

## Investing In Ireland

As a leading commercial law firm, at Sherwin O'Riordan we provide advice to businesses expanding into and investing in Ireland. Our team have specialist knowledge and experience in facilitating both the short and long terms needs of businesses investing and setting up in Ireland. If you are interested in hearing more about how to invest in Ireland, speak to us today.

We understand that you need proof as to why Ireland should be considered as an investment opportunity, and equally importantly, how you go about this. These are the questions that we are here to answer.

### Why is Ireland an attractive place to do business?

Ireland represents an attractive proposition for companies looking for a dynamic and progressive environment within which to grow:

**1. The population in Ireland is the youngest in Europe, and possess a highly desirable skill set:**

- Over 20% of Irish students are engaged in higher education in the scientific and engineering sphere. Furthermore, approximately 25% of the student population are studying in the fields of social sciences, gaining skills and expertise in areas that include business and law.
- 49% of the entire population is aged under 35, which gives access to a dynamic and ambitious workforce. This is more than that offered in the EU or the United Kingdom.

**2. There has been significant government investment in infrastructure:**

- The national transport system in Ireland has been completely transformed, as the country reaches the climax of a multi-billion Euro investment to improve its roads and motorways.
- The Irish rail network hosts the newest inner city fleet across Europe, guaranteeing easy access in and out of the cities to the employees' of thousands of companies.
- The telecoms field in Ireland is one of the fastest and most efficient in Europe. Recent developments have been the creation of advanced optical networks, providing outstanding connectivity.

**3. The country operates a very competitive tax regime, among the most favourable to businesses across the globe:**

- Corporation tax on profits from trading income, which is available to be taxed in Ireland, is fixed at 12.5% - far less than that operated other states including Singapore, the UK and the USA. Furthermore, non-trading revenue will be taxed at 25%. Ireland also offers a competitive advantage to start-up companies that many other states do not: start-ups are exempt from corporation tax.

**4. There is a robust support system in place, backed by the government, to facilitate investment in the Irish economy:**

- Ireland's commitment to being a centre of innovation and entrepreneurship has contributed to the establishment of a number of grants being made available for investors in the economy. Irish resident or Irish branches of companies undertaking Research and Development Activities (R&D) can take advantage of the 25% tax credit for R&D activities, to be offset against corporation tax.

**5. Ireland has the facilities available for investors to use:**

- There are a variety of options available to companies in terms of the placement of their businesses: Ireland has a significant number of recently completed and established business parks, built to grant ease of access to some of the largest cities in the country.
- Ireland offers business a prestigious location from which to operate, without the need to pay as significant a cost on premises. Office rental prices in our capital city, Dublin, are among the lowest when ranked alongside other leading business capitals such as New York, London and Tokyo.

## How do I invest in Ireland?

When considering whether or not to invest in Ireland, there are a variety of practical issues that our specialist commercial lawyers and investment experts can help you with. Below we provide an overview of some of the key questions our clients seek advice and assistance on:

## What permissions do I need?

In order to do business in Ireland, you must be granted 'business permission' by the Irish government. It should be noted, however, that this permission only applies to individuals who are not from the European Economic Area (EEA). If you are based outside the EEA, then there are certain criteria that your proposed investment/business must meet before you will be granted 'business permission':

Your investment/business must create employment (excluding your own) for at least two nationals of the European Economic Area. Alternatively, your investment (if this is for an existing business) must provide for continued employment of the workforce concerned; and,

The proposed business that you hope to set-up must add to the competitiveness and commercial activity of Ireland.

## What assistance can I get in terms of visas and residency?

Ireland offers a variety of programmes that are designed specifically for individuals looking to locate in Ireland. There are a variety of different schemes available:

### a) Start-Up Entrepreneur Programme

This programme applies to non-Irish nationals who have a business proposal for a 'high-potential start-up', with approved funding of €50,000. They can be given residency in Ireland in order to develop their business. There is no requirement that the business meet particular job creation targets, reflecting the fact that many businesses will take time to be built up.

In order for your business to be deemed as a 'high potential start-up', it must:

- Introduce a new or innovative product from the international marketplace into Ireland;
- Be headquartered in Ireland;
- Have been trading for less than six years;
- Be controlled by experienced managers; and,
- Possess the potential to create no less than 10 jobs and €1 million in revenue.

