

Report of the Working Group examining the proposed merger of the Private Residential Tenancies Board (PRTB) and the Property Services Regulatory Authority (PSRA)

Introduction

The 'Special Group on Public Services Numbers and Expenditure Programmes' report of July 2009 (the McCarthy report) recommended the merger of the PRTB and PSRA. This merger proposal was subsequently identified as one of the proposals for critical review in the Government's *Public Service Reform* document (November 2011). The McCarthy report had suggested that the amalgamation of the two bodies would provide savings to the exchequer of approximately €0.5m.

Detailed papers on the role of both organisations were exchanged between the Department of Environment and the Department of Justice. This was followed up by a critical review meeting on 10 September 2012 involving officials from the Department of Environment, Community & Local Government, the Department of Justice & Equality, the Department of Public Expenditure and Reform, the Directors of the PRTB and the Chief Executive Officer of the PSRA (a full list of those in attendance is at **Appendix A**).

Role and Functions

The functions and purpose of both organisations were examined in order to identify common functions and potential for synergies and savings. The PRTB core function is the regulation of the landlord tenant relationship and the resolution of disputes between same. The PSRA's primary functions are the regulation, control and supervision of auctioneers, estate agents, letting agents and management agents as well as the enforcement of standards within the property industry. There is a tenuous link between both bodies in relation to letting agents, but the PRTB and PSRA have very different roles in this area¹.

Given the different functions of both bodies it was recognised that if they were merged there would be a significant potential for conflict of interest to arise. A merged body could find itself, on the one hand, acting as ombudsman in a complaint by a landlord against a letting agent while at the same time adjudicating in a dispute involving the same landlord (in which the same agent could be called to give evidence). The group was of the view that the quasi-judicial functions and impartiality requirements of the PRTB were likely to

¹ c.f. 'Synergies' on page 6

be incompatible with the consumer protection functions of the PSRA (a further detailed note on the potential conflicts arising is attached at **Appendix B**).

Scope for Administrative Savings

The potential for back-office and any other administrative savings (shared payroll, human resources, and ICT functions) was examined and is summarised below – further details are available at **Appendix C**.

- **Staff savings** - PSRA has no staff involved in any back office functions and, as such, savings will not accrue in merging these functions. A saving could accrue were a single CEO to head up a merged organisation. However, were a single CEO able to fulfil the tasks currently undertaken by two CEO's, it's almost certain that consideration would have to be given to upgrading the post (currently both CEOs are at Principal Officer level).
- **ICT Systems** - there are no obvious links between the two systems and considerable costs could be incurred to migrate the PSRA from the D/Justice system to the PRTB.
- **Procurement** - a merged entity would not have sufficient size to leverage procurement savings (for instance, via improved buying power etc).
- **Accommodation Costs** - PRSA is located in Navan in a building shared with Revenue under a 20 year lease, PRTB is located in Dublin City Centre and it will be 5 years before they can activate their next break clause. If the merged body was housed in a single location, this could achieve savings if it were to be relocated outside Dublin. However this would be offset by the costs of high staff turnover during the transition and higher ongoing administrative costs for the PRTB wing (50% of tenancies are located in the greater Dublin area making its Dublin city centre location quite cost effective in terms of holding adjudications / tribunals)
- **Board Savings** - given the range of very different functions that a merged Board would have it is not the view that savings can be achieved in this area; in fact, given the administrative burdens already on both Boards and the necessity of maintaining a functional separation between the different sets of responsibilities, a fulltime professionalised Executive Board might be called for.

Policy developments since the Merger Proposal was first mooted

Since the 2009 McCarthy Report recommendation, policy with regard to the PRTB has developed further. The Residential Tenancies (Amendment) (No.2) Bill 2012 provides for the application of the Residential Tenancies Acts to dwellings in the Voluntary and Co-operative Housing Sector and this will add another layer of complexity to the PRTB's current operations. The Bill is due to be debated in the Dáil in Autumn 2012, with enactment in the first half of 2013, and it will extend the Act to an additional 20,000

tenancies involving complex new tenant-landlord relationships dissimilar in several aspects (e.g. length of tenure, differential rent models) to those currently captured by the Act. The current Programme for Government also commits to the establishment of a tenancy deposit protection scheme; research is underway and recommendations to the Minister are expected by the end of October 2012. Whether the final outcome will see the PRTB taking on the operation of such a scheme, or interfacing with a 3rd party operator, it is clear that this also adds to the PRTB workload given the need to integrate any such scheme with the disputes resolution process currently operated by the PRTB.

The McCarthy Report did not take account of the fact that the PSRA has been identified as the Competent Authority on Money Laundering. While this is a logical fit under the aegis of the Department of Justice and Equality there would be serious concerns were such a function to be moved to a new, merged body.

The full Department of Justice & Equality review '*Report of the Property Services Regulatory Authority Implementation Group on the Recommendation of "Special Group on Public Services Numbers and Expenditure Programmes" to Merge the PSRA and the PRTB*' is attached at **Appendix D**.

Savings in PRSA and PRTB (since 2009)

The Group agreed that any merger would, far from achieving savings, probably cost more. However it was recognised that both bodies are self-financing and have achieved sizable cost savings individually in recent years.

While the PRTB received exchequer funding for a number of years after its establishment it has operated on a self-financing basis since 2010. Indeed, not alone does it fund its own operations but a portion of its income (currently in the region of €2 million per annum) is also used to assist in the funding of inspections across the country, by local authorities, of minimum standards in rented accommodation. The PRTB has also reduced staff numbers from a high of 70 (including agency staff) to 34 by end 2012.

The PSRA is also self-financing and this is in fact a statutory requirement for the organisation. Current running costs are approximately €700K and it will take in around €2 million in licence fees in 2012.

Conclusions

The group agreed that, the PRTB and the PSRA are not a good merger-match, either structurally or functionally. Nonetheless, the group considered in detail whether savings would arise from a merger and has come to the clear conclusion that there is no clear potential for savings if a merger of the PRTB and PSRA was to go ahead. In fact it is likely that ICT and accommodation costs would erode any potential administrative

savings and would incur considerable additional ongoing costs. These are both small organisations with service level agreements and outsourcing already in place for a number of functions; the “low-lying fruit” merger savings are already made.

Functionally, there is no common purpose in the work of both bodies and given their varying roles any merger has the potential to distract from the core functions of both bodies. This could prove to be very disruptive. In the case of the PSRA, which was only formally established in April of this year, and which is currently engaged in the first round of a new licensing system for property service providers, any reorientation of its activities to support the progression of a merger, could adversely impact on its core activities. When the respective roles of the PSRA and PRTB are examined closely it becomes clear that to merge both bodies will give rise to a conflict of roles which will create serious conflicts of interest for a new single body.

The Working Group concluded that, having regard to the lack of synergies between the PRTB and the PSRA, the significant savings in each organisation in recent years, and the fact that both organisations are self-financing, that there is no objective justification for proceeding with a merger of these two organisations. Indeed proceeding with a merger is likely to give rise to additional costs (which would not otherwise arise) and almost certainly will have a significant negative impact on the delivery of their core activities by both the PRTB and PSRA.

Accordingly, the Members of the Working Group recommend that the Government should not proceed with a merger of the Private Residential Tenancies Board and the Property Services Regulatory Authority.

