

THE HIGH COURT

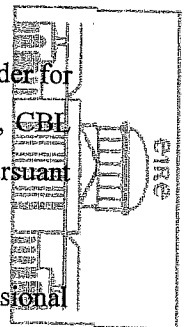
Record No

IN THE MATTER OF CBL INSURANCE EUROPE DESIGNATED ACTIVITY COMPANY
AND IN THE MATTER OF THE INSURANCE (NO. 2) ACT, 1983 (AS AMENDED)

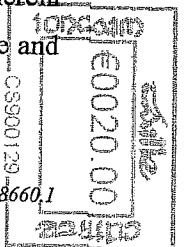
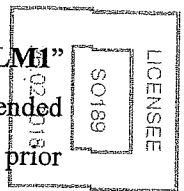
AFFIDAVIT OF LISA O'MAHONY

I, **LISA O'MAHONY**, Head of Function, On-site Inspections, within the Insurance Supervision Division of 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, On-site Inspections, within the Insurance Supervision Division of the Central Bank of Ireland (the "**Bank**"). 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:
 - 2.1 verifying the Petition made by the Bank (the "**Petition**") in which it seeks an Order for the administration of, and the appointment of an administrator in relation to, **CBL Insurance Europe Designated Activity Company** (the "**Insurer**" or "**CBLIE**") pursuant to Section 2 of the Insurance (No.2) Act 1983 (the "**Insurance Act**"); and
 - 2.2 supporting the application of the Bank with respect to the appointment of a provisional administrator to the Insurer pursuant to Section 2(4) of the Insurance Act pending the hearing of the Petition.
3. I beg to refer to a composite book of correspondence (the "**Folder**") upon which marked "**LM1**" I have signed my name prior to the swearing hereof. I also beg to refer to the Petition intended to be issued herein now produced and upon which marked "**LM2**" I have signed my name prior to the swearing hereof. Such of the statements in the said Petition intended to be issued herein now produced and shown to me as relate to the acts and deeds of the Petitioner are true and



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such of the statements as relate to the acts and deeds of any other person or persons I believe to be true.

DETAILS OF THE INSURER

4. The Insurer is a designated activity company limited by shares which was incorporated in the State under the Companies Act 1963 (as amended) on 3 June 1994 as Interpolis Insurance Ireland Limited. The registered office of the Insurer is at 13 Fitzwilliam Street Upper, Dublin 2 D02 V045. I beg to refer to a copy of the original Certificate of Incorporation dated 3 June 1994 together with copies of each of the Certificates of Incorporation on change of name and the certificate of incorporation on the conversion of the Insurer to a designated activity company under the Companies Act 2014 dated 27 April 2016. I also beg to refer to a copy of a search conducted in the Companies Registration Office, together with a copy of the latest annual return filed on behalf of the Insurer and a copy of the certificate of authorization issued by the Bank in respect of the Insurer upon which marked “LM3” I have signed my name prior to the swearing hereof.
5. The Insurer is an insurance undertaking supervised, regulated and authorised by the Bank to conduct non-life insurance business pursuant to the European Union (Insurance and Reinsurance) Regulations, 2015 (the “**2015 Regulations**”). The principal operating activity of the Insurer is to provide a range of non-life insurance products in Ireland and in a number of countries within the European Economic Area on a freedom of services basis. The Insurer specialises in construction-related credit and financial surety insurance, professional indemnity insurance, property insurance, and travel bonding. These products are distributed through channels including Managing General Agents (“**MGAs**”) and other insurance brokers. The nature of the risks insured by the Insurer include principally medical expense insurance, income protection insurance, fire and other damage to property insurance, general liability insurance, credit and suretyship insurance, legal expenses insurance and miscellaneous financial loss insurance. As set out in more detail below the Insurer’s business has grown rapidly since 2016 and this resulted primarily from the Insurer’s acquisition of the underwriting of French construction insurance business of Elite Insurance Company Limited (“**Elite Insurance**”), an insurance undertaking domiciled in Gibraltar. Elite Insurance re-insure a material amount of business to CBLNZ.
6. LBC Holdings Europe Limited, a company incorporated in New Zealand, is the sole direct shareholder of the Insurer. However, the Insurer is ultimately controlled by CBL Corporation Limited (“**CBL**”, and together with its subsidiaries the “**CBL Group**”), an entity incorporated

in New Zealand and whose shares are admitted to trading on the New Zealand and Australian stock exchanges.

7. The Insurer is affiliated with CBL Insurance Limited (“CBLNZ”), a New Zealand domiciled non-life insurer, regulated by the Reserve Bank of New Zealand (“RBNZ”) and a member of the CBL Group. I beg to refer to a group structure chart for the CBL Group upon which marked “LM4” I have signed my name prior to the swearing hereof. Pursuant to various Reinsurance Agreements entered into between the Insurer and CBLNZ, at any given time up to 90% of the insurance risk incurred by the Insurer with respect to the policies that it has issued is re-insured by CBLNZ. I understand that CBLIE wrote €139.1m of gross written premium (or “GWP”) in 2017 of which c.68% in total was reinsured by CBLNZ. I beg to refer to a spreadsheet supplied by CBLIE to the Bank providing details of its reinsurers upon which marked “LM5” I have signed my name prior to the swearing hereof.
8. On 23 February 2018, the Bank was notified by RBNZ that the High Court of New Zealand had granted various orders on the evening of 22 February 2018, on foot of an *ex parte* application by RBNZ, including an order appointing an interim liquidator to CBLNZ. I beg to refer to a copy of the said orders provided to the Bank by RBNZ upon which marked “LM6” I have signed my name prior to the swearing hereof.

BACKGROUND

9. The Insurer has been the subject of increasingly intensive regulatory and supervisory engagement with the Bank since January 2017. I beg to refer to all of the correspondence that has been exchanged between the Bank and the Insurer during that period as appearing within the Folder.
10. During the course of that engagement, the Bank has raised a number of serious issues relating to the financial position of the Insurer, and the manner in which it is carrying on its business. Those issues are briefly summarised below.

Rapid growth of the Insurer's business

11. The Insurer's entire gross premium for 2016 was ██████. However, the Insurer's business plan for 2017 envisaged growth of 515%. The Insurer's entire gross premium for 2017 was ██████. Please see table below showing the quarterly change in GWP and speed of growth in 2017 compared to 2016:

Quarter	2016 €000s	2017 €000s	Percentage change
Q1	██████	██████	889%
Q2	██████	██████	784%
Q3	██████	██████	410%
Q4	██████	██████	276%
Total	██████	██████	454%

Level of reserving in CBLIE and CBLNZ

12. The Bank is the national competent authority for the prudential supervision of insurance undertakings in the State however there exists an EU-wide framework for cooperation amongst national competent authorities in the form of The European Insurance and Occupational Pensions Authority's ("EIOPA") Cross-border Platform of Collaboration (the "Platform"). As part of the Platform, the Bank has ongoing supervisory engagement with EIOPA and other European and international regulators, including RBNZ.
13. The rapid rate of growth with respect to the Insurer's business resulted primarily from the Insurer's acquisition of the underwriting of French construction insurance business of Elite Insurance Company Limited ("**Elite Insurance**"), an insurance undertaking domiciled in Gibraltar. Elite Insurance re-insure a material amount of business to CBLNZ.
14. Based on the Platform discussions in relation to Elite Insurance, the Bank became aware of concerns in relation to reserving in Elite Insurance. On that basis the Bank became concerned that both the Insurer and CBLNZ (its primary re-insurer) were reserving at a level materially lower than appropriate.
15. Following further engagement, the Bank concluded that the Insurer had not been able to demonstrate to the Bank that its technical provisions were being calculated in a prudent and reliable manner in accordance with its obligations under the 2015 Regulations.

