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, Padraig McManus, Piotr Skoczylas and Scotchstone Capital Fund Ltd

Applicants

AND

The Minister for Finance (the "Minister")

Respondent

<u>Affidavit of Professor Dr. Ted Azarmi</u>

I, Ted Azarmi, Professor of Finance and Accounting, of Hauptstraße 37, D-74206 Bad Wimpfen Germany, aged eighteen years and upwards hereby MAKE OATH and say as follows:

1. I am Professor and Chair of International Finance and Accounting at the University of Heilbronn and an Adjunct Professor at the Eberhard Karls University of Tübingen, Germany. Before, I was an Associate Professor at the European School of Finance (ESF), a Professor at the California State University, Long Beach, USA, and a Professor at the International University, Japan.

2. I have more than twenty-five years of experience as a full-time business professor, including 18 years as a tenured or tenure track finance professor in Germany, USA, and Japan.

3. My research and publications cover the following focus areas: international financial management, investment banking, security valuation, venture capital and private equity,

mergers & acquisitions ("M&A"), leveraged buy outs, value and risk management, financial statement analysis, valuation and market timing in M&A transactions, corporate acquisitions through bankruptcy auctions, the impact of state guarantees for debt and equity on corporate investment in times of financial crisis, ownership structure, bank risk and market risk premium, restructuring and two-step spinoff decisions, market timing and optimum pricing in acquisitions. One of my current research activities focuses on the "Asset Impairment Theory", which analyses valuation considering interests of various stakeholders. The academic work I conduct is relevant for determining valuation and shareholding break-up in situations when a stakeholder (such as a government or stockholders) is likely to take benefit at the expense of another class of stakeholders. I have presented academic finding in this area at the French Financial Association meetings (2012), the School of Economics and Management of the Free University of Bozen in Italy and a number of other universities.

4. Over the years, I have served as a reviewer or editor of major finance textbooks by Houghton Mifflin, Pearson Prentice Hall, Addison-Wesley, Simon & Schuster, Routledge, and other major publishers. Also, I have refereed finance articles for the Society for Financial Studies and the German Financial Association.

5. I am a Ph.D. in Finance from the University of Wisconsin, Madison and have three related Masters Degrees in Finance, Business Statistics and Systems Engineering.

6. I beg to refer to my CV and a list of my publications, upon which pinned together and marked with the letters "**TA1**" I have signed my name prior to the swearing hereof.

DECLARATIONS

7. I declare that:

(a) I understand that my duty in providing this Affidavit is to help the Honorable Court, and that this duty overrides any obligation to the party by whom I am engaged. I confirm that I have complied and will continue to comply with my duty.

(b) I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of these proceedings.

(c) I know of no conflict of interest of any kind, other than any which I have disclosed in this Affidavit. I do not consider that any interest which I have disclosed affects my suitability as an expert witness on any issues on which I have given my views.

(d) I will advise the party by whom I am instructed if, between the date of this Affidavit and the trial, there is any change in circumstances which affect my views as set out in this Affidavit.

(e) I have shown the sources of all information I have used.

(f) I have exercised reasonable care and skill in order to be accurate and complete in preparing this Affidavit.

(g) I have endeavored to include in this Affidavit those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion. I have clearly stated any qualifications to my opinion.

(h) I have not, without forming an independent view, included or excluded anything which has been suggested to me by others.

(i) I will notify those instructing me immediately and confirm in writing if, for any reason, this Affidavit requires any correction or qualification.

(j) I made clear which facts and matters referred to in this Affidavit are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

THIS AFFIDAVIT

8. I make this Affidavit from facts within my own knowledge save where otherwise appears and where so appearing I believe the same to be true and accurate.

9. In the context of the within proceedings, I have been asked by the above named Applicants to express my opinion in respect of certain aspects of the recapitalization of Irish Life & Permanent Group Holdings plc (currently Permanent TSB Group Holdings plc) ("ILPGH" or the "Company") and its subsidiary Irish Life & Permanent plc (currently Permanent TSB plc) ("ILP" or "PTSB" or the "Bank"). In particular, I have been asked to express my opinion regarding: i) the ILPGH shareholding break-up post the Bank's recapitalization; ii) a proper capital raising process in this case in 2011; iii) a false market in the ILPGH share; iv); issuing shares below the nominal value in the context of the capital regime in the EU.

10. I have had access to: the direction order of 26th July 2011; the proposed direction order of 25th July 2011; the affidavits of John Moran sworn on 25th July 2011 and on 20th November 2013; the two affidavits of Alan Cook sworn on 20th November 2013; the affidavit of Philip Lane sworn on 20th November 2013; the affidavit of Rose McHugh sworn on 21st November 2013; as well as the affidavit of Ivan Murphy sworn on 21st November 2013. I also have had access to the Applicants' pleadings. I duly considered all of those materials.

11. I draw the attention of the Honorable Court to the fact that on 5th June 2012, I swore an affidavit in the court proceedings in respect of the setting aside of the direction order made on 28th March 2012 regarding the sale of Irish Life Group Limited, the life business that used to be owned by ILP / ILPGH. I beg to refer to that affidavit, upon which marked with the letters "**TA2**" I have sworn my name prior to the swearing hereof. I say and believe that certain

statements I made in that affidavit, in particular those relating to the ILPGH recapitalization in July 2011, are for obvious reasons relevant for the within proceedings.

CONTEXT OF THESE PROCEEDINGS

12. I note that the case of the Applicants does not challenge the recapitalization of ILPGH / ILP, but rather the terms of the takeover by the Minister for Finance of the 99.2% of the voting share capital in ILPGH pursuant to the direction order of 26th July 2011. Specifically, I note that Mr. Skoczylas wrote in paragraph 65 of his affidavit sworn on 30th August 2013:

    "65 ... it is important to reiterate that neither the ILP recapitalisation nor the binding prudential capital requirements for ILP are per se at the core of the Applicants' grievances in the within proceedings – they constitute a mere context (albeit an important context). ***The Applicants unequivocally do not challenge either the ILP's binding prudential capital requirements or the ILP's recapitalisation. What the Applicants do challenge in the within proceedings are the illegal terms of the takeover by the Minister of the 99.2% of the voting share capital in ILPGH.****"* (Emphasis by Mr. Skoczylas)

13. I note that the Applicants' case is specifically based on the alleged breaches by the Minister of certain specific provisions of EU company law, including in particular certain provisions of the Directive 77/91/EEC.

14. I find this position of the Applicants to be a very important aspect of this case, because the position of the Applicants, logically, cannot be impugned on the basis of claims that the recapitalization of ILPGH/ ILP, and in particular the Euro 4 billion capital injection into ILPGH/ ILP, was necessary, and that revoking the said capital injection would have serious adverse consequences. Such an approach by the Respondent is illogical in my view because the Applicants do not challenge the ILPGH / ILP recapitalization or the prudential capital requirements. The Applicants plainly do not seek to revoke the said Euro 4 billion capital injection into ILPGH/ ILP. The Applicants challenge the legality of the means used by the Minister to take over 99.2% of the voting share capital in ILPGH. One has to question the reasonableness of misusing the very conservative capital requirements of a bank to appropriate an excessive proportion of the voting share capital of the bank's holding company, especially if it is being done in a manner that is incompatible with EU law. Such an appropriation (or rather expropriation) cannot be justified on the basis of the fact that a bank was required to have additional capital, based on sudden and massive unexpected prudential capital requirements, in the absence of any liquidation or winding up proceedings. The bank should have been recapitalized in a manner compatible with EU law. Violating EU law in order to appropriate the bank's equity capital is of course plainly illegal.

BANK RECAPITALIZATION

15. I say and believe that prudential capital requirements are an important component of the stability of the banking system. Nothing that I state in this Affidavit should be misconstrued as an attempt on my part to impugn the recapitalization of ILP. However, I say and believe that

one must draw a distinction between prudential capital requirements of a bank, on the one hand, and using (or rather misusing) those capital requirements to inequitably appropriate voting share capital of the bank's holding company, on the other hand.

16. The Central Bank of Ireland imposed on 31st March 2011 a Euro 4 billion capital requirement on ILP. The respective announcements were made following the Prudential Capital Assessment Review (the "PCAR") and the Prudential Liquidity Assessment Review (the "PLAR").

17. It is important to reiterate at the outset that the March 2011 PCAR/PLAR did not discover any unknown problems at ILP that would require an extraordinary intervention. As explained below, the PCAR/PLAR requirements were driven by prudential motivation to instill stability in the baking system.

18. Before addressing details of the ILP's recapitalization, I am going to draw the attention of the Honorable Court to a very conservative nature of the March 2011 PCAR/PLAR capital requirements in the factual context, including explicit statements of the Governor of the Central Bank. However, again, that should not be misconstrued as an attempt on my part to impugn the validity of those prudential capital requirements. Prudential capital requirements ought to be conservative by their very nature. All I say is that the Honorable Court ought to consider that such very, very conservative capital requirements – whose explicit goal is to instill stability into the banking sector during the time of crisis – must not be misused to inequitably appropriate voting share capital of a bank's holding company, as, I believe, was the case in respect of ILPGH. And, it goes without saying that violating EU company law to achieve the fulfillment of such capital requirements is illegal.

19. The ILPGH directors and the Irish authorities made the following formal statements and declarations corroborating ILP's viability:

    I. On 17th November 2010, ILPGH issued its management statement. During the respective investor call, Kevin Murphy, the ILPGH / ILP CEO, made the following formal statement:

    "we have a very strong life assurance business which has shown significant improvement on profitability and we are signalling that the profits will be up 70% at the end of the year which is a profit close to EUR170 million per annum. In terms of the bank, we have indicated a recovery pass so that by 2013, we can generate a return on equity in excess of 10%. So we are very confident that both our life company and our bank are strong businesses".

    The full transcript from the ILPGH investor call on 17th November 2010 is exhibited as Exhibit PS9 to Mr. Skoczylas' affidavit sworn on 30th August 2013. I note that there had been no catastrophic / fatal adverse changes in the ILPGH's inherent business between the time that statement was made and the time of the direction order of 26th July 2011. No liquidation or winding up proceedings were undertaken.

