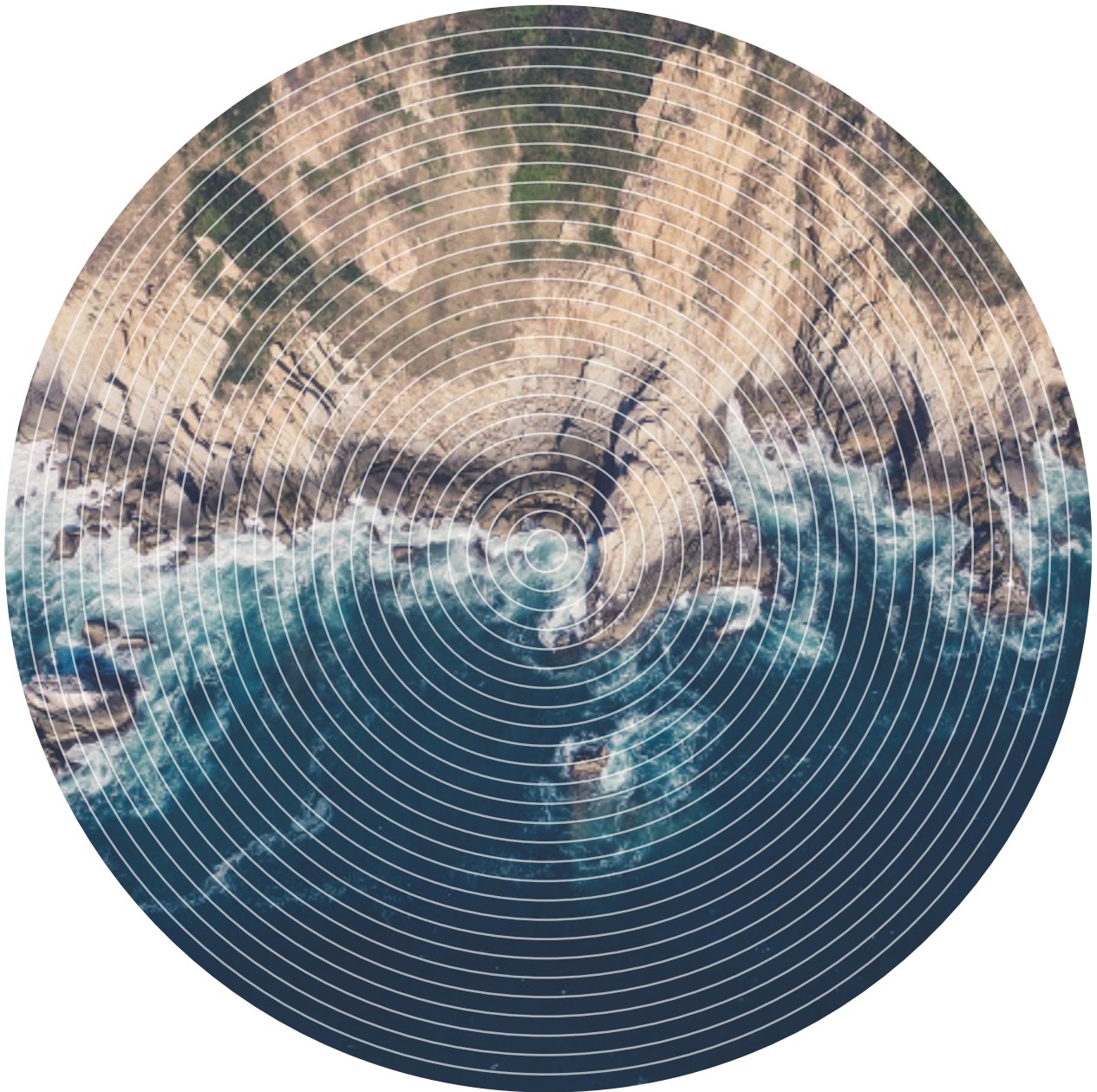

Brexit

Helping you conduct your
business review

13.09.2018

MCCANN FITZGERALD



Brexit brings an unique set of challenges, risks and opportunities for each company and business. This Briefing will assist you in carrying out your review of your business.

The Briefing has two sections:

- First, how to start and set-up your review and review team
- Second, key dates during the run-up period to end March 2019 (the due date for the UK to leave the EU).

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“Our strong advice to all Irish companies and businesses operating in Ireland is to carry out a full review of existing and likely future operations.”

SECTION ONE

Introduction

The United Kingdom’s decision to leave the European Union has already created significant uncertainty and risk for Irish companies and businesses operating in Ireland.

