

Establishment  
Process for Irish  
Head Office  
Non-Life  
Companies

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO



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# Establishment Process for Irish Head Office Non-Life Companies

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## ESTABLISHMENT PROCESS FOR IRISH HEAD OFFICE NON-LIFE COMPANIES

### Initial Discussions with the Irish Financial Regulator

As with any applicant seeking to establish a new regulated entity in Ireland, we would recommend as a first step an initial meeting in Dublin with the Financial Regulator at which the applicant should be in a position to outline its plans to the Financial Regulator in broad terms including:

-  nature of the business
-  broad projections
-  staffing
-  outsourcing
-  target markets.

### Overview of Regulatory Regime

The principal legislation in Ireland governing the establishment and authorisation of Non-Life insurance undertakings is the European Communities (Non-Life Insurance) Framework Regulations, 1994 as amended (the "1994 Regulations") which introduced the Third Non-Life Directive (Council Directive 92/49/EEC) into Irish law.

The 1994 Regulations provide that an insurance undertaking shall not carry on the business of Non-Life insurance unless it is a holder of an authorisation granted by the Financial Regulator under the 1994 Regulations or by the Insurance Supervisor in its home EU Member State. Regulation 6(2) of the 1994 Regulations provides that any such authorisation shall be valid throughout the EU Member States and shall allow an undertaking to carry on insurance business in other EU Member States by way of services or by way of establishment.

In order to be considered to have been established in Ireland, an insurance undertaking must (a) have an office in Ireland which is open during business hours for the transaction of Non-Life insurance business (once its authorised) and (b) must employ at such office persons duly qualified to carry on the business transacted and empowered to issue cover for the authorised classes of Non-Life business and to settle claims.

To comply with these requirements it will be necessary at a minimum to appoint a full time Managing Director or General Manager, Financial Controller and Compliance Officer as well

as having some additional administrative support. This pre-supposes that the Irish Head Office Non-Life insurance undertaking is outsourcing its back-office administration to a third party service provider.

Importantly, an Irish Head Office Non-Life insurance undertaking may only carry on the business of Non-Life insurance and is required to limit its operations to the types of business provided for in the 1994 Regulations and operations directly arising therefrom, to the exclusion of all other commercial business.

The principal conditions applicable to an applicant for Irish Head Office authorisation are as follows:

- (a) it must be a company established either under the Irish Companies Act, 1963 to 2006 or as a European Company (SE), however the head office and the registered office must be in Ireland.
- (b) it must submit to the Financial Regulator a scheme of operations to include particulars or proof concerning:
  - ▣ the nature of the risks which it proposes to cover;
  - ▣ its guiding principles as to re-insurance;
  - ▣ the items constituting its minimum guarantee fund;
  - ▣ estimates of the cost of setting up the administrative services and the organisation of securing business and financial resources it intends to meet those costs;
- (c) in addition, for its first three financial years, it must submit to the Financial Regulator:
  - ▣ a plan setting out detailed estimates of premium income and claims along with estimates of management expenses;
  - ▣ a forecast balance sheet;
  - ▣ estimates relating to the financial resources intended to cover its underwriting liabilities and solvency margin.

- (d) it is required to possess a minimum guarantee fund (equal to one third of the solvency margin, subject to a minimum of Euro 3.2 million);
- (e) it must have a paid-up share capital of at least Euro 635,000;
- (f) it must demonstrate that it shall be effectively run by persons of good repute with appropriate professional qualifications or experience.

It is important to note that the above are minimum figures only. The actual financial resources requirement for a Non-Life company will be determined by the Financial Regulator in line with the applicant's business plan.

Full details of all entities having a shareholding in excess of 10% or more of the capital or voting rights (directly or indirectly) in the applicant must also be disclosed to the Financial Regulator.

Although draft policy documents etc. should be submitted as part of the application for authorisation, there is no requirement for prior approval or systematic notification of general and special policy conditions, scales of premiums, forms and other printed documents which the insurance undertaking intends to use in its dealings with policyholders.

Additional detail on the contents of the application for authorisation are set out later in this memorandum.

