



# Northern Ireland

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# **Lex Mundi: A Guide to Doing Business in Northern Ireland.**

Prepared by Arthur Cox

Updated June 2016

**ARTHUR COX**

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## I. THE COUNTRY AT-A-GLANCE

### A. What languages are spoken?

The predominant language is English.

### B. What is the exchange rate for the U.S. dollar and the euro?

The official currency in use in Northern Ireland is the British pound sterling. Although the euro, in use in the Republic of Ireland, is accepted by retailing chains closer to the border with the Republic of Ireland. In addition, four Northern Irish banks retain the right to print their own sterling-denominated banknotes: Bank of Ireland, First Trust Bank, Northern Bank, and Ulster Bank. (*Source: wikipedia*)

At 8 June 2016:

1 GBP = 1.45241 USD

1 GBP = 1.27869 EUR

### C. Describe your country's geography, proximity to other countries and climate.

#### *Geography & proximity to other countries*

Northern Ireland, which is part of the United Kingdom, is situated in the north-east of the island of Ireland. Ireland is itself an island lying off the north-west coast of Europe, c.96km to the west of Great Britain. The Republic of Ireland is a sovereign independent state, governed by a parliamentary democracy.

Northern Ireland is divided into six counties. Northern Ireland is also known as Ulster because it comprises six of the nine counties that constitute the province of Ulster.

#### *Climate*

The climate is temperate. Winter daytime temperatures range from 4°C - 7°C (or average 39°F); summer temperatures range from 14°C - 20°C (or average 61°F).

### D. Are there cultural influences or prohibitions on the way business is conducted?



No. Northern Ireland has an open business culture in line with that of other western democracies.

It is noted for:

- Advanced Infrastructure;
- Competitive Operating Costs;
- Quality of life;
- Skilled workforce;
- Strategic location; and
- Strong FDI support packages

*Image credit: investni.com*

## **E. Are there religious influences or prohibitions on the way business is conducted?**

There are no formal religious influences or prohibitions on the way business is conducted. However, the legacy of Northern Ireland's political history means there is a body of Fair Employment legislation designed to monitor and promote religious equality in the workforce.

## **F. Explain your country's infrastructure.**

*Be sure to explain which cities have airports, railroad systems, ports, public transportation.*

Northern Ireland has an excellent transport and communications infrastructure. This means that companies can easily do business with their customer base around the world.

### *Transport*

There is easy access to a European Union market of 500 million people, and connections to the global market are excellent.

The first-rate road network has minimal levels of congestion and brings most of Europe within 24-48 hours.

Three airports deal with almost seven million passengers a year. Belfast International Airport runs daily scheduled flights to destinations such as New York, London, Paris and Amsterdam.

The region boasts four ports – Belfast Harbour, Foyle Port, Warrenpoint Harbour and Larne Harbour. Belfast Harbour is the second busiest port on the island of Ireland and along with the ports at Larne and Warrenpoint provides over 160 ferry and freight sailings per week to Great Britain and Europe.

### *Excellent business-focused universities*

Northern Ireland's internationally renowned universities have been key drivers in the development of the region's technology and knowledge industries. Queen's University, and Ulster University have globally recognised research centres across a range of disciplines.

\*Source: InvestNI; Northern Ireland Department for the Economy

## **G. Explain the communication system.**

Northern Ireland's communications infrastructure is renowned as state-of-the-art. It enjoys international connectivity at a very competitive cost.

The region also has a strong record of staying at the forefront of communications technology. It became the first region in Europe to achieve 100 per cent broadband coverage and one of the first to operate and experience high speed, next generation services with a new 40-gigabyte per second transatlantic and terrestrial telecommunications link between Northern Ireland, North America and Europe. This is providing secure, reliable service and delivering prices up to 20 per cent below market rates in London, Dublin, Manchester and Glasgow\*.

The region provides a fully digital, fully fibre optic communications network. Northern Ireland benefits from its own Internet backbone exchange, and telecoms costs are among the lowest in Europe. Investors have access to a truly leading-edge telecoms infrastructure and a burgeoning telecoms sector. The region's compact size also makes it an ideal test-bed for new communications technology.

Northern Ireland's telecoms industry is a highly deregulated and competitive market with over 70 operators. Deregulation means better service and lower costs.

## **H. Describe the public services – i.e. water, electricity, gas. Are they publicly or privately owned?**

### *Water*

Water and wastewater services are modern and publicly owned.

### *Electricity*

Northern Ireland's total primary energy consumption is approximately 4.90 million tonnes of oil equivalent. The vast majority of this energy comes from fossil fuels. Energy policy in the province is maintained by the Department of Enterprise, Trade and Investment.

Northern Ireland's electrical grid is operated by System Operator for Northern Ireland (SONI) and the distribution is managed by Northern Ireland Electricity (NIE) which owns and manages the infrastructure which connects over 850,000 customers. Electricity consumption in Northern Ireland was 7,867 GW·h in 2002/3. At 4.6 MW·h per person, this is 18% less than that of the rest of the United Kingdom (5.6 MW·h per person). The main power station is located at Ballylumford, and is operated by Premier Power. There is also Coolkeeragh power station in Greater Derry. The electricity grid throughout all of Ireland is operated as a single system, with separate control centres in Dublin and Belfast.

Northern Ireland's electrical grid is connected to that of the Republic of Ireland by three cross-border interconnectors. The main interconnector, between Tandragee and Louth has a capacity of 1,200 MW. Two back-up interconnectors have a combined capacity of 240 MW. This combined all-island grid is connected to the National Grid on the island of Great Britain by the 500 MW Moyle interconnector, under the North Channel.

*Source: wikipedia*

### *Gas*

Investors recently have announced plans to begin fracking of gas in Northern Ireland. Gas for the Greater Belfast area is supplied via the Scotland-Northern Ireland pipeline (SNIP), a 24-inch-diameter (610 mm) interconnector pipeline. SSE Airtricity and firmus energy supply gas to the Greater Belfast area via Phoenix Natural Gas' network.

In the other areas of Northern Ireland, specifically towards Derry City, gas comes from two interconnector pipelines, one being supplied by the Republic's gas supplier, Bord Gáis. The North-West pipeline from Carrickfergus in County Antrim to Derry opened in November 2004, and the South-North pipeline from Gormanston (in the Republic) to Antrim was opened in October 2006. The complete South-North pipeline to Dublin opened in November 2007, passing Armagh, Banbridge, Craigavon and Newry. Since December 2005, Bord Gáis has supplied gas to residential customers in this area under the name firmus energy.

*Source: wikipedia*

## II. GENERAL CONSIDERATIONS

### A. Investment policies

*Does the country generally welcome investment? Are there governmental or private agencies devoted to the promotion of investment? Explain any sector exceptions, incentives or restrictions on foreign investment.*

The government welcomes inward investment and generally there are no restrictions intended to prevent ownership of companies or businesses either of which may be wholly owned by overseas interests in Northern Ireland. In fact, as a legacy of the political unrest, grant aid is often available to inward investors from government agencies. Most areas are open to private enterprise and there are few restrictions.

Considerable public expenditure has been devoted to urban renewal in Belfast and Londonderry/Derry. Various agencies have been established to attract new companies and encourage small business, backed by tax and other incentives. Helped by moves towards a peaceful settlement, several important new investments, notably by South East Asian concerns, were announced in the first half of the 1990s, including the period of paramilitary ceasefire in 1994.

The Government, through its industrial development body Invest NI offers financial assistance to entities considering investment in Northern Ireland.

Northern Ireland offers inward investors one of the most attractive support packages available in Europe. These packages are tailor made for each individual investment project.

InvestNI's tailored support packages include cash grants for capital investments and employment, interest relief plus support for a variety of business operations such as R&D, training and marketing.

The region also has an active venture capital market catering for projects up to £2 million.

InvestNI may be able to offer inward investors :

- Revenue grants towards start-up costs, interest relief, factory rental costs, training costs, marketing development costs and R&D. R&D capital spending can be written off against income.
- Pre-employment training grants.
- Finance investment in the share capital of a company and government loans at commercial and concessionary rates.
- Property tax exemptions for manufacturing property.
- Generous depreciation allowances.

*source: InvestNI*

*Describe de facto restrictions on investment, if any, such as bureaucratic discretion.*

There are no restrictions on investment.

*What types of businesses are conducted in the country?*

*Services*



As with all developed economies, services account for the majority of employment and output. Services account for almost 70% of economic output, and 78% of employees.

### ***Agriculture***

Agriculture in Northern Ireland is heavily mechanised, thanks to high labour costs and heavy capital investment, both from private investors and the European Union's Common Agricultural Policy. In 2000, agriculture accounted for 2.4% of economic output in Northern Ireland, compared to 1% in the United Kingdom as a whole. As in the rest of the United Kingdom, livestock and dairy account for the majority of agricultural output. The main crops are (in descending order of value) potatoes, barley, and wheat.

### ***Manufacturing***

Heavy industry is concentrated in and around Belfast, although other major towns and cities also have heavy manufacturing areas. Machinery and equipment manufacturing, food processing, textile and electronics manufacturing are the leading industries. Other industries such as papermaking, furniture manufacturing, aerospace and shipbuilding are also important, concentrated mostly in the eastern parts of Northern Ireland. Of these different industries, one of the most notable is that of Northern Ireland's fine linens, which is considered as one of the most well-known around Europe.

Although its share of economic output has declined, manufacturing output in Northern Ireland has remained almost unchanged over the past five years, after a period of steep manufacturing growth between 1998 and 2001. However, this overall picture of health hides a dramatic shift in manufacturing priorities, with the decline of traditional industries, such as textiles and shipbuilding, at the expense of high tech and capital-intensive industries. In 2005, chemicals and engineering (both of which belong firmly to the latter group) were the only two manufacturing sub-sectors to record growth, whilst output of textiles fell by 18%.

Engineering is the largest manufacturing sub-sector in Northern Ireland, particularly in the fields of aerospace and heavy machinery. Bombardier Aerospace is the province's largest industrial employer, with 5,400 workers at five sites in the Greater Belfast area. Other major engineering employers in Northern Ireland include Bombardier Aerospace, Caterpillar, DuPont, Emerson Electric, Fujitsu, Northbrook Technology, Seagate and NACCO. Many of these manufacturers receive British government financial backing, and enjoy close academic and business links with Queen's University Belfast and the University of Ulster, of which Queen's University Belfast ranks as one of the best British universities for all engineering courses.

Belfast's famous shipyard, Harland and Wolff, which in the early 20th century was the world's biggest shipbuilder, suffered from intense international competition during the 1970s and 1980s and declined rapidly. During the 1990s the company diversified into civil engineering and industrial fabrication, manufacturing bridges and oil platforms. The company made an unsuccessful bid to build the Queen Mary 2, which it was hoped would re-stimulate the yard's shipbuilding business. The vast works on Queen's Island were downsized, with much of the land (including the slipway where RMS Titanic was built) sold off for redevelopment in the 2000s as the 'Titanic Quarter'- a new residential, commercial and high-tech industrial district. The modern, smaller yard employs only 800 people. H&W have not built a ship since 2003, but has seen workload increase through being involved in shipbreaking, ship repair and maintenance and conversion work. The company has also been active in the design and construction of offshore power generation equipment- both wind turbines and wave-action turbines.

### ***Tourism***

Despite the negative image of Northern Ireland held in many foreign countries, on account of the Troubles, tourism is an important part of the Northern Irish economy. In 2004, tourism revenue rose 7% to £325m, or over 1% of the local economy, on the back of a rise of 4% in total visits to 2.1 m in the year. Tourism is considered likely to become one of the main growth areas of the economy in the near future, with the continuation of the peace process and the normalisation of the image of Northern Ireland internationally. The most popular tourist attractions include the historic cities of Derry, Belfast and Armagh, the Giant's Causeway, and Northern Ireland's many castles. The NI 2012 Our Time, Our

Place tourism campaign created by the Northern Ireland Tourist Board generated a profit of £31 million in 2012 (subtracting November and December) the first six months of 2013, according to a study by an independent researcher commissioned by the organization. High profile events initiated by the program include the opening of the £77 million Titanic Belfast and the construction of a Giant's Causeway visitor's centre.

### Public sector

As of December 2008 the public sector in Northern Ireland accounted for 30.8% of the total workforce. This is significantly higher than the overall UK figure of 19.5%, and also higher than Scotland, the next nearest region at 24%. Overall, the figure for Northern Ireland has fallen. In 1992 the public sector accounted for 37% of the workforce. When measured relative to population, the gap between the Northern Ireland and UK figures reduces to three percentage points.

In total, the British government subvention totals £5,000m, or 20% of Northern Ireland's economic output.

