Chapter XX

IRELAND

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I OVERVIEW

The location of choice for investment by multinational corporations, Ireland very much remains open for business as the English-speaking gateway to the lucrative European market. Ireland continues to lead the world in attracting high-value foreign direct investment (FDI) projects and its ability to attract such projects in key sectors – such as information and communications technology (ICT), life sciences, and financial and business services – has been globally acknowledged.[2] Leading US companies in the technology and social media sectors with EMEA headquarters in Ireland, such as Google, Stripe, LinkedIn, Dropbox, Airbnb, Microsoft, Salesforce, Facebook, Indeed and Twitter are a testament to Ireland's continued success in this regard. Indeed, nine of the top 10 US ICT companies are located in Ireland. One-third of multinationals in Ireland have had operations in the country for over 20 years, illustrating their ongoing commitment to Ireland.

Ireland also remains attractive as a holding company jurisdiction for large US-listed multinational corporations that seek to achieve an appropriate balance between the practicalities of day-to-day management, solid shareholder rights and robust corporate governance within a stable and well-developed legal and regulatory environment.

The Irish economy consistently ranks as one of the most competitive in world and Ireland leads the field when it comes to investment incentives.[3]

Ireland's attractiveness as an investment location can be attributed to a number of factors. The positive approach of successive governments to the promotion of inward investment was underscored in the June 2020 Programme for Government, which reaffirmed the administration's commitment to FDI and which pledged to defend existing, and attract new, foreign investment. The development of Ireland as a location of choice for resilient supply chains is a stated government priority. Ireland's highly educated, skilled and flexible labour pool and seamless access to over 250 million European Union (EU) workers are also recognised as key factors that bring foreign investors to Ireland.

Irish governments have used Ireland's tax infrastructure to facilitate the establishment and expansion of overseas companies and have continually enhanced and refined the tax system to ensure that the country remains attractive to foreign investors. Ireland has maintained a corporate tax rate of 12.5 per cent for active business and has an extensive double taxation treaty network.

1 Pat English is a partner and Grace Murray is a senior associate at Matheson.
2 The 2021 IMD World Competitiveness Yearbook.
3 IMD World Competitiveness Ranking 2021.

The Irish legal system, such as that of the United States, is based on the English common law tradition. It is modified by Irish legislation and case law and is further influenced by Ireland's membership of the EU.

Ireland is home to a cutting-edge research and development sector, ranking first in the world in immunology, second in agricultural sciences and third in nanotechnology research. These rankings are underpinned by an exceptional level of collaboration between industry, academia, state agencies and regulatory authorities.[4]

Grant incentives are available to companies meeting certain criteria linked to job creation and investment commitment with respect to specific locations. The Industrial Development Agency (IDA Ireland) is responsible for the promotion of FDI into Ireland and targets sectors that produce sophisticated and high-value products and services, such as the technology, online and pharmaceutical sectors. IDA Ireland, which has offices across the globe, can offer invaluable and practical advice and should certainly be a first port of call for companies evaluating Ireland as a potential location in which, and from which, to do business.

II YEAR IN REVIEW

Ireland continued its top-tier performance in the FDI league, accounting for less than 1 per cent of Europe's population but 3 per cent of FDI projects into Europe in 2019 (and over 6 per cent in IDA Ireland's core sectors of focus).[5] Of the top 10 FDI destination countries in Europe, Ireland was the only country to record a higher number of FDI projects in 2020 compared with 2019, with a 2 per cent increase.[6]

Ireland was ranked the thirteenth most competitive country in the world in 2021[7] and Dublin was ranked fifth in the fDi's European Cities and Regions of the Future 2021/22 report, which also notes that the city has been the biggest beneficiary of Brexit relocations.[8]

The full extent of the financial fallout caused by the covid-19 crisis remains to be seen, but a government stimulus package on an unprecedented scale was introduced and positive economic indicators now appear to be gaining ground.

