



High Growth Startup Pack
Emerging Growth and Venture Capital Practice
Ireland Edition

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About DLA Piper

Whether you're planning to create a startup or to scale up an existing one, with our global relationships with venture and strategic investors, lenders, entrepreneurs and corporates, we're here to help you get organised and on your way.

DLA Piper is one of the leading global business law firms. We are among the world's largest and most geographically diverse legal practices with clients ranging from startups and high-growth companies to companies listed on Euronext Dublin, AIM, the LSE, the NASDAQ and the NYSE.

We've a wealth of national and international expertise in the high-growth sector having been established in Silicon Valley and also having a significant presence in most high-growth hubs across the world: including London, New York, Boston, Northern Virginia and Washington DC, Austin, Beijing, Tel Aviv, Shanghai, Singapore, Los Angeles, San Francisco, San Diego, Stockholm, Moscow, Sydney, Melbourne, Dublin, Vancouver and Toronto.

Our teams include award-winning lawyers working in venture capital, private equity and M&A, litigation, international tax structuring, compliance and investigations, IP strategy and enforcement, licensing and distribution, and clinical trial advice.

Welcome to the DLA Piper Ireland LLP Startup Pack

Startups and scale-ups always face a dilemma at the beginning of their corporate journey – how to ensure a solid legal framework that governs and protects the business, while ensuring legal advice is cost-effective. We have seen this many times and as part of our efforts to introduce radical change to the Irish legal market this is our way of helping.

This Startup Pack is intended for early stage startups and high-growth enterprises looking to get established on a solid footing. We have aimed it at companies raising their first external capital, either from family and friends, or angel and seed-level institutional investors.

Drawing on our significant experience of advising companies at all stages of their development, we aim to help companies understand some of the key legal issues likely to affect them. This information is offered open source. It can be freely shared among the startup and emerging growth community, to assist them in reaching their full potential and to reduce their need to use their cash reserves, where possible.

This Startup Pack has been compiled to reflect feedback from DLA Piper's Emerging Growth and Venture Capital practice, which includes lawyers with experience in intellectual property, corporate, employment, regulatory and tax matters.


This Startup Pack also reflects feedback from many participants in this sector, including startups, founders, incubators/accelerators, venture capitalists and other stakeholders. One key inclusion is a bespoke (and sophisticated) Constitution and a Subscription and Shareholders' Agreement to address common issues startups may face.

DISCLAIMER

(this applies to every section of the Startup Pack)

We hope people using this Startup Pack will gain greater understanding of some of the key legal issues they are likely to face. However, the documents in it provide only a general overview of these issues. They are governed by Irish law and are only appropriate for private limited companies registered (or to be registered) in Ireland.

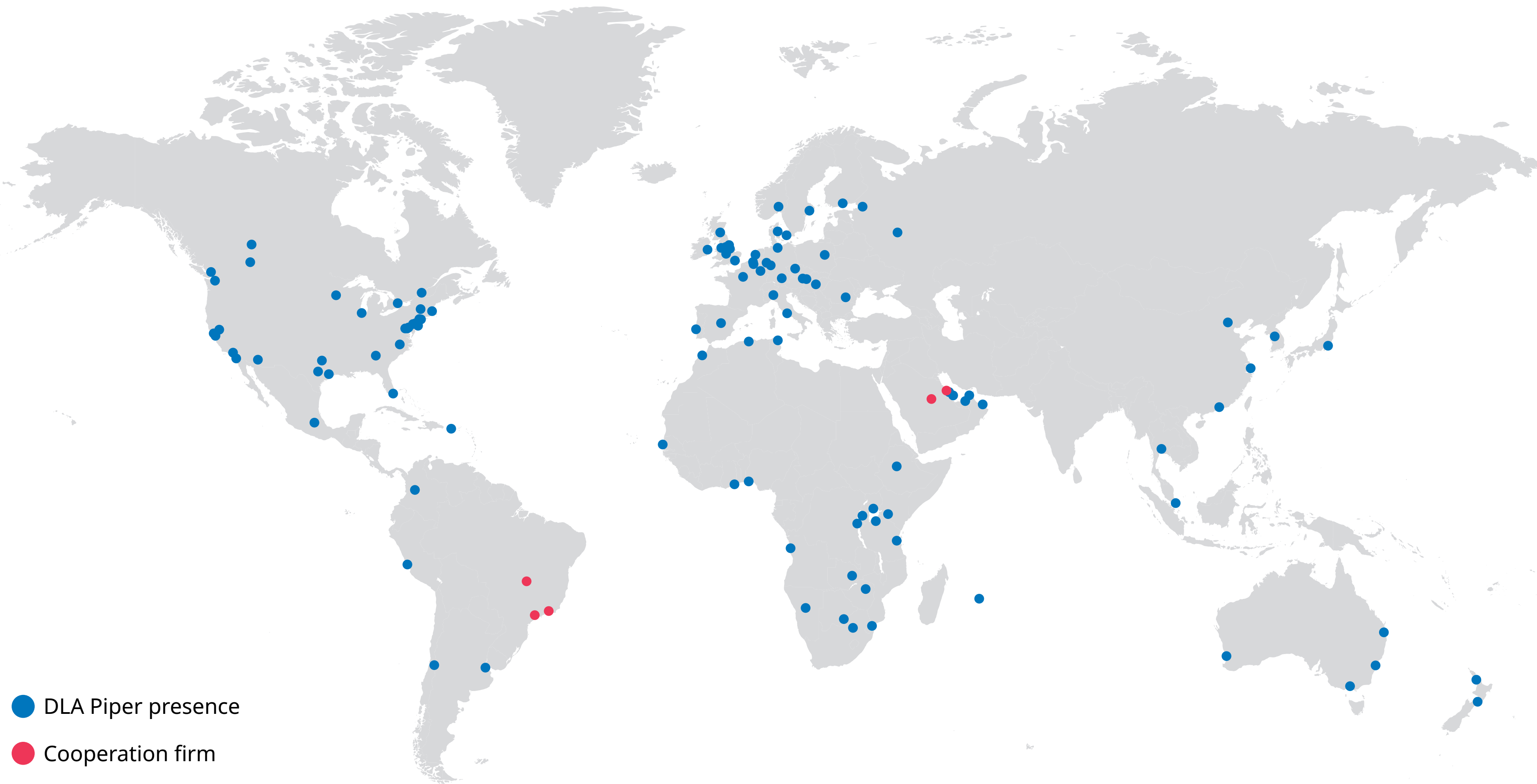
It is not a substitute for comprehensive advice on the particular circumstances of your business. The Startup Pack has been prepared on a generic basis, as a guide. You should seek legal advice before taking any further action. No responsibility is taken for any actions taken or not taken on the basis of this Startup Pack. DLA Piper Ireland LLP is not providing any advice to you in connection with this Startup Pack.

 [This Startup Pack is subject to the terms and conditions of use stated on the final pages.](#)

DLA Piper Ireland LLP

For more information, to send feedback, or to receive legal updates regarding startups, please email startupireland@dlapiper.com

startup@dlapiper.com



- DLA Piper presence
- Cooperation firm

Americas

- Argentina
- Brazil*
- Canada
- Chile
- Colombia
- Mexico
- Peru
- United States

Europe

- Austria
- Belgium
- Czech Republic
- Denmark
- Finland
- France
- Germany
- Hungary
- Ireland
- Italy
- Luxembourg
- Netherlands
- Poland
- Portugal
- Romania
- Russia
- Slovak Republic
- Spain
- Sweden
- United Kingdom

Middle East

- Bahrain
- Oman
- Qatar
- Saudi Arabia*
- United Arab Emirates

Africa

- Algeria
- Angola
- Botswana
- Burundi
- Ethiopia
- Ghana
- Kenya
- Mauritius
- Morocco
- Mozambique
- Namibia
- Nigeria
- Rwanda
- Senegal
- South Africa
- Tanzania
- Tunisia
- Uganda
- Zambia
- Zimbabwe

Asia Pacific

- Australia
- China
- Japan
- New Zealand
- Singapore
- South Korea
- Thailand

* Cooperation firm



In the pack you will find all the key legal documents an early stage startup needs. These include:

- ▶ A constitution
- ▶ A subscription and shareholders' agreement
- ▶ An intellectual property assignment agreement
- ▶ A non-disclosure agreement
- ▶ A privacy policy
- ▶ A standard employment contract
- ▶ Standard terms for website use

We have also included:

-  ▶ A step-by-step guide to setting up a private limited company in Ireland
-  ▶ An intellectual property, sales and marketing checklist
-  ▶ A tax checklist
-  ▶ A checklist of additional employment considerations
-  ▶ A guide to the Irish regulatory framework for raising equity finance



An introduction to key legal documents for startups

What legal documents does a startup or high-growth company need to formalise their business? You will find them here along with useful guides and checklists. These documents have been created by lawyers experienced in corporate, intellectual property, commercial contracting, regulatory, employment and tax matters. They are intended for those considering setting up a company, who have recently incorporated or are about to receive a modest amount of funding.

Incorporating a private limited company in Ireland

The most common startup vehicle in Ireland is the private limited company. One of the first steps for any entrepreneur is to consider forming such a company. Benefits include:

- Legal separation from its owners. It can enter into contracts with third parties and hire employees. It will also probably be required for financing (whether by crowdfunding, equity investment or debt).
- It allows founders to control how much financial risk they are exposed to. A founder may lose their investment in the startup, but unless there is wrongdoing, their home and other assets will be protected.
- A company can be a way to pool and protect intellectual property. If intellectual property has been developed with colleagues, a company enables the founders to share ownership and avoid disputes.

This Startup Pack is aimed at early-stage and high-growth businesses considering a private limited company structure registered in Ireland. If you are considering alternative structures, or starting or expanding your business in another jurisdiction, you may need advice on local law. You can find a general overview of the relevant issues in our Going Global guides, which provide excellent overviews of corporate, employment, intellectual property and tax considerations in key jurisdictions.

Note: you should consider your business structure from a tax perspective. If you have any doubts about whether a company is the best structure for you, consult a tax advisor.

[▶ A step-by-step guide to setting up a company in the Ireland is provided in this guide.](#)

The DLA Piper Guide to Going Global

If you want to expand overseas, the DLA Piper Guide to Going Global is helpful and detailed. It can be found here:

[▶ Guide to Going Global.](#)



Key legal documents

The Constitution

How will your company be run and who will have a stake in it? The two most important documents that cover a company's governance are the company's constitution (Constitution) and the subscription and shareholders' agreement (SSHA).

The Constitution forms a contract between a company's shareholders and must be filed at the Companies Registration Office. It regulates the company's internal management and how power and control is shared between the shareholders and directors. The Constitution addresses the day-to-day practicalities of running the company and other important information about the company's make-up and ownership. Based on our experience from the many venture deals we do each year, as well as feedback from the startup community, we have considered the common issues that arise in practice for most startups and high-growth companies and how these issues can be addressed in the Constitution. For example, one key issue that is often fatal for an early-stage company is a dispute between a co-founder or co-founders who leave the business (whether amicably or acrimoniously). To address this, and other common issues, we have prepared a bespoke Constitution.

▶ [A precedent Constitution is provided in this Startup Pack.](#)

The Subscription and Shareholders' Agreement (SSHA)

This private and confidential document records the commercial arrangement between the parties. It will include details of proposed subscriptions for shares and other key terms for investing in the startup.

The SSHA in the Startup Pack draws on the practical experiences of startups and high-growth companies that have received financing from private investors such as family and friends, angel and seed investors. It is subject to the terms and conditions of use set out on the final page. The two main purposes of the SSHA are:

- To provide the legal mechanism for a prospective investor to subscribe for shares in the company (including details of the price, conditions of subscription and number of shares); and
- To define shareholders' rights and obligations and to govern their relationship between one another and the company.

The SSHA must reflect the commercial agreement between the founders and/or any investors and it is important to get the correct balance. You should consider how much equity will be available to investors, as this may have a significant impact when you seek

further investment. Founders are obviously likely to want to retain as much equity in, and control of, the company as possible. If the terms of the shareholders' agreement are contentious, we recommend that you seek legal advice.

▶ [A precedent SSHA is provided in this Startup Pack.](#)



Key legal documents

The Intellectual Property and Assignment Agreement

What are the original ideas on which you plan to build your success? Intellectual Property (IP) is one of the most important parts of any business. In most technology or life sciences companies, IP will be at the very core of the business. As such, take care over any agreement that involves sharing or using it, whether the IP is yours or belongs to a third party.

An IP Assignment Agreement transfers ownership and rights of the IP specified in the agreement from one person to another.

The IP Assignment Agreement provided in this Startup Pack is a simple way to transfer ownership of someone's relevant IP rights (such as rights created by an individual in connection with the business before they became an employee, director or shareholder or a consultant). Under the agreement, that individual would no longer have any rights in or to the IP assigned.

Note: the IP Assignment Agreement should be used only in straightforward circumstances to transfer existing IP that is easy to identify and define. IP must be described fully enough to identify clearly what is assigned. If the IP is not described correctly, the assignment may not be effective and may not transfer what you want it to. Make sure the assignment is consistent with any other agreement you have with a particular person.

If you have any doubt or if the IP concerned is particularly important, valuable or difficult to define, or if there is additional complexity (eg in terms of ownership), we recommend you seek legal advice to ensure it is properly transferred and all issues have been covered.