## General Good and Other Irish Legal Requirements

An Irish Head Office Non-Life undertaking is required to comply with the following general good requirements:

- ▣ the provisions of the Consumer Information Act, 1978 (applicable to insurance contracts in the marketing and selling of insurance products);
- ▣ the provisions of the Road Traffic Act, 1961, and Regulations under the European Communities Act, 1972, relating to the insurance of mechanically propelled vehicles;
- ▣ the provisions of the Motor Insurance Advisory Board (Establishment) Order, 1984, relating to the statistical requirements of the Board;

- ▣ the provisions of the Sale of Goods and Supply of Services Act, 1980 (applicable to insurance contracts in the marketing and selling of insurance products);
- ▣ provision relating to the supervision and regulation of insurance intermediaries under the Investment Intermediaries Act, 1995 (as amended);
- ▣ the Consumer Credit Act and the Unfair Contract Terms legislation.

In addition, such companies are subject to general Irish and EU legislative provisions applicable to Irish Non-Life companies include the Companies Acts, data protection legislation, insurance mediation legislation, employment law, auditing and taxation legislation etc.

A memorandum of this nature is not designed to address all such issues, which can be dealt with separately as part of a compliance matrix, if required.

The Dillon Eustace Regulatory and Compliance team can provide a variety of compliance related matrices and templates if required.

## Legal Form for Head Office Non-Life Company

The normal Irish legal vehicle for a Non-Life operation is a private limited liability company established under the Companies Acts, 1963 – 2006. The process for establishment of such a company is quite straightforward – submission of the constitutive documentation (Memorandum and Articles of Association) and accompanying forms to the Companies Registration Office.

The timing of the formal incorporation is dependent on a number of factors, principally the need to have a legal vehicle to enter into contracts such as lease of premises, employment contracts, Letter of Intent/Heads of Agreement with outsourcers, etc.

This often requires formal incorporation to occur early in the process. Note that the company can normally be incorporated in a five business day timeframe but this is normally effected using a pro-forma set of constitutive documentation and without using the words “insurance” in the name or objects of the company. This is because the Companies Registration Office will normally not allow incorporation of a company with insurance objects/name until the Financial Regulator has indicated it has approved in principle the application for authorisation.

Accordingly, we normally incorporate a standard trading company at the outset and, once the approval in principle is advised, simply convert the company into an insurance company by amending its Memorandum and Articles of Association by shareholder resolution.




A copy of the proposed final version Memorandum and Articles of Association of the Irish company will need to be submitted to the Financial Regulator with the application for authorisation.

## Overview of Ongoing Supervisory Requirements

Set out below is a high level overview of the general supervision requirements applicable to Irish Non-Life companies.

### *The 1994 Regulations*

The 1994 Regulations (as amended) impose the following ongoing supervision related obligations:

- (a) every Irish Head Office insurance undertaking is required to have administrative and accounting procedures and internal control mechanisms which the Financial Regulator deem sound and adequate;
- (b) details of any proposed transaction of a material nature with a related company or related companies must be pre-notified to the Financial Regulator;
- (c) an Irish Head Office insurance undertaking is required to establish and maintain:
  -  technical reserves, including mathematical reserves in respect of all underwriting liabilities assumed by it; and
  -  an adequate solvency margin and guarantee fund in respect of its entire business. There are detailed rules regarding the calculation/determination of the solvency margin and guarantee fund set out in an Annex to the 1994 Regulations;
  -  assets in those Member States equivalent to the amount of its technical reserves relating to risks within those territories;
- (d) a register showing the assets representing the technical reserves and mathematical

reserves in respect of each class of insurance business must be kept by the insurance undertaking and it must furnish the Financial Regulator with a certificate of the value of those assets annually;

- (e) the Annual Accounts of the insurance company must be forwarded to the Financial Regulator annually.
- (f) It is at the Financial Regulator's discretion whether it allows an insurance undertaking to use explicit discounting, including by way of financial reinsurance. Where such discounting is permitted, the undertaking must disclose the total amount of provisions before discounting, the categories of claims which are discounted, the methods and rate of interest used.
- (g) Where an Irish Head Office insurance undertaking intends to cover motor risk in Ireland it shall become a member of and participate in the financing of the Motor Insurers' Bureau of Ireland and of the guarantee fund. It shall also become a party to the Declined Cases Agreement.