Sustainability is central to all aspects of policymaking in Ireland under the government's Climate Action Plan and state agencies are mandated to partner with multinational corporations on green economy initiatives and opportunities.

In light of Britain's exit from the EU on 31 January 2020, Ireland's position in, and access to, one of the world's largest markets is now even more significant. Bank of America, Morgan Stanley, Barclays and S&P Global were among the many financial services groups that relocated to Ireland to retain access to the European market. Brexit had no effect on Ireland's status as a full EU Member State and both the Irish government and the Irish people are committed to Ireland's continued membership of the European Union and the eurozone.

4 Science Foundation Ireland Annual Report, 2018; Department of Business, Enterprise and Innovation, 2019.
5 IDA Ireland: Driving Recovery and Sustainable Growth 2021–2024.
6 FDI Intelligence Report 2021.
7 IMD World Competitiveness Yearbook 2021.
8 https://www.fdiintelligence.com/article/79334.

III FOREIGN INVESTMENT REGIME

The government is keen to ensure that there are no significant barriers to international trade or foreign investment in Ireland. There are currently no general restrictions governing FDI in Ireland, no limits on the percentage of foreign ownership permitted, no requirements that shares in Irish companies must be held by Irish citizens and no restrictions on the purchase of land for industrial purposes by foreigners.

Ireland continues to score favourably in the Organisation for Economic Co-operation and Development's (OECD) FDI regulatory restrictive index.[9]

EU Regulation (EU) 2019/452 on establishing a framework for the screening of foreign direct investments into the EU (the FDI Regulation) has applied from 11 October 2020 and, since that date, Ireland has been subject to the EU-wide information sharing regime concerning foreign investment. The FDI Regulation coordinates the scrutiny of investments by third (non-EU) countries to ensure that those investments do not threaten security or public order and is focused on areas such as critical infrastructure and technologies, food security and press freedom.

While individual Member States retain discretion as to whether they implement a screening system, any such system must meet basic criteria concerning confidentiality, transparency and the application of review time frames. Ireland has taken its first steps in this direction by establishing an Investment Screening Unit within the Department of Enterprise, Trade and Employment.[10] An Investment Screening Bill was listed in the Summer 2021 Government Legislation Programme but draft legislation has yet to be published.

IV SECTOR-SPECIFIC REQUIREMENTS

i Prohibited sectors

Private investment, whether domestic or foreign, is not permitted in the arms industry. The Minister for Finance can restrict transfers between Ireland and certain designated countries provided that the restrictions conform with EU law.

ii Restricted sectors

Certain types of investment and industries are subject to approval, regulation or both under Irish law. Some of the key types are set out below.

Financial services

The European Central Bank (ECB) is the lead regulator of credit institutions in the EU, and the European Securities and Markets Authority (ESMA) is the lead regulator of non-bank financial services entities. Both the ECB and ESMA are assisted by competent national authorities in each of the EU Member States. The Central Bank is the national competent

9 The FDI index gauges the restrictiveness of a country's FDI rules by looking at the four main restrictions on FDI: foreign equity limitations, discriminatory screening or approval mechanisms, restrictions on key foreign personnel and operational restrictions (e.g., restrictions on branching and on capital repatriation or on land ownership). Ireland scored 0.04, with zero representing an open market and 1 representing a restrictive market. https://data.oecd.org/fdi/fdi-restrictiveness.htm (most recent).

10 https://enterprise.gov.ie/en/What-We-Do/Trade-Investment/Investment-Screening/.

authority in Ireland for both credit institutions and non-bank financial services entities. To operate a banking business[11] in Ireland, a licence or authorisation is required from the Central Bank or the ECB in respect of a credit institution that is a 'significant' institution.

The Central Bank of Ireland (Central Bank) is the home state regulator for 'less significant' institutions operating within Ireland, while the ECB is the home state regulator for significant institutions and works with the Central Bank to supervise these bodies.

