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WESTBORO PARTNERS

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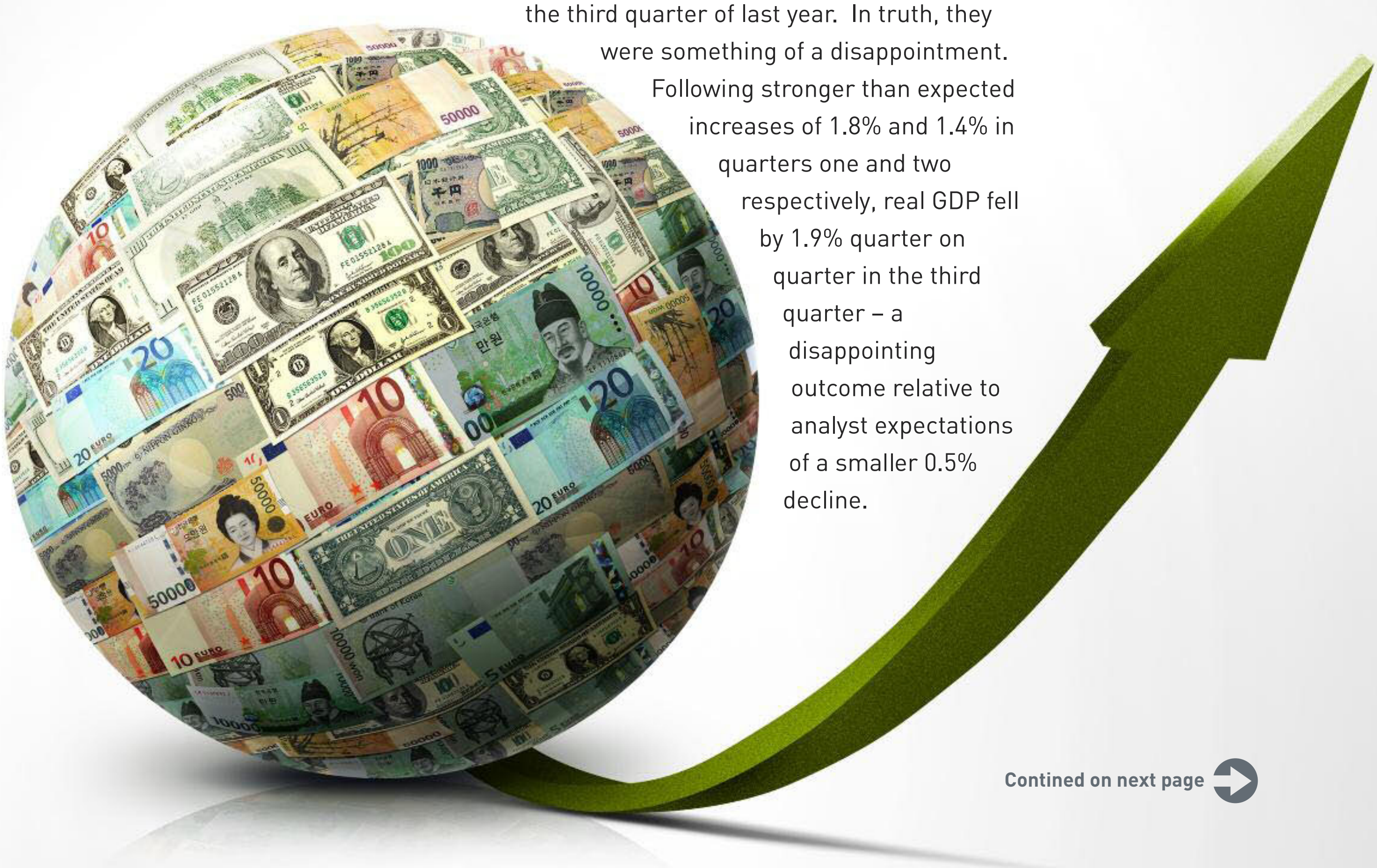
in this issue...

Outlook 2012

The Quarterly National Accounts (QNA) are always one of the most important data sets in any economy, as they provide the most comprehensive official estimates of how the overall economy and its various components are performing. The latest QNA figures for Ireland were released just before Christmas, covering the third quarter of last year. In truth, they were something of a disappointment. Following stronger than expected increases of 1.8% and 1.4% in quarters one and two respectively, real GDP fell by 1.9% quarter on quarter in the third quarter – a disappointing outcome relative to analyst expectations of a smaller 0.5% decline.



