

# Ireland

## Chamber of commerce:

Dublin Chamber of Commerce  
7 Clare Street  
Dublin 2  
Ireland  
Tel: +353 1 644 7200  
Fax: +353 1 676 6043  
Email: [info@dubchamber.ie](mailto:info@dubchamber.ie)  
Web: [www.dubchamber.ie](http://www.dubchamber.ie)

## Professional body:

Law Society of Ireland  
Blackhall Place  
Dublin 7  
Ireland  
Tel: +353 1 672 4800  
Fax: +353 1 672 4801  
Email: [general@lawsociety.ie](mailto:general@lawsociety.ie)  
Web: [www.lawsociety.ie](http://www.lawsociety.ie)

## New licensing regime for retail lenders

Robert Cain  
Arthur Cox  
Dublin

Section 19 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 amended Part V of the Central Bank Act 1997 (CBA 1997) to introduce a new authorisation regime for retail lenders, with effect from February 1 2008. In summary, Section 19 provides for the regulation of retail lenders that provide credit to natural persons in Ireland by way of cash loan, whether or not the lender or the borrower is acting in the course of their trade, business or profession.

The new authorisation regime was principally introduced because the Department of Finance and the Financial Regulator (FR) were concerned, especially in light of the issues around subprime lenders in the US, that the activities of some non-deposit-taking lenders fell outside the scope of the FR's Consumer Protection Code (CPC) and the FR's minimum competency requirements and that, therefore, some borrowers were not benefiting from the safeguards and protections otherwise provided by the FR. Once authorised, a non-deposit-taking lender is a regulated financial services provider for the purposes of the CPC and also the Financial Services Ombudsman Scheme.

Under transitional provisions, firms carrying on the business of a retail credit firm immediately before the commencement of Section 19 of the Act on February 1 2008 were given three months to apply to the FR for authorisation. Since May 1 2008 it has therefore been an offence for anyone to operate as a retail credit firm without having applied to the FR for authorisation or being otherwise exempt.

### Regulation of retail credit firms

Section 19 of the Act provides for the regulation of retail lenders by amending the defini-

tion of regulated business in the CBA 1997 to include retail lenders, described in the Act as retail credit firms.

The regulation of retail credit firms by the Act means that such firms are required to comply with the provisions of the CBA 1997, most notably the requirement to apply for and obtain an authorisation from the Central Bank and FR in accordance with Section 30 of the CBA 1997 and to comply with any conditions and requirements imposed by the FR in accordance with Section 33 of the CBA 1997.

### Definition of retail credit firms

A retail credit firm is defined in the Act as: "a person prescribed for the purpose of paragraph (g) of the definition of 'credit institution' in section 3 of the Consumer Credit Act 1995, or any other person who holds itself out as carrying on a business of, and whose business consists wholly or partly of, providing credit directly to relevant persons".

Broadly speaking, there are exclusions from the authorisation requirement for:

- (i) lenders providing credit solely to companies;
- (ii) lenders providing credit to natural persons outside Ireland;
- (iii) regulated financial service providers within the meaning of the Central Bank Act 1942, which includes licensed banks and passported entities (firms that are already authorised by or registered with the Financial Regulator for other regulated activities therefore do not require a separate authorisation to provide retail credit);
- (iv) authorised credit intermediaries;
- (v) entities exempted by the Financial Regulator from the requirement to hold an authorization;
- (vi) entities that provide credit on a one-off or occasional basis;
- (vii) secondary lenders (persons that obtain an interest in credit that was originally provided by another person); and
- (viii) securitisation SPVs.

### Relevant person

A relevant person is defined as: "a natural person within the State, other than: (a) a natural person who is, or satisfies the criteria to elect to be treated as, a professional client for the purposes of the European Communities (Markets in Financial Instruments) Regulations 2007; or (b) a person who is a regulated financial service provider".

### Credit

Credit is defined as "a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land), but does not include credit of a class specified in section 3(2) of the Consumer Credit Act 1995".

The definition of credit would therefore not appear to catch leasing, hire-purchase or invoice-discounting transactions. And it is questionable whether it would catch non-interest-bearing loans.

### Application process

The FR has published an application form and guidance note for retail credit firms. The FR also wrote to firms that it identified as retail credit firms in order to alert them to the need to obtain authorisation post-February 1 2008.

Neither the Act nor the CBA 1997 provide for a time limit within which the FR is obliged to either grant or refuse an application for authorisation.

Authorisation will only be granted by the FR if the applicant firm can meet the legislative requirements applicable to retail credit firms and also comply with all other relevant FR requirements.

### Conclusion

While there is still no requirement *per se* under Irish law for firms to be authorised to lend money from their own resources at their own risk, firms lending money in Ireland (from either inside or outside the state) should now remember to check whether they fall within the scope of both: (i) the new retail

credit firm authorisation requirement under Section 19 of the Act; and (ii) the existing Consumer Credit Act 1995, and ensure that they comply with the relevant requirements to the extent they are applicable.

## Capital markets – equity

### Recommended firms

#### Tier 1

A&L Goodbody  
Arthur Cox  
Matheson Ormsby Prentice  
McCann FitzGerald  
William Fry

#### Tier 2

Dillon Eustace  
LK Shields  
Mason Hayes + Curran

## Capital markets – debt

### Recommended firms

#### Tier 1

A&L Goodbody  
Arthur Cox  
Matheson Ormsby Prentice  
McCann FitzGerald

#### Tier 2

William Fry

#### Tier 3

Dillon Eustace  
LK Shields  
Mason Hayes + Curran

The equity capital markets in Ireland have been very quiet over the last 12 months with very few issues being done. “There’s only been minor transactions in the last 12 months in equity,” notes one partner. The collapse in the property market is one of many factors contributing to a general lack of finance which has stalled the market.

“Work has been largely underwritten rights issues,” says one partner, and this seems to be the consensus in the market. With IPO work still not seeing much of a recovery, this could be the case for a while yet.

More activity has been seen on the debt markets, with different areas taking prominence throughout the year. “At first no deals were being done, then a wave of restructurings were done, people didn’t want to sell their assets into the market at the time and there were a lot of insolvencies,” says one partner.

Following this there was a great deal of interest in selling bonds to the European

Central Bank (ECB), although this was very much a brief window of opportunity. “Since Christmas there has been a huge tightening up of the rules at the ECB, so now again we’re starting to see the ECB work slowing down.”

