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1. The Organisation

Organisational Change in Recessionary Times

Organisational Change and Strategic Decision-making in the Face of Recession

Forfás, the Irish national policy and advisory board for enterprise, trade, science, technology and innovation, in its 2011 report entitled ‘Statement on Competitiveness Priorities’ says ‘restoring the Irish economy to sustainable economic growth is essential both for reducing unemployment, restoring fiscal balance and for reducing the debt overhang to manageable proportions’. The report continues ‘enhancing our international competitiveness is a necessary part of our recovery strategy. By competitiveness we mean the ability of businesses in Ireland to achieve success and increased share in international markets – leading to improved standards of living for all our citizens’.

In its report ‘Making it Happen: Growing Enterprise for Ireland’, Forfás emphasises the essential role of competitiveness and exports to the restoration of economic growth. It also says that stabilising the banking system and public finances, thereby reducing the debt/GNP ratio, will be a clear and immediate requirement to restore a stable economy fostering future economic growth.

The Changing Economic Landscape and Organisational Change

In the last four years, total employment in Ireland has fallen by over 300,000, or almost 15 per cent. Even though the working-age population has risen, the labour supply has fallen because some people have withdrawn from the labour market altogether. The unemployment rate has soared from 4.8 per cent to 14.2 per cent in this short period. In the construction sector alone, 166,000 jobs have disappeared, and this was the sector that was mainly responsible for fuelling the Celtic Tiger from 1997 to 2007. The accommodation and hospitality sector as well as the services sector and agriculture have also shed jobs. All economic sectors have experienced a massive decline in employment, with the exception of public administration, health and education, over 70 per cent of which are state employees. In 2011, stronger export figures were recorded, however, further substantial improvement is needed in Irish competitiveness in the internationally traded sectors, particularly in manufacturing, export services and tourism, and this needs to result in an improved demand for labour, thus stimulating job creation.

The Response to Recession

ORGANISATIONS FOR THE FUTURE AND NEW AGE PRODUCTIVITY

A report, entitled ‘The Games Sector in Ireland – An Action Plan for Growth (Oct 2011)’, and carried out by Forfás, said that action needed to be taken to position Ireland as one of the most progressive and digitally advanced business environments.

Organisations need to change their strategies and develop business where demand is proven to exist. Parents are well aware that their children all know about gadgets and interactive games, and clearly a global demand appears to exist in this sector.

The Forfás report identifies six key opportunities for Ireland which include:

1. Developing an ‘international cluster’.
2. Enhancing skills and experience by addressing short-term needs.
3. Attracting and developing a talent pool.
4. Building international visibility for the country.
5. Incentivising research and development efforts with Ireland-based firms.
6. Delivering next-generation broadband.

According to Martin Shanahan, Chief executive of Forfás, ‘Games can also be a catalyst for growth in a host of other related activities in the digital economy including social networks, search engines, animation, film and video and e-learning.’

New organisations might therefore base their future business plans on sectors like games, film and animation and direct job creation as well as spin-off jobs could result from such developments.

Another sector that has been reported on is the environment and green technologies sector. According to the Forfás support guide for businesses, ‘Developing a Green Enterprise’, companies are becoming increasingly aware of the financial savings and competitive advantage that arise from adopting an environmentally sustainable and resource-efficient approach to their business. The increasing demand from consumers and clients for ‘green’ and sustainable products and services also provides new opportunities for enterprises to meet customer needs.

Refer to **www.forfas.ie**.

SKILLS SHORTAGES

Skills shortages were identified in a survey conducted by FÁS (SLMRU). The Recruitment Agency Survey (National Skills Bulletin 2011) indicated that positions were difficult to fill in the digital content and technology sector, in sectors such as engineering and utilities (e.g. metal working, production and maintenance fitters, electrical engineers, motor mechanics); ICT (e.g. computer installation and maintenance); high technology activities like pharmaceutical activities, medical devices, managerial, senior posts and sales positions. It also listed high-level niche area

jobs such as accountants, tax experts, actuaries, business analysts, statisticians, planners, medical practitioners and chemists as difficult to fill.

Refer to www.forfas.ie.

Organisations in Ireland – Citizens' Information

Business Start-up Grants available in the Republic of Ireland

Financial support is a key requirement when starting up a new business and there are a number of schemes available to assist new and developing enterprises in the Republic of Ireland. The following list gives details of some bodies that may provide grants or other financial assistance:

CITY AND COUNTY ENTERPRISE BOARDS

Enterprise Boards provide financial assistance to develop economic and entrepreneurial activity at city and county level. City and County Enterprise Boards offer a variety of financial support packages to assist the start-up, development and expansion of small businesses in the manufacturing and services sectors employing ten or fewer people. Capital grants up to a maximum level of €75,000 are available for machinery and equipment purchases as well as for purchasing or altering business premises. Employment grants towards the cost of labour are available to incentivise job creation in new or expanding projects. A grant of up to €7,500 for each job, up to a maximum of ten jobs, may be provided.

Feasibility grants may be provided to assist with the cost of any necessary pre-start-up studies carried out for the purposes of assessing market interest in and demand for a proposed new product or service. These studies would also cover the appropriateness of any associated funding plans and the general viability and sustainability of the venture. The maximum feasibility grant available is €7,500 (Border, Midlands and West) and €5,100 (Southern and Eastern) per individual study.

Further information is available at www.enterpriseboards.ie.

ENTERPRISE IRELAND

Enterprise Ireland is the government agency responsible for the development and promotion of the business sector. Enterprise Ireland can provide financial support towards the cost of establishing, growing and expanding your business. The funding is typically a mix of equity and grants and is specifically intended to meet expenses in the areas of research and design, training, job creation and acquisition of capital assets. Enterprise Ireland has two distinct funding categories for start-up companies:

1. **Funding for exploring new opportunities:** This is preliminary funding towards costs associated with exploring new ideas or markets.

2. **Funding for high potential start-up companies:** Funding towards costs associated with establishing a new high potential start-up company.

Manufacturing or internationally traded services small or medium-sized (SME) companies employing 10-249 people or a high potential start-up companies can apply for these funding streams.

For further information see www.enterprise-ireland.com.

Education – a Route to Recovery and a Sustainable Society

It is a fact that recessions tend to hurt the less educated the most.

‘The latest statistics reflect a nationwide increase in interest in upskilling in the face of economic downturn, with many people determined to enhance their skills base and level of education in order to make themselves more valuable to employers,’ said Kevin Branigan, managing director of Learning Ireland – the group that managed the Irish National Education Database. Economic realities, economic uncertainty and the pursuit of learning for life have led to a rise in the demand for courses.