Corporate governance concerns

16. The Bank had concerns in relation to the governance framework and therefore undertook an on-site review of the governance framework of the Insurer in November 2017. The Bank determined that there were substantial weaknesses in the system of governance in place in respect of the Insurer including with respect to:
- 16.1 the design and implementation of controls in key areas including segregation of duties;
 - 16.2 internal audit;
 - 16.3 the identification, measuring, monitoring, management and reporting of risks;
 - 16.4 oversight of outsourcing arrangements;
 - 16.5 process documentation;
 - 16.6 data management; and
 - 16.7 business continuity management.
17. The Bank was furthermore satisfied that the system of governance in place with respect to the Insurer deviated from the standards required by the 2015 Regulations and constituted a material risk factor for the Insurer, in particular having regard to the rapid pace at which it was expanding its volume of business.

Absence of group supervision

18. New Zealand has not yet been declared equivalent under the Solvency II Directive and there may be substantial differences between the EU and New Zealand regulatory regimes for insurance undertakings.
19. For example, Title III of the Solvency II Directive (which sets out the Europe-wide supervisory framework for insurers and is transposed in Ireland through the 2015 Regulations) addresses the supervision of insurance and reinsurance undertakings in a group. The Solvency II Directive places requirements in relation to group solvency, risk concentration, risk management and internal control on insurance groups within its scope.
20. The Bank is advised that the insurance regulatory framework in New Zealand, governed by the Insurance (Prudential Supervision) Act 2010 does not include an equivalent to the requirements of the Solvency II Directive in relation to group supervision.
21. Therefore, without an applicable equivalent regime, including for group solvency, the Bank cannot assess the solvency position of the CBL Group, nor its risk and internal controls at group

level. This is a concern for the Bank, especially in circumstances where CBLIE has sought to address some of the concerns raised by the Bank by reference to the strategy, resources, activities and control framework of the wider CBL Group.

The financial position of the CBL Group

22. On 2 February 2018, all trading with respect to CBL's shares on the New Zealand Stock Exchange ("NZX") were halted pending an announcement by CBL. Subsequently on 5 February 2018 CBL issued an announcement to the market which can be summarised as follows:
 - 22.1 that it expected to report total revenue growth for 2017 *"in excess of 35%, above previous guidance of 12% - 15%"*;
 - 22.2 that it also expected to make a *"future claims reserve strengthening adjustment of around \$100m to the reserves of CBLNZ in respect of its long-tail French construction insurance business, and another one-off write-off of receivables of approx. \$44m arising from broker/insurer/reinsurer reconciliations and related differences arising from a detailed post-acquisition examination of SFS throughout 2017"*; and
 - 22.3 that *"these adjustments are expected to result in the CBL Group reporting a consolidated FY17 after tax loss of \$75m - \$85m"*.
23. A further announcement was made to the market by CBL on 7 February 2018 with respect to supervisory reviews that had been undertaken by RBNZ and the Bank concerning the adequacy of reserves at CBLNZ and the Insurer, respectively, and that CBL intended to engage in a capital raising process to strengthen its balance sheet and reserves. On the same date it was announced to NZX that AM Best had released amended ratings for:
 - 23.1 CBLNZ, which moved to an Issuer Credit Rating of "bbb+" and a Financial Strength Rating of "B++", under review with negative implications; and
 - 23.2 CBL which moved to an Issuer Credit Rating of "bb+", under review with negative implications.
24. On 8 February 2018 NZX suspended the quotation of CBL's shares due to concerns that *"not all material information relating to CBL and its ordinary shares is available to the market. Furthermore, NZXR understands that the FMA and other regulators have raised concerns relating to the completeness and veracity of information that has released to the market by CBL. In these circumstances, NZXR is not satisfied that the market would currently be able to*

trade in CBL on a fully informed basis". Following the decision on the part of NZX to suspend the quotation of CBL's shares, CBL requested a voluntary suspension of the trading of its shares on the Australian stock exchange.

25. These announcements, which were made publicly without any advance notice to the Bank, gave rise to further concerns within the Bank as to the financial position of the CBL Group.
26. I beg to refer to a copy of the aforementioned market announcements upon which marked "LM7" I have signed my name prior to the swearing hereof.

The financial position of CBLNZ

27. In November 2017, the Bank became aware that the RBNZ had become concerned with regard to the financial position, prudent management and solvency of CBLNZ. This was a matter of very significant concern to the Bank due to the fact that the Insurer reinsured c.68% of the total risks incurred by the Insurer in 2017, and up to 90% of certain material business lines, including those relating to its French construction business, and is therefore reliant to a considerable extent on CBLNZ for reinsurance recoveries in order to be able to pay claims and safeguard policyholders.
28. In a letter addressed by the Insurer to the bank dated 11 July 2017, the Insurer had provided the Bank with the results of a stress test which it had carried out with respect to its French construction insurance business. I beg to refer to a copy of the said letter appearing at **Tab 16** of the Folder. The results of that test demonstrated further to the Bank that the Insurer was highly dependent on CBLNZ's ability to pay all reinsurance recoveries in full in order for the Insurer to be in a position to comply with the Solvency Capital Requirement (or "SCR") and the Minimum Capital Requirement (or "MCR") under the 2015 Regulations.
29. The concerns of the Bank with regard to the financial position of CBLNZ intensified following the announcements made by CBL to NZX in early February 2018. However, the Bank is now gravely concerned with respect to the financial position and solvency of CBLNZ as a result of becoming aware on 23 February 2018 that RBNZ had made a successful application to the High Court of New Zealand on the previous date for the appointment of an interim liquidator to CBLNZ.
30. The interim liquidation of CBLNZ, in turn, has grave implications for the solvency of the Insurer, having regard to the extent of its reliance on CBLNZ's ability to pay reinsurance recoveries, as demonstrated by the results of the Insurer's own stress tests outlined above. The Bank has noted that it has been reported on the "Business Wire" website that the A.M. Best Rating Agency has, following the interim liquidation, downgraded CBLNZ's:

- 30.1 Financial Strength Rating to a Non-Rating Designation “E” (under regulatory supervision) from “B++” (Good); and
- 30.2 Long Term Issuer Credit Rating to “E” from “BBB+”.
31. I beg to refer to a copy of the said article appearing on the “Business Wire” website on 23 February 2018 upon which marked “LM8” I have signed my name prior to the swearing hereof.
32. The Bank had previously confirmed to the Insurer that it was of the opinion that the Insurer was not compliant with its SCR obligations under the 2015 Regulations. This opinion is confirmed, and the Bank's concerns are exacerbated, by the recent news that CBLNZ has been placed into interim liquidation and has been subject to a credit rating downgrade.

