Simmons & Simmons

MIFID Firm

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up in Ireland.

Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- No filing fee
- No material super-equivalent requirements
- Broad domestic and treaty dividend withholding tax exemptions
- Employment law is broadly similar to UK
- Data protection legislation is very similar to the UK in terms of practical application

What are the cons?

- Critical/significant outsourcings will require CBI pre-approval

	Subsidiary (MiFID Investment Firm)
Licence/Passport Process	■ Information on the application process is available here: MiFID Application Guidance ■ The process is iterative and involves submission of a template application form plus numerous supporting documents to the Central Bank of Ireland ("CBI") for review ■ A pre-submission meeting with the CBI is required (and is recommended in any event) ■ Timetable is currently around 6-12 months depending on the scope of the application (including preparation time) ■ No filing fees ■ The CBI requires that "mind and management" are located in Ireland, such that the management team and key risk functions are located in Ireland, that day-to-day decision making takes place in Ireland, and therefore that adequate and effective control of the entity is in Ireland.
Conduct of business Prudential rules	■ Irish requirements will apply – based on MiFID (copy-out) ■ CRR/CRD IV requirements will apply to in-scope MiFID firms ■ No material super-equivalent requirements albeit certain derogations have been exercised (as in all Member States).
Corporate governance	■ Systems and controls requirements are based on CRD IV/MiFID requirements. ■ "Mind and management" will have to be located in Ireland, such that day-to-day decision making and key risk functions are located in Ireland (for subsidiaries of international groups, the CBI appreciates that direction can be set at group level and that employees/management can have dotted line reporting lines outside the legal entity). Four eyes principle applies ■ CBI's fitness and probity regime will apply to certain controlled functions, with persons in "pre-approval controlled functions" (e.g. directors, CEO, CFO, CRO, head of compliance, etc) requiring CBI approval before role can be commenced (regime is similar to the UK approved persons regime) ■ No set requirement on number of directors – but CBI will require a majority of non-executive directors (likely with at least two independent non-executive directors) ■ Note that the CBI requires that directors must be able to devote sufficient time to the role ■ At least one director must be EEA resident (or an insurance bond must be provided (€30,000)) ■ No other specific quantitative requirements (although in practice all executive directors will need to be resident in Ireland and CBI requires that "an institution shall ensure a majority of its directors are reasonably available to the CBI at short notice") ■ All board meetings must take place in Ireland.
Regulatory environment	■ CBI is relatively open to discussion on key issues (albeit cautious/conservative) – regulatory approach is "risk based" such that the most intensive/intrusive regulation is focused on high-risk firms ■ Depending on risk-rating of the firm, it may not have a dedicated point of contact at the CBI.

Subsidiary (MiFID Investment Firm)	
Tax	■ 12.5% corporate tax rate on Irish trading income and dividends from trading subsidiaries in EU and treaty countries ■ No Irish tax for non-residents using the services of an Irish resident investment manager ■ Broad domestic dividend withholding tax exemptions, so tax free repatriation to US, UK and a wide range of other jurisdictions available ■ Limited transfer pricing code based entirely on OECD arm's length principles. Applies to trading activities only and transactions which have the effect of reducing Irish tax take. Given comparatively low corporation tax rate in Ireland, TP issues are likely to be in other jurisdictions ■ The current marginal rates of income tax, Class A PRSI and USC for employees, which are subject to change, are 40%, 4% (employee PRSI), 10.75% (employer PRSI) and 8%, respectively (so the overall rate of tax for employees is 52%) ■ Temporary assignees to Ireland may benefit from relief from Irish income tax subject to certain conditions. ■ Ireland also operates a Special Assignee Relief Programme ("SARP"). Qualifying individuals may apply to have 30% of income in excess of €75,000 exempted from Irish income tax. To qualify for SARP, the individual must be assigned to work in Ireland for at least one year (among other conditions) ■ See also a comparative table of the main taxes and reliefs relevant to setting up a financial services business.
Employment law	■ CRD IV remuneration requirements apply (if firm is a CRD IV investment firm) ■ Employment law is broadly similar to UK ■ Notice – the greater of statutory (max 8 weeks based on service) or contractual ■ Unfair dismissals risk – there must be substantial grounds justifying the dismissal, ie performance, conduct, redundancy and the process used must be fair. If an employee is unfairly dismissed he may seek compensation, reinstatement or reengagement. The maximum award of compensation is two years total remuneration package ■ Redundancy – two weeks' pay per year of service plus a bonus week. A week's pay is capped at €600. An employee must have two years' service before a redundancy payment becomes payable.
Data protection	■ Legislation is based on EU directives and regime is very similar to the UK in terms of practical application.
Outsourcing	■ Many Irish financial institutions have outsourcing arrangements ■ Critical/significant outsourcings will require CBI pre-approval (CBI is now more challenging on outsourcing arrangements than it has been historically) ■ Appropriate oversight will be required per MiFID requirements (including regular audits/reviews and MI provided on the outsourced activities, plus detailed outsourcing agreements) ■ Firm remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing.
Corporate	■ Ireland has a modern company law regime, with very similar concepts to those applicable in the UK.

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