
Christopher Thomas Griffith

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Christopher Thomas Griffith*

I. Introduction

Over the past twenty years, Ireland has experienced rapid growth in its industrial sector. The majority of this development has resulted from a program of innovative incentives. This Article focuses on those laws of the Republic that have promoted technology transfer in the manufacturing sector through foreign investment and licensing. While this Article examines the laws of a single nation, the topics addressed represent concerns that a potential investor or licensor in any foreign country should consider before expending capital towards an investment objective. In addition to acting as a guide to Ireland's investment laws, this Article analyzes the possibility of using these laws and incentives as a model program for stimulating industrial development in lesser developed countries (LDCs).

A. An Overview of Ireland

In deciding whether to place capital in a foreign country, the investor must first analyze the potential risks in a transfer of its funds

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1 For example, the average annual growth rate in the industrial sector was over five and one-half percent between 1963 and 1983, one of the highest growth rates in the European Economic Community. Additionally, over 45% of Irish industrial output is now exported compared to only 20% in 1962. INDUS. DEV. AUTHORITY, IRELAND THE INVESTMENT OPPORTUNITY 3 (1984) [hereinafter INDUSTRIAL].

2 Id. at 12. In any investment scenario, the resident status of the investor determines which laws are applicable. In general, any business operating in the Republic is regarded as a resident, irrespective of whether it is owned or controlled by Irish residents or nonresidents. A person is considered a resident if he is currently living in Ireland and has been there for at least three years; new arrivals are treated as residents if they intend to live in Ireland for an indefinite period or for a period of less than three years. This will be of great importance during the discussion of fiscal and financial investment incentives and tax rates for both corporations and individuals. [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,134 n.7 (1989).

3 No discussion of foreign investment law would be complete without a thorough investigation of the applicable antitrust laws. That topic, however, is outside the scope of this Article.
and technology. This decision must include an analysis of the likely
return on investment and of the political stability and sanctity of con-
tract in the host country.\footnote{4} Ireland’s rate of return on manufacturing
investment averaged twenty-nine and seven-tenths percent for the
years 1977-1983\footnote{5} making it the most profitable industrial nation in
the world.\footnote{6} Equality before the law\footnote{7} and the right to own private
property\footnote{8} are expressly guaranteed by the Irish Constitution, and the
Irish courts have long recognized the principle of sanctity of con-
tract.\footnote{9} Furthermore, the national investment policies have remained
consistent through a series of governments\footnote{10} and were not signifi-
cantly affected by Ireland’s accession into the European Economic
Community.\footnote{11} These factors all contribute to Ireland’s desirability as
a seat for foreign investment.\footnote{12}

\footnote{4} A risk analysis must also be made in the areas of: guaranteeing the confidentiality
of technology, even for a period after the transfer; permitting grant-backs to the source of
the improvements; allowing parties to freely negotiate terms of a contract; allowing parties
the freedom to negotiate compensation; allowing access to impartial and objective dispute
resolution settlements; and guaranteeing no changes in applicable laws. U.N. INDUS. DEV.
ORG., GUIDELINES FOR EVALUATION OF TRANSFER OF TECHNOLOGY AGREEMENTS,
Development and Transfer of Technology Series No. 12, at 66-69 (1979) [hereinafter UNIDO].

\footnote{5} INDUS. DEV. AUTHORITY, 29.7% IRELAND CONTINUES TO BE THE MOST PROFITABLE
CURRENT BUSINESS 1 (1984)).

\footnote{6} This figure is more than twice the EEC (12.4%) and world (11.1%) averages. Ja-
pan came in a distant second with a 17.4% rate of return. \textit{Id.} However, in its most recent
analysis in 1982, the European Commission saw little ground for optimism in the Irish
economy. Certain encouraging signs can, however, be detected: Industrial exports appear
to be picking up, agricultural production is recovering, and fixed capital formation is being
maintained at a high level. On the other hand, Ireland has been hit by poor international
markets (especially in the UK, still their largest trading partner), terms of trade are deteri-
orating, imports of raw and semi-finished materials are expected to increase, inflation
shows little sign of receding from the present excessive level (20%), and no major changes
are expected in the level of unemployment. 11 EUR. ECON. 68 (March 1982), discussed in


\footnote{8} IRISH CONST. art. 4.1(2), reprinted in J.M. KELLY, THE IRISH CONST. 1, 644 (1984).

\footnote{9} This guarantee is thought to have arisen from the guarantee of free alienability of
property created by article 43 of the Irish Constitution. IRISH CONST. art. 43, reprinted in

\footnote{10} Over the past 25 years, all of the major political parties have endorsed these poli-
cies. INDUSTRIAL, supra note 1, at 4.

\footnote{11} Ireland’s accession to the European Economic Community (EEC) on January 1,
1973 has had a significant effect on the investor. The EEC laws, now made applicable to
the Republic, have not been detrimental to Ireland’s development program, but have al-
lowed it to continue its policies and enhance its offerings. An integral portion of the acces-
sion agreement was the assurance, reinforced by protocol, that the Republic is empowered
to continue aid and incentive programs developed to promote its industrial and regional
exports enjoy duty free access to EEC markets. Companies formed in Ireland may draw
on EEC funds under support programs. As a result, non-European investors automati-
cally acquire a bridgehead to Europe. \textit{Id.}

\footnote{12} One of the major factors in deciding to invest in or transfer technology to a host
country is the political stability of the host. INDUSTRIAL, supra note 1, at 4.
II. Incentives

Ireland’s tremendous industrial growth has been stimulated by various governmentally created aids and incentives to industry directed towards investment in the Republic.\textsuperscript{13} These governmental policies specifically encourage investment in endeavors promoting growth in four areas. The policies target an optimal use of domestic labor resources,\textsuperscript{14} greater consumption of native raw materials, substantial growth in international markets, and processes resulting in high “added value.”\textsuperscript{15} Because of this “added value” target, the Republic is very interested in the textile, pharmaceutical, mechanical, health care, electrical, and electronic engineering sectors and has instituted fiscal and financial incentives targeting them.\textsuperscript{16} These programs are coordinated by the Industrial Development Authority (IDA), an agency created by the government specifically for this purpose.\textsuperscript{17} Ireland’s successful use of the financial and fiscal policies outlined below may benefit LDCs by acting as a model program for attracting new technology through the industrial development of those countries.

A. Financial Programs

In order to properly evaluate the type of investment and, consequently, the method of technology transfer to be employed, the various incentive programs\textsuperscript{18} and their interrelationships with the

\textsuperscript{13} These programs will be fully developed infra. Briefly, they include tax incentives, training grants, loan guarantees and interest subsidies, R&D grants, and cash grants. Because newly created domestic businesses also qualify, these programs are not limited to foreign investors. Id. at 3, 11.

\textsuperscript{14} Unemployment continues to be one of Ireland’s most serious problems, despite the ambitious and comprehensive national development policies aimed at job creation. Every practical effort is being made, notably by the Industrial Development Authority (IDA), to attract labor intensive investment to the Republic. [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,139 (1982).

\textsuperscript{15} INDUSTRIAL, supra note 1, at 11. A value added tax is levied on imported goods as well as supplies of goods and services during the course of business in the Republic. This tax is levied at each stage of the production process according to the amount of value added to the product, \textit{i.e.} the difference between the value at exit and the value at entrance into the production process. INDUS. DEV. AUTHORITY, GUIDE TO TAXES AND TAX RELIEFS IN IRELAND 10 (1983) [hereinafter GUIDE TO TAXES].

\textsuperscript{16} INDUSTRIAL, supra note 1, at 5.

\textsuperscript{17} Since its creation in 1958 by the Programme for Economic Expansion, the IDA’s continuing role has been to promote industrial expansion within Ireland and to provide a complete service to the industrialist. Id. at 3. The IDA administers all financial aid offered by the government and spends approximately 11% of the State’s capital budget each year in assisting industry. The IDA has a staff of 700 and offices in 21 cities around the world. INDUS. DEV. AUTHORITY, REPUBLIC OF IRELAND: THE FASTEST GROWING ELECTRONICS LOCATION IN EUROPE 12 (1984). In addition to assisting with financing, the IDA offers site selection, employee training and housing. The agency also builds and manages industrial parks and factories throughout the Republic. INDUSTRIAL, supra note 1, at 11.

\textsuperscript{18} The task of administering the various programs is divided among different agen-
applicable tax laws must be examined.  

1. Capital Formation Grants

Cash grants of capital to newly established industries are provided to offset initial construction and start-up expenses, such as expenditures on fixed assets. The criteria used in awarding such grants include the business' job creation potential, as well as its skill content, location, compatibility with existing projects, overall economic strategy, and export potential. Fixed grants administered by the IDA for new companies are available for sites, site development, buildings, and new machinery and equipment. While these grants are generally limited to a maximum of forty-five percent of the total fixed asset investment, this limit is increased to sixty percent in designated areas. These incentives apply to any newly created industries. The investor, however, need only contact the IDA to be placed in touch with the other agencies. The agencies and their respective programs are outlined as follows:

(a) IDA: Although this body has the general responsibility of promoting national industrial development, it also coordinates other activities. These include assistance to industrialists in establishing or expanding manufacturing industries; provision and administration of grants and other incentives for industry; operation of the Republic's "small industries" program; development and administration of industrial park and factory sites; and provision, where appropriate, of employee housing. See INDUSTRIAL, supra note 1, at 11. While the IDA is also prepared to take an equity stake in a venture if required, investigation of the laws regarding equity is beyond the scope of this Article;

(b) Department of Finance: This department administers the special EEC Regional Development Fund and channels funds through the various agencies listed here;

(c) Industrial Training Authority (AnCo): This agency administers assistance grants for employee training as well as operates special company training programs and training center facilities;

(d) Industrial Credit Company (ICC): This is a state sponsored company that offers facilities to companies requiring capital in order to establish new industries or expand and modernize existing units;

(e) Department of Energy: This department provides cash grants for fuel-efficiency cost surveys and similar aids to promote energy conservation;

(f) Udaras Na Gaeltachta: This organization provides special assistance for companies wishing to locate in the Irish-speaking areas of the country;

(g) Irish Exports Board: This agency provides certain grants toward development of export programs and provides services to Irish-based exporting companies;

(h) National Building Agency, Ltd.: This agency provides comprehensive services with respect to employee and executive housing in industrial development areas; and

(i) Local Authorities: These bodies are authorized to provide small cash grants toward housing construction. This results in reduced accommodation costs for senior personnel of the foreign investor. [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,139 (1982).

