

Companies Registration Office: Moving towards a new era

The Companies Registration Office (CRO) has been operating under a principal Act which is now 50 years old – enacted long before an era of electronic filing and social media. However, the new Companies Bill will make significant changes to the workings of the CRO and will require it to adapt accordingly. In conversation with *Sarah Kilduff, Helen Dixon, the Registrar of Companies*, explains that the Bill will have a hugely positive impact both for the CRO and for business in general.



*Helen Dixon, the Registrar of
Companies*

“dealing with post-registration filing obligations of those companies”. Statutory information provided to the Office is subsequently made available to the public. “Up to this point, year to year, the role of the Office has been fairly fixed, with a static 185,000 companies on the register, the bulk of which are private limited companies”, according to Ms Dixon.

With over 120 staff members in total “it is quite a labour-intensive operation, as many filings are still paper-based, and, while we are operating in an era with excellent technological capability, we still operate primarily under the Companies Act 1963 which clearly did not envisage an era

such as this and so we are not yet in a position to fully exploit the technological capabilities we have”.

Each year, the CRO takes in about 360,000 statutory forms from

The Companies Registration Office, which comes under the remit of the Department of Jobs, Enterprise and Innovation, is primarily concerned with “giving legal birth to Irish companies” and

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companies in addition to about 170,000 sets of financial statements. 64 percent of forms received by the CRO are filed electronically but nearly all of the financial statements continue to be sent to the CRO on paper. "Even though our strategy is to implement a move to electronic filing, we still operate very much as a paper-driven office as the signature requirements, in particular, imposed by the legislation do not facilitate electronic filing systems." Additionally, "the main stakeholder groups that we have, aside from businesses themselves, are the accountancy and audit communities and the legal profession - professions which can sometimes favour operating on a paper basis rather than dealing electronically."

Enforcement

In relation to enforcement of the annual return filing obligation, the CRO utilises its strike-off capability under Section 12 of the Companies (Amendment) Act 1982 to secure filing of outstanding returns. About 7,000 companies are involuntarily struck off the register each year. This strike-off capability, Ms Dixon stresses, is "extremely important to us in terms of maintaining compliance with the key obligation of annual return filing". In addition, the Registrar explains, the CRO prosecutes in the District Court each year a number of companies for failure to file their annual returns and accounts. The CRO also makes High Court applications pursuant to section 371 of the 1963 Act to compel filing of annual returns "in respect of a small number of companies and their directors". "As of this year, we have reached an historic high in terms of compliance" with 90.8 percent of companies up-to-date with their annual returns as at December 31 2012. The CRO is doing well in this regard as they have "a good armoury of enforcement provisions".

Changing role of the CRO

How has the work of the CRO changed in recent times in light of vastly altered economic circumstance? The impact of the recession has been felt primarily in the area of enforcement according to Ms Dixon. The enforcement team, for example, have experienced an increase in the number of calls from "distressed business owners who currently face having their company struck off the

register as they do not have the funding to prepare and file financial statements, pay filing fees etc". "We are listening to these companies and trying to provide them with options but in fact the least costly option in each case is simply to file the company's annual return on time." Another visible change is that while 75 percent of companies file accounts through an accountant, there is an increasing trend whereby companies are completing the mechanics of filing directly with the CRO. This, Ms Dixon adds, is something the CRO "fully supports".

There has also been "a changing profile of work and an increased workload in certain areas", for example an increase in the number of notices of appointments of receiver notified to the office over the last few years. There is also an increase in the types of companies that can register with the CRO, Ms Dixon explains, for example companies that are investment funds "can now register by way of continued incorporation from certain jurisdictions". In recent years, there has also been an increasing number of cross border mergers, with Irish companies being the transferor company in certain instances and the successor company in others. Thus, "the complexity of what we are doing has increased. However, while some of the work has certainly become more legally complex, in general, the work of the office really is quite predictable with set statutory functions."

That said, one of the key challenges according to Ms Dixon has been "motivating staff through periods of change", sometimes caused by external factors such as the Government's decision to decentralise the office.

Decentralisation

While it was intended that the CRO would move to Carlow in its entirety during the previous Government's programme of decentralisation, today just 42 staff members are based there with remaining staff working from a building on Parnell Square which has housed the CRO since 1997. This, Ms Dixon admits "is not ideal, but we maximise the opportunity of having an office outside of Dublin in terms of dealing with paper filings". However, decentralisation, Ms Dixon points out, caused an exodus of staff who did not want to move to Carlow and so the

Office lost "a lot of corporate memory". Furthermore, separate offices "create communication challenges and increased costs" in terms of couriering information and documents between the two offices. Keeping staff motivated is proving an ongoing challenge, yet, "the Companies Bill presents opportunities to keep everyone motivated."

Easing administrative burdens on business: Companies Bill 2012

Ms Dixon admits that one of the key administrative burdens imposed on businesses is the obligation to file an annual return within 28 days of the company's statutory annual return date every year and to append financial statements to that return. Various types of companies that are required to file audited accounts, such as guarantee companies, the second most populous company type on the register, would claim that "the burden of audit is disproportionate and not necessary". However, the new Companies Bill, Ms Dixon notes, will remove the absolute requirement for guarantee companies to have their accounts audited. Additionally, to further ease that burden on business, CRO provides the option to electronically file a company's annual return by developing a portal entitled CORE (Companies Office Registration Environment) which permits companies to access a pre-filled annual return form and businesses can attach a set of accounts to this online form as a PDF or else post them in. Under the existing law, two directors must sign a company's annual accounts and thus Ms Dixon notes, for the moment companies probably find it easier to simply sign and post paper accounts to the Office.

An innovation under the Bill is a requirement for simple type-set signatures and only of the directors to be included in the filed accounts in certain cases. "We envisage once that is operational most companies will start attaching PDF accounts to their annual return, making electronic filing much more meaningful". Technology is, in the Registrar's view, "certainly the key to reducing the burden for both filers and for the CRO." "We would envisage that once the provisions of the new Companies Bill are operational, we will be able to redeploy quite a number of staff currently involved in those manual activities".

Companies Bill 2012

The Minister for Jobs, Enterprise and Innovation, Richard Bruton TD published the Companies Bill 2012 on December 21 2012. The primary aim of this Bill is to simplify company law and consolidate the existing Companies Acts. As the largest substantive Bill in the history of the State, with over 1,400 sections, the implications of the Bill for the CRO must undoubtedly be extensive. "It is great news that the Government has published this Bill and the positives for us are manifold", Ms Dixon stresses.

The Bill will however, bring initial challenges to the CRO "because we

convert to one of the two new private limited company types and file their choice accordingly with the CRO. For companies who fail to proceed with conversion during the 18-month period, the Bill deems those companies to have adopted the form of the new simplified limited company.

The CRO must "try and envisage how many companies will opt to make a filing with us during the 18 months and estimate the amount that will fail to do so." The CRO must also develop a communications strategy in advance of the legislation "to ensure companies know they cannot stay as they are and need to convert".

Simplification

Some of the key innovations in this Bill, Ms Dixon states, include the fact that the Private Limited Company is at the centre of the Bill with the first volume being solely dedicated to this type of company. This new simplified Private Limited Company will have the option of having just one director, as opposed to the current requirement whereby all companies are required to have a minimum of two directors. It will also have a single document constitution omitting "the complexity" of the Memorandum and Articles of Association. The Bill will also remove the concept of ultra vires and will allow the limited company to have the capacity of a natural person. The requirement to hold AGMs will allow for a written-only format. The simplified form of limited company will be a substantial change for the CRO "in terms of new company incorporations because it is envisaged most new companies, once the legislation commences, will be of the simplified limited type and incorporating companies will become much easier and quicker for all concerned."

The CRO too are particularly pleased that the legislation is going "to help us make in-roads into driving uptake of electronic filing" and eliminate the antiquated elements of the 1963 Act that did not envisage modern day technological capabilities. There are many other areas of change that will be challenging from an operational perspective, Ms Dixon admits, for example under the current 1963 Act where companies are obliged to file details of charges over their property with the CRO within 21 days of the date of creation of the charge. The

new Bill rewards faster disclosure by moving from a system of "first in time" in terms of creation, to a system of "first to file", meaning that the CRO will have to have in place a system "capable of recording with great accuracy the order of receipt of charges". Traditionally the filing of charges has been completely paper-based but this system under the Bill will have to be "entirely electronic" to cater for the "first to file" regime.

Given the extent of the current Companies Acts and the complexities surrounding their interpretation, "the Bill is going to be great news for this Office" with all the legislation in one "new consolidated volume". The Companies Bill will be highly beneficial for businesses, Ms Dixon notes: for example the CRO is aware that company directors complain about the difficulty in understanding their exact duties and obligations under current law. The new Bill codifies directors' duties. This too should serve to encourage start-up companies where in the past the "memo and arts seemed archaic but the new system will be very simple and clear allowing companies the ability to get set up quickly and begin operating". Additionally, from a governance perspective, the fact that only one director will be required will also benefit small companies who are, under the current legislation, "forced into having an additional director, who may not be in any real way involved with the business".

With a particularly busy time looming for the Office and the Registrar herself, she admits that it is difficult to know when the Bill will be fully enacted as there are likely to be some amendments as it passes through the Houses of the Oireachtas. However, this legislation was developed by policy makers primarily from the Company Law Review Group, chaired by Dr Thomas B. Courtney, "which is extremely representative of the full stakeholder community of legal practitioners, accountants, business regulators (...) and a lot of it was developed from a consensus point of view". So while specific details are likely to be "tweaked and minor errors corrected", great changes are unlikely and so the CRO can "start to prepare based on the published Bill, while keeping an eye on second stage and committee stage in terms of what amendments do arise".

"the CRO is aware that company directors complain about the difficulty in understanding their exact duties and obligations under current law"

are at the centre of implementation". Companies currently incorporated as private limited companies will be required to undergo a statutory conversion process to the two new types of private limited companies envisaged under the Bill. "This makes obvious sense as you do not want to introduce new state-of-the-art legislation and then have the bulk of companies not convert to the company type to which the new law applies, so the initial challenge for us is going to be the 18-month transition period after commencement of the legislation whereby 170,000 private limited companies in Ireland need to undergo this statutory conversion."

The Bill sets out a number of mechanisms, which, Ms Dixon highlights, companies can use to

Croke Park extension deal: Supporting a 'YES' vote

Bernard Harbor explains why IMPACT is urging for the new Croke Park deal to be accepted and stresses how significant the negotiations were for members

On entering the most recent Croke Park negotiations, IMPACT's general secretary Shay Cody described them as "probably the most difficult ever". By the conclusion of the talks, his prediction turned out to be accurate. The deal that has emerged from those negotiations is, without any doubt, the most challenging proposition put to public servants in living memory.