To obtain a licence for either a significant or a less significant credit institution, the undertaking must satisfy several criteria, including capital requirements and having appropriate and proper procedures in Ireland. Entities wishing to carry on an insurance or reinsurance business also require an authorisation from the Central Bank.

The Central Bank is also the competent authority for the regulation of the securities market in Ireland. If securities are listed on the Irish Stock Exchange, they will also be subject to regulation by the Stock Exchange.

Once authorised in Ireland, banking and other services (including investment services under MiFID and payment services under PSD2)[12] can be passported throughout the EU in reliance on the Irish authorisation. The home state regulator (i.e., the Central Bank in the case of less significant credit institutions and non-bank financial services entities) retains responsibility for the prudential supervision of the entity while the host state regulator (i.e., the regulator in the other EU Member State) will supervise the passported entity's business conduct in that EU Member State.

Acquisition of a stake in an insurance or reinsurance undertaking or a credit institution may require Central Bank approval. Investors seeking to acquire a shareholding or other interest that would either give them a qualifying holding in an insurance or reinsurance undertaking or in a credit institution (authorised or licensed in Ireland), or that increases their control above certain levels (20, 33 or 50 per cent), must first obtain the approval of the Central Bank. A qualifying holding is defined as a direct or indirect holding that represents 10 per cent or more of the capital of, or voting rights in, a target entity, or allows that person to exercise a 'significant influence' over the direction or management of the target entity.

Communications and Broadcasting

The communications industry is governed by the Communications Regulation Act 2002 (as amended) and a number of regulations[13] that implement the EU electronic communications regime. The Irish telecommunications regulator, ComReg, operates an authorisation regime for electronic communications networks and services. The broadcasting industry is primarily governed by the Broadcasting Act 2009 (as amended).

Life sciences

Activities in the life sciences sector are regulated by the Health Products Regulatory Authority (HPRA). The HPRA's role is to protect and enhance public and animal health by regulating medicines, medical devices and other health products. Manufacturers of human

11 The Central Bank Acts, as well as a number of domestic regulations transposing EU Directives (the most notable being Capital Requirements Directive IV) apply to the provision of banking services in Ireland.

12 The Markets in Financial Instruments Directive 2014/65/EU regulates investment services and the Payment Services Directive 2015/2366 regulates payment services.

13 https://www.comreg.ie/about/legislation/.

and veterinary medicines must hold a manufacturing authorisation granted by the HPRA.[14] The HPRA will only grant a manufacturing authorisation if an applicant has at its disposal suitable and sufficient premises, equipment, facilities, staff, manufacturing operations and arrangements for quality control, record-keeping, handling, storage and distribution.

Subject to some minor exceptions, all medicinal products must be authorised before being marketed in Ireland. An application for a marketing authorisation must be made to the HPRA or the European Medicines Agency, where appropriate.

The HPRA is the competent authority for general medical devices, in vitro diagnostic medical devices and active implantable medical devices. The role of the HPRA is to ensure that all medical devices placed on the Irish market meet the requirements of national and EU legislation and to monitor the safety of medical devices in Ireland after they are placed on the market.

Dual-use items

The control of the export of 'dual-use' items and military goods is governed by the Control of Exports Act 2008 and the Control of Exports (Dual Use Items) Order 2009 (as amended), giving effect to EU Council Regulation (EC) No. 428/2009 (as amended). Dual-use goods and technologies are goods and technologies normally used for civilian purposes but that may have military applications. The legislation and requirements are complex and cover a wide range of common products produced by industries dealing with electronics, computers (including software), telecommunications and aerospace technologies. The Trade Licensing and Control Unit within the Department of Enterprise, Trade and Employment is responsible for managing controls on exports of dual-use items and other restricted exports.