19 These programs of grants and incentives apply to foreign investment only through joint ventures of wholly or partially owned subsidiaries of a parent corporation. They do not apply to licensing agreements where no capital investment is made. In such a case, the local licensee would receive any benefits accrued from the incentive programs. Coopers & Lybrand, A Low Tax Environment for U.S. Investment in Ireland, TAX NOTES I (July 1985)

20 See supra note 13 and accompanying text.

21 INDUSTRIAL, supra note 1, at 11.

22 Grants may also be available for leased machinery and equipment to the extent that the grant is paid to the leasing company that passes a benefit to the lessee in the form of rental reductions. [125-3rd T.M.] Tax Mgmt. (BNA) A-11 (1985).
trial concern, whether it be a joint venture or a wholly or partially owned subsidiary. Accordingly, an individual who participates in any form of direct investment is assured of at least a share of these benefits. For example, assume a U.S. corporation transfers its semiconductor technology in exchange for shares in a newly created Irish company. The U.S. corporation would benefit as a shareholder through increased dividends resulting from the greater profit made possible by the incentives awarded to the new company. An outright grant of currency, especially if coupled with subsequent financial incentives, would likely strain the foreign exchange assets of many LDCs and is probably impractical except for the wealthiest of these nations.

2. Employee Training Allowances

Employee preparation usually takes the form of the investor either training the employees at its foreign facility or supplying expatriate personnel to the transfer site for training. One problem that may arise is obtaining remuneration from the host country for the time and effort expended during these training sessions. The investor who is expected to provide trained employees with no reciprocal activity on the part of the host, the local partner or the government, is naturally discouraged from investment and transfer. This situation, however, is not a problem in Ireland. New companies may qualify for IDA and Industrial Training Authority (AnCo) grants which provide a cash incentive for investors that train employees. These incentives can range up to the full cost of training workers and in many circumstances cover traveling expenses, wages, and living costs of workers trained outside of Ireland. The program also includes reimbursement for overhead related to the provision of instructors and personnel consultants. Additional training grants are provided by AnCo for up to 100 percent of the cost incurred in arranging training courses for proprietors, managers, and supervisors in the industrial and distribution areas.

3. Research and Development Grants

Additional grants are provided by the IDA for research and development (R&D) activities commonly engaged in by high-technology firms. Funds are provided for: (1) industrial and R&D programs carried out in Ireland which facilitate the development of new and improved processes; (2) the cost of fixed assets needed for R&D

23 Id. Companies setting up in Irish speaking areas may be aided by grants equivalent to 60% of the cost of buildings, machinery and equipment and the full cost of worker training under a program administered by Udaras na Gaeltachta. Id. at A-12 - A-13.
24 Id. at A-11.
25 This credit is limited to 50% of the IDA approved cost of individual projects or 50,000 Irish pounds, whichever is lower. Id.
facilities; and (3) labor and material R&D costs of pilot energy conservation programs. As an additional incentive to attract high technology companies, the Republic has passed legislation which allows the deduction of R&D costs as a business expense.

4. Loans and Loan Guarantees

The IDA provides loan guarantees while possibly subsidizing interest charges, underwrites all or an agreed portion of factory rentals, and in some cases, takes an equity position in new ventures. The Industrial Credit Company (ICC) is authorized to extend medium and short-term loans to industrial projects for periods of ten or twelve years at fixed or fluctuating rates. Rates for these loans vary from one to three and one-half percent over the cost of the funds to the ICC. The ICC also administers the European Investment Bank (EIB) loans. Although a company may not have adequate capital to start up a joint venture or wholly-owned subsidiary, it may be able to secure financing for either type of company through this incentive program. The availability of loan guarantees acts as a stabilizing force in the calculation of the risk of investment and transfer. This factor is particularly important when a transfer is completed through a license to a newly formed Irish company with less stability than an established firm with a solid financial history.

5. Factory Sites

Site selection is another important factor to consider during the investigative phase of investment. An ideal site is accessible to all major supply routes and shipping centers. Additionally, the cost of the site and accompanying buildings necessary to house the enterprise must be reasonable. Toward these ends, the IDA builds factories, in advance, on its own sites to accommodate new industry. This space is available for purchase at concessionary cost or for rental fees subsidized by the government. The largest state-sponsored industrial parks where facilities such as these are in place are located at Galway, Waterford (IDA estates), Shannon, Limerick (Shannon Free Airport Development Company), County Galway, and County Donegal (Udaras na Gaeltachta). All of these sites are easily accessible to trade facilities.

26 This grant is limited to a maximum of 35% of the cost in specifically designated areas and 25% elsewhere. Id.
27 [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,396 (1982). This grant is limited to 50% of the eligible expenditure, subject to a maximum of 50,000 Irish pounds.
30 Id. ¶ 25,400.
31 This will be developed further infra notes 210-14 and accompanying text.
This concentration of industry into centralized parks would especially benefit an LDC. Infrastructure support in one area only, in the form of roads, utility lines and the like, is eminently more cost effective than locating plants in a more random fashion. Additionally, this concentration encourages smaller suppliers to locate in the area by giving them an easily accessible marketing area. If these centers are located near ports, overall transportation costs are reduced. In turn, the overall cost of the goods produced is reduced, making the country's exports more competitive in the world marketplace.

6. Export Incentive Grants

Export incentives include grants to underwrite expenditures for promotional travel, brand advertising, sales promotions, trade fair participation, market research, consultancy and design costs. These incentives, however, are limited to companies whose market control is in Ireland. Therefore, an investor who does not market its product from Ireland will be unable to take advantage of the incentives. In addition, there are limitations on the amount of these subsidies. Given the fact that it is always advantageous for a manufacturer to be close to its markets, and assuming the investor is locating in Ireland to facilitate the marketing of its goods into the EEC, these incentives, while not overwhelming, may be enough to convince a company to market its Irish manufactured products from within Ireland.

7. Employment Incentives

A host country often attempts to control the number of personnel a new company must employ by setting a minimum number of local employees and penalizing the company if it falls below this level. Ireland has instead chosen to use positive reinforcement to encourage the employment of native manpower. The Republic has not delineated a minimum number of persons a transferee in a direct investment situation must employ. Rather, the Employment Incentive Program administered by the National Manpower Services Agency encourages employers to hire the unemployed by offering a premium for additional employees recruited over and above a "base

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32 [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,403 (1982). These limitations are as follows: (a) 60% (£35,000 maximum) of the cost of advertising and promotional campaigns to overseas markets; (b) 50% of product design direct costs (£10,000 maximum); (c) 100% of translation costs (£10,000 maximum); (d) 80% of sales literature origination costs (£10,000 maximum); (e) 50% of international trade fair participation costs (£5,000 maximum); and (f) 125% of airfares borne by an exporter for promotional travel or overseas client visits. Id.

33 Kenya, for example, will only issue a work permit to a foreigner if it decides that the relevant expertise is not available locally. However, even when this permit is granted, a condition will be attached which requires a Kenyan national to take over the job from the foreign national after the Kenyan has been trained. INVESTMENT REGULATION AROUND THE WORLD I, 152 (R. Hammer, G. Simonetti, Jr. & C. Crawford ed. 1989).
LDCs, with their large numbers of unemployed workers, would benefit the most from requiring all newly formed companies to adhere to some type of local labor quota. This requirement would also help raise the skill level and standard of living of the populace. Countering this argument is the general notion that the lower the number of restrictions on investment, the more the investor is willing to risk. In the case of LDCs, however, the benefits of a native labor quota would outweigh any disincentive the regulations might have on investment.

8. Export Credit Insurance

The Insurance Corporation of Ireland uses two types of insurance to safeguard its export credit. The first relates to insurance coverage on the receipt of payment from a foreign buyer, covering short term payments of up to 180 days. The second applies to the sale of capital goods in Ireland, covering extended receipts ranging up to five years. This payment protection program is an obvious benefit to the investor that desires to export a substantial majority of the goods it manufactures in Ireland to other EEC countries. Such a program, however, would be too expensive for most LDCs to fund.

B. Fiscal Incentives

The major tax incentives available to companies locating in Ireland are in the forms of accelerated depreciation allowances, certain investment allowances, relief for export profits and relief for profits of certain industries located in the Shannon Free Airport Development Zone. The advantages to an investor in each of these

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34 Incentives range from £15 per week in the case of school "drop-outs" with no previous work experience to £30 per week in the case of unemployed adult workers recruited from the unemployment rolls. [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 24,505 (1982). This wage subsidy would encourage an investor to hire unskilled or low-skilled labor from the unemployment pool rather than hiring such workers away from its competitors and is particularly advantageous to those investors and industries which are highly labor intensive. This program is in keeping with the overall theme of the IDA, which is economic development accompanied by high local labor usage. Id. ¶ 25,391.

35 Id. ¶ 25,406. Companies that qualify for export sales relief automatically qualify for consideration under this program. Id.

36 Section 26 of the Finance Act of 1971 applies to new machinery and equipment. Using this allowance, the entire purchase price of the equipment can be written off for the year it was acquired and placed in business use. Finance Act, § 26 (Ir. 1971), discussed in Business Operations in the Republic of Ireland, [125-3d T.M.] Tax Mgmt. (BNA) A-27 (1985).


38 Dividends paid by a company whose profits are obtained totally through the sale of exported goods are not subject to corporate tax in Ireland. Corporation Tax Act, § 66 (Ir. 1976), discussed in [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,413 (1982).

areas will be more fully discussed.\textsuperscript{40}

Fiscal incentives which allow a nation to initiate investment without depleting its supply of foreign exchange should be studied with care by LDCs. In addition, these incentives do not have to last indefinitely—Ireland’s major tax incentive is slated to expire in the year 2000. The Republic’s success proves that sacrificing tax revenue for a short period of time can act as a significant stimulant for investment if combined with the proper support services.