REGULATORY RESPONSE OF THE BANK TO DATE

33. In light of the issues that arose during the course of the Bank’s supervisory engagement with the Insurer the Bank has taken various regulatory steps, including the issuance of various directions pursuant to the Central Bank (Supervision and Enforcement) Act 2013 (the “**2013 Act**”) and the 2015 Regulations. These actions were taken by the Bank in each case after advance notice of its intention to do so was conveyed to the Insurer and after the Bank had considered any submissions received from the Insured.

34. The principal regulatory actions taken by the Bank, and which remain in effect, are summarised below.

Authorisation Condition

35. By letter to the Insurer dated 28 July 2017 the Bank imposed a condition on the Insurer pursuant to Regulation 26(1) of the 2015 Regulations requiring cash, representing reinsurance recoveries under the Reinsurance Agreements(s), to be placed in a trust for the exclusive benefit of the Insurer in order to alleviate concerns regarding the high level of exposure the Insurer has to CBLNZ under the terms of the Reinsurance Agreements(s). I beg to refer to a copy of the said letter appearing at **Tab 19** of the Folder.
36. This condition was imposed after the Bank had issued a letter to the Insurer on 23 June 2017 (appearing at **Tab 11** of the Folder) notifying it of the Bank’s intention to do so, and after the Bank had duly considered the submissions of the Insurer outlined in a letter to the Bank dated 7 July 2017 (appearing at **Tab 15** of the Folder), in which the Insurer had, amongst other things, asserted that:

- 36.1 the growth in business during 2017 arose as a result of a “transitioning” of the insurance business of a CBL Group affiliate (Elite Insurance) to CBLIE rather than the writing of new business;
- 36.2 CBLNZ benefited from a robust credit rating from A.M Best; and
- 36.3 the PwC UK report prepared with respect to Elite Insurance (being a Skilled Persons Report requested by the Gibraltar Financial Services Commission as competent regulator of Elite Insurance) which highlighted reserving issues had “*a number of material deficiencies including errors, uncertainties, omissions, and unreasonable assumptions*”.
37. In its aforementioned letter dated 19 July 2017, the Bank addressed these assertions by pointing out that as the Insurer is the only member of the CBL Group that is supervised by the Bank, it is not relevant that its business has increased by reason of certain portfolios having been transferred from other members of the CBL Group and, for the same reason, the Bank takes no comfort from the knowledge of the CBL Group of the type of business transferred. With respect to the PwC UK report, the Bank noted that it had since been finalised without material amendment, and from prudential supervisory standpoint it is required to take cognisance of it and act accordingly pending the completion of its own review of the Insurer and CBLNZ’s reserving methods.

Notice requiring a Skilled Person's Report

38. On 12 January 2018 the Bank gave notice to the Insurer that it was required to provide a Skilled Persons’ report to the Bank the purpose of which was to assess the firm's approach to the calculation of its technical provisions and the sufficiency of the reserves held by the firm in the context of the requirements of the 2015 Regulations. I beg to refer to a copy of the said letter appearing at **Tab 58** of the Folder. The Bank made the decision to issue the said notice to the insurer after having duly considered the submissions made in that regard by the Insurer to the Bank by letter dated 3 January 2018. I beg to refer to a copy of the said letter appearing at **Tab 56** of the Folder.

Direction requiring a capital add-on

39. On 12 January 2018 the Bank notified the Insurer that it was satisfied that the system of governance in place in the Insurer significantly deviates from the standards laid down in Regulations 44 to 51 of the 2015 Regulations the Bank directed the Insurer, pursuant to Regulation 39 of the 2015 Regulations, and that accordingly it was directed to apply a capital add-on in accordance with the methodology specified in the appendix to the direction letter. I

beg to refer to a copy of the said letter appearing at **Tab 57** of the Folder. The Bank made the decision to issue the said direction to the insurer after having duly considered the submissions made in that regard by the Insurer to the Bank by letter dated 3 January 2018. I beg to refer to a copy of the said letter appearing at **Tab 55** of the Folder.

Direction not to dispose of assets

40. On 2 February 2018 the Bank directed the Insurer not to dispose of any assets without the prior written approval of the Bank and not to make any payments or transfers of assets to its shareholders, directors (except for payments related to directors' fees and salaries) or any related undertaking of the Insurer or its shareholders. Claim payments and certain other expenses were excluded from the scope of the direction. The Insurer was also directed to notify in writing each credit institution with which the Insurer has an account the terms of the Regulatory Direction. This direction replaced previous similar directions since June 2017 given by the Bank and remains currently in effect. I beg to refer to a copy of the said letter appearing at **Tab 62** of the Folder.

Direction to cease writing new contracts of insurance

41. On 7 February 2018, following the market announcements referred to above at paragraph 22, the Bank wrote to the Insurer indicating that it intended to issue a direction to the Insurer requiring it to, amongst other things, immediately cease writing all new contracts of insurance. The letter called for submissions from the Insurer by not later than 5pm on 9 February 2018. I beg to refer to a copy of the said letter appearing at **Tab 67** of the Folder.
42. On 9 February 2018 the Bank received a letter from William Fry, solicitors to the Insurer, (appearing at **Tab 72** of the Folder) in which it was asserted that:
- 42.1 the short timeframe for submissions was "entirely unreasonable given that the issues raised require it to seek appropriate legal, financial and actuarial advice"; and
- 42.2 it had been informed by a representative of a European National Supervisory Authority that it had been advised by the Bank that it intended to direct the Insurer to cease writing new and renewal business, and that accordingly, it was concerned that the Bank had pre-judged this matter in advance of receiving the Insurer's submissions.
43. The Bank responded by letter on the same date outlining that all of the issues referred to in its letter of 7 February 2018 had already been the subject of extensive correspondence and engagement with the Insurer since June 2017. The Bank also rejected any suggestion that it had prejudged the position and that confirmed that it had not made any decision to issue the

relevant directions to the Insurer. I beg to refer to a copy of the said letter appearing at **Tab 73** of the Folder.

44. In a further letter dated 9 February 2018, William Fry provided the Insurer's detailed submissions to the Bank's letter of 7 February 2018. I beg to refer to a copy of the said letter appearing at **Tab 74** of the Folder.
45. With respect to the concerns raised by the Bank with respect to corporate governance issues at the Insurer, William Fry in its letter outlined a number of steps that had been taken by the Insurer in accordance with the remediation plan required by the Bank, including:
 - 45.1 the appointment of a project manager to oversee the implementation of the plan;
 - 45.2 the completion of a tender process for the selection of a new outsourced internal audit function;
 - 45.3 that second-phase interviews had taken place to appoint a Chief Risk Officer and Claims Manager as well as a new Head of Claims;
 - 45.4 changes to the underwriting management team and risk committee; and
 - 45.5 the proposed change of chairman of the board of the Insurer.
46. William Fry also commented that:
 - 46.1 whilst the Insurer's SCR coverage ratio as at 31 December 2017 had deteriorated, that ratio was in excess of 100% prior to the imposition of the requirement for the capital add-on;
 - 46.2 the Insurer regards the capital-add on basis as excessive and disproportionate, particularly in its "*prohibition on recognising any credit or reduction in respect of reinsurance arrangements put in place by CBLIE*"; and
 - 46.3 the full basis of the capital-add was not known by the Insurer until 31 January 2018, and that the Insurer then immediately began to develop a recovery plan to address the potential SCR breach that was identified on that date.
47. With respect to the Bank's concerns with regard to the Insurer's technical reserves, William Fry:
 - 47.1 acknowledged the Bank's concerns with regard to the estimated level of the Insurer's technical reserves, and advised that this concern was being addressed via the

appointment of a Skilled Person to perform an actuarial analysis (as per the requirements of the notice issued by the Bank on 12 January 2018);

