

PART 1

INTRODUCTION

INTRODUCTION

APPOINTMENT OF INSPECTORS

On 30 March 1998, on the application of the Minister for Enterprise, Trade and Employment, the Inspectors were appointed by the High Court under Section 8 of the Companies Act, 1990 to investigate and report on the affairs of National Irish Bank Limited (“the Bank”, “NIB”) relating to:

- (i) the improper charging of interest to accounts of customers of the Bank between 1988 and 30 March 1998;
- (ii) the improper charging of fees to accounts of customers of the Bank between 1988 and 30 March 1998;
- (iii) the improper removal of funds from accounts of customers of the Bank between 1988 and 30 March 1998;
- (iv) all steps and action taken by the Bank, its directors and officers, servants or agents in relation to the charging of such fees or interest or the removal of any funds without the consent of the account holders and their actions arising from the issues when discovered;
- (v) the manner in which the books, records and accounts of the Bank reflected the foregoing matters;
- (vi) the identity of the person or persons responsible for or aware of any of the practices referred to above;
- (vii) whether other unlawful or improper practices existed or exist in the Bank from 1988 to 30 March 1998 which served to encourage the evasion of any revenue or other obligations on the part of the Bank or Third Parties or otherwise.

On 15 June 1998, again on the application of the Minister for Enterprise, Trade and Employment, the Inspectors were similarly appointed to investigate and report on the affairs of National Irish Bank Financial Services Limited (“the Company”, “NIBFSL”) relating to:

- (a) The effecting of insurance policies through NIBFSL with:
 - Clerical Medical Insurance Company Limited
 - Scottish Provident International Life Assurance Limited
 - Old Mutual International (Guernsey) Limited
- (b) The role of NIBFSL, its officers, servants and employees in connection with the effecting of the said policies of insurance.
- (c) The purposes behind the execution of the aforesaid policies of insurance.

- (d) The knowledge of the management and board of directors of NIBFSL of the effecting of the said policies of insurance.
- (e) The identity of the person or persons responsible for or aware of the effecting of or purposes behind the said policies of insurance.

Both Orders were amended on 31 July 2001. The effect of the amendments was to join the Bank in the Order of 15 June 1998 and make it, as well as the Company, the subject of that Order. The amendments also extended the list of insurance companies set out at (a) above to include CMI Insurance Company Limited, Clerical Medical and General Life Assurance Society and Clerical Medical Investment Group Limited.

Copies of the four Orders are set out at Appendices 1 to 4 to this report.

THE COMPANIES

National Irish Bank Limited was incorporated as Midland Montague Leasing (Ireland) Limited on 21 November 1978. It changed its name to Northern Bank (Ireland) Limited on 25 March 1986 and was licensed to carry on banking business by the Central Bank of Ireland on 28 April 1986, taking over the Republic of Ireland business of Northern Bank Limited on 1 July 1986.

On 31 October 1987 the share capital of the company was acquired by National Australia Finance (UK) Limited, now known as National Australia Group Europe Limited, a subsidiary of National Australia Bank Limited. On 15 April 1988 the company changed its name to National Irish Bank Limited.

National Irish Bank Financial Services Limited was incorporated as Northern Bank Trustee Company Limited on 12 January 1970. It changed its name to Northern Bank Trust Corporation Limited on 6 January 1976, to National Irish Bank Trust Company Limited on 15 April 1988, and finally to National Irish Bank Financial Services Limited on 3 November 1989.

National Irish Bank Financial Services Limited is a wholly owned subsidiary of National Irish Bank Limited.

MANAGEMENT STRUCTURE OF THE COMPANIES

The management structure of the Bank changed on a number of occasions during the period covered by the investigations. Organisational developments, insofar as they are relevant to areas the subject of the Inspectors' investigations and this report, are outlined below.

Summary

- The position of chief Dublin-based executive of the Bank was held by a number of individuals during the period, with differing titles.

- Reporting to the chief executive was a General Manager in charge of banking activities with responsibility for a number of areas including the retail branch network of the Bank; the title of this position also changed during the period.
- The executive in charge of the branch network had over the period a variable number of regional or area managers reporting to him; the titles and reporting lines of these individuals, to whom branch managers reported, changed on a number of occasions during the period 1988 to 1998.
- Separate from the branch network was the Financial Advice and Services Division of the Bank, set up in 1989 and headed by the same individual for the entire period covered by the investigation. He reported to the chief executive up to 1 January 1995, to the General Manager – Banking until 23 May 1997, and thereafter, up to the date of appointment of the Inspectors, to the Chief Operating Officer (see below).
- The Head of Audit reported to the chief executive up to 1 July 1991, then directly to the audit committee of the Board until April 1997, when responsibility for internal audit was transferred to National Australia Bank’s European Audit function, based in Glasgow.