#### *Compliance Function*

Each life insurance undertaking is required to nominate an individual office holder as Compliance Officer. In certain cases the Financial Regulator may allow the Compliance Officer to simultaneously hold other offices within the company (e.g. Company Secretary/General Manager etc) but normally only on a temporary basis.

The functions of a Compliance Officer generally encompass the following duties:

- ▣ to obtain the approval of the Board and Managing Director/General Manager for a policy statement on compliance with the Insurance Acts and Regulations, the guidelines issued by the insurance supervisory authority and with other applicable legislation;
- ▣ to monitor the implementation of compliance and to report periodically to the Managing Director/General Manager and to the Board thereon;
- ▣ to review products, procedures and systems on a planned basis from the viewpoint of effective compliance and to advise as to steps necessary to ensure compliance;
- ▣ to review staff training processes so as to ensure appropriate compliance competencies.



The appointment of a Compliance Officer is designed to supplement, not supplant, the responsibility of the Board and of senior management to ensure compliance with legislation and applicable guidelines.

#### *Directors Compliance Certificate*

The Directors Compliance Certificate should be signed by all the Directors and accompany the Annual Returns of the Company. The Certificate covers issues such as general compliance with the regulatory regime, internal controls and use of derivatives etc. There are two versions: one for Life companies and one for Non-Life companies.

#### *Asset Management*

Each company must put in place an asset management policy to ensure that it adequately manages the investment-related risks to its solvency. This should include consideration of regulatory restraints, investment-related risks, technical provisions and solvency which insurers need to monitor, measure, report and control. The main risks would normally be market risk (adverse movements in, for example, stocks, bonds and exchange rates), credit risk (counterparty failure), liquidity risk (inability to unwind a position at or near market price), operational risk (system/internal control failure), and legal risk.

The Board of Directors should continually review the adequacy of its overall investment policy in the light of the insurance company's activities, and its overall risk tolerance, long-term risk-return requirements and solvency position. The results of this review should be communicated to senior management in a written investment mandate(s) setting out the operational policies and procedures for implementing the overall investment policy.

Adequate systems of internal control must be present to ensure that investment activities are properly supervised and that transactions have been entered into only in accordance with the insurer's approved policies and procedures. Internal control procedures should be documented and include regular and timely reporting of investment activity. The functions of the front and back offices should be separated and adequately resourced. The annual audit should include thorough reviews the effectiveness of the internal controls relevant to measuring, reporting and limiting risks, compliance with risk limits and compliance with the insurance company's regulatory obligations.

### *Risk Management of Derivatives*

Procedures governing the risk management of derivatives should also be put in place. Note that the Directors' Certificate which must be submitted with the Annual Returns includes statements concerning compliance in relation to the management of derivatives.

There are specific provisions found in Articles 2(9), 12(3) and 13(5) of Annex III of the 1994 Regulations which set out the conditions under which a derivative instrument may be used in connection with assets covering technical reserves as follows:

- ▣ it is traded on a regulated market or the counterparty is an approved credit institution;
- ▣ the underlying assets are admissible assets under the asset valuation rules;
- ▣ it contributes to a reduction of investment risks or facilitates efficient portfolio management; and,
- ▣ having regard to the nature and amount of assets which it holds and to its liabilities, the company will have, at the settlement date assets to fulfil its obligations under that instrument.

Derivatives must be used “in connection with” other admissible assets. This is of primary importance. For example, a purchased put option would not meet the condition unless the underlying stock were held and a purchased call option would do so only if used in connection with liquid assets. If the use of the derivative involved significant gearing or if a significant penalty could arise in some reasonably likely circumstances, then the condition would not be met.

The use of derivatives would be interpreted as:

- ▣ contributing to **efficient portfolio management**, where their use enabled a reasonable investment strategy to be effected more readily or more flexibly or more economically without any corresponding significant increase in investment risk; and,
- ▣ contributing to **a reduction of investment risks**, where their use reduced mismatching with a broadly positive or neutral effect on investment risk or reduced investment risk with a broadly positive or neutral effect on the matching position, due regard being had both to the credit risk and to the market risk components of overall investment risk.

There is a clear obligation on Non-Life companies to put in place detailed procedures governing the risk management of their derivatives transactions. More detail on this requirement can be made available if requested.

