered design, you have exclusive rights to apply the design to various products, depending on the class or classes that the design is registered in the Locarno Classification system. You can also display your design registration number on the products on which you use the design.

Registrable designs must be:

- **Novel:** it must not be identical to an existing design that has already been made available to the public.
- **Individual in character:** The overall impression it produces on informed users differs from the overall impression produced on similar users by an earlier design.

Trade Secrets and Confidential Information

Confidential information is not technically an IP right but is often used instead of or in parallel with other IP rights and can provide some very valuable protection for a business. One important feature of confidential information is that it can last forever and will only cease to apply once the idea, invention or other confidential thing is made public. It can also be extremely useful to protect things that otherwise could not be easily protected by an IP right such as an idea or a business plan.

The best way to protect confidential information is through an express contract such as a confidentiality agreement, Non-Disclosure Agreement (NDA) or by using a confidentiality clause in an agreement.

A trade secret is a type of IP such as a company formula, practice or process that is not generally known outside of the company and which is kept secret. Trade secrets can confer economic advantage over competitor's products or services. Trade secrets broadly fall into two categories:

- Technical information such as manufacturing processes, recipes or chemical compounds.
- Commercial information including lists of customers, product launch dates, or the results of marketing studies.

Where a court finds that there has been an unlawful acquisition, use or disclosure of a trade secret, it may apply corrective measures, including injunctive relief prohibiting the use or disclosure of the trade secret or the destruction of anything containing or embodying the trade secret. The owner of a trade secret has six years to take legal action in the event of an unlawful disclosure.

HOW HAYES CAN HELP YOU

Hayes professionals are ready to provide you with expert guidance and support on investing, setting up and running your business in Ireland.

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