

# **APPENDIX 10**

## **INTERVIEW NOTICE**



**Coimisiún Imscrúdacháin  
ar Earnáil na Baincéireachta in Éirinn**

**Commission of Investigation  
into the Banking Sector in Ireland**

**Peter Nyberg  
Sole member**

## **Interview Notice**

The Commission of Investigation into the Banking Sector in Ireland is required by Section 13 of the Commissions of Investigation Act 2004 to inform you in writing before you give evidence to the commission as to the functions and powers of this commission, and as to your rights and obligations in relation to the commission.

This is an important document. The commission invites you to read it carefully in advance of giving any evidence to the commission.

At the commencement of your giving any evidence to the commission, the commission will seek to establish the receipt by you of this notice.

If you have any questions in relation to the matters contained in this notice you are invited, should you consider it appropriate to do so, to contact the commission for such information or assistance as it may be in a position to provide to you.

### **Contact may be made as follows:**

Postal address:	Commission of Investigation into the Banking Sector in Ireland, Lansdowne House, Ballsbridge, Dublin 4.
E-mail:	<a href="mailto:information@banking inquiry.gov.ie">information@banking inquiry.gov.ie</a>
Telephone:	01-604 5071
Fax:	01-604 5172
Website:	<a href="http://www.banking inquiry.gov.ie">www.banking inquiry.gov.ie</a>

## **1. Introduction**

The Commission of Investigation into the Banking Sector in Ireland was established pursuant to Section 3 of the Commissions of Investigation Act 2004 by Order of the Government made on 21 September 2010 (as amended) and published in *Iris Oifigiúil* on 24 September 2010.

## **2. Terms of reference**

The terms of reference of the commission are set out in the Order made by the Government and are as follows:

- 1) A commission is established to investigate the following specific matters considered by the Government to be of significant public concern and requiring, in the public interest, an expedited examination:
  - a) the main causes of the serious failure, during the period 1 January 2003 to 15 January 2009, within each of the covered institutions, to implement and adhere to, appropriate standards and controls (including checks and balances) in the context of corporate governance and prudent risk management policy and procedures such as would have avoided the requirement for the provision of exceptional financial support from the State;
  - b) the main causes for the adoption, during the period 1 January 2003 to 15 January 2009, by the Boards of Anglo Irish Bank Corporation and Irish Nationwide Building Society of business models and strategies, and the implementation by the senior managements of those institutions of business and lending practices, which resulted in those institutions experiencing severe financial distress;
  - c) whether in respect of the period 1 January 2003 to 15 January 2009 the external auditors of the covered institutions commented in their audit reports or other communications to the institutions concerned on the failures referred to in subparagraph (a) or the business models and strategies and business and lending practices referred to in subparagraph (b);
  - d) the main causes for the failures, during the period 1 January 2003 to 15 January 2009, in the performance of the statutory roles and responsibilities of the Central Bank and Financial Services Authority of Ireland in respect of the regulation and supervision of the covered institutions and the maintenance of financial stability, in particular in relation to the supervision and oversight of corporate governance and risk management policies and practices in the covered institutions, and the relevance in that

regard of any advices or directions given by the Department of Finance to the Central Bank and Financial Services Authority of Ireland in relation to its supervisory role.

- 2) The commission shall complete the report or reports required in relation to its investigation no later than 6 months from the date of its establishment.
- 3) In paragraph (1) “covered institution” means an institution that is a covered institution pursuant to the Credit Institutions (Financial Support) Scheme 2008 (S.I. No. 411 of 2008).

### **3. Powers**

The Commission of Investigations Act 2004 provides specific statutory powers to the commission to facilitate the discharge of its function. These powers include powers relating to witnesses and documents, power to direct certain persons to pay costs, and powers of entry and inspection.

The text of the Commissions of Investigation Act 2004 is set out in Appendix 2 of the Rules and Procedures manual and is available on the commission website.

In particular, sections 16, 17 and 28 of the Commissions of Investigation Act 2004 set out important powers that may, in the discretion of the commission, be invoked by the commission.