According to the OECD (Organisation for Economic Co-operation and Development) it is important to invest in education as there are growing advantages for those better educated and for those that engage in upskilling.

INNOVATION EMPHASISED AND HOPE FOR THE FUTURE

IDA Ireland emphasises the need for innovation in their newsletter *Innovation Ireland*. Continuous innovation plays a central role in Ireland’s future as a knowledge-based economy. Recognising this, the Irish government put in place a national Strategy for Science, Technology and Innovation (SSTI) in the 1990s. Following from this, significant funding and support are available to fuel innovation across industry, research and education.

This strategy is now paying dividends, fostering a new generation of innovators, supporting exciting collaborative projects and delivering future solutions to the marketplace.

Refer to www.idaireland.ie.

Types of Business Organisation

The main types of business organisation that exist today are:

1. **SOLE PROPRIETOR:** This is an unincorporated (does not have company status) business organisation owned by one person who receives the profits and incurs the liabilities personally.

2. **PARTNERSHIP:** In Ireland, the partnership form tends to be used for professional practice, such as solicitors or accountants. Partnerships are normally formed by a partnership deed setting out the agreement and conditions of the partnership. A less common form is the limited partnership, which allows one or more general partners

who manage the daily affairs of the business and one or more limited partners who provide a fixed capital investment with financial liability limited to the capital investment.

3. COMPANIES: These fall into two categories:

- **Public Limited Company:** This is the main form of incorporation for firms issuing stocks or bonds, having stockholders, and directors that manage the company. The company is incorporated under a Memorandum of Association and Articles of Incorporation, providing the name, share capital, and commercial objectives. There must be seven or more stockholders. There must be a minimum of two directors who manage the daily affairs of the firm and who are usually selected by the shareholders. Annual meetings are required with 21 days advance notice provided. It is also necessary to disclose financial statements and meet statutory requirements for reporting.
- **Private Limited Companies:** The requirements for formation and reporting of private limited companies are generally the same as for the public limited companies. This form is the most popular type of commercial organisation in Ireland – a head office might be located abroad. There must be between two and fifty shareholders, no debentures or shares should be issued to the general public, and there is no minimum level of share capital.

4. FRIENDLY SOCIETIES: These organisations are registered with the Registrar of Friendly Societies and are mainly made up of co-operative societies and group and community water schemes and enterprises.

Credit Unions, however, are now registered with the Registry of Credit Unions (RCU) (under the Credit Union Act 1997) as part of the Central Bank of Ireland's umbrella regulation. It is responsible for the registration, regulation and supervision of credit unions. In recognition of the unique nature of credit unions, a statutory position of Registrar of Credit Unions was explicitly created *within the Central Bank of Ireland* to assume responsibility for the regulation of credit unions.

Refer to **www.centralbank.ie**.

5. STATE BODIES – trading and non-trading

6. SEMI-STATE BODIES – trading and non-trading

7. CHARITIES

8. CARING GROUPS

Virtual organisations, and SMEs fit into one of the types of business organisation listed above – usually private companies or partnerships.

- Virtual organisations, such as virtual business schools, online tour operators, and Internet marketing companies, are some of the organisations that predominantly rely on Internet business and are called 'e-businesses'.

- SMEs are small and medium-sized enterprises that entrepreneurs develop when they find a niche in the market (where sufficient market demand exists) and with some state or semi-state help (e.g. IDA grants, funding from City and County Enterprise Boards, or through Business Expansion Schemes, which are offered by financial institutions to help small businesses get up and running or expand). SMEs' interests are represented by the SFA (Small Firms Association), by ISME (Irish Small and Medium Enterprises Association), and by IBEC (Irish Business Employers Confederation) in some cases.

Note: The organisations mentioned here will be discussed in greater detail later.

What is an Organisation?

Chester Irving Barnard (1886–1961), author of *Functions of the Executive*, in his influential book on management presented a theory of organisation and the functions of executives in organisations. Barnard described an organisation as a 'system of co-operative human activities'. Organising involves the dividing up of tasks, the suitable allocation of these tasks to specialised personnel and the co-ordination and monitoring of the work in hand, to achieve agreed aims and objectives. According to Barnard:

- Everyone should know of the channels of communication.
- Everyone should have access to the formal channels of communication.
- Lines of communication should be as short and direct as possible.

Sole Trader

- This business person is the only owner of the business. Pubs, newsagents, hairdressers, restaurants, painters and decorators, bookshop owners, etc. can all trade as sole traders.
- If he/she wishes to trade under a trade name other than his/her personal name, he/she must register in Dublin Castle under the Registration of Business Names Act 1963 (See www.irishstatutebook.ie). It must be remembered however that if the business name is registered under the Registration of Business Names Act, it is not protected from being copied. If a sole trader or any business wants to protect its brand name, logo or sign, it should register a trademark. So business name registration does not guarantee any exclusivity to stop others from copying a business name, or from infringing a business name, or to stop you being sued from the holder of an existing registered trademark.
- The Safety, Health and Welfare at Work Act 2005 places responsibilities on all traders including the sole trader to ensure the health and safety of people at work

and of the public affected by work activities. He/she must put into place appropriate safety measures, having carried out a safety evaluation of the risks involved and potential hazards to health and safety. A safety programme must be written down in the form of a Safety Statement.

- He/she must keep the books of the business in order and submit monthly and end of year tax returns and must only register for VAT if certain annual limits are exceeded.
- **Advantages of being a sole trader:**
 - (a) Speedy decision-making: no consultation required.
 - (b) No profit-sharing.
 - (c) Flexible hours.
 - (d) No industrial relations problems.
 - (e) Customer-friendly personal service ensures consumer loyalty.
 - (f) Suits family-run business.
- **Disadvantages of being a sole trader:**
 - (a) Unlimited liability: he/she is liable personally for all debts of the business. The business is not a separate legal entity.
 - (b) Higher trade prices: since a small business does not buy in bulk as much as a larger one, not as many trade discounts can be gained. This causes a sole trader's costs to be higher and he/she passes on the cost to the consumer in the form of higher selling prices. Higher prices can cause decreased competitiveness and a loss of sales.
 - (c) A larger capital requirement is necessary, funded only by the sole trader.
 - (d) The business dies with the sole trader.
 - (e) Complete competence in all areas of expertise is required, i.e. versatility, otherwise the business will not survive.
 - (f) Administration overload can cause tax liabilities (owing money because books of the business are not in order).
- Sources of finance for the sole trader towards start-up:
 - (a) Loans from banks and financial institutions.
 - (b) Personal savings.
 - (c) Hire purchase – getting assets like office equipment on loan.
 - (d) Good credit terms – being allowed time by suppliers before purchases must be paid for. (Sources of finance are discussed in detail in Chapter 2.)