The Chief Executive

Jim Lacey was appointed Chief Executive of the Bank in February 1988, the appointment taking effect from 1 April of that year, and he held that position until 22 April 1994. Mr Lacey oversaw a number of changes in organisational structure during that period.

Barry Seymour was appointed Executive Director of the Bank on 22 April 1994 and held that position until 15 July 1996. He too introduced a number of organisational changes.

Philip Halpin became Chief Operating Officer of the Bank on 16 July 1996, holding this position at the date of the Inspectors’ appointment. He reported to a Belfast-based Chief Executive – to John Wright from 16 July 1996 to 5 March 1997, and thereafter to Grahame Savage, Chief Executive at the date of the Inspectors’ appointment.

Each of the above-named was on the circulation list for internal audit reports on branches while he held the position indicated.

The General Manager – Banking

Frank Brennan

Frank Brennan was appointed General Manager – Retail Banking in the management structure put in place in May 1988, shortly after Mr Lacey became Chief Executive. Mr Brennan had previously been General Manager (Operations). In both roles he had

charge of the branch network, reporting to the Chief Executive. Mr Brennan held this title until 1 July 1991, but on 1 October 1990, Dermott Boner (see below) was appointed Head of Retail, reporting directly to the Chief Executive in respect of the branch network, so from that date Mr Brennan was no longer directly responsible for the branches and from 30 September 1990 he ceased to be on the circulation list for internal audit reports on branches.

Mr Brennan subsequently held a number of other positions in the Bank:

- From 1 July 1991 Mr Brennan became General Manager – Corporate Services, retaining responsibility for Management Services (the Bank’s information technology function); Internal Audit also reported to him in relation to administrative and operational matters in this role.
- Mr Brennan’s title changed to General Manager – Administration on 3 May 1993, when he assumed responsibility for the Treasury and International Department (then headed by Philip Halpin) in addition to his existing duties. He retained this title and his duties remained largely unchanged in a reorganisation in December 1994.
- Mr Brennan’s title changed to General Manager Risk Management and Administration in March 1996 “*to illustrate the emphasis we place on this element of his responsibilities*”, according to Mr Seymour’s memorandum to staff advising the setting up of a Risk Policy Committee.
- A reorganisation implemented by Mr Halpin in May 1997 saw Mr Brennan’s duties unchanged, but his title amended to Head of Risk and Administration. Mr Brennan held this title at the date of the Inspectors’ appointment.

Basil Noone

The late Basil Noone was General Manager – Banking from 1 July 1991 to 30 April 1993. A transferee from the parent bank, Mr Noone held no other positions in the Bank before or after his period as General Manager – Banking. During this time, Mr Noone was responsible for the branch network, with Mr Boner reporting to him in this regard. He was on the circulation list for internal audit reports on branches from August 1991 to February 1993.

At the time the Inspectors were interviewing present and former senior management of the Bank, they were informed by the Bank that Mr Noone, then retired and living in Australia, was extremely ill. He has since died. Accordingly, he was not interviewed by the Inspectors and because of this there is no finding in the report as to his knowledge of, or responsibility for, any of the practices under investigation.

Michael Keane

Michael Keane, formerly Head of Marketing (from 1 June 1988) became General Manager – Banking, with responsibility for Corporate and Retail Banking, on 3 May

1993 and held this position until 18 August 1996. There were several changes in the persons reporting to him in relation to retail banking during this period (see below). Mr Keane was on the circulation list for internal audit reports on branches from March 1993 to July 1996.

- Mr Keane became General Manager – Marketing and Distribution on 19 August 1996. He left the Bank on 23 May 1997.

Ken Windeyer

Ken Windeyer joined the Bank as General Manager – Banking on 19 August 1996 and held this position until 31 July 1997.

- Mr Windeyer became Head of Operations and Projects on 1 August 1997, his title subsequently being changed to Head of Operations and Programmes, a position he held at the date of the Inspectors' appointment.

Brian O'Driscoll

Brian O'Driscoll became Head of Personal Markets on 1 August 1997, in which position he became responsible for the branch network, the position of General Manager – Banking having been effectively abolished and replaced by separate executive positions in respect of personal and business markets. Mr O'Driscoll held this position at the date of the Inspectors' appointment.

The Regional Managers (including Head of Retail Banking, Head of Retail)

The management structure and the titles of the personnel to whom branch managers reported changed on a number of occasions during the period covered by the investigations.