### **4. Section 16**

Section 16 of the Commissions of Investigation Act 2004 provides:

- (1) For the purposes of an investigation, a commission may do any or all of the following:
  - (a) direct in writing any person to attend before the commission on a date and at a place and time specified in the direction and there to give evidence and to produce any document that is in the person’s possession or power and is specified in the direction;
  - (b) direct a witness to answer questions that it believes to be relevant to a matter under investigation;
  - (c) examine a witness on oath or affirmation or by use of a statutory declaration or written interrogatories;
  - (d) examine or cross examine any witness to the extent the commission thinks proper in order to elicit information relevant to a matter under investigation;
  - (e) direct a witness to produce to the commission any document that is in his or her possession or power and is specified in the direction;

- (f) direct in writing any person to—
    - (i) provide the commission with a list, verified by affidavit, disclosing all documents in the person’s possession or power relating to a matter under investigation, and
    - (ii) specify in the affidavit any of the listed documents that the person objects to producing to the commission and the basis for the objection;
  - (g) direct in writing any person to send to the commission any document that is in the person’s possession or power and is specified in the direction;
  - (h) direct a person who made a statement or answered a question while being interviewed by a person appointed under *section 8* to provide the commission with a sworn statement in a form acceptable to it confirming, if such is the case—
    - (i) that the statement was made or the answer given by him or her voluntarily, and
    - (ii) that to the best of his or her knowledge the content is true and accurate;
  - (i) give any other directions that appear to the commission to be reasonable.
- (2) The powers of a commission under *subsection (1)* may be exercised by any member authorised in accordance with *section 15(3)* by the commission’s rules and procedures to receive evidence on its behalf, and for that purpose a reference in *subsection (1), (3), (6), (8) or (9)* of this section to “a commission” or “the commission” is to be read as a reference to the authorised member.
  - (3) A person who attends, whether voluntarily or otherwise, before a commission is entitled to be paid by the specified Minister such amount in respect of the expenses of his or her attendance as is determined in accordance with guidelines prepared by that Minister with the consent of the Minister for Finance and after consulting with the commission.
  - (4) The rules of court relating to the discovery of documents in proceedings in the Court apply with any necessary modifications in relation to the disclosure of documents under *subsection (1)(f)*.
  - (5) Where a statement made or an answer given to a person appointed under *section 8* is confirmed in accordance with a direction under *subsection (1)(h)* of this section, the statement or answer is considered to have been received as evidence by the commission.
  - (6) Where a person does not comply with a direction given by a commission under this section, the Court may, on application by the chairperson or, if the commission consists of only one member, by the sole member—

- (a) order the person to comply with the direction, and
  - (b) make any other order the Court considers necessary and just to enable the direction to have full effect.
- (7) If a person against whom an order is made under *subsection(6)(a)* fails to comply with the direction specified in the order, the Court may deal with the matter as if it were a contempt of the Court.
- (8) A person who, without reasonable excuse, fails to comply with a direction under *subsection (1)(a)* to attend before a commission is guilty of an offence.
- (9) The failure of a person to comply with a direction under *subsection (1)(a)*—
- (a) may be punished as a contempt even though it could be punished as an offence, and
  - (b) may be punished as an offence even though it could be punished as a contempt,
- but the person is not liable to be punished twice.
- (10) In *subsection (3)* “expenses” does not include any legal costs.

## 5. Section 17

Section 17 of the Commissions of Investigation Act 2004 provides:

- (1) If as a result of a person—
- (a) failing, without reasonable excuse, to comply with a direction under *section 16*,
  - (b) failing, without reasonable excuse, to comply with a request under *section 14(5)* or *21(5)*, or
  - (c) otherwise obstructing an investigation,

a commission incurs costs that it would not otherwise have incurred, it may, in writing, direct the person to pay to the Minister for Finance those costs, including legal costs as taxed by a Taxing Master of the Court and costs arising from any delay in completing the investigation.