- 47.2 pointed out that the Bank is aware that RBNZ has also commissioned an independent report by Milliman with respect to the French construction business underwritten by CBLNZ, and that the Bank would shortly receive this report once finalised;
- 47.3 asserted that the Insurer had fully co-operated with the Bank's requests with respect to the appointment of a Skilled Person and had engaged in a diligent and transparent manner throughout; and
- 47.4 also asserted that the Bank should not rely on any assertion as to the appropriateness or otherwise of the Insurer's technical reserves for the purposes of taking further regulatory action until the Skilled Person's Report is available.
48. With regard to the financial position of CBLNZ, William Fry outlined the steps that the Insurer has taken to address the counterparty risk posed by its reliance on the financial position of CBLNZ:
- 48.1 it has, in accordance with the condition imposed by the Bank by letter to the Insurer dated 28 July 2017, procured that CBLNZ has established a trust over an account balance of [REDACTED] which is available to the Insurer to collateralise the reinsurance obligations of CBLNZ;
- 48.2 the Insurer has withheld [REDACTED] of reinsurance premiums from CBLNZ;
- 48.3 the Insurer has received capital injections of [REDACTED] from the CBL Group; and
- 48.4 a loan of [REDACTED] owing by CBLNZ to the Insurer was repaid in full on 9 February 2018.
49. William Fry also noted that the Insurer had also endeavoured to put in place a letter of credit with a third party bank to alleviate the Bank's concerns regarding the Insurer's exposure to CBLNZ, although such efforts had not been successful. William Fry also asserted that the Bank's insistence on a particular "evergreen" form of letter of credit was the primary reason for this failure.
50. With regard to the rapid pace of the growth of the Insurer's business, William Fry asserted that:
- 50.1 the Bank did not communicate any issue with the levels of growth specified in its Business Plan for 2017 when it was issued to the Bank in March 2017, and that the

comparison between the levels of premium for 2016 and 2017 is misleading because the 2016 figures amount to only a few months of revenue compared with a full year for 2017;

- 50.2 it had now proposed a voluntary reduction of 15% to 20% for 2018;
 - 50.3 the Insurer now proposed to cease writing all new contracts of insurance with respect to the long-term French business with effect from 1 April 2018; and
 - 50.4 the Insurer had proposed to conduct a complete portfolio review of all its long-term existing French insurance contracts with a view to reducing the portfolio size by not less than 30%.
51. Finally, William Fry provided a copy of a memorandum addressed by the CBL Group to the Insurer outlining the detail of a capital raising project that was underway to strengthen the balance sheet of the CBL Group as a whole. William Fry asserted that if the Bank were to issue a direction requiring the Insurer to cease writing new contracts of insurance that this would have a materially adverse impact on the ability of the CBL Group to implement this plan.
52. Subsequently, on 13 February 2018, the CBL Group made an announcement to the market to the effect that it had decided to exit its French Construction Business and was considering a sale of that business. It also confirmed that it had decided to cease all new French Construction Business from April 2018, with all renewals ceasing from June 2018. I beg to refer to a copy of the said letter appearing at **Tab 77** of the Folder. On the same date, the Insurer contacted the Bank by email to inform it that it had arranged for an additional [REDACTED] to be transferred to the trust account established for the benefit of the Insurer, bring the total balance to [REDACTED]. I beg to refer to a copy of the said letter appearing at **Tab 78** of the Folder.
53. On 19 February 2018, having considered the submissions received from the Insurer, the Bank imposed the following directions on the Insurer:
- 53.1 the Insurer shall immediately cease writing all new contracts of insurance;
 - 53.2 the Insurer shall immediately refrain from renewing any existing contracts of insurance;
 - 53.3 by no later than 20 February 2018, the Insurer shall notify in writing (in terms to be agreed by the Central Bank) all appointed brokers and distribution partners with which the Insurer is connected of the terms of the directions; and

53.4 by no later than 20 February 2018, the Insurer shall request all appointed brokers and distribution partners with which it is connected to inform policy holders of the directions.

54. I beg to refer to a copy of the said letter appearing at **Tab 81** of the Folder. This direction replaced another direction issued earlier that same day on identical terms, save that the latter direction specified a maximum timeframe for the direction of 12 months. In that letter the Bank also responded to the issues raised by William Fry in its letter of 9 February 2018 as follows:

54.1 the Bank reiterated that it rejected any contention that it had prejudged the outcome of the process leading to the issuance of the direction to cease new and renewal business, and confirmed that the Bank had very carefully considered the Insurer's submissions;

54.2 the Bank also reiterated that it considered any contention that it had afforded the Insurer with insufficient time to make those submissions as being unfounded having regard to the fact that the issues were the subject of detailed correspondence over a number of months, and noted that a very similar "minded to" letter had been issued, but not acted upon, by the Bank in November 2017;

54.3 with respect to the plans for the CBL Group to raise capital to strengthen its balance sheet, the Bank noted that no details had been provided with respect to the level of capital required or the timeframe within which the process would be completed, which ambiguity gave rise to concerns for the Bank;

54.4 with respect to the recent market announcements by the CBL Group, the Bank commented that whilst the content of these announcements heightened the pre-existing concerns of the Bank, they did not alone form the basis of the Bank's proposed direction to cease new business;

54.5 the Bank acknowledged the actions taken by the Insurer in compliance with requests from the Bank, as outlined in the letter of 9 February 2018, however the Bank asserted that the Insurer had not rectified the issues identified sufficiently to satisfy the Bank that the Insurer is able to meet its obligations to policyholders;

54.6 with respect to the corporate governance issues, the Bank acknowledged the steps taken to date by the Insurer, but outlined that a number of measures required to be taken by the Insurer remained to be actioned - the Bank also rejected the Insurer's contention that the capital add-on was excessive or disproportionate, and the Bank asserted was appropriate in light of the corporate governance deficiencies identified with respect to the Insurer;

