



**Hearing of the Joint Oireachtas Committee on Finance, Public Expenditure
and Reform, and Taoiseach
Illegal Israeli Settlements Divestment Bill 2023
Pre-Committee Stage Scrutiny
Opening Statement by Mr. Oliver Gilvarry, Assistant Secretary, Banking
Division, Department of Finance
Wednesday, 20 March 2024**

A Cathaoirleach,

Thank you for the invitation today to assist this Committee in carrying out the important process of Pre-Committee Stage Scrutiny.

I want to outline the current state of play with regard to the actions taken in respect of the Private Members Bill. I will also use the time to outline the legal and operational issues which arise in relation to the Bill as it is currently drafted.

At the very outset, on behalf of the Minister for Finance, I want to make clear that he understands the motivation and intentions behind the Private Members Bill.

During the Dáil Second Stage debate on the 16th of May, the Minister outlined a number of actions he was going to take. These included writing to the CEO of the NTMA and the Chair of the Joint Oireachtas Committee on Foreign Affairs and Defence.

As you might expect there has been internal consideration of the issues raised by the Bill within the Department of Finance and there has also been continuing engagement on the issue between the Department and the NTMA.



There has also been engagement at official level with the Departments of Foreign Affairs and Enterprise Trade and Employment on the possible wider implications of the Bill.

Advices were also sought and received from the Attorney General on the legal status of the Private Members Bill.

Officials participated in a closed session with the Foreign Affairs Committee on 24 October last, including those Deputies involved with progressing the Bill. Following which, that Committee prepared and submitted its report in January of this year.

That report highlights that there was a range of views on the merits of placing the UN list on a legislative footing and there was no consensus on the best approach to advance the intention of the Bill. The report recommended further scrutiny by this Committee and that further legal analysis be carried out prior to Committee Stage.

I would also note the Future Ireland and Infrastructure, Climate and Nature Fund Bill is due to be published shortly. It contains important Environmental, Social & Governance provisions which are relevant to this issue and other similar issues going forward.

In the Pre-Legislative Scrutiny of that Bill, the NTMA's investment in companies on the UN list were raised as an issue to be addressed.



All of these steps, including today's Pre-Committee Stage Scrutiny engagement are helpful in informing the Minister and ultimately the Government on an approach to most effectively addressing the issues raised by the Bill.

Impact and issues arising and response to the Private Members Bill

A number of issues were articulated in respect of the Bill during the Second Stage debate in the Dáil. These included:

- the U.N. list is not comprehensive and individual companies which are not on the list could continue to receive investment from ISIF even if they are active in the illegal Israeli settlements in the Occupied Palestinian Territories;
- the use of such a list is not appropriate in primary law since it does not respond quickly to changing circumstances;
- due to the structure and the inflexible nature of the list, legal advice would be needed from Office of the Attorney General on the use of this or other lists; and
- there were issues to be addressed in respect of the type of financial instruments mentioned in the Bill, which would need clarification.

There has been follow up on those issues particularly with relevant legal advice been obtained.

In terms of analysis of the Bill the following points are relevant:



- The precise status of the UN Database within the UN legal order is uncertain and it does not appear that the UN Database was intended to have a particular legal status. Instead, it appears that the list can be seen as a non-binding instrument for the guidance of Contracting States as the UN has not recommended its adoption.
- The State has a duty to ensure that constitutional rights are adequately protected, and it does not appear that placing unconditional reliance on the UN list can adequately protect entities affected, or insulate the State from legal challenge.
- The adoption of the full UN list in domestic legislation would make us an international outlier – to our knowledge no other State has adopted this list into primary law.
- The Bill would need to be amended so that the reference list to which investment exclusions are made is a list developed by the Irish State. The cross reference to the UN list which is included in the Private Members Bill would be insufficient. The State would have to develop its own investment/divestment list based on its own analysis.
- To ensure the framework proposed by the Bill operates with robust procedural safeguards; would result in operational and resourcing implications for the Department of Finance and the NTMA. Including on-going engagement with firms included within the investment prohibition, and requiring a mechanism be provided so that affected firms can request their de-listing where appropriate.



- It also appears that amendments will be required to ensure the Bill is compatible with European law, and other changes may also be required in the event that they arise as part of the legislative drafting process.
- These amendments would in our view be required to ensure that the Bill could be operationalised and would be, as far as possible, constitutionally robust and protective of the constitutional rights involved.
- There was a second iteration of the list published by the UN in June of last year, with some firms removed from the list. But it is unclear when and with what frequency the list will be updated in the future.

Conclusion

In conclusion, I would welcome the Committee's views on these and other matters that arise as a consequence of the Bill.

ENDS