

## **Banking and Ireland**

Ireland has a very large and active banking market and is a jurisdiction in which many international banks and alternative lenders are already funding real estate investments, construction projects, hotel investments and data centres.

### **Why choose Irish Law and Irish lawyers for Banking?**

Ireland's key advantages as a jurisdiction for financing transactions are summarised below. Most notably, Ireland's position as the only other English-speaking common law jurisdiction in the EU, the only English-speaking jurisdiction in the Eurozone, the broad similarities between UK and Irish contract law, financing documentation and security documentation, its modern company law regime and its well-resourced and engaged regulator make Ireland a particularly attractive jurisdiction in which to operate financing transactions.

**Common law:** Following Brexit, Ireland will be the only English-speaking common law jurisdiction in the EU and will therefore be highly accessible to English-speaking clients, lawyers and other professionals accustomed to working through the English language.

The fundamental principles underlying Ireland's legal system will be familiar to those who have, to date, operated within the UK's legal system. This will greatly benefit parties who choose Ireland as their jurisdiction for financing transactions or who choose to amend the governing law of their contracts from English law to Irish law as the most seamless option with minimal changes to documentation required.

**Contractual principles:** The fundamental principles of Irish contract law and of contractual interpretation are broadly similar as between the UK and Ireland and, as a result, understanding the contractual structure of Irish financing arrangements should be straightforward for those who are already familiar with the equivalent UK regime, and the commercial terms can be negotiated on a similar basis.

**EU legislation:** Ireland is a committed member of the EU, and the manner in which EU law has been implemented in Ireland is broadly consistent with how that has been managed in the UK, and so will be familiar to UK-authorised banks and parties experienced in carrying out financing transactions in the UK.

**Financing and finance documentation:** The methods of raising finance in Ireland will be familiar to UK financial services providers and, to the extent that special purpose vehicles (bankruptcy-remote or otherwise) are used for the purposes of raising finance, Ireland's modernised company law regime ensures that these can be incorporated efficiently and promptly.

There has been a steady increase in the level of finance (including mezzanine finance) provided by alternative lenders (including funds) in the Irish market, with many new lending platforms and loan origination funds being established.

Facility agreements and intercreditor agreements on large-scale financing transactions (whether domestic or cross-border) on which the large Irish law firms advise are usually based on the Loan Market Association's (**LMA**) suite of industry standard template documents so these firms have significant experience in advising and negotiating on LMA-based documents since their inception. As a result, parties choosing Ireland as a jurisdiction for financing transactions and who wish to have their contractual arrangements governed by Irish law will still be able to transact based on the LMA documentation that they may already be familiar with.

Structuring bilateral, syndicated or club debt finance structures (not only the facility agreements, but also any intercreditor agreements, guarantees and security and collateral documentation) is managed in a similar manner as between the UK and Ireland. Conditions precedent and completion mechanics are broadly similar as between Ireland and the UK, as is the manner in which loans or participations are transferred (i.e. pursuant to contractual provisions which are the same as those contained in the LMA's standard documents).

**Enforcement:** The enforcement remedies available to lenders (and to security agents/trustees – a concept also recognised and used regularly in Ireland) under Irish law financing documents are very similar to those available in the UK. Unless the security involves a family home, the lender will generally appoint a receiver to manage and sell the secured assets.

**Regulatory infrastructure:** Ireland has a strong regulatory infrastructure. The Central Bank of Ireland (**CBI**) is a well-resourced and engaged regulatory authority, which works closely, and actively engages, with the European Supervisory Authorities. The CBI's reputation for consultation and industry engagement means that organisations choosing Ireland as a jurisdiction through which finance projects can be developed, negotiated and implemented, will find themselves dealing with an engaged and knowledgeable regulatory authority.

**Experienced legal advisors:** Ireland's leading law firms provide strategic advice and legal services to a wide range of financial services providers both domestically and internationally, and have strong working relationships with their UK counterparts. In particular, lawyers in Ireland's leading law firms are vastly experienced in providing strategic advice on domestic and cross-border financing transactions, in negotiating the underlying contractual documentation, and in understanding the commercial nuances specific to the various forms of finance available, including senior and mezzanine finance, private placement and bond structures.

## How will BREXIT impact on Banking?

The outcome of BREXIT is still unfolding across the financial sector. The EU-UK Trade and Cooperation Agreement (**TCA**), which outlines the future economic relationship between the EU and UK, does not address financial services save in respect of a joint declaration committing the UK and the EU to co-operate on matters of financial regulation. Subsequently, a non-binding memorandum of understanding for supervisory cooperation was entered into between the European Central Bank, the Bank of England and the Financial Conduct Authority.

While the long-term impact of BREXIT may not be clear for some time, the considerations in the banking sector prior to the end of the transition period remain largely the same i.e. the TCA does not extend any automatic right of access to EU markets to UK-based financial service providers and the TCA does not impact the position with regards submission to jurisdiction. As a result, it is likely that many financial service providers will continue to focus on whether they should relocate some or all of their UK-based operations to another EU Member State and parties to international contracts may consider amending documentation to a different choice of law and/or submission to jurisdiction clause. As the only English-speaking common law jurisdiction in the EU combined with a skilled workforce, in-depth domestic and international experience and a well-resourced and committed financial regulator, Ireland is uniquely positioned to be the preferred location for parties seeking a relocation jurisdiction and a jurisdiction for financing transactions.