

The High Court

Record No.: 2011 239 MCA

**IN THE MATTER OF IRISH LIFE AND PERMANENT GROUP HOLDINGS PLC
("ILPGH" OR THE "COMPANY")
AND IN THE MATTER OF IRISH LIFE AND PERMANENT PLC ("ILP" OR "PTSB" OR THE "BANK")
AND IN THE MATTER OF THE CREDIT INSTITUTIONS (STABILISATION) ACT, 2010 (THE "2010 ACT")
AND IN THE MATTER OF THE SETTING ASIDE, PURSUANT TO SECTION 11 OF THE 2010 ACT, OF THE DIRECTION
ORDER IN RELATION TO ILPGH AND ILP, WHICH WAS MADE ON 26 JULY 2011 PURSUANT TO SECTION 9 OF THE
2010 ACT (THE "JULY 2011 DIRECTION ORDER")
AND IN THE MATTER OF SECOND COUNCIL DIRECTIVE 77/91/EEC
AND IN THE MATTER OF DIRECTIVE 2001/34/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AND IN THE MATTER OF DIRECTIVE 2009/101/EC OF EUROPEAN PARLIAMENT AND OF THE COUNCIL
AND IN THE MATTER OF DIRECTIVE 2004/25/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AND IN THE MATTER OF DIRECTIVE 2004/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AND IN THE MATTER OF ARTICLE 63 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION
AND IN THE MATTER OF ARTICLE 267 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**

BETWEEN

Gerard Dowling, Pdraig McManus, Piotr Skoczylas and Scotchstone Capital Fund Ltd

Applicants

AND

The Minister for Finance (the "Minister")

Respondent

AND

Permanent TSB Group Holdings plc and Permanent TSB plc

Notice Parties

NOTICE TO ADMIT FACTS

Take notice that the Applicants in this action require the Respondent and the Notice Party, as relevant, to admit, for the purposes of this action only, the several facts respectively hereunder specified; and the Respondent and the Notice Party, as relevant, are hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this action.

The facts, the admission of which is required, are—

1. The Company's EGM on 20 July 2011 (the "EGM"):
 - A. rejected the terms of the ILP recapitalisation funnelled through ILPGH and of the takeover of ILPGH by the Minister, as per Resolutions 1 through 3 of the EGM; and
 - B. adopted Resolutions 4 through 7, which were added to the agenda of the EGM¹.

¹ All of the aforementioned EGM resolutions are exhibited in Exhibit PS53 of the affidavit sworn by Mr. Skoczylas in the within proceedings on 30th August 2013.

2. With exception of Resolution 7, all the aforementioned decisions of the EGM were revoked by the direction order made on 26 July 2011 (the “July 2011 Direction Order”). The terms of the aforementioned Resolutions 1 through 3 were effected by the July 2011 Direction Order.
3. The July 2011 Direction Order was made by the High Court in the terms of the Proposed Direction Order made by the Minister on 25 July 2011 (the “Proposed Direction Order”).
4. The July 2011 Direction Order effected an increase in capital of ILPGH by consideration in cash, against the decisions of the EGM, based on the following measures with concurrent immediate effect, which caused the stake in ILPGH of the original shareholders to be reduced from 100% to less than 0.8%:
 - Increasing the Company’s authorised capital, against the decisions of the EGM, by Euro 22.4 billion by the creation of 70 billion new ordinary shares at 32 cents each, ranking *pari passu* in all respects with the existing ordinary shares of 32 cents; and
 - Concurrently reducing, against the decisions of the ILPGH EGM, the nominal value of the ILPGH ordinary share from 32 cents to 3.1 cents, in order to enable the Minister to subscribe for new shares at 6.345 cents; and
 - Concurrently changing, against the decisions of the EGM, the ILPGH memorandum and articles of association to reflect the above changes; and
 - Concurrently issuing more than 36 billion new shares to the Minister at 6.345 cents, without offering shares on a pre-emptive basis to the existing shareholders in proportion to the capital represented by their shares, despite the fact that the shareholders rejected at the EGM the resolution asking them to waive the pre-emption rights.
5. The July 2011 Direction Order abrogated the requirements of the Listing Rules of the London Stock Exchange and of the main market of the Irish Stock Exchange that the shareholders approve the terms of the Minister’s investment in ILPGH, given that the Minister’s investment constituted a “related party” transaction for the purposes of the aforementioned Listing Rules.
6. The EGM rejected Resolution 2 asking to approve the so-called “whitewash” procedure, i.e. to approve that the Minister be not subject to the obligation, under the Irish Takeover Panel Act 1997, Takeover Rules 2007 to 2008, to make a general offer to buy the shares of the existing shareholders, following the State’s investment in ILPGH, as a result of which the Minister was to become a 99%+ shareholder in ILPGH. Against the decision of the EGM, the Minister has never made the mandatory bid, pursuant to the obligation under the Irish Takeover Panel Act 1997, Takeover Rules 2007 to 2008, for the shares of the ILPGH shareholders. On 23 June 2011, the Minister was granted a strictly conditional waiver in this regard by the Irish Takeover Panel².
7. Given the absence of the above-mentioned whitewash procedure having been approved by the ILPGH shareholders and given the strict conditionality of the waiver granted by the Irish Takeover

