THE HIGH COURT

RECORD NO. 2020 / COS

IN THE MATTER OF DRUMCONDRA AND DISTRICT CREDIT UNION LIMITED
AND IN THE MATTER OF THE CENTRAL BANK & CREDIT INSTITUTIONS (RESOLUTION) ACT 2011 (AS AMENDED)
AND IN THE MATTER OF THE COMPANIES ACT 2014

AFFIDAVIT OF WESLEY MURPHY

I, **WESLEY MURPHY,** Head of the Resolution and Crisis Management Division, 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 the Resolution and Crisis Management 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 Drumcondra and District Credit Union Limited (the "**Credit Union**") pursuant to the Central Bank and Credit Institutions (Resolution) Act 2011 (as amended) (the "**2011 Act**") and the Companies Act 2014 (the "**Companies Act**"). I beg to refer to a composite booklet of exhibits (the "**Booklet**") 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 Booklet 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 the Credit Union 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 the Credit Union is situated in the State. The Credit Union 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 the Credit Union in a Member State of the European Union to which Regulation (EU) 2015/848 applies.

BACKGROUND

5. Drumcondra is a credit union based at 18 Upper Drumcondra Road, Drumcondra, Dublin 9 with a common bond encompassing persons residing or working within the following area: Hampstead Avenue, Courtlands Estate, Griffith Avenue, Gracepark Road, Richmond Road, Cian Park, Lr. Drumcondra Road, Clonliffe Road, Jones's Road, via Royal Canal, Whitmorth Road, Prospect Road, Claremont Court, via Cemetary wall to Botanic Road, Washerwomen's Hill, Ballymun Road to Hampstead Avenue. It was founded in 1967 and is an affiliate credit union of the Irish League of Credit Unions ("**ILCU**").

6. The Credit Union has been the subject of focussed regulatory and supervisory engagement since 2011, which has intensified since 2018 as the Bank became increasing concerned in relation to the viability of the Credit Union. The extensive interaction between the Bank and the Credit Union is set out in more detail below.

7. The Credit Union is in a distressed financial position. As at 30 April 2020, the Credit Union reported a reserve position ("**reserves**") of 5.4% of total assets. Contrary to Regulation 4 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016, the Credit Union has been unable to maintain its reserves 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 the table below, which has been prepared based on the relevant financial information taken from:

   7.1 the audited financial statements for the Credit Union for the periods ended 30 September 2012, 30 September 2013, 30 September 2014, 30 September 2015 and 30 September 2016 (which were presented to the members of Drumcondra and approved at its AGM held on 3 April 2017, and are hereinafter referred to together as the "**Audited Financial Statements**");

   7.2 draft financial statements for the financial periods ending 30 September 2017, 30

September 2018 and 30 September 2019 which have been submitted to the Bank by the Credit Union (including, in the case of the financial statements for the period ending 30 September 2019, revised drafts of such statements, and which are hereinafter referred to as the "**Draft Financial Statements**"));

7.3 unaudited management accounts for the Credit Union as at 30 April 2020 (the "**Management Accounts**") ; and

7.4 prudential returns made by the Credit Union to the Bank in June 2012 and March 2016 (the "**Prudential Returns**").

€'000s Period ended	*Prudential Return June 2012*	*Final Accounts Sept 2012*	*Final Accounts Sept 2013*	*Final Accounts Sept 2014*	*Final Accounts Sept 2015*	*Prudential Return March 2016*
Total assets	12,005	11,901	12,334	13,283	12,453	14,903
Fixed assets	3,027	2,995	2,955	2,928	1,382	1,370
Gross loans	4,370	4,247	3,776	3,791	3,633	3,458
Provisions for bad debts	(473)	(443)	(455)	(371)	(383)	(383)
Surplus/(Deficit)	(798)	(787)	211	174	(1,374)	1,880
Total savings	10,835	10,753	11,045	11,881	12,477	13,076
Total reserves	643	653	865	1,039	(335)	1,547
Reserve position	**5.35%**	**5.49%**	**7.01%**	**7.82%**	**(2.69%)**	**10.38%**
€'000s Period ended	*Final Accounts Sept 2016*	*Draft Accounts Sept 2017*	*Draft Accounts Sept 2018*	*Draft Accounts Sept 2019*	*Revised Draft Accounts Sept 2019*	*Management Accounts April 2020*
Total assets	15,419	16,451	15,477	13,988	14,108	14,060
Fixed assets	1,373	1,319	884	729	848	824
Gross loans	3,979	4,262	4,615	4,622	4,622	3,949
Provisions for bad debts	(315)	(306)	(285)	(442)	(442)	(392)
Surplus/(Deficit)	2,014	34	(364)	(1,087)	(508)	(73)
Total savings	13,477	14,570	14,099	12,922	12,922	13,220
Total reserves	1,672	1,677	1,339	252	831	759
Reserve position	**10.84%**	**10.19%**	**8.65%**	**1.80%**	**5.89%**	**5.40%**

8. I beg to refer to copies of the Audited Financial Statements, the Draft Financial Statements, the Management Accounts and the Prudential Returns, which are located at **Tab 2** of the Booklet.

9. On 18 November 2019, the Registrar of Credit Unions (the "**Registrar**") issued a Regulatory Direction to the Credit Union (the "**November 2019 Regulatory Direction**") pursuant to section 87 of the Credit Union Act 1997 (the "**1997 Act**") which required the Credit Union to: (a) raise its reserves to 10.0% of total assets (c. €[redacted] as at 30 September 2019) by not later than 9 December 2019; and (b) provide a statement in writing setting out the steps it will take to ensure continued compliance with the reserve requirement. The Credit Union failed to comply with the November 2019 Regulatory Direction in relation to the restoration of reserves

by 9 December 2019, and it therefore remains in breach of its obligations thereunder. I beg to refer to a copy of the November 2019 Regulatory Direction, which is located at **Tab 3** of the Booklet.

10. All credit unions in Ireland are currently required to maintain reserves of 10.0% of total assets pursuant to Regulation 4 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016. 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 operational risk reserve and/or 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.

11. 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 the Credit Union, there is a failure to comply with the reserve requirement over an extended period and a credit union is unable to demonstrate an ability to maintain and increase its reserves.

12. As is evident from the above-mentioned table at paragraph 7, and discussed in more detail below, the Credit Union has failed to maintain its reserves in order to comply with the reserve requirement, despite receiving financial funding of c. €1.8m from ILCU in January 2016 and having made the decision to retrospectively apply caps on members' savings to reduce its balance sheet in 2018 and 2019.

13. The Credit Union's financial position between 2012 to date has, for reasons explained in more detail below, deteriorated due to:

    13.1 impairments to the carrying value of the Credit Union's premises located at 18 Upper Drumcondra Road, Drumcondra, Dublin 9 (the "**Premises**") which were reflected in the accounts of the Credit Union in 2012, 2015 and 2018;

    13.2 the inability of the Credit Union to comply with the reserve requirement despite the Credit Union having received financial funding from ILCU in the amount of c. €1.8m in January 2016; and

13.3 the failure of the Credit Union complete a Transfer of Engagement (or "**ToE**"), and the material costs that have been incurred by the Credit Union in its endeavours to implement that Transfer of Engagement strategy.

14. The COVID-19 pandemic has since March 2020 had a material adverse impact on the economy of Ireland, and has resulted in a material reduction in the ability of a significant proportion of borrowers to service debts owing to credit institutions in general, which includes credit unions. Based on information reported to the Bank by individual credit unions since the onset of the COVID-19 pandemic, the sector has seen significantly depleted demand for credit in the form of new loans advanced and has seen an increase in the level of savings held. These trends add pressure to the ability of a credit union to generate income and to maintain reserves in the short to medium term.

15. Notwithstanding this, the Bank is of the view that the financial difficulties of the Credit Union, and its failure over a sustained period to address those difficulties (including its inability to complete a ToE), each pre-date the onset of the COVID-19 pandemic. Accordingly, in the view of the Bank, the failure of the Credit Union cannot be attributed to any material extent to the economic and social impact of the COVID-19 pandemic.

16. On 28 May 2020, following engagement with twelve credit unions, and two failed attempts to complete a ToE with a particular credit union, the Credit Union issued a letter to the Bank outlining the following:

16.1 the Credit Union had taken what it viewed as all reasonable steps within its powers to identify a suitable transferee credit union to advance its ToE strategy, however this strategy had proven unsuccessful;

16.2 looking forward, the Credit Union did not believe that it would be in a position to comply with the requirement to maintain a minimum regulatory reserve of at least 10% of total assets;

16.3 on the basis of the foregoing, the Credit Union requested the continued collaboration of the Bank to seek a resolution of the on-going financial concerns; and

16.4 while fully recognising that the selection of any resolution option is the sole prerogative of the Bank, the Credit Union expressed a preference for a resolution outcome that would result in a directed transfer.

17. I beg to refer to a copy of the said letter of 28 May 2020 (the "**28 May Letter**"), which is located at **Tab 4** of the Booklet.

18. Following receipt of the 28 May Letter, the Registrar determined that all supervisory options to resolve the issues facing Drumcondra had been exhausted, and on 29 May 2020, the Registrar formally referred the matter to RES. Thereafter, RES undertook an in-depth review of the financial position, and regulatory and supervisory history, of the Credit Union.