Members of Review Group

- Cian Ó Lionáin, Principal Officer, Department of Environment, Community & Local Government
- Paula O'Reilly, Assistant Principal, Department of Environment, Community & Local Government
- John Laffan, Principal Officer, Department of Justice & Equality
- Patricia Ballantine, Higher Executive Officer, Department of Public Expenditure and Reform
- Andrew Conlon, Administrative Officer, Department of Public Expenditure and Reform
- Anne Marie Caulfield, Director, Private Residential Tenancies Board
- Pdraig McGoldrick, Assistant Director, Private Residential Tenancies Board
- Tom Lynch, Chief Executive Officer, Property Services Regulatory Authority

Appendix B

Detailed note on potential conflicts of interest in relation to the proposed merger of the Private Residential Tenancies Board (PRTB) and the Property Services Regulatory Authority (PSRA)

Core Functions

The principal activities of the PRTB include the registration of private residential tenancies and the resolution of disputes between tenants and landlords as well as the provision of information, assistance and advice to the Minister on the private residential rented sector.

The role of the PSRA is to act as both regulator for property service providers (Auctioneers/Estate Agents, Letting Agents and Management Agents) and to provide redress mechanisms for consumers of those services. In its role as regulator it is responsible for setting standards, licensing and supervising the professions in the public interest. In its other role of consumer protection, it is required to investigate and adjudicate on complaints made by members of the public against property service providers.

Synergies

The only tenuous link that could be identified between both bodies relates to letting agents. However the PRTB and PSRA have very different roles in this matter. Letting agents in the residential market may have a role in advertising property, collecting rent etc. while not having a legal or contractual relationship with the tenant. Any dispute which may arise between a landlord and tenant is strictly a matter between them and any letting agent employed by the landlord would have no standing in such a dispute (although they may be an evidence party to the disputes process). The PSRA role is one of licensing and regulation of Letting Agents and it has no role in the landlord-tenant relationship.

Potential for Conflict of Interest

Given the different functions of both bodies it was recognised that if they were merged there is a potential for conflict of interest to arise which will present difficulties for the effective execution of the statutory obligations of both bodies. The conflicts which arise with respect to each of the professions regulated by the PSRA are addressed in turn below.

Auctioneers/Estate Agents

The role of the PSRA with regard to Auctioneers/Estate Agents would not appear to give rise to any conflict with the role of the PRTB as adjudicator in disputes between landlords and tenants simply because there appears to be no connection between the two. However, under the Residential Tenancies Act, 2004 the PRTB is required to engage adjudicators (selected by way of open competition) for the purpose of carrying out its disputes resolution function. Such adjudicators are engaged on a contract basis for a period of "not less than" three years. The 2004 Act provides that the adjudicator shall determine the dispute between the landlord and tenant by reaching his/her own decision or by reflecting any agreement reached between the parties in the course of the adjudication. Unless such determination is appealed by either party to the Appeals Tribunal within 21 days the adjudicators' determination is final.

In the majority of cases, disputes between landlords and tenants concern failure to repay deposits, arrears of rent and the levels of rent payable. Because Auctioneers/Estate Agents are qualified in assessing valuations of property, and consequently rental valuations, they are also qualified to act as adjudicators in disputes between landlords and tenants and may potentially be employed as adjudicators by the PRTB (if successful in open competition).

If the PSRA and PRTB were to be merged it would result in a single body, on the one hand acting as regulator and protector of consumer interests with respect to Auctioneers'/Estate Agents' profession while at the same time employing members of that profession to adjudicate (and in the majority of cases make final determinations) in disputes between landlords and tenants. The conflict of interests arising for both the regulatory body and the adjudicators can readily be appreciated.

Letting Agents

Letting agents in the residential market may have a role in advertising property, collecting rent etc. while not having a legal or contractual relationship with the tenant. The tenancy agreement is between the landlord and the tenant and any dispute which requires resolution by the PRTB would not involve the Letting Agent (although they may be an evidence party to the disputes process). However, the merger of both bodies could make the resolution of disputes even more complex. A single body, with the dual responsibilities of the PSRA and the PRTB, could find itself, on the one hand, acting as protector of consumer interests in a complaint by a landlord against a Letting Agent while at the same time adjudicating in a dispute involving the same landlord and his/her tenant. Not only can this give rise to obvious conflicts but will also make the resolution of disputes more complex.

Management Agents' profession

The Management Agents' profession is an area which has not been regulated previously and one which has grown in importance over the last decade with the increase in the

number of Multi-Unit Developments which have become part of the fabric of residential accommodation. This area is very much in need of tight regulation as the difficulties encountered by residents in ensuring that their properties are properly maintained and managed are of grave concern. Because of the major concerns which the Government has had about the regulation of this sector a number of major studies have been carried out in an effort to resolve the present difficulties. The question of the PRTB having responsibility for Management Agents has been debated at length in the context of these studies and the conclusion has been that the PRTB should have no role in the regulation of Management Agents.

In this context the Minister for the Environment, Heritage and Local Government, in the course of the second stage debate on the Residential Tenancies (Amendment) Bill 2006 (Private Members Bill), rejected the proposal to assign responsibility for Management Agents to the PRTB stating that the PRTB was not a suitable body to undertake the task. Responding to the Bill the Minister said:

“The proposal that the private residential tenancies board, PRTB, should be involved in regulating the relationship between property owners and managing agents would not be appropriate and would seriously detract from the PRTB’s role with regard to landlord and tenant matters in the private rented accommodation. We must remember the reason the PRTB was established was to operate the new landlord and tenant system in the private rented sector. Therefore, it would be inappropriate to give the board this additional role.”

The most comprehensive review of the issues surrounding Multi-Unit Developments was carried out by the Law Reform Commission which examined the practical, operational, planning and legal complexities associated with the management of Multi-Unit Developments. The review included: national regulatory issues (including planning matters and the appropriate regulatory structure for those involved in Multi-Unit Developments), the legal structures associated with Multi-Unit Developments (in particular the role of management companies), consumer protection issues (including the protection of consumers at purchase and protecting their long-term investment in the apartment complex) and general land ownership and conveyancing issues. This study was carried out over a number of years and involved an in-depth examination of the many complex issues involved. In December 2006 the Commission published its Consultation Paper on Multi-Unit Developments and its final report was published in June 2008.

As part of its review the Law Reform Commission considered what role the PRTB might have in the regulation of Management Agents. It concluded that:

"the PRTB's ambit extends only as far as the 'mainstream' private rented sector and it is not within the spirit or intendment of the Act that it be applicable to shareholders in multi-unit developments.

That Board is concerned primarily with landlord and tenant issues and, in so far as its present remit extends to multi-unit developments, it is confined to the interests of tenants of the owners of the units. It is not concerned with owner-occupiers of the units or owner-investors who have sub-let on short-term leases.

In any event, it can be argued that engaging the PRTB as the management company sector regulator could foreseeably dilute the Board's efficacy in catering for the needs of 'traditional' tenants, as membership of management companies often comprises landlords. Thus, the PRTB could find its usefulness compromised in cases where it would be necessary to represent and advise both tenants and shareholder landlords."

In its final report published in June 2008 the Law Reform Commission excluded the PRTB from any role in the regulation of Management Agents.

