THE TRIBUNAL RESUMED AS FOLLOWS, ON TUESDAY, 7TH MARCH 2000 AT 10:30AM:

MS. O'BRIEN: We have one witness left over from the sittings last week, we propose to take that witness first and proceed to the opening statement with regard to this aspect of the sittings. I call Mr. John Keilthy.

JOHN KEILTHY, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

MS. O'BRIEN: You have already given evidence to the Tribunal on a previous occasion and on this occasion, the Tribunal has requested you to give evidence generally in relation to a number of accounts that were operated in NCB Stockbrokers on behalf of Overseas Nominees Limited, which was the nominee holding company of Ansbacher Cayman. I think in that connection, you have assisted the Tribunal by providing a memorandum of your intended evidence.

A. That's correct.

Q. I wonder if you have a copy of that document with you?

A. I do.

Q. And I think you are a director of NCB and you are head of the private client division?

A. Correct.

Q. And I think that at the request of the Tribunal, you have provided a Memorandum of Evidence which deals with and is in response to a series of points numbered 1 to 8 which the

Tribunal requested to you address and were set out in a letter from the Tribunal dated 9th December last?

A. Correct.

Q. And in your memorandum, you deal with those points and you state that your memorandum is based on the summary review of the relevant files and documentation of NCB Stockbrokers Limited and on the basis of documentation obtained by it in furtherance of a request made by the Tribunal relating to accounts operated on behalf of Overseas Nominees Limited?

A. Correct.

Q. I think the first matter which the Tribunal asked you to address was the date from which accounts were opened with NCB for the benefit of Overseas Nominees Limited, is that correct?

A. Correct, yes.

Q. I think you informed the Tribunal that from a review of the relevant client files, and other documentation including bank statements and contract notes, it appears that accounts were set up on behalf of Overseas Nominees Limited on or about the following dates, and you then listed accounts and the dates on which they were opened. I think the first account was Aurum Nominees account 333006 and you stated that that was opened on the 7th July of 1988?

A. Correct.

Q. I think in fact that was the account on which you have formerly given evidence to the Tribunal?

A. It is, yeah.

Q. I think it appears therefore that that was the very first of the Overseas Nominees accounts that was opened with NCB?

A. It appears to be.

Q. I think the second account you refer to then is Overseas Nominees Limited which was opened on the 7th September of 1989?

A. Correct.

Q. I think the third account Aurum Nominees account 333034 was opened on the following day, the 8th September of 1989?

A. Correct.

Q. I think the fourth account, Aurum Nominees account also 333071 was opened on the 28th February of 1991.

A. Correct.

Q. And the fifth account, Aurum Nominees account 333097 was opened on the 24th September of 1991. The next account 333107 was opened on the 11th March of 1992 and the final account 333120 was opened on the 16th August of 1993.

A. Correct.

Q. So the last account therefore of Overseas Nominees Limited opened with NCB was in August of 1993.

A. That appears to be the case.

Q. I think it also appears from the name of these accounts that with the exception of the second account, which was opened on the 7th September 1989, all the accounts were opened in NCB, in the name of NCB's own nominees holding company?

A. That is correct.

Q. The second matter which the Tribunal asked you to address was the number of accounts opened, the total funds placed to the credit of the accounts and the breakdown as between the individual accounts.

A. Correct.

Q. And you state that from a review of the relevant client files and other documentation, it appears that up to seven accounts were opened at NCB which appear to have been for the benefit of Overseas Nominees Limited and they are the seven accounts that you have just referred to and indicated the number of accounts and the date on which they opened?

A. It is.

Q. You state further that it is difficult to be precise about the total of funds credited to these accounts due to the fact that in the case of at least one of the accounts, a significant quantity of stock was transferred into the account from Guinness & Mahon over a period of time.

A. That is correct.

Q. So that in the case of that account, it wasn't funds that were provided to NCB, stocks had already been purchased and they were transferred from Guinness & Mahon to the name of your nominee holding company for the benefit of the particular Overseas Nominees account, is that correct?

A. That appears to have been the case.

Q. You say further however on the basis of entries in the relevant bank accounts, correspondence on the files, settlement records and various portfolio valuations

produced in or around the date of set up of the accounts, you estimate that approximately œ2 million in total was credited to the relevant accounts in varying amounts.

A. That's right.

Q. So the total figure over the seven accounts therefore came to approximately œ2 million?

A. Correct.

Q. You state that the breakdown of this figure in terms of the individual accounts was as follows:

Aurum Nominees account 333006 and again that's the account that you already referred to in your previous evidence, approximately œ353,522.

Overseas Nominees Limited account, approximately œ248,393.

Aurum Nominees account, 333034, approximately œ970,000 and that was by far the largest of all the seven accounts that was placed with you?

A. That was indeed.

Q. Then Aurum Nominees account 333071 approximately œ198,106.

A. I think that's 189.

Q. I do apologise. œ189,106. Then Aurum Nominees account 333097, which seems to be the smallest of the accounts, was œ8,140.

Aurum Nominees account 333107 again appears to have been a small account, and the funds held on that you state were approximately œ13,754. Then finally, Aurum Nominees

account 333120, approximately œ300,000?

A. I just want to emphasise these were proximate figures.

Q. Presumably there were movements on the accounts from time to time, shares or stocks were purchased and sold and were retained in liquid funds?

A. Indeed, yeah.

Q. And I think therefore it appears that from those approximate figures that you provided to the Tribunal, that apart from the most substantial account that stood at approximately œ970,000, the next largest of the accounts was account 333006, which was the account you dealt with in your evidence previously?

A. It was.

Q. I think the third matter which the Tribunal asked you to address was whether any of these accounts, with the exception of Aurum Nominees No. 6 account, was at any time overdrawn and if so, extent and duration of such overdrawn balance. In that regard, you stated that of the six relevant accounts, three accounts had overdrawn balances at various stages. Aurum Nominees account 333107 was overdrawn for one day in the amount of œ13,754, is that right?

A. That's correct.

Q. Aurum Nominees account 333120 was overdrawn for 12 days in the amount of œ3,463.

A. Correct.

Q. And Aurum Nominees account 333034 was overdrawn on

approximately eight various occasions between 1991 and 1993 ranging in amounts from approximately œ600 to approximately œ35,000 and ranging in duration from one day to just over a month?

A. Correct.

Q. I think from your previous evidence, you had indicated that the number 6 Aurum Nominees account, it appeared from the Ulster Bank statements, had been overdrawn I think for a period of somewhere in the region of five to six months.

A. It may have been, I am not exactly sure of the duration of the overdrawn amount. I thought it was less than that.

Q. I think this was in the region of certainly five to six months. I think you'd agree therefore it appears to have been overdrawn for longer than any of the other accounts that you have referred to there?

A. Correct.

Q. I think the fourth matter then that the Tribunal asked you to address was the person or persons from whom instructions were received from the date of opening to the date of closure of the accounts.

A. Correct.

Q. I think you state that following a review of the relevant records, it is not absolutely clear who gave instructions in relation to three of the accounts.

A. Correct.

Q. You state that these accounts are Overseas Nominees Limited, Aurum Nominees account 333097 and Aurum Nominees

account 333107. In the cases of these accounts, the relevant transactions appear to have been once-off execution only.

A. Correct.

Q. And by that, what do you mean, once-off execution only?

A. I mean that only one transaction appears to have occurred in the account. And no correspondence, written correspondence in relation to transactions, so I determined that it was just a once-off purchase of a security.

Q. You state that in the circumstances, it is possible the orders were communicated by telephone only?

A. That is correct.

Q. You state that this would not have been unusual?

A. It would not.

Q. And in relation to the other accounts, the following persons appear to have given instructions:
Mr. Des Traynor, Mr. Padraig Collery, Mr. John Furze, Ansbacher Cayman Limited, Overseas Nominees Limited, International Trust Group, Henry Ansbacher, Credit Suisse Guernsey Limited and Credit Suisse Fides Trust Limited.

A. Correct.

Q. The next matter the Tribunal asked you to consider was the person or persons in NCB who dealt with these accounts. You state that in relation to three of the accounts, Overseas Nominees Limited, Aurum Nominees account 333097 and Aurum Nominees 333107, they are the same accounts that you referred to previously in terms of the identity of the

person from whom instructions were received?

A. Correct.

Q. You state that it appears that only a small number of once-off transactions were ever executed. These deals appear to have been executed by various NCB private client dealers. No written correspondence appears to exist in relation to these transactions other than copy contract notes.

A. That's correct.

Q. You say that would not be unusual. In relation to whether accounts which involved ongoing correspondence between NCB and the clients, the main contact person in NCB included Mr. Dermot Desmond in relation to one account, yourself in relation to two accounts, Mr. John Conroy in relation to two accounts, and Mr. Greg Dilger in relation to one account. And you state that various office personnel would have handled the administrative aspects of the accounts.

A. That's correct.

Q. The Tribunal then asked you to provide the address or addresses from which correspondence was received in relation to the accounts and to which correspondence of forwarded by NCB. And you state that following a review of the files, the following are the relevant addresses:
Mr. Des Traynor, 42 Fitzwilliam Square, Dublin 2.
Overseas Nominees Limited, Hamilton Ross International Trust Company, care of Post Office Box 887, Grand Cayman,

British West Indies.

ICON, 91 Merrion Square, Dublin 2. I take it by that you mean Irish Intercontinental Bank?

A. I do.

Q. Mr. Padraig Collery, Inns Court, Winetavern Street, Dublin 8.

Guinness & Mahon, 17 College Green, Dublin 2.

KPMG, 1 Stokes Place, Stephen's Green, Dublin 2.

Credit Suisse Guernsey Limited, PO Box 368, Helevetia Court, South Esplanade, Saint Peter Port, Guernsey and finally Credit Suisse Fides Limited, PO Box 122, Helevetia Court, South Esplanade, St. Peter Port.

A. Correct.

Q. The next matter the Tribunal asked you to consider was the date on which the individual accounts were closed. That's the seven accounts that you have already identified.

A. Correct.

Q. And you stated the following: A review of the files, the account appears to have been closed or in some cases ceased to deal in or around the following dates.

The Aurum Nominees account 333006, that's the number 6 account which you have already given evidence on, the account was closed on or about 18th September, 1995. I think you dealt with the closure of that account in some detail in the evidence that you previously gave.

A. I did indeed.

Q. I think in that case, the balance on the account was

transferred to Irish Intercontinental Bank.

A. It was.

Q. I think the Tribunal also heard evidence from Mr. Collery at the time that the net proceeds were ultimately credited to a bureau account, an S8 sterling account. Then the next account, account Overseas Nominees Limited, you state that this account purchased two securities on the 7th September 1989, that no other transactions were executed through the account as far as you can ascertain.

A. Correct.

Q. So there appears to have been just a one-off, as you refer to it, transaction involving the purchase of stocks.

A. Yeah.

Q. And the third account, Aurum Nominees account 333034, you state that this account was closed in or around 8th February of 1994. And I think in fact that was the largest of the accounts, is that correct?

A. It was.

Q. On which there was an approximate balance of œ970,000?

A. That was the balance that was transferred into the account. That balance could have been larger at the time the account was closed.

Q. The next account Aurum Nominees account 333071, you state that this account was closed in or around the 14th July 1995. Next one is Aurum Nominees account 333097, you state that this account purchased securities on the 19th and 24th September 1991 in or around July 1992, the stocks

appear to have been transferred into another nominee name not under the control of NCB.

A. Correct.

Q. And by that, do you mean that the NCB account was closed and that those stocks which weren't sold were then transferred into another nominee holding company?

A. They were.

Q. So that as and from that date, NCB would no longer have had control of those stocks?

A. Correct.

Q. The next account Aurum Nominees account 333107, you state that the account purchased securities on the 11th and 18th March 1992. In or around July 1992, the stocks appear to have been transferred into another nominees name not under the control of NCB. So the position in the case of this account is the same as the position in the case of the account that you have just mentioned?

A. It does appear to be that way.

Q. And then final Aurum Nominees account 333120, you state that this account was formally closed on the 20th October 1997, and I think that was the last of the account to be closed with NCB and given that it was the 20th October 1997, I think it appears that that would have been after the report of the McCracken Tribunal and just after this Tribunal itself was established.

A. Yes.

Q. You say that in relation to that account, some dividends

were received into the account subsequent to that date and have since been paid out to the client?

A. Correct.

Q. Then the final matter which the Tribunal asked you to address in your evidence is details of all dealings of NCB relating to these accounts with the late Mr. J. Desmond Traynor, the late Mr. John Furze, Mr. John Collins, Mr. D Padraig Collery, Ms. Joan Williams, Mr. Sam Field-Corbett or any other person whatsoever. And you state that in as far as you can ascertain, having regard to the passage of time and the fact that a number of people who would have had handled aspects of the administration and dealing requirements of these accounts no longer worked with NCB, you believe that the details of all the dealings are contained within the documentation already supplied to the Tribunal.

A. I do.

Q. And I take it that if anything arises from that documentation, you'd be in a position to deal with it in evidence if requested?

A. Absolutely.

Q. Thank you very much.

CHAIRMAN: Thank you very much, Mr. Keilthy, for your work in making that evidence available.

A. Thank you.

THE WITNESS THEN WITHDREW.

OPENING STATEMENT:

MR. COUGHLAN: This portion of the Tribunal sittings will be concerned to a significant degree with evidence from Central Bank witnesses. The Tribunal has already heard evidence from the Central Bank witnesses in a number of earlier sittings. That evidence concerned exchange control issues. It was relevant from two points of view: Firstly, the evidence was relevant in connection with the manner in which transactions involving Mr. Charles Haughey on the one hand, and Mr. Michael Lowry on the other, were carried through in what would appear to have been a way which infringed exchange control regulations. The evidence was relevant not only in connection with the apparently irregular manner in which the transactions were carried out, but in the case of Mr. Charles Haughey, in connection in the manner in which the late Mr. Desmond Traynor conducted certain transactions relating to Mr. Haughey.

In the opening statement at the commencement of the Tribunal's last sittings, it was indicated that the Tribunal proposed to lay out, so far as it felt it was necessary and practicable, the operation of the accounts which have come to be known as the Ansbacher accounts; the conduct by the late Mr. Desmond Traynor and the people who took over from him of banking operations, firstly in the bank-within-a-bank at Guinness & Mahon, and from 1989 onwards, in the bank conducted in the premises of CRH and

after that, in the banking operations conducted from the premises of Management Investment Services at Winetavern Street.

From the Tribunal's investigations into these matters, it appears that the accounts now known as the Ansbacher accounts were conducted in conditions of ever-deepening secrecy from about 1970 onwards; that the secrecy surrounding the accounts was reflected not only in the increasingly more opaque codes used to describe operations carried out on the accounts, but also in the marked reluctance of Mr. Desmond Traynor to allow scrutiny by any authorities, whether internal that is in the form of company inspections in Guinness & Mahon or external, in the form of inquiries made by statutory agencies such as the Central Bank.

These sittings have been adjourned to enable the Tribunal to enlarge on information which had come to hand at the outset of the sittings. It will be recalled that in the outline statement made on the 27th January last, I indicated that certain documents had been made available to the Tribunal consisting of an exchange of correspondence between the Central Bank and Guinness & Mahon in 1976 and 1978 in connection with issues which arose in the course of on-site inspections by Central Bank officials. That correspondence was no longer on the records of Guinness & Mahon but with the consent and cooperation of Guinness &

Mahon, the Central Bank was released from its statutory obligation of confidentiality concerning the documentation with the result that the letters were made available to the Tribunal by the Central Bank. These letters indicated that the Governor of the Central Bank had expressed concern to Guinness & Mahon concerning its activities in connection with its subsidiaries operating in offshore tax havens. At the time, reference was also made to information made available to the Tribunal by a former official of Guinness & Mahon that where queries were raised by Central Bank inspectors concerning arrangements involving activities of the subsidiaries in offshore tax havens, these queries were referred to Mr. Desmond Traynor who, in furnishing information to the Central Bank inspectors, made it clear that he was relying on their obligations of confidentiality and secrecy so as to ensure that any suspicions or concerns they had concerning the true nature of these arrangements were not brought to the attention of any other state agencies.

As a result of further inquiries carried out since that time, it became clear to the Tribunal that it would be necessary to secure a full waiver from Guinness & Mahon to the Central Bank and from any other third parties likely to be involved, so as to enable the Tribunal to form a complete picture of the relationship between the Central Bank and Guinness & Mahon in the years during which

Guinness & Mahon was under the effective control of the late Mr. Desmond Traynor. From the information which has now come to hand in response to the widening and deepening of these inquiries, it would now appear that evidence from Central Bank witnesses will be relevant on a number of different fronts. Firstly, it will be relevant in enabling the Tribunal to enlarge on its understanding of the operation of the Ansbacher accounts. Some of this evidence concerns the ends to which Mr. Traynor was prepared to go so as to avoid scrutiny and indeed to divert the attention of scrutineers, ultimately extending even to misleading the statutory investigators, namely the Central Bank.

Secondly, the evidence to be given by Central Bank witnesses will also enable the Tribunal further to understand the nature of and the mechanics of the operations being conducted by Mr. Traynor and of the services being made available to his various customers or clients in this country, involving the use of offshore deposits to back loans within this country. This evidence is also of relevance in understanding the extent to which Mr. Traynor, the financial adviser to Mr. Haughey, may have been involved in highly irregular financial practices.

The additional information which has become available to the Tribunal will also enable the Tribunal to focus some attention, in the course of these sittings, on an aspect of

the Tribunal's Terms of Reference to which little or no specific attention has been paid to date. These are the matters referred to in subparagraph (n) and subparagraph (p) of the Terms of Reference which are as follows:

"And further in particular in light of its findings and conclusions, to make whatever broad recommendations it considers necessary, or expedient.

(n): For enhancing the role and performance of the Central Bank as regulator of the banks and of the financial services sector generally.

