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Market abuse regulations

Tim Scanlon
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The Market Abuse (Directive 2003/6/EC) Regulations 2005 (the Regulations) implement the Market Abuse Directive in Ireland. The Regulations bring Irish law on insider dealing into line with equivalent legislation in other EU member states, and introduce the new offence of market manipulation into Irish law.

Repeal of previous legislation

In parallel with the introduction of the Regulations, the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (the 2005 Act) has repealed the existing legislation in Ireland on insider dealing. The previous legislation has been the subject of intense analysis in a recent High Court case involving Fyffes, a fruit importation and distribution business listed on the Irish Stock Exchange. The case involves proceedings brought by Fyffes seeking to recover a profit made on a sale of shares by companies connected to a former Fyffes director, on the basis that the trades were made with the benefit of unpublished price-sensitive information. Fyffes was unsuccessful in the High Court and the case is under appeal at the time of writing.

What is interesting about the case in light of the introduction of the Regulations is the fact that the judge in the High Court devised a reasonable investor test to be applied in determining whether information is to be categorized as price-sensitive. A similar test has now been expressly introduced as part of the Regulations. A deficiency in the old legislation – that is, the absence of any test to facilitate an assessment of whether non-public information would have a significant impact on the share price of a company, had it been released to the market – has therefore been addressed to some extent.

The Fyffes case has also been one of the lengthiest and most expensive civil cases ever run in the Irish High Court. The difficulties in applying insider dealing legislation, which arise by virtue of the fact that it is an offence based on a hypothesis (that is, what would have happened if information had been available to the market) have been readily apparent.

Insider dealing

The primary offence under the Regulations arises where a person who possesses inside information uses that information by acquiring or disposing of, or trying to acquire or dispose of, financial instruments to which the information relates. There are supplementary

prohibitions on disclosure of information outside the ordinary course of a person's employment and on recommending other persons to acquire or dispose of financial instruments to which the relevant information relates. The Regulations list the categories of person to whom the main prohibition referred to above will apply. These include directors of the relevant company, persons having access to the information by virtue of their employment, and persons in possession of inside information knowing it to be inside information. All of this essentially reflects the provisions of the Directive.

The Regulations define inside information as "information of a precise nature relating directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments which has not been made public and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments".

Information *likely to have a significant effect* is in turn defined as "information that a reasonable investor would be likely to use as part of the basis of his investment decisions".

There is an express exception in the Regulations for inside information relating to a target which is used in the context of a takeover offer being conducted in accordance with the Irish Takeover Rules. The precise ambit of this exception, however, is somewhat unclear. There are also further specific exceptions in relation to buyback programmes and stabilization measures. The provisions of the previous legislation enabling an issuer to recover a profit achieved through a trade made on the basis of inside information is retained and reenacted in the 2005 Act.

There are detailed supplementary provisions aimed at ensuring that issuers and their advisers take appropriate safeguards to protect against the uncontrolled release of price-sensitive information. These include measures to restrict the dissemination of such information and the maintenance of a record of who has received such information.

In tandem with the introduction of the Regulations, the Market Abuse Rules (the Rules) have also been introduced. The purpose of the Rules is to provide guidance on how the Regulations are to be complied with. There are detailed provisions dealing with the obligation of an issuer to release inside information to the market. In that context, the Rules provide that, in conducting the reasonable investor test, the issuer is obliged to take into account the fact that the significance of the information will vary widely from issuer to issuer. Also, the issuer must assume that a reasonable investor will make investment decisions relating to the relevant financial instruments to maximize his economic self-interest. The impact of the information on the totality of the issuer's activities, the reliability of the source of the information and other market variables likely to

affect the relevant financial instrument must also be taken into account. The Rules also suggest certain, relatively broad, types of information that might be relevant to a reasonable investor's decision such as the financial condition of the issuer and major developments in the business of the issuer.

Market manipulation

The Regulations provide for a separate offence of market manipulation. There are three strands to the definition of the offence which reflect the provisions of the Directive:

- transactions or orders to trade which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments or which secure the price of one or more instruments at an abnormal level. Trades for legitimate reasons and which conform to accepted market practice fall outside this.
- transactions or orders to trade which employ fictitious devices, or any other form of deception or contrivance.
- dissemination of information which gives false or misleading signals as to financial instruments, where the person making the dissemination knows (or ought to know) that it is false or misleading.

This offence is framed in a manner which is deliberately broad and, given that there was no previous equivalent offence under Irish law, it will be interesting to see how the regulator applies this legislation in practice.

Summary

The introduction of the new Regulations has brought a new level of clarity to the application of Irish insider dealing legislation. However, as the Fyffes case has demonstrated, there can be great difficulty in applying this legislation in practice. Notwithstanding the express introduction of the reasonable investor test, this is likely to remain the case.