- With effect from 1 June 1988, ***Dermott Boner*** and ***Kevin Curran*** were appointed Regional Managers, with responsibility for nineteen and twenty-two branches respectively; both reported to Mr Brennan, appointed General Manager – Retail Banking at the same time. Mr Brennan was assigned direct responsibility for five branches.
- On 1 October 1990 Mr Boner was appointed Head of Retail, reporting directly to the Chief Executive; to him reported Mr Curran and two newly appointed Regional Managers, ***Tom McMenamin*** and the late ***Michael O'Rourke***.

By reason of the death of Mr O'Rourke, it has not been possible for him to be heard and accordingly the Inspectors make no finding in this report in relation to his knowledge and responsibility.

- From 1 July 1991, Mr Boner reported to Basil Noone, appointed General Manager, Banking at that time, while the three Regional Managers identified above continued to report to him.

- On 3 May 1993, Mr Boner became Chief Manager Retail. Mr McMenamín and **Barry Grogan** (a secondee from National Australia Bank) reported to him as Area Managers. Mr Curran retained his position as Regional Manager. Both Mr Boner and Mr Curran reported to the newly appointed General Manager – Banking, Michael Keane.
- A reorganisation effective from 1 January 1995 saw the retail business of the Bank once more divided into three regions, headed by Messrs Boner, Curran and McMenamín. They reported to Mr Keane.
- The retail business was again reorganised in February 1996, when following the retirement of Mr Boner, Mr Curran was appointed Head of Retail Banking, reporting to Mr Keane, and the retail business was divided into six areas, each the responsibility of an Area Manager. The Area Managers reported to Mr Curran up to the date of his retirement from the Bank on 4 July 1997, and thereafter to Mr O’Driscoll. This was the regional/area management structure in place at the time of the appointment of the Inspectors.

The Financial Advice and Services Division

Separate from the branch network was the Financial Advice and Services Division (“FASD”) of the Bank, set up in 1989. This Division was responsible for the marketing of financial products, including those the subject of the investigation ordered on 15 June 1998. The executive in charge of this division, Nigel D’Arcy, reported to Mr Lacey as Chief Executive, and thereafter to Mr Seymour as Executive Director until 1 January 1995. From the latter date until 23 May 1997 he reported to the General Manager – Banking, and thereafter, up to the date of appointment of the Inspectors, to the Chief Operating Officer.

The FASD comprised a number of financial services managers, an investment manager and support staff, reporting to Mr D’Arcy.

While the financial results of the FASD were accounted for in NIBFSL, the FASD personnel were at all times during the period covered by the investigation employed by the Bank.

The Internal Audit Function

The position of Head of Audit was held by a number of individuals during the period covered by the investigations – Hilary Flood, Tim McCormick, Enda Carberry and Paul Harte.

The Head of Audit reported to the Chief Executive until 1 July 1991. From that date he reported directly to the Audit Committee of the Board, with reporting to the General Manager – Corporate Services in respect of operational and administrative matters. Responsibility for internal audit was transferred to National Australia Bank’s European Audit function, based in Glasgow, in April 1997, at which time the audit approach and form of audit report were also significantly changed.

Review of branch audit reports prepared by the Bank's internal audit function was a significant element in the Inspectors' work; this is addressed in greater detail at page 17 below.

BACKGROUND TO APPOINTMENT OF INSPECTORS

Sale of CMI Insurance Policies

In January and February 1998 RTE television reported that NIB had been involved in the effecting of policies of life assurance on behalf of its customers with a number of companies in the Clerical Medical International Group ("CMI"), companies said not to be authorised under EU insurance legislation to carry on the business of life assurance in the State. It was later disclosed that in addition to CMI, policies were effected on behalf of its customers with Scottish Provident International Life Assurance Limited, with an address in the Isle of Man, and Old Mutual International (Guernsey) Limited, with an address in Guernsey in the Channel Islands, both similarly said to be unauthorised.

The key news media allegations were:

- Bank representatives gathered information on customers holding non-resident accounts, accounts in false names and customers with funds that had not been disclosed to the Revenue;
- The identified customers were invited to participate in an off-shore life assurance linked investment scheme with CMI;
- Most of the monies invested were redeposited with the Bank; for the account holders this had the effect that the nature of their original deposits, which in many cases was at the risk of discovery by the Revenue, was transformed;
- Senior managers in the Bank were aware that the off-shore investment scheme was being used to help customers evade tax, and
- Some senior managers of NIB encouraged customers to evade tax.

On 23 March 1998 the Minister for Enterprise, Trade and Employment, pursuant to the provisions of the Insurance Acts, appointed an authorised officer to examine the affairs of NIBFSL in light of these allegations.

Interest and Fee Charging Practices

On 25 March 1998 RTE television reported that employees of the Bank, under pressure to increase profits, had operated two distinct practices whereby improper charges were made to customer accounts.