² The respective letter from the Irish Takeover Panel is exhibited in Exhibit JM22 of the affidavit sworn by John A. Moran on 25 July 2011.

Panel on 23 June 2011, the Minister is obliged to – and will have to – make a bid according to Article 5 of the Takeover Directive 2004/25/EC (as a means of protecting the minority shareholders in ILPGH), in the absence of the said waiver’s conditions being fulfilled.

8. The ILPGH financial statements issued in 2010 and 2011 before the direction order of 26 July 2011 (the “July 2011 Direction Order”) gave a true and fair view of the financial status of ILPGH, in compliance with the International Financial Reporting Standards (the “IFRS”)³.
9. None of the following ILPGH directors – Alan Cook (Chairman), Kevin Murphy (CEO), David McCarthy (CFO) – has been convicted of, or otherwise sanctioned for, misrepresenting the true and fair view of the financial status of ILPGH in the financial statements issued before the July 2011 Direction Order or in other statements to investors made until the AGM on 18 May 2011.
10. None of the said directors misrepresented the true and fair view of the status of ILPGH in any of those statements.
11. In particular, Alan Cook, the Company’s Chairman, did not misrepresent the fair and true position of the Company when he made at the ILPGH AGM on 18 May 2011 the following statements, which were widely reported in the national press⁴:
 - i. ILP has a “strong, viable and sustainable future” and “can provide healthy competition to the two larger pillar banks”;
 - ii. “The business is not on the brink of insolvency, but there is a requirement for us to guard against a much greater and stringent set of conditions; even though it is unlikely that such conditions will apply in the future.”;
 - iii. The finances of the Company were “not materially different from last September” [when the Company was required to raise only €100m in new capital above and beyond its then current requirements, amounting to a total of €243m], but that the Central Bank applied a far tougher set of conditions; “They have applied a killer punch”;
 - iv. The stress test results seemed “profoundly unfair”;
 - v. The PCAR/PLAR assumptions by Blackrock were “a set of artificial assumptions”;
 - vi. “The goalposts have been moved”;
 - vii. The €4bn capital requirements were “astonishing” and the rise in ILPGH’s capital requirements from €243m to €4bn in less than half a year was “an amazing conundrum”.

³ As per the requirements of the Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, as amended by the Regulation (EC) No 297/2008 of the European Parliament and of the Council of 11 March 2008.

⁴ The respective evidence in this regard has been provided in Exhibit PS39 of the affidavit of Piotr Skoczylas sworn on 30 August 2013.

