

# **Brexit: opportunities and challenges for bar associations and law firms**

A view from Ireland

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## **Introductory comments**

We are living in unprecedented times. The decision of the UK to leave the European Union represents the latest, and arguably not the last example of how quickly events unfold.

Public discourse on taking such momentous decisions increasingly tend to be terse, personal and short-sighted, while the fall-out and its implications can be violently disruptive, grave and costly.

In the context we are speaking today, the challenge for bar associations (and other civil society, political and interest groups) and businesses – including law firms, is to distinguish between what is certain, and uncertain. Between what we can reasonably influence, and what is beyond our reach.

Only then, and even then with only imperfect confidence, can we identify what the challenges and opportunities are. Of course, all this must be conducted against the backdrop of shifting sands, changing positions and at times, conflicting interests.

I do not intend to summarise the procedural steps or framework that is likely to play out over the remainder of the two year window. This ground is well travelled. We would need be clairvoyant or naïve to believe that what is to occur on paper, will in fact occur in reality. Over the coming years, the known unknowns as well as the unknown unknowns are likely to reshape and mould the slickest of Whitehall, Dublin or Brussels' policy papers and guidelines.

Dislocating the legal and operational implications of the Brexit vote from the political and economic shadow it casts, is a difficult exercise, and only underlines the importance of such an event as this, and the work of the IBA and its constituent bar associations.

## **Economic context of Brexit – the UK-Irish relationship**

A few statistics underline the connectedness between the two islands, quite apart from our common legal system. According to the British Irish Chamber of Commerce<sup>[1]</sup>:

- Trade between the Republic and the UK stands at over €60 billion per annum and represents 400,000 direct jobs.
- UK/Ireland trade could decline by as much as 20% as a consequence of Brexit, with the loss of as many as 40,000 jobs and at least a €9bn loss to the Irish economy over the coming years.
- While GDP growth for 2018 is projected to be 1.7% in the UK, Ireland is projected to grow by 3.6%<sup>[2]</sup>. Some analysts anticipate a 5% GDP growth<sup>[3]</sup>, driven by the

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<sup>[1]</sup> British Irish Chamber of Commerce submission to the Oireachtas Seanad Committee on Withdrawal of the UK from the EU (May 2017)

<sup>[2]</sup> Bank of England, and European Commission forecasts, quoted in Irish Times, 12 May 2017

<sup>[3]</sup> Davy's , 8 May 2017

construction sector, consumer spending and falling unemployment rates. The tenuous and still tentative recovery is exposed to negative Brexit shocks.

Unsurprisingly then, the Central Bank of Ireland has concluded that in the short term and long term, the impact of Brexit will be negative. Add to the mix currency fluctuations, interest rate changes and inflationary pressure and the outlook becomes more grave. As the OECD have pointed out, Ireland remains one of the most exposed economies to the UK withdrawal in terms of trade and investment.

A challenging economic performance equals a challenging legal sector performance.

## **The implications, challenges and opportunities for law firms**

The *Law Society's Managing Partner Survey 2017* shows leaders of Irish law firms are nervous and uncertain about how Brexit will affect their firm. The major threats identified were:

- an adverse effect on the economy resulting in reduced fee income
- the entry of UK/Northern Ireland firms to the Irish market.

Few respondents - partly because the potential benefits will be open to only the largest firms - identified the positives, including:

- potential strategic alliances with UK firms, and
- part relocation of the financial services sector to Dublin.

In figures, 68% of respondents perceived Brexit, at this stage, as a threat, 29% foresaw little or no impact, while only 5% saw it as an opportunity for their practice.

A further *Smith and Williamson Survey of Law Firms* found that Brexit will have an increasingly negative impact on new client acquisition as we move from a short term to longer term view.

58% of those surveyed did not believe their existing client base would be impacted by Brexit. This of course is dependent on client profiles, their sector, where they operate on any particular supply chain and where their clients' market is based.

## **Possible impacts**

While Brexit-related advisory work has risen, the longer-term impacts are difficult to articulate at this stage as they are dependent on the scenario that ultimately emerges.

Possible issues or impacts include:

### 1. Competition from firms entering from UK/US to establish an EU foothold:

While this may occur, its likelihood of occurring *because* of Brexit is low; as many global firms already have operations either in Brussels, Luxembourg or other capitals. However, the strategic advantage of Ireland as one of the main common law jurisdictions within the European Union cannot be underestimated.

We do know that Pinsent Masons LLP and DLA Piper LLP two large global firms with offices around the world, are interested in coming to Dublin to open up reasonably

substantial branch offices. Although Brexit wasn't their original catalyst, it is the driving force behind their current interest in doing so this year, if possible. If others have similar plans, they are keeping their cards close to their chest.

## 2. Talent:

As the Irish economy recovers, so too does the employment prospects of legal practitioners.

- Currently about 400 solicitors qualify each year, by comparison to over 650 annually in 2007-2008. The practising solicitor profession in Ireland is made up of 10,000 solicitors and is consolidating somewhat. The development and attractiveness of in-house and public sector roles continue to lure practitioners away from private practice.
- Consequently demand for talent is high and will be higher with the new entrants (Pinsent Masons LLP and DLA Piper LLP) seeking to employ within the Irish market.
- In the context of Brexit, with new entrants or the expansion of existing firms, we anticipate the competition for associate level talent is likely to increase. The higher price for talent is likely to impact on smaller firms the most, and could 'nudge' greater consolidation at that level.