The report claimed that interest charges had been increased, or "loaded", without

legitimate reason, and without customer knowledge, in four branches of the Bank – at Carndonagh, Carrick-on-Shannon, Cork and Walkinstown. The report added that although the Bank's internal auditors had identified the practice of interest loading at two of these branches, no refunds had been made to customers.

It was also alleged in the programme that customers' fees had been uplifted in the College Green branch of the Bank in November 1989 without customer knowledge or underlying justification.

Concern at these allegations prompted the Minister for Enterprise, Trade and Employment to apply for the appointment of inspectors to the Bank, under Section 8, Companies Act, 1990, and the appointment of the Inspectors was ordered by the High Court on 30 March 1998, as set out above.

Report of Authorised Officer

On 4 June 1998 the authorised officer appointed to investigate the affairs of NIBFSL reported to the Minister on an interim basis. From his examination of policy files of all persons who had purchased policies through NIBFSL in the period 1990 to 23 March 1998 from CMI, Scottish Provident International Life Assurance Limited, and Old Mutual International (Guernsey) Limited it appeared to him that:

- 282 policy holders might be in breach of Section 9, Insurance Act, 1936, and that the committal of these breaches appeared to have been assisted by persons employed by NIBFSL;
- The CMI product was promoted, to some limited extent, as a tax avoidance vehicle, and
- In the period prior to the removal of Exchange Controls in 1992, NIBFSL facilitated the movement of funds of Irish residents out of the country.

The authorised officer recommended to the Minister that his interim report be passed to the Director of Public Prosecutions for his consideration and that it be passed to the inspectors investigating the affairs of the Bank, so that they might consider whether they wished to broaden the scope of their investigations to encompass NIBFSL.

This did not become necessary as the Minister applied to the High Court on 15 June 1998 to have inspectors appointed to investigate the affairs of NIBFSL and, as set out above, the Inspectors were appointed to carry out such investigation.

ORGANISATION OF THE REPORT

From the time the Inspectors were appointed to investigate the affairs of NIBFSL in addition to investigating the affairs of NIB, both investigations were carried on in conjunction. While a separate interim report relating to the Bank was furnished to the High Court on 10 June 1998 and a similar report relating to the Company was

furnished to the High Court on 11 August 1998, all subsequent interim reports, dated respectively 17 December 1998, 29 July 1999, 27 July 2000, 3 December 2001, 17 July 2002 and 28 July 2003 related to both investigations. In addition, the matter was mentioned before Mr Justice Kelly on 4 November 2003 and on 4 February 2004, when the position in the two investigations at that stage was the subject of an affidavit presented to the Court. The matter was further mentioned before Mr Justice Kelly on 2 April 2004.

Following the established practice, this report also deals with both investigations.

The report deals separately with the improper practices investigated and the knowledge of, and responsibility for, these practices.

First addressed is the evasion of Revenue obligations, under three headings as follows:

Non-Resident Deposit Accounts	Part 2
Fictitious and Incorrectly Named Accounts	Part 3
Special Savings Accounts	Part 4

The sale of CMI and other policies is addressed in Part 5.

Improper practices relating to interest and fees are dealt with in the succeeding parts:

Improper Charging of Interest	Part 6
Improper Charging of Fees	Part 7

Each of these parts, insofar as is appropriate, deals with the Banks' systems and procedures, the development of the practice investigated, the evidence received by the Inspectors, and the Inspectors' conclusions on the existence of the practice.

The related issues of knowledge and responsibility of Bank personnel in respect of each of the practices are addressed in Part 8.

APPROACH TO RESPONSIBILITY

While the Inspectors are satisfied that many, but not all, branch managers engaged in the practices being investigated, they are nonetheless of the opinion that senior management in the Bank was responsible for the existence of those practices. Senior management had the duty to ensure that the practices did not exist and it was senior management that had the authority to put an end to them. The individual manager's authority was restricted to what happened in his or her branch. He or she cannot be held responsible for practices which existed across the branch network.

In the opinion of the Inspectors, the position of the financial services managers in the FASD was different from that of the branch managers. They were few in number, never exceeding six and mostly being only five, and they met regularly so that each

was aware of the practices and activities of the others. The Inspectors have found a number of these financial services managers, together with certain members of the senior management team, responsible for the promotion of the CMI policies as a secure investment for funds undisclosed to the Revenue.

LEGAL ADVICE AND COURT ACTIONS

The Inspectors engaged William Fry as their legal advisors. Assisted by Counsel, William Fry has advised on various issues arising in course of the Inspectors' work and has represented them in the Court actions referred to below.