▶ [A precedent IP Assignment Agreement is provided in this Startup Pack.](#)

Key legal documents

The Non-Disclosure Agreement

Do you need to keep a secret? Keeping key company information and IP confidential is important to protect your fledgling business. However, you must balance confidentiality with the need for further investment and collaboration with third parties. To do this you may have to share private information.

Before sharing sensitive information a non-disclosure agreement (NDA) should be put in place. Where this cannot be done, a company could try to protect information and IP by making it clear – in writing – to third parties that any information provided must not be disclosed to anyone else and by specifying that the disclosure of such information must be strictly on a “need-to-know” basis.

But you should be aware that venture capitalists and other sophisticated investors often refuse to sign NDAs as this may restrict their ability to evaluate other potential investments in similar industries to your company. **As such, this NDA is not intended for potential investors.** The Irish Venture Capital Association (IVCA) has produced a draft NDA appropriate for these circumstances, which investors are likely to be familiar with.

▶ [Please click here for a link to the IVCA NDA.](#)

The content of an NDA depends on the information being disclosed, the relationship between the parties and why the information is being shared. An NDA cannot really be general or standard form because it must fit specific circumstances.

The precedent NDA in this Startup Pack is intended for the early life of a startup, when it is deciding whether to collaborate with another entity or individual. It is not intended to cover future collaborations. If the relationship develops, you should obtain advice on the arrangements needed to manage confidentiality in the future.

The NDA in the Startup Pack includes mutual promises to keep information confidential and puts obligations of confidence on both parties covering information disclosed by you and your representatives. It also provides ways to end the relationship, including the return and destruction of confidential information.

It is important that an NDA is suitable for specific circumstances. Seek legal advice if you are unsure whether this NDA applies or if you have any queries on specific provisions.

Where confidential information is particularly valuable, make clear that it is covered by an NDA. For the purposes of evidence, you may wish to state that any information provided is subject to a signed NDA (as well as marking it “confidential”). Alternatively, you could list key confidential documents in the NDA itself.

In instances where someone has been given information before signing an NDA, you may wish to send a follow-up email identifying the confidential information and confirm that it is covered by any NDA that has been signed.

▶ [A precedent NDA is provided in this Startup Pack.](#)

Key legal documents

The Employment Contract

Now you have more work to do than there are hours in the day, is it time to look for outside help? As your business grows, you will need staff. At some point in their corporate life, all startups employ people.

As you expand your business, you may need personnel with technical, marketing or operational expertise. It is important that the rights of both the company and employees are properly addressed. An employment contract between the parties is the best way to protect the company.

▶ [A precedent employment contract is provided in this Startup Pack.](#)

The essential terms of an employment contract include role, the date employment began, the nature of its term, salary and other benefits, working hours and location.

For startups in technology and life sciences in particular, the contract must also cover confidentiality and ownership of IP. All intellectual property created by any employee during employment will usually remain the company's property. Restrictive covenants after employment ends should also be included to protect the interests of the company as well as its staff and clients.

Terms of Website Use

You've produced a fantastic website for your business, now what? It is very important to set out clear terms of use for consumers who visit it. These may include limiting access rights and setting out clearly what constitutes prohibited use and unauthorised uploading of material. The company will also want to limit its own liability, protect intellectual property and set out the terms on which it may revoke access rights.

▶ [An example of a document setting out terms of website use is provided in this Startup Pack.](#)

Privacy Policy

You've heard of GDPR and data breaches – what does it mean for your business and how do you protect the company and the information of others? As the amount of personal data grows ever larger, its use is increasingly regulated across the world. It is a key requirement of data protection laws – most pertinently, the EU's General Data Protection Regulation (GDPR) – that individuals are informed about the collection and use of data that relates to an identified or identifiable individual at the time it is obtained. If you collect or use any personal data, details must be provided to the person you collect it from. These include when you will collect information, what you will collect and how you will use it.

It can be difficult for startups to keep track of this, particularly as they grow and the ways they collect or use personal data evolve. It is important to comply with data protection laws, not least because you risk being fined for the improper collection or use of personal data. Other important privacy-related matters must also be considered, including using cookies.

▶ [A precedent privacy policy is provided in this Startup Pack.](#)

Glossary of useful venture capital and company terms



Useful industry terms

Angel groups

Organisations, funds and networks of high-net-worth individuals formed specifically for investing in startup companies.

Angel investor

A high-net-worth individuals who invests in startups.

Anti-dilution provisions

Mechanisms by which certain shareholders' stakes in a company are protected from being diluted (if additional shares are issued at a lower value) without their having to make material new investments.

Board

The directors of the company.

Brokers

A person or firm engaged by an early-stage company to help introduce investors or arrange funding rounds for a fee.

Business day

Any day other than a Saturday, Sunday or public holiday when banks are open for normal business.

Call

An option (but not an obligation) for a purchaser to buy a specified number of shares from a seller at a specified price during a specified period, or when specified events occur.

Cap table

A table describing a company's capitalisation, including the names and number of shares owned by each principal/founder and investors, and any other obligations to issue shares, such as convertible debt, warrants or employee options. The table is often segmented to describe each of several funding rounds and should clearly differentiate holders of different classes of shares.

Change of control

Acquisition of a company through a merger, consolidation, share exchange or another transaction or series of transactions resulting in a change in ownership of the issued shares. The shareholders before the transaction will no longer own, directly or indirectly, at least 50% of the voting power of the surviving entity. It can also mean the disposal by sale, licence or otherwise of all or the substantial part of a company's assets.

Confidential information

This definition can vary (see any Non-Disclosure Agreement) but will commonly include all information known only to a group of individuals or the company, but not the public. This could include details of transactions, customers, employees and other sensitive matters.

Constitution

The main constitutional document of every Irish private limited company, governing the company's internal matters.

Conversion rights

Rights by which preference shares are changed into ordinary shares at a pre-agreed ratio. For example, one preference share might convert into one ordinary share. Holders of preference shares usually have this right at any time after acquiring the shares.

A company may want to force a conversion upon an IPO (see below), a change of control, on reaching certain sales or earnings targets, or on a majority (or agreed higher threshold) vote of preference shareholders.

Convertible loan note

An instrument by which investors lend money to companies which can, on certain agreed terms or events, convert into shares in the company.

Co-Sale provisions or tag-along rights

These give investors the right to sell their shares in the same proportions and for the same terms as the founders, managers, or other investors, should any of those parties receive an offer for their shares they want to accept. Most often they are sought by investors with a relatively small portion of a company compared with the founders, managers or other investors.

Deed of adherence

a document a new shareholder must sign if there is an existing shareholders' agreement to have the same rights and responsibilities as other shareholders. New shareholders agree to adhere to the existing agreements.

Dilution

The reduction in percentage ownership that shareholders suffer if additional shares are issued; for example, by subsequent funding rounds.

Director

Any person serving on the board of directors of the company.

Dividends

Profits paid by the company to its shareholders as a return on their original investment. Generally, they are paid at the discretion of the company (and subject to any legal restrictions on doing so). Dividends are not often paid until much later in a company's life, as startups are rarely able to pay them lawfully and would most likely try to retain any earnings for reinvestment.

Useful industry terms

Drag Along Rights

Enables a majority shareholder to force the minority shareholders to sell their shares to a third party buyer on the same sale terms as the buyer has offered to the majority shareholder.

Due diligence (DD)

The process of validating a potential investment. This usually involves examining certain areas of a company's business, which might include market structure, competition and strategy, technology assessment, management team, operating plan, financial review and legal review.

Equity

Owning an interest in a company, usually via shares or share options.

Event of default

A specific event, such as failing to pay a sum due under a loan, that gives a party (usually lenders) specific rights, such as demanding full payment of outstanding debts or enforcing any security they may have.

Exit

The means for shareholders to see a return on their shares. This is normally a flotation on a public stock market or a sale of the company and is likely to come later in the company's life.

First refusal rights

A negotiated obligation for the company or existing investors to offer shares to the company or existing investors at fair market value, or a previously negotiated price, before selling them to new investors.

FMV (fair market value)

An acceptable price for selling to an independent third party. It will represent what a willing buyer would pay a willing seller on a transaction negotiated at arm's length.

Founder

A person who founded a company and was an initial subscriber for shares in it.

Incorporation

The act of registering a company.

Information rights

Typically given to investors or shareholders to let them see certain company information (including financial information, business plans and budgets).

Intellectual property

A right or non-physical/intangible resource that is presumed to give the company an advantage in the marketplace. It could include patents, trademarks, trade secrets, copyrights and licences.

Intermediary (financial intermediary)

A person or institution who assists other people or entities to make or arrange investment decisions.

IPO (initial public offering)

The regulated process by which a private company registers its shares for trading in public markets ("going public" or "flotation"), such as Euronext Dublin, the London Stock Exchange, NASDAQ or the NYSE.

Investment bankers

Representatives of financial institutions who help issue new securities, including managing and underwriting issues, as well as trading and distributing securities.

Investor

A person or company other than the founder or an employee who buys or subscribes for shares in a company.

Issued share capital

The amount of shares in a company that has been issued and is held by shareholders.

Key person

A specific employee identified as having material value for the company. Key persons are often covered by specific company insurance policies and have more sophisticated service contracts.

Leveraged buyout

When a purchaser who acquires a company finances the transaction using equity funds and third-party bank debt. Any third-party debt is usually secured against the company's assets.

Licensed intellectual property

Any intellectual property licensed to the company by a third party.

LP (Limited Partnership)

A partnership in which some members have limited liability for the debts of the firm. The partnership must consist of at least one general partner and one limited partner. The general partner is liable for all the debts and obligations of the firm. The limited partner contributes a stated amount of capital and is not liable for debts that are beyond that amount. The general partner manages the firm. The limited partner must be excluded from the management of the firm and cannot have any authority to bind the other partners. A limited partnership is not a separate legal entity. See "Venture Fund" below

Member

Another word for a shareholder.

Mergers and acquisitions (M&A)

Transactions as part of a corporate strategy that involves buying, selling, merging and dividing companies.

Useful industry terms

Non-Disclosure Agreement (NDA)

An agreement that prevents private information revealed by one party to another from being disclosed to third parties, usually for a fixed term.

Ordinary shares

The most common form of share for a startup company. If the company goes into liquidation, holders are generally entitled to all its assets and cash, after obligations such as bank debt, corporate debt, taxes, trade creditors, employee obligations, and preference shares (if applicable) have been paid. Founders and employees almost always own shares or options for ordinary shares.

Owned intellectual property

Any intellectual property owned or developed by a company.

Post-money valuation

The valuation of a company immediately after a new round of investment, that is, the previous valuation plus the total new investment.

Pre-emptive rights

The right of a shareholder to provide financing or acquire further shares in the company on the same terms offered to other parties up to the amount needed to maintain their percentage stake in the company.

Pre-money valuation

The valuation of a company agreed by its existing owners and new investors immediately before a new round of investment.

Preference shares

The class of share most likely to be held in angel or venture capital investments. Preference shares outrank ordinary shares but are subordinate to any debt. The bespoke rights attached to preference shares will be detailed in the Constitution (see above). This will often require a tailored Constitution to be adopted. The rights attached to preference shares are likely to include voting, dividend, management, conversion and other rights and preferences beyond those conferred by ordinary shares. Importantly, preference shares aim to ensure “last money in is the first money out” if the company fails.

Private placement

Selling or issuing shares, bonds or other investments not to the public, but directly to institutional or accredited investors. Unlike a public offering, a private placement does not require a detailed prospectus.

Put

An investor’s right to force a company to buy their shares. It is used by investors to ensure the eventual liquidation of their holding and is the opposite of a call.

Seed financing or seed round

The early-stage capital used to get a business off the ground. It can come from various sources, including the founders, friends and family, business contacts, angel investors, crowdfunding or institutional seed funds.

Series A

The first round of significant institutional investment for a company. Subsequent rounds of funding follow alphabetically (eg series B, series C) as the company raises larger rounds of investment.

Sophisticated investor

An investor with a business background and enough investment experience to make reasonable investment decisions

about a company. With startup financing, for legal purposes certain statutory tests will determine whether someone qualifies as a sophisticated investor.

Share option

The right to subscribe or purchase securities (usually ordinary shares) at a stated price in the future.

Subordinated debt

A debt instrument subordinated to lending from institutions such as banks. This type of debt does not normally limit the company’s borrowing power with banks.

Subscribe

An application to acquire shares in the company not previously issued to anyone else.

Subscription price

The aggregate price paid for new shares in a company.

Tag Along Rights

See “Co-Sale Provisions” above.

Termination event

any event listed in an agreement that will terminate it immediately.

Term sheet

A preliminary document that often includes the key terms of an investment in a company, including an agreed valuation, the proposed capitalisation table (see above), key financial and legal terms and both parties’ rights.

Unissued share capital

shares that a company can allot or issue but has not yet done so.

Useful industry terms

Venture capital

The financing an investor would provide to an early stage/startup company. The investor or venture capitalist (who could be an individual, bank, fund, etc) will believe the company has long-term potential to deliver returns on the investment. This is the riskiest type of investing, but the risk is often mitigated if one company in the investor's portfolio makes significant returns. Therefore, venture capitalists often invest in a lot of companies, expecting most to fail but counting on an outlier to achieve returns well above the total invested.

