

Commercial Technology Contracts and Ireland

Ireland has established itself as a global technology hub attracting international ICT companies to establish EU headquarters here and serves as a gateway for businesses seeking to access the EU market. From this legacy of tech in Ireland, Irish legal professionals have built up a wealth of experience advising on commercial technology contracts and are well placed to expand this expertise post-Brexit.

Why Choose Irish Law and Irish Lawyers for Commercial Technology Contracts

The strengths of Irish law and the Irish legal system in relation to commercial technology contracts include:

- **Common Law legal system:** Ireland is a common law jurisdiction similar to England and Wales, North America, and Commonwealth jurisdictions. Ireland is the only fully common law jurisdiction in the EU. This makes Irish law and the Irish courts an attractive alternative to technology contract currently governed by the laws of England and Wales, and subject to the jurisdiction of the English courts. Companies will be able to retain the flexibility and reliability of the common law – but in a jurisdiction which is still also within the EU legal framework.
- **Deep talent pool and sectoral knowledge:** Ireland has established itself at the heart of the global technology industry in for many years. A report released in 2019 highlighted that in 2017 Ireland was the number one location for US technology investment with \$54 Billion invested by American technology businesses alone. Irish Solicitors, Barristers and other legal professionals have built up extensive experience advising companies established in Ireland on commercial technology contracts, creating a deep talent pool of advisors.
- **Effective Dispute Resolution system:** The commercial list of the High Court in Dublin is an efficient and effective venue for parties to resolve complex commercial disputes between businesses (where the value of the claim is at least €1 million). The court's judges have extensive experience in commercial litigation and have flexibility in how they manage cases, resulting in shorter time frames for resolving disputes than other avenues of dispute resolution in Ireland. This is a key consideration for high value commercial technology contracts, where a speedy resolution will often be vital for



contracting parties' commercial concerns. Ireland also possesses a deep pool of experienced mediators and arbitrators to draw from for Alternative Dispute Resolution.

- **English speaking:** As an English-speaking country, Ireland is very accessible to English speaking clients, lawyers and other professionals accustomed to working through the English language. Documents governed by Irish law will be drafted in English and if there is a dispute, court proceedings will be conducted in English.
- **EU Membership:** The Irish public remain overwhelmingly supportive of membership of the EU, making the country a stable gateway and base to access a market of over 500 million consumers for companies into the future.
- **Data Protection:** Data Protection has become one of the more heavily considered and negotiated aspects of commercial technology contracts. Ireland is a centre point of data protection law and policy in Europe, and our Data Protection Commissioner internationally respected. As the centre point of EU regulation for the world's largest technology companies, Irish data protection legal practitioners offer world class experience in advising on the most complex data protection matters that exist today.

How will BREXIT impact Commercial Technology Contracts?

Irish lawyers are specialists in these sectors:

- **Different Governing Law and Jurisdiction:** The UK's decision to leave the EU is likely to cause parties to multi-jurisdictional contracts to consider departing from English governing law, which has long been seen as a well-recognised and respected option. Following the UK's departure from the EU, Ireland will be the only member of the EU that operates a court system that is both English speaking and based on the common law principles.
- **Commercial arrangements:** Depending on the trade deal negotiated between the UK and the EU, there may be material restrictions to the free movement of goods or persons (which can impact on service levels and/or delivery times) and also issues such as currency fluctuations beyond a certain identified threshold. Increases in the costs of doing business may prompt companies to re-negotiate or re-structure (or be forced to terminate) their existing commercial technology contracts.



- **Data Protection:** The Withdrawal Agreement between the EU and UK states that the UK will be treated as an EU Member State while the trade deal is negotiated. This means that the GDPR will apply in the normal way during the transition period. The EU and UK also intend to agree on an adequacy decision by the end of the transition period. However, there is no guarantee that (1) a trade deal will be agreed in this period; or (2) an adequacy decision being made in this period. In either of these scenarios, commercial technology contracts dealing with data transfers between the EU and UK will have to adapt in order to comply with the GDPR. This is in addition to the wider issues related to complying with dual regulatory regimes.
- **Dispute Resolution:** The enforceability of judgments stemming from contractual disputes may be thrown into question post Brexit. The various conventions governing cross border enforcement remains an area of doubt as to how it will operate following Brexit. This could result in key enforcement mechanisms for dealing with commercial technology contractual disputes such as freezing orders which can be key dispute resolution mechanisms being in doubt in cross jurisdictional situations.
- **Dual legal regimes:** As UK and Irish laws diverge, commercial technology contracts will have to address legal issues that were previously aligned in each jurisdiction. For example, UK and Irish competition law, or consumer law, often key terms of commercial technology contracts, may become subject to diverging regimes. The legal implications of which will have to be dealt with when entering into commercial contracts with a cross border element.