"Competent Authority" for Money Laundering

The Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 provides for the PSRA to be "the State Competent Authority" for Property Services Providers (PSPs). As the "State Competent Authority" the PSRA is required to

"effectively monitor the designated persons for whom it is a competent authority and take measures that are reasonably necessary for the purpose of securing compliance by those designated persons with the requirements specified"

In carrying out this function the PSRA is given powers of monitoring and investigation under the Money Laundering Bill which are analogous to the powers of investigation which it has under the Property Services (Regulation) Act, 2011. However, it should be noted that these types of investigations will be more in the nature of criminal investigations, which will obviously require specially trained personnel, and will also involve the PSRA having extensive contact with the Garda Síochána, in particular the Criminal Assets Bureau.

The Special Group proposed that the merged body should be brought under the aegis of the Department of Environment, Community and Local Government. It is clear that the nature of the work involved for the Authority in this regard clearly falls within the remit of

the Department of Justice & Equality and for this work to be carried out by a body under the aegis of any other Government Department would be clearly inappropriate.

Conclusion

When the respective roles of the PSRA and PRTB are examined closely it becomes clear that to merge both bodies will give rise to a conflict of roles which will:

- Create serious conflicts of interest for a new single body.
- Make the resolution of disputes more complex.
- Compromise the ability of any single body to effectively carry out the statutory roles prescribed for both the PSRA and the PRTB.
- Cause the PSRA role as 'Competent Authority' for Money laundering to fall under the aegis of the Department of Environment, Community and Local Government, an entirely illogical fit (this assumes that a merged body would fall under the aegis of the Department currently having responsibility for the larger agency).

If the merger was to go ahead it will significantly impede the operations of both bodies.

Detailed note on Scope for Administrative Savings

The potential for back-office and any other administrative savings (shared payroll, human resources, and ICT functions) was examined. The PSRA, having only 9 staff, already has a service level agreement in place with the Department of Justice and Equality in relation to these functions so no savings would arise on their side. As for the PRTB, its staffing numbers have been reduced hugely due to the ECF (from a total of 70, (including 30 agency staff) to 34 by end-2012) and, such, they are already looking to outsource and/or put service level agreements in place for a number of these functions. While administrative support for both organisations could theoretically be provided by a single supplier it's clear that no net savings will accrue; in fact, with outsourcing to private operators the likeliest outcome, an additional cost is probable.

ICT

The PRTB has, in recent years, invested heavily in ICT systems (on a Microsoft CRM platform) so as to cope with increased workload and reduced staff numbers. The PSRA IT system is built on the Department of Justice and Equality platform. There are no obvious links between the two systems and considerable costs would be incurred to migrate the PSRA from the Justice system to the PRTB. The likely approach in any merger would be to maintain both systems as standalone units while creating some shared internal communications and information systems.

Staff savings

As previously outlined, there is no scope for staff savings arising out of shared services in a merged organisation as PSRA has no staff involved in any back office functions. In theory, a saving could accrue if a single CEO heads up a merged organisation. However, it was agreed that – given the significant differences between both bodies' work, and the increased responsibilities in the case of a merged organisation – consideration may need to be given to the merits of upgrading the post from Principal Officer Level.

Procurement

A merged entity would not have sufficient size to leverage procurement savings (for instance, via improved buying power etc); savings in this regard are more likely to arise in the context of on-going moves to centralise procurement across Government Departments and Agencies.

Accommodation Costs

The PSRA is currently located in Navan in a building shared with Revenue under a 20 year lease negotiated by the OPW. The PRTB has recently renewed their lease (at a reduced cost) and it will be five years before they can activate their next break clause (20 year lease with break clause at 5 and 10 years).

In theory, savings could be achieved if a merged body was to be wholly located in Navan, or another non-Dublin location, when next break clauses allow it. However, as around half of all tenancies are located in the greater Dublin area, a city centre location facilitates good customer service and access and reduces the T&S costs payable to PRTB adjudicators. It would be more logical to physically relocate the smaller PSRA to the PRTB offices in Dublin but given that this would entail higher rent costs it does not seem feasible in the current climate.

Board Savings

It is estimated that the PRSA Board will cost €47,000 in fees in 2012; the PRTB Board costs approximately €137,000 a year. The PRTB Board meet on average three times a month and the PRSA Board has already met 12 times since its establishment in April 2012. Given the range of very different functions that a merged Board would have it is not the view that savings can be achieved in this area; in fact, a fulltime Executive Board might be called for with the additional costs and complications that could entail.

**Report of the Property Services Regulatory Authority Implementation Group
on
The Recommendation of "Special Group on Public Service Numbers and
Expenditure Programmes"
to
Merge the PSRA and the PRTB**

**Report of the Property Services Regulatory Authority Implementation Group
on
The Recommendation of "Special Group on Public Service Numbers and
Expenditure Programmes"
to
Merge the PSRA and the PRTB**

CONTENTS

Introduction

Special Group Recommendation

Roles and Functions of the PSRA and PRTB

Analysis of Special Group's Merger Proposal

- What is the evidence in support of the view that a merger will create "a single body responsible for the broad area of tenancy rights" and save €0.5M p.a.?
- What will be the effect of reducing the PSRA budget by €0.5M p.a.?
- Does the PRTB have the capacity to absorb the functions of the PSRA?
- Will there be a conflict of roles as a result of the merger?
- What structural reorganisation would a merger require?
- The Role of the PSRA as "Competent Authority" for Money Laundering.

Economic Implications

- The Current Cost to Licensees of Obtaining a Licence
- Revenue Accruing to the Exchequer from the Current Licensing System
- Losses in Revenue Under the Existing Licensing System

Conclusion

Introduction

The "Special Group on Public Service Numbers and Expenditure Programmes" in its report to Government on 16 July, 2009 recommended that the Property Services Regulatory Authority (PSRA) be merged with the Private Residential Tenancies Board (PRTB). While the PSRA has not yet been established on a statutory basis the legislation, the Property Services (Regulation) Bill 2009, which will establish it on a statutory basis is currently before the Houses of the Oireachtas.

Pending enactment of the legislation an Implementation Group was set up by the Minister for Justice, Equality and Law Reform to assist and advise on matters relating to the establishment of the new Authority and to make arrangements for the development of the organisational structures, systems, procedures, protocols, rules and regulations, which are fundamental to the long term functioning of the PSRA.

In light of its remit, the Implementation Group, conscious that the recommendation of the Special Group has a bearing on its work on the establishment of the PSRA, decided to undertake a detailed examination of the implications of the recommendation for the PSRA. In the course of this review the Implementation Group paid particular attention to the feasibility of achieving the cost savings envisaged by the Special Group while, at the same time, ensuring that the necessary reforms recommended by the Auctioneering/Estate Agency Review Group can be achieved.

Special Group Recommendation

The "Special Group on Public Service Numbers and Expenditure Programmes" has recommended that the Property Services Regulatory Authority (PSRA) be merged with the Private Residential Tenancies Board (PRTB).