- 54.7 the Bank reiterated its position that it would not be appropriate for the capital-add on to be reduced in respect of the reinsurance arrangements put in place by the Insurer;
- 54.8 the Bank also reiterated that the Insurer had failed to provide sufficient evidence to enable the Bank to come to a determination as to the adequacy of CBLIE's reserves, and that whilst a Skilled Person's Report had been commissioned, but was not yet complete, the Bank noted that it had determined that it was appropriate and necessary to take action to prevent the further exposure of policyholders to risk, prior to the completion of that report;
- 54.9 the Bank asserted that the Reinsurance Trust and the withholding of reinsurance premiums did not eliminate the risk of CBLNZ defaulting on future reinsurance recoveries, [REDACTED]
[REDACTED]
[REDACTED]
- 54.10 the Bank rejected the assertion that it bore a material degree of responsibility for the failure of CBLNZ's efforts to put in place a letter of credit, and noted that the Insurer had informed the Bank that it had, in turn, been informed by RBNZ that it would not agree to an unconditional and irrecoverable letter of credit for the benefit of the Insurer; and
- 54.11 finally, the Bank noted the new proposals from the Insurer to address the concerns of the Bank as outlined in the William Fry letter of 9 February 2018, including the proposal to exit the French Construction Business, identify an alternative reinsurer, and to reduce its other new business by 37%, however, the Bank explained that, by any measure, even with such steps having been taken the amount of premium expected to be written by the Insurer over the following two months would be significant.
55. The Bank received a letter from William Fry on behalf of the Insurer on 19 February 2018 in which it described the Bank's decision to issue the direction to cease new business as "*extremely surprising, entirely unreasonable and grossly disproportionate*" and asserted that if it was not immediately withdrawn, it could "*fatally compromise CBLIE's capacity to complete its programme of measures*" and that its impact on "*both CBLIE and the wider CBL Group will be irreversible and catastrophic*". The letter also demanded the immediate withdrawal of the direction letter and reserved the right of the Insurer to take unspecified action to "*protect its interests*" without further notice to the Bank. I beg to refer to a copy of the said letter upon which marked "LM9" I have signed my name prior to the swearing hereof.

56. On 20 February 2018, the Bank responded to William Fry's letter in which it reiterated its position that the direction to cease new and renewal business was necessary and appropriate and rejected the Insurer's contention that it was unreasonable or disproportionate. I beg to refer to a copy of the said letter upon which marked "LM10" I have signed my name prior to the swearing hereof.

RECENT DEVELOPMENTS AND INTERACTIONS WITH THE INSURER

57. As mentioned previously herein, on 23 February 2018, the Bank received notice from RBNZ that interim liquidators had been appointed to CLBNZ on the evening of 22 February 2018. Subsequently, I received a call from [REDACTED] partner of William Fry, to inform the Bank that the board of the Insurer was considering presenting a petition for the appointment of an examiner to the Insurer. This was confirmed in a follow up email from [REDACTED] at 5.32pm on the evening of 23 February 2018 in which it was also confirmed that the *"thinking of the Board motivated by the decision of the Reserve Bank of New Zealand to appoint an interim liquidator to CBL Insurance Ltd which is the reinsurer of CBLIE"*. I beg to refer to a copy of the said email appearing at **Tab 82** of the Folder.

58. Later that evening at 7.21pm, Arthur Cox, solicitors for the Bank, sent an email to William Fry noting that an interim liquidator had been appointed to CBLNZ and that the board of the Insurer was considering an examinership petition. Arthur Cox outlined that the Bank had grave concerns with regard to the implication for policy holders of the Insurer of these developments and was considering its options, including a potential petition for the administration of the Insurer. In that email the Bank also raised a number of queries concerning the proposed examinership of the Insurer, and requested an immediate response thereto. I beg to refer to a copy of the said email appearing at **Tab 83** of the Folder.

59. William Fry responded at 10.37pm on 23 February 2018 with some information concerning the queries raised by Arthur Cox and in particular noted that the appointment of the interim liquidators to CBLNZ could lead to the insolvency of the Insurer. I beg to refer to a copy of the said email appearing at **Tab 84** of the Folder.

60. On 24 February 2018, Arthur Cox on behalf of the Bank wrote to William Fry and outlined that the Bank was minded to oppose any petition for the examination of the Insurer and explained its concerns with any such proposal. It was also proposed that a meeting would be urgently convened between the Bank, the Insurer and their respective external and internal legal advisors to discuss the proposed examinership. I beg to refer to a copy of the said email upon which marked "LM11" I have signed my name prior to the swearing hereof.

61. A meeting was subsequently convened at 9am on 25 February 2018 at the offices of Arthur Cox and which was attended by certain directors of the Insurer, representatives of the Bank and the respective legal teams of the Bank (Arthur Cox) and the Insurer (William Fry) as well as [REDACTED] of [REDACTED] who was introduced as a potential examiner of the Insurer. Prior to the meeting the Insurer's solicitors provided the Bank with a set of presentation slides prepared by each of [REDACTED] and [REDACTED] providing details of the timelines for the sale of the Insurer's French construction business and the identity of potential purchasers. I beg to refer to a copy of the said documents upon which marked "LM12" I have signed my name prior to the swearing hereof.
62. The submissions made by the Insurer to the Bank at the above-mentioned meeting can be summarised as follows:
- 62.1 the Insurer noted that the Bank had directed it to cease writing new insurance contracts, but had also indicated that such direction could be reviewed at a later date;
 - 62.2 the Insurer also noted that an interim liquidator had been appointed to its reinsurer, CBLNZ, and that since Friday the board of the Insurer had been considering a potential petition for the appointment of an examiner to CBLIE, but that the attitude of the Bank with respect to any such petition would be key;
 - 62.3 the Insurer explained that the directors of CBLIE were of the view that the Insurer had a reasonable prospect of success and that an examinership would be in the best interests of policy holders;
 - 62.4 the Insurer outlined that if an examiner were appointed this would protect the Insurer from potential "contagion" arising from the interim liquidation of CBLNZ, and afford it breathing space to pursue the sale strategy with respect to respect to the French construction business, so that the remainder of its business can survive, and indeed thrive;
 - 62.5 the Insurer indicated that it believed that it was robustly solvent but that it was vulnerable to a demand for payment of unpaid reinsurance premia – nevertheless the Insurer's lawyers were satisfied that the Court would have jurisdiction to appoint an examiner notwithstanding the absence of insolvency – this assertion was queried by the Bank's legal advisors;
 - 62.6 [REDACTED] also outlined that he had only a brief meeting with the board of CBLIE and its legal advisors but it appeared to him that the issues arise as a result of the rate of expansion of the French construction business, which impacted on reserves and noted

that the Bank had issues with the Insurer's corporate governance – he indicated that it may be difficult to resolve all of those issues within the period of examinership and that the board needed to be satisfied that there is was a realistic prospect of survival; and

- 62.7 the Insurer also gave an update, through Mr Mark Christer (the European CEO for CBL who attended by telephone) as to the steps taken so far by the Insurer with regard to the proposed sale of the French construction business, including the proposed appointment of [REDACTED] to advise on the sale, and he indicated that he believed that the sale could be completed by 16 April 2018, and that a number of potential purchasers had been in touch already to make enquiries.
63. At the meeting a representative of the Bank asked the Insurer to clarify its views with respect to a potential administration of the Insurer. The Insurer's legal advisors responded to note that the Insurer was concerned that an administration would result in significant loss of shareholder value in circumstances where it believes that it has a strong balance sheet. The Bank noted that its only concern was the interests of policyholders. The Insurer commented that in circumstances where the Insurer believes that there is significant equity on its balance sheet, there is not necessarily a conflict between the interests of policyholders and the shareholder. The Insurer also commented that it was concerned that an administration of the Insurer would result in a significant loss of shareholder value.
64. At the meeting the Bank also questioned whether it was realistic to expect that the Insurer would be able to complete the sale of the French construction business, and bring itself into compliance with its regulatory obligations, within the 100 day period of any examinership. The Insurer indicated that it believed that a sale of the French construction business would effectively deal with the reserving issues currently faced by the Insurer.
65. The Bank also raised a question as to whether the Insurer was aware of the grounds upon which RBNZ applied for the appointment of interim liquidators to CBLNZ. Mr. Christer confirmed that it was his understanding that the application was driven by RBNZ's concerns with regard to levels of reserves relating to the French construction business.
66. The Bank also queried whether it was the intention of the directors of CBLIE that they would remain in office and exercising their powers in the event that an examiner were appointed to the Insurer. The Insurer and [REDACTED] both indicated that the directors would remain *in situ* at least initially but that if [REDACTED] formed the view that that situation needed to change, that the directors would not have an issue with him assuming direct responsibility for the management of the Insurer.