Source: wikipedia

### What is the rate of inflation?

-0.1% (Nov 2015, Consumer price index)

### Manufacturing Labour Productivity

		(UK=100)						
		2008	2009	2010	2011	2012	2013	2014
United Kingdom		100.0	100.0	100.0	100.0	100.0	100.0	100.0
<b>Nominal GVA per filled job</b>								
North East	DJDO	85.3 <sup>T</sup>	83.7	83.9	85.3	86.7	86.0	86.9
North West	DJDP	92.0 <sup>T</sup>	91.7	91.1	88.8	89.9	89.7	86.9
Yorkshire and The Humber	DMBC	89.3 <sup>T</sup>	88.9	87.5	86.8	86.8	86.6	86.7
East Midlands	DMBE	88.0 <sup>T</sup>	86.7	87.6	86.4	86.5	88.0	89.6
West Midlands	DMDN	87.2 <sup>T</sup>	86.5	87.9	88.4	88.0	87.8	87.1
East of England	DMDQ	100.3 <sup>T</sup>	98.8	99.2	98.0	96.5	96.7	98.0
London	DMGH	137.3 <sup>T</sup>	138.5	139.5	142.9	139.2	137.3	137.7
South East	DMGJ	106.5 <sup>T</sup>	106.4	106.6	105.9	107.0	108.0	107.4
South West	DMGK	91.0 <sup>T</sup>	90.1	90.8	88.7	89.8	89.4	89.2
England	DMGL	102.1 <sup>T</sup>	101.7	102.0	101.9	101.9	101.8	101.8
Wales	DMGM	80.2 <sup>T</sup>	81.1	79.3	81.8	81.7	82.0	80.0
Scotland	DMGX	93.6 <sup>T</sup>	97.1	95.5	94.1	94.0	95.1	95.8
Northern Ireland	DMOA	87.3 <sup>T</sup>	86.4	84.6	86.0	88.2	86.4	86.0
<b>Nominal GVA per hour worked</b>								
North East	DMOB	86.3 <sup>T</sup>	85.2	85.6	87.9	88.9	88.6	88.6
North West	DMOH	93.1 <sup>T</sup>	93.0	91.6	90.3	90.5	91.3	87.0
Yorkshire and The Humber	DMOK	91.5 <sup>T</sup>	90.2	88.7	87.5	87.5	87.8	87.6
East Midlands	DMOL	88.3 <sup>T</sup>	86.7	87.1	87.2	87.1	89.0	91.1
West Midlands	DMON	87.9 <sup>T</sup>	86.3	87.1	88.8	87.4	87.6	86.7
East of England	DMOO	101.1 <sup>T</sup>	100.1	100.4	99.4	97.5	97.5	100.0
London	DMOR	130.0 <sup>T</sup>	130.6	130.6	133.1	129.7	129.2	129.9
South East	DMOS	107.6 <sup>T</sup>	108.4	109.5	107.8	109.2	109.4	108.5
South West	DMOT	93.9 <sup>T</sup>	93.1	94.0	91.3	93.5	92.1	92.5
England	DMOV	102.2 <sup>T</sup>	101.7	101.8	101.9	101.5	101.7	101.6
Wales	DMOW	81.6	82.4 <sup>T</sup>	81.6	82.6	84.8	84.0	82.9
Scotland	DMOY	93.5 <sup>T</sup>	97.5	96.6	95.1	95.9	96.1	97.5
Northern Ireland	DMWA	83.0 <sup>T</sup>	82.2	81.9	83.5	86.2	81.9	81.4

<sup>T</sup> indicates that estimates are new or have been revised. The period marked is the earliest in the table to have been revised.

Source: ONS Statistical bulletin: Labour Productivity, Q3 2015

## B. Diplomatic Relations

*Explain any established diplomatic relations your country may have.*

Northern Ireland, as part of the United Kingdom, has a well developed diplomatic service through the British consular system with representation in most countries.

*Give addresses telephone numbers for the embassies or consulates in your country.*

These are listed in the business section of the telephone directory by country.

*Are there prohibitions or restrictions on certain business dealings with the country?*

No.

*Explain any travel restrictions to or within the country.*

There are no travel restrictions to or within the country.

## C. Government

*Explain your country's election system and schedule. Is there an anticipated change in the present government? Is the present government stable? Briefly explain your country's political history in the last decade.*

Since 1998, Northern Ireland has devolved government within the United Kingdom. The government and Parliament of the United Kingdom are responsible for reserved and excepted matters. Reserved matters are a list of policy area (such as civil aviation, units of measurement, and human genetics), which the Westminster Parliament may devolve to the Northern Ireland Assembly at some time in future. Excepted matters (such as international relations, taxation and elections) are never expected to be considered for devolution. On all other matters, the Northern Ireland Executive together with the 108-member Northern Ireland Assembly may legislate and govern for Northern Ireland. Additionally, devolution in Northern Ireland is dependent upon participation by members of the Northern Ireland Executive in the North/South Ministerial Council, which co-ordinates areas of co-operation (such as agriculture, education and health) between Northern Ireland and the Republic of Ireland.

Elections to the Northern Ireland Assembly are by single transferable vote with six representatives (Members of the Legislative Assembly, MLAs) elected from 18 parliamentary constituencies. Eighteen representatives to the lower house of the British parliament (Members of Parliament, MPs) are elected from the same constituencies using the first-past-the-post system. However, not all of these take their seats. The four Sinn Féin MPs refuse to take the required oath to serve Queen Elizabeth II. In addition, the upper house of the UK's parliament, the House of Lords, currently has some 25 appointed members from Northern Ireland. Northern Ireland itself forms a single constituency for elections to the European Union.

The Northern Ireland Office represents the British government in Northern Ireland on reserved matters. The Government of the Republic of Ireland also has the right to "put forward views and proposals" on non-devolved matters in relation to Northern Ireland. The Northern Ireland Office is led by the Secretary of State for Northern Ireland, who sits in the Cabinet of the United Kingdom.

(Source: wikipedia)

## D. Explain your country's judicial system.

The courts of Northern Ireland are the civil and criminal courts responsible for the administration of justice in Northern Ireland: they are constituted and governed by Northern Ireland law.

The United Kingdom does not have a single unified judicial system — England and Wales have one system, Scotland another, and Northern Ireland a third. There are exceptions to this rule, for example in immigration law, the jurisdiction of the First Tier Tribunal (Immigration & Asylum Chamber) and the Upper Tribunal covers the whole of the United Kingdom, while in employment law there is a single system of Employment Tribunals for England and Wales and Scotland (but not Northern Ireland). Additionally, the Military Court Service has jurisdiction over all members of the armed forces of the United Kingdom in relation to offences against military law.

To overcome problems resulting from the intimidation of jurors and witnesses, the right to a jury trial in Northern Ireland was suspended for certain terrorist offences in 1972, and the so-called "Diplock courts" were introduced to try people charged with paramilitary activities. Diplock courts are common in Northern Ireland for crimes connected to terrorism.

Administration of the courts is the responsibility of the Northern Ireland Courts and Tribunals Service.

### *Supreme Court of the United Kingdom*

The Supreme Court of the United Kingdom was created by the Constitutional Reform Act 2005. It took its duties up on 1 October 2009. It is the highest court of appeal in Northern Ireland, hearing ultimate appeals from all the courts of the United Kingdom, other than Scottish criminal cases. The Supreme Court has taken over the appellate jurisdiction formerly vested in the House of Lords.

### *Court of Judicature*

The Court of Judicature of Northern Ireland is constituted by the Judicature (Northern Ireland) Act 1978. Until 1 October 2009 its name was the Supreme Court of Judicature. The Court of Judicature is the most important superior court of Northern Ireland. It consists of the following courts:

- The Court of Appeal in Northern Ireland (Court of Appeal, formally "Her Majesty's Court of Appeal in Northern Ireland")
- The High Court of Justice in Northern Ireland (High Court, formally "Her Majesty's High Court of Justice in Northern Ireland")
- The Crown Court

The title of the court was changed on 1 October 2009 when the relevant provisions of the Constitutional Reform Act 2005 came into force establishing the Supreme Court of the United Kingdom.

### *Court of Appeal*

The Court of Appeal is the highest court specifically of Northern Ireland. Appeal from the Court of Appeal lies to the Supreme Court of the United Kingdom. The Court of Appeal hears appeals from the Crown Court, High Court, county courts, courts of summary jurisdiction and tribunals.

### *High Court*

The High Court of Justice (High Court) is, like its English equivalent, split into three divisions: Queen's Bench Division, Family Division and Chancery Division. The High Court is located in the Royal Courts of Justice, Belfast.

### *Crown Court*

The Crown Courts hear more serious criminal cases. These are indictable offences and "either way" offences which are committed for trial in the Crown Courts rather than the magistrates' courts.

### ***County Court***

The County Courts are the main civil courts. While higher-value cases are heard in the High Court, the County Courts hear a wide range of civil actions, consumer claims, and appeals from magistrates' courts. The County Courts are called Family Care Centres when hearing proceedings brought under the Children (Northern Ireland) Order 1995 and appeals from the family proceedings courts. There are seven County Court divisions in Northern Ireland.

### ***Subordinate courts***

Below the High Court are several classes of courts. Magistrates' courts (including youth courts, family proceedings courts and domestic proceedings courts) hear less-serious criminal cases and conduct preliminary hearings in more serious criminal cases. They are divided into 21 petty sessions districts. The Crown Court hears all serious criminal cases which are committed to trial. When sitting as family proceedings courts the magistrates' courts hear proceedings brought under the Children (Northern Ireland) Order 1995.

Additionally, there is the Enforcement of Judgments Office, and coroners' courts, which investigate the circumstances of sudden, violent or unnatural deaths.

*(Source: wikipedia)*

## **E. Explain your country's legislative system.**

For the purposes of private international law the United Kingdom is divided into three distinct legal jurisdictions:

- English law in England and Wales;
- Northern Ireland law in Northern Ireland;
- Scots law in Scotland.

Northern Ireland is a common law jurisdiction. Although its common law is similar to that in England and Wales, and partially derives from the same sources, there are some important differences in law and procedure between Northern Ireland and England and Wales. While influenced by English law, the Northern Ireland legal system is distinctive for a number of reasons: it has roots in Irish common law prior to Irish independence in 1921; following Irish independence, Northern Ireland became a devolved jurisdiction within the United Kingdom.

### ***Legislation***

The current statute law of Northern Ireland comprises those Acts of the Parliament of the United Kingdom that apply to Northern Ireland and Acts of the Northern Ireland Assembly, as well as statutory instruments made by departments of the Northern Ireland Executive and the UK Government. Also remaining on the statute books are many Acts of the Parliament of Northern Ireland passed between 1921 and 1972, certain Acts of the Parliament of Ireland made before the Act of Union 1800, and Acts of the Parliament of England, and of the Parliament of Great Britain, extended to Ireland under Poyning's Law between 1494 and 1782.

The expression "Northern Ireland legislation" is defined by statute. The Northern Ireland Act 1998 establishes the legislative competence of the Northern Ireland Assembly. It creates a distinction between excepted matters, reserved matters and other matters (which are transferred i.e. they fall within the NI Assembly's competence). The Northern Ireland Act 1998 functions as a constitution for Northern Ireland as indicated in the Robinson case.

The Northern Ireland Parliament was prorogued in 1972; from then until the establishment of the Northern Ireland Assembly following the Good Friday Agreement, the primary method of making legislation for Northern Ireland was by means of orders in council under the Northern Ireland (Temporary Provisions) Act 1972. A number of important legislative measures were adopted using

the order in council procedure: this included the Criminal Evidence (Northern Ireland) Order 1988 restricting the right to silence, the Fair Employment and Treatment Order (Northern Ireland) 1998 on religious and political discrimination.

(Source: wikipedia)

## F. Environmental Considerations

### *What is the public/government attitude toward environmental regulation?*

Environmental regulation in Northern Ireland is an area which differs substantially from the rest of the United Kingdom. The principal regulatory agency is the NI Environment Agency (“NIEA”) which is a division of the Department of the Environment for Northern Ireland. However, since 1 April 2015, a number of functions which were previously delivered by Northern Ireland Executive departments are now carried out by 11 new councils. These include local planning functions, off-street parking and local economic development. Notably, the Department for the Environment retains responsibility for the determination of regionally significant and ‘called-in’ applications, regional planning policy, planning legislation, oversight and guidance for councils and performance management. Therefore, there appears to be a large degree of overlap in regulatory responsibility which arguably has created uncertainty in relation to environmental regulation in Northern Ireland, for example, water quality is the NIEA’s responsibility but rivers and flooding is regulated by the Rivers Agency – a division of the Department of Agriculture and Rural Development. In terms of environmental legislation, Northern Ireland ministers are bound by UK obligations under the European Convention on Human Rights and EU law and as so much environmental law is European in origin, it leaves little room for Northern Ireland to implement substantially different laws from the rest of Europe.

### *Explain any environmental regulations.*

There are a large number of pieces of legislation in this area in Northern Ireland at present. Examples of environmental regulations are as follows:

- The Industrial Pollution Control (NI) Order 1997 is essentially an attempt to structure pollution control along more holistic lines.
- Directives 80/779, 82/884 and 85/203 concerning smoke and sulphur, lead, and nitrogen dioxide respectively have been implemented by the Air Quality Standards Regulations (NI) 1990, as amended by the Air Quality Standards (Amendment) Regulations (NI) 1994 and the Air Quality Standards (Amendment) Regulations (NI) 1996.
- Directives 94/63 and 99/13 concern the control of Volatile Organic Compound emissions. The 1994 Directive applies to the operations, installations, vehicles and vessels used for storage, and to the loading and transport of petrol from one terminal to another or from a terminal to a service station. It is implemented in part in Northern Ireland by the Industrial Pollution Control (Prescribed Processes and Substances) (Amendment) Regulations (NI) 1998. These Regulations provide the framework for the requirements of the Directive to be imposed and enforced under the Industrial Pollution Control (NI) Order 1997.
- The Dangerous Substances Directive 76/464 was implemented by the Pollution of Waters by Dangerous Substances Regulations (NI) 1990 and the Pollution of Waters by Dangerous Substances (Amendment) Regulations (NI) 1992. Both have since been revoked and replaced by the Surface Waters (Dangerous Substances) (Classification) Regulations (NI) 1998 which:
  - require and enable the DoE to establish water quality objectives for dangerous substances by applying the classifications as laid out in the Regulations; and
  - set out classifications for inland fresh waters, coastal waters and relevant territorial waters and allow for sampling and analysis of these waters in relation to their classification.

