

**An Coimisiún Imscrúdúcháin**  
(CORPARÁID na hÉIREANN um  
RÉITEACH BAINC)



**Commission of Investigation**  
(IRISH BANK RESOLUTION  
CORPORATION)

**The Hon. Mr. Justice Brian Cregan**  
**Sole Member**

**TENTH INTERIM REPORT**  
**6 October 2021**

**Submitted to An Taoiseach pursuant to section 33(3)**  
**of the**  
**Commissions of Investigation Act 2004**

## **1. Introduction**

- 1.1. The Commission presented its Ninth Interim Report to An Taoiseach on 8 April 2021. In that Report, the Commission requested an extension of time for submitting its Report on the Siteserv transaction to 31 October 2021.
- 1.2. Following that Interim Report, An Taoiseach gave an extension to the Commission until 31 October 2021.
- 1.3. The purpose of this Interim Report is:
  - (i) to provide an update on the Commission's work since its Ninth Interim Report and to set out the process that remains to be followed to complete its final Report on the Siteserv transaction; and
  - (ii) to request an extension of time for submitting the Commission's final Report on the Siteserv transaction until 31 March 2022.

## **2. Evidence received since the last interim Report**

- 2.1 The Commission has heard evidence from the following witnesses since its last Interim Report:
  - (1) An Taoiseach, Mr Micheál Martin, T.D.,
  - (2) The former Minister for Finance, Mr Michael Noonan,
  - (3) Mr Denis O'Brien,
  - (4) Mr Karl Brophy, and
  - (5) Mr Niall McFadden.

## **3. The Commission's draft Report**

- 3.1 On 30 July 2021, the Commission issued a draft of its Report on the Siteserv transaction to relevant parties. The draft Report runs to 1,280 pages. It contains 28 chapters and sets out certain provisional findings of fact. It is therefore a lengthy draft Report and, in certain chapters, covers a number of complex matters.

#### **4. Process required to complete the Commission's Report**

##### ***Review by the relevant parties***

- 4.1. As set out above, the Commission issued a draft of its Report containing provisional findings of fact on 30 July 2021 to relevant parties.
- 4.2. The Commission indicated to them that they could make submissions to the Commission in response to the draft Report by 24 September 2021 – a period of eight weeks from the issue of the draft Report.
- 4.3. However, a number of the parties expressed the view that this period was too short given the length and complexity of the draft Report. Accordingly, the Commission extended the period within which submissions could be made to 22 October 2021 – a period of 12 weeks from the issue of the draft Report.
- 4.4. The Commission also indicated that any such parties who wished to do so could provide additional relevant evidence to the Commission in response to any provisional findings of fact in the draft Report relating to that person in order to provide them with an opportunity to respond to any provisional findings of fact which they considered adverse to them.
- 4.5. This process of allowing parties to give further evidence in response to the provisional findings of fact in the draft Report and/or to make submissions is, in the view of the Commission, necessary to ensure that all relevant parties are afforded fair procedures before the Commission.
- 4.6. The Commission expects that some parties will make submissions on the draft Report, and/or adduce additional evidence to the Commission in response to it.

##### ***Consideration of submissions and further evidence by the Commission***

- 4.7. The Commission will have to carefully consider any additional evidence and submissions made to it. Any such additional evidence may be on affidavit or by means of oral evidence to the Commission. While the taking of such evidence may add somewhat to the duration of the process, the Commission expects to be able to deal with it over the course of several weeks in November/early December 2021.

- 4.8. Having considered any submissions received and any additional evidence provided, the Commission will then make such changes as it deems appropriate to its draft Report of 30 July 2021.

***Further submissions or application to the High Court***

- 4.9. After the Commission has considered all further evidence and all submissions, the Commission will then circulate the draft Report required by Section 34 of the Commissions of Investigation Act, 2004 to all relevant parties.
- 4.10. Section 34 of the 2004 Act (as amended by the Commission of Investigation (Irish Bank Resolution Corporation Act) 2016) provides that, before submitting its final Report to the specified Minister (in this case, An Taoiseach), the Commission shall send a draft of the Report (or relevant parts of the draft Report) to any person (a) who is identified in, or identifiable from, the draft Report, and (b) in respect of whom an adverse finding is made in the draft of the Report.
- 4.11. Section 34 also provides that the draft Report must be accompanied by a notice from the Commission specifying the time allowed for making:
- (a) submissions or requests to the Commission under Section 35(1)(a) or 36(1); and
  - (b) applications to the Court under Section 35(1)(b).
- 4.12. Section 35 of the Act provides that a person who receives a draft Report (or part of a draft Report) under Section 34 and who believes that the Commission has not observed fair procedures in relation to that person, may, within the period specified by the Commission:
- (a) submit a written statement to the Commission setting out the reasons for the belief and requesting the Commission to review its draft Report in the light of the statement; or
  - (b) apply to the High Court for an order directing that the draft Report be amended before the submission of the Report to the specified Minister.
- 4.13. When it issues its revised draft Report, the Commission will, as required by Section 34 of the 2004 Act, specify the period within which any such party may make any such

submission to the Commission or seek such order of the High Court. The Commission will determine at that time the appropriate length of time within which the parties may do so.

- 4.14. If any such submission is made to it in response to the draft Report at that time, the Commission will have to carefully consider what (if any) action is appropriate in response.
- 4.15. If any party applies to the High Court under Section 35 of the 2004 Act, the Commission will also have to consider how best to respond to such application.
- 4.16. The Commission can only furnish its final report to An Taoiseach after any application or submissions made under Section 35 are finally dealt with, or, in the absence of any such application or submission, following the expiry of the period specified by the Commission for the making of such application or submissions.

#### ***Timing of final Report***

- 4.17. If no application is made to the High Court, the Commission expects to be able to complete the processes set out above so as to furnish its final Report on the Siteserv transaction to An Taoiseach by 31 March 2022.
- 4.18. If any party makes an application to the High Court, the Commission cannot predict what effect that might have on the issuing of its final Report, including the timing of the delivery of the Report.

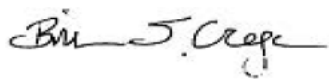
### **5. Unauthorised reported partial disclosure of the Commission's draft Report**

- 5.1 The Commission's draft Report is confidential. Under the 2004 Act, breach of that confidentiality is an offence. On issuing the draft Report the Commission expressly reminded all the relevant parties of that confidentiality requirement.
- 5.2 Nevertheless, recent media coverage suggests that there may have been some leaks of some of the content of the draft Report, in breach of those confidentiality requirements. Any such leak, if it occurred, would not only be in breach of the 2004 Act, it would also be unfair on any party named in such a leak in circumstances where the Commission

may modify or remove a reference to that party, or any other aspect of its draft Report before the Report is finalised.

**6. Request for Extension of Time**

For the reasons given above, the Commission requests an extension of time to 31 March 2022 for the provision to An Taoiseach of its final Report on the Siteserv transaction.



**Signed:** \_\_\_\_\_

**The Hon. Mr. Justice Brian Cregan**

**6 October 2021**