Changes to Legislation: as of 12 March 2024, this Act is up to date with all changes known to be in force.



Number 34 *of* 2009

NATIONAL ASSET MANAGEMENT AGENCY ACT 2009

REVISED

Updated to 25 May 2018

This Revised Act is an administrative consolidation of the *National Asset Management Agency Act 2009*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Data Protection Act 2018* (25/2018), enacted 24 May 2018, and all statutory instruments up to and including *Data Protection Act 2018 (Establishment Day) Order 2018* (S.I. No. 175 of 2018), made 24 May 2018, were considered in the preparation of this Revised Act.

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Number 34 *of* 2009

NATIONAL ASSET MANAGEMENT AGENCY ACT 2009

REVISED

Updated to 25 May 2018

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Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo. 5, c. 57
Agricultural Credit Act 1978	1978,No. 2
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Statutory Instruments Act 1947	1947,No. 44
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Trade Marks Act 1996	1996,No. 6
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Number 34 *of* 2009

NATIONAL ASSET MANAGEMENT AGENCY ACT 2009

REVISED

Updated to 25 May 2018

AN ACT—

TO ADDRESS A SERIOUS THREAT TO THE ECONOMY AND TO THE SYSTEMIC STABILITY OF CREDIT INSTITUTIONS IN THE STATE GENERALLY BY PROVIDING, IN PARTICULAR, FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE NATIONAL ASSET MANAGEMENT AGENCY FOR THE PURPOSES OF—

(*A*)THE ACQUISITION BY THAT AGENCY OF CERTAIN ASSETS FROM CERTAIN PERSONS TO BE DESIGNATED BY THE MINISTER FOR FINANCE,

(*B*) EFFECTING THE EXPEDITIOUS AND EFFICIENT TRANSFER OF THOSE ASSETS TO THAT AGENCY,

(*C*) THE HOLDING, MANAGING AND REALISING OF THOSE ASSETS BY THAT AGENCY (INCLUDING THE COLLECTION OF INTEREST AND CAPITAL DUE, THE TAKING OR TAKING OVER OF COLLATERAL WHERE NECESSARY AND THE PROVISION OF FUNDS WHERE APPROPRIATE),

(*D*) THE TAKING BY THAT AGENCY OF ALL STEPS NECESSARY OR EXPEDIENT TO PROTECT, ENHANCE AND BETTER REALISE THE VALUE OF ASSETS TRANSFERRED TO IT,

(*E*) THE PERFORMANCE BY THAT AGENCY OF SUCH OTHER FUNCTIONS, RELATED TO THE MANAGEMENT OR REALISATION OF THOSE ASSETS, AS PROVIDED IN THIS ACT OR AS DIRECTED BY THE MINISTER, AND

(*F*) THE FACILITATION OF RESTRUCTURING OF CREDIT INSTITUTIONS OF SYSTEMIC IMPORTANCE TO THE ECONOMY, AND

TO PROVIDE FOR THE VALUATION OF THE ASSETS CONCERNED AND THE REVIEW OF ANY SUCH VALUATION,

TO GIVE THE NATIONAL ASSET MANAGEMENT AGENCY CERTAIN POWERS AND OTHER FUNCTIONS IN RESPECT OF LAND OR AN INTEREST IN LAND ACQUIRED BY THAT AGENCY, INCLUDING POWERS RELATING TO THE DEVELOPMENT OF LAND,

TO PROVIDE FOR THE ISSUING OF DEBT SECURITIES BY THE MINISTER FOR FINANCE AND BY THAT AGENCY IN THE PERFORMANCE OF ITS FUNCTIONS UNDER THIS ACT,

TO PROVIDE FOR CERTAIN LEGAL PROCEEDINGS RELATING TO ASSETS ACQUIRED BY THAT AGENCY, TO AMEND THE CENTRAL BANK ACT 1942, AND TO PROVIDE FOR RELATED MATTERS.

[22*nd November*, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

C1 Application of collectively cited *Central Bank Acts 1942 to 2014* restricted (15.07.2015) by *European Union (Bank Recovery and Resolution) Regulations 2015* (S.I. No. 289 of 2015), reg. 119(2)(a), in effect as per reg. 1(2).

Effect of special management.

119. ...

(2) The special management of the institution under resolution has effect notwithstanding anything in—

(a) the Act of 1989, the Act of 2014 or the Central Bank Acts 1942 to 2014,

(b) any other rule of law or equity,

(c) any code of practice made under an enactment,

(d) the listing rules of any regulated market or the rules of any other market on which the shares of an institution or entity may be traded from time to time,

(e) the constitution of the institution under resolution, or

(f) any agreement to which that institution under resolution is bound or has an interest in, except to any extent to which the resolution order expressly provides otherwise.

C2 References in collectively cited *Central Bank Acts 1942 to 2011* to the winding-up of an authorised credit institution or a body that was formerly an authorised credit institution construed (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 90, S.I. No. 548 of 2011.

Application of this Part to bodies incorporated outside State.

90.— (1) In the case of the winding-up of an authorised credit institution, or a body that was formerly an authorised credit institution, that is a company incorporated outside the State, references in the Central Bank Acts 1942 to 2011 to—

(a) the winding-up of an authorised credit institution or a body that was formerly an authorised credit institution, or

(b) any provision of the Companies Acts which relates to winding-up,

shall be construed as references to the corresponding provisions in the law of the foreign jurisdiction concerned if the context so admits and the circumstances so require.