The business landscape across the European Union may change for many Irish businesses as new or revised trading arrangements have to be put in place and/or certain activities – which are currently carried out in the United Kingdom - are re-located. The solutions for each company will vary depending on the applicable requirements for the relevant industry sector and the nature of each such company. One significant element of risk for Irish companies which operate in pan-European markets is anticipating future regulatory divergences between the EU and the UK.

The precise impact for Ireland and Irish companies cannot be determined at this time, however, some government agencies believe that it will be determined ultimately by reference to:

- the nature and conditions of the UK’s exit
- the nature, extent and length of any transitional arrangement(s)
- the type of free trade agreement(s) agreed between the EU and the UK
- the resulting impact on the UK and the extent to which this is transmitted to Ireland and Irish companies and businesses.

To date, many Irish businesses have deferred consideration of Brexit and adopted a ‘wait and see’ approach. For a number of them, such approach was appropriate. Now, however, our strong advice to all Irish companies and businesses operating in Ireland is to carry out a full review of existing and likely future operations and prepare a plan or plans in response to the impact of Brexit (your Review). Some companies may also choose this time and opportunity to carry out a more thorough medium-to-long term and strategic review of their operations in the European Union and beyond into the EMEA region.

This Briefing will assist you in carrying out your Review. If useful to you, we would be happy to assist you further in conducting and/or setting-up your Review. For further contacts, please see page 13.

“It is generally accepted that Brexit poses the most significant challenge that the Irish economy and Irish business have faced in decades.”

SECTION ONE

Starting Your Review

The Irish government has identified the unprecedented challenge of Brexit to Ireland’s economy and trade – whilst acknowledging the endeavours by many businesses to diversify into new markets in the EU and beyond.

In the government’s policy paper published on 2 May 2017, it noted that many issues arising for companies will be addressed not in the initial Article 50 withdrawal agreement but in the subsequent EU-UK agreement or agreements – and also, perhaps, in some of the transitional arrangements.

However, Irish companies and companies operating in Ireland can benefit from a Review at this time of their business models and arrangements, and identification by them of the legal, regulatory and business risks and opportunities, and the steps that should or may be taken, in the run-up to and following Brexit.

In section two we have set out key dates during the run up to end March 2019.

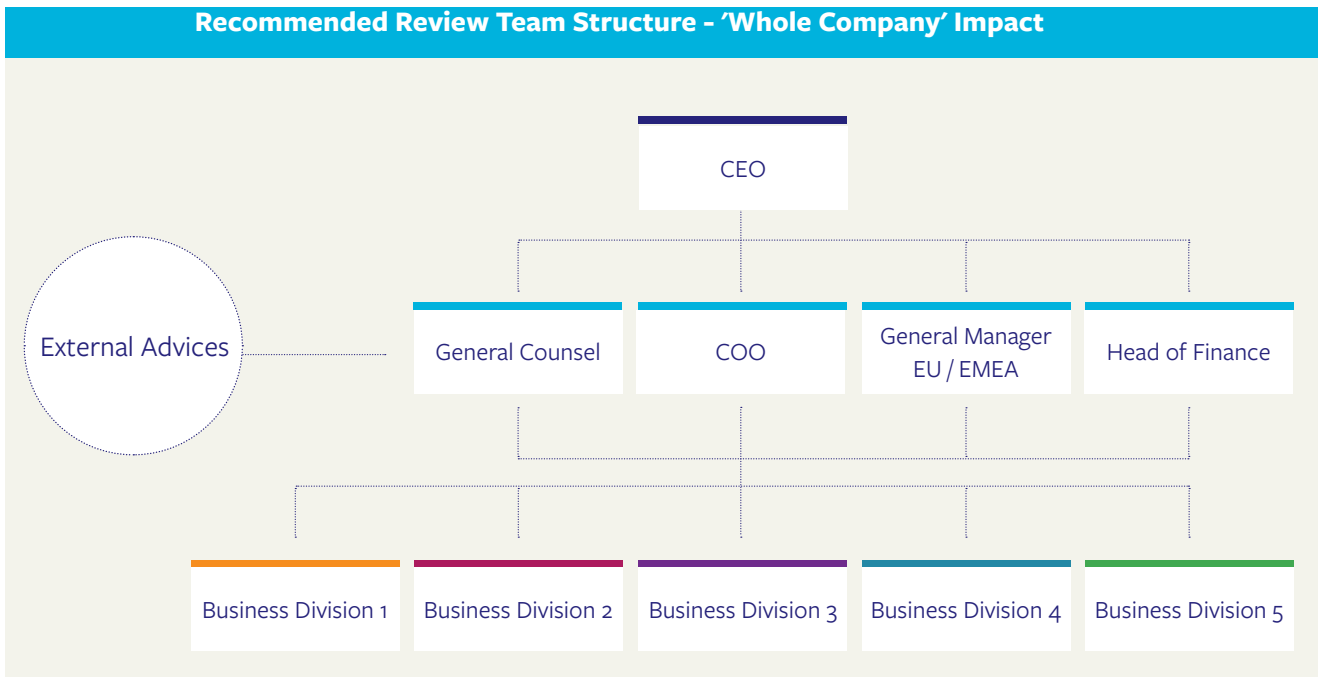
However, the starting point is to establish your Review Team to prepare a plan for and in response to Brexit. The primary aim of the Review should be to identify the principal elements of your business that will be most affected.