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The slippage in overall economic growth mainly reflected evidence of yet further declines in domestic demand as government, consumer and investment spending all contracted. Export growth remained in positive territory and actually held up a bit better than expected. But the pace of expansion in the export sector did slow relative to earlier in the year - reflecting slower growth abroad - and was not sufficient to keep overall GDP growth on the right side of zero in the three months to September.

It is important to bear in mind though that Irish GDP figures are notoriously volatile, so it's never advisable to over-interpret one set of quarterly data – an observation that applies just as much to readings which are better than expected (as in the first half of last year) as to those, like for Q3, where the outcome represents a downside surprise.

Standing back and looking at the overall pattern for 2011 shows that in the nine months to September, overall real GDP was 0.7% higher than in the same period of 2010. The broad pattern here is that relatively healthy, albeit moderating, growth in the internationally-traded sectors of the economy has more than compensated for persistent weakness in domestic spending.

In terms of the period since September, the sharp deterioration in the euro zone economy has not been good news. Nevertheless, the latest Purchasing Managers Indices covering manufacturing and services suggest Irish export orders are showing encouraging resilience. We also take some encouragement from indications in recent weeks that retailers experienced some pick-up in sales around the Christmas period.

Even with some conservative assumptions regarding late-year performance of both domestic and external demand, the economy will probably register full year-GDP growth of close to 1% in 2011. That would be up from -0.4% in 2010, and from -7% in 2009 – a sequence of improvement that does a better job of conveying a sense of the economy's recent trajectory than the large and often erratic swings in quarterly growth rates.

The outlook for 2012 is subject to heightened downside risks, particularly those stemming from the ongoing debt crisis in Europe. The euro zone is Ireland's largest trading partner - accounting for some 40% of Irish exports - and it looks as if it re-entered recession at the end of last year. This represents a major headwind for the Irish economy as we look to the year ahead, and underscores how important it is for Europe's leaders to find a comprehensive and definitive solution to the debt crisis.

Having said that, the recent news out of the US economy has been better than expected and, in contrast to the euro zone, has been pointing to some modest outright improvement which is an important development given Ireland's close trade and investment ties to the US. In addition, the recent weakness of the euro against both the dollar and sterling should bolster further the competitiveness of the Irish export sector, building on the large cost and price adjustment which the economy has already delivered. Furthermore, having had its strongest year in ten years in terms of job creation (net employment in multi-nationals rose by some 6,000 in 2011), the IDA reported that its short-term pipeline of Foreign Direct Investment is strong as we entered 2012.

Overall, barring a major meltdown in the euro zone, the Irish export sector will probably experience a third consecutive year of expansion in 2012. Nevertheless, the external environment looks set to be unhelpfully challenging, especially in Europe. Taken together with a still poor near term outlook for domestic demand means that, while Irish GDP growth will likely stay in positive territory in 2012, it is difficult to see Irish growth momentum continuing to improve over the coming year.

Simon Barry, Ulster Bank.

RELIEF FOR INVESTMENT IN RENEWABLE ENERGY GENERATION

As announced in Budget 2012 the qualifying period for the scheme of tax relief for corporate investment in Renewable Energy projects is being extended for a further three years to 31 December 2014.

To qualify for the relief the energy project must be approved by the Minister Communications, Energy and Natural Resources and be in one of the following categories of technology:

- Solar
- Wind
- Hydro (including ocean, wave or tidal energy)
- Biomass

The relief applies to corporate equity investments and is given by way of a deduction from a company's profits for its direct investment in new ordinary shares in a qualifying renewable energy company. The relief is capped at the lesser of 50% of all capital expenditure (excluding lands), net of grants or €9.525 million for a single project. Investment by a company or group in various projects is capped at €12.7 million per annum, and unless the shares are held for at least 5 years by the corporate investor, the relief shall be withdrawn.

