Global Legal and
Professional Services

Brexit – Ireland as a location for Regulated Financial Service Providers

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The outcome of the 23 June Referendum has raised a host of questions on what will happen next following the UK's decision to exit from the EU. One major concern for UK regulated financial service providers ("**RFSPs**") is the ongoing uncertainty in relation to the continuation of the financial services passporting regime currently enjoyed by UK RFSPs throughout the EU/EEA.

While the full implications of Brexit will depend on subsequent negotiations between the EU and UK, some UK RFSPs, particularly those which require continued guaranteed and unfettered access to EU/EEA markets, are now likely to consider investigating the possibility of moving their operations from the UK to elsewhere in the EU.

As a common law and English speaking jurisdiction with an educated workforce and developed financial services sector that is attractive on tax grounds, Ireland will be seen by many RFSPs as a natural venue to consider in the event it is necessary to establish operations outside the UK post-Brexit.

The Irish regulatory environment

A UK RFSP will find many close similarities between the Irish and UK regulatory environments. The majority of Irish financial services law is made up of Irish implementing measures for EU financial services directives (along with over-arching directly effective EU financial services regulations). We have set out a table of the types of RFSPs that require regulation by the Central Bank of Ireland (the "**CBI**") at the end of this briefing.

As a general comment, the Irish legislature tends to adopt a 'copy-out' approach when implementing EU directives into Irish law by way of enacting primary or secondary legislation (statutory instruments) which follow the text of the relevant directive closely. This approach assists in providing clarity as to scope and intent of domestic legislation and avoids unhelpful or unnecessary 'gold-plating'.

One side effect of this copy-out effect is that there is no properly unified, consolidated body of Irish financial services law. Instead, Irish financial services legislation operates on a 'silo' basis, often without properly cross-referring to (or in some cases, repealing) other applicable legislation. By way of example, the form and content of consumer credit agreements in Ireland is governed by at least three distinct and complexly inter-related pieces of separate legislation[1] rather than a single unified act.

The CBI's approach to regulation and supervision of RFSPs

The CBI is the body responsible for both the prudential and conduct of business regulation of all RFSPs in Ireland and has historically had overall responsibility for the authorisation and supervision of RFSPs in Ireland. From 4 November 2014 this has changed with certain supervisory responsibilities and decision making powers moving to the European Central Bank (the "**ECB**") through the establishment of the Single Supervisory Mechanism.

1 These include the Consumer Credit Act 1995, the EC (Consumer Credit Agreements) Regulations 2010; the European Union (Consumer Mortgage Credit Agreements) Regulations 2016, the EC (Distance Marketing of Consumer Financial Services) Regulations 2004.

The CBI is a statutory body, established under the Irish Central Bank Acts. The CBI's mission statement 'Safeguarding Stability, Protecting Consumers' is illustrative of its strategic objectives. The CBI is not an economic regulator and does not actively seek to promote competition in the Irish market.

The substantial difference in size, scale and resources available between the CBI and the UK Financial Conduct Authority (the "**FCA**") means that UK RFSPs dealing with the CBI will notice some differences between the approaches of each regulator. As a general comment, the CBI produces far less industry guidance than the FCA – for example, there is no Irish equivalent to the FCA Handbook. However, the CBI does issue codes of conduct that RSFP's must comply with as a matter of law when providing services to customers and consumers in Ireland.

In order to focus its resources efficiently, the CBI operates a risk-based framework for the supervision of RFSPs, known as The Probability Risk and Impact SysteM (PRISM). Under PRISM, larger and more significant RSFPs (those with the potential to have the greatest impact on financial stability and consumers) receive the highest level of direct supervision. Examples of high impact firms could include a high street bank or large investment bank.

Lower impact firms are supervised on a proportionate basis to their perceived risk, for example with thematic reviews, reactive or desk based supervision. An example of a low impact firm might be a small payment institution or an insurance intermediary.

Authorisation of RFSPs

Regardless of the type of RFSP seeking authorisation, the the application process involves the submission of a formal application consisting of prescribed documentation containing detailed descriptions, policies and business plans relating to the activities of the proposed RFSP and the approach to risk management and regulatory compliance. The CBI has identified the following as the principal criteria for assessing applications for authorisation as an Irish RFSP:

- acceptability and transparency of the ownership of the financial service provider;
- fitness and probity of individual directors and senior management;
- adequacy of proposed capital to be invested;
- adequacy of internal controls and risk management systems;
- level of resources and expertise of staff.

The CBI places a strong emphasis on the responsibility of directors and senior managers in the proper management of RFSPs. All directors and senior managers will be required to undergo an assessment by the CBI to demonstrate that they are "fit and proper" to manage a RFSP. The timing of an issue of an authorisation of an RFSP from the CBI will vary widely on the type of authorisation being sought. While it is possible to obtain an authorisation for a smaller firm offering a limited range of services (for example, a small family office style investment firm) in a matter of months, authorisation of a credit institution could take over a year. Early engagement with the CBI is crucial to a fast and efficient authorisation process.

Taxation

Ireland has a favourable corporate tax regime which is attractive to companies looking to establish operations in Ireland. The 12.5% corporation tax rate on trading income is one of the lowest in the EU and one of the lowest 'onshore' statutory corporate tax rates in the world. A higher 25% corporation tax rate applies to non-trading income (i.e. passive income).

As a member of the European Union, Ireland benefits from various protections afforded under EU law, including the benefit of the Parent/Subsidiary Directive and the Interest and Royalties Directive which can apply to eliminate withholding taxes on payments between residents of EU member states. Ireland also has an extensive double tax treaty network and various domestic provisions which can substantially reduce or eliminate withholding taxes on non-Irish source income, as well as facilitate the repatriation of profits outside of Ireland in a tax efficient manner. Ireland also has a double tax treaty with the UK which, regardless of what agreement is reached on exit, will facilitate investment between the two jurisdictions.

Conclusion

Ireland has a favourable corporate tax regime which is attractive to companies looking to establish operations in Ireland. The 12.5% corporation tax rate on trading income is one of the lowest in the EU and one of the lowest 'onshore' statutory corporate tax rates in the world. A higher 25% corporation tax rate applies to non-trading income (i.e. passive income).

Walkers is an international law firm, with office in Dublin and London and has some of the largest investment funds, capital markets and dedicated regulatory compliance teams in Ireland. We are in direct contact with the CBI and the Department of Finance to continue to monitor developments in this area. All of our teams are available for discussions to assist you with any queries that you might have on the authorisation process for RFSPs in Ireland.

RFSP's requiring authorisation under Irish law

- Credit Institutions
- Credit Servicing Firms
- Credit Unions
- Electronic Money Institutions
- Funds
- Fund Service Providers
- Insurance/Reinsurance Intermediaries
- Insurance/Reinsurance Undertakings
- Investment Firms
- Investment Intermediaries
- Moneylenders
- Money Transmitters/Bureaux de Change
- Mortgage Intermediaries
- Regulated Markets
- Retail Credit Firms/Home Reversion Firms

Contacts

If you have any queries on the above or would like to discuss in more detail please do not hesitate to contact us or your regular Walkers contact.

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This advisory is part of a series of client advisories on the potential impact of Brexit prepared for clients of Walkers' office in Ireland. The full series may be found in the Brexit section of our website.