

ABOUT BANKING



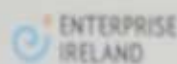
EDITION 11

MAY 2010

Refocused Banking Central to Export-led Growth

**High Potential
Start-Up Showcase
Class of 2009**

**High Potential
Start-Up Showcase**



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Our SME Sector:
A Question of Credit

The IFSC:
Charting a Course to
Future Success

Ireland's Recovery:
Avoid Clichés like the
Plague



ABOUT US

The Finuas Networks Programme is dedicated to specialised training within the International Financial Services sector. Summit Finuas Network aims to support the sector in maintaining Ireland's position as a top International Financial Services Centre through investment in the specialist skills and expertise of its workforce. The network plans to develop and deliver new training in the areas of banking and capital markets, investment management, insurance and specialist professional services to the sector.

The Summit Finuas Network promoter is the Irish Business and Employers Confederation (IBEC). IBEC are the Contracting Body for all services and supplies associated with the SUMMIT FINUAS Network.

PARTNER ASSOCIATIONS

IBEC has partnered with the leading Irish financial services industry associations to collaborate in the establishment of this joint Network. These industry associations include **Financial Services Ireland (FSI)**, the **Federation of International Banks in Ireland (FIBI)**, the **Irish Funds Industry Association (IFIA)**, the **Dublin International Insurance & Management Association (DIMA)** and the **Irish Association of Investment Managers (IAIM)**. Together these associations represent more than 250 firms that are eligible for funding under the terms of the Finuas Networks Programme, and that employ over 80% of the people working in the International Financial Services sector in Ireland.

UPCOMING COURSES

May		June	
4 th	UCITS for Hedge Funds	2/3/24 th	Leadership for High-Potential Individuals in International Financial Services (IFS)
11 th	US GAAP vs IFRS for Investment Funds	2-4 th	Deteriorating Credits
13/20/25 th	Swaps, Fixed Income and Derivatives	8 th	US GAAP Compliant Financial Reporting
18 th	Regulatory Requirements for Irish Domiciled Funds	10 th	IFRS Compliant Financial Reporting
18-20 th	Treasury/Asset Liability Management	23-25 th	Credit Products as an Asset Class
26-28 th	Energy and Environment Markets	24 th	Introduction to Custody Services
		24-25 th	Covered Bonds

For further information, please visit www.summitfinuasnetwork.com/open-courses

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IBF is the leading representative body for the banking and financial services sector in Ireland. IBF has over 70 member institutions and associates. Members include licensed domestic and foreign banks and financial services institutions operating here. The Federation of International Banks in Ireland (FIBI) and the Irish Mortgage Council (IMC) are affiliates.

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NEWSDESK



Speakers at the Strengthening Customer Relationships seminar were: Joe Beashel, Head of the Regulatory Risk Management and Compliance Group, Matheson Ormsby Prentice; Eimer O'Rourke, Head of Retail Banking, IBF; John Clinton, Ernst & Young; Joe Meade, former Financial Services Ombudsman; Pat Power, Training and Development Manager, MABS

Strengthening customer relationships

A recent seminar organised by the Irish Banking Federation (IBF) centred on the increasing focus on financial institutions' relationships with their customers. In particular, the seminar looked at how institutions addressed customers experiencing difficulties, including handling customer complaints and working with customers in arrears.

In one of his final official engagements the then Financial Services Ombudsman, Joe Meade, noted that financial services providers can and do make mistakes but that everybody must play their part in treating customers fairly; and he acknowledged the very real progress that had been made by lenders in this regard.

Pat Power, Training and Development Manager with MABS National Development Limited gave an overview of the IBF/MABS Protocol on Debt Management. This sets out how creditors and money advisers work in partnership to help people to manage personal debt has been in operation since September 2009. He concluded that the Protocol should make the process of agreeing affordable, sustainable repayment plans for clients more straightforward and be a more effective way to manage client arrears.

Transfer pricing in operation

With the current greater focus on transfer pricing issues globally and with tax authorities devoting significant resources in this area, the Finance Act 2010 introduced a new transfer pricing regime. This will come into effect on 1 January 2011, although there are grandfathering provisions for arrangements in place before 1 July 2010.

IBF in association with the Summit Finuas Network hosted a briefing in March 2010 with representatives from the Revenue Commissioners and Deloitte who discussed key aspects of the new legislation and some of the issues facing banks and financial service companies in Ireland and how these issues can be addressed.

While Tadhg O'Connell of the Revenue Commissioners focused on the basic principles of the legislation and key aspects of it, Joan O'Connor of Deloitte Ireland addressed the steps that needed to be taken by financial institution in the short and medium-term with specific emphasis on the review of existing legal agreements in order to avail of grandfathering provisions as well as the general impact of the legislation on operations in the long term. Giles Hillman from Deloitte's London offices focused on topics such as transfer pricing operations cycle, policy development within companies and implementation issues with a specific emphasis on key banking transfer pricing issues.



Pictured at the IBF/FIBI International Financial Reporting Standards (IFRS) Seminar were Ali Uğur, Head of Tax and Accounting, IBF; Joan O'Connor, Partner, Head of Transfer Pricing, Deloitte Ireland; Giles Hillman, Partner, Transfer Pricing, Deloitte UK; Tadhg O'Connell, Principal Officer, Revenue Commissioners

Student achievements honoured

The country's top second-level business students were recently honoured by IBF and the Business Studies Teachers' Association of Ireland (BSTAI). The four students who scored highest in the 2009 State examinations in Leaving Certificate Accounting (Simon Doran, Gorey), Business (Laraine Creed, Ballyjourney) and Economics (Rebecca Bourke, Limerick) and in Junior Certificate Business Studies (Rachel O'Sullivan, Bantry) received their Student Achievement Awards from Dr. Chris Horn, co-founder of Iona Technologies and member of the Government's Taskforce on Innovation.

Complimenting each of the students on their outstanding achievements, Dr. Horn pointed to the skills and abilities of our young people as the basis for future growth in the economy, particularly if we can be innovative in our approach to the challenges that lie ahead. The BSTAI President, Mary O'Sullivan, paid tribute to the banking sector for the ongoing provision of the practical support in the classroom that enabled those very skills to be developed.



Rebuilding the mortgage market

With the objective of determining the likely future shape and size of the mortgage market here, a range of stakeholders and market practitioners presented their perspectives on the theme of Delivering a Sustainable Mortgage Market in a recent IBF/Accenture conference. While the contributions varied in tone and content, in the words of the conference Chair, Brendan Nevin, all stakeholders would prefer in the future a more balanced and sustainable mortgage industry, one informed by a number of core principles such as fair treatment of customers, good regulation and the provision of a suitable housing supply.

In his capacity as Chairman of the Irish Mortgage Council, which is affiliated to IBF, Brendan Nevin also announced the launch of a new website – www.helpinghomeowners.ie – which has been developed by IBF to provide relevant information and guidance to mortgage borrowers who may be experiencing financial difficulties. The initiative is in partnership with the country's 12 mainstream mortgage lenders. The website emphasises the importance for the borrower in getting in touch with his/her lender in order to work together to find a mutually acceptable, sustainable solution.



Pictured at the IBF/Accenture Mortgage Conference: Delivering a Sustainable Mortgage Market were Robbie Kelleher, Head of Global Investment Strategy, Davy Stockbrokers; Brendan Nevin, Chairman, Irish Mortgage Council; Eimer O'Rourke, Head of Retail Banking, IBF; David Duffy, Senior Research Officer, ESRI; Philip Nugent, Principal Officer, Department of Environment, Heritage and Local Government; Niall O'Grady, General Manager - Business Strategy, permanent tsb.

Changes afoot in IFRS

There have been significant changes in some of the International Financial Reporting Standards (IFRS) during 2009, particularly in IAS 39. IBF and KPMG held a half-day seminar on IFRS in December 2009. As part of the Summit Finuas Network seminar programme, this particular seminar provided up-to-date and practical guidance on new and revised IFRS and IFRIC (IFRS Interpretations Committee) interpretations issued by the IASB that affect 2009 and later financial statements. Specific topics included the IASB work programme, new requirements for 2009, implementation of and practical issues for requirements and some of the regulatory views on changes.