(2) For the purposes of a winding-up referred to in subsection (1), the Court may order that the Central Bank Acts 1942 to 2011 apply, if necessary, with such modifications as the Court orders.

C3 Application of collectively cited *Central Bank Acts 1942 to 2011* affected (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 69(6), S.I. No. 548 of 2011.

Effect of appointment of special manager.

69.— ...

(6) A special management order has effect notwithstanding anything in—

(a) the Companies Acts, the Building Societies Act 1989, the Credit Union Act 1997 or the Central Bank Acts 1942 to 2011,

...

except to any extent to which the special management order expressly provides otherwise.

C4 Application of collectively cited *Central Bank Acts 1942 to 2010* restricted by *Central Bank Act 1942* (22/1942), ss. 6(1A) and 6(1B), as inserted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 14(1) and sch. 1 part 1 item 23, S.I. No. 469 of 2010.

Bank to perform functions of European System of Central Banks.

6.— ...

(1A) Nothing in the Central Bank Acts 1942 to 2010 affects the independence of the Bank, the Governor and the Commission required by the Rome Treaty and the ESCB Statute.

(1B) Without limiting the generality of subsection (1A), nothing in the Central Bank Acts 1942 to 2010 authorises any person or authority to give any direction to, or require any action (including the provision of information) by, the Bank, the Governor or the Commission if compliance by the Bank, the Governor or the Commission (as the case may be) with the direction or requirement would be inconsistent with the Rome Treaty or the ESCB Statute.

Annotations:

Editorial Notes:

E1 Collectively cited *Central Bank Acts 1942 to 2012* included in definition of "financial services legislation" for purposes of *Central Bank Reform Act 2010* (23/2010) by *Central Bank Reform Act 2010* (23/2010), s. 3, as amended (19.12.2012) by *Credit Union and Co-operation with Overseas Regulators Act 2012* (40/2012), s. 69(a), S.I. No. 557 of 2012.

E2 Certain classes of bank assets prescribed as classes of eligible bank assets for purposes of Act (23.12.2009) by *National Asset Management Agency (Designation of Eligible Bank Assets) Regulations 2009* (S.I. No. 568 of 2009).

PART 1

Preliminary

Short title, commencement and collective citation.

1.— (1) This Act may be cited as the National Asset Management Agency Act 2009.

(2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(3) An order under *subsection (2)* may, in respect of the amendments of Acts set out in *Part 15* and *Schedule 3* , appoint different days for the amendment of different Acts or different provisions of them.

(4) The Central Bank Acts 1942 to 2001, the Central Bank and Financial Services Authority of Ireland Act 2003, the Central Bank and Financial Services Authority of Ireland Act 2004, this subsection, *section 232*, and *Part 2* of *Schedule 3* may be cited together as the Central Bank and Financial Services Authority of Ireland Acts 1942 to 2009.

Annotations

Editorial Notes:

E3 Power pursuant to section exercised (21.12.2009) by *National Asset Management Agency (Commencement) Order 2009* (S.I. No. 545 of 2009).

2. I appoint 21 December 2009 as the day on which the National Asset Management Agency Act 2009 comes into operation.

Purposes of this Act.

2.— The purposes of this Act are—

(*a*) to address the serious threat to the economy and the stability of credit institutions in the State generally and the need for the maintenance and stabilisation of the financial system in the State, and

(*b*) to address the compelling need—

(i) to facilitate the availability of credit in the economy of the State,

(ii) to resolve the problems created by the financial crisis in an expeditious and efficient manner and achieve a recovery in the economy,

(iii) to protect the State's interest in respect of the guarantees issued by the State pursuant to the Credit Institutions (Financial Support) Act 2008 and to underpin the steps taken by the Government in that regard,

(iv) to protect the interests of taxpayers,

(v) to facilitate restructuring of credit institutions of systemic importance to the economy,

(vi) to remove uncertainty about the valuation and location of certain assets of credit institutions of systemic importance to the economy,

(vii) to restore confidence in the banking sector and to underpin the effect of Government support measures in relation to that sector, and

(viii) to contribute to the social and economic development of the State.

Regulatory functions not affected.

3.— Nothing in this Act—

(*a*) prevents the performance by F1**[**the Governor or the Central Bank**]** of functions in relation to any credit institution or other person authorised or regulated in the State, or

(*b*) affects any obligation arising under—

(i) the treaties governing the European Communities, or

(ii) the ESCB Statute.

Annotations

Amendments:

F1 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 1, S.I. No. 469 of 2010.

Interpretation.