(p): For the protection of the State's tax base from fraud or evasion in the establishment and maintenance of offshore accounts and to recommend whether any changes in the tax law should be made to achieve this end."

At this point, it may be of assistance if I set out in general terms the role of the Central Bank in Irish financial affairs and the peculiar and particular position in which Central Bank officials find themselves in discharging this role, having regard to the provisions of the Central Bank Acts, and the regulations governing the activities officials of the Central Bank since the foundation of that institution.

The Central Bank was established by the Central Bank Act 1942 and is regulated by that Act as amended by subsequent Acts passed in 1961, 1964, 1971, 1989, 1997, and 1998.

The Central Bank was established as the National Monetary Authority responsible for the formulation and implementation of monetary policy, management of the exchequer rate and official external reserves, provision of notes and coins, supervision of banks, building societies and other financial institutions and the financial and capital markets. Historically, it had a number of other roles, including safeguarding the integrity of the currency and regulating credit in the interest of the people as a whole.

One of the Central Bank's more active day-to-day roles since its foundation was as an agent of the Department of Finance, in the administration of exchange control regulations. This was not, strictly speaking, an original statutory role of the Central Bank but rather a role which arose as a result of an explicit delegation by the Minister for Finance of his statutory power of administering the exchange control regulations and those exchange control regulations were abolished at the end of 1992.

The Tribunal is concerned mainly with two roles of the Central Bank, the exchange control role I have just mentioned, and the banking supervisory role. It is with this latter role with which these sittings will deal mainly. This latter role is one which has expanded very significantly with the increase in the type of credit institutions subject to supervision in recent years and

with the increase also in the number of institutions, in particular, since the inception of the International Financial Services Centre in 1987.

Banking supervision has been a major part of the Central Bank function since 1971 and the period under examination in the course of these sittings is from in or about 1976 until in or about 1992 with particular emphasis on the periods from 1976 to 1982. Ultimate responsibility for the supervisory and other roles of the Central Bank rested with the board, which comprises a Governor and nine non-executive directors. The sole shareholder and therefore the owner of the bank is the Minister for Finance. The Governor of the bank is appointed by the President on the advice of the Government for a term of seven years and may be reappointed. Since Ireland's entry into the EMU, the Governor is ex officio, a member of the governing council of the European Central Bank and as Governor, has statutory responsibility for the performance by the Central Bank of ESCB-related functions, powers and duties.

The directors of the Central Bank are appointed by the Minister for Finance for a renewable fixed term of five years. Two of the directors may be in the permanent service of the State. The practice of successive ministers for finance has been to appoint only one such director and he is referred to as a Service Director.

The role of the Governor differs from that of the chairman of a limited liability company and from that of most chairmen of incorporated or unincorporated bodies. Whereas in the ordinary way, the position of chairman is invariably a non-executive one, the Governor of the Central Bank is, in fact, the only executive member of the Board of the Bank and, as provided for in the Central Bank Act of 1942, it is the Board's practice to delegate powers to each Governor for the operation of his appointment, for the exercise and performance of all functions, powers and duties of the Bank, with the exception of those which it would either not be possible to, or appropriate to delegate. The delegation is on the basis of an affirmation by the Governor that in exercising the authority delegated to him, he will follow the established practice of consulting the Board as far as possible on all major decisions and matters of policy and that he will faithfully interpret the Board's attitude to the best of his ability. The position of the Governor, therefore, is akin to that of the chief executive of a commercial entity coupled with the role of an executive chairman of a Board of directors where exceptionally the Board of directors delegates to him most of their powers.

The management and staff of the Bank are appointed by the Governor, who consults the Board regarding the appointment of the Director General and Secretary, who are the two most

senior executives next after the Governor himself. The Director General chairs meetings of a Management Board which comprises the Secretary, who is the Deputy Director General, and five Assistant Director Generals. This management coordinates the planning, budgeting, resourcing, and management review processes of the Bank and the director general reports to the Governor on these matters. Day to day management of the Bank, therefore, is in the hands of the management subject to the overall control of the Governor. While this structure describes the current configuration of management at the Central Bank, it appears that in principle, a similar structure has existed since the establishment of that Bank.

The Central Bank has informed the Tribunal that the objectives of Bank supervision can be classified into two main areas: Firstly, protecting the stability of the banking and financial system of Ireland as a whole this is referred to as the macro prudential/systemic issues and secondly, providing a degree of protection to depositors with individual banks and this is referred to as micro prudential issues.

While the Bank has, from time to time, set down non-statutory criteria and standards by reference to which its supervisory function is discharged, it will not be necessary to detail these for the purposes of the matters under consideration at these sittings.

The supervisory process has been described by the Central Bank as being interactive in nature. It entails a dialogue between the Central Bank and the supervised institution and is based on a principle of cooperation with the Central Bank by the Board of Directors and management of the supervised banks. In other words, the Central Bank regards the Board of Directors of supervised banks as having responsibility for the affairs of their respective banks and expects to be able to place reliance upon the correctness of information furnished to the Central Bank by the boards and management of licensed supervised banks. The supervisory procedures employed by the Bank are described as being both quantitative and qualitative in nature. With regard to these two features of the supervisory process, the Central Bank has stated: "The principle quantitative procedures that are followed with respect to any supervised Bank are in monitoring and review by the Central Bank of compliance by that Bank with the published licensing requirements and standards that relate to matters such as minimum capital and liquidity levels, large exposure to individual borrowers or to an associated group of borrowers, lending to connected parties, for example, directors, and lending to individual economic sectors, concentration of deposits and acquisition of interest by banks and other entities or by other entities in banks.

"Qualitative assessment is, by its nature, more subjective. However, an informed basis for qualitative judgments, particularly as regards cooperate policy and its implementation, is provided by having access to an institution's books, records and key personnel and regular review meetings and in the course of on-site inspections to a regular flow of detailed financial data."

The Central Bank, in other words, looks at the financial state and condition of a Bank for the purpose of making a quantitative assessment and looks at the quality of its management and the quality including, in particular, the integrity and professional standards and standing of its management for the purpose of its qualitative assessment.

The supervision of licensed banks involves, from time to time, on-site inspections or examinations by Central Bank officials involving attendance by those officials at the premises of a licensed Bank and the review of papers and files in the Bank, the interviewing of Bank management and staff, and, if necessary, Bank directors and the raising of issues with Bank management and directors. This can result in extensive debate between the Central Bank and a supervised Bank, concerning issues arising in the course of an inspection. On the completion of an inspection, and if necessary, any debate arising out of the results of the inspection, a report is prepared. This report is called an inspection or Examination Report and it is for the

attention of senior management of the Central Bank and is not normally made available or brought to the attention of the supervised Bank. In the ordinary way, it would appear that the Report is considered by Senior Management of the Central Bank and is not normally brought to the attention of the Board of Directors or the Governor of the Central Bank. It is not clear to the Tribunal from information made available to the Tribunal by the Central Bank what criteria exist, if any, whereby Senior Management would determine whether consideration of an Inspection Report ought to be referred for the attention of the Governor and/or the Board of the Central Bank.

Following consideration of an Inspection Report, the Central Bank would normally communicate with the Chairman of the relevant Bank about matters of significance which the Central Bank wished the supervised Bank to address and where monitoring of any of these matters was required, then there would be an ongoing contact or correspondence between the parties.

I now propose to deal with certain matters concerning events which occurred between 1976 and 1992 and, more particularly, between 1976 and 1982 in the context of the relationship between the Central Bank and Guinness & Mahon.

Before setting out the information available to the

Tribunal concerning those events and bearing in mind that issues may arise concerning the response by the Central Bank to those events, two aspects of the operation of the Central Bank should be mentioned at this point. They are, firstly, the role of the Central Bank in the administration of the exchange control and the impact on Central Bank officials of the oath of office, by which all Central Bank officials were bound until the coming into effect of the 1989 Act, and the impact of the 1989 Act and in particular, section 16 of that Act.

The Central Bank had no inherent or indigenous statutory role in the context of exchange control. Exchange control was a matter remitted by statute to the Minister for Finance. The Minister for Finance, however, had the power to delegate his responsibility for exchange control and by a letter to the Central Bank in 1965, the Minister appointed the Central Bank as his agent to administer exchange control and in delegating that power to the Central Bank, in addition, he delegated to it a further power on the Bank's part in certain circumstances to sub-delegate to other agents, including the commercial banks. In administering exchange control regulations, the Central Bank therefore were acting purely as agent for the Minister for Finance and not acting in the fulfillment of any of its functions under the Central Bank Acts.

In the discharge of functions under the Central Bank Acts,

officials of the Central Bank, including the Governor and every Director, were bound by an oath of secrecy in the following terms, until 1989: And the oath read:

"I... do solemnly swear that I will not disclose any information relative to the business, records or books of any Bank which may come to my knowledge by virtue of my position as Governor or a Director or an Officer of the Central Bank of Ireland except to such persons only as shall act in the execution of the Statutes regulating the said Bank and where it shall be necessary to disclose the same to them for the purposes of any such statute."

With the passing of the Central Bank Act 1989, the taking of this oath ceased to be a feature of the holding of any office in the Central Bank, though it is a question as to whether it continued to bind those by whom it had already been taken. The confidentiality regime applying thereafter was laid down in section 16 of the 1989 Act which provided that no Governor, Director, or Officer or servant of the Central Bank could disclose any information concerning the business of any person or body which came to his knowledge by virtue of his office or employment except in the exceptional circumstances mentioned in the statute. A breach of Section 16 of the 1989 Act is a criminal offence. While under recent legislation, specific duties of disclosure were imposed on officials of the Central Bank, the wider regime of confidentiality established by

section 16 continues to operate.

It would appear that this confidentiality regime is not unique to this jurisdiction and it is feature of supervisory regimes governing financial regulation in all European Union States and indeed is a feature of most international banking regulatory regimes.

With the cooperation of Guinness & Mahon, the Central Bank has made available to the Tribunal a large volume of material dealing with on-site inspections from 1976 to 1982 and thereafter. From this material, the following picture of Central Bank supervision at Guinness & Mahon appears to emerge:

The first on-site inspection of Guinness & Mahon by the Central Bank took place in 1976. After the inspection was completed, but before the Central Bank Report was finalised, a meeting was arranged between Guinness & Mahon and the Central Bank on the 20th May 1976. Mr. John Guinness, Mr. Traynor, Mr. Maurice O'Kelly and Mr. Michael Pender attended the meeting on behalf of Guinness & Mahon. The Central Bank was represented by Mr. B. Daly, Mr. Adrian Byrne and Mr. J. Rockett. The purpose of the meeting was to discuss the main findings of the examiners before finalising the Report. It appears from the Central Bank minute of the meeting that the matters discussed included Guinness & Mahon's offshore activities. Mr. Daly, from the Central Bank, expressed the concern of

the Central Bank about the significant offshore activities engaged in by Guinness & Mahon through its subsidiaries which, it would appear, had, as their main objective, the provision of assistance to tax avoidance. This was denied by Mr. Traynor who indicated that the subsidiaries were all deposit-taking institutions who offered full banking services and that their main income was derived from executor and trustee business.

The Examination Report, which was confidential to the Central Bank, which sets out the results of the on-site inspection into Guinness & Mahon as of the 29th February 1976, dealt extensively with Guinness & Mahon's offshore subsidiaries and their activities. At page 6 of the Report, the offshore subsidiaries are identified together with the level of deposits held in their name with Guinness & Mahon. In the case of Guinness & Mahon Cayman Trust, the level of deposits was œ14.3 million. In the case of Guinness Mahon Channel Islands, the level of deposits was œ2.8 million. And in the case of Guinness Mahon Jersey Trust, the level of deposits was nil. The Central Bank Report recorded that the Central Bank inspectors were satisfied from their conversations with Mr. Traynor that a major part of the activities of these subsidiaries was receipt of funds on which taxation had been avoided. At paragraph 5 of the conclusions of the Report under the heading of "Offshore Subsidiaries", the Report stated that

Guinness & Mahon were, in effect, offering a special service which assisted persons to transfer funds on which tax had been avoided to offshore tax havens. In that context, the Report concluded that the possibility of Guinness & Mahon abusing its position as an authorised dealer in providing the service could not be ignored. The paragraph in the Central Bank Report also included the following statement:

"In view of the delicate nature of these matters, we did not pursue the matter further."

The Central Bank Report contains further comment in relation to Guinness & Mahon's offshore subsidiaries at page 15 of the Report. This part of the Report sets out a detailed history of the establishment of Guinness Mahon Cayman Trust in June of 1972, and the manner in which funds placed with Guinness Mahon Cayman Trust were used to secure or back loans advanced by Guinness & Mahon to Irish customers. In this connection, the Report recorded the initial reluctance of the directors of Guinness & Mahon to provide the Central Bank with information about the activities of the offshore subsidiaries. This was because of fears that the information might be conveyed to the Revenue Commissioners. It appears, however, that the Central Bank were given sight of copy security documents regarding the back-to-back arrangements but were requested not to note the names in which the deposits were held to

which the Central Bank inspectors agreed. The Report also noted Mr. Traynor's assurance that no funds from Ireland had been transferred to the Cayman Islands since the 22nd June 1972, but that deposits held by Guinness Mahon Cayman Trust with Guinness & Mahon had increased by œ4.7 million to œ14.3 million during the preceding 12 months, which the Central Bank inspectors were assured that the increase resulted from deposits which were sourced in the United States of America and Jamaica.

There then followed an exchange of correspondence between Mr. Charles Murray, the then Governor of the Central Bank, and Mr. John Guinness, the Chairman of Guinness & Mahon. Mr. Murray, by letter dated 9th September 1976, outlined the points of concern to the Central Bank which had emerged in the course of the inspection. These included the operation of Guinness & Mahon's offshore subsidiaries. Mr. Guinness responded to the substance of the points raised in the letter of the 26th November 1976, in which he stated that he was not happy with the Central Bank's understanding of Guinness & Mahon's situation and requested an opportunity of discussing the matter with Central Bank personnel.

It appears that a meeting was arranged for the 8th February 1977, which was attended by Mr. Traynor and Mr. O' Kelly on behalf of Guinness & Mahon, and Mr. T. O'Grady-Walsh, the deputy general manager of the Central Bank and Mr. B. Daly

on behalf of the Central Bank. From the Central Bank minute of the meeting, it appears that five topics were discussed which included the issue of tax havens. It appears that Mr. Traynor outlined in some detail the operation of the offshore subsidiaries and stressed that they were basically trust companies but that a proportion of the assets which they managed were deposited directly with Guinness & Mahon. Each of the subsidiaries had banking status and Mr. Traynor emphasised that funds were not placed on deposit with them for the purpose of tax avoidance or tax evasion. It appears that Mr. O'Grady-Walsh and Mr. Daly were not entirely satisfied with Mr. Traynor's explanation, as they agreed that they would raise the matter again with Guinness & Mahon at a later date.

The next on-site inspection of Guinness & Mahon took place in 1978. Prior to that inspection, the issue of Guinness & Mahon's backed loans arose in a different context. It appears that under Central Bank regulations, a licensed Bank is required to maintain a free resources ratio of approximately 10 percent. The free resources ratio relates to the requirement of 1975 published standards of the Central Bank that a licensed Bank should maintain a level of capital employed which the Central Bank considers appropriate in relation to its business ownership and standing. The Central Bank, under the 1975 standards, regarded a free resources ratio of 10 percent as the norm,

though it indicated that it would exercise discretion in determining the specific levels appropriate to the circumstances of banks in different categories. This free resources ratio required that for every œ100 worth of loans made by a licensed Bank, it should have not less than œ10 worth of capital. In the ordinary way, a loan backed by a cash deposit would be regarded as a non-risk asset for the calculation of the free resources ratio, i.e., in other words, the existence of these loans should not have warranted any increase in the capital of the Bank at the rate of œ10 of capital for every œ100 lent.

At a meeting on the 25th January 1978, which was again attended by Mr. Traynor and Mr. O' Kelly on behalf of Guinness & Mahon, Mr. Traynor referred to the backed loans which he valued at œ4 million and which were secured by deposits placed with Guinness Mahon Cayman Trust and he wondered if the Central Bank would consider these loans as non-risk for the purpose of calculating the free resources ratio. It appears that the matter was considered by the Central Bank which decided that the backed loans should continue to be regarded as risk assets. This was communicated to Mr. Traynor by telephone on the 23rd March, when he was also advised that Mr. O'Grady-Walsh might wish to discuss the tax aspect of the loans at a later date.

In the course of Central Bank's consideration of Mr. Traynor's request that the backed loans be treated as

non-risk, a number of internal memoranda and working documents were prepared which recorded the information provided by Guinness & Mahon to the Central Bank regarding the operation and mechanics of the loans. It appears from those documents that the Central Bank concluded that the means by which the loans were secured were designed as a tax avoidance scheme. In a further document headed "Recommendations" the Central Bank concluded:

1: From the information available, it would appear that the loans were secured by a cash deposit and, as such, form a normal back-to-back arrangement. However, the fact that the Bank takes such extreme precautions to keep the existence of the deposits secret from the Revenue Commissioners indicates that the Bank might well be a party to a tax avoidance scheme. Should this be the case, and the Bank accepts the right of set-off for the purpose of calculating the free resources ratio, the Bank would be placed in a very embarrassing position should the Revenue authorities ever become aware of the situation. It is therefore recommended that the Bank does not accept a right of set-off for the purpose of calculating the free resources ratio.

Now, when I use the term Bank there, I am referring to the Central Bank and it is that the Central Bank would be placed in an embarrassing position should the matter ever come to the notice of the Revenue authorities and the

recommendations that it should not be taken into account in calculating the free resources ratio.

When this document comes to be looked at in the course of the evidence from Central Bank witnesses, it will appear clear that the reference to a tax avoidance scheme had first been typed in the Report as reference to a tax evasion scheme and that this was crossed out and the word "avoidance" was written in on the document.