IMPACT's Central Executive Committee (CEC) has recommended that our members accept the new proposals for an extension to the Croke Park agreement. The decision to make that recommendation was not taken

"our task in negotiations was to minimise the adverse effects on our members and the services they provide"

lightly. But IMPACT's elected leadership, composed of a diverse group of public servants from a wide variety of grades, believed the proposals represented the best package that could be achieved through negotiation.

And that is, in every respect, the crux of the issue when members are making their decision to vote for or against the agreement. Would it be possible to achieve something less painful and more palatable if the current deal was rejected? In our judgment, it is not.

There is no denying that the package will result in loss of income for a proportion of public servants, and changes in conditions for many more. It is a stark but undeniable reality that, faced with

management's determination to make €1bn additional cuts to the pay bill, our task in negotiations was to minimise the adverse effects on our members and the services they provide. But it was not possible to make that €1bn figure go away.

By negotiating however, we did achieve the following:

- The package contains measures that will eliminate the "two-tier" workforce introduced when the previous Government imposed an additional ten percent cut in pay scales for new entrants.
- On increments, unions successfully moved management from its position, which was that all increments should be frozen until the end of 2016.
- On premium payments, unions moved management from its position, which was that payment for working Sundays should be reduced from double time to time and a half, and that premiums for Saturday working should be abolished outright.
- Overtime payments, which management wanted to abolish, have also been preserved in a modified form.
- On flexi-time, unions were able to modify the management position on the grades to retain the facility.
- The proposals will also see a small restoration of pension levy reductions for all public servants.
- There will be no change to the 45km limit on redeployment. Management had sought a 100km radius.

Understanding the proposals

Some say that we would have been better off staying outside the talks, but that would have led to a €1bn extraction from the public paybill by way of the blunt instrument of legislation. This would have been an abdication of responsibility to our members. Therefore, by negotiating, IMPACT and other unions have succeeded in reducing the severity of management proposals in every important area, and

it is likely that deeper cuts will be imposed if this package is rejected.

The priority right now is to ensure that public servants understand the proposals. Also, before members cast their votes, it is vital that they also understand the alternatives.

If the current proposals pass, the savings that were sought by management will be achieved in a manner which best protects the lower paid. In addition, protection against compulsory redundancy will remain and 87 percent of public servants will avoid a pay cut.

"If the current proposals pass, the savings that were sought by management will be achieved in a manner which best protects the lower paid."

Although unions have not accepted Government plans to cut so-called "higher pay", the negotiations resulted in less severe cuts, a higher threshold at which cuts are imposed, and a form of implementation that means pay can be restored in time for those who earn less than €100,000 a year.

In the event that the deal is rejected and legislation is introduced, we have no influence over how, where or for how long those measures are applied. That is why it made sense to stay involved in the negotiations, and that is why we are asking members to vote yes.

Bernard Harbor is the National Secretary of IMPACT Trade Union.

Croke Park extension: The ‘NO’ side

The ‘Croke Park Extension’ deal is the worst set of proposals ever voted on collectively by the Irish Trade Union Movement writes *Mike Jennings*

The National Executive of the Irish Federation of University Teachers (IFUT) has decided unanimously to recommend a ‘no’ vote to IFUT members in the ballot which will take place in the next few weeks on extending the Croke Park Agreement. IFUT is calling on all of its members to reject the proposed agreement for reasons outlined below.

We cannot afford it and that is a fact

IFUT members have already suffered a reduction in their earnings of the order of 25 percent. We simply cannot afford a further pay cut of 5.5 percent to 8 percent. IFUT has calculated that a combination of the proposed cuts and reductions over recent years will mean that every single pay increase achieved since the year 2000 will be more than wiped out for all academics below the level of professor (who constitute a small minority in any College). In fact, a college lecturer will earn 3.6 percent less than his/her equivalent back in April 2000 when adjustments are made for CPI increases since then. Despite all of these facts, there is still a gross misconception in the public mind that academics are highly paid. How many people know for instance that the starting salary of a lecturer is €34,386? And that is for a job which requires at least eight years of post-Leaving Certificate education to qualify for.

Many IFUT members are under a constant threat of compulsory redundancy

Almost uniquely in the public sector, significant numbers of staff in the universities and colleges face the threat of compulsory redundancy. IFUT has been forced to fight all such threats on a case by case basis and the Department of Education refused absolutely to insert any wording whatsoever into the new proposals which would give more job security to academics and researchers.



Student numbers up, staff numbers down

The savings we have already given are exceptional in both the public and private sectors. The cut backs proposed in the revised agreement will have a seriously disproportionate effect on higher education staff because of the massive amount of additional work they have had to take on arising from historically high enrolment numbers combined with severe reductions in staff numbers. Our staff to student ratio has deteriorated alarmingly over the past few years.

In 2008 there were 4,795 academics and 89,650 students. By 2011 the number of staff had fallen to 4,426, yet the number of students we teach had soared to 106,448 and this figure continues to increase. If we had an agreed student to staff ratio we would automatically have almost 900 extra colleagues to help us share the extra work we all have had to do for free.

You cannot trust those who do not keep their word

The new proposals represent a shameful breach of faith by the Government. Ever since 2010, we have been giving huge concessions in return for a promise that there would be no pay cuts for four years. This commitment has been reneged upon in such a manner, that it renders meaningless the recent promises that the current proposals will last for three

years.

The existing agreement does not permit the Government to threaten us as they have done. The existing Croke Park Agreement says that it is binding for four years unless there is an “unforeseen budgetary deterioration”. Things are bad but there has been no deterioration, as we are told constantly when it suits the Government to say so.

“Ever since 2010, we have been giving huge concessions in return for a promise that there would be no pay cuts for four years.”

Lack of balance

IFUT accepts that the country is in dire financial straits (although for reasons entirely beyond our control or fault) and that, regrettably, sacrifices are called for by those who can afford them. What we cannot, and will not, accept is that these concessions are to be sought exclusively from public servants. If a person on €34K or €80K is being asked to contribute more than, in fairness, all people on €34K or €80K should be involved. The way to effect that is through a fair and progressive taxation system. Everyone, in both the public and private sectors, should be asked to contribute according to their means in a manner which does not victimise one section of society simply because they serve the public good.

The proposal was put together by two departments who have no idea of how universities operate

In Clause 2.3 of the Agreement it says that the people who work 39 hours a week will not have extra hours to work. Yet in the same clause it says that “academic staff at third-level will work an additional 78 hours per annum”. How can that make sense unless the Department of Education thinks we work less than 39 hours? Especially when at least one university (NUIM), sent up a formal report to them confirming that academics there, work 55 hours per week.

Also, in figures contained in her speech to the IFUT Annual Conference last April, Dr Marie Clarke of UCD provided proof that senior academics in Ireland work an average of 50 hours per week and junior academics an average of 47 hours per week. In both cases this was significantly higher than the European average (48 and 42). These are facts, not anecdotes and were established by a survey conducted across 12 European countries and

“The proposals demand the elimination of exam fees despite the fact that only early-stage academics are paid these separately.”

involving more than 1,200 respondents in Ireland.

The proposals hit lower paid academics more than higher paid

The proposals demand the elimination of exam fees despite the fact that only early-stage academics are paid these separately. More senior staff have their exam duties paid for as part of their basic salary. IFUT calculates that this

measure could involve a loss of up to €2,250 per annum for academics who are already struggling on lower pay scales.

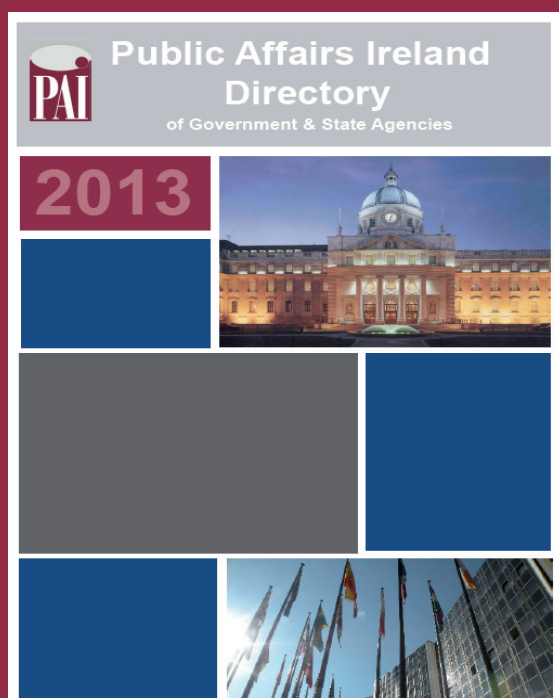
The Department was unable to answer IFUT’s queries as to how they will manage should casual staff who are paid to mark exams no longer be available, owing to the fact that there will be no payment for this work.

Conclusion

There has been much talk of late of “sweeteners” to entice unions to vote in favour of this dreadful deal which is easily, in our view, the worst deal ever voted on collectively by the Irish Trade Union Movement. To conclude, for IFUT members there have been no enticements and the deal is as bad today as it was in the early morning when it was finalised.

Mike Jennings is the General Secretary of the Irish Federation of University Teachers.

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Private and Public Sector: Sharing best practice

Tony Donohoe provides details of a new pilot staff exchange scheme between the civil service and the private sector



The concept of sharing best practice between the private and public sector has been part of policy rhetoric for decades. Translating this rhetoric into reality

presents a challenge which a new pilot staff exchange scheme between the civil service and the private sector seeks to address.

The idea is not new. Similar schemes were tested unsuccessfully in Ireland during the 1970s and the 1990s. However, both the Government and the business community believe that this is a particularly propitious time to introduce such an initiative. In the intervening years, more public services have been delivered in partnership between government agencies and private companies, and there is a deeper mutual understanding of how the respective sectors work. Economic constraints have also driven an ambitious reform agenda which has included business process improvements, better use of technology and more effective public procurement processes.

Goals

The main ambitions driving this new scheme include to:

- Enhance communication, co-operation and understanding between the civil service and the private sector;
- Provide a better understanding by the private sector of the drivers of public policy and to further develop the policy formulation and project management capacity of the civil service;
- Provide for staff development opportunities through new work experiences and project based assignments;
- Provide an opportunity to develop useful relationship networks and

contacts between sectors; and

- Increase the knowledge on both sides of the culture and way of working in the other sector.