Many sole traders evolve into Partnerships or Limited Companies. However, many sole traders prefer to remain with this structure because of full profit-taking and control. It is advisable to have a good accountant to look after finances, tax returns and to implement changes in tax, VAT and employment legislation.

PRACTICE QUESTIONS

1. Briefly explain how in your opinion the onset of the recession has affected the Irish economy in relation to the organisational landscape and the need for future organisational diversification and growth.
2. Summarise the Safety, Health and Welfare at Work Act 2005.
3. Outline *three* advantages of the Sole Trader/Proprietor.
4. Outline *three* disadvantages of the Sole Trader/Proprietor.
5. How does the Registration of Business Names Act 1963 apply to the Sole Trader?
6. Why are Sole Traders' selling prices often higher than those of a larger trader?

Partnership

- This business operates on the basis of a minimum of two persons and a maximum of between twenty and fifty persons, depending on the business concerned.
- The partnership must register under the Registration of Business Names Act 1963 if the partners do not wish to trade under their own personal names.
- The Safety, Health and Welfare at Work Act 2005 applies also to the partnership (as it does to the sole trader).
- The books of the business must be kept in order. (VAT and other taxes must be paid regularly.)
- The partners usually draw up a Deed of Partnership to underpin the conditions of the agreement. Legally, if no written agreement like this is drawn up, the partners are covered under the Partnership Act 1890. Where the agreement is written up by the deed, the contents of the deed will overrule the conditions laid down by the Act.
- The Partnership Act 1890 states in general that profits and losses are to be shared equally. No new admissions are allowed without all the partners' consent. Disputes are settled by majority. Each partner can inspect the books and profits must be calculated before interest is paid to quasi-partners (partners who leave money in the business as a loan – explained below).
- There are four types of partner:
 - (a) Active partner: one who participates fully in the running of the business.
 - (b) Sleeping partner: one who contributes capital but does not take an active part in the running of the business.
 - (c) Quasi-partner: one who retires and leaves his/her money in the business as a loan and is paid interest on the loan once profits have been calculated.
 - (d) Limited partner: one whose liability or duty to pay debts is limited to the amount of capital which the partner invested – underpinned by the Limited Partnership Act 1907. With this type of partnership, one general partner with

unlimited liability must exist. The Investment Limited Partnership Act 1994 was designed to encourage collective investment in businesses, and was aimed at attracting American investors to the Financial Services Centre in Dublin by providing them with a certain degree of financial protection.

- Unlimited liability means the partner/s, i.e. general partners, would have to cover their business debts by dipping into their own private funds if company monies could not meet the debt. One general partner might have to cover another general partner's debt because the partners are jointly and severally liable. The business is not a separate legal entity from the persons who own it and the partners are not protected by limited liability in a general partnership. Unlimited partnerships are risky and require a high level of trust to operate efficiently and survive.
- On the dissolution of a partnership due to the death, bankruptcy or retirement of a partner, or due to the partnership's completion (job finished), expiry time (which would be outlined in the deed), or court order to dissolve due to illegal activities, the procedure to dissolve is as follows:
 - (a) All assets are re-valued and sold (i.e. the realisation of the assets – liquidated – converted to cash).
 - (b) Creditors are paid off.
 - (c) Quasi-partners' loans are paid off.
 - (d) Capital is repaid to the partners.
 - (e) If there is any profit left over on the sale of the assets, it is divided according to profit-sharing ratios of partners. The dead partner's beneficiaries receive his portion.
 - (f) Beneficiaries have the option of becoming sleeping partners (leaving the money in the business, allowing it to continue to operate) or quasi-partners (leaving the money in the business as a loan where interest will be paid to them).
- **Advantages of a partnership:**
 - (a) Greater capital: greater possibility of expansion.
 - (b) Greater specialisation – range of talents and expertise leads to improved productivity, speed and efficiency.
 - (c) Division of liability (sharing the debts).
 - (d) Consultation regarding decision-making.
 - (e) Accounts not published, so privacy maintained regarding transactions.
 - (f) Smaller-scale partnership arrangements benefit from the ability to give personal service and gain consumer loyalty as a result, e.g. hairdressers, window companies.
- **Disadvantages of a partnership:**
 - (a) Unlimited liability (except in the case of limited partners): debts of company may have to be covered by dipping into personal funds.
 - (b) The business is not a separate legal entity from the owners: owners can be sued personally for non-payment of debts.

- (c) Differences of opinion can cause inefficiencies.
- (d) Sharing of profits.
- (e) The death of a partner means the automatic dissolution of the partnership.
- (f) New partners cannot join without full agreement of all partners. This could deprive the business of new capital input.
- Examples of partnerships:
Doctors, solicitors, accountants, dentists, architects and many other regular businesses that trade either under their personal names or a trade name (in which case they must register under the Registration of Business Names Act 1963 in Dublin Castle).
- An example of limited partnerships that have grown is the amalgamation of the two largest accountancy bodies in the world, Coopers and Lybrand and Price Waterhouse, thus making a group of very powerful accountants.

PRACTICE QUESTIONS

1. Explain the differences between Active, Sleeping, and Quasi-partners.
2. What is the purpose of the Partnership Act 1890?
3. What is Unlimited Liability?
4. What is meant by 'The business is not a separate legal entity'?
5. Why would a Partnership dissolve?
6. What is the meaning of specialisation and how does it benefit a Partnership?
7. When a partner dies, explain the procedure that follows.
8. Outline *three* advantages of a Partnership.
9. Outline *three* disadvantages of a Partnership.

Companies

There are six main types of company:

1. **State bodies:** those totally funded by the government/state, e.g. the Army.
2. **Semi-state bodies:** those that are part funded by the government (public sector) and part funded by the private sector (firms and companies), e.g. the Electricity Supply Board (ESB).

State and semi-state bodies can be sub-categorised into trading and non-trading organisations as follows:

TRADING BODIES

Those which offer a service that you pay for.

Semi-state body examples are the Irish transport body CIE (Córas Iompar Éireann) (divided in three – Irish Rail (Iarnród Éireann), Bus Éireann (suburban) and Dublin Bus (city) transportation), ESB, Aer Lingus, Aer Rianta, and Bord na Móna

(turf). An example of a state body is the Health Services Executive (HSE). Public hospitals are under the control of the HSE and public patients and out-patients have to pay for services.

Some essential services would be loss-making services and are semi-state for this reason. The government subsidises CIE for unprofitable routes in order to provide a full service to the public.