PAY AND FILE SUMMARY

The following is a summary of upcoming pay and file dates:

PAYE	
P35 for the year ended 31 December 2011	**15 February 2012**
Relevant Contracts Tax	
RCT for the year ended 31 December 2011	**15 February 2012**
Capital Gains Tax	
Payment of Capital Gains Tax for the disposal of assets made during the month ended 31 December 2011	**31 January 2012**
Corporation Tax	
Filing date for Corporation Tax returns for accounting periods ending in May 2011	**21 February 2012**
Payment of Corporation Tax for accounting periods ending in May 2011	**21 February 2012**

NEW ERA FOR RCT

A new on-line system for the operation of Relevant Contracts Tax (RCT) was introduced on 1 January 2012. From 1 January 2012, the operation of the RCT on the Revenue On-line System (ROS) will be mandatory. Revenue has written to tax payers and held seminars over the last number of months detailing the new procedures.

Five key action points:

- Ensure that you or your agent has access to your RCT information on ROS.
- Ensure that all contracts have been registered with Revenue on ROS and that they are clearly visible, are open for 2012 and have the correct limits. Where contracts are not registered, ensure that you register same without delay.
- Where a contract is not registered it will not be possible to forward a payment notification to Revenue in order to receive a deduction authorisation for the subcontractor. **The Principal Contractor should not pay the subcontractor unless this authorisation is received.**
- Subcontractors should register on ROS to enable them to view relevant contracts and payment notifications sent to Revenue by Principal Contractors.
- Revenue will have an on-line record of all payments made by the Principal Contractors and they will issue a deduction summary of the payments on a monthly or quarterly basis depending on the filing frequency. The Principal Contractor then needs only to arrange payment on or before the due date of the return. If the summary is incorrect, it can be amended on-line.

Revenue has issued notices of deduction rates to taxpayers pre 1 January and have advised that all rates will be reviewed again in March once the system is up and running. Revenue will automatically credit RCT deducted to the subcontractors tax record, which will be available for offset against other taxes or repayment annually.

PAYMENTS TO REVENUE

Taxpayers can now make payments to Revenue using VISA and Mastercard. In order to arrange such payments, taxpayers must contact Revenue on 1890 27 37 47. Payment by credit card will be subject to a transaction charge for third party fees of 1.69% of the value of the payment.

P60 STATIONARY

Revenue will not supply P60 Stationary for 2011. To that end Revenue has approved templates for the Form P60 2011 to be printed by employers. The templates are available on www.revenue.ie.

your business AND facebook

The world of marketing is evolving faster than ever before and the word on everyones' lips right now is "Facebook". The social networking phenomenon presently has 750 million subscribers and what's even more amazing is that two thirds of them log in at least every other day. A recent survey found that each "fan" that follows your page is worth 20 extra visits to your website in a lifetime. With browser-to-buyer ratios (the ratio of people that visit your website to the number of people that actually buy) at an all-time high, this is a powerful statistic. Facebook is a fantastic tool for people on a social level but it also presents an opportunity to all of us in business - an opportunity to connect with our customers closely and ultimately, to increase sales.

Facebook is an amazing platform on which you can reach out and hear the needs of your customers without any background noise. You can use it to post potential new products and gauge a level of interest and conversely, your customers can use it to interact with you. The key to Facebook is not in what you post - it's in the way you post it. In the end, how you interact with people on your wall will have an impact on how others view your company. It's up to you to monitor this platform correctly as Facebook is fast becoming a critical reputation management tool.

Some business owners that are new to Facebook seem to think that their homepage is designed for posting endless links to their websites. This is the virtual equivalent of shoving a brochure in your customers face the second they walk into your business. Instead, look at Facebook as a tool for building relationships. Fill your homepage with meaningful conversation. Let your customers air both their delight and despair about your product or service. If they have an issue with your service, publicly deal with this is a professional manner. Other customers will read this and see that you are pro-active about dealing with problems that arise and this will build public confidence in your brand. Everybody wants to be noticed - by noticing them, others will notice you.