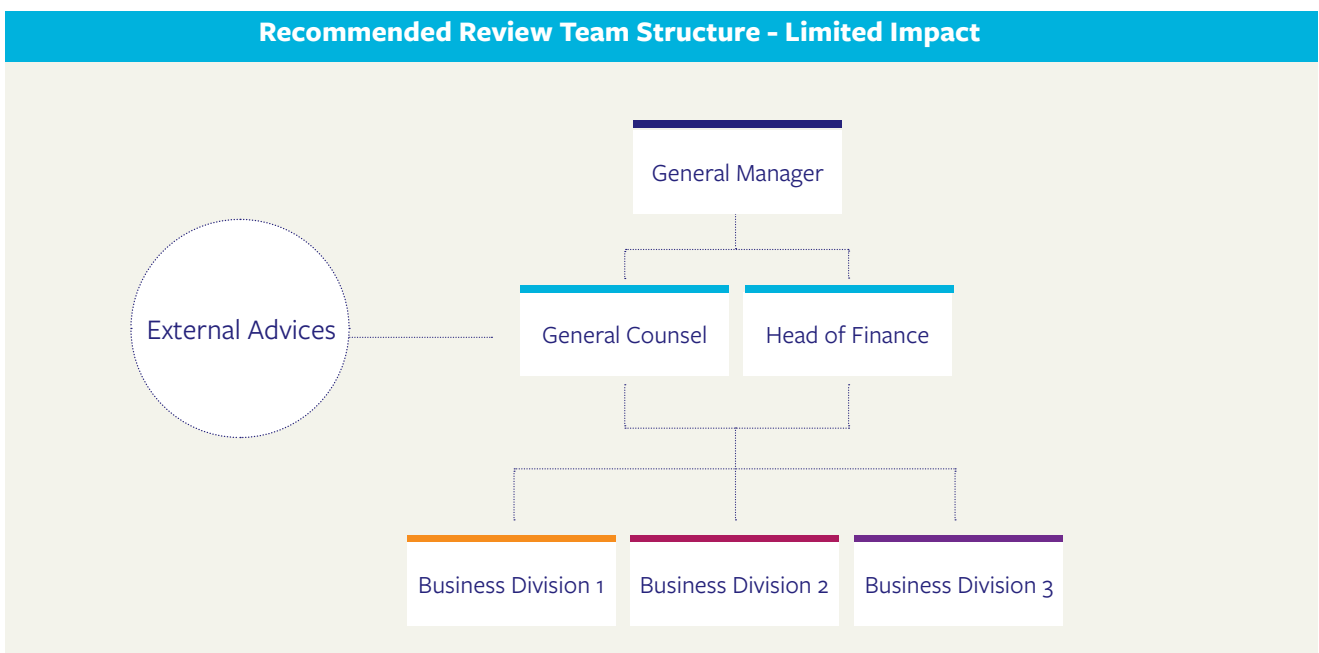
SECTION ONE

Your Review Team - assembling the right team

Each company and business is different. If the potential impact or consequences for your company may be ‘whole company’, then we suggest a structure and team as follows:



If the potential impact or consequences for your company is limited, then we suggest a structure and team as follows:



“Your primary task is to identify what part(s) of your business will be affected most by Brexit?”

SECTION ONE

General Questions for Your Review Team

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01. Primary task: what part(s) of our business will be affected most by Brexit?

 02. How reliant is our business on UK customers or UK-based counterparties?

 03. How many of our UK or UK-based counterparties are, in turn, reliant on EU business, support, grant aid or counterparties?

 04. Will transit of our goods be impacted? What impact on our routes to market?

 05. Will there be any ‘supply-chain’ interruption for our business or our suppliers?

 06. Will a change in the UK regulatory environment affect, interrupt and / or expose our business?

 07. Will our funding or funding sources need to be revised?

 08. Might our cost of funding be impacted?

 09. What is our position in relation to sterling and will we need to change our currency exposure(s)?

 10. Will there be tax, VAT and/or customs implications?

 11. Will any material contracts require reworking or revision?

 12. Might Brexit ‘trigger’ any provisions of the company’s existing contracts (such as a material adverse change clause)?