Court Action – Concerns of Prospective Interviewees

At the commencement of their investigation of the affairs of the Bank the Inspectors wrote to all current or former employees of the Bank who had held positions at the level of manager or above within the Bank during the period covered by the investigation. The purpose of the letter was to request that they furnish to the Inspectors all information or documentation in their possession that might be relevant in any way to their enquiries.

Certain employees replied directly to the Inspectors. In addition the Inspectors received responses from solicitors acting for individual employees or former employees of the Bank who claimed that their clients, if interviewed by the Inspectors, would be entitled to certain rights, the most important of which were:

- the right to be legally represented,
- the right to advance notice of all questions to be put to them,
- the right to receive all documents concerning them, and
- the right to refuse to answer questions if the answers might incriminate them.

In view of the claims being made on behalf of the proposed interviewees, the Inspectors wrote to the solicitors who had made them setting out the procedures they intended to follow in conducting the investigation. The following is an extract from the letter sent by the Inspectors on 4 June 1998 to Mason Hayes & Curran, who represented 75 employees or former employees of the Bank:

1. *Right to refuse to answer questions on the ground of self incrimination*

We have been advised that a person giving evidence to inspectors pursuant to Section 10 of the Companies Act, 1990 is not entitled to refuse to answer any question on the ground that the answer may tend to incriminate him or her. ...

2. *Procedures to be followed*

We have explained that we consider that the first phase of interviews with witnesses will be an information gathering exercise. These interviews will be conducted in private. A transcript of the witness's evidence will be available

to the witness from the stenographers on payment of the cost of the additional copy. We have no objection to any witness being accompanied by a legal advisor at such interview but, with respect, we consider that it would be inappropriate, certainly premature and probably impossible to treat such interviews as approximating to a trial with an entitlement to attend and cross examine the evidence given by other witnesses.

There can be no question of our indemnifying your clients or any of them in relation to costs, whether legal or otherwise. Section 13 of the Companies Act, 1990 states that the expenses of and incidental to the investigation shall be defrayed by the Minister for Justice. We have no role to play in this regard and any question of costs which you may wish to pursue must be addressed to the Minister.

We do not propose to circulate lists of questions in advance of the taking of evidence from witnesses. Given the nature of our work, it will be impossible to predict with certainty what questions will or will not arise at any particular interview.

If, however, the outcome of the first phase of interviews indicates that it is possible that adverse conclusions may be drawn in relation to certain individuals dependent in whole or in part on the testimony of others, then it is our intention that a hearing will be held at which such issues can be addressed, and at which persons who may be at risk of an adverse finding will be entitled to attend to hear the evidence, cross examine the witnesses and give evidence themselves. In the light of these procedures, we consider it would be inappropriate and inconsistent with the statutory procedure to provide copies of the draft Report to witnesses and invite comments on it.

A letter in similar form was sent to the other solicitors who had written to the Inspectors. The Inspectors decided that the issues raised by the solicitors who had written to them should be determined as rapidly as possible since, if left uncertain, they would have resulted in continual delays. Accordingly, the Inspectors sought directions from the High Court pursuant to Section 7 (4) of the Companies Act, 1990 as to whether a right to refuse to answer questions on the grounds of possible self incrimination could be asserted by interviewees in the context of their investigations.

The Inspectors also sought a determination that the procedures which they proposed to adopt, as outlined in their letter of 4 June 1998 to Mason Hayes & Curran, were appropriate and proper for the purpose of the investigations.

The application for directions was heard on 10 July 1998 before Mr Justice Kelly who, by his Order of 11 June 1998, directed that the firms of solicitors representing employees and former employees be asked to agree amongst themselves on the nomination of one named individual to represent all of their clients and to nominate one firm of solicitors and one team of Counsel to appear on the hearing of the above-noted issues. A representative respondent was duly nominated and the matter came for hearing in the High Court before the late Mr Justice Shanley who, in his

judgement delivered on 13 July 1998, declared:

that persons (whether natural or legal) from whom information, documents or evidence are sought by the Inspectors in the course of their investigation under the Companies Act, 1990 are not entitled to refuse to answer questions put by the Inspectors or to refuse to provide documents to the Inspectors on the grounds that the answers or documents may tend to incriminate him, her or it.

and

that the procedures outlined by the Inspectors in their letters dated the 4th June, 1998 [to Mason Hayes & Curran and others] are consistent with the requirements of natural and constitutional justice.

A copy of the High Court Order is set out at Appendix 5.

The representative respondent lodged Notice of Appeal to the Supreme Court against the entire of the judgement dated 13 July 1998.