II. On 29th November 2010, i.e. four months before the announcement of the March 2011 PCAR/ PLAR, the ILPGH Board announced that the Central Bank of Ireland (the "CBI") had completed its review of the Company's capital requirements. PTSB was required to raise Euro 100 million in new capital above and beyond its then current requirements (amounting to a total of Euro 243 million capital requirement). This was more than 16 times less than the subsequent PCAR/PLAR capital requirement in March 2011. ILPGH issued on the same date a formal statement including the following in respect of the aforementioned stress tests:

"Speaking today, Kevin Murphy, Group Chief Executive of Irish Life & Permanent Group Holdings plc said that this further review confirmed the capital strength at the Group and its unique position in the Irish financial marketplace."

The ILPGH statement of 29th November 2010 on the outcome of the stress test on the Company's banking operations is referred to as Exhibit PS10 in Mr. Skoczylas' affidavit sworn on 30th August 2013.

Thus, ILPGH was not in need of substantial extra capital at that point. There had been no catastrophic / fatal adverse changes in the ILPGH's inherent business between the time that statement was made and the time of the direction order of 26th July 2011. No liquidation or winding up proceedings were undertaken.

III. In the second half of December 2010, the Minister for Finance and the Governor of the Central Bank of Ireland signed a Memorandum of Understanding (the "MoU") with the European Commission, which stated *inter alia*:

"10. The plan to overhaul the banking system has several elements. First, banks will be required to run down non-core assets. Second, land and development property loans that have not yet been transferred to NAMA will also be transferred. Third, banks will be required to promptly and fully provide for all non-performing assets as needed. Fourth, banks will be required to securitise and/or sell asset portfolios or divisions with credit enhancement if needed, once the market normalises". […]

12. This reorganization and downsizing of the banks will be bolstered by raising capital standards. While we expect that, in a restructured system, banks will be able to raise capital in the market, we recognize that the higher standards may imply that, in the short run, public provision of capital will be needed for banks that are <u>*deemed to be viable*</u>*. To support this process – and to render it credible – we will undertake a review of the capital needs of banks on the basis of a diagnostic of current asset valuations and stringent stress tests (PCAR 2011).*

- *As an immediate step, to enhance confidence in the solvency of the banking system, the Central Bank will direct Allied Irish Bank (AIB), Bank of Ireland (BoI) and EBS to achieve a capital ratio of 12 percent core tier 1 by end-February 2011*

(structural benchmark) and Irish Life & Permanent (ILP) by end-May 2011 (structural benchmark). This would imply an injection of fresh equity capital of €7bn into these four banks and provide an additional buffer for a potential increase in expected losses. This action, along with early measures to support deleveraging and taking account of haircuts on the additional loans to be transferred to NAMA would result in an injection of €10bn of fresh capital into the banking system". (Underlining added).

The said MoU is referred to in Exhibit JM4 of the affidavit sworn by Mr. Moran on 25th July 2011.

I reiterate that **in late December 2010, the Irish authorities formally agreed with the Commission a plan to inject no more than €10bn into the four banks in question. However, what the Irish authorities then ended up doing was increasing that number to €24bn**, which was the capital requirement imposed on the banks in question pursuant to the March 2011 PCAR/PLAR. **This amounted to an increase of 140% within three months**.

Within the total capital requirement for the Irish banking system, it was clear, based on the aforementioned Central Bank stress tests for ILP conducted in November 2010, that ILP in particular would require very limited extra capital in relative terms.

I also reiterate that **ILP was deemed to be a viable bank by both the Irish authorities and the European Commission**.

IV. On 2nd March 2011, ILPGH announced its full-year 2010 results, confirming a strong capital position of the Group, including PTSB. David McCarthy, the ILPGH CFO, formally stated in respect of PTSB's capital position:

"Turning now to the Bank, the position here is equally strong. And, of course, it is worth repeating that we have uniquely not been recipients of any state aid. Looking at the Bank's capital, the risk asset ratio was 10.7% and that's before receipt of any capital support from the Life Company."

The full transcript from the ILPGH investor conference call of 2nd March 2011 is referred to as Exhibit PS11 in Mr. Skoczylas' affidavit sworn on 30th August 2013.

V. At the ILPGH AGM on 18th May 2011, following the March 2011 PCAR/PLAR announcements and the concurrent statement by the Minister that the State would likely take a majority stake in the Company, the ILPGH Chairman, Mr. Cook, made the following formal comments:

(a) ILP has a *"strong, viable and sustainable future"* and *"can provide healthy competition to the two larger pillar banks"*;

(b) *“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."*;

(c) The finances of the Company were *“not materially different from last September”* [when the Company was required to raise only Euro 100m in new capital above and beyond its then current requirements, amounting to a total of Euro 243m], but that the Central Bank applied a far tougher set of conditions*; “They have applied a killer punch”*;

(d) The stress test results seemed *"profoundly unfair"*;

(e) The PCAR/PLAR assumptions by Blackrock were *“a set of artificial assumptions”*;

(f) *“The goalposts have been moved”*;

(g) The Euro 4 billion capital requirements were *“astonishing”* and the rise in ILPGH’s capital requirements from Euro 243m to Euro 4 billion in less than a year was *"an amazing conundrum"*.

The respective statements by the ILPGH Chairman are corroborated by evidence provided in Exhibit PS39 of the affidavit sworn in the within proceedings by Mr. Skoczylas on 30th August 2011.

20. I note that none of the above top managers / directors of ILPGH / ILP have been criminally prosecuted for grossly misleading the investors and the financial markets. Thus, the above formal statements and declarations must be deemed correct and should be taken at their face value, given the source from which they came.[1]

21. Additionally, I also note the following basic facts unequivocally corroborating ILP’s viability prior to the direction order of 26 July 2011:

    I. At the end of 2010, the Company’s book value per share was at least Euro 5.8[2]. In this regard, I beg to refer to the ILPGH 2010 annual report, upon which marked with the letters “**TA3**” I have signed my name prior to the swearing hereof. It is notable that the

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[1] In fact, I note that Mr. MacCarthy successfully transferred from being the CFO of ILPGH to being the CFO of the then State-owned life business. Hence, the Irish authorities did not seem to think that he acted unlawfully when making the above statements. The same applies to Mr. Murphy, who became the CEO of the life business, before retiring. Finally, I note that Mr. Cook continues to be Chairman of ILPGH and of ILP. All that indicates that the above statements were not substantially incorrect.

[2] See the 2010 ILPGH annual accounts: Euro 1,616m (i.e. c. Euro 5.8 per share) shareholders’ equity based on the IFRS basis; Euro 2,045m (i.e. c. Euro 7.4 per share) shareholders’ equity based on an embedded value basis (see page 209 of the 2010 ILPGH annual report).

Company's equity actually increased between 31st December 2010 and 30th June 2011 (i.e. just before the direction order of 26th July 2011 was made) from Euro 1,616 million (i.e. approx. Euro 5.8 per share) to Euro 1,954 million (i.e. approx. Euro 7.0 per share), given the approx. 277 million of shares in issue. In this regard, I beg to refer to the ILPGH 2011 mid-year report[3], upon which marked with the letters "**TA4**" I have signed my name prior to the swearing hereof. The said increase in the equity attributable to the ILPGH shareholders was recorded in the financial statements of the Company after the issuing on 27th June 2011 of the Circular in which the terms of the State's investment and of the takeover of ILPGH were proposed. Those terms, after first being rejected by the ILPGH shareholders at the EGM on 20th July 2011, subsequently became the terms of the direction order of 26th July 2011.

II. ILP's core tier 1 ratio was 10.6% at the end of 2010, which was above the requirements set by the Central Bank of Ireland (the "CBI").

III. I also note that the ILPGH 2010 results presentation, which was made public on 2nd March 2011 (i.e. less than a month before the March 2011 PCAR/PLAR results were announced), highlights on page 32 the *"Robust group capital position to absorb expected defaults"*[4]. The presentation also confirmed the *"Surplus capital of Euro 416m"* and that *"Including available dividend of Euro 243m in life company would increase Core Tier 1 ratio to 12.2%"*. I beg to refer to the ILPGH full 2010 results presentation, upon which marked with the letters "**TA5**" I have signed my name prior to the swearing hereof.

IV. I note that on 15th July 2011 – i.e. less than two weeks before the direction order of 26th July 2011 was made – the European Banking Authority ("EBA") announced results of the stress tests for European banks. PTSB turned out to be the second best capitalized bank in Europe out of 91 banks tested. Excluding the effects of the direction order of 26th July 2011, under the EBA stress scenario PTSB would need no more than Euro 1.4 billion extra capital – almost three times less than according to the March 2011 PCAR/PLAR. A copy of the full ILPGH EBA stress test results of 15th July 2011 is exhibited in Exhibit PS40 of Mr. Skoczylas' affidavit sworn on 30th August 2013. The EBA stress tests are very relevant to illustrate the *"very, very conservative"*[5] nature of the March 2011 PCAR/PLAR. Claims that allegedly the EBA stress tests were not credible or were inadequate are unfounded and divorced from reality. The EBA stress tests are extremely robust and based on sophisticated methodology. The EBA stress tests are conducted in a bottom-up fashion, using consistent methodologies, scenarios and key assumptions developed in cooperation with the European Systemic Risk Board (ESRB), the European Central Bank (ECB) and the European Commission.

[3] See pages 16, 34, 37 and 87 of the 2011 half-year report.

[4] See page 32 of the ILPGH full 2010 results presentation.

[5] See the quote below from the interview with Governor Honohan.

22. I note also that, so far, the large losses assumed for ILP in the March 2011 PCAR / PLAR have not materialized. ILPGH booked Euro 3.2 billion loan loss provisions between 2010 and the end of June 2013. However, the actual realized losses (i.e. the write-downs of provisions used) for the corresponding period were only Euro 128 million, i.e. approx. 4% of the respective provisions booked for the period in question. I beg to refer to the respective pages from the ILPGH annual / half-year reports[6], which corroborate the above numbers, upon which pinned together and marked with the letters "**TA6**" I have signed my name prior to the swearing hereof.