In **Volume I** of its report the Special Group states (Chapter 3.13) that it

“ considers that there would be synergies from merging the Property Services Regulatory Authority with the Private Residential Tenancies Board, to create a single body responsible for the broad area of tenancy rights and the associated obligations of landlords etc.; ”

In **Volume II** of the report, which consists of Detailed Papers on each of the Ministerial Votes, the Special Group elaborates on its recommendation as follows:

“Merge the Property Services Regulatory Authority with the Private Residential Tenancies Board

The Property Services Regulatory Authority, which is not yet established on a statutory footing, is intended to regulate the property services providers. These are persons involved either as corporate bodies, partnerships, sole traders or employees in:

- *the purchase or sale, by whatever means, of any estate or interest in land (including buildings) wherever situated;*
- *the auction of private property other than land;*
- *the letting of any estate or interest in land wherever situated;*
- *the provision of property management services.*

Auctioneers, Estate Agents, Letting Agents and Property Management Agents will be regulated by the Authority. This will apply not only to property located in the State, but also to transactions in Ireland which relate to property located abroad. The Group considers that there would be synergies from merging the Property Services Regulatory Authority with the Private Residential Tenancies Board. This would create a single body responsible for the broad area of tenancy rights, and the associated obligations of estate agents/property management companies, operating under the aegis of the Department of the Environment, Heritage & Local Government, and this should yield savings of approximately €0.5m.”

There are no other references, or arguments in support of the recommendation, to be found in the report.

Before examining in detail the implications of the recommendation the Implementation Group would first like to give an overview of the respective roles and responsibilities of both the PSRA and the PRTB.

Roles and functions of the PSRA and PRTB

The Property Services Regulatory Authority (PSRA)

Background

In July 2004 the Minister for Justice, Equality and Law Reform, in response to public concerns regarding the adequacy of the existing regulatory framework governing Auctioneers and Estate Agents, established the Auctioneering/Estate Agency Review Group. The Review Group, which comprised representatives from the industry, consumer bodies, the Competition Authority, the Law Society, the farming sector, the co-operatives sector and relevant Government Departments, was asked to examine all aspects of the industry and make recommendations for reform.

Review Group Findings and Recommendations

The Review Group, in its report of July 2005, identified significant shortcomings in the existing statutory and regulatory framework. Major weaknesses identified included the following:

- The existing statutory framework was outdated and inadequate;
- The existing District Court based system allowed for little uniformity in determining the suitability/qualification requirements for Auctioneers/Estate Agents;
- The systems of supervision and control of Auctioneers/Estate Agents were inadequate;
- There was no system of redress for consumers;
- There was no system for investigating the practices of Auctioneers/Estate Agents;
- The existing sanctions to combat misconduct were inadequate;
- The existing licensing system did not cover Property Management Agents;
- Client funds were not adequately safeguarded in all cases under the client account provisions;
- The compensation arrangements for clients were totally inadequate;
- Existing practices and procedures relating to the sale of land by auction and by private treaty were not transparent and did not inspire public confidence;
- There was an absence of consumer information and guidance.

Arising from its analysis of the existing system the Review Group made some 42 recommendations for reform. Principal among its recommendations was the establishment of a new Regulatory Authority to take over the existing District Court based licensing system. In recommending that a Regulatory Authority be established the Review Group stated that, while it considered that many of the issues of concern,

“could be addressed by introducing legislation that provides for a wider range of sanctions the Group does not believe that the District Court, or any court, is the appropriate forum for dealing with complaints relating to professional misconduct that does not amount to a breach of any law.

The Group believes that, like adjudicating on licence applications, dealing with such complaints would be better done by a centralised licensing unit that could provide for the application of subject matter expertise and uniformity of practice...”

The Review Group goes on to state:

“The Group has concluded that there is a compelling need to establish an Auctioneers and Estate Agents Regulatory Authority in order to achieve uniformity and transparency in licensing, regulation and information provision. This Regulatory Authority would licence and control all entities providing auctioneering and estate agency, property letting and property management services in the State, and would subsume the functions and powers currently carried out by the Courts and the Revenue Commissioners.”

It recommended that the Authority be “*established as a matter of urgency*”.

The main recommendations of the Review Group include the following:

- The existing District Court-based licensing system for auctioneers and house agents should be strengthened and transferred to a new Regulatory Authority and its scope should be extended to cover Property Management Agents;
- The Regulatory Authority should set standards for the grant of licences and regulate standards for the provision of property services within its remit;
- The Regulatory Authority should have an investigative and enforcement function enabling it to investigate property services and impose appropriate sanctions;
- The Authority should administer a new Compensation Fund which would be financed by means of contributions from licensees;
- Existing safeguards for client funds should be extended to service charges/fees retained by management agents in respect of multi-unit developments and estates where management company structures are in place;
- Additional statutory safeguards should be put in place in relation to sales of land by auction and private treaty in order to protect the interests of both vendors and purchasers.

Government Decision

The Government accepted the Review Groups recommendations in full and decided to establish the PSRA on a statutory basis. The Property Services (Regulation) Bill 2009, which will establish the Authority on a statutory basis, is currently before the Houses of the Oireachtas.

Functions of PRSA

The principal functions of the PSRA, prescribed in the Property Services (Regulation) Bill 2009, are as follows:

- To operate a comprehensive licensing system covering all providers of property services (i.e. Auctioneers/Estate Agents, Letting Agents and Management Agents). This extended system will replace the current licensing system for

Auctioneers and House Agents under the Auctioneers and House Agents Acts 1947 to 1973;

- To set and enforce standards for the grant of licences (e.g. educational and training standards; levels of professional indemnity insurance) as well as standards to be observed in the provision of property services by licensees;
- To establish and administer a system of investigation and adjudication of complaints relating to the provision of property services;
- To establish, maintain and administer a Compensation Fund to compensate parties who lose money as a consequence of the dishonesty of a licensee;
- To promote increased consumer protection and public awareness of property services in general.

The Private Residential Tenancies Board (PRTB)

Background

In 1999, in response to pressures within the private rented sector and as a result of lobbying from non-governmental organisations concerned with housing issues, the Minister for Housing and Urban Renewal established the Commission on the Private Rented Residential Sector. The Commission, which comprised of landlord and tenant interests, student representatives, members of the legal and accounting professions, auctioneering and property investment specialists and representatives of relevant Government Departments, was asked to investigate the sector and make recommendations for statutory and policy reform.

Commission's Findings and Recommendations

The Commission made a series of recommendations on the main issues of dispute resolution, security of tenure and the setting of rents. With regard to dispute resolution it recommended the establishment of the PRTB to deal with disputes between landlords and tenants. It also recommended a measure of security of tenure for tenants and specified minimum obligations which should apply to landlords and tenants. On the question of setting rents it recommended open market rents be set at the beginning of a tenancy and be subject to annual review.

Government Decision

The Government accepted the Commission's main recommendations and decided to establish the PRTB on a statutory basis. The Residential Tenancies Act 2004, which establishes the PRTB on a statutory basis, also gives statutory effect to the main recommendations of the Commission relating to security of tenure, tenancy obligations of landlords and tenants and the setting of rents.

Functions of PRTB

The Residential Tenancies Act 2004 prescribes the following functions for the PRTB:

- the resolution of disputes between tenants and landlords;
- the registration of tenancies in accordance with the provisions of Part 7 of the Residential Tenancies Act 2004;

- the development of practice guidelines for those involved in the private rented sector;
- the collection and provision of information relating to the private rented sector, including information concerning prevailing rent levels;
- where the Board considers it appropriate, the conducting of research into the private rented sector and monitoring the operation of various aspects of the private rented sector or arranging for such research and monitoring to be done.