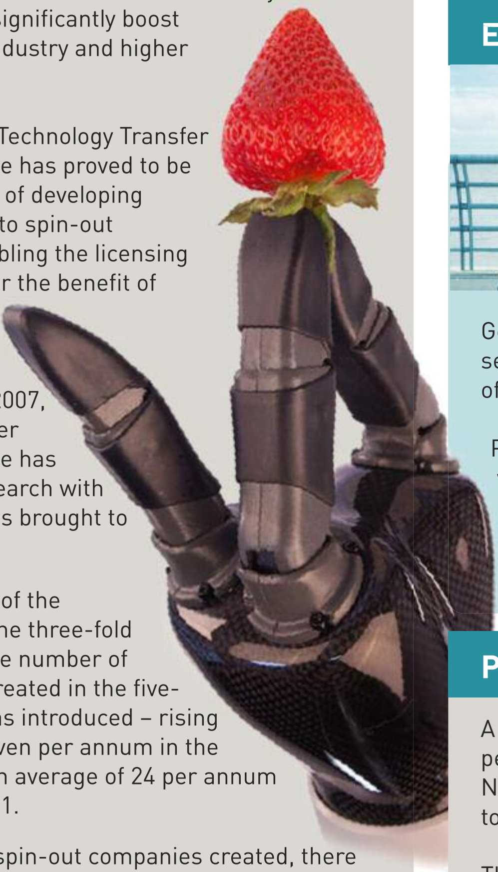
The bottom line is that you need to be aware of what your company is and how the public perceives it. Managed correctly, Facebook can increase customer connections, improve brand awareness, promote business recognition, improve customer service and hopefully, increase revenue. There has never been an opportunity like this to reach as many people as this and if done right, Facebook can completely change your business.

TECHNOLOGY TRANSFER STRENGTHENING INITIATIVE 2

Firms who want to revitalise their businesses to be ripe for export opportunities are being urged to make proposals for the €22m second phase of the Technology Transfer Strengthening Initiative.

In December the Government announced a call for applications for the €22m scheme which supports new company creation and the transfer of intellectual property between higher education institutions and industry.

The €22m initiative, €5.5m per annum from 2013-2016, will build on the achievements of the initial five-year programme, and will significantly boost interaction between industry and higher education institutions.



The first phase of the Technology Transfer Strengthening Initiative has proved to be a very valuable means of developing third-level research into spin-out companies and of enabling the licensing of new technologies for the benefit of industry.

Introduced by Enterprise Ireland in 2007, the Technology Transfer Strengthening Initiative has transformed how research with commercial potential is brought to the marketplace.

The clearest indicator of the initiatives success is the three-fold increase in the average number of spin-out companies created in the five-year period since it was introduced – rising from an average of seven per annum in the period 2002-2006 to an average of 24 per annum between 2007 and 2011.

In addition to the 120 spin-out companies created, there has also been a 400% increase in the amount of technologies licensed to companies by research-performing organisations.

For futher informatio go to **www.enterprise-ireland.com**

FIRST-STEP MICROFINANCE

First-Step Microfinance provides loans up to €25,000 to start-up or expanding new businesses.

First-Step's core goal is to help finance start-up and expanding SME's to provide job opportunities. First-Step's revolving loan funds are supported by the Social Finance Foundation, Enterprise Ireland through the EU Seed & Venture Capital Fund and private sector sponsorship.

www.j4bgrants.ie

INTERTRADEIRELAND LAUNCHES ELEVATE SALES PROGRAMME

InterTradeIreland has launched a new sales development programme, Elevate, to help small businesses to embark on cross-border exports with a view ultimately to looking further afield to the UK and Europe.

Fully funded by InterTradeIreland, Elevate will provide eligible companies with support up to €11,000 to access approved industry marketing experts to help them identify new cross-border markets.

www.intertradeireland.com/elevate/

ENTREPRENEUR INITIATIVE FOR WOMEN

Going for Growth is designed to support women who are serious about growing their businesses and are the owners of a business which has been trading for at least two years.

Participants are offered a unique learning environment with a peer-led approach based on the shared experiences of successful business women and other participants facing common challenges.

www.j4bgrants.ie

PILOT VISA SCHEME

A pilot-scheme launched last year means that business people and tourists from 16 nations entering Britain or Northern Ireland on a valid UK visa will be able to travel on to Ireland without having to obtain an Irish visa.

The Irish Short-stay Visa Waiver pilot scheme will apply to travellers from India, Kazakhstan, the Peoples Republic of China, Uzbekistan, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, Montenegro, the Russian Federation, Serbia, Belarus, the United Arab Emirates, Turkey and Ukraine. They will be allowed in Ireland for up to three months or until their UK visa runs out, whichever is the shortest.

