



Irish Association of
Corporate Treasurers
www.treasurers.ie

Briefing

New Irish Law ISDA Master Agreement

INTRODUCTION

The International Swaps and Derivatives Association, Inc. (ISDA) has published Irish and French law versions of its 2002 ISDA Master Agreement, which are available on its [website](#).

It has also commissioned updated Irish and French netting opinions encompassing those new versions, which have been made available to ISDA members in its [Opinions Library](#). This initiative forms part of ISDA's strategy to provide users of its documentation with the tools they need to future-proof contractual arrangements against the uncertainties presented by Brexit.

McCann FitzGerald worked closely with ISDA on the Irish law aspects of this project and provided the updated Irish netting opinion, which encompasses both the new French and Irish law versions of the Master Agreement. It is anticipated that other jurisdictions' netting opinions will be extended to encompass these new versions of the Master Agreement as they are updated.

PICTURE (FROM L TO R): Scott O'Malia, ISDA CEO, Judith Lawless, McCann FitzGerald, David Stanton, Minister of State at Department of Justice and Equality and Katherine Tew Darras, General Counsel, ISDA, at an event held at the offices of McCann FitzGerald on 3 July 2018 to celebrate the launch of the Irish law version of the ISDA Master Agreement.

BACKGROUND

Corporate treasurers rely on derivatives to manage risks to which their businesses are exposed; they provide an essential tool to lock in borrowing costs, exchange rates and prices, thereby eliminating or reducing many of the uncertainties affecting those businesses.

ISDA has a long history of creating solutions for derivatives market participants, facilitating more efficient, safer derivatives markets. One of those solutions is the production of industry standard documentation. IACT members will be very familiar with the ISDA Master Agreement, which facilitates the prompt negotiation of derivatives on terms benefiting from strong commercial and legal certainty, supported by the legal opinions referred to above.

ISDA previously offered three governing law options for its Master Agreement; those of England, the State of New York and Japan. The choice of governing law, in turn, influences the choice of jurisdiction whose courts would determine any disputes arising under the Master Agreement.

NEW DEVELOPMENT

ISDA's new Irish and French law options ensure that, post-Brexit, users retain the option to use a Master Agreement governed by the laws of an EU Member State, whether their desire to do so derives from Brexit-related or other reasons. The Irish law option offers some very particular benefits to users, as the:

- very limited differences between the English and Irish law versions;
- similarity of the contract law and common law legal systems of England and Ireland; and
- precedential value afforded to decisions of the English courts before the Irish courts,

will provide great comfort to users familiar with the longstanding English law Master Agreement that their expectations as to how the Irish law version works should be respected.

COMMENT

The availability of an Irish law version of the ISDA Master Agreement is a very welcome development for Irish corporate treasurers.

It ensures that they can continue to use a Master Agreement that looks, feels and operates very much like the English law version with which they are familiar

but which, being governed by Irish law, benefits from the automatic recognition and enforcement of judgments of EU Member State courts available under the Brussels Recast Directive.

For treasurers hedging Irish law governed financing liabilities, it will also facilitate alignment of the governing laws of their hedging documentation (the ISDA Master Agreement) and their finance facility documentation.

Whereas ISDA's initial focus has been on its 2002 Master Agreement, a suite of Irish law governed credit support documents has also been drafted and made available to ISDA members for comment.



JUDITH LAWLESS, PARTNER, MCCANN FITZGERALD SAID;

“We have worked closely with ISDA to make Irish law available as an additional governing law option for the ISDA Master Agreement. This initiative will be seen as a welcome development by treasurers as the very limited differences between the existing English law, and new Irish law, versions, and the similarities that exist between English and Irish contract law and legal systems, will be viewed as points of strength and reassurance that their expectations as to how the Master Agreement works should be respected.”



ANNE FITZGERALD, PRESIDENT OF THE IACT SAID:

“The Committee of the IACT considers ISDA's publication of the new Irish law version of the Master Agreement to be a very positive development for the Irish corporate treasury community, providing a very useful additional tool for the corporate treasurer's toolkit.”



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