



Number 10 of 2016

Commission of Investigation (Irish Bank Resolution Corporation) Act 2016



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**COMMISSION OF INVESTIGATION (IRISH BANK RESOLUTION CORPORATION)
ACT 2016**

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[No. 10.]

*Commission of Investigation (Irish Bank
Resolution Corporation) Act 2016.*

[2016.]

ACTS REFERRED TO

Commissions of Investigation Act 2004 (No. 23)

Companies Act 1990 (No. 33)

Irish Bank Resolution Corporation Act 2013 (No. 2)



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**COMMISSION OF INVESTIGATION (IRISH BANK RESOLUTION CORPORATION)
ACT 2016**

An Act to make additional provision in relation to the commission of investigation established by the Commission of Investigation (Irish Bank Resolution Corporation) Order 2015 (S.I. No. 253 of 2015); for that purpose to amend the Commissions of Investigation Act 2004 and the Irish Bank Resolution Corporation Act 2013; and to provide for matters connected therewith. [27th July, 2016]

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“Act of 2004” means the Commissions of Investigation Act 2004;

“Commission” means the commission of investigation established by the Commission of Investigation (Irish Bank Resolution Corporation) Order 2015 (S.I. No. 253 of 2015).

Powers of Commission

2. (1) The Commission may make such orders and determinations, and give such directions, as it considers necessary for the purpose of its functions, and it shall have, in relation to the making of such orders and determinations, and the giving of such directions, all such powers, rights and privileges as are vested in the High Court or a judge of the High Court in respect of the making of orders or determinations, or the giving of directions.

(2) Notwithstanding section 21 of the Act of 2004, the Commission may, where it considers that the disclosure to the Commission of information—

(a) that, but for this section, a person could not be compelled to disclose by virtue of the existence of a duty of confidentiality under any enactment or rule of law, or

(b) to which Article 27 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014¹ applies,

is necessary to enable the Commission to perform its functions, compel any person to disclose that information or produce any document containing that information to the Commission and, accordingly, the Commission may admit in evidence that information or any such document.

¹ OJ No. L 173, 12.06.2014, p.1

- (3) In this section “document” includes—
- (a) any book, record or other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form, and
 - (b) any disc, tape, soundtrack or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form.

Application to High Court

3. The Commission may apply to the High Court for directions in relation to the performance of any of the functions of the Commission.

Referral of question of law to High Court

4. The Commission may refer any question of law in relation to the performance of its functions to the High Court for determination.

Divisions of Commission

5. (1) Where the Commission consists of more than one member it may, whenever the chairperson so determines, act in two or more divisions each of which shall consist of such member or members of the Commission as the chairperson may determine.
- (2) The chairperson of the Commission may, in relation to each division of the Commission—
- (a) designate one member of the division to be the chairperson of the division,
 - (b) determine those functions of the Commission that are to be performed by the division,
 - (c) determine the matters in relation to which the division is to perform those functions, and
 - (d) require the division to prepare a report of the findings of the division in relation to those matters.
- (3) A division of the Commission shall provide a report prepared by it pursuant to a requirement under *paragraph (d) of subsection (2)* to the chairperson of the Commission, and that report shall, for all purposes, be deemed to have been prepared by the Commission and the findings in the report shall be deemed to be the findings of the Commission.
- (4) (a) A division of the Commission shall, for the purpose of the performance of its functions, have all such powers, rights, privileges and duties as are vested in the Commission.

- (b) The chairperson of a division of the Commission shall, for the purpose of the performance of his or her functions, have all such powers, rights, privileges and duties as are vested in the chairperson of the Commission.
- (5) If the chairperson of a division of the Commission is, for any reason, unable to perform his or her functions, the chairperson of the Commission may designate another member of the division to be the chairperson of that division.
- (6) A designation under *subsection (5)* shall not affect the validity of anything done before such designation by the division concerned or by the chairperson of that division standing designated before the said designation.

Special liquidator under Irish Bank Resolution Corporation Act 2013

6. (1) Notwithstanding the Act of 2013 or any other enactment or rule of law, the special liquidator shall comply with all directions given to the special liquidator by the Commission under the Act of 2004 or this Act.
- (2) Section 9 of the Act of 2013 is amended by the insertion of the following subsection:
- “(2A) (a) The Minister may, for the purpose of enabling the Commission to perform its functions, give a direction to the special liquidator to do or refrain from doing any such act as is specified in the direction.
 - (b) A direction under paragraph (a) may include a requirement that the special liquidator waive legal professional privilege.
 - (c) A direction to which paragraph (b) applies shall not be given unless the chairperson of the Commission so requests and informs the Minister in writing that he or she is satisfied that the direction is—
 - (i) necessary to enable the Commission to perform its functions, and
 - (ii) in the public interest.
 - (d) In this subsection ‘Commission’ means the commission of investigation established by the Commission of Investigation (Irish Bank Resolution Corporation) Order 2015 (S.I. No. 253 of 2015).”.
- (3) In this section—
- “Act of 2013” means the Irish Bank Resolution Corporation Act 2013;
 - “special liquidator” has the same meaning as it has in the Act of 2013.

Disapplication of section 118 of Companies Act 1990

7. Neither section 118 of the Companies Act 1990 nor any other enactment or rule of law prohibiting or restricting the disclosure of information shall apply to the disclosure of information to the Commission.

Amendment of Act of 2004

8. The Act of 2004 is amended, in so far only as it applies to the Commission, by—
- (a) the substitution, in subsection (1) of section 2, of the following definition for the definition of “document”:

“ ‘document’ has the meaning assigned to it by *section 2* of the *Commission of Investigation (Irish Bank Resolution Corporation) Act 2016*,”
 - and
 - (b) the substitution of the following subsection for subsection (1) of section 34:

“(1) Before submitting the final or an interim report to the specified Minister, the Commission (within the meaning of the *Commission of Investigation (Irish Bank Resolution Corporation) Act 2016*) shall send a draft of the report, or the relevant part of the draft of the report, to any person—

 - (a) who is identified in, or identifiable from, the draft of the report, and
 - (b) in respect of whom an adverse finding is made in the draft of the report.”.

Short title and commencement

9. (1) This Act may be cited as the Commission of Investigation (Irish Bank Resolution Corporation) Act 2016.
- (2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.