Public takeovers

Public takeovers[15] are principally regulated by the Irish Takeover Panel Act 1997 (as amended), the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 and the Irish Takeover Rules (the Rules). The Rules operate to regulate the orderly conduct of public takeovers in Ireland and to ensure that no takeover offer is frustrated or unfairly prejudiced and, in the case of multiple bidders, that there is a level playing field (e.g., frustrating actions are not permitted without target shareholder approval and due diligence information provided by a target company to one bidder must be provided to all bona fide bidders). The Rules are not concerned with the financial or commercial advantages or disadvantages of a takeover.

The Irish Takeover Panel (the Panel) is responsible for making the Rules and monitoring and supervising takeovers. It works through the office of the Director General who is available for consultation before and during takeovers.

14 The granting of a manufacturing authorisation in Ireland is principally governed by the Medicinal Products (Control of Manufacture) Regulations 2007, as amended, which transpose into Irish law elements of a number of EU Directives.

15 This refers to takeovers of Irish-registered public limited companies that are listed on a regulated market in the European Union, the ESM market of Euronext Dublin (formerly the Irish Stock Exchange), the AIM market of the London Stock Exchange, the New York Stock Exchange or NASDAQ.

V TYPICAL TRANSACTIONAL STRUCTURES

The following transactions structures are commonly used by foreign investors establishing a presence in Ireland.

i Companies

The most popular way of setting up a business in Ireland is by incorporation of a company under the Companies Act 2014 (the Companies Act). There are two basic types of Irish company: private and public. There are two types of private limited company: the model private company (LTD) and, alternatively, the designated activity company (DAC). The vast majority of companies registered in Ireland are private companies limited by shares. Public limited companies are typically used where securities are listed or offered to the public and must meet minimum capitalisation requirements.

The main advantage of the private limited company is that shareholder liability is limited to the amount unpaid on the shares in the company. A company can be incorporated within five working days. All companies must have an Irish registered address. An LTD has unlimited corporate capacity once acting within the law. Generally speaking, at least one director must be resident in the EEA unless an insurance bond is put in place. All company types can be incorporated with a single shareholder.

Most corporate (and other legal entities) in Ireland must gather information on individuals who are their underlying beneficial owners and maintain a beneficial ownership register containing this information, pursuant to the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019. Details must then be filed on a central beneficial ownership register maintained by the Irish Companies Registration Office.[16]

ii Acquisition of assets and companies

A foreign investor may acquire an existing Irish company or acquire the business and assets of an existing Irish company.

Acquisitions can be structured as a share purchase, in which case the shares of the Irish company are acquired directly from the shareholders. All the assets and liabilities of the target company are acquired in a share purchase. The transaction is documented by a share purchase agreement that, if it includes any warranties, will typically be supplemented by a disclosure letter and an instrument of transfer of the shares.

In an asset acquisition, the buyer can choose which assets and liabilities to acquire. The parties will typically enter into an asset transfer agreement that documents the assets to be transferred and the consideration payable. Additional transfer documents may be required to perfect the transfer of the assets in question. If transaction is the transfer of an undertaking, there will be an automatic transfer to the buyer of the rights of, and obligations of the target company towards, its employees under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003.

An extensive due diligence exercise will typically be carried out. Third-party consents may be required in advance of the acquisition.

The European Communities (Cross-Border Mergers) Regulations 2008 (as amended) contain a legal framework to enable cross-border mergers between public or private limited

16 Central Register of Beneficial Ownership of Companies.

companies from different Member States of the EEA. All the assets and liabilities of one or more companies are transferred to another company by way of universal succession and the transferor company is dissolved without going into liquidation. The merger can be by acquisition, by formation of a new company or by absorption (involving the assimilation of a wholly owned subsidiary into the surviving company).

