THE HIGH COURT

RECORD NO.

IN THE MATTER OF CHARLEVILLE CREDIT UNION LIMITED AND IN THE MATTER OF THE CENTRAL BANK & CREDIT INSTITUTIONS (RESOLUTION) ACT 2011 AND IN THE MATTER OF THE COMPANIES ACT 2014

AFFIDAVIT OF WESLEY MURPHY

I, Wesley Murphy, Head of Function - Resolution, at the Central Bank of Ireland, New Wapping Street, North Wall Quay, Dublin 1 aged eighteen years and upwards MAKE OATH and say as follows:-

1. I am the Head of Function within the Resolution Division ("**RES**") of the Central Bank of Ireland (the "**Bank**"), which reports directly to the Governor of the Bank (the "**Governor**") on resolution matters. Among other things, the Bank undertakes the preparation and implementation of resolution actions contemplated or approved by the Governor. I make this Affidavit on behalf of the Bank, having been duly authorised to do so, from facts within my own knowledge save where so otherwise appears and where so appearing, I believe such facts to be true and accurate.

2. I make this Affidavit for the purposes of verifying the Petition made by the Bank (the " **Petition**") in which it seeks an Order winding up Charleville Credit Union Limited ("**Charleville**" or the "**Credit Union**") pursuant to the Central Bank and Credit Institutions (Resolution) Act 2011 (the "**2011 Act**") and the Companies Act 2014 (the "**Companies Act**"). I beg to refer to a composite book of exhibits (the "**Book**") upon which marked "**WM1**" I have signed my name prior to the swearing hereof. Such of the statements in the Petition intended to be issued herein now produced and shown to me and located at **Tab 1** of the Book as relate to the acts and deeds of the said Petitioner are true and such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

3. I say and believe that Charleville has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency ("**NAMA**") or a NAMA group entity.

4. I say and believe that Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings applies to the proceedings and that the centre of main interest (determined in accordance with Regulation (EU) 2015/848) of Charleville is situated in the State. Charleville is incorporated in the State, its registered office is in the State

and the Credit Union conducts the administration of its interest in Ireland on a regular basis and this is known and ascertainable by third parties, including its creditors. I say and believe that no insolvency proceedings have been opened in respect of Charleville in a Member State of the European Union to which Regulation (EU) 2015/848 applies.

5. Charleville is a credit union based in Charleville in County Cork, founded in 1963 with a common bond encompassing the parishes of Charleville, Ballyhea, Newtownshandrum, Ballyagran and Effin. Charleville is an affiliate credit union of the Irish League of Credit Unions ("**ILCU**").

6. Charleville has been the subject of intensive regulatory and supervisory engagement for a period of more than ten years. The extensive interaction between the Bank and Charleville is set out in more detail below.

7. Charleville is in a distressed financial position. As at 30 June 2017, Charleville reported a reserve position ("**reserves**") of 3.5% of total assets in its Prudential Return ("**PR**"). Charleville has, since 2009, been unable to raise and maintain its reserve position to the regulatory reserve requirement of at least 10.0% of total assets of the credit union (the "**reserve requirement**") as is demonstrated by Table 1 below:

Table 1 - Summary of Charleville's financial position (from 30 September 2009 to June 2017)

					Original draft accounts				
€'000s	*Final Accounts*	*Final Accounts*	*Final Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Prudential Return*
Period end	*Sept 2009*	*Sept 2010*	*Sept 2011*	*Sept 2012*	*Sept 2013*	*Sept 2014*	*Sept 2015*	*Sept 2016*	*Jun 2017*
Total assets	62,653	47,564	41,724	44,624	44,008	44,096	42,453	42,649	41,882
Fixed assets	2,222	2,133	2,032	1,928	1,868	1,780	709	668	347
Gross loans	42,726	37,508	28,559	16,457	14,379	13,726	12,392	11,536	10,755
Bad debt provisions	(9,229)	(14,695)	(13,244)	(5,174)	(4,851)	(4,520)	(5,724)	(5,601)	(4,744)
Total reserves (excl. unrealised)	263	(4,443)	(3,618)	3,564	4,135	4,700	1,939	1,657	1,455
Reserve Position	**0.4%**	**(9.3%)**	**(8.7%)**	**8.0%**	**9.4%**	**10.7%**	**4.6%**	**3.9%**	**3.5%**
					Revised draft accounts				
€'000s	*Final Accounts*	*Final Accounts*	*Final Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Prudential Return*
Period end	*Sept 2009*	*Sept 2010*	*Sept 2011*	*Sept 2012*	*Sept 2013*	*Sept 2014*	*Sept 2015*	*Sept 2016*	*Jun 2017*
Total assets	62,653	47,564	41,724	44,624	41,219	40,836	42,230	42,415	41,882
Fixed assets	2,222	2,133	2,032	1,928	515	477	439	391	347
Gross loans	42,726	37,508	28,559	16,457	14,379	13,726	12,392	11,536	10,755
Bad debt provisions	(9,229)	(14,695)	(13,244)	(5,174)	(6,287)	(6,476)	(5,676)	(5,546)	(4,744)
Total reserves (excl. unrealised)	263	(4,443)	(3,618)	3,564	1,345	1,440	1,717	1,421	1,455
Reserve Position	**0.4%**	**(9.3%)**	**(8.7%)**	**8.0%**	**3.3%**	**3.5%**	**4.1%**	**3.3%**	**3.5%**

Source: Charleville's annual final accounts; Charleville's original financial statements as submitted by Charleville to RCU for relevant years; Charleville's revised financial statements submitted by Charleville to RCU in April 2017 following the adoption of FRS102; and prudential return submitted by Charleville to RCU for period ended 30 June 2017.

8. On 4 May 2017, the Registrar of Credit Unions (the "**Registrar**") issued a Regulatory Direction to Charleville pursuant to section 87 of the Credit Union Act (the "**CUA**") (the "**May 2017 Direction**") which required Charleville to: (a) raise its reserves to 10.0% of total assets (c. €3.14m as at 31 March 2017) by not later than 18 May 2017; and (b) in order to mitigate against certain operational risks that have been identified with respect to Charleville, raise and maintain an additional reserve of 3.0% (c. €1.27m as at 31 March 2017). Charleville failed to comply with the May 2017 Direction by 18 May 2017, and it therefore remains in breach of its obligations thereunder. Charleville also failed to comply and remains in breach of an earlier regulatory direction issued by the Registrar on 14 June 2016 ("**the June 2016 Direction**") requiring it to comply with the reserve requirement of 10.0% of total assets.

9. All credit unions in Ireland are currently required to maintain reserves of 10.0% of total assets. This requirement is a key component of the prudential framework for credit unions and is designed to ensure: (a) the stability of individual credit unions and the sector overall; and (b) to protect members' savings and continuity of access to those savings. The reserves of a credit union support a credit union's operations, provide a base for future growth and protect against the risk of unforeseen losses. Indeed, credit unions are expected for that purpose to operate with a level of reserves above the 10.0% requirement. The level of any additional reserves is decided upon by the directors of each credit union having taken prudent account of the nature, scale and complexity of the credit union's business, its risk profile and prevailing market conditions.

10. Compliance with the reserve requirement enables a credit union to deal with future uncertainties and to act flexibly in light of a changing economic landscape. The failure on the part of a credit union to comply with the reserve requirement represents a significant threat to the orderly and prudent regulation of that credit union. This threat is exacerbated where, as has been the case with respect to Charleville, there is a failure to comply with the reserve requirement over an extended period.

11. As is evident from Table 1 above, and discussed in more detail below, based on the revised financial statements submitted by Charleville to RCU in April 2017 it is now clear that since September 2009 Charleville has not complied with the reserves requirement of 10.0% of total assets. Earlier draft financial statements had stated the reserves as higher than in fact they were. It is now undisputed that based on the revised financial statements which the Credit Union submitted, Charleville has been in breach of the 10% reserve requirement since 2009:

    (a) 30 September 2009 Charleville reported reserves of 0.4%;

    (b) 30 September 2010 Charleville reported reserves of -9.3%;

(c) 30 September 2011 Charleville reported reserves of -8.7%;

(d) 30 September 2012 Charleville reported reserves of 8%;

(e) 30 September 2013 Charleville reported reserves of 3.3%;

(f) 30 September 2014 Charleville reported reserves of 3.5%;

(g) 30 September 2015 Charleville reported reserves of 4.1%; and

(h) 30 September 2016 Charleville reported reserves of 3.3%.

12. As is discussed further below, the directors of Charleville in correspondence with the Bank, have complained that its inability to improve its financial position and meet the reserve requirement is due in part to lending restrictions which were imposed on it by the Bank by way of regulatory directions limiting, *inter alia*, individual and monthly lending. However, the Bank introduced these restrictions following careful consideration and on foot of a decision that it was necessary to do so in order to protect depositors. These directions were not the subject of a legal challenge by Charleville. The Bank reviewed the restrictions on lending at various points in time. However, having regard to the Bank's ongoing concerns in relation to the financial position of Charleville, and in particular its failure to meet the reserve requirements, the Bank decided it was not appropriate to lift the restrictions.

13. Charleville's financial position between 2009 and 2017 has, for the reasons explained in more detail in Section 4 of the Resolution Report, deteriorated due to:

13.1 poor lending and inadequate credit controls during the period prior to June 2010;

13.2 in particular the origination by Charleville during and prior to 2009 of a large number of commercial and property loans to members, a number of which were only repayable by the borrower from the sale or refinancing of property assets, known as "bridging loans", and which resulted in the application of a significant level of write offs and impairments to the carrying value of those loans;

13.3 impairments to the carrying value of the office premises of Charleville located at Main Street, Charleville, County Cork (the "**Premises**"); and

13.4 the ongoing maintenance of a high fixed operating cost base (having regard to the reducing level of revenue generated from Charleville's loan book and investment portfolio), resulting in a negative impact on Charleville's profitability, and which, in the view of the Bank and a number of independent experts that have conducted reviews

of Charleville's business, gives rise to material concerns with regard to Charleville's future viability.

14. The position of Charleville which is set out in much greater detail below can be summarised as follows:-

14.1 Charleville has failed to comply with, and remains in breach of:

(a) the June 2016 Direction; and

(b) the May 2017 Direction;

14.2 although Charleville is not currently insolvent from a balance sheet or cash-flow perspective, Charleville is in a financially distressed position due to:

(a) its inability to raise and maintain the required level of regulatory and operational risk reserves in accordance with the law; and

(b) its high fixed operating cost base relative to reducing recurring income levels in recent years,

calling into question its viability on a standalone basis, a view shared by independent experts which have conducted recent reviews of Charleville's business model, and raising the risk of future insolvency;

14.3 Charleville's financial distress has been materially exacerbated by the failure on the part of its board of directors (hereinafter "**Charleville's Board**") to acknowledge the extent of the required impairment of its balance sheet until after it had already twice sought and obtained significant financial support from ILCU in the form of Saving Protection Scheme ("**SPS**") funding (amounting in aggregate to c.[redacted] received in the period between 2010 and 2014), thereby resulting in such funding being insufficient to raise and maintain Charleville's reserves to the level required by law;

14.4 Charleville has now exhausted all feasible options available to it to raise and maintain its reserves at the levels required by law in order to protect members' savings, and it can no longer survive as a standalone entity – this situation has been acknowledged by Charleville's Board, which since early 2016, to address Charleville's financial distress, has actively sought to identify and complete a voluntary transfer of engagements ("**ToE**") with another ILCU-affiliated credit union;

14.5 Since June 2016, ILCU has made SPS funding available to Charleville, subject to conditions, to support a ToE between Charleville and another suitable ILCU-affiliated credit union ([redacted] in 2016 following the issue of the June 2016 Direction and a further [redacted] in June 2017). The purpose of the additional deposit of [redacted] was to raise and maintain Charleville's reserves to 10.0% of total assets and to raise and maintain an additional reserve of 3.0% of total assets to address key risk areas such as (i) Charleville's reserves; (ii) credit risk; (iii) viability; and (iv) issues with the Premises, which were discovered during due diligence reviews.

14.6 Charleville has, on three separate occasions, sought to negotiate and implement a ToE with a third party credit union, however, in each instance those efforts were unsuccessful.

14.7 From March 2016, Charleville was granted an extended period of time by the Registry of Credit Unions ("**RCU**") to facilitate the identification of a suitable and willing transferee, during which period Charleville has been in breach of its obligation to raise and maintain the reserves required by law. The Bank now formed the view that Charleville does not have any reasonable prospect of (i) raising the capital required to meet its reserve requirements; or (ii) implementing a ToE, having regard to the fact that it has now attempted on three occasions to do so.

15. Charleville has been afforded every opportunity over the last 10 years to resolve its financial issues. The Bank cannot continue to exercise forbearance in circumstances where Charleville remains in breach of the Regulatory Directions without any prospect of being in a position to resolve its situation. The Bank is of the view that Charleville has failed as a credit union, has no prospect of being in a position to meet its regulatory reserve requirements and accordingly is seeking a winding up order.

16. A report on Charleville dated 11 October 2017 (the "**Resolution Report**") was provided to the Governor by the Bank. I beg to refer to a copy of this Report which is located at **Tab 2** of the Book.

BACKGROUND

17. A detailed account of the extensive regulatory engagement between the RCU and Charleville is set out in Section 3 of the Resolution Report and is summarised below.

18. The regulatory engagement between RCU and Charleville occurred over the course of a ten year period from early 2007 to date. During that period, at RCU's request, Charleville undertook a number of external expert reviews and inspections.

19. Those independent reviews, along with RCU's own inspections, highlighted the existence of very material and recurring issues in Charleville relating to (a) Charleville's lending practices; (b) the manner in which Charleville has recorded bad debt provisions and the value of the Premises in its financial statements; and (c) the future viability of Charleville's business.

20. A summary of the key supervisory interactions is set out below.

Summary of Regulatory Engagement 2007 to 2010

21. At detailed account of the Regulatory Engagement during this period is set out at paragraphs 3.8 – 3.29 of the Resolution Report.

22. From 20 to 23 March 2007, RCU carried out an inspection of Charleville. This inspection identified significant concerns in relation to the loan book, namely that Charleville had a significant number of large loans – the top 100 loans in the credit union accounted for 42.0% of the total borrowings as at 21 March 2007. Following RCU's inspection in 2007, concerns were raised in relation to Charleville's loan book and its lending, including large business / property related loans with one off lump sum repayments from the sale or realisation of assets, known as bridging loans. An independent review of Charleville's loan book carried out by Susan Morrissey & Co. Chartered Accountants & Registered Auditors (the "**June 2007 Susan Morrissey & Co. Report**") indicated a requirement to increase Charleville's bad debt provisions in the financial statements for the year ended 30 September 2007 to c.€3.0m. As at 30 September 2007, Charleville had total assets of €73.4m and reserves of 9.3%. RCU continued to express concerns during 2008 regarding the management of Charleville's loan book and the type of lending it was undertaking. Notwithstanding these concerns, Charleville only increased its bad debt provisions by c.€0.2m to €2.8m in the audited financial statements for the year ended 30 September 2008 (the "**2008 Accounts**"). Charleville reported total assets of €71.5m and reserves of 10.1% in the 2008 Accounts.

23. In 2009, RCU continued to engage with Charleville with respect to the bad debt provisions, the recoverability of loans, the [redacted], and whether or not repayments were made. Arising from the reviews completed, Charleville's bad debt provisions increased from €2.8m in the 2008 Accounts to €9.2m the audited financial statements for the year ended 30 September 2009 (the "**2009 Accounts**"). The 2009 Accounts reported total assets of €62.7m and reserves of 0.4% (the 30 September 2009 reserve requirement was at least 7.5%). RCU advised Charleville to seek financial support to raise its reserves to the minimum 7.5% required. RCU imposed lending and business restrictions on Charleville in light of RCU's concerns in relation to the financial position of the Credit Union and the management of its loan book.

24. During 2010, Charleville's financial position continued to deteriorate. As a result, RCU issued further restrictions on Charleville's business, given concerns held regarding the management and functioning of the credit union. In May 2010, Charleville entered into an agreement with ILCU (the "**2010 ILCU Guarantee**") which made up to [redacted] of SPS funds available to Charleville to offset losses incurred on non-performing loans, subject to the satisfaction of certain conditions. Charleville's actual reserve position of -9.3% for the year ended 30 September 2010 was only established in mid-2012, following significant interaction between RCU and Charleville in relation to its loan book during 2011 and 2012. Further details regarding the establishment of Charleville's true financial position are set out in the Summary of Regulatory Engagement from 2011 to 2014 below.

Summary of Regulatory Engagement from 2011 to 2014

25. A detailed account of the regulatory engagement between RCU and Charleville during this period is set out at paragraphs 3.30 – 3.78 of the Resolution Report and is summarised below.

26. RCU retained concerns in respect of Charleville's financial position for the year ended 30 September 2010. In this regard, a number of reviews were carried out by external consultants and by ILCU. In particular a viability review carried out by Ernst & Young (the "**EY Viability Review**") raised significant concerns in respect of the adequacy of Charleville's bad debt provisioning, its solvency and viability. The effect of the independent reviews resulted in Charleville increasing the level of bad debt provisions in 2010 Accounts and the 2011 Accounts. The Registrar issued a Regulatory Direction (the "**2012 Direction**"), directing the Credit Union to raise and maintain its reserves to 10.0% of total assets by no later than 27 April 2012, noting Charleville required €9.0m of solvency support.

27. In 2011 Charleville received, in cash, [redacted] of the total [redacted] of SPS support under the 2010 ILCU Guarantee. On 25 April 2012, ILCU provided a second SPS guarantee to Charleville (replacing the 2010 ILCU Guarantee) of up to [redacted] (the "**2012 ILCU Guarantee**"). On 22 August 2012, Charleville held the AGMs for the financial years ended 30 September 2010 and 2011. In the AGM notice for the financial years ended 2010 and 2011, the following financial position for each year was set out:

    27.1 for the year ended the 30 September 2010, Charleville reported a balance sheet of €47.6m, total bad debt provisions of €14.7m and reserves of -9.3% (the 30 September 2010 reserve requirement was at least 8.0%); and

27.2 for the year ended the 30 September 2011, Charleville reported a balance sheet of €41.7m, total bad debt provisions of €13.2m and reserves of -8.7% (the 30 September 2011 reserve requirement was at least 8.5%).

28. The reduction in bad debt provisions in the year ended 30 September 2011 was largely due to loan write-offs of €2.8m and the subsequent release of bad debt provisions of €1.5m. RCU continued to consider the appropriateness of the business restrictions. In light of the significant issues identified in respect of Charleville's financial position and viability, lending restrictions were issued to Charleville in order to limit the potential loss of members' funds.

29. In the period 2012-2014, Charleville drew down [redacted] in cash under the 2012 ILCU Guarantee.

30. In respect of the financial years ended 30 September 2013 and 30 September 2014, while Charleville received SPS support, RCU retained significant concerns in relation to the level of bad debt provisions and the carrying value of the Premises and required Charleville to carry out further work in relation to these matters. As is set out in the Resolution Report, RCU requested a meeting on 22 October 2014 to discuss RCU's concerns regarding the assumptions used in the financial projections in its value in use ("**ViU**") calculation of the Premises as per the most recent draft financial statements. In its response dated 23 October 2014 Charleville set out that it was not prepared to meet with RCU until RCU set out in writing the concerns it had with respect to its financial position. In a letter dated 11 December 2014, RCU outlined its concerns regarding the assumptions in the Credit Union's ViU calculation advising that the projections did not appear to be realistic and achievable. It is worth noting that, as is explained further below, ultimately the value of Charleville's premises, as reported in its balance sheet, has reduced significantly from €2m in 2011 to €350,000 in its most recent PR (June 2017).

Summary of Regulatory Engagement 2015 - March 2017

31. Notwithstanding Charleville's reported reserves of 10.7% as at 30 September 2014, RCU continued to have concerns regarding the level of bad debt provisioning and Charleville's viability. Subsequently, in April 2017, Charleville submitted revised financial statements which show that the reserve ratio was in fact 3.5% in the year ended 30 September 2014.

32. Charleville requested that RCU review its lending restrictions. On 30 January 2015 RCU notified Charleville that MKO Partners (now known and hereinafter referred to, as "**EisnerAmper**") was appointed to undertake an asset review of Charleville pursuant to section 90 and 91 of the CUA. On 1 July 2015 RCU issued the draft report arising from the asset review undertaken by EisnerAmper to Charleville (the "**Draft 2015 EisnerAmper Asset Review Report**") and invited submissions. That report identified the following issues with respect to

Charleville, specifically: (a) the viability of its business model; (b) its inability to maintain the reserve requirement; (c) the carrying value of the Premises; (d) the reliability of its financial projections and ViU calculation; (e) inadequate bad debt provisions; (f) the methodology and application of its loan provisioning policy; (g) the impact of the business restrictions imposed by the Registrar on the Credit Union by regulatory direction; (h) its lending practices, (i) its credit control practices and, finally, (j) its policies and practices with respect to [redacted].

33. On 14 August 2015, Charleville made its submissions on the Draft 2015 EisnerAmper Asset Review Report, stating that it had: *"carefully studied and considered the EisnerAmper report, and fundamentally disagrees with, and has serious concerns about, large aspects of the report.... Projections provided to the Central Bank by this Credit Union previously are still valid and show that the Credit Union can operate a viable business model. Notwithstanding this the Credit Union has engaged the ILCU to provide support".* In addition, Charleville requested an immediate review and lifting of the lending and investment restrictions.