12. Messrs. Cook, Murphy and McCarthy, who were respectively the Chairman, CEO and CFO of both ILPGH and ILP before the July 2011 Direction Order, remained in those positions after the July 2011 Direction Order. Messrs. Murphy and McCarthy then became the CEO and CFO, respectively, of Irish Life Group Limited once it had been sold to the Minister pursuant to the direction order of 28 March 2012.
13. Since its inception, the Company has continued to exist with its own structures.
14. General meetings of shareholders and the Board of Directors, which are the key organs of the Company, have never been suspended.
15. The Company has never been subject of special management under part 3 of the 2010 Act or of a compulsory administration.
16. ILPGH has never been subject of execution measures, such as liquidation, intended to put an end to the Company's existence.
17. Before forming his opinion that making a direction order in the terms of the Proposed Direction Order was necessary to secure the achievement of purposes of the 2010 Act specified in the Proposed Direction Order, the Minister did not consult with the Governor of the Central Bank of Ireland in respect of the compatibility of the said Proposed Direction Order with EU law and, in particular, with the minimum protections of shareholder rights, such as those included in the Second Council Directive 77/91/EEC.
18. Between 31 March 2011 and 26 July 2011, neither ILPGH nor the Minister organised and undertook a professional and comprehensive search for investors – such as that described in paragraph 47 of the affidavit sworn in the within proceedings on 5 December 2013 by Professor Azarmi – in order to assist in the ILP recapitalisation.
19. In respect of the above-mentioned investor search, the Minister / ILPGH have provided no evidence that any investors were approached between 31 March 2011 and 26 July 2011, as part of such a professional and comprehensive investor search, to participate in the ILP recapitalisation.
20. The Minister / ILPGH have provided no evidence that any shareholders were approached between 31 March 2011 and 26 July 2011 to participate in the ILP recapitalisation.
21. The publication pursuant to Directive 2001/24/EC of the European Parliament and of the Council on the reorganisation and winding up of credit institutions in respect of the July 2011 Direction Order was made in the Official Journal of the European Union only on 12 October 2011. The Minister has never effected the respective publications in the national newspapers in each host Member State.

Note: The above list does not present all the facts that are relevant for the trial of the action. It presents selected facts, whose admission will speed up the trial.

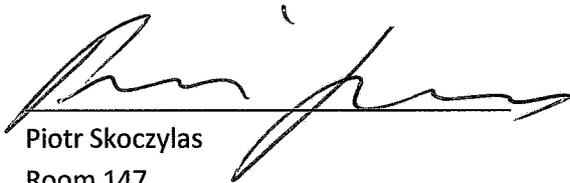
Dated: This 10th day of January 2014



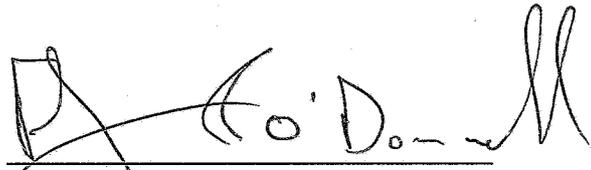
Gerard Dowling
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Padraig McManus
3 Knightsbrook Crescent
Knightsbrook, Trim, County Meath



Piotr Skoczylas
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Flynn & O'Donnell
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To:

Arthur Cox
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To:

Cathal MacCarthy Solicitors
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**THE HIGH COURT
Record No. 2011/239 MCA**

IN THE MATTER OF IRISH LIFE AND PERMANENT GROUP HOLDINGS PLC

AND IN THE MATTER OF IRISH LIFE AND PERMANENT PLC

AND IN THE MATTER OF AN APPLICATION FOR THE SETTING ASIDE PURSUANT TO SECTION 11 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT 2010 OF THE DIRECTION ORDER WHICH WAS MADE ON THE 26TH JULY, 2011, PURSUANT TO SECTION 9 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT 2010 AND ANCILLARY ORDERS

Between:

**GERARD DOWLING, PADRAIG McMANUS, PIOTR SKOCZYLAS AND
SCOTCHSTONE CAPITAL FUND LIMITED**

Applicants

-and-

THE MINISTER FOR FINANCE

Respondent

-and-

PERMANENT TSB GROUP HOLDINGS PLC AND PERMANENT TSB PLC

Notice Parties

REPLY TO NOTICE TO ADMIT FACTS

The Respondent in this action, for the purposes of this action only, hereby admits the several facts, respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them as evidence in this action.

Provided that these admissions are made for the purposes of this action only and are not admissions to be used against the Respondent on any other occasion or by anyone other than the Applicants.

Using the same numbering as set out in the Notice to Admit Facts dated 10 January 2014 the Respondent replies as follows:

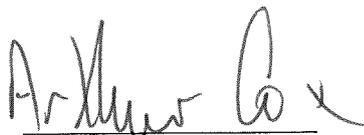
1. The facts relating to the EGM of the First Named Notice Party which occurred on 20 July 2011 are matters more properly addressed by the Notice Parties in their reply to the Notice to Admit Facts. Without prejudice thereto, the Respondent admits the facts in relation to the EGM as set out in the Grounding Affidavit of John A Moran sworn 25 July 2011.