The Judgement of the Supreme Court was delivered on 21 January 1999 by Mr Justice Barrington, all of the other members of the Court concurring. The judgement upheld the decision of the late Mr Justice Shanley with the added proviso that “*a confession of a Bank official obtained by the Inspectors as a result of the exercise by them of their powers under Section 10 of the Companies Act, 1990 would not, in general, be admissible at a subsequent criminal trial of such official unless, in any particular case, the trial Judge was satisfied that the confession was voluntary*”. The appeal against that part of the judgement of the late Mr Justice Shanley which approved the procedures which the Inspectors proposed to adopt was withdrawn, leaving standing his decision on this issue.

A copy of the Order of the Supreme Court is set out at Appendix 6.

Court Action – Scope of Enquiry into DIRT-related Matters

On 17 December 1998 the Dáil passed a resolution pursuant to the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998, which had been passed into law on 16 December 1998. This resolution provided *inter alia* that the Comptroller and Auditor General be requested to carry out an industry-wide investigation into the operation of Deposit Interest Retention Tax (“DIRT”) by financial institutions and to furnish a report which would set out such facts and evidence as he deemed appropriate and would facilitate the efficient, effective and expeditious completion of the hearings by the Committee of Public Accounts into such matters.

One of the consequences of this resolution was that the Comptroller and Auditor General would be required to carry out an investigation into the operation of DIRT by NIB.

The Bank contended that, if the Inspectors were also to investigate compliance by the Bank with its DIRT obligations, this would result in a duplication of investigation and that it was “*unnecessary, wasteful and time consuming, both for the investigating*

authorities and for the Bank and the Company, because the same issue is being covered both by the Inspectors and by the Comptroller and Auditor General ... [when] both ... have all the necessary powers to conduct and complete a thorough investigation ...". The Bank accordingly sought an Order directing that the Inspectors should not engage in a DIRT compliance investigation of the Bank which extended beyond effecting such investigation as they considered necessary to report upon any issues of unlawful or improper practices that exist or existed in the Bank from 1988 to 30 March 1998 which served to encourage the evasion of any Revenue or other obligations on the part of the Bank or third parties or otherwise, and which related to the effecting or selling or marketing, in any capacity whatsoever, of insurance policies through the Bank and/or NIBFSL with the life assurance companies referred to in the Order of 15 June 1998.

The Bank's application was refused by Mr Justice Kelly on 19 March 1999.

A copy of the High Court Order is set out at Appendix 7.

Court Action – Access to Records of Isle of Man Branch

In September 1991 the Bank obtained a licence to operate a branch in the Isle of Man and this branch was available to receive deposits from 1 October 1991. On 1 December 1999, in the context of paragraph 2 (vii) of the Order dated 30 March 1998, the Inspectors wrote to the Bank requesting that they be provided with a listing of the deposit accounts at the Isle of Man branch of the Bank at 30 September 1992, such listing to include the name(s) on the account, the address(es) of the depositor(s) and the balance standing to the credit of each account at 30 September 1992.

The Bank responded that it had been advised by Isle of Man counsel that to supply the information sought without the protection of an Order of the Isle of Man Courts would expose the Bank to legal action in the Isle of Man Courts from account holders at its Isle of Man branch, on the basis that confidential information was being released by the Bank to a third party.

On 6 October 2000, the Inspectors brought a petition to the High Court of Justice of the Isle of Man pursuant to the Bankers' Books Evidence Act 1935 for an Order permitting inspection of the books of the Isle of Man branch of the Bank for the purpose of preparing a list of deposit accounts at that branch as at 30 September 1992, giving the details requested in the letter of 1 December 1999.

The Bank opposed the Inspectors' petition and on 27 April 2001 the petition was refused on the basis that the investigation by the Inspectors into the affairs of the Bank is not a legal proceeding for the purposes of the Bankers' Books Evidence Act 1935.

WORK DONE

Summary

The work in the investigations was carried out in two phases in accordance with the procedures which were approved in the High Court by the late Mr Justice Shanley in his judgement of 13 July 1998. The details of the procedures are set out above at pages 12 and 13. While the entire of Judge Shanley's judgement was appealed to the Supreme Court, the appeal against the part approving the Inspectors' procedures was withdrawn, so Judge Shanley's approval of their procedures remained unaltered.

The details of the two phases are set out below.

The First Phase

In the first phase, the Inspectors' work broadly comprised four principal elements:

- Examination of documents furnished to the Inspectors by the Bank on request and, to a lesser extent, documentation provided by other parties;
- Sworn oral evidence taken from present and former Bank staff and executives, customers of the Bank, and a number of other individuals considered by the Inspectors to be in possession of information concerning the affairs of the Bank or the Company;
- Discussions with officials of the Bank, both of a substantive and facilitative nature, and
- Evaluation of work which the Bank carried out in order to establish the factual position in relation to the allegations and to effect appropriate action.