Jonathan Lew, Partner, KPMG, Ali Uğur, Head of Tax & Accounting, IBF and Paul Dobey, Partner, KPMG at the IBF/KPMG IFRS Seminar

We have a job to do and we know we need to get on with it

We know that we have a big challenge to rebuild trust and confidence in our sector and we know that it is by our deeds that we will be judged.

This edition of *About Banking* is rightly focused on one overarching theme; how can we ensure that the sector plays its full part in enabling the wider economy to get back on the road to creating jobs on a scale that secures existing employment and supports investment in new business opportunities.

While the primary role of the sector is rightly centred on financial intermediation for personal and business customers, we must not lose sight of the sector's own direct contribution to job creation and tax revenue generation. The International Financial Services Centre (IFSC) is well positioned to take advantage of the inevitable opportunities that the ongoing global restructuring of our industry presents.

Our traditional strengths are well known; a competitive tax regime, access to EU markets and a well-educated workforce remain key. In the case of the latter, IBF's Shane Quinlan outlines the role being played by the Government-sponsored Finuas initiative, actively supported by our international banking members and designed to build the skills capacity of the IFSC.

Rebuilding our competitiveness and strengthening our regulatory regime to benchmark against the highest international standards can only serve to enhance our competitive edge. In this respect Neil Ward, Chairman of our international banks affiliate - the Federation of International Banks in Ireland - gives us a timely reminder of the agenda we need to pursue to capitalise on these opportunities. The sector will not be found wanting and is prepared to directly invest in securing the future. The imminent appointment by IFSC firms of an internationally respected and recognised figure to work directly with IDA Ireland and other stakeholders to accelerate the promotion and marketing of the IFSC in targeted international markets at this critical time underlines the sector's commitment.

The Government and the taxpayer have given significant support to the sector in an effort to get our economy moving again. We gratefully acknowledge this as well as the obligations that this support brings.

Elsewhere in this edition we have contributions from the Head of the new Credit Review Office, John Trethowan, and from the Chairman of Enterprise Ireland, Hugh Cooney, on the challenges as they see it in maintaining the flow of credit to business. This is a task not to be underestimated as the publication of the third independent report by Mazars of credit supply to SMEs reminds us.

Four out of five SME loan applications are being approved, according to Mazars - a small but positive improvement on the last report. In total banks approved 29,000 credit applications from SMEs to the value of €1.6 billion in the last quarter of 2009, representing a slight

increase on the previous quarter. However, a further deterioration in the quality of the SME loan book was recorded with one-third of loans now falling into the watchlist or impaired category.

Of course we are aware that much more work remains to be done to support business and we are continuing to work with the authorities and SME representative groups to strengthen banks' capability to meet the needs of business at this critical time. Member banks are bringing a sharper focus to bear on understanding the needs of new and emerging sectors. Individual banks are reorganising their structures and resources to direct service and support to those areas where it is most acutely needed.

Remaining with the theme of economic recovery, the work of strengthening the banking system is well underway. The Financial Regulator has set out its recapitalisation requirements for banks and we know that further measures are planned by international standards setters in the areas of capital, liquidity and counter-cyclical measures.

However, we need to ensure that the cumulative impact of all of these measures are carefully analysed and calibrated, so that we do not dampen or unnecessarily constrain badly-needed economic recovery. As the International Monetary Fund has clearly stated recently: "In moving forward with regulatory reforms to address systemic risk, care will be needed to ensure that the combination of measures strikes the right balance between the safety of the financial system and its innovation and efficiency" - and by extension its lending capacity.

Finally, we must not lose sight of the significant challenge facing thousands of homeowners who are genuinely struggling to service their mortgages. Eimer O'Rourke, IBF's Head of Retail Banking, sets out how our mainstream mortgage lenders are addressing arrears and repossessions. For our part, IBF is contributing directly to the work of the newly-established Mortgage Arrears and Personal Debt Review Group, which is charged by Government with developing some proposals for consideration by the summer.

Notwithstanding this, member banks continue to show significant forbearance to borrowers who are experiencing difficulties. They are mindful of the IBF Pledge to Homeowners: namely, that where borrowers make a meaningful commitment to continuing engagement in pursuit of a mutually-acceptable debt servicing arrangement, our members will not institute legal proceedings. As a sector we will continue to stand by our customers in these difficult and challenging times.

We know that we have a big challenge to rebuild trust and confidence in our sector and we know that it is by our deeds that we will be judged.



Pat Farrell,
IBF Chief Executive

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Our SME Sector: A Question of Credit

John Trethowan, Credit Reviewer, Credit Review Office



The independent Credit Review Office will play an important role in ensuring good quality credit decisions in support of our SMEs and a recovering economy, writes John Trethowan

One of our newspapers reported some months back how a young mother realised she was listening to too much coverage of the financial crisis when the first words her baby uttered were 'NAMA, NAMA'. Given the impact and the depth of the crisis which faced the country over the past couple of years, it is understandable that people have been focused on the debate surrounding the proposals to deal with the problems. The National Asset Management Agency (NAMA) is a huge new liability on the nation's balance sheet, with a large chunk of 'investment' property on the asset side.

To date, the focus right across the globe has been on the liabilities created in economies which lived beyond their means over the previous ten years. This, of course, includes Ireland. Domestically there has been limited attention given to the stock of capital assets which drove this public and private debt during the "Tiger" years. Ireland has been transformed into a modern European state with good road and rail infrastructure and many fine public, industrial, commercial and private buildings. This asset stock, together with excellent people resources and the hard financial lessons learned during the banking crisis, will be important parts of the foundation for the next period of growth.

The re-basing of the economy over the past couple of years to more sustainable levels has obviously led to an overhang of some of this property asset stock; and it is therefore highly unlikely that, when there is new growth in the economy, it will be based on

the property development and speculation which drove the last period of growth.

Facilitating business growth

There could well be growth opportunities in our being an alternative financial services-friendly location for foreign institutions, as our close neighbours find it politically expedient to undermine an industry which is core to their economies. We have lots of available office space, a tax-friendly International Financial Services Centre, a pool of talented youth, and a world-class financial services education system provided through partnership between the Institute of Bankers and University College Dublin. There are high-end, well-paid careers to be attracted to Ireland with the right strategy in this area - with obvious spin-off benefits for the wider economy.

No doubt further inward direct investment from multinationals will also be sought as a boost to jobs; and of course success in this area will be welcomed. However, these can be strategically risky as quantum job losses experienced when global economies contract and multinationals retrench are always a threat, arriving as they do at the worst possible time for the local economy.

The other primary growth area is of course the small and medium-sized enterprise (SME) sector, as an already available and sustainable source of revenue and jobs for the economy. The government and opposition parties are united in recognising this and all have sought to support this

sector through the recession; including the Minister for Finance's wish to ensure that the credit supply system is performing effectively across the sector. The Financial Regulator and the banks have also recognised the importance of this section of the economy by agreeing a Code of Conduct for Business Lending to SMEs - a process in which the Irish Banking Federation was centrally involved.

The EU defines SMEs in a range from micro sole traders through to larger companies employing up to 250 employees with turnover of up to €50 million. Cumulatively these enterprises account for some 270,000, or 90%, of all businesses in Ireland, and employ more than 700,000 people out of the 1.9 million in work. The potential for these businesses to increase or decrease the numbers in employment is widely appreciated.

The trauma of the past couple of years in the Irish banking market, and the simultaneous collapse in confidence in consumer markets, has resulted in a hugely testing time for SMEs. Banks' direct bad debt write-offs, the NAMA valuation haircuts, regulators demanding higher capital buffers and a constrained market funding environment all have undoubtedly adversely affected the availability and pricing of credit; and have focused banks' attention away from competition to survival - for both domestic and foreign-owned banks. This is occurring at the same time that SMEs are weathering tough trading conditions from depressed consumer demand in their markets and they require increased bank support to help them through.

“The other primary growth area is of course the small and medium-sized enterprise (SME) sector, as an already available and sustainable source of revenue and jobs for the economy. The government and opposition parties are united in recognising this and all have sought to support this sector through the recession; including the Minister for Finance's wish to ensure that the credit supply system is performing effectively across the sector.”

