EVERSHEDS

A closer look at BREXIT
The case for Ireland

Contents

Introduction

Post the BREXIT vote, the future is now uncertain for many businesses based in the UK. We have seen continuous change and dramatic developments since the vote to leave the EU was announced.

Reassuringly, Ireland is firmly inside the EU and will remain so. This makes the UK's English speaking neighbour an excellent proposition for any business looking for the certainty and stability that continued EU membership brings.

Ireland's capital, Dublin already hosts a long established International Financial Services Centre (IFSC) and the vibrant Silicon Docks quarter is home to many of the world's leading digital technology companies.

If you are considering relocating your business to Ireland, our dedicated BREXIT Unit, made up of lawyers with expertise across all relevant sectors, including HR, Corporate, Commercial, Real Estate, Banking and Financial Services is well placed to advise you.

The criteria applied by decision makers when considering relocating to Ireland is different for every business. Eversheds Ireland can help you identify the many opportunities relocating a business to Ireland can bring, and can assist you in successfully implementing your relocation plans. This timely guide has been put together as a reference, highlighting some of the key points to consider in making the decision to relocate to Ireland.

The Eversheds BREXIT team has multi-disciplinary expertise, keeping you ahead of the twists and turns as BREXIT develops. We are here to advise you on the impact for your business and how to protect your interests.

At a glance

1. Uncertainties ahead for the UK, while Ireland remains firmly within the EU with access to the common market and all the associated benefits of EU membership.
2. For businesses relocating from the UK, Ireland is a familiar landscape in terms of business culture, language, laws and the regulatory environment.
3. With 40% of the population under 29 years old, Ireland has a young, well-educated English-speaking workforce.
4. Businesses relocating to Ireland will continue to benefit from tax exemptions and few trade barriers when trading with EU member states.
5. Financial services firms located in Ireland will have the certainty they need around continued access to the common market and use of the EU's passporting regime.
6. Businesses subject to data protection rules that relocate to Ireland will have the benefit of the new General Data Protection Regulation.
7. Relocating now means that prime office space is available at an average rent considerably lower than London.

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Why Ireland?

Based on our experience, the following factors tend to be key considerations for businesses looking at Ireland as a location:

- a 12.5% corporate tax rate for domestic and foreign firms
- the quality, flexibility and skills of an English-speaking work force
- a cooperative labour relations system
- political stability
- pro-business government policies
- a transparent judicial system
- strong intellectual property protection
- the pulling power of existing companies operating successfully.

Ireland, with a population of approx. 4.76 million people, is an open economy, and is regarded as one of the best places in the world to do business. Ranked 4th in the Forbes Best Countries for Business, it holds the highest ranking for an English speaking EU member state.

40% of the population is under 29 years old, and it has an education system that ranks in the Top 10 in the world. Ireland also has a pool of skilled management talent: in the IMD World Competitiveness Key rankings for 2015, Ireland ranked No.1 for the availability of senior management.

While economic activity dropped sharply during the financial crisis, the Irish economy has recovered and The European Commission reported recently that the Irish economy was the fastest growing economy in the Euro zone for the second year in a row, and this growth is expected to continue in 2016 and 2017.

The country remains a preferred location for young Europeans. According to the 'Mercer 2016 Cost of City Rankings', Dublin, ranked No.47, making it less expensive than other major European cities like London, Paris, Copenhagen and Zurich.

Comparable legal system

Ireland has a very similar legal system to the UK. Many of the legal concepts relevant to businesses in the UK, relating, for example, to company law, contract law, employment law and regulation, also apply in Ireland. Ireland however, will continue to be subject to EU legislation, whilst, post the BREXIT vote, the UK is likely to be in a state of change for a number of years to come. Something that is likely to have a particular impact on international trade.

Grants, incentives & support services

Various grants, incentives and support services are available to businesses, covering training, capital & employment and research, development and innovation. These include a 25% tax credit for companies engaging in research & development.

IDA Ireland is Ireland's Foreign Direct Investment promotion agency and has assisted various companies, including Intel, Dell, Google, Zurich, Boston Scientific, Microsoft, Accenture and IBM locating in Ireland.