This is seen as a potential boost to Irish companies as it will now be easier for overseas business executives travelling to the UK to include an Irish "add-on" to their trip. Previously, they would have had the cost and inconvenience of applying for both an Irish and a UK visa.

The Irish Short-stay Visa Waiver programme will run up to the end of October 2012, as a pilot, taking in the period of the London Olympics, when a large number of tourists are expected to visit the UK.

A GUIDE TO FOREIGN EXCHANGE

International trade can present businesses with new opportunities, but buying and selling goods in another country introduces additional risks. This article highlights some of those risks and introduces some of the steps your business could take to offset them

Foreign currencies - the risks and how to mitigate them

With developing economies in Asia growing by 9.6% in 2010 and Brazil by 7.5%, (compared to the UK 1.3% and Eurozone's 1.7% and US 2.8%)* it's no surprise that an ever-increasing number of Irish businesses are looking beyond our shores.

Currency fluctuations can cause your costs to increase or your revenues to fall, for example, in June 2010, selling USD 1.20 would have bought EUR 1.00. But within less than a year, by April 2011, selling USD1.20 would have bought EUR 0.85 – a huge change for any Irish business with US Dollar receipts/exposure. But it's important for businesses to recognise the foreign exchange risks involved in dealing in any foreign currency, even the so-called "majors". For example, recent global events have shown us that the Euro can fluctuate dramatically against more familiar currencies such as the GBP and US Dollar – and will likely continue to do so.

Managing foreign currency fluctuations

The good news is that your business doesn't have to be exposed to currency risks like these unless you take a conscious decision that you want to. You can work with your bank to help provide greater certainty for cash flow planning and budgeting, or a degree of protection against a critical level of exchange rates, beyond which profitability becomes threatened.

We understand that no two businesses, or their attitudes towards foreign exchange risk, are the same – which means that flexibility and creativity are crucial in building an appropriate range of potential risk management solutions.

Example 1

Here we examine how currency risks affect a business. Take the example of an Irish based dairy exporter, selling their product in January 2011 and delivering it in May 2011.

They take orders at USD list prices from their American customers in January 2011 and enter into an agreement to deliver the merchandise in May 2011 and get paid a pre-agreed USD amount, (say $500,000) on delivery.
At the point of entering into the sale with their American customer in January 2011 at a EUR:USD exchange rate of 1.30, they would have expected to receive €384,615.38 on delivery of the goods. However, at the point of delivery in May 2011, the $500,000 will only get them €344,827.58 as the rate is now 1.45.

It may not be possible for the exporter to pass all (or indeed any) of this loss on to their customers, meaning this 10% drop in their revenue has a direct impact on their bottom line.

It's no surprise that, with such a big potential impact on businesses' bottom line, foreign exchange risk was highlighted by exporters as the number one risk concern in the The Economist Intelligence Unit's (EIU) report titled "Risk Radar 2011-How firms are navigating risk".

Businesses should prepare themselves for a changing landscape in foreign exchange markets; one where businesses are dealing in more countries and in more currencies than they have in the past. Combined with the increasing economic and political uncertainty that can drive currency fluctuations, it's likely to become ever more important that businesses work with a trusted and experienced partner to develop an integrated, relevant and flexible risk management strategy.

Example 2

In this example we look at how a business might mitigate foreign currency exchange risk. We'll look at a Northern Irish based travel operator specialising in coach tours and holidays in Northern Ireland, with a European customer base (primarily Germany, France, Italy and the Netherlands). Their income is in Euros and their costs in Pounds, putting them at risk if the Pound strengthens against the Euro (each Euro of income would cover fewer pence of cost).

With tight profit margins, the business cannot risk the exchange rate moving too far against them, so they need to guarantee a known "worst case" rate at which they can exchange EUR for GBP. However, having experienced a weaker Pound against the Euro in recent years, they know the boost to their business that an even lower Pound to Euro exchange rate would provide.

By using a portfolio approach to hedging their FX exposure, using Spot, FX Forwards and structured FX contracts, they achieve certainty while also having some ability to benefit should exchange rates subsequently move in their favour.

By Ulster Bank

NOTARY PUBLIC

The European Commission brought proceedings against Belgium, France, Luxemburg, Germany, Greece and Portugal because they restricted access to the profession of Notary to nationals of their own countries. The Commission argued successfully that this was discrimination on grounds of nationality prohibited by the EC Treaty. The effect of the decision is that a qualified Notary may apply for a position in any EU member State.