Venture capitalist (VC)

A specialist in providing equity and other forms of long-term risk capital to enterprises. They usually deal in firms that have a limited track record but can expect substantial growth. A venture capitalist may provide funding and varying degrees of managerial and technical expertise.

Venture debt

Provided to a company by a venture debt fund or bank to bridge between equity funding rounds. This usually involves a higher interest rate than traditional bank debt to compensate for the extra risk. The lender may also take "warrants" (see below) in the company, as well as security over its core assets, such as the IP.

Venture fund

A partnership formed by two or more people to carry on a business with a view to making a profit. It typically has at least one general partner (who is responsible for managing the business of the partnership) and a limited partner (who must contribute capital). See "Limited Partnership" above.

Warrants

Securities that give holders the right, but not the obligation, to acquire shares at a certain price for a given period. They are similar to share options (for non-employees) and are often offered to investors as a bonus for cash investment or to service providers in exchange for fees.

Warranty/warranties

Specific statements relating to the company given by shareholders (or sellers) to investors acquiring shares. The aim is to reassure purchasers about the state of the company.

Step-by-step guide to setting up a company in Ireland



Step-by-step guide to setting up a company in Ireland

You can choose from several different legal structures for your new business and must decide which is best for you. Most probably it will be a private limited company, but you should seek legal and/or tax advice if you are not sure.

Below are simple instructions on how to set up a private limited company using the online service at the Companies Registration Office. Another – more costly – option would be to instruct a company formation agent to incorporate the company for you.

We also explain the basic steps for checking the availability of company names and how to set up, or incorporate, a company online.

People are often surprised how cheap and simple it is to incorporate a company in Ireland. Setting up as a private limited company has several advantages. It is, however, a formal process that must be taken seriously – for example, there will be continuing compliance requirements (including annual and event-driven filings). Details of these obligations are on the Companies Registration Office website.

How to check if your preferred company name is available through Companies

Right from the start you should consider what you will call your business and its probable branding. Be aware that registering a company name will not give you trademark protection. You will need to carry out separate trademark searches.

You can find further information in the **intellectual property checklist** in this Startup Pack.

- Refer to the guidelines on acceptability or otherwise of company names on the [Companies Registration Office website](#)
- Go to the 'Company Search' section on the [Companies Registration Office website](#)
- Type in all or part of your proposed name in the 'Entity name' box on the screen and click 'search'.
- It is important to check that the name you want is not too similar to another name on the register of companies before you submit the company formation documents; and

- Similar searches should also be made directly against the trademark register.

[▶ For further information.](#)

Step-by-step guide to setting up a company in Ireland

Using the Companies Registration Office online platform (CORE) to register with the Companies Registration Office

First, go to:

▶ <https://core.cro.ie>

Then:

- Register by completing the CORE Registration Form and following the prompts.
- Click on: New Filing.
- Select: Form A1: Application to Incorporate a Company.
- Enter all the necessary company information, including its name and registered office (note: the company type should be selected as “Limited”), email details, NACE code (The NACE code is the common basis for statistical classifications of economic activities within the EU) of the company) and the nature of business. Upload the company’s constitution and any other attachments being submitted. Typically these relate to the name of the company (if the name has been reserved) or a letter of no objection obtained from a company with a similar name, etc.
- Enter the information of the proposed director(s) (this is likely to be the founder(s) of the company) and secretary to the company. Enter the individual’s name, occupation, nationality, date of birth and residential address (note: a person may not be a director of more than 25 Irish registered companies at any given time). Note, it is possible to add additional directors and/or a company secretary at this stage or at a later date.
- Enter information related to the proposed officer’s current and previous directorships (held worldwide), which can be individually entered or uploaded in list form. This section requires details of the relevant company name, company number and the country the company is registered in.
- Enter the information on the share capital of the company. It is up to the founder to decide on this amount. For a simple start-up company a typical amount would be 100 ordinary shares of €1 each. For this option input ‘€100’ as the ‘Total Value’, ‘ordinary’ in the ‘class of share’ box and 100 in the ‘number of shares’ box.
- Enter the details for the person(s) who will be the first shareholder(s) of the company (also known as ‘subscribers’).
- Complete the Declaration of Compliance with the Companies Act 2014 obligations for a person delivering a document to the Companies Registration Office, and also enter ‘Presenter’ details including the central administration office and the appropriate NACE code classification.

- Enter the verification and signature details of each proposed director and the secretary. Note all directors and the secretary are required to sign the form.
- Check the overall summary of the company to ensure all of the information is correct, and once confirmed, verify the application and pay the required fee.
- Done! Once you have received email confirmation of registration from Companies Registration Office, your company is now up and running. The Companies Registration Office will issue a Certificate of Incorporation.

That’s it. When you receive confirmation from Companies Registration Office , your company is up and running.

Your private limited company has a separate legal personality from its shareholders, so remember to use it to enter into contracts, open bank accounts and so on.

You should also bear in mind the annual and event-driven filings that must now be made at the Companies Registration Office (either online or by post). Detailed information on this can be obtained from the ‘Post Registration’ section on the Companies Registration Office website.

▶ [We have also included a guide to the Irish regulatory framework for raising equity finance, which may be useful.](#)

Constitution



Constitution

Two key documents cover how a company is run. The first is the Constitution and the other is the Subscription and Shareholders' Agreement.

▶ [Subscription and Shareholders' Agreement section below.](#)

The Constitution is public, so make sure that commercially sensitive information appears only in the Subscription and Shareholders' Agreement. This includes specific details about share and income rights, and leaver provisions and exit provisions (see the Key Terms section below):

▶ [Key Terms of the Constitution.](#)

The Constitution has been prepared on the basis that the company is receiving seed financing from friends, family and/or other private investors. They assume that there will be only one class of shares (ordinary shares). As it does not refer to preference shares or multiple classes of ordinary shares, they are not suitable for later-stage investment.

Make sure you are comfortable that the Constitution suits your circumstances. You may need legal advice to check this or if you require clarification regarding the meaning of any provisions.

▶ [Download our precedent Constitution here.](#)

Key terms

Leaver Provisions

The Constitution includes specific provisions for employees holding equity in the company. However, these would only apply to a founder owner if they have signed an employment contract (or consultancy or service agreement) with the company.

If an employee leaves the company, they will be deemed to have offered some or all their shares for sale. The price of such shares will depend on the circumstances of leaving.

A departing employee will be a Good Leaver, a Bad Leaver or an Intermediate Leaver. These different types, with their consequences, are defined below.

The fair market value means the price agreed between the leaver and the company or, if no agreement can be reached, the price set by a third-party valuer, in accordance with a procedure set out in the Constitution.

For Intermediate Leavers, the Constitution applies a concept of “value vesting”. This means that the price at which they will be deemed to have offered to sell all their shares will depend on how long they have been employed. The Constitution currently contemplates monthly vesting over a four-year period (ie 2.08% of the value vests per month, with full vesting at the end of the fourth year), but this can be tailored as appropriate. Provisions can also be included to ensure no vesting occurs in the first year. (This is often referred to as a cliff, and means that if someone leaves in the first year they receive no value).

Type of Leaver	Circumstances of Leaving	Consequences of Leaving
Good Leaver	<p>Someone who stops being employed by the company in any of the following circumstances:</p> <ul style="list-style-type: none"> • Death; • Permanent disability or ill health that results in them becoming permanently unable to work; or • Resignation solely because the second set of circumstances above have occurred to their spouse or child. <p>The board (with the consent of a majority of investors) can also decide that someone is a Good Leaver.</p>	<p>The employee is deemed to have offered to sell all their shares for the fair market value.</p> <p>The board (with the consent of a majority of investors) has the right to allow an employee to keep all or some of their shares.</p>
Bad Leaver	<p>Someone who stops being employed by the company and is not a Good or an Intermediate Leaver. This would cover most employees who leave voluntarily.</p>	<p>The employee is deemed to have offered to sell all their shares for the lower of the fair market value or the nominal value.</p> <p>The board (with the consent of a majority of investors) has the right to allow an employee to keep all or some of their shares.</p>
Intermediate Leaver	<p>An employee who is neither a Good Leaver nor a Bad Leaver.</p> <p>The Board (with the consent of a majority of investors) can also determine that a Bad Leaver is an Intermediate Leaver.</p>	<p>The employee is deemed to have offered to sell all their shares for:</p> <ul style="list-style-type: none"> • Vested shares, the fair market value; and • Unvested shares, the lower of the fair market value or the nominal value. <p>The board (with the consent of a majority of investors) has the right to allow an employee to keep all or some of their shares.</p>

These vesting provisions will have to be tailored to suit your business. It is common for employees to leave a business, so these provisions are important.

Key terms

Share Capital

The Constitution assumes that shareholders hold the same class of ordinary shares and each ordinary share entitles its holder to the same rights (when it comes to voting, and income and distributions). If a shareholder is to receive different or preferential treatment, the Constitution may not be suitable, and you will need specific legal advice. It is most unlikely that this Constitution will be suitable for Series A and beyond, when an institutional venture capital investor will most likely require preferential rights in relation to the founders and other shareholders.

Transfer Restrictions

It is important for a high-growth company to manage its shareholder base properly. One way to do this is to restrict the transfer of ordinary shares to third parties.

The Constitution provides that ordinary shares can be transferred only in the following circumstances:

- To a permitted transferee (in the case of an individual, a family member or family trust, or in the case of a corporate entity, a member of its group), provided the board of directors has agreed; and
- In accordance with the pre-emption provisions. Any shareholder wishing to transfer shares must first offer them to the other shareholders for an agreed price.

Further minority protections – Drag and Tag

Drag Along Right

If the investors and holders of more than 75% of the ordinary shares (or whatever percentage decided (generally, more than 50% but less than 90%)) wish to transfer all their ordinary shares to a third-party purchaser, they can require all other shareholders to sell their ordinary shares to that purchaser on the same terms. This prevents a minority shareholder from being able to block a sale of the company. In practice, the interests of the founders and the investor would often be in line as it would be hard to sell the business without their being completely engaged in the process. The drag is therefore usually used to sweep up any stragglers, as any buyer is likely to insist on acquiring 100% of the issued share capital.

Tag Along Right

If shareholders propose a sale of shares that would lead to one person holding more than 50% of the share capital, all shareholders can sell all their shares to that purchaser on the same terms. This gives a minority shareholder the right (but not the obligation) to sell their stake at the same time as the majority. You can also tie the 50% threshold to the shares held by the investors.

How to complete the constitution

- 1 Read the disclaimer on the front page of the Constitution in full.
- 2 Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
- 3 Review the document to make sure you are comfortable with its content, and that it is appropriate for your needs. If in doubt, seek legal advice.
- 4 Arrange for the special resolution to be signed and dated by shareholders holding at least 75% of the company's share capital. Once signed and dated, the special resolution and the new constitution must be filed in the Companies Registration Office
- 5 Keep the original document(s) or a copy of the document in a safe place, as well as an electronic back-up of the final signed version.

Subscription and shareholders' agreement



Subscription and shareholders' agreement

The other important document concerning how a company is run, alongside the Constitution, is the Subscription and Shareholders' Agreement (SSHA).

This private and confidential document records the commercial arrangement between the parties, including details of any proposed subscription for shares and other key terms of the investment.

The SSHA has been prepared for company receiving seed financing at an early stage from friends, family and/or other private investors, but can be adapted for use with multiple investors.

The SSHA has two main purposes:

- To provide the legal mechanism for investors to subscribe for shares. It will usually include details on price, conditions to subscription and number of shares; and
- To define (with the Constitution) the rights and obligations of shareholders and to govern their relationship with one another.

The SSHA must reflect the commercial agreement between the founders and/or any investors and it is important to achieve the correct balance. Founders should carefully consider how much equity they give away to investors as this may have a significant impact when seeking further investment. In practice, founders are likely to want to retain as much equity in the company as possible.

You should be comfortable that this SSHA fits your circumstances. Seek legal advice to make sure of this or if you require clarification regarding the meaning of any of the provisions.

[!\[\]\(cf531ed27e91483460120fcc057b3901_img.jpg\) Download the precedent SSHA here.](#)

Key terms

Warranties

These are important contractual statements often given by the company and (sometimes) by its founders (collectively known as the warrantors) to reassure investors about the condition of the company. Investors are also likely to obtain their own financial and legal review (due diligence) of the company and its business.

The warranties serve two main purposes:

- To elicit disclosure of information from the warrantors of any known problems; and
- To provide investors with a potential remedy if any statement about the company later proves incorrect. Any known problems should be set down in as much detail as possible in schedule 5 of the SSHA.

The warranties are given by the warrantors jointly and individually, so investors can choose to bring a claim against any one or more of them for any loss arising from a breach. The SSHA expressly forbids a warrantor from seeking any contribution from another warrantor.

Most warranties are also qualified by the awareness of the warrantors, so warrantors are liable for a breach only if they (or any of the other warrantors) knew about the matter when the SSHA was signed.

All warranties are subject to financial and time limits on claims (other than with fraud).

In the light of the above, each founder and their co-founders should be completely comfortable with the warranties before entering into the SSHA. Given the importance of the warranties, the founders and any key employees may wish to discuss them (and any known problems) together in detail. It is best to disclose all issues to a potential investor to reduce the risk of being sued later. Venture capitalists will be accustomed to seeing a number of problems and/or issues.