34. On 30 October 2015, Charleville submitted a report prepared by DHKN to RCU (the "**2015 DKHN Report**") which identified that an impairment to the value of the Premises was necessary to bring it to market value, as per the GVM Valuation dated April 2015. In addition, the 2015 DHKN Report raised concerns in relation to Charleville's financial position noting the following as "key challenges" facing the Credit Union:

34.1 Continued decline in Charleville's loan book and associated loan interest income;

34.2 Decreasing investment income due to falling rates of return;

34.3 Increased regulatory and compliance costs;

34.4 Investment in IT infrastructure;

34.5 Member expectations of dividend and increased service offerings; and

34.6 Competition from other financial institutions, including other credit unions.

35. Furthermore, the 2015 DHKN Report stated that: *"due to the level of uncertainty with respect to loan growth, declining investment returns and increasing costs, it is our opinion that the future viability of CCU, operating with no restrictions, will remain challenging and uncertain".*

36. RCU met with Charleville on 12 November 2015 to discuss the findings of the Draft 2015 EisnerAmper Asset Review Report and the 2015 DHKN Report regarding the carrying value of the Premises and the [redacted]

[redacted]. RCU also highlighted the potential negative impact of these impairments on Charleville's financial position.

37. On 18 November 2015, Charleville submitted additional information regarding the status of the "*32 secured loans*" as reported in the 2015 DHKN Report. Charleville noted that "*this figure has reduced to 23 Active loans, with 7 resolved since the DHKN review of April, 2014, and a further 2 resolved since the DHKN review of October, 2015. Regarding the further three performing secured loans we discussed previously, please note that the Credit Union takes your comments fully on board. I wish to confirm that in the event any of these performing loans falls into arrears, Charleville Credit Union Limited will disregard the value of security attaching to the loan, and will fully apply the appropriate Resolution 49 provision, without discount.*"

38. In an email dated 20 November 2015, RCU acknowledged the additional information provided by Charleville, noted the matters discussed at the meeting on the 12 November 2015 and advised Charleville that is was "*prudent that Charleville Credit Union reflect full provisions for the remaining 23 Active Loans*".

39. In an email exchange between Charleville and RCU on 24 November 2015, RCU clarified the need for Charleville to recognise on a prudent basis the bad debt provision requirement on a specific portfolio of non-performing loans and a fixed asset impairment as identified in the Draft 2015 EisnerAmper Asset Review Report and the 2015 DHKN Report.

40. In an email dated 27 November 2015, Charleville advised that "*the Board of Directors agreed at their meeting last night to resubmit the Prudential Return for September as per your request*".

41. On 30 November 2015, Charleville submitted a revised PR for the financial period ended 30 September 2015 (the "**Revised September 2015 PR**"). Bad debt provisions were increased to €5.6m and an impairment to the carrying value of the Premises of €0.98m was included. Based on the Revised September 2015 PR, Charleville reported reserves of 4.6% of total assets.

42. Following the completion of the reviews undertaken by EisnerAmper and DHKN in 2015, which identified viability, Premises impairment and loan portfolio impairment issues, RCU did not consider it appropriate at that time to review the restrictions on lending.

43. The Draft 2015 EisnerAmper Asset Review Report and the 2015 DHKN Report identified requirements for additional bad debt provisions and impairments to the Premises. When these adjustments were taken into account by Charleville, its financial position deteriorated further. Charleville submitted its Revised September 2015 PR, in which it increased its bad debt

provisions to €5.6m and reflected an impairment to the Premises of €0.98m. As such, Charleville reported total assets of €42.5m and reserves of 4.6% of total assets.

44. On 29 January 2016 Charleville provided a report prepared by MSN (the "**2016 MSN Report**") relating to a review of specified viability matters. Following the 2016 MSN Report, Charleville advised RCU that a ToE was in the best interests of its members. Two proposals with respect to two credit unions followed. The first proposal was initiated in early 2016 with [redacted] Credit Union Limited ("[redacted]"). However, this process did not complete. In [redacted] RCU advised Charleville [redacted]. The second proposal was then initiated in September 2016 with Clonmel Credit Union Limited ("**Clonmel**"). However, at a meeting on 22 March 2017, with representatives from RCU, Clonmel, Charleville and ILCU, Clonmel advised all parties that it had decided not to proceed with the ToE referring to the number of risks it presented as outlined by it in previous correspondence. A further updated market valuation (which was required as part of the ToE process) dated 2 February 2017 valued the Premises at €0.38m. When Charleville reflected this further impairment in its March 2017 PR, it reported reserves of 3.3% of total assets. Clonmel advised that [redacted] was a major factor in Clonmel's board of directors' decision not to proceed with the ToE. In an email to RCU dated 23 March 2017, Charleville stated that it had "*resolved to source another suitable Credit Union with which to complete a merger*". Further details of the two attempted ToEs are set out below.

45. Given the on-going uncertainty with respect to Charleville's financial position, RCU did not consider it appropriate, at that point in time, to relax the lending restrictions as a fundamental priority of RCU is the protection of members' funds. In this regard, RCU was particularly mindful of the financial projections that were submitted to RCU which indicated that Charleville would have to re-enter the lending market and potentially lend at levels similar to prior years (2007-2009) which would have increased the possibility of further losses and, therefore, the ability of Charleville to maintain reserves at the appropriate levels in the interests of protecting members' funds.

46. As set out above, during this period the Registrar issued the June 2016 Direction on 14 June 2016 requiring Charleville to comply with the reserve requirement of 10.0% of total assets.

47. In the Section below, dealing with the Bank's assessment of the reasons for Charleville's failure, a summary is provided of these revised financial statements which shows the impact thereof on Charleville's financial position compared with the position originally reported to RCU. It is now evident from the revised financial statements that, since the introduction of the reserve requirement at 30 September 2009, Charleville has failed to raise maintain its reserves at the required level.

Summary of Regulatory Engagement since March 2017

48. A detailed account of recent regulatory engagement with Charleville is set out at paragraphs 3.130 – 3.169 of the Resolution Report and is summarised below.

49. On 5 April 2017, following the failed ToE with Clonmel in March 2017, Charleville submitted revised draft financial statements for the financial years ended 30 September 2014 - 2016. The figures reported in these revised accounts in respect of bad debt provisions and fixed assets differed from the original financial statements submitted by Charleville in the respective years.

50. In a letter dated 7 April 2017, the Registrar notified Charleville that, in light of its failure to comply with its obligation to continually maintain reserves of at least 10.0% of total assets, she was minded to issue a regulatory direction to Charleville requiring it to: (a) raise and maintain its reserves to at least 10.0%; and (b) raise and maintain an additional reserve of 3.5% in the form of €1.5m in solvency support and to demonstrate a capacity to maintain the additional reserve at that level. In that letter the Registrar invited Charleville to make any submissions regarding the proposed regulatory direction in writing to RCU by not later than 21 April 2017. The Registrar also confirmed that if the regulatory directions were issued, Charleville would be expected to comply within a two-week timeframe from the date of issue.

51. On 12 April 2017 Charleville provided submissions to RCU in response to the Registrar's letter of 7 April 2017. The key comments made by Charleville in those submissions may be summarised as follows:

    51.1 Charleville commented that the: *"ongoing existence of draconian lending and investment restrictions over such a duration has had the inevitable consequence of limiting the Credit Union's ability to grow and develop its business base, rectify legacy loan book issues, and the sustainment of adequate reserves"*, and that: *"these are the reasons for the Credit Union's inability to generate the required levels of operational income"*;

    51.2 Charleville asserted that it: "*had obtained a Regulatory Reserve position of 10.3%, as at 31 December, 2014"* and had "*been given to understand by your office, that when*

the Regulatory Reserve had attained the required 10%, that you would be favourably disposed to reviewing the lending restrictions in place in the Credit Union";

51.3 Charleville further asserted that it had: "*worked very hard to achieve the required Regulatory Reserve, and it has been an ongoing cause of frustration and disappointment that the lending and investment restrictions continue to remain in place with no easing or reduction whatsoever*";

51.4 Charleville contended that: "*the key issue is the continued decline of the Credit Union loan book, and the associated loss of business to other financial institutions, as a direct result of the Credit Union's inability to trade normally due to the presence of lending restrictions*";

51.5 Charleville offered the view that the: "*Central Bank inaction regarding the easing of both lending and investment restrictions, because they have been in place for such a considerable period of time, did make the viability of the Credit Union challenging, but also, in our considered view, eminently achievable, because of our fiercely loyal membership, and our ongoing inability to consider applications from members because of the existence of the lending restrictions*";

51.6 Charleville commented that it had taken: "*actions regarding writing down the value of the premises, and disregarding security valuations on loans, in the belief that we would get fair play, and support from the Central Bank*", that such actions: "*had a clear and obvious impact on the Regulatory Reserve, reducing it to a figure of 4.9%*" and that it believed that having taken these measures: "*we would quickly see a review of the lending and investment restrictions, as outlined, as tangible evidence of your support for the Credit Unions' addressing these legacy issues*" but that: "*sadly this has proven not to be the case*";

52. With respect to the June 2016 Direction, Charleville commented that given the continuation of the lending and investment restrictions: "*income generation was never going to be anywhere near the required level to achieve a Reserves figure of 10%*", that the issuance of the June 2016 Direction "*smacked of a "box-ticking" exercise - and was clearly never going to be achieved by the Credit Union, because the Central Bank, the very organisation insisting that the Reserves be restored, were at the same time preventing the Credit Union from being in a position to do so*".

53. In relation to the proposed ToE with [redacted], Charleville asserted that: "*unfortunately and inexplicably, the Credit Union did not receive the necessary support we believed was necessary*

from your office, to facilitate and reassure all stakeholders, that this merger was in the best interests of all parties".

54. Regarding the Registrar's concern in relation to the [redacted], Charleville stated that: "*it would appear that the Bank has come to its own conclusions without giving the Credit Union any real opportunity to respond to the Bank's concerns*", and attached a copy of a letter addressed to Charleville by its solicitors, Noonan Linehan Carroll Coffey ("**NLCC Solicitors**"), with respect to the [redacted]. Charleville also asked RCU to provide it with a copy of the Reilly Report prepared for Clonmel by James Reilly & Son with respect to [redacted] which was referred to in the Registrar's letter of 7 April 2017 so that it could properly address the issues identified.

55. With respect to the concerns raised by the Registrar concerning governance issues, Charleville commented that it: "*fundamentally disagrees*" with RCU's assessment and that: "*the challenges that Charleville Credit Union Limited has been working through, are not attributable to negative or lax Governance as implied, but because of the presence of restrictions limiting the ability of the Credit Union to trade normally*". Charleville also asserted that: "*the Directors, the membership and the public in Charleville deserve to be informed as to what the Central Bank considers to be the most appropriate plan for their Credit Union*", and that: "*clearly the Central Bank has a view as to what they perceive to be the best solution for the membership of Charleville Credit Union Limited, but have never disclosed this to the Credit Union*".

56. Finally, Charleville notified RCU that it had written to ILCU outlining the SPS funding required to comply with the proposed directions, that the deadline for submissions was "*very tight*" and therefore requested an extension: "*for a number of weeks, to permit us to make the necessary representations, and obtain the required support from the Irish League of Credit Unions, and raise the funding required*".

57. On 19 April 2017, RCU issued a letter to Charleville in which it confirmed that: (a) the Reilly Report had previously been provided to Charleville by email on 12 April 2017 (but provided another copy for convenience); and (b) the deadline for further submissions was extended to 28 April 2017. On 20 April 2017, Charleville submitted a PR to RCU for the period ended 31 March 2017 (the "**March 2017 PR**"), which reported that Charleville's reserves were 3.3% as at 31 March 2017.

58. In a further letter to RCU dated 28 April 2017, Charleville advised that it had formally applied to ILCU for SPS support. This letter also enclosed a further letter from NLCC Solicitors dated

27 April 2017, which sought to address the concerns raised by RCU on foot of the Reilly Report with respect [redacted]. In their letter, NLCC Solicitors:

[redacted]

59. Having duly considered Charleville's submissions received on 12 April 2017 and 28 April 2017, and the continuing financial issues faced by Charleville, the Registrar issued the May 2017 Direction on 4 May 2017 requiring Charleville to:

59.1 raise its reserves to 10.0% as at 31 March 2017 and in order to do so, raise €3.14m in solvency support in cash to be lodged in an account in the name of Charleville; and

59.2 raise and maintain an additional reserve of 3.0% of its total assets and in order to do so, raise €1.27m in solvency support; and

59.3 comply with the above directions on or before 4pm on 18 May 2017.

60. In the May 2017 Direction, RCU noted the following with respect to the submissions received from Charleville:

60.1 with respect to Charleville's submissions concerning the ongoing lending and investment restrictions imposed by RCU on Charleville, RCU noted that: *"there has been an extensive regulatory engagement with the Credit Union over an extended period of time"* which has focused on the failure of the Credit Union to: *"adequately*

address the pervasive and reoccurring issues relating to loan impairments, bad debt provisioning and fixed asset impairments";

60.2 RCU noted that in its letter dated 12 April 2017, Charleville asserted that it: "*had obtained a Regulatory Reserve position of 10.3% as at 31 December, 2014*" - however, RCU pointed out that on 5 April 2017 Charleville had submitted revised draft financial statements to RCU in respect of the years ended 30 September 2014- 2016, and that the revised financial statements for the year ended 30 September 2014 included additional bad debt provisions of €2.0m and an impairment of the Premises totalling €1.3m which reduced the previously reported reserves as at 30 September 2014: *"from 10.7% to 3.5%";*

60.3 RCU asserted that it is clear that: "*the Credit Union is failing and has failed over a period of time to maintain the required minimum reserve of 10% of total assets*"; and on that basis: *"the Central Bank has not been, and is not in a position to consider removing the restrictions placed on the Credit Union's business activities, in the interest of safeguarding member's funds and the stability of the credit union sector*"; and

60.4 RCU noted that, notwithstanding the additional information contained within the letter received by Charleville from NLCC Solicitors with respect to [redacted], it continued to have concerns with regard to: "[redacted] *and its effect on any potential transfer of engagement process that the Credit Union may commence, should it receive the required financial support as directed by this letter*" – however, having considered the advice received from NLCC Solicitors, RCU revised the additional reserve requirement proposed in its letter of 7 April 2017 from 3.5% to 3.0% of total assets, thereby decreasing the amount of the additional reserve from €1.5m to €1.27m as at 31 March 2017.

61. On 17 May 2017, RCU received a letter from Charleville in response to the May 2017 Direction on the following terms:

61.1 Charleville disputed that it had failed to address the fundamental issues affecting it, noting that it had been working with RCU over a prolonged period of time at huge operational cost. Charleville asserted that it: "*always fully adhere to your directives*" which it claimed had the effect of reducing the reserves to the present levels rather than any inaction on Charleville's part;

61.2 Charleville noted that, whilst an additional reserve of 3.5% had been proposed by RCU in its letter of 7 April 2017, the May 2017 Direction provided for a reduced additional reserve of 3.0% in light of the advices provided to Charleville by its solicitors NLCC Solicitors with respect to [redacted] - Charleville also advised that [redacted] to further deal with RCU's concerns;

61.3 Charleville stated that ILCU had confirmed to it in writing that if Charleville found a suitable transferee for a ToE that was acceptable to RCU, ILCU would give "*serious consideration*" to providing SPS support for any such ToE; and

61.4 Charleville advised that it was continuing with its efforts to identify a suitable transferee and that it had had initial discussions with a potential transferee, however Charleville asserted that it was "*completely pointless*" to continue with those efforts without the Bank's support and requested that the Bank give detailed guidance and direction as to which credit union it deems most suited to a ToE with Charleville.

62. On 23 May 2017, RCU responded to Charleville's letter of 17 May 2017 on the following terms:

62.1 RCU rejected Charleville's assertion that it had always fully adhered to regulatory directions issued by the Bank and noted that despite receiving c.[redacted] in SPS support between 2010-2014, Charleville: (i) has been unable to raise and maintain its reserves to 10.0% since 2009; (ii) has been unable to convene an AGM since 2012 for the year ended 30 September 2011; and (iii) is in breach of its obligations under both the June 2016 Direction and the May 2017 Direction;

62.2 RCU reiterated its view that Charleville has been unable to address its fundamental financial difficulties and in that context referred to: (i) the revised financial statements relating to each year since 2013 submitted by Charleville in April 2017 which made it clear that Charleville had previously materially understated bad debt provisioning requirements and fixed asset impairments, and had not met the reserve requirement of 10.0%, during those periods and; (ii) the most recent PR submitted by Charleville which reported reserves of 3.3% as at 31 March 2017;

62.3 RCU reiterated that the Bank holds significant concerns regarding Charleville's future viability and its ability to remain as a standalone credit union, concerns which have been confirmed by a number of independent reviews conducted in respect of Charleville in recent years;

62.4 RCU noted that Charleville had unsuccessfully attempted on two previous occasions to implement a ToE and that accordingly, RCU had serious concerns with regard to Charleville's ability to complete a ToE even if another suitable transferee was identified;

62.5 RCU explained that it was not the role of the Bank to identify or propose potential transferees but rather to ensure that the ToE process complies with the requirements of the CUA and to consider whether the Bank should confirm the ToE, and that if Charleville had identified a suitable and willing transferee it should immediately notify the Bank; and

62.6 RCU advised of its view that it was not in the interests of the public, Charleville's members, or the credit union sector as a whole for Charleville's current situation to continue indefinitely and the Bank reserved the right to exercise its powers under the 2011 Act should Charleville be unable to submit a detailed proposal to RCU by 16 June 2017 detailing how it could immediately comply in full, and on a sustainable basis, with its obligations under the May 2017 Direction.

63. On 8 June 2017 RCU received a letter that was printed on the office paper of Charleville, but which was signed by a number of its employees in which they outlined concerns with regard to the future of Charleville.

64. On 13 June 2017 RCU received a further letter from Charleville confirming that: "*the Board of the Irish League of Credit Unions formally resolved on Saturday, 10th June, 2017, to lodge a further* [redacted] *to the National Treasury Management Agency account in the name of Charleville Credit Union Limited*" and asserting that such lodgement would "*increase the total funds in this account to* [redacted]*, which will have the effect of both restoring the Regulatory Reserves position to the required levels, while also providing finance for the Additional Reserve of 3%*".

65. On 15 June 2017 RCU received a detailed letter from Charleville in response to RCU's letter to Charleville of 23 May 2017. The principal issues raised in the letter are summarised below:

65.1 Charleville reiterated that it had "*at all times co-operated with the Central Bank*" and had "*undertaken all necessary actions within the power and scope of the Credit Union, to ensure compliance with all relevant legislative and regulatory directions*".

65.2 Charleville asserted, with respect to the June 2016 Direction, that it had "*sourced funding support from the Irish League of Credit Unions to restore our Reserves, and such funds had been placed in a NTMA account in accordance with your instructions*" and that "*up until the time of your instruction of 24th November 2015, to disregard*

security valuations and readjust the premises valuation, the Credit Union had been in full and complete compliance with the 10% reserve requirement".

65.3 With regard to the May 2017 Direction, Charleville also asserted that it will be in a position to comply as a result of the decision of ILCU to *"provide SPS support to any TOE by the Credit Union which has Central Bank approval".*

65.4 Charleville stated, with regard to the Bank's letter of 23 May 2017 and the fact that Charleville had failed to raise and maintain its reserves to the required level, that the letter created a *"false and potentially misleading impression"* that Charleville had "*permitted such a position regarding the Reserves to arise, and had chosen a course of inaction in response*" and that its reserves at their current levels below 10.0% "*was as a result of the Credit Union complying with your instructions to both disregard the value of security held on loans, and apply an adjustment to the premises valuation".*

65.5 Charleville acknowledged that it is *"important to point out"* that the additional lodgement of [redacted] into the NTMA account in the name of Charleville "*is not taken into account by the Central Bank for the purposes of calculating the present statutory reserve position of Charleville Credit Union Ltd*".

65.6 Charleville referred to an email exchange between it and Mr Eamon Clarke of the Bank from 24 November 2015 which Charleville assert constituted an instruction to amend its PR for 30 September 2015 to "*disallow the value of the security held on the secured files*" and "*provide in full for the secured loans by increasing the existing Bad Debt Provision by the value of the security*". Further, Charleville asserts that the "*nett effect of the board's compliance with these instructions by the Central Bank was to reduce Charleville Credit Union Ltd reserve by a further 6%"* and that the email exchange with Mr Clarke demonstrated that "*this was the decision of the Central Bank and the Credit Union was required to comply with it".*

65.7 Charleville stated that it had restated its financial statements for the financial years ended 30 September 2013 to 2016 because there had been a change in applicable financial reporting standards and asserted that Charleville "*did **not** materially understate the provisioning requirements and fixed asset impairments, but reported them in a factual manner in accordance with accepted accounting standard requirements".*

65.8 In response to the Bank's comment in its letter of 23 May 2017 with regard to Charleville's high cost base, Charleville stated that over the previous five years it had

"almost halved its payroll cost and has reduced its staff compliment by 40%, together with absorbing significantly increasing regulatory and compliance expenditure in common with the Credit Union movement generally".

65.9 Charleville asserted that it was: *"unable to improve its trading position because of the ongoing draconian and punitive operational restrictions imposed by the Bank on lending and investments, both in place for a considerable period of time"*, which had as a consequence *"the gradual reduction of our ability to grow and develop our business - primarily through core lending income"*. Charleville further asserted that its inability to grow its business was the *"fundamental issue in Charleville Credit Union Ltd"* not *"solely the reserves position"* as suggested by the Bank in its letter of 23 May 2017.