Analysis of the Special Group's Merger Proposal

The Special Group envisages that merging the PSRA with the PRTB will create:

“a single body responsible for the broad area of tenancy rights and the associated obligations of landlords etc.”

and

“a single body responsible for the broad area of tenancy rights, and the associated obligations of estate agents/property management companies.”

In addition it states that there would be synergies from such a merger which could yield an annual saving of €0.5M.

In examining the Special Group's report the Implementation Group is concerned to find that the report contains:-

- no analysis of the respective roles and functions of the PSRA or the PRTB,
- no reasoned arguments to support the recommendation, and
- no empirical evidence to support the claimed benefits.

The rationale underpinning the recommendation to merge the two bodies is not set out in the report and the benefits which will accrue from such a merger are simply asserted without any supporting evidence.

When considering the recommendation the Implementation Group addressed the following questions:

- What evidence is there to support the contention that a merger will create *“a single body responsible for the broad area of tenancy rights”* and save €0.5M p.a.?
- What will be the effect of reducing the PSRA budget by €0.5M p.a.?
- What capacity has the PRTB to absorb the functions of the PSRA?
- Will there be a conflict of roles as a result of the merger?
- What structural reorganisation would a merger require?

- What are the Implications for the PSRA as "State Competent Authority" for Money Laundering?

Each of these questions is addressed below.

What is the evidence to support the contention that a merger will create "a single body responsible for the broad area of tenancy rights" and save €0.5M p.a.?

This question gives rise to three distinct issues.

Firstly, what evidence is there to support the contention that the merger will create “*a single body responsible for the broad area of tenancy rights and the associated obligations of landlords etc.*”?

It is clear from an examination of the statutory functions of the two bodies, outlined above, that the function and responsibilities of both bodies are totally unrelated. The PSRA is concerned with the licensing and regulation of Auctioneers/Estate Agents, Letting Agents and Management Agents and the enforcement of standards within the property services industry. The PRTB is primarily concerned with the protection of tenants rights and the resolution of disputes between landlords and tenants involving private residential tenancies. In this context it is important to understand that the PRTB remit only covers private residential tenancies and excludes such rental arrangements as:

- Business lettings
- Formerly rent controlled dwellings
- Social housing
- A dwelling occupied by the owner under a lease or a shared ownership lease;
- A holiday letting;
- A dwelling in which the landlord is also resident;
- A dwelling in which the spouse, parent or child of the landlord is resident and there is no written lease or tenancy agreement; and
- a tenancy the term of which is more than 20 years.

The PSRA has nothing whatsoever to do with landlord and tenant matters and to suggest, as the report of the Special Group does, that by merging it with the PRTB would result in *the creation of a single body with responsibility for landlord and tenants matters*” shows a total lack of understanding of the roles and responsibilities of both bodies. The contention is simply incorrect.

Secondly, what evidence is there to support the contention that the merger will create "*a single body responsible for the broad area of tenancy rights, and the associated obligations of estate agents/property management companies*"?

As we have said Auctioneers/Estate Agents, Letting Agents and Management Agents, which the PSRA is being established to regulate, have nothing whatsoever to do with the landlord and tenant relationship. Under the law a property service means:

"any of the following services provided in the State, by a property services employer or by a person in the course of an employment or as an independent contractor, in respect of property located within or outside the State:

- a) the auction of property other than land;*
 - b) the purchase or sale, by whatever means, of land;*
 - c) the letting of land;*
 - d) property management services,*
- but does not include a service provided by a local authority in the course of the performance of its functions under any statutory provision."*

Auctioneers/Estate Agents are involved in the purchase and sale of property which includes residential property, commercial property, and real property.

Management Agents act on behalf of Management Bodies in the management and running of "Multi-Unit Developments" and "Gated Estates".

Letting Agents are involved in the letting of both residential and commercial property. However, the vast majority of lettings involve commercial property and the use of Letting Agents in the residential market is the exception rather than the rule. Where Letting Agents are involved in residential lettings their role is to act for and under the instructions of the landlord. A Letting Agent will normally have a contract with a landlord to act for him/her in advertising the property for letting, arranging for the letting, collecting rents, etc. While the Letting Agent may have regular contact with the tenant in the collection of rents, etc., as an Agent he/she is not involved in any way with the tenancy or letting agreement between the landlord and tenant and has no legal or contractual relationship with the tenant. Where disputes arise between a landlord and tenant they are strictly a matter between them and any Letting Agent employed by the landlord has no standing in such a dispute.

None of these professions have any involvement with *"the broad area of tenancy rights"* and neither have they any *"associated obligations"*.

The PRTB was established, in the first instance, as a "single body", to deal primarily with landlords' and tenants' disputes, in so far as they relate to private residential tenancies. In this regard the Implementation Group notes that the Special Group's Report proposes that the "rents tribunal" be merged with the PRTB and would agree that such a merger would be wholly consistent and clearly marry two bodies, with compatible functions and responsibilities, which were established to deal with landlord and tenant matters.

The contention that the merger of the PSRA and PRTB would create

"a single body responsible for the broad area of tenancy rights and the associated obligations of landlords etc."

and

"a single body responsible for the broad area of tenancy rights, and the associated obligations of estate agents/property management companies.. "

is simply incorrect.

Thirdly, what synergies will there be from the merger of both bodies?

The Special Group claims that "*there would be synergies from merging*" the PSRA with the PRTB which will result in annual savings of €0.5M. Clearly one would expect that the merger of two entities would result in gains in revenues or cost savings resulting from a "natural match" between the assets of the separate entities and the amalgamation of cognate functions. However, where the functions of the two bodies are totally different the scope for savings may be limited. In considering this matter the Implementation Group examined in detail all of the functions and responsibilities of the two bodies.

The principal functions and responsibilities of both bodies were examined first. As has been outlined earlier the principal statutory functions of the PSRA and the PRTB are in no way related. In fact they are absolutely distinct from one another. For example the PRTB's primary role in adjudication on disputes between landlord and tenants has no parallel in the PSRA. Similarly PSRA's role as regulator and ombudsman for the property service industry has no parallel in the PRTB. Consequently, in so far as the execution of the principal functions of the two bodies is concerned no synergies can be achieved in this area through a merger of the two bodies.

The Implementation Group then examined the secondary functions of both organisations. These included such functions as Human Resource Management, Financial Administration, Payroll Systems, IT Services, which would have parallels in both organisations and where one would expect to achieve savings. However, the PSRA has already entered into "Service Agreements" with the Department of Justice, Equality and Law Reform for the provision of all of these services and the PSRA does not itself employ any staff to provide such services. Consequently, no savings can be achieved in this area through a merger. On the contrary rather than achieving savings the transfer of these functions to the PRTB could incur additional costs.

The next area examined was the savings which might be achieved by having just a single Board. The legislation which will establish the PSRA provides for a Board of not more than 11 members while the Residential Tenancies Act, 2004, which established the PRTB, provides for a Board of not more than 15 members. Obviously savings can be achieved by having only one Board. However, similar savings can be achieved by having smaller Boards.

What are the implications of reducing the PRSA budget by €0.5M p.a.?

Clearly annual savings of €0.5M, as envisaged by the Special Group, cannot be achieved simply by merging the two bodies. That being the case the question arises as to how such savings might be achieved. As was pointed out at the outset the Special Group's report is silent on how it arrived at the figure of €0.5M and no empirical evidence is provided in support savings of €0.5M. On the contrary the figures produced by the Special Group in its report relating to PSRA expenditure are incorrect.