23. In this regard, one needs to recognize that the enormous provisions made by ILP between 2010 and June 2013 will be partly released back to profits and equity, if no realized losses of that magnitude materialize. It is very relevant that, so far, hardly any realized losses have materialized (in relative terms) in the corresponding 3.5-year period between 2010 and June 2013. I say and believe that using (or rather misusing) the prudential loan loss provisions, which amount at this point to approx. 2,400% of the realized losses, in order to justify the excessive appropriation of the ILPGH shareholders' equity can be deemed to amount in effect to nothing short of an expropriation. In the context of the magnitude of the enormous and consistent difference between the loan loss provisions and the realized losses over the period of 3.5 years, any arguments about a lag between those two values are plainly unsustainable and defy logic. Of course, realized losses lag provisions, but not to the extent present here, which has been consistently building up over a 3.5-year period. There is no doubt in my mind that in this case a part of those enormous provisions will be released back to profits and equity. Certainly, one must at least consider such an outcome. Thus, a contingency for such an outcome could have been made – and should have been made – as part of the break-up of the ILPGH equity capital post recapitalization, in order to allow the original shareholders a claw-back mechanism commensurate, or partly commensurate, with any release of the loan loss provisions back to profits and equity.

24. The ILP recapitalization has been driven by prudential requirements aimed at overcapitalizing the Irish banks. This has been explicitly confirmed by the Governor of the Central Bank of Ireland, who said on 31 March 2011 during an RTE TV interview:

    "What we are doing now with this proposed very high capital amount is to over-, if you like, overcapitalize the banking system to an extent that provides absolute reassurance to the markets". In the same interview, Governor Honohan went on to characterize the stress test as having been based on: *"very, very conservative, I think exaggeratedly, almost, conservative methods on top of the macroeconomic stresses that we're assuming".* In the same interview, Governor Honohan admitted that: *"We don't actually think those losses*

[6] Specifically, see the following pages from the ILPGH annual and half-year reports: page 2 of the ILPGH annual report for 2011; page 2 of the ILPGH annual report for 2012; page 2 of the ILPGH report for the first half of 2013; pages 119 and 120 of the ILPGH annual report for 2011; pages 114 and 115 of the ILPGH annual report for 2012; page 49 of the ILPGH half-year report for 2013; page 11 of the ILPGH annual report for 2012; page 10 of the ILPGH annual report for 2011; and page 11 of the ILPGH half-year report for 2013.

will occur, we don't actually think the repossessions will occur." "So that's by no means the Central Bank's forecast for what will happen - far from it."

The transcript from the RTE TV interview by Governor Honohan of 31 March 2011 is referred to in Exhibit PS31 of the affidavit sworn by Piotr Skoczylas on 30th August 2013.

25. In the above context, I note that the ILP Euro 4 billion recapitalization resulting from the March 2011 PCAR/PLAR consisted of the following key elements:

Euro 2.3 billion equity capital injection by the government pursuant to a direction order effected by the Minister for Finance on 26th July 2011. The investment was forcibly funneled through ILPGH, which is ILP's holding company. It is notable that the only reason that investment was funneled through ILPGH was in order to appropriate a stake in ILPGH. Otherwise, the Minister could have injected capital into ILP without relying on any special powers. That dovetails with the Applicants' position in this case – as specified by Mr. Skoczylas in paragraph 65 of the affidavit he swore on 30th August 203 – i.e. that the Applicants unequivocally do not challenge either the ILP's binding prudential capital requirements or the ILP's recapitalization. What the Applicants do challenge are the terms of the takeover by the Minister of the 99.2% of the voting share capital in ILPGH.

Euro 1.3 billion proceeds from the sale of Irish Life Group Limited ("ILGL"), which was the ILPGH/ ILP insurance arm. ILGL was forcibly sold to the Minister for Finance pursuant to a direction order made on 28th March 2012, and then resold by the Minister within about a year for Euro 1.3 billion to Canada Life, with additional benefits offered exclusively to the Minister. In this regard, I note that 100% of ILGL was owned by the Bank, which is in turn a fully owned subsidiary of ILPGH. By the virtue of the original shareholders' full ownership of the Company's equity, all the assets belonging to ILPGH were attributable to the ILPGH original shareholders. Hence, it is clear that the proceeds from the sale of ILGL were attributable to the original ILPGH shareholders and should have been recognized as the capital contributed to the ILPGH recapitalization by the original shareholders, when establishing the Company's shareholding break-up post recapitalization. I expand on this matter further down in this Affidavit.

Euro 0.2 billion (net) loss caused by a liability management exercise (the "LME", colloquially
known as "burning" the bond holders). This net negative Euro 0.2 billion consists of:

a. regulatory deductions of Euro 1.2 billion (negative) associated in effect with the carrying value of the Irish Life Group following buyback of tier 2 debt[7]; and
b. Euro 1.0 billion profit realized on the buyback of Euro 1.2 billion of tier 2 debt (the LME);

[7] I explain this complex matter in detail in my aforementioned affidavit sworn on 5th June 2012, where I show the interrelation between the LME, the regulatory deductions and the sale of ILGL.

Euro 0.4 billion through contingent debt capital (the "CoCo") provided by the State and repayable to the State as debt, i.e. not contributing to equity capital;

Euro 0.2 billion through a dividend from the Irish Life Group.

Additional facts regarding the above numbers are provided in the aforementioned affidavits of John A. Moran and in the affidavit of Mr. Skoczylas sworn on 30th August 2013. There does not appear to be a major dispute between the parties regarding the numbers *per se*, but rather how to interpret the numbers in respect of an equitable shareholding break-up post recapitalization.

26. What the above numbers mean is that ILPGH in fact had to raise Euro 5.2 billion in order to meet the regulatory capital requirement of Euro 4.0 billion. This is because the above-mentioned regulatory deductions of Euro 1.2 billion had to be compensated for.

27. I note that ILP / ILPGH raised Euro 2.9 billion (excluding the net equity contribution by the Minister):

    Euro 0.4 billion CoCo was raised in July 2011 as debt from the State
    Euro 1.0 billion LME profit was made in 2011
    Euro 0.2 billion dividend from the life business was paid in in 2011
    Euro 1.3 billion was generated on the sale of the life business to the State. The State then re-sold the asset quickly, as set out above. The State thus served as a short-term conduit that ILGL passed through.

28. I note that the Minister for Finance injected Euro 2.3 billion equity from the State funds by means of the direction order of 26 July 2011.

29. Thus, I note that out of the total Euro 5.2 billion raised, the Minister has provided net Euro 2.3 billion equity and Euro 0.4 billion debt (which – being debt and not equity – ought not to contribute towards the Minister's equity stake in ILPGH). Thus, in terms of the equity division post recapitalization – even if one "burdens" the ILPGH shareholders with the aforementioned negative Euro 0.2 billion "contribution" resulting from the combination of the LME and of the regulatory deduction – the Minister has provided net approximately 64% of equity capital (i.e. Euro 2.3 billion out of the total Euro 3.6 billion equity raised); at the same time, the Minister has taken over 99.2% of the ILPGH's equity capital. I would like to draw the attention of the Honorable Court to this disproportionate relationship between the Minister's net capital commitment and the Minister's equity benefit: the Minister has taken more than 99.2% of the equity capital of ILPGH in return for providing – in the most favorable scenario ("calculation-wise" from the Minister's perspective) – only net 64% of the equity capital raised.

30. The above disproportionate relationship between the Minister's capital commitment and the equity stake that the Minister took from the original ILPGH shareholders ought to be considered in the light of the facts set out above, as well as of the fact that ILP or ILPGH have never been subject to any liquidation or winding up proceedings, and that ILP had been up

until 26th July 2011 the only major Irish bank that had not received any State aid. The Minister's approach to taking over 99.2% of the ILPGH's equity capital, while providing net no more than 64% of the equity capital required by the March 2011 PCAR/PLAR, occurred against the background of the aforementioned statements by the ILPGH directors and by the Irish authorities corroborating ILP's viability.

31. I say and believe that depriving the ILPGH shareholders of more than 99.2% of their holding in ILPGH could have been reasonable only if ILPGH had been subject to a liquidation or winding up proceedings. The logic then would have been that the bankrupt company was recapitalized, but the original shareholders had been wiped out because the company had gone bankrupt. However, as outlined above, ILPGH had not been subject to any liquidation or winding up proceedings. Thus – while conservative prudential capital requirements can be justified for the sake of maintaining trust in the banking system – there was no need to deprive the ILPGH shareholders of 99.2% of their holding in ILPGH on the basis of *"very, very conservative ... exaggeratedly, almost, conservative methods on top of the macroeconomic stresses that [the CBI were] assuming*" (to use the words of Governor Honohan). Prudential capital requirements ought not to have been a basis for excessive changes in the ownership structure of ILPGH. Using such *"very, very conservative"* assumptions of prudential capital requirements in order to take over 99.2% of ILPGH from its original shareholders is in my view unreasonable and the manner in which the Minister did it was unnecessary and disproportionate.

32. It is instructive to note – and it further illustrates the unreasonableness of the actions of the Minister, in my view – that the Minister had not agreed (despite proposals from both the ILPGH shareholders and indeed from the ILPGH directors) to arrange for any claw back mechanism in case the said *"very, very conservative"* PCAR / PLAR assumptions did not materialize. In this regard, it is worth referring to the letter from the ILPGH Chairman to the Minister dated 20th July 2011, in which the ILPGH Chairman made formal submissions to the Minister on behalf of ILPGH in respect of the terms of the takeover by the Minister of a majority stake in ILPGH. The said letter is referred to as Exhibit JM21 in Mr. Moran's affidavit sworn on 25th July 2011.

