

Confidential

Non Paper

Siteserv Transaction

To: **Minister**, John Moran, Ann Nolan
From: Shareholding Management Unit
Date: 12 July 2012

This document should not be shared with IBRC management or board as it refers to confidential information informally received.

Background

At a meeting between DoF and IBRC's Chairman and CEO (on 31 May 2012) it was agreed that the DoF would review the Siteserv (the Company) transaction to better understand the decisions taken. The majority of the information below is from a one hour meeting which took place on 11 June 2012 and some limited follow up thereafter.

The background to the transaction and the process, as set out at the meeting on 11 June is set out in Appendix 2. The DoF is not in possession of documents on the transaction, other than as set out in Appendix 2.

The critical decisions taken by the bank, and possible alternatives, are set out on the following page.

Next steps for consideration

Based on the discussions with the bank, which were high level in nature, there appears to be a reasonable question to be answered in relation to the decision by the bank not to act in a primary role in this transaction. On the facts available, this decision appears to have given rise to a number of other subsequent actions which could, quite reasonably, be considered to have caused a reduction the bank's recovery on the Siteserve exposure.

There are also other connections between the company and the successful bidder which could also have given rise to a potential conflict. Certain market participants have, informally, made it clear that they were very unhappy with the process and that they had provided higher bids.

We understand that the Central Bank has completed a file review of this transaction (focussing on the process rather than the commerciality of the transaction). We further understand that there were any material findings from this review.

Given the apparent question as to the quality of some of the decisions taken, it is recommended that there is an independent review of the transaction to assess the impact that the decisions taken have had on i) the process put in place, and ii) the final recovery for the bank. There are options in relation to how this review might be initiated but the two best options are:

- i) Asking the Chairman, or his appointed advisors, to independently review the decisions taken in the transaction. However, given the board were involved in the decision making this may not provide a truly independent view on the transaction.
- ii) The Minister initiating an independent review of the transaction. This would be considerably more effective but would likely bring media scrutiny if/when it the review enters the public domain.

Comments

Decision	Bank's view	Alternative view / Comment
Allowing the company to run the sales process	<p>For the bank to have inserted itself as a primary in the process would have meant damage to the Company as perception of distressed sale. It was expected that this would then have damaged price achieved.</p> <p>The bank protected its interests through its own process which included the appointment of Walter Hobbs to sit on the Company's committee and through second opinion on the work of the Company's advisors.</p> <p>As it was decided that this was the Company's process, the Company appointed its nominated advisor to complete the work on its behalf.</p>	<p>The alternate would have been, as principal secured creditor, to have run the process themselves.</p> <p>While we cannot say that the bank's position in relation to the perception of a distressed sale being damaging, this decision was fundamental to everything that ensued.</p> <p>Including that the bank did not negotiate terms for say debt for equity or some deferred payment arrangement.</p> <p>While Davy were the Company's nominated advisor, an alternate advisor could have been appointed (the nominated advisor would still have had to completed its regulatory function (arising from the relevant listing requirements) in relation to the transaction).</p>
Not to open the sales process to trade buyers	<p>The Bank felt that there would be damage to or loss of contracts through people reviewing the dataroom information for their own benefit with no intention of bidding. It was indicated that the type of businesses that Siteserv operates and the type of competitors might heighten this risk</p>	<p>Trade buyer may have been in a position to provide the best price and may have had i) lower diligence requirements and ii) lower return requirements.</p> <p>Due diligence process could have been completed keeping customer information redacted or anonymous – which would often be the case in such due diligence.</p> <p>Some risk would have remained</p>
Entering into exclusivity with Island	<p>To take 3 bidders forward, however, given Island request for exclusivity (and threat to leave the process without it) it, it was decided to proceed with exclusivity.</p> <p>Siteserv transaction sub-committee chairman recommended exclusivity to IBRC.</p> <p>IBRC's response to why exclusivity was granted to Island was, in summary (see appendix 2 for additional detail):</p> <ul style="list-style-type: none"> - The process was controlled by Siteserv and its advisors KPMG and Davy. IBRC had an observing role only. - Island Capital's bid would yield the highest proceeds to IBRC. - Other offers had issues such as exclusivity requirements considerable execution risk, lower pricing 	<p>Given second round pricing appeared to be relatively close together, could the process have been continued without Island in order to keep competitive process alive?</p> <p>The bank's response that the process was controlled by Siteserv again points to whether the company running the process was the correct decision.</p> <p>In relation to the commercial points, there appear to have been better bids available but IBRC would argue that delivering on these bids would have proven difficult.</p>

