

Judicial Planning Working Group
Department of Justice
51 St. Stephen's Green
Dublin 2
D02 HK52

Sent via email to: judicialplanning@justice.ie

12th November 2021.

Re: Submission to the Public Consultation on Judicial Planning.

Dear Sir / Madam,

The administration of the judicial system and, in particular, its efficiency and reliability, are important elements of the State's value proposition for Foreign Direct Investment (FDI). As the State agency responsible for winning and developing FDI, we receive feedback from international investors on Ireland's judicial system and especially with respect to planning applications and the associated appeals and judicial review processes.

While our justice system is broadly well-regarded, the time and resources required to engage with it can be very high and the system now compares unfavourably with other EU jurisdictions. This is reflected in the World Bank report entitled *Doing Business in the European Union 2020: Greece, Ireland, and Italy*¹. This found that while Ireland² ranked amongst the most favourable locations in which to do business, on average, it lags behind other locations in the EU on efficiency of judicial processes, court automation and case management.

IDA Ireland's detailed position on these matters was set out in our 2018 submission to the Review of the Administration of Civil Justice, which we made jointly with our parent Department and Enterprise Ireland. We note the aforementioned review has since concluded and a comprehensive report has been submitted to the Minister. Therefore, rather than restate our position in detail here, we strongly believe that providing the necessary resources to implement the recommendations of that review, and particularly those that have the potential to enhance Ireland's attractiveness as a location for investment, would be an important and welcome development.

¹ World Bank. 2019. *Doing Business in the European Union 2020: Greece, Ireland, and Italy*. Washington DC
<https://openknowledge.worldbank.org/bitstream/handle/10986/33650/Doing-Business-in-the-European-Union-2020-Greece-Ireland-and-Italy.pdf>

² The report examined individual cities within each country and accordingly Ireland is represented by Dublin in the above regard. Page 49 of the report refers.

The pandemic has brought about a societal shift in attitudes toward the use of technology and hybrid and remote working. In turn, this has delivered financial and administrative efficiencies across many sectors of the economy. The judicial process must keep pace with this change to ensure that Ireland remains a competitive location for investment into the future. Competitor locations are already offering new innovations in public and judicial administration. Similar innovations including the appropriate use of technology could significantly enhance the judicial process in Ireland.

Brexit will also place increased demands on the judicial system. Since the UK referendum, IDA Ireland has secured more than 100 Brexit-related investments with associated employment potential of more than 6000 roles. Furthermore, IDA has diversified its source markets for FDI, restructured its European operations, and deployed additional resources to focus on the Middle East, Asia, and Latin America. An increase in the volume of FDI over the next five years or so could potentially lead to more demand for access to judicial remedy, which will require a commensurate increase in judicial resources to avoid unsustainable caseloads and a reduction in service levels.

A separate but related area of concern to IDA Ireland are the delays currently being experienced as a result of the significant increase in the number of judicial reviews being taken against decisions within the planning system. The volume of cases compares unfavourably internationally³ and is problematic as multinational investors require reasonable certainty, not only in relation to the timelines for delivery of their own capital projects, but also on the timelines for delivery of the associated public infrastructure upon which their investments depend. This includes energy, transport, telecommunications, and water services. Any avoidable delay in the provision of such infrastructure erodes our competitiveness and makes Ireland a less attractive place in which to do business.

IDA Ireland fully supports the need for appropriate checks and balances within Ireland's planning process. However, in recent years the efficiency of Ireland's planning system, particularly the protracted nature of the judicial review process, has become an area of reputational risk to the State. Some projects have been significantly delayed by protracted legal and planning processes that have taken years rather than months to reach a conclusion. In an increasingly competitive international marketplace, the protracted planning appeal and judicial review process has the potential to discourage fresh investment by both new entrants and existing clients.

As we outlined in our submission to the Department of Housing on the General Scheme of the Housing and Planning and Development Bill in 2020, and to the Department of Public Expenditure and Reform on the review of the National Development Plan (NDP) in 2021, we believe that the judicial review process can be conducted in a more efficient manner that adheres to certain well understood timelines, while continuing to respect public participation rights and fully complying with our obligations under EU and international law.

³ Departmental Legal Cases, Dáil Éireann Debate, Tuesday - 11 May 2021:
<https://www.oireachtas.ie/en/debates/question/2021-05-11/255/>

It is essential that we do not allow a situation to develop where judicial review could be perceived as a de facto additional step in Ireland's planning process for strategically important projects. Equally, we must guard against any potential for litigation to become a mechanism that delays investment and increases costs to such an extent that projects become commercially unviable, notwithstanding that the planning decisions underpinning those projects may ultimately be upheld by the courts.

IDA firmly supports the commitments contained in the Programme for Government to reform judicial review processes in the planning system and to introduce a new Environmental and Planning Law Court to ensure that such cases can be heard in a timely and efficient manner by specialist judges. The prioritisation of these measures would significantly assist delivery of the *NDP* and *Housing for All*. It is vital, therefore, that these significant commitments are implemented as soon as possible. In this context, it is also essential that the proposed new court is properly resourced. We strongly encourage the Judicial Planning Working Group to examine this issue as part of its deliberations. The Review Group is best placed to assess the exact resourcing needs of this court, but we note with some concern that the planning list in the High Court may currently be under resourced.⁴

Finally, we are very grateful to the Department of Justice and the Working Group for undertaking this public consultation and for its work in this area to date. If you have any questions in relation to this submission, please don't hesitate to contact me.

Yours sincerely,



Kieran Donoghue
Global Head of Strategy & Public Policy
IDA Ireland.

⁴ Avalanche of litigation looms as High Court battles through delays, *The Irish Times*, Monday, Sep 20, 2021: <https://www.irishtimes.com/news/crime-and-law/courts/high-court/avalanche-of-litigation-looms-as-high-court-battles-through-delays-1.4678188>