 13. Do we need to review investment decisions taken or consider future investment decisions differently?

 14. What, if any, employment, visa, etc impact(s) could there be for us?

 15. What sector-specific issues are there for us?

“We recommend that your Review Team reviews all transactions involving English law and UK-based parties .”

SECTION ONE

Legal Considerations for Your Review Team

It is not possible to determine what new legal, constitutional, regulatory, tax and economic regime(s) and relationships might be created in place of today’s arrangements or the timeframe in which any such changes might be implemented.

However, your Review should include the following legal and regulatory matters:

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01. **Market access:** might your business require new, alternative or additional authorisations, licences, *etc*?

 02. **Companies and corporate transactions:** underlying law may change a little but areas such as employment, pensions, health and safety, IT and data protection should all be considered

 03. **Mergers and acquisitions:** although underlying company law may not change very much, the competition law regime could change and this may be important in a number of deals. There may also be a risk of future dual regulation rather than mutual recognition

 04. **Employment:** will non-UK nationals employed in the UK, and UK nationals employed in the EU, have continuing rights to work in the other jurisdiction?

 05. **Banking and lending:** you should review loan and credit documentation, security and guarantees

 06. **Derivative transactions:** in the short term, do you anticipate having to provide collateral where values have fallen dramatically? In the longer term, the non-application of the EU directive on financial collateral arrangements could raise many issues

 07. **Commercial dispute resolution:** as the UK will no longer be a part of the EU some parties may review governing law, jurisdiction and arbitration provisions when entering into new contracts with cross-border elements

 08. **Financial services, asset management, funds:** possible significant changes to both the structure of transactions (as a result of the loss of passport rights) and documentation reflecting revised and/or new legal and regulatory framework(s)

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09. **Environment and energy:** the EU energy and environmental directives and regulations will no longer apply to the UK or UK businesses. The impact on existing and future contracts may be considerable
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10. **Restructuring and insolvency:** this is a particularly difficult area. The Insolvency Regulation will no longer automatically have direct effect in the UK and, while it is likely that it will be replaced with a similar legislative regime, that will require change to both UK law and EU law

“Ireland is a common-law, English-speaking country, with a stable system of government within the EU.”

SECTION ONE

Ireland’s Advantages as a Location

Your Review may lead to revised planning for your business post-Brexit. In so planning, you should reflect on the advantages that Ireland has as a place in which to do business. These advantages include:

- a long-standing, deeply committed EU member state
- a member of the Eurozone
- a common-law, English-speaking country, with a stable system of government within the EU
- a well-educated, flexible and diverse work force and is ranked as a top business destination
- a well-established financial services sector
- home to an array of professional services firms
- a regulator of the financial services sector, CBI, a tried and tested regulator
- deeply embedded in the EU’s supervisory and regulatory system
- its business migration system from EEA countries more ‘business friendly’ in recent years
- significant amounts of commercial office space coming on stream over the coming months, capable of accommodating in excess of 20,000 persons.

“The impact on some industry sectors will be marked, affecting investment and trading in significant ways.”

SECTION ONE

The Impact of Your Review

The long term implications for Irish companies and companies operating in Ireland, and on the Irish economy as a whole, cannot be known at this time. However, it can be said that it is very likely that legal and regulatory divergence in many trade and business sectors will increase over time and the impact on your business and your industry sector could be marked, affecting your investment and trading in significant ways.

The Irish government is seeking to mitigate the risks for Irish trade and to the Irish economy. It has identified the need to:

- maintain close trade between UK and EU/Ireland
- minimise regulatory burden for goods transiting UK
- improve business environment – facilitate more competitive, diversified markets, better infrastructure
- pursue trade and investment opportunities from Brexit
- remain a long-standing, deeply committed EU member state

It is also spoken of “making a strong case that UK’s withdrawal represents a serious disturbance to the Irish economy overall and that we will require support” which, depending upon the industry sector in which your business operates, may lead to some form of government

support or relief as a result of an EU state aid ‘holiday’. However, it would be unwise to plan or rely on such support or relief being available.

Your business response at this time and in the period leading up to the UK’s exit from the European Union, including during any transitional period(s), will be every bit as important (and, perhaps, more important) as the Irish government’s endeavours. Our sense is that short-term responses by business may simply have cost implications and, thus, the better approach may be to conduct your Review with a medium-to-long-term and strategic perspective.

We would be happy to assist you in your Review.

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Section Two
Brexit Timeline

16 Overview of key dates

SECTION TWO

Brexit Timeline







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This document is for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.