4.— (1) In this Act—

"acquire", in relation to a bank asset, shall be construed in accordance with *subsection (2)*;

"acquired bank asset" means a bank asset that NAMA or a NAMA group entity has acquired, and in which NAMA or a NAMA group entity retains an interest;

"acquired portfolio", in relation to a participating institution, means all the bank assets specified in a completion notice that have been acquired from the participating institution;

"acquisition schedule" has the meaning given by *sections 87* and *89* ;

"acquisition value", in relation to a bank asset, means the value determined by NAMA in accordance with the valuation methodology;

"applicant credit institution" means a credit institution that is applying or has applied under *section 62* to be designated;

"appointed member", in relation to the Board, has the meaning given by *section 19*;

"associated debtor" has the meaning given by *section 70*;

"bank asset" includes—

(*a*) a credit facility,

(*b*) any security relating to a credit facility,

(*c*) every other right arising directly or indirectly in connection with a credit facility,

(*d*) every other asset owned by a participating institution, F2**[**...**]**

F3**[**(*dd*) an asset owned by the Central Bank, and**]**
(*e*) an interest in a bank asset referred to in any of F4**[**paragraphs (*a*) to (*dd*)**]**;

"Board" means the Board of NAMA referred to in *section 19*;

"borrow" includes the raising of money in any manner (including, in particular, borrowing by the creation and issue of bonds, debentures and debt securities, whether subordinated or not);

"Central Bank" means the Central Bank F5**[**...**]** of Ireland;

"Chairperson" means the appointed member nominated under *section 25*;

"charge" includes—

(*a*) a mortgage, judgment mortgage, charge, lien, pledge, hypothecation or other security interest or encumbrance or collateral in or over any property,

(*b*) an assignment by way of security, and

(*c*) an undertaking or agreement by any person (including a solicitor) to give or create a security interest in property;

"Chief Executive Officer" means the Chief Executive Officer appointed under *section 37* or *40 (3)*, and includes—

(*a*) in relation to any function of NAMA that the Chief Executive Officer has authorised an officer of NAMA to perform, that officer, and

(*b*) any officer of NAMA designated by the Board under *section 38 (4)*;

"company" means—

(*a*) a company within the meaning of the Companies Acts, or

(*b*) a body established under the laws of a state other than the State and corresponding to a body referred to in *paragraph (a)*;

"completion notice" means a notice referred to in *section 97*;

"confidential information" has the meaning given by *section 202*;

"Court" means the High Court;

"credit facility" includes every kind of financial accommodation (including a loan facility, a line of credit, a hedging facility, a derivative facility, a bond, a letter of credit, a guarantee facility, an invoice discounting facility, a debt factoring facility, a deferred payment arrangement, a leasing facility, a guarantee, an indemnity and any other financial accommodation giving rise to a payment or repayment obligation) provided to a debtor or associated debtor, whether alone or together with another person or persons and whether as part of a syndicate or otherwise;

"credit facility documentation" in relation to a credit facility means the documents, contracts, instruments and agreements containing or evidencing the terms or conditions applicable to, or that otherwise govern or regulate, any aspect of the credit facility or any associated arrangement or transaction entered into in connection with it, including any document issued or entered into by any person that directly or indirectly creates or provides or is expressed to create or provide any security, guarantee or surety or other benefit or collateral in connection with the credit facility or the associated arrangement or transaction;

"credit institution" has the same meaning as it has in the Central Bank Act 1997;

"debtor" means a person who is or was indebted or obligated to a participating institution under or in connection with a credit facility;

"debt security" means a note, bill, bond or similar financial instrument;

"designated bank asset" means a bank asset specified in an acquisition schedule that has been served on a participating institution in accordance with *section 87* or *89* ;

"development land" means land wherever situated (regardless of its zoning or its status under the Planning and Development Acts 2000 to 2007 or any other enactment or applicable law)—

(*a*) in, on, over or under which works or structures were or are to be constructed, or

(*b*) where it was intended to make a material change in the use of the land,

that was intended to be sold or otherwise exploited;

"eligible bank asset" has the meaning given by *section 69 (4)*;

"ESCB Statute" has the meaning given by section 2 of the Central Bank Act 1942;

"establishment day" means the day appointed by the Minister under *section 8* to be the establishment day;

"European Communities" has the meaning given by section 1 of the European Communities Act 1972;

"financial year", in relation to NAMA, means—

(*a*) the period commencing on the establishment day and ending on 31 December 2010, and

(*b*) each subsequent period of 12 months ending on 31 December in any year;

"functions" includes powers and duties, and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

"Governor" has the same meaning as in the Central Bank Act 1942;

"guarantor" means a person who has entered into a guarantee or indemnity in connection with a bank asset;

"interest", in relation to a bank asset, means—

(*a*) the whole or any part or fraction of the bank asset,

(*b*) any other estate in, right or title to or interest in, the bank asset (whether legal or beneficial), or

(*c*) any interest, other than a legal or beneficial interest;

"land" has the same meaning as in the Land and Conveyancing Law Reform Act 2009, but also includes any right or interest in or over land;

"legal proceedings" includes any form of binding dispute resolution, and in particular includes arbitration;

"local authority" has the same meaning as in the Local Government Act 2001;

"Minister" means the Minister for Finance;

"NAMA" means the National Asset Management Agency;

"NAMA group entity" means—

(*a*) a subsidiary of NAMA (within the meaning given by section 155 of the Companies Act 1963), or

(*b*) any other body corporate and any trust, partnership, arrangement for the sharing of profits and losses, joint venture, association, syndicate or other arrangement formed, registered, incorporated or established by NAMA for the purpose of performing any of its functions under this Act;

"non-performing", in relation to a bank asset, has the meaning given by *subsection (3)*;

"NTMA" means the National Treasury Management Agency;