19. On the basis of that review, the result of which is set out in greater detail below, the Bank is of the view that the current position of the Credit Union can be summarised as follows:-

    19.1 the Credit Union has failed to comply with, and remains in breach of, the November 2019 Regulatory Direction;

    19.2 although the Credit Union is not currently insolvent from a balance sheet or cash flow perspective, it is in a financially distressed position due to its inability to raise and maintain the level of regulatory reserves required by law;

    19.3 Drumcondra has confirmed to the Bank in the 28 May Letter that it has exhausted all efforts to successfully pursue a ToE and the Credit Union has concluded that the strategy is no longer achievable;

    19.4 the Credit Union has also confirmed to the Bank in the afore-mentioned letter of 28 May 2020 that it has exhausted all efforts to successfully pursue a ToE and that it has concluded that such a strategy is no longer achievable;

    19.5 the Bank has adequate grounds under the 2011 Act to present a petition for the winding-up of the Credit Union, and should do so as soon as possible; and

    19.6 the Bank should, as soon as possible after the presentation of such a petition, make an application to this Honourable Court for the appointment of a provisional liquidator to the Credit Union in order to, *inter alia*, preserve the Credit Union's assets, prepare the necessary Deposit Guarantee Scheme ("**DGS**") file, and mitigate the risk of an unmanaged failure of the Credit Union's business pending the hearing of the Petition, in the interests of its members, creditors and the public.

20. A report dated 26 June 2020 (the "**Resolution Report**") setting out in detail the review with respect to the Credit Union has been conducted by RES. I beg to refer to a copy of this Report which is located at **Tab 5** of the Booklet.

REGULATORY AND SUPERVISORY BACKGROUND

21. The relevant regulatory engagement between the Bank and the Credit Union which is summarised in this Affidavit occurred over the course of a nine year period from 2011 to date. During that period, the Credit Union was subject to a number of inspections that were conducted by external independent experts and by the Bank. Those independent reviews, along with the Bank's own inspections, identified reoccurring material issues relating to: (a) the carrying value of the Premises; (b) risks relating to non-compliance with the reserve requirement; and (c) the viability of the Credit Union's business.

22. A summary of the key supervisory interactions is set out in detail below.

Summary of Regulatory Engagement 2011 to 2015

23. On 31 August 2011, the Registrar imposed a lending restriction on the Credit Union as a result of the high level of arrears reported in respect of its loan book. This restriction limited the maximum loan amount to €20k per individual member, and was considered necessary in order to protect members' funds.

24. On 8 August 2012, the Credit Union submitted its prudential return for the quarter ending 30 June 2012 (the "**June 2012 PR**") and reported reserves of 5.35%, which was in breach of the reserve requirement. The June 2012 PR reflected an impairment of c. €800k to the carrying value of the Premises, from €3.7m to its Value in Use ("**ViU**") of €2.9m, following a review conducted by the Credit Union. ViU is an accounting technique employed for the purposes of valuing a business's premises, and refers to the present value of the future cash flows expected to be derived from those premises. A ViU calculation will typically involve: (a) estimating the future cash inflows and outflows derived from continuing use of the asset and from its ultimate disposal and (b) applying the appropriate discount rate to those future cash flows.

25. Following the impairment to the carrying value of the Premises and the Credit Union's failure to comply with the reserve requirement, the Credit Union was subject to further regulatory engagement, which included an asset review pursuant to section 90 and 91 of the 1997 Act conducted by MKO Partners (now known and hereinafter referred to as "**EisnerAmper**"). On 28 May 2013, the Bank issued the final EisnerAmper Asset Review Report to the Credit Union (the "**Final 2013 EisnerAmper Asset Review Report**"). The Final 2013 EisnerAmper Asset Review Report identified issues with respect to the Credit Union's reserves, the carrying value of the Premises, bad debt provisions, a high risk of corporate failure, the viability of its business model and its lending practices. I beg to refer to a copy of the Final 2013 EisnerAmper Asset Review Report which is located at **Tab 6** of the Booklet.

26. In its prudential return for the quarter ending 30 September 2013, the Credit Union reported total assets in the balance sheet of €12.3m, a carrying value of €2.9m for the Premises and reserves of €1.0m, or 7.0% of total assets. As a result of the Credit Union's continued failure to comply with the reserve requirement, the issues identified in the Final 2013 EisnerAmper Asset Review Report and that the fact that the carrying value of the Premises represented c. 23% of the total assets of the Credit Union, the Bank maintained significant concerns with regard to risk to capital.

27. The Bank continued to engage with the Credit Union regarding its concerns relating to the carrying value of the Premises and the supportability of the ViU, which led to the appointment of EisnerAmper in December 2014 to conduct a further asset review of the Credit Union pursuant to section 90 and 91 of the 1997 Act (the "**Draft 2015 EisnerAmper Asset Review Report**"). The Draft 2015 EisnerAmper Asset Review Report confirmed capital risk issues relating to the Credit Union's ViU and again identified a high risk of corporate failure. The report also identified risks relating to the viability of the business, bad debt provisioning and lending practices. The Credit Union responded to this report by advising that it was satisfied that it had a plan to restore its reserves and remain as a viable standalone entity. The Final 2015 EisnerAmper Asset Review Report was subsequently issued to the Credit Union on 28 September 2015. I beg to refer to a copy of the Final 2015 EisnerAmper Asset Review Report which is located at **Tab 7** of the Booklet.

28. During 2015, the Credit Union submitted its 2015 Strategic Plan to the Bank and engaged with ILCU in regard to obtaining the financial funding necessary to restore its reserves in line with the reserve requirement. Following the review of the 2015 Strategic Plan, the Bank continued to engage with the Credit Union regarding its concerns relating to the supportability of the ViU and the carrying value of the Premises.

29. In July 2015, the Credit Union submitted a valuation report in respect of the Premises dated 26 June 2015 which indicated that the Premises then had a market a value of €1.35m (the "**2015 Valuation Report**"). The Credit Union subsequently resubmitted its prudential return for the quarter ending 30 June 2015 (the "**June 2015 PR**"), which recorded an impairment of €1.53m representing a reduction in the carrying value of the Premises from €2.88m to €1.35m (as reported in the 2015 Valuation Report) and reported reserves of -3.38% as at 30 June 2015.

30. As a result of the Credit Union's continuing failure to comply with the reserve requirement, on 12 August 2015 the Bank notified the Credit Union by letter that it was minded to issue a regulatory direction on capital to the Credit Union pursuant to section 87 (1) of the 1997 Act. In response, the Credit Union confirmed that it was engaging with ILCU to apply for the

requisite financial funding to restore its reserves. Having considered the Credit Union's response, on 11 September 2015 the Registrar issued a regulatory direction letter on capital to the Credit Union pursuant to section 87 (1) of the 1997 Act (the "**2015 Regulatory Direction**") requiring the Credit Union to restore its reserves to the 10% minimum requirement by 2 October 2015. On 6 October 2015, the Registrar received confirmation from the National Treasury Management Agency of the transfer of ILCU Saving Protection Scheme ("**SPS**") funding totalling €1.817m to an account in the name of Drumcondra.

31. I beg to refer to copies of the said correspondence between the Bank and the Credit Union referred to above at **Tab 8** of the Booklet.

Summary of Regulatory Engagement from 2016 to 2017

32. On 12 January 2016, the Credit Union provided confirmation to the Registrar of the receipt of ILCU SPS funding totalling €1.817m. Subsequently, on 2 February 2016, Drumcondra indicated in a letter addressed to the Registrar that it was of the view that, following receipt of the ILCU funds in January 2016, the risk to the viability of the Credit Union had been addressed. However, the Registrar remained of the view that Drumcondra had not fully complied with the requirements of the 2015 Regulatory Direction in relation to the provision of a statement in writing setting out the steps it would take to ensure continued compliance with the reserve requirement following the restoration of its reserves. The Registrar subsequently engaged with Drumcondra in relation to these requirements of the 2015 Regulatory Direction, and the steps Drumcondra would take to ensure continued compliance with the minimum reserve requirement.

33. In February 2016, the Credit Union submitted a request to the Registrar for the removal of the lending restriction imposed on it since August 2011. Following receipt of this request, the Registrar engaged with the Credit Union in relation to its reserves, and in November 2016 the Registrar was notified by Drumcondra of a breach of that lending restriction. As a result of this breach, the Registrar continued to have concerns with regard to the adequacy of the Credit Union's systems and controls and the related increased risk to members' funds, and did not consider it appropriate to remove the lending restriction.

34. Following substantial engagement by the Registrar with the Credit Union on its draft financial statements, on 3 April 2017, the Credit Union convened and held annual general meetings of its members for the years ended 30 September 2012, 2013, 2014, 2015 and 2016. The key information that was contained in the audited financial statements presented to members at these meetings can be summarised as follows:

34.1 for the year ended 30 September 2012, Drumcondra reported a balance sheet of €11.9m, Premises carrying value of €2.9m and reserves of 5.49%;

34.2 for the year ended 30 September 2013, Drumcondra reported a balance sheet of €12.3m, Premises carrying value of €2.9m and reserves of 7.01%;

34.3 for the year ended 30 September 2014, Drumcondra reported a balance sheet of €13.3m, Premises carrying value of €2.9m and reserves of 7.82%;

34.4 for the year ended 30 September 2015, Drumcondra reported a balance sheet of €12.5m, Premises carrying value of €1.3m and reserves of (2.69%); and

34.5 for the year ended 30 September 2016, Drumcondra reported a balance sheet of €15.4m, Premises carrying value of €1.3m and reserves of 10.84%.

35. In June 2017, the Credit Union submitted a copy of a letter to the Registrar that had been issued to its full membership in relation to its decision to introduce a cap on members' savings of €25k, effective from 1 July 2017. The Credit Union advised the Registrar that its members had been informed that the rationale underlying this decision included the adverse impact of increases in members' savings on the Credit Union's ability to maintain the minimum reserves requirement.