The Companies Act contains a domestic statutory regime for Irish private companies modelled on the European Cross-Border Merger regime. The transaction involves either a court approval process or use of the Summary Approval Procedure (requiring shareholder consent and the making of a declaration of solvency by the directors). A private company limited by shares can also be split (by division) between two other Irish companies (one of which must be an LTD and neither of which can be a public limited company). Divisions are conducted through a court-approved process and the Summary Approval Procedure cannot be used. Mergers and divisions of public limited companies are also regulated under the Companies Act.

iii Joint ventures

Foreign investors may establish a joint venture in Ireland. The following three structures are commonly used:

a a corporate joint venture involving the incorporation of a limited liability company to carry out the joint venture business;

b a partnership formed under the Partnership Act 1980 or the Limited Partnerships Act 1907. The partnership may be limited or unlimited and will be subject to one level of tax; and

c a contractual arrangement whereby the terms of the joint venture and the legal relationship between the parties will be governed by contract law. Each party will be subject to separate tax.

iv Migrations and redomiciliations

Ireland remains an attractive destination for corporate groups choosing to redomicile their ultimate holding company (known as 'inverting' or an 'inversion'). Redomiciliations or inversions of US companies were common between 2012 and 2016 but, following the introduction of US Treasury Department regulations, have become less so.

There are a number of ways to structure a redomiciliation into Ireland. One is to migrate the existing holding company's tax residence to Ireland (i.e., by the transfer of its central management and control to Ireland). This structure can present difficulties, however, as many jurisdictions impose a tax charge on a migration of tax residence. It can be a particularly unfeasible route for US companies, as the United States does not have a separate concept of tax residence as distinct from the place of incorporation. For public companies incorporated in a common law jurisdiction, a more common form of inversion structure involves the incorporation of a new Irish parent company between the existing parent company and the public stockholders that engages in a court-approved cancellation scheme of arrangement or a share-for-share exchange. Reverse mergers are also used, whereby the US purchaser merges into a subsidiary of the Irish target and the Irish target issues new shares to the stockholders of the US company. For EU-incorporated public companies, an inversion may be achieved by re-registering the existing parent company as a European public company[17] and then transferring its place of registration to Ireland. EU parent companies can also redomicile to Ireland by merging with an Irish public company under the cross-border merger regulations.

Owing to US anti-inversion rules, most inversions now arise in an acquisition context, where the US company undertakes a strategic acquisition or merger with a foreign company, with the ultimate holding company of the merged group being located in Ireland. The Irish holding company may subsequently list on a US stock exchange, such as NYSE or NASDAQ.

v Branch operations and place of business

It is usually preferable to establish a separate legal entity in Ireland; however, in some cases it may make sense from a regulatory perspective for the foreign entity to establish a branch in Ireland. Any foreign limited liability company trading in Ireland that has the appearance of permanency, an independent Irish management structure, the ability to negotiate contracts with third parties and a reasonable degree of financial independence is considered a branch under Irish law and must register the branch within one month of establishment. Under the Companies (Accounting) Act 2017, branch registration requirements were extended to a foreign unlimited company that is a subsidiary undertaking of a body corporate whose members have limited liability.

Under the Companies Act, 'place of business' registrations are not required or recognised.

VI OTHER STRATEGIC CONSIDERATIONS

i Competition Law

The main Irish antitrust legislation is the Competition Acts 2002–2017. Any notifiable transaction must be reviewed by the Competition and Consumer Protection Commission (CCPC), which has the power to block or impose restrictions on the deal. Where the jurisdictional thresholds of the EU Merger Regulation[18] are triggered, notification to the European Commission may instead be required.

Media mergers must be notified regardless of the turnover of the undertakings involved. Media mergers are subject to additional review by the Minister for Media, Tourism, Arts, Culture, Sport and the Gaeltacht who must have regard to public interest and other criteria.

Mergers, acquisitions and full-function joint ventures that meet the following financial thresholds in the most recent financial year must be notified to the CCPC before they are put into effect:

a the aggregate turnover in Ireland of the undertakings involved is not less than €60 million; and

b the turnover in Ireland of each of two or more of the undertakings involved is not less than €10 million.