33. In the above context, and in the context of the direction order of 28th March 2012, the following has been the totality of the ILP recapitalization measures undertaken by the Minister: Firstly, in July 2011, the Minister effected an injection into ILP (funneled through ILPGH) of Euro 2.3 billion of equity capital and Euro 0.4 billion of debt (CoCo). Secondly, the Minister forcibly arranged for a sale to himself of the Irish Life Group for Euro 1.3 billion when the embedded value of the business was Euro 1.7 billion to Euro 1.8 billion (the embedded value was c. Euro 1.75 billion at the end of 2010[8], remained unchanged at Euro 1.7 billion at the end of 2011 and amounted to Euro 1.8 billion at the end of June 2012[9]). Then, the Minister quickly re-sold

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[8] See page 45 of the aforementioned 2010 results presentation, which states that the embedded value at the end of 2010 was Euro 1,746 million.

[9] I beg to refer to the ILGL 2012 interim results, which corroborate the said embedded value numbers on page 8, upon which marked with the letters "**TA7**" I have signed my name prior to the swearing hereof.

the life business for the same price for which he had bought it, while receiving significant additional monetary benefits. Thus, the Minister invested net Euro 2.3 billion equity, which accounted for no more than 64% of total equity raised (of Euro 3.6 billion). In return, the Minister has taken over 99.2% of the ILPGH shareholders' equity.

34. Taking over 99.2% of the shareholders' equity in return for investing net approx. 64% of the required equity capital was in my view disproportionate and unreasonable, given that all that the Minister was supposed to do was to facilitate the meeting of the *"very, very conservative"* prudential capital requirements in order to contribute towards stabilizing the Irish banking system. His objective was not supposed to be an excessive appropriation of the ILPGH voting share capital, which ended up being the result of his actions. That result was inequitable in light of the fact that ILPGH has never been in the process of liquidation or winding up.

SHAREHOLDING BREAK-UP POST RECAPITALIZATION

35. To substantiate the notion that the sale of ILGL and other capital measures undertaken by the Company ought not to benefit the Minister, it is instructive to review the legal basis for the ILP recapitalization and the formal statements in this regard by the Company and its CEO.

36. Article 3(7)(g) of the Implementing Decision 2011/77/EU (as amended by the Implementing Decision 2011/326/EU) states:

    "7. Ireland shall adopt the following measures during 2011, in line with specifications in the Memorandum of Understanding:

    (g) the recapitalisation of the domestic banks by end July 2011 (subject to appropriate adjustment for expected asset sales in the case of Irish Life & Permanent) in line with the findings of the 2011 PLAR and PCAR, as announced by the Central Bank of Ireland on 31 March 2011."[10] (Underlining added).

    I beg to refer to the Implementing Decision 2011/77/EU and the Implementing Decision 2011/326/EU, upon which pinned together and marked with the letters "**TA8**" I have signed my name prior to the swearing hereof.

37. In this context, the aforementioned ILPGH Circular of 27th June 2011, which proposed the terms of the State's takeover of ILPGH, which were subsequently rejected by the shareholders at the EGM on 20th July 2011, states the following:

    Page 3: *"The Central Bank requires that in order for the Bank to continue its business it must achieve a Total Gross Capital Requirement of Euro 4.0 billion. The Institutions and the Irish Government have agreed that the Total Gross Capital Requirement of Euro 4.0 billion*

[10] The *"appropriate adjustment for expected asset sales and liability management exercises in the cases of Irish Life & Permanent"* was further confirmed by the updates of that Implementing Decision, i.e. by the Implementing Decisions 2011/542/EU (of 2nd September 2011) and 2011/827/EU (of 30th November 2011).

is subject to appropriate adjustment for any capital generated through asset disposals (including the possible disposal of the Irish Life Group) and the Liability Management Exercise. Euro 2.9 billion of the Total Gross Capital Requirement is required by the Central Bank to be achieved by 31 July 2011 with the balance to follow by no later than the Final Investment Date. Of this Total Gross Capital Requirement, Euro 0.2 billion will be met from internal Group resources." (Underlining added).

Page 6: *"As of the date of this Circular, the Company and the Bank will enter into the Placing Agreement with the Minister and the NTMA in respect of the State Investment. The Placing Agreement sets out the terms of the Euro 2.7 billion Principal State Investment under which the Minister agrees to subscribe Euro 2.3 billion for approximately 36.2 billion new Ordinary Shares at a price of Euro 0.06345 per Ordinary Share and provides for the execution of the Contingent Capital Agreement pursuant to which the Minister agrees to subscribe for Euro 0.4 billion in Contingent Capital Notes."*

Page 8: "***Capital generated by the Company***

The State Investment may be reduced by capital generated from the combination of the Liability Management Exercise and future asset disposals including a possible disposal of the Irish Life Group.

The Group announced on 31 March 2011 that it will attempt to meet an element of the Total Gross Capital Requirement through asset sales, including the possible disposal of the Irish Life Group." (Text in bold as per the Circular; underlining added).

38. The 2012 ILPGH Annual Report states:

Page 8 (Group Chief Executive's Review):

"The CBI, as part of the PCAR exercise carried out in 2011, determined an additional capital requirement for the Group of Euro 4 billion before the sale of the Life Group to the Minister for Finance for Euro 1.3 billion on 29 June 2012. I note also that the Minister for Finance has recently agreed terms for the sale of this business to an international life assurance business which will mean that the State will recoup the full amount which it paid for this business in June 2012 thereby leaving ('net') PCAR capitalisation for the State at Euro 2.7 billion." (Underlining added).

The 2012 ILPGH Annual Report is exhibited as Exhibit PS13 to the affidavit of Mr. Skoczylas sworn on 30 August 2013.

39. The above evidence makes it clear that the State indeed contributed net Euro 2.3 billion of equity and Euro 0.4 billion of contingent debt to the ILPGH / ILP recapitalization (the contingent debt cannot be considered equity before any conversion into equity, which has not occurred). The rest of the equity, i.e. net Euro 1.3 billion, was contributed by the by ILPGH Group, i.e. from the ILPGH assets attributable to the ILPGH shareholders through their equity

stake. Hence, the State contributed no more than 64% of the total equity capital. Yet, the State took over more than 99.2% of the equity voting rights.

40. I say and believe that the proceeds from the sale of ILGL (and other capital measures undertaken by ILPGH or ILP) were attributable to the original ILPGH shareholders and should have been recognized as the capital contributed to the ILPGH recapitalization by the original shareholders, when establishing the Company's shareholding division post recapitalization.

41. An argument that the ILPGH shareholders should not be credited with the sale of ILGL (and other capital measures undertaken by ILPGH or ILP) because it would allegedly create an undue windfall profit for them, given that ILPGH was worth Euro 19 million in the stock market on 23rd June 2011, is completely incorrect. The market capitalization of 23rd June 2011 was a result of a false market in the ILPGH share, as I explain below. Any references to the market value in this context are plainly meaningless. Furthermore, such an argument would indicate that ILGL (which was an ILPGH asset), which the Minister later forcibly bought (and then re-sold) for Euro 1.3 billion (and whose embedded value was Euro 1.8 billion), was worth close to nothing (in the absence of hardly any realized credit losses). Such an argument is misconceived and fails to appreciate the reality.

42. In respect of an argument that a corporate veil of ILP cannot be pierced and thus the ILPGH shareholders cannot be credited with the sale of ILGL by ILP (or by other capital measures undertaken by the Company), this argument is misconceived, in my opinion. What plays an important role in this respect is the fact that the Minister used special powers available to him under the Irish 2010 emergency legislation in order to put himself in control of both ILPGH and ILP. Of course, one of the cardinal rules of law when considering the corporate veil, is that those in control of a company cannot use their control to their advantage and to the disadvantage of the weak shareholders. This is particularly so in an extreme case like this one, when the "strong", i.e. the Minster for Finance, by means of the *ex parte* direction order of 26th July 2011 (which was made in the terms of the proposed direction order made by the Minister on 25th July 2011) in fact revoked the resolutions of the ILPGH EGM (i.e. the will of the majority of the ILPGH shareholders) in order to force the terms of his takeover of ILPGH.

43. It is relevant to refer to the case law of the European Court of the Human Rights (the "ECtHR"), which supports my opinion. According to the ECtHR case law, the piercing of the "corporate veil" of the company is in this case justified because of the exceptional circumstances, given that in this case it is practically impossible for the companies in question – i.e. ILPGH or ILP – to apply to appropriate courts through the organs set up under their articles of incorporation in order to oppose the actions of the State. For all intents and purposes, the State completely controls those companies in respect of any matters relating to the extensive direction orders effected by the Minister for Finance. Hence, the corporate governance of the two companies does not function as normal and the companies are practically not in a position to oppose the Irish State in court. Thus, the corporate veil can be pierced in this case. The circumstances of the case, considered as a whole, conferred on the Applicants title to substantive interest protected by Article 1 of Protocol No. 1 ECHR, which is the key issue that needs to be examined in each case where the protection of Article 1 of

Protocol No. 1 is evoked[11]. The national courts have the duty to apply the same principles in respect of piercing the corporate veil.

44. Furthermore, the above is further supported and reinforced by the ILP / ILPGH Scheme of Arrangement, which was the basis for creating ILPGH as the holding company of the group and which was sanctioned by the High Court order of 11th January 2010. The Scheme of Arrangement, entered into pursuant to section 201 of the Companies Act 1963, provides that: *"The financial interests of Existing Shareholders (other than Restricted Shareholders) in the profits, net assets and dividends of the Group will not be affected by the Scheme"*[12]. Hence, it is clear that the proceeds from the sale of assets belonging to ILPGH or to ILP are attributable to the ILPGH shareholders, when establishing the shareholding break-up post recapitalization.

CAPITAL RAISING

45. When considering the capital raising for ILPGH in 2011, it is relevant to refer to the following examples of open market fund raising undertaken by Irish banks:

   (a) On 25th July 2011, the Irish Government announced its agreement to sell up to 10.5 billion units of ordinary stock at Euro 0.10 per unit to a group of significant institutional investors. The respective evidence is provided in Exhibit PS44 of Mr. Skoczylas' affidavit sworn on 30th August 2013.

