

DPE 022/33/2015

27 April 2016

Circular 14 /2016

To: Accounting Officers

**Minute of the Minister for Public Expenditure and Reform in response to the
Committee of Public Accounts Report on the Dublin Docklands Development Authority**

A Dhuine Uasail,

1. I am directed by the Minister for Public Expenditure and Reform to enclose, for your information and guidance, a copy of the Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts report on the Dublin Docklands Development Authority.

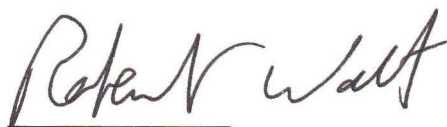
Issues raised

2. The Minute addresses a number of issues, including:
 - The acquisition of the Glass Bottle site;
 - Governance and Risk Management issues; and
 - Departmental/Ministerial oversight arrangements.

Enquiries

3. Enquiries in relation to this Circular can be addressed to Government Accounting Unit, Department of Public Expenditure and Reform, telephone: +353 1 6767571, Lo-Call: 1890 661010 or email: govacc@per.gov.ie.

Mise le meas,



Robert Watt
Secretary General

Minute of the Minister for Public Expenditure and Reform in response to the Committee of Public Accounts Report on the Dublin Docklands Development Authority

The Minister for Public Expenditure and Reform has examined the Committee's Report and has taken account of its conclusions. In relation to the Committee's recommendations, his response is as follows:

Recommendation 1.

All public bodies should ensure that their records in respect of investment decisions, including joint ventures, are comprehensive. The public spending code should be reviewed to ensure that it has standard requirements relating to cost benefit analysis and risk assessment with particular reference to joint ventures.

The Minister for Public Expenditure and Reform notes the recommendations of the Committee and will ensure that the requirements relating to cost benefit analysis and risk assessment with particular reference to joint ventures will be examined in the context of the next update of the Public Spending Code.

The requirements in the Public Spending Code are based on employing good practices at all stages of the *expenditure life cycle*. The Public Spending Code is the comprehensive set of Value for Money rules and procedures to ensure that the State gets the best possible value for the resources at its disposal. The Public Spending Code includes standard requirements regarding expenditure appraisal procedures such as Cost Benefit Analysis which should be applied to all proposals that involve public expenditure.

Every organisation needs to assure itself that the expenditure practices it employs are of an acceptable standard, that it consistently maintains these standards and if there are deficiencies that they are identified and addressed. All Government Departments, local authorities, the Health Service Executive, public bodies and all bodies in receipt of public funding must comply, as appropriate, with the relevant requirements of the Public Spending Code. In the case of State bodies, the Board of each State body should satisfy itself annually that the Body is in full compliance with the Public Spending Code.

Recommendation 2.

The Boards, in compliance with their fiduciary duties, need to ensure that decisions are taken on the basis of comprehensive analysis and that a comprehensive record of decision making is in place. The Code of Governance for State bodies should be reviewed to establish whether its provisions need to be enhanced in light of the experiences at the DDDA.

The Minister for Public Expenditure and Reform accepts the recommendation of the Committee which is timely in the context of the work currently being undertaken by the Department of Public Expenditure and Reform in updating the *Code of Practice for the Governance of State Bodies, 2009*. The issues raised in this particular recommendation will be taken into consideration in the context of the current revision of the *Code of Practice for the Governance of State Bodies*.

Recommendation 3.

The oversight of a body, under the aegis of a Department, should not be the function of a civil servant who is also a member of the board of that body.

The Minister for Public Expenditure and Reform accepts the recommendation of the Committee which is timely in the context of the work currently being undertaken by the Department of Public Expenditure and Reform in updating the *Code of Practice for the Governance of State Bodies, 2009*. The issues raised in this particular recommendation will be taken into consideration in the context of the current revision of the *Code of Practice for the Governance of State Bodies*.

Recommendation 4.

Notwithstanding the commercial sensitivity of any proposal, it should be a requirement that there is disclosure of key financial data as part of the comprehensive cost benefit analysis that should be part of any submission seeking Ministerial approval to enter joint ventures or to increase borrowings.

The Minister for Public Expenditure and Reform notes this recommendation and would point out that under the current provisions of the *Code of Practice for the Governance of State Bodies, 2009* a State body should obtain the approval of the relevant Minister for any intended action which would extend or change significantly the nature, scope or scale of the activities in which it (or any subsidiary or State body joint venture) engages. The financial consequences of such actions, and their consistency with the existing remit of the body (if any), notably its statutory remit, should be set out. In addition, the consent of the Minister for Public Expenditure and Reform should be obtained for any action which, in the view of the relevant Minister, would have significant financial consequences, notably on the debt, profitability or ability of the body to pay dividends (where relevant).

The establishment or acquisition of subsidiaries, participation in joint-ventures and the acquisition of shares by any State body, by its subsidiaries or by joint ventures in which either

a State body or its subsidiaries participate (“State body joint ventures”) is subject to the legal capacity to do so and to the prior written approval of the relevant Minister, given with the consent of the Minister for Public Expenditure and Reform.