The second on-site inspection of Guinness & Mahon took place in 1978, and examined the affairs of Guinness & Mahon as of the 30th April 1978. Prior to the Report being finalised, a meeting similar to the meeting arranged prior to the 1976 report took place on the 13th September 1978. The meeting was attended by Mr. Traynor and Mr. Maurice O'Kelly for Guinness & Mahon and by Mr. B. Daly, Mr. Adrian Byrne and Mr. J. Fitzgerald of the Central Bank. The minutes of the meeting record that the Central Bank was not happy at the extent of Guinness & Mahon's involvement in back-to-back loans and took the view that the schemes were not in the national interest. The Central Bank was considering whether to request Guinness & Mahon to wind down its activities in that particular area. It appears that Mr. Traynor added that it was not correct to state that Guinness & Mahon were involved in any tax avoidance schemes; that the schemes to which the Central Bank were referring were devised and arranged by the Bank's customers

and their financial advisers; that the Bank merely informed its customers of the existence of the banking facilities available in Guernsey and which were formerly available in the Cayman Islands. Mr. O' Kelly appears to have commented that Bank managers of the associated banks advised customers to deposit funds in their branches in the UK for the purpose of tax avoidance and queried as to whether the Central Bank was also considering taking action in those cases. The Central Bank confirmed that it was unhappy with tax avoidance schemes generally. The 1978 Examination Report, in common with the 1976 Report, was a confidential document and was not released by the Central Bank to Guinness & Mahon. The Report also focused on the offshore activities of Guinness & Mahon's subsidiaries. A summary of the main findings of the Report appeared on the first page and the first item listed was, "The Bank is participating in taxation avoidance arrangements."

The taxation avoidance scheme also featured as the first matter in the conclusions and recommendations of the Report which concluded that Guinness & Mahon had advanced loans amounting to œ5.5 million to customers which were secured by deposits placed with Guinness Mahon Cayman Trust or Guinness Mahon Guernsey Limited. The recommendations repeat the assertion that the deposits formed part of tax avoidance schemes. The full extent of Guinness & Mahon's involvement in the schemes was difficult to determine.

The inspectors were of the view that while the provision of advice on tax avoidance within the law might be an acceptable part of the work of any Bank, it was not, in their view, appropriate or ethical for a Bank to participate in, as distinct from giving advice on tax avoidance schemes. The inspectors suggested that Guinness & Mahon should cease its participation in these schemes.

Appendix 10 to the 1978 Report listed the major loans backed by deposits held in Cayman/Guernsey trust companies. These amounted in total to œ5,002,000 and were backed by deposits amounting to œ3,799,208. The smallest loan listed was œ9,269, and the largest loan listed was œ1,179,486. Following the Examination Report, a meeting was arranged on the 7th March 1979 purely for the purpose of discussing Guinness & Mahon's offshore activities and the Central Bank's concerns about them. Mr. Traynor and Mr. O' Kelly attended for Guinness & Mahon and Mr. B. Daly and Mr. Adrian Byrne attended for the Central Bank. It appears from the Central Bank minutes that Mr. Daly acknowledged that a significant portion of international business was conducted through offshore subsidiaries and that this did not concern the Central Bank. The Central Bank's sole concern related to the fact that Guinness & Mahon had advanced loans in excess of œ5 million to Irish customers which were secured partly or wholly by deposits placed with offshore subsidiaries through discretionary trusts. Having regard to the complex manner in which the

loans were secured and the secrecy surrounding the existence of the security, the Central Bank could see no logical reason for the arrangements other than to assist customers to avoid tax and reiterated its view that it was not appropriate for Guinness & Mahon to be engaged in such a significant way in tax avoidance schemes.

Mr. Traynor asserted that discretionary trusts of the kind used in the back-to-back schemes were used for a large number of legitimate reasons; that they were used extensively by multinational companies as a means of transferring assets from one country to another; and that they had also been used extensively in this country in the past as a legitimate method of reducing a state duty liability. Mr. Traynor also stated that due to the introduction of exchange control as between the sterling area and the Cayman Islands, no new loans had been granted since 1972 where deposits held in the Cayman Islands formed part of the security, and that the introduction of new exchange control regulations would effectively end the provision of loans backed by deposits held in the Channel Islands. It appears that the Central Bank accepted an assurance given by Mr. Traynor that the level of loans was likely to be reduced in the future. In these circumstances, the minutes of the meeting noted that the Central Bank did not wish to pursue the matter further in light of Mr. Traynor's assurances.

The next meeting at which the topic appears to have arisen was on the 9th August 1979. The meeting was attended by Mr. Traynor and Mr. Maurice O'Kelly and by Mr. D. McCleane, Financial Director of Guinness & Mahon. Mr. B. Daly and Mr. N. Kennedy attended for the Central Bank. The matters under discussion at the meeting primarily related to Guinness & Mahon's loan portfolio. Reference was again made to Guinness Mahon Cayman Trust, the placing of assets in trusts operated by Guinness Mahon Cayman Trust, and the provision of those trusts to back loans advanced by Guinness & Mahon in Dublin. It appears from the Central Bank minutes that Mr. Traynor stated that there had been little increase in the activity of Guinness Mahon Cayman Trust in the previous few years, and he did not think that it would grow any further. The appendices to the minutes of this meeting included a list of Guinness & Mahon's 20 largest loans as of the 30th April 1979. This included five of the loans which had been listed in Appendix 10 to the 1978 Report which, it will be recalled, comprised the major loans backed by deposits held in Cayman and Jersey Trust Companies. It also included, at number 12, a loan for œ437,265 which was described in Appendix 3 as being a loan backed by a deposit. The loan at number 13 for œ423,350 was not disclosed in the appendices as being a backed loan but from information provided to the Tribunal, it would appear that this loan was secured in that fashion. Notwithstanding that, it should have been

apparent to the Central Bank that Guinness & Mahon was not providing complete information regarding the level of backed loans. It appears that the matter was not pursued.

A formal review meeting was held by the Central Bank with Guinness & Mahon on the 21st February 1980. The matter of loans secured by offshore deposits was not adverted to during the course of the meeting and no query appears to have been raised with Mr. Traynor regarding the assurance given by him at the meeting on the 7th March 1979, that the level of these loans would not increase and would be likely to reduce.

A further review meeting was held on the 7th October 1980 and yet again there was no reference to the backed loans or to any of the concerns expressed by the Central Bank inspectors in 1978. One of the topics which it appears was discussed at the meeting was Guinness & Mahon's loan portfolio.
Appendix 2A to the minutes of the review meeting comprises a list of comments on Guinness & Mahon's larger loans.
The top loan, which stood at œ3,116,000, was described in the following terms:
"Substantial cash deposit no concern."

This loan for over œ3 million had not been disclosed in Appendix 10 to the 1978 report. The loans listed at 3 and

4 of the appendix which stood at œ795,000 and œ1,601,000 as of the 31st August 1980 were included in the list in Appendix 10 and in the two-year period, the first of these loans had increased by œ200,000 and the second of the loans had increased by œ422,000. While the disparity in the level of loans as between 1978 and 1980 should have been apparent to the Central Bank, it appears that despite the inspectors' concerns, that is the earlier concerns in the Report of 1978, no query was raised with Mr. Traynor regarding his assurance to reduce those loans.

A further review meeting took place on the 29th April 1981. The principal matter under discussion at that meeting appears to have been the level of Guinness & Mahon's lending. The two most substantial loans which appear to have been discussed in the course of the meeting were a loan for œ6,939,000 and a loan for œ3,745,000. The first of the loans had been disclosed in Appendix 10 of the 1978 Report at which the time the loan was quantified at œ1,179,000. It appears that the Central Bank was informed that as regards this loan, the company had US $9 million on deposit in Guinness Mahon Cayman Trust but that there was no formal guarantee. The second most sizable loan, which then stood at œ3,745,000 was the loan which had been disclosed in Appendix 2A to the earlier review at which time the loan had stood at œ1,932,000. Yet again, it would appear that the increased level of these loans was not drawn to the attention of Mr. Traynor, despite his

assurances that the level of the loans would not increase.

The third on-site inspection of Guinness & Mahon by the Central Bank took place in 1982 and an Inspector's Report was prepared as of the 31st August 1982. In common with the early Reports, this Report was an internal confidential document and was not released to Guinness & Mahon. The Report commenced with a summary of the results of the previous inspections in 1976 and 1978. Despite the fact that the offshore activities of Guinness & Mahon had featured as the headline finding of the 1978 inspection, there was no reference whatsoever to these matters in the summary contained in the 1982 Report. It appears that in its dealings with the Central Bank in 1982, Guinness & Mahon had distinguished between back-to-back loans and offset loans. The former were estimated as amounting to approximately œ2 million. The latter were distinguished as loans granted by Guinness & Mahon on the security of deposits held in the Cayman Islands, mainly to US residents. In the body of the Report, the major back-to-back loans were listed as comprising three loans, all of which had been disclosed in Appendix 10 to the 1978 Report. However, the loans which featured in the 1981 review meeting were not included in the Report.

A meeting was held on the 12th January 1983 to discuss the outcome of the 1982 inspection. In the course of the

meeting, it appears that Mr. Adrian Byrne, from the Central Bank, referred to the commitment given by Mr. Traynor at the meeting in 1979 to reduce its involvement in back-to-back lending. It appears that Mr. Traynor stated that there had been no increase in the level of that type of lending and that he would provide a list of loans under this heading to the Central Bank. Guinness & Mahon have not as yet been able to identify any list which might have been provided to the Central Bank by Mr. Traynor, nor has the Central Bank as yet produced any such list.

While what I have set out above is an outline of the information which has been made available to the Tribunal from documentation furnished by the Central Bank, there are some further aspects of the relationship between Guinness & Mahon and the Central Bank to which I should now refer.

Time and again, mention has been made in the course of the Tribunal's sittings of the expression "suitably secured" to indicate, in a coded way, the existence within Guinness & Mahon of an offshore backing deposit securing onshore borrowing, usually by Irish residents. It will be recalled that the Central Bank was assured by Mr. Traynor that the use of offshore deposits in this way would be wound down as a result of concerns expressed by the Central Bank in 1976 and 1978 and while it appears that there was no winding down of the deposits for the purpose of backing loans, the use of the expression "suitably secured" was

discontinued from in or about November of 1978. However, while the expression does not seem to have been used in 1979, 1980 or 1981, it appears that from in or about 1982, a similar coded expression was used to indicate once again the existence of such an offshore backing deposit. From in or about 1982 onwards, it would appear that the expression "security considered adequate" or similar expressions may have been used for the purpose of indicating back-to-back arrangements. It is possible therefore that inspectors seeking to identify the potential continued reliance on offshore deposits as security for onshore loans might have been deflected or diverted by the discontinuation of the coded expression "suitably secured" and its subsequent replacement with a different term.

Officials of Guinness & Mahon, having conducted further examination of documents in the possession of that Bank, have furnished the Tribunal with material which seems to indicate that after 1978, other measures may have been taken by Mr. Traynor to withhold from the Central Bank information which would have pointed to the existence of backed loans. Guinness & Mahon's records include an internal memorandum dated 23rd August 1982 from Ms. Deirdre Devane, an official of Guinness & Mahon, to Mr. Pat O'Dwyer, who was then loans officer, asking him to provide information which had been requested by the Central Bank including details of the top 20 loans. A request for a

supervised Bank's top 20 loans was a common feature of the supervisory process conducted by the Central Bank. In response, by memorandum of the 26th August 1982 from Mr. Pat O'Dwyer to Ms. Deirdre Devane, Mr. O'Dwyer enclosed a schedule outlining the top 20 loans and further indicated in his memorandum that, as agreed, he had "Intentionally omitted back-to-back situations". Mr. O'Dwyer has informed the Tribunal that he assumes that the agreement mentioned was one made in the course of his work at Guinness & Mahon and can only have been made following a conversation which he possibly had with the late Mr. Traynor.

From the material made available by the Central Bank, it would appear that these additional facts were not known to, nor did they come to the attention of the Central Bank officials conducting an on-site investigation and indeed, it is obvious that it was never intended that this information should come to their attention.

From the foregoing review of the information made available to the Tribunal by the Central Bank, that is of course excluding the information which appears to have been deliberately kept from the Central Bank, it seems clear that officials of the Central Bank carrying out an inspection in Guinness & Mahon had misgivings concerning the activities being conducted by Guinness & Mahon in connection with back-to-back loans secured by offshore or

so-called offshore deposits. The context in which these misgivings arose should be viewed from two standpoints: Firstly, from the standpoint of the quantitative assessment mentioned above, and secondly, from the standpoint of the qualitative assessment. From the point of view of the quantitative assessment, it will be recalled that at the meeting of the 25th January 1978, Mr. Traynor wondered whether the Central Bank would consider the œ4 million worth of the loans made to Guinness & Mahon and secured by deposits placed with the Bank's Cayman Island subsidiary, could be considered as non-risk for the purpose of calculating the free resources ratio.

In reply to Mr. Traynor's request in January of 1978, as I have already indicated, the Central Bank responded that they would continue to regard the Cayman-backed loans as risk assets. In other words, the Central Bank did not treat these loans as properly or regularly secured by cash deposits. The Central Bank therefore was not persuaded to treat them as non-risk assets. This did not, however, exhaust the misgivings of investigating officials and/or of those members of Bank management by whom reports were prepared or received. There was still a degree of concern that the arrangements put in place whereby Guinness & Mahon loans were secured by offshore cash deposits were surrounded by an unhealthy cloak of secrecy.

This pertains, of course, not to the quantitative but to

the qualitative assessment underpinning the supervisory process. The question which arises at this stage is whether, having regard to the response by Guinness & Mahon to the various queries raised by the Central Bank concerning the offshore activities, this should have prompted the Central Bank to form a negative view of Mr. Traynor and his continued involvement as a senior executive and ultimately as the chief executive of Guinness & Mahon. While, from the information available, it would appear that the Central Bank did not learn of the operation by Mr. Traynor of a bank-within-a-bank and, therefore, of his being involved in an activity which was flagrantly in breach of the Bank licensing regulations, the Central Bank officials were nevertheless armed with information which raises the question as to whether they should have acted more vigourously against the Bank and indeed, whether in acting, they might have been alerted to the true extent of Mr. Traynor's activities. In this connection, I want to refer again to the review or outline of the various dealings between the Central Bank officials and the representatives of Guinness & Mahon over the years between 1976 and 1982, with specific reference to those isolated dealings connected with the offshore activities under the control of Mr. Traynor.

In its Examination Report of 1976, commenced on the 5th April 1976, the Bank stated at page 6, paragraph 5, that they were satisfied from their conversations with Mr. J. D.

Traynor that a major part of the activities of Guinness & Mahon's offshore subsidiary activities involved the receipt of funds on which tax had been avoided.

Secondly, the Report stated it would appear that sometime shortly before the completion of the Report on the 26th May 1976, at a meeting held on the 20th May 1976, Mr. Traynor denied that these activities involved tax avoidance.

At page 15 of the Report, the Central Bank noted the reluctance of the directors to give information in relation to the activities of the offshore subsidiaries, because of fears that the information might be conveyed to the Revenue authorities.

In a letter of the 9th September 1976 from Mr. Murray, the Governor, to Mr. J. H. Guinness, the Chairman of Guinness & Mahon, the Central Bank stated that it was concerned at the extent of Guinness & Mahon's involvement through its subsidiaries operating in offshore tax havens. A meeting was held to discuss this matter and at that meeting, Mr. Traynor stated that the funds in question were not placed on deposit for the purpose of tax avoidance or evasion.

In an internal memorandum on the 10th February 1978, the Central Bank noted once again that no evidence of the arrangements made between the Cayman or Guernsey offshore subsidiaries and the Dublin Bank were maintained at the Dublin office as a precaution against physical inspection

by the Revenue. That, of course, was information which was given to the Central Bank by Mr. Traynor of Guinness & Mahon and from the evidence which has been heard from Mr. Collery and other officials of Guinness & Mahon, it would appear that this information was erroneous information furnished to the Central Bank, although the Central Bank was not to know that at the time.

In a further memorandum, again in February of that year, the Central Bank took the view that the precautions taken to keep the existence of these deposits secret from the Revenue Commissioners indicated that Guinness & Mahon might well be a party to tax avoidance schemes. One reading of the Central Bank note suggests that the Central Bank were concerned that there might be evidence of a tax evasion scheme.

The main findings of the Bank's 1978 Report were that Guinness & Mahon was involved in a scheme described as a tax avoidance scheme, but in terms which make it clear that the arrangement involved the Dublin borrower being able to claim taxation relief on interest paid on the borrowing from the Dublin Bank, while presumably he did not pay tax on the interest which he earned on the deposit with the offshore Bank.

It will be observed from the foregoing that notwithstanding Mr. Traynor's assertion that Guinness & Mahon was involved

in neither tax avoidance nor tax evasion, he nevertheless went to great pains, as the Central Bank detected, to avoid scrutiny by the appropriate agencies, including the Revenue Commissioners, and that notwithstanding the various assertions by Mr. Traynor, the Central Bank's view which appears in the 1978 Report was that Mr. Traynor was involved in a scheme which clearly savoured of tax avoidance and, on one reading of the Report, possibly of tax evasion.

It should be recalled that at the meeting held on the 7th March 1979, in response to the Central Bank's concern regarding back-to-back borrowings involving offshore subsidiaries, Mr. Traynor asserted that discretionary trusts, which were a central part of the arrangements, were features of ordinary international commerce and that they were used extensively by multinational companies as a means of transferring assets from one country to another. This is an explanation which would not have impressed any lawyer and at this point, the question is whether, having regard to the fact that they were not prepared to give Mr. Traynor credit for his earlier denials of involvement in tax avoidance, the Central Bank should have given any further credit to his explanation and whether they should not, in fact, have sought the services of an appropriate qualified expert to evaluate the explanations upon which Mr. Traynor relied. Allied to this is the fact that Mr. Traynor, notwithstanding his protestations of non-involvement in tax

evasion or tax avoidance, nevertheless sought to mollify the inspectors by assuring them that the back-to-back arrangements would be wound down. The question which arises is whether it is correct to characterise the relationship between the Central Bank and Guinness & Mahon as one in which the Central Bank did not accept the various conflicting and inconsistent explanations proffered by Mr. Traynor concerning these offshore activities, as one in which the Central Bank did not credit his explanations and, therefore, as one in which the Central Bank should have, on a qualitative assessment, formed a negative view of Mr. Traynor's entitlement to be involved with Guinness & Mahon as a supervised bank.

