



Margaret Falsey
Secretariat
Committee of Public Accounts
Leinster House
Dublin 2
D02 XR20

8 October 2018

Re: PAC32-I-1057 & PAC32-I-1067

Dear Ms. Falsey

Thank you for your letters dated 25 September 2018 and 01 October 2018 in which the Committee sought: (i) additional information in relation to cash holdings in NAMA and the impact of negative interest rates; and (ii) further information regarding the case taken against the Minister for Finance by Mr. David Hall (David Hall v the Minister for Finance, Ireland and the Attorney General 2017/11173P) (the "**Proceedings**").

I would like to clarify that the review sought by the Committee was not carried out in relation to negative interest rates, but rather in relation to an analysis by the Department regarding early access to dividends/distributions from NAMA (see transcript pg 107-108, link in footnote below¹). As requested, I enclose a note in relation these issues for the Committee's attention.

As regards the Proceedings, as most recently set out in my letter to the Committee of 20 July, the Department has taken legal advice with a view to having these resolved as expeditiously as possible, while protecting the interests of the State. This remains the Department's overarching aim, and informs the approach taken by the Department in the Proceedings.

Questions were raised by the Committee on 20 September regarding the role of the Committee in the Proceedings. It is a matter of very significant concern that it appears that without prejudice privilege has been breached in disclosing correspondence from the Chief State Solicitor's Office in this matter. As a matter of law, it is not open to the Department, or indeed any party, to breach without prejudice privilege. For the avoidance of doubt, this has been reconfirmed with the Chief State Solicitor's Office. Notwithstanding the confidential nature of without prejudice discussions, I can again confirm, as in my letter of 20 July, that the Department would not suggest any role for the Committee outside of its normal remit. I can further confirm that as part of any such without prejudice discussions with the Plaintiff, the Department would not and does not seek to set the agenda of the Committee.

¹ https://data.oireachtas.ie/ie/oireachtas/debateRecord/committee_of_public_accounts/2018-09-20/debate/mul@/main.pdf

As set out in the Minute of the Minister for Finance and Public Expenditure and Reform in response to the Committee of Public Accounts Periodic Report November - December 2017, the Department is still not in a position to elaborate on the issues and respond to suggestions that the oversight and transparency of the liquidation would be any way enhanced through the existence of a Committee of Inspection. The Department is firmly of the view that the claims made in the Proceedings are without foundation and the Special Liquidation of IBRC has been conducted in an entirely appropriate manner and in accordance with the provisions of the IBRC Act. The Department is defending the Proceedings accordingly.

Finally, the steps taken by the Department in response to the Proceedings have been driven by the desire to ensure that the issues raised are resolved as expeditiously as possible, in the appropriate forum and in the appropriate manner, while protecting the interests of the State. All reasonable avenues in this regard have been considered, and will continue to be considered in conjunction with the Department's legal advisors. Having undertaken this process, and without prejudice to the duty of the Department and the CSSO to keep the existence of without prejudice discussions confidential, the Department confirms that a comprehensive Defence to these proceedings will be filed within two weeks.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Derek Moran', with a long horizontal flourish extending to the right.

Derek Moran
Secretary General