36. I beg to refer to copies of the said correspondence from 2016 to 2017 referred to above at **Tab 9** of the Booklet.

Summary of Regulatory Engagement from January 2018 to September 2019

37. During the period between February 2018 and July 2018, the Registrar engaged with Drumcondra on a number of supervisory matters relating to risks in terms of its capital, strategic/viability, governance, credit and liquidity. That engagement gave rise to increased concerns on the part of the Registrar with regard to these risks due to weaknesses identified following a review of the Credit Union's strategic plan, the reported reserves in prudential returns submitted by Drumcondra, credit function weaknesses identified in a report by the Credit Union's internal auditor and a reported breach of the minimum liquidity requirement of 20% (as required by Regulation 8 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016).

38. As a result of these increased concerns, in September 2018 the Registrar conducted an onsite PRISM (Probability Risk and Impact System) engagement with Drumcondra. PRISM is the Bank's risk based framework for the supervision of regulated firms. Throughout this

engagement, Drumcondra failed to demonstrate financial and governance/operational resilience, evidenced by an inadequate strategic plan, the inability to clearly demonstrate viable measures to ensure compliance with the reserve requirement and failures within the governance framework.

39. Following the PRISM engagement, the Registrar formed the view that Drumcondra had immediate viability risks given that, subsequent to receipt of €1.817m in ILCU funding in January 2016, the Credit Union had failed to implement its strategic plan. The Registrar noted that, as a consequence of this failure, it had been necessary for the Credit Union to implement a cap on members' savings (resulting a requirement for the repayment of excess members' savings) in order to manage Drumcondra's balance sheet and maintain reserves in excess of the reserve requirement. The Registrar was also of the view that the Credit Union failed to demonstrate financial and governance/operational resilience.

40. The Registrar engaged with Drumcondra on the immediate viability risks identified in the 2018 PRISM Engagement and in January 2019, Drumcondra submitted an updated strategic plan, which outlined both a ToE strategy and a strategy to remain on a standalone basis. This updated strategic plan contained trigger points, based on financial performance, which, if and when activated, would require Drumcondra to pursue a ToE strategy and also noted that it was clear to Drumcondra that it was likely that these triggers would be hit in the coming months. In addition, the updated strategic plan confirmed that Drumcondra had made the decision to implement a further savings cap of €15k, which would be applied retrospectively.

41. In March 2019, the Credit Union confirmed that it was pursuing a ToE solution to address its significant viability risk and in May 2019, Drumcondra confirmed it made the decision to pursue a ToE to [redacted] ("[redacted]").

42. As part of the ToE process, an asset and due diligence review of Drumcondra was conducted by EisnerAmper, dated 23 August 2019 ("**ToE Due Diligence Report**"). The ToE Due Diligence Report identified:

42.1 risks to the stability and viability of Drumcondra;

42.2 an impairment to the carrying value of the Premises of €[redacted];

42.3 the requirement for an increase in provisions for bad debts of €94,305;

42.4 an adjustment to Drumcondra's investment portfolio of €28,500; and

42.5 a risk that Drumcondra was not in compliance with the reserve requirement as a result of the impairments identified in the ToE Due Diligence Report, which would reduce Drumcondra's reserves to 8.4% as at 31 May 2019.

43. I beg to refer to a copy of the ToE Due Diligence Report which is located at **Tab 10** of the Booklet.

44. The impairment to the carrying value of the Premises arose from a market valuation conducted by [redacted], dated 14 August 2019 (the "[redacted]") as part of the ToE process. The [redacted] valued the Premises at €[redacted].

45. Following the identification of an impairment to the carrying value of the Premises and other adjustments as per the due diligence conducted as part of the ToE process, Drumcondra's August 2019 Management Accounts reported reserves of 7.68%, which failed to meet the reserve requirement. As such, Drumcondra progressed its ToE strategy with [redacted] to an advanced stage of the ToE process and simultaneously engaged with ILCU with regard to the requisite financial funding to restore its reserves to the reserve requirement, which is a pre-requisite to the completion of any ToE.

46. Given Drumcondra's failure to comply with the reserve requirement, the Registrar had immediate concerns and engaged with Drumcondra in relation to advancing its ToE solution in an expedient manner. Throughout its engagement with Drumcondra, the Registrar reiterated its position that Drumcondra's reserves must be restored to the reserve requirement in order for the ToE to advance to completion, which was acknowledged by all parties.

47. I beg to refer to copies of the said correspondence referred to above at **Tab 11** of the Booklet.

Regulatory engagement with the Credit Union from October 2019 to date

48. In light of Drumcondra's failure to comply with the reserve requirement, the significant issues identified in the 2018 PRISM Engagement and the ToE Due Diligence Report, on 4 October 2019 the Registrar issued a letter to Drumcondra (the "**2019 Pre-Direction Letter**") confirming that the Bank was "minded to" issue a regulatory direction to Drumcondra with respect to its capital reserves and business activities. The 2019 Pre-Direction Letter noted that Drumcondra was in an advanced stage of a ToE process and was in negotiations with ILCU regarding its application for the requisite funding to restore reserves in order to complete the ToE. The Registrar also indicated in the 2019 Pre-Direction Letter that it proposed to issue regulatory directions pursuant to section 87(1) of the 1997 Act and regulatory requirements pursuant to section 85 of the 1997 Act that, if issued, would require Drumcondra to restore its reserves to the minimum reserve requirement, restrict its lending and investment activities and maintain a minimum liquidity ratio. Drumcondra was invited to provide submissions to the Registrar with

respect to the proposed regulatory directions and regulatory requirements by 25 October 2019.

49. During October 2019, Drumcondra and [redacted] engaged with ILCU regarding Drumcondra's SPS funding application to restore its reserves to 10% of total assets in order to complete the ToE. Following consideration of Drumcondra's application, the ILCU Board approved €[redacted] in funding to support the ToE and confirmed, in writing, to Drumcondra its view that an impairment to the carrying value of the Premises was not required. As a result, the shortfall between the funding amount approved by the ILCU Board and the amount sought by Drumcondra was c. €[redacted] and did not, as a result, adequately restore Drumcondra's reserves to 10% of its total assets as required to complete the ToE. Following confirmation of ILCU's decision, Drumcondra continued to engage with ILCU with a view to seeking agreement for the provision of the requisite funding to restore its reserves to 10% of total assets in order to complete the ToE. ILCU subsequently engaged Moore Ireland to review the funding application that it had received from Drumcondra.

50. On 25 October 2019, the Credit Union responded by letter to the 2019 Pre-Direction Letter in which it expressed the view that "*the capitalisation, governance and business model challenges*" faced by the Credit Union would be addressed by the completion of a ToE to [redacted], and that in order to complete that transaction the Credit Union would require SPS support from ILCU. The Credit Union also reported that it had "*invested heavily in the Transfer of Engagement and are following a detailed project plan, now well advanced to bring that transfer to a successful conclusion as soon as possible*". However, the Credit Union also noted that ILCU had to date indicated that it was prepared to offer SPS support of €[redacted], which represented a shortfall in the amount required to restore its regulatory reserve. The Credit Union indicated that the relevant shortfall arose due a reduction in the recorded value of the Premises as indicated by a red book valuation report that had been prepared for the purposes of the ToE process. Finally, the Credit Union indicated that had relayed this issue to ILCU along "*with an explanation of the revaluation and have indicated a pathway forward*" and that the Credit Union was "*awaiting the response from the ILCU*".

51. Following the consideration of the Credit Union's response, the Bank issued the November 2019 Regulatory Direction, which noted that the Credit Union was in an advanced stage of a ToE process in order to address the financial, governance and strategy/business model risks in the Credit Union and "*will continue to work constructively with our colleagues in* [redacted] *to implement the Transfer of Engagement*".

52. In relation to the restoration of reserves, the November 2019 Regulatory Direction provided that, with effect from 18 November 2019 until further notice, the Credit Union had three weeks

to *"raise and maintain its regulatory reserve requirement (for the purposes of the 2016 Regulations) to a minimum of 10% of its total assets as at 30 September 2019 and in order to do so must raise an amount of €*[redacted] *in solvency support"*, which support *"must be provided in cash form only and lodged to a bank account in the name of the Credit Union"*. The November 2019 Regulatory Direction also required the Credit Union to "*provide to the Registrar a statement in writing setting out the steps it will take to ensure continued compliance with its obligations under Regulation 4 of the 2016 Regulations to maintain a regulatory reserve requirement of at least 10% of its assets"*.

53. On 16 December 2019 Moore Ireland completed a review of the Credit Union's ILCU Funding application on behalf of ILCU, which included:

53.1 a market valuation of the Premises conducted by [redacted], dated 21 November 2019 (the "[redacted] **Valuation Report**"), that valued the premises at €[redacted]; and

53.2 a market valuation of the Premises conducted by [redacted], dated 6 December 2016 which valued the premises at €[redacted].

54. Following the completion of that review, ILCU confirmed to the Bank by email dated 16 December 2019 that it had recommended to its board of directors that SPS funding of €[redacted] should be made available to the Credit Union. In a response by email dated 23 December 2019, the Bank confirmed to ILCU that:

54.1 pursuant to the November 2019 Regulatory Direction "*the Credit Union must restore its reserve position to a minimum 10% of total assets. The Credit Union is currently in breach of this Regulatory Direction on Capital. The Credit Union's reserves must be restored to the minimum regulatory requirement of 10% of its assets, prior to the transfer of engagements completing";*

54.2 the Bank continued to have "*significant concerns that the Credit Union's financial position will deteriorate further given its financial performance and possible future costs/ impairments arising from the transfer process*"; and

54.3 noting that the Application for SPS Funding was due to be discussed at an ILCU board meeting on 4 January 2020, the Bank required confirmation of ILCU's position with respect to the Application for SPS Funding "*immediately following this meeting, by close of business on 6 January 2020 latest.*"

55. On 10 January 2020, Drumcondra submitted draft audited financial statements to the Registrar for the financial period ending 30 September 2019 (the "**Draft 2019 Accounts**"). In the Draft

2019 Accounts, Drumcondra reported reserves of 1.80%, which indicated that the Credit Union required €1.27m in funding to restore reserves to 10% of its total assets as at that date. The deterioration in Drumcondra's reserves arose from an impairment to the carrying value of the Premises to reflect the [redacted] Valuation of €[redacted], adjustments to the provisioning for bad debts, investment portfolio revaluations and costs accrued in order to complete the ToE.