NON-TRADING BODIES

A semi-state body like the IDA (Industrial Development Authority), which looks after new and existing investment in Ireland, is a non-trading body providing important grants and incentives for any new initiatives. State bodies like the Army, Garda Síochána and the Blood Bank are non-trading bodies because they do not trade in goods or services for any fees, but they provide a free service to the public.

3. **Unlimited companies:** unlike partnerships, must register under the Companies Act but, similar to partnerships, do not enjoy the benefits of limited liability. Capital is provided by shareholders. Each individual amount is called a share.
4. **Companies limited by guarantee:** usually non-profit making like clubs registered under the Companies Act and liability is limited to the amount each individual member invests if the company gets into financial difficulty.
5. **Private Limited Company:** any business that applies to the CRO (Central Registrations Office) in order to gain limited liability and can place Ltd after the company name. Greater financial security is gained as the business is now a separate legal entity from the people that own it. Debts of the business are cleared by the business and money is not taken out of the owners' personal funds. The business, however, might be subject to Corporation Tax.
6. **Public Limited Company:** any well-established private limited company that has a good business track record and decides to float the shares of the business on the Stock Exchange, offering them to the public, and gaining a trading certificate allowing the business to place plc after their company name. The business is now a public company. More money or capital can be generated by going public through share capital. The company accounts have to be published and profit-sharing increases.

What is the CRO?

The Companies Registration Office is the statutory authority for registering new companies in the Republic of Ireland. It also deals with the registration of post-incorporation documents and ensures the enforcement of the Companies Acts (1963–2009) and companies' filing obligations.

The CRO (www.cro.ie) is where business people or the public in general can locate public statutory (or legal) information on Irish companies. Business people are

also legally required to register with the CRO before commencing trading. The CRO operates under the rules of the Department of Enterprise, Trade and Employment.

Its website (search facility available) includes details of:

- The Register of Companies.
- Business names.
- Registered/disqualified persons.

The main functions of the CRO are:

- The incorporation of companies and the registration of business names.
- The receipt and registration of post-incorporation documents (after a business has been given company status).
- The enforcement of the Companies Acts in relation to the companies' filing obligations.
- Making information available to the public.

The CRO's website has been referred to as the main Irish companies' online registration environment.

There are three ways to register a business name, or a change made to a business name, with the CRO. You can register as:

- an individual (Form RBN1)
- a partnership (Form RBN1A)
- a body corporate (Form RBN1B).

(Forms can be downloaded from the CRO website, www.cro.ie.)

Formation of a Private Limited Company

(Converting from a Sole Trader, Partnership or Unlimited Company to a Private Limited Company)

You must decide on a company name. Look up the 'Frequently used numbers' section of the phone directory and find the Companies Registration Office – telephone (01) 804 5200. You must check with the office that the company name you have decided on is not already in use and you must get three forms:

1. An A1 form will be sent to you on request by the Companies Registration Office, more formally known as the Registrar of Joint Stock Companies.
2. A 'Memorandum of Association' form.
3. An 'Articles of Association' form.

Both the memorandum and articles are in booklet form and must be purchased from a law stationery office. Look up 'Stationery Offices' in the phone book.

PROCEDURE

1. When the legal documents have been drawn up by yourself or by a solicitor (Solicitor's Act 1954) they must be lodged with the Registrar of Joint Stock Companies. They are:

- (a) Memorandum of Association: containing information on the name and objectives of the company, a statement verifying that the company has limited liability, two signatures which are witnessed verifying the formation of the company, and the location of the registered legal office where all the legal documents are sent.
 - (b) Articles of Association: containing the list of internal rules and regulations connected with the company such as voting rights, powers and duties of directors, and procedures regarding meetings.
 - (c) A formal declaration of compliance with the Companies Act.
 - (d) A statement denoting the amount of Authorised or Nominal Share Capital of the company.
2. The documents are inspected by the Registrar and must comply with the Companies Act.
 3. When the documents are verified, the Registrar issues a 'Certificate of Incorporation', the birth certificate of a limited company.
 4. The company can now commence business with the protection of limited liability and can place Ltd after its company name.
Note: Limited liability indicates that the company is a legal entity separate from the owners. Regarding debts of the company, the company is sued, not the owners. Refer to www.cro.ie for further information.

Formation of a Public Limited Company

(Converting from a Private Limited Company to a Public Limited Company)

The Companies Registration Office must be contacted (telephone (01) 804 5200) to clarify the requirements regarding capital turnover and size of business.

1. The company wishing to become public must satisfy the following conditions:
 - (a) have a stated minimum authorised capital of which at least a quarter must be offered to the public.
 - (b) have a minimum market value.
 - (c) have a minimum number of shareholders.
 - (d) have a healthy track record – positive working capital.
 - (e) have a minimum profit level.
 - (f) accept full disclosure on its operations – salaries, profits and strategies. This is the reason why some businesses are reluctant to go public.
2. The legal documents that must be lodged with the Registrar of Joint Stock Companies are:
 - (a) Memorandum of Association – with at least seven signatures verifying the authenticity of the memo, as well as the other contents of the memo mentioned previously.
 - (b) Articles of Association – contents mentioned previously.
 - (c) A formal declaration of compliance with the Companies Act.

- (d) A statement denoting the amount of authorised or nominal share capital of the company.
 - (e) A list of agreed directors.
 - (f) Directors' written consent to become directors.
3. Company makes application to Stock Exchange Council through a stockbroker where shares are quoted.
 4. The company employs a merchant banker, and the stockbroker and the merchant banker together inspect the books of the company:
 - (a) to verify that the books meet the Stock Exchange Council's requirements regarding the financial state of the company.
 - (b) to verify the healthy future prospects of the company.
 5. When the Stock Exchange Council accepts the company's application to trade on the Stock Exchange, the Registrar of Companies issues the company with a trading certificate.

TRADING CERTIFICATE

A public limited company must not commence business or exercise any borrowing powers until the trading certificate entitling it to commence business has been issued by the Companies Registration Office (CRO). Before such a certificate can be issued, the company must file *Form 70* in accordance with section 6 of the Companies (Amendment) Act 1983.

6. Before shares are quoted on the Stock Exchange, the company must produce a prospectus after receiving the trading certificate (the birth certificate of the public limited company).

PROSPECTUS

The word 'Prospectus' is defined in the Act as 'any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company'.

An offer to existing holders of shares or debentures is also regarded as coming within the scope of this definition.

7. Once the Trading Certificate has been received and the Prospectus has been organised, the company can now commence trading on the Stock Exchange, quoting the shares of the company, and can place plc after its trade name. Refer to **www.cro.ie** for further information.