- The Ground Water Directive is implemented in Northern Ireland by the Ground Water Regulations (NI) 1998.
- The Asbestos Directive 87/217 is implemented in relation to the control of asbestos into water in Northern Ireland by the Control of Asbestos in Water Regulations (NI) 1995.
- The Waste Framework Directive (Directive 2009/98 EC) was implemented in Northern Ireland by the Waste (Amendment) Regulations (Northern Ireland) 2013.
- The Landfill Directive (1999/31/EC) were transposed in Northern Ireland through Landfill Regulations (Northern Ireland) 2003, the Waste and Emissions Trading Act 2003 and the Landfill Allowances Scheme (Northern Ireland) Regulations 2004 (as amended).

Other environmental regulations relate to waste management, nature conservation and agriculture. For further information see [www.doeni.gov.uk](http://www.doeni.gov.uk).



### III INVESTMENT INCENTIVES

#### A. Explain any export incentives or guarantees.

*Are there tax incentives for exports? -If so, are they limited to certain types of product? -Is export financing available from government or private sources? -If so, what forms of financing or guarantees are available? -Is there any governmental insurance for exports? -Must a national be a participant?*

There are no significant tax incentives for exports.

Export financing is available from private sources such as the local banks or specialist financial organisations and from government.

UK Export Finance (also known as the Export Credits Guarantee Department) is the official export credit agency in the UK

It helps UK exporters by ‘underwriting’ bank loans offered to overseas buyers of UK products and services. This means it takes on the risk of the loan from the bank, so that the bank is more likely to offer it.

It can also help exporters to:

- raise tender and contract bonds
- access working capital finance
- secure confirmations of letters of credit

UK Export finance also offers insurance to UK exporters against the risk of non-payment by overseas buyers.

Types of financing available include:

- documentary credits
- bills of exchange
- buyer credits

There is not requirement for a national to be a participant.

#### B. Explain any grants, subsidies or funds your country offers foreign investors.

*Are the grants or subsidies restricted by the type of activity? -What is the process for obtaining approval for these grants or subsidies? -How long does it take to receive approval? -Can the investor receive loans from the government or governmental agencies? -Must a national be a participant in the enterprise in order for the investor to receive these grants or subsidies?*

Northern Ireland offers one of the most attractive incentive packages in Europe as many major multi-national companies have discovered when locating branches of their business here. They are not restricted to any particular type of activity, although certain types of activity may be looked at more favourably. The funding is from the government purse, and is awarded through Invest NI as to which, see section VII A below.

There is no requirement for a national to have an equity interest in the business for an award to be made. Invest NI's role is to grow the local economy helping new and existing businesses compete internationally and by attracting new investment to Northern Ireland. The following classes of assistance are available:



### **Financial**

- Revenue grants to cover marketing, consultancy and salary costs
- Training grants to cover pre-employment and on-the-job needs
- Working capital assistance
- Assistance with securing equity and venture capital funding

### **Non-financial**

- Training
- Mentoring
- Networking opportunities
- Overseas market visits
- Access to expert knowledge and skills

Every package of assistance from InvestNI is tailored to the requirements of each investment project.

## **C. Explain any national tax incentives for foreign investors.**

There is a highly favourable environment for businesses and those who invest in them. In addition to the growing diversity of sources of finance, such as crowdfunding and peer-to-peer lending, there are schemes and incentives devised to help companies of all sizes secure funding.

Corporation tax rates are among the lowest in Europe.

A new Northern Ireland corporate tax rate of 12.5% takes effect from April 2018. Allowances, credits and other aspects of the tax regime remain at the respective values for the United Kingdom.

For companies operating in both Northern Ireland and the rest of the UK rules apply according to the size of the company.

For smaller and medium sized companies, the Act introduces new rules which allocate all their profit to Northern Ireland if at least 75 per cent of their staff time and staff costs relate to work in Northern Ireland.

Larger companies will have to determine whether they have a regional establishment in Northern Ireland – broadly, similar to the existing permanent establishment rules. They must then, if they have a presence in both NI and the rest of the UK, apply rules similar to those governing the allocation of profits to a permanent establishment. This effectively means that the company would treat their Northern Ireland trading activity as if it were a separate business from its activity in the rest of the UK, and apportion profits appropriately between the two.

If your business meets certain criteria, it may also qualify for help with business rates or tax relief for research and development.

### **Business rate reliefs**

Small business rate relief, empty premises relief, industrial derating, charitable exemption

### **The Seed Enterprise Investment Scheme (SEIS)**

This aims to encourage investment in small and early stage companies by reducing the risk to investors of investing in these types of companies

### ***Employment Allowance***

Employers can reduce the amount of National Insurance contributions (NICs) they pay for their employees by up to £2,000.

### ***Annual Investment Allowance***

Currently stands at £500,000.

### ***Capital Allowances***

A tax relief designed to allow the cost of certain of your company or organisation's assets to be written off against its taxable profits

As well as plant and machinery, you can also claim capital allowances for:

- renovating business premises in disadvantaged areas of the UK
- extracting minerals
- research and development
- 'know-how' (intellectual property about industrial techniques)
- patents

### ***Enterprise Investment Scheme***

Helps small companies raise finance by offering tax relief to investors who buy new shares in their companies.

### ***Venture Capital Trust (VCT) Scheme***

Designed to help smaller companies raise finance by offering a range of tax reliefs to investors who invest in VCTs, who in turn onward invest or lend to small and medium sized businesses

### ***Capital Gains Roll-over Relief***

You may be able to delay paying Capital Gains Tax if you either sell ('dispose of') some business assets or use all or part of the proceeds to buy new assets. This relief means you won't pay any tax until you sell the new asset

### ***Research and development tax credits***

Small businesses can get 225 per cent tax relief on their research and development spending

### ***Patent Box***

Enables companies to apply a lower rate of Corporation Tax to profits earned after 1 April 2013 from its patented inventions and certain other innovations.

To qualify for the Patent Box regime, a company must own a qualifying patent or an exclusive licence under a qualifying patent. The company must also have been involved in the development of the patented invention. Broadly, if the company meets these criteria, then it can elect into the regime.

The adjusted profits arising on the income from patents are partially excluded from UK corporation tax, such that they are taxed at a reduced effective rate. This reduced rate will be 10% from 1 April 2017. The benefit is being phased in from 1 April 2013 such that approximately 33.9% of the adjusted

profit is exempt from UK corporation tax and then increases in stages to approximately 52.4% from 1 April 2017.

### *Social Investment Tax Relief*

This provides a range of income and capital gains tax reliefs which can be claimed by individual investors for investments they have made in social enterprises, with a view to helping people and communities. It is in place for investments made or capital gains arising in the period from 6 April 2014 to 5 April 2019

### *Tax reliefs for the creative industries*

A group of five corporation tax reliefs that allow qualifying companies in the creative industries to claim a larger deduction or in some circumstances claim a payable tax credit when calculating their taxable profits

### *Entrepreneur's Relief*

When an entrepreneur sells or closes their business, they need only pay ten per cent Capital Gains Tax on any qualifying profits

## IV FINANCIAL FACILITIES

### A. Banking/Financial Facilities

*- What kind of financial institutions exist?*

*- What is the type of financial system in the country?*

*- How is the banking system structured?*

Financial Institutions in Northern Ireland include banks, building societies, investment businesses (from global fund management operations to local financial advisors), insurance companies and credit unions and are regulated by the U.K. wide Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA).

The PRA was created as a part of the Bank of England by the Financial Services Act (2012) and is responsible for the prudential regulation and supervision of around 1,700 banks, building societies, credit unions, insurers and major investment firms.

The PRA's objectives are set out in the Financial Services and Markets Act 2000 (FSMA). The PRA has three statutory objectives:

1. a general objective to promote the safety and soundness of the firms it regulates;
2. an objective specific to insurance firms, to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders; and
3. a secondary objective to facilitate effective competition

The PRA advances its objectives using two key tools - Regulation and Supervision.

The Financial Services Register is a public record of all the firms, individuals and other bodies regulated by the PRA.

The FCA regulates the business conduct of the banks, building societies, investment businesses, insurance companies and credit union through three objectives set out in the Financial Services Act 2012:

- Protect consumers
- Protect financial markets
- Promote competition

The Bank of England is the central bank of the United Kingdom and as such it is banker to the government and other banks.

Types of investment funds available in the U.K. include unit trusts, investment trusts, and open ended investment companies and investment firms must be authorised by the FCA.

*Must the investor maintain a bank account in the country?*

There is no requirement to maintain a bank account in Northern Ireland.

### ***What are the requirements for opening a bank account? What are the restrictions, if any, on the investor's use of the account?***

Pursuant to the U.K. framework for combating money laundering, financial institutions are required to verify the identity and address of persons/companies seeking to open accounts.

Evidence of identity can be in documentary or electronic form.

Individuals: full name, residential address and date of birth ideally from a government issued document which includes the customer's full name and photo, and either residential address or date of birth e.g. valid passport, valid photo card driving licence etc.; or a government issued document (without a photograph) which includes the customer's full name, supported by a second document, either government issued, or issued by a judicial authority, a public sector body or authority, a regulated utility company, or another FCA-regulated firm in the UK financial services sector or in an equivalent jurisdiction, which includes the customer's full name and either residential address or date of birth.

Corporates (other than regulated firms): full name, registration number, registered office in country of incorporation and business address. Additionally, for private / unlisted companies: names of all

directors (or equivalent), names of individuals who own or control over 25% of its shares or voting rights and names of any individual(s) who otherwise exercise control over the management of the company. The bank should verify the existence of the corporate from either confirming the company's listing on a regulated market, conducting a search of the relevant company registry or obtaining a copy of the company's Certificate of Incorporation.

For private / unlisted companies, the bank may decide, following a risk assessment, to verify one or more of the directors as appropriate in line with the CDD requirements for individuals. In respect of beneficial owners, the relevant person must take risk based and adequate measures to verify the identity of the beneficial owner(s).

The requirements of the UK anti-money laundering regime are set out in:

- The Proceeds of Crime Act 2002 (as amended by the Crime and Courts Act 2013 and the Serious Crime Act 2015)
- The Money Laundering Regulations 2007
- The Terrorism Act 2000 (as amended by the Anti-Terrorism, Crime and Security Act 2001, the Terrorism Act 2006 and the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007).
- The Money Laundering (Amendment) Regulations 2012 extended the scope of the Regulations to include all estate agents, included a power for professional supervisory bodies to share information with each other and particularised HMRC's criteria that may be used to determine whether an individual is "fit and proper" in connection with money service businesses and trust and company service providers.

### ***European standards***

The Fourth EU Money Laundering Directive has now replaced the third directive and it is expected to be implemented into UK law by 2017.

Banks are regulated for anti-money laundering (AML) controls by the FCA.

The obligation is on the banks to identify transactions and customers that may involve money laundering, terrorist financing or breaches of the sanctions regime. Many banks utilise software which incorporates a number of standardised scenarios which seek to highlight transactions warranting additional investigation.

New anti-money laundering rules announced by the UK Government will require people who are suspected of criminal activity to explain before any charges how they came by their assets. The new

action plan will also increase the responsibility of businesses, including banks, to report suspicious financial activity and use special measures when dealing with those designated as being “of concern in relation to money laundering”.

### *Is there a stock market?*

Northern Ireland does not have its own stock exchange. The U.K. stock exchange is the London Stock Exchange. ([www.londonstockexchange.com](http://www.londonstockexchange.com)) The London Stock Exchange became a regulated exchange in 1801.

### *Can the investor receive bank loans?*

Banks in Northern Ireland offer a wide range of facilities to customers including loans, overdrafts, cash advances, leasing facilities, and development finance.

SMEs in NI tend to enjoy long-term relationships with their banks and are often able to negotiate competitive rates and conditions. The banks are keen to react to the needs of new technology companies by offering more tailored financial packages including mezzanine funding and treasury products.

InvestNI have created a suite of funds designed to bridge gap between banks and private investors:

- **NI Small Business Loan Fund:** £5m fund that provides unsecured loans to individuals, private companies and social enterprises in the small, medium and micro enterprise size range.
- **Growth Loan Fund:** £50m fund that provides unsecured loan finance to SMEs that can demonstrate strong growth and export potential.
- **techstart NI:** £29m integrated suite of funds and support for entrepreneurs, seed and early stage SMEs and university spin-outs.
- **CoFund NI:** £28m venture capital fund that co-invests alongside business angels and other private investors.
- **Development Funds:** Two £30m equity funds designed to help SMEs in Northern Ireland accelerate their growth.

techstart NI, Co-Fund NI and the Development Funds are part financed by the European Regional Development Fund under the EU Investment for Growth and Jobs Programme 2014-2020.

Britain’s biggest banks have together launched a new Business Growth Fund (BGF). This invests over £2.5 billion to help dynamic and growing medium-sized UK businesses with an annual turnover of £10 million to £100 million. The investment is provided in the form of equity capital and complemented by loans and trade finance offered by banks.

BGF is an investment company that provides growth capital for ambitious entrepreneurs running growing UK companies. At its simplest, the growth capital we provide is long-term, patient equity funding that businesses use to execute their strategic plans.

- Initial investments usually between £2m–£10m for a minority equity stake and a board seat
- Back both privately owned and AIM-listed, profitable companies typically with a turnover of £5m–£100m
- Invest from own balance sheet
- Offer long-term funding of up to 10 years, developing a meaningful partnership based on shared goals and objectives from the outset
- Invest in all business sectors with the exception of regulated financial services
- Strong local approach with eight offices across the UK.