In an attempt to bring clarity to the situation it was agreed that Mazars would monitor the supply of credit to SMEs and this would be performed by extracting bank data on the situation and testing borrowers' views by market research. The results of the three reports to date have shown a dichotomy of views with banks claiming credit decline rates to SMEs of between 12.5% and 14% and borrowers suggesting between 24% and 28% of applications are being declined.

Ensuring credit supply

In order to promote further confidence in the market, the Minister for Finance announced in the December Budget my appointment to ensure that the supply of credit to this sector is operating effectively. This role is established under the NAMA

legislation and anticipates a more stable environment for banks' capital positions and greater capacity to lend following the NAMA transfers and the banks' recapitalisation programmes.

A core part of this role is the establishment of an independent and impartial system to review adverse banks' credit decisions to SME borrowers. This provides individual borrowers with more confidence, in that any decision they disagree with can be viewed by an experienced lender with no capital or funding constraints influencing their opinion on the application. In addition the anonymised findings

of the reviews will be one of the sources of analysis on which improvements to both the supply side of credit by the banks and the demand side from SME borrowers can be identified.

The Credit Review Office has been established around the most basic principles of lending as follows: (i) is there confidence in the integrity and the abilities of the person to whom you are lending; and (ii) how, when and where will the cash be generated to repay the lending. The actual process breaks these core questions into two parts: (a) establishing the facts on the background, financial performance and prospects for the borrower - which should be easily agreed by the borrower and the bank; and (b) establishing the differing opinions on the capacity of the borrower to repay the debt. The facts and opinions are then assembled into a structured model by which the independent Credit Reviewer can make an impartial assessment.

As this role is established under the NAMA legislation, it is currently confined to the five banks participating in NAMA and it is effective on credit applications from 31 March 2010. While the only NAMA banks originating fresh credits to the SME market are AIB and Bank of Ireland, these two banks currently account for some 60% of the SME market. Other banks may voluntarily join the scheme and this is a matter for their boards to decide.

It is also important to note that my role goes further than the establishment and running of the Credit Review Office. It includes a requirement to ensure that banks' lending policies are fair and not too constraining; and also to monitor their plans and progress in achieving the volume targets set for them in the passing of the NAMA legislation in March.

Most people are now familiar with the 'how' of the NAMA strategy: namely, removing the non-performing property loans from the participating banks' balance sheets at realistic valuations; and ensuring that the banks are recapitalised through State and private funding. It is now important to focus on the 'what' and 'why' in the NAMA strategy's principal objective, in putting the participating banks in a position to support the local economy and engage in lending and competition once again - albeit on wiser, cash flow-based principles which were sadly lacking over the past few years when bankers became beguiled with lending against rising asset values.

A further benefit of NAMA, which is not widely recognised, is that it retains a mix of Irish-owned and foreign bank competition in

our market. Whilst a foreign bank presence is welcomed and provides competition and innovation, it is also vital that there is a sustainable core of banks who set credit policy locally for this market. When times get tough, foreign banks can and do dictate credit risk strategy from their parent head offices which may not be benign for the host economy. The experiences of Australia and New Zealand are illustrative: the 'four pillars' strategy in Australia prevents foreign ownership of the four main banks there; by contrast New Zealand allowed control of their banks to move abroad and suffered the consequences economically of having credit policies set to suit agendas in other jurisdictions.

Supporting the credit process

The cheapest form of capital is retained profit and good lending is good profit generating business; so encouraging banks to lend should not be a huge problem. The flipside of this is that bad lending is the largest drain on capital, hitting a balance sheet at 100% margins; so in encouraging banks to lend to support SMEs it is always caveated that attention to credit quality is required.

Much has been made of the Credit Review Office's lack of compulsion over banks in cases where the impartial opinion is that the bank should have lent the money to an SME. The decision to take any lending assets onto banks' balance sheet rests with their Directors and Credit Committees. The Regulator, and probably the ratings agencies, would take a dim prudential view of outsiders dictating credit decisions to the banks.

Some commentators have written the Credit Review Office off as having 'no teeth'.

However, such views fail to recognise the pre-launch work completed by this Office with the two main banks in ensuring that their own internal appeals systems are functioning effectively, as it is a precondition that the bank would first have reviewed any disputed decision prior to being submitted to the Credit Review Office. I know how seriously these two banks have taken their role in this process and I am confident that as many internal appeals as possible are being sanctioned to prevent referral to the Credit Review Office. As such, the Office is already having an impact in achieving the overall objective of ensuring that the credit supply system is functioning effectively for SMEs.

In recent months there have been many calls for the introduction of a State-backed loan guarantee scheme as a remedy to the perceived lack of credit supply to SMEs. There are two elements to

such schemes: (i) a requirement to assess the creditworthiness of the applicants, which is what the Credit Review process already does for those who need to appeal a declined application to the banks; and (ii) a recognition that the risk is being transferred from the banks' balance sheets onto the State's. This has already proved to be less than popular with the public during the NAMA process.

An assessment of the number of opinions that it is safe to lend on cases submitted to the Credit Review Office can provide valuable empirical evidence as to the level of

risk which a loan guarantee scheme would entail. If the majority of the opinions suggest that it is safe to lend, a loan guarantee scheme would entail a relatively low level of risk for the taxpayer and may provide another stimulus to SME lending - albeit one that is not an open-ended liability in time or volume. A more focused scheme may also be an option to certain sub-sectors, such as those whose main asset is intellectual or creative output and whose future value is difficult for banks to assess.

Conclusions

In a recovering economy one of the main challenges for SMEs will be that, as their business activity levels begin to increase, they will require access to higher levels of working capital for stock and debtors; but their recent past performance may suggest difficulty in generating the levels of cash required to repay this level of borrowing. SMEs and their banks will both face the same 'chicken and egg' challenge here and some prudent risk taking will be necessary, even if this means working together on solutions such as shorter duration facilities which can be progressively increased, or making debtor finance as attractive a proposition as possible.

At the end of the day there are no 'silver bullets' to ensure that the credit supply system is functioning effectively for SMEs. Rather what we have are pieces of a strategic jigsaw in the form of post-NAMA restructuring and capitalisations, the retention of some credit policy making in Irish hands, the Credit Review Office, and the work of Enterprise Ireland and the City and County Enterprise Boards. Let us hope that the economy can recover its vitality before the infant referred to at the outset will have lost the term 'NAMA' from her vocabulary!

John Trethowan is a former chief executive officer, and chief operating officer and Executive Director of National Irish Bank.



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The IFSC: Charting a Course to Future Success

Neil Ward, General Manager and Managing Director, Bank of Montreal Ireland plc



The good news story that is the IFSC can be further enhanced through initiatives in the areas of taxation, education and regulation, according to Neil Ward.

The change in the physical landscape of Dublin's eastern quays over the past quarter century is truly impressive. However, what lies beneath the façade of this contemporary urban sight is even more remarkable. Ireland's ascent to be a major global hub for financial services is one of the most notable commercial achievements in the history of the island. The success and international recognition of Ireland's financial services industry did not come about by chance; it was brought about by visionary leadership, thoughtful planning and perseverance.

As we head into 2010 and beyond, the very effective business model of the Irish financial services industry has been studied and emulated by many countries across the globe. With the world navigating its way through the recent financial upheaval, many financial institutions are realigning themselves for the new universe in which they will be operating. Consolidation and relocation are inevitable outcomes, so it is imperative that Ireland is ready with a comprehensive marketing strategy that anticipates the needs and concerns of these companies.

We have a window of opportunity now - and over the next couple of years - to solidify and strengthen Ireland's place on the global financial stage. It is vitally important that we take action to educate the public in Ireland about the value of our International Financial Services Centre (IFSC) in order to capture the public's trust and support. The government is fully aware of the importance

of the IFSC and is actively supporting its future growth. However, having a public also enthused about the IFSC's future is not just important in itself but usefully complements government support. The IFSC needs to get its positive story out in the media - both here and internationally. We need to differentiate the activities of the IFSC sector from those of the domestic financial services sector. The imminent announcement of a new IFSC Ambassador/Commissioner to specifically promote the interests of the IFSC is a significant first step in communicating that differentiation.