Restrictive Covenants

The scope of these should be considered in detail. To be enforceable, covenants should be reasonable regarding geographical area, the length of restrictions and the type of business covered. If they go beyond what is reasonably necessary to protect the company's legitimate interests, the courts may rule them void or unenforceable. What is reasonable depends, of course, on circumstances.

Majority Investor Consent

The SSHA includes a list of items that require the consent of shareholders with at least 75% of the share capital. This figure can be lower or higher to suit specific transactions. These are designed to protect investors' financial interest in the company.

All existing shareholders also benefit from the statutory pre-emption rights contained in section 69 of the Companies Act 2014. In general, any new shares issued by the company for cash must be offered to existing shareholders in proportion to their existing holdings before they are offered to new investors, unless shareholders waive that right.

Other

Investors also have the right to receive certain financial information relating to the company. The founders and the company should be careful about what information (financial or otherwise) given to new investors. Once the SSHA has been entered into, most information provided by the company to investors will be covered by its confidentiality obligations.

The founders and the company should always make sure any information provided to investors is correct, to protect the relationship with investors and ensure no legal liability arises.

It is also important to consider whether any potential tax implications of the investment round. See the tax checklist:

[▶ Download the Tax Checklist for more information.](#)

How to complete the SSHA

- 1 Read the disclaimer on the front page in full.
- 2 Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
- 3 **Schedule 1** – enter full details of the founders and investors.
- 4 **Schedule 2** – insert the company details. Much of this information can be obtained from the Companies Registration Office.
- 5 **Schedule 3** – the deed of adherence is required only when shares are being transferred to a new shareholder. The new shareholder must sign the deed of adherence to accept the terms and conditions of the SSHA.
- 6 **Schedule 4** – this contains “boilerplate” provisions dealing with generic contractual arrangements generally found in commercial contracts of this type.
- 7 **Schedule 5** – this gives the founders the opportunity to disclose to the investors any matters that qualify or contradict the warranties in clauses 4 and 5 of the SSHA. Read through each individual warranty carefully and consider whether you know anything that does (or may) qualify or contradict it in some way. Any disclosure in Schedule 5 must include sufficient detail to allow investors to identify its nature, scope and full implications.
- 8 **Review the agreement to make sure you are comfortable with its content, and that it is appropriate for your needs. Ideally you should seek legal advice to make sure.**
- 9 The founders must satisfy themselves that the subscription monies will be forthcoming/are available.
- 10 Share certificates will have to be distributed to investors.
- 11 The SSHA must be signed as a deed and dated by all parties in accordance with Irish law. Under Irish law a deed must be signed by the relevant individual in the presence of an independent witness. If you have any doubts over the formalities of signing the SSHA, seek legal advice.
- 12 Keep the original document(s) or a copy in a safe place and an electronic back-up of the final signed version.

Intellectual property assignment



Intellectual property assignment

Intellectual Property (IP) is important, especially for a technology or life science company. It is essential that any agreement relating to sharing or using it – whether the IP belongs to your or someone else – has the effect you think it has. Take special care with this.

An assignment of intellectual property transfers ownership of specified IP from one person to another. This document is a simple assignment to be used to transfer IP rights belonging to an individual – for example, those created by a director or shareholder of your company, an employee before they joined your company, or a consultant you have engaged. Through it, that person will lose their rights to the assigned IP. If they are to retain ownership of the IP, or some limited right to use it, this assignment is unsuitable.

The assignment should be used only in straightforward circumstances to transfer existing IP that is easy to identify and define. Make sure the IP is described in enough detail to identify clearly what is being assigned. If the IP is not correctly described, the agreement may not be effective or may not transfer what you think it does. If in doubt, seek legal advice.

It is also important to ensure the assignment does not clash with any other agreement the person has with you. If the IP is particularly important, valuable, hard to define or if there is extra complexity, seek legal advice to make sure it is properly transferred.

How to complete the IP assignment

- 1 Read the disclaimer on the front page in full.
- 2 Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
- 3 Review the agreement to make sure you are comfortable with its terms, and that they are appropriate for your needs. Ideally you should seek legal advice to ensure this.
- 4 **Schedule 1** – enter details of the IP being assigned. Ensure it is entered correctly and in as much detail as possible, so it is clear what is being transferred. Include registration numbers for any registered rights. Include pictures or annex copies of documents where this helps identify the rights transferred.
- 5 **Schedule 2** – insert details of any licences, previous assignments, security interests, options, mortgages, charges or liens relating to any of the Assigned Rights (as defined). However, if any do exist, we strongly recommend you take legal advice about their effect on the Assigned Rights and this Assignment.
- 6 The IP Assignment document must be signed and dated by all parties in accordance with Irish law. If you have any doubts over the formalities for signing the document, get legal advice.
- 7 Keep the original document(s) or a copy in a safe place and an electronic back-up of the final signed version.

After completion

For registered rights, it is important that the assignment is recorded at the relevant registry. This ensures third parties have notice of your rights. If the assignment is not recorded, a third party could gain rights in your IP. The costs and formalities of registration vary. Contact the relevant registry for further information and take legal advice if you are not sure what to do.

Further guidance

We have also included an intellectual property checklist, which you may find helpful.

- ▶ [Download the Intellectual Property Checklist.](#)

Non-disclosure agreements



Non-disclosure agreements

Before you share any sensitive information with a third party, ensure you have a non-disclosure agreement (NDA) in place.

The form of NDA you need, including the safeguards on confidential information, will depend on the nature of the information, who you share it with and why.

This NDA is designed for the early stages of a startup when you are sharing information with another party so you can decide whether you want to work with each other. It is not designed to cover future collaboration. If you decide to work with the other party, you should take advice on the collaboration arrangements you need to manage your relationship. These arrangements should contain appropriate confidentiality provisions instead of this NDA.

This NDA is mutual, so both you and the other person promise to maintain the confidentiality of each other's confidential information private. The same obligations apply to both parties. The NDA protects confidential information disclosed by you or one of your Representatives (as defined in the NDA) to the other party or one of its representatives. At the end of the agreement, or at your request, the other party must return or destroy all confidential information disclosed.

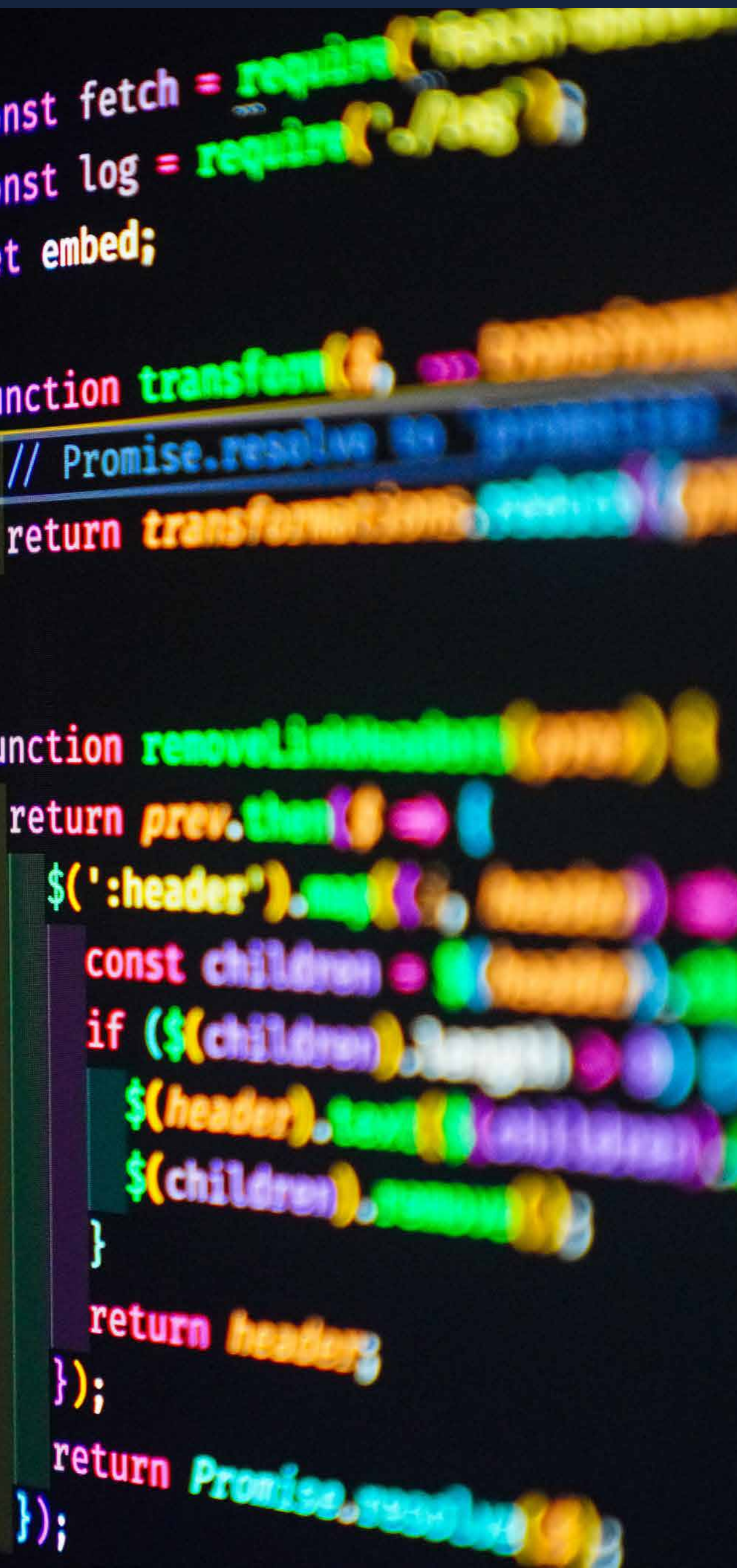
You must be comfortable that this NDA suits how you want to use it. Take legal advice if you are not sure or are unclear about the meaning of any provisions.

This NDA should not be used for potential investors. For an example of such an NDA, the IVCA has produced a draft outline that investors are likely to be familiar with. Please click here for a link to the IVCA NDA:

[▶ IVCA NDA.](#)

It is uncommon for a VC to agree to an NDA, as they would be concerned about restricting their ability to vet other companies in the same sector.

[▶ Download the precedent NDA here.](#)



How to complete the NDA

- 1 Read the disclaimer on the front page in full.
- 2 Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
- 3 Review the NDA to make sure you are comfortable with its terms, and that they are appropriate for your needs. Ideally, seek legal advice to make sure.
- 4 The NDA must be signed and dated by all parties in accordance with Irish law. If you are in doubt about the formalities for signing it, seek legal advice.
- 5 Keep the original document(s) or a copy in a safe place and an electronic back-up of the final signed version.

A contract of employment





A contract of employment

What are the terms on which you want to employ people? Certainty is best, so formal employment agreements are always advisable. Nonetheless, employers are legally obliged to provide anyone they want to employ for more than a month with a written statement of certain key terms of their employment, within two months of hiring them.

It is important for early-stage startups who are considering expanding their workforce to understand how specific employment-related clauses could affect them. Also, it usually benefits a company to take a consistent approach to employment contracts. This lays down certain standards and expectations for all employees. The contract must adequately protect the company's interests without putting too big a burden on staff, which could discourage them from joining.

Employees must be given certain terms in writing. These include job title, the date employment began and the nature of its term, notice periods, salary information, hours and place of work, pensions information, holiday entitlement and holiday pay, sick pay, disciplinary and grievance procedure information, and details of any collective agreements.

With technology or life sciences startups in particular, it is essential the contract covers confidentiality and ownership of intellectual property. Both these points have been addressed in the employment contract in this Startup Pack. Some people may also have to be made subject to restrictions after they leave the company to protect its confidential information and contacts.

▶ [Download a precedent Employment Contract here.](#)

We have also noted some additional issues often overlooked by startups in relation to employment law, which may be helpful:

▶ [Download the Employment Checklist.](#)

How to complete the employment agreement

- 1 Read the disclaimer on the front page in full.
- 2 Complete the details indicated in square brackets and ensure all square brackets are deleted. Where alternatives are provided, delete the options not required.
- 3 Review the agreement to make sure you are comfortable with its terms, and that they are appropriate for your needs. Ideally, seek legal advice to make sure.
- 4 The Employment Contract must be signed and dated by all parties in accordance with Irish law. If you have any doubt about the formalities for signing it, seek legal advice.
- 5 Keep the original document(s) or a copy in a safe place and an electronic back-up of the final signed version.

Legal checklists





Legal checklists

IP checklist

The IP checklist covers some initial considerations relating to IP and a startup business, particularly for technology and life science companies.

Rather than providing comprehensive advice on everything that could apply, it is a non-exhaustive list of potential queries and concerns. If you have any particular queries or concerns, seek legal advice.

The IP checklist provides a general overview of matters such as brands and trademarks, confidentiality, patents, registered and unregistered IP, third-party rights, open source and user-generated content, data protection, advertising, consumer protection and websites. It also includes some basic website terms and conditions that can be used as a precedent.

However, as with the other documents in this Startup Pack, seek legal advice on any issues on which you need further detail or clarity.

[▶ Download the IP checklist here.](#)

Tax checklist

This checklist is designed to cover some of the initial tax considerations for a startup business.

It includes the types of registrations your business and/or an individual may need to make.