## **B. Exchange Controls**

There are no current exchange controls relating to transfer or investment of funds into or out of Northern Ireland. The United Kingdom Treasury formerly had powers under the Exchange Control Act 1947 to control a wide variety of transactions in currency, gold and securities but this Act was abolished by the Finance Act 1987.

## V. STRUCTURES FOR DOING BUSINESS

The company is the most common form of business entity and the principal corporate legislation is contained in the following:

- The Companies Act 2006 (the “**2006 Act**”)
- The Insolvency (Northern Ireland) Order 1989

This legislation regulates the formation and dissolution of companies, share capital, distributions, duties and conduct of directors, publication of accounts and other documents and the management and administration of companies.

### A. Governmental Participation

*Will the government seek to participate in the ownership or operation of the entity (e.g. depending on the type of activity involved)? -If so, to what extent? -What is the investor's potential liability to partners, investors or others? -Are there restrictions on capitalization? -What are the investor's tax consequences? (see also Sections XII and XIII)*

Invest Northern Ireland as indicated previously is an economic development agency established in April 2002 under the Industrial Development Act 2002 which supports business growth and inward investment, promotes innovation, research and development and in-company training, encourages exports and supports local economic development and company start up. It is a Non-Departmental Public Body and operates under an independent Board whose chairman is responsible to the Northern Ireland Minister for the Economy. The Department for the Economy and Invest Northern Ireland work closely together to ensure that the Executive's economic development policy, as outlined in the Programme for Government, is fully realised. Invest Northern Ireland's focus is on measures that will help companies become and remain competitive in global markets and it seeks to provide innovative initiatives designed to help companies improve their capabilities.

### B. Limited Liability Companies

*Are limited liability companies permitted?*

Limited companies are the most frequently used forms of business entity in Northern Ireland. The advantage is that the company is an entity separate from its shareholders. In the case of a limited company the liability of shareholders is generally limited to the amounts (if any) unpaid on their shares.

There are three types of limited companies:

- a) Private company limited by shares where members' liability is limited to the amount unpaid or shares they hold.
- b) Private company limited by guarantee where members' liability is limited to the amount they have agreed to contribute to the company's assets if wound up.
- c) Public limited company where the company's shares may be offered for sale to the general public and members' liability is limited to the amount unpaid as shares held by them.

The 2006 Act also requires every company incorporated outside the United Kingdom, which establishes some type of place of business in Northern Ireland, to file certain documents at Companies House. However, registration is not required if the company has no physical location in Northern Ireland.



Co-operatives also exist in Northern Ireland and are governed by the Industrial and Provident Societies Act (Northern Ireland) 1969. In practise they have limited liability but the amount of capital which may be held by any one member is restricted and voting is on the basis of one member, one vote irrespective of the amount of capital held.

### *If so, how are they registered or incorporated?*

All companies are registered with Companies House, which operates under the aegis of the Department for the Economy. Companies House is located at second floor, The Linenhall, 32-38 Linenhall Street, Belfast BT2 8BG.

Essentially there are two ways to form a company in Northern Ireland. The first option is to purchase a “ready-made” or “shelf” company from a company agent or solicitors. Alternatively, anyone can incorporate a company by filing the following:

- a) Memorandum of Association;
- b) Articles of Association (unless the model articles discussed below are being adopted in their entirety);
- c) Form IN01;
- d) Additional information if your application includes a sensitive word or expression; and
- e) Fee for registration of a company (currently £40.00 for a paper application and £13 for an electronic application). Cheques are made payable to “Companies House”. Forms may be downloaded from the Companies House website <https://www.gov.uk/topic/company-registration-filing/forms> and details of fees and charges may also be found there.

#### ***(A) Memorandum of Association***

This confirms the subscribers’ intention to form a company and become members of that company on formation. In the case of a company that is to be limited by shares, the memorandum will also provide evidence of the members’ agreement to take at least one share each in the company.

The wording of the memorandum is prescribed by the Companies (Registration) Regulations 2008 and cannot be amended.

#### ***(B) Articles of Association***

This document governs the internal arrangements of the company. Members can choose their own articles or, alternatively, adopt the standard model articles set out in the Companies (Model Articles) Regulations 2008. In practice however, most companies adopt the model articles and amend them to suit their own particular needs.

#### ***(C) Form IN01***

This gives Companies House the details of the name of the company, the registered office of the company, the choice of articles of the company and the names and particulars of the first directors and secretary and must be signed by all directors, the secretary and all subscribers to the memorandum.

A Certificate of Incorporation is then issued. An incorporated company may also have a company seal. The vast majority of companies must hold an Annual General Meeting (“AGM”) within 18 months of incorporation and annually thereafter no more than nine months after their accounting year end.

Companies appoint a secretary whose duties are administrative rather than managerial. Since April 2008, having a company secretary is no longer obligatory.

With very few exceptions, companies are currently required to file Annual Returns and audited accounts on an annual basis. A fee of £40 is charged to file an Annual Return by paper and £13 electronically. The Annual Return gives details of the registered office, officers, issued and authorised

share capital of the company as at the date of the return. All limited and public limited companies must send their accounts to Companies House but if they are eligible and wish to, medium-sized, small, very small and dormant companies may prepare and file abbreviated accounts.

From June 2016, the Small Business, Enterprise and Employment Act 2015 will replace the requirement to file an Annual Return with a duty to deliver a confirmation statement. This statement must state that the company has delivered all the information it was required to provide in the review period to which the confirmation statement relates. The review period means the 12 months beginning with the date of the company's incorporation. The confirmation statement must be delivered within 14 days of the end of the relevant review period and must include information such as any changes to the registered office address, shareholders, capital, etc.

### *How long do these procedures take?*

Provided there are no problems with the proposed name of the company or with the necessary documentation, a company is usually incorporated within 8 to 10 days.

There is a same day incorporation service available. This costs £100. The application must be delivered to Companies House by 3pm and the envelope must be marked "same day service" in the top left hand corner.

### *What costs and fees are involved?*

The fee for incorporating a company in Northern Ireland is £40 for a paper application and £13 for an electronic application, although there may be legal fees in addition to this.

### *Must a national of the country or a related state be a participant, manager or director?*

This is not necessary.

### *Are there restrictions on capitalization?*

No

### *What are the investor's tax consequences?*

Not applicable

## **C. Joint Ventures**

### *Are joint ventures permitted?*

Joint ventures are permitted. There is no standard joint venture agreement and the structure and composition of each joint venture depends on its purpose and the requirements of the parties. The most usual structure is the private limited company but they may also be a public company, a European Economic Interest Grouping (EEIG), a society registered under the Industrial and Provident Societies Order, or it may be a contractual arrangement between the parties.

### *If so, what is the registration or incorporation procedure?*

See above for details pertaining to private limited and public companies.

If the official address of the EEIG is to be in Northern Ireland, the following must be submitted to Companies House in Belfast:

- i. Form EE FM01; and
- ii. the contract of formation.

The contract of formation must, as a minimum, contain the following information about the EEIG:

- its full name;
- its official address;
- the objects for which the grouping was formed;
- the names/business names and legal form of each member;
- the permanent address or registered office of each member;
- the number, and place of registration (if any), of each member, and
- the duration of the EEIG, except where this is indefinite.

If the contract is in a language other than English it must be accompanied by a certified translation.

If the EEIG has its official address outside the UK and an establishment is to be set up in Northern Ireland, within one month of the setting up of the establishment the following documents must be submitted to Companies House:

- i. Form EE FM02; and
- ii. certified copies of all documents which were submitted to the registering authority where the EEIG has its official address.

These must be accompanied by a certified translation where these documents are not in English.

After the EEIG is registered, notices of appointment and removal of managers but also be filed. To appoint a manager where the official address of the EEIG is in the UK, form EE APP01 or EE AP02 must be filed. To remove a manager where the official address is in the UK, form EE TM01 must be used and where the address is outside of the UK, form MP01.

A Form MP01 must also be used to file the following documents and details:

- any amendment to the formation contract;
- notice of a member's assignment of all or part of its participation in the EEIG;
- any judicial or members' decision ordering or establishing the winding up of the EEIG;
- any judicial decision nullifying the EEIG;
- notice of the appointment or termination of appointment of a liquidator or liquidators of the EEIG;
- notice of the conclusion of liquidation of the EEIG;
- a proposal to transfer the official address to another Member State; and
- notice of any provision exempting a new member from the payment of debts and other liabilities which originated prior to his admission.

Form EE MP02 must be used to file notice of the setting up or closure of any establishment of the EEIG, except where registration on form EE FM02 is required

### *How long do these procedures take?*

This normally takes five working days provided that there are no problems with the documentation.

### *What costs and fees are involved?*

A fee of £20 is payable on registration of an EEIG.

### ***Must a national of the country or a related state, (e.g. the EC) be a participant, manager or director?***

An EEIG must have at least two members based in different Member States. To be eligible for membership, companies, firms and other legal bodies must have been formed according to the law of one of the Member States and have their central administration (i.e. place of central management and control) and their registered or statutory office -where this is required - within the EC. Individuals may become members if they carry on any industrial, commercial, craft or agricultural activity or provide professional or other services in the EC. Organisations from non-EC countries may not become members.

### ***What is the investor's potential liability?***

An EEIG is a hybrid between a company and a partnership and liability of its members is not limited.

There are certain restrictions:

- it cannot be formed with the object of making a profit, although it may do so in the normal course of its operations;
- it cannot exercise management control over its members' own activities or those of any other undertaking;
- it cannot hold shares in any of its members;
- it cannot have investment from the public;
- it cannot be a member of another EEIG;
- it cannot employ more than 500 persons;
- it cannot be used to make loans to a company director or any person connected with him where that would be restricted or controlled by national law ; and
- it cannot be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by national law.

All members of an EEIG have unlimited joint and several liability for its debts and other liabilities, but may divide such liability between themselves in whatever proportion they wish.

### ***What are the investor's tax consequences?***

A company would be liable to corporation tax on its income. Individual directors and shareholders will be liable to pay income tax where for example dividends are declared.

## **D. Unlimited Liability Companies**

*What are the forms of liability companies?*

*How are these forms registered or incorporated?*

*How long do these procedures take?*

*What costs and fees are involved?*

*Must a national of the country be a participant, manager or director?*

The features of an unlimited company are similar to the limited company except that the members' liability is unlimited. Recourse may be had by the creditors to the shareholders in respect of liabilities that may be owed by the company which the company has failed to discharge.

## **E. Partnerships, General or Limited**

*Are partnerships recognised or permitted?*

Both general and limited partnerships are permitted and are an important part of business life. The law relating to partnerships is contained in the Partnership Act and, in the case of limited partnerships, the Limited Partnerships Act 1907 applies as well.

The main type of partnership is the general partnership. Section 1(1) of the Partnership Act 1890 defines an ordinary/general partnership as "the relation which subsists between persons carrying on a business in common with a view to profit." A partnership agreement must be drawn up and the basic terms to be considered are contained in the Partnership Act 1890.

Section 4(2) of the Limited Partnerships Act 1907 defines a limited partnership as consisting of "one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed". In return for limited status the limited partner has no role in the management of the firm.

The Limited Liability Partnership Act (Northern Ireland) 2002 which came into force in Northern Ireland in July 2003 provides for limited liability partnerships which would allow the partnership structure to be retained whilst protecting the personal assets of a partner against claims for which they have no responsibility.

*Must a national of the country or related state be a partner? If so, to what extent?*

This is not necessary.

*What costs and fees are involved?*

A limited partnership must be registered with Companies House in Belfast and the registration fee is £20. A limited liability partnership will also have to be registered at Companies Registry and the fee is £40. There will also be legal fees involved in the formation of either partnership.

### ***What is the investor's potential liability?***

In the case of an ordinary/ general partnership the partners have unlimited joint liability in contract whereas they have unlimited joint and several liability in tort.

In the case of a limited partnership the general partner is liable for all debts and obligations of the firm. The limited partner contributes capital or property valued at a stated amount and is not liable for debts of the partnership beyond the amount contributed.

The Limited Liability Partnership vehicle will be a separate legal entity and the liability of the partners will be limited.

### ***What are the investor's tax consequences?***

The principal advantage is that, unlike a company, in a partnership income tax is paid by the partners on the share of the profits received by them and no tax is paid by the partnership.

Limited Partnerships The profits of an LLP will be taxed as if the business were carried on by partners in partnership, rather than a body corporate.

## **F. Partnerships, Undisclosed**

***Do undisclosed partnerships exist? -If so, how are they formed? -What costs and fees are involved? -Must a national of the country or a related state be a participant, manager or director? -What is the investor's potential liability? -What is the investor's tax consequences?***

Undisclosed partnerships do not exist in Northern Ireland.

## **G. Sole Proprietorships**

***Can the investor be a sole proprietor? -How is the sole proprietorship registered or established? -How long does this process take? -What costs and fees are involved? -What is the investor's potential liability? -Are there restrictions on capitalization? -What are the investor's tax consequences?***

Sole proprietors are not required to register at Companies House unless the sole proprietor has set up as a single member company. The company will be liable to incorporation tax on its income. See Section XII.