Company Law

Irish company law is mainly laid down by the Companies Acts 1963–09. In addition, there is the Company Law Enforcement Act 2003, which aims to strengthen supervision and business compliance with some parts of company law. It was framed in response to a number of incidences of company fraud and malpractice that had been identified in the early years of the twenty-first century.

Areas that needed particular attention included:

- The appointment of a Director of Corporate Enforcement, to head a new multi-disciplinary agency to enforce company law, and to conduct investigations and prosecutions.
- More rigorous enforcement of the rules on filing annual returns and provision for ‘on-the-spot’ fines for late returns.
- Court powers, on the application of the Director, to order individual companies to comply with company law.
- Extended powers for the court to impose restrictions and disqualifications on individuals acting as directors.
- Costs of most investigations, prosecutions and court proceedings imposed on delinquent companies.
- New obligations on auditors to report suspected breaches of the Companies Acts by client companies.

In 2005 the then Minister for Trade and Commerce Michael Ahern gave the go-ahead for the new Investment Funds, Companies and Miscellaneous Provisions Act 2006. This Act allows a company to authorise a person to be its Electronic Filing Agent to simplify filing and doing business with the CRO.

Changes have also been introduced by the European Communities (Companies) (Amendment) Regulations 2007 Act with regard to new disclosure requirements of company information on websites and electronic communications. It is now mandatory to include the following information on all websites, electronic order forms and emails:

- Name of the company and its legal form.
- Place of registration of the company, the company number and its registered office.
- In the case of a company exempt from the obligation to use the word ‘limited’ or ‘teoranta’, the fact that it is a limited company.
- In the case of a company being wound up, the fact that this is so.
- If there is a reference to share capital of the company, the reference should be to paid-up share capital.

If a company has a website, it must display this information in a prominent and easily accessible place on the site.

(Source: www.lowtax.net.)

As its name would suggest, the Company Law Consolidation and Reform Bill 2010 will consolidate the provisions of existing company law and related legislation into one single act.

For current information on Company Law Acts visit the Department of Jobs Enterprise and Innovation website: www.djei.ie/commerce/companylawadmin.

Changes to Private Limited Company Formation

In 2007 the Company Law Review Group suggested that Irish company law be consolidated into one Act, the Companies Consolidation Act 2008. This law is intended to change the profile of a private limited company from its current form.

The main changes are:

- The current memorandum and articles of association will be replaced by a single document.
- Companies will be allowed to have just one director and a company secretary instead of the previous requirement to have a minimum of two directors. The director and secretary must be different individuals.
- Clauses will be introduced so that companies' obligations to other parties are more copper-fastened and companies cannot any longer evade these obligations by using loopholes in company law.

Other Categories of Company

Other categories of company that are covered by the Companies Act include:

- Private Company Limited by Shares (private shares, 50 members only, no shares transfer).
- Non-resident Company. (The Finance Act 1999 rendered all incorporated companies resident in Ireland, with some offshore exceptions: now it is not as easy to benefit unfairly from favourable taxation conditions if you are a non-resident.)
- Public Company Limited by Shares (minimum seven members, maximum capital of €38,092).
- Company Limited by Guarantee (used for charitable and non-profit-making purposes such as a local community membership raising funds for buildings or facilities).
- Branch of Overseas Company (same CRO registration rules apply, with an authorised representative in Ireland).
- General Partnership (under Partnership Act 1890): partners are individually liable for debts of company.
- Limited Partnership (under Limited Partnership Act 1907): one or more general partners with unlimited liability and one or more limited partners where their liability or debt responsibility is limited to the amount they contributed to the business.
- Investment Limited Partnership (ILP) (under the Investment Limited Partnership Act 1994) allows collective investors to obtain double tax relief, which is unavailable to unit trust investors. The minimum share capital is €127,000 and at least two directors must be Irish. Partners must be approved by the Central Bank and monthly accounts must be submitted to the Central Bank.

What is Insolvency?

Insolvency means the inability to pay one's debts as they fall due. Usually used to refer to a business, insolvency refers to the inability of a company to pay off its debts. Business insolvency is defined in two different ways:

1. **Cash flow insolvency:** Unable to pay debts as they fall due.
2. **Balance sheet insolvency:** Having negative net assets, in other words, liabilities exceed assets.

A business may be ‘cash-flow insolvent’ but ‘balance-sheet solvent’ if it holds illiquid assets, particularly against short-term debt that it cannot immediately realise if called upon to do so. Conversely, a business can have negative net assets showing on its balance sheet but still be cash-flow solvent if ongoing revenue is able to meet debt obligations, and thus avoid default. This could be, for instance, if it holds long-term debt. Many large companies operate permanently in this state.

Insolvency does not automatically imply bankruptcy, which is a determination of insolvency made by a court of law, with resulting legal orders intended to resolve the insolvency.

Company Liquidity/Receivership Problems – What’s Next for Companies in Ireland?

Irish insolvencies in the year to August rose to 1,090; Total company collapses in the 2008-2011 period to rise to 5,300 firms

Finfacts Team

1 September 2011

New statistics released today by InsolvencyJournal.ie reveal that corporate insolvency figures for August totalled 119, a 22 per cent drop from the July total of 152. The first eight months of 2011 saw a total of 1,090 corporate insolvencies, an increase of over seven per cent on the total recorded for the same period in 2010 (1,012).

Commenting on the figures, Ken Fennell of Kavanaghfennell, the firm which compiles the data commented: ‘The decrease in August is not surprising as there is usually a

seasonal reduction in the number of insolvencies. We had a comparable reduction in August last year.’

According to Fennell: ‘Although the reduction in the number of receivership appointments is welcome we believe the banks and NAMA will continue to appoint receivers where they believe they have no alternative and they are of the view that such appointments will lead to greater recoveries. The recent outcome of the Start Mortgages case could also have some implications on future receivership appointments.’

With regard to industry totals, the total number of insolvencies in the construction industry so far this year totalled 278, a 10 per cent dip on the figures recorded for the same period during 2010.

‘The overall trends in corporate insolvencies for the year to date would suggest that at least 1,600 companies will enter into some form of insolvency arrangement by the end of the year with construction and retail continuing to bear the brunt,’ Fennell commented.

Source: www.finfacts.ie

What are the differences between Examinership, Receivership and Liquidation?

Examinership, Receivership and Liquidation – What's the Difference?

As the global economy continues to reel from the current downturn many businesses and individuals are facing what seem to be insurmountable financial problems. The event which demonstrates that an employer is in serious financial trouble can take various forms. Liquidation in the case of a corporate employer, bankruptcy in the case of an individual employer, are perhaps the most obvious examples. But there are other possible indications that an employer has serious financial problems such as receivership or the appointment of an examiner to a company.