There are many worthy initiatives in the pipeline that may enhance the IFSC's attractiveness new and additional investments by financial institutions. These include the development of Ireland as a hub for green financing and carbon trading, growing our capabilities in Islamic financing and Sharia-compliant products and fostering the use of Ireland as a location for registering finance-based intellectual property rights.

Other forward-thinking ideas such as government-supported focus on specialised and targeted education and the willingness of the Revenue Commissioners to fine-tune our tax codes for Islamic-compliant products mean that Ireland will continue to stay at the cutting edge of change in financial services. Add to this the growth and passporting ability of the internationally accepted, Irish-domiciled UCITS (Undertakings for Collective Investments in Transferable Securities)

products, our expansion as an insurance and re-insurance hub and our strong position in the global aircraft leasing industry and you get a picture of a vibrant and diverse IFSC.

New initiatives in taxation and education

When you consider all the other competitive advantages Ireland has including our geographical location, our language, our educated workforce, our governmental support, our corporate tax structure, our currency and - perhaps most importantly - our entrepreneurial spirit, it is easy to see that we have a lot going for us. However, a number of other key initiatives could further enhance the IFSC's profile and attractiveness.

One of the most important requirements for future growth and for upward movement in the IFSC's value chain is our ability to attract the very best front office staff. Much of the required infrastructure is already in place, we have access to technology and our professional services firms are as good as anywhere in the world. What we are still lacking is the senior experienced line of business leaders who are themselves willing to locate here together with the businesses they manage internationally. The licensed foreign banks that are here have already bought into Ireland as a great location in which to do business, but unfortunately not all the key players within those organisations see the benefits to them as individuals to locate here.

Over the past number of years many chief executives of member banks of the Federation of International Banks in Ireland (FIBI) have witnessed the departure of highly specialised staff from their Irish bases or have struggled to attract from abroad key individuals that are paramount to the future success and growth of their Irish operations. Quite often the main reason for this is the lack of competitiveness in Ireland's personal tax structure. Anecdotal evidence suggests that, when net income is the same or lower in Ireland by comparison with locations such as London and New York, the preference of high-earning, highly specialised people is not to choose Ireland as their country of residence.

We have a radical low corporate tax rate that has been a huge benefit to the country. Now we need a similar radical tax regime for personal income taxes. If we can decrease personal tax, we will see an influx of talent

into the country. This new talent will in turn help to generate more employment by giving direction to our entrepreneurial spirit and facilitating the growth of new businesses; and in the process increase the overall tax take from the IFSC for the government.

As powerful as our low corporate tax rate is in attracting foreign direct investment, it could be further enhanced by providing incentives to companies to make long-term commitments here. Companies who continue to operate profitable businesses in Ireland should be offered tax rebates. The rebates could be structured in similar fashion to a long-term incentive plan and linked to minimum levels of activity and profit over a specified period of years. The attractiveness of having a possible tax rebate to collect would discourage companies from relocating their businesses to other jurisdictions. Our current tax regime is being replicated by competing financial centres so we must ensure that our tax offering is competitively differentiated.

The 'IFSC' is a globally recognised brand in financial services, yet it is not possible to study for an IFSC MBA or an IFSC Masters in Finance. We have third-level institutions right at the heart of the IFSC district which could be leveraged to include financial services in their offerings to students.

Quality educational programmes specialising in financial services and incorporating the IFSC brand in their marketing would have both international and local appeal. Having students from around the globe undertake their graduate and postgraduate financial services education in the heart of the IFSC district would do wonders for the promotion and the image of Ireland in general and the financial services industry in particular. Establishing a university research and development department, working at the frontier of finance as part of its strategy, would present new possibilities and opportunities for the IFSC.

A regulatory benchmark

Our recent past experience of a light-touch regulatory regime for financial services has not served us well and has left a legacy of reputational damage in the domestic and international arena. The somewhat reassuring news is that we are not alone with these reputational issues and it is a problem that can be reversed and re-

engineered so that our regulatory reputation becomes a strength and not a weakness.

As we are all aware, a tsunami of regulation is on its way over the next few years. Adapting to this new and changing regulatory world will be an expensive and resource-heavy exercise. We have two choices on how we wish to view this regulatory onslaught: we can either embrace it with a goal of having the IFSC become the international benchmark of high regulatory standards; or we can be nonchalant about it and treat it as a box-ticking exercise. With the right and balanced leadership in the Financial Regulator, we can turn the forthcoming mandatory changes into a brand-enhancing opportunity for the IFSC.

Finally, there can be useful synergies between the IFSC and the National Asset Management Agency (NAMA). We have an abundance of under-utilised office and commercial space throughout the country, much of which will shortly be coming under the control of NAMA. There will be opportunities to use this property as a tool to attract new entrants to Ireland or to entice those already here to expand their activities. NAMA is taking a long-term view on its real estate holdings; and if this view were tied into the long-term enhancement of the IFSC, we could end up with a more saleable and valuable portfolio of assets for NAMA in the years to come.

The IFSC has many challenges ahead of it but it also has many core advantages and strengths. With a dedication to purpose and a willingness to innovate, five years from now the IFSC could once again be the envy of the worldwide financial services industry.

The author is currently Chairman of the Federation of International Banks in Ireland (FIBI) which, as the voice of international banks operating in Ireland, is affiliated to the IBF.

Ireland's Recovery: Avoid Clichés like the Plague

Kevin Gardiner, Head of Investment Strategy EMEA, Barclays Wealth



Several of the structural drivers behind Ireland's supply-side growth story are still in place, according to Kevin Gardiner.

While working as an economist at Morgan Stanley in London in 1994, I was asked to take a look at the Irish economy. Ireland had just had a difficult decade, to say the least, but its possible participation in the theoretical single currency was beginning to register with investors. The dust was settling on the latest near-death experience for the Exchange Rate Mechanism and Morgan Stanley Capital International had recently upgraded the Irish equity market to developed status.

Following a fact-finding mission, I drafted the economics section of a short investment report that we were eventually ready to post in late August 1994. When we found ourselves stuck for a title the phrase "Celtic Tiger" sprang to mind and the rest as they say is history. Nothing I have written since, or will likely write in the future, has struck such a chord. The phrase resonated from Dublin to Donegal. I have subsequently apologised many times – and well before the collapse – on Irish radio, on TV and in Irish broadsheets for "cultural vandalism".

In retrospect, the initial boom exceeded even our upbeat expectations. Growth averaged 9% between 1993 and 2000. It slowed

somewhat from 2001 but to a far-from-puny trend of 5% through to 2007. This latter stage was the more irrationally exuberant one, delivering first the most egregiously expensive Georgian houses ever seen, and then eventually of course, after 2007, a traumatic banking, property and labour market collapse.

That collapse coincided with seismic events on the global stage. The failure of Lehman Brothers, and the near-failure of AIG in September 2008, effectively froze the global money supply. What had looked like a manageable, cyclical downturn suddenly turned into a terrifying secular event that left capital markets and the global economy seemingly poised on the brink of a 1930s-type depression.

Economic indicators across the world dropped like a stone, as previously creditworthy companies as far away as Asia found it difficult to obtain simple export finance, for example. But the fall from grace of the Irish economy was dramatic even against this backdrop. As of the end of 2009 real gross national product (GNP) had fallen by 17% from its end-2007 high to levels last seen in 2003, while the unemployment rate, at 13%, was back at levels not seen indeed since 1994.

Structural drivers of growth

When invited to speak at conferences in Dublin or to the Irish media, almost always the first question asked is whether the "Celtic Tiger" will revive – and if not, what phrase would I coin for its successor? I try to sidestep the question, but not because I am pessimistic about Ireland's chances of recovery – I am not.

The nature of the original growth story is often overlooked. As we saw it then, direct EU structural assistance played only a modest role and house prices and easy credit

an even smaller one. Instead, the original structural story was very much a supply-side phenomenon, fostered by low business taxes, a welcoming attitude to foreign direct investment (FDI), a well-educated, flexible and English-speaking workforce, and membership of the EU (and eventually the euro).