## **H. Subsidiaries/Branches/Representative Offices**

***Can the investor establish a branch, subsidiary or representative office? -If so, how long does registration or incorporation take? -What costs and fees are involved? -What is the investor's potential liability? -Must a national of the country be a participant, manager or director? -Are there restrictions on capitalization? -What are the investor's tax consequences? -Are these tax consequences different than those of a local company?***

The fact that a company incorporated outside Northern Ireland is carrying on business in Northern Ireland does not automatically mean that the company has to be registered. However, the Overseas Companies Regulations 2009 requires registration of an overseas company where it has some degree

of physical presence through which it carries on business, i.e. a UK establishment. The use of the concept of a UK establishment has ended the different registration regimes previously in place. The implementation of the Overseas Companies Regulations 2009 introduced a single UK jurisdiction, i.e. it is no longer necessary for an English/Welsh or Scottish company to register a UK establishment in Northern Ireland or vice versa.

Within one month of opening a UK establishment, an overseas company must provide the following to Companies House:

- a completed form OS IN01; and
- the fee of £20.

If the company is registering its first UK establishment, it must also deliver:

- certified copy of the company's constitutional documents (e.g. charter, statute, memorandum and articles of association etc.); and
- where an overseas company is required to deliver accounts under parent law, a copy of the latest set.

If the original documents are not in English, certified translations must also be provided.

## **I. Trusts and other Fiduciary Entities**

*Are trusts or other fiduciary entities recognised? -If so, how are each defined? -What are the legal consequences of a transfer of assets to a trust or fiduciary? -Can the investor be the grantor, trustee or beneficiary?*

Trusts and fiduciary entities are recognised in Northern Ireland. They exist at common law and under legislation -the Trustee Act (Northern Ireland) 1958 and the Trustee Act (Northern Ireland) Act 2001. In addition there are special legislative regulations governing some kinds of trusts.

Charities also exist in Northern Ireland. These are usually trusts but they may also exist as companies. They are governed by separate legislation.

## VI. REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS

### A. Alien Business Law

*Is the business subject to any alien business law?*

*Are there registration or reporting requirements?*

It may be the case that law from other jurisdictions will apply to trading activity in Northern Ireland. However, in such circumstances you should take specific advice from lawyers in the jurisdiction whose law is applicable.

### B. Antitrust Laws

*Do the entity's operations comply with anti-trust laws?*

The primary sources of competition law in Northern Ireland are:

- the Competition Act 1998; and
- the Enterprise Act 2002, as amended by the Enterprise and Regulatory Reform Act 2013.

The Competition Act 1998 took effect in the United Kingdom on 1st March 2000 and extends to Northern Ireland, as do the Enterprise Act 2002, which took effect on 20 June 2003 and the Enterprise and Regulatory Reform Act 2013, which took effect on 1st April 2014. This body of legislation replaces the previous system for controlling anti-competitive agreements in force since 1956 and also introduces a prohibition of abuse of a dominant position, based on European Community law. The competition law regime contains Chapter I and II prohibitions and provides for the direct application of articles 101 and 102 of the Treaty on the Functioning of the European Union.

Section 2 of Chapter I prohibits and renders void and unenforceable agreements between undertakings which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. Section 3 excludes certain agreements from the application of section 2 and sections 4 -11 provide for exemptions from the prohibition contained in Section 2.

Section 18 of Chapter II prohibits the abuse by one or more undertakings of a dominant position in a market if it may affect trade within the United Kingdom.

The Competition and Markets Authority (“CMA”) is the main enforcement body for the prohibition against anti-competitive agreements and the prohibition against abuse of a dominant position. It has replaced the roles of the Office of Fair Trading and the Competition Commission and has much greater enforcement powers than its predecessors. Some of the utility regulators are given concurrent jurisdiction under the Competition Act with that of the CMA in their respective sectors but are obliged to consider whether the use of their Competition Act powers is more appropriate before using their own unique enforcement powers. The CMA has the power to take over a case from a regulator where it thinks fit. In addition to voidness, a breach of Chapter I or Chapter II prohibitions may result in the imposition of fines by the CMA of up to 10% of a company’s worldwide turnover.

The CMA has jurisdiction to examine a merger where either a “relevant merger situation” has been or will be created. A relevant merger situation arises when the following criteria are met:

- two or more enterprises cease to be distinct, or will cease to be distinct, as a result of being brought under common ownership or common control;
- either one or both of the following criteria is satisfied:
  - i. the UK turnover of the target exceeds £70 million; or



- ii. the transaction results in at least 25% combined share of sales or purchases in (or in a substantial part of) the United Kingdom, of goods or services of a particular description; and
- the merger has not yet taken place or has taken place not more than 4 months before a Phase 2 referral is made.

As alluded to above, UK merger control can be a two stage process. The CMA firstly considers whether it believes that the merger results or could result in a substantial lessening of competition (Phase 1). If so, the case will be referred to a more in-depth review (Phase 2).

There is no obligation to seek prior clearance from the CMA either before or after a merger. It is a commercial decision for the parties whether to notify the CMA and whether to make the merger condition on CMA clearance.

### ***Are there filing requirements?***

See above for mergers.

There is no obligation to notify the European Commission of restrictive agreements. However, notification is required if a licence from the European Commission is sought.

## **C. Environmental Regulations**

### ***Is the business of the investor subject to environmental regulation? If so, are there added costs involved (e.g. audit requirements)?***

Environmental regulations are dealt with at Section II subsection F.

An investor may be subject to environmental regulation and where he/she is a director of a company he/she may be guilty of an offence under almost all environmental legislation where an offence by a body corporate is proved to have been committed with the consent, connivance or approval of, or to have been facilitated by neglect on the part of such director.

## **D. Government Approvals**

### ***Are government approvals required for the anticipated business?***

There is no requirement to obtain government approval, however it may be of assistance in obtaining grants from the Department of Trade and Investment.

## **E. Insurance**

### ***Must the enterprise carry insurance? -If so, what kind of risks must be insured? -Is there a state monopoly on insurance?***

Employer's liability insurance is mandatory. Drivers are also obliged to have third party insurance. Otherwise, there is no legal requirement to carry insurance, however it is usually required when applying for grants and it is prudent for businesses to have insurance.

## F. Licences/Permits

*Are licences or permits required for the anticipated activity? -If so, how does the investor apply for and receive the necessary licence or permit? -How long does it take to receive the licence or permit?*

In most cases licences/permits are not required. However in the case of certain industries, for policy reasons licences are required and are obtained from the relevant regulatory body.

## VII OPERATION OF THE BUSINESS

### A. Advertising

#### *Are there restrictions on advertising?*

There are some restrictions on advertising. The daily time for advertising on independent radio and television must not exceed a statutory amount. There is a prohibition on the broadcast of any advertisement which is directed towards any religious or political end or which is related to an industrial dispute.

In the case of commercial advertisements, the self-regulatory body of the Advertising Standards Authority stipulates that certain standards must be met. Their Code requires that all advertisements:

- should be legal, decent, honest and truthful;
- should be prepared with a sense of responsibility to consumers and society; and
- should respect the principles of fair competition generally accepted in business.

### B. Attorneys

#### *Is it necessary to have local counsel?*

The requirement to have local counsel will depend on the nature of the legal work involved. For example, if the client requires representation in court, local counsel is required.

#### *How can local counsel be found?*

A list of solicitors can be obtained from the Law Society of Northern Ireland, 98 Victoria Street, Belfast, BT1 3JZ, [www.lawsoc-ni.org](http://www.lawsoc-ni.org). A list of barristers may be obtained from the Bar Council on the website [www.barlibrary.com](http://www.barlibrary.com)

#### *How much are attorneys fees?*

The fees charged vary and depend on the amount of time involved, the complexity of the work to be done and also the seniority of the solicitor or barrister. A partner in a solicitor's firm will generally charge between Stg£170 and Stg£210 per hour whereas assistant solicitors will charge between Stg£70 and Stg£170.

### C. Bookkeeping Requirements

#### *Must the investor keep local books of accounts?*

A company's books of account must correctly record the company's transactions in accordance with legal and professional requirements and enable the financial position of the company to be determined with reasonable accuracy. A director who deliberately or negligently fails to ensure compliance with these requirements will be guilty of an offence. However, it will be a defence for a director if he proves that he had reasonable grounds for believing and did believe that a competent and reliable

person was charged with the duty of ensuring compliance with these requirements and such person was in a position to discharge that duty. It is an offence for a director or any other officer to destroy, mutilate or falsify a company's books and records. Directors are also obliged to keep minutes of all meetings of members, directors or committees of the directors.

Where a company in liquidation is unable to pay all of its debts and it is shown that the failure to keep proper books of account has contributed to this, or has resulted in substantial uncertainty concerning the company's assets and liabilities or has substantially impeded its orderly liquidation, a court may declare that a director or any other officer who is in default of the above obligation shall be personally liable without limit.

Each year the directors of a company are required to lay before the annual general meeting a profit and loss account and balance sheet in respect of the company. If relevant, this should include a group profit and loss account and balance sheet. In each case these financial statements must give a true and fair view of the state of affairs of the company/group at the end of its financial year and must be signed on behalf of all of the directors by two of the directors. Included with these financial statements there must be a report of the directors on the state of the company's affairs and a report of the company's auditors on the accounts examined by them. Failure by a director to take all reasonable steps to ensure compliance with these obligations is an offence.

A company is also required to make an annual return in the prescribed form to the Registrar of Companies at least once a year. Annual returns must now be filed generally no later than 28 days after the annual return date. Failure to meet filing deadlines results in the imposition of late filing fees.

In addition, a company may need to make other returns in the course of the year with regard to other matters. These obligations are not confined to the directors of the company and may extend to some of its officers.

It should be noted that from 30th June 2016, UK limited companies will be required to file an annual confirmation statement instead of an annual return. The change will be introduced as part of the Small Business, Enterprise and Employment Act 2015. Similar to the annual return, the confirmation statement must be filed once every 12 months. It is hoped that it will be a more simplified process for administrative purposes.

#### *In what form must the investor keep accounts (e.g. GAP, in what language, etc.)?*

The Companies Act 2006 (the "Act") imposes an obligation on directors and certain other officers of a company to provide information requested by company's auditors. Any director who knowingly or recklessly supplies materially misleading, false or deceptive information will be guilty of an offence.

In certain circumstances, persons, including directors, are obliged by the Act to furnish information and documents to other parties, such as, the Registrar of Companies, and directors will be guilty of an offence for failing to do so.

## **D. Business Ethics/Codes**

#### *Are there certain business ethics or codes which the investor must follow (e.g. GAAP for accountants, etc.)?*

There are business codes specific to professions such as accountancy and law but there are no business codes for most commercial activities of a non-professional nature.

## **E. Consumer Protection Laws**

### *Are there consumer protection laws which apply to the investor's operations?*

The consumer protection laws protect the consumer in all areas of commercial activity. Apart from possible liability in negligence or breach of contract, the main pieces of legislation giving rise to liability are the Sale of Goods Act and the Supply of Goods and Services Act. The consumer has various rights, enforceable against a retailer, in relation to goods. For example, the goods must be of merchantable quality, they must be reasonably fit for their purpose and they must be as described.

## **F. Construction**

### *What are the costs of construction? -Are permits required for construction? -How is authorization to construct obtained? -How long does it take to receive authorization? -What fees are involved?*

The form and costs of construction contracts vary according to the different circumstances in each case. Generally construction contracts are concluded on either a fixed price basis or reimbursable basis. Planning permission legislation must be complied with, in respect of developments, prior to commencing construction. It can take several months to obtain full planning permission consent from the relevant local authority. Notably, as part of local government reform, the bulk of planning functions in Northern Ireland no longer rests with the Department of the Environment. Instead, these powers have been devolved to 11 new councils from 1st April 2015. Contractors must also abide by the health and safety regulations.

## **G. Contracts**

### *Can the investor freely enter into local contracts? -Can the contracts be governed by the law of another country?*

Northern Irish law adheres to the principles of common law and, while there is Northern Irish case law, decisions from the English courts and other pertinent jurisdictions are often cited. A contract may be broadly defined as an agreement between two or more parties enforceable by them at law, the breach of which gives rise to a right of damages. Different types of contracts are possible, such as agency agreements and distribution agreements. Many agency agreements are covered by the Commercial Agents (Council Directive) Regulations (Northern Ireland) 1993 as transposed into UK law.

## **H. Price Controls**

### *Are there applicable price controls?*

Price control legislation does still exist, however it is rarely invoked.

## **I. Product Registration**

*Must the entity register its product? -If so, how is registration obtained? -How long does the process take? -Are there fees involved?*

In general there are no registration requirements. However, registration might be required on an industry by industry basis. For example, if the product is a foodstuff then food regulations must be complied with.

## **J. Reduction or Return on Capital**

*Can capital be repatriated while the corporation is still ongoing?*

The concept of authorised share capital has been abolished by the Companies Act 2006; there is no longer a requirement for a company to include its authorised share capital in its memorandum, and directors may increase share capital by simply allotting new shares. For existing companies, the authorised share capital currently stated in the company's memorandum will constitute a restriction in its articles of association which may be removed or amended by ordinary resolution.

In the case of issued share capital, where it is appropriate to do so, a company may reduce its share capital if permitted by statute and confirmed by the court. The situations in which a company may reduce its share capital are outlined in the Companies Act 2006. A private company limited by shares can either:

Option 1: pass a special resolution and apply to court for confirmation of the reduction; or

Option 2: pass a special resolution supported by a solvency statement made by all its directors and deliver certain documents to Companies House, without requiring a court process.

## **K. Sale of Goods**

*Are there restrictions on the manner, time or place of sale of goods?*

There are licensing laws governing the manner, time and place of sale of alcohol. Some of the requirements, for example, to have the business within one mile of the original licence, have been abolished in recent years.