The next issue which arises in the context of the on-site inspections carried out by the Central Bank concerns the fact that in the 1982 Report, as I have already indicated, there is a reference to loans backed by Cayman deposits and one of these loans was identified as being to a Mr. K. P. O'Reilly-Hyland. At that time, Mr. O'Reilly-Hyland was a director of the Central Bank. From the information made available to the Tribunal, it would not appear that the concerns expressed by the Inspectors regarding the offshore activities of Guinness & Mahon were brought to the attention of the Board of the Central Bank. From the fact that Mr. Murray wrote a letter alluding to the matter to Mr. Guinness, it seems clear that the concerns must have

been brought to his attention as Governor, but it does not appear to have formed any part of the record of the Central Bank Board's deliberations.

A question which arises is whether the involvement of a director of the Central Bank in the back-to-back loan arrangements, which had been the cause of misgiving on the part of Central Bank officials, ought to have been brought to the attention of the Governor and/or the Board of the Central Bank. The issue in this connection is not merely whether the whole question of the back-to-back arrangements and the potential for tax evasion was brought to the attention of the Board of the Central Bank, but whether the specific involvement of a director of that Board ought to have been brought to the attention of the Board. Bearing in mind that apart from the reliance placed by the Central Bank on assurances given by Mr. Traynor that the back-to-back arrangements would be wound down, the Central Bank had taken an overall favourable view of the general banking operations of Guinness & Mahon. In other words, Guinness & Mahon was given a certificate of good health. It is a question as to whether the Board of the Central Bank were aware and if not, whether they should have been made aware of Mr. O'Reilly-Hyland's involvement so as to ensure that the duties of the Board of the Central Bank were discharged properly, bearing in mind that the Central Bank were effectively certifying the continued good standing of Guinness & Mahon. This certification was

being effectively given notwithstanding a concern expressed by the inspectors or examiners about an irregular activity in which one of the Directors of the Board of the Central Bank was involved.

The Tribunal has not yet obtained a statement from Mr. K. O'Reilly-Hyland, but has been informed by his solicitor that Mr. O' Reilly-Hyland will give evidence that prior to his appointment to the Board of the Central Bank in 1973, he informed the then Minister, Mr. George Colley, that he had an offshore trust.

Of course, apart altogether from the information which appears to have been made available to the Central Bank in the course of their various inspections, it now seems that the Bank were expressly misled in a number of material respects, in that; notwithstanding assurances given by Mr. Traynor, the provision of loans backed by Cayman deposits was not wound down; the involvement of Guinness & Mahon in the provision of tax schemes, whether savouring of tax evasion or tax avoidance, did not cease in line with the assurances given by Mr. Traynor. It would appear that in fact as the evidence of Mr. Denis Foley TD shows, Mr. Traynor was still making services available to Irish residents involving the use of offshore tax havens connected with Guinness & Mahon in 1979 and in the following years. As the document entitled "A Note to John Furze" shows, it would appear that the schemes expressly

directed themselves to tax evasion and that this was being touted in Dublin by Mr. Furze and/or Mr. Traynor.

From evidence given to the Tribunal by Mr. Sam Field-Corbett, Mr. Denis Foley TD, Mr. Padraig Collery, the evidence of Mr. Raymond McLoughlin concerning the note to Mr. John Furze, evidence given concerning correspondence from Mr. John Collins to his co-director of Cayman, Mr. Traynor in Dublin, it would appear that the secrecy surrounding the activities of Mr. Desmond Traynor was calculated to enable certain customers of his to evade tax. It is the arrangements whereby these services were made available that have been characterised both in this Tribunal and elsewhere as being in the nature of a bank-within-a-bank. What has been called the bureau system was the mechanism whereby this bank-within-a-bank was administered, whether in Guinness & Mahon's premises in Lower Pembroke Street or in Fitzwilliam Square or Winetavern Street. The Central Bank has stated that it had no knowledge of the existence of this bureau system. The Central Bank has stated that it is anxious that no misunderstanding should arise from the fact that while aspects of the Ansbacher operation, as already outlined by me, had attracted the attention of the Central Bank, it had no knowledge of the existence of the bureau system or memorandum accounts of deposit in the Cayman Islands on the bureau system. This only came to their attention during

the course of the McCracken Tribunal.

It would appear difficult to imagine that where the Central Bank was relying on information made available by officials and directors of a Bank, they could have ascertained the existence of the bureau system. At the same time, it is a question whether the Central Bank should have continued to place reliance on the responses of the directors and of officials of Guinness & Mahon to queries concerning the Ansbacher accounts in light of what would appear to have been their failure to accept the Guinness & Mahon account of these transactions and, in particular, the Guinness & Mahon's protestations that neither tax avoidance nor tax evasion was involved. The question that will be pursued in the course of these sittings is whether the inspectors ought to have taken their investigations of the Ansbacher accounts further, whether, in other words, it is only with the benefit of hindsight that it can be said that a more intensive investigation would have come upon the bureau system or whether, on the facts as they were then available to the Central Bank, they would have come upon it in any case.

I have already alluded to the fact that the officials of the Central Bank were, prior to 1989, bound to take an oath of secrecy and since that date, they are bound by obligations of confidentiality as regards information obtained in the course of their duties. What should be

borne in mind is that where an official of the Central Bank obtained information in the course of his duties concerning tax evasion, suspected tax evasion, or for that matter, tax avoidance, he was not precluded by his oath from acting within the ambit of his duties on that information. What his oath precluded him from doing was from relaying that information to, for example, the Revenue Commissioners, or to any other agency outside the Central Bank. His oath would not, however, have precluded an official of the Central Bank from taking a view of a supervised Bank, or of a director or officer of a supervised Bank, based on the information he had obtained and on an impression he had formed concerning the activities of the kind which appears to have been carried on in Guinness & Mahon. In other words, where the Central Bank formed a view that the directors of a supervised Bank were engaged in activities which were contrary to the national interest or which savoured of impropriety, irregularity or illegality, it would have been open to the Central Bank to request the supervised Bank to remove the relevant director or official from his position or to take action to ensure that he was no longer involved in the activities in question.
Likewise, where the Central Bank formed the view that the high standards of integrity, probity and competence to be expected of bankers were not being maintained, it would be open to the Central Bank similarly to insist on the removal of an official or a director. This would have been

particularly so where the Central Bank had been given differing accounts over a period of time in respect of a particular activity of the Bank and also where it had been given an account which they found unacceptable or unreliable. All of these steps could have been taken by the Central Bank without breach of any oath taken by any official or breach of any statutory duties of confidentiality imposed and could have been done without the involvement of any outside agency or could have been done without relaying information to any outside agency concerning the activities in question and is something which the Central Bank had attempted to do on an occasion prior to their dealings with Mr. Traynor following the 1976 inspection on site.

While the existence of the bureau system, as it has been called within Guinness & Mahon, was detected in the course of an internal audit in Guinness & Mahon in 1989, it appears that this internal audit, for whatever the reason, was not made available to the Central Bank. It is of course the case that since 1989, the Ansbacher relationship with Guinness & Mahon was being wound down and that by 1982, in real terms, it no longer existed.

While much of the information upon which this opening statement is based has only come to the attention of the Tribunal in the last few weeks, it is important to state that in carrying out its investigation, the Tribunal has

been fully facilitated by the Central Bank in any inquiries it has raised with the Central Bank and has been provided with the assistance of the Central Bank in raising queries with former officials and also with current and former officials of Guinness & Mahon, that is, the Bank under supervision in the various Reports.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:50PM:

MR. HEALY: Mr. Adrian Byrne.

ADRIAN BYRNE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Byrne. Mr. Byrne, you are an officer of the Central Bank and can you tell me what your current position is with the bank?

A. Head of banking supervision.

Q. And you have been involved in banking supervision perhaps not as the head or chief official in that section for some time, is that right?

A. Yes, I have been involved in the banking supervision since 1972, when I joined the Bank as its first inspector.

Q. Now, you have made you have provided the Tribunal with a statement of evidence and I think that statement of evidence refers to quite a number of documents and what I propose to do is go through the statement of your evidence and to go through the documents that have been mentioned,

this may take some time, and then it may be necessary to go through some of the reports that were mentioned this morning in an outline statement by Mr. Coughlan and some of the associated documents referred to in the outline statement and I think, am I right in saying that apart from the fact that you are familiar with those documents as the head of that section of the Bank, you were involved either as an inspector or as a reviewer in many of them?

A. I was, that's correct.

Q. You are familiar with all of documents?

A. Yes.

Q. At this stage, perhaps there is something else I should say in connection with those reports and it's this, that the reports that are prepared by the Central Bank are confidential reports prepared by officials for the purposes of such circulation as is warranted within the Central Bank, isn't that right?

A. For internal use within the Central Bank.

Q. And arising from those reports, the Central Bank may or may not decide to communicate with a supervised bank, letting the Bank know of its requirements arising from an inspection, isn't that right?

A. Yes, normally after an inspection, we would write to the chairman of the Bank expressing whatever concerns arose during the course of that inspection.

Q. And we'll be coming back to the details of some of those dealings you had with Guinness & Mahon over the years from

in or about 1976 onwards. Starting firstly with your statement now.

You describe your statement as a statement of evidence made by the Central Bank and by that, I take it that what you are saying is something that the Central Bank as well as you yourself stand over, is that right?

A. Correct, yes.

Q. And it's made to assist the Tribunal by setting out details of such information as was available to the Bank in respect of certain borrowings by Irish resident persons or companies from Guinness & Mahon Limited which had been secured in one form or another by reference to certain deposits held abroad and the view taken by the Bank of such business.

A. That's correct.

Q. This statement refers to and reflects, so far as may be relevant to the matters now under consideration, the contents of two memoranda which were submitted by the Bank to the Tribunal in December of 1997 with respect to firstly, the implications for banking supervision of the Report of the Tribunal of Inquiry (Dunnes Payments), the McCracken Report, and secondly, the role of the Bank as regulator of banks and the financial services sector.

Now, maybe I should also say that between the time when this Tribunal was first established and first began its work, it has been regularly in contact with the Bank in connection with both exchange control issues and

supervisory issues, is that right?

A. That's correct.

Q. And the paper provided by the Bank in 1997 or the memorandum you refer to was intended to address aspects of the McCracken Report which gave rise to concern in the context, I think, of exchange control mainly, is that right, although there were also references to bank supervision?

A. That's right. To a large deposit in particular, yes.

Q. Since that time, the Bank has provided the Tribunal with an amount of other material and also with expert assistance in the context of various queries the Tribunal had concerning exchange control?

A. Yes.

Q. And I think most of the Tribunal's dealings with the Bank over the past while have been in the context of exchange control, isn't that correct?

A. As far as I understand it.

Q. Because you were not, in fact, directly involved

A. That's right.

Q. And it's only since it's only in the recent past, in fact, that you have been involved in detailed discussions with the Tribunal in the provision of assistance and information in the context of the Bank's role as a regulator?

A. That's correct, only over the past few weeks, yes.

Q. You say the Bank is the supervisory authority for Guinness

& Mahon Ireland Limited. The name of that Bank up to 1994 was Guinness & Mahon Limited and it is referred to as G&M and that's how it's frequently referred to in the course of evidence given at these sittings. The information about the affairs of G&M in the period from 1976 to 1989 set out in this statement is drawn from information obtained from G&M by the Bank in the course of the exercise by the Bank in its supervisory functions. Having regard to the statutory obligation confidentiality placed upon the Bank by section 16 of the Central Bank Act 1989, as amended, all information about the affairs of G&M set out is disclosed pursuant to a consent to such disclosure that has been given to the Bank by G&M.

A. That's correct.

Q. So that until that disclosure was made available, the Bank was not at liberty of its own motion to make that information available to the Tribunal?

A. That's correct, yes.

Q. You go on to say, the system of memorandum accounts not forming part of the accounting records of G&M which were maintained by Mr. Traynor and Mr. Collery recording the interests of Irish residents in deposit accounts held with Guinness Mahon Cayman Trust was concealed from the Bank. Prior to the establishment of McCracken Tribunal, the Bank had no knowledge of that system.

A. That's correct, yes.

Q. Now I think what you are anxious to point out here, and I

think this has also been mentioned by Mr. Coughlan this morning, is that you had no knowledge of the recording or administration system used by Mr. Traynor to keep a record of, as you say, the interests of various people within this jurisdiction in deposits held offshore or at least held onshore but in the name of offshore entities, is that right?

A. That's correct. In other words, we had no information about these so-called Ansbacher accounts, as they are generally referred to as.

Q. Well, maybe we will just clarify that for a moment. You have no knowledge of what has been called, I think, the bureau system, the system on which records were kept?

A. That's correct.

Q. Your knowledge, such as it was of the Ansbacher accounts, and if I can use that expression in parentheses, is limited to what is contained in the reports to which I will refer at a later point.

A. That's absolutely right, yes.

Q. You go on to say, the Bank identified certain back-to-back loan arrangements in 1976. It conveyed to the Board of G&M its view that such arrangements and involvement in tax avoidance were inappropriate. G&M gave an assurance to the Bank in 1979 that the arrangements would not increase and were expected to be gradually reduced. The Bank had no reason to believe or expect that this assurance would not be honoured by G&M and in the course of monitoring the

position over the following years, obtained no information to suggest that the assurances were not being honoured.

You now go on to refer to the Central Bank Act of 1971 and the background to the role of the Bank and when Central Bankers refer to "the Bank", they mean the Central Bank, something I have had to get used to.

A. Capital B.

Q. In the supervision of the affairs in G&M. I think it might be easier at this stage to keep saying Central Bank. I understand your use is somewhat different terminology. The Central Bank's powers with respect to banking supervision over licensed banks were first established in the Central Bank Act 1971. The principal provisions of the 1971 Act relevant for this purpose were set out Part 2 of the Act in Section 3.2, Section 31 and might be summarised as follows:

Firstly, it was unlawful for any person to carry on banking business unless it was the holder of a licence issued by the Bank.

Secondly, the Bank had power at the time of issue of a licence or thereafter to impose conditions upon the licence.

Thirdly, the Bank, with the consent of the Minister for Finance, might revoke a licence in specified circumstances including the insolvency of the holder of the licence, or

the conviction of a holder on indictment of an offence under the 1971 Act or an offence involving fraud, dishonesty for breach of trust. Or if circumstances relevant to the granting of a licence had changed since it was granted, that if an application were now to be made, it would be refused.

Fourthly, the books and records of a licence holder were to be open to inspection by the Bank.
Lastly, if the Bank was of the opinion that a licence holder had become or was likely to become unable to meet its obligations to depositors, it could direct the holder to suspend the taking of deposits or the making of payments.

Now, if I could just go over those again for a minute, the principal provision or the foundation provision was to carry on a banking business without a licence was unlawful. So banking was a licensed or privileged activity which could only be carried on following some form of evaluation by the Central Bank.

In the granting of a licence or in the issuing of a licence or at any time after a licence had been issued, the Bank could impose a condition. Perhaps you could just indicate what types of conditions might be imposed from time to time by a Bank or by the Central Bank on a supervised bank.
A. Well, for instance, if we believed that a bank was overexposed in the property sector, or

Q. Had too much money lent to people speculating in property.

A. Exactly, we would impose a condition on the licence that they reduce that by X percent over a period of time or whatever.

Q. After an inspection which might throw up a picture of too much exposure in that particular sector, in the letter you'd issue after the inspection, you might indicate, and I take it this would be done formally, that a condition was being imposed on the licence and the effect of that would be to put the Bank on notice that they had to get their house in order by a specified period of time.

A. There is a procedure to be followed which would impose conditions which would have to be done later. There is a procedure in law to be followed on how we go about imposing a condition. We must give them notice, we must give them 21 days to respond and then we have the power to impose that condition, having received the representations.

Q. Which might or might not cause you to decide whether to continue to impose it or alter?

A. Yes. If they put in a persuasive argument, we could review it or rethink it.

Q. The Bank could, with the consent of the Minister for Finance, could revoke a licence if some of the circumstances you mention had risen, where they obviously were the holder of a licence, had become insolvent but also where circumstances relevant to the grant of a licence had

come to your notice which, if you had been aware of them at the time you granted the licence, you wouldn't have granted it, that might cause to you revoke a licence?

A. Yeah.

Q. Or at least to do so with the consent of the Minister for Finance.

A. That's right.

Q. So that involves a continuing awareness or an obligation on the part of the Central Bank to continue to be alert to circumstances obtaining in connection with the carrying on or conduct of banking business by a bank?

A. Circumstances might change, such as the ownership of the Bank. It may be sold to an undesirable person. We might consider that they are not competent people to own a bank licence and therefore we seek to revoke it.

Q. It could have sold to an incompetent or an undesirable person to whom you wouldn't have given a licence first day.

A. That's correct.

Q. And, of course, in order to enable you to maintain a level of awareness, you have a right of access to the books and records of a licence holder?

A. Yes.

Q. And lastly, of course, you have a right to suspend the taking of deposits where you feel that a bank would not be a position to repay the depositors the money that had been deposited with them or by them, sorry?

A. Yes.

Q. You then go on to deal with supervision. You say supervision falls under two distinct headings. Namely the authorisation of new banks and the ongoing supervision of existing banks. The objectives of bank supervision can also be classified into two main areas. Firstly, protecting the stability of the banking and financial system of Ireland as a whole, which you describe as macro prudential or systemic issues and secondly, providing a degree of protection to depositors with individual banks which you describe as micro prudential issues?

