

## IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY

### IN THE MATTER OF THE INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND T/A CHARTERED ACCOUNTANTS IRELAND

#### FINAL DECISION [AND SANCTION] OF THE ENQUIRY COMMITTEE

(Record No. 1 of 2012 - ICAI/PwC)

#### Definitions

For the purposes of this Decision, the following definitions shall apply:

"Act", shall mean the Companies (Auditing and Accounting) Act 2003;

"Authority". Shall mean the Irish Auditing & Accounting Supervisory Authority;

"CARB", shall mean the Chartered Accountants Regulatory Board of the Institute.

"Enquiry Committee", shall mean the Committee set up pursuant to Regulation 5 of the Regulations;

"Institute", shall mean the Institute of Chartered Accountants in Ireland operating under the name and title of Chartered Accountants Ireland; and

"Regulations", shall mean the Companies (Auditing and Accounting) Act 2003 (Procedures governing the conduct of Section 23 Enquiries) Regulations 2012.

#### Background

1. In 2008 the Irish Financial Services Regulatory Authority (the "Financial Regulator") appointed PwC to carry out a review of the financial and capital position of certain Irish Banks including the Bank of Ireland Group.
2. By letter dated 03 November 2008 a member of the Institute who, for the purpose of this Decision will be referred to as "Party A" wrote to the Secretary of the Chartered Accountants Regulatory Board<sup>1</sup> ("CARB") of the Institute of Chartered Accountants in Ireland (the "Institute"). In the letter of 03 November Party A questioned the appropriateness of the appointment of PwC to act for the Financial Regulator in circumstances where PwC was, at the time of appointment, *"the independent auditors of Bank of Ireland"*.
3. By letter dated 8 December 2008 an Individual who, for the purpose of this Decision will be referred to as "Party B" wrote to the Institute. In the letter of 8 December 2008 Party B, *"a small investor in Bank of Ireland"*; questioned, inter alia, the *"professional ethics of the PwC in accepting work for the Financial Regulator ... involving a review of aspects of accounts of the Big Six financial Institutions which includes BOI..."* The letter went on to note that PwC were auditors Bank of Ireland. The letter ended *"Kindly pass this letter to the appropriate person/committee for some action"*
4. By letter dated 11 December the letter from Party B was acknowledged by the Institute advising Party B that his letter was referred on to CARB.

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<sup>1</sup> The section of the Institute that deals with regulatory matters

5. By letters dated 1 and 22 December Party A wrote to CARB noting that he had not received an acknowledgement or response.
6. By letter dated 12 January 2009 CARB responded to Party A acknowledging the correspondence. The letter went on to state *"Please be advised that these matters are currently being examined by CARB as Secretarial matters "*.
7. By letter dated in error 22 December 2008 (i.e. although the letter bears this date it is clear that the letter was issued in January 2009 and is stamped by CARB as having been received on 16 January 2009) Party A, in response to CARB's letter of 12 January 2009, stated, inter alia, *"I am uncertain as to what "Secretarial Matters" means."*
8. By letter dated 16 February 2009, Party A wrote again to CARB seeking *"a response or acknowledgement"* to his previous letter.
9. By email dated 20 February the Head of Professional Conduct of CARB responded, inter alia, *"thank you for bringing a number of matters to CARB's attention. As stated in my previous letter, CARB are currently examining these matters. Please be assured that they are being afforded the necessary consideration and attention at this time."*
10. By letter dated 23 February Party B wrote to the Institute and stated, inter alia, *"I refer to your letter of 11 December issued by the Secretary and await your response. "*
11. By letter dated 24 February the Head of Professional Conduct responded to Party B advising that his correspondence had been forwarded by the Secretary to CARB. The letter went on to state:  
  