[▶ Go to the Tax checklist here.](#)

Guide to the Irish Regulatory Framework for Raising Equity Finance

Any startup should bear in mind the legal restrictions on seeking investment from third-party sources.

[▶ Guide to the Irish Regulatory Framework here.](#)

Checklist of additional Employment Law considerations

We have also included a checklist of additional employment law considerations often overlooked by early-stage businesses.

[▶ Go to the Employment Law checklist here.](#)

Intellectual property, sales and marketing checklist



Intellectual property, sales and marketing checklist

This document provides an overview of some of the key initial considerations in relation to Intellectual Property (“IP”), data protection, advertising, consumer law and setting up a business, particularly for companies in the tech sector, based on the law as it stands in Ireland at December 2020.

Note that the law of other countries will differ.

It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this note. This checklist is also by no means exhaustive. If you have any queries or concerns in relation to IP, we recommend that you seek legal advice before taking any further action.

This information is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was posted; however, the law may have changed since that date. This information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this information.

First steps

Before beginning to invest time and money in building up your business under a particular trading name, brand name or logo, undertake clearance searches to check that your chosen name/logo does not conflict with pre-existing third party rights

The most relevant third party rights are registered or “unregistered” trade mark rights, although these are not the only rights that may apply to your new business.

You must make sure that your proposed name/logo is sufficiently different to pre-existing registered trade marks for identical or similar goods and unregistered names/logos used by other businesses. The key consideration in this area is whether your name/logo or your use of it could give rise to a likelihood of confusion with the earlier mark(s) or business.

You must also make sure that your name/logo could not be said to be taking unfair advantage of, or being detrimental to the distinctive character or reputation of a pre-existing well known trade mark (whether or not registered in Ireland).

It is advisable to get official clearance searches undertaken and assessed by a qualified practitioner, rather than carrying these out yourself. However, to get an initial idea of potential conflicts you can undertake online searches on search engines and on the online trade mark registries including those at the Intellectual Property Office of Ireland and EUIPO.

At this stage it is also important to check whether there is a suitable domain name available that relates to your chosen business name.

Register your trading name, key brand or product names and any logos

Consider registering your main trading name and key product and brand names or logos as trade marks in jurisdictions where you will be marketing or have the most business activities and dealings or in jurisdictions from which you may face the most competition. This is to help to protect them from being appropriated by third parties. Merely having registered a company name provides little protection for the name.

Currently, there are two types of registered trade marks that protect marks in Ireland – Irish national trade marks which protect your mark in Ireland only and European Union trade marks which protect your mark in the EU . You also need to decide what goods and services to register your mark in relation to.

We recommend you seek legal assistance in registering trade marks to make sure you get the right protection to suit your business.



First steps

Register domain names

Consider what names to register. Domain names should be registered in the name of the company and not the name of the individual who made the application.

Consider registering potential variants of your main domain name, for example common typing error variants. As domain names are relatively cheap you can consider registering a number of these. Once registered by another person, it can be difficult to recover the domain name from the third party.

A domain name is commonly registered through a domain name registrar. There are a number of registrars offering Irish domain name registration and they can offer a variety of services at different prices. You should consider a number of different providers to obtain the right service for you. A full list of accredited registrars can be located at [ICANN](#).

Ensure that your company is the owner of IP used by your business

As a general rule, except where you are using third parties' IP under licence, all IP that is being used by your company should be owned by your company.

Ensure that any individuals or contractors you hire transfer their IP rights in their work they are doing and materials related to it to your company. This can be through appropriate terms and conditions being included in an employment contract, commissioning or consultancy agreements or by a separate assignment. Examples of an employment contract and a standalone IP assignment which contain contractual provisions to transfer IP are included in this start-up pack.

Where you are using rights that cannot be assigned, make sure that your company is given a sufficiently wide licence to use these rights by the rights owner.

Ensure that your company is the registered proprietor of any of its registered IP

As a general rule, all of your company's IP should be registered in its name, not the names of employees or directors. This includes domain names.



First steps

Do not disclose confidential information, new designs, ideas or inventions without appropriate protection in place

As a rule, confidential information can no longer be protected once it is in the public domain. If you disclose a design you will not be able to obtain registered design protection for it (subject to a one year grace period in certain circumstances). If you disclose an invention before you apply for patent you will no longer be able to obtain patent protection.

You can avoid losing protection by disclosing the design, idea, invention or other confidential information to another person under the protection of a **non-disclosure agreement**.

Make sure it is clear that the non-disclosure agreement covers what you are disclosing and that the terms of any non-disclosure agreement are appropriate. If the information is valuable we recommend seeking legal advice before disclosing the information and for preparation of the agreement.

Also consider what practical steps you can take to protect information (such as only showing a copy of the document to the other person, not providing a copy to them, and marking copies of documents confidential).

Protecting your business IP

Registering your business IP

There are a number of types of IP that can be registered which include trade marks, design rights and patents. Design rights can be used to protect game characters or graphical user interfaces (GUIs) as well as the appearance of real world products.

IP can be one of the most valuable assets of a company's business, as it can prevent competitors from offering similar goods or services to you, add value to your company by giving it assets which it can sell or licence, and be used to demonstrate your company's worth to potential investors.

It is worthwhile considering IP registrations from the early stages of any business, and developing an IP filing strategy, as many jurisdictions operate a "first to file" registration system. You may also lose the possibility of obtaining any protection if you do not register the IP before you disclose your design or invention to the public.

You should take steps to register IP in jurisdictions that are relevant to your business (which may include jurisdictions where potential competitors are likely to operate). Which rights are important will vary depending on the nature of the business in question. However, registration is crucial to protect, effectively use and exploit IP.



Protecting your business IP

Don't forget patents

There is a common misconception that patents cannot be obtained in Ireland in relation to software or business methods. Whilst it is fair to say it is not as easy to get patents for software or business methods as it is in the US, it is still possible to obtain a patent where, broadly, the invention has a "technical effect" and the other usual requirements for patentability are met.

Of course if you are operating in the US or may expand to the US, then you can benefit from its more generous system.

For more guidance on patents, please see the Intellectual Property Office of Ireland's guidance found [here](#) and/or speak to a patent lawyer or attorney.

Protecting your unregistered business IP

Certain IP rights in Ireland can arise automatically, such as copyright and unregistered design rights.

Where you have designed or created something, it is important to ensure that the documents evidence precisely what you have designed or created and these documents should be retained. Sufficient detail of the creation or design process should be kept to support your claim to own the right and to establish the extent of the right you own. Documents should be dated and identify who contributed to the work.

Use trade mark notices, and use them correctly

Whilst it is not necessary to use a trade mark notice to obtain protection, it can be helpful both to deter third parties from using the mark and to help build up its distinctiveness as an indicator of the trade origin of your goods or services.

Where you have a registered trade mark you can use the ® symbol to show that the mark is registered. Note, however, that it is an offence to use this symbol where a mark is not registered.

Where you are using a brand name that is unregistered you can use the symbol ™.

You can also include a trade mark notice on your goods, website or marketing materials stating that "[your mark] is a registered trade mark of [your company name]" or a longer notice, such as:

"The corporate names of [your company name] and the brand names of our products and services are protected trade names and/or registered trade marks. [A non-exhaustive list of our registered trade marks can be found [here](#). If for any reason, any particular trade name or trade mark does not appear on this list, no waiver of our intellectual property rights is intended.] All rights reserved.

We take breaches of our intellectual property rights seriously and will take appropriate legal action in respect of any infringements."



Protecting your business IP

Use copyright notices

As copyright is an unregistered right, it can be particularly useful to include a copyright notice on your goods, website and marketing materials to put third parties on notice of your rights.

For individual works you can use the © symbol as follows:

“© [your company name] [year work created]”

The appropriate form of a longer notice is dependent on the nature of the rights and the medium concerned. As an example you could include the following on a website:

“This website and the material which appears on it (for example all text, photographs, logos, graphics etc.) are protected by copyright, belonging either to [your company name], or used under licence by us. Although you may view the material for your own non-commercial use, no other use should be made of it without formal permission from us. All rights reserved.

We take breaches of our intellectual property rights seriously and will take appropriate legal action in respect of any infringements.”

Avoid infringing third party rights

Ensure that your company has the necessary IP licences for its activities

Where your company uses IP rights which it does not own, you should also make sure that your company has necessary licences in place. Ensure that the terms of this licence are sufficiently wide to cover the use you are making and any potential future use you might like to make of these rights.

It is important to keep a record of licences that you have, and to monitor that you are keeping within the terms of the licences. For example a licence may be limited in terms of the number of users, geographical scope or what use you can make of the licensed IP.

The geographical dimension

Bear in mind that you can be considered to be carrying out potentially infringing activities in a country even if you are not based there. For example, if you have a website and make sales through that website to a particular jurisdiction, even though your website is not primarily targeted at that jurisdiction.

Hyperlinking

It is important that you do not link to or embed content which you know or suspect infringes copyright. Include an appropriate disclaimer in your website terms and conditions. Only link to or embed content which you are very confident is on the relevant site with the authorisation of the copyright owner, and is not behind a paywall. Take down links to content which you are notified infringes someone’s rights.

In any event, as a reputational matter you should take care that sites you link to are reputable.



Avoid infringing third party rights

Open source

Open source is now far more mainstream (e.g. the UK government has a presumption in favour of open source) and there is less fear and uncertainty regarding the combination of open and proprietary code.

There still remain a number of “open source myths”, such as “you can’t use open source in the proprietary environment”. Open source can be used in the proprietary environment, but to do so, careful consideration needs to be given to the risks so as to ensure that no unintended consequences are created through the combination of various aspects of free and open source software (FOSS) and proprietary code through the inheritance of FOSS licence restrictions.

Irrespective of the use of open source, the risk remains that use of unlicensed software could infringe someone else’s rights. The risk is amplified where proprietary and open source software are combined. If licensed correctly, open and propriety code can sit alongside each other. However, the licensing approaches for open source vary meaning that in some cases unintended consequences arise from modifications made to open source software, and from the combination of open source and proprietary code. If open source software is incorporated into your business software, be mindful of what effect the particular open source software licence(s) have on the subsequent use or licensing of amendments, improvements and adaptations of the software (or combinations of open source and other software) and take legal advice on this.

Failure to do so could act as a brake on the ability to sell potentially contaminated products because buyers feel they risk contamination themselves. The risk is a real risk and can affect the value of a deal. In addition, there is the risk of enforcement action by groups such as the free software foundation.

User generated content (UGC)

If your business involves user generated content, bear in mind you may be considered liable for defamatory statements, IP infringement or otherwise unlawful content.

Take legal advice on what steps you need to take to minimise your liability for UGC.

Some examples include comprehensive terms and conditions, which prohibit infringing/unlawful content, disclaim liability and allow you to take particular content down, and implement such notice and take down procedures.

In addition, make sure you have the necessary rights to make use of that content, including use that you can envisage or may wish to make in future.



Other matters	
Website terms and conditions	There are numerous other matters which may be relevant to your business and which we mention here for awareness. It is not possible to give comprehensive guidance on all considerations and legal risks within the confines of this checklist. We would therefore recommend that you seek legal advice, especially in relation to standard terms and conditions and other contracts which you use in the context of your business.
Website terms and conditions and the provision of information	<p>Your website should have appropriate terms and conditions and privacy policy that are easily accessible for visitors to the site. The website must also include certain corporate information about the company (such as the name, company number, registered geographic address etc).</p> <p>The terms and conditions for Irish consumer facing websites should be drafted in accordance with the requirements which apply to business-to-consumer contracts (consumer contracts) made by distance communication (such as online, email, mail-order, telephone, text message). The regulations place obligations on distance sellers to provide certain information before a consumer is bound by a contract and entitle customers to cancel contracts within a certain time-period and receive a refund. See “Distance and off-premises sale to consumers” section below for more details.</p>
Data Protection	Data protection law is concerned with the collection, use, sharing and storage of personal data by ‘data controllers’. Personal data is a broadly interpreted concept, which includes any information which can be used by the controller to identify an individual. Identifying someone may simply mean singling them out – for example where a unique individual is tracked online – even if you are unable to ‘name’ that individual. In Ireland, the main data protection law is the General Data Protection Regulation (GDPR), which is an EU law. This is supplemented by the Irish Data Protection Act 2018.
Notices	All businesses are required to inform relevant individuals (known as ‘data subjects’) about how and why their personal data is used by the business. The necessary notice may be provided in a number of ways, depending on how the business interacts with the data subjects. Commonly, a privacy notice or policy will be available on the business’ website, to inform users of the website and customers about the use of their personal data. Privacy notices should also be provided to company employees in respect of the company’s use of their personal data.