For international companies looking for a platform in Europe, particularly American firms, the commercial and cultural fit was a good one. Ireland's small size meant that each new arrival had an impact on the local economy some 30 times larger than if the same operation had set up in Germany, for example.

Several of these drivers are of course still in place. And even after the closures and withdrawals of the past two years, the ongoing importance of foreign-owned companies is reflected in the fact that gross exports still account for around 90% of gross domestic product (GDP).

However, watching the second phase from afar revealed the double-edged nature of the "Tiger" metaphor. As a descriptive term, it had more than fulfilled its promise; but as a cliché, it eventually became counter-productive - perhaps literally. Its indiscriminate use might have helped foster, in a small way, the extrapolative expectations that can be so damaging in real estate and lending markets. The interaction of media and markets was a sobering reminder of how potent that elusive thing "confidence" can be. Never was the phrase "animal spirits" more appropriate.

Now it seems as if despondency has taken root just as firmly as exuberance did earlier. A Celtic characteristic perhaps? (I write as one.) As so often happens, just at this stage there are tentative signs of light at the end of the economic tunnel - and a cheaper euro may yet brighten the gloom a little further. Meanwhile, as noted, some of the structural drivers of the earlier supply-side story never went away.

Few Irish households will be inclined to share this view just yet. Incomes, let alone house prices, have yet to stop falling; unemployment has yet to peak. The banking debacle is casting a long and imprecise shadow. But internationally, things are looking brighter and this will eventually offer some support to the Irish economy.

Despite the increased prominence of China and India, the single most important engine of the global business cycle, is still the massive US economy. It is not out of the woods yet. But stories of the death of the US consumer have yet again proved premature, and the importance placed on credit in particular as a driver of growth has been overstated.

US household spending, for example, has more than regained the ground lost in the recession, even as consumer credit has continued to shrink. Over and above the direct boost that a growing US consumer might offer to world trade and exports in general, the possibility that falling credit need not prevent recovery might offer some reassurance as far as the prospects for Irish domestic spending are concerned.

Potentially of even greater importance for Ireland, American companies collectively are now running a healthy financial surplus and their thoughts will at some stage turn to investing overseas again. Some people argue that even if this does occur, Ireland is now so expensive that the investment will go somewhere else. This seems too narrow a view. A country's competitiveness is not driven solely by unit wage costs - and those costs are in any case not cast in concrete, even within the confines of the single currency.

On that latter front, some economists have also been urging that Ireland should leave the euro. This would be a mistake. The mortgage boom and bust was not primarily driven by euro area monetary policy, but by domestic hubris. Even if it were politically feasible to leave, extra currency and interest

"The nature of the original growth story is often overlooked. As we saw it then, direct EU structural assistance played only a modest role and house prices and easy credit an even smaller one. Instead, the original structural story was very much a supply-side phenomenon, fostered by low business taxes, a welcoming attitude to foreign direct investment (FDI), a well-educated, flexible and English-speaking workforce, and membership of the EU (and eventually the euro)."

rate volatility would likely cancel much of the attraction of temporarily lower costs in the eyes of many foreign firms. Euro participation is part of the competitive package that initially made Ireland such an attractive place in which to invest. After all, if a large US company wants to invest in an English-speaking, financially volatile and euro-sceptic EU base outside the single currency, there is always the UK.

World trade is recovering and direct investment may follow. This should eventually filter through to some stability in Irish exports, and to resumed hiring

and build-out at the subsidiaries of foreign-owned firms. Data on recent FDI flows have been more resilient than feared, with encouraging signs perhaps of a wider spread across industries than in the past.

Banking and credit supply

The chances of a domestically driven upturn in spending are of course much slimmer, given the damage still being done to living standards and balance sheets. However, the constraints posed by the Irish banking system can be overstated. This is not to downplay the contribution made by banks to the worldwide and Irish crises that broke in 2008: those crises were largely financial events. But just because banks played a major role in the crisis does not mean that a vigorous banking sector is a prerequisite for economic recovery.

What we have surely learned from the massive inflation and deflation of financial balance sheets is that the link between them and economic activity - as opposed to asset prices - is pretty loose. If there was far too



"World trade is recovering and direct investment may follow. This should eventually filter through to some stability in Irish exports, and to resumed hiring and build-out at the subsidiaries of foreign-owned firms."

much credit to start with, we may not need anywhere near as much for the economy to start growing again. Indeed, the banking industry will not quickly be permitted to lend so aggressively again: tighter regulation in one form or another is a given – once politicians and regulators work out what they should and can do.

The lending that does matter for growth, and which froze so disastrously in September 2008, is a small portion of the total loan book. Small and medium-sized businesses certainly need access to that working capital; but much of the wider decline in bank lending may be the result of lower demand, not just reduced supply.

And the nature of the banking failure in Ireland was in one important way different to that in a number of other markets. It was huge, but it was simple – a failure of what has been described as "utility banking". Irish banks lent far too recklessly against real estate assets. What they do not seem to have done is to engage as much in the

complex, multi-tiered structurings and securitisations seen elsewhere. Although large, Irish bad loans might at least be reasonably transparent.

Of course, property prices have yet to stabilise, and the initial discount applied by the National Asset Management Agency (NAMA) has been bigger than expected. But viewed from overseas, it is more difficult to find fault with the Irish government's crisis management than seems to be the case domestically. The Irish "bad bank" may not be perfect and, if Ireland were starting from scratch in a moment of leisure, it might well do things differently. But you have to play the hand you are dealt.

In acting decisively over deposit guarantees, the failing banks and the budget deficit, and in now offering a degree of transparency regarding the NAMA discounts, the Irish government has not, viewed in the international context, done such a bad job. This is not to absolve it of shared responsibility for fostering the boom to

begin with; but as they say, people in glass houses...

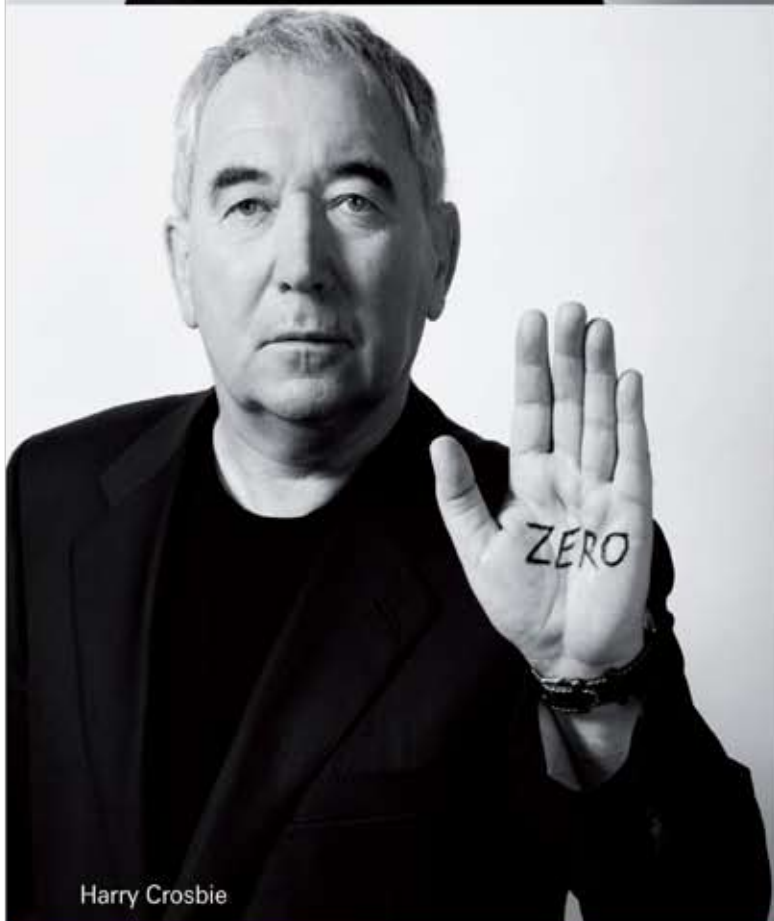
International investors have to date mostly given Ireland the benefit of the doubt. While spreads on Greece's debt first ballooned out earlier this year, those on Ireland's stayed reasonably stable. Indeed, for a while they actually narrowed relative to the UK. More recently they have widened markedly, but this seems to have reflected a general nervousness triggered by further developments in Greece rather than more local concerns.