The purpose of this article is to explain the distinct roles played by Liquidators, Receivers and Examiners as set under the Companies Acts.

Liquidation

Under Irish law, the liquidation or winding-up of a company, in other words, its legal death, can take one of two forms. It can be a winding-up by order of the court (also known as an official liquidation). Far more frequently, however, it will be a voluntary winding-up (which, in turn, may be either a members' voluntary winding-up, or a creditors' voluntary winding-up).

A Creditors' Voluntary Liquidation is the most commonly used procedure for dealing with an insolvent company. In summary, this process is usually initiated by the insolvent company, acting through its board. In a Creditors' Voluntary Liquidation, the liquidator is primarily concerned with the interests of the creditors.

A Members' Voluntary Liquidation is a mechanism whereby a solvent company, acting through its directors and members, decides to wind-up a company, primarily for the purpose of selling its assets and distributing the surplus to its shareholders.

Examinership

Examinership is an alternative to liquidation. The Companies (Amendment) Act 1990 introduced the examinership process to provide a mechanism for the rescue and return to health of an ailing, but potentially viable company.

An application is made to a court of law to appoint an Examiner; an application is usually made by the company itself, but it can be made by the directors, creditors, contingent or prospective creditors, including the employees.

The Examiner's primary function is to evaluate the company's viability, and if it is salvageable, the Examiner is responsible for developing a long-term survival plan. Once an Examiner has been appointed, the company goes under the protection of the court. This means that for a period in which the company is under examinership, no application can be made to wind up the company, nor can a receiver be appointed.

Receivership

Receivership is not usually initiated by the company itself, but rather by its creditors. It normally arises when the company has defaulted on a contract to repay loans or debts outstanding. The Receiver's primary role is to recover the money owing to the creditor and, in theory, the company can continue trading while in receivership.

However, in order to recover the creditor's money the Receiver may have to sell off assets to the point that the company can no longer continue to operate. In those circumstances, the company is likely to end up in liquidation. Although historically and virtually exclusively a process used by banks as a means of recovery, it is a procedure of last resort in the lender-borrower relationship.

Source: www.mlaw.ie.

What is a Public Private Partnership?

A Public Private Partnership (PPP) is a partnership between the public and private sector for the purpose of delivering a project or service traditionally to do with infrastructure, e.g. public road construction, school buildings, water treatment projects, etc. This type of partnership involves a public authority (such as a government department) delegating to a private organisation the responsibility for financing, executing and maintaining a project in return for the right to operate the facility for an extended period. This enables its investment to be amortised, that is, the private sector takes the financial risk.

Sample projects are listed on www.ppp.gov.ie.

Note: Irish Legal Acts referred to above and other Acts not referred to here are available as hard copy from the Department of Enterprise, Trade and Employment website (www.entemp.ie, under Company Law Financial Services Publications) or from the Government Publications Office, Molesworth Street, Dublin. Company Acts are also available to download from www.cro.ie/en/downloads.

What was the Financial Regulator?

In May 2003, the Irish Financial Services Regulatory Authority (IFSRA) was set up and was a distinct element of the Central Bank and Financial Services Authority of Ireland. The title of the organisation was then changed to the Central Bank Financial Services Authority of Ireland (CBFSAI).

Most recently following the tightening of regulations due to the global recession and the debt and banking crisis, the Central Bank of Ireland Reform Bill 2010 created

a new single unitary organisation, the Central Bank of Ireland, with responsibility for both central banking and financial regulation. The Bank is headed by a Commission, chaired by the Governor. The Governor is supported by a Head of Central Banking and a Head of Financial Regulation.

The new structure replaces the Central Bank and Financial Services Authority of Ireland (CBFSAI) with its two component entities – the Central Bank and the Financial Regulator. Each has its own particular set of responsibilities and its own specific governance structure. With effect from 1 March 2010, the CBFSAI's statutory consumer information and education functions were transferred to the National Consumer Agency.

Friendly Societies

A friendly society was traditionally one that had an essentially community-based ethos and was a not-for-profit type of organisation. From the mid-1800s until 2003, the Registrar of Friendly Societies was the body that had statutory responsibility for the registration and general regulation of Friendly Societies, Trade Unions (social economy enterprises), Industrial and Provident Societies (mainly Co-operatives), Building Societies, and (from the 1960s) Credit Unions.

The most recent report on friendly societies entitled 'Registry of Friendly Societies Annual Report 2010' is available on the Department of Justice Enterprise and Innovation website at www.djei.ie.

These societies are categorised in the Report as follows:

The Registry of Friendly Societies deals with three different entity types, namely Industrial and Provident Societies, which in the main consist of co-operatives; Friendly Societies; and Trade Unions, which include employee unions, employer associations and trade associations.

The principal legislation governing these entities is:

- Industrial and Provident Societies Acts 1893-1978.
- Friendly Societies Acts 1896-1977.
- Trade Union Acts 1871-1990.

These societies are categorised in the Report of the Registrar of Friendly Societies 1994–1996 as follows:

1. Industrial and Provident Societies
2. Credit Unions
3. Friendly Societies registered under the Friendly Societies Acts.
4. Some trade unions.

INDUSTRIAL AND PROVIDENT SOCIETIES

These are divided in the following way:

Dairy societies, livestock breeding societies, meat-processing societies, livestock marketing societies, horticultural societies, egg and poultry societies, fishing societies, public utility societies. (Group water schemes and housing development are separate categories.)

Examples are Thurles Co-operative Creamery Ltd, Waterford Co-operative Society Ltd, Clover Meats Ltd, Donegal Potatoes Ltd, Goldenvale Co-operative Mart Ltd, Monaghan Poultry Growers Co-operative Society, Cappagh Group Water Scheme Society Ltd, Carlow Town Housing Co-operative Society Ltd, Clondalkin Community Enterprise Co-operative Society Ltd, and many others.

Most of the above-named industrial and provident societies are co-operative societies and have a co-operative organisational structure. The history of the co-op movement laid the foundation for the type of structures that exist today.

The co-operative movement had its origins in an English town in Lancashire called Rochdale. The father of the co-operative movement was a Welshman, Robert Owen (1771–1858). He gathered together a number of colleagues who called themselves the Rochdale Pioneers and they drew up a set of rules called the Rochdale Principles which still govern the thinking and conduct of co-operatives:

1. Open membership – anyone can join.
2. Democratic rule – one vote per person.
3. Limited return on capital.
4. Surplus profit to be distributed according to number of purchases.
5. No credit – cash sales only.
6. Some profit is set aside for educational purposes.
7. Neutral on political and religious issues.