Another new incentive for manufacturing companies slated to terminate in 2000\textsuperscript{41} subjects profits\textsuperscript{42} from goods manufactured\textsuperscript{43} in Ireland to Irish corporate tax at a reduced rate of ten percent.\textsuperscript{44} This rate is only available to companies residing in Ireland, but there is no requirement that a parent company be a resident of or incorporated in Ireland. For example, a foreign parent operating through its Irish branch is entitled to this relief.\textsuperscript{45} The new tax rate is actually an eighty percent reduction of the applicable corporate tax and is calculated as such.\textsuperscript{46} This rate may be further reduced by the application of capital allowance grants which would virtually eliminate a com-

\textsuperscript{40} See infra section III.

\textsuperscript{41} Finance Act, § 38 (Ir. 1980). GUIDE TO TAXES, supra note 15, at 3. This program is designed to replace the existing Export Sales Relief and Shannon relief programs, although the 1981 Finance Act, which restored tax relief to certain operations, carries on in the Shannon Airport Zone. Id. at 9.

\textsuperscript{42} Although profits from retail sales of manufactured goods do not qualify, these retail sales do not include sales to a person who carries on a trade of reselling the goods, a person who uses the goods in the course of his own trade, or an institution, such as a church or school, that uses the goods in activities. [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,415 (1982). Profits for manufacturing and non-manufacturing activities will be apportioned for the purposes of taxation. GUIDE TO TAXES, supra note 15, at 4.

\textsuperscript{43} The Revenue Commissioners have adopted a very lenient standard toward what constitutes “manufacture.” Any goods that are subjected to a process resulting in a change in their character are “manufactured goods.” GUIDE TO TAXES, supra note 15, at 4.

\textsuperscript{44} The standard rate is 50%. Id. at 3. Intercompany sales are also entitled to this type of relief, provided that the manufacturing and sales companies are in a 90% direct shareholding relationship or both are 90% direct subsidiaries of a third company. If such conditions are met, both qualify for the 10% incentive, provided the seller is not a retailer. [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,415 (1982).

\textsuperscript{45} GUIDE TO TAXES, supra note 15, at 4. Additionally, Irish resident companies making dividend distributions after February 8, 1983 must pay Advance Corporate Tax (ACT) on the tax credit attaching to the distribution (35/65ths). For companies taxed at the 10% rate, however, the amount of ACT on dividends will be 1/18th. Distributions to foreign holding companies with which Ireland has a tax treaty, e.g. the United States, are exempt if the holding is more than 75%. Id. at 6.

\textsuperscript{46} An example of a calculation using this rate is as follows:
pany's tax debt during the first years of its operation.\textsuperscript{47}

III. Foreign Investment Law and Structure

A. Generally

The Irish economy is open, with the right of private ownership of property expressly guaranteed by the Constitution.\textsuperscript{48} Because of this guarantee, there are no restrictions on the percentage of foreign ownership of a company.\textsuperscript{49} In general, therefore, commercial activity, including the selection of the subject matter of any technology transfer, is open and freely negotiable to foreign investors with no direct restrictions.\textsuperscript{50}

However, indirect restrictions do exist, shrouded in the form of the investment incentives discussed earlier. The IDA uses the aforementioned criteria in evaluating a potential development to determine the appropriateness of awarding it fiscal and financial incentives.\textsuperscript{51} These criteria, in practice, specifically indicate the areas of subject matter appropriate for transfer. Therefore, potential investors are able to gear their operations towards eligibility for the incentives.

Capitalization of a new venture is crucial to its initial success. While the Irish government is willing to share in capital formation, it will not completely capitalize a company through grants. For example, if a newly formed manufacturing company is being aided by a grant in the area of its capitalization, the company will be required to provide capital in an amount equal to that of the grant.\textsuperscript{52} This may

\begin{tabular}{lcl}
\hline

Taxable profits & 1,000 (pounds) \\
Corporate tax (50\%) & 500 \\
Deduct $500 \times 4/5$ & (400) \\
Tax payable (10\% effective rate) & 100 \\

\hline

Although if the company has profits of less than 25,000 pounds, the rate of tax is 40\%.

<table>
<thead>
<tr>
<th>Taxable profits</th>
<th>1000 (pounds)</th>
</tr>
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<tbody>
<tr>
<td>Corporate tax (40%)</td>
<td>400</td>
</tr>
<tr>
<td>Deduct $400 \times 4/5$ &amp; (320)</td>
<td></td>
</tr>
<tr>
<td>Tax payable (8% effective rate)</td>
<td>80</td>
</tr>
</tbody>
</table>

\textit{Id.} at 3-4.

47 This depends, however, on the capital intensity and profitability of the project. \textit{Id.} at 4. Normal accounting depreciation is not allowed as a deduction in calculating profits for tax purposes. These special tax depreciation allowances ("capital allowances"), however, will allow the accomplishment of the goal of tax reduction. \textit{INDUSTRIAL, supra note 1, at 7.}

48 \textit{See supra note 8.}


50 This will operate to reduce the risk of the transfer in the eyes of the transferor. The greater control the transferor has over the outcome of the transfer, the safer the transferor will feel in transferring the technology.

51 \textit{See supra note 2.}

52 \textit{Coopers & Lybrand, supra note 19, at 1-2.}
be accomplished, in the case of a public company, by the issuance of shares in an appropriate amount. If this offering provides insufficient funds, the balance may be provided by a loan subordinated to all creditors (including the agency from which the grant was obtained). Although the financing for a direct investment is usually expected to be provided in the foreign currency of the state of the nonresident investor, Irish banks are also permitted to supply working capital for nonresident companies in Irish pounds.

Problems may arise when a host government requires that a local partner to a joint venture receive an increasing amount of equity in the venture over time. This requirement is known as a "sliding scale of equity" and is disfavored by an investor because the scale may eventually slide in favor of total ownership by the local partner, leaving the investor with no equity stake in the venture. Obviously, an investor who expects or needs to be involved in the venture and reap profits over the long term will be hurt by this type of legislation. In Ireland, however, there are no such governmentally required sliding scales of equity favoring the local partner; this follows from an Irish law which sets no limits on the percentage of foreign ownership of an Irish company. For the reasons outlined above, an LDC would be well advised to follow the Irish lead in this area.

B. Corporation Laws of the Republic

The most common means by which foreign investors do business in the Republic are the branch operation and the public limited company which corresponds to the U.S. corporation. Joint ventures and wholly owned foreign investments in Ireland are usually couched in one of these forms. The taxation and incentives provided for the two forms of companies are identical. The principle difference is that the public limited company may raise capital through the sale of shares or debentures to the public, which is an important method of financing the capitalization of a new venture. The public limited company also has the advantage of limiting the liability of its members to either the amount they have invested in the company or the amount of shares they hold, in the event of it being wound up.

53 Id.
54 Id. at 2.
55 Compare Saudi Arabia statutes which prohibit foreign ownership of real estate; Venezuela which mandates that all new investments be at least 15% Venezuelan-owned (except for companies rendering services to the state-owned mining sectors); and Morocco which requires that Moroccan citizens or companies hold at least 50% of the share capital and constitute a majority of the board of directors in new companies. INVESTMENT REGULATION AROUND THE WORLD, supra note 33, at 156, 189, 203.
58 Id. § 5(a)-(b), reprinted in 10 COMMERCIAL LAWS OF THE WORLD at 8. Limitation may
The public unlimited company has no such advantage.\textsuperscript{59}

As stated earlier, the main feature of a public company is that it may raise capital through the sale of shares or debentures to the public. It is required to have at least seven shareholders at all times.\textsuperscript{60} If the number drops below this statutory minimum for a period of more than six months, every member who is aware of this development will be severally liable for the debts incurred by the company in the conduct of its business operations throughout the six months.\textsuperscript{61} The rules for formation of public companies apply equally to Irish residents and foreign enterprises, subject to certain special rules and exceptions.\textsuperscript{62}

A memorandum of association\textsuperscript{63} and a copy of the articles of association\textsuperscript{64} signed by two members of a private company or seven members of a public company are required for registration purposes.\textsuperscript{65} Processing usually takes about eight weeks. The cost principally involves a flat rate registration fee of eighty pounds and a formation levy of one percent of the company's capitalized value.\textsuperscript{66} The cost of preparing the memorandum of association and articles averages 250 pounds.\textsuperscript{67} The documents must then be submitted to the registrar.\textsuperscript{68}

Every company must have at least two directors and a company secretary to oversee compliance with company law.\textsuperscript{69} There is no statutory requirement that a director be a shareholder in the company.\textsuperscript{70} Also, there is no requirement that a member of the union work force be a member of the board of directors. Directors are usually appointed by the shareholders.\textsuperscript{71}

Any member of a company may seek judicial relief when he believes that the affairs of the company are being conducted, or the

\textsuperscript{59} Id. § 5(2)(c), reprinted in 10 Commercial Laws of the World at 8.
\textsuperscript{60} Id. § 5(l), reprinted in 10 Commercial Laws of the World at 8.
\textsuperscript{61} Id. § 36, reprinted in 10 Commercial Laws of the World at 25.
\textsuperscript{63} Companies Act § 6, reprinted in 10 Commercial Laws of the World at 8-9.
\textsuperscript{64} Articles of association may be registered for a company "limited by shares"; this, however, is not mandatory. Companies Act, No. 33, §§ 11-12, reprinted in 10 Commercial Laws of the World at 12.
\textsuperscript{65} Id. § 7 (Memorandum), § 14(d) (Articles of Association), reprinted in 10 Commercial Laws of the World at 9, 13.
\textsuperscript{67} Id.
\textsuperscript{68} Companies Act, No. 33, § 17, reprinted in 10 Commercial Laws of the World at 14.
\textsuperscript{69} One of the directors may be designated as the secretary. Id. § 174, 175(l), reprinted in 10 Commercial Laws of the World at 133.
\textsuperscript{70} This may legally be required by the company’s Articles. Id. § 180(1), reprinted in 10 Commercial Laws of the World at 136.
\textsuperscript{71} The provisions for appointment are contained in the company’s Articles. Id. § 181, reprinted in 10 Commercial Laws of the World at 136.
powers of the directors are exercised, in a manner oppressive to himself or other members.\textsuperscript{72} If the court finds the complaint justified, it may issue an order directing or prohibiting any act, cancelling any transaction, or otherwise regulating any future conduct of the company's affairs.\textsuperscript{73} The court has jurisdiction\textsuperscript{74} to wind up a company for a number of reasons: if default is made in delivering the statutory report to the registrar or holding a statutory meeting; if it suspends business for a year or does not commence business within a year after incorporation; if the number of members goes below the statutory minimum; if the company is unable to pay its debts; or if the company's affairs are being conducted in a manner oppressive to any member or in disregard of his interests as a member.\textsuperscript{75}

The capital requirements for a private company are the same as those for a corporation (public company). As such, those provisions relating to shareholders, directors, officers, winding up procedures, and disclosure requirements are, with minor exceptions, the same as those that apply to a public company.\textsuperscript{76}

These formation laws are not unduly restrictive to foreign investment. The requirements are similar to those of the United States, which is considered an excellent place to establish a corporate base. Neither the cost nor the eight week period required to approve the formation are excessive. The type business a company is involved in is not a factor in formation approval. If there are any problems with formation, the IDA, acting under a legislative directive to encourage industrial development, will help remedy the situation.\textsuperscript{77} These liberal conditions serve to encourage investment because they create a less restrictive business climate. Although the aforementioned financial programs would initially strain the coffers of many LDCs, they should be treated as goals to strive for as the economies of these countries strengthen.

