

# **APPENDIX 7**

## **DISCLOSURE NOTICE**



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

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

**Peter Nyberg  
Sole member**

### **Disclosure Notice**

The Commission of Investigation into the Banking Sector in Ireland is required by Section 12 of the Commissions of Investigation Act 2004 to disclose to you the substance of any evidence in the possession of the commission that, in the opinion of the commission, you should be made aware of for the purposes of the evidence that you may give or have given to the commission.

This is an important document and the commission invites you to read it carefully.

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@bankinginquiry.gov.ie">information@bankinginquiry.gov.ie</a>
Telephone:	01-604 5071
Fax:	01-604 5172
Website:	<a href="http://www.bankinginquiry.gov.ie">www.bankinginquiry.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 Commissions 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.

The commission wishes to specifically draw your attention to section 12 of the Commissions of Investigation Act 2004 which sets out the duty of the commission to disclose the substance of evidence to you and to give you an opportunity to comment by written or oral submissions.

### **4. Section 12**

Section 12 of the Commissions of Investigation Act 2004 provides:

(1) Subject to subsection (2), a commission shall disclose to a person-

- (a) who is directed to attend as a witness before the commission,
- (b) who attends voluntarily to give evidence to the commission, or
- (c) about whom evidence is given to the commission,

the substance of any evidence in its possession that, in its opinion, the person should be aware of for the purposes of the evidence that person may give or has given to the commission.

(2) Subsection (1) does not require the disclosure of the source of any evidence given or document produced by a witness while giving evidence in private under section 11,

unless the commission considers that, in view of the purposes of the investigation or in the interests of fair procedures, the source should be disclosed.

(3) A commission shall give a person to whom it discloses the substance of evidence under subsection (1) an opportunity to comment by written or oral submissions on the evidence.

## **5. 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 consider exercising its compulsory powers under the Commissions of Investigation Act 2004.

## **6. Legal representation**

You are entitled to have a legal representative present to advise you 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.

## **7. Disclosure**

The evidence disclosed to you under section 12 of the Commissions of Investigation Act 2004 is set out in the Schedule to this Disclosure Notice.

## **8. Confidentiality**

The contents of any evidence given, or the contents of any document produced, by a witness while giving evidence to the commission must not be disclosed by any person except in the circumstances specified in section 11 of the Commissions of Investigation Act 2004.

A person in breach of this statutory duty of confidentiality may be guilty of a criminal offence under section 11(5) of the Commissions of Investigation Act 2004.

The text of section 11 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.

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

**Signed:**

**Peter Nyberg  
Sole member**

**Schedule**

**[evidence disclosed by the commission]**