This was followed by greater interest in distressed bonds and debt buybacks as has been seen in many jurisdictions. “A number of banks are looking to buy back their own debt,” says one partner.

On the structured finance and securitisation side the market has been less affected. “Instruments have been very stable,” says one partner, “and it’s been a busy one as ever on the domestic securities side.” It has also been a time of new opportunities for firms. “Companies are looking at assets that they hadn’t looked at before to securitise,” says one partner.

Looking forward, CMBS restructuring is seen as the activity to watch out for, as many structures are now coming up to maturity and will need to be restructured.

### A&L Goodbody

Falling under the umbrella of its banking and financial services department, A&L Goodbody’s debt capital markets and structured finance and securitisation teams are led by Ciaran Rogers.

Another lead figure at the firm is Adrian Burke who acted for Irish Life & Permanent on two significant transactions last year. The first was a restructuring of European and US commercial paper and certificate deposit programmes in preparation for the first issuance of government-guaranteed debt in these areas. The deal closed in December 2008, and in the same month the firm acted for the bank over a modification to its existing Euro MTN programme allowing it to issue government-guaranteed debt under the Irish state guarantee programme.

In May 2008 the firm also advised Iberdola and Iberdola Finance over the establishment of a €1.5 billion medium-term structured note programme. This was Iberdola’s first issue in the European MTN market.

In a further highlight, the firm acted for Ulster Bank on the establishment of a €10 billion French Certificate of Deposit programme.

In the securitisation market the team’s biggest deal was advising the AIB Group and Causeways Securities on the £2 billion securitisation of a portfolio of residential mortgages. This was the AIB Group’s first RMBS transaction, and the firm advised on both Irish and Northern Irish law.

The firm has a fine reputation in aircraft financing and this has been enhanced further

by three significant transactions in the last 12 months. Closing in December 2009, the firm advised CIT Aerospace on two aircraft securitisations with a combined value of \$1.4 billion. Leading the A&L Goodbody team was aircraft specialist Séamus Ó’Cróinín who also worked alongside Catherine Duffy on the \$1 billion securitisation of an aircraft portfolio for Calyon.

Another highlight saw the firm acting for the Governor and company of the Bank of Ireland in regard to a number of securitisations, including an issue by Melepard of €1.2 billion notes backed by corporate loans and 1.7 billion notes from Pirus Securities backed by residential mortgages originated by ICS Building Society.

Depfa Bank is another client of the firm. In 2008 a team led by Adrian Burke acted in connection with the Sirrah Funding 1, 2 and 3 securitisations of various asset portfolios. The deals were valued at €1.25 billion, €2.5 billion and €2 billion respectively, and were structured to qualify for European Central Bank eligibility.

### Leading lawyers

Adrian Burke  
Ciaran Rogers

### Arthur Cox

Arthur Cox’s debt capital markets team is led by Cormac Kissane, who is popular with clients. “Cormac Kissane; we see him both on the securitised side and the covered bond side, we found him pro-active and alert to the changes in the market,” says one client.

Kissane led teams on some of the firm’s biggest deals last year, including acting for CRH America on a \$650 million bond issue under the US shelf programme. Kissane’s team also acted for the Dublin Airport Authority as guarantor and for DAA finance as issuer on a €600 million ten year Eurobond issue.

The firm advised Barclays on a syndicated €6 billion treasury bond issued by the Irish state’s National Treasury Management Agency (NTMA) in January. This combined with a second syndicated bond issued in February, raised over €10 billion for the government.

On the equity side the firm’s largest deal saw Pádraig Ó Ríordáin lead a team advising CRH over a €1.2 billion rights issue completed in March 2009.

In the securitisation market, a team led by Glenn Butt advised Moorgate Funding and Merrill Lynch on the establishment of a £10 billion CMBS programme. The team also acted for Irish SPV Wolfhound Funding 2008-1 and Bank of Scotland (Ireland) over a €4.3 billion RMBS transaction.

The firm advised another SPV, Palladium Funding No 1, and the Royal Bank of Scotland in a €5.7 billion RMBS programme, which was closed in January 2009.

#### Leading lawyers

Glenn Butt  
Cormac Kissane

### Matheson Ormsby Prentice

Matheson Ormsby Prentice's strength in the debt capital markets is based around its structured finance and derivatives practice; the largest in the country.

The team is led by Turlough Gavin and was involved in a number of noteworthy deals this year, including the first bond issued under the government's guarantee scheme. The firm acted for Allied Irish in the establishment of a \$15 billion MTN programme allowing the bank to access American funding.

In another first, the firm advised Macquarie on the first issue of European Central Bank eligible bonds secured by Australian assets. Awarded the 2009 Structured Finance and Securitisation Deal of the Year at the *International Financial Law Review's* Asia awards, the A\$1.5 Billion (€859 million) securitisation was the largest transaction in the Asia-Pacific region in 2008, but was structured through an Irish company.

The team is also advising in relation to the collapse of Lehmann Brothers, acting for orphaned company Anthracite Investments on debt securities and funding solutions designed to deal with its debt of over \$1 billion.

On the equity side the firm's practice is headed by Tim Scanlon, who led a 15-lawyer team on a €2.5 billion merger of IAWS and Hiestand, and the subsequent listing of the merged company ARYZTA on the Irish and Swiss stock exchanges. The cross-border nature of the deal highlighted the team's ability to work effectively on international transactions.

#### Leading lawyers

Turlough Gavin

### McCann FitzGerald

Heading the debt and structured finance and securitisation practices at McCann FitzGerald is Roy Parker. A team led by Parker advised EBS Building Society over the establishment of its mortgage covered securities programme and the establishment of a covered bond bank and subsequent bond programme; the first for an Irish building society.

The firm acted for two of the six Irish credit institutions covered by the Government's guarantee scheme, establishing a €10 billion

debt issuance programme for the Irish Nationwide Building Society and a €6 billion programme for EBS.

Another standout deal was advising Bord Gais Eireann on a \$450 million private placement into the US market in February 2009. The deal, led by partner Fergus Gillen, showed that opportunities for Irish companies abroad had not dried up.