## VIII CESSATION OR TERMINATION OF BUSINESS

### A. Termination

#### *What are the tax consequences of terminating the business?*

The particular circumstances of each business would have to be reviewed to determine what the tax consequences of termination would be. Amongst the issues to be considered would be the following:

- the termination of the business would mean that if there had been any losses carried forward, they would be lost, since generally they can only be carried forward for set-off against profits of the same trade;
- if the business owns assets which were the subject of capital allowances claims, the position would have to be reviewed to determine whether there was any clawback of allowances on the termination of the business;
- if its assets are disposed of on termination, a capital gains tax liability could arise;
- if the company will be subject to corporation tax in respect of the period from the last accounting date to the date of cessation; and
- if the business had sustained losses at termination any loss incurred in the final period can be carried forward and set off against income from the same trade in the three proceedings years.

#### *What costs are involved in termination?*

It costs £10 to strike off a limited company from the Companies Register and the relevant Companies House form is a form DS01. To be struck off the Companies Register, the company must not have traded or sold any stock in the last 3 months; it must not have changed its name in the last 3 months; it must not be threatened with liquidation and there must not be any agreements with creditors in place. Otherwise, a company would need to voluntarily liquidate the company instead as outlined below.

There are legal, accounting fees including the fees for a liquidator or receiver. In the case of the receiver, the fee is usually fixed by the person (often a debenture holder) who appoints him. However an application may be made to the court by the liquidator or any member to the court to fix the remuneration. In a compulsory liquidation the court has control over how much the liquidator is paid. In a voluntary winding-up a liquidator's fees is fixed either by the members at a general meeting or by the court where it is not fixed by the members.

The company may also be required to repay any grants received from Invest NI.

#### *How long does it take to terminate the business?*

The time to terminate a business will depend on the circumstances in which the business is terminated and whether the company is solvent or insolvent. If a company is solvent, it can apply to be struck off the Register of Companies or start a members' voluntary liquidation.

For striking off, once the form DS01 is sent to Companies House, an acknowledgement letter will be sent by Companies House to advise whether the form has been filled out correctly. If it is filled out correctly, the request for the company to be struck off will be published as a notice in the local Gazette. Under old legislation, if nobody objects, the company would be struck off the register once the 3 months mentioned in the notice has passed. A second notice will then be published in the Gazette which will mean the company will not legally exist anymore. However, the Small Business, Enterprise and Employment Act 2015 has introduced a new timescale that the company is struck off not less than 2 months from publication of the Gazette notice.

For members' voluntary liquidation, the first step would be to complete a "Declaration of solvency" and it must be signed by the majority of the company's directors. A general meeting with the shareholders should be called at least 5 weeks later and a resolution for the voluntary wind up would need to be passed. The resolution would then need to be advertised in the Gazette within 14 days. The company would then need to appoint a liquidator to take charge of winding up the company and send the signed form to Companies House within 15 days of passing the resolution.

A director can propose a creditors' voluntary liquidation if the company is insolvent and if enough shareholders agree. This would mean that the company would stop trading and be liquidated. 75% of shareholders must agree to the winding up to pass a winding up resolution. After the resolution is passed, an authorised insolvency practitioner would need to be appointed as liquidator to take charge of liquidating the company. The resolution would need to be sent to Companies House within 15 days and it should be advertised in the Gazette. The directors must also hold a meeting with all the creditors within 14 days of the winding up resolution.

Alternatively, a company might be forced into compulsory liquidation if it does not pay its creditors. A company's creditors can apply to the court to get their debts paid by obtaining a court judgment or making an official request for payment (a statutory demand).

If a company is insolvent, it could use a Company Voluntary Arrangement to pay creditors over a fixed period and if the creditors agree, a limited company could continue trading. The insolvency practitioner would work out an arrangement covering the amount of debt a company can pay and the payment schedule within a month of being appointed. The insolvency practitioner would then write to creditors about the arrangement and invite them to a meeting to vote. To use this option, the Company Voluntary Arrangement must be approved by creditors who are owed at least 75% of the debt.

### *How is the investor's particular form of business treated in termination?*

### *Can the business be terminated without government approval or intervention?*

Yes- if nobody objects to the notice of striking off in the local Gazette, a company can be struck off the register once the 3 months in the notice has passed.

However if the staff numbers exceed certain statutory limits then the relevant Government Department requires to be given one month's notice where the termination will result in collective redundancy.

### *What are the obligations toward creditors, employees and others upon termination?*

A company would need to inform creditors, members and others that are likely to be affected by the company's dissolution as any of them may object to the company being struck off.

The directors who make the application must within 7 days of sending the application to the Registrar, send a copy to its members, creditors, employees, managers or trustees of any employee pension fund and any directors who have not signed the form.

Notably, striking off is not an alternative to formal insolvency proceedings where these are appropriate and even if a company is struck off and dissolved, creditors and others could still apply for the company to be restored to the register.

The obligations towards creditors, employees and others will vary, depending on whether the company is solvent or insolvent. Where the company is solvent, all the creditors will have to be paid any money due to them. If it is insolvent, the state arranges for the debts to be paid and after that the creditors and employees will be paid any money due to them.



### *What are the tax consequences of termination?*

Where a company is being wound up a liquidator is appointed, either by the creditors in the case of a voluntary liquidation or by the court in the case of a compulsory winding up. In addition a receiver may be appointed, though in the case of an insolvent company the liquidator may apply to the court for an Order to stop the receiver from acting.

The company may also be required to repay any grants received from Invest NI.

## **B. Insolvency/Bankruptcy**

### *What is the extent of the investor's liability in the event of insolvency or bankruptcy?*

Investors in a limited company only incur personal liability for the company's debts in very rare circumstances. It may arise where they have given personal guarantees or where they are found by a court to have traded as individuals and the Company has been a sham. Only Directors of a Company may be found guilty of Fraudulent or Wrongful Trading under the Companies Act 2006.

## IX LABOR LEGISLATION, RELATION, AND SUPPLY

### A. Employer/Employee Relations

Save for a few provincial nuances, employment law in Northern Ireland largely mirrors the laws of England and Wales.

#### *What laws govern Employer/Employee Relations?*

##### **(1) The Employment Rights (Northern Ireland) Order 1996 (the ERO)**

The Employment Rights (Northern Ireland) Order 1996 (the ERO), is the foundational piece of legislation governing the employment relationship in Northern Ireland. It embodies the primary rights and obligations of both the Employer and Employee in respect of key aspects of the employment relationship from its inception to its termination and covering most potential eventualities in between.

The ERO covers the following key aspects of the employment relationships.

##### ***Employment Particulars***

Within the first two months of the employment, the Employer must give the Employee a written statement setting out certain key employment terms which are specified in the ERO. These terms include the commencement date, place of work, frequency and rate of payment, the length of the Notice period and certain other specified entitlements.

In addition, the written terms must include the period of employment, if it is for a fixed term or specified purpose. The length of any trial period must also be included. Any changes to the written terms must be notified also in writing by the Employer to the Employee at the earliest opportunity, and in any case within a month of their taking place. Unilateral variations to a Contract by an Employer to the detriment of an Employee are not permitted without the Employee's consent.

It is worthy to note that the terms and conditions which an Employer is obliged to communicate to an Employee in writing may not reflect the full Contract between the parties. Terms and conditions which are not covered, but agreed by the parties at the time of the Contract or later, may be upheld by a Court or Tribunal

##### ***Protection of Wages***

The ERO establishes certain rights for all Employees relating to the payment of wages. All Employees are entitled to a written statement of wages, contributions and deductions. Save for a number of excepted circumstances the ERO prohibits unauthorised deductions from wages, unless for example, the authorised deductions are made by or under statute or if the Employee previously consented to the deduction or payment by way of written agreement.

An Employee can bring a complaint to an Industrial Tribunal in respect of an unauthorised deduction or payment, provided the complaint is made within 3 months of the date of the unauthorised deduction or payment.

##### ***Maternity Paternity and Adoption Rights***

The ERO provides all pregnant employees with an entitlement to reasonable paid time off for anti-natal care. This right is not dependent upon length of service. During confinement and after the birth the mother is (subject to qualification) entitled to receive Statutory Maternity Pay (SMP) from the Employer as a minimum payment. Employers can offset SMP payments against any allowable payments due to be made to HMRC.

With respect to the leave itself, all female Employees are automatically entitled to 26 weeks of ordinary maternity leave. Maternity leave must commence no earlier than 11 weeks before the expected week of childbirth and no later than the expected week of childbirth itself. The two weeks

following the birth of a baby is regarded as “compulsory maternity leave”. It is a criminal offence for an Employer to allow a woman to return to work within the compulsory leave period.

During the basic maternity leave period the Employee’s terms and conditions (save for the entitlement to remuneration) remain in existence and the Employee is entitled to return to the same job, or to a suitable alternative position.

An Employee is entitled to additional maternity leave up to a maximum of 26 weeks. Therefore an Employee can take up to 52 weeks maternity leave. To qualify for additional maternity leave, the Employee must have been continuously employed by her Employer for 26 weeks ending with the fifteenth week before the expected week of childbirth.

People on extended maternity leave are entitled to return to work on terms and conditions no less favourable than those that would have applied if she had not been absent. Failure to allow an Employee to return to work on this basis, may entitle the Employee to bring a claim of sexual discrimination or, in some circumstances, breach of Contract. Dismissal of an Employee for any reason connected with pregnancy or recent childbirth, will be automatically unfair and discriminatory. The Employee will be entitled to challenge this dismissal before The Industrial Tribunal irrespective of her length of service.

In order to qualify for paternity leave, an Employee must have been with the employer for at least 26 weeks by either the end of the 15th week before the start of the week when the baby is due or the end of the week you are notified you are matched with their child. As long as an Employee meets certain conditions, an Employee can take either one or two weeks' paternity leave. Employees should also be mindful of their rights to shared parental leave and pay (discussed below).

With respect to adoption leave, an Employee will be entitled to up to 26 weeks ordinary adoption leave followed by 26 weeks additional adoption leave. Adoption leave will be payable for up to 26 weeks. It will be paid at the same rate as the standard SMP (subject to other qualification criteria). During the period of adoption leave, the Employee will be bound by, and be entitled to the benefit of all terms and conditions (except remuneration). During the additional adoption leave, the Employee will benefit from a more limited set of terms and conditions. Protections similar to those enjoyed by Employees on maternity leave, in respect of dismissal are also afforded to Employees on adoption leave. In addition, since the introduction of shared parental leave and pay on 5 April 2015 (discussed below), adopters can now bring their adoption leave and pay to an early end and opt into shared parental leave and pay with their partner.

The Work and Families Act (Northern Ireland) 2015 governs the new shared parental leave (“SPL”) and statutory shared parental pay (“SSPP”) regime which is available for eligible employees whose baby was due on or after 5 April 2015 or who have had a child placed with them for adoption on or after that date. It aims to give parents flexibility in how they care for their child and how best to balance work and domestic needs. Women continue to be eligible to take up to 52 weeks of maternity leave (or in the case of adopters, 52 weeks of adoption leave) and the same arrangements for statutory maternity pay or maternity allowance will continue to apply. SPL will be created where an eligible mother or adopter ends their maternity or adoption leave early. The untaken weeks of maternity or adoption leave can be taken as SPL if the eligibility criteria are met. Similarly, the SSPP will be the residual amount of statutory maternity or adoption pay unused by the mother or adopter.

### ***Termination of the Contract of Employment***

With respect to fixed term Contracts, these can be terminated before the end of its term, by notice, if the Contract contains a notice provision. Alternatively, it can be prematurely terminated if the other party is guilty of a serious breach of the terms of the Contract. That said, an Employee who has been engaged on a Contract, or succession of Contracts for a period in excess of one year, may be entitled to claim unfair dismissal.

Contracts which are entered into for an indefinite period tend to contain an express term giving either party the right to terminate the Contract by giving the other specified period of notice.

Save for terminations due to a serious breach of Contract, the terminating party must give the other the requisite period of notice, as set out in the Contract. For the notice to be valid, the basic requirement is that it must clearly indicate an intention to end the Contract at a given date. Generally, notice tends to be given in writing. In any event, Employees with one year's continuous service can demand written reasons for their dismissal.

The ERO provides minimum periods of notice, based on length of service with the same employer. In short, one week's notice must be given for service of four weeks to two years. Thereafter an additional week's notice for each additional completed year of service, up to a maximum of 12 weeks' notice.

Should the Contract require either or both parties to give a longer period of notice than the statutory minimum, the contractual obligation must be adhered to. Should the Contract specify a notice period which is shorter than the statutory minimum, the provision is void and is replaced by the statutory notice period.

An Employee who resigns is required to give his Employer the notice period required by the Contract, or in the absence of any contractual provision, statutory notice of one week.

The only circumstances under which either party is entitled to terminate the Contract of Employment without giving the other party notice (be it statutory or contractual) is where the other party is in serious breach of one of the basic obligations of the Contract. The party purporting to terminate without notice must be able to show that the breach(es) warranted immediate termination of the Contract.

A dismissed employee can challenge the dismissal in one of two ways.

The first option is to bring a claim of wrongful dismissal. Wrongful dismissal occurs when the Employer terminates the employment in breach of Contract, for example, failing to give the Employee adequate notice. Any Employee (irrespective of their length of service or status) who believes that their Contract has been terminated in a manner which is not consistent with his/her Contract of Employment can sue for damages in a Court of an appropriate jurisdiction. If successful, the award given may be reduced by any employment benefit which the Employee has received during the period complained of or by any earnings from new employment during that period (less all loss of deductions). The amount of any such award is not capped.