56. In addition, the Draft 2019 Accounts reported a pension liability of approximately €[redacted] that was contingent on the completion of the ToE. This pension liability would impact Drumcondra's reserves at the point of transfer and, accordingly, result in an increase in the level of funding that would be required to restore reserves to 10% of Drumcondra's total assets. Based on this information, Drumcondra required c. €[redacted] to restore its reserves to 10% of its total assets as at 30 September 2019 in order to complete the ToE.

57. On 13 January 2020, Drumcondra confirmed that the ILCU Board approved €[redacted] in funding to complete the ToE to [redacted]. This proposed funding amount would have been insufficient to restore Drumcondra's reserves to 10% of its total assets, as required in order to complete the ToE, and based on the Draft 2019 Accounts, the shortfall in funding to complete the ToE was c. €[redacted]. [redacted] subsequently confirmed that it was withdrawing from the ToE with Drumcondra.

58. Drumcondra subsequently revised its Draft 2019 Accounts to reflect the adjustments arising from the cessation of the proposed ToE to [redacted] and reported reserves of 5.89% as at 30 September 2019. This increase in reserves related to the revaluation of the Premises from the value reported in the [redacted] Valuation to the value reported in the [redacted], and the reversal of costs accrued that would have been required had a ToE progressed to completion.

59. In light of the cessation of Drumcondra's proposed ToE to [redacted], and in order to address its increased risk profile and continued failure to comply with the obligations under the November 2019 Regulatory Direction, on 17 January 2020, the Registrar issued a letter to Drumcondra confirming that it was required to: (a) identify a suitable transferee credit union to advance its ToE strategy, and (b) provide confirmation that the requisite funding will be provided in order to restore its reserves to 10% of total assets and thereby to enable it to comply with its obligations under the November 2019 Regulatory Direction. This confirmation was to be provided to the Registrar by 31 January 2020.

60. The Registrar held increased concerns based on Drumcondra's continued failure to comply with its obligations under the November 2019 Regulatory Direction and its increased risk profile, given the cessation of the proposed ToE to [redacted]. As such, on 24 January 2020, the Registrar issued a letter to Drumcondra confirming that the Bank intended to issue a further regulatory

direction letter on business activities to Drumcondra (the "**2020 Pre-Direction Letter**"). The Registrar proposed in the 2020 Pre-Direction Letter to further restrict Drumcondra's business activities pursuant to section 87 of the 1997 Act. Drumcondra was invited to make any submissions it deemed relevant in response to the 2020 Pre-Direction Letter by no later than 31 January 2020.

61. On 5 February 2020, Drumcondra responded to the 2020 Pre-Direction Letter and provided an update on the ongoing steps it was taking to identify a suitable transferee credit union and the provision of the requisite financial funding to comply with the November 2019 Regulatory Direction. However, this update did not satisfy the confirmations sought by the Registrar in its letter of 17 January 2020, as set out above at paragraph 59. On 17 February 2020, the Registrar issued the February 2020 Regulatory Direction restricting Drumcondra's business activities. The restrictions, as set out in the 2020 Pre-Direction Letter, were implemented as a result of its continued failure to comply with its obligations under the November 2019 Regulatory Direction and its increased risk profile.

62. Throughout January to April 2020, Drumcondra provided a number of updates to the Registrar with respect to its progress in identifying a transferee credit union and its efforts to obtain the requisite funding from ILCU to restore the Credit Union's reserves to 10% of total assets, so that it could complete a ToE once a transferee had been identified. During this period, the Registrar considered Drumcondra's updates and provided extended periods of time to allow Drumcondra to advance its ToE discussions with potential transferee credit unions, in response to the exceptional circumstances prevailing in the State with regard to COVID-19.

63. Drumcondra confirmed that, following the withdrawal of [redacted] from the ToE process in January 2020, it had engaged with eleven further potential transferee credit unions but was ultimately unable to advance its ToE strategy. As a result, Drumcondra made the decision to re-engage in potential ToE discussions with [redacted] in March 2020, and submitted a revised and increased SPS funding application to ILCU in the amount of €[redacted].

64. Drumcondra subsequently confirmed to the Registrar by email dated 17 April 2020 that the ILCU Administration Committee considered its application and recommended SPS funding of €[redacted] subject to ratification by the ILCU Board. Drumcondra advised the Registrar that the ILCU Board meeting was scheduled for the first two weeks in May 2020, where its SPS funding application would be considered.

65. Given that Drumcondra was awaiting confirmation from ILCU with regard to the financial funding amount to be provided and in light of the exceptional circumstances prevailing in the State with regard to COVID-19, the Registrar extended the deadline for the submission of the

confirmation relating to a transferee credit union and the provision of the requisite financial funding to complete a ToE, to 29 May 2020.

66. On 25 May 2020, the Credit Union submitted a letter to the Bank that it had received from ILCU which noted that the Credit Union had "*re-engaged with* [redacted] *in relation to a potential transfer of engagements and the amount of SPS support sought to facilitate this current application for a transfer of engagements is the sum of €*[redacted] *in capital support*" and confirmed that, on 8 May 2020, the board of ILCU had considered this application and decided "*against providing the amount requested of €*[redacted]". The letter from ILCU also confirmed "*its decision, made in January 2020, to sanction the amount of €*[redacted] *in SPS support to [the Credit Union] to facilitate a transfer of engagements to* [redacted]". Finally, the letter acknowledged that "*this is not the response that you would have wished for, however please do not hesitate to contact...if the ILCU can offer any technical assistance in addition to the sum of €*[redacted] *to facilitate a transfer of engagements*".

67. On 28 May 2020, the Credit Union submitted the 28 May Letter which confirmed that the Credit Union had "*exhausted all opportunities to identify a transferee credit union into which we could transfer our engagements*" and that it had "*revisited the option of transferring the engagements of [the Credit Union] to* [redacted]". The 28 May Letter also confirmed that the Credit Union had made "*a second application to the Savings Protection Scheme ("SPS") acting through the Administration Committee of the Irish League of Credit Unions ("ILCU") seeking adequate funding to enable the transfer with* [redacted] *to progress*" and that it had "*received a final response from the ILCU on 22 May 2020*" which confirmed that "*while the ILCU were willing to provide a level of support, the level of support was neither sufficient nor adequate to enable the* [redacted] *transfer to proceed*".

68. The 28 May Letter also confirmed that, as at 30 April 2020 "*the management accounts of the credit union reflect assets of €14,059,883 and total reserves of €758,733*" and reserves of 5.40% of total assets. The letter reported that in "*the 7 months to 30 April 2020, the credit union has incurred a deficit of €72,735. Furthermore, in the month of April 2020, our asset base has grown from €13,853,000 to €14,059,883. In this regard, the credit union reserves are contracting and the credit union assets are expanding, further worsening the credit union's capital adequacy*".

69. The 28 May Letter additionally confirmed that:

69.1 based on its April 2020 Management Accounts, the Credit Union "*is not complying with the requirement set out in Regulation 4 of the Credit Union Act 1997 (Regulatory*

Requirements) Regulations to establish and maintain a minimum regulatory reserve requirement of 10% of the total assets of the credit union";

69.2 the Credit Union had considered that it had taken "*all reasonable steps within its powers to identify a suitable transferee credit union to advance its transfer of engagement strategy*", which had "*unfortunately, been unsuccessful*";

69.3 the Credit Union had concluded that the ToE strategy "*is no longer achievable*" and that it "*does not view, looking forward, it will be in a position to comply with the requirement set out in Regulation 4 of the Credit Union Act 1997 (Regulatory Requirements) Regulations to establish and maintain a minimum regulatory reserve requirement of 10% of the total assets of the credit union*"; and

70. Finally, in the 28 May Letter the Credit Union requested the Bank's "*continued collaboration in order to seek a resolution of the ongoing financial concerns*". The letter also confirmed that the board of the Credit Union was "*minded to co-operate to the fullest extent with the CBI in seeking a resolution*", that its "*paramount concern is the social and economic well-being of our members*" and "*with full recognition of the fact that the selection of any resolution option is the sole prerogative of the Central Bank of Ireland, we would express our preference for a resolution outcome that would result in a directed transfer.*".

71. The Bank subsequently confirmed receipt of the Credit Union's 28 May Letter and confirmed that the Bank would proceed with the consideration of the use of its powers.

72. As at the date of swearing this Affidavit, the Credit Union has not been able to implement a ToE. Furthermore, the Credit Union has not been able to provide the Bank with any proposal on how it intends to comply in full, and on a sustainable basis, with its obligations under the November 2019 Regulatory Direction. Accordingly, the Bank has formed the view that the Credit Union has exhausted all options to address its immediate risks and comply with its regulatory obligations. The current external environment arising from the COVID-19 pandemic has had a further negative impact on the Credit Union's ability to raise and maintain its reserves in order to comply with its obligations under the November 2019 Regulatory Direction.