The Inspectors also:

- Advertised their appointment in national daily newspapers summarising the terms of their appointment to investigate the Bank, seeking information relating to the practices being investigated.
- Corresponded and met with representatives of various State Agencies including the Revenue Commissioners, the Central Bank of Ireland and the Department of Enterprise, Trade and Employment.

The Inspectors did not investigate individual customer accounts, as:

- they were advised that the Bank had some 317,000 customer accounts as of 31 March 1998;
- such work would have been extremely time consuming and costly, and
- would have replicated work which the Bank had advised the Inspectors was to be undertaken by its staff, the results of which were shared with the Inspectors.

The findings set out in this report therefore do not include listings of improper interest or fee charges, bogus non-resident accounts, or branches ranked by reference to the incidence of improper practice. Detailed investigations carried out by the Bank, and the results thereof, are mentioned in the relevant sections of the report, but neither the Inspectors nor their agents participated in this work.

Review of Documentation

The Inspectors were assisted in their examination and interpretation of documentation by senior personnel from PricewaterhouseCoopers.

Particular emphasis was placed on review of internal audit reports on branch visits carried out during the period covered by the investigation, as they represent a contemporaneous record of the results of examination of branch procedures and records over that time. The Bank advised the Inspectors that a total of 202 branch audit reports had been prepared in the period 1988 to 1997, but that 38 of these were no longer available (20 in respect of 1988, 17 in respect of 1989 and 1 in respect of 1995). The Inspectors' review was perforce limited to the 164 reports furnished.

Interviews

All sworn interviews were carried out by the Inspectors; PricewaterhouseCoopers personnel assisted in preparing for interviews (particularly by way of identifying relevant documentation), and in following up matters arising from interviews.

A total of 235 sworn interviews was conducted in the first phase of the investigations, this total comprising 142 interviews with customers of the Bank (the majority of whom were investors in CMI policies), 87 interviews with present or former Bank staff, including senior executives and directors, 10 of whom were interviewed on more than one occasion, and 6 interviews with individuals falling into neither of these categories. A stenographer was present at each interview, and copy transcripts were made available on request to interviewees. Due to a Court action initiated by the Inspectors, required to clarify the position of interviewees and some ancillary matters (see above), with three exceptions, interviews with Bank personnel did not commence until February 1999.

Approximately 113 people held the position of branch manager during the period covered by the investigations. After interviewing 35 of these managers, the Inspectors were satisfied that they had received sufficient evidence to enable them to conclude that the practices being investigated existed.

The Inspectors have concluded that it would not be fair to name in their report the branch managers and Bank customers interviewed. Likewise, branch manager and customer interviewees quoted in the report have not been identified.

Numerous discussions were held with Bank executives in the course of the investigation. A number of these were of a formal nature, particularly in relation to reports prepared, and action taken, by the Bank. There were many other meetings on a less formal basis, directed at expediting progress in the Inspectors' work. In

addition to these direct contacts, there was extensive correspondence both with the Bank and its legal advisors.

Review of Actions Taken by the Bank

Fieldwork in review of actions taken by the Bank was carried out by PricewaterhouseCoopers personnel working to the Inspectors' direction. These reviews were followed by formal meetings with senior Bank personnel and by presentations from Bank executives in relation to actions taken by the Bank in the period following the Inspectors' appointment.

Authorised Officer - Acknowledgement

In conducting their investigation into the affairs of NIBFSL, the Inspectors had the benefit of sight of the report of the authorised officer Mr Cosgrove, and of discussions with Mr Cosgrove, whose assistance in expediting the initial phase of their investigation of the Company the Inspectors gratefully acknowledge.

The Second Phase

Individuals

After the conclusion of the first phase of the investigations, the Inspectors prepared their provisional findings and then wrote to every individual who could be adversely affected by them, setting out the provisional findings which affected the recipient and details of the evidence relevant to his or her knowledge and responsibility.

In this letter each person was invited to attend before the Inspectors for the purpose of making whatever submission or argument they might wish to present. In addition they were informed that they could give evidence themselves, call witnesses, and examine any witness if they so wished. They were requested to let the Inspectors know within fourteen days whether they wished to attend before the Inspectors or make a written submission.

Progress during this phase was very slow. It was not practical to impose strict time limits.

The Inspectors received numerous requests for documentation and for transcripts of the evidence of other persons interviewed by the Inspectors; consideration by the parties of material furnished on foot of these requests proved time consuming.