## Authorisation Timing

As a general guide, one should expect the authorisation process to take 4 to 6 months (closer to 6 months in fact).

Communication with the Financial Regulator in terms of initial plans and thereafter during the authorisation process is a key driver of timing and is the reason why we recommend an early introductory meeting with the Financial Regulator.

## Application for Authorisation

We have summarised below the information which will be sought by the Financial Regulator as part of an application for authorisation of a new Irish Head Office life company.

### *Details of the Applicant*

- (i) Full name and address of applicant.
- (ii) Contact details of a principal who will accept receipt of any correspondence from the Financial Regulator in respect of the application proposal (i.e. name, address, telephone, fax and e-mail details).
- (iii) Contact details of professional advisors in relation to the application proposal (if applicable), (i.e. name, address, telephone, fax and e-mail details).
- (iv) Confirmation that the Financial Regulator can liaise with the named professional advisors in respect of the licence proposal.
- (v) Details of the applicant's Company Secretary, Bankers, Legal Advisor and External Auditor.

### *Overview of Parent/Group*

Full name and address of Parent/Group.

- (i) Confirmation that the Board of the Parent has approved the submission of the application for the establishment of a Non-Life insurance company to the Financial Regulator (a certified copy of the board minute confirming that the Parent has consented to the establishment of the applicant should be submitted).
- (ii) Brief history/background of Parent/Group. This should include overview on the ownership and structure of parent/group (ideally the Financial Regulator prefers ownership to be vested in one or more financial institutions of standing e.g. subsidiary of an international insurance company/ group, etc).
- (iii) Confirmation that the parent/group has obtained the prior consent of its home country supervisory authority.
- (iv) Copy of organisation chart of the group outlining:
  - the legal structure of each of the entities concerned (i.e. whether the entities are incorporated, limited liability companies, unlimited, etc.);
  - the percentage holding of each shareholder; and
  - details as to where the applicant will be positioned in the group.
- (v) Provide audited annual accounts in respect of the parent/group.
- (vi) Provide information on industry ranking and size of parent on a local and global scale.
- (vii) Main group activities/lines of business. Details of main areas of global activity of parent/group and details of main areas of EU activity of parent/group should be given.
- (viii) Details of all existing group operations in Ireland including:
  - a description of the activities being carried out by each of the existing Irish operations;
  - details as to whether the operations are supervised by the Financial Regulator or any other regulatory authority; and

- provide internal audit reports on the Irish operation(s) in the previous 12 months. A summary of the internal audit reports will suffice where more than five internal audit reports have been carried out in the last year.
- (ix) Details of any proposed association of the applicant with:
- existing Irish operations; and
  - other group operations providing details of any proposed links between existing operations (including Irish operations) and the applicant.
- (x) Financial standing detail for parent/group i.e. summary for the last five years of:
- income and profitability;
  - balance sheet;
  - solvency position /capital adequacy.
- (xi) Debt ratings for parent/group/institutional shareholders (this should include details of any upgrades/downgrades in the last 3 years and reasons why).
- (xiii) Confirmation whether the Parent/Group has any other regulated entities in other jurisdictions.

#### *Regulatory Supervision*

- (i) Contact details for Parent/Group's Home State Regulator/Supervisor.
- (ii) Confirmation whether the Parent/Group's Home Regulator/Supervisor applies consolidated supervision to the Group.
- (iii) Confirmation (and details where relevant) whether the Parent/Group, within the last 5 years has:
- received regulatory approval for new entities in any other jurisdiction;

- applied to establish a regulated entity in any other jurisdiction, which was either withdrawn or refused;
- been subject to an investigation into allegations of fraud, misconduct or malpractice by any regulatory authority in any other jurisdiction;
- the parent/group or any its director/senior manager/executive, been censured or disciplined by any regulatory body further to its professional activities.