67. Finally, the Bank requested the Insurer to comment on what its position would be in the event that the Bank decided to confirm its opposition to any examinership, and to proceed to an administration. The Insurer's solicitors confirmed that it would need to carefully consider how to respond in the event that such a decision were made. The Bank reflected on and carefully considered the matters raised by the Insurer at the meeting however for the reasons explained below the Bank has formed the view that it cannot support an examinership petition by the Insurer or its directors and that it is appropriate to petition for the appointment of an administrator.

THE CONCERNS OF THE BANK

68. The Bank continues to have concerns with regard to each of the issues that were identified during the course of its engagement with the Insurer and does not accept that the Insurer has been able to properly address those concerns.

69. However, the Bank's primary and most urgent current concern with respect to the Insurer arises as a result of the interim liquidation of CBLNZ which occurred on 22 February 2018 and of which the Bank became aware on the morning of 23 February 2018.

70. Specifically, the Bank has concerns that, as a result of the liquidation of CBLNZ:

70.1 there is considerable uncertainty and doubt with regard to the solvency of CBLNZ and its ability to comply with its obligations to the Insurer under the Reinsurance Agreements;

70.2 the inability of the Insurer to rely upon the Reinsurance Agreements has, as demonstrated by the Insurer's own stress tests, the potential to materially deplete the Insurer's SCR and, potentially, its MCR;

70.3 there must now be a significant question as to ability of the Insurer's ability to pay its debts, having regard to the extent of its reliance on the financial position of CBLNZ as its primary reinsurer, as is demonstrated by the Insurer's indication to the Bank that it is considering presenting a petition for the appointment of an examiner to the Insurer, a remedy that is only available in the event of an actual or imminent insolvency;

70.4 there is a material risk that the liquidator of CBLNZ may seek to issue proceedings or take other action against the Insurer [REDACTED]

(a) [REDACTED]

(b)

[REDACTED]

(c)

[REDACTED]

(d)

[REDACTED]

70.5 in light of the public nature of the financial difficulties faced by the CBL Group, the policy holders of the Insurer face considerable uncertainty with regard to the future of the Insurer and its ability to continue to meet its obligations to them.

71. As a result of these concerns, the Bank believes that the Insurer is in a financially distressed position and that it is incumbent upon the Bank to take such action as is necessary to protect the interests of policyholders and the integrity of the insurance market within the State. The Bank has considered the following options that are potentially available to it:

71.1 the Bank could indicate its consent to, or not oppose, a petition for the appointment of an examiner to the Insurer to be presented by its directors or shareholders;

71.2 the Bank could present its own petition for the appointment of an examiner to the Insurer;

71.3 the Bank could present a petition for the liquidation of the Insurer, and simultaneously apply for the appointment of a provisional liquidator; or

71.4 the Bank could present a petition for the administration of the Insurer, and simultaneously apply for the appointment of a provisional administrator.

72. With respect to the option of examinership, the Bank is of the view that it cannot support an examinership petition by the Insurer or its directors, and that the Bank should not present its own such petition, for the following reasons:

72.1 the Bank has grave concerns that it will not be possible for the Insurer to formulate a scheme of arrangement, and to take all steps that would be required to bring it into compliance with its regulatory obligations, within the maximum 100 day period of any examinership;

72.2 the Bank also notes that the Insurer does not at this stage appear have any concrete proposals, or expressions of interest, from any third party investor and, while the Bank acknowledges that it is not necessarily unusual that such investment would not be confirmed in advance of an examinership, in the case of the Insurer the Bank has grave

concerns that such investment would not be forthcoming during the relatively short period afforded for an examinership; and

- 72.3 the Bank also notes that the Insurer appears to be proposing to sell the French construction business whilst in examinership in order to address its SCR issues, however, again the Bank is concerned that there is a material risk that such a sale would not be achieved within 100 days.
73. With respect to the option of liquidation, the Bank notes that, in order to present a petition for the winding up of the Insurer, the Bank would be required to demonstrate to the Court that the Insurer was unable to pay its debts, either on a cash-flow basis or on the basis of its debts including its prospective and contingent liabilities. The Bank acknowledges that, based on recent developments including the Insurer's own proposal for the appointment of an examiner, there is some risk that the Insurer may be insolvent at this time. However, on balance the Bank is of the view that it is not in a position to demonstrate the insolvency of the Insurer at this time.
74. The Bank also notes that the Insurance Compensation Fund (the "**Fund**"), established under the Insurance Act 1964 (the "**1964 Act**") sets out a mechanism for liquidators and administrators of insurers that write Irish risks to apply to the Fund for financial support. The conditions under which access to the Fund would be permitted by the Accountant of the Irish High Court is set out in the 1964 Act. When an insurer is in administration, in order to gain access to the Fund to financially support the business of the insurer and perform his functions in relation to that insurer and the risks are a "risk in the State" as defined in section 1 of the 1964 Act, a test based on the location of the relevant insurer's business must be met.
75. Under Section 3C(1)(a) of the 1964 Act, an administrator will get access to the Fund if, in the opinion of the Bank, at least 70% of all risks written by the insurer in the preceding three years were risks of policyholders in the State and if, in the opinion of the Court, such amounts as are proposed to be drawn down from the Fund are necessary to enable the administrator to carry on the business of the insurer and to perform his functions in relation to the insurer. Under Section 3C(1)(b) of the 1964 Act, an administrator can, where an average of the business of the insurer concerned was over the 3 years before the appointment of the administrator not at least 70 percent in respect of risks in the State, apply to have paid out of the Fund only amounts that are in the opinion of the Court (i) required to defray the expenses of the administrator in the performance of his or her functions in relation to the insurer, and (ii) unlikely to be defrayed otherwise than from the Fund.
76. The Bank is of the view that an administrator of the Insurer would not meet the relevant test as set out in Section 3C(1)(a) of the 1964 Act in particular because the vast number of policies

do not contain "risk in the State" having regard to the definition of that phrase in Section 1 of the 1964 Act. Having carefully considered all of the facts as currently understood by the Bank, and in particular the submissions recently made by the Insurer with respect to its own proposed examinership petition, the Bank has decided to present the within Petition for the administration of the Insurer and to apply for the appointment of a provisional administrator. The Bank believes that the within Petition is in the public interest and in the interests of the policy holders of the Insurer, and it believes that an administration of the Insurer will assist in the maintenance of the proper and orderly regulation and conduct of the insurance business or reinsurance business in the State and enable the Bank to determine the actual financial position of the Insurer. In particular the Bank is of the view that:

- 76.1 the administration, including the provisional administration, of the Insurer will protect the Insurer, and its policy holders, from the risk of insolvency proceedings being commenced by its creditors, including CBLNZ;
- 76.2 an administration would enable an administrator to take control of the business of the Insurer, and secure its business, assets and records, so that he can take immediate steps to determine whether the Insurer can be restored to a sound financial footing and continue as a going concern;
- 76.3 the administrator would also have the power, if he considers it appropriate, to sell the French construction business, but could do so without the time constraints that would apply to any such sale in an examinership;
- 76.4 in short, an administration affords all of the material legal protections to policy holders that would also be available in an examinership, but without the time constraints that would apply under that procedure;
- 76.5 whilst the Bank notes that the Insurer has concerns that an administration would have an adverse impact on shareholder value, the Bank's first and paramount concern must be the interests of policy holders rather than shareholders; and
- 76.6 the Bank also notes that it is possible, under the Insurance Act, for an administrator to be discharged from an insurance company once he or she has restored the financial position of the insurer, and that accordingly it cannot be said at this stage that the administration of the Insurer would necessarily cause any greater damage to shareholder value than an examinership, particularly an examinership that may fail and result in an immediate administration or liquidation.

77. Finally, the Bank notes that pursuant to Section 2(1) of the Insurance Act, the Bank is entitled to present a petition for the administration of the Insurer notwithstanding that there is or may be another course of action available to it, and in this instance the Bank is firmly of the view, for the reasons explained above, that the best course of action with respect to the Insurer is for the Bank to present the within Petition for the administration of the Insurer and the appointment of a provisional administrator pending the hearing of the petition.

GROUNDS FOR ADMINISTRATION

78. Sections 2(2)(a) of the Insurance Act sets out three alternative grounds upon which this Honourable Court has the jurisdiction to make an order for the administration of an insurance company and the appointment of an administrator to an insurance company.

79. In addition Section 2(2)(b) of the Insurance Act outlines a mandatory ground which must be satisfied in order for such an order to be made.

80. The Bank is of the view that each of the grounds specified in both Section 2(2)(a) and Section 2(2)(b) of the Insurance Act are satisfied with respect to the Insurer and that consequently, it is appropriate for the Bank to present a petition for the appointment of an administrator to the Insurer. It has formed that view on each of the bases set out below and as expanded on and explained in further detail above.

Section 2(2)(a) (i): The manner in which the business of the insurer is being or has been conducted has failed to make adequate provision for its debts, including contingent and prospective liabilities

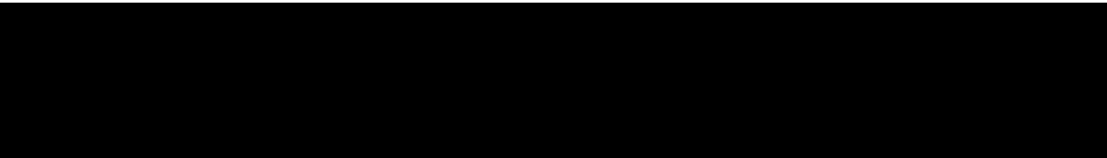
Significant counterparty risk has been realised

81. The Bank is satisfied that the manner in which the business of CBLIE is being or has been conducted has failed to make adequate provision for its debts, including contingent and prospective liabilities for the reasons outlined below.

82. As set out in detail above, CBLIE is very dependent on the ability of CBLNZ to honour its obligations to reinsure the significant majority of CBLIE's insurance business (including up to 90% reinsurance with respect to the French Construction Business, which the Bank considers to be CBLIE's line of business attracting the greatest level of risk). In simple terms, CBLIE needs CBLNZ to pay its reinsured claims in order to be able to make claims payments to its policyholders. CBLNZ is now in interim liquidation. This level of counterparty risk has been a concern for the Bank for many months, particularly given the evidence provided to the Bank by CBLIE itself through stress tests that indicate the extent of CBLIE's reliance on CBLNZ

paying its reinsurance premiums such that the Bank issued a direction in July 2017 to collateralise relevant reinsurance recoveries. As interim liquidators have been appointed to CBLNZ, it is reasonable to expect that CBLNZ is unlikely to be in a position to continue to honour its commitments to CBLIE and continue to reinsure its business, and this position was confirmed to the Bank during the course of its meeting with the Insurer on 25 February 2018. The Bank also notes in this regard that CBLNZ's credit rating has been materially downgraded.

83.



Furthermore, there is no evidence of other capital on which CBLIE could seek to rely if the obligations of CBLNZ under the reinsurance arrangements could not be met. CBLIE has been unsuccessful in putting in place a third party Letter of Credit to supplement its capital position or any other capital arrangement sufficient to address the Bank's concerns.

84. The Bank now believes that in placing such reliance on its group reinsurer, which is now in interim liquidation, and in failing to secure alternative capital, the manner of CBLIE's business has been and is being conducted in a way that fails to make adequate provision for its debts.

Inability of the Insurer to meet its SCR

85. It is the opinion of the Bank that there can be no reasonable doubt that the Insurer is currently unable to meet its SCR pursuant to the 2015 Regulations. Every Irish insurer is required to hold adequate eligible own funds to meet its SCR which must be maintained at 100%. The SCR can take account of suitable qualifying reinsurance arrangements. In consequence of its inadequate governance framework, the Bank issued a direction to CBLIE on 12 January 2018 imposing a capital add on which had the effect of raising the SCR of CBLIE. The Direction required CBLIE to recalculate its SCR as at 31 December 2017 having regard for the capital add-on. CBLIE's recalculated SCR was [REDACTED]. This calculation still provided for some recognition of the reinsurance arrangements with CBLNZ. In light of the recent developments, including the interim liquidation of CBLNZ and its material credit rating downgrade, the opinion and concerns of the Bank as iterated above are amplified.

Inability to demonstrate sufficiency of its reserves pursuant to the 2015 Regulations

86. Under the 2015 Regulations, every Irish insurer is required to establish technical provision with respect to all of its insurance and reinsurance obligations towards policyholders and beneficiaries of insurance contracts, which should be calculated in a prudent, reliable and objective manner, based on up-to-date and credible information and realistic assumptions and

be performed using adequate applicable and relevant actuarial and statistical methods. Under the 2015 Regulations, if requested to do so by the Bank, it is incumbent on an insurer to be able to demonstrate the appropriateness of its level of technical provisions, as well as the applicability and relevance of the methods applied and the adequacy of the underlying statistical data used.

87. The Bank has been gravely concerned with the levels of reserves of CBLIE, particularly as regards the French construction business. Despite the significant concerns of the Bank in this regard and substantial work undertaken by the Bank and CBLIE, there remains insufficient evidence from CBLIE that the reserves held by CBLIE are adequate to cover its liabilities to policyholders. Furthermore, CBLNZ is being investigated by its regulator, RBNZ, as to whether it is able to demonstrate the adequacy of its reserves in respect of the same business - which is gravely concerning, considering that it reinsures up to 90% of the relevant business written by the Insurer. The Milliman actuarial report commissioned by RBNZ to examine the adequacy of CBLNZ's reserves was provided in draft to CBLNZ on or around 20 February 2018. The Bank considers that it is likely that no comfort regarding the adequacy of CBLNZ's reserves was provided in this draft report. In any event, the inability of CBLIE to demonstrate adequacy of its reserves demonstrates that the business of the insurer is being conducted so as to jeopardise or prejudice the rights and interests of persons arising under policies issued by the Insurer by reference to the regulatory regime to which it is subject.