The figures in Table 3 of the Appendix to *Detailed Paper 13* of the Report are inaccurate. Table 3 records expenditure by the PSRA in 2008 as €1.0M. However, expenditure in that year by the PSRA was less than €0.6M of which nearly €0.5M was pay. Consequently, the only way in which a reduction of €0.5M could be achieved in the PSRA budget would be to disband the PSRA as it now stands.

As has been said there is a singular lack of analysis to be found in the report of the Special Group with respect to this recommendation and this becomes very evident in this context. What the Special Group fails to understand is that the PSRA has not yet been established. What has been established is an administrative body whose main responsibility is to make arrangements for the establishment of the Authority and its structures including the basic organisational structures, systems, procedures, protocols, rules and regulations, which are fundamental to the long term functioning of the Authority.

To achieve savings of the order predicted by the Special Group would involve the abolition of this administrative body and the transfer of all of the PSRA functions and responsibilities to the PRTB without assigning any additional staff to the PRTB.

The Implementation Group have already, in the context of advising the Minister on the legislation, outlined in detail the short, medium and long term costs of running the PSRA. The overall annual cost of running the PSRA, once fully established, is estimated at €2.8M of which €1.3M will be staff costs (including independent inspectors on limited contracts). However, the PSRA is required to be self-financing and all costs are to be defrayed from the Property Services Providers licence fees.

What capacity has PRTB to absorb the functions of the PSRA?

As has been stated the only way to save €0.5 is to abolish the PSRA, as it currently exists, and to transfer all of the functions of the PSRA to the PRTB without incurring any additional costs. In this context the ability of the PRTB to absorb all of the functions of the PSRA without additional staff must be considered.

The core function of the PRTB is the operation of a landlord and tenant dispute resolution service. However, since the establishment of the PRTB in 2005 it has had serious difficulties in coping with the volume of cases which have been referred to it for resolution and is currently in serious arrears. In the three year period from January, 2006 to December, 2008 (The only period for which full year figures are available) the number of disputes referred to the PRTB for resolution exceeded 4,000. However, during this period the number of final determinations/decisions made in respect of these cases was just in excess of 1,300. In addition to the delays in this area there are also arrears of over 4 months in the processing of landlord registrations, which is a secondary function of the PRTB.

In recent discussions with the PRTB, in the context of examining areas in which there might be room for closer cooperation between the two bodies, the PRTB indicated that currently they had an arrear of over 12 months between receiving a request for a hearing

and assigning a person to adjudicate on the dispute. The difficulties which the PRTB are experiencing, and have experienced since its establishment, were recently recognised by the Minister for Housing and Local Services at the Department of Environment, Heritage and Local Government when, on the 18th June, 2009, responding to criticisms about the delays in the PRTB, stated:

"in response to the large and ongoing volume of work involved, a request from the Board of the PRTB for the recruitment of an additional 14 permanent staff, to bring the permanent staffing complement from 26 to 40, was approved."

He added:

"I recently announced my intention to review the provisions of the Residential Tenancies Act 2004 under which the Private Residential Tenancies Board (PRTB) operates. The purpose of this review is to consider whether the Act best supports the PRTB's key functions and whether legislative amendments would support either the achievement of additional operational efficiencies by the PRTB in the delivery of those functions or the broader good working of the private rented sector."

It is clear that the PRTB has not got the capacity to carry out its own functions effectively as matters stand and that the Minister with responsibility in this area, in recognition of this, has called for a full review of the PRTB.

It is obvious therefore that the PRTB is not in a position to take on the role and responsibilities of the PSRA.

Will there be a conflict of roles as a result of the Merger?

As has been pointed out the role of the PSRA is to act as both regulator and ombudsman for the Auctioneers'/Estate Agents', Letting Agents' and Management Agents' professions. In its role as regulator it is responsible for setting standards, licensing and supervising the professions in the public interest. As ombudsman it is required to investigate and adjudicate on complaints made by members of the public against members of the profession. The role of the PRTB is to adjudicate in disputes between individual landlords and tenants.

As has been stated, in so far as the principal roles of both bodies are concerned, no synergies will arise as a result of the merging the two organisations. However, what becomes apparent, on examination of the roles of both bodies, is that a merger of both bodies will give rise to conflicts of roles which will present difficulties for the effective execution of the statutory obligations of both bodies. The conflicts which arise with respect to each of the professions regulated by the PSRA are addressed in turn below.

Firstly, the role of the PSRA with regard to Auctioneers/Estate Agents would not appear to give rise to any conflict with the role of the PRTB as adjudicator in disputes between landlords and tenants simply because there appears to be no connection between the two. However, it is important to understand how the PRTB carries out its adjudication function. Under the Residential Tenancies Act, 2004 the PRTB is required to engage

"adjudicators" for the purpose of carrying out its function. Such adjudicators are engaged on a contract basis for a period of "not less than" three years. The 2004 Act provides that the adjudicator shall determine the dispute between the landlord and tenant by reaching his/her own decision or by reflecting any agreement reached between the parties in the course of the adjudication. Unless such determination is appealed by either party to the Appeals Tribunal within 21 days the adjudicators determination is final.

In the majority of cases disputes between landlords and tenants revolve around level of rents, failure to repay deposits and arrears of rent. Because Auctioneers/Estate Agents are qualified in assessing valuations of property, and consequently rental valuations, they are uniquely qualified to act as adjudicators in disputes between landlords and tenants and many are employed as adjudicators by the PRTB.

If the PSRA and PRTB were to be merged it would result in a single body, on the one hand acting as regulator and ombudsman with respect to Auctioneers'/Estate Agents' profession while at the same time employing members of that profession to adjudicate (and in the majority of cases make final determinations) in disputes between landlords and tenants. The conflict of interests which this gives rise to for both the regulatory body and the adjudicators can readily be appreciated.

The second professional group regulated by the PSRA is Letting Agents. We have already outlined above the role which Letting Agents play in the landlord and tenant relationship. As has been pointed out the tenancy agreement is between the landlord and the tenant and any dispute which requires resolution by the PRTB would not involve the Letting Agent. However, the merger of both bodies could make the resolution of disputes even more complex. A single body, with the dual responsibilities of the PSRA and the PRTB, could find itself, on the one hand, acting as ombudsman in a complaint by a landlord against a Letting Agent while at the same time adjudicating in a dispute involving the same landlord and his/her tenant. Not only can this give rise to obvious conflicts but will also make the resolution of disputes more complex.

The third area of the PSRA responsibilities to be considered is its role in relation to the Management Agents' profession. This is an area which has not been regulated previously and one which has grown in importance over the last decade with the increase in the number of Multi-Unit Developments which have become part of the fabric of residential accommodation. This area is very much in need of tight regulation as the difficulties encountered by residents in ensuring that their properties are properly maintained and managed are of grave concern. Because of the major concerns which the Government has had about the regulation of this sector a number of major studies have been carried out in an effort to resolve the present difficulties. The question of the PRTB having responsibility for Management Agents has been debated at length in the context of these studies and the conclusion has been that the PRTB should have no role in the regulation of Management Agents.