65.10 With regard to Charleville's efforts to implement a ToE with [redacted], Charleville claimed that the Bank, having initially indicated its support for the ToE *"had a change of mind to this joint approach at some point"* and complained that it was *"confusing in the extreme for Charleville Credit Union Ltd to be permitted by your office to proceed with a merger process with [redacted] Credit Union Ltd, only for your office to decide abruptly that this merger should not proceed".*

65.11 Charleville further claimed that it had taken encouragement from an email from the Bank dated 20 August 2016 that it *"intended to engage in a more active way with the Credit Union"* after the proposed ToE with [redacted] did not proceed, but again complained that the Bank appeared to *"again have changed its mind on this approach at some point"* and referred to the statement in the Bank's letter of 23 May 2017 wherein it reminded Charleville that it was *"not the role of the Central Bank to identify or propose potential ToEs between credit unions".*

65.12 With regard to the proposed ToE with Clonmel, Charleville stated that the *"circumstances surrounding the termination of the ToE process by Clonmel Credit Union Ltd are unclear"* and *"came as a huge surprise and shock"* and claimed that *"on 15 March, 2017, the Central Bank directed Clonmel Credit Union Ltd to cease all ToE activities and requested a meeting between the Central Bank and Clonmel Credit Union Ltd, which we understand did not take place".*

65.13 Charleville also asserted that *"the reasons the two proposed Transfers of Engagement did not proceed were because your office did not permit the first to proceed, having initially permitted it, and the second is less clear, because at an advanced stage of the transfer of engagement process, the Central Bank met with the Board of Clonmel Credit*

Union Ltd, and shortly thereafter, all activities were halted, and the transfer process terminated by Clonmel Credit Union Ltd".

65.14 Finally, with regard to its continuing efforts to identify a ToE, Charleville argued that it would *"not be unduly difficult to source a suitable partner Credit Union, with your support, assistance and encouragement"* for which the process would be *"greatly eased by the decision made in May 2017 by the Board of Directors of ILCU to provide SPS support to any ToE by the Credit Union which has Central Bank approval".* However, Charleville also confirmed that it had not at the date of its letter *"obtained a formal expression of interest from a potential ToE partner"* but contended that *"without the constructive engagement of the Bank in that process, it is possible that we may not succeed".*

66. On 23 June 2017 the Bank responded to Charleville's letters of 13 June 2017 and 15 June 2017 on the following terms:

66.1 The Bank noted that while Charleville argued that the recent deposit of [redacted] made by ILCU into an account with the NTMA has resulted in Charleville having restored its reserves to the required levels, pursuant to Regulation 3 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 (the **"2016 Regulations"**). , in order for SPS support to be included within Charleville's reserves it must constitute *"capital that is unrestricted, fully realised, non-distributable and therefore fully loss-absorbing".* The Bank also explained that any deposit made by ILCU with the NTMA that is *"only available to the Credit Union in the event that a ToE is completed"* cannot be *"included within the calculation of the Credit Union's regulatory reserve ratio".* The Bank also noted that this position was acknowledged by Charleville in its letter of 15 June 2017 and also in its most recent PR which *"specified that the Credit Union had a regulatory reserve of 3.4% as at 31 March 2017".*

66.2 The Bank refuted Charleville's assertion that it had agreed to accept ILCU's lodgement with the NTMA to secure Charleville's reserves and commented that *"the Credit Union is aware that the Central Bank did not at any time agree that the restricted NTMA deposit could constitute regulatory reserves"* and that *"it would not be legally permissible for the Central Bank to do so".* Further, the Bank pointed out that it was *"clear that the Credit Union remains in breach of its obligations"* under the May 2017 Direction and that the sums lodged by ILCU with NTMA do not *"have any impact on the regulatory reserve position of the Credit Union".*

66.3 With regard to Charleville's assertion that it was instructed by the Bank to disallow the security held against certain loans in the calculation of its bad debt provisions, the Bank noted that Charleville had previously expressed concern to the Bank with regard to "*the* [redacted]", and referred to an email from Charleville on 12 December 2013 in which it stated, in respect of [redacted]" and that "*prudently we would have to carry* [redacted] *provision on all of these accounts*".

66.4 The Bank also disputed Charleville's assertion that Charleville was "*instructed*", (by virtue of Mr Eamon Clarke's emails of 24 November 2015), to make changes to bad debt provisioning and fixed asset impairments on the basis that this assertion was "*misleading and inaccurate*" and that the emails "*appear to have been taken out of context for that purpose*". The Bank noted that prior to the relevant email exchange two independent reports concerning Charleville had been completed which highlighted "issues with respect to the adequacy of the Credit Union's bad debt provisions and fixed asset impairments" and that a meeting had been convened between Charleville and the Bank on 12 November 2015 to discuss the findings of those reports.

66.5 The Bank also noted that, following the email exchange with Mr Clarke, Charleville issued a letter confirming that Charleville's Board had decided to reduce the "*net book value of the fixed assets by €950k to reflect the market value of the building*" and to "*disallow the value of security held on secured loans*". Finally, the Bank noted that "*it is the responsibility of the directors of the Credit Union, at all times, to ensure compliance with all its legal and regulatory requirements*", including to ensure that its books and records give "*a true and fair view of the state of affairs*" of Charleville and that "*accurate information concerning the financial position of the Credit Union is provided to the Central Bank*".

66.6 With regard to Charleville's charge that the lending restrictions imposed were "*draconian and punitive*", the Bank explained that the reasons for such restrictions were as outlined in detail in its letter of 23 May 2017 and in circumstances where Charleville has been *"unable over an extended period of time to maintain the required minimum reserve of 10% of total assets, the Central Bank has not been, and is not, in a position to consider removing" those restrictions in the interests of "safeguarding members' funds and the stability of the credit union sector"*.

66.7 Responding to Charleville's claim that the Bank had "*abruptly*" decided that the proposed ToE with [redacted] should not proceed, the Bank noted that Charleville had in

its letter referred to a "*selective excerpt*" of the relevant email which in fact made it clear "*from the outset that it had concerns as to the execution of a ToE with* [redacted]" which related to "[redacted] *having recently concluded a number of other ToEs and the administrative burden that typically arises in dealing with post-transfer issues*".

66.8 The Bank denied that it had directed Clonmel to "*cease all ToE activities*". The Bank noted that at a meeting convened on 22 March 2017 between it, Clonmel and Charleville it had explained that the purpose of the email referred to by Charleville was to arrange a meeting to "*garner an overall assessment of the situation, given the number of outstanding matters and action points relating to the ToE proposal*". The Bank also pointed out that at that meeting Clonmel had explained the reasons for its withdrawal from the ToE process including the "*uncertainty regarding the nature and extent*" of Charleville's [redacted], and that subsequently Clonmel and Charleville issued a joint statement with regard to the cessation of the ToE discussions.

66.9 Finally, the Bank reiterated that it is not the role of the Bank to identify or propose potential ToEs between credit unions. It also noted that Charleville had not notified the Bank of any potential transferee despite more than three months having elapsed since the termination of the proposed ToE with Clonmel. However, the Bank confirmed that it was prepared to allow Charleville a final period of forbearance until close of business on 6 July 2017 by which time Charleville must: "*submit to the Central Bank (a) a letter of consent signed by the board of a proposed transferee in respect of their intentions to enter ToE negotiations with the Credit Union and (b) a High Level Business Case supporting the feasibility in respect of any such ToE proposal*".

67. On 26 June 2017, RCU received an email from Charleville raising an issue with the fact that the Bank's letter of 23 June 2017 was received at 23.07 that evening, and requesting that the deadline of close of business on 6 July 2017 specified in the Bank's letter should be extended to close of business on 10 July 2017. The Bank responded later that day and extended the deadline to 1pm on Friday 7 July 2017 in recognition of the fact that its letter of 23 June 2017 was not received until late in the evening.

68. On 29 June 2017, RCU issued a regulatory direction (the "**June 2017 Direction**") on business activities to Charleville as the December 2016 Direction had expired. In this letter, RCU noted that Charleville was reporting reserves of 3.3% of total assets as at 31 March 2017 and as such, did not comply with the requirement set out in the May 2017 Direction to raise reserves of at least 10.0% of total assets and raise and maintain an additional operational risk reserve of 3%

of total assets. The June 2017 Direction imposed regulatory lending restrictions on Charleville on the following terms:

68.1 restricting the maximum size of loans to members to an amount not exceeding €0.015m (net exposure);

68.2 prohibiting Charleville from making advances of loans to members in any calendar month where the total loans in that calendar month would exceed €0.25m; and

68.3 requiring Charleville to refrain from making investments other than investments in deposit accounts of the kind set out in Regulation 25(1)b of the 2016 Regulations.

69. The June 2017 Direction also reminded Charleville that the Liquidity Requirement set out in the June 2016 Direction would remain in place until such time as it is revoked by the Registrar by notice in writing.

70. On 6 July 2017, RCU received a detailed letter from Charleville in response to RCU's letter to Charleville dated 23 June 2017, which addressed the following issues:

70.1 Charleville expressed disappointment in RCU's response letter dated 23 June 2017 stating that it did "*not acknowledge or address all of the relevant matters*" Charleville had set out therein.

70.2 With respect to the additional funding of [redacted] deposited by ILCU with a NTMA account in the name of Charleville, and the Bank's assertion that such funding was conditional and therefore could not be counted towards Charleville's reserves, Charleville asserted that the Bank had previously accepted that a previous deposit secured from ILCU in July 2016 on similar conditions was "*a means for securing our reserve position at that time*". Charleville also asserted that this additional funding was "*ringfenced*" and that it would continue in its "*endeavours to source a suitable merger partner*".

70.3 Charleville further claimed that the Bank had taken a "*revised stance on the matter of the reserves and solvency support*" and in particular noted that it now required solvency support to be "*unrestricted, fully realised, non-distributable and therefore fully loss absorbing*". Charleville advised of their "*formal request to the Board of Directors of the Irish League of Credit Unions for the appropriation of the entire of the* [redacted] *now standing to the credit of the National Treasury Management Agency account in the name of Charleville Credit Union Limited*". Charleville stated that it would inform RCU of ILCU's decision on their request, which was due for consideration at

ILCU's upcoming Board meeting on the 15 July 2017. In light of this, Charleville requested further time to obtain the requested confirmation from ILCU "*so as to resolve your concerns in this regard once and for all*".

70.4 Charleville advised it took issue with the "*pejorative language*" that it claims RCU used with regard to [redacted]. Charleville asserted that it "[redacted]".

70.5 Charleville asserted that the Bank had, in RCU's letter dated 23 June 2017, quoted an email from Charleville to RCU on 12 December 2013 in a manner that was "*highly selective and had been taken out of context*". Charleville requested that RCU "*issue a correcting addendum*" to its letter dated 23 June 2017, "*confirming that the passage quoted from our email of 12 December 2013 does not refer to the* [redacted]". Charleville further advised that [redacted]".

70.6 Charleville disagreed with RCU's comments in its letter dated 23 June 2017 in respect of emails exchanged between Charleville and RCU, which RCU stated had appeared "*to have been taken out of context*". Charleville claimed that the Credit Union was "*instructed*" by RCU to take "*the steps outlined*" in their email dated 24 November 2015 and that "*Mr. Clarke confirmed these instructions*".

70.7 Charleville complained about certain statements in RCU's letter of 23 June 2017 which it believed suggested that "*the Credit Union deliberately understated certain matters in draft financial statements for several years*". In this regard, Charleville stated that the "*Board of Directors and staff wholly reject any suggestion of impropriety on their part*" and requested that the Bank "*provide an addendum to your letter dated 23rd June to correct the record immediately*".

70.8 In response to RCU's comments on the imposition of lending restrictions, Charleville contended that the restrictions have been in effect "*since the 17th December, 2009, not October, 2011*". Charleville made further allegations in relation to the lending restrictions in place, stating, "*the Central Bank has created and maintained an environment of stagnant/ regressive growth potential in Charleville Credit Union Ltd*". Charleville reiterated that concerns raised by RCU in respect of Charleville's financial position, while continuing to impose the restrictions, were "*disingenuous, and at worst, a cause for concern at a short sighted perspective of aggressively and effectively "running down" the operational effectiveness of our community Credit Union*".

70.9 Charleville disputed RCU's comments around the two unsuccessful transfers, stating that RCU *"directed that no further progress be made on the* [redacted] *ToE"*, Charleville stated that RCU had denied any *"instruction"* given to Clonmel to cease all ToE activities.

70.10 Charleville outlined that it had *"entered into discussions/ negotiations with two Credit Unions"* and reiterated that it had secured SPS funding from ILCU.

70.11 In response to RCU's comments around its role in the ToE process, Charleville asserted *"The Central Bank has a key role in that no ToE may proceed without the ultimate sanction of the Central Bank"*.

70.12 Charleville provided an update on the issue pertaining to the [redacted], enclosing a copy of a letter dated 27 April 2017 from NLCC Solicitors. The letter set out that the "[redacted]".

70.13 Charleville referred to the letter of consent requested by RCU to be signed by the board of a proposed transferee credit union, and advised that they had *"been in contact with a suitable Credit Union who indicated that they are interested at exploring the prospect of entering a ToE with Charleville Credit Union Ltd."* However, Charleville argued that the short timeframe imposed by RCU meant they had yet to obtain a letter of consent from the credit union.

70.14 Charleville suggested the use of an intermediary acceptable by both RCU and the credit union to assist in resolving the ongoing matters.

71. On the 7 July 2017 RCU wrote to Charleville and advised that the Bank took issue with a number of points raised in its letter of 6 July 2017 and intended to respond in detail thereto. In the meantime, it responded on the following terms:

71.1 RCU noted that Charleville had requested that ILCU allow the Credit Union to have unrestricted access to the sum of [redacted], which would be considered at ILCU's board meeting on 15 July 2017.

71.2 RCU agreed to allow Charleville additional time until 5p.m. 17 July 2017 to revert with written confirmation from ILCU that the NTMA funds will be transferred into an account in Charleville's name, by not later than 1pm on Friday 21 July 2017 and that

"*the NTMA funds are made available to the Credit Union in accordance with the requirements of Part 2 section 3(1) of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016*".

71.3 RCU noted that Charleville had not submitted a letter from a proposed transferee credit union confirming their intentions to enter into ToE negotiations, as required by RCU. RCU advised that if Charleville had identified a suitable transferee then this must be communicated to RCU immediately. In addition, RCU required that if the proposed transferee was unable, for unavoidable logistical reasons, to formally confirm a decision to commence ToE negotiations, then that party should instead confirm that it: (i) had entered into preliminary discussions with Charleville; (ii) is interested in exploring a potential ToE with Charleville; (iii) anticipates that its board of directors would meet within three weeks to approve the commencement of ToE negotiations; and (iv) if such approval is forthcoming it will confirm this to the Bank.

71.4 RCU noted Charleville's suggestion of appointing an intermediary between RCU and Charleville, advising Charleville of "*the statutory role of the Central Bank as regulator*", and as such, disclosed it is "*not in a position to entertain any such proposal.*"

72. Charleville, on the 17 July 2017 acknowledged RCU's letter dated 7 July 2017 and responded as follows:

72.1 Charleville asserted that it "*has at all times co-operated with the Central Bank, and has undertaken all necessary actions within the power and scope of the Credit Union, to ensure compliance with all relevant legislative and regulatory directions*".

72.2 Charleville reported that it received an enclosed letter from ILCU, addressed to RCU in which ILCU confirmed that it would "*give serious consideration to providing SPS support for the transfer to take place*". The letter from ILCU further provides that it "*would give serious consideration to providing SPS support to the Credit Union to raise its regulatory reserve requirement to a minimum of 10% of total assets as at 31 March 2017 (being [redacted]), if the Central Bank of Ireland lifts the lending and investment restrictions that are currently in place in the credit union.*"

72.3 Charleville reported that they had informal discussions in relation to a potential ToE with [redacted] Credit Union Limited ("[redacted]") and that RCU should expect correspondence shortly from [redacted] to confirm their interest. Charleville also stated that another credit union, that wished to remain unnamed, had expressed an interest in

initiating ToE discussions. Charleville advised that the unnamed credit union was unable to formally hold a board meeting due to the unavailability of its directors over the summer period.

72.4 Charleville requested an extension of RCU's deadline of the 17 July 2017 (for the commencement of formal ToE discussions) to the 30 September 2017. Charleville outlined that it was committed to a ToE and confirmed that it had secured appropriate funding from ILCU. Charleville requested that RCU engage constructively with it and expressed disappointment at RCU's decision not to consider the proposal of appointing an intermediary to assist in resolving the ongoing matters.

73. On 20 July 2017, RCU referred to Charleville's letters of 7 July 2017 and 17 July 2017 and ILCU's letter of 18 July 2017, responding on the following terms:

73.1 RCU stated that the "*statement set forth in ILCU's letter of 18 July 2017 does not constitute the confirmation sought in our letter of 7 July 2017*" noting that ILCU is only prepared to give "*serious consideration*" to making part of the NTMA Funds, i.e. [redacted], available provided that certain conditions are met.

73.2 RCU further added that "*even if ILCU were prepared to provide a binding commitment to make* [redacted] *available then such amount would be insufficient to enable the Credit Union to comply with its obligations under the May 2017 Direction.*"

73.3 RCU confirmed that the conditions specified by ILCU in its letter are not terms that RCU is in a position to agree to, most notably, the lifting of lending and investment restrictions. RCU concluded that Charleville is in breach of its obligation to raise and maintain its reserves to the level required by the May 2017 Direction on a standalone basis.

73.4 RCU acknowledged that to date, it had not received formal confirmation from [redacted] or any other credit union in relation to a potential ToE. RCU informed Charleville confirmation from either [redacted] or the unnamed credit union must be provided to RCU not later than 5pm Monday 31 July 2017. RCU requested that the credit union confirm it is willing to proceed with ToE negotiations in which case RCU will provide guidance on the timeline established, should ToE negotiations commence. RCU stated that the Bank is not prepared to allow the situation to continue indefinitely, in which Charleville is in clear breach of a regulatory direction.

74. On 20 July 2017, RCU issued a second letter to Charleville, by way of detailed response to Charleville's letter dated 6 July 2017 and outlined the following:

74.1 RCU disputed Charleville's assertion that RCU did not address all of the issues raised in previous correspondence noting that RCU carefully considered each letter and all material issues were adequately addressed. RCU also confirmed that it had endeavoured to address each of the notable points addressed in Charleville's letter of the 6 July 2017. However, RCU noted that any point raised by Charleville not addressed by RCU should not be construed as acceptance on the Bank's behalf.

74.2 RCU rejected Charleville's assertion that the sum of [redacted] (the "**Relevant Deposit**") deposited by ILCU in the name of Charleville could be included in Charleville's regulatory reserves. RCU referred to the letter dated 23 June 2017, in which RCU stated that "*the Central Bank did not at any time agree with the Credit Union that the Relevant Deposit could be included within the Credit Union's reserves*". RCU reminded Charleville that in its letter dated 23 June 2017, it had explained to the Credit Union, that the characteristics of a credit union's regulatory reserves are set out in Regulation 3 of the 2016 Regulations. For ease of reference, RCU attached a copy of both the 2016 Regulations and guidance on same.

74.3 Following Charleville's submission of the March 2017 PR, RCU noted that Charleville reported reserves of 3.3% as at 31 March 2017. RCU added that the directors did not include the Relevant Deposit within the regulatory reserves reported in the March 2017 PR, nor were they included in the regulatory reserves in any PRs submitted by the Credit Union, since the Relevant Deposit was made. Contrary to Charleville's position set out in Charleville's letters dated 13 June 2017, 15 June 2017, and 6 July 2017, RCU stated that Charleville and its directors understood at all times that the Relevant Deposit could not be included within its regulatory reserves due to the fact that the Relevant Deposit can only be used to support a voluntary ToE with another ILCU-affiliated credit union.

74.4 RCU repudiated Charleville's assertion set forth in its letter dated 15 June 2017 that RCU "*instructed*" it to make certain changes to its fixed assets impairments and bad debt provision stating that Charleville has no basis for this assertion. For clarification, RCU highlighted that the relevant impairments were made following a decision by Charleville's Board and this was relayed to RCU in a letter dated 1 December 2015 (the "**December 2015 Letter**"). RCU further added that this decision was followed by a meeting between Charleville and RCU on 12 November 2015 to discuss the findings of the Draft 2015 EisnerAmpner Asset Review Report and the 2015 DHKN Report.

74.5 RCU rejected Charleville's assertion that it had misquoted an email from Charleville to RCU on 13 December 2013. RCU advised that it letter of 23 June 2017 accurately quoted the email in question. RCU advised the email from Charleville confirmed that the directors of Charleville had concerns regarding the [redacted] as far back as December 2013.

74.6 RCU rejected Charleville's assertion that RCU had implied that Charleville's Board had deliberately misinformed or misled RCU when it submitted the draft financial statements which were subsequently revised. RCU noted that the draft financial statements for the financial year ended 30 September 2014 were submitted by Charleville to RCU on 26 May 2015. RCU outlined that Charleville had reported reserves of 10.7% as at 30 September 2014 and further outlined that on 5 April 2017, Charleville had submitted revised draft financial statements for the financial period ended 30 September 2014 in which it reported regulatory reserves of 3.5% on that date. RCU stated that, contrary to previous assertions by Charleville, Charleville had not been able to satisfy the reserve requirement of 10% in any financial year since 2009.