Banking and capital markets

Recommended firms

Tier 1

A&L Goodbody
Arthur Cox
McCann FitzGerald

Tier 2

Matheson Ormsby Prentice
William Fry

Tier 3

Dillon Eustace
Eugene F Collins
LK Shields
Mason Hayes & Curran

A&L Goodbody

Winner of the Irish law firm of the year award at the *IFLR* European Awards 2006, A&L Goodbody continues to land roles on many of Ireland's most innovative transactions. One of the major changes in the past 12 months in Ireland has been the number of international deals led by Irish firms. As the leader of the pack, A&L Goodbody has scooped a large handful of these international deals – something of a development after being traditionally revered for advising on domestic issues.

International banks have called on A&L Goodbody's services with increasing regularity over the past year. For example, the Bank of America sought advice from the firm in relation to the €200 million and \$60 million financing of Wedgewood. Over the past year the firm also acted as Irish counsel to UBS in connection with a \$1 billion complex warehousing facility provided to AerFunding, and advised Lehman Brothers in relation to bridging facilities provided in connection with the acquisition of the Debis AirFinance Group by Cerebus. Indeed, A&L Goodbody is particularly strong in the aviation arena, and was at the helm again when acting for Standard & Poor's in relation to a \$987 million securitization portfolio of aircraft leases by Aircraft Lease Securitization.

In the aftermath of the advent of the EU Prospectus Directive, which further enhanced Ireland as a key financial jurisdiction, A&L Goodbody is among the select group of law firms being recruited for international work. For example, the firm advised the Quinn Group on a €355 million syndicated loan facility and \$300 million US private placement of debt securities. Spanning 18 jurisdictions, this deal was considered by many commentators to be the key finance deal of the year, and a clear demonstration that Ireland had cemented its foothold in the international arena. The firm has also preserved its connection with domestic lenders, however, as demonstrated when it acted for Allied Irish Banks and IIB Bank as lead arrangers of a €180 million-worth of syndicated unsecured facilities provided to the Irish Continental Group.

Securitization has also been an area that has been gathered up by the winds of prosperity. A&L Goodbody has certainly had its market share, advising upon a litany of high-value transactions. Among these, Depfa Bank called upon the firm for advice on a €1 billion synthetic securitization of a portfolio of government and public sector bonds, and to reiterate the firm's international standing, Morgan Stanley and German Postal Pension

Securitization selected the firm to advise on an €8 billion securitization of pension receivables.

In other capital markets work, the firm acted for ABN Amro, Merrill Lynch & BCP Investments on the Magellan Mortgages No 4 €1.5 billion asset-backed note issuance programme, linked to a Portuguese mortgage pool, advised JP Morgan on Celf Loan Partners 11's €643 million CLO, and guided Cavendish Square Funding through a €300 million CDO.

Leading lawyers

Adrian Burke
Catherine Duffy
Stephen Haughey
Ciaran Rogers

Key contact partners

Catherine Duffy
John Olden

Arthur Cox

A firm that is rated highly by the market, Arthur Cox has established itself as an extremely effective operator in the areas of banking and capital markets. Contemporaries said that "traditionally the firm has a large domestic practice, but they now have a strong international practice with instructions in and out". In terms of leading lawyers, Grainne Hennessy is "highly regarded, and appropriately called a leading lawyer". In addition, Cormac Kissane "has made a real name for himself, and is excellent".

Active in the financial services arena, Arthur Cox assisted Legg Mason in relation to the acquisition of the asset management activities of Citigroup in Ireland, and in a deal which closed shortly before the time of writing, Arthur Cox advised on the first multi-manager derivatives risk management process for use by a multi-manager Ucits, worth \$3 billion.

Also a key player on the lender side, the practice acted for the Anglo-Irish Bank when it provided a junior loan in the REO securitization of a property portfolio in Ireland worth €425 million. In other standout work, Arthur Cox advised on €200 million-worth of syndicated facilities to the Greenstar Holdings Waste Management Group, acted for UTV in raising funding for the acquisition of the Wireless Group, and aided the Topaz Energy Group when it used acquisition financing facilities to fund the purchase of Irish Shell for €206 million.

Despite bidding farewell to the "leading light" James O'Dwyer this year, team leader Kissane has proved to a beacon in the market. Among the litany of transactions, the practice assisted EBS Building Society on a €125 million Tier I capital issue, and at the turn of 2006, the firm guided Merrill Lynch, Lehman Brothers and Deutsche Bank through the Bank of Ireland's \$800 million Tier I capital issue. Other standout deals in this arena saw the firm advising the Grafton Group on a \$250 million and a €41 million private placement of notes, and in a deal closing in March 2006, the practice guided Barclays Bank and Allied Irish Bank through the €10 billion asset covered securities programme for Allied Irish Bank.

Arthur Cox was ever-present on the equity side too, advising target company NTL Ireland when it was acquired by UnitedGlobalCom, the listed US Internet service provider for €325 million, in an innovative warehousing deal. This transaction was the first time that a warehousing structure was implemented in Ireland. The firm acted for another target, the Jurys Doyle Hotel Group, in relation to its acquisition by JDH Acquisitions, a bidding vehicle controlled by a consortium of Jurys Doyle directors, for €1.198 billion.