The success of the scheme will depend on the alignment of a number of moving parts including the aspirations of the potential participants and organisational needs of those establishments. Therefore the sponsors have agreed on two principles: (i) The scheme should not be 'over-engineered' and bureaucracy should be kept to a minimum and (ii) It must make sense in terms of generating tangible skills and experience for the participants and their organisations.

Government departments have been asked to nominate up to three staff for assignment to placements in the private sector to areas that best link into key government policy and reform initiatives. These could include initiatives such as project management, facilities management, ICT/eGovernment, shared services or information sharing. They could also include specific sector areas such as agri-food, job placement, water/waste services, energy, communications and education.

Candidates

Nominees will be chosen from high performing individuals with strong leadership potential. Departments will give an undertaking that nominees will be released for a period of between six months and a year, where there is a suitable match, and will be strongly encouraged and incentivised to participate. IBEC has conducted a similar exercise amongst a group of member companies.

The original employer relationship will be retained and the assignment will be by way of secondment, on foot of an exchange of letters. The existing salary will be unchanged and paid by the applicant's employer.

Inclusion of specific clauses in assignment letter will oblige private sector assignees for the duration of assignment to be subject to Civil

Service Code of Behaviour and will cover aspects such as political activity and affiliation, ethics and official secrets etc.

A small exchange scheme oversight group, with representatives from the civil service and the private sector, will be established, the main function of which will be to maintain a general overview on the implementation of the scheme. It will be supported by a Secretariat from the Department of Public Expenditure and Reform. Its initial job will be to draw up a list of suggested matches between private and civil service applicants for consideration by the oversight group. Individual companies and departments will liaise directly with each other to put the exchange arrangements in train and arrange to meet nominees advised to them by the oversight group. It is hoped to make the process as flexible as possible, with minimum bureaucracy.

The pilot scheme has an initial target of 20 exchanges for the first year. Early indications of interest suggest that this should be achievable. It is hoped to have the first exchanges in place by the middle of the year.

Given the economic constraints the country is facing, we need ambitious reform of the public sector that delivers speedy, specific and measurable savings while maintaining the quality and level of public services. However, budget constraints mean that it is difficult to maintain the quality of outcomes. This challenge can be addressed through best practice sharing with the private sector and a more collaborative approach to public service delivery. The proposed staff exchange scheme is a modest, but tangible example of this approach.

For more information contact Tony at tony.donohoe@ibec.ie.

Tony Donohoe is the Head of Education, Social and Innovation Policy with IBEC.

Life in the Mansion House for Dublin's Lord Mayor

Councillor Naoise Ó Muirí outlines his opinion as Dublin's first citizen on a range of issues relating to Dublin city

The role of the Lord Mayor comprises four key responsibilities, namely to chair the City Council meetings, to represent the city at public functions and events across Ireland, to represent the City at public functions and events abroad and finally, to pursue a policy agenda.

The term of office is one year and the role of Lord Mayor is a demanding one with well over 2,500 diary appointments in the course of that year. The amount of travel involved in this role varies based on the priorities of each Lord Mayor, however, internationalisation is a critical part of my agenda and so far I have been on missions to Beijing, Hamamatsu (Japan), Helsinki, Brussels, Barcelona and London. I will shortly travel to London again and I also expect to travel to Guadalajara in Mexico and our sister city of San Jose in California in late March. There is also likely to be a mission to Munich in Bavaria in May. In this regard, I believe that the term of a Lord Mayor is too short. I am frequently asked by my compatriots abroad "What can you get done in a year Lord Mayor?"

Directly elected Mayor

The prospect of directly electing a Lord Mayor of Dublin city was reiterated by the Government in the Action Plan for Local Government, launched in October 2012. While I am hugely supportive of a directly elected Mayor, there are a number of factors I would prefer to be adopted first, should this ever become a reality. Firstly, it would be preferable to have an election solely in Dublin and for the role of the city manager to be transformed with a transfer of executive power to the Mayor. In addition to these two amendments, I would like to see the ability to maximise local taxation decisions or raise finance locally to be embedded within the local government system.

There is certainly a political tension



Councillor Naoise Ó Muirí is the Lord Mayor of Dublin city since June 2012

around the idea of a directly elected Mayor for Dublin, mainly within the civil service in my view. For example, what official within the Department of Finance would be willing to devolve taxation policy down to one region that generates 35 to 40 percent of the country's economic output? Nevertheless, every major capital city in the developed world has a directly elected mayor and in my view, Dublin needs to follow suit or risk being left behind.

Crime in the city centre

Dublin's city centre is safe and we have worked very closely with An Garda Síochána to improve the situation, particularly with respect to O'Connell Street and its environs. 20,000 people an hour pass the Spire on O'Connell street at peak and the key crime statistics show that the risk of serious assault in the area is now approximately 1,000,000 to 1. That being said, we are engaged in a constant battle to deal

with a negative media perception of this area and while we are acutely aware that there are certainly ongoing issues to be dealt with (including street-dealing and trading of prescription drugs), I feel that the overall improvement is very positive.

Dublin and tourism

If we all pull together, tourism in Dublin is an industry that has huge potential for growth. Dublin does not need a re-branding exercise, it is a city of intimate cubbyholes from which each visitor inevitably departs with their own story. Additionally, the beauty of tourism is that it is labour intensive but does not require highly-skilled workers.

Construction in Dublin

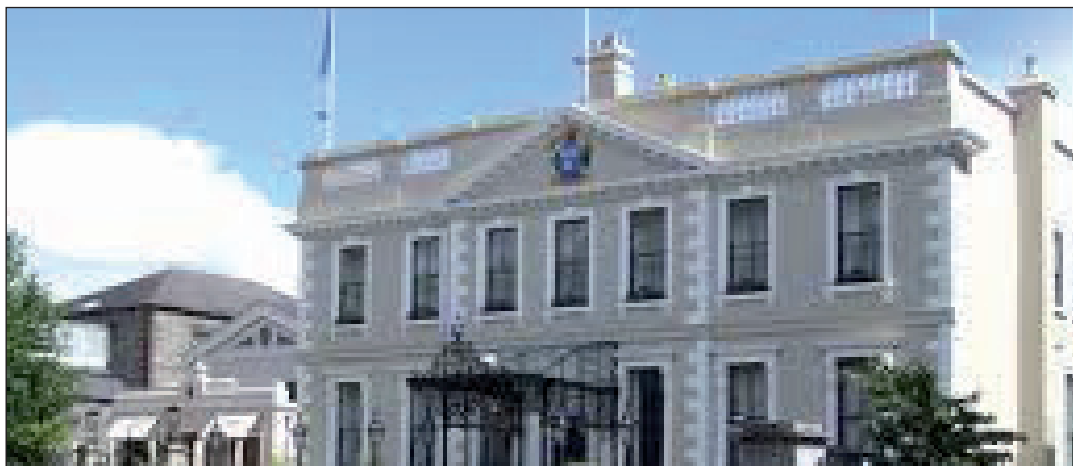
Based on international norms, Ireland should be able to support a steady-state construction industry of about 12 percent of GNP. This equates to an annual industry worth approximately €15bn which would bring with it 170,000 jobs and translate to 60,000 people in the greater Dublin region working in the construction industry. It is therefore vital for Dublin that we get back up to this level of activity.

Dublin and sport

Research states that just a little regular exercise has significant benefits on one's general health and longevity, especially as you get older. With that in mind, we have set up a Lord Mayor's Challenge to recruit 200 runners of all shapes and sizes to participate in five road-races taking place throughout the City. The 200 places were snapped up in jig-time and we have just completed the 4th of five races with the St. Patrick's 5k Race through the Georgian Streets of Dublin.

Wifi in Dublin city centre

We looked at this idea previously in



The Mansion House in Dublin has been the official residence of the Lord Mayor of Dublin since 1715

2005/2006 but ran into a state-aid related road-block. This time around we have therefore adopted a different approach by awarding a concession to a partner. The city provides the base infrastructure on which the service is mounted (street lighting poles etc) and the partner installs and operates the service. It is an experiment for the city but one which has huge potential. The challenge now is to get the city, businesses and citizens to develop and utilise the service in innovative ways. Dublin has major advantages in its quest to be a leading Digital City in the world but we cannot sit back on our laurels.

“Dublin’s city centre is safe and we have worked very closely with An Garda Síochána to improve the situation, particularly with respect to O’Connell Street and its environs.”

Links with London

It has always amazed me that the civic links with the capital of our biggest trading partner remain under-developed. Dublin was, after all, the “second city of the Empire” many years ago and a massive portion of

the population of greater London acknowledges their Irish ancestry. With this in mind, we will be building on opportunities to positively celebrate shared British/Irish heritage in years to come.

Dublin on New Year’s Eve

This year New Year’s Eve in Dublin proved greatly successful with a combined attendance of nearly 43,000 people. 15,000 people attended the countdown concert on College Green alone. One of the big changes in the organisation of the event was the family focus of the celebrations. The Peoples Procession of Light, for instance, started at 6.30pm and the fireworks over Stephen’s Green at 8pm. In my opinion, making the needs of families a priority contributed greatly to the success of the night. Also encouraging was the fact that a third of attendees were visiting from outside of Ireland and 93 percent of survey respondents said they would recommend the event to friends or relatives. Dublin is now on the international map for New Year’s Eve and hopefully this will continue.

Property Tax

In my view, the property tax is needed and I will be paying it. It is something which is a feature of most developed European societies and can be put to good use in funding local service provision.

The renewal of Grafton Street

Some will class the renewal of Grafton Street as a vanity project for the City, but I disagree. It is the premium part

of our central business district and it is vitally important that we present it in the best light possible.

“In my view, the property tax is needed and I will be paying it. It is something which is a feature of most developed European societies and can be put to good use in funding local service provision.”

Living in the Mansion House

You get the option of moving in – and how could you not? Dawson Street is a busy street but St. Stephens Green is some garden! The formal rooms are all on the ground floor and the living quarters (3-bed apartment) are on the 1st floor. The house dates back to 1705 and parts are rumoured to be haunted – based on what we have seen thus far I am inclined to agree with that assessment.

Cyber Bullying: New media, new risks

Following media reports of a number of high profile cases of cyber-bullying, **Julie O'Neill** looks at the issue of cyber-bullying and legal recourse that exists for victims of cyber-bullying, against persons other than the bully, both within and outside of the employment context



What is cyber-bullying?