74.7 RCU also disputed Charleville's assertion that the Bank had conducted itself in a manner that was "*at best disingenuous, and at worst, a cause for concern at a short sighted perspective of aggressively and effectively running down the operational effectiveness of our community Credit Union*" in relation to the imposition of the lending restriction on Charleville. RCU explained that the Bank's policy is to impose lending restrictions on credit unions where it has concerns with regard to the financial position of that credit union, including where a credit union is unable to raise and maintain reserves at the required minimum. RCU outlined that Charleville has been unable to raise and maintain its reserves at the required 10% of total assets for a number of years and as such, RCU could not consider a removal of the lending restrictions in those circumstances.

74.8 In response to Charleville's assertion that RCU sought to prevent the Credit Union from completing a ToE, RCU advised that these assertions had no basis in fact and that RCU rejected them in their entirety. RCU advised that the proposed ToE with [redacted] had not proceeded on the basis that [redacted] had recently completed a number of ToEs and that the supporting high level business case for the ToE was inadequate as previously outlined to the credit unions. RCU further noted that the proposed ToE with Clonmel did not proceed as Clonmel withdrew from negotiations after issues were identified during the due diligence review. RCU reiterated that it had not at any stage instructed Clonmel to withdraw from ToE discussions with Charleville.

74.9 RCU refuted suggestions that it had discouraged credit unions from engaging with Charleville in relation to a ToE and further added that at no stage did RCU seek to interfere with Charleville's efforts to identify a ToE partner.

74.10 RCU noted that Charleville had engaged in a third attempt to negotiate and complete a ToE with either [redacted] or another unnamed credit union and in this regard, provided Charleville with a final deadline of 31 July 2017 to (i) obtain confirmation from [redacted] or the unnamed credit union that it was interested in commencing ToE negotiations and (ii) confirmation from Charleville to RCU that Charleville was willing to commence ToE negotiations with [redacted] or the other unnamed credit union.

75. On 31 July 2017, RCU received a letter from Charleville in response to RCU's letters dated 20 July 2017. Charleville stated that ILCU's reservations as set out in ILCU's letter, dated 18 July 2017, were related to the lending restrictions imposed on Charleville. Charleville expressed frustration at RCU's unwillingness to articulate any vision for the future of Charleville and reported that Charleville would be unable to grow its lending business resulting in the further depletion of its reserves if the current lending restrictions remained in place. Charleville confirmed that the Credit Union had begun exploratory discussions with [redacted].

76. RCU issued an email to Charleville on 31 July 2017 at 17:14pm, acknowledging receipt of their email of 31 July 2017. RCU outlined that the Bank had yet to receive confirmation from the proposed transferee, as requested in RCU's letter dated 7 July 2017.

77. On 4 August 2017, RCU responded to Charleville's letter dated 31 July 2017. RCU provided an extended deadline of 21 August 2017, for Charleville and [redacted] to submit confirmation that the board of each credit union had resolved to proceed with a ToE and that there were no further unresolved issues or conditions that would prevent both credit unions from proceeding with a ToE.

78. On 18 August 2017, Charleville set out in a letter to RCU that Charleville's Board had resolved to proceed with the ToE with [redacted]. Charleville's letter enclosed a letter from [redacted] dated 15 August 2017 (the "**15 August 2017 Letter**") advising that its board had agreed to enter negotiations on a proposed ToE with Charleville. In the 15 August 2017 Letter, [redacted] had set out a number of terms and conditions conditional on the ToE proceeding. The primary terms and conditions included the imposition of a limit on individual savings balances held at Charleville, a "*media blackout*" relating to the ToE process and an agreement from Charleville that it would reimburse [redacted] for any costs incurred, should the ToE fail where [redacted] was not at fault.

79. On 24 August 2017, RCU held a meeting with [redacted] to discuss and gain an understanding of the terms and conditions agreed by both credit unions. By email dated 25 August 2017, RCU advised both [redacted] and Charleville of the meeting that had taken place the previous evening, and noted that RCU intended to schedule a meeting with all applicable parties over the following 10 days, to outline the ToE process and next steps.

80. On 28 August 2017, RCU contacted the CEO of [redacted] (who was acting as project manager for the proposed ToE) by telephone, in order to convene a round-table meeting between all parties involved in the proposed ToE. The CEO advised that he would contact all relevant parties that day to confirm availability for a suitable date and time for the meeting.

81. RCU received correspondence from [redacted] and Charleville dated 1 September 2017, which outlined that a meeting had been held the previous day between the boards of both credit unions, at which [redacted] notified Charleville that it did not wish to proceed further with the ToE discussions. [redacted] advised RCU that they had withdrawn from the ToE discussions on the basis that [redacted] *"...own asset size was not sufficiently large enough to enable them to proceed."* [redacted] further outlined that *"having run and assessed high level financial projections for the combined businesses of* [redacted] *and CCU, the Board of* [redacted] *cannot support a business case that would see a TOE of CCU to* [redacted]*"*. RCU noted [redacted] comments and requested additional detail on the high-level projections that had caused concern for the management and board of [redacted].

82. In respect to a request from RCU, [redacted] provided its own high-level financial projections for the proposed ToE and a summary analysis regarding same. [redacted] outlined the following concerns:

82.1 The projections outlined that Charleville would incur losses (excluding their level of debt recovery) and that [redacted] was not strong enough to support and sustain the level of projected losses.

82.2 Charleville's projected level of debt recovery was unsustainable and Charleville's professional and legal fees were high, and would likely continue in an effort to recover bad debts.

82.3 While funding of [redacted] from ILCU remained available to Charleville for a ToE with certain reasonable ToE related costs, ILCU confirmed to [redacted] that they had not quantified what level of costs they considered to be reasonable.

82.4 [redacted] would require ILCU to agree to underwrite the P&L of the combined entity for a minimum of 4 years to allow the business to stabilise and grow. [redacted]

indicated that ILCU was unlikely to do this and would seek to attach repayment of this support again to a portion of the loan book. [redacted] highlighted that this could further impact on projected loan interest income.

82.5 While [redacted] recognised the potential loan growth and business, the loan interest income projected in the years 2018-2020 was not sufficient.

82.6 There would be high fixed costs and high staff costs, in taking on Charleville's members' shares. Given Charleville's current financial position, the existing directors could not remain on the board of the proposed merged entity, and Charleville would be unlikely to accept this position.

82.7 On the 8 September 2017, RCU issued a letter to Charleville acknowledging the position in relation to recent ToE discussions with [redacted]. RCU reiterated that the Credit Union remained in breach of the May 2017 Regulatory Direction. In response to Charleville's request for a meeting, RCU advised that a meeting should be convened as a matter of urgency.

83. On the 20 September 2017, RCU met with representatives from Charleville and ILCU, at which I am advised by the representatives of RCU present at the meeting the following key points were discussed:

83.1 Charleville's Chairman, Pat Savage, advised that Charleville had made contact with the Chairperson of two unnamed credit unions regarding a potential ToE, however could not provide formal details until the boards of the two unnamed credit unions had agreed formal expressions of interest. RCU requested that formal correspondence would be required from Charleville and the credit union interested in commencing a ToE by Friday, 29 September 2017.

83.2 Mr. Savage noted that Charleville's reserve position and lending restrictions imposed by the Bank were contributing factors to the previous ToEs not progressing and he requested that those restrictions be eased on a phased basis. RCU reminded Charleville of previous correspondence issued, reiterating that the Bank were not in a position to ease restrictions in light of Charleville's current financial position.

83.3 RCU outlined that the Bank had identified serious issues with respect to Charleville's business, viability and financial position which had been detailed in previous correspondence with Charleville. RCU noted that those concerns had been confirmed by the recent correspondence received from [redacted] detailing their reasons for withdrawing from the ToE process.

83.4 Charleville questioned RCU as to whether the lifting or easing of restrictions would be considered if SPS funding was received to restore Charleville's reserves to 10% and the additional reserve of 3%. RCU advised that it would consider all of Charleville's submissions, however reiterated the Bank's concerns regarding the viability of Charleville on a standalone basis, the Credit Union's financial issues that remained and also the level of funding that would be required going forward.

83.5 Mr. Savage asked RCU to confirm the alternative actions that may occur if a ToE was unattainable to which RCU stated that the Bank would need to consider exercising its powers under the 2011 Act. RCU noted the urgency of Charleville's situation, the lack of details that it could provide regarding the potential transferees and that the current situation could not continue for an indefinite period. RCU also highlighted its concerns that any other transferee in a ToE process, may identify similar issues as those identified by [redacted].

83.6 To conclude, RCU advised that the discussions from the meeting would be considered and that formal correspondence would be issued to the Credit Union outlining the 29 September 2017 deadline, for any submissions to RCU.

84. RCU issued a letter to Charleville on the 22 September 2017 which can be summarised as follows:

84.1 RCU noted that since June 2016 Charleville had been in continuous breach of the regulatory directions issued by the Bank to raise and maintain its regulatory reserves to the required minimum, and that Charleville had itself acknowledged it was not viable as a standalone entity, some eighteen months previously;

84.2 RCU also noted that Charleville remained in breach of its obligations under the May 2017 Direction and had been given additional time to enter into ToE discussions with [redacted];

84.3 RCU further noted that [redacted] had withdrawn from those discussions and had issued an email to RCU, which was enclosed in its letter to Charleville, setting out [redacted]'s reasons for withdrawing from the ToE process;

84.4 RCU then noted that among the primary reasons for [redacted] decision to withdraw from ToE discussions with Charleville was the fact that Charleville was projected to make a loss in 2018, 2019 and 2020 and that in order to underwrite those losses, [redacted] would require additional financial support from ILCU on completion of the ToE, but was not confident that such support would be forthcoming;

84.5 RCU commented that Charleville had attempted and failed three times to implement a ToE in a period of eighteen months and that issues identified by [redacted] are matters that any other credit union would also identify while considering a ToE with Charleville;

84.6 RCU acknowledged that at the meeting convened with Charleville's Board on 20 September 2017, the Chairman of Charleville had indicated that he had made initial contact with two unnamed credit unions to determine whether those parties were willing to engage in ToE discussions with Charleville and that he expected to hear back from the credit unions during the week commencing 25 September 2017; and

84.7 finally, RCU reminded Charleville that it was prepared to provide it with some additional time until Friday 29 September 2017 to make any further submissions in relation to its current position, to include any response received or further engagement it had with the two unnamed credit unions. In this respect, RCU outlined in its letter that the Bank would require written confirmation from Charleville and any potential transferee that the boards of each credit union had resolved to commence ToE discussions. It was also requested from Charleville that if any expression of interest had been received from a credit union in relation to a ToE , that as part of its submissions, Charleville must explain why it believes it will be in a position to conclude a ToE with the relevant credit union, considering the issues identified by [redacted].

85. By letter dated 29 September 2017, Charleville wrote to RCU in response to the Bank's letter of 22 September 2017, which correspondence can be summarised as follows:

85.1 Charleville re-iterated that it has *"at all times co-operated with the Central Bank, and has undertaken all possible actions within the power and scope of the Credit Union, to achieve compliance with all relevant legislation and regulatory directives*".

85.2 Charleville outlined that it has adhered to all regulatory directions issued by the Bank with the sole exception of the June 2016 Direction and the May 2017 Direction. Charleville asserted that its inability to comply was a result of the imposition of restrictions by the Bank of a number of submissions to the Bank to address that matter in the preceding years.

85.3 Charleville advised that it had made a further submission to ILCU requesting that it review its position with respect to the conditions to releasing the funds held with the

NTMA. Charleville explained that the board of ILCU was due to meet in early October and was "*confident*" that its submissions would form part of that meeting's agenda.

85.4 Charleville outlined that it was "*disturbed to note*" that the Bank had, in its letter, placed "*considerable reliance*" on the explanations put forward by [redacted] in its email of 1 September 2017 to the Bank as to the reasons for [redacted] withdrawal from the ToE discussions. Charleville stated that it "*objects in the strongest possible terms*" to the Bank's "*apparent reliance on this limited and hurriedly produced financial overview as if this report were reciting facts*".

85.5 Charleville commented that it had been given no prior opportunity to comment on [redacted] email of 1 September 2017 and fundamentally disagreed with many aspects thereof and took exception to the Bank's "*apparent acceptance of the summary conclusions made by* [redacted]".

85.6 Charleville stated that it had reviewed some financial projections prepared by [redacted] prior to meeting [redacted] on 31 August 2017 and had, at that time, expressed concern as to the accuracy of some of [redacted] figures and the assumptions underlying them. Charleville then summarised some of the issues which it had with [redacted] projections, as follows:

(a) "*Inaccurate - some of the assumptions made were obviously incorrect, including; Bad Debt recoveries for CCU are €338K YTD, and these are not reflected in the projections. We would reasonably expect ongoing recoveries per annum, and this should have been reflected.*

(b) *Underestimated – the growth projections were seriously under-estimated, and the rationale behind such an approach was not clearly explained.*

(c) *Lending opportunities - the growth projections did not take into account the positive impact of unrestricted lending opportunities, skilled and talented local staff, a growing national and local economy, and a focused marketing campaign that would undoubtedly have facilitated judicious loan growth in a cost-effective manner.*

(d) *Loss projections – the projections for losses were, in the opinion of Charleville Credit Union, unduly pessimistic and were far in excess of reasonably held views of Charleville Credit Union Limited.*

(e) *Payroll and other costs – Charleville Credit Union limited has always held the view that these matters are manageable and are for discussion, as part of the overall ToE process."*

85.7 Charleville highlighted that they had recently engaged in talks with [redacted] Credit Union Limited ("[redacted]") however, [redacted] was not in a position to proceed further with ToE discussions at this time.

85.8 Charleville confirmed that it had been in contact with [redacted] Credit Union Limited ("[redacted]") "*who wished to enter into discussions on ToE*". Charleville attached correspondence from the chairperson of [redacted], addressed to Charleville (the "[redacted] **Letter**") for the Bank's attention and informed it that a meeting had been arranged between [redacted] and Charleville for 4 October 2017.

85.9 Finally, Charleville asked the Bank to allow a reasonable extension to enable the boards of both credit unions to engage in negotiations.

86. In the [redacted] Letter, the chairperson stated that, following the request of Charleville, the board of [redacted] had agreed to meet with Charleville on 4 October 217 "*to discuss their current situation*".

87. By letter dated 3 October 2017, RCU responded to Charleville, which correspondence can be summarised as follows:

87.1 The Bank re-iterated that the conditions imposed by ILCU with respect to the release of the funds held with the NTMA, namely that the Bank would lift the lending and investment restrictions that are currently in place, are not terms that the Bank can agree to in circumstances where Charleville was in breach of the May 2017. The Bank explained that it was therefore of the view that Charleville had no reasonable prospect of obtaining funding form ILCU on terms that would enable to comply with the May 2017 Direction and that Charleville had been unable to provide any evidence to the contrary.

87.2 The Bank noted Charleville's disagreement with the conclusions and views expressed by [redacted] in its email of 1 September 2017. The Bank however, pointed out that many of the issues identified by [redacted] were also alluded to in reports prepared by various experts over recent years in relation to Charleville and that these same issues had also been raised by the Bank with Charleville over the same period.

87.3 The Bank asserted that Charleville must accept that, notwithstanding the views which it had set out in its letter of 29 September 2017, that [redacted] was entitled to form its views following the review of Charleville's financial information carried out with respect to the Charleville's business and that it decided to withdraw from ToE discussions as a result of the problems that emerged from that exercise. The Bank pointed out that it was reasonable to conclude on that basis that any other party that may wish to engage in ToE discussions with Charleville would be likely to identify the same issues.

87.4 With respect to the position with [redacted], the Bank noted that the [redacted] Letter was silent in all respects as to any ToE discussions with Charleville and [redacted] did not confirm in its letter that it wished to enter into those discussions.

87.5 The Bank stated that in its letter of 22 September 2017, it had allowed Charleville a further period, to 29 September 2017, to make further submissions with respect to its current position, including with regard to expressions of interest from a suitable transferee credit union. Such expressions of interest were required to be in the form of formal letters from both credit unions confirming that their respective boards had resolved to enter into ToE negotiations and should be accompanied by an explanation from Charleville as to why it believed that the parties could overcome the issues identified by [redacted] and complete a successful ToE.

87.6 The Bank noted that Charleville has been unable to comply with any of the requirements outlined in the 22 September 2017 letter, within the specified timeframe. The Bank stated that Charleville had not provided any basis as to why a ToE could be implemented with [redacted] or the rationale as to why it believed that [redacted] is interested in engaging in a ToE.

87.7 The Bank outlined that it required Charleville to furnish to it, prior to its meeting with [redacted] on 4 October 2017, all documentation and material which it intended to provide [redacted] for the purpose of that meeting. The Bank also re-iterated its requirement that formal letters be provided from [redacted] and Charleville's Board, confirming that the respective boards had resolved to enter into ToE negotiations together with an explanation from Charleville as to why it believes the parties could overcome the issues identified by [redacted] in its email of 1 September 2017 and successfully conclude a ToE.

87.8 The Bank expressed that having considered all of Charleville's submissions in its letter of 29 September 2017, the Bank had formed the view that (a) *that it is very unlikely*

that a viable ToE could be implemented; (b) it is not in the interests of its members for the Credit Union to be allowed further time to try to identify another potential transferee; (c) it is not in the interests of the members of the Credit Union, nor the credit union sector as a whole, for the Central Bank to exercise any further forbearance with regard to the Credit Union's inability to comply with its regulatory obligations."

87.9 The Bank stipulated that Charleville must revert with the required information within 7 days failing which, the Bank noted that it would proceed to exercise its powers under the 2011 Act. Finally, the Bank stated that if [redacted] received any communications from [redacted] before the expiration of the 7 day period, then the Bank must be notified immediately.

88. On 4 October 2017 Charleville wrote to RCU in advance of its meeting with [redacted]. In this letter, Charleville confirmed that, once the parties had signed a confidentiality agreement, it intended to provide [redacted] with the June 2017 PR as well as the most recent management accounts and recent financial statements, all of which were enclosed.

89. On 9 October 2017, RCU received a letter from [redacted] addressed to the Bank, dated 5 October 2017. This letter stated that the "*Board of Directors of* [redacted] *Credit Union Limited and representatives of Charleville Credit Union Limited met last night*" and that following that meeting "*the Board of* [redacted] *agreed to continue informal discussions with Charleville in the short-term with a view to establishing whether there is a business case in support of pursuing a transfer of engagements of Charleville Credit Union into* [redacted] *Credit Union*".

90. On the 10 October 2017, RCU issued a letter to Charleville, informing Charleville of the correspondence received from [redacted], noting "*that the letter from* [redacted] *does not satisfy the requirements of the Central Bank as set out in the 3 October Letter insofar as the letter does not confirm that the board of directors of* [redacted] *have resolved to enter into ToE negotiations with the Credit Union, but rather that* [redacted] *has agreed to further "informal" discussions as to whether such ToE negotiations could be supported by a business case.*" Furthermore, RCU outlined that if Charleville wished to make any final submissions to the Bank as to why it should not proceed to exercise its powers under the 2011 Act, then any such submissions were to be made by 12pm, Wednesday 11 October 2017.

91. On 11 October 2017, RCU received a letter from Charleville which in summary provided the following response to RCU's letters of 3 October 2017 and 10 October 2017:

91.1 Charleville asserted that RCU's letter of 10 October 2017 made it "*clear that the Central Bank has not supported the possibility of a ToE by Charleville Credit Union*

Limited" and commented that this is consistent with their experience "*over the past 18 months where one potential transferee after the other withdrew from negotiations with us, following contact between each transferee and the Central Bank*".

91.2 Charleville also referred to the Bank's "*continuation of punitive lending and investments restrictions on Charleville Credit Union Limited over several years*" which "*maintained a vice like restraint on the Credit Union's endeavours to move forward*" and "*discouraged the ILCU from releasing the SPS funding committed by the ILCU to restore the Credit Union's 10% reserve*".

91.3 Charleville notes that RCU's letters of 3 October 2017 and 10 October 2017 required [redacted] to "*commit to formal ToE negotiations immediately*" and to "*give chapter and verse on how* [redacted] *and CCU propose to respond to concerns raised by a third party Credit Union (*[redacted]*) in respect of an entirely different ToE proposal*". Charleville then stated that "*understandably, neither* [redacted] *nor CCU are in a position to deal with these demands within the short timeframe set out in your letters*".

91.4 In its letter Charleville stated that is of the view that "*the Credit Union's business would thrive in Charleville with the benefit of an appropriate ToE and the SPS support available from the ILCU*" and that a "*solution along these lines could have been funded entirely by the Credit Union sector without recourse to State funds*".

91.5 Charleville notes that the Bank has not in its letters said "*what form of "resolution" is contemplated by the Central Bank for Charleville Credit Union Ltd*" and finally, that it was Charleville's "*earnest hope that any action that the Central Bank might take will note be detrimental to the members of Charleville Credit Union*".

92. Finally, on 11 October 2017 RCU responded to Charleville's letter of same date noting that Charleville has been unable to comply with the requirements set out in its letter of 10 October 2017 and that, having carefully considered the content of its letter, and that received previously from [redacted], the Bank would now proceed to make a decision with respect to the exercise its powers under the 2011 Act. The Bank also requested a meeting with Charleville's Board at their offices at 8pm on Thursday 12 October 2017 whereupon the Bank would inform Charleville of its decision and the next steps which it intended to take.

