

# Financial Services: Pre and Post Brexit Formulating a Unified Response



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## Foreword by John McGrane

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Director General - British Irish Chamber of Commerce

On behalf of the British Irish Chamber of Commerce and our event partner McCann FitzGerald, it gives me great pleasure to present to you this report of our seminar “Financial Services: Pre and Post Brexit – Formulating a Unified Response”. Since the referendum result in the UK last June, the Chamber has committed itself to working with our members and key stakeholders to address areas of mutual concern and potential opportunity. This work is being achieved by bringing together leading cross-sectoral experts to develop policy and formulate an advocacy position that influences and shapes the Brexit negotiation process in Westminster, Dáil Éireann and the relevant EU Institutions. This work is of particular importance to the Financial and Professional Services sector, as it is a sector that presents real opportunities for Ireland in a post-Brexit environment.

The objective of this seminar was to examine in both a pre and post-Brexit context issues arising that affect the financial and professional services industry, the nature of post-Brexit access and relationships that UK re-insurers could continue to have with the EU and to assess what opportunities are available for the sector.

I am delighted that one of the key themes that emerged from the day’s proceedings was the need for a joined up, unified response to Brexit, a message that we will continue to convey to the Government. The high level contributions made on the day and collated within this report will be delivered to the Minister for Financial Services, eGovernment and Public Procurement, Eoghan Murphy TD, as part of our ongoing constructive workings with the Minister and policymakers.

Finally, I would like to express my thanks to our partner on this project McCann FitzGerald, in particular John Cronin, and to our various panel members who gave of their expertise and time- Eddie Cullen, Michael Culligan, Denis Curran, Brian Daly, Susan Dargan, Valarie Daunt, Joe Duffy, John Fitzgerald, Patrick Manley, Darragh Murphy, Brendan Roche and Deirdre Somers.

## The Seminar Chairman, John Cronin

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Partner, Head of Brexit Group - McCann FitzGerald

The Chair for the Seminar was McCann FitzGerald Partner and Head of their Brexit Group, John Cronin.

John has many years' experience in banking and corporate matters on a very broad range of transactions and projects. At McCann FitzGerald, he provides legal and strategic advice to many corporate and financial institutions and State agencies.

John was the firm's Chairman from May 2008 to April 2015. He trained and qualified with McCann FitzGerald. After a stint with a UK magic circle firm, he became a partner in the firm's Finance Group in 1991 and, from 1991 until August 2002, he led their London office.

On the topic of Brexit, he moderated an important, and probably the first, discussion with leading senior lawyers in the City of London in January 2016. Also in London in early 2016 and before the referendum, together with BICC, McCann FitzGerald hosted An Taoiseach, Enda Kenny T.D., who spoke to the risks of Brexit to Ireland. At an early stage, John had advised that Brexit was the single most significant risk for the Irish economy and Irish business and of the likely legal, regulatory, economic and political uncertainty that would follow a vote by the UK to leave the EU.

Following the referendum, John leads the firm's Brexit Group – a cross-sector group that advises and represents Irish and international business clients on the legal, regulatory and tax implications of Brexit. The Group has built upon its early work and has made a number of presentations to clients and representative bodies both in Ireland and abroad.

The firm has published a 'Brexit – A legal perspective' now in its third issue and a 'Brexit Tracker' a second issue of which has just been published – it aims to keep clients up-to-date in relation to the legal and related political/economic developments in respect of Brexit. As the only Irish law firm with working offices in Brussels, London and New York, it provides an informed insight of views at the heart of Europe, the City of London and New York.

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## Objective

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On 20 October 2016 McCann FitzGerald co-hosted an event, with the British Irish Chamber of Commerce, entitled “Financial Services: Pre and Post Brexit – Formulating a Unified Response”. The event took the form of three separate panel discussions: the first, was an overview of Brexit and financial services generally, the second addressed the insurance industry (somewhat forgotten in many of the discussions to date) and, the third, sought the views of market participants in the banking and funds sectors.