So will the "Tiger" come back? Growth may well resume tentatively later this year, with or without a revival in bank lending; and if FDI does eventually revive, Ireland may at some stage outpace its euro area peers again. But a "Tiger" economy is a small, relatively poor country growing quickly to catch up with its better-off neighbours. Even after the bust Ireland is no longer in need of this cliché – or any other for that matter.



Karl McCann – Fyffes

Melanie Verwoerd
UNICEF Ireland



Harry Crosbie



Eddie O'Brien – Topaz

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Refocused Banking Central to Export-led Growth

Hugh Cooney, Chairman, Enterprise Ireland

Banks must widen their focus in support of sectors that can drive economic recovery through export-led growth, writes Hugh Cooney.

Ireland's growth model of the past decade - one driven by consumption and construction - has run its course. Ireland, its banks and its businesses now need a competitive economy based on sound fundamentals; not trading assets between ourselves in a limited domestic market, but real and substantial sales to other markets.

It is imperative that the banks place themselves at the centre of this export-led recovery and future wealth generation. Banks, more used to servicing traditional, domestically focused, asset-backed businesses, must now focus greater attention on the sectors that will lead Ireland's economic recovery.

Ireland's economic recovery and growth will be driven by the export-focused, high value-added, knowledge-led companies in sectors such as clean technologies, medical devices, software, financial services, prepared consumer and specialist functional food, life sciences and high-level manufacturing. They are our high-value medical devices manufacturers such as Creganna in Galway; our leading-edge software companies, such as Dublin's Norkom Technologies; and our internationally traded services companies such as Abtran in Cork (see profiles on page 18).

During the boom years these types of businesses and sectors remained somewhat under the radar of the banks. When there was so much hay to be made in servicing traditional domestic markets such as the

property sector, the banks under-exploited the opportunity available in servicing our knowledge-led exporting base.

This is understandable to some degree; ideas, innovation and intellectual property are by their nature intangible and appear to carry greater risk than traditional, asset-backed businesses. However, it is now clear that this concentration on certain sectors and the resultant narrower risk base, is one of the factors that has led to our current difficulties.

The banks now must widen their focus to encompass these critically important sectors. This is essential for two reasons. Firstly, these high value-added, export-focused businesses need a supportive banking system to succeed internationally. These are the sectors which will be bringing the much-needed real value added and foreign income into this country. Without access to sufficient finance, the platform for our recovery will be unbalanced and structurally unsound and the recovery slower than is possible and is needed.

Secondly, there is limited growth potential in the domestic market. The banks will stymie their own growth potential by operating in areas that are either stagnant or in decline. Furthermore, becoming involved in several of these areas would spread the risk for banks at a strategic level across a broader range of sectors. Over-exposure to the property market played a significant part in our current situation, whereas Irish

entrepreneurial activity encompasses a range of sectors which are affected to varying degrees by the ebb and flow of economic fortunes.

Wider horizons for sectors and markets

It is true that our knowledge-led, high-tech sectors are different from traditional business; they require greater knowledge and understanding of the particular business, the sector and its dynamics. However, it is possible to acquire expertise in these sectors and then to develop new revenue streams servicing them. Furthermore, by aligning themselves with the companies that will spearhead real wealth generation, Ireland's banks can also capitalise on their success.

This will mean a significant change of focus for the banks; a move away from large transaction funding to providing more business funding. It also requires a change in banks' approach to risk, but this will ultimately benefit them in the longer term.

In addition to looking beyond property, Irish banks must also take a wider view of the new economy. Currently around 50% of Irish exports are to the UK, a market that is very familiar to us - indeed, many of the banks have experience in this market. However, Enterprise Ireland's client companies are increasingly focusing elsewhere. This is a necessary and welcome development. In the new global financial landscape the high growth markets are



Pictured at the recent Enterprise Ireland HPSU (high-potential start-up companies) launch were Maria Archer, Autonomic Media, Minister for Trade and Commerce, Billy Kelleher TD and Hugh Cooney, Chairman, Enterprise Ireland.

the Middle East and the BRIC countries – Brazil, Russia, India and China. Naturally this is uncharted territory, but Irish banks must think about how to best serve the companies addressing those markets, either directly or through forming alliances with local partners.

Collaboration and knowledge sharing is the way forward. Over the past 12 months, Enterprise Ireland has put increased effort into working closely with the Irish banks. This initiative has included an exchange/secondment programme between Enterprise Ireland and Ireland's main banks whereby personnel from Enterprise Ireland have been seconded to the banks and vice versa in a knowledge and skills-sharing exercise.

This exchange of complementary skills and knowledge sharing is further aligning Ireland's banks to Ireland's innovative exporting sector and ensuring greater insight into the sectors on which our future entrepreneurial efforts depend. Closer collaboration from all sides will help to de-risk future involvement by the banks in what they might currently perceive as unfamiliar sectors. For that loop to be completed, the banks must become more involved with high-growth firms.

And there are other synergies that can be exercised. Banks' traditional access to high net worth individuals can also be further exploited. As they become more knowledgeable about some of the high technology industry sectors, Ireland's banks can act as a conduit to link potential investors with companies at various stages of their growth. This activity can have a positive multiplier effect that results in true wealth creation rather than the wealth redistribution model of the past.

While some of the growth areas we have identified may be unfamiliar to some banks, the following is an example of one sector with which banks should be very familiar. We have a growing number of indigenous companies operating in financial services, such as Abbey Capital and Quintillion. We would like to see more start-ups emerging from within the IFSC structure and from the traditional banking sector. Just as the high-tech multinationals that came here in the 1980s ultimately spawned an ecosystem of innovative start-ups, there are significant opportunities for innovative start-ups in the financial services sector. At Enterprise Ireland we are actively working to support financial services entrepreneurs to embark on new ventures.

Conclusions

In short, our fortunes will be decided on our own efforts and our knowledge-led, high-value enterprises are the base on which Ireland's future wealth depends. Finance is a critical component of the structure to support indigenous businesses – and by extension the economy as a whole.

Following the Minister for Finance's recent announcement, Enterprise Ireland will be collaborating with the Irish Banking Federation and the banks in the development of banking expertise and services in support of the modern growth sectors of the economy. This is a positive and timely initiative.

The banks can choose to be an observer or a key player in the development of this opportunity by becoming more involved in our wealth-generating sectors. By placing themselves at the centre of economic activity, our banks will make a real contribution to Ireland's economic recovery and secure their own future growth.

The author was recently appointed by Government to chair the Mortgage Arrears and Personal Debt Review Group, established in accordance with the Renewed Programme for Government.

Creganna-Tactx Medical

Based in Galway, Creganna-Tactx Medical is a leading supplier of products, technologies and services to medical device and lifescience companies worldwide. The company has over 800 employees and a combined turnover of \$110 million (€81.6 million) in 2009. The group also has facilities in California, Massachusetts and Minnesota in the US and in Singapore. Its customer portfolio includes the world's leading medical device manufacturers.

In January this year Creganna acquired US firm, Avalon Medical Services, which traded as Creganna Tactx. Bank of Ireland Corporate Banking acted as agent and funding bank for the transaction, while Barclays Bank Ireland and HSBC Corporate Banking Ireland provided the finance.

Creganna's CEO, Helen Ryan, praised the support the company received from its fundraising partners during the deal process, "This deal demonstrates the commitment of Bank of Ireland Corporate Banking, Barclays Bank Ireland and HSBC Corporate Banking Ireland in supporting solid Irish businesses to develop and expand despite challenging economic conditions. They understood our vision from the outset and effectively helped us to secure and close this deal in a timely manner, enabling us to enter 2010 in a very strong competitive position."

Norkom Technologies

Established in 1998 and headquartered in Dublin, Norkom Technologies is a leading provider of financial crime and compliance software solutions to the global financial services industry. The company's solutions are deployed in more than 100 countries across four continents, monitoring billions of transactions a day for global financial services clients including seven of the top ten financial services organisations in the world.