*"I tabled your correspondence to the Complaints Committee of CARB at its meeting on 16<sup>th</sup> January 2009. The Complaints Committee hears complaints against members, member firms, affiliates and students and determines whether there is a prima facie case of misconduct. In this case, the Committee requested that I thank you for bringing this matter to its attention and to advise you that the Committee is currently examining matters referred to by you. "*
12. By letters dated 31 March and 20 April 2009 Party A wrote to the Head of Professional Conduct of CARB seeking response to his correspondence going back to 3 November 2008.
13. By letter dated 24 April 2009 the Head of Professional Conduct of CARB replied to Party A. This letter purports to explain the term "Secretarial matters" by reference to the definition of a "Complaint" as set out in the relevant Disciplinary Bye-laws. The relevant Bye-Law definition describes a "complaint" that is "brought to the Head of Professional by a complainant or otherwise coming to the attention of the Head of Professional Conduct." the letter goes on to state that *"it is at the discretion of [the Head of Professional Conduct] to deal with complaints in this manner where matters come to the attention of the Head of Professional Conduct other than by way of direct complaint, also in circumstances where there are multiple complaints received in a particular matter or where the interests of the complainant are not directly affected by the matter complained about".*
14. By Letter dated 22 July 2009 Party B wrote to the Head of Professional Conduct referring to CARB's letter of 24 February and went on to say *"It is now 6 months since you tabled this matter for consideration by the [Complaints Committee] and I have had no feedback whatsoever from that source. Has any action taken place in the matter e.g. review of working papers? "*
15. By letter dated 20 August the Head of Professional Conduct wrote to Party B responding to his letter of 22 July 2009. The letter stated, inter alia, *"I wish to advise you that this complaint is currently being processed as a Secretarial Complaint and the investigation remains ongoing."* After setting out the definition of a complaint under the Disciplinary Bye-laws the letter goes on to state *"The matter which you are referring to is being treated as a complaint in which the writer, as Head of Professional Conduct, is effectively the complainant for the purposes of*

*carrying out the investigation. It is at the discretion of the writer to deal with complaints in this manner where matters come to the attention of the Head of Professional Conduct other than by way of a direct complaint, also in circumstances where there are multiple complaints received in a particular matter or where the interests of the complainant are not directly affected by the matter complained about."*

16. Subsequently both Party A and B wrote to the Head of Professional Conduct on a number of occasions challenging the manner in which the matter was being dealt with by CARB.

The letters of 24 April 2009 and 20 August 2009 from CARB to Party A and Party B respectively are, in the view of the Enquiry Committee, very important letters in the context of the first finding because the net effect of the letters is that the Head of Professional Conduct effectively takes over the complaints of Party A and Party B instead of treating them as individual complaints. The Enquiry Committee has, effectively, arrived at the findings (as set out below) that each of the complaints made by Party A and Party B should have been treated as individual complaints but instead were treated as complaints brought by the Head of Professional Conduct to the Disciplinary Committee of the Institute even though Party A, in subsequent correspondence, objected to his complaint being dealt with in this matter.

Because the Head of Professional Conduct decided that Party A and Party B were not to be treated each as a "Complainant" they were, as a consequence, deprived of certain potential rights which included the possibility of each of the Complainants having their complaint directly dealt with by the Complaints Committee, their right to refer the decision to an independent reviewer and, generally to receive normal notifications and correspondence that CARB would send out to Complainants in the course of dealing with a complaint. The Enquiry Committee regard the rights of Complainants to be treated in their individual capacity as important rights and ones of which Complainants should not be deprived of without good and sufficient reason.

### **Findings of the Enquiry Committee:**

Having reviewed the documents furnished and the submissions made by or on behalf of the Institute and others, the Enquiry Committee has made findings that the Institute of Chartered Accountants in Ireland (hereinafter the Institute) has failed to comply with its approved investigation and disciplinary procedures as follows:

**1. Finding:** That, in contravention of its approved investigation and disciplinary procedures, the Institute has failed to treat either Party A or Party B as "Complainant (s)" or to have made a "Complaint" as defined and set out in Bye laws 61 and 69 of the Institute's Bye Laws thereby depriving them of the rights of a complainant under Bye Laws 70, 73.4 and 74.1.

**Reason(s):** The Disciplinary Bye-laws define "Complainant" as "...a person ...who brings a Complaint to the attention of the Head of Professional Conduct". Complainants as defined under the Institute's Disciplinary Bye-laws, are afforded certain rights (see determinations below), of which, it appears from the documentation furnished, Party A and Party B were deprived. The EC do not consider the Institute's 'Guide to Complaints Procedure', setting out the concept and processing of a so called 'secretarial complaint' to form part of or to be in compliance with the investigation and disciplinary procedures and Bye laws of the Institute as approved by IAASA.

**Reason(s):** There is no evidence of the Head of Professional Conduct either resolving Party A's Complaint or Party B's complaint under 70.1 or conveying the Complaints to the Committee in the manner required by 70.2, but rather they were treated as if the complaint had emanated from or been made by the office of the Head of Professional Conduct (described as a "Secretarial Complaint").

**Reason(s):** In relation to the Complaint(s) investigated as a Secretarial Complaint, the non- treatment of Party A and Party B as Complainants meant that neither of them was informed as required by Bye-law 73.4 of the Complaints Committee's decision that a *prima facie* case had not been made out that there

was a conflict of interest in PwC accepting work from the Financial Regulator involving a review of aspects of the accounts of Bank of Ireland, and the reasons for that decision.

