

# LAW SOCIETY SUBMISSION

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## **A NEW STRATEGY FOR IRELAND'S INTERNATIONAL FINANCIAL SERVICES SECTOR**

DEPARTMENT OF FINANCE

NOVEMBER 2018

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#### ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

## 1. Introduction and Key Recommendations

- 1.1. The Society welcomes the opportunity to make a contribution to the Department of Finance's current review of the IFS 2020 Strategy and future iterations. Our contribution is largely limited to -
- a consideration of the underlying legal architecture that is so vital in supporting the financial services sector,
  - the reputation of Ireland as a location where such services can be not only delivered, but also where disputes relating to same can be effectively resolved, and
  - the educational and continuing professional development offering that is so vital to ensure the right talent is available to support the continued growth of the sector.
- 1.2. The following Policy Committees of the Society all represent the depth of knowledge and interest in the development of the Irish financial services sector and in ensuring its world class reputation -
- Litigation Committee
  - Business Law Committee,
  - Taxation Committee
  - IP/Data Protection Committees
  - Our Finuas Skillnet Network
- 1.3. The Society remains available to meet with Department officials to clarify any of the proposals contained within this document and to support additional initiatives in this area.

### Key Recommendations

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<b>Brexit:</b>	The proposition of Ireland as a centre for international dispute resolution and choice of law must be integrated into the State's enterprise development strategy and marketing efforts, with the objective of retaining and attracting foreign direct investment.
<b>Courts Reform:</b>	The Department and its IFS Division has a leadership role in communicating with other relevant departments and agencies (Department of Justice, Courts Service etc) the need for increased resourcing and IFS appropriate reforms.
<b>IFS Talent:</b>	As part of any future IFS Strategy, the Society recommends that the Department deepen its collaboration and linkage with education providers such as the Society, to ensure that the needs of the market continue to be met, and the necessary market signals are responded to.

## 2. Environment: Harnessing the Brexit opportunity

- 2.1. We note the commitment that has been made by the Department of Justice, alongside the IDA, the Bar of Ireland and the Society towards a focused strategy of promoting Ireland as a location for international dispute resolution. Agreed actions need to be expedited in the face of continued competition from other jurisdictions to attract international disputes – including those relating to financial services – to their territories.
- 2.2. The Irish legal services sector generates €2.3bn annually in turnover, and contributes €1.7bn to the Irish economy. Employing 18,000 directly and supporting local economies and suppliers, the sector currently responds to the demands of Irish, UK and overseas-based individuals and operations. Expanding activity in financial services law and related fields contributes an increasing proportion to the sector's value and the Exchequer.
- 2.3. State support for the promotion of Irish law as the choice of law, and Ireland as the choice of forum is fundamental to the ongoing development of the Financial Services eco-system. As an indication of the global standing of Irish law, the International Swaps and Derivatives Association (ISDA) has published new French and Irish law versions of the ISDA Master Agreement, adding to the existing suite of English, New York and Japanese law choices. The new Master Agreements are intended to provide options for those institutions that would prefer to continue trading under EU Member-State law with EU court jurisdiction clauses once the UK leaves the EU.
- 2.4. Ireland's value proposition as a location for dispute resolution and choice of law is based on the following main features:
  - *Common law system internationally preferred:* Because of its procedural effectiveness and certainty, common law is the preferred governing law of the vast majority of cross border commercial contracts and arbitrations.
  - *Expertise in EU and International law:* The Irish Courts' application of EU and international law will remain unchanged, offering international litigants certainty and continuity in their business and dispute resolution activities.
  - *EU-wide enforceability of judgements:* The application of EU and common law offers international litigants certainty and continuity in their business and dispute resolution activities.
  - *English language – the working language of the courts and business:* In addition to being the lingua franca of global finance, our proximity to the UK uniquely positions Ireland as an ideal forum of choice for operations that will continue to be headquartered in the UK but that seek pan-EU protection
- 2.5. **The proposition of Ireland as a centre for international dispute resolution must be integrated into the State's enterprise development strategy and marketing efforts, with the objective of retaining and attracting foreign direct investment, and in particular as a key support to the financial services sector.**

### 3. Structural and regulatory reform: Arbitration, Court Procedures

- 3.1. Ireland's value proposition for international investment is predicated on our talent, corporate environment and political stability. As global trade intensifies, the quality of legal institutions and resolution channels will be of increasing strategic importance, particularly for more value added services and sectors (eg, ICT, Life Sciences, Financial Services, Advanced Manufacturing etc.).
- 3.2. The ease of doing business in Ireland plays an important role in the competitiveness of Ireland's indigenous and international companies. The speed, certainty and consistency of courts in responding to business requirements such as the enforcement of contractual provisions and intellectual property protections, at an international standard, is an imperative.
- 3.3. Ireland is also well equipped to resolve disputes by arbitration. Irish legislation incorporates the UNICTRAL model law and there is a strong legislative framework, wholeheartedly supported by the judiciary, designed to facilitate effective arbitration proceedings.
- 3.4. New rules are regularly introduced at Commercial and High Court levels to provide more effective and speedier access to justice. The Society urges the Courts Service, with the support of the Department of Finance, to internationally benchmark current and proposed rules and to assess how they will accommodate not only any Brexit-related changes in activity and types of cases, but also accommodate the necessary expertise, speed and resources that are required to support the financial services sector.
- 3.5. Courts Service reforms in the following areas are urged, and would benefit from Department of Finance support:
  - *ICT resourcing:* efforts must be redoubled to keep abreast of international developments and ICT expenditure levels in the Courts Service.
  - *Resourcing of increased specialisation of judges and lists:* specialisation reinforces the credibility of Ireland's FDI offering, confirming a commitment on the part of the State to provide the enterprise sector, including specialist financial services entities, with a speedy and cost effective service.
  - *Court rules and procedures that are IFS appropriate:* An assessment of the areas of discovery, litigation financing, class actions and how hearings are conducted would all benefit the IFS and FDI agenda. A contribution by the Department to the current Review of Administration of Civil Justice, is welcome and urged.
- 3.6. **The Department and its IFS Division has a leadership role in communicating with other relevant departments and agencies (Department of Justice, Courts Service etc.) the need for increased resourcing and IFS appropriate reforms.**

## 4. IFS Talent: Education and Continuing Professional Development

- 4.1. With the continued development and sophistication of international financial services, new roles and obligations emerge. Allied with increased national and supra-national regulation, the quality of financial services talent is a vital component in the State's IFS Strategy.
- 4.2. *The Law Society Finuas Skillnet* is a learning network for companies of all sizes within the legal sector and professional advisors within Ireland's IFS sector. Member companies work collaboratively to share best practice and to respond effectively to their business and skills needs.
- 4.3. The network addresses both technical and non-technical skills needs of their members. The objective of this national network is to support the growth, competitiveness and sustainability of Ireland's legal and international financial services sectors.
- 4.4. The network provides strategic responses to emerging national and international trade, regulatory and competitive challenges facing legal and IFS professionals, through the delivery of highly specialised education and training.
- 4.5. Examples of training and courses designed by the Society and delivered to the financial services sector include, but are not limited to:
  - Diploma in Finance Law
  - Certificate in Aviation Leasing and Finance
  - Diploma in Aviation Leasing and Finance
  - Annual Fintech Symposium
  - International Financial Services Diploma
- 4.6. **As part of any future IFS Strategy, the Society recommends that the Department deepen its collaboration and linkage with education providers such as the Society, to ensure that the needs of the market continue to be met, and the necessary market signals are responded to.**

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