If employees of a foreign firm relocate to Ireland, continue to be domiciled in the United States but are considered Irish residents also, they will only be taxed in full on their income if they are paid by the Irish company.\textsuperscript{78} If they are paid from the United States, they

<table>
<thead>
<tr>
<th>Income (L)</th>
<th>(US$)*</th>
<th>Erie rate (%)</th>
<th>US Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>13,000</td>
<td>15,470</td>
<td>35</td>
<td>14</td>
</tr>
<tr>
<td>18,600</td>
<td>22,134</td>
<td>48</td>
<td>17</td>
</tr>
</tbody>
</table>


Income in excess of the amounts listed above is taxable at the maximum rate of 60%.

\textsuperscript{72} Id. § 205(l), reprinted in 10 COMMERCIAL LAWS OF THE WORLD at 164-65.

\textsuperscript{73} Id. § 205(3), reprinted in 10 COMMERCIAL LAWS OF THE WORLD at 165.

\textsuperscript{74} Id. § 212, reprinted in 10 COMMERCIAL LAWS OF THE WORLD at 169. This section gives the High Court jurisdiction to wind up any company.

\textsuperscript{75} Id. §§ 213, 214, reprinted in 10 COMMERCIAL LAWS OF THE WORLD at 169-70.

\textsuperscript{76} Id. §§ 5, 11, 33, reprinted in 10 COMMERCIAL LAWS OF THE WORLD at 8, 12, 23.

\textsuperscript{77} INDUSTRIAL, supra note 1, at 11.

\textsuperscript{78} Coopers & Lybrand, supra note 19, at 4. An example of the personal income tax rates is given below.
will be liable only on remittances of the income to Ireland. Remittances of capital are not taxable. These taxes on expatriate employees are excessive when compared to the U.S. rate, and investment would be encouraged if there were a method of avoiding the Irish tax laws. One possibility is to offer generous benefit packages to boost an expatriate employee's earnings with a corresponding reduction in actual salary since these benefits are not subject to Irish taxation.

A double tax treaty favorable to U.S. expatriates exists between the United States and Ireland. Its provisions allow all personal income tax actually paid in Ireland to be credited against U.S. personal income tax liability. A similar tax convention exists in favor of U.S. businesses paying tax in Ireland. Only the tax actually paid in Ireland, not the amount of tax it would have paid in Ireland were it not for the incentives, may be credited against a firm's U.S. tax debt.

While this treaty does not confer a direct monetary benefit on an investor, it can help stimulate direct investment in a host country. In the case of a licensing agreement, the only relief is exemption from withholding taxes on royalty payments and an exemption on taxation for patents that are devised in Ireland. These two exemptions, however, are not likely to exceed the benefits derived from a direct investment.

C. Foreign Exchange and Payment

A number of features of Irish exchange controls may be significant to the foreign investor. Investment in Ireland by entities residing outside the country requires permission from the Central Bank of Ireland. Permission, however, is generally given as a matter of course. Foreign companies may repatriate one hundred percent of their profits to a foreign parent and these profits are freely transferable. Further permission can be obtained at any time for the repatriation in any currency of the proceeds from the sale or liquidation of the foreign investment, including any capital appreciation. Because the investor may desire to reinvest these profits in other projects, Irish law allows currency to flow freely between Ireland and the home country of the foreign investor.

No restrictions are imposed on payments abroad for the impor-
tation of goods and services. Payments arising from technical and marketing assistance contracts are supervised rather than restricted.\textsuperscript{84} This freedom can be beneficial for parties entering into a licensing agreement, because a host country allows only a specified amount of currency to leave the country as compensation for the licensor’s assistance contracts. Thus, the investor may be left without adequate compensation for services rendered. In addition, exporters are required to give credit terms of no more than six months and to repatriate the proceeds from exports without delay.\textsuperscript{85} This requirement is one of the most restrictive in the export area. The investor, however, should be able to regulate by contract its own repayment schedule for purchases of exported goods. Export proceeds can usually be repatriated to the investor’s country without undue regulation. Permission, again, is generally granted by the Central Bank in due course.\textsuperscript{86}

While a foreign investor would prefer to remit payments directly to its home bank, the mere monitoring of these transfers should not act as a disincentive. Although Ireland possesses sufficient foreign exchange reserves, the unavailability of these funds could prevent an LDC from making support payments because of its need to keep as much hard currency in the country as possible.

\section*{D. Import-Export Issues}

\subsection*{1. Duties and Tariffs}

Duties and tariffs on imported goods and raw materials play an important role in the profitability of any manufacturing investment. If these duties are too high, the direct investor may be discouraged because it is unable to reap an acceptable profit from the venture. In Ireland, customs duties are levied on goods imported from non-EEC countries. For most industrial goods, rates will tend to be four to ten percent, but other goods, such as footwear and electronic components, are taxed at a higher rate.\textsuperscript{87} Therefore, a company considering a transfer of electronic controls through a direct investment in Ireland must make a detailed financial analysis to determine if custom duties would undermine its profits.

One beneficial aspect of this law concerns the time of payment, which may be deferred until the fifteenth of the month following the month of importation.\textsuperscript{88} This delay will help a company’s cash flow.

\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id. For a general discussion of the complexities of exchange controls, see Gold, \textit{Exchange Control: Act of State, Public Policy, the IMF's Articles of Agreement, and Other Complications}, 7 \textit{Hous. J. Int'l Law} 13 (1984).
\textsuperscript{87} Coopers & Lybrand, \textit{supra} note 19, at 3.
\textsuperscript{88} Id.
situation, allowing it time to profit from the imported goods before the importation payment is due.

2. **Value-added tax**

A value-added tax (VAT) is levied on goods and services supplied in Ireland by persons in the course of business and on goods imported into Ireland. The VAT is levied on the ultimate consumer only as businesses are entitled to recover VAT paid on their purchases and expenses, including capital expenses. A VAT registered business which manufactures and exports at least seventy-five percent of the value of its products, however, may apply for authorization to import raw materials and equipment without payment of a VAT. The exemption applies to goods incorporated rather than consumed in the manufacturing process. Companies that export all or most of their production will not incur a real VAT cost due to this zero rating for exports. This rating also allows the exporting company to compete favorably with other nations who do not use a VAT system. This export incentive is not enough to allow the Irish firm to undersell a U.S. based company, a concern often voiced when export "incentives" are debated. This strategy could allow an LDC to raise the capital needed to finance some of the aforementioned financial and fiscal incentive programs, which in turn stimulate investment.

3. **Dumping**

The "dumping" of imports occurs when industries sell goods in a foreign market at a price less than their fair market value in order to gain an advantage in the foreign market. The foreign country's industries naturally suffer from a lesser demand for their products. Without protection against this activity, foreign investment in countries where dumping occurs is discouraged.

This problem is acknowledged by the EEC, and a method for countering this trade practice is provided by the European Commission (EC). Investigation of dumping of subsidized imports is provided for under EC Regulation 3019/79. Action takes the form of a complaint filed either with the European Commission in Brussels or through the Department of Industry, Commerce and Tourism. An LDC would be wise to offer similar protection for its potential investors.

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90 Id. See also GUIDE TO TAXES, supra note 15, at 10.
91 BLACK'S LAW DICTIONARY 451 (5th ed. 1979).
4. Irish Export Laws

Export restrictions play a large part in determining the suitability of a host country for investment involving technology transfer. Obviously, the transferor would like to be free to export its goods in whatever manner it sees fit without the payment of export taxes or restrictions on the type of goods exported. The Republic has instituted some restrictions, the most notable concerning certain strategic materials such as high technology weapons components. When exporting to EEC member states, however, no substantive restrictions are imposed.93

During negotiations on a United Nations Code of Conduct, the LDCs voiced their opposition to any restriction on their ability to export products made directly from or derived from imported technology.94 The LDCs legitimate interest in expanding their exports is balanced by the investor's interest in protecting its technology. LDCs would probably benefit more if they allowed some type of protection to the investor. Otherwise, many worthwhile projects will be lost due to the investor's fear of losing its ownership rights to the technology. The investor must be allowed to make a reasonable return on its investment and should not be expected to surrender its technology without adequate remuneration.

While there is no restriction on the currency in which exports are invoiced, the Central Bank requires that export payments be collected and repatriated within six months.95 Although this requirement seems restrictive, the Irish government permits the currency, after it has been repatriated, to flow freely to any location chosen by the transferor. The Government's role is limited to that of a supervisor.96

5. U.S. Export Laws

The Export Administration Act of 1979 (EAA),97 recently renewed by Congress,98 imposes restrictions on the exports of technical data99 and certain commodities for the purpose of furthering U.S. foreign policy, maintaining national security and protecting the

95 Id. ¶ 25,134.
96 See supra notes 91-94 and accompanying text (section discussing exchange controls).
99 Technical data is defined as information of any kind that can be used or adapted for use in the design, production, manufacture, utilization or reconstruction of articles or
As an example of their application, assume that the subject matter of data transferred to Ireland concerns patents, specifications, tolerances and processes for the manufacture of electronic switching devices. Under the EAA, transferral of this data is subject to export control because the switches that result from use of the data are a "controlled commodity." Due to this classification, a validated, versus a general, license must be applied for and obtained in order to export these materials to Ireland.