INSURANCE (AMENDMENT) ACT 2011

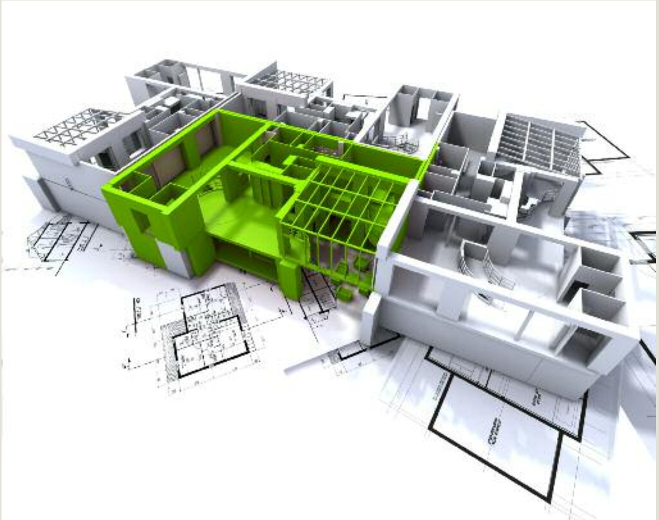
This Act amends the Insurance Act of 1964 and changes the scope of the Insurance Compensation Fund from one which covers the risks of policyholders of Irish authorised companies to one that covers all insured risks in the State except for specific excluded risks which include Health Insurance and Life Insurance. But for the specified excluded risks, all Insurance Policies taken out in relation to risks in the State come within the Scheme. Insured risks outside the State are no longer covered by the Scheme where an insurance company is being liquidated.

SECTION 106 OF THE COMPANIES ACT 1963

Ms. Justice Laffoy has directed that for every application under Section 106 of the Companies Act (an application to extend a time to register a Charge) the Court will require reference to this specific Mortgage Deed by way of date and parties among other things. Also a full certified copy of all pages of the relevant Mortgage Deed will be required to be produced with the papers lodged in Court.

MULTI-UNIT DEVELOPMENTS ACT 2011

The Act came into operation on 1 April 2011 and set the date of 1 October 2011 as the date for handing over private residential developments.



The Act provides for the setting up of an owners' Management Company at the expense of the Developer of the Multi-Unit Development. Where the Multi-Unit Development has been substantially completed by the Developer but the common areas have not been transferred to the owners' Management Company the Developer is to transfer the ownership of the common areas within six months of the commencement of the Act. Even though the common areas may have been transferred by the Developer the obligation still remains with him to complete the development and the Developer must indemnify the owners' Management Company in respect of all claims against the Company of whatever nature in respect of acts or omissions by the Developer in the course of works connected with the completion of the Multi-Storey Development. The Developer must also keep in force an Insurance Policy covering all risks in respect of the Developer's use or occupation of the Multi Storey Development.

CIVIL LAW (MISCELLANEOUS PROVISIONS) ACT 2011

Section 30 (G) of the Civil Law (Miscellaneous Provisions) Act 2011 came into effect on 10 October 2011. This Section amends Section 85 of the Bankruptcy Act 1988 and provides for the reduction of the application period to the Court for discharge from Bankruptcy from 12 years to 5 years and to provide for the automatic discharge of Bankruptcy on the fifth anniversary of the Adjudication Order.

Who REALLY Gets What?

Legal Right of Testator's Spouse and provision for Children
The Succession Act 1965 contains provisions designed to protect the spouse and children of a Testator from disinheritance.

Legal Right systems operate in many countries. There are three basic systems which can be summarised as follows:

- A fixed portion of a person's estate is reserved for certain classes of beneficiaries and cannot be disposed of by him in his Will i.e. Ireland, France and Spain.
- A dependent is allowed to apply to the Court for a definite part of a deceased's person's estate, if he so wishes i.e. Germany and some US States.
- A dependent is given the right to apply to the Court, if he wishes, and the Court is empowered to award maintenance to the dependant out of the estate at its discretion i.e. U.K. and some Canadian Provinces.

The Succession Act of 1965 defines the legal right to share of the spouse:-

- If the Testator leaves a spouse but no children, the spouse has a right to 50% of his Estate;
- If the Testator leaves a spouse and children, the spouse has a right to one-third of his estate. This right of the surviving spouse (legal right) has priority over all other bequests and ranks in priority after the rights of creditors of the deceased.