There is no codified definition of cyber-bullying in Ireland. However, the Office for Internet Safety recently issued a Guidebook on Cyber-Bullying which defines cyber-bullying as:

“bullying which is carried out using the internet, mobile phone or other technological devices. Cyber-bullying generally takes a psychological rather than physical form but is often part of a wider pattern of ‘traditional’ bullying. It can take the form of sending nasty, mean or threatening messages, emails, photos or video clips; making silent phone calls; putting up nasty posts or pictures on a message board, website or chat room; saying hurtful things in a chat room; pretending to be someone else in a chat room or message board or text message and saying hurtful things; or accessing someone’s accounts to make trouble for them.”

What claims can an employer be exposed to?

As of January 2013, and largely as a reaction to the Phoebe Prince and Megan Meier cases, sixteen US states had introduced laws that directly address cyber-bullying. However, cyber-bullying is a developing area of law in Ireland. In fact, most employees are surprised to learn that there is no single piece of legislation that makes bullying, let alone cyber-bullying,

unlawful. Consequently, we are required to look to recognised common law principles and various pieces of legislation to establish whether a victim of cyber-bullying has a cause of action against his or her employer.

“In fact, most employees are surprised to learn that there is no single piece of legislation that makes bullying, let alone cyber-bullying, unlawful.”

Causes of action may include:

• Personal Injury

An employee may bring a claim for damages arising from a psychological / psychiatric illness suffered as a result of cyber-bullying. There have been no direct cases in this area in Ireland. However, it is likely that the Courts will follow the established principles for assessing whether an employer is liable for personal injury arising from stress, bullying and harassment as follows:

- Has the employee suffered an injury to his or her health as opposed to ordinary occupational stress;
- Is that injury attributable to the workplace; and
- Was the harm suffered by the employee concerned reasonably foreseeable?

• Defamation and vicarious liability

Where cyber-bullying involves defamatory statements being made about an employee, the employer may be held vicariously liable for the defamation. The concept of “vicarious liability” provides that certain acts done by a person in the course of his or her employment may be treated as done by that person’s employer, whether or not it was done with the employer’s knowledge or approval. The ultimate question is whether there is a sufficiently close connection between the employment and the wrongdoing.

There is no case law in Ireland in relation to this issue. However, the High Court has recently held that an employer was liable in defamation for the acts of one of its employees in the context of bullying. In his judgment in the case of *Browne v Minister for Justice, Equality and Law Reform and the Commissioner of An Garda Síochána* [2012] IEHC 526, Cross J. awarded an employee €25,000 for defamation.

• Breach of Statutory Duty

An employee may bring a claim to the High Court alleging that his or her employer has breached its statutory duties under the Health, Safety and Welfare at Work Act 2005 (the “2005 Act”) by failing to provide a safe place of work. Statutory health and safety obligations were expressly referred to in the Supreme Court decision in *Quigley v Complex Tooling and Moulding* [2008] IESC 44 where the court stated that “employers now have an obligation to prevent their employees from such that would cause mental injury, i.e. stress, harassment and bullying in the workplace”. Accordingly, it is possible that a victim of cyber-bullying could bring a claim for damages on the grounds that his or her employer breached its statutory rights.

• Discrimination

An employee may bring a claim to the Equality Tribunal under the Employment Equality Acts 1998 – 2011 if the cyber-bullying amounts to harassment or discrimination on one of the nine discriminatory grounds. The Act provides that an employer may be held vicariously liable for acts of bullying and harassment, related to one of the discriminatory grounds, carried out by employees in the course of their employment where the acts are carried out with or without the employer's consent or knowledge. The Act also provides that it is a defence for an employer to show that he took such steps as are reasonably practicable to prevent the harassment taking place.

• Constructive Dismissal

Where the cyber-bullying has become so intolerable that an employee feels they cannot reasonably be expected to continue working for the employer, they may resign and claim constructive dismissal in the Employment Appeals Tribunal (the "EAT") under the Unfair Dismissals Act 1977-2011 (the "UD Acts").

• Unfair Dismissal

Finally, it is worth noting that the perpetrator may also have a cause of action against his or her employer under the UD Acts if they are dismissed as a result of their actions. A key issue for an employer to consider is whether the conduct complained of fell within the scope of the employment relationship.

In the case of *Emma Kiernan v A Wear Limited* (UD643/2007), the employee was dismissed for misconduct for allegedly posted derogatory comments about her manager on Bebo. The EAT held that, while the comments deserved strong censure and possible disciplinary action, the conduct did not, in its view, constitute gross misconduct and awarded compensation of €4,000.

In *Smith v Trafford Housing Trust* [2012] EWHC 3221, the High Court in the UK found that an employee was entitled to express his views about gay marriage on Facebook and his employer had acted unlawfully when it demoted him for doing so. The Court rejected the Trust's argument that the posts breached the Trust's Equal Opportunities Policy, which required employees to treat their work

colleagues with dignity and respect, as the posts were judgmental and liable to upset colleagues. The Trust argued that, because 45 of the plaintiff's Facebook friends were fellow employees, this created a work related context sufficient to attract the provisions in the Policy. The Court held that the Plaintiff's Facebook did not have the necessary work related contact to attract the relevant provision in the Policy as it was clear he used Facebook for social rather than work-related purposes.

"It is expected, with the exponential growth of social media that a significant body of law will develop over the next few years in this area."

What claims can occur outside of the workplace?

The absence of an employee / employer relationship is not fatal for the victim of cyber-bullying and, for example, where a student is bullied by fellow students, a cause of action may lie against the school in negligence or defamation as follows:

• Defamation

A person who has authorised or participated in the publication of a libel is treated as publishing the libel. Therefore, a school may also be liable for publication of defamatory material hosted on, for example, Moodle. Section 27 of the Defamation Act 2009 does provide a defence of "innocent publication" where the host can prove that it was not the author, editor or publisher of the statement. The Act provides, however, that reasonable care must be taken in respect of the publication and it must be shown by the host that it did not know and had

no reason to believe that it caused or contributed to the publication of the defamatory statement. Questions will be asked as to the level of responsibility the host had for the content of the statement or the decision to publish it and the nature or circumstances of the publication.

• Negligence

In order to succeed in a claim for negligence, there must be a (i) duty of care; (ii) breach of the standard of care required; (iii) loss or damage; and (iv) causal link between the breach of the duty of care and the loss or damage suffered.

There have been no reported claims for negligence against a school or university in Ireland for bullying or cyber-bullying but media reports suggest that there may be a case taken in this area shortly. Cases in other jurisdictions may provide some guidance to the Courts in Ireland when the issue does eventually appear before the Courts.

In the case of *Oyston v St Patrick's College* [2011] NSWSC 269, the Supreme Court of New South Wales in Australia held that a school had breached its duty of care to a former student by failing to implement its anti-bullying policy or to take steps to adequately deal with ongoing bullying. The Court made an award of damages of £100,000 Australian dollars (approximately €78,000).

Conclusion

It is expected, with the exponential growth of social media, that a significant body of law will develop over the next few years in this area. Dr Móna Moore, founder and director of the Anti-Bullying Research Centre in Trinity College Dublin is reported to have urged that legislation be enacted in Ireland to deal with this matter. However, until such time as codified legislation is introduced, employers will be required to work within the current piecemeal framework.

Julie O' Neill is an Associate in the Employment Law Unit of McDowell Purcell Solicitors.

Finance Bill 2013: A Financial Services Perspective

Deirdre Power and Niamh Jennings describe the implications of the Finance Bill 2013 for financial services in Ireland

The Finance Bill 2013 was published on February 13 2013 against a different economic background than when the Budget for the year was announced in December 2012.

Ireland has been in a position to conclude a deal on the debt incurred to bail out the banks, thus reducing the annual costs of financing this debt. The Irish and the international economies are beginning to show some green shoots, with unemployment beginning to stabilise. Our progress has been noted by many in the international business community, including a recent statement by the President of the European Commission, José Manuel Barroso, who has said he is confident Ireland will make a full return to the markets before the end of the year.

Against that backdrop, the words that summarise Finance Bill 2013 from a financial services perspective are recovery, innovation and compliance. The Irish economy returned to growth in 2011 with the predictions for 2013 being GDP growth of 1.5 percent. Tax revenues are up by 7.7 percent in 2012, recent bond issuances have been well received by the markets, and the rating agencies are more positive in their outlook on Ireland's future.

While the challenges of the domestic financial services sector are well documented, it is worth noting that the international financial services sector in Ireland has weathered the storm extremely well with the international funds, leasing, insurance, treasury and financing sectors continually growing. That being said, the international financial services sector in Ireland is acutely aware of the competition that other key financial services centres such as London, New York, Singapore, and Germany pose. The need to continually introduce new financial products and incentivise businesses not only to locate here, but to maintain



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their operations here and grow their international footprint from Ireland, is key to our future strategy and success. As with running any business, one has to innovate and respond to what the ultimate customer wants. Without innovation, investors are not going to look to Ireland as a possible place to do business.

Therefore, the various announcements in this year's Finance Bill that bring innovation to the top of the agenda are very welcome. Initiatives such as the Real Estate Investment Trust (REIT) is a good news story for the funds and property sectors which gives a platform from which to refine and build a world class REIT environment. In addition, the amendment of the Investment Limited Partnership (ILP) framework to result in a tax transparent fund structure suitable for Private Equity and Real Estate investments sends a clear and positive message that Ireland is AIFMD (Alternative Investment Fund Managers Directive) ready and open

for business.

Outlined below are the key financial services initiatives in further detail.

REITs

As announced in the Budget, the Finance Bill introduces the Real Estate Investment Trust (REIT) into Ireland. The new legislation is welcome at a time where there is significant overseas interest in acquiring Irish real estate. The REIT regime provides a tax exemption in respect of the income and chargeable gains of a property rental business held within a company which satisfies a number of conditions. Some of the key conditions are outlined below.

The REIT must:

- Be both Irish tax resident and Irish incorporated;
- Distribute 85 percent of the income from its property rental business by way of dividend;
- Derive 75 percent of its aggregate income from the property rental business. It may carry on other "residual" business, but the tax exemption applies only to the income and chargeable gains of the property rental business;
- Have its shares listed on the main market of a recognised stock exchange in the EU;
- Not be a close company (i.e. it must be widely held);
- Maintain a property financing cost ratio (the ratio of the sum of the property rental income and finance costs of the property business to the finance costs of the property business) of at least 1.25:1; and
- Give notice in writing to the Revenue Commissioners that it wishes to be treated as a REIT for tax purposes.

In addition to the above conditions, the REIT's property rental business must consist of at least three properties

(there is a three year build-up period allowed), and no one property should make up more than 40 percent of the total market value of the properties in the business. The provisions also allow for the creation of Group REITs, provided each member of the group satisfies the relevant conditions.