An additional restriction imposed by the EAA precludes reexportation of this data from the receiver country to certain other countries. The EAA indexes these forbidden countries by use of letters. In the case of data concerning electronic switches, reexportation to a Group Q, W, Y, or Z country is prohibited without a validated license and permission from the Office of Export Administration (OEA).

Any sublicensing activity or reexportation of this materials. The data may take a tangible form, such as a blueprint or manual, as well as an intangible form such as a technical service. 15 C.F.R. § 379.1(a) (1986).

The Commodity Control List (CCL) includes all commodities subject to export controls. It is grouped into 10 categories, which are then subcategorized as to specific commodities. 15 C.F.R. § 399.1(b) (1986). After the commodity is located on this list, an Export Control Commodity Number (ECCN) will accompany it. This four-digit number is followed by a code letter which relates to the documentation a party must have to export the given commodity. 15 C.F.R. § 399.1(l)(2) (1985).

For example, a manufacturer of electronic switches falls into the Group 5 commodities. Its ECCN number would be 1567A which requires a validated license to export this type of commodity to any country (Q, S, T, V, W, Y, Z countries and Canada). 15 C.F.R. § 399.1, supp. 1 (1985).

The procedure for obtaining such a license is given in section 372. 15 C.F.R. § 372.4 (1986).

(1986) (any exportation of technical data not covered by a general license under sections 379.3-4 must possess a validated license). The data in this example does not fall within the general license provisions, thus necessitating a validated license.

The countries are grouped as follows:

Q: Romania
S: Libya
T: Greenland, Miquelon and St. Pierre Islands, Mexico, Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Bahamas, Barbados, Bermuda, Dominican Republic, French West Indies, Haiti, Jamaica, Leeward and Windward Islands, Netherlands Antilles, Trinidad and Tobago, Colombia, French Guiana, Guyana, Surinam, Venezuela, Bolivia, Chile, Ecuador, Peru, Argentina, Brazil, Falkland Islands, Paraguay, and Uruguay.
V: Southern Rhodesia
All countries are not included in any other category except Canada (includes Republic of Ireland).
W: Hungary, Poland
Y: Albania, Bulgaria, Czechoslovakia, Estonia, East Germany, Laos, Latvia, Lithuania, Outer Mongolia, USSR
Z: North Korea, Vietnam, Kampuchea, Cuba


(1985). Even the shipment of these articles and data through an improper country can subject the exporter to liability. 15 C.F.R. § 370.9 (1985).
TECHNOLOGY TRANSFER IN IRELAND

Data outside of Ireland without permission will subject the transferor to liability.

The EAA also restricts the reexportation of products manufactured abroad through the use of U.S. technical data. Unless specifically authorized by the OEA, it is unlawful to export direct products of U.S. technical data to country groups Q, W, Y, or Z, the People's Republic of China, or Afghanistan. This prohibition clearly encompasses the foreign manufacture of the transferor's product. Therefore, the transferor should maintain a hold on the marketing and subsequent exporting of its goods to reduce the risk of liability, because the holder of the license is legally responsible for the proper performance of all its terms.106

The subsequent export of commodities from Ireland to certain other countries107 is further regulated by import controls in the form of International Imports Certificates and Delivery Verification Certificates. The importer must obtain these certificates before export begins.108 Again, permission to reexport must be obtained from the OEA.

E. Protection of the Subject Matter

Another important factor to consider when assessing the desirability of a host country for investment is the amount of protection that transferred technology will receive. The host country must recognize and guarantee the confidentiality and private ownership of transferred technology, not only during the contractual period, but for a reasonable time after termination. Registration of the technology through patent and trademark statutes is often used as a means of insuring against this type of risk.109 If adequate protection is not offered, other investment programs will also be seriously undermined.110

106 15 C.F.R. § 386.1(a) (1986).
107 These countries include: Austria, Denmark, Germany, Greece, Italy, Belgium, France, Luxembourg, Netherlands, Norway, Portugal and the United Kingdom. 15 C.F.R. § 375.3(a)-(b) (1986).
108 15 C.F.R. § 375.3(a) (1986).
109 UNIDO, supra note 4, at 8. Other means of protection and their limitations, particularly as to post-transfer protections, will be discussed infra.
110 The period of time must be sufficient to allow the investor to recoup expenditures incurred while developing this proprietary information. For example, the United States allows a license of patented technology to be co-extensive with the life of the patent. This implies a maximum 17 year duration. St. Paul Plow Works v. Starling, 140 U.S. 184 (1891). Compare India, which normally approves licensing agreements for only five year terms and does not favor granting extensions. This encourages assimilation of the technology within the duration of this first agreement. Guidelines for Industries, Ch. III, §§ 8, 9(xi), reprinted in Control of Restrictive Practices in Transfer of Technology Transactions, U.N. TDBOR. U.N. Doc. TD/B/C.6172 (1977). India does, however, recognize a patent protection period of 14 years from the date of filing or seven years from date of filing for a process patent. PATENTS THROUGHOUT THE WORLD 177 (A. Jacobs 3d ed. 1986). An additional requirement is that if the patent right is not exercised for three consecutive years from the date of issue, a com-
Irish patent law is contained in the 1964 Patents Act\(^{111}\) and the 1970 Patents Rules.\(^{112}\) The patenting procedure follows a pattern not unlike that used in the United States. An application must be filed containing specifications and claims defining the scope of the invention.\(^{113}\) Once the specifications have been submitted to the Patent Office, they are published in the Patent Journal to allow those who feel the invention is not worthy of a patent or has been disclosed previously to challenge the grant.\(^{114}\) After this publication, the inventor must make a special application to have the patent granted or "sealed."\(^{115}\)

Patents are granted for sixteen years, subject to a five or ten year extension if the invention is of exceptional merit and if the patentee has not been adequately remunerated.\(^{116}\) No fee is required upon "sealing," and no fees are payable during the first four years of the patent term. Following this period, the yearly renewal fees are graded from twenty to sixty-four pounds per year up to the sixteenth year.\(^{117}\) The period of monopoly and fees charged in Ireland is similar to U.S. patent provisions and would therefore not prejudice an investor's interests. The possible extension of the sixteen year term

\(^*\) Pulmonary license will be granted to another party upon application. *Id.* at 181. The practical effect of these Indian statutes is to force the patentee to either: 1) license the patent and benefit from royalties for five years after which the patentee must a) sell it to the licensee or b) lose it due to the patentee's non-use, or 2) the patentee must directly invest in India and use the patent for the full term of the grant itself.

\(^{111}\) *Patents Act,* (Ir. 1964), *reprinted in* 63 PAT. & TRADE MARK REV. 189 (1965).


\(^{113}\) A patent application has a priority date as of its filing date, unless the inventor has filed a provisional application. In such cases, the inventor will have 12 months to develop and perfect the invention. *Patents Act,* § 8(2) (Ir. 1964), *reprinted in* 63 PAT. & TRADE MARK REV. 189, 194 (1965). The priority date comes into play when two people have claimed the same invention. In this case, the inventor with the earliest priority date will be awarded the patent.

This is in conflict with U.S. patent law in that the first inventor to file an application is not necessarily awarded the patent. If a second inventor can show he conceived of the invention prior to the first inventor's date of conception and worked with due diligence to reduce it to practice (file the application or construct the device), then the second filer will be awarded the patent. 35 U.S.C.A. § 102(g) (West 1984). A drawback to the potential patentee is that this type of law will result in a race to the patent office, possibly resulting in a patent being issued to another party who may have conceived prior to the first inventor but decided to "sit" on the invention, then after discovering that the second inventor is about to patent the invention, initiating a race. This type of practice would not be allowable in the United States and it is felt that this provision may discourage transfer, but only to a slight degree.

\(^{114}\) *Patents Act* § 18(2) (Ir. 1964), *reprinted in* 63 PAT. & TRADE MARK REV. 189, 201 (1965).

\(^{115}\) *Patents Act* § 23(1)-(3) (Ir. 1964), *reprinted in* 63 PAT. & TRADE MARK REV. 189, 220-221 (1965).

\(^{116}\) *Patents Act* § 25 (Ir. 1964), *reprinted in* 63 PAT. & TRADE MARK REV. 189,221 (1965).

provides a qualifying investor with the additional time necessary to recover its expenditures associated with the development of the patented article.

Again, an LDC should consider a similar provision allowing extension upon a showing of cause by the patentee. This type of provision removes some of the risks associated with bringing of new technology into an area with little or no history of profit-making enterprises. If these protections are offered, they must be accompanied by effective enforcement procedures. Therefore, the transferor should be allowed easy access, through jurisdictional statutes, to the host country's judicial system, and the host should actively enforce violations.

One Irish provision that differs greatly from anything found in U.S. patent law is the section that allows the granting of a compulsory license. This section allows a person to apply for a compulsory license when there has been a misuse of monopoly rights under the patent\textsuperscript{118} any time after the expiration of four years from the date of application or three years after sealing.\textsuperscript{119} The licensing fees required for this compulsory license are the subject of negotiations between the patent owner and the licensee.\textsuperscript{120} Because of this provision, a person awarded a patent in Ireland is advised to use the invention to its fullest potential or risk losing exclusivity. This statute also implicitly regulates the terms of a license by requiring the granting of a compulsory license if the terms offered might prejudice a trade or industry.\textsuperscript{121} Moreover, if an investor invents a useful article and demand for the item grows, the inventor will not be allowed to decide when and at what price the device will be sold. Instead, the aforementioned "abuse of patent right" provision is invoked, a compulsory license is granted, and the inventor is prevented from deriv-
ing the highest possible return on its investment. This provision thus acts as a disincentive to the investor who intends to transfer such proprietary information.

The goal of the investor is to make a profit, but this profit in turn puts tax money in the state's coffers. Thus, an LDC should act with restraint when considering enacting a compulsory licensing provision. If the state's goal is to keep the patented technology in use, a compulsory license provision is not the only option. Another alternative is the enactment of a statute which repeals the patent grant if the patent is not used for three consecutive years. Such a provision is not as restrictive as the Irish statute, and satisfies the state's desire to keep the technology from being "shelved."