Other matters	
Data Protection Principles	<p>All controllers must comply with the following core principles when using personal data:</p> <ul style="list-style-type: none"> • <u>Lawfulness, fairness and transparency</u>: data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. • <u>Purpose limitation</u>: data must be collected for specified, explicit and legitimate purposes and not processed in a manner incompatible with those purposes. • <u>Data minimisation</u>: data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. • <u>Accuracy</u>: data must be accurate and, where necessary, kept up to date. Reasonable steps must be taken to ensure that inaccurate personal data are erased or rectified without delay. • <u>Storage limitation</u>: data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data are processed. • <u>Integrity and confidentiality</u>: processing must ensure appropriate security of the data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.
Internal Policies	<p>The GDPR places a strong emphasis on accountability – i.e. it requires controllers to demonstrate how they ensure their business complies with the data protection principles, and the other obligations under the GDPR. A key way of ensuring accountability is through the use of appropriate internal policies, such as a Data Protection Policy which explains to staff how to comply with the GDPR in the performance of their duties.</p>
Lawful Basis for Processing	<p>Data controllers may collect and process personal data when:</p> <ul style="list-style-type: none"> • the data subject consents; • the data controller needs to process the data to enter into or carry out a contract to which the data subject is a party; • the processing satisfies the data controller’s legal obligation; • the processing protects the data controller’s vital interests; • the processing is required to perform a public function in the public interest, or to administer justice; or • the data controller has a legitimate reason for the processing, except if the processing would damage the data subject’s rights, freedoms or other legitimate interests.
Data Subject Rights	<p>All data subjects have rights to exercise control over their personal data, such as accessing a copy of their data, or asking for their data to be erased. Requests to exercise rights must be complied with within one calendar month, unless the request is particularly complicated. These rights are not absolute, and certain exemptions apply in each case.</p>



Other matters	
Contracts with Third Parties	If a data controller uses a third party supplier to process personal data on its behalf (e.g. a payroll provider or a cloud hosted software application), the controller must enter into a contract with that third party which contains certain mandatory contractual terms. These terms are outlined in Article 28(3) of the GDPR.
International Transfers	Transfers of personal data to jurisdictions outside of the European Economic Area are allowed if the jurisdiction provides 'adequate protection' for the security of the data, or if the transfer is covered by 'standard contractual clauses' approved by the European Commission, or subject to an organisation's articles of association or other data protection policies. There is no requirement in Ireland to notify the Data Protection Commission (DPC) of the use of the standard contractual clauses or to file these with the DPC.
Security	<p>Data controllers must take appropriate technical and organisational measures against unauthorised or unlawful processing and against accidental loss or destruction of or damage to, personal data. The measures taken must ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage, and appropriate to the nature of the data. If there is a breach of security, that breach must be notified to the DPC within 72 hours, unless there is no likelihood of risk to the data subjects. If there is a likelihood of high risk, then the data subjects themselves must also be notified. This may in any case be advisable, if there are steps which you need those data subjects to take in light of the security breach (e.g. re-setting usernames and passwords).</p> <p>The Act does not specify specific security measures to adopt and implement. However, the National Standards Authority of Ireland recommends that organisations should adopt best practice methodologies such as ISO 27001.</p>



Other matters

Direct Marketing

Direct marketing is the communication of marketing or other promotional material which is targeted at a particular individual. In Ireland, there are strict rules regarding electronic direct marketing (which includes email, social media direct messages, SMS and telephone, but not currently online behavioural or targeted advertising) to consumers. These rules are contained in the ePrivacy regulations. If marketing to consumers by email, direct message or SMS, you must have first obtained the consumer’s prior consent (which must be specific, free and informed). There are two circumstances where you can send marketing emails on an opt-out basis:

- **Existing Customers.** If (1) a customer has previously purchased services from you in the 12 months prior to the sending of the marketing; (2) the direct marketing is in relation to similar services offered by you; and (3) there is a clear opt out option for the customer, both at the time the email address was collected and each time a message is sent, then you may rely on these three criterion to send further direct marketing communications to that customer; and
- **B2B Exception.** The B2B Exception provides that marketing may be sent, on an opt-out basis, to an email address which reasonably appears to you to be the email address used mainly by the subscriber in the context of their commercial or official activity, and that the email or communication relates to that activity only.

With respect to telephone marketing, you can either obtain prior consent, or you can call consumers without prior consent, provided you screen against the National Directory Database list (in relation to landlines). In all cases, your privacy notices to individuals (see “Data Protection” section) must make it clear that you will carry out direct marketing, and provide details of how they can opt-out of / prevent this.

Advertising

If your business involves advertising or you are making advertising statements (for example on your website), or if you are organising sales promotions, you should be careful that statements and advertising or marketing meet requirements of the Advertising Standards Authority for Ireland’s (ASAI) Code where relevant. This code is enforced by the ASAI and is quite detailed. In relation to advertising in other jurisdictions, there are a number of regimes to consider, with particular nuances in different jurisdictions. General principles applying to most jurisdictions are:

- advertising should not mislead consumers or make claims that cannot be substantiated;
- stricter rules tend to apply to advertising to minors;
- there are often restrictions on “obscene” or potentially offensive advertising, although the detail of how these restrictions apply in practice will vary significantly between jurisdictions; and
- sector-specific rules apply, particularly in relation to financial services, and products which may affect health such as tobacco, alcohol, foods and cosmetics.



Other matters	
Implied terms and conditions	<p>In Ireland, contracts for the sale of goods or supply of services are to be treated as including certain implied terms unless expressly dis-applied. If a buyer is dealing as a consumer then the Irish Sale of Goods legislation will render the disapplication of such implied terms unenforceable. Such terms may only be disapplied in a business to business context where such disapplication is shown to be fair and reasonable.</p> <p>For this reason careful consideration should be given before excluding certain implied terms (although in practice, it is not rare for service providers in business-to-business contracts to exclude implied conditions and replace them with express terms). Implied terms will only be effectively dis-applied if they are expressly excluded.</p> <p>Key implied terms in a contract of sale of goods, digital content or services (as applicable) are that:</p> <ul style="list-style-type: none"> • the seller has a right to sell the goods and/or digital content; • the goods and/or digital content conform with their description; • the goods and/or digital content are of satisfactory quality; • the goods and/or digital content are reasonably fit for purpose; and • the services will be provided with reasonable skill and care.
Accessibility	<p>Irish equality legislation imposes a duty on service providers to make "reasonable accommodations" to enable disabled users (such as those who are visually impaired or hard of hearing) to access their services.</p>
Consumer protection law	<p>There is an extensive body of consumer protection law in Ireland. Key principles are set out below, however this is not an exhaustive list of legal risks and considerations.</p> <p>The primary impacts of consumer protection law are that certain terms set out in a consumer contract may not be binding on consumers and certain terms are implied into contracts.</p> <p>If you are providing products, services and/or digital content to consumers you should be mindful of consumer protection legislation and ensure that your terms and conditions and your commercial practices (which include advertising and marketing) are fair, reasonable and not misleading. The Consumer Protection Act 2007 states that a seller may be held criminally liable for misleading or aggressive sales practices and could also be liable for statutory civil remedies. A practice may be "misleading" if for example it omits or hides material information or contains false information in relation to any material information so as to cause the average consumer to take a transactional decision that they would not otherwise have made.</p>



Other matters

Selling to Consumers

When selling goods, services and/or digital content (including distance sales, in-store and off-premises) to consumers, businesses are often required to provide certain information to consumers before they are bound by the contracts (such as the name of the business, geographic address, telephone number, the main characteristic of the product supplied). Different information requirements apply depending on the way in which the product is sold and the type of product.

The European Communities (Unfair Terms in Consumer Contracts Regulations) 1995 (as amended) (the Regulations) applies to consumer contracts. In particular, the Regulation provides that:

- liability for death or injury caused by a trader’s negligence can never be excluded or limited in a consumer contract;
- terms in a consumer contract must not be unfair (applying a “fairness” test set out in the Regulations and determined by taking into account (i) whether there is a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer; and (ii) the requirement of good faith (strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term etc). However, this test does not apply to the terms which define (i) the subject matter of the contract (for example the service description) or (ii) the charges, as long as such terms are set out in plain and intelligible language;
- any term which is “unfair” is not binding on the consumer; and
- any written term in the consumer contract is in plain and intelligible language.

If the price and the main subject matter of the contract are not transparent and prominent, they will also be assessed for fairness. It is therefore important for the contract to be written in plain language and not to hide key terms in "small print" and to draw the consumer’s attention to any particularly onerous terms.

Guarantees

While guarantees are not compulsory, consumer guarantees take effect as a contractual obligation when the goods are delivered, so a consumer may take legal action if the seller does not act in accordance with the terms of the guarantee. If they are given to an Irish consumer then they must be written in plain, intelligible English and give all the necessary information to make a claim under the guarantee. The consumer’s statutory rights in relation to the goods being sold or supplied are not affected by the guarantee.



Other matters

Distance and off-premises sale to consumers

In the case of distance contracts (such as consumer contracts entered into over internet and telephone) and off-premises contracts (such as sale at the consumer's home), consumers have the right to cancel unless one of the exemptions apply. Where the consumer has the cancellation right, companies must inform consumers of a right to cancel and withdraw from sale during the 14 calendar day cancellation period if they change their mind. If the trader fails to provide relevant information, the cancellation period can be extended up to 12 months.

It is worth noting that, in the case of distance contracts, companies must not start providing services unless:

- the consumer has given express consent to start the supply of content; and
- the consumer has acknowledged the loss of the right to cancel as a result.

There are statutory requirements around reimbursement and return of goods if the consumer exercises the cancellation right. For example, if companies want consumers to bear the postage cost of returning any cancelled goods, this must be communicated before consumers are bound by contracts.

In the case of distance contracts, companies must obtain the express consent of consumers for any payments (e.g. by using a "pay now" button), to make it clear that a binding obligation will arise if an order is placed.

There are also requirements to provide information relating to out-of-court dispute settlement. Whether a trader agrees to any out-of-court complaint and redress mechanism and if so how to access it must be included in a distance or off-premises contract. A trader established in the EU and selling online must also include a link to the EU online dispute resolution platform on their website.

Tax checklist



Tax checklist

The tax checklist is designed to cover some of the initial considerations that relate to tax and a start-up business.

It includes the types of registrations that a business and/or individual may need to make.

The taxes summarised below are grouped into those imposed on the company, and then those imposed on individuals. The interests of the company may not always fully align with yours as founding shareholder, or officer or employee. Individuals should always take their own independent tax advice taking into account their personal circumstances.

New companies

Register your company for tax with Revenue Commissioners

You must register your company for corporation tax and any other applicable taxes (VAT, as an Employer for PAYE, relevant contracts tax) with Revenue as soon as the company commences a business activity. You can register your company for corporation tax by completing and filing Form TR2. In addition, you should complete Form 11F CRO and send it to the relevant Revenue district within 30 days of the company commencing a business activity in Ireland.

For further information see:

▶ <https://www.revenue.ie/en/starting-a-business/registering-for-tax/how-to-register-for-tax-as-a-new-company.aspx>

File Company Tax Returns annually

Corporation Tax Returns (Form CT1) are due annually and must be filed with Revenue by no later than 8 months and 23 days after the end of each accounting period. The returns must be filed online using the Revenue Online Service (ROS). You must keep adequate business and accounting records to file a return and calculate the amount of corporation tax due.

Depending on the level of taxable profits of your company, it may be required to pay preliminary tax, i.e. pay part of its corporation tax in advance of the end of the accounting period to which it relates. The preliminary tax could be paid in one or two instalments depending on the amount of corporation tax paid by the company for the preceding year. The balance of the corporation tax that a company must pay is usually paid when filing its corporation tax return. There are certain exemptions available to start-up companies in respect of their first accounting period.

There is a relief from corporation tax of up to €40,000 per year which is available to start-up companies for the first three years from the commencement of trade. The relief is subject to certain conditions and its amount depends on the amount of employer social insurance (PRSI) paid by the company per year in respect of its employees. In order to avail of the relief, the company must commence trading by 31 December 2021.

For further information see:

▶ <https://www.revenue.ie/en/companies-and-charities/corporation-tax-for-companies/corporation-tax/index.aspx>

▶ <https://www.revenue.ie/en/companies-and-charities/corporation-tax-for-companies/corporation-tax-payment-and-filing/payment-and-filing.aspx>

▶ <https://www.revenue.ie/en/starting-a-business/initiatives-for-startup-businesses-and-smes/tax-relief-for-new-startup-companies/index.aspx>



New companies

Register your company as an Employer for Pay as you earn (PAYE)

Your company will generally be an employer of its directors, as well as any other employees (but not self-employed individuals), and therefore it must operate the PAYE system by deducting the appropriate amount of income tax, universal social charge (USC) and PRSI, from their pay and from most benefits in kind. Once registered for PAYE, Revenue will notify your company, as employer, of the tax credit and tax bands which apply to each employee which specifies how much tax to deduct.

As an employer you will need to pay employer PRSI on salary and most benefits in kind paid to employees.

Irish based employees are generally subject to Irish income tax, USC and PRSI on their earnings. Income tax is applied at differing marginal rates, depending on the level of income.

For further information see:

- [▶ https://www.revenue.ie/en/employing-people/paying-an-employee/index.aspx](https://www.revenue.ie/en/employing-people/paying-an-employee/index.aspx)
- [▶ https://www.revenue.ie/en/employing-people/paying-your-employees-tax-to-revenue/pay-related-social-insurance-prsi.aspx](https://www.revenue.ie/en/employing-people/paying-your-employees-tax-to-revenue/pay-related-social-insurance-prsi.aspx)
- [▶ https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/tax-relief-charts/index.aspx](https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/tax-relief-charts/index.aspx)



New companies

Register your company for VAT if the annual turnover of the company is over a certain threshold and submit a VAT return

The company will generally be charged VAT (which is its 'input tax') on the purchase price of goods and services supplied to it by Irish VAT registered suppliers and on imports of goods and services into Ireland (unless those types of goods or services are specifically exempt from VAT or zero-rated).