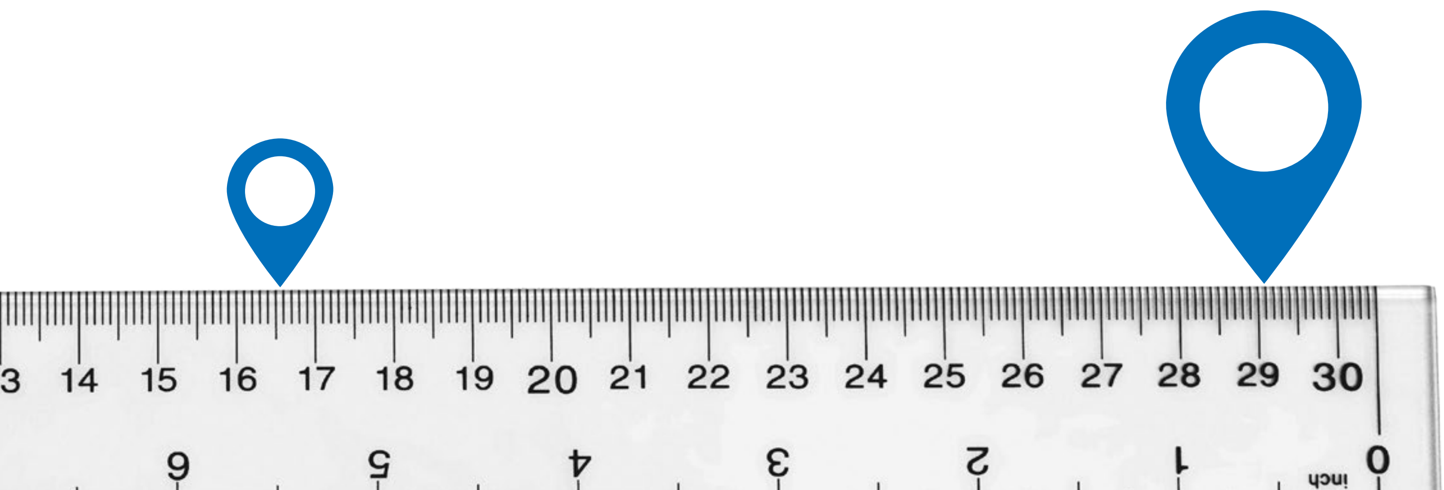
The IMD World Competitiveness Yearbook, which benchmarks the performance of 60 countries across a number of key areas for Foreign Direct Investment, ranked Ireland as follows in 2016[1]:

- **1st** for flexibility and adaptability of workforce
- **1st** for investment incentives
- **1st** for attractiveness of investment incentives
- **1st** for national culture open to foreign ideas
- **1st** for direct investment flows abroad (%)

Ireland's economy grew 5 times faster than Eurozone average in 2015[2]

[1] *Source: IMD World Competitiveness Yearbook 2016, Manpower Talent Shortage Survey 2015; Manpower Talent Shortage Survey 2015*

[2] *Source: Department of Finance Spring Stability Statement 2016*



Flexible business models

While various business models exist, the most common entity used to carry on business in Ireland, as in the UK, is a company limited by shares. The requirements and obligations under Irish law associated with setting up and maintaining a company in Ireland are very similar to the UK, including around; shareholder rights, directors duties, maintaining statutory registers and other post incorporation reporting.

Private companies – at a glance

- There are two types of private limited companies in Ireland, a Private Limited Company or a Designated Activity Company (DAC).
- A Private Limited Company can have one director, a simplified Constitution and, because it does not have stated objects, can engage in any lawful activity.
- A DAC is a private company that has the capacity to undertake specific activities as set out in its Constitution. DACs tend to be used for regulated entities, charities, management companies, and companies which are incorporated for a specific purpose. A DAC must have a minimum of two directors.
- Irish companies are required to have a registered office address in Ireland.
- Every limited company is required to appoint a company secretary. In a single director company, there must be a separate company secretary.
- There is no restriction in relation to foreign ownership of companies. An Irish company can be 100% owned by non-Irish residents.
- Once incorporated, a company must maintain certain documentation. These include its statutory registers, which include a Register of Members, Register of Directors and Register of Directors Interests, amongst others. All Irish companies must also file an annual return every year following incorporation together with financial statements, which must be audited if a company is above a certain size.
- For publicly traded companies, a sole or dual listing on the Irish Stock Exchange will continue to give access to a euro quotation and EU investors. Irish regulator approved prospectus' and relevant authorisations will continue to be able to be passported without undue difficulty across the EU.

