

Becbay Limited

Request

This memorandum, produced by the Dublin Docklands Development Authority (the Authority) is to respond to the PAC to answer the question:

“What we (PAC) agreed was that, as DDDA had possession of the records, it should clarify the position in terms of what financial arrangement was ultimately signed off in the shareholders agreement with Bernard McNamara and Donatex – (January 2014)”.

Qualification

In producing this memorandum the PAC is asked to note the following limitations:

- we have reviewed the documents (namely the Shareholders Agreement and the Subscription Agreement) which appear to be the primary documents dealing with the arrangements between the Authority, Donatex Limited and Mempal Limited regarding the joint venture to acquire the IGB site;
- we have set out what we believe to be the relevant provisions of the Shareholders Agreement and the Subscription Agreement dealing with the financial commitments of the Authority; and
- we were not involved with the Authority at the time these agreements were entered into and that, consequently, our analysis is based solely on a review of the documents.

The Relevant agreements

On 9th November 2006 the Authority entered into two agreements with Donatex Limited and Mempal Limited relating to Becbay Limited (“Becbay”) (the joint venture company set up to acquire the IGB site) as follows:

1. Shareholders Agreement, and
2. Subscription Agreement

The following appears to be the financial commitment of the Authority as referenced in both documents.

Shareholders Agreement

Section 2 of the Shareholders Agreement regulates "Funding of the Company". From a review of the Shareholders Agreement, the following table shows how the Authority committed to financial exposure:

| Clause Ref | Detail | Financial Exposure / Commitment |
|-------------------|---|--|
| 2.1.2 | Clause 2.1.2 states that the parties agree to provide guarantees or security to the funding bank (Anglo) in the amount of €100,000,000 in proportion to their shareholding in Becbay (in the Authority's case 26%). | |
| 2.1.3 2.1.3(2) | Clause 2.1.3 states " <i>For the avoidance of doubt, the parties hereto hereby agree....the total recourse to the DDDA under the guarantee/security arrangements pursuant to clause 2.1.2 (or otherwise)...shall not exceed €26,000,000</i> ". | €26,000,000 |
| 2.1.3 | Clause 2.1.3 has a proviso " <i>subject to....clause 2.1.7</i> " | |
| 2.1.7 | Clause 2.1.7 states that " <i>Each of the investors...for the first two years following Completion, fund their pro rata portion of the interest charged...on the Debt...</i> " (again 26% in the case of the Authority). | 26% of the interest charged on the bank borrowing in the first two years |
| 2.3 2.3.2 | Clause 2.3, which includes a proviso stating that it is " <i>other than and subject to Clause 2.1.3(2)</i> ", states that " <i>Notwithstanding any other provision of this Agreement and the Subscription Agreement....the total aggregate liability of the DDDA to the other parties hereto, and to all third parties.....shall not exceed €35,000,000 in aggregate</i> ". | €35,000,000 |
| | TOTAL | €61,000,000 plus 26% of the interest charged on the bank borrowing in the first two years |

Subscription Agreement

The First Schedule (Page 12) sets out the Loan stock amounts and numbers of shares held by each party.

Extract from – Recital E (page 2):

'On completion:

- (1) The DDDA shall subscribe for €32,808,520 of A Loan Stock;*
- (2) Donatex shall subscribe for €51,736,513 of A Loan Stock and €6,767,089 of B Loan Stock;*
- (3) Mempal Ltd shall subscribe for €41,641,584 of A Loan Stock and €5,446,681 of B Loan Stock*
- (5) The debt financing shall be put in place; and*
- (6) The interim advances shall be repaid.'*

Extract from Definitions:

"Debt Financing" is defined in the Subscription Agreement dated 9th November 2006 as:

'Debt Financing means the credit facilities made and or to be made available by the Banks to the company by way of the acquisition finance facilities referred to in the Shareholders agreement.'

"A Loan Stock" is defined in the Subscription Agreement dated 9th November 2006 as:

'...the €126,186,617 non interest bearing, redeemable Series A Loan Stock 2006 as such loan stock is constituted, and to be issued under the A Loan Stock Instrument, less for the time being so much of the principal thereof as has been repaid or redeemed.'

Authority reading of the above

Recital E:

- Item 1 identifies the amount the Authority subscribes to, being **€32,808,520**.
- Item 5 (there was no item 4) refers to the fact that Debt Financing shall be put in place, and
- Item 6 specifies that any Interim Advances made by the parties shall be repaid. In the Authority's case there were Interim Advances of €3,900,000 and these were repaid to the Authority.

It is therefore clear that the Authority's commitment pursuant to the Subscription Agreement was:

- **€32.8m** under Item 1 for its investment in the loan stocks / equity, *in addition to*
- its commitment under Item 5 (Debt Financing) being the Bank Loan (which per the Shareholders Agreement is **26% of €100m plus 26% of interest charged** on the bank borrowing).

Financial outturn

From a review of the Authority's records the actual financial outlay directly relating to the Authority's involvement in the Shareholders Agreement and Subscription Agreement appears to be as follows:

| | | Actual Outlay |
|---|---|--------------------|
| 1 | Equity Investment in Becbay – as set out in part 1 of the First Schedule of the Shareholders Agreement (Page 25). | €32,808,520 |
| 2 | Paid to Becbay to allow Becbay to pay the Authority's pro rata share of interest for 2007 and 2008 pursuant to clause 2.1.7 of the Shareholders agreement. | €11,100,000 |
| 3 | In July 2011, the Authority reached an agreement with NAMA in respect of the Authority's 26% share in Becbay covering the Authority's liability in respect of Becbay's borrowings. The settlement comprised an intrastate transfer of assets from the Authority to NAMA. These assets had a balance sheet value of €7.85m on the date of transfer. This transfer was accounted for in the Authority's 2010 Financial Statements as a post balance sheet adjustment. | €7,851,000 |
| | Total | €51,759,520 |

Ultimately, therefore, the total financial outlay of the Authority directly arising from its entering into the Shareholders Agreement and Subscription Agreement was **€51,759,520**, of which **€18,951,000** (€11,100,000 + €7,851,000) was paid out arising from the guarantee provided by the Authority as part of the debt financing for the transaction.

Dublin Docklands Development Authority

21 January 2014

Enclosures

1. Shareholders Agreement
2. Subscription Agreement