Proposal to place CBLIE into examinership

88. As outlined above, on 23 February 2018 William Fry on behalf of CBLIE, advised that the board of CBLIE "*believes that an examinership*" would be in the best interests of policyholders as it would bring CBLIE under the protection of the Court. The process of examinership is only open to companies that are insolvent or likely to become insolvent, on a cashflow or balance sheet basis.
89. In correspondence, counsel for CBLIE has also stated that "*the appointment of the interim liquidators to CBL Insurance Ltd could* [REDACTED]

90. It is clear to the Bank that if the directors of CBLIE have formed the view that the Insurer is a suitable company to avail of examinership protection, it follows that the directors of the Insurer must also have formed the view that the Insurer is either insolvent or likely to become insolvent.

This fact lends further support to the Bank's view that the manner in which the business of the insurer is being or has been conducted has failed to make adequate provision for its debts, including contingent and prospective liabilities.

Section 2(2)(a)(ii) – the business of the insurer is being or has been so conducted as to jeopardise or prejudice the rights and interests of persons arising under policies issued by the insurer

Rapid Growth without an appropriate governance framework

91. As explained above, CBLIE has rapidly expanded its business in the last 12-18 months by acquiring the renewal rights on the French construction business previously underwritten by Elite Insurance. Notwithstanding its lack of experience in this business, CBLIE informed the Bank that it relies heavily on the significant experience of group companies to underwrite and reserve for these types of risk. The on-site inspection conducted by the Bank into the governance of CBLIE's business exposed an entirely deficient governance framework, given the size and nature of the business of CBLIE which deviates significantly from the requirements of the 2015 Regulations. The deviations were so significant from the appropriate standard that the Bank imposed a capital add-on by direction dated 12 January 2018. Together with the other factors outlined herein regarding reserving practices demonstrates to the Bank that CBLIE does not have an appreciation for the risks to which the business of CBLIE is exposed and consequently, the Bank considers that that the business of the insurer is being or has been so conducted so as to jeopardise or prejudice the rights and interests of persons arising under policies issued by the Insurer.

Inability to demonstrate sufficiency of its reserves pursuant to the 2015 Regulations

92. The Bank contends that the matters set out in paragraphs 86 and 87 equally demonstrate that the Bank has grounds under Section 2(2)(a)(ii) of the Insurance Act to petition for the appointment of an administrator to the Insurer.

Inability to meet its SCR pursuant to the 2015 Regulations

93. The Bank contends that the matters set out in paragraph 70 equally demonstrate that the Bank has grounds under Section 2(2)(a)(ii) of the Insurance Act to petition for the appointment of an administrator to the Insurer.

Section 2(2)(iii) – the insurer has become unable to comply with the requirements of the supervisory regulations in a material respect

Failure to implement an appropriate governance framework as required by the 2015 Regulations

94. The Bank contends that the matters set out in paragraph 91 equally demonstrate that the Bank has grounds under Section 2(2)(a)(ii) of the Insurance Act to petition for the appointment of an administrator to the Insurer.

Inability to demonstrate sufficiency of its reserves pursuant to the 2015 Regulations

95. The Bank contends that the matters set out in paragraphs 86 and 87 equally demonstrate that the Bank has grounds under Section 2(2)(a)(iii) of the Insurance Act to petition for the appointment of an administrator to the Insurer.

Inability to meet its SCR pursuant to the 2015 Regulations

96. The Bank contends that the matters set out in paragraph 70 equally demonstrate that the Bank has grounds under Section 2(2)(a)(iii) of the Insurance Act to petition for the appointment of an administrator to the Insurer.

Section 2(2)(b): The making of such an order would assist in the maintenance in the public interest of the proper and orderly regulation and conduct of insurance business

97. The Bank believes, in light of its concerns outlined at paragraphs 69 to 71 above, that it is necessary for an administrator to be appointed to the Insurer as a matter of urgency, and that such appointment would assist in the maintenance in the public interest of the proper and orderly regulation and conduct of the insurance business. The Bank believes that in light of the interim liquidation of CBLNZ, the Insurer's primary reinsurer, there is a real and imminent risk of either an insolvency of the Insurer and / or a disorderly collapse of its business, and that such an outcome would be clearly not in the public interest or conducive to the proper and orderly regulation and conduct of insurance business in the State.
98. The Bank, in its capacity as prudential supervisor to the insurance market in Ireland, has duties to ensure that the financial position of the Insurer is established as a matter of urgency, and that it is returned to a sound footing if possible. The Bank believes that an administrator appointed under the Insurance Act is best placed, having regard to the powers conferred thereunder and the protection afforded by the Court to the Insurer during the course of administration, to procure this outcome.

PROVISIONAL ADMINISTRATORS

99. The Bank believes that it is also necessary for an administrator to be appointed on a provisional basis to the Insurer pending the hearing of the within the Petition. If such an order is not made on a provisional basis, the Bank is of the view that there is a material risk that, once the fact of the Petition becomes public, this information could destabilise the business and operations of the Insurer and cause a disorderly collapse thereof prior to the hearing, and also create considerable concern and uncertainty for policyholders.
100. The Bank believes that a provisional administration order would facilitate the administrator to immediately take control of the business and assets, and the records, and maintain the *status quo* of the Insurer pending the hearing of the Petition, and that this is clearly in the interests of policyholders.

DECISION BY DEPUTY GOVERNOR

101. Having given the matter careful consideration, Mr Sibley issued an email received by me confirming his decision that the Bank should proceed to present the Petition as soon as possible and to also make an urgent application to this Honourable Court, at the earliest possible opportunity, for the appointment of a provisional administrator to the Insurer. I beg to refer to a copy of the said letter upon which marked "LM13" I have signed my name prior to the swearing hereof.

PROPOSED ADMINISTRATOR

102. I say that Kieran Wallace of KPMG, One Stokes Place, Dublin 2 has indicated that he is willing to act as Administrator and also as Provisional Administrator if the Court sees fit to appoint him. I beg to refer to the Affidavit of Kieran Wallace in which he, *inter alia*, confirms his willingness to act as Administrator and Provisional Administrator when produced.
103. The Bank requests that this Honourable Court that, if its sees fit to appoint Mr Wallace as Administrator and / or as Provisional Administration, he shall have conferred upon him all of the powers specified in Section 2A and Section 3(1)(a) of the Insurance Act.

NOTICE OF PRESENTATION OF THE PETITION TO BOARD OF THE INSURER

104. The Bank will shortly after the swearing of this Affidavit give written notice to the board of CBLIE to inform them that the Bank intends to present a petition for administration of the Insurer and apply for the appointment of provisional administrator. I say that it is intended that I will swear a supplemental affidavit in order to apprise this Honourable Court of any response received from the Insurer with respect to such notice.

THE HIGH COURT

Record No

**IN THE MATTER OF CBL
INSURANCE EUROPE
DESIGNATED ACTIVITY
COMPANY**

**AND IN THE MATTER OF THE
INSURANCE (NO. 2) ACT, 1983
(AS AMENDED)**

AFFIDAVIT OF LISA O'MAHONY