The second and more popular option is to bring a statutory claim of unfair dismissal. The basis for this claim is the ERO. It occurs when an Employee can prove to an Industrial Tribunal that his/her dismissal was for a reason other than one of the following five accepted grounds for dismissal:

-capability/performance (lack of); -persistent or gross misconduct; -redundancy; -continued employment would be in contravention of a statutory provision; -some other substantial reason.

In addition the Employer must also show that its conduct, in effecting the dismissal was reasonable in the sense that it followed fair procedure.

The Employer must also be able to show that the reason for the dismissal of the Employee was not wholly or indeed partially connected to a number of circumstances, specified in the ERO as being automatically unfair.

A claim for unfair dismissal must be lodged within three months of the effective date of termination. If successful the most common remedy awarded is compensation. Compensation is made up of two elements, basic and compensatory. The basic award is calculated with reference to the Employee's age and length of service. The compensatory award is designed to offset losses incurred as a result of the dismissal. From 6 April 2016, the maximum compensatory award for unfair dismissal is £79,100. However, this maximum limit does not apply for dismissals which constitute sexual, religious, racial or disability discrimination. Dismissal on any of these grounds can also result in an award for "injury to feelings."

In addition to, or as an alternative to an award of compensation, the Industrial Tribunal can order the Employer to either reinstate or re-engage the Employee. However, these remedies are rarely invoked.

An Employee must have completed one year's continuous service to be entitled to claim unfair dismissal. That said, no service qualification is necessary where an Employee believes that the dismissal arose from sexual, racial, religious or disability discrimination or where it was based on one of the automatically unfair reasons for dismissal referred to above.

### ***Redundancy***

The ERO defined redundancy as a dismissal wholly or mainly attributable to:

- the Employer's decision to stop carrying on that business in the place where the Employee was employed; or
- the fact that the work for which the Employee was hired has ceased or diminished at that place.

To qualify for a lump sum statutory redundancy payment, an Employee must be between the ages of 18 and 65 and have worked for the Employer for at least two years. Service before the age of 18 does not count. Calculation of the statutory redundancy payment is based on an Employee's continuous length of service and their age.

The maximum length of service taken into account is 20 years and there is a ceiling on the amount paid of £500 per week. Thus the maximum payment under the statutory formula is £15,000 in Northern Ireland. An Employer is entitled to 0.5 weeks' pay for each full year worked when the Employer is under 22 years old; 1 week's pay for each full year worked when the Employer is between the ages of 22 and 41; and 1.5 week's pay for each full year worked when the Employer is 41 years or older. Statutory redundancy payments are not taxable.

There are certain information and consultation procedures which an Employer must comply with, in circumstances where 20 or more dismissals by reason of redundancy take place at one establishment within a period of 90 days -i.e. constitutes a collective redundancy. The exact nature of the information and consultation obligations are set out in detail in the Trade Union and Labour Relations (Northern Ireland) Order 1995.

An Employer who fails or refuses to take all reasonably practicable steps so as to comply with the information and consultation procedures on collective redundancies, will be liable for awards of up to 90 days of pay for each dismissed employee. Furthermore, any individual selected in the collective redundancy may bring a claim for unfair dismissal on the basis that the Employer did not follow fair procedure in effecting the redundancies.

### **(2.) Working Time Regulations (Northern Ireland) 2016**

The Working Time Regulations (Northern Ireland) 2016 (the 2016 Regulations) provides that unless an Employee has an opt out agreement, or an exemption applies, Employees aged 18 or over cannot be forced to work more than 48 hours a week on average. The maximum working week is averaged over a rolling reference period of 17 weeks in the majority of cases. Whilst the reference period can be fixed, reduced or extended by a collective or workforce agreement, it cannot be longer than 52 weeks.

Subject to a number of specified exceptions, the 2016 Regulations also require adult day workers to receive a daily rest period of at least 11 consecutive hours in every 24 hours; an uninterrupted weekly rest interval of at least 24 hours in every 7 days or one of at least 48 hours in every 14 days; and an uninterrupted rest break of at least 20 minutes when an individual's work period lasts more than 6 hours. There are special requirements for young people and night workers which are set out in the 2016 Regulations.

Adult workers can voluntarily opt out of the 48 hour maximum working week limit provided they do so of their own free will and give their consent in writing. An employee can revoke this consent by giving the Employer 7 days' written notice.

Employers are obliged to keep records going back two years exhibiting their compliance with provisions of the maximum weekly working time. These records should detail the hours worked by Employees who have not opted out as well as those employees that have.

The 2016 Regulations also introduced a general right to minimum paid annual leave for all employees save those employed in certain transport or maritime activities and Doctors in training. Regulation 15 states that the entitlement is 4 weeks leave in each leave year. Employees who are recruited in the middle of the annual leave require their annual leave entitled on a pro rata basis. This minimum statutory entitlement must be taken in the relevant holiday year. If any employees get more than the statutory minimum, any such excess annual leave entitlement may, be carried forward subject to agreement between the parties.

In addition to the minimum statutory annual leave entitlement, employees tend to receive the following public holidays:

- New Year's Day
- March 17 (St Patrick's Day)
- Good Friday
- Easter Monday
- May 1st (or the nearest Monday)
- Last Monday in May (Spring Bank Holiday)
- July 12th (Orangeman's Day)
- Last Monday in August (Autumn Bank Holiday)
- Christmas Day
- Boxing Day

Work on public holidays is generally paid as overtime at double to normal pay rate.

### **(3) The Employment Relations (Northern Ireland) Order 1999**

The Employment Relations (Northern Ireland) Order 1999 sets out the law in relation to collective bargaining, trade union recognition and all other aspects of employment relating to trade union membership. It also sets out certain minimum standards of procedure which an Employer must adhere to in relation to disciplinary and grievance hearings, for example, the right of an Employee to be accompanied by a trade union representative, colleague or some other acceptable representative at any such hearing. Essentially, the rights and obligations of Employers and Employees are set out in the Employment Rights (Northern Ireland) Order 1996.

### **(4) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "2006 Regulations") and the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 (the "SPC Regulations")**

TUPE implements the EU Directive on acquired rights. By virtue of TUPE, existing Employees of a business that changes ownership (except for a share transfer) have a right to transfer to the new Employer under the same terms and conditions of employment (both contractual and customary) with the exception of occupational pension provisions.

Upon transfer to the new Employer, the Employee's service with their previous Employer remains in tact, i.e. there is no break in his/her continuity of employment. Should an Employee refuse to transfer, then this refusal operates as termination of the Contract of Employment, thus dis-entitling the Employee to any redundancy payment or claim of unfair dismissal.

The SPC Regulations are commonly applied to work contracts for office cleaning, workplace catering or security. There are two exceptions to when a service provision change will be protected by TUPE:

- if the contract is for the supply of goods for the company's use; or
- if the contract is carried out in connection with a single specific event or short-term task.

An Employee is only protected under a service provision change if he/she can clearly be identified as completing the service that is being transferred.

Terminations for either the old or the new Employer, for reasons related to the transfer are unlawful save for terminations which are based upon economical, technical or organisational reasons which necessitate a change in the workforce.

Prior to the transfer taking effect, the original Employer is required under TUPE to inform the designated Employee representative(s) of the fact of the transfer and its legal and social implications as well as the measures envisaged to be taken in relation to the Employees. Where a trade union is recognised, then the Employer must consult with the trade union. The original Employer is also required to consult with the representatives in good time with a view to seeking their agreement to any such measures. Failure to inform and consult within the requisite time period can result in penalties of up to 90 days' pay per effected Employee.

## **(5) Equal Opportunity**

### ***5.1 Sex Discrimination (Northern Ireland) Order 1976 (Amended 1988)***

The 1976 Order bans direct and indirect discrimination at work on the grounds of sex or marital status both in recruitment, access to terms and conditions of employment, opportunities for training, transfer or promotion and with respect to termination of employment. Adherence to these statutory provisions is monitored by the Equal Opportunities Commission. Case law has established that sexual harassment constitutes unlawful sexual discrimination. Sexual harassment refers to words or conduct which was unwelcome to the recipient.

### ***5.2 Equal Pay Act (Northern Ireland) 1970 (Amended 1984)***

The Equal Pay Act (Northern Ireland) 1970 stipulates that men and women should receive equal pay for equal work or for the equivalent work of equal value. The 1970 Act provides for the calling of an independent expert to determine the value of the work. In making his assessment, the expert can draw comparisons with other jobs in the same Company.

### ***5.3 The Fair Employment (Northern Ireland) Act 1990 (As Amended 1998)***

The Fair Employment and Treatment (Northern Ireland) Order 1998 combat religious and political discrimination in the work place in Northern Ireland. The 1998 Act provides for sanctions which include suspension of state aid, ineligibility for public contracts and fines. Compliance with the Act is monitored by the Equality Commission for Northern Ireland.

### ***5.4 Disability Discrimination Act 1995***

The Disability Discrimination Act 1995 affords statutory protection to disabled people in respect of their access to employment, terms and conditions of employment, promotion and training and selection for dismissal. It is unlawful for an Employer to treat a disabled person less favourably than an able bodied individual unless there are justifiable reasons for the difference in treatment. The 1995 act requires Employers to make reasonable adjustments within the workplace to overcome the practical effects of an individual's disability insofar as is possible.

Again the Disability Discrimination Act 1995 is enforced by The Equality Commission for Northern Ireland.

### ***5.5 Race Relations (Northern Ireland) Order 1997***

The Race Relations (Northern Ireland) Order 1997 outlaws direct and indirect discrimination on the grounds of colour, race, nationality or ethnic or national origins. The act prohibits discrimination of an individual with respect to recruitment, dismissal and all other terms and conditions and opportunities which arise during the course of the employment relationship.

As with the other pieces of equality legislation the Race Relations (Northern Ireland) Order 1997 is enforced by the Equality Commission for Northern Ireland.

Under all of the legislation referred to above, a range of statutory Codes of Practice have been developed to cover specific key areas. In addition, of primary relevance are various European Directives and wider European Community Legislation which are periodically rolled out.

#### **6. Health and Safety at Work Order (NI) 1978**

The Health and Safety Work Order (NI) 1978 was enacted with the purpose of preventing accidents and ill health in the workplace. The Health and Safety Executive was established pursuant to the Act and is charged with enforcement.

Every employer is under general duty, to ensure, in so far as is reasonably practicable, the health and welfare at work of all its employees. Various specific duties are imposed on employers, including the preparation of a written safety statements in respect of each work place.

#### **7. National Insurance**

Employees and employers pay National Insurance contributions on employee's emoluments upon deduction of certain approved contributions.

Everyone between the ages of 16 to 65 years of age, in insurable employment must pay national insurance.

#### ***Are there obligations to train Employees?***

Health and Safety Legislation requires that Employees be trained so as to ensure that they are conscious of safety and vigilant to the risks and hazards involved in the work place with regard to work systems and work equipment.

### **B. The Employment Regulations**

#### ***Must the investors hire nationals of the country?***

The investor should first seek to hire nationals of a country within the European economic area (EEA). In the event that this is not possible, the investor must apply to the Overseas Labour Service, Department of Education and Employment for a work permit in respect of each and every Employee who is not from an EEA country that it wishes to employ in Northern Ireland.



### *Is there a minimum wage?*

From 1 April 2016, the new National Living Wage (“NLW”) came into force for workers aged 25 and over. It will affect employees, most workers and agency workers, casual labourers, agricultural workers and apprentices who are aged 25 and over and who have completed their first year of apprenticeship. The NLW has initially been set at £7.20 per hour which is a rise of 50 pence relative to the current National Minimum Wage (“NMW”). The current NMW for those under the age of 25 will continue to apply. The levels of NMW vary depending on the age of the Employee and whether he/she is an apprentice. The current rates in Northern Ireland are: £6.70 for workers aged 21 and over; £5.30 for workers aged 18-20, £3.87 for workers aged 16-17 and £3.30 for apprentices under 19 years old or 19 or over and in the first year of their apprenticeship.

Employers that do not pay its workers the correct rates of pay, unless the arrears are paid by the employer within 14 days, will have to pay a penalty for non-payment which would be 200% of the amount owed. The maximum fine for non-payment could be £20,000 per worker and employers who fail to pay could be banned from being a company director for up to 15 years.

### *Is there a maximum number of hours an Employee can work each week?*

Generally, Employees must not work more than 48 hours per week averages over a 17 week reference period. See the section on Working Time Regulations (Northern Ireland) 2016 above for further detail.

### *Is there a minimum of vacation and sick days to be given?*

An Employer is not statutorily obliged to give an Employee a specific number of sick days. Sick pay may be paid at the discretion of the Company.

Annual leave entitlements are set down in the Working Time Regulations (Northern Ireland) 2016 which are referred to in more detail above. Essentially, an Employee is entitled to 5.6 weeks paid annual leave (28 days for someone working five days a week) which can include bank and public holidays.

## **C. Hiring and Firing Requirements**

### *Must the investor employ a minimum number of people?*

There is no legal requirement to employ a minimum number of people.

### *Must the investor employ a minimum number of nationals?*

There is no legal requirement to employ a minimum number of nationals.

### *Must certain positions in the Company be held by nationals?*

There is no legal requirement that certain positions within the Company be held by nationals.

### *Are there rules to follow in hiring/dismissing personnel?*

In hiring personnel Employers must be cognisant of the provisions of the Employment Rights (Northern Ireland) Order 1996 and the Employment Relations (Northern Ireland) Order 1999.