The company must register for VAT if the value of goods and services the supply of which is subject to VAT, made by the company over a 12 month period, exceeds the registration threshold, or there are reasonable grounds for concluding such supplies will do so. Once registered for VAT, the company must itself charge Irish VAT at the applicable rate (which is its 'output tax') on supplies it makes to its customers. There may be situations where the company need not have to charge output tax, for example if its supply is of an exempt nature, or the place of supply is outside Ireland. There are differing rates of VAT depending on the nature of the supply, the standard rate being 23% (this rate has, in the past, been temporarily reduced to 21% as a COVID-19 related tax measure).

The company will not be able to claim a credit for its input VAT if it does not have a valid VAT invoice from the supplier and/or is not VAT registered. Accordingly, if the company is not yet required to register for VAT, it may nevertheless be worth voluntarily registering. The company should not be entitled to recover input tax if it makes VAT exempt supplies.

The company would be required to submit bi-monthly VAT returns to Revenue, reporting its output tax and input tax and other information for that period and either paying Revenue the excess of its output tax over its input tax or conversely claiming a refund of surplus input tax.

For further information see:

▶ <https://www.revenue.ie/en/vat/what-is-vat/index.aspx>

▶ <https://www.revenue.ie/en/vat/vat-rates/index.aspx>

Individuals

Self-Assessment

If you are a company director, you may need to complete a Self-Assessment Tax Return (Form 11) to tell Revenue about your own personal income and expenses after the tax year end on 31 December each year. You can do this online or by way of a paper form. If you are filing the paper form this needs to be filed with Revenue by 31 October in the year following the end of the tax year. If you are filing online, the return needs to be filed with Revenue by mid-November (deadline is confirmed by Revenue annually). You may also be required to pay preliminary tax by 31 October in the tax year to which it relates.

For further information see:

▶ <https://www.revenue.ie/en/self-assessment-and-self-employment/guide-to-self-assessment/index.aspx>

▶ <https://www.revenue.ie/en/self-assessment-and-self-employment/guide-to-self-assessment/what-is-preliminary-tax.aspx>



Individuals

PRSI

If you are self-employed (or a proprietary director), you must compute and account to Revenue for Class S PRSI yourself. Class S PRSI is charged at a flat rate of 4% on all reckonable income (income from a trade or profession, investment income, rental income). For further information see:

▶ <https://www.revenue.ie/en/employing-people/paying-your-employees-tax-to-revenue/pay-related-social-insurance-prsi.aspx>

Equity investment

Tax considerations for manager-shareholders

If you are a director or an employee holding or acquiring shares, there are a number of tax considerations to be aware of:

- income tax arises where shares are purchased for less than market value and this can apply even where the original founder shareholders acquire additional shares. The tax is operated by the employer company;
- anti-avoidance provisions can also trigger a tax liability, for example, where shares are converted or rights attaching to shares are varied so as to move value from one class of share to another;

Entrepreneurs' relief could reduce (potentially significantly) the main rate of capital gains tax on a disposal of shares in trading companies from 33% to 10% on chargeable gains of up to €1 million, but certain conditions must be satisfied. For further information see:

▶ <https://www.revenue.ie/en/gains-gifts-and-inheritance/cgt-reliefs/revised-entrepreneur-relief.aspx>

Equity Incentives

Equity incentives are an ideal way for start-up companies to incentivise employees as they involve no cash cost to the company and are generally very flexible in terms of rewarding performance and achievement of growth.

A robust valuation of the acquired shares must be kept on the records of the company to support the treatment from a tax perspective.

There is a specific tax incentive scheme which seeks not to apply income tax to a gain realised on the exercise of share options, for options granted to key employees, but its conditions are very restrictive.

For share options, employees are responsible for paying tax realised on the exercise of the option but for the issue of shares, the employer company is responsible for withholding tax and paying to Revenue.



Equity investment

Employee Incentive Schemes – Obligation to notify Revenue

If your company issues shares or grants options to directors or employees in connection with their employment, your company (as employer) will be required to notify Revenue of that fact. Your company will need to file annual returns in relation to reportable events in respect of share option schemes (grant of shares/share options, exercise of share options, etc) electronically via ROS. The electronic filing must be made with Revenue by 31 March following the tax year in which the reportable event occurred. Your company will also have certain reporting obligations when providing share or cash awards to its employees under an employee share incentive scheme.

For further information see:

[▶ https://www.revenue.ie/en/additional-incomes/employment-related-shares/index.aspx](https://www.revenue.ie/en/additional-incomes/employment-related-shares/index.aspx)

Employment checklist



Employment checklist

The employment law checklist is designed to cover some of the initial considerations that relate to employment law and a start-up business in Ireland. It is not exhaustive, but rather an indication of some initial points to consider. It is recommended that legal advice is taken prior to commencing a recruitment process.

New companies	
Tax	
Register your company for payroll taxes	<p>As an employer, your company will be required to register for the pay-as-you-earn (PAYE) system and deduct the appropriate amount of income tax due from the employees at source from the employees' remuneration (including most benefits in kind), and remit such amounts to the Revenue Commissioners. Once registered for PAYE, the Revenue Commissioners will notify your company, as an employer, of the tax credit and tax bands which apply to each employee which specifies how much tax to deduct.</p> <p>In addition, your company must deduct the relevant employer's and employee's Pay Related Social Insurance (PRSI) and Universal Social Charge (USC) at source from the employee's remuneration and remit it to the Revenue Commissioners. The rate of USC varies depending on the relevant earnings of the employees.</p>
Recruitment	
Job advertisements	<p>Employers must not discriminate against prospective employees in relation to access to employment. This includes advertisements for vacancies. Advertisements must not indicate an intention to discriminate on any of the nine protected grounds (e.g. gender, civil status, family status, sexual orientation, religious belief, age, disability, membership of the Traveller community and race).</p> <p>Indirectly discriminatory criteria, such as a requirement to work full-time or to have a certain length of service, are prohibited unless the criteria are proportionate and necessary to achieve a legitimate objective.</p>
Data protection	<p>All personal data relating to job applicants obtained during the recruitment process must be processed and retained in accordance with Irish data protection law.</p> <p>A privacy notice should be provided to prospective candidates which sets out the personal data which the employer will be processing in connection with their recruitment, the reasons that this is required, the safeguards in place to protect their personal data and its position on the retention of that data.</p>
Reasonable accommodation	<p>Reasonable adjustments may need to be made to the application and interview process for those applicants with disabilities, such as providing documentation in an accessible format (e.g. Braille, large print, audio).</p> <p>After recruitment, employers are under a continuing obligation to take appropriate measures to meet the needs of disabled people in the workforce.</p>



New companies	
Recruitment	
Pre-employment health questions	Pre-employment health questions to candidates are not required but can be requested, particularly for roles where a minimum level of physical fitness or medical health is a relevant factor for the job. The company should be in a position to show that screening of this type is necessary, proportionate and in pursuance of a legitimate interest, so as to justify the intrusion on the employee's privacy. A decision not to hire someone on the grounds of information revealed in a medical examination may constitute disability discrimination. Medical history is a special category of personal data under Irish data protection law and processing of that data must be on an appropriate lawful basis.
Pensions	Where employers do not offer employees an occupational pension scheme, they must provide employees with access to a Personal Retirement Savings Account (PRSA). There is no obligation to make employer contributions to it. An automatic enrolment system is proposed to be introduced by 2022. This will require employers to contribute to a defined contribution scheme on behalf of employees who are not already enrolled in a pension scheme operated by the employer.
Immigration checks	Employers should ensure each prospective employee has permission to work in Ireland before commencement of employment. It is a criminal offence to employ someone who does not have permission to work. Generally all non-EEA nationals require an employment permit to work in Ireland. Permit applications can take several months to process and therefore should be made in good time prior to the proposed employment start date. Offers of employment should be made conditional on immigration verification.
Background checks	Many employers will wish to carry out background checks. Employer references, identity and education verifications are common practice in Ireland. Criminal checks are permitted only in very exceptional circumstances. Credit checks may only be permissible to the extent reasonably required by the role, e.g. where the candidate has financial responsibilities. Employers must comply with the various obligations regarding personal data that it may obtain in the course of candidate background checks.
Terms and conditions of employment	
Contracts of employment	An employer must provide an employee with 'core' terms of employment within five days from the start date. Other specific key terms must be provided in writing within two months of an employee's start date. These obligations are best satisfied by providing an employee with a comprehensive written contract of employment.



New companies	
Terms and conditions of employment	
Staff handbook	A staff handbook contains policies and procedures relevant to employees, such as disciplinary, grievance and absence management policies. A staff handbook ensures that employees are aware of the company's expectations and provides guidance to managers on how such matters should be handled in practice. Employees will often appreciate clear procedures, setting out the company's requirements and step-by-step processes.
Probationary periods	The purpose of a probationary period is to provide a suitable amount of time in which the company can assess the employee. Typically probation periods are three to six months in duration. The duration will depend on the nature of the job and how long it will take the employer to assess performance for the purposes of confirming continued employment. It is advisable that the probation period is not greater than 12 months, inclusive of notice.
National Minimum Wage	As of 1 February 2020, the national minimum wage is €10.10 per hour. From 1 January 2021, the national minimum wage will increase to €10.20 per hour. Some sectors (e.g. catering, construction) have had higher mandatory pay rates under Registered Employment Agreements, Employment Regulation Orders or Labour Court Determinations.
Notice	Minimum terms of notice apply where either an employee or employer wish to end a contract of employment. The notice period to be given by an employer depends on the employee's length of service. It varies from one week (for an employee who has between 13 weeks and two years' service) to eight weeks (for an employee with over 15 years' service). Employees are only required to give one week's notice. These are only minimum notice periods and it is usual for parties to agree longer notice periods in the contract of employment.
Working time	The maximum working week is 48 hours, not including rest and break periods, aggregated over a reference period. Employees are generally entitled to rest periods of at least 11 consecutive hours in every 24 hour period and one weekly rest period of 24 consecutive hours. This rest period must include a Sunday unless specified otherwise by the contract of employment. Employees are not entitled to overtime pay unless expressly provided for in their contract of employment.



New companies	
Terms and conditions of employment	
Employer protections	<p>The company should consider what protection should be included in contracts of employment. For example, in the technology and life sciences sectors, if the role involves the creation of intellectual property, the company would certainly need to include detailed provisions to ensure that all IP belongs to the company and not the individual.</p> <p>Post-termination restrictions should also be included where necessary to protect the company's interests and prevent an employee with access to confidential information/trade secrets from working for a competitor within a certain area for a period of time after the termination of employment.</p> <p>Confidentiality obligations will also need to be included in respect of non-disclosure both during employment and post-termination and need to be specific to protect the particular information and trade secrets a company is concerned about.</p>
Health and Safety	<p>Employers are obliged to ensure the health and safety of employees. Every Irish employer is required to carry out a workplace risk assessment to identify any hazards, assess the risks arising from such hazards and identify the steps to be taken to deal with any risks. A safety statement must also be prepared setting out the people in the workforce who are responsible for safety issues. Employees should be given access to this statement and employers should review it on a regular basis.</p>
Group Restructures	
TUPE considerations	
	<p>The European Communities (Protection of Employees on Transfer of Undertaking) Regulations (TUPE) may apply to restructures within group companies. For example, an intra-group re-organisation may involve an asset purchase. The transfer of a business within a group can constitute a transfer of an undertaking for the purposes of TUPE in the same way as a transfer between two unconnected parties. This means that employees would automatically transfer on their existing terms and conditions.</p> <p>It is highly recommended that legal advice is taken prior to any intra-group reorganisation taking place.</p>

Raising equity finance



Raising equity finance – A guide to the Irish regulatory framework

A key source of financing for start-up companies is equity financing. This often takes the form of personal investment or investment by third parties (including friends and family, professional investors and/or alternative sources such as crowdfunding) in return for shares in the capital of the company.

When an investor acquires shares in a start-up company, there is a risk that the investor may lose his entire investment if the company is not successful. Shares in private limited companies are also illiquid assets and difficult to value. It is for these reasons that the legislative regime has developed to protect investors and to restrict a company's ability to induce investors to invest in a company.

This note provides an overview of the relevant Irish and EU legislation to be considered by start-ups (though it should not be viewed as legal advice) where they are seeking to raise equity finance. It is not possible to provide comprehensive advice on the matters that may apply in the particular circumstances of your business in this note. This note is also by no means exhaustive. If you have any queries or concerns in relation to the

Irish regulatory framework, we recommend that you seek legal advice before taking any further action.

This information is intended as a general overview and discussion of the subjects dealt with. The information provided here was accurate as of the day it was posted; however, the law may have changed since that date. This information is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper is not responsible for any actions taken or not taken on the basis of this information.

Restrictions on offers to the public

The main investor protections come in the form of restrictions on offers of securities (which includes shares) to the public.

Subject to certain limited exceptions (outlined below), Irish companies are restricted from offering securities to the public.

Generally speaking, there is an offer of securities to the public if there is a communication to any person which presents sufficient information on the securities to be offered and the terms on which they are to be offered to enable an investor to decide to buy or subscribe for the securities in question. The communication can be in any form and by any means.