A. Mm-hmm.

Q. You say that the Bank has, from time to time, set down non-statutory criteria and standards, most recently in its licensing and supervision requirements and standards for credit institutions as published in the Bank's 1995 winter bulletin. Secondly, you say that for the period under review in this statement, the relevant licensing and supervision requirements and standards were published in the Bank's 1975 annual report, the 1975 standards and we may refer to a copy of that in a moment.

A. Right.

Q. These were subsequently modified in certain respects and re-issued from time to time. These licences requirements and standards were the basis of the supervisory process as implemented by the Bank with licensed banks. You say that the supervisory process is interactive in nature and is in

frequent dialogue between the Bank and supervised institutions. Although the process evolves and is refined over time, it is based upon a principle of cooperation by the Bank with the Board of Directors and management of supervised banks. The responsibility of the Board of Directors of a Bank for the affairs of that institution and the ability of the Central Bank to place reliance upon the correctness of information furnished to it by the Board and management of a licensed Bank. The supervisory procedures employed by the Central Bank are both quantitative and qualitative in nature. The principal quantitative procedures that are followed with respect to any supervised Bank are a monitoring and review by the Bank of compliance by that Bank with the published licensing requirements and standards that relate to matters such as minimum capital and liquidity levels, large exposures to individual borrowers or to an associated group of borrowers, lending to connected parties, for example, directors, lending to individual economic sectors, concentration of deposits and acquisitions of interest by banks in other entities or by other entities in banks.

Qualitative assessment is by its nature more subjective. However, an informed basis for qualitative judgments, particularly as regards corporate policy and its implementation, is provided by having access to an institution's books, records and key personnel at regular

review meetings and in the course of on-site inspections and to a regular flow of detailed financial data.

I think now you go on to deal with the implementation of some of these procedures in the context of G&M, is that right?

A. That's correct.

Q. We may come back to some of these principles that you mention here at a later point, but I'll go on with your statement for the moment. You say the procedure for supervision of G&M, as with any other licensed Bank in the period under review, included an on-site inspection or examination from time to time, whereby members of the staff of the Central Bank would attend at the premises of G&M. This inspection would involve a review of papers and files and discussions and meetings with management and directors of G&M following which a report would be prepared by the Bank with respect to that inspection and matters arising. Although that report would be based upon information supplied by the licensed Bank and would form the basis of subsequent dialogue with it, a copy of the Report would not be furnished to that Bank.

Consideration of an inspection report and any action resulting from that would be carried out by Senior management of the Bank and was not normally a matter for consideration by or brought to the attention of the Board of Directors of the Bank.

Following consideration of that report, the Bank would communicate with the chairman of the relevant Bank about matters of significance which the Central Bank wished to address and these would then be dealt with in correspondence or at meetings.

You then refer to a letter of the 9th September 1976 from the Central Bank to Guinness & Mahon which you refer to later on in paragraph 24 to which a detailed reply was given by Guinness & Mahon. That letter, dated 26th November 1976, is an example of the Bank's approach to supervision.

You say that in a letter, the Bank refer to a number of issues as follows:
Firstly, capital adequacy: The Bank considered that additional share capital should be introduced to G&M at an early date.

Profitability: The Bank considered the level of operating profit of G&M to be very low.

Thirdly, involvement in property: The Bank considered that G&M's loan portfolio was excessively concentrated in the property sector and proposed to impose a condition on the banking licence to require a substantial reduction in this over a three-year timeframe.

Investment in subsidiaries and associated companies: The

Bank considered that the extent of lending by G&M to connected companies was excessive and proposed to impose a condition requiring reduction of such lending to a more appropriate level.

You then go on to say that the conditions being mooted were, in fact, formally approved by the Board of Directors of the Bank on the 18th May 1977 and they were imposed on G&M's licence on the 17th June of 1977.

Fifthly, the letter of guarantee: This had been previously requested from G&M's holding company, Guinness Mahon & Company London, and the Bank now required that this would be finalised at a later date. What the Central Bank wanted was a letter of comfort from Guinness & Mahon's London parent confirming that the London parent would effectively provide cover or protection for the obligations of the Dublin Bank, isn't that right?

A. That's right, stand over the liabilities, yeah.

Q. Sixthly, you dealt with a number of other matters.

Firstly, G&M's loan portfolio: The 10 largest loan advances were a greater proportion of G&M's total loan book than the Bank considered appropriate.

Next, under the heading of tax havens: The Central Bank expressed concern at the extent of G&M's involvement with its banking subsidiaries in offshore tax havens and asked G&M to discuss the matter and you refer to the fact that

you'd be mentioning this later on.

Liquidity: The Bank considered that G&M should endeavour to reduce the imbalance between the maturity of its assets, its loan and liabilities, meaning its deposits, by attracting longer term deposits and or reducing the level of medium term lending.

A more comprehensive statement of Bank's approach to supervision which has evolved and continues to evolve over time by reference to best international practice has been furnished to the Tribunal and we can, if necessary, go into that in detail later on if you wish.

Now, I think that the items you mentioned, the seven or six main items and the three subsidiary items you mentioned a moment ago, and which were referred to in the correspondence between the Central Bank and G&M, were mainly addressed in the context of the quantitative assessment we discussed a moment ago, is that right?

A. That's correct, yes.

Q. They were to do with the financial state and condition of the Bank as it appeared from the, I suppose, numerical information made available to you?

A. That's right.

Q. Next you go on to discuss the Bank's approach to the issue of confidentiality. You say that the Central Bank, in common with supervisory bodies throughout the European Union and elsewhere, is subject to a strict confidentiality

regime. This is currently set out in Section 16 of the Central Bank Act 1989 as amended. The section is so framed as to preserve the confidentiality of the private commercial interests of supervised entities, whether banks or other types of financial institutions I suppose, such as insurance companies or whatever and financial institution customer relations and generally to ensure privacy. It is in accordance with and gives effect to the requirements of European Union law which imposes a common standard of professional secrecy on all financial supervisors. The section provides that the Governor, each director and each officer and servant of the Bank is not to disclose any information concerning the business of any Bank or body which came to his knowledge by virtue of his office or employment except in circumstances specified in the statute and a breach of the statute is a criminal offence.

Until 1989, and therefore until the 1989 Act was passed, and for the greater part of the period under review, the confidentiality regime was prescribed by Section 31 of the Central Bank Act of 1942 which provided for the Governor, each director and every officer of the Bank to swear an oath of secrecy that oath was in the following term, it was mentioned this morning by Mr. Coughlan: "I... do solemnly swear that I will not disclose any information relative to the business, records or books of any bank which will come

to my knowledge by virtue of my position as Governor or Director or Officer of the Central Bank of Ireland except to such persons only as shall act in the execution of Statutes regulating the said bank and where it shall be necessary to disclose the same to them for the purposes of any such Statute."

Section 16 permit certain disclosure to be made and in the context of this statement as referred to in paragraph 3 above, one such exception to the principle of strict confidentiality is relevant insofar as disclosure may be made by the Bank with the consent of the person to whom the information relates and were not the same person of the person from whom the information was obtained. So that if you have obtained information with regard to a third person, you can disclose that with his permission?

A. Correct.

Q. Or alternatively, if you got information as in this case from Guinness & Mahon, then with the consent of Guinness & Mahon, that information may be disclosed?

A. That's correct.

Q. Has the Central Bank, to your knowledge, ever taken the initiative and I am not suggesting that it should be obliged to do so but has it ever itself initiated a request to a supervised Bank or to a third party to enable it to furnish information to either a government agency or a tribunal such as this one?

A. Off the top of my head, I can only recall one occasion many

years ago when I think we did use the same type of waiver as we have used to give information to this Tribunal.

Q. But on that occasion, was it the Central Bank who first approached the third person or was the approach made by the inquiring agency to the Central Bank?

A. That, I am not sure about. It's a long time ago, but I can check. I can find that out.

Q. The Criminal Justice Act 1994 imposed new duties of disclosure upon financial institutions to counter money laundering and the Bank is now under a statutory obligation which supersedes its confidentiality obligations to report to the Garda Siochana any suspicion it may have that an entity of supervision has committed or is committing an offence of money laundering. That is an offence which would include handling any property, knowing or believing it to be the proceeds of another person's criminal activities, such as including tax evasion.

So, regardless of any obligation that you have, if you now suspected merely that a bank was involved in handling funds which were the results of tax evasion,

A. We now have an obligation.

Q. It's not a case of you being merely at liberty. You have a duty

A. It's a clear obligation under the Act to report it to the Gardai.

Q. You say the Central Bank has no knowledge of or access to

the tax position of individual customers, whether borrowers or depositors of financial institutions. The Bank does not have any contact with the Revenue Commissioners in respect of information obtained by it in the exercise of its supervisory functions. Any sharing of such information by the Bank with the Revenue would be unlawful and indeed criminal. The position corresponds with that of prudential regulators elsewhere in the world.

And do you agree with, I think what Mr. Coughlan said this morning, that what that means is you may not convey information to the Revenue Commissioners concerning an individual's or a bank's tax position or any activities it's involved in but that wouldn't prevent you from acting on it, that information, within the limit of the statutory functions of the Central Bank?

A. That's correct. We can report it nowadays to the Gardai and we can take internal action, if you like, against a particular Bank

Q. If I could just summarise you, you are saying you have a duty to report it to the Gardai nowadays, but at all times long before you had any duty to report it to the Gardai, you were entitled to take internal action on it?

A. We were, yes.

Q. Internal action means internal action within the Central Bank?

A. Internal action, in other words, we could take action against the particular Bank. We could, for instance, have

a director removed if that was deemed necessary. We could seek to have that done, yes.

Q. Whether you'd succeed or not is another business, but you could decide to take steps or that that step was appropriate?

A. That's always been available to us, yeah.

Q. You are now going on to refer to dealings by the Central Bank with Guinness & Mahon with respect to loans made by Guinness & Mahon to customers which were secured by deposits between 1976 and 1979. We may not deal with the entire 1989. We may not be dealing with the entire period up to '89 but in any event we'll be dealing with a number of years during that span.

A. Mm-hmm.

Q. First you deal with the period 1976, 1977. And you say that the first inspection by the Bank of G&M was carried out in 1976, described as an inspection as at the 29th February of 1976, as part of the Bank's routine supervisory regime and in the light of certain prudential aspects of G&M's affairs which were already of concern to the Bank, and, like all inspections, was directed at prudential issues. In the course of that inspection and review of particular loan files, the Bank became aware that the directors of G&M regarded the operations of its offshore subsidiaries as being particularly confidential. Inquiries by the Bank about cases where it was not apparent that adequate security was held by G&M for loans which it had

made were referred by staff of G&M to Mr. Traynor to deal with. An explanation that such loans were secured by complex back-to-back arrangements of deposits in offshore subsidiaries was given to the Central Bank by Mr. Traynor. The Bank was given sight of copy security documents and an explanation of the nature of the security and agreed not to note the names in which the deposits were held. In later inspections, the names were noted. Mr. Traynor informed the Bank that no files or records relating to customer transactions with these companies were retained in Dublin for fear that the retention of such files would give grounds to the Revenue to claim that the companies were managed by Dublin and also to avoid the possibility that individual files might come into the hands of the Revenue.

In the course of the inspection, a meeting was held at the Bank on the 20th May 1976 to discuss the main findings of the examiners before finalising the Examination Report. The meeting was attended by four directors at G&M, namely Mr. John H. Guinness, Mr. Des Traynor, Mr. Maurice O'Kelly and Mr. Michael Pender. At this meeting, the Bank drew the attention of the directors to a number of matters, most of which were subsequently set out in the Bank's letter to Mr. Guinness, which you already referred to, I think.

A. Mm-hmm.

Q. The Bank also said, as set out in that minute of its

meeting, that it was concerned by significant offshore activities engaged in by G&M by its offshore subsidiaries and it appeared the main object of these companies was assist in tax avoidance. Mr. Traynor denied this and said that these subsidiaries were all deposit-taking institutions that offered full banking services, their main income been derived from executor and trustee business. I think you will see on the monitor to your right, Mr. Byrne, a page from a minute of that meeting. The contents of the rest of that page and of the other pages of the minute have been obscured and all I have highlighted is the reference to offshore activities, which was item 5. "Mr. Daly said that he was somewhat concerned about the significant offshore activities engaged in by the Bank through its subsidiaries, it would appear that the main object of these companies was to assist in tax avoidance. Mr. Traynor denied this and said that these subsidiaries were all deposit-taking institutions who offered full banking services. Their main income was derived from executor and trustee business."

Now, we will come back to some of these documents in more detail at later point. Am I right in saying that these subsidiaries referred to were Guinness Mahon subsidiaries in the Channel Islands and in the Cayman Islands?

A. Yes.

Q. You go on to say the structure and function of the offshore companies as outlined by Mr. Traynor to the Bank in the

course of the examination was summarised in the inspection report. I'm trying to put the relevant page of the Report on the overhead projector but for the moment I think I will just read on from an extract which you have made in your statement from the contents of the Report.

The extract is as follows:
Prior to the 22nd June 1972, when the Cayman Island ceased to be part of schedule territories for exchange control purposes, Guinness & Mahon Dublin arranged for the transfer of funds to a Cayman registered discretionary trust of which Guinness & Mahon Cayman was the trustee. The use of the trust funds was totally at the discretion of the trustees of Guinness Mahon Cayman Trust.

A Cayman company was formed which was controlled by the trust and a deposit placed in the Cayman Bank in the name of the Cayman company. The customer in Dublin whose funds had been transferred would then apply to the Dublin Bank for a loan equal to the funds deposited by the Cayman company. Before the loan was advanced, the Cayman company signed an agreement with Guinness Mahon Cayman Trust whereby it agreed to transfer an amount equal to any loss incurred on the loan to a specified Dublin customer to the benefit of GMCT. For exchange control and tax reasons, Guinness & Mahon Dublin were expressly excluded from having any claim on the forfeited funds, but as GMCT is a wholly-owned subsidiary of Guinness & Mahon Dublin, the

forfeited deposit could, if required, be transferred by way of dividend.

Now, firstly, can I ask you to confirm that that note of the mechanics of the operation involving GMCT is based on what Mr. Traynor told you?

A. Correct.

Q. It is not based on your evaluation of any documentation that he gave you?

A. No, it's as told, I think, to me personally by Mr. Traynor.

Q. So what he was telling you at that time was that prior to 1972 when it would have been lawful to do so, funds or Guinness & Mahon Dublin arranged for the transfer of funds to a Cayman-registered discretionary trust?

A. Mm-hmm.

Q. After 1972, it wouldn't have been possible to do that because the Cayman Islands had become a foreign country, if you like, from an exchange control point of view. It had ceased to be part of the sterling area, isn't that right?

A. That's right, yes.

Q. And Mr. Traynor was obviously anxious to impress upon you that this was something that had been done prior to the introduction of exchange control, I suppose, inviting you to infer that it was not happening after exchange control was introduced?

A. Yes, he gave me every assurance that he did not breach exchange control. All the money went out before '72.

Q. Now, the mechanics were that the funds were transferred to a discretionary trust, a Cayman company was then formed. That Cayman company was controlled by the trust and a deposit placed in the Cayman Bank in the name of the Cayman company which presumably must have got money from the trust.

A. Mm-hmm.

Q. A customer in Dublin whose funds had been transferred would then get a loan from Dublin equal to the amount of the deposit in the Cayman Islands?

A. Possibly not equal, but certainly secured by.

Q. Well in any case, in that particular note you made, I think you said equal, so that's what you were talking about there and then. Of course there may have been cases where the amounts were not quite equal.

A. Yeah.

Q. What he was telling you at that time was a deposit would be made out in the Cayman Islands, not anywhere else but in the Cayman Islands, of an amount equal to the loan borrowed in Dublin.

A. That's correct.

Q. That before the loan was advanced, the Cayman company agreed with Guinness Mahon Cayman Trust, in other words, with the Cayman Bank, if you like, which was also of course the trustee.

A. Exactly.

Q. Whereby it agreed to transfer an amount equal to any loss

incurred on the loan made by Guinness & Mahon to the Dublin customer.

A. Yes.

Q. So therefore, if the Dublin loan was defaulted on, the company in the Cayman lost its deposit.

A. Yes. It was forfeited and the money was held then in the Cayman Island subsidiary.

Q. I suppose you asked the question how did Dublin get their hands on that? And they said to you

A. It can come back through, by way of dividend or

Q. By way of dividend. They owned the Cayman Bank in which the deposit had been made so if the deposit was forfeited to the Bank, their view was they had made a profit over there equal to the amount of loss they had made here?

A. That's how it worked, yes.

Q. And the agreement that is mentioned in that explanation of the mechanics of the transaction was not shown to you.

A. No, I don't think so. I think I describe later where he did bring us through the system.

Q. I am aware of that and we may come to that later. We will have every opportunity to come to those documents but for the purposes of this note in any case, it's unlikely or you would have mentioned it?

A. That's correct.

Q. You go on to say, we have been assured by Mr. Traynor that no funds from Ireland have been transferred to the Cayman Islands since exchange control came into operation. He

also indicated that deposits held by the Cayman company have, however, increased by œ4.7 million to14.3 million during the 12-month period to the 31st March 1976.

And once again this presumably raised some query in your mind in light of the assurance

A. That's right.

Q. And he gave you a further assurance?

A. He did.

Q. And he assured you that this increase had been obtained through deposits from the United States and Jamaica, you go on to say that you had no evidence to support that information?

A. That's right. That's what I said.

Q. Would I be right, or would it be fair to infer that from the statement you make that you had no evidence to support that information that you may have looked for evidence?

A. No. That's what he told me, I think, at the time.

Q. But he presumably didn't tell you I have no evidence to support that information. You must have drawn that conclusion

A. Yes.

Q. Or you must have reached that conclusion from some exchange you had with him.

A. Yes, I can't remember whether I asked him for support or not, but certainly we didn't have it.

Q. Well you wouldn't have known that you didn't have it unless you had presumably asked him and got some kind of refusal

or fobbing off in some way?

