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BREXIT BRIEFING

1. Introduction to Brexit

On 23 June 2016, Britain will hold a referendum about its membership of the European Union (EU). The question being posed is *'Should the United Kingdom remain a member of the European Union or leave the European Union?'* The referendum is a simple in/out vote, with the options for voters being *'Remain a member of the European Union'* or *'Leave the European Union'.* British, Irish and Commonwealth citizens over 18 who are resident in the UK will be eligible to vote, in addition to UK nationals living abroad who have been on the electoral register in the UK in the past 15 years.

British Prime Minister David Cameron is campaigning to remain in the EU on the basis of the package of reforms agreed in February 2016 on a variety of issues. If the UK opts to stay in the EU, these reforms will come into effect, including:

Protection for City of London – preventing imposition of eurozone regulations	**Exclusion from an "ever closer union" with EU member states**	**Limits on welfare and child benefit payments to EU migrants**
'Red card' for national parliaments – easier for member states to band together and block EU legislation	**Drive towards enhancing competitiveness – reducing unnecessary regulation**	**Limits on free movement of persons – tackling 'sham' marriages**

Should the UK vote in favour of 'Brexit', the impact on Britain and the rest of the EU will be significant and is likely to bring about a period of major uncertainty, including market volatility. The impact on Ireland in particular could be far reaching, given the close geographic, political and economic ties between the two countries.

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2. What is the legal mechanism for exiting?

No full member state has ever left the EU and so the practicalities surrounding a possible Brexit are somewhat uncertain. Article 50 of the Lisbon Treaty contains a procedure for voluntary withdrawal from the EU, although it is not very detailed. It provides that a member state can notify the European Council of its intention to leave and a withdrawal agreement would then be negotiated between the EU and that member state. The timing of the notification to the European Council of the intention to withdraw would be a matter for the UK government. Following the notification there would be a 2 year period in which to negotiate the withdrawal agreement. This 2 year period could be extended if both the UK and the European Council so decide.

Alternatively, the UK could seek to negotiate the terms of a Brexit in advance of triggering the Article 50 procedure set out above. Following conclusion of an agreement with the European Council, the UK could then make the notification of its intention to leave. However, it has been suggested that choosing this route could result in demands for a follow-up referendum in the UK on the terms of the exit deal reached, and so may not be suitable.

Of course, the UK could opt for a unilateral withdrawal from the EU by simply repealing the domestic legislation which provides for the primacy of EU law. Such a course of action would be a drastic one, and would be likely to antagonise the remaining EU member states. In turn, this could impact on Britain's chances of negotiating favourable trade agreements with the EU following exit.

3. What are the different models that could be adopted if Brexit occurs?

If Brexit comes to pass, it is clear that the UK will need to put new trade arrangements in place with the EU and other third countries where the existing trading relationship is based on the UK's membership of the EU. What is unclear is what form these trade arrangements will take. The following are the main options that have so far been identified:

Membership of the European Economic Area (EEA) – e.g. Norway	The UK would stay within the single market for goods and services but would be obliged to apply EU law related to the single market in its domestic legislation. However, as the UK would not have a say in the creation of this law, it is unlikely that this model will find favour.
Membership of European Free Trade Association (EFTA) – e.g. Switzerland	The UK would sign a series of sectoral bilateral agreements with the EU dealing with trade, financial services and free movement of persons. It would gain access to the single market while retaining national sovereignty.
Customs Union – e.g. Turkey	This model would be based on a limited customs union which would allow tariff free access to EU markets. Again, the UK would be obliged to comply with EU rules and regulations in the customs area but would have little or no influence over the creation of these rules.
World Trade Organisation (WTO) rules	The UK would rely on the standard WTO rules for access to the EU market, while being exempt from most EU legislation. Each member of the WTO grants the same 'most favoured nation' (MFN) market access to other members, including charging the same tariffs. The imposition of such tariffs would raise the cost of exporting to the EU for UK traders.

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Bespoke deal	A bespoke deal is the option that a number of prominent Brexit supporters are touting and would involve the UK negotiating a special deal with the EU which would retain free trade. Such a model could take many years to put in place and the EU may not be inclined to grant the UK a particularly favourable deal for fear it would encourage other member states to leave the EU.

4. What is the significance of the relationship between Ireland and UK?

The UK is the 2nd largest economy in the EU and 5th largest economy in the world. It is therefore likely that the legal, economic and political consequences of a Brexit would be far reaching. However, given the very close connections between Ireland and the UK, it is arguable that Ireland would experience the greatest impact amongst EU member states were Britain to vote to leave the EU.

The significance of the relationship between Ireland and the UK is illustrated by the following:

Over €1 billion in goods and services exchanged between Ireland and UK every week	**Irish exports to Britain worth more than €1.2 billion a month**	**Britain is Ireland's largest trading partner in the EU – Ireland is the fifth largest destination of UK exports**
Importance of agri-food sector – UK's largest export market is Ireland and Ireland's largest export market is the UK in this sector	**UK is the third largest investor in Ireland**	**Energy markets – Ireland imports 89% of its oil and 93% of its gas from Britain**

5. What are the Brexit threats to Ireland?

In November 2015, the Economic and Social Research Institute (ESRI) published a paper setting out the possible economic implications of Brexit for Ireland, focussing in particular on the areas of trade, foreign direct investment (FDI), energy and migration.[1] In general, the ESRI paints quite a pessimistic picture for Ireland if Britain were to leave the EU, with lower wages, higher prices and major trade losses being predicted.