In this context the Minister for the Environment, Heritage and Local Government, in the course of the second stage debate on the Residential Tenancies (Amendment) Bill 2006

(Private Members Bill), rejected the proposal to assign responsibility for Management Agents to the PRTB stating that the PTRB was not a suitable body to undertake the task. Responding to the Bill the Minister said:

“The proposal that the private residential tenancies board, PRTB, should be involved in regulating the relationship between property owners and managing agents would not be appropriate and would seriously detract from the PRTB’s role with regard to landlord and tenant matters in the private rented accommodation. We must remember the reason the PRTB was established was to operate the new landlord and tenant system in the private rented sector. Therefore, it would be inappropriate to give the board this additional role.”

The most comprehensive review of the issues surrounding Multi-Unit Developments was carried out by the Law Reform Commission which examined the practical, operational, planning and legal complexities associated with the management of Multi-Unit Developments. The review included: national regulatory issues (including planning matters and the appropriate regulatory structure for those involved in Multi-Unit Developments), the legal structures associated with Multi-Unit Developments (in particular the role of management companies), consumer protection issues (including the protection of consumers at purchase and protecting their long-term investment in the apartment complex) and general land ownership and conveyancing issues. This study was carried out over a number of years and involved an in-depth examination of the many complex issues involved. In December 2006 the Commission published its Consultation Paper on Multi-Unit Developments and its final report was published in June 2008.

As part of its review the Law Reform Commission considered what role the PRTB might have in the regulation of Management Agents. It concluded that:

“the PRTB’s ambit extends only as far as the ‘mainstream’ private rented sector and it is not within the spirit or intendment of the Act that it be applicable to shareholders in multi-unit developments.

That Board is concerned primarily with landlord and tenant issues and, in so far as its present remit extends to multi-unit developments, it is confined to the interests of tenants of the owners of the units. It is not concerned with owner-occupiers of the units or owner-investors who have sub-let on short-term leases.

In any event, it can be argued that engaging the PRTB as the management company sector regulator could foreseeably dilute the Board’s efficacy in catering for the needs of ‘traditional’ tenants, as membership of management companies often comprises landlords. Thus, the PRTB could find its usefulness compromised in cases where it would be necessary to represent and advise both tenants and shareholder landlords.”

In its final report published in June 2008 the Law Reform Commission excluded the PRTB from any role in the regulation of Management Agents.

When the respective roles of the PSRA and PRTB are examined closely it becomes clear that to merge both bodies will give rise to a conflict of roles which will:

- create serious conflicts of interest for a new single body,
- make the resolution of disputes more complex, and
- compromise the ability of any single body to effectively carry out the statutory roles prescribed for both the PSRA and the PRTB.

It will significantly impede the operations of both bodies.

What structural reorganisation would a merger require?

As things stand the PSRA is located in Navan, Co. Meath and the PRTB is located in Dublin. The OPW has entered into twenty year leases in respect of the current premises housing both bodies. The PSRA lease commenced in January, 2008 and the PRTB lease commenced in October, 2007. If both bodies were merged it would be necessary to house all staff at one location. This would involve either the staff in Co Meath being relocated to Dublin or the staff in Dublin being relocated to Co. Meath.

As we have said the PSRA is at present an administrative body whose staff are staff of the Department of Justice. All of the staff currently working with the administrative body have agreed to transfer permanently to the PSRA once it has been put on a statutory basis. All of these staff have relocated to Co. Meath from Dublin under the Department of Justice, Equality and Law Reform decentralisation programme in the last 18 months. If the PSRA were to be merged with the PRTB, or alternatively the PRTB were to take over the PSRA responsibilities and the PSRA to be disbanded, all of the staff currently located in Navan, Co Meath would have to be relocated back to Dublin. This of course would add considerably to the accommodation costs as the rental cost of accommodation in Dublin City is considerably more than in Co Meath.

Alternatively the PRTB could be moved to Co. Meath. While this might be feasible in the longer term there is currently a shortage of office accommodation in Navan, where the PSRA is located. A factor which should be borne in mind in this context is that over 52% of disputes referred to the PRTB are from people based in Dublin. Consequently, to move the PRTB to Co. Meath would result in the service being either less accessible to the citizen or more expensive in terms of time lost travelling to Dublin plus the associated travel and subsistence costs.

What are the Implications for the PSRA as "Competent Authority" for Money Laundering?

The Criminal Justice (Money Laundering and Terrorist Financing) Bill, 2009 was published in the last Dáil session and is currently awaiting Second Stage debate in the Seanad. Money Laundering, within the meaning of the new legislation, is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities and includes acquiring, possessing or using the proceeds of criminal

conduct. Under section 25 of the Bill Property Services Providers (PSPs) are "designated persons" for the purposes of the new legislation. As such they have certain statutory obligations including the carrying out of "customer due diligence" checks which includes the verification of the identity of the customer and the ownership of property and goods. PSPs are also obliged under the legislation to maintain certain records and report any suspicions of money laundering or terrorist financing. Any PSP who conceals or disguises any property or converts or transfers it from the State and knows or believes or is reckless as to whether it represents the proceeds of criminal conduct, is guilty of the offence of money laundering. It is also an offence for a PSP to provide any advice or assistance in relation to converting, transferring handling or removing property knowing or believing it to represent the proceeds of criminal activity or being reckless as to whether it was or represented proceeds.

Under the new legislation the PSRA, once established on a statutory basis, will be "the State Competent Authority" for PSPs. As the "State Competent Authority" the PSRA is required to

"effectively monitor the designated persons for whom it is a competent authority and take measures that are reasonably necessary for the purpose of securing compliance by those designated persons with the requirements specified"

In carrying out this function the PSRA is given powers of monitoring and investigation under the Money Laundering Bill which are analogous to the powers of investigation which it has under the Property Services (Regulation) Bill, 2009. However, it should be noted that these types of investigations will be more in the nature of criminal investigations, which will obviously require specially trained personnel, and will also involve the PSRA having extensive contact with the Garda Síochána, in particular the Criminal Assets Bureau.

The Special Group proposed that the merged body should be brought under the aegis of the Department of Environment, Heritage and Local Government. As we have already said the Special Group did not carry out any detailed analysis of the role and responsibilities of the PSRA and it is very clear that it did not take any account of the role of the PSRA as "State Competent Authority" with respect to the Criminal Justice (Money Laundering and Terrorist Financing) Bill, 2009. It is clear that the nature of the work involved for the Authority in this regard clearly falls within the remit of the Department of Justice, Equality and Law Reform and for this work to be carried out by a body under the aegis of any other department of Government would be clearly inappropriate.

Economic Implications

The Current Cost to Auctioneers/Estate Agents of obtaining a licence

At present, any person wishing to obtain an Auctioneer's/Estate Agent's licence must first obtain:

- a Certificate of Qualification,
- a Certificate of Deposit and
- a Tax Clearance Certificate.

A Certificate of Qualification is obtained from the District Court. Twenty eight days before making the application to the Court for such a certificate the applicant must place a notice in a local newspaper indicating the applicant's intention to apply to the Court for a certificate. The local Garda Superintendent must also be notified of the intended application 28 days before the application is submitted.

A Certificate of Deposit is obtained from the High Court. This is granted once the applicant lodges a sum of €12,700 with the court or an insurance bond for that amount.

A certificate may be obtained from the Revenue Commissioners. This is granted by the Revenue Commissioners where the applicant meets his/her taxation obligations.