The new regime provides that property income dividends paid by the REIT will be subject to 20 percent Dividend Withholding Tax (DWT), regardless of the country of residence of the recipient. It may be possible, however, to reduce the rate of withholding tax under the terms of a relevant Tax Treaty between Ireland and the investor jurisdiction. Property income dividends received by Irish resident companies will not be treated as franked investment income, and will thus be subject to corporation tax.

REITs are recognised as important vehicles for property investment in over 30 jurisdictions throughout the world. As such, the REIT brand is well recognised globally, and the Irish regime has been introduced with a view to attracting international investors to the Irish property market.

The new Irish legislation is certainly a good start, but in its current form it is a work in progress. Although it may be possible to reduce or in some cases eliminate the 20 percent DWT through the application of a relevant tax treaty, in many cases the structure will give rise to some exposure to Irish tax for investors. However it is important to note that this is also the case with the many other competing regimes, including the UK REIT regime, which generally gives rise to a 15 percent withholding tax under UK tax treaties.

Furthermore, although the REIT is designed for investment in Irish property, it is possible to use Irish REIT structures to invest in foreign property, however doing so could give rise to tax leakage (given the application of the DWT of 20 percent to distributions from the REIT, regardless of the Irish or non-Irish source of the underlying rental income). The requirement for the REIT to be Irish incorporated results in a stamp duty charge of 1 percent on the acquisition of shares in the REIT. It is important to note that profits from any development activities undertaken by the REIT will be subject to corporation tax at 25 percent. We are hopeful that, once the regime is operational,

enhancements to the tax legislation will be made in future Finance Bills, in order to ensure that the REIT is fit-for-purpose.

With international entrants joining the market, Irish financial institutions should have increasing opportunities to find buyers for distressed property assets, freeing up much-needed capital for investment in other projects, which should serve to contribute to the stabilising of the property market, and the wider economy, in time.

Investment funds

Traditionally, Investment Limited Partnerships (ILPs), established under the Investment Limited Partnerships Act 1994, were treated as opaque for Irish tax purposes. However, in response to calls by the Irish international funds industry, the Finance Bill includes measures to treat ILPs established on or after February 13 2013, as transparent for Irish tax purposes. The tax treatment of ILPs after this date will be very similar to the treatment of Common Contractual Funds (CCFs).

ILPs have been removed from the definition of Investment Undertaking, and the tax treatment applying to ILPs is now set out in a new section, Section 739J. This section provides that ILPs are not chargeable to tax in respect of income and gains (i.e. "profits") on underlying investments, but that those profits are treated as accruing to the unitholders in the ILP in proportion to their relative investment in the ILP, as if the unitholder held a corresponding share in the underlying investments directly.

A key advantage of the new ILP regime is that, unlike CCFs, there is no restriction on the types of investors/partners permitted, other than they must satisfy the qualifying investor criteria from a regulatory perspective. Interest withholding tax, DIRT, stamp duty and CAT exemptions will continue to apply to ILPs under the new regime.

The new ILP is expected to be the investment vehicle of choice for private equity investors, particularly for the purposes of investing in green energy and in real estate assets (including Irish real estate). It will be possible to "check the box" on the new ILP for US tax purposes, which will provide a more tax efficient result for US investors, which will further enhance the attractiveness of Irish funds for

this large pool of investors. The new regime is expected to result in further job creation in the funds industry which already employs over 12,000 people in Ireland.

This important change to the ILP framework sends a clear and positive message that Ireland is AIFMD ready and open for business, and is responding to the needs of the private equity, real estate and alternative investment community.

Other changes

There are other smaller changes in the Bill that impact the financial services sector, such as amendments to R&D tax credits, Foreign Earnings Deduction, Islamic Finance provisions, enhanced foreign tax credit on certain dividends from EU/EEA treaty countries, elimination of interest withholding tax on payments to approved pension schemes, and a reduction in the clawback period under the Intangible Asset regime. Changes to DIRT and the rate of tax on returns from life and investment funds are given effect in the Bill.

With Ireland being the premier global location for aircraft leasing, there is also good news for the aviation sector, with the introduction of tax allowances and accelerated allowances on certain buildings used in connection with commercial aircraft (from a date to be determined by the Minister).

Wish list

Initiatives which the financial services industry would like to see reflected in the final version of the Bill include a branch exemption for insurance companies, pooling of tax credits for leasing companies, the removal of withholding tax for treasury/cash pooling entities (regardless of the recipient's location) as well as a full dividend participation exemption.

To sum up, this Bill reiterates that Ireland is well and truly open for business and the various initiatives will hopefully play their part in our continuing economic recovery.

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Selling our forests is a dead loss

The Government is currently weighing up proposals to sell a wide range of State assets. Among them, the harvesting rights of our state forestry company, Coillte. **Niall Shanahan** explains why this sale makes little economic sense

Selling the rights to fell and sell timber to private operators could see the end of a profitable state company, a closure of many, if not all, of the nation's private sawmills and a devastating blow to tourism due to restricted access. Moreover, the financial return on the proposed sale would only generate enough cash to pay three weeks interest on the nation's debts. The proposal, quite simply, does not add up.

The Coillte branch of IMPACT trade union, which represents 600 workers at the state firm, is campaigning against the proposed sale. Since last November a coalition of other organisations joined forces with IMPACT's Coillte members to form the Save Our Forests campaign. These include the Society of Irish Foresters, Birdwatch Ireland and Mountaineering Ireland.

The Coillte branch of the union also took steps to properly investigate the economic consequences of the proposal by commissioning economist Peter Bacon to weigh up the economic viability of the proposed sale. As it turned out, Bacon unearthed some uncomfortable truths.

No economic rationale

"The economic rationale for the proposed sale of Coillte harvesting rights no longer stands up and cannot be justified," was Bacon's ultimate assessment in his report. Assessment of the Consequences of the Proposed Sale of Coillte's Timber Harvesting Rights, published in January, found that the State would remain liable for costs of €1.3bn following a sale of harvesting rights.

To cover these costs, Coillte would need to sell timber at €78 per cubic metre, which is "well above current or recent prices." The average recent price paid for Coillte supplies to sawmills has been just over €43 per cubic metre.

Bacon's assessment concludes: "To generate a sale valued at €1.3bn would require an average price of €78 per m³. This is well above current or recent prices and there is no basis in these prices for assuming that this

would be achieved." This means that, rather than generating State income, a sale of Coillte harvesting rights would represent a substantial cost to the exchequer.

The proposal requires the State to continue to maintain the land the forests are planted on, despite the loss of profits currently generated by Coillte timber sales.

The report says the overall result of the Government's proposal would

"a sale of Coillte harvesting rights would represent a substantial cost to the exchequer."

effectively liquidate Coillte as a viable, commercial entity. "Given the non-commercial activities of Coillte and the residual land and forest that would need to be managed, it should be seen as a proposal to restructure Coillte as a National Parks Service that will depend on a state subsidy to carry out its obligations. However, no argument has been formulated to support such a move and, when viewed as such, the economic rationale for the sale disappears," it finds.

Bacon estimates the costs of a sale of Coillte harvesting rights as follows:

Loss of funds from Coillte profit flow at €565m; Coillte deficit funding requirement equalling €313m; economic cost of Coillte job losses, €19m; Coillte debt liability at €172m; Pension liability, €130m; and loss of amenity value at €105m. This totals €1,304m.

Bacon estimates the return on the sale of the harvesting rights at €774m. With an obligation to use half of the funds raised to pay off debt, as part of the Troika bailout agreement, this would leave €387m. Bacon concludes of this

figure, "the funds raised would facilitate repayment of 0.2 percent of the total debt under this measure or provide 6.2 percent of the interest cost in 2012, about three weeks of interest. Clearly, from an accounting point of view, the impact is marginal almost to the point of being negligible."

Jobs

In addition to the very real risk of job losses at Coillte, there is also a substantial risk of job losses in the industries reliant on a strong supply of good quality domestic timber product. Bacon's report says the proposed sale has the potential to disrupt the Irish timber processing sector, due to lack of certainty over future supply. It says job losses, which could arise in the processing industry if timber were exported without processing in Ireland, would add to future costs to the State.

"There are risks associated with this that go beyond the normal risks that can be associated with projections of timber prices. These include the potential to disrupt the processing sector, a possible cost factor that was not included in the assessment of costs. It is possible to envisage some options to minimise this potential, such as a piecemeal approach to the sale using a policy that could be soon reversed or a conditional sale, but it is unlikely that such options would have any real value in practice," it finds.

'Save Our Forests: The social, economic and environmental case against selling Coillte assets', published in November 2012, says the plans could jeopardise up to 12,000 jobs in the Irish forest products sector, which is currently worth €2.2bn a year, including €286m in exports.

These risks were further highlighted in a special Oireachtas members briefing in February, organised by the Save Our Forests campaign, when Pat Glennon of the Irish Timber Council (ITC), the representative body for Ireland's sawmills, addressed the issue from the perspective of the timber industry.

Mr Glennon said that the proposed



sale of Coillte's harvesting rights could lead to the closure of all ten of Ireland's sawmills with the loss of 2,500 jobs. The ITC has published a new report, prepared by EPS Consulting, which finds that it makes no sense for the Government to proceed with the sale from a either a commercial, economic or financial point of view.

The loss of jobs in the wider timber industry would disproportionately affect rural communities throughout the country, where the prospects of replacement employment are minimal at best.

Access

The inclusion of the wide range of leisure groups in the Save Our Forests campaign reflects very real concerns about restricted access to, and through, Coillte forests in the event that private operators acquire the harvesting rights.

Save Our Forests says prospective buyers, set on the commercial exploitation of timber, would be unlikely to agree to maintain "safe and optimum" access to forests without significant incentives "which are unlikely to be affordable at present." This would severely restrict countryside access in Ireland, which has no public 'rights of way' over private land, and where 18 million visits are made to Coillte forests each year. This could also have a major impact on the tourism sector. Coillte estimates the value of tourism to these amenities at €270m each year.

Drawing on the limited privatisation experience of New Zealand, the publication says: "commercially-driven owners or concessionaires could not be relied on to interpret access liberally, or to undertake the expenditure necessary to maintain forest land for safe and optimum recreational use. It is impossible to imagine how the State could maintain public access to Coillte lands after harvesting rights were sold to private companies."

Bacon notes, "Coillte owns most

of the forests with the best amenity assets and has an open forest policy. In addition, it is actively developing facilities to improve the use of its forests for this purpose. It currently manages ten forest parks, over 150 recreation sites and three mountain bike facilities, along with over 50 percent of all off-road long distance hiking routes in Ireland. This is in some contrast to the approach of private plantation owners who have largely adopted a closed forest approach."