There were significant delays while individuals were making up their mind if they wished to cross-examine someone and, if they did, who it should be. Then, where cross-examination of a witness was sought, adequate notice had to be given to the witness, his or her availability confirmed, and a date fixed which suited all parties and, since there were altogether twenty four separate cross-examinations of witnesses, this part of the phase occupied a considerable amount of time. A number of individuals introduced expert witnesses; several also offered further direct evidence.

In addition, the Inspectors and their legal advisors had to deal with a substantial volume of correspondence from the lawyers of the persons involved.

Not all the parties to whom the Inspectors wrote in this phase of the investigations sought to cross-examine witnesses. With one exception however, all made written submissions, the majority supplementing these by oral submission through counsel.

As a result of the various matters referred to, this part of the second phase of the investigation took approximately eighteen months.

The Inspectors considered, at length and in detail, all matters arising during this phase – the points raised by the legal advisors of the individuals concerned, the testimony of witnesses cross examined, the evidence of expert witnesses, and the submissions, written and oral, made on behalf of the party. As a result, the provisional findings in respect of a number of persons were modified.

The submissions received on behalf of the different individuals were of such substance and variety that it would not be possible for the Inspectors to give their responses to each without inordinately increasing the volume of the report. The Inspectors have, however, taken fully into consideration the submissions of each individual before reaching a final conclusion as to their knowledge or responsibility.

In arriving at their conclusion in regard to any individual, the Inspectors relied solely on evidence notified to such individual and on any additional evidence adduced by the individual by way of examination or cross-examination of a witness or witnesses.

Where any conflict arose between the evidence of any individual and the evidence of a witness or witnesses which would support an adverse finding, the individual was given an opportunity to cross-examine such witness or witnesses, and the conflict was resolved by the Inspectors having regard to their view of the credibility of the individual and of the relevant witness or witnesses in the light of their cross-examination.

The Bank

Following the completion of their provisional findings in respect of individuals, the Inspectors, on 1 August 2003, furnished their draft report to the Bank. In their letter accompanying the draft, the Inspectors informed the Bank, as they had informed each individual to whom they had written at the commencement of the second phase, that in addition to making submissions either written or oral, or both, the Bank would be entitled to cross examine witnesses on whose evidence the Inspectors were relying, and to call further evidence if it wished. The Bank did not take up the option of calling or cross-examining any witnesses.

Following a number of preliminary meetings, on 24 March 2004, senior executives of the Bank, accompanied by the Bank's lawyers, delivered to the Inspectors the Bank's response to the draft report. The response is a document entitled "Reaction Paper" containing four and a half pages of text and seven schedules, which is reproduced in full at Appendix 19.

In this Reaction Paper the Bank does not take issue with anything contained in the draft report and does not seek any change in it.

The text of this report, therefore, is unaltered from that passed to the Bank on 1 August 2003, apart from this account of the second phase of the investigation as it relates to the Bank, the inclusion of the Reaction Paper as an additional Appendix and a number of references thereto in the text, some minor textual amendments, and a small number of deletions arising from the Inspectors' final review of the draft report.

In the Reaction Paper the Bank expresses its regret that during the period under investigation events took place which fell short of the standards customers and third parties dealing with the Bank were entitled to expect, and apologises to all those who have been affected by the events. The Bank describes the terms of the draft report as being of the utmost gravity and states that accordingly the Bank's view is that the taxpayer should not be liable for the Inspectors' costs and the Bank will therefore offer to discharge the Inspectors' reasonable taxed costs of the investigation, as recommended in the draft report furnished (see below).

The Reaction Paper also sets out how the Bank has responded, and is responding, to certain of the Inspectors' findings, and the changes the Bank has made to ensure that events of the type suggested in the original allegations could not recur.

At page 4 of the Reaction Paper, the Bank lists payments, incurred and anticipated, amounting to Euro 64 million, arising from the issues addressed in the investigations, of which Euro10.8 million relates to the Bank's ongoing "Offshore Investors' Settlement Programme" and Euro12.5 million represents refund and compensation payments to customers in respect of fees and interest. This latter amount includes anticipated additional refunds of Euro10.6 million arising from a programme of work and refunds devised in light of the Inspectors' views expressed in their draft report. This programme is described at Schedule V to the Reaction Paper.

RECOMMENDATION ON COSTS

Section 13 (3) of the Companies Act, 1990 provides that "*The report of an inspector may, if he thinks fit ... include a recommendation as to the directions (if any) which he thinks appropriate in the light of his investigation, to be given under subsection (1)*" by the Court in regard to the payment of the expenses of and incidental to the investigation.

The Inspectors consider that their report should include a recommendation as to the directions to be given under subsection (1).

The Inspectors' recommendation, in the light of their investigation, is that the Bank should repay to the Minister for Justice, Equality and Law Reform the entire of the expenses of and incidental to the investigation.