Decision	Bank's view	Alternative view / Comment
	or conditionality.	
Payment of fee to shareholders i) Necessity ii) Quantum	<p>Payment was necessary to ensure shareholders voted to approve the transaction. Examinership not considered an option because of the terms of customer contracts which would have been in breach. Loss of contracts would have resulted in loss of value.</p> <p>Bank sought view of PwC who agreed that possibly a payment, of between €0mn and €5mn, may have been required to secure the vote</p> <p>Advice from Davys was that the fee should be referenced off the average share price for the previous 12 months - €5mn</p>	<p>Arguably no payment should have been made to shareholders given the precarious position the company was in. Examinership would appear to have been a reasonable option, however, contract issues would have remained. The Bank relied on the Company's review of customer contracts which indicated that liquidation or examinership would be a breach. Was there any potential for customers to continue if there was a respected trade or other buyer available quickly?</p> <p>The bank accepted the view of the Company's advisor on the level of fees (albeit it that it was at the higher end of PwC's range of €0mn to €5mn) – bank has indicated that they did not have an ability to negotiate with shareholders as not a primary. If more recent share price was used this amount would have reduced by circa 50%. Furthermore, any payout price did not need to be linked to the share price.</p> <p>Was Davy's advice the right advice for the bank to take given they were the advisors to the Company (whose responsibility is to the shareholders)? From a summary report on the shareholders (see Appendix 2.1) it would appear that a significant proportion of them are Davys' clients – the extent of this relationship, and therefore the extent of any potential conflict, is not evident from the report.</p>
Not accepting the higher bids of: - [REDACTED] - [REDACTED]	<p>[REDACTED] – further tax and legal due diligence could have jeopardised the price on offer and there were lower levels of conditionality in the Island bid</p> <p>[REDACTED] – the bid came in after the process (although here had been correspondence during the process). Risks in closing (as set out above)</p>	<p>To have followed the other bids as improving the potential return. However, the bank's assessment of the risks associated with each of these bids moved them forward with Island.</p>

Appendix 1

Background

- In January 2011 the Company commissioned a report from KPMG on the options available – it was assessed that the Company needed €20mn. PwC were engaged by IBRC to review the KPMG plan. Under the terms of the EU Commitments, the maximum the bank could lend was €15mn. As a result it was determined that the Company should enter into an orderly process to sell itself (June 2011). A decision was taken that the Company would run the sales process as to do otherwise might have indicated a potentially damaging degree of distress. Walter Hobbs was appointed to the process to represent the bank's interest.
- There were 50 candidates selected to which information memoranda were sent to 12. This filtered to 9 expressions of interest and finally to 8 bids. It was determined by the Company that, to protect customer contracts, the process would exclude trade players.
- The 8 bids were received in December 2011 and reviewed at that time. The highest bid from the first round was in last place by the second round. Island (Millington / DO'B), was the winner of the process with a bid of €45.42 – but not by a significant amount.
- The Bank felt it appropriate to take 3 bids forward. Including the second bid from [REDACTED]. However, Island then insisted that if it did not receive 14 days exclusivity that it would walk away from the process. On 10 February SiteServ wrote to IBRC saying that exclusivity be entered into with Island. [REDACTED] were informed of this and then, a few days later, provided a revised bid of [REDACTED]. Credit Committee decided to neither accept nor reject the Island bid given the higher bid in from [REDACTED]. It was determined by Siteserv that, notwithstanding the higher bid from [REDACTED], that they would proceed with the Island bid because of the exclusivity but also as the [REDACTED] bid indicated further levels of tax and legal due diligence which could have resulted in price reductions [On request, IBRC indicated that this was despite all parties having the same access to the dataroom etc. IBRC, again on request, responded that, in relation to DO'B, there was no evidence that anything other than a bona fide process.]
- As a result of media speculation on the sale the Company's position with customers was weakened (including some putting the Company on watch) and DBRS lowered the Company's credit rating to N4 (lowest).
- The Bank obtained sign off on the process from Walter Hobb and KPMG.
- In relation to the €5mn the Company received advice from Davys that a payment of €4mn to €5mn was necessary to induce the shareholders to vote through the transaction. PwC felt a payment of between 0 and €5mn was necessary. The Company's advisors were relied upon by IBRC. Once a decision was taken to make a payment it then applied to any of the bids.
- It was indicated that of the €5mn there was 30 – 40% free float in the company with the remainder held by institutional holders and management. Of the €5mn it was thought that Brian Harvey (CEO) received €0.8mn.
- In March 2012, [REDACTED] (a trade player) saying they had contacted the CEO of the Company to offer to acquire. A price of €60mn was in the press at the time. No price was evident in the email correspondence between [REDACTED] and Siteserv. [REDACTED] submitted a conditional offer. Davy's concerns with the [REDACTED] offer include i) contract already in place with Island (IBRC also bound by this), ii) the bid was indicative non-binding, iii) the bid was silent on adjustments (which all the other bids had), iv) bid based on publically available information – no detailed diligence completed – other participants had taken 2 – 3 months, and v) bid silent on reps, warranties and indemnities. As a result IBRC wrote to Davys stating that any proposal for the sale was for Siteserv to consider.
- Arthur Cox were advising Siteserv and Island capital. IBRC were provided (January 2012) with assurances by Arthur Cox on appropriate firewalls being in place to act for both sides.

