



How to set up in Ireland

CRD/CRR Bank

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 a bank in Ireland.

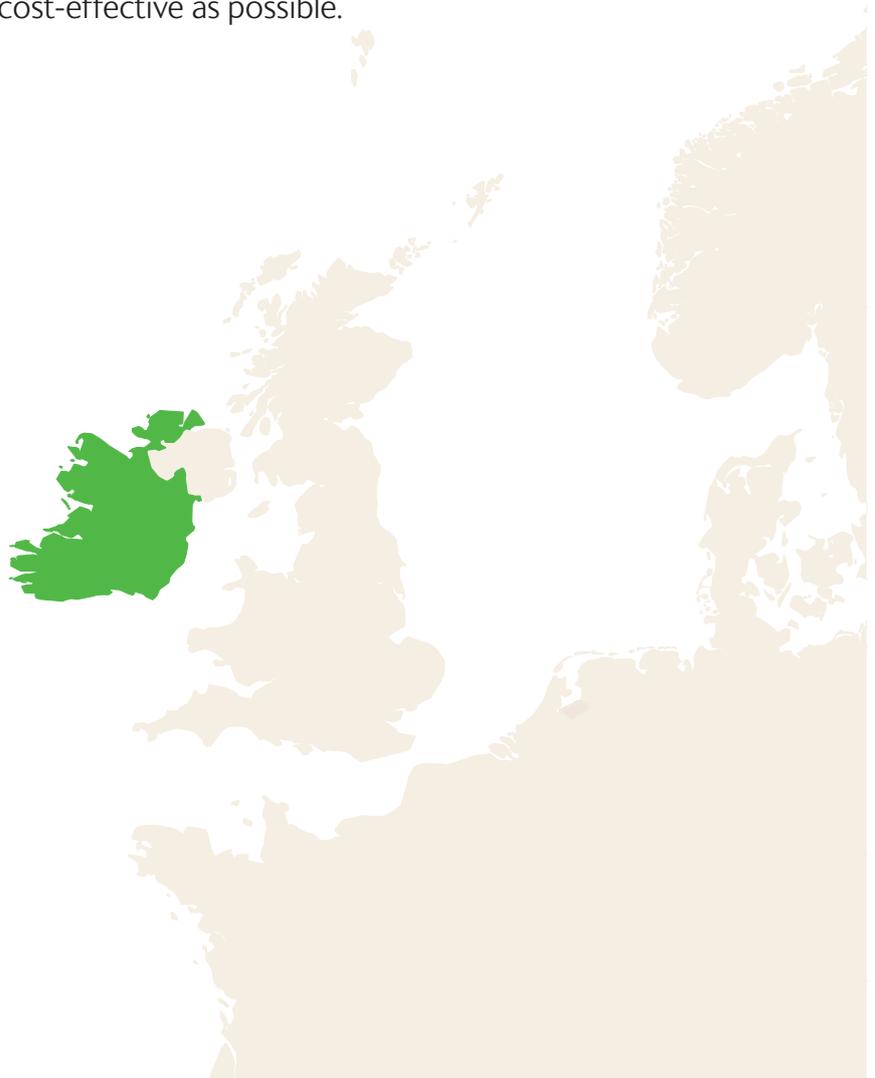
Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- No 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



Licence/Passport Process

- Information on the application process is available <http://www.centralbank.ie/regulation/industry-sectors/credit-institutions/Pages/authorisation.aspx>
- As a result of the creation of the EU Banking Union, the ECB (in conjunction with national competent authorities (NCAs)) grants and withdraws any bank authorisation
- The ECB also takes “fit and proper” decisions – it assesses the suitability of new members of the significant banks’ management bodies
- 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)
- The CBI serves as the entry point for applications and notifications related to all authorisation procedures. A bank must use CBI’s forms for application or notification where available
- Feedback from the ECB is that it has a backlog of authorisation applications, so delays can be expected (we understand that the ECB is not outsourcing as much to the NCAs as it could)
- In light of Brexit, the ECB is considering its approach and with what guidance it will provide firms
- Licence application process likely to be 12-18 months
- The decisions are made following the ECB and CBI applying the Common Procedures – which include information as to expectations as to substance and people, including:
 - programme of operations
 - governance (fit and proper members of management bodies, suitable shareholders)
 - capital, liquidity and solvency
 - internal organisation (risk management, compliance, audit)
- “Mind and management” will have to be located in Ireland, such that day-to-day decision making and key risk functions (CEO, CRO, CFO, Legal, Compliance) are located in Ireland

Conduct of business Prudential rules

- CRR/CRD IV requirements will apply
- No material super-equivalent requirements

Corporate governance

- Systems and controls requirements are based on CRD IV 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” (eg directors, CEO, CFO, CRO, head of compliance) requiring CBI/ECB approval before role can be commenced (regime is similar to the UK approved persons regime)
- CBI has bespoke corporate governance rules for credit institutions <https://www.centralbank.ie/regulation/Documents/Corporate%20Governance%20Requirements%20for%20Credit%20Institutions%202015.pdf>
- No set requirement on number of directors – but CBI will require a majority of non-executive directors (with at least two independent non-executive directors and potentially more than two)
- 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
- There are no quantitative thresholds on staff numbers but for a bank a fairly significant number will be expected

Regulatory environment

- Licensing restrictions into other jurisdictions for marketing will need to be considered
- Although delegation is generally possible, this is likely to require that any representative of the UK entity would need to be dual hatted (secondment arrangement probably suffice) to do the marketing into jurisdictions where a licence is required.
- Dual hatting will need to be considered from a corporate perspective

Bank

Tax

- 12.5% corporate tax rate on Irish trading income and dividends from trading subsidiaries in EU and treaty countries
- 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

- Subject to any new Brexit rules, outsourcing to the UK should be possible
- 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 CRD IV/EBA requirements (including regular audits/reviews and MI provided on the outsourced activities, plus detailed outsourcing agreements)
- The firm remains responsible for any outsourced activity and will be expected to maintain in-house expertise to supervise/manage the outsourced activities
- It would in theory be possible for a new bank in Ireland to outsource product marketing back to London, without the London operation becoming a branch of the new Continental European bank

Corporate

- Ireland has a modern company law regime, with very similar concepts to those applicable in the UK
- Corporate considerations depending on actual structure
- Not possible to convert branch into new legal entity
- New entity to be established

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