The underlying concept of the Succession Act is not based on a duty to provide maintenance but rather on the idea that a Testator has a duty to leave part of his estate to his Widow.

Where a Testator makes a bequest to his spouse in his Will and says that it is in addition to her legal right share, then this is treated as an additional bequest to the surviving spouse on top of a sum equal to the value of her legal right share. If the Will does not contain such an express provision, then any bequest to a spouse will be interpreted as being in satisfaction of the spouse's legal right share.

In situations where the Testator has made a bequest to his spouse in the Will, the spouse may elect to take either the bequest or the share to which she is entitled as her Legal Right. If she fails to elect, the spouse shall be entitled to the bequest under the Will and will not be entitled to take any share as a Legal Right. Similarly, where a Testator dies partly testate and partly intestate the surviving spouse may elect to take either her share as a Legal Right or her share under the intestacy together with any bequest made to her under the deceased's Will. In default of election, the surviving spouse is entitled to take her share under the intestacy in addition to the bequest under the Testator's Will but will not then be entitled to take any share of the Legal Right. If a spouse elects to take her Legal Right share, she may also elect to take any bequest under the Will which is less in value than the Legal Right share in partial satisfaction of her Legal Right.

The deceased's Personal Representative has a duty to notify the surviving spouse, in writing, of her right of election. The right of election must be exercised within six months of receiving the notification from the Personal Representatives, or within one year from the date of issue of the Grant of Probate of the deceased's estate whichever is the later. Although the limitation period does not begin to run until the service of notice on the surviving spouse by the Personal Representative, this does not prevent the surviving spouse from exercising the right of election before the service of the notice.

Family Home

The Succession Act specifically provides that where the deceased's estate includes a house which was the surviving spouse's home at the time of the deceased's death, the surviving spouse can require the deceased's Personal Representative to appropriate the house in or towards satisfaction of her Legal Right share. The surviving spouse can also require the deceased's Personal Representative to appropriate any household contents in or towards satisfaction of her Legal Right share. The term "chattels" as used in the Act includes furniture, books and other ordinary household goods but it does not include business assets of the deceased or money. It is the duty of the Personal Representative to notify the surviving spouse of her right of appropriation. This right must be exercised within six months from the date of receipt by the surviving spouse of the notification or within one year from the date of the issue of the Grant of Probate whichever is the later. The right of appropriation exists whether the deceased has died testate or intestate. The Personal Representative of the deceased cannot sell or otherwise dispose of the home or the contents of the home except with the consent of the surviving spouse in circumstances where the administration of the deceased's estate is not possible without the sale of the home due to the lack of other assets.

In circumstances where the share of the surviving spouse is not sufficient to enable her to exercise her right to require appropriation of the Family Home or the contents of the home, the surviving spouse may exercise the right in relation to the share of any minor child. Where a surviving spouse has to use the share of a minor child to be able to require appropriation of the Family Home, the Act does not direct that the surviving spouse holds the Family Home on trust for herself and the minor child. If it transpires that the Family Home and contents are worth more than the entitlement of the surviving spouse and a minor child then the surviving spouse may equalise things by paying the balance in cash to the Personal Representative. The Courts, however, would be unlikely to order that the balance be paid by the surviving spouse if such payment would be likely to cause hardship to herself and the minor child/children.

Children's Rights

The Succession Act does not stipulate a "fixed share" of a Testator's estate for the benefit of his children. The onus is on a child to make a claim that "proper provision" has not been made by the Testator for him/her.

The Court has considered whether a Testator has "failed in his moral duty to make proper provision" for a child in several cases. The Court considers the application of a child from the point of view of a prudent and just parent taking into account each child's position and any other circumstances which may be of assistance in determining whether "proper provision" has been made. There is a high onus of proof on the child who makes such an application. There is considerable case law on such applications and the view of the Courts seems to be that it is not sufficient for a child to establish that the provision made for him/her was not as great as it might have been, or not as great as the bequests to other children. The child making the application must establish that the Testator failed in his moral duty to make proper provision for him/her.

An application by a child who alleges that proper provision has not been made for him/her must be made within one year from the date of issue of the Grant of Probate.