93. I beg to refer to copies of all of the correspondence since March 2017 which is at **Tab 3** of the Book.

94. As at the date of the swearing of this Affidavit, Charleville has not been able to implement a ToE. Furthermore, Charleville has not been able to provide the Bank with any proposal as to

how it intends to comply in full, and on a sustainable basis, with its obligations under the May 2017 Direction. Accordingly, the Bank has formed the view that Charleville is in breach of its obligations under the May 2017 Direction and that it has exhausted all means available to it by which it can comply with those obligations.

CONSIDERATION BY THE BANK OF THE ISSUES RAISED BY CHARLEVILLE

95. The Bank has carefully considered the assertions and criticisms made by Charleville before deciding to apply for the winding up of Charleville.

96. The key issues raised by Charleville in that correspondence can be summarised as follows:

96.1 Charleville has asserted that RCU had failed to provide the necessary support to Charleville with respect to its unsuccessful attempt at a ToE with [redacted], the implication being that if such support had been given Charleville may have been able to complete the ToE and avoid its current predicament;

96.2 Charleville has alleged RCU formed a view concerning the extent of any impairment required to the [redacted] based on the content of the Reilly Report without giving Charleville an opportunity to respond to the issues raised therein;

96.3 Charleville has asserted that the regulatory directions imposed by RCU, restricting Charleville's lending and business activities, impeded its ability to comply with the June 2016 Direction and that RCU, by not relaxing or lifting those restrictions, had prevented Charleville from being in a position to raise and maintain its reserves to the level required by the June 2016 Direction; and

96.4 Charleville has also asserted that its reserves at its current level of 3.5% of total assets is due to the fact that it had been directed by RCU to fully provide for [redacted].

97. The Bank has carefully considered each of the issues raised with reference to the regulatory and supervisory file of Charleville.

Charleville's criticisms concerning RCU's role in the failed ToE with [redacted]

98. The interactions between RCU and Charleville with regard to the proposed ToE can be summarised as follows:

98.1 On 19 April 2016, Charleville advised RCU that a meeting was held with [redacted] to discuss a potential ToE.

98.2 On 21 April 2016, Charleville requested that RCU clarify any concerns that it may have regarding the proposed ToE to [redacted], and on the same day, RCU responded to say that: *"the Central Bank does not have a fundamental objection to [redacted] Credit Union as a potential transferee. As per our discussions,* [redacted]".

98.3 An initial exploratory meeting was subsequently convened between [redacted] and Charleville on or around 23 May 2016, negotiations duly progressed and 17 June 2016 was fixed as the deadline for the delivery by both credit unions to RCU of the High Level Business Case for the proposed ToE (the "**HLBC**"). Following a delay in the preparation of the HLBC this deadline was subsequently extended to 6 July 2016, and the HLBC was ultimately submitted to RCU on 11 July 2016.

98.4 On 18 July 2016 RCU expressed a number of concerns and queries to Charleville and [redacted] regarding the adequacy of the HLBC, including that it did not appear to: *"reflect the additional considerations for a transfer involving the difficulties currently experienced in Charleville"*. As an example, RCU noted there was no reference in HLBC to the two key issues in Charleville, being: (a) the level of staff, and potential overstaffing, as Charleville effectively becomes a branch of [redacted]; and (b) the issues with respect to the value of [redacted].

98.5 RCU invited responses from Charleville and [redacted] with respect to its comments on the HLBC by 22 July 2016. Charleville responded to say that it "*was highly unlikely*" to be able to respond within that timeframe.

98.6 RCU never actually received any submissions or response from Charleville or [redacted] with respect to the concerns that it expressed concerning the HLBC and subsequently in an email to Charleville dated 20 August 2016, RCU advised Charleville that the proposed ToE to [redacted] should not proceed: "[redacted]". RCU noted that it also held concerns in relation to the information submitted by both credit unions regarding the proposed ToE. RCU stated that it remained: "*fully committed to working with the Credit Union to help identify the most suitable transfer option to address the financial position of the Credit Union*".

99. In a letter dated 16 September 2016, Charleville stated that: "*in light of the Bank's view that the proposed transfer to* [redacted] *should not proceed, the Board of Charleville Credit Union Ltd have decided to terminate the transfer process with* [redacted] *and have advised* [redacted] *accordingly*". Charleville advised that it had made "*informal contact with Clonmel*" in relation to a proposed ToE. In addition, Charleville stated that it was: "*glad to see from your emails of 20 August 2016 and 14 September 2016 that the Bank remains fully committed to working with our Credit Union to help identify the most suitable transfer option to address the financial position of the Credit Union.*"

100. In order to assess whether or not there is any basis to Charleville's allegation with respect to RCU's conduct concerning the proposed ToE to [redacted], it is necessary to first consider the nature of RCU's role with regard to ToEs.

101. Sections 129 to 132 of the CUA sets out the legislative requirements and steps for a voluntary ToE between two credit unions. In the first instance it should be noted that:

101.1 a ToE can only be instigated by two credit unions that resolve by a special resolution of their respective members to approve the voluntary ToE of one credit union to another (unless RCU consents to such transfer being approved instead by resolutions of their respective boards of directors);

101.2 although RCU will from time to time seek to facilitate discussions between credit unions with respect to potential ToEs, RCU's primary role, as a prudential regulator to the sector, in the ToE process is to confirm, or not confirm (as the case may be) any ToEs that are proposed to be undertaken by credit unions in accordance with section 131 of the CUA; and

101.3 it is not the role of RCU to propose or instigate potential ToEs, but rather to ensure that any applications that it receives with respect to proposed ToEs comply with the requirements of the CUA, and in particular, are not contrary to the public interest or RCU's statutory functions with respect to the regulation and supervision of credit unions - indeed it would be inconsistent with its role as regulator of credit unions in relation to ToEs, for RCU to propose potential ToEs to itself for confirmation.

102. Charleville's criticism of RCU with respect to the proposed ToE with [redacted] appears to be twofold: first, that RCU failed to provide the necessary support to the ToE; and second, that RCU's failure to provide such support was "*inexplicable*" (as stated in Charleville's letter to RCU dated 12 April 2017).

103. RCU is not required to support any given ToE that is proposed by a credit union. Rather RCU's role as regulator is to analyse the issues that may be faced by any ToE, ensure that the credit unions concerned have identified any such issues prior to the ToE proceeding and have put in place appropriate arrangements to mitigate any risks that may threaten the stability and viability of the combined entity post-ToE and finally, to decide whether or not to confirm any ToE that is formally approved by both credit unions, having regard to the interests of all key stakeholders in both entities, and the sector as a whole.

104. It is clear from that correspondence that:

104.1 RCU explicitly conveyed to Charleville prior to the commencement of its negotiations with [redacted] that challenges may arise given that [redacted];

104.2 RCU raised material concerns with respect to certain deficiencies with the HLBC which were conveyed to both Charleville and [redacted] and that those issues and concerns were not adequately addressed or indeed responded to by either credit union; and

104.3 it was appropriate for RCU to provide notice to both credit unions that, in light of its concerns, it would be unable to confirm the proposed ToE.

Charleville's criticisms regarding [redacted]

105. In its letter dated 12 April 2017, Charleville asserted that RCU had come to certain conclusions concerning [redacted], as set out in its letter dated 7 April 2017, on the basis of the conclusions of the Reilly Report but without providing a copy thereof to Charleville or allowing it an opportunity to respond to the issues raised therein.

106. It is clear from all of the relevant correspondence and meeting notes relating to this issue that:

106.1 the Reilly Report was prepared by the solicitors for Clonmel as part of its due diligence exercise concerning the business and assets of Charleville, including [redacted];

106.2 whilst the file does not confirm that the Reilly Report was provided by Clonmel to Charleville prior to the date of RCU's letter of 7 April 2017, in an email dated 14 March 2017 Clonmel stated that a discussion was held with Charleville regarding, inter alia, matters concerning [redacted], and that accordingly, if Charleville did not have a copy of the Reilly Report by the time it received RCU's letter of 7 April 2017, it was nonetheless familiar with the issues raised in that report with regard to [redacted];

106.3 a copy of the Reilly Report was in fact forwarded by RCU to Charleville on 12 April 2017 and again on 19 April 2017;

106.4 in a letter to Charleville letter dated 19 April 2017 RCU agreed to extend the period within which Charleville could make submissions to the Registrar, in part to allow Charleville time to respond to the issues raised with respect to [redacted] in the Reilly Report;

106.5 Charleville did in fact make further submissions to RCU on 28 April 2017 with respect to [redacted] and the conclusions of the Reilly Report and submitted a written opinion from its solicitors seeking to address those conclusions; and

106.6 in light of the difference of views expressed in the Reilly Report, on the one hand, and the submissions of Charleville and its solicitors on the other hand, RCU altered its position with respect to the additional operational risk reserve that was imposed on Charleville by the May 2017 Direction and reduced the level of the additional operational risk reserve from 3.5% to 3.0% of total assets (a reduction from €1.5m to €1.27m as at 31 March 2017).

107. On the basis of the above, it is clear that Charleville was provided with adequate opportunity to consider and respond to the issues raised in the Reilly Report as reflected in its further submissions to RCU and that RCU duly considered those submissions and, as a direct result thereof, reduced the level of additional operational risk reserve imposed in the May 2017 Direction from 3.5% to 3.0% of total assets.

Charleville's criticisms with regard to the imposition of regulatory directions by RCU

108. The regulatory directions imposed by RCU on Charleville form a central aspect of the regulatory and supervisory history of Charleville. Those regulatory directions included:

108.1 the requirement to raise and maintain Charleville's reserves to a certain specified level, which directions are for ease of reference hereinafter referred to as "**Reserve Directions**" ; and

108.2 restrictions on the lending and business activities of Charleville, with respect to: (i) limitations on lending to any individual member where the net exposure to that member would exceed a specified amount; (ii) limitations on the total amount of lending to members in any calendar month; (iii) prohibitions on Charleville accepting deposits from new or existing members which exceeded a specified limit; (iv) prohibitions on Charleville making certain investments and expenditure on fixed assets; and (v) the

maintenance of liquidity above a specified level, which directions are for ease of reference hereinafter referred to as "**Conduct of Business Directions**".

Rationale for imposition of the Reserve Directions

109. All credit unions in Ireland are currently required to maintain reserves of 10.0% of total assets. This requirement is a key component of the prudential framework for credit unions and is designed to ensure: (a) the stability of individual credit unions and the sector overall; and (b) to protect members' savings and continuity of access to those savings. The reserves of a credit union support a credit union's operations, provide a base for future growth and protect against the risk of unforeseen losses. Indeed, credit unions are expected for that purpose to operate with a level of reserves above the 10.0% requirement. The level of such additional reserves is decided upon by the directors of each credit union having taken prudent account of the nature, scale and complexity of the credit union's business, its risk profile and prevailing market conditions.

110. Compliance with the reserve requirement enables a credit union to deal with future uncertainties and to act flexibly in light of a changing economic landscape. The failure on the part of a credit union to comply with the reserve requirement represents a significant threat to the orderly and prudent regulation of that credit union. This threat is exacerbated where, as has been the case with respect to Charleville, there is a failure to comply with the reserve requirement over an extended period.

111. With effect from 30 September 2009, all credit unions were required to maintain reserves of not less than 10.0% of total assets on an ongoing basis. This reserve requirement is defined in the 2016 Regulations as "*the amount held in the Total Regulatory Reserve of a credit union expressed as a percentage of Total Assets of a credit union*". Reserves available to a credit union for the purpose of the "*Regulatory Reserve Requirements*" must be realised, unrestricted and non-distributable. Credit unions are required to remain in compliance with the reserve requirement on an ongoing basis.

112. Where a credit union's reserves were less than 10.0%, the credit union was required to transfer other realised reserves to the total reserve requirement in order to bring the reserves up to the required level. Where a credit union did not have adequate reserves to meet the reserve requirement by 30 September 2009, the board of directors of the credit union was required to provide the Registrar with a plan for achieving compliance within the shortest timeframe possible, but not later than the timeframes and percentages set out below:

112.1 30 September 2009 – reserves of at least 7.5%;

112.2 30 September 2010 – reserves of at least 8.0%;

112.3 30 September 2011 – reserves of at least 8.5%;

112.4 30 September 2012 – reserves of at least 9.0%; and

112.5 30 September 2013 – reserves of at least 10.0%.

113. Credit unions that do not comply with the reserve requirement are issued with a regulatory direction pursuant to section 87 of the CUA, directing that the credit union raise and maintain its reserves to the required level.

114. The ILCU administered SPS fund provides support to ILCU affiliated credit unions in financial difficulties. SPS support is provided at ILCU's discretion. Prior to 2014, SPS support was generally provided in the form of a "*loan guarantee*", which is more accurately described as a binding agreement to acquire a credit union's non-performing loans for a certain value, subject to certain specified conditions being satisfied by that credit union, including that the relevant loans covered by the "guarantee" are written-off or impaired within two years. Under these arrangements, once the conditions with respect to the loans covered by the guarantee were satisfied, the credit union applies to drawdown funds from SPS and ownership of the loans would pass to ILCU on behalf of SPS.

115. Previously, the Bank accepted that the SPS support provided in the manner described above could be taken into account by the relevant credit union when calculating its reserves, even in circumstances where the SPS guarantee had not been drawn down. However, with effect from 1 January 2016 as per the requirement set out in the 2016 Regulations, the Bank requires any financial support received by credit unions in financial difficulties, would not satisfy the reserve requirement, unless such support is provided in cash, which is unrestricted, fully realised and non-distributable and is fully loss-absorbing capital, to ensure greater certainty in respect of a credit union's reserves. This aspect of the 2016 Regulations emerged following a public consultation undertaken by the Bank on regulations for credit unions, in respect of the commencement of the remaining sections of the 2012 Act in November 2014. A feedback statement along with final regulations was published in July 2015. Furthermore, a notification regarding the commencement of these regulations was sent to all credit unions on 22 December 2015 ahead of commencement of the regulations on 1 January 2016.

116. Following extensive discussions with ILCU, a standard capital contribution agreement ("**CCA**") to be entered into between ILCU and credit unions availing of SPS support was approved in January 2015 and which met the Bank's requirements. Separately a transfer of rights agreement ("**TRA**") was devised which would be put in place between ILCU and any

credit union availing of SPS support that would allow ILCU any future recovery values of a limited number of fully provided assets. The TRA provides for the assignment of rights of recovery typically with respect to written off loans, written off investments and any upside on the existing market value of premises in the event that the credit union decides to dispose of the premises. It is separate from and does not impinge on the capital contribution, which remains unrestricted, realised and non-distributable.

117. Charleville, like every other credit union in the State, currently has a statutory obligation to maintain reserves of 10.0% of total assets. This position would have been the case whether or not the Registrar had issued the various Reserve Directions imposed on Charleville since 2012. In its June 2017 PR Charleville reported reserves of 3.5% as at 30 June 2017.

118. The rationale, purpose and effect of the Reserve Directions imposed on Charleville was to:

118.1 impose a specific legal duty on Charleville to take such measures as are necessary to raise and maintain its reserves at 10.0% (or in the case of the May 2017 Direction, raise and maintain its reserves to 10.0% and an additional operational risk reserve of 3.0% of total assets) by a date specified in the relevant Reserve Direction, for example by seeking support from external sources such as SPS;

118.2 make certain legal remedies available to the Bank in the event that Charleville failed to comply with such Reserve Directions (including the power to seek a Court order requiring compliance and / or the power to petition for the winding up of Charleville); and

118.3 highlight the seriousness of the financial situation faced by Charleville with a view to focussing the attention of the directors on the causes of Charleville's financial distress.

119. The Reserve Directions were imposed on Charleville having regard to the: (a) the acute financial distress of Charleville; and (b) the regulatory policies and practices operated by RCU in respect of the entire credit union sector at the time concerned.

Rationale for imposition of Conduct of Business Directions

120. RCU first imposed a formal Conduct of Business Direction on Charleville in October 2011 in response to a significant deterioration in Charleville's reported financial position since late 2009. Prior to the issue of the first Conduct of Business Direction, RCU's practice was to issue written instructions to Charleville imposing similar restrictions, but unlike formal regulatory directions, these instructions were not legally binding on Charleville. A contravention of a Direction by a Credit Union and any participation in such a contravention by any person

concerned in the management of the Credit Union may be the subject of the administrative sanction procedure under Part IIIC of the Central Bank Act, 1942. This may result in financial penalties and other sanctions being imposed on the Credit Union and/or such persons concerned in the management of the Credit Union.

121. Furthermore, failure to comply with a Regulatory Direction is a criminal offence pursuant to Section 88(6) of the Act. Prosecutions may also be taken in respect of such offences against any officer or member of the Credit Union who has consented or connived in such a failure or to whose neglect such failure may be attributed.

122. As can be seen from the account of the regulatory interaction between RCU and Charleville as summarised earlier in this Section, Charleville has regularly requested that RCU ease or lift the restrictions imposed by the various Conduct of Business Directions. Apart from one occasion in May 2013, where RCU agreed on a one off basis to increase Charleville's monthly lending limit by €0.1m, from €0.25m to €0.35m, RCU has been unable to ease or lift the restrictions imposed on Charleville by these Conduct of Business Directions. RCU has consistently explained to Charleville that it was not in a position to lift or ease the Conduct of Business Directions until it was satisfied that Charleville's financial difficulties had been fully addressed.

123. The statutory basis for the issue of regulatory directions by the Registrar arises under Section 87 of the CUA, which confers the Registrar with the authority to issue Conduct of Business Directions on credit unions where it deems it appropriate to do so. In general, the primary rationale and purpose of imposing conduct of business directions is the protection of members' savings.

124. Members' funds generally constitute a key, if not the primary, source of funding for new lending by credit unions. Therefore, where a credit union is experiencing financial difficulties, is unable to maintain reserves of 10.0%, has a history of engaging in lending activity involving high levels of risk of delinquency, or has failed to adopt appropriate credit risk policies, the Registrar will consider imposing one or more Conduct of Business Directions in order to mitigate the risk to members' funds of that credit union. Although RCU generally regards a lending restriction as a short-term measure, it will usually not ease or lift any such lending restrictions unless and until it is satisfied that the credit union has fully addressed each of the issues identified by RCU that necessitated the imposition of the Conduct of Business Directions in the first place.

125. Clearly, the imposition of lending restrictions will have a negative impact on the ability of a credit union to grow its loan book. In fact, that is the purpose of those restrictions, which are designed to limit lending in order to allow the credit union an opportunity to ameliorate its

financial position without incurring further risk with respect to members' savings. It is also clear that the restriction of a credit union's ability to grow its loan book and to offer credit to members can have negative consequences for that credit union's reputation and profitability. However, RCU has a duty to balance the potential for the imposition of lending restrictions to have such negative consequences for a credit union against: (a) the risk to members if the credit union is permitted to lend freely in circumstances where it is demonstrably financially distressed or has inadequate credit and risk policies in place, or is in fact already non-viable; and (b) the risk for the wider sector if a credit union were to suffer a disorderly collapse due to continuing uncontrolled lending at a time when it is already financially distressed.

126. Although each case is necessarily assessed on its merits, the Registrar will generally impose a Conduct of Business Direction on any credit union that is unable to maintain the reserve requirement of 10.0% over a material period of time. This is because the inability to maintain reserves of 10.0% over a sustained period is a key indicator that a credit union is seriously financially distressed and is at material risk of failure. Generally speaking, RCU will not ease or lift lending restrictions until it is satisfied that the credit union has raised its reserves to the level required, has demonstrated it can to maintain its reserves at that level, and has further demonstrated that it has adequately addressed the issues that caused the credit union to have reserves of less than 10.0%.

127. The Bank believes that the issuing and maintaining of the Conduct of Business Directions imposed on Charleville was necessary and appropriate, in particular when considered by reference to:

127.1 the fact that various reviews conducted by experts in respect of Charleville (the findings of which are summarised earlier in this Section) highlighted the existence of poor lending policies and inadequate credit controls in respect of Charleville, during the period prior to June 2010;

127.2 the acute financial distress caused to Charleville as a result of poor lending practices, which resulted in the impairment of a substantial part of Charleville's loan book;

127.3 the fact that Charleville has not been able to raise and maintain the reserve requirement of 10.0% at any time since 2009 notwithstanding substantial cash support received by Charleville from ILCU via SPS; and

127.4 the fact that the Draft 2015 EisnerAmper Asset Review Report and the 2015 DKHN Report raised serious doubts as to the viability of Charleville's business, even if it

managed to temporarily raise its reserves to 10.0% and the Conduct of Business Directions were lifted.

128. It is also notable that Charleville, although it has requested in correspondence that the restrictions be lifted, has never legally challenged them.

Charleville's assertion with regard to provisions against [redacted]

129. As is demonstrated from the summary of the regulatory interactions between RCU and Charleville set out above, the adequacy of Charleville's bad debt provisioning has been a central issue of concern to RCU throughout the entire period of its engagement with Charleville.

130. In particular, RCU held concerns regarding the [redacted]. Until late 2015, Charleville maintained the position that, although these loans were non-performing, it was entitled to reduce the bad debt provision required to be applied against those loans [redacted] However, RCU consistently raised concerns with Charleville with regard to the [redacted] and whether the extent of the reduction in provisioning was justified. The position was confirmed by Charleville in an email addressed to RCU dated 12 December 2013, wherein Charleville stated that in relation to the [redacted]".