A guidance note by the CCPC provides that 'turnover in the state' means sales made or services supplied to customers within the state.

The substantive test for assessment of competition issues by the CCPC is whether 'the result of the merger or acquisition would be to substantially lessen competition in markets for

17 Also known as a Societas Europaea.

18 Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

goods or services' in Ireland (referred to as the SLC test).[19] The CCPC can investigate mergers falling below these thresholds if it believes that the merger could have as its object or effect the prevention, restriction or distortion of competition or involves the creation or strengthening of a dominant position.

A filing fee of €8,000 is payable to the CCPC for all mergers. There is an obligation on 'each undertaking involved' to notify the CCPC[20] and, in practice, joint filings by the parties are submitted.

The Competition Acts 2002–2017 provide for a two-phase review process. The CCPC has an initial 30 working days (Phase I) from notification to decide whether to clear the merger or carry out a more detailed investigation. The CCPC can initiate a Phase II investigation, in which case it has 120 working days from notification within which to decide whether the merger should be allowed unconditionally, allowed subject to conditions or prohibited. The CCPC may issue a formal request for information from the parties (RFI) that has the effect of stopping the clock in either Phase. On 1 July 2021, the CCPC introduced a simplified merger notification procedure, intended to reduce the time needed to review proposed mergers, and improve the process for notifying parties, when filing mergers that do not give rise to significant competition concerns.[21]

Of the 41 notifications received by the CCPC in 2020 (a 13 per cent decrease from 2019, attributable in part to the covid-19 pandemic), 15 (35 per cent of cases) required an extended Phase I review (i.e., a formal RFI was issued by the CCPC) and there were two Phase II reviews (the same number as in 2019). In 2020, the CCPC took an average of 22.9 working days to issue a Phase I decision in a standard (non-extended Phase I) case. To date, only three mergers have been blocked by the CCPC: *IBM/Schlumberger*, *Kingspan/Xtratherm* and *Kerry/Breeo*.

Failure to notify a transaction, or to supply information requested by the CCPC within the specified time limit, can constitute a criminal offence. Transactions put into effect without the CCPC approval are void. To date, the CCPC has not taken legal action against any parties to a merger where a transaction has been put into effect prior to clearance, although it has publicly condemned this type of behaviour.

The Competition Acts 2002–2017 provide for a voluntary merger notification system for mergers that do not meet the thresholds but still raise antitrust issues. Voluntary notifications are dealt with in the same way as mandatory notifications.

A determination by the CCPC to prohibit a merger, or permit a merger subject to conditions, can be appealed to the High Court by the parties to the transaction. Complainants and third parties do not have a right of appeal but may apply to the High Court for judicial review of a CCPC determination.

The Competition Acts 2002–2017 enable the CCPC to enter into arrangements with antitrust bodies in other jurisdictions in relation to the exercise of its merger control function.

The CCPC maintains regular contact with competition authorities in other jurisdictions regarding cases that are subject to parallel reviews in those jurisdictions that may affect Ireland.

19 Section 20(1)(c) of the Competition Acts 2002–2017.

20 In contrast, under the EU Merger Regulation, the obligation to notify is generally on the purchaser or the party acquiring control.

21 https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/05/Simplified-Merger-Notification-Procedure-Guidelines.pdf.

ii Foreign investor protection

Investors from both within and outside the European Union receive the same treatment as domestic investors under Irish law.

Various protections are contained within the statutory frameworks referred to above. The Companies Act allows shareholders, directors or creditors of a company to bring an action to the High Court against a company or an officer of a company for failure to remedy a breach of the Companies Act. Directors of Irish companies are subject to a range of extensive duties and can be held personally liable for certain breaches under the Companies Act.

The Office of the Director of Corporate Enforcement (ODCE) encourages compliance with the Companies Act and brings to account those who disregard the law. The ODCE has investigative and disciplinary powers and can act on complaints from auditors, professional bodies and the public.