As is clear from the event's title, its key objective was to consider how Ireland should formulate a unified response to Brexit, which was broadly agreed to be a defining event for Ireland, presenting both clear risks and clear opportunities. While much of the focus of the discussions was on the need to develop a unified response for financial service providers (FSPs) themselves, it was clear from the discussions that Ireland as a jurisdiction will also need to consider how to respond to a number of related challenges. These include defending Ireland's interests in the context of the EU-UK Brexit negotiations, filling the vacuum that the UK's departure will create within the EU, and responding to domestic Brexit related challenges. While the panel discussions had different areas of focus, a number of common themes emerged in each of the areas.

Overall, it was agreed that it is vital that Ireland and Irish business identifies and seizes the appropriate opportunities for financial services at this critical time and does so employing a coherent and co-ordinated message (facilitated by Government).

Panel 1 – Overview: Denis Curran – IDA Ireland, Valarie Daunt – Deloitte, John FitzGerald – TCD and Deirdre Somers – Irish Stock Exchange

Panel 2 – Insurance: Michael Culligan – Milliman, Patrick Manley – Zurich, Darragh Murphy- McCann FitzGerald and Brendan Roche – Marsh

Panel 3 – Market Participants: Eddie Cullen – Ulster Bank Ireland, Brian Daly – KPMG, Susan Dargan – State Street and Joe Duffy – BNY Mellon

Each Panel was moderated by John Cronin, Partner and Head of Brexit Group at McCann FitzGerald

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## Formulating a unified response

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Brexit presents clear challenges for FSPs generally with the impact felt most severely by UK-centred FSPs, at least in the short term. Many UK FSPs are concerned about potentially losing their EU passporting rights post-Brexit. Consequently, they are considering options that will permit them to continue to passport throughout the EU post-Brexit, including setting up a subsidiary in a continuing EU member state. This represents an opportunity for Ireland to attract further investment to its international financial services sector.

There was widespread agreement that although IDA Ireland is already playing a key role in promoting Ireland as a financial services destination, others, including industry groups and individual firms (including law and other professional services firms) also have a part to play, and that all participants should have a co-ordinated, unified and cohesive message explaining the advantages of Ireland as a financial services location. A sense that market participants should be brought together and kept in the information loop by Government entities was felt to be appropriate – it would also assist the coherency and consistency of the message. Discussions also focused on the content of the message, as well as delivery and timing issues.



## The Message

There was a broad consensus regarding the content of the unified message. Specifically, Ireland's advantages as a financial services location include the facts that Ireland

- is a long-standing, deeply committed EU member state – NB: this point needs to be given greater amplification by the Government both in the EU and elsewhere- and is also in the eurozone;
- is a common-law, English speaking country, with one of the most stable system of government in the EU;
- has a well-educated, flexible, and diverse work force and is ranked as a top business destination; and
- has significant amounts of commercial office space coming on stream over the coming months, capable of accommodating in excess of 20,000 persons.



Ireland also has a well-established financial services sector, comprising some 450 internationally and Irish-owned cross border financial services businesses. The sector has a truly international focus, derived from, and reflected in, the fact that it has long acted as a mid-point linking the US and European financial services markets. Ireland is home to an array of professional services firms with in-depth financial services experience, including audit and legal firms.

The regulator of the financial services sector, the Central Bank of Ireland (“CBI”) is a tried and tested regulator, which is deeply embedded in the EU's supervisory and regulatory system. This is reflected in its rules-based, cautious, prudent and predictable approach to regulation. Given the level of cross-border activity originating from Ireland, the CBI also has considerable experience in cross-border regulation and supervision and is among the most experienced regulators in Europe in this regard. This experience is likely to be of vital significance for any firm looking for a home from which to exercise passporting rights.

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## Delivering the Message

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The UK financial services market is unmatched in terms of its strength and depth. Brexit is likely to fragment this market but not all of those fragments will be a right fit for Ireland, which means therefore that we need to determine what sort of business activity and firms Ireland should seek to attract. First and foremost, Ireland should focus on delivering its message to business activities/firms that are low risk and offer employment. Conversely, it should also seek to discourage high risk business activities/firms that do not offer any or much benefit to the Irish economy from locating here.

Moreover, crucially, in the financial services sector, Ireland needs to prioritise its message delivery in a way which reflects its own post-Brexit objectives. Brexit offers Ireland a unique opportunity to build-on its current financial services offering including by attracting the types of FSPs which are not currently well-represented here, such as financial services infrastructure providers, including trading platforms, clearing houses, central securities depositaries, credit rating agencies and benchmark administrators. While initially these FSPs may not offer significant employment opportunities, their presence in Ireland would, in all likelihood, lead to the development of an entire ecosystem deeply embedded in the Irish financial services sector and help build an interconnected financial services system. This would in turn attract further investment to the financial services sector.