A cause of action for infringement can arise as early as the day the specifications of the patent are filed. If infringement is proved, the patentee has the option of requesting an accounting of the profits obtained instead of compensation for the damages. The court may also grant an injunction to prevent further infringement. These remedies are comparable to those offered to successful plaintiffs in U.S. court proceedings. Transfer should not, therefore, be detrimentally affected by these provisions.

The current Irish trademark provision is the 1963 Trade Marks Act. The statute defines "mark" as a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination of these that associates the proprietor with the goods in the course of their production or preparation for the market. An investor that uses a logo or other design on its label, stationery or exterior packaging is afforded protection by this statute. A mark, however, must be properly registered.

Registration confers the right of exclusive use. Trademark registration is generally granted except for marks that are likely to confuse or deceive the public because of their similarity to other

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123 Patents Act § 56 (Ir. 1964), reprinted in 63 Pat. & Trade Mark Rev. 189, 257 (1965).

124 Patents Act § 55(4) (Ir. 1964), reprinted in 63 Pat. & Trade Mark Rev. 189, 257 (1965).


128 Id.

129 Id.
registered marks. Additionally, if a trademark becomes so familiar that its use is likely to indicate a connection between the goods and a person entitled to use the mark, a defensive mark with respect to other goods may be issued. Unlike a patent grant, an unused trademark cannot be cancelled for non-use but retains all the rights of a normal registered mark.

Trademarks are granted for a term of seven years and may be renewed upon application and payment of renewal fees. The registration fees vary with the type of trademark: fifteen pounds for one mark on one classification of goods; twenty pounds for defensive marks; and a renewal fee of fifty-five pounds. These fees are clearly not excessive and are unlikely to significantly burden a foreign investor seeking protection of its marks.

Actions for infringement must be brought before the High Court. Upon a finding of infringement, the relief granted may include any combination of the following: (1) an injunction, (2) damages, (3) an accounting of profits, (4) seizure of articles bearing the trademark, and (5) recovery of costs. In conclusion, the elements of trademark law are similar to those of the United States and will not pose a problem relating to either registration or sufficiency of remedy.

Another intellectual property right, know-how, is protected by Irish law in two ways. When know-how is transferred under contract and designated for a specific use, an action for breach of contract can be brought for misuse. An action will also lie for misuse of

\[130\] Trade Marks Act, No. 9, § 22(1) (Ir. 1963), reprinted in 62 PAT. & TRADE MARK REV. 23, 75 (1963).
\[131\] Many examples of this exist in the United States. Xerox (copies) and Kleenex (facial tissues) are probably the most widely recognized in this class.
\[135\] Trade Marks Act, No. 9, § 51 (Ir. 1963), reprinted in 62 PAT. & TRADE MARK REV. 23 (1963).
\[138\] Although the term “know-how” is difficult to define precisely, Melville has characterized the term as follows:

Know-how consists of information conveying useful experience relating to a process of manufacture (or anything analogous to such a process); it usually manifests itself in the form of final working drawings, test reports, operations manuals and such esoteric things as critical path analysis .... [I]ts market value to others working in the relevant field may be much higher than its cost. Melville, Know-How and Trademark Licensing in the United Kingdom, 59 TRADE MARK REP. 813 (1969). This definition does not require total secrecy. It does, however, imply that the information cannot be known to a large sector of the industry. If it were known, its market value would be closer to its cost.
confidential information if certain elements of proof can be shown. In order to obtain compensation, the transferor must show that the information was confidential and treated as such, that it was divulged in a situation imparting an obligation of confidence, and that there has been misuse of the information. Possible remedies include equitable actions, damages, or both.\textsuperscript{3} The investor, if acting as a licensor, should make certain that all employees of the licensee who come into contact with this know-how sign non-disclosure agreements. The agreements should make clear that the information was indeed confidential, leaving liability for breach to rest on whether the defendant misused or misappropriated the information.

\textbf{F. Licenses}

Unlike the licensing agreements of past years that dealt solely with patent rights, today's agreements transfer rights in the form of patents, trademarks, know-how,\textsuperscript{140} trade secrets, marketing and technical assistance contracts. There are three basic reasons to consider a licensing agreement: (1) it requires minimal capital investment;\textsuperscript{141} (2) it provides income from royalties and technical assistance fees;\textsuperscript{142} and (3) it enables U.S. manufacturers to benefit from a reverse flow of technology in the form of grant backs.\textsuperscript{143} Although the merits of international licensing are substantial, it has certain drawbacks. These disadvantages include a possible lack of control over the licensee’s manufacturing processes and marketing programs\textsuperscript{144} as well as certain antitrust problems that may arise when restraints are placed on the licensee’s use of the technology.\textsuperscript{145} These drawbacks can create major problems for an investor, many of which can be overcome through proper drafting of the license.

\textsuperscript{139} L. ECKSTROM, LICENSING IN FOREIGN AND DOMESTIC OPERATION § 22.01(5) (1985).
\textsuperscript{140} Another explanation of know-how is presented by Byington. Know-how is usually referred to as the sum of knowledge, skill, methods and other information necessary to the technical process. While this is not patented technology, the information is not generally known or accessible in the industry. This would include, for example, blueprints, formulas, design layouts, operating instructions and specifications. Byington, Planning & Drafting of International Licensing Agreement, 6 N.C.J. INT’L L. & COM. REG. 193, 195 (1981).
\textsuperscript{141} Risk of loss decreases as less capital is invested. This arrangement also allows test marketing of its services, product, or know-how prior to heavy capital investment. In addition, this situation would make more dollars available to support research and development. \textit{Id.} at 194.
\textsuperscript{142} \textit{Id.} at 195. In this case, royalties are exempt from currency regulations. Irish tax laws do not include the taxation of royalties; corporate income is, however, taxable although at a very reduced level. \textit{GUIDE TO TAXES, supra} note 15, at 9.
\textsuperscript{143} A grant back occurs when, for example, the licensee, after improving upon the licensor's technology, returns the improvement to the source (licensor) rather than keeping the improvement for itself. This practice may lead to a significant reduction in research and development expenditures. Byington, \textit{supra} note 140, at 194-95.
\textsuperscript{145} Byington, \textit{supra} note 140, at 195.
The investor seeking to transfer technology should investigate any foreign governmental restrictions and take certain other precautions before entering into a license. First, the tenure of any agreement should be for a fixed, long term, allowing for repayment of initial R&D expenses.\textsuperscript{146} The contract should be executed in the United States, and the laws of the state where it is executed should be made applicable to the transfer. In addition, the licensor should retain the right to control the quality assurance procedures of the licensee through periodic inspections of the equipment, production records and facilities.\textsuperscript{147} Strict confidentiality must be maintained by inclusion of a clause stating that non-disclosure contracts must be signed by all appropriate employees and contractors.\textsuperscript{148} The licensor should also restrict the right of the licensee to sub-license or assign the technology to situations in which approval of the licensor has been expressly obtained.\textsuperscript{149} Any grantback provision, wherein the licensee agrees to transfer back to the licensor any information and rights to future technical improvements on the licensor's technology, must be drafted with care to avoid antitrust problems.\textsuperscript{150} Finally, the agreement should not merely be an agreement to sell. If it is, greater compensation will be required.

Most licenses generate revenue through royalty payments. These payments usually involve either one "lump sum" payment or a small initial payment with further negotiated amounts per unit produced.\textsuperscript{151} Royalty provisions should include an allowance for future renegotiation of payments and a minimum guaranteed annual return.\textsuperscript{152} In addition, the agreement should provide for termination of the contract if payments cannot be properly remitted due to exchange controls or other circumstances, and termination by either party upon the bankruptcy of the other.\textsuperscript{153} The agreement should further provide for the payment of services supplied by the licensor in the form of technical assistance, personnel training and manage-

\textsuperscript{146} Provisions should be included, however, allowing the parties to withdraw from the contract without liability in specified situations. \textit{Id.} at 196.
\textsuperscript{147} The licensor should also seek a clause enabling it to terminate the agreement if it feels the licensee's production is adversely affecting its best interests. \textit{Id.} at 198.
\textsuperscript{148} \textit{Id.}
\textsuperscript{149} \textit{Id.}
\textsuperscript{150} The reasonableness of the clause will generally determine its legality. If it is reasonably necessary to protect the licensor, is not a disincentive to innovation, does not extend beyond the scope of the technology transferred, does not restrict competition, and the licensor has similarly agreed to furnish the licensee with technical innovations during the term of the agreement, it will likely be held valid. Payne & Stroup, \textit{U.S. Antitrust Aspects of the International Transfer of Technology}, 5 N.C.J. Int'l. L. & COM. REG. 91, 109 (1980).
\textsuperscript{151} Some licensors may opt to receive equity in the manufacturing entity. This would allow the licensor to exert a greater degree of control over the use of the technology, thereby reducing the risk of the transfer. Byington, \textit{supra} note 140, at 199.
\textsuperscript{152} Irish law will not restrict this type of clause. See \textit{Irish Const.} art. 43, \textit{reprinted in J.M. Kelly, The Irish Const.} 644 (1984).
\textsuperscript{153} \textit{Id.}
ment, and engineering consulting services. A licensor should expect to receive royalties that fall between fifteen and thirty-five percent of the licensee's profit estimate. The royalty, however, is usually not based on profit but on a percentage of sales.

Ireland has no governmental regulations affecting these intellectual property areas—all are freely negotiable. The royalty term is limited only by what the licensee is willing to pay for the technology. Additionally, royalties that are tied to the Irish rate of inflation are not restricted. This may be an appropriate safeguard if the rate of inflation continues at its present rate of approximately twenty percent. This freedom from governmental restraint stimulates transfer through licensing.