   (b) In July 2011, BoI arranged two bi-lateral secured term funding trades with two major international banks, raising c. Euro 2.9 billion of term funding for the group. The respective evidence in provided in Exhibit PS50 of Mr. Skoczylas' affidavit sworn on 30th August 2013.

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[11] Cf.: Depalle v. France [GC], § 62; Anheuser-Busch Inc. v. Portugal [GC], § 63; Öneryıldız v. Turkey [GC], § 124; Broniowski v. Poland [GC], § 129; Beyeler v. Italy [GC], § 100; and Iatridis v. Greece [GC], § 54.

[12] The Scheme Circular is referred to as Exhibit PS3 in the affidavit of Mr. Skoczylas sworn on 30th August 2013. The said quote, which appears on pages 33 and 34 of the Scheme Circular, comes from the "Explanatory Statement" made pursuant to section 202 of the Companies Act 1963, which, as per page 28 of the Scheme Circular, *"explains in writing details of the Scheme"*. As per the High Court Notice of Court Meeting (2009 No. 640 COS), subsequent to the High Court order dated 4 November 2009, the following resolution was approved at the general meeting on 17th December 2009: *"THAT the scheme of arrangement dated 20 November 2009 between Irish Life & Permanent p.l.c. (OLD ILP) and the Existing Shareholders (as defined in the scheme circular attached to the Notice convening this meeting (the Scheme Circular) in its original form or with or subject to any modification, addition or condition approved or imposed by the High Court (the Scheme), the terms of which are set forth in the Scheme Circular, be approved and the directors of OLD ILP be authorised to take all such actions as they may consider necessary and appropriate for carrying the Scheme into effect."* (Underlining added). Hence, any arguments that any parts of the Circular, such as the aforementioned quote on pages 33 and 34 of the Circular, do not constitute the terms of the Scheme of Arrangement are misconceived and incorrect. I further note that ILPGH has had only one class of ordinary shares, which all rank *pari passu*, and, therefore, there is no difference between shareholders who were shareholders of ILP when the Scheme of Arrangement came into being and the current shareholders.

(c) In October 2011, BoI raised Euro 1.1 billion in funding from the private sale of bonds. The respective evidence is provided in Exhibit PS51 of Mr. Skoczylas' affidavit sworn on 30th August 2013.

(d) In August 2011 and then in November 2011, ILP raised funding totaling £1.4 billion and Euro 1.15 billion, respectively, in separate transactions in the open market. Additionally, a further funding of Euro 145 million was put in place by Permanent TSB Finance, the car finance subsidiary of ILP, The respective evidence is provided in Exhibit PS52 of Mr. Skoczylas' affidavit sworn on 30th August 2013.

46. The above facts show clearly that investors were making large investments into the Irish banking sector around the time the Minister effected the direction order of 26th July 2011. In this light, there is no justification for statements that allegedly ILP (the only bank that had not been subject to any State aid up until 26th July 2011) was uniquely disqualified from attracting outside investors. Such statements amount to nothing more than speculations.

47. In order to raise large amounts of capital, a company such as ILPGH would have to hire an investment bank, which would have to go with the company through an elaborate process of preparing the capital raising and then executing such a transaction. Given that in this case the capital had to be in the form of equity, the only realistic way to raise the capital was to sell a stake in the business. Hence, the investment bank would have to go through the process involving among others the following indispensable steps:

    i) Determining a stake to be sold; ii) Defining timetable and choosing an optimal process; iii) Conducting an internal due diligence; iv) Identifying potential purchasers; v) Analyzing structures for the potential transaction; vi) Preparing marketing materials; vii) Contacting potential buyers; viii) Signing confidentiality agreements; ix) Establishing a sale process; x) Establishing a short list of potential buyers; xi) Releasing additional information to potential buyers; xii) Engaging with potential buyers; xiii) Soliciting initial non-binding bid interest; xiv) Evaluating initial non-binding interest; xv) Allowing the buyer due diligence; xvi) Conducting management presentations; xvii) Allowing visits to branches and other facilities; xviii) Allowing data room studies; xix) Canvassing and soliciting final bids; xx) Evaluating bids; xxi) Preparing and negotiating a sale agreement; xxii) Preparing and managing a signing process; xxiii) Conducting the capital-market related process and the shareholder approvals, to ensure compatibility of the sale with the legal requirements, including the EU law requirements, such as the requirements of the Takeover Directive.

    In the above regard, I beg to refer to a two-page overview of a typical sale process, prepared by Morgan Stanley, upon which marked with the letters "**TA9**" I have signed my name prior to the swearing hereof. Morgan Stanley is the leading investment bank worldwide. The said document illustrates complexities of a sale process, which ILPGH would have to go through in order to be able to determine that no investors were available. In the absence of such an elaborate sale process – for which there is no evidence in this case – statements claiming that no investors had been available to invest into ILPGH / ILP amount to speculations.

48. Given the size of the capital to be raised in this case, only going through the above elaborate process, could have yielded any realistic prospect of finding a buyer, in the context of the financial crisis that undoubtedly made any sale process more challenging. Without going through the above elaborate process, it is plainly a speculation to claim that there were no buyers/ investors. The reality is that, in order to find a buyer/ investor, the company has to actively engage with the potential investors in the sale process. That is especially the case when a transaction in question is very large, such as in this case. The fact that investors were willing to commit large amounts of money to the Irish banking system is illustrated by the above selection of transactions that occurred between July and November 2011. Of course, there were no investors who would be willing to entertain investing billions of Euros into a bank without being invited to a proper sale process. It is incorrect to claim that it is an established practice that investors are expected to approach sellers proactively. It is normally the other way around – sellers have to approach potential investors proactively and engage with those potential investors in the above-described steps of a sale process, in order to be able to adequately evaluate whether there is a realistic prospect of a sale. Again, that is especially the case if the investment in question amounts to at least hundreds of millions of Euro (in respect of a minority stake in this case).

49. Claims that allegedly investors were not interested in investing in ILP in particular because of the ILP's business profile are also unsubstantiated, given that ILP was identified as systemically important for the Irish banking system and given that an investor's willingness to invest always depends on a relationship between risk and reward. The higher the perceived risk, the larger the expected reward. This relationship must be managed while selling a stake during a financial crisis, which means that possibly investors might need to be offered higher rewards, i.e. higher expected rates of return, than it would have been the case in the absence of a financial crisis. In this context, claims that allegedly investors would be repelled from investing in ILPGH because ILP was losing money are divorced from the realities of investing. Investments into companies that lose money happen every day of the week. What matters is the rate of return for an investor when he exists the investment – not whether the company in question makes money or not at the point of entering the investment. In simple terms, investors wish to receive more money from the sale than they invested, accounting for the risk and the time value of money.

50. The fact that a sale process is conducted during a financial crisis may make the process more difficult, but it may also create opportunities for opportunistic buyers, such as large private equity houses, who would be willing to risk capital in return for a prospect of a higher return on capital. In fact, there are many investors who specialize in restructuring cases and even in companies in distress. There is no evidence that any such investors were engaged in respect of an investment in ILPGH.

51. Finally, I say and believe that claims that allegedly the depressed market value of the ILPGH share repelled investors are also incorrect:

    I. Firstly, as set out below, the ILPGH share price was subject to a "false market".

II. Secondly, the reality that the share price was undervalued can be deduced from the following facts:

(a) During the aforementioned investor call on 17th November 2010, the ILPGH CEO, Mr. Murphy, was asked: *"Do you have any comments as to the level of your share price? Do you believe that it reflects fairly the value of the Company which means by the way that the whole Company would be valued at about EUR230 million?"* [Note: the market value of c. Euro 230m corresponded to the share price of c. Euro 0.83]

Mr. Murphy responded: *"No, obviously we believe the share price totally undervalues the Company at the moment. Clearly we have a live Company that has an embedded value of circa EUR1.6 billion and obviously we have a bank which clearly long term is capable of generating circa EUR100 billion [sic]* [million] *per annum after-tax profitability . Clearly these are very stressed environments. There is a lot of uncertainty about the future so we are optimistic that the current initiative to bring certainty to the Irish debt raising situation will ultimately be positive for the share price as clearly the share price is essentially suffering because of that uncertainty at the moment."*

(b) Independent broker reports in the months leading up to the March 2011 PCAR/PLAR show that the price was undervalued. The evidence in this regard is provided in Mr. Skoczylas' affidavit sworn on 30th August 2013 in the section "Independent valuations of ILPGH" on pages 73 through 75. I say and believe that the strength of said analyses comes from the fact that they were independently conducted *before* the shock caused to the ILPGH share price by the PCAR/PLAR announcement at the end of March 2011, by the concurrent statement by the Minister indicating that the State would take a majority stake in the Company, and by the rumors surrounding those events. Incidentally, an approach trying to impugn those independent broker analyses because they had not accounted for the subsequent huge provisions, i.e. for the aforementioned 2,400% difference between the enormous provisions and the actual realized losses, is misconceived. In fact, the consensus of the broker views *unaffected* by the events after 31st March 2011 clearly shows the perverseness of the 2,400% "magical" disconnect between the huge provisions and the realized losses.

III. Thirdly, the depressed share price in fact offers opportunity for investors who may be willing to take advantage of the disconnect between the intrinsic value of the company and its distorted market value.

FALSE MARKET IN THE ILPGH SHARE

52. A "false market" in a share is both a legal term and an economic term. It refers to unusual, sudden significant moves in the share price, which are not caused by inherent changes in the business or in the market, but by external rumors or announcements.