Delivering Ireland's message in a way that is attractive to financial services infrastructure providers need not be to the exclusion of communicating the advantages of Ireland as an investment location to key FSPs. However, the message may need to be delivered in different ways depending on its ultimate recipient



## Timing and delivery channels

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In terms of timing, FSPs are likely to formulate their responses to Brexit over the next three to twelve months. Consequently, Ireland's message regarding its advantages as an investment location will need to be formulated and communicated to FSPs much sooner rather than later – some feel that the timing is now critical. This is particularly the case as FSPs tend to work in clusters and once one FSP decides to relocate, or co-locate, to a particular place, others are likely to follow.

While IDA Ireland is marketing Ireland as an investment location, industry bodies and individual firms must also act as delivery channels. In addition, and most importantly, efforts should be made to encourage firms that have moved to Ireland in the past to share their experiences with UK FSPs. Senior individuals who relocated to Ireland with their families for work reasons could also be asked to share their stories and how they rate their business and personal quality of life since moving.

### Message for Irish-based UK citizens

UK FSPs are not the only ones affected by Brexit. For example, there are over 100,000 UK citizens currently in Ireland and Brexit has created some uncertainty over whether, and under what conditions, they will be permitted to remain here. While there is no expectation that the Irish government would wish to withdraw or even restrict the right of UK nationals to live and work in Ireland post-Brexit, it was broadly agreed that it would be helpful for the Government to clarify its position on this issue sooner rather than later.



## Negotiating Brexit

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The terms of the UK's exit from the EU will be negotiated by the Commission, led by Michel Barnier, on the one hand, and the UK on the other. However, the member states (through the European Council) will set the strategic direction and agree the detailed negotiating mandate of the Commission - and will also very much ride shotgun. When negotiating, the Commission/Council will defend the EU's interests rather than those of any individual member state. Specifically, while the Commission will listen to representations made by individual member states, and may take them into account, it will not necessarily share or promote the priorities of any one member state.

Consequently, although Brexit has particular implications for Ireland, the Government will need to focus on delivering a few key messages to the EU, prioritising those issues that it would most like reflected in a Brexit agreement. As financial services is not currently ranked as high priority for the Government, the financial services industry will need to be equally clear on its Brexit priorities when making its representations to Government.



# Filling the Brexit Vacuum

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The UK has an unparalleled depth and expertise in the financial services sector and EU financial services have benefitted significantly from this, including Ireland. There are already signs that the UK's influence is starting to diminish and, post-Brexit, it will be significantly scaled-back, if not gone completely. This presents a key challenge for Ireland which will need to play a much greater role at the EU's negotiating tables than it has in the past. This will not only require more resources but significantly more pro-active involvement on Ireland's part (informed by local financial services participants) if it is to help mitigate the loss of the UK's strong, well-informed and pragmatic negotiating presence. In particular, while traditionally the interests of Ireland's financial services sector have been aligned with those of the UK, over the next months and years, Ireland will need to find new friends and diplomatic partners if it wishes to ensure that the EU's future financial services policy remains truly European.

Brexit will also have significant implications for the EU's budgets, and key financial services institutions, including the European Supervisory Authorities ("ESAs") may face budget cuts. The ESAs have played a central and very positive role in developing the EU's regulatory framework for financial services and any curtailment of their activities could have adverse consequences for that framework. Ireland will need to ensure that the ESAs' ability to carry out their respective mandates is not undermined by insufficient resources. On a related point, currently, the UK plays an important role in developing the ESAs' policies and Ireland (again by taking soundings from local players) will need to become more involved in the development of those policies in the future, if it wishes to ensure that its views are reflected in secondary legislation and guidelines.

## Domestic Brexit challenges

Irish FSPs face exciting but challenging times. Generally, Brexit is likely to impact negatively on growth in financial services as resources which would otherwise have been invested in developing new products will instead be diverted to dealing with Brexit. In addition, the presence of more financial services firms in Ireland will lead to an increasingly competitive environment. The possibility also exists that FSPs that remain based in the UK will be subject to a more flexible regulatory environment post-Brexit. As against this, however, the advantages associated with ensuring that the UK's regulatory framework remains equivalent to that of the EU, makes any substantive divergences between UK and EU law unlikely at least in the short to medium term.