Taxation

Ireland's Corporate Tax Regime

Ireland's corporate tax regime makes Ireland an extremely attractive location for business for a number of reasons. The primary appeal is of course the corporate tax rate of 12.5% on trading income (and 25% on passive income), a rate that the Irish Government remains firmly committed to. In addition to this, as an onshore well regulated location and the fact Ireland enjoys continued and unfettered barrier free access to the EU common market, there are a number of other distinctive features of the Irish corporate tax regime worth noting. The regime aims to encourage Research and Development (R&D) activity and the development of knowledge and IP in Ireland. The R&D Tax Credit Scheme, available to Irish resident companies and branches (seeking to engage in scientific advancement and resolve scientific or technological uncertainty), provides a 25% tax credit in relation to qualifying R&D expenditure which can be offset against a company's corporation tax liability. Ireland also offers the first OECD compliant Knowledge Development Box which provides that profits, which arise from certain qualifying assets and relate to R&D carried out by the company, can be taxed at an effective rate of 6.25%. Ireland also provides a competitive holding company regime with a number of reliefs available to international businesses together with an extensive network of double taxation treaties.

Taxation and BREXIT

The nature of the relationship between the UK and the rest of the EU in terms of taxation post BREXIT is uncertain and will depend largely on the arrangements agreed between the EU and the UK as part of the BREXIT negotiations.

Currently, because the UK has access to the common market, there are few barriers to trade between the UK and other EU Member States. However, once the UK leaves the EU this relationship will change. The uncertain nature of the relationship between the UK and the EU in terms of taxation post BREXIT makes Ireland attractive as an alternative location to the UK for businesses.

Continued access to the EU

Ireland, as a member of the EU, will continue to have the benefit of having access to the common market, with few trade barriers between Ireland and other EU Member States.

Customs Duties and VAT

The free movement of goods within the EU means that no customs duties currently arise on imports and exports between Ireland and other EU Member States. Post BREXIT the UK will no longer be a part of the common market which confers this benefit. As a result, and unless the UK negotiates a different post BREXIT arrangement with the EU, imports and exports between the UK and other EU Member States may be subject to customs duties.

To facilitate the common market, there are a number of mechanisms which allow companies within the EU to simplify their VAT affairs. Companies based in EU Member States can also recover VAT paid on certain expenses incurred in another Member State. When the UK leaves the EU, it will no longer benefit from such mechanisms and, assuming it retains VAT, may have to alter its VAT rules.

EU Tax Exemptions

As a continuing member of the EU, Ireland benefits from various tax exemptions and reliefs provided for by EU Directives. Examples of this include the Parent-Subsidiary Directive and the Interest and Royalties Directive, both of which provide tax relief and exemptions in respect of withholding taxes on certain cross-border payments between EU based members of a group of companies. Subject to the BREXIT negotiations, post BREXIT businesses located in the UK will no longer be able to avail of such exemptions and reliefs.

Banking

The banking market

Many of the banks and financial institutions that operate in the UK also have operations in Ireland, although certain parts of the market, such as residential mortgages, are dominated by indigenous Irish financial institutions.

Increasingly, non-bank lenders, such as insurance companies and loan origination funds, are involved in the Irish market.

Comparable laws and regulatory regime

Businesses relocating to Ireland from the UK will find that the banking and financial services landscape in Ireland has many similarities with that in the UK. Many of the concepts with which lenders and borrowers are familiar in the UK, also apply in Ireland.

The banking and financial services sector benefits from a robust regulatory regime. In Ireland it is not necessary for a lender to be licensed before lending to an Irish company, although separate licensing regimes apply to consumer finance and in relation to issuing letters of credit, guarantees and similar instruments for third parties. In addition, when lending to certain persons, banks and other regulated bodies, lenders must comply with codes of conduct and regulations issued by the Central Bank of Ireland. There are currently no exchange controls operating in Ireland.

Lending structures

The same types of lending structures commonly utilised in the UK are found in Ireland. Lenders and borrowers may enter into bilateral agreements and larger credits may be documented on a syndicated basis, where a group of lenders, acting through a facility agent, collectively agree to lend funds to the borrower on the same terms.

Guarantees and security

Irish law recognises the concept of a security agent/trustee, where one entity holds security on trust, or for the benefit of a group of lenders. UK lenders and borrowers will find that similar types of guarantees and security can be taken in an Irish context.