2. This is admitted.
3. It is admitted that the July 2011 Direction Order was made by the High Court in the terms of the Proposed Direction Order made by the Minister on 25 July 2011.
4. The effects of the July 2011 Direction Order are as set out in the Affidavits sworn on behalf of the Respondent herein and no further admission is made.
5. This is not admitted.
6. This is not admitted.
7. This is not admitted.
8. This is admitted.
9. This is admitted.
10. This is not an appropriate matter for a Notice to Admit Facts.
11. This is not an appropriate matter for a Notice to Admit Facts.
12. It is admitted that Messrs, Cook, Murphy and McCarthy, who were respectively the Chairman, CEO and CFO of both ILPGH and ILP before the July 2011 Direction Order, remained in those positions after the July 2011 Direction Order. It is admitted that Messrs Murphy and McCarthy were the CEO and CFO, respectively, of Irish Life Group Limited before the July 2011 Direction Order, and continued in their roles after it had been sold to the Minister pursuant to the Direction Order of 28 March 2012.
13. This question is not understood.
14. This is admitted.
15. This is admitted.
16. This is admitted.
17. This is not admitted.
18. This is not admitted.
19. This is not admitted.
20. This is not admitted.

21. It is admitted that publication in the Official Journal of the European Union which was arranged by the Courts Service of Ireland occurred on 12 October 2011. It is not admitted that there was any inadequacy in the publication of the making and terms of the July Direction Order within the Member States. There was widespread publication including by way of a Regulatory News Service announcement made by ILP.

Dated this 17th day of January 2014

SIGNED:



ARTHUR COX

Solicitors for the Minsiter

Earlsfort Centre

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TO:

Gerard Dowling

First Named Applicant

1 Gleann Na Riogh Court

Naas

County Kildare

AND TO:

Padraig McManus

Second Named Applicant

3 Knightsbrook Crescent

Old Dublin Road

Trim

County Meath

AND TO: Piotr Skoczylas
Third Named Applicant
c/o Room 147, Maldron Hotel
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AND TO: Flynn O'Donnell
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AND TO: Cathal MacCarthy
Solicitor for the Notice Parties
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Railway Street
Dublin 1

**THE HIGH COURT
Record No. 2011/239 MCA**

**IN THE MATTER OF IRISH LIFE AND
PERMANENT GROUP HOLDINGS PLC**

**AND IN THE MATTER OF IRISH LIFE AND
PERMANENT PLC**

**AND IN THE MATTER OF AN
APPLICATION FOR THE SETTING ASIDE
PURSUANT TO SECTION 11 OF THE
CREDIT INSTITUTIONS (STABILISATION)
ACT 2010 OF THE DIRECTION ORDER
WHICH WAS MADE ON THE 26TH JULY,
2011, PURSUANT TO SECTION 9 OF THE
CREDIT INSTITUTIONS (STABILISATION)
ACT 2010 AND ANCILLARY ORDERS**

Between:

**GERARD DOWLING, PADRAIG McMANUS,
PIOTR SKOCZYLAS AND
SCOTCHSTONE CAPITAL FUND LIMITED**

Applicants

-and-

THE MINISTER FOR FINANCE

Respondent

-and-

**PERMANENT TSB GROUP HOLDINGS PLC
AND PERMANENT TSB PLC**

Notice Parties

REPLY TO NOTICE TO ADMIT FACTS

**ARTHUR COX
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THE HIGH COURT
Record No. 2011/239MCA

IN THE MATTER OF IRISH LIFE & PERMANENT GROUP HOLDINGS PLC
AND IN THE MATTER OF IRISH LIFE & PERMANENT PLC
AND IN THE MATTER OF SECTION 11 OF THE CREDIT INSTITUTIONS
(STABILISATION) ACT, 2010
AND IN THE MATTER OF AN APPLICATION FOR THE SETTING ASIDE
PURSUANT TO SECTION 11 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT,
2010 OF THE DIRECTION ORDER WHICH WAS MADE ON THE 26TH JULY, 2011
PURSUANT TO SECTION 9 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT,
2010 AND ANCILLARY ORDERS