The firm's equity team is included under the umbrella of its corporate finance division. The team is headed by Barry Devereux, who was also lead partner as the firm advised Petroceltic in relation to a subscription by Iberdola for 216 million new shares. This was coupled with an option allowing Iberdola to acquire a 49% interest in any of the company's major assets for \$55 million.

In October 2008 a team led by partner David Byers advised JPMorgan, Cazenove and Lazard and Davy as the sponsor and placing agents on Waterford Wedgewood's proposed €154 million equity issue

In structured finance, Hugh Beattie led in a stand-out deal advising Depfa Bank, Dexia Capital Markets and Delta Spark in an issue of limited recourse notes backed by a portfolio of tariff-deficit energy credit rights. The deal was valued at €1.3 billion and closed in September 2008.

#### Leading lawyers

Roy Parker

### William Fry

William Fry's reputation in the market lies in the equity capital markets, where the firm is ranked in tier one. On the debt side the firm is known in the market mainly for its niche practice in catastrophe (Cat) bonds.

The firm's equity group is headed by corporate partners Myra Garrett and Owen O'Connell. One of the team's biggest projects in 2008 saw the duo advising Waterford Wedgewood on its €120 million fundraising, which was completed by partners Brendan Henghan and David Carthy.

Another highlight for the equity team included a €100 million debt buyback for Smurfit Kappa, while Skillsoft instructed the firm on a \$684 million capital reduction and the creation of \$277 million of distributable reserves; the first time positive reserves were created following a capital reduction.

On the debt side the team is led by Elaine Hanly and Paul Murray, who worked on most of the firm's key deals over the last 12 months. In June 2008 a team led by Hanly acted for Calyon New York in a \$786 million secured funding to ACS Aircraft Entities.

In February 2009 Paul Murray's team highlighted the firm's expertise in the Cat

bond market, advising SCOR on the €200 million Atlas V capital bond which provides SCOR with coverage in respect to earthquakes and hurricane disasters in both the US and Puerto Rico.

#### Leading lawyers

Elaine Hanly

### Other ranked firms

In January 2009 Dillon Eustace acted as the Irish advisors to Monte Paschi Ireland in a €50 billion debt issuance programme, with the notes issued by Monte Paschi being guaranteed by Banca dei Paschi di Siena. The firm also had a role as advisors to Irish Life & Permanent in its €8 billion Euro commercial paper programme.

Led by Joe Gavin, LK Shields' structured finance and securitisation team had a role in establishing a second MTN programme for Banquo Credit Management. The firm also acts for Nomura and Deutsche Bank.

## Banking

Recommended firms	
<b>Tier 1</b>	A&L Goodbody Arthur Cox Matheson Ormsby Prentice McCann FitzGerald
<b>Tier 2</b>	William Fry
<b>Tier 3</b>	BCM Hanby Wallace Eversheds O'Donnell Sweeney LK Shields Mason Hayes + Curran

The upheaval in the Irish banking sector has led to a significant drop-off in the amount of new lending being done. However law firms have found activity in other areas, most notably in the debt restructuring area. "You're seeing little in terms of new cash, particularly in property finance," says one partner, "but we are seeing a lot of time consumed by restructuring. You would have precious little chance of getting cash for new projects."

There has also been a great demand for advice in relation to the proposed National Asset Management Agency (Nama), with banks looking at options to rid their balance sheets of toxic assets. "With the introduction of Nama to take the loans off the balance sheet, people are quite distracted," says one partner. The legislation was finalised in July 2009 giving the agency the management of 10,000 loans worth a staggering €90 billion.

The body will have the power to intervene in the property market and the new rules will reduce the scope of legal challenges able to be made against it. Loan acquisitions by the agency will start in October 2009 and no doubt law firms will have their hands full in the coming months as a result.

A short-term change is a shift by the banks towards club deals, as one partner explains: "Very few banks are taking syndicated risk. Any deals done this year will be done on a club basis, and so negotiations will be a lot more protracted."

As with many jurisdictions, the long-term effects of the financial crisis will alter the way bank lending is typically conducted. "A lot of the banks have had much greater control imposed by their parents," says one lawyer. "There is an increased level of credit control; they say 'we want everything wrapped up in a bow'."

Increased regulation will also have an effect, with the regulator requiring a lot more reports and analysis than any time before.

### **A&L Goodbody**

A&L Goodbody boosted its banking team in 2008 with the promotions of Maireadh Dale and Ross Moore to the partnership. This also helped to reduce the impact of former partner Nollaig Murphy's departure to Maples & Calder.

The firm's banking team was consistently praised by clients for its quality. "Goodbodies in terms of quality [has] been very, very good", says one client, "Catherine Duffy in particular was excellent."

A clear highlight last year was the firm's work for Genesis Lease over the \$241 million financing by a bank syndicate of a portfolio of 11 aircraft. Séamus Ó'Cróinín led the banking team on the deal which was significant as it created a new form of Irish law security interests through the use of the Capetown Convention on International Interests in Mobile Equipment, which standardised transactions involving moveable property.

#### **Leading lawyers**

Kevin Allen  
Catherine Duffy  
Stephen Haughey

### **Arthur Cox**

Arthur Cox has a strong reputation in banking which was reflected by the positive comments it received from clients. "They're one of the top firms in the country and they are extremely competitive in terms of their prices," says one client. "They're very good at the two-way relationship and they're very

good at providing training and advice off the clock."

There was also plenty of praise for partner Orla O'Connor: "She's fantastic; very clear communicator, commercial approach, identifies the legal risk," says one client. Another client adds: "She's our point person for banking; she's technically extremely competent, [and] very pleasant to deal with."

One of the firm's key transactions over the last year saw it acting for Bank of Ireland on a sale and leaseback transaction and on the restructuring of €140 million credit facilities to an Irish corporate group. Natixis also instructed the firm on the restructuring of \$250 million of facilities advanced to an Irish fund.

The firm also acted for Anglo Irish in connection with the refinancing of facilities of the South King Street Centre in Dublin.

Another of the firm's leading figures is Grainne Hennessy, who has been involved in a number of lending transactions this year despite the general downturn in this area. In March 2009 the firm acted for a syndicate of banks led by Bank of Ireland in a €1.3 billion facility to Kerry Group. Hennessey also acted for a bank syndicate which provided loans to the Irish Dairy Board Co-operative Society.