In 2009 Norkom was listed as one of the world's top 100 providers of financial technology in the Fintech 100 rankings for the second consecutive year. Norkom has operations and offices across Continental Europe, North America and Asia-Pacific.

Abtran

A home-grown Irish and international success story, Abtran employs 1,000 people in a world-class business headquartered in Cork. Founded in 1997 with six employees, Abtran has grown to become Ireland's largest indigenous business process outsourcer. With a projected turnover in excess of €40 million in 2010, the company recently announced further expansion of its research and development initiatives and 300 new jobs. Abtran has an extensive and diverse client base including the ESB, An Post, BSKyB, Aviva and BetEire Flow (the M50 toll operator).

International business forms a significant portion of Abtran's sales and new export potential is strong. The company is targeting further growth in the global business

process outsourcing market which is currently valued at some €300 billion in revenues. Abtran's success is firmly based on a commitment to innovation and collaboration with clients, higher education institutions and technology partners to research new

ways of delivering services and benefits to citizens and customers on behalf of its clients.

"It is true that our knowledge-led, high-tech sectors are different from traditional business; they require greater knowledge and understanding of the particular business, the sector and its dynamics. However, it is possible to acquire expertise in these sectors and then to develop new revenue streams servicing them. Furthermore, by aligning themselves with the companies that will spearhead real wealth generation, Ireland's banks can also capitalise on their success."

Upskilling Ireland's International Financial Services Sector

Shane Quinlan, Programme Manager, Irish Banking Federation



Shane Quinlan explains how the financial services sector and Government are working together on the continuous development of skills and expertise that helps to maintain the competitiveness of our international financial services sector.

The issue of human capital development or 'upskilling' has been a key policy imperative for the Government in recent years. In response to 2007 research by the Expert Group on Future Skills Needs on skills deficits in the international financial services (IFS) sector, the Government announced the Finuas Skills Initiative in February 2009, a State-supported programme for developing enterprise-led learning networks within the IFS sector.

The aim of this initiative is to support the sector in maintaining Ireland's position as a top centre for financial services by investing in further developing the specialist skills and

expertise of its workforce. Jointly funded by Government and companies within the sector, Finuas is managed by Skillnets on behalf of the Department of Enterprise, Trade and Innovation. It is envisaged to run until 2013, with an initial training fund of €1 million allocated in 2009 and further €1 million allocated for 2010.

Through its affiliate, the Federation of International Banks in Ireland (FIBI), the Irish Banking Federation (IBF) joined forces with its industry partners Financial Services Ireland (FSI), the Irish Funds Industry Association (IFIA), the Dublin International Insurance and Management Association (DIMA) and the Irish Association of Investment Managers (IAIM) to form the Summit Finuas Network in June 2009. Together these associations represent more than 250 firms that employ 80% of the people working in Ireland's IFS sector.

The overall objectives of the Network are as follows:

- provide a forum for companies within the IFS sector to work with educational providers to inform course content in line with market developments;
- support the transfer of knowledge and competence, both within and across companies, and to raise the overall pool of competence within the sector in Ireland;
- strengthen the management competence and insight of leaders and innovators;
- upgrade skills of key employee groups; and
- provide skills for operational and process innovation allowing Irish operations to successfully compete for mobile projects in global organisations.

To date, the Network partners have identified a number of appropriate training programmes and secured a significant proportion of the Finuas fund to put these programmes in place. Skills deficits have been identified in areas such as people management, innovation, leadership, risk management and dealing with complex financial instruments; and professional training providers were engaged to design and provide relevant courses, workshops and seminars.

The Summit Finuas Network was officially launched by the Tánaiste, Mary Coughlan TD, in September 2009 and in the final four months of last year 110 companies within the IFS sector became members of the Network and over 4,000 training days were provided to those organisations through 79 different programmes. These programmes represented a mixture of accredited open courses (diplomas, certificates, etc.), a number of short-term technical courses, industry workshops, seminars and specifically tailored in-company training programmes.

Due to the success of the Network in 2009, a significant proportion of the 2010 Finuas allocation was secured and the 2010 Summit Finuas Network training programme was launched in March. New courses in corporate banking, covered bonds, alternative investments, energy and environmental finance and executive management form a key part of the 2010 programme together with a second run of the more successful 2009 courses.

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Conveyancing: Towards Greater Certainty and Security

Eimer O'Rourke, Head of Retail Banking, Irish Banking Federation (IBF)



Eimer O'Rourke writes that, whilst enormous change was taking place in banking over the course of 2009, a related area which underwent significant change was that of the taking and registration of mortgage security.

Work which had already commenced on reviewing the certificate of title system was accelerated in the wake of high-profile mortgage fraud cases in 2008. Revised residential undertakings, guidelines and certificates of title were finalised and came into use in May 2009. This documentation set out clearer expectations around the timelines for completion of various steps in the process and the interaction between the solicitor and the lender, bringing greater certainty and risk management to bear on the system.

July 2009 saw the enactment of the much-awaited Land and Conveyancing Law Reform Act and the bulk of its provisions were commenced on 1 December 2009. The Act consolidated and updated the legislative basis for conveyancing. From the perspective of mortgages, the legislation introduced some key changes, which prompted an extensive review of mortgage documentation. These provisions included:

- a requirement for the Property Registration Authority (PRA) to prescribe the standard form of charge for registration;
- the changed nature of the mortgage security in the case of unregistered land; and
- the repeal of some archaic legislative provisions.

Standardised mortgage deed

In this context IBF finalised the standardised mortgage deed project which its members had initiated some years previously. This standard residential mortgage deed is now in use by the majority of mortgage lenders in the Irish market. The deed and associated documentation are available on the PRA website (www.landregistry.ie). Competitive aspects of mortgage offerings, such as the amount of the loan in question, its purpose, the applicable interest rate and repayment terms, are a matter for individual lenders; as such, these are reflected in the individual facility letters and associated conditions which are developed by each lender.

The standardised mortgage deed is seen as a positive forward-facing step. It should streamline the process for all concerned as it greatly reduces the number of variations possible, thus simplifying matters for all practitioners in the market. It provides value to both lenders and the PRA in its capacity to reduce the large volumes of paper storage associated with each loan. For the consumer it moves the process closer to achieving simpler switching from one mortgage provider to another.

Advancing the e-agenda

This standardisation is seen as a key building block in the move towards paperless or electronic charges (e-charges) and ultimately e-conveyancing. The e-agenda was also advanced in 2009 through the implementation of e-discharges.

Piloted initially through a subset of mortgage lenders, e-discharge was successfully rolled out across the board. The industry looks forward to working with the PRA in 2010 as its plans for e-charges develop. These enhancements have been complemented by the move to e-stamping in the Revenue Commissioners.

Taken together, these steps are welcome advances in the move towards e-conveyancing. However a full e-conveyancing system has the capacity to augment Ireland's competitiveness by delivering speed and efficiency in this area, whilst mitigating the more significant risks inherent in a system which is characterised by manual operations.

As of 1 January of this year, Land Certificates (and Certificates of Charge) ceased to have any legal force or effect. In the past, great significance was attached to the Land Certificate as it provided the owner of registered land with evidence of his/her title.

It was also occasionally used as a means of providing security for a loan by depositing the Certificate with the lender. The abolition of Land and Charge Certificates is part of the broader move towards an e-conveyancing system. The move away from paper-based processes towards electronic databases is a key principle of the e-agenda.

The Land and Conveyancing Law Reform Act also has a significant impact on the documentation used for commercial mortgages. The legislation gives the lender the discretion to disapply certain provisions of the Act in the commercial mortgage deed. Accordingly, each lender had to review their commercial mortgage documentation in order to determine what stance it wished to reflect with regard to these discretionary items.

Addressing repossession

IBF member institutions view repossession as a last resort for borrowers in difficulty. Lenders work with distressed borrowers in order to find mutually acceptable, sustainable solutions. This is evidenced by the small number of new court cases initiated and by the very low level of properties taken into possession.