On the structured finance side, meanwhile, Arthur Cox advised on a slew of innovative and high-volume transactions this year. For example, the practice acted for Real Estate Opportunities on the first commercial-backed mortgage securitization (CMBS) of Irish real estate assets – relating to 16 Irish properties – for €425 million. Neatly positioned in a jurisdiction which has credibility in securitization and listings, Arthur Cox proved extremely effective, aiding JM Huber on a trade receivables securitization that spanned eight jurisdictions.

In a further display of its ability, the firm advised Citigroup and Dresdner in relation to Gazprombank's \$1 billion loan participation note issue, which registered as the largest and first such issue done using an Irish vehicle. In another standout deal, the practice guided Merrill Lynch through a €305.4 billion multi-tranche collateralized debt obligation linked to regulatory capital instruments for Dekania Europe CDO.

Leading lawyers

Grainne Hennessy
William Johnston
Cormac Kissane

Key contact partners

Glenn Butt
Kathleen Garrett
Stephen Hegarty
Grainne Hennessy
William Johnston

McCann FitzGerald

According to one rival, McCann FitzGerald is "the top firm" for banking and capital markets transactions, being "strong domestically and internationally". According to observers, the list of leading lawyers makes enviable reading.

Always a strong contender for offering advice on lending matters, McCann FitzGerald acted for a syndicate of banks led by Bank of Ireland in relation to the €420 million financing of the acquisition of the Superquinn group of companies, acted for a syndicate of banks led by the Anglo Irish Bank which provided financing to Ion Equity so it could acquire the Irish business of Shell, advised Independent News & Media on a new €440 million syndicated credit facility, and assisted Ulster Bank Ireland in relation to the financing of the Eircom employees' participation in the take-private of the Eircom Group.

At the request of Allen & Overy, McCann FitzGerald responded to a questionnaire on legal and regulatory issues arising in connection with UBS's foreign exchange, cash and collateral trading activities. Citigroup was another high-profile client, which sought advice from the firm on Irish regulatory issues concerning the sale of its global asset management business. EBS Building Society was also a beneficiary, requiring assistance on regulatory aspects of the arrangements entered into with Irish Life for life assurance and investment products. Lastly, the firm was instructed by Alphayra for assistance on the legal and regulatory aspects relating to new products and services, including electronic money.

In the first-ever securitization of non-conforming Irish residential mortgages, the firm represented Start Mortgages (a subsidiary of UK specialist mortgage lender the Kensington Group) in a deal which involved the issue of bonds by a special purpose company to capital markets investors backed by the cashflows anticipated from a portfolio of such mortgages. The firm was also co-counsel to Eurohypo (again working in tandem with with Allen & Overy) in the first Irish asset CMBS transaction, worth €375 million, for Opera Finance. In another headline-grabbing deal, McCann FitzGerald acted for First Active when it elected to

raise €1.75 billion through a residential mortgage-backed securitization – the first Irish RMBS deal in over two years (since Celtic 8) and the first Irish asset securitization. The firm announced its intentions even more when advising AerCap (formerly Debis AirFinance) and Aircraft Lease Securitisation on the latter's successful offering of \$1 billion-worth of floating-rate asset-backed notes.

Lively on the debt side, McCann FitzGerald advised Allied Irish Banks on its mortgage covered bond subsidiary, AIB Mortgage Bank, and acted for Unicredito Italiano Bank (Ireland) in relation to the establishment of a \$2 billion extendible floating-rate note programme. And in a transaction that attracted much media attention, the practice advised Irish Nationwide Building Society on the issue of €1 billion-worth of floating rate notes.

The firm also held an enviable hand in the more buoyant equity arena. Among the highlights, the firm advised FireOne Group in relation to its £120.5 million initial public offering and its admission to trading on London's Alternative Investment Market (Aim), and acted for Davy twice: first, as underwriter of the €60 million open offer announced by Waterford Wedgwood in June 2006, and secondly, in relation to the placing of new ordinary shares and admission to trading on Aim of AGI Therapeutics. In a further standout deal that was ongoing at the time of writing, the practice was busy advising underwriters UBS and AIB on the privatization of Aer Lingus.

Leading lawyers

Catherine Dean
Ronan Molony
Niall Powderly

Key contact partners

David Byers
Julian Conlon
John Cronin
Roy Parker
Niall Powderly

Matheson Ormsby Prentice

"Beefing up their team and developing their practice", Matheson Ormsby Prentice (MOP) comes highly recommended by rival practitioners and clients alike. Bagging roles on a slew of complex mandates, the practice boasts an impressive register of some of Ireland's leading corporate finance lawyers.

Advising the lending syndicate in respect of a €240 million syndicated loan facility provided to the Dunloe Ewart Group was certainly a highlight worth enthusing about, as was the advice given to Barclays Capital in its capacity as lead manager in respect of a securitization of Irish residential mortgages by Start Mortgages, which involved the issue of €376 million-worth of mortgage-backed notes by Lansdowne Mortgage Securities No 1.

In other finance matters, the firm acted for Ulster Bank Ireland on the financing arrangements for the acquisition of the Berkeley Court site by the Dunne Group, which was a follow-on deal to the acquisition of the Jurys Doyle Hotel Group. In another notable transaction, MOP advised BNP Paribas and Barclays Capital as lead managers of the issue of £300 million core Tier I capital preference shares by Anglo Irish Bank in June 2005, a ground-breaking transaction because it was the first time such a structure had been implemented to raise Tier I capital by an Irish bank.