Company EGM to approve the sale to Island took place on 5 April 2012.

Appendix 2 – Documents received

From: Karl Cleere [mailto:KarlCleere@ibrc.ie]
Sent: 19 June 2012 14:33
To: Buckley, Danny
Cc: Peter Fitzgerald; Tom Hunersen; Pat Walsh
Subject: Follow up queries on Siteserv for DOF

Danny,

Please see below responses to the queries you raised with Peter Fitzgerald:

Any questions please let me know.

Kind regards

Karl.

Please see attached the following:

1. Share capital table outlining the breakdown of the shareholdings in Siteserv – this shows the % distributions of the €5m shareholder payment.
2. Email correspondence with [REDACTED] who were representing [REDACTED].
3. Letter from IBRC to [REDACTED] outlining IBRC's position.
4. Email exchange between Pat Walsh and Walter Hobbs/KPMG enquiring of [REDACTED].
5. Email from Pat Walsh to [REDACTED] referring [REDACTED] to the "company led process".
6. In relation to the hypothetical query of if the offers in the 2nd round were similar, why would we not seek to exclude Island Capital if they were demanding excluding exclusivity and run with 2-3 other parties in a third round to maximise competitive tension, the following points are relevant:
 - The process was controlled by Siteserv and its advisors KPMG and Davy. IBRC has an observing role only.
 - Island Capital's bid would yield the highest proceeds to IBRC.
 - [REDACTED] wanted exclusivity themselves.
 - [REDACTED] offer was dependent on financing and they were not prepared to enter a third phase.
 - [REDACTED] and [REDACTED] offers had more conditions according to KPMG
 - [REDACTED] offer was dependent on exclusivity and a break fee arrangement
 - [REDACTED] offer would yield only €35m to IBRC and it was unclear as to their deductions from that figure.

