

# DRAFT

IN THE MATTER OF  
IRISH BANK RESOLUTION CORPORATION LIMITED (IN LIQUIDATION)

AND IN THE MATTER OF THE  
COMMISSIONS OF INVESTIGATION ACT 2004

**Draft Terms of Reference for Commission of Investigation**

[Editors note – these terms are in draft only and require to be settled in due course]

1. On the [ ] day of June, 2015, by an Order of the Government made under Section 3 of the Commissions of Investigation Act, 2004, a Commission of Investigation has been established for the purpose of investigating issues of significant public concern relating to:
  - (a) Perform a review of certain activities of IBRC (the “Review”) and produce a report (the “Report”) setting out the findings of the Review regarding certain activities of IBRC,
  - (b) provide the report to Government,
  - (c) for that purpose, obtain any necessary external advices or assistance and ensure that any actual or perceived conflicts of interest which may arise are properly managed in connection with the Review, and
  - (d) comply with the terms of this Order as expediently as possible and subject to the timeframe indicated in paragraph 6 below.
2. The Commission is directed to investigate and to make a report to the Government in accordance with the provisions of Section 32 of the

Commissions of Investigation Act, 2004 (No. 23 of 2004) on the following matters:

The scope, purpose and form of the review and report are to be undertaken in respect of the following terms of reference.

(a) Scope

The review shall consider 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 by 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.

(b) Purpose

- (i) The review shall investigate, in relation to each such decision, transaction and activity within the scope of the review:
  - (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 and agents, in respect of any transactions, activities and management decisions identified in 2(a) A and B above.

(C) whether it can be concluded from the information available within the Bank 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 IBRC Act 2013 set out in section 3 thereof,

(D) examine 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.

(E) investigate 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.

(c) Form

(i) A report is to be produced in relation to the review, which:

(A) is to set out the scope and findings of the review in fulfilment of the purposes; and

(B) is to respect obligations of confidentiality and to respect commercial sensitivity where those are not incompatible with the public interest.

**3.** To report on any other matters of concern arising from its investigation of the above matters and to make any further recommendations as the Commission sees fit.

4. The Commission shall exercise discretion in relation to the scope and intensity of the investigation it considers necessary and appropriate, having regard to the general objective of the investigation.
5. The Government has appointed the Honourable Mr. Justice [ ], Judge of the [ ] Court, to act as the Sole Member of the Commission of Investigation.
6. The Commission of Investigation is directed to conduct the task assigned to it under these Terms of Reference and to report to the Government no later than the 31st December 2015, subject to section 6(6) of the Commissions of Investigation Act, 2004.