Once these certificates have been obtained the applicant submits them to the Revenue Commissioners together with the excise duty of €250 and an Auctioneer's/Estate Agent's licence is issued.

The costs associated with each application are as follows:

Application for a Certificate of Qualification

Because this application is made to the District Court it is normal for the applicant to engage a solicitor to handle the application. The total cost of engaging a solicitor to undertake this work is €500. In addition to the cost of engaging a solicitor there is a court fee of €135 for processing the application. The notice which must be inserted in the newspaper is a standard notice and costs €150. **Total Cost: €785**

Application for a Certificate of Deposit

The making of such an application will normally be included in the general solicitors fees. An applicant may either lodge a sum of €12,700 with the High Court or obtain an insurance bond to cover that amount. It is normal for a bond rather than a deposit to be provided. The cost of such a bond is €150. **Total Cost: €150**

Application for a Tax Clearance Certificate

The making of such an application will normally be included in the general solicitors fees. **Total Cost: €0**

Application for Auctioneer's/Estate Agent's Licence

The making of such an application will normally be included in the general solicitors fees. However the licence itself costs €250. **Total Cost: €250**

The total cost of obtaining an Auctioneer's/Estate Agent's licence = €1,185

Revenue Accruing to the Exchequer from the Current licensing system

At present the number of Auctioneers/Estate Agents licences issued annually is 2,850. While the total cost of these licences to the industry is €3,377,250 only €1,097,250 (€712,500 - Excise Duty and €384,750 Court Fees) accrues to the Exchequer.

Less than a third of the cost of acquiring a licence goes to the Exchequer.

Losses of revenue under the existing licensing regime

The Implementation Group have become aware that because of the absence any regulation of the industry there are significant losses of revenue accruing to the State under the existing licensing system. All Auctioneers/Estate Agents and Letting Agents are required to be licensed. However, from an examination of the Revenue Commissioners licensing records it is apparent that a large number of Auctioneers/Estate Agents and particularly Letting Agents are currently operating without licences.

Our experience of Letting Agents is that unless they are also engaged in Auctioneering/Estate Agency work they will invariably not hold a licence. From a recent survey of Agents (over 200 Agents) engaged solely in the provision of letting services we found 100% non-compliance with the law. Not one held a licence.

A growing trend, which has emerged in recent times because of the slowdown in property sales, is for some Auctioneers/Estate Agents is to become more involved with letting rather than the sale of properties. A review of the Revenue records has revealed that a number of Auctioneers/Estate Agents, who have moved in this way, have failed to renew their licence for the current licensing period.

The reality is that under existing law there is no effective enforcement of the licensing system. As a consequence, and on the basis of the existing licensing fees (CPI adjusted) the State is currently losing over €0.2M. per annum on this alone.

The second area where losses are occurring is the absence of a universal licensing system. This presents in two ways. Firstly, not all those providing Auctioneering/Estate Agency and Letting Agency services are required to hold a licence under the existing law. Secondly, certain areas of the property services industry (i.e. Management Agents) are not covered under the existing law. From discussions with the main representative bodies in the industry (IAVI and IPAV) it is estimated that for every licence issued by the State 4 people on average operate under it. These are persons who work either as partners of licensees or employees of licensees. Even on the basis of just two people operating on each licence the loss of revenue to the state in this area is, based on the old licence fee (CPI adjusted), over €1.7M. Finally, there are a minimum of 500

Management Agents which are unlicensed which, again based on the old licence fee (CPI adjusted), would net at least €0.5M for the State. The net loss of revenue to the State is, at a minimum, over €2M.

The establishment of the PSRA will ensure that the public good which can be achieved through effective regulation can in fact be achieved at little or no cost to the exchequer because the PSRA, as a dedicated regulatory body, will be in a position to recover the €2M. currently being lost to the exchequer.

Conclusion

Having examined the Recommendation of the Special Group and examined the statutory roles and responsibilities of both the PSRA and the PRTB the Implementation Group is of the view that:

- The Special Group has failed to provide any analysis of the respective roles and functions of the PSRA and the PRTB and consequently fails to understand that there is no relationship between the functions of the two bodies.
- There are no reasoned arguments provided in the Special Group's report in support of its recommendation. The rationale underpinning the recommendation to merge the two bodies is not set out in the report and the benefits which will accrue from such a merger are simply asserted without any supporting evidence.
- There is no empirical evidence to support the claimed financial savings. On the contrary the PSRA expenditure figures for 2008, which are included in the report, are incorrect and are overstated by a factor of nearly 70%.
- The contention that the merger of the two bodies will create:
“a single body responsible for the broad area of tenancy rights and the associated obligations of landlords etc.”
and
“a single body responsible for the broad area of tenancy rights, and the associated obligations of estate agents/property management companies.”
is not correct. The PSRA has no function whatsoever in relation to landlord and tenant matters.
- The claim by the Special Group that *“there would be synergies from merging”* the two bodies which will result in annual savings of €0.5M is also incorrect. Obviously savings can be achieved by having just one Board. However, a similar level of saving can be achieved by having two smaller Boards.
- The only way in which the claimed annual savings of €0.5M can be made is by disbanding the existing PSRA administrative body and transferring the functions of the PSRA to the PRTB without assigning any additional staff.
- The PRTB does not have the capacity to take over the statutory functions of the PSRA. At present the PRTB does not even have the capacity to carry out its own statutory functions efficiently and effectively. Even though the PRTB was only

established four years ago it already has very serious arrears of work. Its inability to carry out its statutory functions has been recognised by the Minister for the Environment, Heritage and Local Government who has ordered a full review of its operations.

- Because the PSRA and the PRTB have such disparate statutory roles and responsibilities a merger of both bodies will create a serious conflict of roles which, in turn, will:
 - create serious conflicts of interest for a new single body,
 - make the resolution of disputes more complex, and
 - compromise the ability of the new single body to effectively carry out the statutory roles prescribed for both the PSRA and the PRTB.
- Because of the absence of any effective regulation of Auctioneers/Estate Agents, Letting Agents and Management Agents there is currently a significant shortfall in revenue accruing to the State annually. Under the existing system not all those providing services are licensed. In addition there is no effective system of enforcement. As a result the estimated annual shortfall in licensing fees accruing to the State is in excess of €2M.
- The Special Group did not consider the role and responsibilities of the PSRA as "State Competent Authority" with respect to the Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009. It is clear that the nature of the work involved for the PSRA in this regard clearly falls within the remit of the Department of Justice, Equality and Law Reform. For this work to be carried out by a body under the aegis of any other Government Department would be inappropriate.

In the light of the foregoing the Implementation Group is of the view that to assign responsibility for the statutory roles of the PSRA and the PRTB to a single body will seriously undermine the Governments policy for the effective regulation of Auctioneers/Estate Agents, Letting Agents and Management Agents and also seriously undermine the States capacity to provide an effective system of dispute resolution for landlords and tenants. In addition because of the absence of adequate regulation there will continue to be inadequate protection for consumers and a significant loss in revenue accruing to the State. Indeed the implementation of the recommendation could well result in greater rather than less cost to the State.

Consequently, the Implementation Group is of the view that:

- if Government policy in both of these important areas is to be implemented and
 - the current loss of revenues accruing to the State is to be addressed,
- both bodies should be kept separate and independent.