131. RCU's concerns with regard to the [redacted] also arose from the findings of a number of external reviews undertaken in respect of Charleville's loan book, including the Draft 2015 EisnerAmper Asset Review Report and the 2015 DHKN Report, with regard to the [redacted] RCU met with Charleville's Board on 12 November 2015 to discuss the findings of the Draft 2015 EisnerAmper Asset Review Report and the 2015 DHKN Report wherein RCU outlined its concerns regarding these matters. Finally, in a letter dated 1 December 2015, Charleville's Board informed RCU that it had decided to "[redacted]" thereby ensuring that loans that were in arrears for a period of more than fifty two weeks would be fully provided for. Charleville also submitted the Revised September 2015 PR, including the adjustment in its bad debt provisioning levels, thus reporting reserves on of 4.6% of total assets, as opposed to reserves of 10.3%, as reported in the PR for the period ended 30 June 2015.

132. Having considered all of the relevant correspondence and other materials relating to this issue, it does not appear that RCU "*directed*" or "*instructed*" Charleville to provide fully for its non-

performing property-related loans or to [redacted]. Furthermore:

132.1 Charleville did not provide RCU with justifications for its under-provisioning against these loans nor has it provided any substantive evidence that [redacted]; and

132.2 in an email to RCU dated 12 December 2013 Charleville stated, in relation to the relevant impaired loans, that: *"prudently we would have to carry [redacted] provision on all these accounts"* and that: *"this cost is too onerous on the Credit Union which is the basis for requesting funds under the SPS in the first place"*.

133. In conclusion:

133.1 the imposition of the Conduct of Business Directions and the Reserve Directions was an appropriate and necessary regulatory response by RCU to Charleville's financial distress;

133.2 RCU appropriately refused Charleville's request for the Conduct of Business Directions to be eased or lifted in circumstances where Charleville was not in a position to satisfy RCU that it had raised, or was in a position to maintain, it's the reserve requirement accordance with the Reserve Directions and where RCU had material concerns regarding the viability of Charleville's business model;

133.3 RCU was entitled to form the view, having regard to the overriding interest in protecting members' savings and the stability of the credit union sector as that: (i) it was not appropriate to ease or lift the Conduct of Business Directions imposed on Charleville because to do so could expose members' savings to further risk; and (ii) the restoration of Charleville's reserves must be achieved through the contribution to its reserves of additional permanent loss absorbing capital in cash using a source such as SPS funding prior to any lifting or relaxation of the Conduct of Business Directions;

133.4 it is not correct, as asserted by Charleville, that Charleville's failure to raise and maintain its reserves to the required level was caused by the imposition and maintenance of the Conduct of Business Directions by RCU or that, by imposing the Conduct of Business Directions, RCU was preventing Charleville from complying with its obligation to raise and maintain its reserves to the required level;

133.5 Charleville was not *"instructed"* by RCU to provide fully for its impaired property related loans or to [redacted],

however, the decision by Charleville's Board to [redacted] significantly impacted on Charleville's reserves; and

133.6 Charleville's inability to raise and maintain the 10.0% reserve requirement had as its root cause poor lending practices prior to 2010, and the financial distress that resulted therefrom, as is more particularly described below.

BANK'S ASSESSMENT OF REASONS FOR CHARLEVILLE'S FAILURE

134. I believe it is important in the context of the Petition for the winding up of Charleville to outline to the Court what the Bank believes are the underlying causes of Charleville's difficulties which have ultimately led to its failure. These difficulties were identified through supervisory/regulatory interactions, together with a number of reviews and inspections which have been set out in some detail in the Resolution Report and have been summarised above.

135. Charleville's underlying business model, as with all credit unions, is the intermediation of members' savings by granting loans to other members, with surplus resources invested. The income earned from such activities should cover operating costs, the payment of a dividend to members (dividends in credit unions being the equivalent to deposit interest in banks) if possible, and ensure the credit union maintains adequate reserves to comply with the reserve requirements.

136. The Bank is of the view that Charleville's failure has resulted primarily from poor lending practices during the period prior to 2009. As a direct consequence of those practices, Charleville has, over time, needed to recognise a significant level of bad debt provisions and related loan write-offs. In addition, Charleville has had to recognise a sizeable level of impairment to the carrying value of the Premises. The combined impact of those factors has had a negative effect on Charleville's reserves, which according to the June 2017 PR were 3.5% and consequently, the Credit Union is not in compliance with the 10.0% reserve requirement.

Income and Expenditure Account

137. Table 2 below sets out Charleville's income and expenditure from the year ended 30 September 2009 to 30 June 2017.

Table 2: Charleville's income and expenditure 2009 - 2017

€'000s Period end	Final Accounts Sept 2009	Final Accounts Sept 2010	Final Accounts Sept 2011	Draft Accounts Sept 2012	Original Financial Statements Draft Accounts Sept 2013	Draft Accounts Sept 2014	Draft Accounts Sept 2015	Draft Accounts Sept 2016	Prudential Return Jun 2017
Income									
Loan interest	2,592	2,189	1,874	1,521	1,119	869	781	851	579
Other interest income	589	887	387	770	576	415	229	126	47
Other income	44	27	13	21	19	24	26	19	22
Total Income	**3,225**	**3,103**	**2,274**	**2,312**	**1,714**	**1,308**	**1,036**	**996**	**648**
Ordinary operating expenses									
Salaries and wages	1,173	1,047	1,184	588	590	590	530	496	380
Management expenses	973	983	902	840	712	565	595	615	568
Depreciation	115	105	112	105	105	100	89	41	0
Total ordinary operating expenses	**2,261**	**2,135**	**2,198**	**1,533**	**1,407**	**1,255**	**1,214**	**1,152**	**948**
Ordinary operating (Loss) / Profit	**964**	**968**	**76**	**778**	**307**	**53**	**(178)**	**(156)**	**(300)**
Exceptional items									
ILCU funding	0	0	(2,155)	(5,895)	0	0	0	0	0
Impairments	0	0	0	0	0	0	984	0	0
Bad debt provisions	6,461	5,259	(1,451)	(164)	305	(100)	2,030	(653)	(802)
Write offs	201	368	2,812	0	0	0	0	529	802
Recoveries	(66)	(52)	(61)	(139)	(569)	(412)	(431)	(317)	(334)
Total non recurring items	**6,596**	**5,574**	**(854)**	**(6,198)**	**(264)**	**(512)**	**2,583**	**(441)**	**(334)**
Total Expenses	**8,857**	**7,709**	**1,344**	**(4,664)**	**1,143**	**743**	**3,797**	**711**	**614**
Net (Loss) / Profit	**(5,632)**	**(4,606)**	**930**	**6,976**	**571**	**565**	**(2,761)**	**285**	**34**
Dividend	(1,298)	0	0	0	0	0	0	0	0
Key ratios									
Loan Interest/Total income %	80%	71%	82%	66%	65%	66%	75%	85%	89%
Cost Income ratio [1]	275%	248%	59%	(202%)	67%	57%	367%	71%	95%
Cost Income ratio [2]	70%	69%	97%	66%	82%	96%	117%	116%	146%

Source: Charleville financial accounts and prudential return.

Notes: (1) Cost income ratio including exceptional items; and (2) cost income ratio excluding exceptional items.

138. As Table 2 illustrates, Charleville's total expenses exceeded its income in the years ended 30 September 2009, 30 September 2010 and 30 September 2015. In the years ended 30 September 2011 and 2012, Charleville reported an increased trading surplus following the recognition of funds from the drawdown of SPS Support from ILCU. In the financial year ended 30 September 2016, Charleville reported a trading surplus of €0.3m, following the benefit of exceptional items (which included recoveries of loans previously written-off and the reversal of bad debt provision). This trading surplus would be reversed to a trading loss of €0.16m, when these exceptional items are excluded. It is instructive to note that [redacted], following a review of the financial position of Charleville carried out in late August 2017 as part of the ToE process, highlighted the sustainability of relying on loan recoveries to mask operating losses as a key reason for its withdrawal from that process. In that context [redacted] stated that: "*CCU P&L is currently supported by Debt Recovered and its difficult to assess how sustainable this is long term ... We have assumed that CCU is currently recovering "easy wins" in their bad loan book which is reflected in their current P&L but this level of recovery is unlikely to be sustainable*".

139. Charleville's cost income ratio is an important barometer of its underlying viability, and, as the analysis in Table 2 shows Charleville's cost income ratio has been unsustainably high over an extended period. Charleville's management sought to address the level of ordinary operating expenses over the financial years ended 30 September 2012, 2013 and 2014. Table 2 details the year-on-year reduction in ordinary operating expenses in these years. This resulted in Charleville's cost income ratio (excluding exceptional items) reducing below 100% in those years to more sustainable levels. However, notwithstanding the reduction in operating expenses, Charleville's cost income ratio (excluding exceptional items) has remained above 100% since 2015. For any business to sustain itself, such a high cost income performance would present a significant threat to its future sustainability and viability. Indeed, given the level of operating expenses and the fact that Charleville is loss making, when exceptional items are excluded, it is unlikely that there exists a business case for a ToE in the absence of external support that would in essence under-write operating expenses for an extended period post transfer. In that regard, it is noted that as part of its explanation for terminating ToE discussions with Charleville, [redacted] stated that: "*given the level of projected losses in the Merged Entity SCU would require ILCU to agree to underwrite the P&L of the combined entity for a minimum of 4 years to allow the business to stabilise and grow. Based on projected losses this could cost in the region of €1m plus*".

140. Charleville's loan book, a credit union's primary income generator, has declined significantly since 2009 (as outlined in Table 3 below), and consequently Charleville experienced a significant decline in interest income on its loan book. Interest income declined from €2.6m in the year ended 30 September 2009 to €0.9m in the year ended 30 September 2016, a 65.4% reduction.

141. As outlined in Table 3 below, since 2011 Charleville's cash, bank and investments has increased steadily as its loan book reduced in size, rising from €26.7m at 30 September 2009 to €35.8m at 30 September 2016. Surplus resources were invested mainly in short-term investments, typically on deposit in credit institutions. In light of the prevailing low interest rate environment, the income Charleville has been able to generate on its investments has diminished. Other interest income (which includes return on investments) has declined from €0.9m in the year ended 30 September 2010 to €0.1m in the year ended 30 September 2016, representing a decline of €0.8m or 88.9%. While Charleville's surplus funds available for investment has increased significantly in the period under review, the actual return on surplus funds has significantly reduced.

142. Notwithstanding Charleville's efforts to manage its operating cost base, as noted above, its income generating capacity has been constrained by: (i) diminished investment returns given

the low interest rate environment; and (ii) the reduced scale of Charleville's loan book, its primary income-generating asset from which it should earn interest income and (iii) the lending restrictions imposed on Charleville by RCU which were necessary for the reasons explained previously. The sustained reduction in its income generating capacity limits Charleville's ability to cover its operating cost base on an ongoing basis, which calls into question its underlying viability.

Evolution of Charleville's balance sheet 2009 - 2017

143. Table 3 below sets out the evolution of Charleville's financial position for the period 30 September 2009 to 30 June 2017. As is evident from Table 3, Charleville's balance sheet has contracted significantly over that period, with loan and fixed asset carrying values declining significantly on the asset side and members' savings decreasing significantly on the liability side. Table 3 also identifies the negative effect of loan and fixed asset impairments and write-offs on Charleville's reserves.

Table 3: Evolution of Charleville's balance sheet from 30 September 2009 to 30 June 2017

					Original Financial Statements				
	Final	*Final*	*Final*	*Draft*	*Draft*	*Draft*	*Draft*	*Draft*	*Prudential*
€'000s	*Accounts*	*Accounts*	*Accounts*	*Accounts*	*Accounts*	*Accounts*	*Accounts*	*Accounts*	*Return*
Period end	*Sept 2009*	*Sept 2010*	*Sept 2011*	*Sept 2012*	*Sept 2013*	*Sept 2014*	*Sept 2015*	*Sept 2016*	*Jun 2017*
Assets									
Fixed assets	2,222	2,133	2,032	1,928	1,868	1,780	709	668	347
Cash, bank & investments	26,664	22,411	21,996	25,316	31,629	32,951	34,867	35,829	35,432
Gross loans	42,726	37,508	28,559	16,457	14,379	13,726	12,392	11,536	10,755
Bad debt provisions	(9,229)	(14,695)	(13,244)	(5,174)	(4,851)	(4,520)	(5,724)	(5,601)	(4,744)
Net loans	33,497	22,813	15,315	11,283	9,528	9,206	6,668	5,935	6,011
Other assets	269	207	2,381	6,097	983	159	208	217	92
Total Assets	**62,652**	**47,564**	**41,724**	**44,624**	**44,008**	**44,096**	**42,452**	**42,649**	**41,882**
Liabilities									
Members savings	61,934	51,443	44,891	40,907	39,617	39,090	39,651	40,672	40,218
Other creditors	455	463	245	153	256	306	862	320	209
Total Liabilities	**62,389**	**51,906**	**45,136**	**41,060**	**39,873**	**39,396**	**40,513**	**40,992**	**40,427**
Total reserves (excl. unrealised)	**263**	**(4,443)**	**(3,617)**	**3,564**	**4,135**	**4,700**	**1,939**	**1,657**	**1,455**
Loans to Assets Ratio	68%	79%	68%	37%	33%	31%	29%	27%	26%
Cash, bank & investments to Assets	43%	47%	53%	57%	72%	75%	82%	84%	85%
Provisions / gross loans %	22%	39%	46%	31%	34%	33%	46%	49%	44%
Reserve Position %	0.4%	(9.3%)	(8.7%)	8.0%	9.4%	10.7%	4.6%	3.9%	3.5%

Source: Charleville's annual final accounts; Charleville's original financial statements as submitted by Charleville to RCU for relevant years; and prudential return submitted by Charleville to RCU for period ended 30 June 2017.

144. Members' savings, which stood at €61.9m at 30 September 2009 declined significantly in the following years, reducing to €39.1m by 30 September 2014, representing a 36.8% decline over a five-year period. Members' savings began to increase again in recent years and according to

the June 2017 PR, totalled €40.2m. This represents an overall reduction of 35.1% in the period from 30 September 2009 to 30 June 2017.

145. Charleville's total assets have also declined, decreasing from €62.7m at 30 September 2009 to €42.6m at 30 September 2016, a 32.1% reduction during the period. The main decline in assets was the reduction in Charleville's net loan book and the carrying value of the Premises, while cash, bank and investments increased.

146. Since 2009, loans have represented a declining proportion of Charleville's overall asset mix, reducing from a loan-to-asset ratio of 68.2% as at 30 September 2009 to 25.7% as at 30 June 2017. Cash, bank and investments increased from €26.7m at 30 September 2009 to €35.4m as at 30 June 2017, an increase of 32.6% over the period. Cash, bank and investments as a percentage of total assets increased from 42.6% at 30 September 2009 to 84.6% as at 30 June 2017.

147. The evolution of Charleville's asset mix and associated imbalance, moving from a higher proportion of loans (which are typically the primary income generating asset of a credit union) to a higher proportion of investments (returns on which are diminished in the current low-yield environment) has constrained Charleville's income and raises issues regarding its future viability, a matter that will be dealt with below.

148. In the year ended 30 September 2009, the book value of fixed assets (being primarily the Premises and other fixtures and fittings) was €2.2m. The recognition of sizeable impairments has resulted in the carrying value of the Premises declining to €0.35m as at 30 June 2017.

Loan Portfolio and bad debt provisions

149. In the year ended 30 September 2009, Charleville's gross loans totalled €42.7m. Its gross loan book has declined steadily over the period and at 30 June 2017 amounted to €10.8m, which represents an overall reduction of 74.7% from 30 September 2009 to 30 June 2017.

150. Prior to 2009, Charleville granted a significant number of property-related loans to a limited number of borrowers. As outlined earlier in the Report, a number of those loans were bridging finance loans, which effectively means that the loans were structured on the basis that they would be repaid by the borrower from the sale or refinancing of the underlying properties held as security, rather than from other resources of the borrowers. It is important to note that in some cases borrowers may have had no alternative means to repay the loans. As a result, this type of lending tends to be riskier in nature from a credit risk perspective given the size of the loan and the nature of the repayment obligations. Such lending is not typical within the credit union sector, where loans are usually of an unsecured short-term nature. The credit risk

associated with these bridging finance loans may have also increased further due to Charleville advancing top-up facilities in some instances to the borrowers, to meet interest repayments or extend the term of the loans. This resulted in the overall exposure to those borrowers increasing, while at the same time masking the underlying performance of the original loan as arrears in principal and interest payments may have been cleared when the new facilities were made available.

151. In light of RCU's concerns regarding the performance of Charleville's loan book due to an increase in arrears and in light of the nature of the lending Charleville undertook prior to 2009, a number of reviews of Charleville's loan book were undertaken. The successive reviews by RCU and third parties resulted in increases in the level of bad debt provisions held against Charleville's loan book.

152. There were three significant increases in bad debt provisions between 2009 and 2015:

152.1 in 2009 Charleville increased its bad debt provisions by €6.5m following the B&A Loan Book Review, resulting in total bad debt provisions of €9.2m being reported in the financial statements for the year ended 30 September 2009;

152.2 Charleville increased its bad debt provisions by a further c.€5.5m following the 2011 MSN Report, resulting in total bad debt provisions of €14.7m reported in the financial statements for the year ended 30 September 2010; and,

152.3 Charleville increased its bad debt provisions by €2.0m in the 2015 financial statements following a decision by its Board to no longer reduce the total bad debt provisions required under the approach prescribed by ILCU's 2003 Resolution 49 methodology ("**Resolution 49**"), by the deemed value of property assets pledged as security against certain secured loans, resulting in total bad debt provisions of €5.7m as at 30 September 2015. The total bad debt provisions has declined marginally since then, amounting to €4.7m as at 30 June 2017, reflecting loans being written off and the consequent release of related bad debt of provisions.

153. While Charleville's loan book has reduced in value, bad debt provisions as a percentage of the gross loans has increased principally due to the deterioration in the performance of the portfolio. In the year ended 30 September 2009, total bad debt provisions as a percentage of gross loans was 21.6%. This increased in the year ended 30 September 2011 to 46.4%, following impairments connected with the B&A Loan Book Review, 2011 MSN Report, the 2011 ILCU Review and the EY Viability Review.

154. In the year ended 30 September 2012, total bad debt provisions as a percentage of gross loans reduced to 31.4%, reflecting loans being written-off and the consequent release of related provisions. In the year ended 30 September 2015, total bad debt provisions as a percentage of gross loans increased again to 46.2%. This followed the decision of Charleville's Board to provide fully for a further €2.0m in bad debt provisions on certain loans with property pledged as security. As at 30 June 2017, the total bad debt provisions as a percentage of gross loans was 44.1%.

155. Charleville's loan provisioning policy historically followed the Resolution 49 methodology. This methodology calculates the required provision on a non-performing loan based on: (a) the current loan balance in arrears; and (b) the number of weeks that the loan has been in arrears. However, Resolution 49 does not take into account the deemed value of property pledged as security against a loan, which as noted above Charleville held a large portfolio of secured loans. Until 2015, Charleville, in determining the level of bad debt provisions required for its secured loans, calculated the provisions using the methodology prescribed by Resolution 49 and, where Charleville deemed it appropriate, reduced the level of provisions based on the deemed value of the property security which was attached to the particular loans.

156. Further to the Draft 2015 EisnerAmper Asset Review Report, RCU raised concerns as to the [redacted], and questioned the [redacted]. Charleville asserted that [redacted]. However, Charleville did not take the appropriate steps in all cases to ensure that [redacted]. It subsequently became evident that a high proportion of the [redacted] were impaired but Charleville had failed to provide adequately for them on a timely basis, and was unable to recover the deemed [redacted].

157. Successive expert reports that identified risks associated with Charleville's approach, supported RCU's concerns in relation to Charleville's provisioning methodology on [redacted]. In particular, the Draft 2015 EisnerAmper Asset Review Report raised significant issues with regard to the [redacted], and accordingly, whether [redacted] could justify the extent of the reduction in the bad debt provisions applied by Charleville in respect of those loans. The Draft 2015 EisnerAmper Asset Review Report also noted that Charleville had not performed an adequately documented assessment of the [redacted].

158. After detailed engagement with RCU on the findings in the Draft 2015 EisnerAmper Asset Review Report and other reports, Charleville eventually recognised an additional €2.0m of bad debt provisions in the financial statements for the year ended 30 September 2015, submitted to RCU in December 2015.

159. The Bank is of the view that if Charleville had more prudently recognised the [redacted] at an earlier stage, additional bad debt provisions may have been held at the point when Charleville sought SPS solvency support from ILCU in both 2010 and 2012. It is possible that such additional solvency support could have protected Charleville from the impact on its reserves of additional loan impairments that it incurred subsequently in 2015, which have materially contributed to Charleville's current minimum reserve shortfall.

Fixed Asset Impairment

160. In accordance with Financial Reporting Standard 11 - *Impairment of Fixed Assets and Goodwill* ("**FRS 11**"), Charleville was required to carry out an impairment review of the Premises on an annual basis. FRS 11 requires Charleville to compare the carrying value of the Premises with the 'recoverable value', which in FRS 11 is defined to be the higher of the ViU or market value. As can be seen from Table 3 above, at 30 September 2009 Charleville's fixed assets had a carrying value of €2.2m, of which the Premises represented €1.9m, based on a valuation derived from the ViU calculation prepared by Charleville in the period.