F6**[** 'officer of NAMA' means—

(*a*) the Chief Executive Officer of NAMA,

(*b*) any person assigned to NAMA in accordance with section 42, and

(*c*) any person employed by NAMA under section 16(2) of the Irish Bank Resolution Corporation Act 2013; **]**

"participating institution" means a credit institution that has been designated by the Minister under *section 67*, including any of its subsidiaries that is not excluded under that section;

"performing asset" means a bank asset that is not a non-performing asset;

"quarterly report" means the report to the Minister under *section 55*;

F7**[**...**]**
"security" includes—

(*a*) a charge,

(*b*) a guarantee, indemnity or surety,

(*c*) a right of set-off,

(*d*) a debenture,

(*e*) a bill of exchange,

(*f*) a promissory note,

(*g*) collateral,

(*h*) any other means of securing—

(i) the payment of a debt, or

(ii) the discharge or performance of an obligation or liability,

and

(*i*) any other agreement or arrangement having a similar effect;

"statutory receiver" means a receiver appointed by NAMA pursuant to *section 147*;

"subsidiary" means a subsidiary (within the meaning given by section 155 of the Companies Act 1963) or a subsidiary undertaking (within the meaning given by the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992));

"surety" means a person who has provided a security in connection with the repayment by a debtor of a credit facility or in connection with a guarantor's obligations under a guarantee or indemnity;

"tax clearance certificate" has the meaning given by whichever of section 1094 or 1095 of the Taxes Consolidation Act 1997 applies in the particular case;

"total portfolio acquisition value", in relation to an acquired portfolio of a participating institution, means the total of all the acquisition values for the acquired portfolio of the participating institution and any of its subsidiaries that are also participating institutions;

"the treaties governing the European Communities" has the meaning given by section 1 of the European Communities Act 1972;

"valuation methodology" means the valuation methodology set out in *Part 5* .

(2) A reference in this Act to acquisition, in relation to a bank asset, includes—

(*a*) any form of legal or beneficial transfer, including a vesting by operation of law,

(*b*) a succession by operation of law,

(*c*) a synthetic transfer,

(*d*) a risk transfer,

(*e*) the imposition of a trust,

(*f*) the creation of a trust interest,

(*g*) a novation,

(*h*) an assignment,

(*i*) an assumption,

(*j*) sub-participation,

(*k*) sub-contracting, and

(*l*) any other form of transfer, acquisition, assumption or vesting recognised by the law applicable to the bank asset.

(3) For the purposes of this Act, a bank asset is non-performing if—

(*a*) it is in the course of being foreclosed or otherwise enforced,

(*b*) principal or interest or both are in arrears,

(*c*) interest is being or has been capitalised or otherwise deferred otherwise than in accordance with its terms,

(*d*) payments are not being, or have not been, met,

(*e*) its covenants are not being, or have not been, complied with, or

(*f*) other obligations are not being or have not been complied with.

Annotations

Amendments:

F2 Deleted (7.02.2013) by *Irish Bank Resolution Corporation Act 2013* (2/2013), s. 15(a)(i), commenced on enactment.

F3 Inserted (7.02.2013) by *Irish Bank Resolution Corporation Act 2013* (2/2013), s. 15(a)(i), commenced on enactment.

F4 Substituted (7.02.2013) by *Irish Bank Resolution Corporation Act 2013* (2/2013), s. 15(a)(ii), commenced on enactment.

F5 Deleted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 2, S.I. No. 469 of 2010.

F6 Substituted (7.02.2013) by *Irish Bank Resolution Corporation Act 2013* (2/2013), s. 15(b), commenced on enactment.

F7 Deleted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 3, S.I. No. 469 of 2010.

Regulations.

5.— (1) The Minister may make regulations to do anything that appears necessary or expedient for bringing this Act into operation.

(2) Where a provision of this Act requires or authorises the Minister to make regulations, such regulations—

(*a*) may make different provision for different circumstances or cases, classes or types, and

(*b*) may contain such incidental, consequential or transitional provisions as the Minister considers necessary or expedient for the purposes of this Act.

Expenses of Minister and NTMA.

6.— (1) The expenses incurred by the Minister in the administration of this Act shall be paid out of money provided by the Oireachtas.

(2) The expenses incurred by the NTMA under this Act shall be paid out of the Central Fund and the growing produce of that Fund.

(3) The expenses incurred by the NTMA in relation to NAMA since 7 April 2009 shall be paid out of the Central Fund and the growing produce of that Fund.

Offences.

7.— (1) A person on whom an obligation is imposed by or under *section 202(2)* and who intentionally does not comply with the obligation commits an offence.

(2) A person who intentionally, recklessly or through gross negligence provides false or inaccurate information to NAMA commits an offence.

(3) A person commits an offence if the person—

(*a*) intentionally withholds information from NAMA in breach of an obligation to provide that information imposed by or under this Act, and

(*b*) does so with the intention of having a material impact upon—

(i) the manner in which NAMA deals with a bank asset,

(ii) a decision by NAMA to refrain from dealing with a bank asset, or

(iii) the value that NAMA determines for a bank asset.

(4) A person who intentionally withholds information from NAMA in breach of an obligation to provide that information imposed under this Act commits an offence if the withholding of the information has a material impact upon—

(*a*) the manner in which NAMA deals with a bank asset,

(*b*) a decision by NAMA to refrain from dealing with a bank asset, or

(*c*) the value which NAMA determines for a bank asset.