The 2009 Act specifies certain parameters around the mortgagee's rights of repossession. These provisions apply to mortgages created after the commencement of the Act - since 1 December 2009. It is therefore likely to be some time before these changes have an impact in practice. The legislation requires a mortgagee to go to court to seek an order for possession and to seek an order for sale (these can be done concurrently). Alternatively, these powers can be exercised with the borrower's consent. However,

the industry envisages significant shortcomings around the operation of these powers, particularly sub-section 97 (1) on the seven-day limit for consent to possession and sub-section 100 (2) on the seven-day limit for consent regarding power of sale.

The practicalities around obtaining consent and taking possession or obtaining consent to power of sale within a seven-day period are logistically so challenging for both borrower and lender that these sub-sections, as they stand, are unlikely to be used. This means that, despite their potential, in so far as both parties may be willing to pursue this course of action they will be forced to go to court. This will result in borrowers incurring increased legal and credit costs, losing the option of privacy and experiencing significant delays in resolving a situation which they were otherwise prepared to resolve.

“...a full e-conveyancing system has the capacity to augment Ireland's competitiveness by delivering speed and efficiency in this area, whilst mitigating the more significant risks inherent in a system which is characterised by manual operations.”

Glossary of Key Terms

Certificate of Title system

This system requires the purchaser's solicitor to provide:

- i. a signed undertaking to the lender guaranteeing he/she will adhere to the recognised process of creating security;
- ii. a certificate of title guaranteeing the quality of the security

Charge

A charge is an interest or right which the lender secures against the property of the registered owner/mortgagor to ensure that the debt will be repaid. It is noted on the land register within the Property Registration Authority.

Discharge

A discharge is the process by which a charge is removed from the land register usually upon repayment of the debt by the registered owner/mortgagor to the lender/mortgagee.

Mortgagee

A mortgagee is the lender to whom a mortgage is made. The mortgagee is entitled to the payment of the money secured to him by the mortgage.

Mortgagor

A mortgagor is the person who makes the mortgage. The mortgagor is the registered owner of the land (with the interest of the mortgagee noted on the land register).

Undertakings

An undertaking is any unequivocal declaration of intention addressed to someone who reasonably places reliance on it, which is made by a solicitor in the course of his practice. A solicitor is personally bound by an undertaking.

Stamp

A 'stamp' in a conveyancing context is confirmation by the Revenue Commissioners that the necessary statutory duty has been paid in respect of the legal instrument.

Three-way closing

At the close of a conveyancing transaction, the three parties (purchaser, vendor and financial institution) are each represented separately by their own solicitor.



Pictured at the IBF/IOB Conveyancing Seminar were: Michael Kelly, Training and Policy Manager, AIB Securities; Detective Sergeant Pascal Walsh, Commercial Fraud Unit, Garda Bureau of Fraud Investigation; Philip Murphy, Assistant Principal Officer, Revenue Commissioners; Shane Martin, Adviser, Retail Banking IBF; Eimer O'Rourke, Head of Retail Banking, IBF; William Prentice, Head of Banking & Financial Services Department, Matheson Ormsby Prentice; Peter McHugh, Corporate Services Division, Property Registration Authority

Approximately half of all principal dwellings that are currently taken into possession are by way of voluntary surrender rather than on foot of a court order. This is why the industry sees the seven-day limit as inherently anti-consumer and has a preference for extending this limit to a 30-90 day period, for example. Furthermore, given seasonal impacts on the housing market, a seven-day limit would not be workable and a significantly longer period should be allowed in order to seek the best price for a property.

The IBF has communicated these concerns to the Department of Justice, Equality and Law Reform following which the Department has agreed to review these issues further in the light of actual experience.

The legislation also provides that repossession proceedings with respect to mortgage loans - created since 1 December 2009 - must be initiated in the Circuit Court rather than the High Court.

Whilst there are advantages and disadvantages to either route from both the lender's and the borrower's perspective, IBF has conveyed to the Department that its members have voluntarily agreed that any proceedings commenced in respect of principal private residences from 1 October 2009 would be initiated in the Circuit Court as opposed to the High Court. This voluntary commitment applies regardless of when the mortgage was created.

Solicitors' Undertakings

Over the course of the past 18 months IBF members have focused on ensuring that outstanding solicitors' undertakings are fulfilled and that bank security has been properly registered. In doing so, they have employed various methods to ensure that solicitors recognise their responsibilities and comply with their undertakings, some of which are outstanding for a number of years. These methods have elicited an improved response from the legal profession overall, but there is still a segment of the profession that is not in compliance. Lenders will now have to consider how best to escalate matters in respect of the non-compliant segment in order to achieve a satisfactory outcome.

The final area where significant developments continue to unfold relate to changes to the minimum terms and conditions of solicitors' professional indemnity insurance (PII) and the consequent impact on the use of commercial undertakings in the market.

The Law Society has the power to make new regulations prescribing the minimum terms and conditions of PII and, with effect from December 2009, revised the regulations with respect to the level of cover required by solicitors.

While these changes were set out in detail in revised regulations, two of the key changes can broadly be summarised as follows:-

- (a) the minimum level of PII which solicitors are required by law to hold has been reduced from €2.5 million to €1.5 million; and
- (b) solicitors are no longer insured under their standard cover to give undertakings to financial institutions in respect of commercial property, including residential investment properties.

In practice, it remained open to solicitors to take out additional insurance over and above the statutory minimum to cover (b) above. Therefore, lenders could request that customers appoint solicitors who had this additional cover in place, thus facilitating the customer's solicitor also acting on behalf of the lender in certain respects, minimising duplication and cost to the customer. In some cases, the lenders have instructed a separate solicitor resulting in a three-way closing.

The Law Society has confirmed that it is considering prohibiting the use of undertakings with respect to commercial mortgage transactions, even where a solicitor has or can secure additional insurance to cover this. It is understood that this decision may be formally taken by the Council of the Law Society over the coming months. The Law Society's reasoning is that undertakings in the commercial mortgage market do not represent best practice as there is uncertainty around the availability of insurance cover going forward and the undertaking documentation is not standardised with respect to commercial mortgages.

The removal of undertakings in respect of commercial property will result in a return to three-way closings for some commercial mortgage transactions, which heretofore would have relied on such an undertaking. The three-way closing may result in additional legal fees and delays for commercial mortgage transactions. While institutions acknowledge that three-way closings may be appropriate for larger, more complex transactions, this would be an unwelcome development in the context of facilitating the supply of credit to the SME market.

In addition, IBF has requested that the Law Society consider reviewing their definition of commercial to exclude residential investment property loans which come within the Consumer Credit Act, as again it is felt that the duplication of solicitor costs would be particularly disproportionate to the size and nature of such transactions.

Alternatively, if this approach were not acceptable to the Law Society, IBF would advocate that a simple monetary limit be set, below which undertakings can be used and above which they would not be used. This approach would also facilitate the availability of commercial mortgage credit for lower ticket transactions without incurring a disproportionate legal cost. IBF will seek to work with the Law Society towards finding a proportionate solution to these challenges.

Where to now?

We have seen much change in the whole conveyancing area over the course of the past year. However, it has been characterised by disjointed rather than co-ordinated developments, with perhaps less sight of the desired outcome than would

be optimal. Some of the changes are clearly progressive, while others will remain to be judged in the fullness of time.

However, what is clear is that the area of registration of mortgages in Ireland, and indeed the wider area of conveyancing,

still has a long way to go to catch up with other jurisdictions in terms of ease of doing business, cost and efficiency.

Structural changes are likely to be needed in order to modernise the system in a way that transforms how this aspect of business is conducted and in order to ensure that all stakeholders derive value from the model. If we are to ensure Ireland's place in the leading ranks of competitiveness indicators going forward, now might be the appropriate

time to take stock of developments to date, devise a clear vision of the system we wish to have in five years' time and start to put in place the necessary elements to deliver that system.

“IBF member institutions view repossession as a last resort for borrowers in difficulty. Lenders work with distressed borrowers in order to find mutually acceptable, sustainable solutions. This is evidenced by the small number of new court cases initiated and by the very low level of properties taken into possession.”

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