**Reason(s):** As a result of not being treated as Complainants and not receiving notification of the Complaints Committee's decision that no *prima facie* case had been made out that there was a conflict of interest in PwC accepting the engagement from the Financial Regulation to examine aspects of Bank of Ireland's accounts and the reasons for that decision, Party A and Party B were not afforded the opportunity to require the Head of Professional Conduct to refer the decision of the Complaints Committee to an Independent Reviewer in accordance with Bye Law 74.1.

**2.Finding:** That, in contravention of its approved investigation and disciplinary procedures, the Institute failed to investigate part of Party A complaint, specifically the element referring to his unhappiness with the '*...clean report given by PwC on BO/ accounts to 31/03/08*' as defined in Bye Laws 61,70.1 ,70.2 and 73.2. These failures led to a subsequent failure under Bye Law 71.1, to consider whether the complaint for '*public concern and/or is of complexity or importance*'.

**Reason(s):** The minutes of the Complaints Committee meetings at which Party A's letter was placed before the Committee, make no reference to the consideration of this second element of Party A's complaint. In addition the Complaints Committee Agenda papers 26<sup>th</sup> May 2010 and 26 January 2011 prepared for the Committee setting out the '*Nature of the Complaint* ' make no reference to the second element of the Complainant's complaint.

**3. Finding:** That, in contravention of its approved investigation and disciplinary procedures the Institute's Complaints Committee failed to consider whether the Complaint dealt with as a Secretarial Complaint was one of public concern and/or of complexity or importance when the complaint(s) were first conveyed to the Complaints Committee.

**Reason(s):** The EC notes the assertion of the Institute that there was no requirement on the Complaints Committee to minute the formation of its opinion in relation to Bye Law 71.1. However in the absence of any such record (or indeed other documentary confirmation) of the complaints Committee's deliberations on this point in January 2009 when they began their consideration of these complaints, it is difficult for the EC to accept that this was in fact done at that time. The Complaints Committee minuted their consideration of the issue of public concern over a year later at two subsequent meetings, however by that time the Committee had engaged with PwC, had written to both Party A and Party B and were progressing their deliberations. The EC can find no record of the Committee considering whether the complaints raised questions of 'complexity or importance'.

Extract from the minutes of Complaints Committee meetings 26 May 2010 & 26 January 2011. "*The Committee having considered the matter first formed the opinion that the complaint was not one which gave rise to or included questions of public concern* '.

## **Decision as to Sanction**

As the Enquiry Committee is not satisfied after completing the enquiry the Institute has complied with the approved investigation and disciplinary procedures as set out in its byelaws the Enquiry Committee sought submissions as to sanction from CARB.

### **Finding 1**

In its submissions in relation to Finding 1 CARB stated, inter alia, "that the practice has been revised and updated to ensure that potential complaints are now classified as such and are afforded the relevant rights ...". It further submitted that the breach was "*neither deliberate, dishonest, reckless nor negligent*".

With regard to the submissions made while the Enquiry Committee notes that the practice has been "revised" CARB has not said in what manner it has been revised. The Enquiry Committee noted that

the correspondence was not dealt with in a timely manner and both of the Complainants had to send many reminders. In addition the Enquiry Committee notes the tone of the correspondence from the Head of Professional Conduct which was far from helpful and the ultimate reason given for treating both complaints as "Secretarial Complaints" does not stand up to any objective analysis. As a consequence the Enquiry Committee have come to the view that treating both complaints as "Secretarial Complaints" was a purposeful act by the Head of Professional Conduct which had the consequences already outlined. Therefore the Enquiry Committee regard this as a serious breach and this fact is taken into account in the sanctions applied below.

## Finding 2

In its submission in relation to finding number 2 CARB refer to "Terms of Settlement". This Committee has not been given nor does it required access to any matters or offers made prior to the setting up of this Committee and therefore cannot take in to account any "Terms of Settlement" offered by CARB.