#### **Leading lawyers**

Kathleen Garrett  
Grainne Hennessy  
Orla O'Connor

### **Matheson Ormsby Prentice**

Headed by founding partner William Prentice, Matheson's Ormsby Prentice's banking division is highly thought-of by the market and clients alike, moving it up into tier one this year. "MOP is tier one as far as I'm concerned," says one client. "Their banking lawyers are up there with the best; William Prentice is an icon, a walking encyclopaedia of law knowledge."

The banking team received a further boost this year with the hire of Helen Noble in July 2008. Noble had previously worked at fellow Irish firm Mason Hayes + Curran.

The firm had a role in the first programme for the issuance of state guaranteed debt securities, advising Allied Irish Bank. The firm's team was headed by Patrick Molloy, who is an active figure in the firm's banking practice.

Another deal led by Molloy saw the firm advising Bank of Scotland Funding, a subsidiary of the bank's Irish operations, on its access to HBOS' issuance of debt instruments.

The firm also saw debt restructuring and re-financing work, with one highlight advising IIB Bank and KBC Bank on the €330 million refinancing of the facilities of the Kingspan Group.

#### **Leading lawyers**

William Prentice

### **McCann Fitzgerald**

McCann Fitzgerald is another firm with a long-held reputation in banking work in Ireland and this is reflected by their top-tier ranking. The banking practice is headed by Ambrose Loughlin.

In August 2008 a team led by Eamon de Valera acted as lead counsel to Ulster Bank in the provision of loan facilities to a Bidco promoted by Alchemy Partners in connection with the acquisition of the Noonan group.

Another notable deal in June 2008 saw the firm advising AerCap in the establishment and financing of a 50/50 joint venture with Deucalion Aviation Funds for the \$489 million purchase and lease back of 19 aircraft from the TUI Travel group of companies.

The firm also acted for Anglo Irish Bank in July 2008 on the provision of facilities to Quinlan Private to fund the acquisition of a site at Heuston South Quarter in Dublin, and to fund the development of two buildings on the site.

#### **Leading lawyers**

Niall Powderly

### **William Fry**

Led by Elaine Hanly, the firm's banking team now consists of five partners after the promotion of Rachel Stanton to the partnership in June 2008.

A team led by Hanly advised Allied Irish Banks in relation to the funding of Montevetro II, a treasury Group subsidiary, for the development of an office and retail complex on Barrow Street in Dublin.

Alongside Hanly, Orla Brennan is also consistently noted by the market as one of the firm's key practitioners. Last year Brennan led a team advising the Barchester Group on the investment and development made available at Ulster Bank.

Brennan also advised Bank of Ireland on a facility to Regeneration Developments to fund a site acquisition, involving 38 property and four company acquisitions.

One of the firm's busiest clients was Allied Irish, who the firm advised on a number of funding transactions including a finance deal for a development by JJ Fleming Construction in Sandford and development facility for the Harry A Crosbie Group.

#### **Leading lawyers**

Orla Brennan  
Elaine Hanly

## Other ranked firms

Eversheds O'Donnell Sweeney's banking & financial services department is led by Steve Rodgers. Last year the firm advised Dairycrest Group over its £350 million refinancing with a group of banks. Rogers also led a team advising the Royal Bank of Scotland over a £325 million loan facility to the Speedy Hire Group.

A further highlight saw the firm act for Bank of Ireland in regard to €127 million of senior and mezzanine facilities to Abatewood.

## Investment funds

### Recommended firms

#### Tier 1

A&L Goodbody  
Dillon Eustace

#### Tier 2

Arthur Cox  
Matheson Ormsby Prentice  
McCann FitzGerald  
William Fry

#### Tier 3

LK Shields  
Maples and Calder  
Mason Hayes + Curran

A significant development in the investment funds market this year has been the increased interest in moving funds away from unregulated jurisdictions. This is good news for investment fund lawyers in Ireland, who can safely predict a boost in their workload.

Competition in this area traditionally comes from Luxembourg, although many partners are confident that Ireland can claim the lion's share of the new work thanks, among other reasons, to its cultural ties. "A lot of our instructions are coming from American and UK counsel," says one partner. "If you took the point that Ireland and Luxembourg will continue to be used for funds, we're looking at the difference between Ireland and Luxembourg, culturally and geographically." Another partner adds: "People are now more keen to work with Irish lawyers than Luxembourg ones."

There has also been a sharp increase in interest in Ucits (Undertakings for Collective Investment in Transferable Securities) products. "There have been so many hedge fund buy ups that we now see more hedge fund managers looking at Ucits," says one lawyer. This activity has been further boosted by the greater flexibility offered by Ucits III. "Ucits III provides strong limits on leverage; it's attractive for investors and managers," says one partner.

Qualifying Investor Funds (QIFs) have also been in demand as an alternative to the Ucits product. "On one level the Ucits gives you the passport and ability to sell across Europe," says one lawyer, "but the QIF gives you that flexibility."

The interest in these products shows that the appetite for funds has not waned. "On the assumption that we're over the worst of the recession people are redeeming funds, many are coming back into the market and looking at new investments," one partner says.

## A&L Goodbody

The investment funds team at A&L Goodbody is led by Brian McDermott and forms part of the larger corporate group. In 2008 it was a case of one-in one-out, with Barry McGrath leaving for Maples & Calder in June and Carol Widger being promoted into the partnership in May.

One of the firm's biggest deals last year was advising Towry Law Investment Management on the establishment of an agency management company and two unit trust structures. The first was authorised as a Qualifying Investor Fund (QIF), while the second was a retail fund, which was the first structure of its kind to receive recognition under section 272 of the Financial Services and Markets Act in the UK.

The investment funds team also advised M&G Investment Management in the set up of a limited liquidity umbrella structure. This was one of the first funds launched in a limited liquidity basis to invest in assets at depressed prices.

In the Ucits (Undertakings for Collective Investment in Transferable Securities) area the firm advised Citigroup Global Markets in the set up and launch of the Citi Comet Index Fund which provides for investing in a swap on a bespoke commodities index. The firm also advised Third Avenue Management in relation to the establishment of the first Ucits umbrella fund.

Another deal saw the firm advise Collins Stewart Fund Management on the movement of Guernsey protected cell companies and sub-funds of the company's UK open-ended investment company (OEIC) structure into its Ucits umbrella structure. The team gave further advice to the company on the transfer of two Guernsey portfolios into two new sub funds.