CHARACTERISTICS OF THE CO-OPERATIVE

1. Must register under the Industrial and Provident Societies Act 1893–1978 with the Registrar of Friendly Societies and if they convert to companies they must conform to the Companies Act 1990.
2. Can be formed by eight or more people.
3. One person, one vote, irrespective of number of shares held.
4. A member may not own more than an agreed number of shares.
5. As more capital is acquired, no further authorised share capital can be issued.
6. Shares are non-transferable and a member must sell back shares to the co-op and they are withdrawn.
7. Surplus on profits is distributed to members in proportion to their holding. Some is used for educational purposes.

Retail co-operatives, producer co-operatives and worker co-operatives exist; however, the co-operative movement has undergone dramatic change in recent years

and must now compete to survive. Many have become public companies, having successfully adjusted to the competitive position required in the business world today. Examples of plcs like this are Kerry Group plc and Avonmore Waterford plc (which merged in September 1997 to form Glanbia). Activities like milk processing, dairy produce trading, pig farming and meat processing are carried on by the Kerry Group. Talks of mergers or take-overs of any remaining suitable co-ops have been common in recent times due to the benefits attached to this type of venture:

1. Extra finance from share issues.
2. Top-class management improving efficiency and productivity.
3. Benefits attached to large-scale operations (economies of scale). Examples of economies or benefits are bulk buying with large discounts, lower advertising costs per unit output, and top-class specialised workers.

RETAIL CO-OPERATIVES

Some co-operatives, such as Thurles Co-operative Creamery Ltd, have a retail outlet (shop attached to the co-op). In this they sell fresh produce as well as a range of household items to the public. Retail co-operatives like this are listed in the Registry of Friendly Societies under 'Industrial and Provident Societies – Dairy Section'. Other co-operatives, such as knitwear co-ops, can also have shops attached to them. They are listed under the 'Other Productive Societies' section of the same publication.

What is a Credit Union?

A Credit Union is an organisation of people, for people. It exists only to serve its members, not to profit from their needs. History has shown that people can achieve far more through co-operation and working together than by individual effort. Credit Unions have ingrained this philosophy in their operations. They are non-sectarian and non-political, and continue that Irish tradition of co-operative self-help.

Credit Union Operating Principles are founded based on the philosophy of co-operation, equality, equity (fairness), and mutual self-help. They are:

- Open and voluntary membership.
- Democratic control (one member one vote).
- Limited dividends on equity capital.
- Return of surplus to members.
- Non-discrimination in race, religion and politics.
- Services to members.
- Ongoing education (promoting the education of members, officers and employees).
- Co-operation among co-operatives (serving the best interests of members at local, national and international level).

- Social responsibility (extending services to those who need them; abiding by the interests of the broader community).

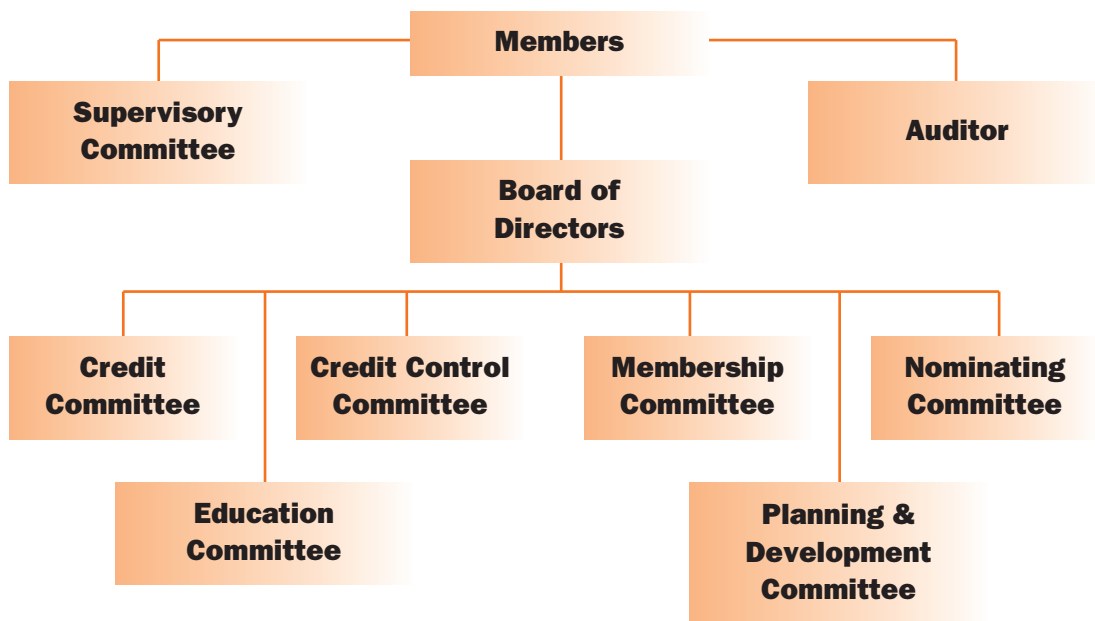
There are over three million members in Ireland and savings amount to approximately €12.6m. There are over 9,200 active volunteers involved in the movement and over 3,500 people are employed in Credit Unions in Ireland.

What is a 'Credit Union Chapter'?

Each Credit Union was traditionally a member of a particular Chapter (or geographical grouping), e.g. the Tipperary Chapter or the Limerick City Chapter. These chapters acted as a forum for the exchange of information, shared promotion and training programmes. There are 25 chapters, with Chapter Liaison Officers in charge of each individual chapter.

Credit Unions in the Republic of Ireland are now registered with the Registry of Credit Unions (RCU) (under the Credit Union Act 1997) as part of the Central Bank of Ireland's umbrella regulation. The Registry is responsible for the registration, regulation and supervision of credit unions. In recognition of the unique nature of credit unions, a statutory position of Registrar of Credit Unions was explicitly created *within the Central Bank of Ireland* to assume responsibility for the regulation of credit unions.

Refer to www.centralbank.ie/regulation/industry-sectors/credit-unions/Pages/default.aspx for further information.



Other committees such as a youth committee may be appointed from time to time

Figure 1.1 The Organisational Structure of the Credit Union

The members of a credit union elect a board of directors at its AGM (Annual General Meeting). The board is responsible for the control, direction and management of the affairs, funds and records of the credit union. Only credit union members are eligible for election to the credit union board and its committees. It is important, therefore, that members attend their AGM.

The Irish League of Credit Unions (ILCU) is the umbrella body for all credit unions in Ireland. It was set up in 1960 to represent and service affiliated credit unions on the island of Ireland. It now represents the interests of over 530 credit unions in Ireland.