(5) A credit institution that commits an offence under this section is liable—

(*a*) on summary conviction, to a fine not exceeding €5,000, or

(*b*) on conviction on indictment, to a fine not exceeding €20,000,000.

(6) A person other than a credit institution who commits an offence under this section is liable—

(*a*) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment, to a fine not exceeding €5,000,000 or imprisonment for a term not exceeding 5 years or both.

(7) Where an offence under this section—

(*a*) has been committed by a body corporate, and

(*b*) is proved to have been committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of, a person—

(i) who is a director, manager, secretary or other officer of the body corporate, or

(ii) purported to act in any such capacity,

that person as well as the body corporate shall be taken to have committed an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(8) Where the affairs of a body corporate are managed by its members, *subsection (7)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Annotations

Editorial Notes:

E4 Offence under section, in so far as it relates to a person other than a credit institution, prescribed as a "relevant offence" for purposes of *Criminal Justice Act 2011* (22/2011) (9.08.2011) by *Criminal Justice Act 2011* (22/2011), ss. 3 and sch. 1 par 12, S.I. No. 411 of 2011.

PART 2

National Asset Management Agency

Chapter 1

Establishment, Functions and Powers

Establishment day.

8.— The Minister shall by order appoint a day as the establishment day for the purposes of this Act.

Annotations

Editorial Notes:

E5 Power pursuant to section exercised (21.12.2009) by *National Asset Management Agency Act 2009 (Establishment Day) Order 2009* (S.I. No. 547 of 2009).

2. I appoint 21 December 2009 as the establishment day for the purposes of the National Asset Management Agency Act 2009.

Establishment of NAMA.

9.— (1) There is established, on the establishment day, a body to be known as the National Asset Management Agency (in this Act referred to as "NAMA"), to perform the functions assigned to it by this Act.

(2) NAMA shall be a body corporate with perpetual succession. NAMA has power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) Except where otherwise provided by this Act, NAMA is independent in the performance of its functions under this Act.

Purposes of NAMA.

10.— (1) NAMA's purposes shall be to contribute to the achievement of the purposes specified in *section 2* by—

(*a*) the acquisition from participating institutions of such eligible bank assets as is appropriate,

(*b*) dealing expeditiously with the assets acquired by it, and

(*c*) protecting or otherwise enhancing the value of those assets, in the interests of the State.

(2) So far as possible, NAMA shall, expeditiously and consistently with the achievement of the purposes specified in *subsection (1)*, obtain the best achievable financial return for the State having regard to—

(*a*) the cost to the Exchequer of acquiring bank assets and dealing with acquired bank assets,

(*b*) NAMA's cost of capital and other costs, and

(*c*) any other factor which NAMA considers relevant to the achievement of its purposes.

Functions of NAMA.

11.— (1) In order to achieve its purposes, NAMA shall perform the following functions:

(*a*) acquire, in accordance with *Part 6* , such eligible bank assets from participating institutions as it considers necessary or desirable for achieving its purposes;

(*b*) hold, manage and realise acquired bank assets (including the collection of interest, principal and capital due, the taking or taking over of collateral where necessary and the provision of funds where appropriate);

(*c*) perform such other functions, related to the management or realisation of acquired bank assets, as the Minister directs pursuant to *section 14*;

(*d*) take all steps necessary or expedient to protect, enhance or realise the value of acquired bank assets, including—

(i) the disposal of loans or portfolios of loans in the market for the best achievable price,

(ii) the securitisation or refinancing of portfolios of loans, and

(iii) holding, refinancing, realising and disposing of any relevant security.

F8**[**(1A) NAMA has such other functions as are conferred on it by or under the Irish Bank Resolution Corporation Act 2013.**]**

(2) In the exercise of its functions NAMA shall have regard to the need to avoid undue concentrations or distortions in the market for development land.

(3) The Minister may confer on NAMA, by order, such additional functions connected with the functions for the time being of NAMA as he or she thinks necessary for the achievement of its purposes, subject to such conditions (if any) as may be specified in the order.

(4) An order under this section may contain such incidental, supplemental and consequential provisions as are, in the opinion of the Minister, necessary to give full effect to the order.

(5) An order under *subsection (3)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(6) NAMA shall act in a transparent manner in carrying out its functions under this Act to the extent that to do so is consistent with the proper and efficient and effective discharge of those functions.

Annotations

Amendments:

F8 Inserted (7.03.2013) by *Irish Bank Resolution Corporation Act 2013* (2/2013), s. 15(c), commenced on enactment.

Editorial Notes:

E6 Power pursuant to subs. (3) exercised (22.10.2010) by *National Asset Management Agency (Conferral of Additional Function) Order 2010* (S.I. No. 505 of 2010).

Powers of NAMA.

12.— (1) NAMA has all powers necessary or expedient for, or incidental to, the achievement of its purposes and performance of its functions.