The governmental protections provided for proprietary rights, such as trade secrets, are another important factor to be considered by a transferor. An important question in this area is the extent to which the parties can use the transferred know-how subsequent to the termination of a license. Irish law sides with the licensor. A provision in a license of technology prohibiting post-contractual use of unpatented technology is valid and enforceable, so long as the technology is not in the public domain. By virtue of the "springboard doctrine," the agreement may be enforceable even if it has entered the public domain, if the entrance did not result from an act of the licensor. The reasoning behind this approach is that a person who has obtained information in confidence is not allowed to use it as a springboard for activities detrimental to the person who made the confidential transfer. The licensee is placed under a special disability in the fields of competition to ensure that it does not receive an unfair start. The licensor may circumvent this doctrine by expressly stating in the license that the licensee will continue to pay royalties if the licensee continues to use the licensed information after it becomes public knowledge.

In certain cases, it may be necessary to grant an exclusive license

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154 Id.
155 The percentage of profits can still be used to calculate the appropriate percentage of sales. For example, assume the percentage of profits a licensor would like to receive is 40%. Further assume that the licensor’s before tax profits are 20%. It would therefore be reasonable for the licensor to charge an eight percent royalty rate on the selling price. Blair, Overview of Licensing and Technology Transfer, 8 N.C.J. Int’l L. & Com Reg. 167, 185 (1983).
157 Patent and trademark rights were discussed supra notes 109-137 and accompanying text.
159 Id.
160 Id.
to persuade a party to manufacture a given device. Such a license usually allows the grantee to make, use, and sell the product in a given territory and often imposes a duty on the licensor not to license any other party.

In Ireland, limited exclusivity is possible in an intellectual property license if the exclusivity is necessary to induce the licensee to develop a particular market which would otherwise be left undeveloped, and no attempt is made to restrict the import and export of licensed goods between the licensed territory and other EEC member states. It is also permissible to tie exclusivity to a minimum royalty clause. If minimum royalties are not paid, the license becomes nonexclusive.

A licensor may employ a “field of use clause” to limit the licensee’s use of transferred patents or know-how to the manufacture of a certain product. This type of clause appears to be valid and enforceable under Irish law. Such a provision is important to a licensor because royalties are often tied to the sale of a certain product embodying the licensor’s technology. If the information is used in the manufacture of another product, the licensor will also want to receive royalties on the sale of that article. Enforcement of field use clauses assures the licensor of fair compensation for the use of its technology. Clauses in licenses which limit the licensor’s liability for negligent use of its licensed technology are also valid and enforceable in Ireland. Furthermore, because negligence remains a basic element of a products liability claim, plaintiffs often choose to sue the licensee rather than the licensor. At this time, these laws benefit the licensor. If a strict liability standard similar to that in the United States is adopted, however, it will make it easier to show licensor liability. Until such time, an exemption clause in favor of the licensor should be included in the agreement. Although the typical LDC may desire to have the ability to reach the “deep pocket” of a licensor if an injury occurs, it might be best to allow this type of exemption clause during the early industrial development stage. Allowing this protection would further encourage an investor to invest in an LDC.

A basic tenet of Irish law is that a license does not convey the right to grant sublicenses. In In re Burroughs-Delphanque, a provision preventing the licensee from granting trade secret and know-

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162 L. Eckstrom, supra note 139, at § 22.03[7].
163 Id. § 22.05[9].
165 Id. at 916.
166 L. Eckstrom, supra note 139, at § 22.01[12].
167 Id. § 22.03[13].
how sublicenses was allowed. The licensor, nonetheless, should maintain control of its intangible "property" to prevent accidental disclosure by the licensee in case of an unsuccessful attempt at sublicensing. In a transfer situation, the licensor should also include a no-challenge clause in the license. This type of provision effectively disallows any claim by the licensee of invalidity of the licensor's proprietary information. Such a provision, however, is considered anticompetitive under article 85(1) of the EEC Treaty.

Although patent rights are freely assignable in Ireland, this freedom can create problems. For example, in order to protect its rights under a license, the licensee of a patent must register the license with the Patent Office before the transaction. If the licensor thereafter makes another assignment of the patent, the rights of the licensee under the first license agreement are not affected.

Permitting grantbacks to the source of the improvement, whether it be the licensee or the licensor, is beneficial to both parties. Such a policy encourages the free flow of technology between the parties, because they both know they will receive the benefit of any improvements from their labor. The reasonableness of a grant back clause will generally determine its legality. If the clause: a) is reasonably necessary to protect the licensor, b) is not a disincentive to innovation, c) does not extend beyond the scope of the technology transferred, d) does not restrict competition, and e) there is simultaneous agreement by the licensor to furnish the licensee with technical innovations made during the course of the agreement, it will likely be held valid. In short, grant back agreements are held valid when they are reciprocal. If the licensor has a good research and development laboratory, it is in the licensor's best interest to assent to this type of arrangement.

For the reasons stated above, such an arrangement should be allowed by an LDC. For its own protection, however, an LDC should insist that either a reciprocal grant back clause or consideration for the improvement be included as a requirement for validity. In this way, the licensee is assured of at least some benefit in return for its improvements.

In certain situations, a licensor may desire to divide the technology between several licensees. This practice is not in conflict with Irish law. The licensor is free to divide its technology and any exclusive rights in the intellectual property as it sees fit. In the case of a

169 Id. (citing 1 Common Mkt. L. Rev. 84 (R.P. Supp. 1972)).
171 L. Eckstrom, supra note 139, at § 22.05[8].
172 See supra note 143.
173 Id.
174 Payne & Stroup, supra note 150, at 109.
patent, for example, a division of the exclusive rights in the three areas, manufacturing, selling, and using the device, is permissible. A licensor can license the marketing rights and retain the manufacturing rights, or vice versa.

In the absence of a contractual clause to the contrary, there is an implied obligation on the part of the licensor to cover the costs of renewal fees on patents and trademarks. A licensor can attempt to obligate the licensee for these costs. A licensee, because it does not own the patents and trademarks, may well object to such a requirement.

G. Dispute Resolution

As a term of the licensing or joint venture agreement, an investor may provide that any disputes be arbitrated under the laws of a neutral country rather than under those of the host. An express contractual agreement to this effect is not contrary to Irish law so long as it does not encompass employment conditions or labor disputes, which are expressly excluded from arbitral settlement by statute. When either party to a license is a resident of Ireland, a foreign arbitration site may be contractually agreed upon. It is important, however, to choose a forum in which the courts are familiar with the law chosen to avoid misinterpretations by the arbitral body.

Certain conditions must be fulfilled if a foreign award is to be deemed valid and enforceable in Ireland. Even if these conditions are met, however, the jurisdiction of the Irish courts cannot be completely excluded. If the award is purported to be contrary to public

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175 L. Eckstrom, supra note 139, at § 22.05[13].
176 Id. § 22.05[6].
177 If transfer is to be accomplished by direct foreign investment through a wholly owned subsidiary, the Irish subsidiary would not likely resort to formal arbitration with the parent company as a method of dispute settlement. Normal business disputes between two Irish entities are not generally submitted to arbitration for settlement [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,532 (1982).
178 Disputes arising out of matters of employment such as terms, conditions or pay are not submitted to arbitration. Labor disputes, which are subject to general legislation, may also not be submitted to arbitration. Industrial Relations Act, No. 26, § 24 (Ir. 1946), discussed in 6 INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS (1984). [hereinafter INTERNATIONAL ENCYCLOPAEDIA].
179 Foreign awards emanating from these arbitrations are enforceable and binding in Ireland if the underlying arbitration agreement is covered by the Protocol of 1923 and one party is a resident of Ireland, a signatory to the 1927 Convention, while the other party resides in a country that is also a signatory to the convention. Geneva Convention on the Execution of Foreign Arbitral Awards, Sept. 26, 1927, explained in [Doing Business in Europe] Common Mkt. Rep. (CCH) ¶ 25,537 (1982). The United States is a signatory.

The award must also be:

1. made under an arbitration agreement which is valid in the country where the award is made;
2. awarded under the tribunal provided for in the agreement;
3. made in conformity with the law governing arbitration procedures in the country in which it is made;
4. final in the country in which it is made (the award will not stand if
policy or Irish law, a review of the award by the High Court will be conducted.\textsuperscript{180} The High Court will refuse to enforce a foreign award that does not deal with the questions submitted to arbitration, or contains decisions beyond the scope of the agreement. In addition, the party against whom enforcement is sought must be given sufficient notice and adequate representation.\textsuperscript{181} In conclusion, although arbitration may be a faster and less expensive manner of settling disputes in other countries, the cost of arbitration in Ireland is likely to be considerably higher than an ordinary court proceeding and may therefore be prohibitive.\textsuperscript{182} A contractual agreement to arbitrate disputes in a neutral country should thus be demanded by both the licensor and the investor.

\textbf{H. Labor Law Considerations}

The Irish Congress of Trade Unions (ICTU) is the central authority for the Irish labor movement. This standing is guaranteed by law.\textsuperscript{183} The ICTU’s principle function is the coordination of Ireland’s eighty unions,\textsuperscript{184} each of which represents a particular trade or profession. Because of this strong governmental backing of the labor movement, an investor will find it difficult, if not impossible, to establish a non-union workplace. Although employers are under no statutory obligations to recognize or negotiate with a labor union, virtually all of them consider it prudent to do so.\textsuperscript{185} When an employer’s workforce is divided among various unions, it is standard practice to negotiate on a collective basis. The employer, however, retains the right to select and recruit employees.\textsuperscript{186}

A major economic policy change took place in 1979 with the announcement of a proposed National Understanding for Economic and Social Development (NU). The NU has been described as an
integrated action program in the areas of employment, pay, taxation and social expenditure. It replaced the previous compensation policy which was dictated by National Pay Agreements negotiated between employer representatives and labor unions.

These "Understandings" provide for percentage increases in employee salaries to offset inflation, subject to a minimum flat-rate increase per week. Also typical are incremental percentage increases to offset rises in the consumer price index above an agreed percentage. The 1982 NU was negotiated on the basis of a fifteen percent wage increase over a fifteen month period. This figure acknowledges that full compensation for that year's twenty percent inflation rate would be counterproductive in its impact on real disposable income.

Labor negotiations in Ireland are similar to the United Auto Workers Automotive manufacturer negotiations in the United States. Wages are indexed to cost-of-living and subject to weekly increases. A positive aspect of this arrangement is the proven willingness of Irish workers to accept smaller wage increases when times become difficult.