Foreign investors may also be entitled to appeal a decision taken by a regulatory body. There is also a general right[22] to judicial review by the High Court against a decision made by any person or body exercising a public function. Accordingly, decisions of government departments, tribunals, regulators or bodies making decisions by public or statutory authority can be judicially reviewed.

Ireland provides strong, enforceable protection for all aspects of intellectual property (IP). The Irish Commercial Court deals with major commercial and IP cases. It offers a fast-track process to quickly and efficiently deal with IP disputes (usually within one year). In relation to interlocutory applications, costs are awarded at the interlocutory stage, which provides a very powerful tool to combat IP infringement. The Commercial Court provides investors with a strong platform for protecting their assets.

Ireland also promotes alternative dispute resolution. The government has incorporated the United Nations Convention on International Trade Law Model Law on International Commercial Arbitration into Irish law and the Arbitration Act 2010 provides the legislative framework supporting the conduct of arbitration in Ireland. The Rules of the Superior Courts, as amended by the Mediation Act 2017, also promote the use of mediation and allow the courts to suggest the use of mediation and to adjourn matters to facilitate this.

iii Tax

Ireland offers investors a stable and low corporation tax environment that does not breach harmful EU or OECD tax competition initiatives. Ireland is actively involved in forums for discussing and reviewing international tax developments. In addition to being a committed member of both the EU and OECD, Ireland has an extensive and expanding double taxation treaty network.

Ireland has implemented country-by-country reporting rules and a ‘knowledge development box’, which applies a lower tax rate (6.25 per cent) to income earned through commercialising certain qualifying intellectual property developed in Ireland. Since the final OECD’s base erosion and profit shifting (BEPS) reports were issued, Ireland has separately participated in EU negotiations with a view to implementing (EU-wide) a number of the BEPS recommendations. These changes were agreed under the Anti-Tax Avoidance

22 In certain circumstances, the right to judicial review may vary; for example, in the financial services sector.

Directive[23] and a subsequent amending directive (the Tax Avoidance Directives), which require EU Member States to implement domestic legislation and measures to tackle tax avoidance practices. The Tax Avoidance Directives lay down controlled foreign company (CFC) rules, an exit tax, rules regarding anti-hybrid mismatches within the European Union and with third countries, general interest limitation rules and a general anti-abuse rule, all to be implemented over a number of years. The required exit tax rules were implemented in Ireland on 10 October 2018 and the CFC rules were introduced in the Finance Act 2018, taking effect for accounting periods beginning on or after 1 January 2019. Ireland has confirmed that no changes are required to Irish law to implement the general anti-abuse rules. The required anti-hybrid rules have been implemented in Ireland (with the exception of the reverse hybrid rules, which are to be implemented by 1 January 2022) and apply to payments made on or after 1 January 2020. Ireland will also introduce the required interest limitation rule with effect from 1 January 2022. Ireland expanded its transfer pricing legislation for accounting periods beginning on or after 1 January 2020 following the release of the 2017 OECD Transfer Pricing Guidelines. Certain non-trading transactions now fall within the ambit of these rules.

VII OUTLOOK

The covid-19 pandemic has dominated public discourse since early 2020 and resulted in several pieces of emergency legislation under the Health Act 1947, restricting travel and the operation of business. These restrictions are now being relaxed on a phased basis. The government introduced targeted company law measures (some of which will outlast the pandemic) designed to ease these difficulties for companies. One such measure is the temporary provision that facilitates virtual shareholder meetings,[24] which, according to a recent government announcement, will now be put onto a permanent statutory footing.

Managing the recovery process in the aftermath of a time of acute financial pressure is likely to be a key concern for companies and directors in the foreseeable future. A recent OECD report[25] noted that while foreign companies in Ireland were affected by the pandemic, 'the overall resilience of these firms in the face of an unprecedented global economic shock suggests that the sectoral mix of FDI in Ireland, while concentrated, is aligned with sectors that drive economic growth in the 21st century'. That same report found that Ireland was the second most open economy to trade in the OECD and that Ireland's FDI base deeply integrates its economy into global value chains.