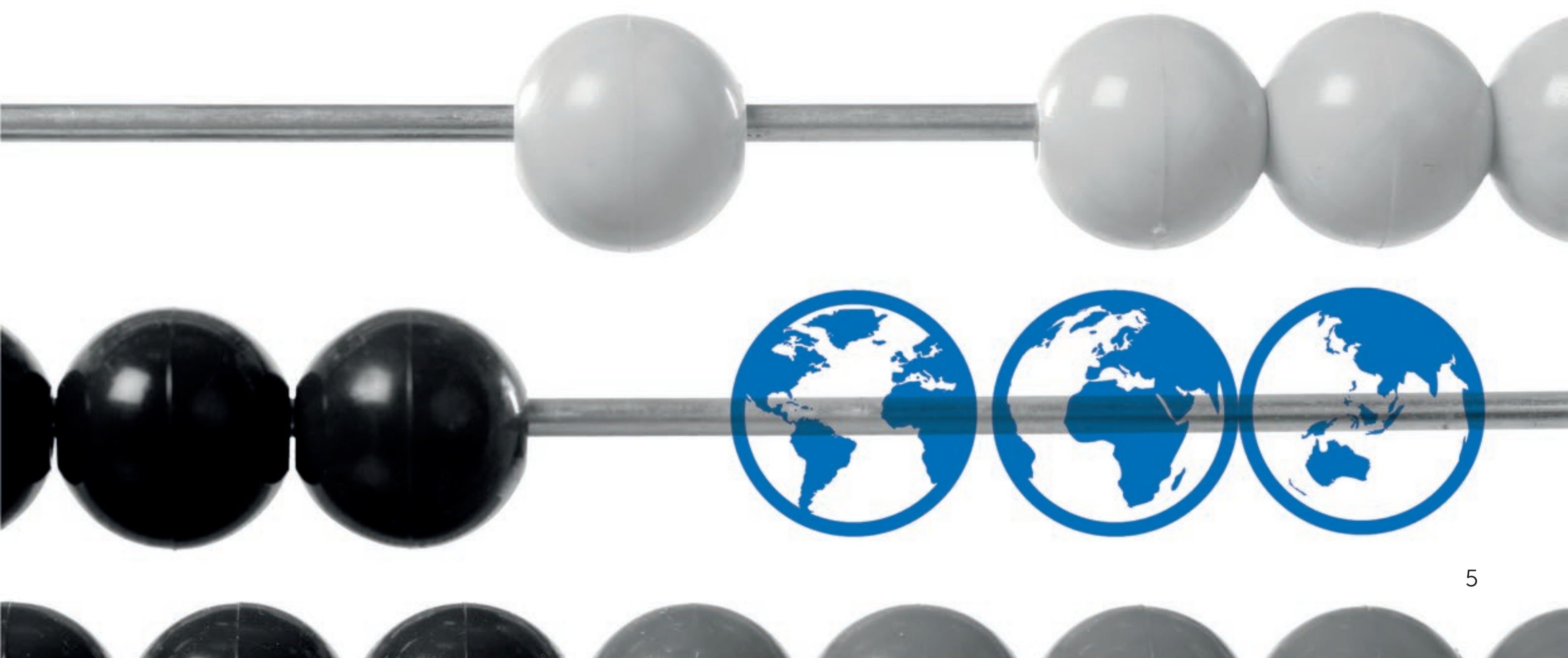
A creditor can protect the validity or priority of its security by registering it, where required, at the Companies Registration Office and/or, if applicable, at specialist asset registers eg in the case of intellectual property, real estate, aircraft and ships.

Unsecured credit

Depending on the particular debtor/creditor relationship, an unsecured creditor can avail of certain contractual or legal remedies under Irish law.

Enforcement

Creditors can take court action to recover debts once a judgment is obtained, using a court order stating that the debtor is liable to the creditor. Security holders can also enforce their loans and guarantees and realise their security outside a court process. The most common methods of enforcing security under Irish law are appointing a receiver and/or using the power of sale generally conferred on the security holder.



Financial services

Passporting rights and BREXIT

The UK's decision to leave the EU is likely to have significant consequences for UK credit and financial institutions currently providing services to customers located in EU Member States on the basis of EU passports. While Passporting rights for UK institutions could be saved if the UK ultimately joined the European Economic Area (EEA), or entered into sector-specific bilateral arrangements, this cannot be stated with any certainty pending the outcome of the Article 50 negotiations.