Employment conditions in Ireland are regulated by a succession of acts. The maximum standard working week is forty-eight hours for individuals over eighteen years of age, and there are few restrictions on overtime. The Factories Act of 1955 provides for the safety, health and welfare of industrial workers by regulating

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187 The Employer-Labour Conference negotiated the first National Pay Agreement in 1970. Similar agreements were used through February 1977. *Id.* § 206.

188 Changes in rates of pay are negotiated at the industry level and agreements made by employers and unions are for a fixed period of time. All agreements provide for phased increases in basic rates of pay. Graduated pay increases are keyed to the Consumer Price Index so that real income keeps pace with inflation. *Id.* § 210.

Where firms or industries consider that they are unable to apply the terms of the agreement and remain viable, the employers must inform the union and, if direct negotiation does not lead to agreement, the matter is referred to the Labour Court for conciliation or arbitration. Employer-Trade Union National Agreements, 1970-77, discussed in *INTERNATIONAL ENCYCLOPAEDIA*, supra note 178, at § 218. In addition, minimum wage legislation does exist, but only for carefully chosen categories of workers. See generally Industrial Relations Act, No. 26 (Ir. 1946).

189 *INTERNATIONAL ENCYCLOPAEDIA*, supra note 178, at § 210.

190 *Id.* §§ 207-08.


192 Conditions for Employment Act, No. 2 (Ir. 1936); Conditions of Employment Act, No. 4 (Ir. 1938); Conditions of Employment Act, No. 2 (Ir. 1942); and Conditions of Employment Act, No. 12 (Ir. 1944), *discussed in INTERNATIONAL ENCYCLOPAEDIA*, supra note 178, at § 152.

193 *INTERNATIONAL ENCYCLOPAEDIA*, supra note 178, at § 152(b).

194 Conditions of Employment Acts, No. 2 (Ir. 1936) and No. 12 (Ir. 1944). Any limits that are imposed (generally, two hours of overtime per day) may be exceeded when permission is received from the Minister of Labour. See generally *INTERNATIONAL ENCYCLOPAEDIA*, supra note 178, at § 152(c).

dangerous machinery and fumes, dust, gas, and the like. It prohibits overcrowding, and makes detailed provisions for such items as ventilation, heating, lighting, overcrowding, sanitary conveniences, fire escape, drinking water, washing facilities, first-aid rooms, and locker rooms. An investor should be aware of these safety regulations and incorporate them into his construction plans.

Certain procedures must be followed in Ireland with regard to lay-offs. Irish statutes offer job security against arbitrary lay-offs (redundancies) and dismissals. The 1973 Minimum Notice and Terms of Employment Act lays down a minimum period of notice for dismissal, which varies with the term of employment. The Redundancy Payment Acts provide for lump-sum payments to those workers considered redundant relative to their period of employment, age, and salary. The Unfair Dismissals Act defines "unfair dismissal" and provides an adjudicative system through which certain employees can address their grievances. Unfair dismissal includes dismissal because of the employee's trade union activities, religious or political opinions, race, color, participation in legal proceedings against the employer, and unfair selection of redundancy or pregnancy. Remedies include reinstatement to the same job, re-engagement in the same or similar job, or compensation up to a maximum of 104 weeks of pay. In addition, under the 1974 Anti-Discrimination Act, men and women employed by the same associated employers in the same locality doing "like" work are entitled to the same pay and benefits. "Like" work is defined as work of the same or similar nature making equivalent demands on skill, physical or mental effort, or responsibility under the same working conditions.

Non-national management personnel and other key workers can easily obtain work permits in Ireland. These permits are renewable every twelve months for five years and thereafter indefinitely, so long as the worker remains in the same job. Personnel sent to Ireland to start-up, supervise, or train employees should have no trouble moving freely between their home country and Ireland even if they remain in Ireland for more than a transitory period of time. Unlike

196 The Factories Act, No. 10, § 11 (Ir. 1955), discussed in INTERNATIONAL ENCYCLOPÆDIA, supra note 178, at § 179.
197 Id.
199 The Unfair Dismissals Act, No. 10, § 6 (Ir. 1977), discussed in INTERNATIONAL ENCYCLOPÆDIA, supra note 178, at § 269.
200 Id.
201 Anti-Discrimination (Pay) Act, No. 15, § 3 (Ir. 1974).
202 Non-EC member nationals, referred to as "Third Country Nationals," are generally denied permits only when an objection is raised before the Department of Labour that an EC national is available to fill the position at issue. INTERNATIONAL ENCYCLOPÆDIA, supra note 178, at § 322.
some other countries, the Republic also has no direct governmental restrictions on separate technical assistance, training or maintenance contracts, or on the amount of currency that may be paid to the investor for training or maintenance expenses.\textsuperscript{203}

I. Quality Control

When negotiating a license or joint venture agreement, the investor who is transferring technology should seek to maintain some control over the finished product of that technology in order to protect its interests. These interests range from a need to maintain sales to a concern for the investor's reputation. Ireland imposes no governmental restrictions on the type or number of quality control checks that the investor can maintain. In the case of a license or joint venture, the investor is free to negotiate the terms of a quality control system with the host.\textsuperscript{204} This freedom of negotiation should encourage transfer to Ireland.

J. Infrastructure Support

In assessing the infrastructure of a host country,\textsuperscript{205} there are four commercial areas that must be examined: education, transportation, communications, and health care. These areas act as an indicator of market potentials and sources of supply.

The science and technical infrastructure of a nation is important because it must be able to absorb any technology transferred and make appropriate adaptations of the technology through the host country's own scientific effort. To this end, the Irish Department of Education provides education free of charge in primary and "second level" schools\textsuperscript{206} and gives substantial aid to universities and other institutions of "third level" instruction.\textsuperscript{207} The educational system, while not quite as advanced as that in the United States, should be

\textsuperscript{203} See supra note 9.
\textsuperscript{204} This freedom to design contractual provisions in accordance with the transferor's needs without restriction is guaranteed by the Irish Constitution. See supra note 9. This would not be an issue in the case of a wholly owned foreign branch. A clause to this effect might stipulate a certain type of quality control method, such as a "quality circle" approach, or specify that the transferee use certain types of machinery to guarantee tolerances of the finished product.

\textsuperscript{205} Ireland's investment in infrastructural support for industry was over 27% of their GDP between 1979 and 1983. This is compared to 17.5% in the United States and 21.5% in Germany over the same period. This may be misleading as both the U.S. and German infrastructures are superior to that present in Ireland. This extra expenditure is necessary to bring the Irish infrastructure up to par with the world leaders.\textit{Industrial, supra note 1, at 6.}

\textsuperscript{206} \textit{Indus. Dev. Authority, Why Ireland for Engineering} 9 (1982) [hereinafter \textit{Engineering}].

\textsuperscript{207} Most notable are the nine Regional Technical Colleges and the National Institutes for Higher Education in Dublin and Limerick. \textit{Id.} at 10.
able to absorb any type of technology that might be transferred.\textsuperscript{208}

The principal seaports with connections to the western United Kingdom and Continental destinations are Dublin, Cork, Waterford and Limerick. Regular bulk cargo and container services operate from these main ports to major ports in the United Kingdom and continental Europe. There are also direct sailings to the United States.\textsuperscript{209} International airports can be found at Dublin, Cork and Shannon, the last being the closest European airport to the eastern seaboard of the United States.\textsuperscript{210} In addition, public road and rail transport is operated by the state owned Irish Transportation System. Although modernization of the highway network is long overdue,\textsuperscript{211} locating manufacturing sites near a port should ease this burden.

Ninety percent of telephone subscribers are linked to the automatic telephone network operated by the government and those in the greater Dublin, Cork, Drogheda, Galway, Limerick, Shannon and Waterford areas have direct dial access to most of Western Europe and North America.\textsuperscript{212} The government department that oversees these operations also supplies equipment for the transmission of computerized data over telephone lines.\textsuperscript{213} The Irish network is currently scheduling a massive modernization program involving digital switching and new transmission technology. A total investment of 800 million pounds has been estimated as necessary for its completion.\textsuperscript{214}

The Department of Health operates free hospital services, although persons with annual incomes over 8,500 pounds must pay consultants' fees. All wage earners over sixteen years of age pay an annual health fee of one percent of their annual income, subject to a seventy pound ceiling.\textsuperscript{215} In sum, the Irish transportation and communication systems are best described as merely adequate, and the educational and medical facilities do not measure up to their U.S. counterparts.\textsuperscript{216}

\textsuperscript{208} A laboratory specializing in wafer fabrication, hybrid technology and semiconductor design has been established in Dublin where R&D facilities are made available to companies. A microelectronics research center exists at University College, Cork, and 38 new electronic courses have been set-up in centers around the country to absorb the rapidly increasing student inflow in this area. INDUS. DEV. AUTHORITY, REPUBLIC OF IRELAND: THE FASTEST GROWING ELECTRONICS LOCATION IN EUROPE I-9 (1984).

\textsuperscript{209} ENGINEERING, supra note 206, at 7.


\textsuperscript{211} Id. ¶ 25,145.

\textsuperscript{212} Id.

\textsuperscript{213} Id.

\textsuperscript{214} Id. See also Today Ireland, Tomorrow the Continent, TEXAS BUSINESS (Oct. 1983.)


\textsuperscript{216} Id. ¶ 25,145.
IV. Conclusion

By offering incentives to the manufacturing sector and allowing parties involved in an investment scheme the freedom to contract as they see fit, Ireland has established itself as an excellent foreign investment host for both joint ventures and wholly owned subsidiaries. Licensing, while offering advantages to investors because of the reduced risk due mainly to the small initial capital outlay, is overshadowed by the stability of the Irish government, lack of restrictions, and truly hospitable atmosphere shown by the Irish IDA. Thus, Ireland has many advantages to a company seeking to expand its operations overseas and should be considered a strong candidate for any form of technology transfer in the manufacturing sector.

Irish law in this area also serves as a valuable model for any LDC desiring to stimulate its industrial economy. While LDCs may not be able to emulate all of the Irish programs at once, they nevertheless have a guide to follow that has a proven success rate. In order for the LDC to be ultimately successful, however, it must have strong financial backing and the infrastructure to support such development. Until an LDC develops these characteristics, the logical route for it is to implement these programs one by one.