While Ireland is fundamentally a highly attractive destination for financial services activities and firms, a diverse range of problems still need to be resolved. These include infrastructure issues, such as the availability of residential housing; access to schools, including international schools; developing and attracting financial services talent; the income and capital gains taxation regimes; and ensuring the CBI is adequately resourced, to name a few. Post-Brexit challenges for Ireland merit a co-ordinated response and consideration should be given to designating a central co-ordinator for Brexit.

## Insurance- Some Specific Points

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There is a large opportunity for Ireland right now to attract some of the 220+ insurance entities operating in London/UK having passport rights. We have the specialisms and experience, plus the political stability, which should enable us to attract a good proportion of such entities. After London, Dublin is close to being the no.2 player in the European insurance markets at present.

The CBI is part of what should make Ireland attractive to new entrants. There are two dimensions to the CBI's role: its risk appetite and its physical capacity. In terms of risk appetite, the CBI is clear that it wants substance, it wants to understand the business model and how risks are managed. This is as it should be. On its physical capacity, its staffing levels may need to be strengthened.

In the 1990s, IDA Ireland and industry used a joint approach to entice Italian insurers to locate here. Once one big company decided to move, five/six followed suit. The time is now ripe for a similar approach. Industry should work together to send a common message. London will move slowly but steadily and our initial focus should be on incubation services and building-up from there. Many firms are likely to co-locate. To achieve a successful level of new business, the sector should work together - notwithstanding the normal (and natural) competitive instincts and strains.

In relation to selling business into the UK post-Brexit, the industry needs certainty in relation to the rules/regulations that the UK will adopt. This, clearly, could take some time.

### **A few Tax points**

Tax is perceived negatively at the moment and cases such as Apple are being used to feed the perception of Ireland as a tax haven.

Ireland needs to decide whether we are trying to be a low cost or high value option location. Our option is really the high value one, as Eastern Europe will be the low cost destination. Ireland will need more attractive income and capital tax rates. We have the most 'progressive' tax system in Europe and the second most 'progressive' system in the world. We need to update our overall tax framework across all areas.

In that context it would be sensible to not only review the corporate tax regime as has been proposed by government, but also to have a policy debate on what type of environment, including income and capital tax regime, will be appropriate for Ireland so that we can successfully attract and retain the range of skills to allow the economy to prosper in the world we are now facing into.

In this regard the global corporate tax rules are changing so that there will be much stronger correlation between the corporate tax revenues collected by a country and the location of the people who add value to the business.



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## BACKGROUND

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The British Irish Chamber of Commerce was founded in 2011 ahead of the historic visit of HM Queen Elizabeth II to Ireland and the subsequent State visit of President Michael D. Higgins to Britain. The objective of the Chamber is to champion the €60 billion annual trade between the UK and Ireland which directly sustains over 400,000 jobs. We are a bilateral Chamber, engaging members from across two islands and five legislative bodies in meaningful dialogue with a common purpose.

Excellent networking events help our members to find new suppliers and markets. Sector driven policy committees enable firms to jointly examine opportunities and threats and to think about collaborative growth in Europe and beyond.

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# Member Benefits

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When you join the British Irish Chamber of Commerce you can opt for a range of benefits from a broad menu. Talk to us to create a bespoke package that's perfect for your needs.

## Choose from:

- A seat on the Council of the British Irish Chamber of Commerce with rights to attend meetings of both Dublin and London Chapters
- Access to all areas of Chamber activity, including membership of Sectoral Working Groups (currently Energy, Food & Agribusiness, SME, ICT, Finance & Professional Services, Tourism, Brexit/International, Life Sciences, Infrastructure) with full voting rights on policy direction
- Opportunity to Chair or observe sectoral working groups
- Invitations to C Suite and Invitation Only Events including Invited Leaders Series and those with cabinet ministers, business leaders, policy makers and ambassadors
- Invitations to events at Westminster and Dáil Éireann
- Priority booking for fast selling high profile events including President's Gala Dinner, Annual Conference Dinner and British Irish Race Day
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- Opportunities to partake in Trade Missions
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