- (2) If any person who attends before or gives evidence to a commission is adversely affected as a result of an act or omission described in any paragraph of *subsection (1)*, the commission may—

- (a) on its own initiative, or
- (b) at the request of the person adversely affected,

direct the person whose act or omission had that result to pay to the person adversely affected all or part of any costs (including legal costs as taxed by a Taxing Master of the Court) that he or she incurred as a result of the act or omission.

- (3) A direction of a commission to pay costs under *subsection (1)* or *(2)* does not take effect until it is confirmed by the Court on application by the chairperson of the commission or, if a commission consists of only one member, by the sole member.

- (4) On application under *subsection (3)* for an order confirming a direction of the commission to pay costs to the Minister for Finance or another person, the Court may-

- (a) make an order confirming the direction with or without modification, or
- (b) refuse to make such an order.

- (5) Subject to *subsection (3)*, any sum payable pursuant to a direction under this section may be recovered as a simple contract debt in any court of competent jurisdiction.

- (6) A person may be directed to pay costs under this section even though the act or omission that resulted in the direction is punishable as contempt or as an offence against a provision of this Act and the direction does not prevent the person being punished for contempt or the bringing of proceedings in respect of the offence.

## 6. Section 28

Section 28 of the Commissions of Investigation Act 2004 provides:

- (1) Subject to *section 27*, any authorised person<sup>1</sup> may do any or all of the following:
- (a) enter at any reasonable time any premises in which the authorized

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<sup>1</sup> **An authorised person is defined by section 26 of the Act as (1) any member of the commission; or (2) any person appointed under section 8 of the Act and authorised by the commission in writing to exercise the powers given in section 28 to authorised persons.**

person has reasonable grounds to believe there are any documents, or there is information in any form, relating to any matter within the commission's terms of reference;

- (b) inspect any documents, or information in any form, on the premises;
  - (c) secure for later inspection any documents, any information in any form and any equipment in which those documents or that information may be held, if the authorised person has reason to believe that the documents or information may be relevant to the investigation;
  - (d) secure for later inspection the premises, or any part of the premises, but only if the authorised person considers it necessary to do so in order to preserve for inspection documents or information in any form that he or she has reason to believe may be kept there and may relate to the investigation;
  - (e) take copies of or extracts from any documents or any electronic information system on the premises, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form;
  - (f) remove for later examination or copying any documents, or information in any form, that the authorised person has reason to believe may relate to a matter under investigation and retain them for the period that he or she considers reasonable;
  - (g) direct any person on the premises to produce to the authorized person any documents, or information in any form, kept on the premises;
  - (h) direct any person on the premises having charge of, or otherwise concerned with the operation of, data equipment or any associated apparatus or material to provide the authorised person with all reasonable assistance in relation to the equipment, apparatus or material;
  - (i) direct any person on the premises to give to the authorized person any information that the authorised person may reasonably require with regard to a matter under investigation.
- (2) Despite *subsection (1)*, an authorised person may not enter a private dwelling or the part of any premises that is used as a private dwelling, except—
- (a) with the consent of the occupier, or
  - (b) under the authority of a warrant issued under *section 29* by a judge of the District Court.



- (3) When exercising powers under this section, an authorised person may be accompanied by a member of the Garda Síochána.
- (4) The production of a document in compliance with a direction under this section does not prejudice a person's lien on the document.

#### **7. Co-operation**

The commission is required by Section 10 of the Commissions of Investigation Act 2004 to seek the voluntary co-operation of persons whose evidence is desired by the commission in relation to any matter within its terms of reference, to facilitate such co-operation, and to conduct its investigation as expeditiously as possible.

The commission commenced its work on 21 September 2010 and is required to submit a final report to the Minister for Finance within 6 months of that date.

In the event that you do not voluntarily co-operate with the commission, or you withdraw co-operation, the commission will exercise its powers under Sections 16, 17 and 28 of the Commissions of Investigation Act 2004 as it considers necessary.

#### **8. Legal representation**

You are entitled to have a legal representative present to advise when you give evidence to the commission. If you have no legal representative present to advise you the commission will advise you of your legal rights and obligations while giving evidence.

**Dated the [Month] [Day] [Year]**

**Signed:**

Peter Nyberg  
**Sole member**