### b) Immigrant Investor Programme

This scheme is available to individuals and their families from outside the EEA who pledge themselves to an 'approved investment' in Ireland. It allows individual investors and their immediate family to enter Ireland and to remain here, initially, for up to 5 years. This can also be renewed after the 5 year term.

In order to be approved under this programme, an investment must be good for Ireland, for jobs and in the public interest. Furthermore, the funds of an investment must have been legally acquired and owned by the investor. If you have borrowed funds to make the investment, you will not qualify for this programme.

Before your investment will qualify for approval under this programme, it must fall into one of the following categories:

- A minimum of €500,000 investment into an Irish business for at least 3 years. The business can either be pre-existing or new;
- An investment of at least €1,000,000 in a 5 year low interest immigrant investor bond;
- A once-off endowment of no less than €500,000 to a public project that will benefit sports, the arts, health, culture or education. An investment of €400,000 will be approved under this scheme, where it is pooled by at least 5 people;
- An investment of funds no less than €500,000 in a managed fund, focusing on Irish businesses and projects; or
- An investment of at least €2,000,000 in any REIT (Irish Real Estate Investment Trust) that features on the Irish Stock Exchange. It is permissible for the investment to be spread across a variety of REITs.

## Can I bring some members of my team into Ireland?

The environment in Ireland has been specifically designed to encourage foreign investment, and this extends to issues regarding employment permits and the rules that govern them. Depending on who you will need to be present in Ireland, and for what purpose, there are a variety of employment schemes that are available to you:

### a. Intra-Company Transfer Permit

If you need to bring key personnel from your home country to Ireland to assist in the development of your business, the Intra-Company Transfer Permit could be particularly useful.

The main advantage of this particular permit is that it allows for the temporary placement of senior members of staff in the Irish business, while allowing them to remain on the payroll of the parent company. The temporary nature of the permit is particularly useful in that it allows for foreign investors to test the environment before deciding to put more resources into the business. In order to qualify for this permit, certain criteria need to be satisfied:

- The employee in question must be a key employee;
- They must earn more than €40,000; and,
- They must occupy a senior role, e.g. manager or director.

It is important to be aware that the spouse/partner or any dependants of the holder of an Intra-Company Transfer Permit will need to apply for a separate employment permit, if they plan on coming to Ireland.

### b. Critical Skills Employment Permit

This is a particular kind of employment permit that is geared towards encouraging individuals with high skills to enter the Irish labour market, and ultimately take up permanent residence. This is sometimes known as the 'Ireland Green Card'. In order for your employees to be eligible for this particular permit, you as the prospective employer must:

- Operate a private limited company that is registered in Ireland;
- Be a start-up;
- Provide a job offer with a salary in excess of €60,000 or for a limited number of strategically important occupations with a salary between €30,000 and €59,999.

The list of occupations that are deemed important to the Irish economy is available here. It should be noted that the list of approved occupations does change from time to time, but currently includes:

- IT specialists;
- Doctors, nurses, pharmacists and other positions allied to these;
- Scientists;
- Accountants;
- Lawyers; and,
- Tax and business experts.

It is also a condition for the Critical Skills Employment Permit that the job offer you provide is for a position for 2 years or more.

### c. General Employment Permits

These employment permits are different from Critical Skills Employment Permits in that all occupations will be eligible to apply unless they are excluded as Ineligible Employments. The list of Ineligible Employments is available here and currently includes:

- Managers in the hospitality, leisure and healthcare services;
- Pensions, human resources and sales assistants/administrators;
- Construction and building professionals; and
- Food preparation and hospitality personnel.

A General Employment Permit can be granted for an initial period of two years, after which it can be renewed for a maximum of three years. After five years have passed, the individual concerned will be able to apply to the Irish Naturalisation and Immigration Service to explore other, more permanent options for residency in Ireland. It is important to understand that employees that are seeking naturalisation must satisfy stringent criteria before their application will be approved.