Its main functions are to:

1. Promote the ideas and ethos (community-based) of credit unions.
2. Represent affiliated credit unions with government, the EU and other agencies.
3. Provide central services to credit unions.

The **Savings Protection Scheme Fund** protects the savings of individual members by making sure that the credit unions are financially and administratively sound and by providing remedial help to any credit union that shows signs of weakness in these areas. The savings of individual credit union members are protected up to a maximum of €12,700.

Credit Union services include:

- Savings
- Loans
- Insurance
- ATM/EFT facilities
- Money transfer
- Foreign exchange.

JOINING A CREDIT UNION

Joining your local credit union is easy: all you do is apply for membership. To be a member there may be an entrance fee of not more than €1/£1stg and you will need to hold minimum savings of between one and ten shares. After this members can continue saving regularly – even small amounts – which encourages the saving habit.

BENEFITS OF MEMBERSHIP

Members of credit unions enjoy many benefits associated with membership, including:

- Control over members' own finances.
- Encouragement and advice on a regular savings programme.
- Loan availability at relatively low rates of interest that remain consistent even during times of economic turbulence.

- Security of savings through the credit unions fidelity bond and through the Irish League of Credit Unions Saving Protection Scheme.
- Loan Protection and Life Savings Insurance at no direct cost to the eligible member.
- The knowledge that their own savings are being used in their own community.
- All officials of credit unions, whether volunteers or staff, must be fidelity bonded.
- Under the rules of a member's credit union, confidentiality is protected.
- The savings of eligible members are insured through Life Savings Insurance.
- Full financial statements are prepared and can be examined by members.
- Annual returns are independently audited and lodged with the relevant regulatory authority.

Savings are used to make loans to members. The interest received from loans and investments is used:

- To pay expenses
- To build up reserves.

The remaining income may be returned to members as a dividend. The rate of dividend can vary from credit union to credit union.

Credit unions to get €1bn boost

Friday, 7 October 2011

The Government will pump up to €1bn into credit unions around the country.

The move is being made to strengthen the balance sheets and boost the reserves of credit unions that have run into difficulties.

Although the majority of credit unions are healthy, Minister for Finance Michael Noonan said that others were 'on the brink of falling down a hole'.

'I seriously intend sorting out the credit unions and some of them we'll have to do immediately, but we won't do it in one big bang,' the minister has told the Seanad.

Around 20 of the 79 at-risk credit unions have experienced serious financial difficulties. These have sought financial aid from a fund set up by the Irish League of Credit Unions.

Almost €1bn worth of loans at the State's 400 credit unions are in arrears for 10 weeks or more. This represents gross arrears of 18 per cent of the €5.2bn loan book in the Republic.

Mr Noonan said that if the movement had been one large bank with individual branches, it would have no problems because the good ones would balance the bad ones.

'But individual credit unions have problems that are coming down the road quickly,' he said.

A commission set up earlier this year to examine the credit union sector is due to deliver an interim report next Tuesday. But Mr Noonan said that matters had been 'overtaken by events' and the Central Bank had requested that it urgently be given extra powers to deal with credit unions 'that are on the brink'.

Source: www.herald.ie/news/credit-unions-to-get-1bn-boost-2899719.html

Charities and Caring Groups

A charity is a not-for-profit organisation that must be constituted and operated exclusively for charitable purposes, e.g. St Vincent de Paul, Trócaire and Concern. It is a basic principle of charity law that an organisation's objects must be expressed in precise rather than broad or vague terms. This identifies it clearly as having a recognised charitable purpose.

There is no legal framework for the registration of charities in Ireland. However, the Office of the Revenue Commissioners, Charities Section maintains a database of organisations to which they have granted charitable tax exemption. A CHY reference number is then allocated to the charity.

Charitable organisations usually take one of three legal forms (as advised to them independently by a solicitor):

1. An unincorporated association with a Constitution or Rules.
2. A charitable trust established by Trust Deed.
3. A company governed by a Memorandum and Articles of Association.

Caring Groups are also not-for-profit organisations that fall under the 'charity' banner, but their services also consist of advice and counselling given by qualified trained volunteers e.g. CURA, the Samaritans and Alcoholics Anonymous. These organisations rely primarily on funding from donations and funds raised through charitable activities and events.

PRACTICE QUESTIONS

1. How do semi-state bodies and state-sponsored bodies differ?
2. Give *one* example *each* of:
 - (i) a trading semi-state body
 - (ii) a non-trading semi-state body
 - (iii) a trading state body
 - (iv) a non-trading state body.
3. Define the following:
 - (i) Unlimited Company;
 - (ii) Company Limited by Guarantee;
 - (iii) a Private Limited Company; and
 - (iv) a Public Limited Company.
4. What is the CRO?
5. Briefly explain Irish company law by referring to:
 - (i) the Companies Act 1963–2009
 - (ii) the Company Law Enforcement Act 2003
 - (iii) the Investment Funds, Companies and Miscellaneous Provisions Act 2006

- (iv) the European Communities (Companies) (Amendment) Regulations 2007 Act.
- (v) The Companies Consolidation Reform Bill 2010.
- 6. What are the procedures for unlimited companies to become private limited companies?
- 7. What are the procedures for a private limited company to become public?
- 8. What is a public private partnership?
- 9. What is the Financial Regulator?
- 10. Name *three* types of friendly societies. What characteristics are common to each?
- 11. What are the main functions of the ILCU?
- 12. How have co-ops changed in status in recent years?
- 13. What are the Rochdale Principles?
- 14. What is a chapter with regard to credit unions?
- 15. Give a brief account of how credit unions operate.
- 16. In your opinion, will credit unions survive into the future? Why/Why not?
- 17. How are charities defined?
- 18. What is a Caring Group?

Features of Different Types of Organisational Structure

Factors Determining Organisational Design

1. **A Formal Organisation:** Functional divisions of labour that are based on the formal lines of authority affect the structure of an organisation.
 An organisation is structured to achieve specific goals with the formal functions of the organisation set out within a well-defined framework. Responsibilities are formally grouped to achieve specific tasks. Job specifications make the individual's position in the organisation clear. There are chains of delegated authority for different levels of decision-making and built-in channels of communication exist. Examples are banks, colleges, advertising agencies, software companies, etc.
2. **An Informal Organisation:** This operates alongside the formal framework, where individuals within the organisation form social groupings and relationships and often use informal methods to get things done. It is flexible and spontaneous and often speeds up the completion of tasks based on informal teamwork. Newcomers sometimes have to 'get accepted' into informal groupings.

The Organisational Hierarchy and Organisational Chart Shapes (flat, tall)

The lines of authority should be clearly defined in every organisation (i.e. every employee should be able to see clearly to whom he/she is responsible). Since the