161. RCU, in the context of annually reviewing a credit union's year-end draft financial statements, assesses the reasonableness of the assumptions used to derive the ViU calculation and the carrying value of the Premises arising therefrom. As outlined in Section 3 of this Report, RCU raised concerns over an extensive period in relation to the assumptions underpinning Charleville's ViU, questioning whether those assumptions were reasonable and supportable. The Draft 2015 EisnerAmper Asset Review Report and the 2015 DHKN Report supported the concerns raised by RCU in relation to the reasonableness of Charleville's assumptions and recommended that Charleville impair the value of the Premises in its balance sheet to market value. Charleville impaired the carrying value of its Premises to market value in the financial statements for the year ended 30 September 2015. Charleville's subsequent recognition of this impairment had the effect of reducing the carrying value of the Premises from €1.7m as at 30 September 2014 to €0.7m as at 30 September 2015. Charleville further impaired the carrying value of the Premises to c.€0.35m in the June 2017 PR.

Impact on Reserves

162. Charleville's lending and provisioning practices have had a significant impact on its reserves in the period 30 September 2009 to 30 June 2017. Its reserves diminished further following the recognition of impairments to the carrying value of the Premises as noted above.

163. The summary of the evolution of Charleville's financial position in Table 3 above indicates that Charleville had reserves of 0.4% as at 30 September 2009 reflecting the recognition of €6.5m in additional bad debt provisions in that period. Notably, Charleville was balance sheet insolvent as at 30 September 2010 with reserves of -9.3% following the recognition of additional bad debt provisions of €5.5m in the year ended 30 September 2010. Charleville's financial position improved marginally in the financial year ended 30 September 2011, reporting reserves of -8.7%, which included the benefit of the drawdown of [redacted] in SPS support from ILCU.

164. Charleville received the benefit of the drawdown of further SPS support of [redacted] from ILCU in the year ended 30 September 2012, on foot of which it reported reserves of 8.0%. In its original submission of draft financial statements for the year ended 30 September 2014, Charleville reported reserves of 10.7%. This was the first time since 2009 that Charleville reported reserves in excess of the 10.0% reserve requirement. However, following Charleville's recognition of an additional €2.0m in bad debt provisions related to certain secured loans and further impairments of c.€1.0m to the carrying value of the Premises, its reserves reduced to 4.6% as at 30 September 2015. In the June 2017 PR, Charleville reported reserves of 3.5%, which is not in compliance with the 10.0% reserve requirement.

Revised Financial Statements

165. On an annual basis, credit unions submit draft year-end financial statements to RCU in advance of convening an AGM. Charleville has not been in a position to convene an AGM since 2012 and consequently the AGMs for the financial years ended 30 September 2012 to 30 September 2016 have not taken place. The effect of this means that the financial statements remain in a draft form and are therefore not final accounts.

166. From the financial year ended 30 September 2016, credit unions have been required to prepare financial statements in accordance with Financial Reporting Standard 102 ("**FRS102**"). Consequently, Charleville revised its financial statements for the years ended 30 September 2014 to 30 September 2016 inclusive. On 5 April 2017, Charleville submitted revised draft financial statements to RCU for the years ended 30 September 2014, 2015 and 2016 (the "**Revised Financial Statements**") (and hereafter, the earlier submission of financial statements in draft form for the relevant years shall be referred to as the "**Original Financial**

Statements"). The Revised Financial Statements for the financial year ended 2014 also contain for comparison purposes, the revised figures for the year ended 30 September 2013.

167. The Revised Financial Statements retrospectively restate Charleville's historic financial position, with material adjustments affecting total bad debt provisions and therefore the carrying value of loan assets. The relevant adjustments had the effect of revising the timing – to an earlier financial year-end - of the recognition of impairments to loan and fixed assets, thereby revising Charleville's historic year-end reserves.

168. Table 4 below sets out the principal movements in Charleville's balance sheet by comparing the Original Financial Statements to the Revised Financial Statements.

Table 4: Summary comparison of Original Financial Statements to Revised Financial Statements

					Original draft accounts				
€'000s	*Final Accounts*	*Final Accounts*	*Final Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Prudential Return*
Period end	*Sept 2009*	*Sept 2010*	*Sept 2011*	*Sept 2012*	*Sept 2013*	*Sept 2014*	*Sept 2015*	*Sept 2016*	*Jun 2017*
Total assets	62,653	47,564	41,724	44,624	44,008	44,096	42,453	42,649	41,882
Fixed assets	2,222	2,133	2,032	1,928	1,868	1,780	709	668	347
Gross loans	42,726	37,508	28,559	16,457	14,379	13,726	12,392	11,536	10,755
Bad debt provisions	(9,229)	(14,695)	(13,244)	(5,174)	(4,851)	(4,520)	(5,724)	(5,601)	(4,744)
Total reserves (excl. unrealised)	263	(4,443)	(3,618)	3,564	4,135	4,700	1,939	1,657	1,455
Reserve Position	**0.4%**	**(9.3%)**	**(8.7%)**	**8.0%**	**9.4%**	**10.7%**	**4.6%**	**3.9%**	**3.5%**
					Revised draft accounts				
€'000s	*Final Accounts*	*Final Accounts*	*Final Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Draft Accounts*	*Prudential Return*
Period end	*Sept 2009*	*Sept 2010*	*Sept 2011*	*Sept 2012*	*Sept 2013*	*Sept 2014*	*Sept 2015*	*Sept 2016*	*Jun 2017*
Total assets	62,653	47,564	41,724	44,624	41,219	40,836	42,230	42,415	41,882
Fixed assets	2,222	2,133	2,032	1,928	515	477	439	391	347
Gross loans	42,726	37,508	28,559	16,457	14,379	13,726	12,392	11,536	10,755
Bad debt provisions	(9,229)	(14,695)	(13,244)	(5,174)	(6,287)	(6,476)	(5,676)	(5,546)	(4,744)
Total reserves (excl. unrealised)	263	(4,443)	(3,618)	3,564	1,345	1,440	1,717	1,421	1,455
Reserve Position	**0.4%**	**(9.3%)**	**(8.7%)**	**8.0%**	**3.3%**	**3.5%**	**4.1%**	**3.3%**	**3.5%**

Source: Charleville's original financial accounts as submitted by Charleville to RCU for relevant years; Charleville's Revised Financial Statements as submitted by Charleville to RCU in April 2017 following the adoption of FRS102; and the prudential return submitted by Charleville to RCU for period ended 30 June 2017.

169. It is worth noting the impact of the revised financial statements on Charleville's reported reserves:

169.1 in the revised financial statements for the year ended 30 September 2013, Charleville's reserves are reported as 3.3% which is a more accurate reflection of its true financial position at that time, rather than reserves of 9.4% as reported by Charleville in the original financial statements; and

169.2 in the revised financial statements for the year ended 30 September 2014, Charleville's reserves are reported as 3.5%, which is a more accurate reflection of its true financial position at that time, rather than reserves of 10.7% as reported by Charleville in the original financial statements.

170. The revised financial statements identify that Charleville's reserves have only exceeded 4.0% on one occasion since it received the second draw down of SPS support of [redacted] in 2012. Consequently, the revised financial statements submitted by Charleville to RCU in April 2017, indicate that, since the introduction of the reserve requirement at 30 September 2009, Charleville has failed to raise and maintain its reserves at the required level.

171. As noted earlier expert reviews have questioned Charleville's viability on a standalone basis.

172. In conclusion, the Bank has determined that Charleville's failure was primarily caused by:

172.1 poor lending practices during the period prior to 2009 which resulted in a significant level of property related lending to a concentrated number of borrowers with [redacted];

172.2 a material amount of those loans were not performing and top up loans were then provided which increased Charleville's overall exposure to the relevant borrowers, thereby masking the true underlying performance of the non-performing loans - when these loans subsequently defaulted, Charleville was required to recognise sizeable bad debt provisions or write off the loans;

172.3 however, Charleville's Board failed to recognise at an early stage the full extent of required bad debt provisions by relying on the [redacted], with the result that efforts to restore Charleville's reserves using SPS funding were inadequate and therefore ineffective;

172.4 by the time in late 2015 that Charleville recognised the actual extent of bad debt provisioning that was required on its loan portfolio and the required impairment to the Premises, it had become clear that Charleville's financial position had deteriorated, reporting reserves of 5.0% at 31 December 2015, following which in March 2016, Charleville's Board decided to pursue a ToE to address the credit union's financial difficulties (on the basis that Charleville could no longer operate on a standalone basis without third party support); and

172.5 finally, Charleville's inability to address the deterioration in its reserve positon, which arose directly as a result of its failure to adequately provide for its non-performing loans

and to impair the value of the Premises, has meant that RCU has been unable to lift or ease the Conduct of Business Directions which have been in place since October 2011. This has also contributed to the deterioration in the value of Charleville's loan book and, therefore, precluded its capacity to generate sufficient sustainable income on its assets (when factoring in diminished investment returns in the current low interest environment on its cash, bank and investments), to cover its recurring operating costs despite efforts to rationalise the same. With a cost income ratio (excluding the impact of one-off exceptional items), exceeding 100% in recent years, Charleville's sustainability and viability on a standalone basis is in question.

173. The Bank is of the view that Charleville is a failing institution. Charleville has breached its obligations under the June 2016 Direction and the May 2017 Direction and has no reasonable prospect of complying with those obligations within a reasonable timeframe.

GROUNDS FOR LIQUIDATION

174. The assessment by the Bank as to the reasons why liquidation was considered by the Bank to be the appropriate approach in respect of Charleville are set out in Section 5 of the Resolution Report.

175. Under section 77 of the 2011 Act, the Bank may present a petition for the winding up of a credit institution (including a credit union) under any of the following five grounds:-

175.1 *that in the opinion of the Bank, the winding up of that credit institution would be in the public interest;*

175.2 *that that credit institution is, or in the opinion of the Bank may be, unable to meet its obligations to its creditors;*

175.3 *that that credit institution has failed to comply with a direction of the Bank-*

(a) *in the case of the holder of a licence under section 9 of the Central Bank Act 1971 under section 21 of that Act, or*

(b) *in the case of a building society, under section 40(2) of the Building Societies Act 1989, or*

(c) *in the case of a credit union, under section 87 of the Credit Union Act 1971;*

175.4 *that that credit institution's licence or authorisation (as applicable) has been revoked and (in the case of the holder of a licence under section 9 of the Act of 1971) that it has ceased to carry on banking business;*

175.5 *that the Bank considers that it is in the interest of persons having deposits (including deposits on current accounts) with that credit institution that it be wound up.*

176. The Bank in making this petition relies on the grounds set out in sections 77(a), (c) and (e).

177. The Bank is furthermore of the view that it is entitled to present this petition on each of the grounds outlined above, and that the existence of any one of these grounds would justify such course of action.

The Credit Union is in breach of Directions of the Bank (section 77(c))

178. Charleville has failed to comply with directions of the Bank made pursuant to section 87 of the Credit Union Act 1971 (the "**CUA**").

The June 2016 Direction

179. On foot of regulatory concerns, and following a letter issued to Charleville on 22 December 2015 indicating an intention to issue a regulatory direction, the Registrar issued the June 2016 Direction pursuant to section 87 of the CUA. The June 2016 Direction directed Charleville as follows in relation to its reserves:

> *"The Credit Union must raise and maintain its regulatory reserve requirement (as set out in the Regulations) to at least 10% of the assets as at 31 March 2016 and in order to do so must raise an amount of €2,409,000 in solvency support. This solvency support must be in place no later than 4pm on 5 July 2016 and this support must be provided in cash form only and lodged to a bank account in the name of the Credit Union.*
>
> *The Credit Union is required to provide to the Central Bank a statement in writing setting out the steps it will take to ensure continued compliance with its obligation to maintain a regulatory reserve requirement of at least 10% of the assets. This statement must be provided to the Central Bank on or before 5 July 2016."*

180. Charleville in an email to RCU on 5 July 2016 confirmed that it had raised the required [redacted] in solvency support and restored its 10.0% reserve requirement. However, this support was provided by ILCU in the form of a deposit with the NTMA which was not available to Charleville on an unrestricted basis and could only be released to Charleville on the completion

of a ToE with another ILCU-affiliated credit union. Pursuant to Regulation 3 of the Regulations 2016, in order for SPS support to be included within the Credit Union's regulatory reserves it must constitute capital that is unrestricted, fully realised, non-distributable and therefore fully loss absorbing. Accordingly, such funding could not be taken into account when calculating Charleville's reserves.

181. On 21 July 2016, Charleville submitted a PR for the period ended 30 June 2016, which reported that it then held reserves of 4.9%. Every PR submitted by Charleville since then has also recorded reserves of less than the 10.0% reserve requirement specified by the June 2016 Direction. The revised financial statements submitted by Charleville to the Bank for the financial year ended 30 September 2016 also reported reserves of 3.3% of total assets.

182. Accordingly, on the basis of the above, Charleville has failed to comply with the June 2016 Direction.

The May 2017 Direction

183. On foot of regulatory concerns, and following a letter issued to Charleville on 7 April 2017 indicating an intention to issue a regulatory direction, the Registrar issued the May 2017 Direction pursuant to section 87 of the CUA directing Charleville as follows:

> *"The Credit Union must raise its regulatory reserve requirement (as set out in the Regulations) to a minimum of 10% of the total assets as at 31 March 2017 and in order to do so must raise an amount of €3.14m in solvency support. This support must be provided in cash form only and lodged to a bank account in the name of the Credit Union".*
>
> *The Credit Union must raise and maintain a minimum additional reserve of 3% of the total assets of the Credit Union and in order to do so must raise an amount of €1.27m in solvency support and thereafter demonstrate a capacity to maintain the additional reserve at that level. All reserves that are held as additional reserves must have the characteristics, set out in regulation 3 of the Regulations".*

184. Charleville was required to comply with the May 2017 Direction by 18 May 2017. Following Charleville's request, the Bank extended this deadline to 16 June 2017. In a letter dated 13 June 2017, Charleville advised that it had received additional SPS support from ILCU, which had been lodged into an account in the NTMA in the name of the credit union. In a further letter dated 15 June 2017, Charleville advised that this support was conditional on the credit union completing a ToE process with a suitable transferee credit union. Again, as this funding

was not and is not available to Charleville on an unrestricted basis and can only be released to Charleville on the completion of a ToE with another ILCU-affiliated credit union, the Bank is satisfied that such funding cannot be taken into account when calculating Charleville's current reserves.

185. On 21 July 2017, Charleville submitted the June 2017 PR, wherein it reported that it has reserves of 3.5% of total assets.

186. On the basis of the foregoing, the Bank is satisfied that Charleville has failed to comply with the May 2017 Direction or to provide a plan setting out how it will comply with the terms of the May 2017 Direction. Having regard to the foregoing, the Bank is of the view that, as Charleville has failed to comply with both the June 2016 Direction and the May 2017 Direction, the Bank has grounds pursuant to section 77(c)(iii) of the 2011 Act to present a petition for the winding-up of Charleville.

A winding up is in the interests of deposit holders (section 77(e))

187. As set out above, one of the grounds for the presentation of a petition for the winding up of a credit institution under section 77 of the 2011 Act is that the Bank considers it to be in the interests of persons having deposits in that credit institution that it be wound up. On balance, the Bank has formed the view that a winding up of Charleville would be in the interests of persons having deposits in Charleville.

Members are not aware of the full extent of the current circumstances of Charleville

188. In February 2017, there was widespread media coverage in relation to the proposed ToE between Charleville and Clonmel. There was further press coverage following the announcement of the cessation of the ToE discussions between Clonmel and Charleville in March 2017, including articles published in both the Irish Independent and the Irish Examiner on 29 March 2017.

189. Notwithstanding this press coverage, the members of Charleville are not aware of Charleville's current or recent financial position, and have no knowledge of the impact of loan and premises impairments, which have further eroded its reserves. Furthermore, members are not aware of Charleville's constrained income generating capacity, which calls into question its ongoing viability.

190. Given its severely weakened financial position, and to prevent the potential destabilising consequences that might arise were its financial position made public, Charleville has been

unable to hold an AGM since 22 August 2012 (held in respect of the financial years ended 30 September 2010 and 30 September 2011).

191. The Draft 2015 EisnerAmper Asset Review Report stated that Charleville's members have not received a dividend since the financial year ended 30 September 2007, dividends being, in the case of credit unions, the equivalent of interest payments received by depositors in banks and other credit institutions. As a result, Charleville's members are indirectly out of pocket, and indeed, they could benefit from a higher rate of return by putting their money into another credit institution paying dividends or deposit interest, especially where there is no realistic possibility of Charleville providing a dividend to its members in the near future.

192. As set out above, Charleville entered into exploratory talks with Clonmel in late 2016 to determine if there was a business case for a strategic alignment, which would benefit members of both credit unions, and lead to a stronger combined entity. However, due to a number of unresolved issues, including Premises impairments, [redacted] and transferee member resistance, this ToE process did not complete.

193. Charleville entered exploratory talks with [redacted] in July 2017 to determine if a ToE was possible. However due to concerns regarding Charleville's financial projections and profitability in the near term and the detrimental impact this would have on the combined entity, [redacted] decided to withdraw from the process in September 2017. This is not in the public domain. However if it became known that Charleville failed to complete a third transfer so soon after the failure of ToE discussions with Clonmel, it could give rise to concerns amongst its membership. Furthermore, additional negative publicity may make Charleville less attractive to potential transferee credit unions.

194. There is no reasonable prospect that Charleville will either be able to pay a dividend or hold an AGM in the foreseeable future because in order to hold an AGM, it will be necessary for Charleville to disclose the full extent of its distressed financial position and weak cost/income profile and outlook to its members. Members are likely to be concerned that the [redacted] ToE failed due to issues regarding Charleville's unsustainable cost base, impaired income generating capacity and viability, which could lead to the withdrawal of member confidence resulting in the rapid destabilisation of Charleville and potentially lead to a run on savings and deposits.

A pay-out will result in depositors obtaining alternative retail financial services

195. It is not possible to identify the number of Charleville's members with alternative banking relationships with other credit institutions. However, it is likely that a portion of the members of Charleville do not have access to other bank accounts. As such, the liquidation of Charleville is likely to lead to some of Charleville's members not having access to alternative retail

financial services in the short term. However, it is important to note that Charleville's members may be able to avail of alternative retail financial services locally, as retail banking services are available in the town of Charleville, with both an AIB and Bank of Ireland branch present. In addition, there is a Post Office in Charleville, where members can avail of retail banking services.

A pay-out will result in depositors availing of the services of a fully functioning financial institution/entity

196. It is not in the interest of the members of Charleville to have their savings/deposits lodged with an entity that is not fully functioning and that cannot offer members full access to the range of services usually offered by credit unions.

197. It is in the interest of Charleville's members to have access to a fully functioning financial institution/entity, which is managed on a prudent basis. As such, a pay-out would result in members of Charleville depositing their savings with such an institution, offering full credit union/financial services to members.

Access of Charleville's members to their deposits

198. Pursuant to the European Union (Deposit Guarantee Schemes) Regulations 2015 (S.I. No. 516 of 2015) (the "**DGS Regulations**"), which transposed Directive 2014/49/EU (the "**2014 Directive**") into Irish law and the Financial Services (Deposit Guarantee Scheme) Act 2009, as amended, the State maintains the deposit guarantee scheme (the "**DGS**") which is administered by the Bank. In the event of an authorised credit institution being unable to repay deposits, the DGS compensates eligible deposits up to €100,000 per depositor. In addition, under limited circumstances, certain deposits known as temporary high balances are protected up to €1,000,000. In liquidation, all eligible deposits (as defined in the DGS Regulations) in the form of member's savings and deposits would be covered up to €100,000 per depositor. Any members' savings or deposits not covered by the DGS would only be repaid by a liquidator to the extent that liquidation resources are sufficient to repay such savings or deposits, ranking on a *pari passu* basis alongside general creditors in the liquidation. It is important to note that as the DGS will be a preferential creditor under the Companies Act, it is unlikely that any depositor that does not receive a full payment from the DGS would be entitled to any proceeds from the liquidation, unless there is full repayment of creditors.

199. The DGS is a key factor in ensuring the stability of the banking system through the guaranteed protection of depositors in the event of the failure of their credit institution. The effectiveness of the DGS relies on its ability to issue prompt compensation payments to eligible depositors

in as short a time frame as possible. Although at present the mandatory statutory deadline for Member States remains 20 working days, Directive 2014/49/EU (the "**Directive**") has recited that such a repayment period "*runs counter to the need to maintain depositor confidence and does not meet depositors' needs*". Accordingly, by 2024, Member States are required to implement a reduced statutory deadline of 7 working days.

200. I am advised that the appointment of a provisional liquidator will trigger an irrevocable obligation under the DGS Regulations to make payment to eligible deposit holders. If the Court appoints a provisional liquidator, following such appointment, a compensation payment under the DGS Scheme would be made to a member in respect of that member's duly verified eligible deposits by means of a crossed cheque (i.e. a cheque that, in general, could only be lodged to an account, not cashed) posted to that member's address within 20 working days. Although 20 working days remains the statutory deadline, the DGS aims to issue compensation to duly verified eligible depositors, as early as possible within the statutory deadline.

201. If any of Charleville's members are deemed ineligible under the DGS, they will rank as general creditors of Charleville in liquidation. Whether or not there are members that are ineligible will be determined following an invocation of the DGS.