Bacon also identifies that Irish forests do not have a clear physical separation between forests of amenity value and forests of commercial value, "Coillte forests with amenity values are mostly commercial plantations i.e. they have been planted, often with the more commercial species, with a view to eventual felling to realise the timber value".

A good example of this cheek-by-jowl arrangement can be found in places like Ballinstoe, County Wicklow, where existing mountain bike trails weave in and out of areas where forest land has already been commercially harvested. Coillte's open access policy means that a balance has been successfully struck between commercial and leisure activity. However, international experience suggests this arrangement would be unthinkable, and unmanageable, should private operators acquire the harvesting rights. In such circumstances, the losses to local economies from reduced tourism activity are inevitable.

Lessons of state asset sales

Matt Staunton, National Secretary for IMPACT's state enterprises division, sees the proposal to sell Coillte's forest harvesting rights in the light of other State asset sales. Invariably, he says, the state has sold state assets "in haste, and then has been forced to repent at leisure". Mentioning the example of the sale of Eircom, Mr Staunton said "the unseemly haste with which the

company was sold, along with all of its essential infrastructure, has hindered the development of broadband in Ireland quite significantly. That failure has put a dent in our international competitiveness." He added, "the company was then mercilessly stripped of its assets by several owners, and left with a significant debt. This was a profitable company with a leading edge on the development of mobile and broadband technology. It was squandered for short term gains."

Matt points out that Coillte does not cost the taxpayer anything, but would immediately require ongoing state subsidies if the sale goes ahead. He is certain that the proposed sale runs similar risks to Eircom. "Looking at the lifespan of the proposal, fifty to eighty years, how could you ever be certain that the land would not be acquired outright by private interests? How could you ensure that the forests themselves would not be harvested beyond what's sustainable?"

"We have a fast growing, high quality sustainable crop, which was only made possible by decades of carefully skilled planning. To abandon such a profitable state enterprise, for three weeks worth of interest repayment and a legacy of maintenance costs, is a measure beyond desperate."

Following a Dáil debate on the issue in February, Kildare TD Emmett Stagg was moved to say that the sale is now "most unlikely". Minister for Public Expenditure and Reform, Brendan Howlin TD has acknowledged the work of the Save Our Forests campaign to highlight the issue, including the publication of the Bacon report. While the Government seems serious about factoring Bacon's report into its considerations, the proposed sale remains a live option. Until a decision is announced, Coillte's future hangs in the balance.

Niall Shanahan is a Communications Officer with IMPACT Trade Union.

Junior Cycle reform: Making innovation in education work

'A Framework for Junior Cycle' was published in October 2012 by the Minister for Education Ruairí Quinn TD. In this article, *Moirá Leydon* outlines why, from the practitioners perspectives, specific factors must be taken into account during the reform process



October 4 2012 was a "landmark" day in Irish education. On that day, Minister Ruairí Quinn TD launched 'A Framework for Junior Cycle' which, by radically changing the curriculum and assessment at Junior Cycle, aims to bring innovation right into the heart of teaching and learning in our schools. The Junior Cycle is a crucial period in young people's education and social development. As noted in the influential ESRI longitudinal study of students' experiences at junior cycle, "during this period, young people form their attitudes to school and to school subjects which influence their likelihood of completing school, their choices later in senior cycle and even their post-school education options". The decision to change the Junior Cycle curriculum preceded the current Minister. In June, 2008 the then Minister for Education and Science, Mr Batt O'Keeffe, TD, directed the National Council for Curriculum and Assessment:

"It's important that the NCCA reviews international practice in this area, examines what should be prioritised in the totality of the junior cycle experience and the nature and form of assessment that would be most appropriate in the context of what's no longer a high-stakes environment."

Context for change

The context for change in education is well documented internationally. This context has most recently been articulated in the EU Commission's Communication on Education. "Rethinking Education; Investing in skills for better socio-economic outcomes" was launched on November 20, 2012 accompanied by seven staff papers covering all aspects of education and training. The Communication was integrated into the conclusions of the Education Council on February 15 2013. (The policy documents are available at http://ec.europa.eu/education/news/rethinking_en.htm.)

The EU Communication states that the broad mission of education and training encompasses objectives such as active citizenship, personal development and well-being, which also go hand-in-hand with the need to upgrade skills for employability. Across the world teachers are being challenged to transform educational outcomes. Their role as transmitters of knowledge is no longer enough. Policy objectives such as lifelong learning, the knowledge economy, and individual wellbeing and social cohesion comprehend very profound changes in thinking about education. Influential international reports such as the McKinsey reports in 2007, "How the world's best performing schools come out on top" and in 2010, "How the world's most improved school systems keep getting better", have been decisive in shaping governments' thinking on education reform (available at <http://mckinseyonsociety.com/downloads/reports/Education>).

These reports have been underpinned by the findings from the international benchmarking exercise that is the biennial OECD Programme for International Student Assessment (PISA). In an inter-connected, globalised world it is no surprise that

international data and discourse on education have become "framing" paradigms for change at national level. Ireland is no exception in this regard; however, the challenge for education policy makers is not to "policy borrow" initiatives which are successful in different cultural contexts but to "policy learn" and build on the strengths in the current system.

A Framework for Junior Cycle: Key elements

The Framework for Junior Cycle is a complex policy document. It is clearly based on a strong understanding of the challenges ahead for schools, and for society. It aims to improve the learning experiences of young people and thereby improve educational outcomes overall. It will require radical changes in the way schools deliver the Junior Cycle curriculum and in the way that curriculum is taught in the classroom. It pays particular attention to embedding quality assurance mechanisms in the education system which will generate evidence at school level to enable the school to engage in continuous improvement but also to inform policy at Departmental and State level. It contains a detailed timeframe for the implementation of the proposed changes. It provides for an inclusive curriculum by introducing specific curricular programmes for students with special educational needs and, for the first time, a new aligned qualification, placed at Level 2 of the National Qualifications Framework.

The key elements of the Minister's Framework for Junior Cycle are:

- Phased replacement of the Junior Certificate examination with school-based assessment over second and third year;
- State certificate to document achievement in the Junior Cycle will

be replaced by a school certificate, commencing in 2017;

- All subjects to be revised to a common subject "specification";
- Greater flexibility given to schools in terms of how they deliver the curriculum across the three-year cycle;
- Greater flexibility to schools in terms of supporting the transition from primary to second level education;
- Introduction of Short Courses to allow schools to innovate in curriculum;
- Implementation of Literacy and Numeracy Strategy across all subject areas, plus the introduction of standardised tests in English, Irish and Mathematics; and
- Introduction of Junior Cycle Achievement Profile which will provide (i) a statement of the grades awarded in the subjects or short courses studied by students and (ii) a statement on students' broader engagement in school such as attendance, teamwork, extra-curricular activities, etc.

One of the most innovative aspects of the Framework is the new way of looking at knowledge. While the Framework retains a subject-based curriculum, the manner in which these subjects are configured is radically different to the current subject syllabuses. Under the Framework, subjects will be re-designed to reduce content in favour of an emphasis on better conceptual understanding by students; the integration of 21st century learning skills, such as managing information and thinking, being creative, working with others, managing myself and my wellbeing, communicating; and specific measureable learning outcomes for students. The latter will be supplemented by examples of students' work across a variety of settings such as essays, project work, visual displays, aural presentations, group work and traditional written examinations.

Use of ICT and digital media will be important in all subject areas, especially in the new English specification where digital literacy will be a core area of students' learning. A further innovative feature is that the entire subject specification will be online so that students and parents in particular will have access to all that they need to know about a subject including what will be learned, how it will be assessed, what will the student know and what skills will they acquire at the end of the three-year Junior Cycle programme.

How to make reform work in education?

There is clearly much potential in the Framework to renew aspects of our second-level education. However, it must be stated that teachers' initial response to Minister Quinn's policy launch on October 4 last was one of shock. This collective response arose from the proposals in the Framework to replace the terminal externally assessed Junior Certificate examination with a model of school-based assessment and the replacement of the State Certificate of student achievement by a school certificate. This is truly a radical policy departure and differs significantly from the advice provided to the Minister by the statutory advisory body, the National Council for Curriculum and Assessment. Teachers also felt that they had not been consulted on the proposed changes. They felt that their professional wisdom, experience and expertise had been side-lined in the decision-making process leading up to the launch of the Framework.

This response has thrown up pertinent questions on managing a reform process in education. Within the OECD, there is an emerging body of evidence on how to "make reform happen" in education. Dialogue with the practitioners is one of the keys to successful education reform. The importance of this dialogue was highlighted in the 2011 OECD Background Report for the International Summit on the Teaching Profession. The conclusion in this Report was that teacher engagement in education reform is not just important: it's the most important factor in securing reform in education. It states:

"Learning outcomes are the results of what happens in classrooms, thus only reforms that are successfully implemented in classrooms can be expected to be effective. Teacher engagement in the development and implementation of reform is therefore crucial and school reform will not work unless it is supported from the bottom up. This requires those responsible for change to communicate their aims well and involve the stakeholders who are affected. But it also requires teachers to contribute as architects of change, not just its implementers." (p.51)

The lesson to be drawn from this OECD Report is clear: it is not enough to design reforms to improve students' learning and outcomes. In order for such reforms to succeed, they must

address the legitimate concerns of the practitioners.

Investment for quality education

Investment is the second necessary factor for successful reform in education. At a time of strained resources, this is a hard case to make. However, it is a case that must continue to be made. Education reform is notoriously difficult and investment cannot be ignored as a "make-or-break" factor. The quality paradigm for change in Irish education developed by the National Council for Curriculum and Assessment makes the point that:

"Resources play an important role in nudging and incentivising people towards engaging with change. But they are also more intrinsic to the process of change than that. Investing in people, in the learning environment, in aspects of schools as learning organisations is fundamental to establishing a momentum for change." (p. 14)

The entire thrust of the 'Framework for Junior Cycle' is the evolution of the school as a learning community. In this context, the practitioners need time to think, reflect, plan, and negotiate change processes in their classroom and across their subject departments. This time must be allocated to schools. This is a resource issue, which cannot be ignored in the implementation of the reform process.

Dialogue with teachers for effective reform

Fundamental changes such as those proposed in the Framework have triggered concerns and fears among teachers. The reform process and its undoubted potential for innovation, for radically transforming the educational experiences of our 12 to 15 year olds, will not deliver until there is much greater involvement by the practitioners in shaping the reforms. Ultimately, the reform process must move beyond a top-down, centralised model to one where individual schools are empowered to become learning communities, where there is a high degree of trust and confidence in the assessment and certification models and where the social goals of quality in education and social inclusion are to the forefront.