(2) Without prejudice to the generality of *subsection (1)*, NAMA may—

(*a*) provide equity capital and credit facilities on such terms and conditions as NAMA thinks fit,

(*b*) borrow on any terms and conditions that NAMA thinks fit,

(*c*) secure the payment of money in any manner, including on the assets of NAMA or on any particular property and rights, present or future, of NAMA,

(*d*) initiate or participate in any enforcement, restructuring, reorganisation, scheme of arrangement or other compromise,

(*e*) enter into contract options and other derivative financial instruments (including instruments expressed in currencies other than the currency of the State), whose purposes include—

(i) eliminating or reducing the risk of loss arising from changes in interest rates, currency exchange rates or other factors of a similar nature, or

(ii) eliminating or reducing the costs of raising funds or borrowing or the cost of other transactions carried out in the ordinary course of business,

(*f*) guarantee, with or without security, the indebtedness and performance of obligations of others (whether or not NAMA receives any consideration for, or direct or indirect advantage from, the giving of the guarantee),

(*g*) draw, accept and negotiate negotiable instruments,

(*h*) distribute assets *in specie* to the Minister,

(*i*) accept any security, guarantee, indemnity or surety,

(*j*) enter into contracts of insurance, and insure and self-insure, in relation to any of its activities and property,

(*k*) enforce any security, guarantee or indemnity,

(*l*) compromise any claim,

(*m*) open and maintain bank accounts, including accounts in currencies other than the currency of the State, and carry out necessary banking transactions,

(*n*) form a NAMA group entity for the purpose of performing any of its functions,

(*o*) give security for any debt, obligation or liability of a NAMA group entity,

(*p*) enter into a partnership or joint venture for the purpose of performing any of its functions,

(*q*) establish a trust or participate in a trust as trustee or beneficiary,

(*r*) borrow, lend or transfer debt securities, including, (but not limited to) equity and debt instruments,

(*s*) acquire and dispose of property,

(*t*) purchase, by agreement, bank assets that are not eligible bank assets where in NAMA's opinion it is necessary to do so in the interests of the proper performance of its functions,

(*u*) invest its funds as the Board determines,

(*v*) vest property in any other person on behalf of, or for the benefit of, NAMA with or without declaring a trust in NAMA's favour,

(*w*) sell or dispose of the whole or any part of the property or investments of NAMA, either together or in portions, for such consideration and on such terms as the Board thinks fit,

(*x*) discharge any debt, obligation or liability,

(*y*) purchase, hold and sell any licence,

(*z*) make any planning application in relation to land, and intervene in any planning application made by another person,

(*aa*) make any application to develop minerals on land,

(*ab*) undertake development for the purpose of realising the full value of any asset,

(*ac*) carry on any business that NAMA considers can be conveniently carried on in connection with any of its functions or is calculated directly or indirectly to enhance the value of or facilitate the realisation of or render profitable any of NAMA's property or rights,

(*ad*) benefit from any carbon credits acquired by it, and

(*ae*) do all such other things as the Board considers incidental to, or conducive to the achievement of, any of NAMA's purposes under this Act.

(3) A reference in another provision of this Act to a power or the exercise of a power conferred by this section does not limit by implication the operation of this section unless the contrary intention is expressed.

(4) NAMA may exercise any of its powers or carry out any of its functions—

(*a*) within, or anywhere outside, the State,

(*b*) alone or in conjunction with others, and

(*c*) by or through an agent, NAMA group entity, contractor, factor, or trustee.

(5) NAMA may use its seal outside the State.

(6) NAMA may exercise any of its powers for the benefit of a NAMA group entity.

(7) Nothing in this Act authorises NAMA, when exercising any of its powers or carrying out any of its functions in any place, to act otherwise than in compliance with the law of that place.

(8) In exercise of its powers under *paragraphs (s)*, *(z)*, *(ab)* and *(ac)* of *subsection (2)*, NAMA shall have regard to proper planning and sustainable development as expressed in Government policy and in any relevant F9**[**regional spatial and economic strategy (within the meaning of the Planning and Development Act 2000, including any regional planning guidelines to which section 21(4) of that Act relates)**]** and development plans (within the meaning of that Act).

Annotations

Amendments:

F9 Substituted (1.06.2014) by *Local Government Reform Act 2014* (1/2014), s. 5(8) and sch. 2 pt. 6, S.I. No. 214 of 2014.

Minister's powers to issue guidelines to NAMA.

13.— (1) The Minister may issue guidelines in writing to NAMA for the purposes of this Act and, in so far as any such guidelines relate to issues within the Governor's remit, the Minister shall consult with the Governor before doing so.

(2) In particular, and without prejudice to the generality of *subsection (1)*, the Minister may issue guidelines in relation to the purposes mentioned in *subparagraph (viii)* of *section 2 (b)*.

(3) In performing its functions under this Act, NAMA shall have regard to any guidelines issued by the Minister under this section.

(4) As soon as practicable after issuing guidelines, the Minister—

(*a*) shall cause the guidelines to be published in *Iris Oifigiúil*, and

(*b*) shall lay a copy of the guidelines before each House of the Oireachtas.

Minister's powers of direction.

14.— (1) The Minister may give a direction in writing to NAMA concerning the achievement of the purposes of this Act.

(2) In particular, and without prejudice to the generality of *subsection (1)*, the Minister may give directions in relation to the purposes mentioned in *subparagraph (viii)* of *section 2 (b)*.

(3) NAMA shall comply with a direction given by the Minister under this section.

(4) As soon as practicable after giving a direction to NAMA, the Minister—

(*a*) shall cause the direction to be published in *Iris Oifigiúil*, and

(*b*) shall lay a copy of the direction before each House of the Oireachtas.