### Leading lawyers

Brian McDermott

## Dillon Eustace

Dillon Eustace is very well respected in the funds area and the firm's focus and strong history has established it as one of the leading funds practices in the Irish market.

Dan O'Connor is highlighted by clients as a leading figure: "He's good, a good knowledge of the industry and he appreciates the issues that affect us, so his advice is very targeted and commercial," says one client.

The practice is led by Andrew Bates, and the team has been busy on a number of Qualifying Investor Funds (QIF) and Ucits (Undertakings for Collective Investment in Transferable Securities) structures in the past 12 months.

Among the firm's highlights was the establishment of an Irish umbrella Ucit for Marshall Wace in February 2009, and the creation of a umbrella non-Ucits master feeder managed account platform for Optima Fund Management.

The firm also advised Adept Investment Management on six sub-fund QIFs.

### Leading lawyers

Andrew Bates  
David Dillon

## Arthur Cox

Arthur Cox's investment funds practice is combined with its asset management group, and is headed by Kevin Murphy.

The firm's practice over the last year has reflected the general market, with a number of Ucits (Undertakings for Collective Investment in Transferable Securities)-based transactions. A team led by Murphy advised on the liquidation of Merrill Lynch Global Selects Portfolios – a Ucits fund with assets in excess of €2 billion and 125 sub funds. The firm also advised Russell Investments on the establishment of a new Ucits umbrella structure for 30 sub funds.

In December 2008 the firm advised GSO/Blackstone on the merger of a Guernsey fund into an Irish Qualifying Investor Fund (QIF) listed on the London Stock Exchange with an approximate value of €100 million.

Arthur Cox pulled off quite a coup this year by winning Optimal Investment Services as a client. The company has a value in excess of €10 billion.

### Leading lawyers

Sarah Cunniff  
Kevin Murphy  
Carl O'Sullivan

### Matheson Ormsby Prentice

Joint heads of department Michael Jackson and James Scanlon spearhead Matheson Ormsby Prentice's asset management and investment funds group, and are the prominent figures on the majority of the firm's main transactions.

In March 2009 Michael Jackson headed the team advising Mercer in the establishment of a common contractual fund. Jackson has also been involved in advising HSBC as custodian to a number of funds affected by the Bernie Madoff scandal.

Scanlon headed a team acting for Vega in establishing a distressed debt fund. Scanlon also advised Crosby in its proposed establishment of a swap-based exchange-traded fund.

#### Leading lawyers

Michael Jackson

### McCann FitzGerald

McCann FitzGerald's investment management group is led by Mark White, who is well respected by his peers. "If I was to pick out a lawyer it would be Mark White from McCanns," says one competitor.

The team has a particular expertise in hedge funds and property funds, although like other firms it has found its practice dominated by work on Ucits (Undertakings for Collective Investment in Transferable Securities) and Qualifying Investor Funds (QIF).

Most of McCann's work consists of portfolio management for its biggest clients. One role saw it act as advisor to AIB Investment Management on all the funds it manages, while the firm also acts as legal advisors and listing sponsors for both Ignis Asset Management and UBS, whose Ucits umbrellas alone contain over 40 sub funds.

Harbourmaster Capital Management also instructed the firm on a number of leveraged loan sub-funds in an existing umbrella platform.

#### Leading lawyers

Mark White

### William Fry

The key figures in William Fry's Asset Management and Investment Funds department are Cormac Commins and Daniel Morrissey. Commins has been particularly busy in the last year and clients have been impressed by his work. "He's very available and responsive to requests," says one.

Both lead partners had roles advising Barclays Global Investors on the proposed sale of its iShares exchange-traded funds (ETF) business to CVC Capital Partners for \$4.4 bil-

lion. Commins also advised Lazard Asset Management on the establishment of an umbrella fund of exchange traded funds.

Tara O'Reilly has also been active, acting for ETF securities on the establishment of a platform of swap-based ETFs – the first in Ireland. Alongside this, O'Reilly acted for Hermes Investment Management on the launch of two Ucits (Undertakings for Collective Investment in Transferable Securities) umbrella schemes linked to the management of pension portfolios. O'Reilly also acted for Barclays Global Investors in relation to the first *shariah*-compliant ETFs in Europe.

### Other ranked firms

LK Shields advised Banquo Credit Management on the establishment of a Ucits (Undertakings for Collective Investment in Transferable Securities) III umbrella fund with a focus on managing credit risk. The team also advised Turner Investment Partners in relation to the first successful launch of a Ucits III investment company, Turner Funds. A further highlight was acting for Bloxham on its establishment of a low-risk Ucits III fund.

Maples and Calder's investment funds team is led by Barry McGrath, who led a team on its role advising Morgan Stanley and Goldman Sachs on the establishment of a Ucits (Undertakings for Collective Investment in Transferable Securities) ETF platform with 50 sub funds.

The firm was also advisor to Barclays Capital in its establishment of ten derivatives-based hybrid Ucits III funds and a Qualifying Investor Fund (QIF). Further highlights include advising Citigroup Alternative Investments on a QIF, and acting for Credit Suisse on a Ucits platform.

## Mergers and acquisitions

### Recommended firms

#### Tier 1

A&L Goodbody  
Arthur Cox  
William Fry

#### Tier 2

Matheson Ormsby Prentice  
McCann FitzGerald

#### Tier 3

Eversheds O'Donnell Sweeney  
LK Shields  
Mason Hayes + Curran

#### Tier 4

BCM Hanby Wallace  
Eugene F Collins

The Irish M&A market has hit a difficult period, with investors reluctant to enter a market which they don't believe has reached the bottom. "Values are falling and they [investors] need convincing that we're at the bottom of the market," says one partner.

There is also increased caution once transactions are set in motion, as one lawyer says: "In large deals the banks are doing a lot of due diligence, the level of detail is increasing."

In the absence of new deals, firms have found their practices shifting towards restructuring and portfolio management. "There has been a bit more of a shift towards people getting their house in order and creating a war chest," says one partner.

The downturn has also caused a shift in the origin of investors. "The players are different," says one lawyer, "there is more trade to trade deals; before it was PE houses." Venture capital was one area mentioned as a potential source of new work, however others in the market expressed doubt: "Venture capital are looking at opportunities but a lot of them have had difficulties with their investments," says one partner.