Moirá Leydon is Assistant General Secretary in the Education and Research department of ASTI.

Reforming the Social Welfare Appeals System

The number of appeals to the Social Welfare Appeals Office more than doubled between 2007 and 2011, but this increase in volume is just one of the problems with the system. In this article **Senator Katherine Zappone** outlines the details of the Seanad motion which seeks to reform the Social Welfare Appeals System



In November of last year I, together with my Independent Senator colleagues, put forward a motion in the Seanad seeking a number of modest reforms to the social welfare appeals system. We presented these reforms as a cost-effective use of the resources already within the system. We hold an acute awareness of the current economic context coupled with the belief that particularly in times of austerity, we must have due regard to the principles of fairness and justice, especially for those who are most vulnerable.

TDs and Senators receive a huge number of requests and complaints from citizens and residents who are experiencing enormous delays within the appeals system. Many people are waiting for decisions to be overturned because the initial decision did not take into account all the circumstances of an individual or interpret accurately Irish or EU social welfare law as it applies to the individual's circumstances. These wrongful decisions were made at the first instance of decision-making and contribute to the extremely high number of appeals before the social welfare appeals office. A clear indicator that the process is flawed is the fact that 50 percent of decisions are overturned on appeal. The most cost effective

change to the system could happen by correcting the shortcomings within the application process.

People who make an appeal face a number of problems within the current system. The number of social welfare appeals has more than doubled in the past five years with 52,972 live appeals in 2012. The average waiting time for an appeal to be dealt with by summary decision is 27.8 weeks in 2012. The pressures on the system have resulted in a number of appellants being unable to access their fundamental rights because of these delays, causing destitution in some cases. The number of appeals officers has been increased to over 40 and other system reforms have resulted in decreased waiting times and increased productivity. However, given the pressures exerted in the current economic climate, it is vital to highlight that the system is almost at capacity (that is, efficiencies will not increase much more) owing to the ever growing number of appeals and the limited number of staff available to deal with them. Consequently, we will still have considerable delays in spite of the current reforms.

'Not Fair Enough'

The Free Legal Advice Centre (FLAC) published research on the system last year entitled, *Not Fair Enough*. FLAC's research provides us with an analysis of the system from a human rights law perspective. It offers a lens with which to determine what is lacking in the current system. It is an objective analysis from the perspective of the rule of law, and it highlights that people have a right to social security, to fair procedures, due process and effective remedies. A person's right to fair procedures is enshrined in Article 6 of the European Convention on Human Rights. Everyone is entitled to a fair

and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Towards a reformed appeals system

The Government could meet these human rights legal obligations as well as improve the cost effectiveness of the current system by conducting and publishing an audit of independence of the social welfare appeals system. Such an audit could recommend ways to further improve fair procedures in the system and an appellant's access to justice. An audit provides us with an objective benchmark of human rights principles and standards of fair hearing against which judgment can be made with regard to the independence and transparency of the current system.

An audit that assesses the system according to the five human rights principles outlined below provides a strong basis for such reform.

1. Independence

In 1986 the Commission on Social Welfare recommended that an independent chairperson for the Appeals Office be appointed rather than appeals being made directly to the Minister via the Department. While the Office has since been given its own premises and staff, the Chief Appeals Officer is still appointed by the Minister for Social Protection. In 2007 the Chief Appeals Officer, Bryan Flynn called for the Appeals Office to be made statutorily independent. However, today it remains a section of the Department of Social Protection. The actual and perceived independence of the Office is of crucial importance if the public are to have confidence in the system.

2. Equality of arms

There should be a fair balance between the parties (an equality of arms).

Current appeal procedures weigh against appellants because they do not have access to the same information as those making the decision about their case. Appellants are not automatically given a copy of their social welfare file which may contain useful information. This file as well as a copy of the deciding officer's submission that contains information on why the application was rejected should be provided to the appellant as a matter of course. It should not be necessary to make a freedom of information application to access this information.

“TDs and Senators receive a huge number of requests and complaints from citizens and residents who are experiencing enormous delays within the appeals system.”

3. Right to an oral hearing

Appellants should also be informed of their right to seek an oral hearing, a right which they hold under Article 6 of the European Convention on Human Rights. The granting of an oral hearing should not be at the discretion of an appeals officer. An option to request an oral hearing ought to be included on the appeals application form. Statistics show there is a higher rate of success on appeal in cases where an oral hearing is held, compared to a decision that is made on written evidence only. Oral hearings allow for a teasing out of the issues and the questioning of evidence and decisions. One principle of natural law and fair procedure is that a person should have the opportunity to make their case in the easiest form possible. To take one example, a separated woman with a large family, not only had her one-parent family payment stopped, but also received a demand for €21,000, an alleged over-

payment. Her payment was stopped in November 2009 and, following consultation with FLAC, she made an appeal to the social welfare appeals office. The Department claimed that she was co-habiting with her ex-partner. As a result of a freedom of information request the woman received her social welfare file. This file contained a social welfare inspector's report which stated that she was not cohabiting. The report showed that the evidence on which the Department based its opinion was deficient. The woman had presented written evidence in her initial application that corroborated the inspector's report, but her file showed that this was not taken into consideration. Following an oral hearing that was held more than a year after she appealed the decision, at which FLAC represented her, the social welfare appeals officer allowed her appeal and rejected the overpayment claim. The woman's payment was restored, but arrears were not granted for a further three months.

At the end of January 2013 the number of oral hearings being held had increased and the success rate at these hearings had also risen. The majority of appeals remain, however, by way of summary decision.

4. Civil legal aid

People have a right to legal assistance in complex cases. It must be noted that civil legal aid is not available for representation at a social welfare appeal. Appellants may seek assistance from an NGO or lay advocate or they may represent themselves. Some appeals can deal with complex issues of law. Therefore, appellants may be at a disadvantage when presenting their case without legal advice or assistance. The Government should make civil legal aid available in these instances. Failing that, advocacy organisations ought to be funded to assist people in complex cases.

5. Consistency in decision-making

The last principle has to do with consistency in decision-making within the social welfare appeals system. The appeals office does not maintain a database of decisions which is accessible to appellants about cases which may be similar to their own. At present, a database exists to assist appeals officers in their work, but

all that would be needed is a minor investment in anonymising software in order to make a number of significant decisions available to the appellants and their advocates. This would assist appellants' preparations for appeals significantly.

Conclusion

In a recent appearance before the Joint Oireachtas Committee on Social Protection, Chief Appeals Officer, Geraldine Gleeson gave evidence to the

“The Government could meet these human rights legal obligations as well as improve the cost effectiveness of the current system by conducting and publishing an audit of independence of the social welfare appeals system.”

Committee that the number of appeals had increased while the waiting times have come down somewhat. Additional appeals officers were hired in 2011 but significantly there has been loss of experienced appeals officers leading to longer processing times in 2012 and beyond.

These minor improvements in an overburdened system are inadequate. Substantial analysis of the current system must be undertaken with a view to recommending systemic and effective reforms, as outlined above. To do otherwise would be to continue to fail those most in need of assistance.

Katherine Zappone is an Independent Senator.

Keeping Cork Moving: Cork prioritises key infrastructure projects to protect and grow investor appeal

Siobhan Bradley outlines Cork Chamber's views on some of the strategic initiatives that the region have progressed and some of the outstanding challenges in the region

If a region wishes to be an engine for sustained economic growth, it must offer as conducive and attractive a business environment to entice and secure commercial interest and inward investment. According to the IDA Horizon 2020 Strategy 'the lesson of the Irish experience with FDI is that success is never permanent and to stand still is to be left behind'.

Cork Chamber continue to work in partnership with local government, statutory agencies/bodies and key regional stakeholders to prove what is possible, even in adverse circumstances, when vision, innovation, collaboration and a steadfast commitment to recovery and growth predominate. By tenaciously identifying innovative initiatives in infrastructure, concentrated cluster developments and urban development planning, Cork has successfully implemented strategic plans which ensure that it is well positioned to capitalise on opportunities as a return to growth occurs.

Existing strengths of the region

Cork's natural advantage in terms of scale and critical mass, its diverse industry base and well developed geographic clusters of export-oriented companies in the agrifood, tourism, pharmaceutical and ICT sectors, coupled with its unique energy advantages have provided the region with a well developed product of strength to build on throughout the downturn. In the last 18 months alone, the region has built on its already strong economic clusters by securing inward investment from international pharmaceutical firms such as Sangart, Biomarin and Eli Lilly and global ICT leaders such as Apple, FireEye, Huawei and Big Fish Games.

Meanwhile, indigenous companies such as Voxpro, Carbery Group and Barry & Fitzwilliam continue to provide high quality employment and deliver excellent products and services.

The Cork Gateway also benefits from its renowned higher education and research institutes which concentrate

"Cork's natural advantage in terms of scale and critical mass, its diverse industry base and well developed geographic clusters of export-oriented companies..."

on research development in areas of most relevance to its existing industries, including ICT/electronics, lifesciences, food and the environment. The region's capacity and status as a lead player in research and innovation was further corroborated by Government's recent announcement that UCC/Tyndall Institute have been awarded four of the seven new world class research centres as part of the €300m Science Foundation Ireland/industry research investment in Ireland.

Building stronger roots for economic growth

Ambition, tenacity and vision have been the core elements driving the region's strategic development. While recognising that major investment in infrastructure has been limited for the short term, Cork's strategies have concentrated on the need to ensure that sufficient levels of investment continue over five year cycles to facilitate a modal shift. Recent developments in transport and infrastructure bear the fruits of this hard work.

Building a sustainable transport system

In February 2013, the Department of Transport announced a five year €8.3m funding package for sustainable transport investment projects for Cork City and suburbs. Currently, Cork has a relatively low level of public transport usage by commuters; eight percent in comparison to Dublin's 21 percent and this investment which is part of a regional cities sustainable transport programme aims to improve the walking, cycling and public transport experiences for city commuters. Key projects in the five year initiative include a €1.1m investment to improve the accessibility of Kent Station and its links to the city centre, cycle corridors to link Douglas, Ballyvolane and UCC to the city centre, a €1m redevelopment of Parnell Place and a €1m investment in a new City Centre Movement Strategy (CCMS).