No shadow or *de facto* directorship.

15.— (1) When discharging a function under this Act, none of the persons mentioned in *subsection (2)* shall be taken, only because of discharging that function, to be a shadow director (within the meaning given by section 27(1) of the Companies Act 1990) nor a *de facto* director nor a person discharging managerial responsibilities of—

(*a*) any participating institution,

(*b*) any person that is a debtor, guarantor or surety in relation to an acquired bank asset, or

(*c*) a person that is an associated debtor of a debtor referred to in *paragraph (b)*.

(2) The persons are—

(*a*) the Minister,

(*b*) NAMA,

(*c*) any appointed member of the Board,

(*d*) the Chief Executive Officer of NAMA,

(*e*) an officer of NAMA,

(*f*) the NTMA,

(*g*) any employee of the NTMA,

(*h*) the Chief Executive of the NTMA,

(*i*) the Governor,

(*j*) a F10**[**member of the Commission**]** of the Central Bank,

(*k*) an employee of the Central Bank,

(*l*) F11**[**...**]**

(*m*) a NAMA group entity,

(*n*) a director of a NAMA group entity, and

(*o*) an officer of, a consultant or adviser to, or a person employed by or under or acting on behalf of, any person, body or authority mentioned in *paragraphs (a)* to *(n)*.

(3) For the purposes of this section, a *de facto* director is a person who is determined to have been a director of a company although not formally or validly appointed to the position.

Annotations

Amendments:

F10 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 4, S.I. No. 469 of 2010.

F11 Deleted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 5, S.I. No. 469 of 2010.

Prevention of corruption.

16.— (1) To avoid doubt, the provisions of the Prevention of Corruption Acts 1889 to 2001 apply to—

(*a*) every officer of NAMA,

(*b*) the Chief Executive Officer,

(*c*) the other members of the Board, and

(*d*) every director of a NAMA group entity.

(2) Where in any proceedings against a person who performs functions for or on or behalf of NAMA, or who performs functions connected to the valuation of eligible bank assets, for an offence under the Public Bodies Corrupt Practices Act 1889 or the Prevention of Corruption Act 1906 it is shown that—

(*a*) any gift, consideration or advantage has been given to or received by the person, and

(*b*) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given was—

(i) a person who is a debtor in relation to an eligible bank asset, or

(ii) an associated debtor of such a person,

the gift or consideration or advantage shall be taken, unless the contrary is proved, to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of those functions.

Liability of NAMA, etc.

17.— Without prejudice to any defence otherwise available to, or immunity otherwise enjoyed at law by NAMA, a NAMA group entity or a person specified in *section 34 (1)*, no action for damages shall lie against NAMA, a NAMA group entity or such a person in respect of or arising out of the performance or non-performance in good faith of any of the functions provided for in *Parts 4*, *5* and *6*, or in respect of any decision made in good faith to perform or not to perform any of the functions provided for in *Parts 8* and *9*.

Chapter 2

Membership of Board and Related Matters

Functions of Board.

18.— (1) There shall be a Board of NAMA, whose functions are as follows:

(*a*) to ensure that the functions of NAMA are performed effectively and efficiently;

(*b*) to set the strategic objectives and targets of NAMA;

(*c*) to ensure that appropriate systems and procedures are in place to achieve NAMA's strategic objectives and targets and to take all reasonable steps available to it to achieve those targets and objectives.

(2) For the purposes of the Board exercising its functions under *subsection (1)*, and without prejudice to any of its powers at law, the Board may provide for the performance of any such function by an officer of NAMA.

(3) In performing its functions, the Board shall act in utmost good faith with care, skill and diligence.

Membership of Board.

19.— (1) The Board consists of—

(*a*) 7 members appointed by the Minister (in this Act referred to as "appointed members"), and

(*b*) the Chief Executive Officer of NAMA and the Chief Executive of the NTMA as *ex-officio* members.

(2) Subject to *subsections (3), (4)* and *(6)*, the Minister shall appoint a person to be an appointed member only if, in the opinion of the Minister, the person has expertise and experience at a senior level in one or more of the following:

(*a*) finance and economics;

(*b*) law;

(*c*) social housing and community development;

(*d*) accountancy and auditing;

(*e*) public administration;

(*f*) credit management;

(*g*) project finance;

(*h*) construction and land development;

(*i*) property management and sale;

(*j*) valuation;

(*k*) urban and land planning;

(*l*) banking and investment;

(*m*) insolvency and restructuring;

(*n*) risk management.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a member of the European Parliament is disqualified from appointment as an appointed member of the Board while he or she is so entitled or is such a member.

(4) A person who is a member of a local authority is disqualified from appointment as a member.

(5) A member of the Board shall, not later than 3 months after appointment, furnish to the Minister a tax clearance certificate.

(6) The Minister shall, so far as is practicable and having regard to relevant experience, ensure an equitable balance between men and women in the composition of the Board.

Term of office of appointed members.

20.— (1) Subject to *subsection (2)*, the term of office of an appointed member is 5 years.

(2) Of the first appointed members, the Minister shall appoint 2 members for a term of office of 3 years and 3 members for a term of office of 4 years.

(3) Subject to *subsection (4)*, an appointed member whose period of office expires by the passage of time is eligible for re-appointment as such a member.