Trade	The ESRI suggests that Brexit could result in a reduction in trade flows between Ireland and UK by 20% or more, equating to a value of about €10 billion annually. This is likely to have a particularly negative impact on the agri-food sector. Non-tariff barriers such as customs controls could be reintroduced and specific tariffs could be levied on imports from the UK.

[1] *Scoping the Possible Economic Implications of Brexit on Ireland*, Alan Barrett, Adele Bergin, John FitzGerald, Derek Lambert, Daire McCoy, Edgar Morgenroth, Iulia Siedschlag and Zuzanna Studnicka (ESRI: November 2015).

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Foreign Direct Investment	If Britain were to leave the EU, it is likely that it would become less attractive to FDI due to reduced access to the single market. This would have an adverse impact on the growth potential of the UK and could have a knock-on effect on Ireland's economic growth. The ESRI is of the view that Ireland would not see a significant upsurge in FDI in a Brexit scenario, given that the UK could put in place corporate tax and other reforms to increase its attractiveness to investors.
Energy	An all-island market for electricity has existed since 2007 and due to Ireland's dependence on gas supplies from Britain, the ESRI notes that a Brexit could raise questions about energy security. Interconnection with Britain would leave Ireland vulnerable to any problems in the British market if Britain were to leave the EU and increasing the level of interconnection with remaining EU member states would be a time consuming and costly exercise.
Migration	Free movement of persons may be affected in a Brexit scenario, which would have an impact on the large number of people who move between Ireland and the UK for the purposes of work. Any new restrictions could have implications for the Irish labour market, with the ESRI suggesting that the result could be an additional 60,000 people in the Irish workforce, leading to cuts in wages of up to 4%.
Other	• Loss of an important ally at the EU negotiating table. The UK and Ireland currently take similar stances on taxation, internal market and financial services matters amongst other areas. • Political and diplomatic realignment of relationship between Ireland and UK and possible impact on the peace process. • The border with Northern Ireland would become an external EU land border with possible introduction of customs posts, passport controls etc.

6. What are the Brexit opportunities for Ireland?

While most commentators and politicians predict a negative outcome for Ireland if Britain were to leave the EU, it has been suggested that there are a number of areas in which Ireland could benefit in a Brexit scenario.

As already mentioned, Britain would be less attractive to FDI if it were not in the EU, with research suggesting that EU membership increases FDI from outside the EU by 27%. For investors seeking access to the single market, Ireland would be a viable alternative to the UK.

It is predicted that the regulated financial services sector could see a particular influx of companies and institutions moving operations from Britain to Ireland in order to maintain a foothold in the EU markets. In the event of a full Brexit, regulated financial services firms based in the UK would lose their passporting rights to carry on business in any other state in the EEA without having to obtain an authorisation or registration on a country-by-country basis. It is likely that the asset management sector in the UK would be significantly impacted, and it is reported that the Central Bank is preparing for an increase in applications for authorisation

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from asset management companies due to a fear from asset managers that they would no longer be able sell UK regulated funds into the EU following a Brexit.[2]

7. Why choose Ireland as an EU base in a post-Brexit scenario?

Ireland presents an attractive alternative for companies seeking to either establish or maintain a base in the EU in a post-Brexit scenario for a variety of reasons:

Attractive corporate tax rate (12.5%)	**English-speaking**	**Fastest growing economy in the EU**	**Pro-business environment**
Stable labour costs	**Common law jurisdiction with similar legal system**	**Highly skilled and educated workforce**	**R&D incentives**
Comprehensive tax treaty network	**Low start up regulations and ease of establishing a business**	**Geographic position close to UK and same time zone as UK**	**Similar employment laws to UK**

8. What are the legal consequences of Brexit?

Without knowing what form a Brexit will take and what agreements would replace Britain's membership of the EU, it is difficult to predict the specific legal consequences that would arise following a withdrawal from the EU. It is suggested that Irish firms that have close links with the UK or which do business with UK companies should consider the risks that a Brexit could pose to their business, in particular whether legal or regulatory changes in the UK could have an adverse impact on their operations. The following are some general legal and regulatory issues that may come to the fore if the UK opts to leave the EU:

- **Financial services** – loss of passport rights for UK based regulated financial services providers and possible need to amend documentation to take account of the new regulatory framework.

- Divergence of **regulatory standards** between Britain and remaining EU member states – areas of particular significance may include data protection, energy, financial services and health and safety.

- **Employment issues** – whether nationals from EU members states would be permitted to stay in the UK and also the impact on UK nationals already living in the EU.

[2] *Ireland prepares for Brexit fund influx*, Irish Times, 14 March 2016

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- Review of **legal documentation** – governing law, territory and **jurisdiction clauses** could be impacted and references to EU legislation or legal concepts may need to be amended.

- Possible changes to **competition law** which could affect mergers and acquisitions.

9. How can William Fry assist your business?

William Fry is available to discuss the possible legal, regulatory and tax implications of a Brexit on your business. We can also advise on all legal, regulatory and tax issues involved in relocating your business to Ireland. Please contact the person relevant to your industry sector below or any member of William Fry's Financial Regulation Group or your usual William Fry contact for legal advice.

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