As the popularity of large suburban shopping centres continues to increase and impact on city centre foot fall, strategic initiatives that improve vitality, commercial activity and growth in the city centre are to be commended. The

proposed CCMS contains radical and innovative measures which aim to better align Cork with leading European city transport and pedestrian systems. Plans include the introduction of pedestrian friendly spaces and an enhanced environment for cyclists, restricted vehicular access to Patrick Street for certain daily periods and the re-introduction of a two-way traffic system on MacCurtain Street. When

eastern periphery of Cork City Centre, Cork City Harbour is the second largest city centre development space in Europe. The demand from business is increasingly for office products located in dynamic, urban environments and the City Harbour development provides a unique opportunity in this regard.

Extensive analysis has been undertaken to identify recommendations which progress the development in a

phased and incremental manner that initially capitalises on existing assets, infrastructure, services and areas of energy which do not require major upfront capital investment. The priority area that has been identified is an office led, mixed use development at the western end of the North docks that is south facing, fronting the River Lee and the City Centre. This area presents a significant opportunity to release large



undertaking an initiative of this scale, public consultation and commercial and public 'buy-in' is integral to successful planning and ease of implementation. The Chamber believes that clear and cohesive communication and planning throughout the eight different phases of the Strategy are key to ensuring its success and also recommends that detailed benchmarking and regular impact reviews are undertaken to enable the NTA and Cork City Council to demonstrate that the measures have worked.

A modern office district that attracts FDI

Another priority project to grow the city's vibrancy and investor appeal is the development of a quality modern business district in Cork City Harbour. Spread over 162 hectares on the

"In February 2013, the Department of Transport announced a five year €8.3m funding package for sustainable transport investment projects for Cork City and suburbs."

areas of state controlled, vacant, underused lands that are owned or influenced by Irish Rail/CIE and grow their value for Cork and Ireland. The project has a real and tangible capacity to grow the city's investor appeal by providing the business community with the confidence that it will have the office property products they might need whatever their business life stage or requirement. Predictions are for up to 7,000 jobs being created within ten years and discussions are underway with Government to 'unlock' the lands and progress planning and construction.

Building research and innovation

The planned Cork Science & Innovation Park (CSIP) on the western fringe of the City will strengthen Cork's position as a global player in the science, technology and knowledge driven enterprises that

have become increasingly important to global economic success. By playing to the region's economic strengths, and focusing on three key business sectors - ICT, Health and Wellbeing and Energy and the Environment - where Cork has a proven track record, the CSIP will extend on the existing levels of connectivity between industry and third and fourth level education and research institutions. Advanced research in these three business sectors, which are driving economic activity in the U.S., Asia and Europe, is predicted to have a major impact on the regional and national economy creating up to 1,000 direct and 289 indirect jobs within five years.

“Another priority project to grow the city's vibrancy and investor appeal is the development of a quality modern business district in Cork City Harbour.”

Planting more of the right seeds

Despite the significant progress on particular strategic initiatives, there remains a number of challenges which require progression to ensure a conducive business environment that expands and intensifies investor interest.

International communications

As an island, Ireland must take every reasonable opportunity to improve its international communications connectivity not only to support the ICT sector, but also to capitalise on emerging opportunities in the internationally traded services sector and elsewhere. There are strong economic arguments, both at a regional and national level, for bringing Tier 1 international data

connectivity to the southern part of the country which would improve connectivity, and reduce data costs for businesses along the Atlantic corridor. It would also underpin the development of the Cork Docklands and CSIP. The fact that 'big data' and ICT are among the 'disruptive reform' areas identified in the Action Plan for Jobs 2013 reinforce the need for high speed, timely and cost-effective broadband access across Ireland.

A 2012 economic appraisal of a new Tier 1 connection undertaken by Cork BIC on behalf of Cork City Council, Aurora and E-net found that the connection could contribute an additional €160m in GDP for Regional Ireland over three to five years, create up to 4,300 new jobs and contribute up to an additional €328m to the Exchequer over five years from increased taxes and reductions in unemployment benefit.

The Chamber and its partners have engaged in extensive effort to secure investment through private, non-statutory channels and it has become increasingly clear that Government support is imperative to progress action, a perspective that is echoed in the IDA's Horizon 2020 Strategy.

A dedicated convention centre

The absence of a city-based convention centre is a major infrastructural deficit which means the Cork Gateway currently struggles to 'tap into' the large number of potential income generating audiences across a broad spectrum of areas (e.g. business/academic conferences, tourism, entertainment events). A large scale convention centre has potential as a 'Munster' product and would positively impact on the region's tourism and grow revenue generating opportunities for hotels, retail and hospitality sectors. The success of the 5,000 capacity 'Live at the Marquee' concert series illuminates the potential market for such an entertainment hub and a permanent development will enhance Cork's role as a premier business and leisure destination.

Cork City Council is currently undertaking an economic appraisal to determine the economic case for public support and the Chamber is hopeful of a favourable decision to progress the development of a landmark initiative

that has clear financial, economic and social dividend for Cork and its surrounding regions.

A conducive business environment

An enabling business environment is essential to support the region's economic development and encourage further inward investment and the Chamber, its membership and regional stakeholders remain ambitious in their targets of ensuring appropriate infrastructure is in place to attract and grow commercial activity within the County. Cork's progressive approach to economic development and the relentless pursuits of strategies to overcome existing challenges will ensure that the region is ready to capitalise on emerging economic opportunities. Progress in relation

“The Chamber and its partners have engaged in extensive effort to secure investment through private, non-statutory channels”

to the city's sustainable transport system, Cork City Centre Harbour and the CSIP are all testament to this. Targeted investment today will ensure its attractiveness well into the future.

Meanwhile Cork Chamber will continue to represent our members and advocate for the progression of additional strategic initiatives that strengthen the region's economic attraction and enables it to prosper regionally, nationally and internationally.

Siobhan Bradley is the acting Policy and Research Manager at the Cork Chamber of Commerce.

Public sector risk management: Are you managing?

Corné Mouton offers advice for devising an effective risk management system in an organisation



Risk management has, in recent years, emerged as an essential management tool for the majority of public sector organisations in Ireland. A number of factors have contributed to an increased emphasis on risk management, including high profile organisational failures, changes in the economic environment and publication of clearer guidelines in respect of risk management in the Code of Practice for the governance of State bodies and other similar guidelines.

Public sector organisations globally are now facing the same major challenges, including cost pressures, staffing and skills shortages, demands for improved services and meeting efficiency targets. The importance of effective risk management is therefore heightened.

To ensure an effective risk management framework is in place and embedded in any organisation, a number of key risk management components require consideration. These are highlighted below.

Align risk management objectives to organisational objectives

In any organisation, there should be a direct relationship between objectives, which are what an entity strives to achieve, and risk management components, which represent what is needed to achieve them. Risk management initiatives should be integrated with other management

processes to support management decision-making rather than operating as a pure compliance function.

Develop a risk management policy and framework

The risk management policy should clearly describe:

- Risk management objectives and risk appetite;
- Structures and responsibilities in place, including roles and responsibilities for risk management at different levels in the organisation; and
- Risk management processes and tools in place, including reference to the risk register, risk reporting, frequency of risk activities and available guidelines.

The board should oversee the risk management framework

The board of any public sector organisation should approve the risk management policy and framework in place and then monitor its effectiveness by:

- Keeping risk management as a standing item on the board agenda;
- Assuming responsibility for risk management at board level or including this as part of the responsibilities of sub-committees (such as the Audit or Risk Committee);
- Ensuring board and sub-committee members have adequate risk management expertise;
- Appointing a chief risk officer;
- Annually approving the risk management policy, risk appetite, business plan and risk register;
- Reviewing risk reports, material risk incidents and noting/approving required actions; and
- Periodically reviewing the effectiveness of the risk management framework.

Clearly define risk management responsibilities

At each level of the organisation, risk management responsibilities should be clearly defined. The Board should be supported by senior /

executive management and the chief risk officer to ensure development and implementation of the risk management framework, and the effective identification, prioritisation and management of risks. Risk owners should be responsible for managing

“The last number of years has served as a warning to public sector organisations: get risk management wrong and you are just one step away from disaster.”

individual risk while staff in general have a role in ensuring that the control environments continue to operate consistently and that risk incidents are reported.

Consider the appropriate risk management tools

The risk management framework in place should include utilisation of risk management tools such as:

- A risk register – to record and categorise risks, assess the impact and likelihood of each risk, identify the current controls in place, allocate risk owners and prioritise required actions based on residual risks;
- Risk management business plans – detailing the required future actions necessary to manage risk at an appropriate level;
- Risk management policy – including risk management objectives, risk appetite, structures and responsibilities in place, risk management processes and tools in place;

- Risk reports – referring to the risk monitoring and reporting arrangements in place;

- Specialist knowledge / published guidelines – arrangements for ensuring risk management activities are aligned to and in compliance with current guidelines and good practice in similar organisations.

Risk assurance

An effective risk management system should also ensure that assurance is obtained over whether responses put in place to manage and control identified risks, are effective. The Internal Audit function has a leading

role in providing assurance over the adequacy of controls across a range of risk areas. Assurance can also be obtained directly from management or from other assurance functions in place.

In conclusion, the last number of years has served as a warning to public sector organisations: get risk management wrong and you are just one step away from disaster. As a result, the Irish public sector has moved risk management to the top of its agenda, and should now focus on reaching a level of maturity where a robust risk management framework is in place and can be relied upon to reasonably

identify key threats to the organisation, as well as the appropriate responses. Risk management should not be seen as a single event, but as a continuous process requiring regular evaluation, assurance and improvement.

Corné Mouton is a Partner within Mazars with particular responsibilities in the areas of corporate governance, risk management, internal audit, IT audit, regulatory compliance and special investigations.



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Appointments

Name: Professor Michael Gibney

Position: Chairman of the Food Safety Authority of Ireland (FSAI)

Name: Raymond O'Rourke

Position: Board Member of the FSAI Board

Name: Professor Charles Daly

Position: Board Member of the FSAI Board (reappointed)

Name: Bill O'Herlihy

Position: Chairman of the Board of Bord Scannánah Éireann

Name: Maurice Sweeney

Position: Board Member of the Board of Bord Scannánah Éireann

Name: Dr Annie Doona

Position: Board Member of the Board of Bord Scannánah Éireann

Name: John Rice

Position: Board Member of the Board of Bord Scannánah Éireann

Name: Kate O'Toole

Position: Board Member of the Board of Bord Scannánah Éireann

Name: Seamus Deasy

Position: Board Member of the Board of Bord Scannánah Éireann

Name: Katie Holly

Position: Board Member of the Board of Bord Scannánah Éireann

Name: Joe Keeling

Position: Chair Horse Racing Ireland

Name: Karen O'Leary

Position: Chief Executive National Consumer Agency