Karl Cleere ACA

Davy Corporate Finance

The Cable share register has 617 individual shareholdings

Share Register Analysis

Cable Register as at 9 December 2011

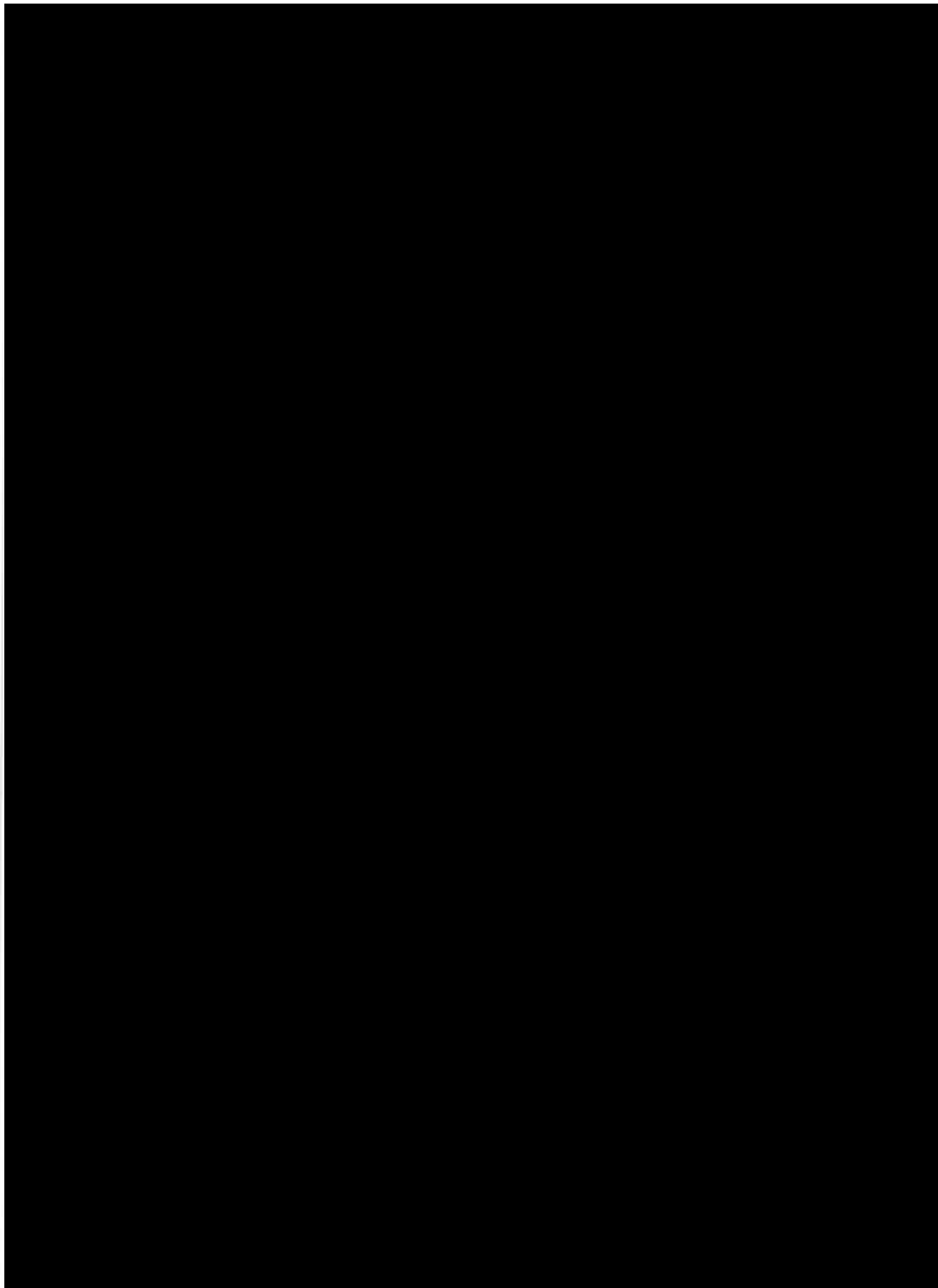
Rank	Shareholder	No. of Shares	% Holding
1.	Brian Harvey	20,273,566	16.0%
2.	Harvest Financial Services (Davycrest)	11,888,433	9.4%
3.	Boundary Capital (Davycrest)	10,803,117	8.6%
4.	Davy Private Client (Davycrest)	7,815,000	6.2%
5.	Desmond Whyte	6,599,285	5.2%
6.	Christopher NESTE	6,415,094	5.1%
7.	John Neal	6,415,094	5.1%
8.	Patrick Jordan (Davycrest)	5,454,545	4.3%
9.	Barry Herriott (Davycrest)	3,615,625	2.9%
10.	Goodbody Nominees (GSSCLT)	2,947,787	2.3%
-	Other Davycrest Nominees Accounts	21,605,100	17.1%
-	Other Shareholders	22,559,395	17.8%
Total Share Capital in Issue (9 th Dec 2011)		126,392,041	100.0%

