

Brexit Focus Group

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As we commence 2018 and notwithstanding that the UK/EU Brexit negotiations managed to proceed to Phase 2 just before the end of 2017, the reality of the situation is that for the most part there is no greater clarity on what shape Brexit will ultimately take. That said there is a sensible need to keep an eye on what a “Hard Brexit” will bring in its wake.

In the last week Minister for Justice and Equality, Charlie Flanagan launched the initiative to promote Ireland as a leading centre globally for international legal services, the initiative being promoted by the Council of the Bar of Ireland and the legal profession generally and supported by the IDA.

Post Brexit Ireland will be the only English speaking common law jurisdiction fully integrated into European legal order and this should provide opportunities for Ireland. This latest initiative compliments and is consistent with the Government’s Brexit strategies to date involving it generally pursuing trade and investment opportunities arising from Brexit and specifically its IFS2020 strategy in relation to the financial services sector.

Post Brexit, with the UK outside of the EU the risk is that Judgements of English Courts may not be as easily enforced in Member States as previously and this will be a concern for parties relying on such clauses in their contracts.

Ireland is offering the alternative, being as it will then be the only English speaking common law jurisdiction in the EU. As the IDA has pointed out this week the development of Ireland as an international litigation and arbitration hub enhances Irelands reputation as a location for foreign direct investment within Europe. The strengthening of the legal services sector here will meet the growing demands of leading international businesses that are increasingly deciding to make Ireland their European Home.

This is something EFC is focused on, being involved as it is in this latest initiative launched last week.

We can advise and assist clients who have concerns or requirements as regards reviewing existing contracts which contain provisions currently providing for English law and jurisdiction. In relation to new contracts we suggest that the governing law and jurisdiction provisions need more particular attention going forward than heretofore they would have attracted in the general provisions sections of contracts where parties generally accepted or acquiesced in agreeing to English law and jurisdiction applying.

We believe that these issues may particularly arise in certain sectors such as the financial services, insurance, intellectual property and financing generally but of course are applicable to all contracts with an international dimension where heretofore there was a general sense that parties agreed to English law and jurisdiction notwithstanding that neither party to the contract was located in that jurisdiction.

For further information on this topic please contact:

Eileen Grace, Partner & Head of Brexit Focus Group E: egrace@efc.ie

Mark Walsh, Managing Partner E: mwalsh@efc.ie