A. Probably.

Q. You go on to refer to Guinness Mahon Channel Islands and the amount of deposits there as at the 30th April 1976 at œ2.8 million and the deposits at Guinness Mahon Jersey Trust as being nil. These companies were formed, you say in your report, as a direct consequence of the Cayman Island ceasing on the 22nd June 1972 to be part of the scheduled territories. The Jersey company, as we understand, only commenced trading. The Guernsey company has however been trading for over a year, in the 12 months to the 30th April 1976, deposits have increased from nil to œ2.8 million.

Now, at this point, can I just go back to one thing on your statement for a moment, Mr. Byrne. And it's in paragraphs 8 to 10 of your statement where you describe the supervisory process.

A. Yes.

Q. You divide it into two, I suppose, different approaches, the quantitative approach and the or the quantitative assessment and the qualitative assessment?

A. Correct.

Q. And we have already discussed quantitative assess. You mention qualitative assessment is more subjective. It's based on meeting people, seeing their work, seeing them, the work they do, the documents they produce and so forth,

evaluating their responses to queries?

A. Yes.

Q. You also state, and this is probably crucial to the way you conduct the supervisory activity, that it's an interactive activity and that you place reliance on the correctness of information furnished to you by directors and officials of banks?

A. Mm-hmm.

Q. And I take it therefore that the whole supervisory process, certainly at that time and perhaps also now, is grounded on the highest standards of integrity and probity in Bank officials and Bank directors?

A. Absolutely.

Q. And that in order to conduct the process in the way you describe by relying on the correctness of what is of the information you are given by directors and officials, you have to assume that they are going to be forthright and candid in what they tell you?

A. Correct.

Q. And the qualitative assessment that you make is an assessment not just of their competence and capacity as bankers, but also an assessment which is, of course, a subjective one, of their, or primarily a subjective one of their probity and integrity. "Can I rely on this person?" is the judgement you must make, is that right?

A. That is correct.

Q. Now, in the context of the inquiries that you made which

elicited the information that we have just referred to, you, I think, raised certain queries with, as you say, with members of staff, and you were referred by those staff members to Mr. Traynor for responses?

A. Mm-hmm.

Q. So therefore, you were placing an enormous degree of reliance on Mr. Traynor in providing you with information in relation to the supervised entity in this case?

A. Absolutely, yes.

Q. I notice that you were referred to Mr. Traynor, you weren't referred to Mr. Guinness, to Mr. O' Kelly, to any of the other directors, but to Mr. Traynor.

A. Mm-hmm.

Q. And would I be correct in suggesting that throughout your dealings with the Bank, which I think spanned a considerable period of time, Mr. Traynor was, to use I suppose a hackneyed expression, the main man?

A. He certainly was the main spokesperson in relation to these particular loans.

Q. Yes.

A. But when we write a letter, we write to the chairman. We expect the chairman to distribute that letter to his directors. We expect the directors to consider it and respond to it in writing. So in a sense, having completed the inspection, that process was followed, so while Mr. Traynor may have been the main spokesman, we still had all of the directors involved in the problems

Q. Absolutely. As far as you were concerned, merely because Mr. Traynor was the contact man, didn't mean that the other inspectors other directors, were going to be absolved of any responsibility for standing over whatever assurances he may have given you?

A. That's right. They were fully aware of the issues and the problems we had, so while Mr. Traynor did the speaking and was the spokesman and visited the Bank very few times on his own, he normally had another director with him, in fact, so while he didn't appear to be to us to be acting alone, unknown to the other directors.

Q. So then, perhaps I could qualify that by saying he was the lead spokesman for the Bank but you were in no doubt that all of the other directors of the Bank were aware from the letters sent by either you or by any of your superiors to Guinness & Mahon, that the other directors were being made aware of your concerns?

A. Yes, we were satisfied that they were aware, yes.

Q. You go on to say that the inspection report also contained certain information obtained from G&M about deposits made with the Channel Islands subsidiaries as follows. "During the course of our examination, we discovered that certain deposits were being received in Dublin but, at the express desire of the depositors, were being placed with a subsidiary company. The subsidiary company was Guinness & Mahon Channel Islands Limited. This company is within the sterling area and carries on banking activities. The

deposits received by this bank in this way are subsequently given by means of a loan to one of its own subsidiary companies, Sumac Investments"A" Limited. This company then places the funds made available to it with Dublin.
On the 29th February 1976, Sumac Investments"A" Limited had deposits with Guinness & Mahon Dublin totalling œ762,111 or 3.2 percent of total private and commercial deposits.
When this aspect of the Bank's affairs was discussed with the directors, they intimated that these funds were being placed abroad in this way so as to enable the depositors to avoid tax on both interest and capital."

Can I summarise what's contained in your note by suggesting that what attracted your attention was the fact that deposits were being received in Dublin, but were being placed with a subsidiary company, Guinness Mahon Channel Islands, but which then found their way back into Dublin again.

A. Yes.

Q. And ultimately for, what you were informed, was some kind of tax avoidance scheme.

A. Yes.

Q. Now, this is an issue that's going to arise time and again, the difference between tax avoidance and tax evasion and I know that those words are sometimes used interchangeably. Clearly whoever typed that document saw fit initially to use the word 'evade' and then to then the word 'avoid' was subsequently inserted. Can you say whose handwriting

the word 'avoid' is in?

A. I can't be certain. I mean I can speculate, I don't know whether that would be correct to do or not, but you know, you can speculate.

CHAIRMAN: If you think you can give a reasonably informed probability, by all means

A. I suspect it's probably Bernard Daly who worked with me at the time.

MR. HEALY: I see. Again, not wishing to anticipate too much, the extent to which we may have to go back over the Report, you were with Mr. Rockett, one of the two examiners

A. Mm-hmm.

Q. Carrying out the 1976/77 inspection, if I can call it that.

A. Mm-hmm.

Q. And the Report you produced was then reviewed by Mr. Daly.

A. Correct.

Q. If we could just have the front page of the Report. What I have put on the overhead projector, I am not sure that you have it with you, is the front page of the Report.

A. Yes.

Q. And it's described as being Central Bank of Ireland, Guinness & Mahon Limited Examination Report as at 29th February 1976. I take it that is the cut off date for

your various facts and figures?

A. That's correct.

Q. And that explains why you have an authorisation date of the 26th March '76, an examination commencement date of 5th April '76, and a completion date of the 26th May. So you go in after the authorisation on those dates and you carry out your inspection as and of the 29th February 1976.

A. That's right.

Q. Now, if you can push the document on the overhead projector up a little. The examiners are yourself and Mr. Rockett, both of you who are chartered accountants and the reviewer was Mr. Daly, who is also a chartered accountant.

A. Mm-hmm.

Q. Now if we go back to the document we had a moment ago on the overhead projector. May we take it then that if Mr. Daly inserted the word 'avoid' in preference to the word 'evade', your preference was for the word 'evade'?

A. Yes, I would think so.

Q. Again we may have to come back to that somewhat troubling distinction at a later point.

A. I know.

Q. Now, going back to your statement, at paragraph 24 you say that following completion of the inspection, the Governor wrote to the Chairman of G&M on the 9th September 1976 advising him of a number of points of serious supervisory concern. We have already mentioned what those points were.

A. Mm-hmm.

Q. These concerns included the extent of G&M's involvement with its banking subsidiaries operating in offshore tax havens. Certain matters raised by the Bank were dealt with in correspondence and a meeting was arranged to take place in February 1977 to discuss the outstanding issues, including the offshore subsidiaries. If I could just have the front page of that letter again on the overhead projector. This is a letter, I think it's from the Governor, am I right?

A. I think so, yeah.

Q. It's from the Governor dated 9th September 1976, addressed to the chairman.

A. Yes.

Q. That is, if you like, the formal communication from the most senior person in the Central Bank to the most senior responsible person in the supervised entity.

A. Correct.

Q. And it referred to a number of points, of what the Governor called serious concerns which have emerged from the examination which the Bank feels ought to be brought to your attention.

I presume that the use of the adjective 'serious' isn't something that you put into every letter? These were matters of importance?

A. Yes.

Q. If we can pass to the item which has attracted the interest of the Tribunal. We have already mentioned it. "The examination revealed that Guinness & Mahon Limited has banking subsidiaries closely connected to the Irish Bank operating in offshore tax havens. The Bank is somewhat concerned at the extent of this involvement and would welcome an opportunity to discuss the matter."

Now, there was a response to that letter which ultimately led up to a meeting which you mention in your statement. Before coming to the meeting, I just want to go through the trail of correspondence which led to the meeting. Firstly, there was the Governor's letter of the 9th September 1976, followed then by a response from Mr. Guinness on the 13th September of 1976. I am sure you are familiar with these documents. Mr. Guinness said "Dear Governor, thank you for your letter of 9th September 1977 concerning the inspection by your examiners of our books earlier this year. We would welcome the... also contact your secretary later this week with a view to arranging an appointment."

It would appear that there was some discussion which, on the telephone, which led to another letter of the 20th September of 1976 from Mr. Guinness to Mr. O'Grady-Walsh, who was then, I think the general manager, is that right, of the Bank or the deputy general manager of the Bank, the Central Bank at that time?

A. I think he was deputy general manager.

Q. I am sure I'll be corrected if I am wrong. Mr. Guinness said "Dear Mr. O'Grady-Walsh, I refer to our telephone conversation last Thursday concerning my acknowledgment of the Governor's letter of the 9th September.
I understand that the Central Bank may wish us to submit our comments in writing before arranging a meeting. I shall now advise my colleagues of the position and arrange to have discussions with them so that our comments may be prepared for submission to you.

In the meantime, I have pleasure enclosing a copy of certified consolidated accounts..." And so on.

Clearly as a result of the letter of the 9th, there was some discussion between Mr. Guinness and Mr. O'Grady-Walsh on the telephone as a result of which Mr. O' Grady-Walsh said "Look, before we have a meeting, could we please have your comments in writing on the Governor's letter of September."

A. Yes.

Q. On the 21st September 1976, Mr. O'Grady-Walsh replied simply on a pro forma basis.
There was some other correspondence of no particular concern until the 26th November of 1976 when Guinness & Mahon responded in a comprehensive response to the letter of the 9th September.

Now, this letter is about two and a half pages long. I

think what you see on the overhead projector is simply a small portion of the letter.

A. Mm-hmm.

Q. It deals with firstly capital adequacy. I think we have already gone over some of these matters in the course of your statement and there is an extensive reply to the issues raised by the Central Bank in relation to capital adequacy.

Then there is a discussion on profitability, and again quite an extensive reply.

There is then a reference to the Central Bank's concerns that Guinness & Mahon were excessively involved or exposed in the property area. There is a reference to investment in subsidiary companies. A reference to the letter of the guarantee that the Bank required and we have already mentioned that, that was furnished. It's the guarantee from Guinness & Mahon, the London parent. Then there is a reference to other matters. These were the three matters that you mentioned, there were loan portfolio, tax havens and liquidity.

The position in relation to the loan portfolio has been rectified. There is a fairly extensive response to the issue of liquidity and on the topic of tax havens, what is suggested is that Mr. Guinness is not altogether happy with Mr. Murray. The Governor's understanding of Mr. Guinness'

situation in relation to tax havens and Mr. Guinness goes on to say "And I would certainly welcome the opportunity of discussing the matter."

Now, there was no comprehensive response to that at all.

A. No.

Q. And I suppose that is consistent with the reluctance in the Bank to provide you with information or documentation in relation to these matters in the course of your inspection, is that right?

A. That's correct.

Q. Clearly the Bank wished this matter to be discussed in the context in which there would be no exchange of correspondence?

A. That's correct.

Q. Now of course, the Central Bank had its own note of what Mr. Traynor had informed you in so as far as he had informed you of the full story. He had informed you of the mechanics of the GMCT and of the Channel Islands operation and you had your own note of that?

A. Yes.

Q. And there was correspondence emanating from the Central Bank in which the issue was raised, but insofar as the records of correspondence emanating from Guinness & Mahon are concerned, there would be nothing except this fairly anodyne reference to the fact that this is something best discussed.

A. Yes.

Q. And I think you are aware from the fact that the Tribunal has had to secure the cooperation of the current owner of Guinness & Mahon to obtain access to documents, that there is very little of this documentation in the records of Guinness & Mahon.

A. Yes, so I believe, yes.

Q. And I take it that means that if an internal scrutineer in Guinness & Mahon, such as an internal auditor or an external auditor, were examining documentation

A. They wouldn't find very much.

Q. Exactly. So if we could pass onto the meeting then and your reference to it in your statement. You say "The meeting was held on the 8th February 1977 and was attended by Mr. Traynor and Mr. O' Kelly. At the meeting, Mr. Traynor outlined in some detail the operations of Guinness & Mahon subsidiary companies in the Cayman Islands, Guernsey and Jersey. He state that had they were basically trust companies but that a proportion of the assets being managed were deposited with the trust companies themselves, that the companies in question had banking status, and that the relevant funds were not placed on deposit for the purpose of tax avoidance or evasion."

Now, I think on the overhead projector, what we have is a minute of that meeting, a minute kept by an official of the Central Bank and ultimately reduced to a typewritten form.

Now, I just want to pass to the last two sentences once again of that note. "Mr. Traynor emphasised that the funds were not placed on deposit for the purpose of tax avoidance or evasion." And from that, can I infer that the question of avoidance and evasion was mentioned so that there could be no dispute or doubt about it, as it were?

A. I would guess so, yes.

Q. And he clearly denied that there was neither avoidance nor evasion involved?

A. Yes.

Q. It then goes on "Mr. O'Grady-Walsh and I discussed this matter subsequently and agreed that they should talk with Guinness & Mahon again concerning this matter at a later date." Can I take it that that's your note?

A. No, it's signed I think by B. Daly.

Q. I see. Could you throw any light on the manuscript note at the bottom of that page which also appears to have been scribed by Mr. Daly? If you like, I would let you look "We also agree that we should request a copy of the returns sent to the relevant supervisory authorities monthly." Will I let you look

A. I know what that's about. In fact I cover it there in my statement somewhere, but it's basically suggesting that we should get copies of the various returns submitted by Guinness & Mahon Cayman Trust to the Cayman supervisory authority.

Q. That's the next matter you mention in your statement, in

fact.

A. Yes. That's what that handwritten note is about.

Q. You say subsequently the Central Bank requested G&M to arrange for the Bank to be supplied with copies of GMCT's quarterly prudential returns to be submitted to the Cayman Island supervisory authority in order to be in a position to monitor the condition of GMCT that's what you are referring to?

A. Yes.

Q. Did you have any opinion at that time of the quality of supervision provided by the Cayman Islands supervisory authority?

A. No. To the best of my knowledge, we didn't have any contact with them.

Q. In the ordinary way, as a central Bank having a supervisory function, would you have contacts with or a network of contacts with other similar regulatory authorities in other countries?

A. Nowadays very much so.

Q. At that time?

A. At that time not so very much.

Q. I suppose you would have had contact with the Bank of England?

A. Beyond that, I don't think virtually anybody.

Q. I see. You say that quarterly returns were received for the period 1977 to 1984 when ownership of GMCT was transferred by G&M to its holding company Guinness Mahon

and Company Limited London. These returns showed that the greater part of the funds from non-bank deposits were placed by GMCT with Guinness Mahon group companies, including G&M. The amount placed by GMCT with G&M varied over the years and represented a varying proportion of Guinness Mahon London's total deposits.

So, the information you had showed that most of the money that had been placed with Guinness Mahon Cayman Trust by commercial and private depositors ended up in Dublin or in London?

A. That's correct, yeah.

Q. And that the amounts placed each year with either Dublin or London varied up and down from year to year?

A. That's what happened. It just allowed us to monitor what was going on in the Cayman. The deposits were coming in and where it was being placed.

Q. In March of 1977, the Central Bank was informed by G&M that ownership of the Channel Islands business was being transferred from G&M to its parent company in London and the company subsequently ceased to be subsidiaries of G&M. And you refer to a note of a telephone conversation which we will come to later if necessary.

On the 25th January 1978, a meeting was held in the Bank, in the Central Bank, to discuss the Central Bank's concern at the decline in Guinness & Mahon's free resources ratio as at the 31st October of 1977. And a copy of the Bank's

minute of that meeting is attached. This was attended by Mr. Traynor and Mr. O' Kelly and Mr. Traynor asked whether the Bank would consider loans backed by deposits placed with the Cayman Islands subsidiary as being non-risk for the purpose of calculating the free resources ratio. The Bank decided that the loans should continue to be regarded as risk assets. This inquiry was made in the context of the categorisation of such loans as assets of Guinness & Mahon for the purposes of the Bank's 1975 licences and supervision standards and requirements which you have already referred to.

Now, I think we have a note of this meeting on the overhead projector. In attendance were Mr. Traynor and Mr. O' Kelly for the Bank and Mr. O'Grady-Walsh and Mr. Daly for the Central Bank.

Now, perhaps you'd just explain, and bear in mind the explanation the Tribunal has already given of its understanding of the free resources ratio, maybe you'd just explain what you understand and what the Bank understands that notion to mean or to involve?

A. Yeah. Well very simply, free resources ratio is a term not used nowadays, we tend to refer to as solvency ratio. It's basically the relationship of capital to assets and in those days, put very simply, for every œ10 a bank will lend, it will expect it to maintain one pound in capital and that was the, what we call the capital one pound

capital for every œ10 lent.

Q. So that what Mr. Traynor was seeking to do was to persuade the Bank to take the view that where a loan was backed by a cash deposit, there was no need to apply the capital resources ratio so that loan?

A. Correct. It was a zero lending.

Q. And in the ordinary way, I suppose, if you did have a loan, an onshore loan backed by an onshore cash deposit, there could be no risk where that loan was concerned, isn't that right?