There has also been greater movement from international investors, particularly from the US and the UK, where the perception in the market was that those economies were more advanced towards recovery than Ireland. "There is definitely evidence of recovery happening in the US," says one lawyer, "so we find a number of international deals being looked at."

What activity there has been in the market has been focused on certain essential sectors such as energy, with interest in these areas considered key. With Ireland being touted as one of the global leaders in renewable energy, this area is experiencing the greatest growth, particularly in the wind power sector.

## A&L Goodbody

A&L Goodbody's mergers and acquisitions practice is led by John Given (M&A) and Eithne Fitzgerald (corporate finance). Fitzgerald in particular is recommended by the firm's clients: "She's spot on, she knows her stuff," says one client. "She's very thorough; she's got an absolute eye for detail and likes to have every dot in the right place, crossing all the T's." The client adds: "She was under high demand and made sure that additional people were brought in when needed."

Among the firm's key deals was advising Ryanair on its €748 million hostile bid for Aer Lingus. The team also acted for Eirgrid in its acquisition of Soni; an electricity transmission system operator in Northern Ireland. This deal was complicated by the differing regulatory and statutory constraints in each country.

The firm is advising Irish Continental Group over a €700 million potential takeover by the Moonduster consortium and Aella. Western Union Financial Services also mandated the firm on its €124 million acquisition of Fexco Money Transfer in February 2009.

### Leading lawyers

Eithne Fitzgerald  
John Given  
Jack O'Farrell  
Julian Yarr

## Arthur Cox

Arthur Cox retains its position in the top tier this year after working on a number of high-value and complex transactions over the past year. The corporate M&A department is headed by Colm Duggan, who also led the team advising the state-owned Electricity Supply Board (ESB) on its €450 million acquisition of two of its power stations by Spanish power company Endesa.

The firm's links with the government gave it a role on the nationalisation of Anglo Irish and the €3.5 billion recapitalisation of Bank of Ireland, with team representing both the Irish Department of Finance and the bank in the later deal. The firm also advised the department of finance over the €3.5 billion recapitalisation of Allied Irish announced in February.

Another notable deal saw the firm acting as advisors to the Aer Lingus group during a hostile takeover action initiated by Ryanair. The €748 million bid was launched in December 2008, but was declined by shareholders in January 2009.

January 2009 also saw the team advising Mastercard in its \$100 million acquisition of Orbiscom, an Irish provider of payments solution software, from HgCapital. In another

acquisition deal the firm advised Sysco, a US food distribution group, on its acquisition of Pallas Foods.

### Leading lawyers

Ciarán Bolger  
Colm Duggan

## William Fry

William Fry's substantial M&A practice is managed by Myra Garrett. In 2008 the firm hired two partners and promoted two others, underlining its strength and commitment to the corporate market.

A significant deal acted on by the firm last year saw it advising Barclays Global on its sale of its iShares asset management business to private equity firm CVC capital partners for \$4.4 billion.

In September 2008 Myra Garrett headed a team advising Iona Technologies on its \$162 million take-private. Owen O'Connell also acted for Aergo Capital on its €110 million acquisitions of Safair and Safair Lease Finance, which was completed in July 2008.

William Fry is also working for the Olympus Corporation on the €630 million sale of its diagnostic systems business to Beckman Coulter.

### Leading lawyers

Myra Garrett  
Owen O'Connell

## Matheson Ormsby Prentice

Fellow practitioners highlighted Patrick Spicer as a key figure at Matheson Ormsby Prentice's M&A department. "Paddy Spicer is a very good guy, very pragmatic, we have a lot of time for him," says one rival partner.

One of the firm's biggest deals last year was a €2.5 billion merger of Ireland's IAWS Group and the Swiss company Hiestand Holding to create Aryzta. Led by Tim Scanlon, the deal involved 15 partners from the firm and involved an Irish scheme of arrangement, a Swiss statutory merger and a dual listing on both the Irish and Swiss stock exchanges.

Another significant deal saw the firm advise Portuguese company Hovione on its purchase of Pfizer's API Pharma plant in County Cork.

Elsewhere, the team showed the strength of its energy practice when a team led by George Brady advised Spanish Utility firm Endesa in its €450 million acquisition of 20% of the generation assets of state-run utility company ESB in January 2009.

## McCann FitzGerald

The corporate M&A department at McCann FitzGerald is headed by partner David Lydon and has had its numbers swelled by the promotion and appointment of six new solicitors.

Like its capital markets team, McCann's corporate practice has also done work regarding the Waterford Wedgewood insolvency, acting as counsel to WWRD Holdings on its distressed acquisition of certain Waterford assets.

In December 2008 the firm acted for Marathon Oil Corporation in its sale of Marathon Oil Ireland to the Star Energy Group for \$180 million. In the same month a team led by Ben Gaffikin advised Amdocs on its acquisition of Changing Worlds via a share purchase.

Gaffikin was also the lead partner when the team advised the management team of Noonan Services in its buyout by Alchemy Partners. This was one of the few private-equity transactions to take place in Ireland in 2008.

### Leading lawyers

Barry Devereux

## Other ranked firms

One of Eversheds O'Donnell Sweeney's biggest deals last year saw the firm acting for Alltracel Pharmaceuticals in its £20.8 million recommended takeover by Hemcon Medical by way of a scheme of arrangement. Another substantial deal saw the team advise Green Wind Energy on the acquisition of wind farm assets from ABO Wind.

Led by Gerald Halpenny, the M&A team at LK Shields acted for the Cornmarket Group last year over the sale of a 25% interest in the group's holding company to Irish Life & Permanent. The firm also acted for Veolia Environmental Service in the acquisition of AVR Safeway in September 2008, and advised the shareholders of Vilicom Holdings on the sale of the company to Shared Access.

M&A highlights for Mason Hayes + Curran included acting for Kerry Group in its acquisition of Breeo Foods and representing FL Partners in the acquisition of Tomsburg. The firm also advised the shareholders of Sligo Champion in its sale to Independent News and Media.

In the energy sector the firm acted for Treasury Holdings in its sale of Eco Wind Farm to Viridian Power and Energy Holdings.