202. For the reasons set out the Bank is of the opinion that it is in the interests of depositors that Charleville is liquidated and, in particular, for the following reasons:

202.1 The DGS pay-out will result in members depositing their savings with other institutions that are not financially distressed as is the case with Charleville;

202.2 The DGS pay-out will result in members accessing, through alternative financial institutions, the full range of financial services that can reasonably be expected by members of a credit union, which is not the case for Charleville's members at present; and

202.3 The DGS pay-out will result in members having to deposit their savings with other institutions that may result in Charleville's members receiving a return on their savings either by means of a dividend or interest payment, in entities that have annual financial statements approved by their members or shareholders.

The winding up of Charleville would be in the public interest (section 77(a))

203. The Bank is of the view that, on balance, a liquidation of Charleville is in the public interest for the reasons set out below.

The indirect consequences of liquidation

204. The Bank considers that there may also be unquantifiable but very real costs that would arise as a result of the liquidation of an authorised credit institution in the State, with the potential of knock on consequences for other credit unions, for the financial sector generally and the State.

205. Accordingly, in order to ensure that the liquidation of Charleville is commenced in an orderly manner, the Bank is seeking the appointment of a provisional liquidator to Charleville, who will have full control over the assets and operations of Charleville pending the hearing of the winding up petition. The Bank believes it is necessary for a provisional liquidator to be in place during the period between the date of the filing and the hearing of the petition, to avoid a disorderly cessation of the business of Charleville and to enable payments to eligible deposit holders to occur as quickly as possible.

206. The orderly nature of the DGS pay-out process will help to ensure that any potential negative consequences in terms of knock on impacts are limited to the greatest extent possible (although there remains a risk that such consequences could still occur).

207. Should Charleville be liquidated at a time when it is not actually insolvent, this could be advantageous to members and creditors on the basis that the liquidator may be able to realise the current balance sheet value of Charleville's assets to fully cover all balance sheet liabilities and cover the costs of liquidation. Were this to occur, no member or creditor would be financially disadvantaged by the liquidation, save for the costs of liquidation.

The orderly liquidation of a credit institution reflects properly functioning market post crisis

208. The liquidation of a failed or failing entity is part of the normal functioning of a market economy. However, it is not always possible to liquidate a failed entity without creating serious consequences for the broader economy. It is necessary to judge each situation carefully on an individual basis. During the recent financial crisis, significant amounts of taxpayers' money were used to support banks, which might otherwise have had to be liquidated, due to a fear of systemic consequences for the wider economy should they be allowed to fail. The liquidation of the global investment bank Lehman Brothers in the United States in 2008 showed that significant externalities for the wider financial system and economy could arise from the disorderly failure of a credit institution.

209. Since the onset of the financial crisis, governments around the world (including in Ireland) adopted a range of policy measures designed to limit the systemic impact of the failure of financial institutions, and to protect their customers in circumstances where they do fail.

210. Charleville is a failing credit institution which, despite extensive supervisory engagement, has failed to comply with the reserve requirement for a number of years. It is the view of the Bank that these financial issues arose due to poor lending practices, including issues surrounding the [redacted].

211. Charleville has previously entered into two SPS guarantees with ILCU, receiving a total of c.[redacted] in external financial support. Despite this significant amount of financial support, Charleville's capital position has continued to deteriorate. At this point, Charleville is still not in compliance with its reserve requirement of 10.0% of total assets, a position which have prevailed for many years with members of Charleville having no knowledge of same.

212. Charleville has entered into voluntary ToE processes on three occasions. In [redacted], efforts to carry out a voluntary ToE with [redacted] failed to complete. In late 2016, Charleville entered into exploratory talks with Clonmel with a view to the completion of a voluntary ToE process (with external financial support made available, conditional on completion of this process). However, this voluntary ToE process also failed to complete. In July 2017, Charleville entered into ToE talks with [redacted] with a view to the completion of a voluntary ToE process (with external financial support made available, conditional on completion of this process). However, this voluntary ToE process also failed to complete. Since the termination of ToE negotiations with [redacted], Charleville has attempted to commence formal ToE discussions with two further credit unions, [redacted] and [redacted]. [redacted] indicated that it was not interested in pursuing ToE discussions with Charleville, and the preliminary discussions with [redacted] have not resulted in the commencement of formal ToE negotiations.

213. In light of the above, it is the view of the Bank that action is now appropriate at this point. Given the three failed voluntary ToE processes, it is unlikely that a further voluntary ToE process will successfully complete. The provision of substantial external financial support has not succeeded in raising and maintaining Charleville's reserve requirement. Considering Charleville's deteriorating financial position, it is the view of the Bank that it would be wholly inappropriate to forbear further in relation to Charleville, which may lead to a further destabilisation of its financial position.

214. The Bank has already carried out three directed transfers under the 2011 Act in the credit union sector: Newbridge Credit Union Limited was transferred to Permanent TSB, Howth Sutton Credit Union Limited was transferred to Progressive Credit Union Limited and Killorglin Credit Union Limited was transferred to Tralee Credit Union Limited. More significant are the liquidations of Berehaven Credit Union Limited in July 2014 and Rush Credit Union Limited

in November 2016. Although the circumstances differ in many respects, there are similarities in relation to the necessity to liquidate and in this regard, a precedent is available.

215. It is important to note that there was no contagion in the wider credit union sector arising from the exercise by the Bank of its powers under the 2011 Act in those cases. The Bank believes that an orderly liquidation involving, where required, the prompt pay-out of eligible depositors by DGS facilitated by the appointment of a provisional liquidator is likely to limit the prospect of contagion in that regard (albeit there can be no guarantee that there will not be contagion arising from a liquidation of Charleville).

An orderly winding up of a credit union serves the interest of the credit union sector and the State

216. There exists a general public expectation that the State would intervene rather than let any credit union fail. This is coupled with the public perception that individual credit unions are financially linked to each other. In this regard, the Minister for Finance (the "**Minister**") has, on a number of occasions over the years, expressed his support for the credit union sector, and in particular, during the course of 2013 in the context of the Transfer Order under the 2011 Act that was made by the Court in relation to Newbridge Credit Union Limited. In terms of the provision of support for the credit union sector that underpins that perception, the Minister has provided €250m to support the resolution of credit unions. Of the €250m provided to the Credit Institutions Resolution Fund (the "**Fund**"), some of that money has been expended in effecting the directed transfers of other credit unions, as noted above.

217. The DGS represents one of the tools of the State to protect depositors and prevent systemic contagion from the failure of a credit institution. In the Bank's opinion, the public interest is served by an orderly winding up of an entity such as Charleville, with a prompt DGS pay-out reducing the risk of any potential damage to the wider economy and reducing the need to use taxpayers' funds.

218. The Oireachtas has provided for a number of options in the 2011 Act, including directed transfer and liquidation. In order to secure the directed transfer of a credit institution, the Bank must demonstrate that the intervention conditions are met (which is a relatively high threshold) and that such a transfer is necessary in the circumstances. In contrast, the grounds for applying for the winding up of a credit institution under the 2011 Act are more readily met. It is only in situations where an approach other than liquidation is "necessary in all the circumstances" that the alternative approach can be utilised.

219. Liquidation in the case of Charleville may also encourage enhanced regulatory compliance across the credit union sector, to the benefit of the sector, its members and the wider public. Charleville has since 2009 been unable to raise and maintain its reserve position to the

regulatory reserve requirement of at least 10% of the total assets of the credit union. The importance of the regulatory reserve has been explained above already. It is a situation that in the opinion of the Bank cannot be allowed to continue.

APPLICATION FOR APPOINTMENT OF A PROVISIONAL LIQUIDATOR

220. The Bank seeks the appointment of a provisional liquidator to Charleville pending the hearing of the Petition. The Bank believes that it is essential in all the circumstances that a provisional liquidator be appointed to Charleville in order to ensure the winding up of Charleville occurs in an orderly fashion and that there is an orderly realisation and subsequent distribution of the entity's assets. I say and believe that if a provisional liquidator is not appointed there is a real risk of serious adverse consequences for savers and deposit holders of Charleville and the credit union sector generally.

221. The Bank acknowledges that the appointment of a provisional liquidator will have a potentially terminal effect on Charleville's business and may result in the permanent cessation of its trade, regardless of the outcome of the full hearing of the petition. Nonetheless, the Bank is of the view that the appointment of a provisional liquidator is essential to protect members and ensure an orderly winding up of Charleville for the reasons set out in more detail below.

Possibility of a run or forced closure if provisional liquidator is not appointed

222. The Bank believes that it is very likely that the presentation and filing of any petition for the winding-up of Charleville will become public knowledge very shortly thereafter. Although the Bank is not required to serve the petition on Charleville, or arrange for the advertisement of the petition (in at least two daily newspapers and *Iris Oifigiúil*) prior to the date falling seven clear days before the return date (in accordance with the Rules of the Superior Courts), the Bank's practice with respect to the winding-up of credit unions is to serve the petition on the credit union as soon as possible after it has been filed with the Central Office of the High Court. The reason for this practice is that the Bank believes that it is not in the public interest for the Bank to withhold the fact that a winding-up petition has been filed with respect to a credit union from its directors and members unless there are clear and compelling reasons to do so, not least because there is always some risk that the filing of the petition may be leaked.

223. Even if the Bank were to decide not to disclose to Charleville in advance that it had decided to present a winding-up petition, and to wait until the date immediately prior to the seven-day notice period before serving and advertising the petition, clearly the imminent winding up of Charleville would be in the public domain for at least those seven days prior to the return date.

224. The Bank is of the view that once the fact of the presentation of the winding-up petition becomes public there would be a very material risk, if not a strong likelihood, that this information, and the imminent prospect of an interruption in members' access to savings, would precipitate a "run" on Charleville, and the widespread attempted withdrawal of savings and deposits by members of Charleville. This would likely result in further material damage to the financial position of Charleville.

225. Furthermore, the Bank is of the view that once such a "run" were to occur, it would be very difficult, if not impossible, to bring a halt to such a scenario without causing the unplanned closure of Charleville in a disorderly manner. The Bank believes that there is a very material risk that the combination of a "run" on deposits at Charleville, following by the unplanned forced closure of its operations to bring an end to such a scenario, could have contagion effect elsewhere in the credit union sector and therefore create serious risk of stability for the financial services sector.

226. The risk of a run in respect of Charleville is heightened by the fact that Charleville's members are not aware of the true financial position of the credit union. Charleville's last AGM took place on 22 August 2012, and Charleville's last set of published financial statements were for the financial year ended 30 September 2011. As outlined above, Charleville's financial position has deteriorated since then. The news that a petition had been filed by the Bank for the winding-up of Charleville may cause many members to seek to withdraw their savings from Charleville.

227. The Bank is of the view that the appointment of a provisional liquidator to Charleville on the date that the petition is presented and filed would substantially avert the risks outlined above, including the risk of a damaging run or uncontrolled and disorderly closure of Charleville, for the following reasons:

227.1 a provisional liquidator, being an independent Court-appointed practitioner with proven experience in dealing with corporate entities in financial difficulty, would be able to manage the cessation of Charleville's business in an orderly, planned and controlled manner, thereby mitigating the risk of a disorderly closing of the business and reducing any confusion that may ensue;

227.2 a provisional liquidator would also be able to manage and effectively communicate the effect of the action taken by the Bank to all stakeholders at Charleville, including its Board of Directors, employees and members;

227.3 a provisional liquidator would also have the ability to safeguard, secure and preserve Charleville's assets, books and records pending the hearing of the petition, and would be able to make appropriate applications to Court where necessary to achieve this objective; and

227.4 most importantly, in the Bank's opinion, a provisional liquidator would be able to immediately begin work on the provision of information to the Bank to enable eligible deposits to be repaid from DGS funds within the prescribed period of not more than 20 working days, and to communicate with members and depositors with respect to the likely timing of those payments.

Role of provisional liquidator in facilitating timely DGS pay-out

228. I am advised that the appointment of a provisional liquidator will trigger an irrevocable obligation under the DGS Regulations to make payment to eligible deposit holders.

229. The appointment of provisional liquidator to Charleville would allow the provisional liquidator, immediately upon his or her appointment, to liaise with the DGS and to provide the necessary information to them to enable payments under the DGS to members of Charleville as quickly and efficiently as possible, thereby ensuring the Bank fulfils its obligations under the DGS Regulations.

230. As outlined above the Bank is of the view that if a provisional liquidator were not appointed to Charleville, it is highly probable, due to the uncertainty created for members, that pending the hearing of the petition that the Registrar would be required to direct Charleville to cease business in order to avoid a disorderly collapse. In such circumstances it is possible that the Bank would determine that Credit Union was unable for reasons relating to its financial circumstances to repay deposits and that it had no prospect of being able to do so and if it was so determined, this would trigger the obligation to make compensation payments under the DGS Regulations. On this basis, the DGS would be required, subject to limited exceptions, to make a compensation payment to duly verified eligible depositors within 20 working days. However, in order to make such payments DGS would require a list of all of the eligible savers and depositors in Charleville and the amounts that they are due under DGS.

231. In the opinion of the Bank, there is a material risk that Charleville would not be able to carry out the work necessary to facilitate this process in the extremely short time-frame required. The primary reason for this is that in order for DGS payments to be made the Central Bank must have access to specific files relating to the deposits of the credit institution.

232. If Charleville were to cease trading in a disorderly manner following the presentation of a petition by the Central Bank without a provisional liquidator having been appointed, the Bank is of the view that a material risk would arise that in the absence of any certainly regarding their position, employees and service providers that play a role in the preparation and safeguarding of the books and records of Charleville may cease working with Charleville. This could cause significant delay in the completion of a DGS pay out. Any such delay or disorder with respect to the making of payments would create substantial uncertainty and cause undue hardship for Charleville members, and may affect public confidence in the DGS Scheme.

233. In contrast, if an experienced insolvency practitioner is appointed as provisional liquidator, he or she would be in a position to immediately obtain control over the operations and business, as well as the books and records, of Charleville. A provisional liquidator would also be in a position to effectively communicate with and reassure key employees and contractors that they will be paid for the work that they will be required to do to facilitate a DGS pay-out.

234. I believe it is also important to explain that in the Bank's view, the option of a directed closure of the Credit Union following the presentation of a petition would not address the contagion risks which have been referred to above and which would also arise in such a scenario.

Consequences for the credit union sector generally of an unmanaged failure of Charleville

235. In addition to the potentially damaging consequences of an unmanaged failure of Charleville, such an event could also have negative consequences for the credit union sector as a whole. Members of other credit unions might become concerned about the prospect of a run, unplanned closure and delayed DGS pay-outs in their own credit unions, especially where negative information about a credit union (including financial information) is in the public domain.

236. Any uncertainty or delays over the timing of DGS pay-outs to eligible depositors would also risk undermining public confidence in the DGS, which is essential to the stability of credit unions and deposit-taking institutions generally.

237. This risk would be substantially mitigated by the appointment of a provisional liquidator to manage and control the closure and ensure that the DGS was facilitated with the assistance it requires to ensure a successful and efficient pay-out. As is explained below, in the case of Rush Credit Union Limited and Berehaven Credit Union Limited both of which were wound up on the grounds of insolvency, the DGS was in a position to make the payments within seven working days of the appointment of the provisional liquidator. The Bank believes that the risk of wider contagion from a liquidation of a credit union has been reduced by the fact that credit union members now realise that liquidation does not mean the loss of a members' deposits and

the fact that they understand that such deposits will be available within a short period of time through DGS.

Requirement for provisional liquidator to have the power to facilitate DGS payments immediately

238. As outlined above, if the Court is satisfied to appoint a provisional liquidator, the Bank has been advised that under the DGS Regulations this will commence the statutory 20 day working period within which eligible deposits must be repaid to members.

239. The Bank is of the view that, given the tight timeframe within which such payments must be made under those regulations, it is of critical importance that the Court also grants the provisional liquidator the power to take all necessary steps to ensure that those payments are made. Although the statutory time frame within which the DGS payments must be made is 20 working days the Bank is strongly of the view that it is of critical importance that payments are made by DGS as quickly as possible after it has been invoked and DGS intends to do so if a provisional liquidator is appointed to Charleville.

240. While the 2014 Directive, as implemented by the DGS Regulations, allows for a transitional period whereby DGS can make payments within 20 working days, the recitals to the 2014 Directive recognise that such a lengthy period runs *"counter to the need to maintain depositor confidence and does not meet depositors' needs"* and that the period should be reduced to 7 working days after the transitional period expires.

241. Furthermore, during the transitional period, the DGS Regulations provide that where DGS is unable to pay out within 7 working days it is possible for a member to make a subsistence application. This firstly underlines the expectation that where possible DGS payments will in fact be made within 7 working days. Although the possibility of a subsistence application being made exists under the Regulations, this has never occurred as in previous instances as the payments have been made within 7 working days. Furthermore, the Bank believes that even if members of the Credit Union were to make such applications, such subsistence payments might not in and of themselves be sufficient to relieve the difficulties that might be experienced by members if they did not have access to their money and furthermore it would take time to process such applications.

242. In the case of Rush Credit Union Limited and Berehaven Credit Union Limited both of which were wound up on grounds of insolvency the DGS was in a position to make the payments within seven working days of the appointment of the provisional liquidator. The Bank is strongly of the view that this facilitated an orderly winding up and avoided any contagious or concern in the wider credit union sector. This was a very important factor in ensuring the

liquidation was successful. Furthermore, the manner in which DGS was dealt with in these cases gave rise, in the Bank's view to an expectation in the mind of the general public that the DGS payments will be made in a shorter period than the 20 working day statutory timeframe.

243. The Bank is of the view therefore that it is critically important that a provisional liquidator is granted the necessary powers to facilitate the making of DGS payments to members as quickly and efficiently as possible following his appointment so the DGS payments can be made in as short a period as possible in advance of the 20 working day statutory deadline.

DECISION BY GOVERNOR

244. On 11 October 2017 a copy of the Resolution Report was provided to the Governor and that on 12 October 2017 the Governor, having carefully considered the Resolution Report, decided that the Bank should proceed to present the Petition and to make an application before this Honourable Court for the appointment of one or more provisional liquidators to Charleville.

PROPOSED LIQUIDATORS

245. I say that David O'Connor and Jim Hamilton, each of BDO, Beaux Lane House, Mercer Street Lower, Dublin 2, have indicated that they are willing to act as Joint Liquidators and also as Joint Provisional Liquidators if the Court sees fit to appoint them. I beg to refer to the Affidavit of David O'Connor and Jim Hamilton in which they, *inter alia,* confirm their willingness to act as Joint Liquidators and Joint Provisional Liquidators when produced.

NOTICE OF PRESENTATION OF THE PETITION TO BOARD OF CHARLEVILLE

246. I say that the Bank will meet with Charleville's Board in order to inform them that the Bank intends to present a petition for winding up of Charleville and apply for the appointment of Provisional Liquidators after I have sworn the affidavit herein. I say that it is intended that I will swear a supplemental affidavit in order to apprise this Honourable Court of what takes place at that meeting.

CONFIDENTIALITY

247. While the Bank is not seeking that this application be heard otherwise than in public, the Bank respectfully requests that the paragraphs, or parts of paragraphs, which have been highlighted in yellow in the Petition, this affidavit, and the exhibits hereto be kept confidential to the Court in all circumstances and not be disclosed in open court or published or reported pursuant to Section 99 of the 2011 Act and/or the inherent jurisdiction of the Court, on the grounds that

they are highly commercially sensitive and / or are subject to regulatory confidentiality or data protection restrictions.

248. The information which has been highlighted relates to:-

(a) ToE negotiations that were into between Charleville and a number of third party credit unions which had engaged in such process with the Bank in good faith and on the understanding that discussions would remain confidential – the Bank believes that the public disclosure of the identity of those credit unions, or of information that may enable such credit unions to be identified, could, *inter alia*, prejudice any further processes involving a ToE or Directed Transfer where interested parties are likely to require their involvement to be kept confidential; and

(b) information relating to [redacted], which includes privileged legal advice with respect to same, which if disclosed publicly could damage the prospects of any liquidator of Charleville [redacted] and / or result in the loss of legal professional privilege.

CONCLUSION

249. For all of the reasons set out, I therefore pray this Honourable Court for the reliefs set out in the Petition and ex parte docket herein.

SWORN by the said **WESLEY MURPHY** on the 12th day of October 2017 at Ten Earlsfort Terrace, Dublin 2

WESLEY MURPHY

in the County of the City of Dublin

before me a Commissioner for Oaths / Practising Solicitor and

I Philippa Mangan hereby Certify that I know the Deponent

(1) I know the Deponent; or,

PHILIPPA MANGAN

(2) the Deponent has been identified to me by Philippa Mangan who is personally known to me; or,

(3) prior to the swearing hereof the identity of the Deponent has been established by me by reference to

COMMISSIONER FOR OATHS/ PRACTISING SOLICITOR

This Affidavit is filed on behalf of the Petitioner by Arthur Cox, Solicitors, Ten Earlsfort Terrace, Dublin 2.

Filed this day of 2017

THE HIGH COURT

Record Number: 2017 / COS

IN THE MATTER OF CHARLEVILLE CREDIT UNION LIMITED

AND IN THE MATTER OF THE CENTRAL BANK AND CREDIT INSTITUTIONS (RESOLUTION) ACT 2011

AND IN THE MATTER OF THE COMPANIES ACT 2014

AFFIDAVIT OF WESLEY MURPHY

EXHIBIT "WM1" REFERRED TO IN THE AFFIDAVIT OF WESLEY MURPHY

SWORN THE 12th DAY OF OCTOBER 2017

WESLEY MURPHY

PRACTISING SOLICITOR/
COMMISSIONER FOR OATHS