## D. Labour Permits

### *Are labour permits required?*

If a person is from the EEA or Switzerland, he/she can work in Northern Ireland without a work permit. However, if a person is not from EEA or Switzerland, he/she must apply to get a permit to work in Northern Ireland.

### *If so, how are they obtained?*

If a person is not from the EEA or Switzerland, he/she must apply under the points-based system to work in the UK. There are five tiers to work in the UK:

1. Tier 1 – highly skilled workers;
2. Tier 2 – skilled workers with a job offer;
3. Tier 3 – low-skilled workers filling specific temporary labour shortages;
4. Tier 4 – students; and
5. Tier 5 – youth mobility and temporary workers.

For people from the EEA wanting to work in the UK, he/she would need to show a prospective employer his/her passport, national identity or Home Office Registration Certificate and show the UK Border Agency his/her work document if he/she is from an A2 or A8 country and need permission to work.

Work permits are dealt with by the Home Office Border and Immigration Agency. The work permit division will seek to ensure that the Employee in question has not lived, or worked illegally in the UK and that the Employer has made a reasonable effort to hire an EEA national to the position. Employers can face unlimited fines if they employ illegal workers. Employers should also be mindful about discrimination laws in Northern Ireland and ensure all job applicants are treated equally.

### *How long does the process take?*

The work permit division aims to decide 90% of complete applications containing the required information within one day of receipt and 90% of all applications within one week. However, its ability to reach this decision is dependent upon the Employer supplying all of the information at the time of application. An employer must apply for the work permit and it is advised that it should not apply more than six months or less than four weeks before the work permit is needed.

### *What does a permit cost?*

The charge for each type of work permit application is set out in the guidance notes for the Home Office and Nationality Charges 2016 available online at <https://www.gov.uk/topic/immigration-operational-guidance/fees-forms>. The fee varies based on the type of work permit that an employer is applying for.

## X TAX ON CORPORATIONS

Northern Ireland's position as part of the United Kingdom with its pro-business tax regime makes it one of the most attractive and profitable locations in Europe for investors. The UK has historically been a low tax environment for business.

Pursuant to the Corporate Tax (Northern Ireland) Act 2015, the Northern Ireland Executive has the power to set the rate of corporation tax on certain trading profits from 1 April 2018. It is expected the rate will be set at 12.5%. The new rate of corporation tax will only apply to companies that trade in Northern Ireland and it is particularly aimed at companies that will create employment in Northern Ireland. It will exclude companies that only have rental and investment income. However, the government has indicated that it will not legislate to implement the provisions of the act until the Northern Ireland Executive's finances are on a "sustainable footing."

The levels of corporation tax in Northern Ireland are among the lowest in the EU as shown below.

### EU Corporation Tax Rates 2015

Country	Corporation Tax
Belgium	33%
Italy	27.5%
France	33.33%
Spain	35%
Austria	25%
Portugal	21%
Luxemburg	21%
Northern Ireland	20%
Germany	15%

Source: *Corporate Tax Rates 2015: Deloitte (August 2015)* available at:

<http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-corporate-tax-rates-2015.pdf>

There have recently been significant changes to the R&D tax reliefs available for spending by businesses on research and development.

R & D Relief allows limited companies, who carry out qualifying R & D related to their trade to claim extra corporation tax deduction for certain qualifying revenue expenditure. The level of relief available depends upon which R & D relief scheme a company falls within as set out below.

#### 1. The SME Scheme

From 1 April 2015, a company can get relief of 230% on its qualifying R & D costs. Furthermore, loss-making companies can in certain circumstances surrender the losses arising in return for a payable tax credit.

## 2. The Large Company Scheme

Under this scheme, a company can get relief of 130% on its qualifying costs. However, there is no payable tax credit for losses under this scheme.

## 3. Research and Development Expenditure Credit Scheme

This scheme was introduced for expenditure incurred on or after 1 April 2013. From 1 April 2015, a taxable credit is available at 11 per cent of qualifying R&D expenditure.

Companies can claim R & D Relief by entering the total qualifying expenditure on the full Company Tax Return form CT600 as well as outlining the project, the scientific or technological uncertainties to be resolved and the allowable costs on direct resolution. Backdated claims are also possible. Manchester R & D Unit deals with all Northern Ireland claims and queries should be sent to [randd.manchester@hmrc.gsi.gov.uk](mailto:randd.manchester@hmrc.gsi.gov.uk).

## XI TAX ON INDIVIDUALS

### 1. Income Tax

The amount of income tax an individual pays in each tax year (from 6 April to the 5 April the following year) depends on how much his/her taxable income is above his/her personal allowance and how much of it falls within each tax band. There are also other allowances for married couples and blind person's allowance. Tax is then paid on the amount of taxable income remaining after the allowances have been deducted on the basis of the below.<sup>1</sup>

Band	Rate	Income after allowances 2016 to 2017	Income after allowances 2015 to 2016	Income after allowances 2014-2015	Income after allowances 2013- 2014
Starting rate for savings	10% (0% from 2015 to 2016)	Up to £5,000	Up to £5,000	Up to £2,880	Up to £2,790
Basic rate	20%	Up to £32,000	Up to £31,785	Up to £31,865	Up to £32,010
Higher rate	40%	£32,001 to £150,000	£31,786 to £150,000	£31,866 to £150,000	£32,011 to £150,000
Additional rate	45%	Over £150,001	Over £150,001	Over £150,001	Over £150,001

There are also different classes of national insurance and the type depends on a person's employment status and how much a person earns.

### 2. Capital Gains Tax

Capital Gains Tax would also be payable by individuals when an asset has been disposed of and it has increased in value. The individual would be taxed on the gain that is made; not the money that is received by the individual. Some assets are tax-free and no Capital Gains Tax would need to be paid if all gains in a year fall within an individual's tax-free allowance. Note that for 2016-2017, the annual exempt amount is £11,100.

For the tax years 2016 to 2017, the following Capital Gains Tax rates apply:<sup>2</sup>

- 10% and 20% tax rates for individuals (not including residential property and carried interest);
- 18% and 28% tax rates for individuals for residential property and carried interest;
- 20% for trustees or for personal representatives of someone who has died (not including residential property);
- 28% for trustees or for personal representatives of someone who has died for disposals of residential property;

<sup>1</sup> <https://www.gov.uk/government/publications/rates-and-allowances-income-tax/income-tax-rates-and-allowances-current-and-past>

<sup>2</sup> <https://www.gov.uk/government/publications/changes-to-capital-gains-tax-rates/changes-to-capital-gains-tax-rates>

- 28% for Capital Gains Tax on property where the Annual Tax on Enveloped Dwellings is paid - the Annual Exempt Amount is not applicable; and
- 20% for companies (non-resident Capital Gains Tax on the disposal of a UK residential property).

### 3. Inheritance Tax

Individuals should also be mindful of inheritance tax which is paid if a person's estate is worth more than £325,000 when they die. The rate of Inheritance Tax is 40% on anything above the threshold and this rate may be reduced to 36% if 10% or more of the estate is left to charity. Usually the executor of the will or the administrator of the estate is responsible for paying the Inheritance Tax.

Notably, there are some reliefs to Inheritance Tax such as business relief which allows a business or its assets to be passed on without the need to pay Inheritance Tax, or at a reduced rate. Other reliefs include agricultural relief for agricultural property and woodland relief.

## XII TAX ON OTHER LEGAL BODIES

### A. Taxes Generally

*-Is there a generally accepted way of structuring the company or other entity so as to ensure the desired tax consequences?*

*Is there an advance tax ruling that can be used to validate or invalidate the chosen form of doing business?*

*Is there a general anti tax avoidance system?*

*Can the chosen form of business be treated as a deferent form for tax purposes?*

In Northern Ireland, tax is imposed by statute, though HMRC has developed extra-statutory rules of practice for the administration of aspects of the taxing statutes. It is possible to obtain advance opinions from the HMRC authorities, particularly in the context of inward investment transactions. While such opinions are not technically binding it would be highly unusual for HMRC to depart from them.

It is generally possible to structure transactions in such a way as to achieve desired commercial objectives. Northern Ireland does not have an equivalent of the US “*check the box*” system and thus the chosen form of business cannot be treated as a different form for tax purposes.

There is also currently a consultation which is considering draft legislation and guidance for a new corporate criminal offence of failure to prevent the criminal facilitation of tax evasion. The new corporate offence aims to overcome the difficulties in attributing criminal liability to corporations for the criminal acts of those who act on their behalf. Whilst this consultation refers to the application of the new offence by “corporations”, the draft legislation refers to a “relevant body” to encompass the broad range of legal persons to which the new offence will apply. The offence will have three stages:

**Stage one:** criminal tax evasion by a taxpayer (either a legal or natural person) under the existing criminal law (for example an offence of cheating the public revenue, or fraudulently evading the liability to pay VAT);

**Stage two:** criminal facilitation of this offence by a person acting on behalf of the corporation, whether by taking steps with a view to: being knowingly concerned in; or aiding, abetting, counselling, or procuring the tax evasion by the taxpayer; and

**Stage three:** the corporation’s failure to take reasonable steps to prevent those who acted on its behalf from committing the criminal act outlined at Stage 2.

The consultation runs from 17th April to 10 July 2016. Companies should be mindful of the new corporate criminal offence and ensure all its practices are legally compliant with any new legislation.

### **XIII GENERAL TAX CONSIDERATIONS**

In Northern Ireland, tax is imposed by statute, though HMRC has developed extra-statutory rules of practice for the administration of aspects of the taxing statutes. It is possible to obtain advance opinions from the HMRC authorities, particularly in the context of inward investment transactions. While such opinions are not technically binding it would be highly unusual for HMRC to depart from them.

It is generally possible to structure transactions in such a way as to achieve desired commercial objectives. Northern Ireland does not have an equivalent of the US “*check the box*” system and thus the chosen form of business cannot be treated as a different form for tax purposes.

Tax queries should be sent to HMRC in relation to guidance about investing or expanding a business in Northern Ireland. The Northern Ireland tax office helps to promote corporate inward investment and local business expansion in Northern Ireland.

The address is for the Northern Ireland Corporate Tax Office is:

HM Revenue and Customs – Northern Ireland Corporate Tax Office

Custom House

Custom House Square

BT1 3ET

United Kingdom



## XIV IMMIGRATION REQUIREMENTS

### A. Immigration Controls

There are immigration controls in Northern Ireland under the remit of UK Visas and Immigration. For more information go to [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)

A person would not be subject to immigration control if he/she is:

- a British citizen;
- a national of an EEA State other than the United Kingdom; or
- a Swiss National.

UK Visas and Immigration is part of the Home Office and controls and manages UK immigration. It considers applications from individuals outside the UK to enter the UK to work, do business, study, visit for any reason, join family and settle permanently. It also considers applications from individuals who wish to remain under a temporary or permanent UK immigration status, individuals seeking refuge or humanitarian protection and employers wishing to register sponsors under tier 2 or tier 5 of points based system.

The UK immigration system for migrants coming to work, invest or set up business in the UK is largely contained in a tiered points-based system. The Immigration Rules set out the procedure and operational guidance in relation to immigration. All companies would need to conduct “right to work” check when recruiting new employees which involves checking their identity and nationality and that they have the correct immigration status for the position. Employers should also be mindful of their obligation to avoid discrimination in the workplace on the basis of race or nationality.

## **XV. EXPATRIATE EMPLOYEES**

### **A. Drivers' Licences**

*Must the investor obtain a driver's licence for that country?*

The International Driver's Licence is recognised in Northern Ireland.

### **B. Education**

*What type of schools are available for the investor's family? -What fees are involved? -What is required for enrolment? -Can the investor or company receive a tax benefit?*

Northern Ireland has a very high standard of education. Northern Irish students are consistently amongst the most successful in the UK examinations.

### **C. Housing**

*Can the investor own property?*

An investor may own property without restriction.

*Must the investor have housing before he enters the country?*

This is not a requirement.

*Can the investor subsidize housing and receive a tax benefit?*

If a company provides the benefit of accommodation to an employee, the company would get a tax deduction for the cost to them of providing the benefit, and the employee would be charged to tax (as a benefit in kind) on the value of the accommodation provided.

### **D. Importing Personal Possessions**

*How can the investor import his personal belongings? -Are import duties payable? -Are there requirements for clearing the belongings through customs?*

Certain goods may not be imported, or imported only under a licence. The principal items include firearms, ammunition, explosives, offensive weapons, indecent or obscene material (books, periodicals, prints and video recordings), plants or bulbs, live or dead animals (including cats and dogs), birds or poultry, endangered species, meat and meat products, and hay or straw (even if used as packing).

In cases of doubt, the point of contact is HM Revenue and Customs.

## **E. Medical Care**

*What level of medical care is available?*

*Is there national health care?*

There is a national health service in Northern Ireland. Health boards/trusts are the statutory bodies responsible for the provision of health and personal social services in their respective areas. They also provide information and literature on health promotion.

## **F. Moving Costs**

*What costs are involved in moving*

*Can the investor receive any tax allowances?*

If a company moves its business from one location to another, the expenses of relocating may not strictly be allowable for tax purposes since they would be regarded as capital expenditure rather than revenue expenditure incurred wholly and exclusively for the purposes of the trade. It might be possible to agree with Revenue by concession that a deduction be given.

Note that the HMRC have issued a statement of practice confirming that an employer can reimburse an employee for certain relocation expenses, subject to parameters and conditions specified by HMRC.