A. That's right. Even by today's standards, a cash-backed loan is zero weighted, yes.

Q. Exactly. It's a non-risk asset of the Bank?

A. Yes, correct. It's backed by cash, yes.

Q. And if we go to the sixth paragraph of the minute, you have a reference to what Mr. Traynor was looking for. He said that his Bank had loans of œ4 million which were secured by deposits placed with the Bank's Cayman Island subsidiary and he wondered if the Bank would consider these loans as non-risk for the purpose of calculating the free resources ratio.

In other words, where the Dublin Bank had loaned œ4 million in the ordinary way, you would expect it to be able to refer to or point to œ400,000 of capital.

A. Correct.

Q. And he wished to avoid having to provide œ400,000 of capital by relying on the œ4 million deposited in the

Cayman banks?

A. That's right.

Q. He wanted you to treat that as a cash backing for his loans granted in Dublin?

A. That was it, yes.

Q. And you said that you'd consider the matter or when I say you said, at least the Central Bank said they'd consider the matter.

A. Yes.

Q. And the meeting concluded and it appears that presumably it was Mr. Daly made the note, said that he rang Mr. Traynor on the 23rd March and mentioned to him that the Central Bank had considered the question of the loans and decided that they should continue to be regarded as risk assets.

A. Yes.

Q. In other words, the Bank were not happy to treat them

A. To allow the set-off, yes.

Q. Now, at that stage, do you know what prompted the Bank to reject Mr. Traynor's invitation to treat the loans as non-risk?

A. There is no question about it, there was a cloud hanging over these loans, whether it was tax evasion or tax avoidance, I don't know, but there was certainly a cloud. There was also lack of legal certainty as to whether they were back-to-back, because they were held, remember, in a discretionary trust under the control of Mr. Traynor, so he

had the discretion as to whether he would actually transfer the funds in to meet any losses. So there was a double issue there.

Q. But can we divide it into two sections or areas then. Firstly there was the question of the whether the loans were truly cash backed. Whether the Irish Bank could really look to the deposit in the event of a default?

A. Yes.

Q. So that was, if you like, a mechanical problem.

A. Correct.

Q. Then there was the cloud hanging over them of uncertainty about what was really going on.

A. Yes.

Q. I think in the next sentence, Mr. Daly clearly is referring to that when he says "I also said that Mr. O'Grady-Walsh may wish to discuss the tax aspect of those loans at a later date." That is the cloud that you are talking about?

A. Yes.

Q. The next two paragraphs of your statement in fact deal with what you have just now told the Tribunal, so I don't think I need to go through them, unless there is anything you want to draw to the Sole Member's attention. You go on to say that later in 1978, the Bank conducted a second inspection of G&M as at the 30th April 1978 and in the course of that examination, the Bank obtained additional information about loans made by G&M which were secured by deposits held in its affiliated offshore banks. The

subsequent Examination Report noted that the staff of the Bank were unable or reluctant to give information on certain aspects of the Bank's activities and, as a result, much information was received from directors.

Isn't this in fact the second time, if I am right, that the inspectors detected a degree of reluctance on the part of Bank staff to provide information?

A. Yes, absolutely. It was a rerun of the 1976 position, yeah.

Q. You say that they were unable or reluctant. So presumably you weren't sure whether it was a case of the Bank staff not having the information or being apprehensive in some way at making it available to you?

A. Precisely. It wasn't clear whether they knew and wouldn't tell you or were asked by Mr. Traynor not to tell you.

Q. And Mr. Traynor was again the linchpin.

A. Absolutely.

Q. He is the lead man. And can I take it that what you were told, look, I can't tell you anything about that. You'll have to ask Mr. Traynor?

A. You better talk to Mr. Traynor about that, yes.

Q. And to an Irish person, I think it means I may know something about it but I am not going to tell you and it's for you to ask somebody higher up, is that it?

A. Precisely, yes.

Q. You go on to say that the main findings of the Report

included a description of taxation avoidance arrangements involving affiliated offshore companies of G&M in which G&M participated, which was similar in all material respects to the description which had been given by G&M to the Bank in 1976. I think we have it on the overhead projector.

I think this time what it says is, under the heading maybe I should just put this in context. The 1976 statement, like the other statements, was prefaced with a foreword and in the third paragraph, it says "The second examination of the Bank was based on the balance sheet of the Bank as at 30th April 1978, the end of the Bank's financial year. Following the previous examination of the Bank carried out in May 1976, the Bank imposed a number of conditions restricting the Bank's lending to subsidiary property companies. This examination was carried out as part of the Bank's routine supervisory procedures. It was also undertaken to enable the Bank to review the performance of the Bank" I should perhaps read that so as to make more sense of it by saying "It was also undertaken to enable the Central Bank to review the performance of its supervised Bank in regularising its loan portfolio and to assess the ability of the supervised Bank to comply with the conditions due for compliance on the 30th June 1978."

Now in the summary of the main findings, the first item is that it is described as follows:

The Bank, meaning the supervised Bank, is participating in tax avoidance arrangements and this is the first item in the main findings on the next page.

The Bank has advanced loans amounting to œ5.5 million which, according to the books and records of the Bank, are either partially secured or unsecured. Details of the major loans involved are outlined in Appendix 10. We have been informed by the vice-chairman of the Bank, Mr. D. Traynor, that each of these loans are, in effect, secured by means of a cash deposit placed with Guinness Mahon Cayman Trust Limited, a wholly-owned subsidiary of the Bank or with G&M Guernsey Limited, a wholly-owned subsidiary of Guinness Mahon London. These deposits are placed as part of a complex tax avoidance scheme and considerable measures are being taken by the Bank to ensure that knowledge of the existence of the scheme does not become known to the revenue authorities in Ireland. The scheme as we understand it operates as follows:

A prospective borrower is advised by the Bank to place funds and you have put that word in quotation marks with Guinness & Mahon Guernsey. The funds are placed in the name of a discretionary trust of which Guinness Mahon Guernsey are trustees. The trust then forms a locally incorporated company to which it makes a deposit equal to the amount of the loan which the customer intends to borrow from Guinness & Mahon Dublin. This

Guernsey company re deposits the same amount with the Guernsey Bank and agrees to forfeit the deposit up to an amount equal to any loss incurred by Guinness & Mahon on the loan to a specified customer, i.e. the prospective borrower. This deposit is placed with Guinness & Mahon Dublin by the Guernsey Bank. The advance is therefore secured by funds deposited in Dublin by the Guernsey Bank.

And this, with the only difference, that it's Guernsey and not Cayman Islands, is the self same description in principle as you were given on the previous occasion.

A. Yes.

Q. Now, you were not, I think, an inspector on the occasion of this

A. That's correct, yes

Q. You were the reviewer of an inspection carried out by Mr. Fitzgerald, Mr. Burke and Mr. Hynes, is that right?

A. That's correct.

Q. You would have seen this at second hand?

A. Yes.

Q. Mr. Fitzgerald, Mr. Burke and Mr. Hynes were given this explanation and you would have seen it once the material came in to you as the reviewer?

A. Yes.

Q. And you would have recognised this, corresponding with what you have learned on the previous occasion?

A. Yes.

Q. You go on, the creation of the discretionary trust (of which Guinness & Mahon Guernsey are trustees) effectively assigns control of the deposit to the Bank and removes all evidence of the link between the deposit and the borrower. It is there impossible to prove that the depositor and the borrower are in fact the same person. Through this arrangement, the borrower is able to claim taxation relief on the interest paid on his advance from the Dublin Bank and presumably does not pay interest on the tax which he earns on his deposit with the Guernsey company.

If we could just go to that last paragraph. Can I take it that this is not a note of what was said to the examiner by Mr. Traynor, but the examiner's impression of what he understands was going on?

A. Yes, I would say that.

Q. Because Mr. Traynor, after all, had denied that there was tax evasion going on. He had even denied that there was tax avoidance going on?

A. Indeed. Yes, that would be a conclusion drawn by the examiner himself.

Q. And if you read that conclusion, what the examiner is effectively saying is if you ignore all this complex scheme of trusts and companies, what the arrangements are designed to do is to break the link of identity between the Dublin borrower and the offshore depositor who are, in fact, one

and the same person.

A. Yes.

Q. So as to enable the Dublin borrower to get relief on the interest he pays on his borrowings and presumably, the inspector says, to avoid paying tax on the interest he earns on his deposit.

A. Correct.

Q. Now, that brings me back to the use of the expression avoidance and evasion. That is undoubtedly tax evasion, isn't that right?

A. Yes.

Q. The impression that the inspector had is no more than the impression you had yourself when you carried out your inspection is that that tax evasion was going on here, not tax avoidance?

A. Yes.

Q. Isn't it in fact the case that in the ordinary way, by tax avoidance, we understand an arrangement put in place by a taxpayer to take advantage of the tax, if you like, the Taxes Acts, so as to avoid paying tax which he would otherwise have to pay if he didn't organise his affairs so as to take advantage of those Acts.

A. Yes.

Q. So that where a taxpayer examines the taxes legislation and feels I can organise my affairs so that Act will not apply to them

A. Yes.

Q. and I will avoid tax. That's tax avoidance, isn't that right?

A. Right.

Q. And there is nothing unlawful in organising your affairs so as to avoid tax.

A. No.

Q. And you may effectively challenge the Revenue Commissioners to tax you on the basis that you have now organised your affairs so as to prevent them getting their hands on your money?

A. Yeah.

Q. But if what you had done was to organise your affairs so as to avoid taxing them, then one imagines that you wouldn't be as obsessed with secrecy as Mr. Traynor seems to have been, is that right?

A. I would think so, yes.

Q. Would I be right in thinking that secrecy is something you are which is more likely to appear in a tax evasion than a tax avoidance scheme?

A. Oh probably. I mean certainly from what I understand, people avoiding tax or who have tax avoidance schemes through experts or whatever, don't wish the Revenue to become aware of these things because, you know, there is a loophole, they have created some loophole which they don't want the Revenue to pick up and close it. So there is an element of keeping tax avoidance schemes away from the Revenue as well.

Q. But if a tax avoidance scheme is put in place so as to ensure that the taxpayer is kept completely on the correct side of the law, as it were, he may nevertheless be unable to avoid disclosure to the Revenue, isn't that right?

A. That's correct.

Q. Though he may rely on his scheme to avoid paying tax?

A. Yes.

Q. So isn't there a difference between avoiding disclosure on the one hand and avoiding tax on the other? Avoiding disclosure may be difficult.

A. Yes.

Q. Avoiding tax is something you may or may not achieve depending on how good your accountant is at examining and analysing the Taxes Acts.

A. Yes.

Q. Can I take it that the principal feature of what these inspectors examined here was something designed to avoid disclosure?

A. Yes.

Q. And to evade tax.

A. Yes.

Q. Now, maybe I'll just go onto the next page of that report in which another matter is mentioned which I will come back to later, but I should mention it as it reflects earlier assurances given to you when you were fulfilling the role of inspector. The inspectors note that since 1972, the Cayman Islands ceased to be part of the scheduled

territories. We have been informed by Mr. Traynor that no funds have been transferred to the Cayman Islands from Ireland since that date. Loans advanced under the scheme since 1972 are secured by funds deposited in the Cayman Trust before that date. Most new business is now being channelled through Guinness Mahon Guernsey Limited, a subsidiary of Guinness Mahon Limited London. That was simply a repetition of the assurances that had been given to you.

A. Yes.

Q. Now, going back to your statement, I don't think it will be necessary to refer to paragraph 32, since we have effectively dealt with most of the items mentioned in that part of the statement. I can go on to paragraph 33.

On the 13th September 1978, a meeting was held at the Bank to discuss various matters arising from that recent examination of G&M prior to the finalisation of the Examination Report. This was attended by Mr. Traynor and Mr. O' Kelly. The discussion related to supervisory issues of the same general character as had been raised a couple of years previously in the Bank's letter of the 9th September 1976. In the course of the meeting, the Bank stated, as set out in its minute of that meeting, that it was not happy with the extent of G&M's involvement in tax avoidance schemes.

I think by GML, you mean Guinness & Mahon in Dublin.

The Bank felt such schemes were not in the national interest and it was considering whether to request G&M to wind down its activities in this area. Mr. Traynor said that such a request would make him very unhappy. He added that it was not correct to say that G&M was involved in any tax avoidance schemes. The schemes to which the Bank was referring were devised and arranged by G&M's customers and their financial advisers. G&M merely informed its customers of the existence of the banking facilities available in Guernsey and which were formerly available in the Cayman Islands.

In its conclusions and recommendations, the Report comments as follows:

The Bank: G&M has advanced loans amount to go œ5.5 to customers which were secured by deposits in Guinness Mahon Cayman Trust or Guinness Mahon Guernsey Limited. These deposits form part of tax avoidance schemes. The full extent to which the Bank is involved in these schemes is difficult to determine. We are of the view that while the provision of advice on tax avoidance within the law may be an acceptable part of the work of any bank, it is not in our view appropriate or ethical for a bank to participate in, as distinct from advice on, tax avoidance schemes. We suggest, therefore, that the Bank should cease its participation in these schemes.

You go on to say that on the 1st November 1978, the deputy general manager of the Bank wrote to the chairman of G&M and advised him that in relation to G&M's offshore banking activities, the inspection had disclosed that Guinness & Mahon had loans in excess of œ5 million and so on and you effectively repeat what was contained in the Report.

Then the final paragraph, you set out effectively what had already been set out by the examiners in their report.

A. Mm-hmm.

Q. This was a letter of the 1st November of 1978 and I think you got a response from Mr. John Guinness, the chairman of Guinness & Mahon on the 9th November, which said "Dear Mr. O'Grady-Walsh, thank you for your letter of the 1st November commenting in detail on the inspection carried out earlier this year by your examiners. The matters raised in your letter will be discussed by our Board when it meets on the 12th December. After this meeting, we will then be in a position to give you our comments on the matters raised."

Can I take it that when Guinness & Mahon informed the Central Bank that the matter would be discussed by the Board, you took it that that meant the full Board of Directors of the Bank?

A. Absolutely, yes.

Q. This was, after all, an extremely important matter, a letter from the Bank's regulator informing them of concerns

that had been raised and indeed had been raised more than once?

A. And we do, at the end of each letter, ask that this letter be considered by the Board before you respond to it. That's specifically asked for, I think.

Q. And you specifically ask that it be considered by the Board because, as you stated earlier, I think, in response to one of my questions, it's not just Mr. Traynor or any assistant with him or any other director you are relying on. You want to ensure the entire Board are aware that you are relying on their standing over any assurances that you are given?

A. That's right.

Q. On the 1st February 1979, you then got a response from Mr. Guinness and it dealt with a number of matters, concentrating on the two items which the chairman of Guinness & Mahon then believed to be the only two items outstanding. And one of those was offshore banking activities, the second item and Mr. Guinness says "We do have a wholly-owned subsidiary, Guinness Mahon Cayman Trust, and we do transact business of a banking nature with Guinness & Mahon Cayman Trust and with its wholly-owned banking subsidiaries." That was hardly news to you after two inspections.

A. Yes.

Q. It goes on to say on the next page, "Such business however is a normal part of the activities of a bank which is part

of an international banking group and, to the best of my knowledge, the major Irish banks have similar structures. My Board feels strongly that we are not involved in what you have described as offshore banking activities, but on the other hand, I do recognise that conclusion sometimes can occur in regard to the exact nature and purpose of banking business emanating from these international contacts."

It goes on,"Because of the complexity and proliferation of the various types of international banking arrangements of this nature, I would like to suggest that both Mr. Traynor and Mr. O' Kelly might meet with your representatives at the earliest possible date to discuss this whole matter in detail."

We are going back around in a circle, again Mr. Traynor wants to have a meeting. He doesn't want to commit himself in writing, and he suggests that he'd meet with the Bank and I think that meeting was arranged, is that right?

A. That is correct.

Q. On the 7th March of 1979, you say, that Mr. Traynor and Mr. O' Kelly met with officers of the Bank to discuss G&M's offshore activities. A copy of the Bank's minute of that meeting is attached to your statement and it's on the overhead projector at the moment. I will just go through your statement first. You say the Bank indicated that its concern related not to general international banking

business which might be conducted through offshore banking centres, but to the fact that G&M had advanced loans in excess of œ5 million to customers which were secured partly or wholly by deposits placed in its associated offshore banks through discretionary trusts. Because of the complex manner in which the loans were secured and the secrecy surrounding the existence of the security, the Bank could see no logical reason for the arrangements other than to assist customers to avoid taxation. The Bank was of the view that it was not appropriate for a bank for a supervised Bank, in other words to be engaged in such a significant way in tax avoidance schemes.

Mr. Traynor stated that discretionary trusts were used for a large number of legitimate reasons. They were used extensively by multinational companies as a means of transferring assets from one country to another and had also been used extensively in Ireland in the past as a legitimate method of reducing a staged duty liability.

With regard to the loans granted by Guinness & Mahon, Mr. Traynor stated that all of these loans represented genuine banking loans which, with the possible exception of one loan amounting to œ400,000, Guinness & Mahon would have been quite satisfied to advance without the existence of a cash deposit as part of the security. He was quite confident that all of the loans would be fully recovered without recourse to the cash deposit. He stated that in

all cases the cash deposits were placed in the offshore banks before the loans were advanced to the borrower in Dublin. There was no question of G&M advances loans to be placed on deposit in offshore banks.

Mr. Traynor also said that he could not see any way which the present level of loans which had cash deposits placed in offshore banks as security could increase. He said that since 1972, when the Cayman Islands ceased to be part of the sterling area, no new loans had been granted where deposits held in the Cayman Islands formed part of the security and it seemed that the introduction of the new exchange control regulations, that is the 1978 regulations, would effectively end further loans being advanced where deposits held in the Channel Islands formed part of the security. He was quite satisfied that the level of these loans would not increase and expected that there would be a gradual reduction of the present level. The Bank indicated that in view of the assurances given by Mr. Traynor that the level of these loans was likely to be reduced in the future, the Bank would not pursue the matter further at that time."