Brexit created both challenges and opportunities for all industries and sectors across the Irish economy. The EU-UK Trade and Co-operation Agreement, which was concluded on 30 December 2020, established the terms of the future trading relationship between the parties. Some important post-deal policy issues remain outstanding, however, such as those relating to the Northern Ireland Protocol.

The Department of Enterprise, Trade and Employment recently held a public consultation on the EU Proposal for a Corporate Sustainability Reporting Directive (CSRD),

23 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

24 Companies (Miscellaneous Provisions) (Covid-19) Act 2020 and related secondary legislation.

25 Organisation for Economic Cooperation and Development, (2020), FDI Qualities Assessment of Ireland, www.oecd.org/investment/FDI-Qualities-Assessmentof-Ireland.pdf.

noting that the final proposal for the directive is hoped for in the first half of 2022. The CSDR proposal forms part of a package of measures announced by the European Commission to encourage the flow of money into sustainable activities across the EU.

The government has signalled its intention to publish revised export control legislation, currently governed by the Control of Exports Act 2008. The reform proposals are driven by the desire to ensure that Ireland continues to meet its international obligations and maintains an export control regime in line with international best practice.

In October 2020, a Review Group on the Administration of Civil Justice, established by government, recommended the establishment of a separate list within the Commercial Court dedicated to intellectual property disputes and disputes concerning technology, indicating potential developments in this area.

IDA Ireland's recently published 5-year strategy contains an ambitious plan aligned with the Programme for Government 2020 under five pillars: growth, transformation, regions, sustainability and impact. IDA Ireland will seek to diversify source markets for investment and leverage opportunities arising from Brexit.

Ireland is constructively engaging in the OECD's ongoing work to address the tax challenges of the digitalisation of the economy and it was an active participant in the OECD's BEPS project.

It is intended that Ireland will remain a highly attractive location for international business. This is reflected in the Corporation Tax Roadmap published by the Department of Finance in January 2021, which outlines the following future policy commitments of Ireland:

> *to ensure that we continue to play to our traditional strengths, including a forward-looking business environment, a whole-of-Government approach to ensure we remain agile and competitive, and importantly recognising the value of an educated and dynamic workforce who have consistently delivered innovation.*

PAT ENGLISH

Matheson

Pat English is a corporate partner and head of Matheson's international business group. He is also a senior member of the US business and inward investment groups. He practises corporate law, focusing primarily on advising overseas clients on establishing operations and doing business in and from Ireland.

In addition to advising on establishment projects, Mr English advises a broad range of international and, in particular, US clients on international corporate reorganisations, pre- and post-integration transactions, cross-border mergers and general commercial contracts, corporate governance and compliance issues and strategies. In September 2011, he returned from his role as resident counsel and head of the firm's US offices in New York, where he had been based for two years.

In 2016, *The American Lawyer* named Mr English a 'Transatlantic Rising Star', an award that honours lawyers under the age of 40 'for excellence in handling transatlantic matters across the key areas of corporate, finance, disputes and outstanding transatlantic strategy'.

GRACE MURRAY

Matheson

Grace Murray is a senior associate in Matheson's international business group. She advises US and other international clients on inward investment and establishment projects, international corporate reorganisations, pre- and post-acquisition integration and consolidation projects, general corporate governance and compliance matters. Ms Murray also advises leading US and other international corporations on the establishment of Irish operations; provides corporate counsel to a range of US and other international corporations in respect of their Irish operations; advises Fortune 500 companies on international corporate reorganisations, strategic restructurings, integration and consolidation projects; and provides ongoing corporate advice and strategic counselling to a range of international corporations.

Ms Murray is a member of the Law Society of Ireland.

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