

S.I. No. of 2015

COMMISSION OF INVESTIGATION (IRISH BANK RESOLUTION CORPORATION) ORDER 2015

WHEREAS pursuant to section 3(1) of the Commissions of Investigation Act 2004 (No. 23 of 2004) the Minister for Finance made a proposal to the Government for the establishment of a commission to investigate the matters specified in Article 3 of the following Order and to make any reports required under that Act in relation to its investigation;

AND WHEREAS the Government by decision made on 9 June 2015 considered those matters to be of significant public concern;

AND WHEREAS a draft of the following Order has been laid before each House of the Oireachtas, together with a statement of the reasons for establishing the commission, and a resolution approving that draft has been passed by each such House;

NOW, the Government, in exercise of the powers conferred on them by section 3 of the Commissions of Investigation Act 2004 (No. 23 of 2004), hereby order as follows:

Citation.

1. This Order may be cited as the Commission of Investigation (Irish Bank Resolution Corporation) Order 2015.

Definition.

2. In this Order “Act” means the Commissions of Investigation Act 2004 (No. 23 of 2004);

Establishment of Commission, etc.

3. A commission is hereby established to—

(a) investigate the matters, which are considered by the Government to be of significant public concern, referred to in the terms of reference (the text of which is, for convenience of reference, set out in the Schedule) of the commission, and

(b) make any reports required under the Act in relation to its investigation.

Management of external advices.

4. The commission shall, for the purposes of performing its functions, obtain any necessary external advices or assistance and ensure that any actual or perceived conflicts of interest which may arise in respect of such external advices or assistance are properly managed.

Report to Taoiseach of the investigation.

5. The commission shall, subject to section 6(6) of the Act, submit to the Taoiseach its final report in relation to its investigation no later than 31 December 2015.

Oversight of administrative matters.

6. (1) The Taoiseach is specified as the Minister of the Government responsible for overseeing administrative matters relating to the establishment of the commission, for receiving its reports and for performing any other functions given to him under the Act.

(2) The Taoiseach is authorised by this Article to appoint a person to be a member of the commission.

SCHEDULE

Terms of Reference for Commission of Investigation Concerning Irish Bank Resolution Corporation Limited

The Commission is directed to investigate and to make a report to the Taoiseach in accordance with the provisions of section 32 of the Commissions of Investigation Act 2004 (No. 23 of 2004) on the following matters:

1. The Commission shall investigate all transactions, activities and management decisions, other than those relating solely to the acquisition of assets by the National Asset Management Agency, which occurred between 21 January 2009 (being the date of the nationalisation of IBRC) and 7 February 2013 (being the date of the appointment of the Special Liquidators to IBRC) (the “Relevant Period”); and which either:

- (a) resulted in a capital loss to IBRC of at least €10,000,000 during the Relevant Period, whether in consequence of a single transaction or of a series of transactions relating to the same borrower or entities controlled by the same borrower (“Relevant Write-Offs”); or
- (b) are specifically identified by the Commission as giving rise or likely to give rise to potential public concern, in respect of the ultimate returns to the taxpayer.

2. The purposes for which each such decision, transaction and activity referred to in 1 above are to be investigated are the following (and accordingly the Commission’s terms of reference extend to investigating):

- (a) the processes, procedures and controls which were operated by IBRC in relation to the Relevant Write-Offs to ascertain whether the appropriate internal IBRC governance procedures and controls were adhered to in respect of the transactions under review and whether the said procedures and controls were fit for purpose,
- (b) whether there is prima facie evidence of material deficiencies in the performance of their functions by those acting on behalf of IBRC, including the IBRC board, directors,

management, the staff of the wealth management unit and agents, in respect of any transactions, activities and management decisions identified in 1. above,

(c) whether it can be concluded from the information available within the IBRC and relevant evidence and witness testimony as appropriate that the transactions were not commercially sound in respect of the manner in which they were conducted, the decisions made and the outcomes achieved having regard to the purposes of the Irish Bank Resolution Corporation Act 2013 set out in section 3 thereof,

(d) whether the interest rates or any extension to interest rates or any periods for re-payments were given by IBRC on preferential terms that were unduly favourable to any borrower, where those interest rates resulted in a differential of more than €4 million in interest due over the standard applicable interest rates for loans of that nature or where the amendments give rise to or are likely to give rise to potential public concerns,

(e) whether, in respect of any transaction under investigation, any unusual share trading occurred which would give rise to an inference that inside information was improperly provided to or used by any persons, and in the event that such an inference does arise whether any such information was actually improperly provided or used,

(f) in relation to each transaction under investigation, whether the Minister for Finance or his Department was kept informed where appropriate in respect of the transactions concerned, and whether he, or officials on his behalf, took appropriate steps in respect of the information provided to them.

3. The report to be made by the Commission in relation to the foregoing investigations shall:

(a) shall set out the scope and findings of the investigations in fulfilment of the purposes set out in 2. above;

(b) respect obligations of confidentiality and to respect commercial sensitivity where those are not incompatible with the public interest; and

(c) set out such recommendations as the Commission sees fit.

4. The Commission shall report on any other matters of concern arising from its investigation of the above matters and make any further recommendations as the Commission sees fit.

5. The Commission shall exercise discretion in relation to the scope and intensity of the investigation as it considers necessary and appropriate, having regard to the general objectives of the investigation.

6. In these terms of reference:

(a) "IBRC" means Irish Bank Resolution Corporation Limited;

(b) where a contractual obligation was agreed during the Relevant Period but not executed until after the Relevant Period then the contract and any resulting loss shall be regarded as having been made during the Relevant Period;

(c) references to IBRC shall be construed as including references to Anglo Irish Bank or Irish Nationwide Building Society and any subsidiaries of IBRC, Anglo Irish Bank or Irish Nationwide Building Society;

(d) for the avoidance of doubt, references to transactions, activities and management decisions shall be construed as including references to amendments made to the terms and conditions of loans.

GIVEN under the Official Seal of the Government,

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Taoiseach.