53. The ILPGH share was subject to a relatively steady decline caused by the financial crisis and characteristic for all the capital markets worldwide. The decline was exacerbated by the particular situation in Ireland. I beg to refer to the Reuters share price chart for ILPGH, with imposed comparative charts for Bank of Ireland, AIB and the financials index, covering the period from November 2009 to November 2013, upon which marked with the letters "**TA10**" I have signed my name prior to the swearing hereof. As one can see from that chart, the share price of ILPGH displays the same pattern as the share prices for BOI and AIB, with the key difference being that the ILPGH share price is a magnification of the other two because the ILPGH share price appreciated more than the other two in relative terms in 2009 and, thus, it also declined more than the other two in relative terms in 2010.

54. I should note that relative price comparisons for ILPGH are difficult because ILPGH is a holding company that used to house a bank and an insurance company. Thus, simple share price chart comparisons to either the banking universe or to the insurance universe may be misleading. Some of the most appropriate comparisons are to BOI and AIB as the closest comparables during the time of the Irish crisis.

55. The ILPGH share price was subject to unusual significant movements at the end of March 2011 / beginning of April 2011. Specifically:

    (a) On 28th March 2011, shortly before the announcement of the 2011 PCAR/PLAR results on 31st March 2011, the share price was stable at about 74 cents (the share price opened at 74 cents and closed at 74 cents, with the intra-day low of 73 cents and the intra-day high of 76 cents). The trading volume on that day was 250,896 shares. I beg to refer to the Reuters ILPGH share price charts depicting the ILPGH price movements on 28th March 2011, 29th March 2011, 1st April 2011, as well as 29th June 2011, upon which pinned together and marked with the letters "**TA11**" I have signed my name prior to the swearing hereof.

    (b) On 29th March 2011, when rumors started circulating about the takeover of the Company by the State and the dilution of the shareholding, the share price dropped by about 50% to 37 cents before recovering slightly and closing at 40.5 cents, i.e. 45% below the closing from the previous day. Following are the key share statistic of that day:

        - Share price opened at 72 cents and closed at 40.5 cents;
        - Intra-day high of 72 cents and the intra-day low of 37 cents;
        - Volume traded: 6,442,993 (!)

        I beg to refer to the press reports regarding the fears of the State's takeover of ILPGH, upon which pinned together and marked with the letters "**TA12**" I have signed my name prior to the swearing hereof

(c) Given the above-mentioned price drop, the share price was then suspended on the stock exchange on 30th March 2011 until 1st April 2011. I beg to refer to the respective announcement by the Company, upon which marked with the letters "**TA13**" I have signed my name prior to the swearing hereof.

(d) On 31st March 2011, the Euro 4 billion capital requirement was imposed on ILPGH. Concurrently the Minister made a statement saying that the Government would likely take over the Company by acquiring a majority stake. I beg to refer to the respective statement by the Minister, upon which marked with the letters "**TA14**" I have signed my name prior to the swearing hereof.

(e) When the trading in the ILPGH share was re-opened on 1st April 2011, the share price dropped by a further 73%, down to 11 cent, before recovering to 16.7 cents at the end of the trading day. Following are the share statistics of that day:

- Share price opened at 18 cents and closed at 16.7 cents;
- Intra-day high of 22.4 cents and the intra-day low of 11 cents;
- Volume traded: 22,576,861 (!!!)

56. The above-described dramatic collapse in the ILPGH share price by more than 76% (i.e. from 72 cents to 16.7 cents) during the two trading days on 28th March 2011 and on 1st April 2011 was caused by the announcements on 31st March 2011, including – importantly – the said Minister's statement, and by the rumors preceding those announcements. The price collapse was not caused by any inherent changes in the business or in the market. The Euro 4 billion capital requirement cannot be considered an inherent change in the business of ILPGH / ILP, but rather a unique imposition of a drastically new business paradigm. There cannot be any doubt that the fall of the price in the ILPGH share became artificial and the normal functioning of the markets was distorted. This fact is corroborated by the suspension of the share trading, which is a drastic move that very rarely happens. Therefore, the price collapse amounted to a "false market" in the ILPGH share, as defined by Article 3 of the Takeover Directive. As such, the resultant depressed price should have not been used by the Minister as a benchmark for the State's takeover of the Company pursuant to the direction order of 26th July 2011 (which was made in the terms of the proposed direction order made by the Minister on 25th July 2011). I note that the approach of the Minister in this regard had absolutely nothing to do with satisfying any capital requirements – that approach was plainly aimed at maximizing the Minister's stake in ILPGH at the expense of the ILPGH original shareholders. The Minister could have, and should have, effected the State's investment at a higher price, the floor for which was – as per Article 8(1) of the Second Council Directive 77/91/EEC – the nominal value of the ILPGH share before the imposition of the terms of the direction order of 26th July 2011.

57. I say and believe that the following factors contributed to the false market in the ILPGH share:

I. The ILPGH share price was adversely affected by the extraordinary expropriatory powers of the State, which naturally repelled investors.

II. The “false market” in the ILPGH share was exacerbated by the fact that, following the March 2011 PCAR/PLAR announcements and the concurrent statement by the Minister, there was an acknowledged expectation that the share would have to be de-listed from the London Stock Exchange and the main market of the Irish Stock Exchange (as it ultimately was in September 2011), which contributed to the illiquidity of the share.

III. The share price was adversely affected by the absence of an announcement regarding the mandatory pre-emption rights pursuant to the aforementioned Article 29(1) of the Second Company Law Directive (with the nominal value of 32 cents as the absolute lower limit for the rights’ price, which had to be commensurate with the issue price to the Minister at the same or at a higher price).

IV. The share price was adversely affected by the absence of a mandatory bid to existing shareholders pursuant to Article 5 of the Takeover Directive 2004/25/EC (again with the 32 cents as the absolute lower limit for the offer price), which was required once it was clear that the Minister would acquire control of the Company, and whose absence contributed to the share’s illiquidity to the detriment of the existing shareholders[13].

58. This must be further seen in light of the aforementioned *“total undervaluation”* of the share in the months leading up to the March 2011 PCAR/PLAR. This *“total”* undervaluation of the share was formally acknowledged and explained by the ILPGH CEO during the above-mentioned investor call on 17th November 2010. The share undervaluation is also clear from an analysis of the above-mentioned independent broker reports.

59. I say and believe that it was inequitable that the “false market’s” share price, which was a result of the said announcements, then constituted the basis for the huge dilution of the ILPGH shareholders when the Minister for Finance injected capital in the Company, against the decision of the Company’s general meeting.

60. I say and believe that the only equitable approach by the Minister was to have the new shares issued at or above the unaffected price from before the above-mentioned aberrations (i.e. at or above 74 cents from the closing on 28 March 2011).

CAPITAL REGIME IN THE EU

61. A foundation of the European corporate legal system is the so-called “legal capital”. The European “legal capital” regime for public limited liability companies, which is based on Directive 77/91/EEC (the “Second Company Law Directive”[14]) and complemented by other Directives, consists of:

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[13] I note the conditional waiver granted to the Minister by the Irish Takeover Panel by the letter of 23rd June 2011, which is referred to in Exhibit JM22 of John Moran’s affidavit sworn on 25th July 2011.

[14] The Directive was recast for by Directive 2012/30/EU of 25 October 2012, without any substantive changes.

- the existence of legal capital (as per Article 2 of the Second Company Law Directive; also Articles 7, 8(1) and 6(1) of that Directive);
- statutory minimum capital requirements;
- restrictions on the use and distribution of legal capital;
- rules prohibiting circumvention; as well as
- shareholders' rights.

62. The "legal capital regime" contains core corporate governance rules common to all public limited liability companies incorporated in the EU. The stated purpose of the general legal capital regime is to protect weak shareholders and creditors. Decision rights vested in the general meeting are an important aspect of the European legal capital regime.

63. The key acknowledged benefits of the European legal capital regime are:

    - Approximation of laws. The regime constitutes an important means to approximate Member State's corporate governance rules in the area of company law.

    - Separation of management and control. The regime increases the separation of management and control through the effective shareholders' veto rights.

    - Reduction of non-controlling shareholders' perceived exposure to expropriation and misuse by stronger / controlling shareholder or one acquiring control. Shareholders' veto rights reduce non-controlling shareholders' vulnerability. A result is a favorable effect on the price that investors are prepared to pay for shares.

64. The Second Company Law Directive offers shareholders certain compulsory protections and enshrines in law the imperative for an approval by the majority of shareholders of key acts associated with increasing or altering capital in a company. I note that the Second Company Law Directive was transposed into Irish law mainly through the Companies Acts. In this regard, I beg to refer to the Report of the Company Law Review Group for 2009 detailing the instruments transposing the Second Company Law Directive into Irish law, upon which marked with the letters "**TA15**" I have signed my name prior to the swearing hereof.

65. Specifically, the Second Company Law Directive contains a number of provisions on circumvention:

    - One of the most important provisions on circumvention is Article 8(1), which states:

      "Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par."

    I comment on this in more detail in the section below entitled "Issuing Shares Below Nominal Value".

- Article 25(1) establishes the imperative that any increase in capital must be decided on by the majority of shareholders. This must be seen in conjunction with Article 17(1), which states: *"In the case of a serious loss of the subscribed capital, a general meeting of shareholders must be called within the period laid down by the laws of the Member States, to consider whether the company should be wound up or any other measures taken."* In this regard, it is worth noting that this rule does not oblige a company either to wind itself up or to take other measures. Rather, the only obligation is that the company let shareholders discuss, and decide upon, the possible alternatives. Incidentally, this rule also applies when losses force the company below the statutory minimum capital requirements.

- Article 29(1) provides for mandatory pre-emption rights, which cannot be abrogated.

66. Those Articles of the Second Company Law Directive, which are supposed to be transposed into Irish law at all times, are among the legal core principles that are the foundations of EU corporate law. Given the transposition imperative, no Irish law can override or deactivate the unconditional nature of any those provisions of EU law (in the absence of express exception under EU law).

67. In the absence of the absolute statutory protections offered by the Second Company Law Directive it would be easier for the Board to let a controlling shareholder – or one who is acquiring a controlling stake – to expropriate weak shareholders. That is why those statutory protections are supposed to be sacrosanct.