BETWEEN:

GERARD DOWLING, PADRAIG McMANUS, PIOTR SKOCZYLAS and SCOTCHSTONE
CAPITAL FUND LIMITED

APPLICANTS

-and-

THE MINISTER FOR FINANCE

RESPONDENT

-and-

PERMANENT TSB (GROUP HOLDINGS) PLC and PERMANENT TSB PLC

NOTICE PARTIES

**REPLIES ON BEHALF OF THE NOTICE PARTIES TO THE APPLICANTS' NOTICE TO
ADMIT FACTS**

TAKE NOTICE that the Notice Parties' response to the Notice to Admit Facts ("**the Notice**") delivered by the Applicants' dated 10 January 2014 is set out below. The same paragraph numbering as is contained in the Notice is used for ease of reference.

1.(A) It is admitted that Resolutions 1 – 3 were rejected at the EGM on 20 July 2011.

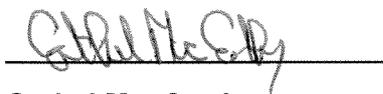
1 (B) It is admitted that the shareholders voted in favour of Resolutions 4 – 7 at the EGM on 20 July 2011.

- 2 Paragraph 2 is admitted.
- 3 Paragraph 3 is admitted.
- 4 The Notice Parties admit the terms of the Direction Order as set out in the Direction Order made by McGovern J. dated 26 July 2011.
- 5 Paragraph 5 is not admitted.
- 6 It is admitted that the EGM rejected resolution 2. It is admitted that the Minister was granted a waiver in respect of an obligation to make a general cash offer to shareholders in ILPGH under the Takeover Rules by way of letter of 23 June 2011 from the Irish Takeover Panel.
- 7 Paragraph 7 is not admitted.
- 8 Paragraph 8 is admitted.
- 9 Paragraph 9 is admitted.
- 10 Paragraph 10 is admitted.
- 11 It is admitted that the Chairman did not misrepresent the fair and true position of the Company at the AGM on 18 May 2011. No admission is made in respect of the press statements at paragraphs 11(i) to (vii).
- 12 It is admitted that Messrs, Cook Murphy and McCarthy, who were respectively the Chairman, CEO and CFO of both ILPGH and ILP before the July 2011 Direction Order, remained in those positions after the July 2011 Direction Order. It is admitted that Messrs Murphy and McCarthy were the CEO and CFO, respectively, of Irish Life Group Limited before the July 2011 Direction Order and continued in their roles after it had been sold to the Minister pursuant to the Direction Order of 28 March 2012.
- 13 It is not understood what is meant by paragraph 13 and accordingly no admission is made in respect of same.

- 14 It is admitted that the general meeting of shareholders and the board of directors have never been suspended.
- 15 Paragraph 15 is admitted.
- 16 Paragraph 16 is admitted.
- 17 Paragraph 17 is not admitted.
- 18 Paragraph 18 is not admitted.
- 19 Paragraph 19 is not admitted.
- 20 Paragraph 20 is not admitted.
- 21 This paragraph is relevant to the Respondent rather than the Notice Parties and accordingly no admission is made by the Notice Parties in respect of same.

Save insofar as has been expressly admitted, the facts set out in the Notice are denied.

Dated 20th Day of January 2014



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THE HIGH COURT
Record No. 2011/239MCA

IN THE MATTER OF IRISH LIFE & PERMANENT GROUP HOLDINGS PLC
AND IN THE MATTER OF IRISH LIFE & PERMANENT PLC
AND IN THE MATTER OF SECTION 11 OF THE CREDIT INSTITUTIONS
(STABILISATION) ACT, 2010

AND IN THE MATTER OF AN APPLICATION FOR THE SETTING ASIDE
PURSUANT TO SECTION 11 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT,
2010 OF THE DIRECTION ORDER WHICH WAS MADE ON THE 26TH JULY, 2011
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BETWEEN:

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APPLICANTS

-and-

THE MINISTER FOR FINANCE

RESPONDENT

-and-

PERMANENT TSB (GROUP HOLDINGS) PLC and PERMANENT TSB PLC

NOTICE PARTIES

REPLIES ON BEHALF OF THE NOTICE PARTIES TO THE APPLICANTS' NOTICE TO
ADMIT FACTS

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