## What incentives are available to encourage staffing of the business from the domestic workforce?

The Irish government operates a number of Employer Incentive Schemes to encourage employers, including foreign investor businesses, to employ their staff from the local population:

### Jobplus

This particular scheme was created to persuade employers to employ individuals who have been unemployed and on the unemployment register for significant periods of time. It has been proven to be particularly attractive to foreign investor businesses. In order to qualify for the scheme, your business must:

- Be registered as a PAYE employer with Irish Tax & Customs, and the employee must be on your payroll and subject to PAYE and social insurance. This is known as 'PRSI' in Ireland;
- Be in-keeping with Irish tax and employment laws, and hold a valid Tax Clearance Certificate from Irish Tax & Customs; and,
- Offer full-time employment in excess of 30 hours per week over a 4 days per week minimum.

If your business meets the criteria listed above, and employs someone under this scheme, you will be given one of two regular payments from the Department of Social Protection:

- If you employ someone who has been unemployed for between 12 and 24 months, you will be paid €7,500; or,
- If you employ an individual that has been unemployed for 24 months or above, you will be given €10,00

## What kind of commercial entity can my business be?

Private limited companies incorporated in Ireland tend to be the most common kind of commercial entity that foreign investors make use of. In order to make use of the limited company model, certain criteria will need to be satisfied:

- The company must have the intention of carrying on some kind of activity in Ireland including the holding, acquisition or disposal of any kind of property;

- There must be details given as to the place in Ireland where the company will carry out its business, and where the organisations and administration of the company will be conducted from;
- Regarding the proposed name of the company, there must be a search conducted with the Companies Registration Office. This will guarantee that the name proposed for the company is not already being used, or does not have too much of a similarity with a company that is already operating in Ireland;
- It is important that at least one of the directors of the company is resident within the European Union (EU).
  - If this is not possible, then the company will be entitled to hold a bond to the value of €25,400. An insurance company will provide two original bonds, and the company must file both of these with the Companies Registration Office.

You may decide that you do not want to incorporate a private limited company in Ireland to facilitate your investment. The alternative is to make use of a company incorporated outside of Ireland, and operate in Ireland via a branch office. A branch office, in Irish law, is a branch of a foreign company that operates in Ireland and:

- Has the appearance of permanency;
- Has a separate management structure;
- Has the ability to negotiate contracts with third parties; and
- Has a reasonable degree of financial independence.

As a result of changes in EU law, domestic companies and branch offices of foreign companies must now satisfy largely similar registration requirements.

It is important to be aware that the legal regime under which companies operate in Ireland will undergo significant reform, following the introduction of the Companies Act 2014, which came into force on 1st June 2015. This new legislation enhances the business benefits of investing in Ireland, such as introducing the new simplified corporate vehicle of private company limited by shares.

## What are the rules governing the ownership of Real Estate in Ireland

Foreign investor businesses have the option of owning real estate in Ireland, if it proves to be a more attractive proposition than securing a commercial lease. Real Estate can be owned either through the purchase of the freehold interest, or of a long leasehold interest. It should be noted, however, that there are certain restrictions on the purchase, development and occupation of real estate that apply to all businesses in Ireland.

An alternative to purchasing real estate in Ireland would be to secure a commercial lease. The duration of commercial leases tend to range between five and twenty years. There has recently been significant legislative reform in this area, with more flexibility being afforded to would-be occupiers of real estate. Commercial leases will in almost all cases include break clauses, allowing you to exit from the agreement if you no longer deem it viable to operate your business from the premises. Particular points to note regarding commercial leases include:

- It will normally be a requirement of a lease that you, as a commercial tenant of the property, will maintain the property, and make any repairs that become necessary;
- There will be limitations within the lease on what you are able to use the property for;
- If your business is placed in a development with multiple occupiers, you may be obliged to pay service charges and insurance costs in addition to the monthly rent; and,
- There will likely be a provision in the lease for rent review – these can allow both for an upward or downward movement.

## How will my investment be protected?

Ireland has, for many years, been focused on developing a business culture that protects businesses, and encourages continued investment and innovation. The intellectual property (IP) regime has been specifically formulated to provide robust protection for businesses:

### Copyright

Copyright laws provide protection against infringement of a variety of different works including original databases, literary, dramatic or artistic works, films and cable programmes.

Irish copyright will also exist in databases which lack the requisite originality, but have had substantial investment made in respect of their contents.