73. I beg to refer to copies of the said correspondence from October 2019 to date at **Tab 12** of the Booklet.

BANK'S ASSESSMENT OF REASONS FOR DRUMCONDRA'S FAILURE

74. I believe it is important in the context of the Petition for the winding-up of the Credit Union to outline to the Court what the Bank believes are the underlying causes of the Credit Union'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. In summary, the Bank has concluded that the primary causes of the Credit Union's failure are (a) the non-viability of the Credit Union as a standalone business; and (b) the failure of the Credit Union to address that non-viability by means of the completion of a ToE to a suitable third party credit union.

Non-viability of the Credit Union as a standalone business

75. The Bank is of the view that the principal factors leading to the Credit Union not being able to continue operating on a standalone basis, are predominately due to the following:

75.1 inability to substantially grow the Credit Union's loan book;

75.2 income and cost management;

75.3 fixed asset impairment; and

75.4 inability to implement the strategic plan developed.

Inability to substantially grow the Credit Union's loan book

76. Drumcondra's core 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, ensure that the credit union maintains adequate reserves to comply with the reserve requirement and, if possible, the payment of a dividend to members.

77. Since 2016, Drumcondra's loan to asset ratio has ranged from between 26% - 32%, with only a moderate single digit percentage growth in the total gross book value of the loan book over this period. Furthermore, as per the March 2020 prudential return, only 13% of Drumcondra's members were borrowing from the Credit Union, indicating that there is a low level of interest for credit union services within the Drumcondra Common Bond area. The 2019 ToE Due Diligence Report also confirmed this as it states that Drumcondra: *"is relatively low lent in terms of value and borrowers numbers"*.

78. Drumcondra experienced a declining rate of growth in the loan book during the financial year ending 30 September 2019. As is illustrated in the Table below, this rate of decline increased significantly in the period ending April 2020, resulting in a total decline of 15% of the gross loan book value during the first seven months of the financial year. This decline demonstrates a continued trend of reduced levels of borrowing by members of Drumcondra. If this trend

continues, it is anticipated that income generated by Drumcondra from loans to members, and trading generally, will deteriorate further.

€'000s Period ended	*Final Accounts Sept 2015*	*Final Accounts Sept 2016*	*Draft Accounts Sept 2017*	*Draft Accounts Sept 2018*	*Draft Accounts Sept 2019*	*Revised Draft Accounts Sept 2019 (1)*	*Management Accounts Apr-20*
Assets							
Fixed assets	1,382	1,373	1,319	884	729	848	824
Cash, bank & investments	7,799	10,300	11,077	10,159	9,022	9,022	9,616
Gross loans	3,633	3,979	4,262	4,615	4,622	4,622	3,949
Bad debt provisions	(383)	(315)	(306)	(285)	(442)	(442)	(392)
Net loans	3,250	3,663	3,956	4,330	4,180	4,180	3,557
Other assets	23	83	98	104	58	58	63
Total Assets	**12,453**	**15,419**	**16,451**	**15,477**	**13,988**	**14,108**	**14,060**
Liabilities							
Members savings	12,477	13,477	14,570	14,099	12,922	12,922	13,220
Other creditors	310	253	177	39	814	354	81
Total Liabilities	**12,788**	**13,730**	**14,748**	**14,138**	**13,736**	**13,276**	**13,301**
Net (liabilities)/assets	**(335)**	**1,689**	**1,703**	**1,339**	**252**	**831**	**759**
Loans to Assets Ratio	29%	26%	26%	30%	33%	33%	28%
YoY Increase/(Decrease) in Gross Loan Value	(4%)	10%	7%	8%	0%	0%	(15%)
Cash, bank & investments to Assets	63%	67%	67%	66%	64%	64%	68%
Provisions / gross loans %	11%	8%	7%	6%	10%	10%	10%
Reserves %	**(2.69%)**	**10.84%**	**10.19%**	**8.65%**	**1.80%**	**5.89%**	**5.40%**

79. The decline in the total gross loan book value stands in contrast to the projected growth targets set out in Drumcondra's revised strategic plan for the period up to 2022. That plan anticipated that the value of Drumcondra's gross loan book at the end of September 2020 would be €5.3m, increasing further to €5.8m by the end of September 2021. In order achieve these targets, however, Drumcondra would need to increase the value of its loan book by 48% by September 2021, during which period the Credit Union would need to issue approximately €110k of additional loans to members per month.

80. As a result of the high level of arrears on Drumcondra's loan book, the Registrar imposed lending restrictions in August 2011, restricting members' loans to €20k in excess of savings. These restrictions were considered necessary to protect members' funds. Following the receipt of funding from ILCU in 2016, Drumcondra sought a review of these restrictions. However, due to continuing concerns relating to Drumcondra's lending practices, the Bank did not consider it appropriate to revoke or revise the terms of the lending restrictions which may have adversely affected Drumcondra's ability to increase the value of its loan book.

81. In 2017, the Credit Union engaged RBK Accountants to prepare a report (the "**RBK Report**") to support discussions with the Bank on amending or lifting the lending restrictions set. I beg to refer to a copy of the RBK Report at **Tab 13** of the Booklet.

82. The RBK report found continued issues with regard to adherence to lending policies and inadequate segregation of duties in the process, in effect reaffirming concerns held by Bank. In addition, similar credit issues were identified as part of the 2018 PRISM Engagement.

83. The November 2019 Regulatory Direction further restricted the Credit Union from lending a total cumulative amount of €200k a month. The November 2019 Regulatory Direction was issued by the Bank in order to protect members' savings, having regard to heightened concerns with respect to Drumcondra's viability, its depleted reserves and other issues identified in the 2019 ToE Due Diligence Report. Further restrictions on lending, again due to ongoing viability concerns for Drumcondra, were also imposed as part of the February 2020 Regulatory Direction.

84. In the opinion of the Bank, Drumcondra's failure to put in place effective controls to ensure adherence to appropriate lending practices has been a contributory cause of the Credit Union's inability to materially expand the value of its loan book during the period from 2016 to date. Although Drumcondra made intermittent requests to the Registrar during that period to review the lending restrictions imposed on the Credit Union, those requests were not supported by any compelling evidence that the governance issues that gave rise to the need for those restrictions had been addressed to the satisfaction of the Bank.

Income and Cost Management

85. Drumcondra's inability to generate sufficient income from lending and investment activities has been a contributing factor in relation to the gradual deterioration of the financial position and viability of the Credit Union.

86. As illustrated in the Table below, the loan interest income growth for Drumcondra from 2015 to 2019 was limited, increasing marginally between 2% – 6% year-on-year. This limited increase, coupled with Drumcondra's investment income reduction from €120k to €52k due to the low interest rate environment in the respective period, resulted in the total income earned by the Credit Union in both 2015 and 2019 remaining static at €552k.

€'000s Period ended	*Final Accounts Sept 2015*	*Final Accounts Sept 2016*	*Draft Accounts Sept 2017*	*Draft Accounts Sept 2018*	*Draft Accounts Sept 2019*	*Revised Draft Accounts Sept 2019* (3)	*Management Accounts Apr-20*
Income							
Loan interest	419	416	444	464	474	474	276
Other interest income	120	139	91	93	52	52	25
Other income	14	11	15	30	26	26	1
Total Income	**552**	**565**	**549**	**587**	**552**	**552**	**302**
Operating expenses							
Salaries and wages	162	170	195	195	183	183	105
Management expenses	232	301	332	328	1,000	631	253
Depreciation	38	29	46	44	37	37	24
Total operating expenses	**432**	**500**	**573**	**567**	**1,220**	**851**	**383**
Operating (Loss) / Profit	**120**	**65**	**(24)**	**20**	**(669)**	**(300)**	**(81)**
Exceptional items							
ILCU funding	-	(1,817)	-	-	-	-	-
Impairments	1,513	-	-	406	248	38	-
Bad debt provisions	12	(68)	(10)	(21)	157	157	(51)
Write offs	22	25	15	42	71	71	77
Recoveries	(55)	(89)	(63)	(43)	(59)	(59)	(35)
Total exceptional items	**1,494**	**(1,949)**	**(58)**	**384**	**418**	**208**	**(8)**
Total Expenses	**1,926**	**(1,448)**	**515**	**951**	**1,638**	**1,059**	**375**
Net (Loss) / Profit	**(1,374)**	**2,014**	**34**	**(364)**	**(1,087)**	**(508)**	**(73)**
Dividend	-	-	-	-	-	-	-
Key ratios							
Loan Interest/Total Income %	76%	74%	81%	79%	86%	86%	91%
Cost Income ratio (1)	349%	(256%)	94%	162%	297%	192%	124%
Cost Income ratio(2)	78%	88%	104%	97%	221%	154%	127%

87. Drumcondra received €1.817m in ILCU funding in January 2016. The purpose of this funding was to enable the Credit Union to re-organise its business and re-establish itself as a viable standalone entity. However, in the period following the provision of funding by ILCU, the Credit Union has been unable to achieve any material growth in lending income, and its total income has remained almost static. In the view of the Bank, notwithstanding the significant ILCU SPS funding received in January 2016, Drumcondra proved incapable of effectively restructuring its business and this would strongly suggest that Drumcondra is no longer viable as a standalone credit union. As highlighted above, Drumcondra achieved limited growth in its gross loan book since 2016, which has had an adverse direct impact on the growth of loan interest income. The Bank is further of the view that, because income has remained almost static since 2015, and there is now a decline in the gross value of Drumcondra's loan book, it is highly unlikely that Drumcondra could trade its way out of financial difficulty on a standalone basis through income growth.