Any increase in capital must be decided upon by the general meeting

68. Article 25(1) of the Second Company Law Directive states:

    "Any increase in capital must be decided upon by the general meeting."

69. In this regard, in the aforementioned Circular of 27 June 2011 the Company confirmed the necessity for the shareholder approval of any capital increase and of issuing new shares. Specifically:

    Firstly, Resolution 1 of the EGM on 20th July 2011 asked for an approval of the capital increase. Incidentally, the Board acknowledged that the capital increase in question *"would represent an increase of approximately 17,500 per cent of the Company's authorised euro denominated ordinary share capital."*[15] The enormous magnitude of the capital increase obviously makes the more important the requirement of the shareholder approval.

    Secondly, in respect of granting the Directors authority to allot relevant securities, the Circular stated:

[15] Page 13 of the Circular, Resolution 1(a) *"To increase the Company's authorised share capital"*.

"The new section 20 authority is necessary: (i) to authorise the Directors to allot State Securities under the State Investment; and (ii) to issue any Ordinary Shares following conversion of any Contingent Capital Notes. Once passed this will grant sufficient authority to the Directors to allot such Ordinary Shares without further authority or approval from Shareholders."[16] (Underlining added).

70. Article 25(1) of the Second Company Law Directive was transposed into Irish Law through the following sections of the Companies Acts:

    - Section 68 of the Companies Act 1963 regarding an alteration of the company's share capital. I note in this regard that section 68 of the Companies Act 1963 precludes a company from altering the conditions of its memorandum in order to alter share capital, against the decision of a general meeting.

    - Section 20(1) of the Companies Act 1983 regarding requirements in respect of the issuance of new shares.

71. I note that the increase in capital in ILPGH pursuant to the direction order of 26 July 2011 occurred not only without an approval of a general meeting, but in fact against the specific decisions of the EGM on 20 July 2011.

Mandatory Pre-Emption Rights

72. Article 29(1) of the Second Company Law Directive states:

    "29(1). Whenever the capital is increased by consideration in cash, the shares must be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares."

73. This Article was transposed into Irish law by s. 23 of the Companies Act 1983 regarding pre-emption rights.

74. The mandatory nature of the pre-emption rights does not depend of the size of capital raising or on anybody's views about the reasonableness of the requirement to offer pre-emption rights. This is a legal requirement protecting shareholders' rights – not a business option.

75. In respect of the pre-emption rights, the above-mentioned Circular of 27 June 2011 corroborates the mandatory nature of pre-emption rights in the absence of a waiver granted by the majority of shareholders. The Circular stated the following regarding the respective resolution, which was rejected by shareholders at the EGM on 20 July 2011:

[16] Page 13 of the Circular, Resolution 1(b) *"To grant the Directors' authority to allot relevant securities"*.

"This asks Shareholders to give authority to the Directors to disapply pre-emption rights relating to the issue of Ordinary Shares under the State Investment and relating to Ordinary Shares to be issued following conversion of any Contingent Capital Notes. Pre-emption rights provide that a company will not issue shares for cash to any person unless it has made an offer to existing Shareholders on a proportionate basis first."[17]

76. I note that the ILPGH shareholders were not offered pre-emption rights when the more than 36 billion new shares were issued to the Minister pursuant to the direction order of 26 July 2011.

ISSUING SHARES BELOW NOMINAL VALUE

77. Nominal value is an accounting value of a company's stock for balance sheet purposes. The fundamentals are as follows: the share capital is calculated by multiplying the nominal value by the number of shares. When shares are issued, the nominal value is recorded in the balance sheet as share capital and any amount paid over nominal value is recorded as share premium (also known as an additional paid-in capital). The share capital and a share premium constitute together the paid-in capital.

78. As an absolute rule, no new shares can be issued in the EU below the nominal value. This is enshrined in the aforementioned Article 8(1) of the Second Company Law Directive. This is a cardinal rule of law in the EU aimed at protecting legal capital.

79. I note that In Ireland, the prohibition of allotting shares at a discount to the nominal value is regulated by section 27 of the Companies Act 1983. In this regard, I beg to refer to the sections of the "Companies Acts 1963-2012" by MacCann and Courtney, which is an acknowledged authority on the Irish Companies Acts. The authors state on page 930 in respect of section 27 of the Companies Act 1983:

   "Prohibition on allotment of shares at a discount: C(A)A 1983, s 27 places on a statutory footing a well established common law principle, namely that a company may not issue shares at a discount (ie below par value)."

   I beg to refer to excerpts from the said "Companies Acts 1963-2012" covering the sections of the Companies Acts mentioned in this Affidavit, upon which pinned together and marked with the letters "**TA16**" I have signed my name prior the swearing hereof.

80. Regarding the prohibition of allotting shares below the nominal value, it also is worth referring to the "Company Law", 4th Edition by Michael Forde and Hugh Kennedy, which is an acknowledged authority on company law in Ireland. The authors state the following:

   "Allotment at a discount

[17] Page 15 of the Circular.

6-28 The shares of all registered companies "shall not be allotted at a discount" (1983 Act, s. 27). This iron rule admits of no exceptions or qualifications [...]

"Watering" shares

6-29 "Water" shares means a company allotting its shares for a consideration that is actually worth less than their issue price; in particular, for less than their par or nominal value. The objection to that practice is that it gives a wholly misleading picture of a company's true worth and can be a device for defrauding shareholders and creditors. To ensure some equivalence between the value of shares issued to subscribers and the consideration that the company receives in return, the 1963 Act prohibited issuing shares at a discount and struck at transactions where a discrepancy in value was patent or there was fraud. These standards are now supplemented by exacting provisions of the 1983 Act, the thrust of which is to prohibit plcs from allotting shares for consideration of dubious value and to ensure a degree of equality in exchange when allotting plcs' shares, and in transactions between plcs and their initial members."

I beg to refer to the above-mentioned passages from the said book, upon which marked with the letters "**TA17**" I have signed my name prior to the swearing hereof.

81. I note that the rule of law that shares cannot be issued below the nominal value was in fact acknowledged by the Company itself. In the Circular issued by the Company on 27th June 2011 (the "Circular") for the purpose of an extraordinary general meeting (the "EGM") on 20th July 2011, during which the terms of the State investment were supposed to be approved (and were in fact turned down), the ILPGH Board stated the following:

    Page 14 of the Circular: *"Pursuant to the articles of association of the Company and the Companies Acts, the Company is not permitted to issue Ordinary Shares at a discount to their nominal value, which is currently €0.32 per Ordinary Share."*

    The Circular of 27 June 2011 is referred to as Exhibit PS7 in the affidavit of Mr. Skoczylas sworn on 30 August 2013.

82. Obviously, shares can be issued at or above the nominal value. In such a case the above-mentioned share premium is created.

83. Situations may arise where a company's shares trade in the stock market at a discount to their nominal value. In such a case, a general meeting can of course decide to split the shares or to lower their nominal value in order to raise capital. What is key, however, is that such a decision is an exclusive right of a general meeting. No such decision can be taken against the will and resolutions of a majority of shareholders at a general meeting. I note the following in this regard:

    I. The prerogative of a general meeting is very important not only to protect the interests of the majority of shareholders, but also to act as a defence against predatory moves

by acquirers. There may be situations in which, even though shares trade below their nominal value, the stock market price is disconnected from the intrinsic value of the shares. This appears to have been the case for ILPGH in late 2010 / early 2011 (and thereafter). In this regard, I refer again to the aforementioned statement of the ILPGH CEO from 17 November 2010 saying: *"we believe the share price totally undervalues the Company at the moment"*[18] (underlining added), when the ILPGH shares traded at 83 cents in the stock market.

II. Furthermore, there can be instances of a false market in a share – i.e. of a sudden and unexpected increase or drop in the share price – caused by rumours or external announcements, which are not a result of intrinsic changes in the business or in the market. That was the case for ILPGH at the end of March 2011 / the beginning of April 2011, around the time when the Euro 4 billion capital requirement was unexpectedly imposed on the Bank, following the Central Bank's previous capital requirement of 29th November 2010 amounting only to a total of €243m. I comment on this matter separately in this Affidavit.

84. In respect of the ILPGH share capital and share premium, as per the aforementioned ILPGH half-year report at 30 June 2011, before the direction order of 26th July 2011, the following Euro values and per share values are notable:

- the share capital was Euro 89m, which corresponded to 32 cents per share, given the approx. 277 million shares in issue[19] (see pages 34 and 37 of the 2011 half-year report);
- the share premium was Euro 364m, which corresponded to c. Euro 1.31 per share (see pages 34 and 37 of the 2011 half-year report).

85. This is an important context in which the Circular of 27th June 2011 was issued, which proposed the terms of the ILPGH takeover by the State, which were then rejected by the shareholders at the EGM on 20 July 2011 and which were subsequently enforced by the direction order of 26 July 2011.

86. As per page 135 of the ILPGH 2012 annual report (exhibited in Exhibit PS13 of the affidavit of Mr. Skoczylas sworn on 30th August 2013), on 27 July 2011, ILPGH issued, pursuant to the direction order of 26th July 2011, 36,249,014,972 ordinary Euro 0.031 shares (at a subscription price of Euro 0.06345 per share) to the Minister for Finance. Total gross proceeds from the issue, before costs of Euro 46m, amounted to Euro 2.3 billion, with Euro 1,123m recorded in share capital and Euro 1,131m recorded in share premium after costs. Following this issuance, the Minister owned in excess 99.2% of the share capital of ILPGH.

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[18] Evidence in this regard is provided in Exhibit PS9 of Mr. Skoczylas's affidavit sworn on 30 August 2013.

[19] Page 87 of the 2011 mid-year report confirms that *"The company has only one class of issued shares and as at 30 June 2011, it had 276,782,351 (30 June 2010: 276,782,351; 31 December 2010: 276,782,351) ordinary shares in issue in that class."*

Those changes were made by revoking the decisions of the ILPGH EGM on 20 July 2011, which specifically turned down the above-mentioned share issue.