In other capital markets work, MOP advised JP Morgan, HVB and Preps 2005-2 on the issue of €360 million preferred pooled securities, the first time an Irish issuing company had been used as part of the Preps programme designed by CEG.

MOP also landed a role guiding lead arrangers BNP Paribas and Barclays Capital through the £300 million issue of core Tier I capital preference shares by the Anglo Irish Bank. Anglo Irish Bank reported that this issue was the largest-ever issue of preference shares by an Irish financial institution, and was substantially oversubscribed.

The implementation of the EU Prospectus Directive has had a positive impact on transactions across Europe, ensuring that Ireland as a jurisdiction continued to win listings over the Luxembourg Stock Exchange. Turlough Galvin's team, which specializes in structured finance, waded into the arena and immediately landed a handful of significant mandates. Among these, the firm acted as Irish counsel to SVG Diamond Private Equity II as issuer, Nomura as arranger and SVG Advisers as investment adviser in relation to the €325 million Diamond II transaction, and advised BNP Paribas and Omega Capital Investments on the first large managed synthetic CDO of 2006.

Leading lawyers

Turlough Galvin
William Prentice
Tim Scanlon

Key contact partners

Patrick Molloy
William Prentice
Chris Quinn

William Fry

With a "very strong client base" similar to the top-tier firms, William Fry is particularly strong in the finance arena, despite losing "key banking partner" Daragh Bohan this year. The firm's capital markets work continues to keep it in the hunt for a promotion place, and the market perceives the firm as being a real contender.

The six-partner and 10-associate banking team, presided over by the much-respected Elaine Hanly, has seen a consistent deal flow of interesting and complex mandates over the year. First, the practice acted for JDH Acquisitions in the funding of a €1.3 million bid for the Jurys Doyle Hotel Group, the largest capital markets and acquisition financing transaction in Ireland in 2005. In a further big-ticket deal, William Fry guided the Jefferson Smurfit Group through the financing of its merger with rival packaging group, Kappa Packaging, in a deal which included a cash payment of €300 million, the issue of a €75 million subordinated promissory note to Kappa's shareholders, and the refinancing of JSG and Kappa's existing debt facilities by way of a new senior credit facility worth around €2.93 billion.

William Fry also acted for Waterford Wedgwood in relation to a €200 million and \$60 million credit facility line made available by a Bank of America-led syndicate of banks, advised US Bancorp on the establishment of an Irish credit institution, and consulted Morgan Stanley on the acquisition and sale of NTL Ireland for €325 million, including advising on the competition law and merger control aspects of the transaction.

Hanly's debt team registered a fruitful period as well. In the largest-ever corporate bond issues on the Irish Stock Exchange to date (and the largest fund raising by a corporate entity without a credit rating), the firm represented Porsche International Financing in relation to a €2 billion two-tranche eurobond issue. The firm also aided the Ardagh Glass Group on a €126 million public bond issue, and acted for the Jefferson Smurfit Group on \$200 million and \$217.5 million senior subordinated note issues and a €325 million senior payment-in-kind note issue, all listed on the Luxembourg Stock Exchange.

Standout deals in the equity arena, meanwhile, saw Owen O'Connell's team advise on the successful takeover bid for the Jurys Doyle Hotel Group worth €1.25 billion, and represent Waterford Wedgewood in a rights issue worth €100 million. Structured finance work also came thick and fast, with the firm representing the Scottish Re Group on a \$2.1 billion securitization listed on the ASM of the Irish Stock Exchange, a landmark deal since it was the largest-ever issue of unwrapped securities in a regulation XXX securitization.

Leading lawyer

Elaine Hanly

Key contact partners

Orla Brennan
Elaine Hanly
Brendan Heneghan

Insolvency and restructuring

Recommended firms

Tier 1

Arthur Cox
Eugene F Collins
Matheson Ormsby Prentice
McCann FitzGerald
William Fry

Tier 2

A&L Goodbody
Mason Hayes & Curran

Tier 3

LK Shields
O'Donnell Sweeney
Whitney Moore & Keller

Arthur Cox

With the Irish economy remaining strong, few businesses have run into difficulties over the past year. Where this has occurred, it tends to be when companies with a base in Ireland experience problems with their international operations. In this climate, Arthur Cox has grabbed a few notable mandates, preserving its position as a market leader. "Regarded very highly", the firm's practice is principally led by leading lawyer William Day.

The firm's representation of the Bank of America in the liquidation of Eurofood IFSC (Parmalat's Irish subsidiary) proved to be the standout case of the year, in terms of deal volume and complexity. The sluggish UK car economy brought with it another mandate for Arthur Cox as the firm guided the UK administrator PricewaterhouseCoopers through the administration of Rover Ireland.

Other standout deals saw the firm assist the provisional and official liquidator Pearse Farrell of FGS in the provisional and official liquidation of Mouldpro Internatioal, and act for the petitioners, Polet Airlines, in the examination of Skynet Airlines.