88. Another contributing cause of Drumcondra's gradual deterioration is the increase in operating expenses for the period 2016 - 2018. This increase, as illustrated in the Table at paragraph 86, is further indicative of the Credit Union's failure to re-organise itself effectively following receipt of ILCU funds in January 2016. Drumcondra's 2015 Strategic Plan aimed to reduce operating expenses at a rate of 4%, year-on-year, during respective periods. The level of increase of operating expenses experienced during this period, against what was proposed in the strategic plan, demonstrates to the Bank that Drumcondra does not have the capacity to manage its operating expenses effectively on a standalone basis. It is also clear to the Bank that the management of these costs continues to be an issue of concern with respect to

Drumcondra, with operating expenses being well in excess of income recorded in the management accounts for the period to April 2020.

89. Bad debt provisions, which are an indicator of a credit union's ability to manage its loan book, have also been a source of concern. As presented in the Table at paragraph 86 above, bad debt provisions as a percentage of gross loans declined from 11% after the receipt of the 2016 ILCU funding, to 6% in 2018. As part of the 2019 ToE Due Diligence Report, a requirement for an additional bad debt provision of €94k was recommended. This increased the bad debts provisions as a percentage of gross loans to 10% in the 2019 financial statements, further negatively impacting upon the overall trading position of Drumcondra. The percentage remains the same as of the date of the April 2020 management accounts.

90. On the basis of the foregoing, and in particular noting the inability of Drumcondra to generate additional income, coupled with the growing operational costs, Drumcondra has struggled since 2016 to achieve an operating profit sufficient to allow the Credit Union to remain viable on a standalone basis. This limited level of operating profits has also had a material adverse impact on the ability of Drumcondra to maintain its reserves in excess of the regulatory requirement. Based on these ongoing trends, and as highlighted in the April 2020 management accounts which report an operating loss of €81k, it is difficult to envisage Drumcondra improving its trading position over the course of the coming years. This highlights the need for action to be taken in respect of Drumcondra in the interests of its members.

91. The absence of a financial surplus has also resulted in Drumcondra not issuing a dividend to members since 2010. A payment of a dividend in the medium term may be required to motivate members to utilise the Credit Union's full range of services and generate income accordingly, to facilitate the rewarding of savers.

Fixed Asset Impairment

92. The Credit Union previously valued the Premises using the ViU accounting technique. The Bank raised concerns over an extensive period as to whether the assumptions underpinning Drumcondra's fixed asset valuation were reasonable and supportable. The 2015 Asset Review Report supported the Bank's concerns and recommended that the Credit Union re-value the Premises in its balance sheet to reflect fair market value. Drumcondra subsequently engaged a real estate services firm to perform a property valuation, which concluded that the Premises had a market value of €1.35m. Prior to this, the Premises had been recorded in Drumcondra's accounts as having a value of €2.88m. Accordingly, the revaluation of the Premises required an impairment of €1.53m to be recognised in Drumcondra's 2015 financial statements. This impairment was the primary reason for the requirement of funding from ILCU in 2016.

93. It was necessary for Drumcondra to record a further impairment in the value of the Premises following the [redacted], which was conducted in connection with the ToE process with [redacted] in 2019. During that process, four property valuations were undertaken in respect of the Premises, resulting in values ranging from €[redacted] to €[redacted]. Drumcondra ultimately decided that the [redacted] of €[redacted] was the more reasonable value. As illustrated in the Table at paragraph 86, the recognition of this impairment resulted in Drumcondra amending and reflecting an impairment of €[redacted] in its 2018 draft financial statements in September 2019 and as a consequence thereof, the Credit Union reported reserves of 8.65%, indicating that its reserves had fallen below the regulatory requirement of 10% for the first time since January 2016.

94. The Bank is of the view that the level of impairment of the value of the Premises is one of the primary causes of Drumcondra's financial distress.

Inability to implement the strategic plan developed

95. Drumcondra presented the 2015 Strategic Plan up to the year ending September 2019, outlining how it would ensure continued compliance with the reserve requirement following the receipt of funds from ILCU in January 2016. The strategic plan included forecasted trading positions, scheduled Board activities and risk analysis. Drumcondra further provided an updated 2018 Strategic Plan forecasting to the period ending September 2020. The Registrar had considered concerns around this plan and engaged with Drumcondra on its content. The Bank completed a PRISM Engagement in 2018 and found significant concerns in relation to Drumcondra's strategic planning process due to the errors in the Revised 2018 Strategic Plan, the lack of strategic direction and the fact that Drumcondra had failed to achieve previous strategies. The Bank is of the view that, taken as a whole, these failures demonstrate that Drumcondra is no longer viable as a standalone credit union.

96. Following intensive engagement between the Bank and Drumcondra, an updated version of the 2018 Strategic Plan was presented in January 2019. As part of this strategic plan, Drumcondra defined a set of economic targets or triggers, as outlined below, in relation to the performance of the business. If these targets were not met, then the Credit Union would determine whether it could continue as a standalone entity, and whether a ToE strategy should be employed.

Annualised Loan Book Growth Must Exceed %	Annualised Savings Growth Must Not Exceed %	The Capital Ratio Must Exceed %
8%	2%	10.50%

97. As part of the submitted revised Strategic Plan the Board of Drumcondra advised: *"During the*

course of the development of this strategy, it became increasingly clear to the Board and Management of Drumcondra, that there is clear and present likelihood that the economic triggers will be activated over the coming months, and there is a high degree of probability that DDCU will seek a transfer of engagements as a result. For this reason, during the preparation of this strategy, the credit union decided to make initial steps to advance a transfer of engagement optionality." At a meeting between the Board of Drumcondra and the Registrar on 26 February 2019, there was an acknowledgment that these economic targets had not been reached, based on the submitted prudential return for the quarter ending 31 December 2018. Drumcondra were therefore taking steps to advance a ToE strategy.

98. The Bank agrees with the overall conclusion of Drumcondra that the entity is no longer viable on a standalone basis, given: (a) the declining gross loan book; (b) the income and cost management concerns; (c) the level of fixed asset impairments; and (d) an increasing cost base. The Bank further believes that Drumcondra is not in a position to restore its capital position to the required regulatory level and is, thus, not capable of continuing to trade on a standalone basis.

Inability to complete a Transfer of Engagement

99. In early 2019, as is set out in detail in paragraph 97, Drumcondra recognised that there was a high degree of probability that the Credit Union could not continue as a standalone entity, and would need to implement a ToE, particularly in light of its recognition that there was a likelihood that the economic triggers set out in the strategic plan would be activated.

100. Throughout 2019 Drumcondra attempted to engage with potential transferees and focused on two credit unions: [redacted] and [redacted] ("[redacted]"). [redacted] was identified as the preferred transferee and engaged in advanced due diligence. That due diligence exercise established that funding of c. €[redacted] would be required to restore the reserve position of Drumcondra in advance of the ToE. Accordingly, Drumcondra applied to ILCU for SPS funding of this amount. ILCU commissioned a review of the application and ultimately decided in January 2020 that funding of €[redacted] would be the maximum amount that it would be willing to provide to support the ToE process. On foot of ILCU's decision, [redacted] advised that it would not be in a position to complete a ToE and it subsequently withdrew from the process.

101. Following the withdrawal of [redacted] from the ToE process, Drumcondra again reached out to [redacted], and to a number of additional credit unions, with a view of assessing interest in completing a ToE. In total Drumcondra have advised the Registrar that it engaged with twelve credit unions in the greater Dublin commuter region, however, no credit union formally engaged in any ToE process with the exception of MFCU. Following the lack of interest

expressed by any of the credit unions approached, Drumcondra and [redacted] re-commenced ToE discussions in April 2020 and decided to re-seek funding support from ILCU in order to complete the ToE. Given the passage of time and additional losses having been incurred, the revised funding application sought €[redacted] to restore Drumcondra's capital position and complete the ToE. ILCU again advised that it would be willing to provide the maximum funding of €[redacted] to support the transfer, and as a result, Drumcondra and [redacted] were unable to complete the ToE.

102. Consequently, Drumcondra has failed to show that there is any realistic prospect of completing a ToE or meeting its reserve requirement. Drumcondra has failed to provide the Bank with any meaningful ToE proposal or any solution to address its difficulties. The Bank is of the view that the Bank has provided Drumcondra with substantial time to rectify its reserve position and Drumcondra has now exhausted all options to address its immediate risks and comply with its regulatory obligations.

103. As a result of the above assessment, the Bank is of the opinion that Drumcondra is not in a position to continue to trade on a standalone basis. Furthermore, its inability to complete a ToE and the acceptance in the 28 May Letter by the Board of Drumcondra that it will not be able to comply with the obligations set out in the November 2019 Regulatory Direction, illustrates that Drumcondra is a failing institution. The Bank is of the view that it is highly unlikely that Drumcondra would be able to identify a transferee, even if it were provided with additional time to approach other credit unions.

104. On the basis of the foregoing, and having assessed that the Credit Union is not a viable entity, it is incumbent on the Bank to take action and exercise its powers under the 2011 Act with respect to Drumcondra.

GROUNDS FOR LIQUIDATION

105. The 2011 Act provides the Bank with powers to present a petition for the winding-up of a credit institution (including a credit union) under any of the five grounds specified in section 77, being that:

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

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

105.3 the 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 1997;

105.4 the 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 Bank Act 1971) that it has ceased to carry on banking business; or

105.5 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.