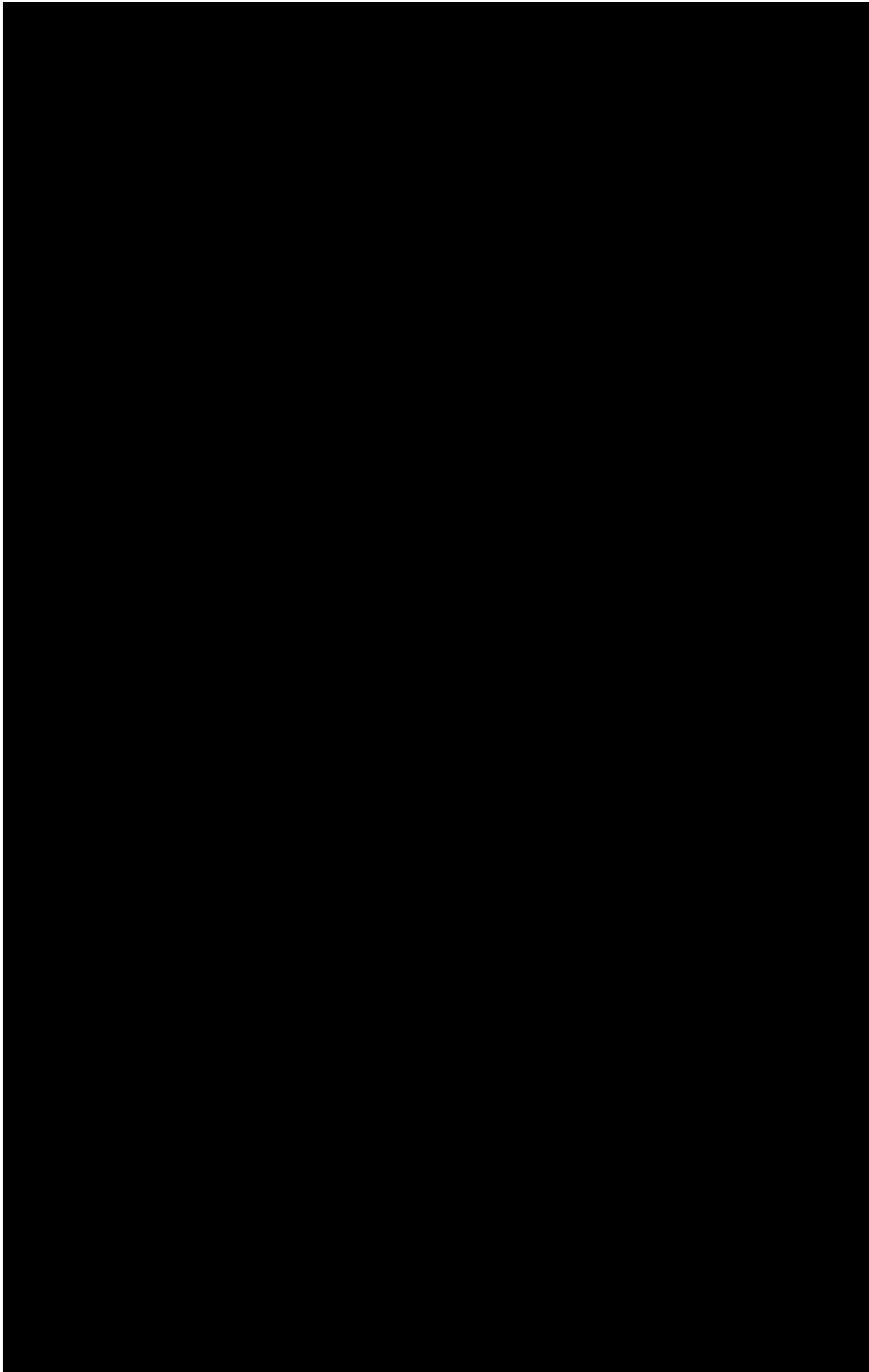
Source: Company Registrar

- The Cable share register has 617 individual shareholdings.
- Approximately 60% of the ordinary shares are held by current/former Cable employees or individuals that received shares as consideration in past acquisitions. Relationships with the later category have been difficult in recent years given the changes in the underlying operating environment.
- The balance of approximately 40% is held by a mix of private and institutional investors, none of which have material stakes.