## Project finance

### Recommended firms

#### Tier 1

A&L Goodbody  
Arthur Cox  
McCann FitzGerald

#### Tier 2

Matheson Ormsby Prentice

#### Tier 3

Eversheds O'Donnell Sweeney  
Mason Hayes + Curran  
William Fry

#### Tier 4

Eugene F Collins  
LK Shields

Although not hit as hard as some other areas, project finance transactions have been delayed as sources of finance become increasingly difficult to locate. "Previously you had a degree of certainty, before you had money chasing projects, now you have projects chasing money," says one partner.

Financing deals has become further complicated by the increase in the number of club deals, reflecting a greater demand for security. This brings with it its own problems as lawyers have to juggle a number of viewpoints and opinions. Another issue is the fall in the number of banks involved in the process, leading to the introduction of banks who have not had experience in this area previously. "When you introduce a non-project finance bank into the process it elongates it because they get nervous about all the jargon," says one lawyer.

There are signs however that the banks are coming back to the market, according to partners. "European investment banks are showing interest in large Irish projects. There are now a raft of banks who are wanting to come back into the market, which is increasing competition," says one partner.

However the energy sector is still active in Ireland, in particular the renewables sector. The country's geography makes it ideally suited for wind power, and the onshore sector has been thriving for a number of years. This, combined with clear government backing, means firms can expect to get more work in this area in the future.

There is also increased interest in road projects in Ireland according to commentators. "What showed me how robust the market is was N53 [the national secondary road project]. Looking at the list of bidders, it was a who's who of world PFI [private finance initiative] companies." This is a reflection of an increased market desire for

steady income streams in the midst of the financial turmoil.

### A&L Goodbody

Clients of A&L Goodbody's project finance team were quick to praise its adaptability. "The last transaction we worked on one of the banks did not give them much instruction, which created a lot of problems for them, but they dealt with it admirably," says one client. "They were instrumental in driving that deal towards close."

Included within its banking and finance department, the team is headed by Kevin Feeney. A new partner was added in May 2008 with the promotion of Ross Moore, who also drew the praise of his clients: "He's an excellent lawyer and he's done very well for us," says one client. "He goes the extra mile in terms of understanding the underlying knowledge. This makes him much more understanding."

The firm highlighted its expertise in renewable energy this year by working on two significant wind farm deals. The first, completed in December 2008, saw the firm advising Ulster Bank Ireland and the Royal Bank of Scotland over a €300 million refinancing of SWS Energy's portfolio of operational and development wind farms. The firm also advised Ulster Bank over a bilateral loan facility for SWS for the development of three wind farms, and for future projects. A&L Goodbody also advised Ulster Bank Ireland on an €85 million bilateral loan facility to finance three wind farm projects.

In April 2009 the firm advised Belfast Metropolitan College on a PFI (private finance initiative) procurement of a new landmark campus building with a capital value in excess of £50 million. In another education deal, a team headed by Kevin Feeney advised St McNissi's Educational Trust on a PFI project for the financing of two new primary schools and two replacement secondary schools. The deal closed in May 2009 with an approximate cost of £30 million.

#### Leading lawyers

Kevin Feeney

### Arthur Cox

Boasting the largest project finance team in Ireland, Arthur Cox's focus is primarily on public-private partnerships (PPPs) and energy, with Alex McLean heading the team.

One significant PPP deal completed by the firm last year was the government's School Bundle 1. The firm advised the National Development Finance Agency on the €100 million project, which was closed in March 2009.

In January 2009 Alex McLean led a team advising EirGrid on the €125 million Phase 1 funding of a 500MW east-west interconnector.

The team's expertise in energy was also highlighted by a number of notable wind farm deals. In the last year the firm has worked on the financing for five wind farm deals, advising various banks including Ulster bank and Rabobank with a combined value of more than €110 million.

The firm is also advising Eco Wind Power on a €200 million cross-collateralised wind farm portfolio financing.

#### Leading lawyers

Alex McLean

### McCann FitzGerald

Led by Eamonn O'Hanrahan, McCann's project finance team was active this year, advising Bank of Ireland on the financing of the non-commercial Digital Radio Network, operated by Tetra. The team was led by Colm Fanning who also advised SWS Energy on the refinancing of aspects of its portfolio in July 2008.

In December 2008 a team led by Claire Lenny advised O'Hare & McGovern and Interserve on the Derry Diocese bundled schools public-private partnership (PPP) project. This was one of only three PPP projects closed in 2008.

#### Leading lawyers

Colm Fanning  
Eamonn O'Hanrahan

### Matheson Ormsby Prentice

Led by Michael O'Connor, Matheson Ormsby Prentice's project finance team was active this year, with one highlight advising the Macquarie Partnership as the preferred bidder as well as Bank of Ireland as senior lender on the Schools Bundle 1 public-private partnership (PPP). The deal, valued at €80 million, was closed in March 2009. Macquarie Partnerships also mandated the firm for its Decentralisation PPP.

One significant deal in the education sector saw the firm act for Kier Regional on a €250 million rebuilding and refurbishment of ten secondary schools, which is part of Kent County Council's £600 million Building Schools for the Future programme.

#### Leading lawyers

Michael O'Connor

## Other ranked firms

**Eversheds O'Donnell Sweeney** partner Kerri Crossen has a growing reputation in project finance. "She's building a bit of a presence there," says one rival partner. The firm advised Green Energy Company on the €110 million financing of the Boggeragh Mountain development, and acted for GW Energi on the €40 million acquisition and financing of the Gortahile Wind Farm. The firm also has a role in the continuing development of Dublin's Metro North project.

**William Fry's** project finance practice is led by Liam McCabe. The firm added two more partners to the department in June 2008. One of the firm's biggest projects was a public-private partnership (PPP) financing for University College Dublin's Gateway project. The firm also acted for the Leargas consortium in regard to the cancelled Thornton Hall Prison project.

## Restructuring and insolvency

Recommended firms	
<b>Tier 1</b>	Arthur Cox Matheson Ormsby Prentice McCann FitzGerald William Fry
<b>Tier 2</b>	A&L Goodbody Eugene F Collins Mason Hayes + Curran
<b>Tier 3</b>	Eversheds O'Donnell Sweeney LK Shields Maples and Calder

Restructuring and insolvency have been very busy areas for law firms in the last couple of years, and the trend looks set to continue for a while yet. "There is a flood of these examinerships this year," says one partner, however this was curbed by the lack of liquidity in the market.