## 3. Competence, training and firm strategies:

Arguably more a post-Brexit impact, Irish law firms may need to develop a competence on International trade law, cross border regulation, and a knowledge of the post-Brexit UK regime. As clients continue to trade to and through the UK, or establish families across these islands, firms that do not master these areas will be at a competitive disadvantage.

- In relation to this point I would also include the need for firms to continue developing relevant and valuable relationships with UK and international law firms so that clients can benefit from a seamless and comprehensive legal service, across borders.
- In short: firms will have to upskill and think smart in relation to Brexit affairs.

## 4. Language, Information and Data Management:

There are plenty of positives to be drawn from Brexit. As the only legal jurisdiction that speaks English and also the main common law hub in the EU, this will make us attractive to the US particularly, but that doesn't mean we don't need to improve our own language skills. It would naïve and complacent to think that the English language will have the same ubiquity it had pre-Brexit.

Information and data management are among the most important features of most legal systems around the world and as the only English speaking country remaining within the EU, they are two obvious areas upon which to focus.

The UK Law Society's Joint Brussels Office comprehensive paper, *'The priorities of the legal sector in the UK's negotiating objectives for withdrawal from the EU'*<sup>[4]</sup> highlights a range of systemic issues impacted upon by Brexit. The document states that:

*Solicitors are particularly concerned that awareness should be raised about the loss of reciprocity, and the consequences of an increased divergence between the UK and EU regimes. Analysis of a possible 'fall back' into other international regimes which may go on to dictate the EU-UK relationship is particularly important.*

#### 5. Qualification as an Irish Lawyer:

As things stand, more than 1,100 lawyers from the UK have joined the Roll of Irish solicitors. However, less than a quarter have taken out practising certificates. As Brexit divorce draws closer, it is likely we will see more joining the Roll and a considerably higher percentage taking out practising certificates in order to guard against possible regulatory change. Although the current regime remains very friendly to our UK counterparts and there are no plans to change it, the reciprocity regime is held together based on EU law and this fact, together with the impending UK Single Qualification Exam, may move the goal posts in the future.

It is self-evident that all legal disciplines bar none, will be affected. In particular commercial and private client litigation, with any cross border dimension, will be impacted upon as litigants consider the enforceability of judgments outside the EU. Consequently the location of dispute resolution, alternative forms of settlement and the possibility of specialist fora is already playing a part in contract design and negotiations.

How firms respond to these challenges will determine their place within the Irish legal market and their growth potential.

### **The implications, challenges and opportunities for Bar Associations.**

As matters stand, we believe that the Law Society of Ireland must consider the following three actions in the short to medium term:

1. **Improve our collaboration with the State's trade and enterprise agencies** by reiterating the advantages and clarity of dispute resolution norms that exist within the common law framework.
2. **Continue to educate and inform policy makers** as the negotiation process continues on the likely impact on clients in sensitive areas such as family law, litigation, data protection, criminal justice and so forth, as well as public law issues.
3. **Assess the future needs of the legal sector and recalibrate our training approach** where necessary. For the Law Society of Ireland at least, we have as our mission, to mould a profession that is *'prepared for the future'*. Being global in outlook must increasingly be our goal; to match the profile of our client base and the migration possibilities of legal talent. To that end; languages, technology and soft skills form a vital part of our vision for legal training and continuing education. As noted, developing a competence in customs law and international law must be a priority as we cannot ignore a 'worst case scenario'.

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<sup>[4]</sup> UK Law Societies Joint Brussels Office, March 2017, The priorities of the legal sector in the UK's negotiating objectives for the withdrawal from the EU, Brussels.

Undoubtedly our members and the wider public will require direction and clarification on the legal and practice implications of 'the conscious uncoupling'. Our communications and policy function will be responding and anticipating those needs.

## **Closing comments**

At a European and International Bar level, the loss of the UK to the European Union will be felt acutely. The United Kingdom's contribution over the years has enriched the IBAs output, and there is no reason why it should not continue into the future.

With a common language and a common legal heritage, Ireland counts the UK as an important and close friend. The relationship between the UK and Ireland is unique amongst EU member states, not least because our citizens – our young people, families, students, our business interests – are so inextricably connected. Because of that, and our close working relationship, we have found ourselves on the same side on many policy debates.

The International Bar Association must be commended for the range of stimulating and engaging Brexit related content and actions to date.

It is my view that, as the representative body for bar associations across the globe, the IBA should work constructively to impress upon the negotiating teams of the UK, the Commission, and Dublin the strategic, economic and social importance of accommodating a common law legal system within the future UK-EU relationship.

It may well be that we will be the UK's only EU friend in the next two years but we must not be swayed by the potential animosity of some other EU countries. Everyone will have their own boat to paddle but the Irish Law Society needs to guide its ship into less choppy waters with the UK in its slipstream.