Leading lawyers

William Day
Eugene McCague

Key contact partners

William Day
Eugene McCague

Eugene F Collins

According to some commentators, niche insolvency firm Eugene F Collins "is not getting the returns that it hoped for" because of the enduring strength of the Irish economy. The occasional pessimist even suggested that if the firm is really to dominate this area, it requires some chunky corporate collapses to stimulate the deal flow.

Nevertheless, the team, led by the well-respected market veteran Barry O'Neil who, according to one rival practitioner, is "deserving of the title of leading lawyer", is consistently praised for the quality of its work. Shortly before going to press, the *IFLR1000* had learnt that Eugene F Collins had been issued with some enviable mandates. Notable work for the year included the firm's advice to Dr Enrico Bondi on the court liquidation of Eurofood IFSC, acting for receiver Derek Earl in the receivership of Tairgeori Biamara Atlantach Teoranara, steering examiner Jim Hamilton through the examination of Bromley Communications, and advising liquidator Eugene McLaughlin in relation to the creditors' voluntary liquidation of Satellite Sports.

Further clients of the firm include Friel Stafford, RSM Robson Rhoes, Baker Tilly O'Hare, Ernst & Young and McStay Luby.

Leading lawyer

Barry O'Neil

Key contact partners

Terry Leggett
Barry O'Neil
Doug Smith

Matheson Ormsby Prentice

Boasting considerable strength, Matheson Ormsby Prentice (MOP) is a European Commission-approved liquidator. In the first referral to the European Court of Justice for an interpretation of European insolvency regulation, MOP advised the liquidator, Pearse Farrell, of FGS Eurofood IFSC. In other standout deals the firm advised the receiver McStay Luby in the receivership of Meadowfern, and acted for Unidare in relation to its voluntary liquidation and restructuring.

The firm also counts PricewaterhouseCoopers, Farrel Grant Sparks, Bank of Scotland (Ireland), ACC Bank and Ernst & Young as clients.

Leading lawyer

Tony O'Grady

Key contact partners

Rod Ensor
Julie Murphy O'Connor
Tony O'Grady

McCann FitzGerald

McCann FitzGerald has developed a reputation for being a firm that is "always going to get a lot of good work", and the firm has certainly lived up to this reputation this year.

For example, the firm acted for the examiner of Skynet Airlines, an Irish airline which operated flights from Ireland to Russia, and at the time of writing was advising on two notable cases. In the first, McCann FitzGerald was assisting on the liquidation of Flightlease, in which the Irish High Court gave permission to conduct the liquidation in US dollars, deviating from the normal rule that all assets must be converted into euros. And in the second, the firm advised on the insolvent liquidation of Citrico, which is part owned by Coca-Cola, in a case which involved many cross-border issues.

Other key clients of the firm include Deloitte, Farrell Grant Sparks, KPMG, McStay Luby and Grant Thornton.

Leading lawyer

Emma Crowley

Key contact partners

Emma Crowley
Hilary Marren
Jane Marshall

William Fry

“Losing Mark Traynor will leave a deficit” suggested one rival practitioner, but the consensus was that Michael Quinn’s team would bounce back, maintaining its status as a great choice for insolvency and restructuring advice in Ireland. The firm retains Michael Quinn as a leading lawyer, and commentators also announced Barry Cahir as a rising star.

Standout cases for the year saw the practice represent the liquidator in the liquidation of Medialab Europe and advising the institutional creditors in relation to the €120 million restructuring of IWP. The practice was also active in assisting the examiner and the liquidator of EU Jet Ops, and in another transaction that was ongoing at the time of writing, William Fry was assisting the liquidator of Swissair Transport.

Further clients of the firm include Mitek Pharmaceuticals and Worldport Ireland.

Leading lawyer

Michael Quinn

Key contact partner

Michael Quinn

A&L Goodbody

For a firm which did not possess an insolvency practice to speak of until two years ago, A&L Goodbody has made significant inroads into the market, and “in time will be one of the top firms for this work”. The relentless strength of the Irish economy means that A&L Goodbody generates much of its work from US and UK firm referrals, spurred on by the firm’s “leading figure” David Baxter.

In a demonstration of the firm’s international client base, A&L Goodbody acted for the bondholders (the largest creditor body) in the closing of Eurofood IFSC, and in a matter that drew considerable media attention, advised Delta Airlines on Irish insolvency-related issues before the company entered into Chapter 11 proceedings.

Among the year’s other work, the firm guided the receiver Tom Kavanagh twice: first, through the collapse of Peacocks Hotel, and secondly, as the liquidator for the Interbloem Flower Group.