#### *Ownership Structure*

- (i) Details of all direct and indirect holders of shares or other interests in the applicant.
- (ii) Submit the most recent audited accounts for all direct and indirect qualifying shareholders, if applicable (i.e. those who hold 10% or more of the capital or of the voting rights).
- (iii) Arrange for Individual Questionnaires (standard form available on the Financial Regulator website) to be completed by all individual qualifying shareholders.
- (iv) Demonstrate that the applicant is independent of dominant interest if the applicant is owned or ultimately owned or controlled by one or a small number of individuals.
- (v) Demonstrate that there will be cohesion, continuity and consistency in the manner in which the business of the Non-Life insurance undertaking is directed by its owners.
- (vi) Briefly summarise the rationale of using a plc (if applicable) as opposed to a private company.

#### *Legal Structure*

- (i) Confirmation that the applicant will be registered in Ireland and subject to Irish law.
- (ii) Outline the full legal structure of the applicant, i.e. limited company, unlimited company, etc.
- (iii) The following should be included with the application:
  - certificate of incorporation

- draft copy of the Memorandum and Articles of Association of the Applicant, along with confirmation that the objects clause is limited to the business provided for in the application and in the Insurance directives.
- Latest audited accounts where the applicant has already been incorporated for more than 18 months.

*Objectives and Proposed Operations*

- (i) Outline the classes of Non-Life insurance business being applied for.
- (ii) Provide full details of the applicant's proposed insurance business and products.
- (iii) Confirm that the operations of the company will be limited to Non-Life insurance.
- (iv) The application should be specific as to the activities, which the applicant proposes to carry out if granted a licence. The proposal should also set out the countries in which business will be written and whether this will be on a freedom of services or establishment of a branch basis.
- (v) Where other Member States are involved, applicants should note that there may be further legal requirements to be fulfilled in each Member State. These are usually communicated by the relevant authorities in the countries by means of their 'General Good Requirements'.
- (vi) The following should also be included:
  - Rationale for seeking an insurance licence and establishing in Ireland.
  - Detailed information on the sources of funding for the applicant.
  - Overview of market research which has been undertaken regarding the establishment of a Non-Life insurance undertaking and its proposed activities, or any information supporting the applicants expectations in relation to its target market and the level of expected sales.
  - Overview of the applicant's distribution network for its products.
  - Likely sources of new business/future business activities for the applicant.

- The applicant's new product approval process.

#### *Organisation of the Applicant and Governance Arrangements*

- (i) Demonstrate how 'heart and mind' will be present in Ireland (The day-to-day operations must be conducted within the State.)
- (ii) Provide details of the proposed board of directors and their activities, specifically identifying:
  - Executive directors
  - Non executive directors
  - Independent directors (at least two are required)
  - Proposed frequency of board meetings and location; and
  - Potential conflicts of interest (if any, including details of how they will be addressed).
  - Provide Organisation chart of the applicant's corporate governance structure;
  - Details of all management committees and members [e.g., Audit Committee, Underwriting Committee, Risk and Compliance Committee, Remuneration Committee, Investment Committee, other relevant committees.]
- (iii) Details should include composition thereof, frequency of meetings, general responsibilities/terms of reference, reporting lines; and details of sub-committees (if applicable).
- (iv) Provide details of organisation structure/management team (to include the Compliance Officer), i.e. biographies, job titles, responsibilities, reporting lines, etc.
- (v) Provide operational process map for the entire company including functions outsourced to service providers.
- (vi) **Note: 'Individual Questionnaire' in respect of each of the applicant's board of directors/senior management and general manager with original signatures of the parties in question must be completed and returned with the application.**
- (vii) Provide outline of projected staffing requirements over the first 3 years of the applicant's operations (broken down on a yearly basis).



### *Risk Oversight*

Details must be provided in respect of the following key functions:

- Audit.
- Compliance
- Risk Management
- Underwriting
- Reinsurance
- Financial Control
- Investment Management
- Internal Controls/ Policies
- Conflicts of Interest
- Outsourcing

### *Capital, Solvency and Financial Projections (3 years projections required)*

**Capital:** The applicant must possess a Minimum Guarantee Fund, which is currently Euro 3.2 million.

**Share Capital:** The minimum paid up share capital must be not less than Euro 635,000.

**Financial Projections:** The financial estimates should be submitted in the format outlined in the Financial Regulator's Guidance Note on the completion of Non-Life Annual Returns and the currency used should be Euro. Projected figures are required for 3 years on a realistic, pessimistic and optimistic basis.