106. Having considered:

106.1 that Drumcondra is in a financially distressed positon and is in continuing breach of the November 2019 Regulatory Direction;

106.2 that Drumcondra has, as at the date of this Affidavit, failed to provide the Bank with a meaningful plan to address its reserve shortfall;

106.3 the alternative resolution options available to the Bank under the 2011 Act are not suitable in this case; and

106.4 the matters raised by the Credit Union in its 28 May Letter,

the Bank is of the view that the presentation of a Petition for the winding-up of the Credit Union is the most appropriate course of action to take in the circumstances.

107. In the opinion of the Bank, three of the grounds for liquidation, as set out above at paragraph 105, are relevant to the Bank's consideration as to whether the grounds to petition this Honourable Court for the winding-up of Drumcondra have been met, namely that:

107.1 the Credit Union has failed to comply with a direction of the Bank issued under section 87 of the Credit Union Act 1997;

107.2 the winding-up of the Credit Union is necessary in the interests of persons having deposits; and

107.3 the winding-up of the Credit Union is in the public interest.

Ground (a): Failed to comply with a direction of the Bank

108. As set out above, one of the grounds for liquidation is that the credit institution failed to comply with a direction of the Bank made pursuant to section 87 of the 1997 Act. Following ongoing regulatory concerns and the 2019 Pre-Direction Letter, the Registrar issued the November 2019 Regulatory Direction pursuant to section 87 of the 1997 Act seeking the Credit Union to restore its regulatory reserve position to the minimum 10% requirement.

109. Drumcondra remains in breach of the November 2019 Regulatory Direction with its reported reserve position in April 2020 being 5.4%. The Credit Union also indicated that it does not believe that it will be in a position to comply with the requirement to maintain a minimum regulatory reserve of at least 10% in its 28 May Letter.

110. As already discussed, the requirement of Drumcondra to hold reserves of 10% of total assets is a statutory obligation, established to provide a base for future growth, to protect the risk of unforeseen losses, and to ensure the continuity and protection of members' savings. The inability of the Drumcondra to raise and hold sufficient reserves is, therefore, a significant concern of the Bank.

111. The Bank is satisfied that Drumcondra has failed to comply with the November 2019 Regulatory Direction and failed to provide a plan setting out how it will comply with the terms of the Direction.

Ground (b): The winding-up of that credit institution is necessary in the interests of persons having deposits

112. Drumcondra is classified as a small credit union by asset value, as it has assets less than €40m. Based on the most recent prudential return as at the 31 March 2020, Drumcondra has a balance sheet of c. €14m and 5,095 members. The membership only represents 5.3% of the Dublin Central constituency and 0.9% of the Dublin City Council population. Notwithstanding the evidence that the Credit Union is an important local community organisation, the above statistics illustrate that membership is not significant on a regional or national level.

113. The members of Drumcondra are not aware of its current or recent financial position, and have no knowledge of the impact of recent loan and premises impairments, which have further eroded its reserves. Given its weakened financial position, and to prevent the potential destabilising consequences that might arise were its financial position made public, Drumcondra has been unable to hold an AGM since 3 April 2017.

114. Drumcondra's members have not received a dividend, the equivalent of interest payments received by depositors in banks and other credit institutions, since the year ended 30 September

2010. As a result, Drumcondra's members have lost the opportunity to earn a return by depositing their savings with the Credit Union. Members could have benefited from earning a higher rate of return by depositing their money with another credit institution through deposit interest or the receipt of dividends. Furthermore, the opportunity loss in this regard will continue, as there is no realistic possibility of Drumcondra providing a dividend to its members in the near future.

115. Additionally, Drumcondra has a limited range of financial services, in light of the self-imposed savings limit of €15k and a daily deposit limit of €3k implemented in February 2019. And as a result of the breaches in its regulatory requirement, as outlined above, it can no longer make a loan to an individual member in excess of €10k above shares whether secured or unsecured with a limit on monthly lending capped at €100k.

116. A number of neighbouring credit unions have a common bond that partially overlaps with the common bond of Drumcondra. In the event that Drumcondra is wound-up, this may facilitate the provision of credit union services to a portion of the existing member base in the short term. Over the medium to long term, a local credit union may seek to extend its common bond to fully cover the Drumcondra common bond.

117. It is not possible to identify the number of Drumcondra's members who have alternative banking relationships with other credit institutions. Based on previous experience, it is probably that a portion of the members do not have access to a bank account at the point of winding-up. As such, the liquidation is likely to lead to some of the Credit Union's members not having access to alternative retail financial services in the short term.

118. It is important to note, however, that the members of Drumcondra will be able to avail of alternative retail financial service providers locally if the Credit Union is wound-up. Retail-banking branches are available in the Drumcondra area and include an AIB, EBS, Permanent TSB and Bank of Ireland. There are also two Post Office branches situated in Drumcondra, where members can avail of a variety of retail banking and payment services. It can be noted that all other branches and/or financial service providers in the area are operational despite COVID-19 restrictions. Given that impacted members have a number of alternative financial services in the immediate area, Drumcondra is not viewed as a critical service provider by the Bank.

119. 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 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 €100k per depositor. In addition, under limited circumstances, certain deposits known as temporary high balances are protected up to €1m. 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 €100k 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.

120. 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 timeframe as possible. Although at present the mandatory statutory deadline for Member States remains 15 working days, the 2014 Directive has recited at Recital 38 that such a repayment period *"runs counter to the need to maintain depositor confidence and does not meet depositors' needs. The repayment period should therefore be reduced to seven working days"*. Accordingly, by 2024 Member States are required to implement a reduced statutory deadline of 7 working days.

121. 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 15 working days. Although 15 working days is the statutory deadline, the DGS aims to issue compensation to duly verified eligible depositors, as early as possible within the statutory deadline.

122. It is in the interest of Drumcondra's members to have access to a fully functioning credit institution which is managed on a prudent basis. Drumcondra cannot, however, be viewed as a fully functioning entity as it is not able to offer its members full access to the range of services usually offered by credit unions. An additional benefit of a DGS pay-out would, therefore, be that the members of Drumcondra are obliged to deposit their savings with another institution which can offer full credit union/financial services.

123. Having considered the aforementioned factors and taking into account certain concerns identified, the Bank is of the opinion that it is in the interests of depositors that Drumcondra be wound-up for the following reasons:

123.1 The DGS pay-out will result in members depositing their savings with other institutions that, unlike Drumcondra, are not financially distressed.

123.2 The DGS pay-out will result in members being able to access, through alternative financial institutions, a full range of financial services that are reasonably expected to be provided to members of a credit union, but which are not being provided to Drumcondra's members at present.

123.3 The DGS pay-out will result in members having to deposit their savings with other institutions that may result in Drumcondra'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.

Ground (c): The Winding-up of the Credit Institution is in the Public Interest:

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

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

125. The liquidation of a failed, or failing entity, is part of the normal functioning of a market economy. The realisation and distribution of capital, as a result of a liquidation, allows stakeholders to better maximise their capital employed, instead of it remaining and being destroyed in the failing entity. The winding-up of an inefficient entity is also an incentive and indicator to the market to continue to innovate, adapt and employ capital in an orderly manner and if they fail to evolve, they too could deteriorate and be wound-up. However, it is not always possible to liquidate a failed entity without creating some consequences for the broader economy, such as the risk of contagion or the loss of public faith in the financial sector. The onus is, thus, on the Bank to limit the risk to the economy if a credit union is to be wound-up.

126. The Bank is of the view that (a) Drumcondra is a failing entity, (b) the resolution options under Parts 4, 5 and 6 of the 2011 Act are not appropriate to resolve the Credit Union and (c) the liquidation of Drumcondra is, in consequence, the most preferable option for its members. The Bank has already carried out three liquidations under the 2011 Act in the credit union sector: Berehaven Credit Union Limited in July 2014, Rush Credit Union Limited in November 2016 and Charleville Credit Union in October 2017. Although the circumstances in these previous cases differ in many respects, there are similarities in relation to the necessity to liquidate and

in this regard, a precedent is available.

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

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

128. Liquidation in the case of Drumcondra may also encourage enhanced regulatory compliance across the credit union sector, to the benefit of the sector, its members and the wider public. Since Drumcondra revised its financial statements for the year ended 30 September 2018 in September 2019, it has been unable to raise its reserve position to the regulatory reserve requirement of at least 10% of total assets. The importance of the regulatory reserve requirement is explained at paragraph 11 of this Affidavit. The Bank cannot allow a situation to persist whereby a credit union is in breach of the reserve requirement, and it also serves to highlight to the credit union sector that the application of the reserve requirement is to be adhered to in all circumstances.

COVID-19 Considerations

129. It is important to note that the Bank has taken care to assess the impact of COVID-19 on the Credit Union and whether it is necessary and appropriate to seek the winding-up of the Credit Union during what is accepted to be an adverse economic period. In determining that it is necessary to petition for the winding-up of Drumcondra at this time, the Bank has had regard for, in particular, the following relevant factors:

129.1 The Bank has had regular extensive supervisory and regulatory engagement with the Credit Union since 2015, at which point Drumcondra required and later obtained €1.817m of ILCU funding;

129.2 Drumcondra has been subject to focused regulatory and supervisory engagement which has intensified in line with the identification of increased viability risks since 2015;

129.3 In January 2019, long before the genesis of COVID-19 (which had a national impact from February 2020), the Credit Union acknowledged that it was not viable on a standalone basis and the only option available that would allow it to remain viable would be to successfully complete a ToE strategy;

129.4 From March 2019 to May 2020, numerous efforts were made to complete a ToE strategy, however, all such efforts were ultimately unsuccessful for reasons already outlined above. As Drumcondra could not complete a ToE in a normal economic climate, the Bank is of the view that it would be significantly more difficult to attempt to complete a ToE during, and in the aftermath of, the current adverse economic climate, caused as a result of COVID-19, as any potential transferee credit unions will be focused on overcoming its own business model challenges on a standalone basis; and

129.5 The Bank was also caused to issue a number of Directions on the Credit Union, most notably the November 2019 Regulatory Direction, which the Credit Union has indicated that it will not be able to comply with.