Third country access

UK institutions may still be able to provide services in the EU on a cross-border basis as third country institutions. However, this would require specific engagement with regulators and assessment of the relevant third country access rights in all jurisdictions and for all sectors in which it wishes to provide services.

Establishing an EU subsidiary

The more straightforward route to continued access to the single market in financial services is to establish one or more subsidiaries in EU Member States and to transfer any existing EEA business to that entity. Once authorised, the new EU entity could use the EU's passporting regime to provide services across the EEA.

Ireland is a well-regulated jurisdiction, similar to the UK, with a strong regulatory background and supervision by the Central Bank, making it an attractive jurisdiction from a client perspective, particularly for retail clients.

For these, and other, reasons a number of subsidiaries of international financial institutions and/or their European or EMEA headquarters are already based in Ireland.

Data protection

Data Protection and the GDPR

The Irish Data Protection Acts 1988 and 2003 (as amended) govern the processing of personal data in Ireland and is very similar to the UK Data Protection Acts 1998. In May 2018, this legislation will be superseded by the General Data Protection Regulation (GDPR)

The UK's decision to leave the EU is likely to have an impact from a data protection law perspective if there is a divergence between the current UK Data Protection Act 1998 and the GDPR.

Ireland, as a continuing member of the EU, will have the benefit of the GDPR, creating a more harmonised data protection regime throughout the European Union.

Major impact of BREXIT on data protection in the UK

Once the UK leaves the EU, personal data transfers from EU Member States (including Ireland) to the UK, even intra-group transfers, will be subject to the same restrictions as any other non-EEA countries (eg US) and will need to meet the 'adequate safeguard' standard required for those data transfers to be lawful.

Many transfers outside the EEA currently rely on alternative mechanisms to implement the 'adequate safeguard' standard, such as model contracts and binding corporate rules. However, these mechanisms may not be suitable in the long-term, given the level of trade and data transfers that take place between the UK and EU Member States (including Ireland).

UK entities may consider moving their operations to Ireland in order to continue to be subject to the EU data protection regime, preventing unnecessary issues in relation to the transfer of personal data.

Employment

The labour market

With its comparatively flexible set of employment laws, open labour market and wage flexibility, Ireland is a competitive attraction for businesses wanting access to the labour force of the European Union, which EU membership and free movement of labour brings.

In recovery mode after the recent financial crash, Ireland's unemployment rates has come down from a high of 15% to 8%, and is expected to fall further over the coming years as there is a focus on increasing the labour supply to meet continuing economic growth in areas such as: ICT, engineering, sales/customer care, logistics, health, business and finance, hospitality and construction.

Comparable employment laws

Ireland and the UK have a comparable level of employment law protection and regulation, many of which are a product of European law.

In addition, employment permits are available for workers moving to Ireland from outside the EU/EEA. US citizens are not required to have a visa to land in Ireland.

Salary Comparisons between London and Dublin

	Dublin €	London € Salary converted from Sterling to €
Project managers	60–80k	70–95k
IT Director	95–150k	100–180k
IT operations	28–38k	45–55k
Customer Service Team Lead	30–35k	37–48k
Team Lead (Multilingual)	30–35k	40 – 52k

Source: CPL Recruitment September 2016

OECD better life index 2015

	Time devoted to leisure and personal care	Employees working very long hours
Ireland	Ranked 8 / 38	Ranked 13 / 38
UK	Ranked 21 / 38	Ranked 28 / 38

- Concerning the public sphere, there is a strong sense of community and moderate levels of civic participation in Ireland, where 95% of people believe that they know someone they could rely on in time of need, higher than the OECD average of 88%.
- In general, Irish people are more satisfied with their lives than the OECD average. When asked to rate their general satisfaction with life on a scale from 0 to 10, Irish people gave it a 6.8 grade, higher than the OECD average of 6.5.