### *Policy and Claims Administration*

Provide details of the remit and staffing of the policy admin function including the reporting lines of the function, the key reports utilised and the frequency of reporting.

### *Policy Documents*

Provide details of Policy Documents and Marketing Literature and other information provided to policyholders e.g. Key Features Information

### *Sales and Distribution*

Provide details of all distribution channels and projected sales for each product and regulatory status of distributors (who are subject to authorisation/qualifications e.g. Minimum Competency Requirements or equivalent in other Member States)

Confirm process whereby applications are accepted and recorded and cash handling procedures and controls over same.

Outline procedures to ensure adherence to the Financial Regulator's Consumer Code or equivalent consumer related rules in other Member States.

Outline the personnel and procedures in place to ensure adherence to the Financial Regulator's Minimum Competency Requirements.

### *IT/ Business Continuity Plan*

Provide details of:

- all IT systems to be used in relation to front and back office operations;
- the main IT service providers and back up IT service providers;
- the business continuity plan (confirming the business continuity arrangements in place in an alternative location in the State).

### *Other*

Confirm the location of the applicant's:

- initial infrastructure plans; and
- future/permanent plans.

Confirm the Financial Regulator will be notified as soon as practicable of any material changes to the current business plan.

## Dillon Eustace Insurance Team

Dillon Eustace acts for a number of international and domestic Non-Life companies including Axa Insurance, British Marine Mutual Insurance, BRIT Insurance, Chubb Insurance, Ecclesiastical Insurance, FBD Insurance plc, Fortis Insurance, Independent Insurance, Liberty Mutual Insurance Europe, St. Paul's International Insurance, Travellers Insurance and many others.

Legal services provided by Dillon Eustace to these companies include advices on:

- establishment and authorisation;
- cross-border passporting and home state v. host state issues;
- capitalisation and distribution issues;
- corporate re-organisations/due diligence;
- corporate governance;
- compliance (compliance plans, procedures, reports, data protection, anti-money laundering);
- policy documentation advices;
- product related advices;
- contractual negotiations with TPAs and asset managers, other counterparties;
- insurance mediation and distribution;
- asset management;
- ISDA documentation/derivatives generally;
- employment contracts;
- property related matter (leasing of premises, residential accommodation for staff);
- full service company secretarial services.

 CONTACT US

## Our Offices

**Dublin**

33 Sir John Rogerson's Quay,  
Dublin 2,  
Ireland.  
Tel: +353 1 667 0022  
Fax.: +353 1 667 0042

**Cork**

8 Webworks Cork,  
Eglinton Street,  
Cork, Ireland.  
Tel: +353 21 425 0630  
Fax: +353 21 425 0632

**Boston**

26th Floor,  
225 Franklin Street,  
Boston, MA 02110,  
United States of America.  
Tel: +1 617 217 2866  
Fax: +1 617 217 2566

**New York**

245 Park Avenue  
39<sup>th</sup> Floor  
New York, NY 10167  
United States  
Tel: +1 212 792 4166  
Fax: +1 212 792 4167

**Tokyo**

12th Floor,  
Yurakucho Itocia Building  
2-7-1 Yurakucho, Chiyoda-ku  
Tokyo 100-0006, Japan  
Tel: +813 6860 4885  
Fax: +813 6860 4501

e-mail: [enquiries@dilloneustace.ie](mailto:enquiries@dilloneustace.ie)

website: [www.dilloneustace.ie](http://www.dilloneustace.ie)

## Contact Points

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*For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.*

**Andrew Bates**

**e-mail: [andrew.bates@dilloneustace.ie](mailto:andrew.bates@dilloneustace.ie)**  
**Tel : +353 1 667 0022**  
**Fax: + 353 1 667 0042**

**Tom Carney**

**e-mail: [tom.carney@dilloneustace.ie](mailto:tom.carney@dilloneustace.ie)**  
**Tel : +353 1 667 0022**  
**Fax: + 353 1 667 0042**

**Breeda Cunningham**

**e-mail: [breeda.cunningham@dilloneustace.ie](mailto:breeda.cunningham@dilloneustace.ie)**  
**Tel : +353 1 667 0022**  
**Fax: + 353 1 667 0042**

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DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.  
[www.dilloneustace.ie](http://www.dilloneustace.ie)

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