There is no registration requirement for your business to enjoy copyright protection: the moment a particular work is created, copyright will exist. The duration of the copyright will however depend on the type of work in question.

### Design and Trademarks

Full legal protection is available for both designs and trademarks, where the necessary legislative criteria are satisfied. In addition to statutory protection, trademarks also benefit from common law protection. Moreover, they are also capable of Irish, European or international registration.

### Patents

Irish patent legislation is in keeping with comparator states. Where the requisite criteria are satisfied, patents can last for 20 years. It is possible to apply for shorter patent protection, allowing for some savings to be made by the business.

### Data Protection

Ireland has an enviable reputation for data protection. There is also a dedicated Data Protection Commission charged with overseeing the enforcement of data protection laws, designed to protect the data that is used by businesses.

## Why instruct Sherwin O'Riordan?

At Sherwin O'Riordan, we have a dedicated foreign investment team of lawyers that have specialist expertise in assisting investors to do business in Ireland. We regularly provide advice on the establishment of a foothold in the country, through the registration of domestic companies or the operation of branch offices. We are also experienced in seeking taxation reliefs for investors hoping to make use of Ireland's favourable tax regime.

We take a comprehensive view, that takes into account all the specific needs of our clients. As a full service law firm, we are regularly instructed to provide legal advice in respect of building a client's workforce, including ensuring compliance with employment laws and enforcing intellectual property interests.

Ireland ranks among the most competitive states in the world for businesses, alongside America, Japan and the UK. If you have questions about doing business in Ireland and want to speak to a lawyer that will provide you with bespoke, comprehensive legal advice, contact us today.

## Here are some of the companies we've worked for and what we did for them:

**Profitero** advised on US bank loan (Silicon Valley Bank) and security for multi-million dollar facility.

**Newworld** (Brand and design agency) advised on intellectual property protection and terms and conditions of business and website.

**MyBeatz Music** (Online music collaboration website) Private investment, share subscription and investment agreement, M&A review, IP issues, collaborated with Delaware lawyers on IP issues, EI investment.

**Manepa** (Medical Device company) – Property transactions, employment law, share purchase agreements, debt collection.

**Steorn** (Intellectual Property Development & Software) Private investment, trust investment, M&A review, IP protection and licencing and all of it's employment law issues.

**IC Realtime** (Software and Hardware Company in HD Camera sector) Employment law advices, supplier contracts, distribution agreements, Non disclosure agreements, T&Cs (on and off line), Property transactions.

**Crossflow Payment Solutions** (Finance technology and Peer to Peer finance) incorporation, IP licencing, SHA.

**CMC Platform Financials** (Finance & markets technology) incorporation, IP licencing, SHA.

**Marvao Medical Devices** (Medical Technology) Investment from EI and Private, IP licencing, Employment law.

**Hephaheat Limited** (Energy Technology), Formation, M&A, IP licencing, employment law.

**Shelbourne Hotel** (Renaissance Hotel Group)– employment advice and HR reviews.

**SST renewables** (Solar Energy Farms and Investment Company) - share subscription and investment agreement and IP advice.

We have the capacity to help with other issues as they come up.

Our partners have significant experience in dealing with FDI clients from having set up FDI businesses in Ireland for companies from South Africa and the USA. We work in teams of three on all of our projects to ensure that there is access to senior people at all time with at least two partners available on each project.

## Testimonials

*We were really impressed with the practical approach and commercial sense both partners brought to our transaction. Their knowledge on the financial documents and commercial agreements was impressive but it was their 'always reachable' attitude that impressed us most.*

**Geoff Ryan, VP Finance, Profiterro Inc.**

*We simply cannot fault the service we receive from SOR. They have specialist solicitors in each area where we need advice and we've had contact with 4 different partners during the last 14 months, and the experience has been the same each time. Really really good.*

**Justin Cahill, Chairman, CMC Platform Financials**

*Every time I call James, or one of his partners, I get them and they deal with any issues I have with a minimum of fuss and commercial approach. They also have a genuine interest in my company. As a result, they are now our first call before we make a decision to do anything that might impact our business in any way. Also, their knowledge and service are second to none.*

**Derek Byrne, CEO, Electroplus Group and IC Realtime.**