130. It is most noteworthy that all of the aforementioned actions, and related concerns of the Bank on Drumcondra, arose prior to the outset of the COVID-19 pandemic in Ireland. The Bank is therefore of the view that the reasons for the failure of Drumcondra are readily identifiable and the financial deterioration of the Credit Union cannot be attributed to the pandemic.

131. Despite the foregoing, when the impact of COVID-19 was felt nationally, and the Government introduced measures to prevent the spread of the virus, the Bank granted the Credit Union an extended period of time to explore the options available with the aim of addressing its viability weaknesses. Once all of the potential options were exhausted, Drumcondra issued its 28 MayLetter to the Bank requesting assistance in resolving its financial issues.

132. The Bank is of the view that the liquidation of Drumcondra is the appropriate method to provide for an orderly pay-out from the DGS, an orderly procedure for the realisation of Drumcondra's assets, and to facilitate the repayment of available funds to the DGS and other creditors of Drumcondra.

APPLICATION FOR APPOINTMENT OF A PROVISIONAL LIQUIDATOR

133. The Bank believes that it is essential for a provisional liquidator to be appointed immediately to Drumcondra, pending the hearing of the winding-up Petition of Drumcondra, as the provisional liquidator will be able provide immediate protection over the assets of the Credit Union. Where so it is ordered by this Honourable Court, the provisional liquidator can also commence the works necessary to achieve the statutory objectives of a liquidator as provided by the 2011 Act, being in particular;

133.1 to facilitate the Bank in ensuring that each eligible depositor receives the prescribed amount payable from the DGS; and

133.2 to wind-up the affairs of the designated credit institution, so as to achieve the best results for that recognised credit institution's creditors as a whole.

134. 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 Drumcondra, and the widespread attempted withdrawal of savings and deposits by members of Drumcondra. The provisional liquidator will have a crucial role in terms of minimising this risk of a run on deposits, which may occur once it becomes public knowledge that a Petition for the winding-up of Drumcondra has been presented. If a run on deposits were to commence, the Bank is of the view that it would be very difficult to halt and may result in the uncontrolled and disorderly closure of the Credit Union. The occurrence of this risk is additionally heightened in the current financial climate due to the implications of COVID-19, and by the fact that Drumcondra's members are not aware of the true financial position of the Credit Union.

135. Whilst it is acknowledged that the appointment of a provisional liquidator may have a potentially detrimental effect on Drumcondra's business and may, regardless of the outcome of the full hearing of the Petition, result in the permanent cessation of its trade the Bank is nevertheless of the view that the appointment is necessary for the reasons set out in the preceding paragraph and for the following reasons:

135.1 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 Drumcondra'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;

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

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

135.4 most importantly, the appointment of a provisional liquidator will also result in the invocation of the DGS and enable the provisional liquidator 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 15 working days.

Role of the provisional liquidator in facilitating a timely DGS pay-out

136. 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.

137. The appointment of provisional liquidator to Drumcondra 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 Drumcondra as quickly and efficiently as possible, thereby ensuring the Bank fulfils its obligations under the DGS Regulations.

138. The Bank is of the view that if a provisional liquidator is not appointed to Drumcondra, 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 Drumcondra to cease business in order to avoid a disorderly collapse. In such circumstances it is possible that the obligation to make compensation payments would be triggered 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 15 working days. However, in order to make such payments the DGS would require a list of all the eligible savers and depositors in Drumcondra and the amounts that they are due under the DGS.

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

140. If Drumcondra were to cease trading in a disorderly manner following the presentation of a Petition by the 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 certainty regarding their position, employees and service providers that play a role in the preparation and safeguarding of the books and records of Drumcondra may cease working with Drumcondra. This could cause a 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 Drumcondra members, and may affect public confidence in the DGS Scheme.

141. The provisional liquidator would play a key role in facilitating a timely DGS pay-out by obtaining control over the operations and business, as well as the books and records, and thus

can provide the DGS with the list of eligible savers and depositors in Drumcondra and the amounts that they are due under the scheme. If a provisional liquidator were to be appointed, it would ensure that a compensation payment is duly paid to verified eligible depositors as soon as possible, within the statutory timeframe and that the process was managed in an orderly manner.

142. The Bank understands that no member of Drumcondra has aggregate eligible savings that exceed €100k which are fully covered by the DGS. Accordingly, the Bank expects that all verified eligible deposits of each member of Drumcondra should be repaid in full under the DGS within 15 working days of the appointment of the provisional liquidator.

143. In addition to ensuring that amounts that are due under the DGS could be paid out in a timely manner, the 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.

144. If a provisional liquidator is not appointed, the DGS payment may not be made as promptly. In such circumstance, this could result in (a) an unmanaged failure of Drumcondra; and (b) an undermining of the public confidence in the DGS which is essential to the stability of the financial sector generally.

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

145. As outlined above, if this Honourable Court is satisfied to make an order for the appointment of a provisional liquidator to Drumcondra, this will trigger the commencement of the period within which eligible deposits must be repaid to members under the DGS Regulations.

146. The Bank is of the view that, given the tight timeframe within which such payments must be made, it is of critical importance that a provisional liquidator is appointed to take all necessary steps to ensure that the DGS payments are made within the required timeframe. Although the statutory timeframe within which the DGS payments must be made is 15 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.

147. As explained above, while the 2014 Directive, as implemented by the DGS Regulations, allows for a transitional period whereby DGS can make payments within 15 working days, the recitals to the 2014 Directive recognise that a period over 7 working days 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.

148. Furthermore, during the transitional period, the DGS Regulations provide that where the DGS has not paid 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 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 do not have access to their money and furthermore it would take time to process such applications.

149. In the case of Rush Credit Union Limited, Berehaven Credit Union Limited and Charleville Credit Union which were wound-up on foot of petitions by the Bank, following the appointment of the provisional liquidators, the DGS was in a position to make the payments within 7 working days of their appointment. The Bank is strongly of the view that this facilitated an orderly winding up and avoided any contagion or concern in the wider credit union sector. This was a very important factor in ensuring the liquidation was successful. Furthermore, the successful manner in which the DGS was invoked 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 current 15 working day statutory timeframe.

150. 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.

DECISION BY GOVERNOR

151. On 26 June 2020, a copy of the Resolution Report was provided to the Governor and that on 30 June 2020 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 the Credit Union. I beg to refer to a copy of the said Letter from the Governor to me at **Tab 14** of the Booklet.

152. I say on the evening of 1 July 2020, a representative of the Registry of Credit Unions division of the Bank attended a meeting with the Board of Drumcondra and District Credit Union (the "**Credit Union**") by teleconference in advance of the within application being made to this Honourable Court. At the said meeting, the Board of the Credit Union was advised that the Governor decided that the Bank should make an application to this Honourable Court seeking the appointment of provisional liquidators to the Credit Union under the Central Bank and

Credit Institutions (Resolution) Act 2011 and that this application would take place today, 2 July 2020 at 11am. I beg to refer to a copy of the email from the representative of the Registry of Credit Unions division of the Bank together with minutes of the said meeting at **Tab 15** of the Booklet.

PROPOSED LIQUIDATORS

153. I say that Stephen Tennant and Nicholas O' Dwyer, both of Grant Thornton, 13 – 18 City Quay, 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 Affidavits of Stephen Tennant and Nicholas O' Dwyer in which they, inter alia, confirm their willingness to act as Joint Liquidator and Joint Provisional Liquidators (if so appointed) when produced.

NOTICE OF PRESENTATION OF THE PETITION TO BOARD OF DRUMCONDRA

154. As outlined above, I say that the Bank met with the Credit Union's Board in order to inform them that the Bank intends to present a Petition for winding-up of the Credit Union and apply for the appointment of Provisional Liquidator.

CONFIDENTIALITY

155. 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 located at Tabs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13 and 15 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.

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

    156.1 Transfer of Engagement negotiations that were into between the Credit Union 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 Transfer of Engagement or Directed Transfer where interested parties are likely to require their involvement to be kept confidential;

156.2 information relating to the nature of the Premises, which if disclosed publicly could damage the prospects of any liquidator of the Credit Union obtaining full value for those Premises; and

156.3 information relating to specific loans made by the Credit Union to certain members, which if disclosed would enable the relevant members of the Credit Union to be identified.

CONCLUSION

157. 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 2nd day of July 2020
at Ten Earlsfort Terrace
in the County of the City of Dublin
before me a C~~ommissioner for O~~aths / Practising Solicitor and
(1~~) I know the Deponent; or,~~ AM'C
(2) the Deponent has been identified to me by Frances Flynn 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~~ AM'C

Aonghus McClafferty

~~**COMMISSIONER FOR OATHS**~~/ AM'C
PRACTISING SOLICITOR
AONGHUS MC CLAFFERTY

WESLEY MURPHY

I FRANCES FLYNN hereby
Certify that I know the Deponent

This Affidavit is filed on behalf of the Petitioner by Arthur Cox, Solicitors, Ten Earlsfort Terrace, Dublin 2. Filed this day of 2020

THE HIGH COURT

Record Number: 2020 / COS

IN THE MATTER OF DRUMCONDRA AND DISTRICT CREDIT UNION LIMITED

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

AND IN THE MATTER OF THE COMPANIES ACT 2014

AFFIDAVIT OF WESLEY MURPHY

Arthur Cox
Solicitors for the Petitioner
10 Earlsfort Terrace
Dublin 2