When seeking such approval, State bodies should supply their relevant Department with complete details of such proposed subsidiaries, joint ventures or acquisitions and should do so at the earliest opportunity in order to avoid delays.

Such details should include, together with such other information that may be requested:

- the full business case for the proposal;
- the amount of share capital proposed to be acquired compared with the entire issued share capital of the company concerned;
- details of any shares held in such company by any other State body, its subsidiaries or State body joint ventures;
- data on the financial commitment and exposure of the parent body, whether by way of equity, loans, guarantee or otherwise;
- other potential liabilities that may have a negative impact on the company; and
- outstanding borrowings of such company from all sources, whether guaranteed or not, and any commitments by them which could involve financial exposure for a State body.

In relation to increased borrowings the *Code of Practice for the Governance of State Bodies, 2009* also provides that State guarantees cannot be given without explicit statutory authority and may only be given by the relevant Minister with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform. State guarantees may also be subject to approval by the EU Commission under the Treaty rules on State Aid. As a general rule, current policy is not to issue new State guarantees to State Bodies due to the potential impact on the State’s Balance Sheet and to allow outstanding guarantees to expire as the relevant borrowings are repaid.

Recommendation 5.

The dissolution of the DDDA should be deferred until any liabilities that arise for public authorities in respect of the structural deficiencies that now exist at the Longboat Quay apartment complex, are discharged.

The Minister for Public Expenditure and Reform is informed by the Department of the Environment, Community and Local Government that it does not accept this recommendation

as the legislation governing the dissolution of the Authority provides a mechanism for addressing the assets/liabilities position of the Authority on its dissolution.

The Minister is further informed by that Department that;

- The Dublin Docklands Development Authority (Dissolution) Act 2015 (No. 55 of 2015) was signed into law by the President on 24th December 2015.
- Sections 5 and 6 of the Act provide that the Minister shall, by order, appoint a day to be the dissolution day and on the dissolution day, the Dublin Docklands Development Authority shall stand dissolved. The Minister has now signed the commencement order and with effect from 1st March 2016 the Authority stands dissolved.
- Matters relating to Longboat Quay and the liability of the remediation of structural defects in that development are currently before the Courts and it is not clear when they will be resolved. In light of the on-going litigation and to provide certainty in terms of the future development of the Docklands area it was deemed appropriate the Authority should be dissolved.
- This decision was taken in light of the fact that the Act provides that, on dissolution, the assets and liabilities, including choses-in-action (or rights to sue), of the Authority, transfer to Dublin City Council and this transfer includes any possible outstanding liabilities for Longboat Quay.

Note: Recommendation Number 6 was omitted from the PAC Report on the Dublin Docklands Development Authority.

Recommendation 7.

Dublin City Council should now bring forward a proposal for the efficient use of the Jeannie Johnstone.

The Minister for Public Expenditure and Reform is informed by the Department of the Environment, Community and Local Government that this recommendation is accepted.

The Minister is further informed by that Department that:

- As part of the dissolution of the Dublin Docklands Development Authority, a transition plan was put in place by the Authority in conjunction with Dublin City Council to oversee an orderly wind-down of the DDDA.

- This transition plan was largely overseen by a designated Docklands Unit of Dublin City Council which remains in place post-dissolution to continue the oversight and management of all aspects of the future regeneration of the area.
- The dissolution legislation provides for the transfer of the Authority's assets and liabilities to Dublin City Council, including the Jeannie Johnston, and it is understood that plans are afoot for the future utilisation of the vessel.
- The Docklands Unit of Dublin City Council has completed a heritage audit of the Docklands area, in conjunction with various interested parties and organisations that have a remit for that part of the city. It is understood that the future role of the Jeannie Johnston is an important component of that heritage audit, which will inform its future usage.

Recommendation 8.

Where sales of State assets occur without an open process, the reasons for that private sale should be clearly documented and reported to the parent Department and should be highlighted, by way of a note, in the accounts of the State body.

The Minister for Public Expenditure and Reform notes this recommendation and would point out that under the current provisions of the *Code of Practice for the Governance of State Bodies, 2009* the disposal of assets of State bodies or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties, with an anticipated value at or above a threshold level of €150,000 should be by auction or competitive tendering process, other than in exceptional circumstances. The method used should be both transparent and likely to achieve a fair market-related price.

In relation to the reporting of disposals under the current provisions of the *Code of Practice for the Governance of State Bodies, 2009* details of all disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties below the threshold value of €150,000 without auction or competitive tendering process should be formally reported to the Board, including the paid price and the name of the buyer, on an annual basis. Details of and explanations for the disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 which have not been subject to auction or competitive tendering process should be included in the Chairperson's annual report to the relevant Minister. The Chairperson, in the annual report to the relevant Minister should affirm that the disposal procedures, as outlined above, have been complied with.

Given under the Official Seal of the Minister for Public
Expenditure and Reform on this the 27 day of April,
2016.



L.S.

Robert Watt

Robert Watt

Secretary General

Department of Public Expenditure and Reform