Leading lawyer

David Baxter

Key contact partners

David Baxter
Catherine Duffy
Seamus O’Cronin

Mergers and acquisitions

Recommended firms

Tier 1

A&L Goodbody
Arthur Cox
Matheson Ormsby Prentice
William Fry

Tier 2

McCann FitzGerald

Tier 3

Mason Hayes & Curran

Tier 4

Eugene F Collins
LK Shields
O’Donnell Sweeney

A&L Goodbody

A&L Goodbody’s “good, strong client base” ensures that the firm is considered among the market’s M&A leaders once again this year. The enviable foundations laid by the firm are the result of ably guiding clients through innovative and complex transactions over the years. Rival practitioners were almost universally complimentary about the practice, commenting on an uncharacteristically underweight deal flow for the past year but noting that this deficit was to be attributed to the relative inactivity of clients, rather than to the firm losing ground.

And the firm certainly continued to win roles on some of the headline-grabbing deals of the year. In a transaction that was executed to a tight timeframe and was one of the largest acquisitions of the past year, long-standing client Eircom called on the firm for advice in relation to its €420 million acquisition of Meteor Mobile Communications. And, in a significant development in the Irish and global whiskey market, the practice advised Irish Distillers twice: first, on the Irish aspects of Diageo’s acquisition of the Old Bushmills Distillery Company, and secondly, in relation to the Irish aspects of Pernod Ricard’s €11.1 billion acquisition of Allied Domecq.

Exercising its muscle in the high-profile cross-border arena, meanwhile, A&L Goodbody assisted Royal Dutch Shell with the disposal of its retail and commercial fuels business in Ireland, and once again demonstrated its dexterity when advising Hibernian/Aviva on its €1.3 billion banking, life insurance and pensions merger with Ark Life.

Leading lawyers

Paul Carroll
Eithne FitzGerald
John Given
Jack O’Farrell
John Olden
Julian Yarr

Key contact partners

Paul Carroll
Eithne FitzGerald
John Given

Arthur Cox

“Top of the tree” according to rivals, Arthur Cox continues to be a veritable powerhouse in the Irish M&A market. One commentator observed the fact that “in the past five years they’ve improved their practice every year”, and that “their domestic

client base is more significant than [that of] any other firm". Such praise was also heaped on the team's individuals, with Michael Meghen the main recipient, described as "a good practitioner and pleasant to deal with".

UnitedGlobalCom, the listed US Internet services provider, sought the services of Arthur Cox during the €325 million acquisition of NTL Ireland, which involved an innovative warehousing structure. This transaction was the first time that a warehousing structure had been implemented in Ireland.

In another high-volume transaction, James O'Dwyer led a team that advised the target company the Jurys Doyle Hotel Group on its €1.198 billion acquisition by JDH Acquisitions, a bidding vehicle controlled by a consortium of Jurys Doyle directors. The firm also advised a consortium of Irish investors, called the Topaz Energy Group, in relation to the acquisition of the Irish retail and commercial fuel business of Royal Dutch Shell, and served as principal legal adviser to Infonxx for the acquisition of Conduit, an Irish provider of directory assistance services and call centre operator.

Leading lawyers

Ciaran Bolger
Colm Duggan
Eugene McCague
Michael Meghen
James O'Dwyer

Key contact partners

Ciarán Bolger
Colm Duggan
Michael Meghen

Matheson Ormsby Prentice

Matheson Ormsby Prentice (MOP) is bagging roles on "a good few transactions", and is "a serious player" according to market opinion. The firm has built on the progress made in previous years, and this time round can boast to have advised on all of the public takeovers occurring in Ireland this year at the time of writing. Commentators decided that "Tim Scanlon is the leading lawyer" at the firm; "he is bright and practical, client-friendly and good to work with".

The successful period for the firm saw it advise Allied Irish Bank on the merger between AIB's Ark Life division and leading insurer Hibernian Life & Pensions (owned by Aviva). At over €1.3 billion, this was the first major corporate transaction on which the firm has advised AIB – a significant breakthrough in market terms. Another big-ticket deal saw MOP guide the shareholders of Irish company the Landesk Group through the \$416 million sale of the company to Avocent.

In other work, the firm advised the acquirer, the Informatica Corporation, and one of the vendors, Trinity Venture Capital, on the acquisition by Informatica of Irish company Similarity Systems for \$55 million. At the time of writing, MOP had won another significant mandate, advising Australian investment company Babcock & Brown Capital in relation to its €2.4 billion bid for the Eircom Group.

Leading lawyer

Tim Scanlon

Key contact partners

Andrew Doyle
Robert Heron
Tim Scanlon
Stanley Watson

William Fry

William Fry prides itself on its corporate department – and with just reason, according to rivals, who describe it as "a top firm that

would be regarded as having a formidable M&A practice." Contemporaries looked beyond the pure volume of deal flow, too, saying that "they do good, high-quality work". From among the strong team, Owen O'Connell received commendation from the market, one peer noting that he is "exceptionally strong and exceptionally experienced".

The standout deal of the past 12 months saw the practice advise the Jefferson Smurfit Group on its merger with Kappa Packaging, a €2.6 billion deal which created the leading packaging supplier in Europe. Other big-ticket work saw the practice guide JDH Acquisitions through its €1.2 billion takeover of the Jurys Doyle Hotel Group.

In other work, William Fry acted for the vendor on the sale of Star Media (Stockbyte) to Pixel Imager Holdings, and Morgan Stanley Equity Funding instructed William Fry when it required advice on the €332 million acquisition and disposal of NTL's Irish cable television and communications business.

