

# **Draft of**

## **STATUTORY INSTRUMENTS**

**S.I. No. [x] of 2010**

**COMMISSION OF INVESTIGATION (BANKING SECTOR) ORDER 2010**

**DRAFT**

COMMISSION OF INVESTIGATION (BANKING SECTOR) ORDER 2010

WHEREAS pursuant to section 3(1) of the Commissions of Investigation Act 2004 (No. 23 of 2004) the Minister for Finance made a proposal to the Government for the establishment of a commission to investigate the matters specified in Article 3(1)(a) of the following Order and to make any reports required under that Act in relation to its investigation;

AND WHEREAS the Government by decision made on 6 July 2010 considered those matters to be of significant public concern;

AND WHEREAS a draft of the following Order has been laid before each House of the Oireachtas, together with a statement of the reasons for establishing the commission, and a resolution approving that draft has been passed by each such House;

NOW, the Government, in exercise of the powers conferred on them by sections 3, 4(1) and 7(2)(a) of the Commissions of Investigation Act 2004, hereby order as follows:

**Citation.**

1.—This Order may be cited as the Commission of Investigation (Banking Sector) Order 2010.

**Definition.**

2.—In this Order—

“Act” means the Commissions of Investigation Act 2004 (No. 23 of 2004);

“Commission” means the commission established in accordance with Article 3.

**Establishment of Commission, etc.**

3.—(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 subparagraph (b);
- (d) the main causes for the failures, during the period 1 January 2003 to 28 September 2008, 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).

#### **Authorisation, etc., of Minister for Finance.**

4.—The Minister for Finance—

- (a) is specified as the Minister responsible for overseeing administrative matters relating to the establishment of the Commission, for receiving its reports and for performing any other functions conferred on him or her under the Act,
- (b) is authorised to set the Commission’s terms of reference, and
- (c) is authorised to appoint the member or members of the Commission.

#### **Commission’s working methodology.**

5.—The Commission shall adopt and implement a working methodology or framework to ensure that any report required in accordance with the Act is completed within the period specified in Article 3(2). The methodology or framework may include or provide for such sampling techniques or selection of examples as the Commission may determine.

#### **Commission may rely on certain earlier reports.**

6.—The Commission may, as it considers appropriate, rely on the information and findings in the following reports:

- (a) the Regling & Watson report (*A Preliminary Report on the Sources of Ireland’s Banking Crisis*) (May 2010, Klaus Regling & Max Watson);
- (b) the Honohan report (*The Irish Banking Crisis and Regulatory and Financial Stability Policy 2003 – 2008, a Report to the Minister for Finance by the Governor of the Central Bank*) (31 May 2010).

Given under the Official Seal of the Government,

2010

STATEMENT OF REASONS FOR ESTABLISHING A COMMISSION OF  
INVESTIGATION

*(This statement of reasons is not part of the Order and does not purport to be a  
legal  
interpretation)*

Section 3(1) of the Commissions of Investigation Act 2004 provides that following a proposal made by a Minister with the Approval of the Minister for Finance, the Government may, by order, establish a commission of investigation into any matter considered by the Government to be of significant public concern.

The Minister for Finance wishes to establish a commission under the Commissions of Investigation Act 2004 to investigate matters of significant public concern in respect of the period 1 January 2003 to 15 January 2009 in respect of (i) – (iii) and in respect of the period 1 January 2003 to 28 September 2008 in respect of (iv), namely, (i) in respect of the credit institutions that are covered institutions (pursuant to the Credit Institutions (Financial Support) Scheme 2008 (S.I. No. 411 of 2008), the main causes of the serious failures, within each of those 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; (ii) in respect of Anglo Irish Bank Corporation and Irish Nationwide Building Society, the main causes for the adoption, during the period 1 January 2003 to 15 January 2009, by their Boards of business models and strategies, and the implementation by their senior management of business and lending practices which resulted in those institutions experiencing severe financial distress; (iii) whether the external auditors of each of the covered institutions commented in their audit reports or other communications to the institutions on the failures referred to in (i) above or the business models and strategies and business and lending practices referred to in (ii) above; and (iv) the main causes for the failures 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 all of the covered institutions and the relevance in this 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.

At its meeting on 6 July the Government agreed the draft Order and Statement of Reasons for establishment of the Commission as defined in the Commissions of Investigation Act 2004.