Now

CHAIRMAN: I think that's almost verbatim to what the actual minute says.

MR. HEALY: Absolutely, yes.

So Mr. Traynor was saying that because the impending change in the exchange control regulations within the Channel Islands, within exchange control, there would be no further lending on deposits coming from the Channel Islands or taken in the Channel Islands but arranged in some way as to allow them to be security for loans in Dublin, isn't that right?

A. Yes, yes.

Q. Now, before I leave that question of the meeting of March of 1979, could I just pass could I just go back to another document in which this issue was raised at an earlier time in 1978.

This appears to be an internal memorandum which relates to the discussion that we mentioned earlier and that was minuted in connection with Mr. Traynor's request to the Bank, to the Central Bank, to have the loans which were secured by Cayman deposits treated as non-risk assets and I think that this note of which you have a copy in your hand, it's a book it's at fold 2.3, Sir, in your book of documents this document I think minutes the recommendations of the Bank and some comments by officers of the Bank which appear to be related to the disposal of that issue, is that right?

A. That's correct.

Q. It's headed "Recommendations" and the first item is loans by Guinness & Mahon Limited which are "Secured by cash deposits in GMCT and Guinness Mahon Channel Islands

Limited. From the information available, it would appear that the loans are secured by a cash deposit and, as such, form a normal back-to-back arrangement. However, from the fact that the Bank takes such extreme precautions to keep the existence of the deposit secret from the Revenue Commissioners, indicates that the Bank might well be a party to a tax evasion and then avoidance scheme."
The word 'evasion', I take it, is the word that's crossed out and the word 'avoidance' is inserted in handwriting.

"Should this be the case and the Bank accepts Bank accepts the right of set-off for the purposes of calculating the free resources ratio, the Bank would be placed in a very embarrassing position should the Revenue authorities ever become aware of the situation. It is therefore recommended that the Bank does not accept a right of set-off for the purpose of calculating the free resources ratio."

Now if you look at the sentence that begins, "Should this be the case and the Bank accepts the right of set-off for the purpose of calculating the free resources ratio, the Bank would be place in a very embarrassing position should the Revenue authorities ever become aware of the situation." And there is an asterisk after the word 'situation', which refers to a note, a handwritten manuscript note at the bottom of the page.

A. Mm-hmm.

Q. Which goes, "If tax implications were to arise, it may be that the non-risk character of the loans in question would change and a risk of loss for the Bank would emerge", is that right?

A. Yes.

Q. Now, can I take it that what that means is that if tax implications were to arise, in other words, if this money which was supposed to secure a loan in Dublin was held to be the result or the fruits of tax evasion, it might not be possible for the Bank to look to it in the event of there being a default on the loan.

A. Yes.

Q. Would that be your understanding?

A. I think that's my understanding, yes.

Q. Now, if the money which was used to back a Dublin loan in this way was money which was merely the result of a tax avoidance scheme, then although the borrower or the taxpayer might find himself in a difficulty with the Revenue Commissioners who would say, look you may argue that tax is not payable on this but in fact it is, he might have to pay the Bank in the event of a default by losing his deposit and he might have to pay the Revenue.

A. Yes.

Q. But as long as tax evasion wasn't involved, he wouldn't run the risk of criminal sanctions, isn't that right?

A. That's right.

Q. And the money in question wouldn't be tainted by

criminality. It might be tainted by some other form of, how shall I put it it might be questionable in some way, it might be open to question in that the Revenue might say we do not agree that it is tax free in its current state, but it wouldn't be tainted by criminality. And can I suggest that what was originally contemplated by this note is that tax evasion was involved, even though somebody may have used a slightly more polite word like tax avoidance. Would you agree with that?

A. Yes. I am the author of this note. And the word tax evasion was used by me in that note and I am sure I knew the difference between tax avoidance and tax evasion and I intended it to be tax evasion, because quite frankly the use of avoidance in that sentence doesn't make an awful lot of sense.

Q. That's exactly the meaning I took from it, Mr. Byrne, that it could only have that meaning in that sentence. It's consistent with the view you expressed earlier where I think you used word evasion in circumstances where it could only have been the appropriate word?

A. Yes, so that's all I can say on that.

Q. Whatever you feel at this point, Sir, I could go on and finish the reading of the statement

CHAIRMAN: It's preferable to me to finish the statement. It would mean we would make quite good progress today and you can tidy up what ancillary

matters are left tomorrow. Is that suitable, Mr. Byrne? That means you won't be too long tomorrow. If you were to complete your evidence all today, it might be a little tough for the stenographers...

MR. HEALY: We will go through the rest of the statement and leave any elucidations and references to the other documents until tomorrow.

A. Fine.

Q. You go on to say that a meeting was held on the 9th August 1979 to review progress in G&M since the last inspection of its affairs as at the 30th April 1978. This was attended by Mr. Traynor and Mr. O' Kelly and Mr. D. McCleane, the financial director/controller of G&M. Mr. Traynor, when asked to comment on the international activities of GMCT, said there had been little increase in activity in the Cayman company in the last few years and that he did not think that it would grow any further.

You then go on to pass onto the period from 1980 to 1991. You say on the 21st February 1980, a meeting was held at the Bank to review the affairs of G&M as at the 31st December 1979. This was attended by Mr. Traynor, Mr. O'Kelly and Mr. McCleane. A number of supervisory issues were dealt with, as was customary at such meetings. G&M supplied a list of the 20 largest outstanding loans which it had made. Three of these loans had been included in the list of the major loans backed by deposits as at the

30th April 1978 which had previously been supplied to the Bank. Subsequent review meetings were held with G&M on the 7th October 1980, the 29th April 1981, and the 2nd February 1982.

It was the standard procedure at such meetings to review the 20 largest loans outstanding and at each of these meetings, it was noted that two or three of the loans appearing to be on the list of such loans were secured by deposits. And dealing with 1982 you say, in 1982 the Bank conducted a third inspection of G&M as at the 31st August 1982. This inspection proceeded as was customary on the basis of information and papers which the Bank had previously requested would be made available in this case as requested in a letter dated 20th August 1982. The Examination Report subsequently prepared noted that the Bank had been informed that only in exceptional cases were loans advanced by G&M on an unsecured basis and contained information about loans backed by deposits as set out in paragraph B that's the next paragraph of your statement.

The Bank was informed that G&M engaged in what was called normal back-to-back lending and also lending where it had the security of a deposit, although the depositor and the borrower may not be the same person which G&M referred to as offset loans. The Report described these arrangements as follows:

Back-to-back loans were stated to amount in total to approximately œ2 million. Details of loans to three named borrowers were then given amounting to œ1.9 million. Each of the borrowers had been a borrower as at the 30th April 1978 of a loan backed by a deposit. The backing deposits were held in the Cayman Islands. Offset loans were described as loans granted by G&M on the strength of deposits held in the Cayman Islands mainly to US residents. When a loan is advanced, usually in US dollars, an equivalent amount is transferred to the Dublin Bank and held in the name of GMCT. The identity of the depositor is not known and is not necessarily the borrower. Mr. Traynor assured the Bank that all of the legal formalities to give G&M a right of lien over these deposits had been completed. Loans in this category amounted to approximately œ10 million. The inspection report contained a note on GMCT which indicated that in respect of back-to-back loans, G&M would have a more direct and explicit form of security on the deposits in the Cayman Islands than had previously been suggested.

And this is a note that was contained in the inspection report. Prior to 1972, when the Cayman Islands ceased to be a part of the schedule territories, funds were transferred from this country and place in a discretionary trust of which Guinness Mahon Cayman Trust were the trustees. J.D. Traynor is a director of that company.

The owner of these funds could then borrow from Guinness & Mahon limit an amount equal to the value of funds in the Cayman. The loan was secured by these funds. This security was formalised by the borrower signing a promissory note pledging the funds in Cayman to the Bank should the loan fall into arrears. The scheme had the obvious benefit for the depositor/borrower in that the depositor earned interest which was taxable at a low rate in the Cayman and interest sorry, the depositor sorry, I better go over that again. The scheme had the obvious benefit for the depositor/borrower in that the depositor earned interest which is taxable at a low rate in the Cayman and interest on the loan was allowable for tax in Ireland. The benefit to the Bank is that a margin of .5 percent to 1 percent is earned on each own with no risk attached. No funds had been transferred from this country to the Cayman Islands since 1972.

A meeting was held on the 12th January 1982 to discuss the outcome of the examination as of August 1982, and a copy of the Bank's minute of that meeting is attached to your statement and we can refer to it tomorrow. The meeting was attended by Mr. Traynor, Mr. O' Kelly and Mr. McCleane. The Bank referred to commitment given at a meeting in 1979 where G&M had undertaken to reduce its involvement in back-to-back lending. Mr. Traynor said that there had been no increase in the level of this type of lending. The Bank noted that the total amount of loans

so stated as being secured in that manner was œ1.9 million, being those listed in the Examination Report. The Central Bank concluded that the assurances given by G&M in 1979 that the back-to-back loans would not be increased and would probably be reduced were being honoured.

A meeting was held on the 18th July 1984 this is I think about a year and a half later attended by Mr. Pender, a director of G&M, to discuss matters in relation to emerging bad debts in G&M. A copy of the bank's minute of that meeting is also attached to your statement, and we can refer to that also tomorrow. At the meeting, the Bank referred to developments in Bank supervision at home and abroad, focusing particularly on the need for as adequate supervision in relation to banking subsidiaries and the application of prudential supervision on a consolidated basis basis and said that in keeping with this, the Bank would wish to extend its prudential supervision to GMCT. In other words, the Central Bank wished to look not only at the Irish Bank that was supervising but at the overall group of banks, of which that Bank was a part, including its subsidiaries, in other words?

A. To put them together on a consolidated basis.

Q. It was agreed that this would be the subject of further discussion. In the event, primarily with a view to supporting the financial position of G&M by a transfer of funds from its parent company in London, ownership of GMCT

was transferred from G&M to GM and Co. London prior to the 30th September 1984 and it thus ceased to be a subsidiary of G&M.

Whether this was coincidental or not, the result of it was that you could no longer press ahead with your proposal or suggestion that GMCT would come within your supervisory remit as a subsidiary of the Dublin Bank.

A. That's correct, yes.

Q. And I think you are aware that subsequently GMCT was effectively bought by Mr. Traynor and his associates under a management buyout?

A. That's correct, yes.

Q. Notwithstanding that GMCT was no longer a subsidiary, it continued to be an affiliate of G&M and in subsequent inspections of G&M by the Bank as at 31st December 1985, and as at 31st January 1988, the position of loans secured by hypothecated deposits was reviewed. Notwithstanding the winding down of the 1978 position, the Bank was aware that a number of back-to-back loans, mainly to non-residents, were granted by G&M after 1979. The Bank had no reason to believe that these loans were not genuine banking loans. In 1988, GMCT ceased to be a member of the Guinness Mahon Group. The Bank supervisory requirements restricted the percentage of its deposits that be held by any licences Bank from a bank outside its own group of companies and the application of those requirements resulted in a reduction in the deposits placed with G&M by

GMCT. In 1989, borrowings by G&M from GMCT, that is to say deposits, placed with it by GMCT amounted to œ46.8 million or 33.3 percent of G&M's total borrowings. This was in excess of the limit of 15 percent applicable to total borrowings by an Irish Bank from any one non-affiliated Bank or associated group of interbank depositors. This borrowing was reduced stepwise between 1988 and 1991 to œ4.6 million or 5.2 percent of total borrowings and thus brought the figure into compliance with the Central Bank's requirements.

And we know that, in fact, during that period, most of GMCT's deposits in Dublin were switched from Guinness & Mahon to Irish Intercontinental Bank?

A. Yes.

Q. In the course of its inspections of G&M in 1982, 1985 and 1988 the Bank, at review meetings held at regular intervals during this period, inquired into the internal audit function in G&M. The inspection report as at 31st August 1982 noted that the internal auditor was not a full-time position and that in the last two management letters addressed by G&M's external auditors, Touche Ross & Company, to the directors of G&M, reference had been made to the defects in the loans administration area and the maintenance of appropriate records and files. The inspection report as at the 31st December 1985 indicated that a member of the staff of G&M had been appointed as a

full-time internal auditor in the course of 1985, and that he reported directly to his opposite number in the parent company in London who reported ultimately to the Board of Directors in London.

Reports prepared by the internal auditor in the last two years were examined by the Bank inspectors and these did not appear to have uncovered any major items of concern in G&M. In a letter dated 4th June 1986, written by the assistant general manager of the Bank to the chairman of G&M following the inspection, the Bank referred to deficiencies, that is the central Bank referred to deficiencies in the internal audit arrangements as follows:

During the course of the inspection, a number of reports prepared by the internal auditor were examined. These reports were submitted to Senior management and it appears that there was little or no response made to the recommendations contained therein. We understand that reports by the internal auditor are not being submitted to the chief internal auditor of Guinness & Mahon & Company Limited, that is the London company, is that right?

A. Mm-hmm.

Q. And that the level of response has improved. The Bank feels that the internal audit function in banks is of crucial importance and is concerned to note that that function has not been operating effectively. We would be glad to have your confirmation that the deficiencies in

this area are being rectified.

In a letter in reply dated 15th July 1986, Mr. M. J. Pender, the Bank's managing director, said that the Board of G&M had considered the Central Bank comments. With respect to internal audit, he said we concur with your view that the internal audit function is a critical one and the Board has been unhappy with this particular area for sometime. However, we have recently employed as a consultant the former chief internal auditor of the Bank of Ireland Group with a view to strengthening this area. Furthermore, the group internal auditor from our London office has also been involved with a view to making changes in this area to clearly demonstrate the vital role the function has and will have in the future affairs of the Bank.

The subject was reviewed again in the course of the Bank's examination of G&M as at the 31st January 1988. The inspection report noted that the internal auditor had resigned from G&M in September of 1987 and had not yet been replaced. In his post inspection letter to G&M dated 29th April 1988, the Bank states that it would wish to see the vacancy filled or acceptable alternative arrangements made at an early date. The Report described the internal audit arrangements involving an internal audit team from the parent Bank in London. A further inspection as at the 31st March 1992 internal controls within G&M were reviewed

and a copy extract from the inspection reported is also annexed to your statement. That indicates that internal audit reports were carried out by the internal audit function of G&M London on an annual basis. It was noted that the external auditor's manager's letter in respect of period end 31st December 1991 did not disclose any material deficiencies and that the matters raised by the auditors were being addressed.

Now, can I take it that the Central Bank derived some comfort from the fact that once an internal audit function was up and running and internal audit reports were produced and they didn't disclose any deficiencies, that you were

A. Of course, that's true.

Q. happy enough, as it were?

A. That's part of the procedure, yes.

Q. The internal audit report on G&M in 1989 which was disclosed to the McCracken Tribunal, was not at any time disclosed to the Bank, and lest there be any doubt about it, that report of 1989 was the one which described in some detail what has now come to be known as the bureau system.

A. That's correct.

Q. And that report was never given to you in 1989, 1990, 1991 or at any time until the

A. At never time never disclosed to us.

Q. Would I be right in saying that that report contained, I suppose, some of the starkest findings you could ever

expect to find in an internal audit report?

A. I think so, yes.

Q. It showed a bank-within-a-bank?

A. Exactly. And had we learned about it, clearly we would have had to act very strongly on it.

Q. In the course of the inspection of G&M as at the 1st February 1988, an explanation of operation of the computer department of G&M was given to the Bank's examiners. The inspection report set out details of the computer department and a copy of relevant extract from the Report is attached. The fact that the computer system of G&M was used for maintenance of records of funds held with GMCT by persons resident in Ireland was not disclosed to the Bank.

In fact, am I right in thinking that the inspection carried out at the time included a note of contact made by the inspector with Mr. Collery, who was the person responsible for operating or overseeing the computer department?

A. That's right. I think he gave them this description of how the computer system

Q. And that description did not

A. It made no reference to the bureau.

Q. Or to any of the other matters that had been mentioned in evidence to this Tribunal by Ms. Margaret Keogh?

A. No, absolutely not. It was purely a technical run down on the bureau system.

Q. And when you say you weren't aware of the bureau system, you weren't aware either of any of the other features of the operation of the bank-within-the-bank?

A. None whatsoever, and I think I have given you everything in this statement that we knew.

Q. Notepaper, Bank statements?

A. Absolutely nothing.

Q. Nothing like that?

A. No.

Q. The facts of the operation of the Ansbacher accounts and the involvement of G&M in that are still emerging and are the subject of a number of inquiries. It would appear however that the operation was carried out through a clandestine system outside or parallel to the books and records of G&M by persons who took extraordinary steps to conceal it from the Bank and other state agencies. As already stated, the Central Bank had no knowledge prior to the establishment of the McCracken Tribunal of the system of memorandum accounts recording the interests of Irish residents in the deposits held by GMCT.

It is highly unlikely this is a comment I think you are making that you regard it as highly unlikely that any supervisory system including one it on-site inspection processes could detect the existence of background arrangements not forming part of the accounting records of G&M without the assistance of the officers of the supervised bank and without the assistance of internal and

external bank auditors.

Just in relation to the last point you make, without the assistance of internal and external bank auditors, it is, in fact, the case that, by 1989, an internal audit function was in operation and did detect this clandestine system and notwithstanding the existence of that, it still did not come to the attention of the Bank. I am not criticising the Bank at this point

A. We would have expected that they would come to us with something as serious as that.

Q. So that merely to rely on an internal audit function would not be enough.

A. Oh no.

Q. Because here we had an operating internal audit function.

A. Yes.

Q. One which found and I think stopped this clandestine system?

A. Correct.

Q. And you were not aware either of the detection of it or the stopping of it?

A. Normally, an internal auditor or the Bank itself would come to us with, you know, less serious findings. We would rely on them to do that.

Q. We may have to return to these matters tomorrow.

CHAIRMAN: Tomorrow. Thank you very much for your assistance so far.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

WEDNESDAY, 8TH MARCH 2000, AT 10:30AM.