Irish employment laws – at a glance

- The minimum wage is currently €9.15 per hour. It can be less if employees are under the age of 18, if it's their first job after reaching 18 or if they are trainees.
- Employers must not discriminate on grounds of gender, marital or family status, sexual orientation, religion, age, disability, race or membership of the travelling community.
- Once employees have one year's service they may only be dismissed for redundancy (lay off), incapability and/or misconduct. Fair procedures must be followed in carrying out any dismissal. If a dismissal falls foul of either of these criteria, it risks being deemed "unfair" for the purposes of the legislation. Employees can seek relief for unfair dismissal of up to two years' gross remuneration or re-instatement.
- The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 apply in Ireland. Where a business is transferred from one entity to another, resulting in a change of employer, the rights and obligations of the transferor in relation to the contracts of employment of its staff are transferred to the new owner.
- Unlike almost all other EU countries, collective bargaining is fundamentally based on a principle of voluntarism. No company can be compelled to recognise or negotiate with a trade union.

Real estate

The real estate market

As a compact city, Dublin offers the advantage of proximity to almost everything a business and its employees will need. Many of the world's leading financial institutions have offices in the International Financial Services Centre (IFSC), while Silicon Docks is home to some of the world's most famous technology companies. The strong market and continued deleveraging has given rise to a large number of high profile real estate deals, including Facebook, Twitter, Apple and Microsoft.

Availability of prime office space

The Irish market offers significant advantages in the wide availability of prime office space, particularly in the country's capital, Dublin.

Currently, Dublin is a 38 million sq ft office market, and this is growing, with 3.5 million sq ft of space under construction.

Similarly, at an average rent of between €55 and €60 per square foot, office space in Dublin is considerably cheaper than the £65 approx. (€77 approx.) per square foot currently charged in London.

In addition, investment in suburban locations with even lower rents and newly renovated facilities is increasingly attracting investors away from the city.

Pre-lets are becoming more common in the Irish market. This is where lease deals are committed up front, at fixed rents, giving certainty to landlords and tenants alike prior to any development or refreshing works being commenced.

Dublin versus London

- Headline rents in the Dublin office sector were €55 per sq foot in 2015, according to an analysis by commercial property agent HWBC.
- The average rent for office space in central London in 2015 was £55.34 per sq ft.

According to letting agent HWBC, the biggest Dublin office deal of 2015, in terms of space let, was Baggot Plaza on Upper Baggot Street in Dublin 4 with Bank of Ireland as the tenant. Bank of Ireland have reportedly let the building for €511 per square metre (€47.50 per square foot).

By comparison London's most expensive office (October 2015) was 54 Brooks Mews, a newly refurbished office in Mayfair measuring 6,000 sq ft and advertised at a rate of £500 per sq ft.

Comparable real estate laws

Businesses relocating from the UK to Ireland will find that the mechanisms, legal concepts and systems in real estate are somewhat similar to those of the UK.

Purchase or lease –your choice

A move to Ireland is likely to involve the acquisition of Irish real estate, either by way of lease or outright ownership.

Whilst it may be advisable to set up a special purpose vehicle to hold Irish property, in order to limit liability, there is nothing to prevent a foreign individual or company from leasing or purchasing property in Ireland. We continue to work with clients who are utilising innovative structures, including Qualifying Investor Alternative Investment Funds (QIAIFs), REITs, LuxCos and limited partnerships.

We have seen a return to 10 year leases, sometimes with the benefit of break options (being a right to terminate the lease earlier, in some cases subject to payment of a penalty). Larger tenants or multinationals may prefer to sign 15 or 20 year leases, also with break options, to ensure the continued availability and control of space. On any new lease deal, other tenant friendly inducements may also be available such as rent free periods, rent holidays, capital contributions and fit out allowances.

A favourable rental regime for tenants

Most commercial leases incorporate rent reviews every five years. The Irish government has introduced legislation, effectively neutralising upward only rent reviews in new commercial leases. Simply put, this means that rents could go up or down on review, in line with market forces.

Availability of residential accommodation

A government initiative aims to double the level of residential construction to 25,000 homes per year by 2021 increasing the availability of accommodation.

How we can help

If you are considering relocating your business to Ireland, our dedicated BREXIT Unit, made up of lawyers with expertise across all relevant sectors, including HR, Corporate, Commercial, Real Estate, Banking and Financial Services is well placed to advise you.

While the impact of BREXIT will be different for each business, we will help you identify the challenges and the opportunities, and assist you in successfully managing and implementing your relocation plans. As the only full service international law firm based in Ireland, we are well placed to provide a fully integrated, multi-disciplinary approach to your relocation plans.

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