Leading lawyer

Owen O'Connell

Key contact partners

Bryan Bourke
Myra Garrett
Owen O'Connell

McCann FitzGerald

Ireland proved to be even more of a force on the map for corporate transactions over the past year – a trend that can only mean good news for the M&A market's top players. Although arguably better known for its stellar finance practice, McCann FitzGerald performed well in M&A this year, picking up some juicy roles.

Among these, the firm advised Boston Scientific on the Irish aspects of its merger with Guidant to create a leader in cardiovascular devices. With a transaction value of €28 billion, the merger created one of the largest medical technology companies in the world. The firm also advised Doughty Hanson and its consortium in its capacity as one of the bidders in the proposed acquisition of NTL Ireland. Although the bid ultimately proved unsuccessful, the practice was involved until the final stages.

McCann FitzGerald also advised Anglo Irish Bank Private Equity and Anglo Irish Bank Private Bankers in relation to the MBO/MBI of the Irish assets of Shell, and advised Doughty Hanson again on its acquisition of TV3, the only privately owned terrestrial free-to-air national commercial television channel in the Republic of Ireland, from its existing shareholders CanWest, ITV and a consortium of private investors.

If McCann FitzGerald continues to progress at the rate it has done over the past year, the market feels it can only be a matter of time before it gains promotion into the top tier. Rival practitioners suggested that the firm "has tier one lawyers, but doesn't have the deal flow to match" – and it is this which currently negates them from a top-tier placing.

Leading lawyer

Barry Devereux

Key contact partners

David Byers
Barry Devereux
Paul Heffernan

Eugene F Collins

This year, another selection of enviable mandates made their way to the offices of Eugene F Collins. Frequently playing a lead role on sizeable transactions, the practice ended the latter quarter of 2005 with some hefty mandates. For example, the firm advised

Western Wireless in relation to its €428 million sale of Meteor Mobile to Eircom, and also assisted Stanley Ireland on its €730 million sale of Stanley Bet to William Hill.

Investors in a purchasing vehicle also turned to Eugene F Collins for advice in relation to the €450 million purchase of Superquinn supermarkets, as the firm was also in demand from Leinster Leader's shareholders when the company was sold to Johnson Press for €138 million.

Key contact partners

Gerard Coll
Eileen Grace
Leonora Malone

LK Shields

A boutique firm for corporate advice, LK Shields has cemented a solid reputation in acting for business societies and financial institutions, as well as businesses engaged in the telecommunications, financial services, food and drink, information technology, pharmaceuticals, and paper and packaging sectors.

A standout deal over the period saw LK Shields advise the H&K Group on its €50 million leveraged buyout. Spring 2006 proved a particularly fertile time for the practice, with the firm also advising MacDonald Dettwiler and Associates on the acquisition of Mistview Holding (the parent company of the Rochford Brady group of companies).

In further exhibitions of the firm's abilities, the practice steered the Gardiner Group through the acquisition of Genfit (Mayo) and the Safeway Manufacturing Company, and advised the vendor in relation to the sale of Hamilton Osbourne King.

Other recent clients of the firm include Digicel Communicorp, Alpha Newspapers, the ISS Group and Communicorp.

Key contact partners

Gerry Halpenny
Emmet Scully
Lawrence Shields

O'Donnell Sweeney

At O'Donnell Sweeney, a time of prosperity immediately followed a consolidation in personnel following the hire of David Beattie. Among the highlights of a strong year, O'Donnell Sweeney acted for the vendors in relation to the sale of Conduit Enterprises, a leading directory enquiries and outsourced services company, to a consortium led by Investcorp and also involving Infonxx. The practice also served as advisor to the shareholders of Similarity Systems in relation to its sale to the Informatica Corporation for \$55 million.

In other work, the practice acted for the shareholders of the Two Way Freight & Logistics Group, a major Irish logistics and freight service provider, in the sale of the company to Aramex International. Finally, O'Donnell Sweeney confirmed its status when it stepped up to advise Eircom in a takeover bid for Eircom by Babcock & Brown.

Key contact partners

David Beattie
Francis Hackett
David O'Beirne

Project finance

Recommended firms

Tier 1

A&L Goodbody
Arthur Cox
Matheson Ormsby Prentice
McCann FitzGerald

Tier 2

William Fry

Tier 3

Eugene F Collins
Mason Hayes & Curran
O'Donnell Sweeney

A&L Goodbody

In a market which is witnessing mandates at an unprecedented rate, the "very active and prominent" A&L Goodbody has the reputation among clients and rival practitioners of being a particularly good choice of firm for advice on the complex transactions. A consistent force in the public-private partnership (PPP) arena, Eamonn Conlon "gets things done" and is well-supported by Kevin Feeney, described by a rival as "very good".

Babcock & Brown, a bidder in the purchase of shares for the Tynagh power project, sought A&L Goodbody's advice on that transaction, and turned to the firm again for its expertise in relation to the bidding process for the new Criminal Court complex, which was the largest design-build-finance-operate accommodation PPP project to come to the market in the past year, and the first PPP project in the courts sector.