The introduction of the National Asset Management Agency (Nama) will also have an effect on enforcement. "I think that the banks will sift through their loans, and anything with a reasonable chance of enforcement they will pursue and the rest they will give over to Nama." The legislation is due to be finalised in the autumn of 2009 and firms are waiting to see what effect it will have on the market. "The whole receivership market will depend on how Nama will turn out," says one lawyer.

The economic downturn has hit certain sectors in Ireland much harder than others. Retail, construction, leisure developments and

automobile part manufacturers have all faced massive challenges. Property is another troubled area, however there is a feeling that the initial crisis has given way to a more general slump.

The economic downturn has also led to an increase in cross-border work, with Irish firms kept busy restructuring the European operations of domestic companies. "There is a lot of cross-border work and work on Irish subsidiaries abroad," says one partner.

### Arthur Cox

The two significant figures in Arthur Cox's restructuring & insolvency team are department head William Day and Brendan Cooney; both of whom are well respected by clients and peers. "Arthur Cox, we know them very well, we regard them very well. Willy Day is a good operator, he knows his staff," says one client, while a rival partner praises Cooney: "Brendan Cooney is a very safe pair of hands."

Both partners are involved in the firm's significant deals, including advising Billy O'Riordan as receiver of the Blarney Hotel & Golf Resort. The duo is also advising David Carson of Deloitte in the liquidation of Principles Retail Ireland.

In the examinations area the firm acted for Kieran Wallace from KPMG as examiner of G&L Property Investments, which closed in March 2009. The firm is also involved in ongoing work in the examination of the Golden Disc Group.

### Leading lawyers

William Day

### Matheson Ormsby Prentice

Matheson Ormsby Prentice's restructuring and insolvency practice has been busy with a number of examinerships over the last year. Tony O'Grady and department head Rod Ensor are the key figures at the firm with a hand in most deals.

One of the firm's key transactions was advising Gallium on its examinership. The company went into liquidation on 27 March 2009 with a €24 million shortfall valued on a winding-up basis.

Tony O'Grady has also been advising Sony Music Entertainment Ireland on the examinership of Golden Discs. The firm also advised Ken Fennell in the examinership of architects firm Douglas Wallace – the first examinership of a professional services firm in Ireland.

Another deal sees the firm advising Aidan O'Connell of Deloitte on the examinership and liquidation of Cappoquin Chickens. The company went into liquidation on the 29 August 2008 with a €7 million shortfall.

### Leading lawyers

Rod Ensor  
Tony O'Grady

### McCann FitzGerald

After returning to the firm last year Jane Marshall has taken over as head of the restructuring and insolvency department at McCann FitzGerald, and alongside partner Michael Murphy is involved in most of the firm's key actions. Clients were clearly pleased with her return: "She's probably the best insolvency lawyer in Dublin," says one.

Marshall advised the Mosaic group of companies, including Principles, Karen Millen and Shoe Studio, on the administration of their UK parent companies. In the case of Principles and Shoe Studio the firm also applied for the appointment of a provisional liquidator.

The firm has worked in the retail sector, acting in the liquidation of Zavvi Retail (Ireland) and for the administrator of Stylo. McCann FitzGerald is also advising HSBC Bank and HSBC Invoice Finance over the funding of Shires Ireland and seven related companies which entered examinership in March 2009.

### Leading lawyers

Jane Marshall

### William Fry

William Fry's insolvency & corporate recovery team is led by Michael Quinn, and was expanded this year with the promotion of Fergus Doorly to partner in June 2008.

Quinn advised on one of the firm's most prominent deals advising the Irish businesses of Waterford Wedgwood during the company's restructuring and administration process completed in March 2009. Quinn was also the lead partner as the firm acted for Ernst & Young as the joint administrator of Nortel Ireland.

Fergus Doorly took the lead as the firm acted for Deloitte as the joint administrator of Land of Leather. Doorly also acted in the liquidation of Elfotec.

Barry Cahir was involved in a number of deals including advising Kieran Wallace of KPMG over the examination of Masterchefs, and advising on the receivership of Bula, which was heard in the Supreme Court in January.

### Leading lawyers

Michael Quinn

**A&L Goodbody**

A&L Goodbody ended 2008 on a high with the recruitment of Mark Traynor from Maples & Calder in December. Traynor joins lead partner David Baxter in the firm's restructuring and insolvency department and wasted no time getting involved on some of the firm's key transactions.

Clients are very impressed with the firm's work and there was particular praise for Baxter. "He's not one that would just provide sections of the act," says one client, "he would stand back from the problems and get perspective; he's a dream lawyer."

Both Traynor and Baxter were involved as the firm advised Deloitte as receivers for Waterford Wedgewood and Waterford Crystal in Ireland and administrators over Waterford Wedgewood UK. After the sale of the UK business along with certain Irish assets, the firm is acting as receiver of the Irish companies.

In another well-publicised action, the firm advised Ernst & Young in its role as liquidator of Zavvi Retail (Ireland). The deal closed in January 2009, with most of Zavvi's assets being sold to HMV.

The firm also advised Deloitte in June 2008 when the company was appointed as receiver in the restructuring of Cheyne Capital, one of the first successful restructurings of a SIV, which included a public auction of the underlying portfolio. The deal was valued at €7 billion.

David Baxter also worked on a notable examinership, advising the AES Corporation as the main secured creditor in the examinership of Agcert. AES acquired Agcert through a debt-for-equity exchange.

**Leading lawyers**

David Baxter

**Other ranked firms**

In 2008 **LK Shields** advised Citibank, Mitsubishi UFJ Securities and Principal Life Assurance over the insolvency and examinership of International Securities Trading. The firm also advised the Ire-Tex Group in its examinership and subsequent liquidation.

**Maples and Calder** advised certain noteholders of senior and subordinated debt of Waterford Wedgewood during the administration of the company. The firm was also involved in the fallout from Lehman Brothers, advising noteholders in relation to the Dante repackaging programmes.

**Eversheds O'Donnell Sweeney** acted for the examiner to Modern Kitchens Manufacturing and its related companies, with the Modern Kitchens securing new investment through the examinership.

The team also acted for Alltracel Pharmaceuticals in a scheme of arrangement application to the High Court. Other highlights included acting as receiver to two development companies – Largreen and Sherside.