Appendix 2.2

Offer letter from [REDACTED]





Appendix 2.3

Correspondence with [REDACTED]

[REDACTED]

Addressee Only
Strictly Private and Confidential

[REDACTED]
KPMG Corporate Finance Limited
Russell Court
St. Stephen's Green
Dublin 2
Ireland

[REDACTED]
Davy Corporate Finance
Davy House
49 Dawson Street
Dublin 2
Ireland

29th February 2012

Re: Project Cable Process

Dear Sirs,

Our client, [REDACTED] is disappointed not to be advanced to the next phase of the Project Cable process but accept your decision on the basis that KPMG have indicated that another party has offered a significantly higher price than our [REDACTED] offer. On behalf of [REDACTED], we wish you the best of luck with an expeditious completion. We would also like to note clearly our continued strong interest in the asset and our ability to move quickly if the process does not proceed as expected. To this end we would be prepared to commit to completing a transaction within one month of being awarded exclusivity, on the basis that a reasonable amount of information and access to management would be made available.

Please do not hesitate to contact either myself or [REDACTED] should the situation change.

Yours sincerely

[REDACTED]

[REDACTED]

**Strictly Private and Confidential
Addressee Only**

Pat Walsh
IBRC
Stephen Court
18/21 St. Stephen's Green
Dublin 2

16th March 2012

Re: Project Cable

Dear Pat

We read with interest this morning the announcement made by the board of Siteserv that it has conditionally agreed a disposal to Millington for a cash consideration of €45.42m.

As you will recall [REDACTED] made a cash funded offer of [REDACTED] on January 30th.

We were advised by KPMG Corporate Finance that the preferred bidder was selected on the basis of a higher priced offer. We would welcome an understanding as to why the board of Siteserv and IBRC were happy to proceed with a cash offer that is nearly [REDACTED] lower than our [REDACTED] offer of [REDACTED]

It may be that there is an innocent explanation but if for any reason our clients' offer may have been overlooked, [REDACTED] remain strongly interested and can complete the transaction expeditiously.

I attach copies of [REDACTED] original offer letter together with our follow up letter to KPMG and Davy.

Yours sincerely

[REDACTED]

CC: Richard Woodhouse, IBRC

[REDACTED]

[REDACTED]

Appendix 2.4

Email exchange between IBRC and one of the unsuccessful bidders [REDACTED]

From: Karl Cleere
Sent: 15 February 2012 09:40
To: [REDACTED]
Subject: RE: Stearns

Pat Walsh
15 May 2012 12:01
Karl Cleere
FW: Stearns

From: Pat Walsh
Sent: 14 February 2012 10:12
To: Pat Walsh
Subject: RE: Stearns

Happy to talk [REDACTED] but Company led process well underway at this stage
pat

From: [REDACTED]
Sent: 14 February 2012 10:12
To: Pat Walsh
Subject: RE: Stearns

Worth us speaking about it?
[REDACTED] is very interested assessing whether there's something we can do together on all or part of the
business.

Best
[REDACTED]

From: Pat Walsh [mailto:PatWalsh@ibrc.ie]
Sent: 13 February 2012 08:32
To: [REDACTED]
Subject: Re: Stearns

Its me
Pat Walsh
Head of Restructuring - Group Recovery Management Unit

From: [REDACTED]
Sent: Monday, February 13, 2012 08:28 AM
To: Pat Walsh
Subject: Stearns

Best

A couple of expressions of interest have been lodged with the company, to no avail. Can you direct me to the
current case manager?

Best

[REDACTED]

Appendix 2.5

Correspondence in relation to [REDACTED] from the IBRC board's appointee to the process

From: Pat Walsh [mailto:PatWalsh@ibrc.ie]

Sent: 13 February 2012 16:50

To: Karl Cleere

Subject: FW: Siteserv

From: Walter Hobbs [mailto:walterhobbs@virgocapital.ie]

Sent: 13 February 2012 16:44

To: Pat Walsh; [REDACTED]

Subject: RE: Siteserv

Pat,

[REDACTED] were considered by the board, sub-committee and advisors as part of the original discussion of potential investors and were discounted in favour of the 12 parties that were identified (as previously discussed with the bank of the 12 contacted, 8 came through to initial bids with 6 conducting due diligence and making final offers).

Some of the advisers had anecdotal evidence that [REDACTED] did not have strong financial capability at this time. We were under pressure to keep the A list as short as possible to keep the process manageable. In that respect, judgements had to be made as to who was in and out.

There were a number of contacts with the company and/or its advisors following on from the media speculation in recent weeks – you will recall t

[Note that the email was curtailed in the documentation received from IBRC]