87. Thus, the Minister forced, against the decision of the ILPGH EGM on 20 July 2011, a reduction in the ILPGH nominal value from 32 cents to 3.1 cents by changing the respective provisions of the ILPGH Memorandum and Articles of Association. At the same moment (given the immediate effect of paragraphs B1.1, B1.2, B1.3(a), B1.3(b) and B1.9, as well as of paragraph C of the direction order of 26th July 2011, pursuant to paragraph D of that order), the Minister effected an issue of more than 36 billion new shares at the price of Euro 0.06345 per share. That amounted to a circumvention of the above-mentioned rules of law preventing issuing shares below their nominal value – the Minister circumvented those rules of law by forcibly changing the ILPGH Memorandum and Articles of Association against the will of the ILPGH EGM, in order to lower the nominal value of 32 cents to issue more than 36 billion new share at about 6 cents, which resulted in a massive dilution of the original shareholders. That flew in the face of the spirit and of the letter of the above-mentioned legal provisions precluding the issue of shares below the nominal value and against altering the company's memorandum and articles of association without an approval of a general meeting.

88. The Minister's actions ended up amounting to a contrived scheme aimed at issuing shares below the original nominal value of 32 cents. I note that John Moran actually confirms this in his affidavit sworn on 20th November 2013, where he states at paragraph 194: *"If it is the case that the value at which someone is willing to subscribe for shares is less than the nominal value of those shares, as was the case for the subscription by the Minister for shares in ILPGH, it is necessary to reduce the nominal value of the shares before the issue of those shares."* John Moran then states further at paragraph 198 of his affidavit: *"I am advised that the creation of the deferred shares was simply a mechanism, commonly used, to reduce the nominal value of shares so that the shares in ILPGH could be issued to the Minister at the price at which the Minister was willing to subscribe for such shares, which price (Euro 0.06345) was less than Euro 0.32 per share (being the original nominal value of the shares)."* I say and believe that approach flew in the face of Articles 8 and 25 of the Second Company Law Directive (77/91/EEC). I say and believe that forcibly changing the company's memorandum and articles of association against the respective decision of a general meeting, in order to lower the nominal value of the share to issue a massive amount of new shares below the original nominal value, causing an enormous dilution to the existing shareholders, is nothing more than a contrived – and illegal – circumvention of the absolute rule of law prohibiting the issue of new shares below the nominal value.

89. I say and believe that specifically in this case the following was the impact of the above-mentioned terms of the direction order of 26th July 2011 on the ILPGH share capital and share premium:

Table A1: Forced Reduction in Share Capital and Share Premium Attributable to Original Shareholders, as a Result of the Direction Order of 26th July 2011:

	Status Before 26 July 2011	Addition by means of Direction Order	Status After 26 July 2011	
	Euro million	Euro million	Euro million	
A) Share capital	89	1,123	1,212	
B) Share premium	364	1,131	1,495 *	
A+B) Paid in capital	453	2,254	2,707	
% owned by original shareholders	*100%*		*0.8%*	***Forced Redcution***
Owned by original shareholders	Euro million		Euro million	Euro million
A) Share capital	89		9	80
B) Share premium	364		11	353
A+B) Paid in capital	453		21	432

* As per page 65 of the ILPGH 2012 annual report, the share premium after the Direction Order was reduced slighly due to *"issue costs associated with share issue to the Minister for Finance"*. The result was the share premium of €1,492m at the end of 2012.

The share capital attributable to the original ILPGH shareholders was reduced by approx. Euro 80 million. Additionally, the share premium attributable to the original ILPGH shareholders was reduced by approx. 353 million.

To corroborate the above numbers, I beg to refer to: page 37 of the 2011 mid-year report, page 72 of the ILPGH 2011 Annual Report, page 65 of the ILPGH 2012 Annual Report, as well as to page 28 of the ILPGH mid-year 2013 report, upon which pinned together and marked with the letters "**TA18**" I have signed my name prior to the swearing hereof.

90. I reiterate that, of course, the company can decide – by a decision of a general meeting – to either increase or reduce its capital. It can also decide – by a decision of the majority vote of shareholders – to turn its undistributable capital (i.e., *inter alia*, the paid-in capital) into a distributable reserve that can be offset against future losses. What cannot be done, however – and what indeed occurred in this case – is to force against the decision of a general meeting a reduction in the amount of the nominal value per share in the absence of a liquidation or winding up. Such an approach is unequivocally incompatible with said Articles 8 and 25 of the Second Company Law Directive 77/91/EEC.

91. In this regard, it is instructive that one would not be able to turn to any acknowledged legal example of any EU government ever forcing a massive dilution on existing shareholders by causing an issue of billions of new shares below the nominal value after first forcibly changing the original nominal value in the company's memorandum and articles of association, against the respective decisions of a general meeting. Such an approach would be incompatible with

EU law and with cardinal rules protecting legal capital enshrined in the Second Company Law Directive (i.e. Articles 8 and 25 of the Directive). A precedent of that sort would spread like a virus through the EU corporate legal system. I cannot stress enough how damaging that would be for corporations across Europe. Changes in the law at the EU level and changes in the European capital supervision regime would be necessary in order for such an approach to be acceptable and legal.

92. Incidentally, it is incorrect to claim that allegedly, in this case, offering the ILPGH shareholders the mandatory pre-emption rights would have been precluded by the fact that shares traded below the nominal value (and pre-emption rights are oftentimes offered at below the market value). Firstly, of course, the minimum legal requirements are clear, as set out above, and they are not subject to arguments. Additionally, had the State investment occurred in this case at the nominal value of 32 cents or above (as it should have in order to be compatible with the law), then the share price would have likely reflected that.

93. Shares allotted at a discount must be cancelled and duly re-issued at or above the nominal value. Alternatively, the allottee is liable for the amount of the discount together with interest. In this regard, it is instructive to refer again to the "Companies Acts 1963-2012" by MacCann and Courtney. The authors state on page 931:

> *"Consequence of allotting shares at a discount: If shares are issued at a discount, the allottee becomes liable to pay to the company in cash a sum equivalent to the amount of the discount together with interest."*

94. I note that, in this case, strictly speaking, such a liability of the Minister would amount to Euro 9.3 billion (i.e. 36.249 billion shares which were issued to the Minister multiplied by the difference between 32 cents [which was the nominal value before 26 July 2011] and 6.345 cents [which was the price at which new shares were allotted to the Minister on 27 July 2011]). While this liability of Euro 9.3 billion cannot be regarded as realistically capable of being enforced, it does illustrate the magnitude of the wrongdoing committed by the Minister. Hence, the more than 36 billion shares issued to the Minister at the price five times below the nominal value must be cancelled and re-issued in a manner compatible with the law. Otherwise, the status quo would create an EU-wide illegal precedent (in breach of Article 8(1) of the Second Company Law Directive), which would have a de-stabilising effect on the EU company law regime.

CONCLUSIONS

95. I conclude in respect of the direction order of 26th July 2011 (which was made in the terms of the proposed direction order made by the Minister on 25th July 2011) that:

    (a) The actions of the Minister for Finance were excessive and unjustified in that he appropriated 99.2% of the ILPGH voting share capital but contributed no more than 64% of the required equity capital. That excessive appropriation of the shareholders' equity had nothing to do *per se* with satisfying any capital requirements. Given that

ILPGH has never been in a process of liquidation of winding up, such a transfer of wealth from the ILPGH shareholders to the State is inequitable, especially if achieved by means that were incompatible with EU law, such as effecting the share issue below the share's nominal value (i.e. after forcing the change in the ILPGH Memorandum and Articles of Association in order to lower the share's nominal value before issuing more than 36 billion new shares, against the respective decisions of a general meeting).

(b) The Minister / the Company failed to conduct an adequate investor search and should, therefore, not claim unjustifiably that there were no investors who would be able and willing to participate in the ILPGH recapitalization in 2011. In the absence of an adequate investor search, such statements amount to speculations.

(c) The Minister for Finance unduly effected the share issue at the price significantly below the share's nominal value of 32 cents, against the respective decision of the ILPGH EGM. That resulted in a transfer of wealth from the original ILPGH shareholders to the State, which was achieved by means incompatible with EU law. Specifically, circumventing the iron rule of law that no shares can be issued below the nominal value, and forcibly changing the ILPGH Memorandum & Articles of association against the decision of the ILPGH general meeting, in order to reduce the nominal value from 32 cents to 3.1 cents, must be seen as flying in the face of the EU principles enshrined Article 8(1) of the Second Company Law Directive.

(d) The Minister effected the capital increase in ILPGH in a manner that was incompatible also with other foundations of EU corporate law, and in particular with Articles 25(1) and 29(1) of the Second Company Law Directive, whose transposition he ignored or violated. That was unlawful because those legal provisions were put in place in order to set unbreakable rules of law that must guide any capital increases made by public limited companies in the EU. In the absence of specific provisions of EU law allowing for exceptions from the above-mentioned iron rules of law, those rules plainly cannot be breached by anyone, under any circumstances.

(e) When injecting capital into ILPGH at the chosen price of 6.345 cents a share, which was five times below the nominal value existing before the Minister's intervention, the Minister ignored the false market in the ILPGH share, which was at least partly caused by his own announcement on 31st March 2011 confirming the rumors that the State would take over a majority stake in ILPGH as a result of the sudden and unexpected capital requirement of Euro 4 billion imposed on the Bank.

96. I confirm that the opinions that I have expressed in this Affidavit represent my true and complete professional opinion.

Urkundenrolle 2013 Nr. 3326

SIGNED:

Ted Azarmi

Ted Azarmi

Sworn by the said **Ted Azarmi**
this 5th day of December 2013 at the following address:

Notar Gerhard Kleine
Deutschhofstraße 35
74072 Heilbronn, Germany

before me, a Notary / Commissioner for Oaths, and I know the Deponent

Signature and stamp of the Notary / Commissioner for Oaths:

Signed by Notary / Commissioner for Oaths

Filed on behalf of the Applicants.