There are two material restrictions to be aware of:

- Companies Act prohibition on companies making offers to the public – Pursuant to section 68 of the Companies Act 2014, a private limited company must not offer shares of the company to the public.
- Requirement to prepare a prospectus – Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 (commonly referred to as the Prospectus Regulation) provides that it is unlawful for a company to offer securities to the public unless a prospectus, approved by the Central Bank of Ireland, has been prepared. Breach of this requirement is a criminal offence.

It is important to note that the Companies Act prohibition applies only to private limited companies while the Prospectus Regulation requirement applies to all Irish companies (including private and public companies).

Before any offer is made by a start-up company, the scope and extent of the offering should be assessed to ensure that these restrictions are not triggered. Ideally any offer should be targeted at specific individuals (whether it be professional investors or friends and family) only rather than the general public.

Raising equity finance – A guide to the Irish regulatory framework

Exceptions

The exceptions most commonly used by start-up companies seeking equity financing apply to both the Companies Act prohibition and the Prospectus Regulation requirements. These exceptions provide that the following offers of securities will not be regarded as an offer to the public and will therefore fall outside the restrictions:

- i. an offer addressed to qualified investors;
- ii. an offer addressed to 149 or fewer persons; or
- iii. an offer addressed to both qualified investors and 149 or fewer other persons.

For these purposes, a qualified investor includes regulated investment and financial firms and other persons who are high-net-worth professional investors.

Additional exceptions – Prospectus Regulation only

The following exceptions to the Prospectus Regulation requirements are also available to Irish start-up companies (other than Irish private limited companies which are subject to the Companies Act prohibition referred to above):

- i. the total amount being raised from investors in EU member states is less than EUR8,000,000 (calculated over a period of 12 months);
- ii. the minimum consideration payable by any person is EUR100,000; or
- iii. the offer is addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors. Note that this specific exception goes further than the more limited Companies Act exception referred to above which applies in respect of 149 offerees in total, while this exception applies in respect of 149 offerees in each member state of the EU.

Potential Liabilities

Where an offer of securities is to be made (whether it constitutes a public offer or otherwise) and equity finance is sought, it is important to be aware of the potential liabilities that may arise.

Generally speaking, such liabilities arise in connection with misleading statements made to investors in connection with a proposed investment. The potential grounds for such liability include:

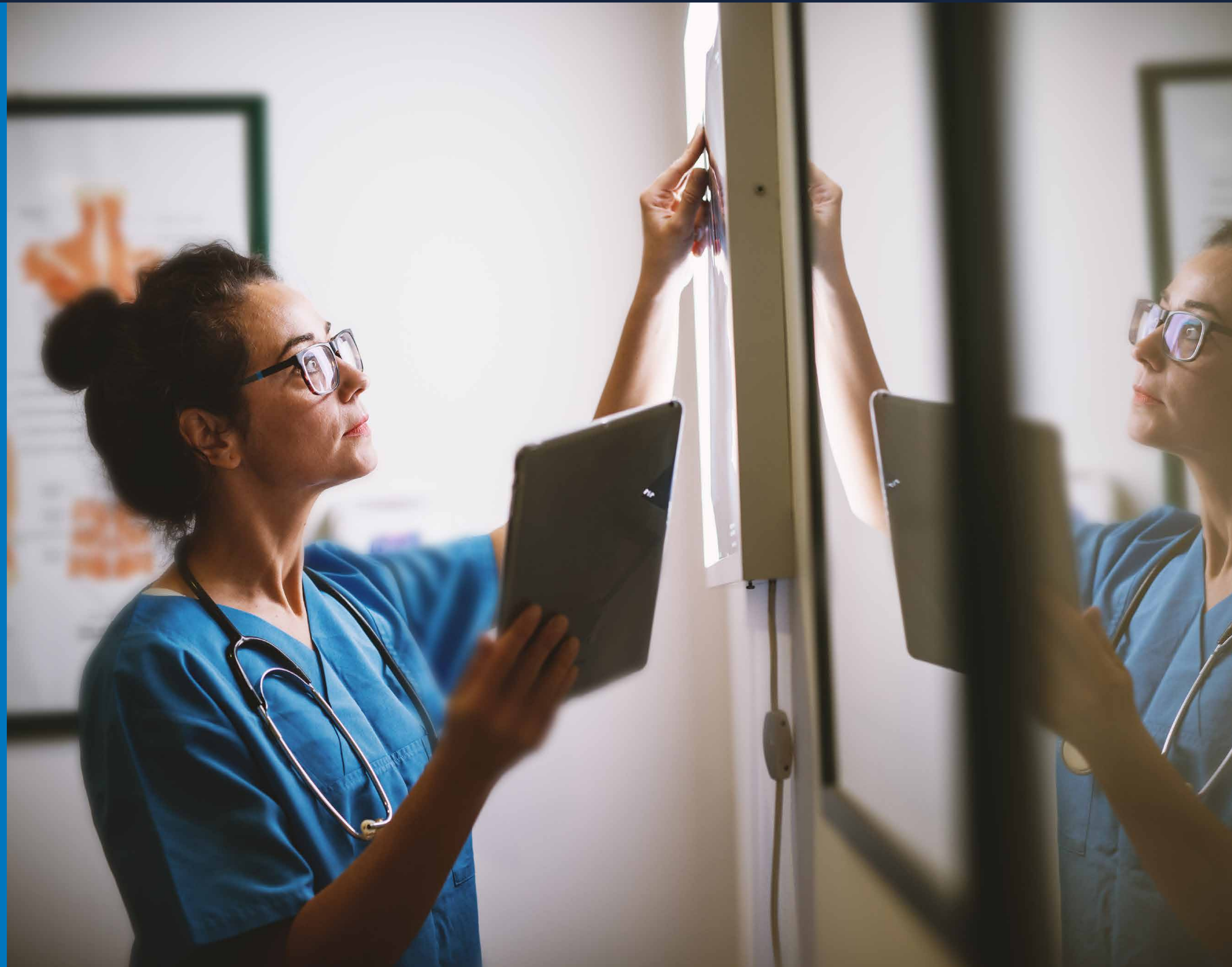
- **Breach of Contact** – If an investor can demonstrate that they bought shares in reliance on a false or misleading pre-contractual representation for which

the company is responsible they may be able to bring a claim against the company under the law of misrepresentation unless liability is clearly and properly excluded. The proforma subscription and shareholders' agreement provided in this start-up pack excludes liability for any pre-contracted representations made.

- **Misstatement** – Where a person relies on a misstatement of fact made by the company or any of its directors to buy securities and suffers a loss as a result of the misstatement, and such misstatement was negligently made, a civil action for negligence may arise to recover damages for such loss. The proforma subscription and shareholders' agreement provided in this start-up pack expressly excludes liability for such claims. Civil liabilities may also arise in respect of a fraudulent statement of fact. Liability for such fraudulent misstatement cannot be excluded.

As such, it is important to ensure that all statements made to prospective investors (whether written or by any other means, including verbally) are accurate and are capable of verification by way of underlying data/ information. In addition, statements about the expected future performance of the company should be avoided.

Startup pack: Terms and conditions of use





Startup pack: Terms and conditions of use

1. Definitions and Interpretation

In these terms and conditions:

“DLA Piper” means the global law firm known as DLA Piper, operating through various separate and distinct legal entities (including the DLA Piper Entity). Further information in respect of these entities can be found at the Legal Notices page at www.dlapiper.com.

“DLA Piper Entity;” “we” or “us” means DLA Piper Ireland LLP (and words such as “our” shall be interpreted accordingly).

“DLA Piper Group” means the alliance of legal practices known as DLA Piper Group, comprising members which are separate and distinct legal entities and which are affiliated to entities of DLA Piper but are not, themselves, entities of it. Further information in respect of these members can be found at the Legal Notices page at www.dlapiper.com.

“DLA Piper Person” means each and all of the following and each and all of their respective members, partners, directors, employees, representatives and agents (as the case may be):

- the DLA Piper Entity;
- any other entity of DLA Piper;
- any member of DLA Piper Group; and
- any body or entity controlled or owned by any entity of DLA Piper (including the DLA Piper Entity) or any member of DLA Piper Group or any of their respective members, partners, directors, employees, representatives or agents (as the case may be).

2. Scope and terms of the Startup Pack

You should note that:

- 2.1 The Startup Pack is intended as a general overview of some of the key legal issues that are likely to be relevant to a startup business in Ireland and does not claim to be comprehensive or provide specific legal advice or other advice. It is not possible to provide comprehensive advice, whether legal or otherwise, on the matters that may apply in the particular circumstances of your business in this Startup Pack. Accordingly, matters which you consider to be important, or which may otherwise be considered important, to your particular circumstances or business may not have been addressed in the Startup Pack, or may not have been addressed in sufficient detail for your purposes. Consequently, the Startup Pack cannot in any way act as a substitute for obtaining your own legal advice and other advice.
- 2.2 We have not updated the Startup Pack since 1 July 2021 to take account of any subsequent events or changes in law, and we have no duty or responsibility to do so.

3. Downloading the Startup Pack

- 3.1 By downloading and/or accessing and/or reviewing and/or using the Startup Pack you confirm that:
 - 3.1.1 you have fully considered the provisions of these terms and conditions, have obtained such legal advice as you consider appropriate and consider such provisions to be reasonable; and
 - 3.1.2 you have read and understood these terms and conditions and you understand that they may affect your rights or responsibilities and you agree to be bound by these terms and conditions.

4. No reliance or claims by you/any other party

- 4.1 You acknowledge and agree that these terms and conditions are a condition to our agreement to provide you with access to the Startup Pack and that neither we nor any DLA Piper Person:
 - 4.1.1 owes or accepts any duty, responsibility or liability to you or any other party, whether in equity, contract, tort or otherwise, in respect of the Startup Pack or in respect of any information contained in or derived from the Startup Pack;
 - 4.1.2 shall be liable in respect of any direct or indirect losses (of whatever nature), costs, claims, demands, expenses (including, without limitation, legal expenses) or other liabilities incurred or suffered by you or any other party arising out of your use, or any other party's use, of the Startup Pack, or any information contained in or derived from the Startup Pack, or our provision of the Startup Pack to you or any other party.
- 4.2 You agree that you will not rely on the Startup Pack and will not bring any action, proceedings or claim against us and/or any DLA Piper Person where such action, proceedings or claim in any way relates to or concerns or is connected with your use, or the use by any other party, of the Startup Pack or any information contained in or derived from the Startup Pack.
- 4.3 You acknowledge and agree that by making the Startup Pack available to you, neither we nor any DLA Piper Person is making any representation, statement, warranty or assurance in relation to the accuracy or completeness of the Startup Pack or any matters mentioned or information contained in it.

Startup pack: Terms and conditions of use

4.4 You agree to indemnify us and each DLA Piper Person and to hold us and each DLA Piper Person harmless against all actions, proceedings and claims brought or threatened against us and/or any DLA Piper Person and against all direct or indirect losses (of whatever nature), costs, claims, demands, expenses (including, without limitation, legal expenses) and other liabilities which we and/or any DLA Piper Person incur or suffer from time to time arising out of or in connection with your failure, or that of any other person to whom you provide a copy of the Startup Pack in accordance with paragraph 5 of these terms and conditions, to comply with these terms and conditions.

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5.1 Subject to paragraph 5.2, you must not copy or distribute the Startup Pack or otherwise make it available to any other person.

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5.2.2 to any person,

provided that, in each case, you take all steps necessary to ensure that the recipient understands and agrees that the Startup Pack is provided to them subject to the same terms and conditions as those set out in these terms and conditions in relation to our provision of the Startup Pack to you.

6. Subsequent version(s) of the Startup Pack

You acknowledge and agree that, by making a copy of the Startup Pack available to you, we do not assume any duty or responsibility to provide you with any subsequent versions of the Startup Pack (if any).

7. No reliance on supplementary information or explanations

If we, in our absolute discretion, agree to give information and/or explanations to you and/or your professional advisors (to whom we assume no duty or responsibility) in relation to the Startup Pack, you acknowledge and agree that any such information and/or explanations are given subject to the same terms and conditions as those set out in these terms and conditions in relation to the Startup Pack.

8. No lawyer/client relationship with you

Our agreement to provide a copy of the Startup Pack to you does not constitute or create a lawyer/client relationship between us (and/or any DLA Piper Person) and you and/or those persons to whom you make the Startup Pack available in accordance with these terms and conditions.

9. General

9.1 Liability

Nothing in these terms and conditions shall be applicable to the extent that it constitutes a limitation or exclusion of liability for death or personal injury caused by negligence or constitutes a limitation or exclusion of liability for our fraud or reckless disregard of professional obligations.

9.2 Applicable law and jurisdiction

These terms and conditions and any dispute or claim arising out of or in connection with it, its subject matter or formation (including, without limitation, any non-contractual dispute or claim) are governed by and shall be construed in accordance with Irish law, and you irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to settle any such dispute or claim.

9.3 Entire agreement

These terms and conditions constitute the entire agreement and understanding between us in respect of their subject matter.

9.4 Severance

9.4.1 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of any other provision of these terms and conditions.

9.4.2 If any illegal, invalid or unenforceable provision of these terms and conditions would be legal, valid or enforceable if some part or parts of it were deleted, such provision shall apply with the minimum deletion(s) necessary to make it legal, valid or enforceable.

Thank you



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