*CARB goes on to make the following submissions "it is vital that CARB's action in respect of the member firms audit of Bank of Ireland be considered in the context of CARB's entire regulatory remit. In 2010, having prioritised the taking of appropriate steps in response to the banking crisis and having reflected on the most suitable form of response, the CARB Board commenced major review of the audits of specific financial institutions, including PWC 's audit of Bank of Ireland, in accordance with Quality Review Regulations as opposed to the Disciplinary By-Jaws. Vast financial and human resources have been devoted to the Bank Review and since it's commencement it is estimated that the Review has cost CARB €1,000,000. It is expected that the Bank Review should conclude with Reports being made publically available in May 2015, save for in circumstances where an appeal is lodged. Bearing in mind the magnitude of this Bank Review project it should be clear that the CARB Board's response in relation to the role of auditors in the context of the banking crisis is something that all CARB committees and staff have been cognisant of in the carrying out of their functions."*

The submission went on to state:-

*"Prior to commencing this project CARB consulted with relevant stakeholders including IAASA, the Central Bank, the Department of Justice, the National Treasury Management Agency and the applicable auditors. Following CARB's extensive engagement with IAASA through its then chairperson Ms Karen Erwin the Terms of Reference for this review (the "Bank Review") were specifically agreed with JAASA and IAASA indicated its satisfaction with CARB's proposed response to the concerns being expressed regarding the audits of certain financial institutions in the wake of the banking crisis. Throughout the project both CARB's Quality Review team and Mr. David Spence, the independent expert appointed to oversee the Bank Review, have met regularly with the IAASA executive to keep IAASA apprised of progress."*

The submission continued:-

*"If the EC, notwithstanding the above, direct that CARB conduct an investigation into this matter, such an investigation is likely to face considerable obstacles to conduct. Firstly, such a move by CARB is likely to be strongly contested by the member firm in terms of issues such as the matter being effectively reinvestigated for a second time by CARB, objections in relation to the time and resources previously expended by the member firm in cooperating with the Bank Review, in addition to there being the possibility that such files relating to this period may no longer be in the possession of the member firm, some seven years later. In addition the member firm is likely to seek deferment of such an investigation into the matter until such time as the Oireachtas Banking Enquiry and other related parallel investigations have concluded."*

*In light of the above points CARB is respectfully beseeching the EC to carefully consider the making of such an Order and the repercussions and impediments to CARB carrying out such an investigation at this stage. Instead, CARB submits that this finding is a technical breach and that no sanction should be imposed in view of the thorough review of financial institution audits being conducted by way of the Bank Review. CARB respectfully submits that this technical breach was neither deliberate, dishonest, reckless nor negligent. Instead, CARB's failing relates to a lack of communication with the complainants which, had the terms of the Banking Review been appropriately communicated to these*

*individuals, may have satisfied their requests for an update on CARB's handling of the banking crisis and could thereby perhaps have circumvented the need for this Enquiry."*

While the Enquiry Committee acknowledges the strong submission made on behalf of the Institute the Enquiry Committee's primary concern is with the rights of the Complainants. The Complainants in this case have both made complaint and they are entitled to have their complaints be dealt with in the proper manner by the Institute. Insofar as the Bank Review is concerned it may very well be (and this Enquiry Committee is a stranger to the Bank Review) that his particular issue will be dealt with in such a review but it may not. If it is dealt with in this Bank Review then no doubt these matters can be put before the Complaints Committee. With regard to the passage of time this is a matter between CARB and the various parties involved but is not a reason why this Enquiry Committee should not direct a rehearing.

### **Finding 3**

In its submission relating to finding number three CARB, inter alia, submits that the failure to consider whether the complaint was one of public concern and or complexity was merely a failure to minute this issue. In this regard, other than attempt to assert in correspondence that the matter was not minuted, CARB have not produced any evidence from, for example, the secretary of the Committee and/or the members of the Committee to confirm that this issue was in fact taken into consideration. In any event it is such an important matter that it should have been minuted.

#### **General Submission re Findings**

CARB has submitted, inter alia, that a "monetary fine of €15,000 to included costs" would be appropriate together with either an admonishment or censure.

The Enquiry Committee in arriving at its sanctions and taking in to account the fact that it requires the matter to be reinvestigated believe that the sanction of €15,000 is proportionate in all the circumstances.

### **Sanction**

Having regard to all the circumstances of this matter, taking all of the above into consideration and the reasons as set out above, the Enquiry Committee hereby applies the following sanctions:-

- a. Censure the Institute;
- b. Annuls the decision of the Institute (3.9 "08/12/090 PWC/Secretarial") dated 26 May 2010 and the decision of the Institute (3.13 "08/12/090 PWC/Secretarial") dated 26 January 2011 relating to the matters that were the subject of the Enquiry;
- c. Directs that the Institute conducts a fresh investigation into the matter; and
- d. Requiring that the Institute pay the Authority a sum of €15,000.

Dated: 20th February 2015

Signed: Keith Walsh

Chairman of the Enquiry Committee