The Department of Education and Science proved to be an important client for the firm too, requesting guidance on the development of the Cork School of Music. Also, at the time of writing the firm was assisting the education authorities on five education-related PPP deals in Northern Ireland, and was advising the Local Schools Consortium, which comprised Northern Ireland contractors John Graham (Dromore) and O'Hare and McGovern, and German infrastructure company Bilfinger & Berger BOT, in its bid for the strategic partnership contract for Belfast schools. In another PPP project, A&L advised the DirectRoute Consortium in all aspects of the Limerick Tunnel project.

In the energy sector, meanwhile, A&L Goodbody guided HgCapital through its equity investment in the 32MW project financing for the Sorne wind farm in Donegal, one of the first Irish wind farm deals involving substantial institutional third party equity investment at the project development stage, which added significant additional complexities to the traditional project finance model. Another alternative energy project saw the firm act for Calyon, the Royal Bank of Scotland and Ulster Bank on the project financing of the Derrybrien wind farm, one of the largest wind farm developments in Ireland to date.

Leading lawyers

Eamonn Conlon
Kevin Feeney

Key contact partners

Eamonn Conlon
Kevin Feeney
Dudley Solan

Arthur Cox

Traditionally acting as adviser to lenders on complex project financing transactions, Arthur Cox's recently expanded eight-partner, 15-associate team is led by the well-regarded Alex McLean, and is well positioned to reap the rewards from this buoyant area.

Standout deals for the year saw the firm advise Barclays Bank on the €90 million Cork School of Music PPP, act for the Celtic Roads Group and Société Générale on the €300 million Waterford bypass project, and guide Allied Irish Bank through the €30 million financing of Irish Power Systems.

In a further transaction that was ongoing at the time of writing, Arthur Cox was busy representing Treasury Holdings Consortium in relation to the €150 million financing of the National Conference Centre.

Further clients of the firm include the Vridian Group and Elsam.

Leading lawyers

Grainne Hennessy
Alex McLean

Key contact partners

Grainne Hennessy
Alex McLean
Garrett Monaghan

Matheson Ormsby Prentice

A slew of impressive PPP mandates have crystallized the reputation of Matheson Ormsby Prentice (MOP) this year, after the initial shock of losing "impressive operator" Mark Varian to O'Donnell Sweeney. Michael O'Connor heads the projects team, which comprises five partners and 10 associates.

This year MOP acted for the successful bidder, Sispar, on the Greystones Harbour PPP which, at €200 million, was one of the largest PPP transactions in Ireland for 2005-2006. The firm was also visible on the Cork School of Music project, receiving instructions from John Sisk & Sons.

In addition, the practice was crucial in assisting the Drogheda Port Company on the €200 million PPP development of a major new deepwater port, and in January 2006 opened an international competitive process for a joint venture partner for port development.

At the time of writing, the firm was advising John Sisk & Sons again, this time on the €400 million National Conference Centre PPP.

Leading lawyer

Michael O'Connor

Key contact partners

Patrick Molloy
Michael O'Connor
William Prentice
Richard Stowe

McCann FitzGerald

Another strong contender for Irish PPP work, McCann FitzGerald was highlighted as a leader in the project financing arena, rivals noting that the firm "held a strong role on the Irish roads project" and that "they have managed to pick up many projects in prisons and courts". At the time of writing, McCann FitzGerald was advising the Courts Service in relation to the development of a new Criminal Court complex, which involves the construction of a new 22-court criminal justice building. In one of the most significant project financings of the year, McCann FitzGerald acted for Value Retail on the Kildare Village project, the first development of its kind in Ireland.

Continuing its visibility on some of Ireland's top projects, the firm advised Hochtief and Barclays Private Equity (as subordinated lender and equity promoter respectively) on the Cork School of Music PPP, and acted for the National Roads Authority which awarded the contract for the design, build, financing and operation of the N25 Waterford bypass PPP scheme to the Celtic Roads Group in April 2006.

Leading lawyers

Tim Bouchier-Hayes
Colm Fanning

Key contact partners

John Cronin
Colm Fanning
Claire Lenny
Eamonn O'Hanrahan

O'Donnell Sweeney

In the previous edition of the *IFLR1000*, questions were asked as to the effect that hiring Mark Varian would have on O'Donnell Sweeney's visibility. Despite being well represented in this arena before Varian's arrival, it is clear that his presence has bolstered the firm's ability to win important mandates.

In the past year, O'Donnell Sweeney has been particularly visible on the bank side of large project financings. For example, in a deal that closed in August 2005 the firm was instructed by the lenders, IIB Bank and KBC Bank, on the much-publicized Sorne wind farm project, and also provided advice to the senior lender, AIB, in the Ballybane wind farm project.

Among the firm's key non-bank mandates, meanwhile, Varian headed a team that advised National Toll Roads on the €300 million Waterford N25 PPP, and O'Donnell Sweeney cemented its reputation by assisting Mountside Properties on the €300 million Tynagh power station project.

Leading lawyer

Mark Varian

Key contact partners

David Beattie
Steve Rodgers
Mark Varian