(4) An appointed member is not eligible to serve for more than 2 consecutive terms of office.

Remuneration, etc., of appointed members.

21.— (1) An appointed member shall be paid such remuneration and such allowances in reimbursement of expenses incurred as the Minister from time to time determines.

(2) An appointed member holds office on such terms (other than the payment of remuneration and allowances for expenses incurred) as the Minister determines at the time of the member's appointment.

How appointed members cease to hold office.

22.— (1) An appointed member ceases to be such a member if he or she—

(*a*) is adjudicated bankrupt,

(*b*) makes a composition or arrangement with creditors,

(*c*) is convicted of an indictable offence in relation to a company,

(*d*) does not furnish a tax clearance certificate as required by *section 19 (5)*,

(*e*) is convicted of an offence involving fraud or dishonesty, or

(*f*) is disqualified or restricted from being a director of a company.

(2) If an appointed member—

(*a*) is nominated as a member of Seanad Éireann,

(*b*) is elected as a member of either House of the Oireachtas or as a member of the European Parliament,

(*c*) is regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(*d*) becomes a member of a local authority,

he or she thereupon ceases to be an appointed member.

(3) An appointed member may at any time resign his or her membership by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.

(4) The Minister may remove an appointed member on reasonable notice in writing at any time from membership of the Board (or, if the appointed member concerned is the Chairperson, either from the Board or only from being Chairperson) if—

(*a*) in the Minister's opinion, the member—

(i) is not adequately performing his or her functions, whether because of incapacity through illness or injury or otherwise,

(ii) has contravened *section 30* or *31* , or

(iii) has committed misconduct specified in the written notice,

(*b*) in the Minister's opinion, a material conflict of interest has arisen in relation to the member, or

(*c*) his or her removal appears to the Minister to be necessary or expedient for the effective performance by NAMA of its functions.

(5) An appointed member of the Board, upon the expiry or other termination of his or her term of office, shall also be taken to have resigned from any directorship of a NAMA group entity.

How *ex-officio* members cease to be Board members.

23.— (1) An *ex-officio* member of the Board ceases to be a member if he or she—

(*a*) ceases to be the Chief Executive Officer of NAMA or the Chief Executive of the NTMA, as the case may be,

(*b*) is adjudicated bankrupt,

(*c*) makes a composition or arrangement with creditors,

(*d*) is convicted of an indictable offence in relation to a company,

(*e*) is convicted of an offence involving fraud or dishonesty, or

(*f*) is disqualified or restricted from being a director of a company.

(2) If an *ex-officio* member of the Board—

(*a*) is nominated as a member of Seanad Éireann,

(*b*) is elected as a member of either House of the Oireachtas or as a member of the European Parliament,

(*c*) is regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or

(*d*) becomes a member of a local authority,

he or she thereupon ceases to be an *ex-officio* member.

(3) An *ex-officio* member of the Board, upon the expiry or other termination of his or her term of office, shall also be taken to have resigned from any directorship of a NAMA group entity.

Filling of casual vacancies, etc.

24.— (1) If an appointed member dies, resigns, retires, becomes disqualified or is removed from office, the Minister may appoint a person to fill the vacancy so occasioned. The person so appointed shall be appointed in the same manner as, and for the remainder of the term of office of, the member whose death, resignation, retirement, disqualification or removal occasioned the vacancy.

(2) In the circumstances mentioned in *subsection (1)*, and without prejudicing the Minister's powers under that subsection, the Minister may appoint a person to act temporarily as a member of the Board. The duration of such an appointment, and the terms under which the person appointed holds office, shall be as the Minister determines at the time of appointment.

(3) Subject to this Act, NAMA may act notwithstanding one or more vacancies among the members of the Board.

Nomination and remuneration, etc., of Chairperson.

25.— (1) The Minister shall nominate one of the appointed members as Chairperson.

(2) The Chairperson holds that office for 5 years or until the end (whether by the passage of time, resignation or removal under *section 22*) of his or her term of office as an appointed member, whichever is the earlier.

(3) A person may hold the office of Chairperson for 2 terms only, whether or not the terms are consecutive.

(4) The Chairperson may at any time resign that office (with or without also resigning as an appointed member) by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.

(5) If the Chairperson dies, resigns, retires, becomes disqualified or is removed from office, the Minister shall nominate another person to fill the vacancy so occasioned. The person nominated may be an appointed member.

(6) In the circumstances mentioned in *subsection (5)*, and without prejudicing the Minister's powers under that subsection, the Minister may appoint a person to act temporarily as Chairperson. The duration of such an appointment, and the terms under which the person appointed holds that office, shall be as the Minister determines at the time of appointment.

(7) An appointment pursuant to *subsection (5)* may be for all or a specified part of the term of office of the person replaced.

(8) If the Minister proposes to nominate a person under *subsection (5)* who is not already an appointed member, the Minister may—

(*a*) appoint that person to the Board as an appointed member, even though doing so will cause the number of appointed members specified in *section 19* to be exceeded, and

(*b*) nominate the person as Chairperson.

(9) The Minister may determine that the Chairperson shall be paid additional remuneration or allowances on account of his or her responsibilities as Chairperson.

Meetings of Board.

26.— (1) The Board shall hold such meetings as are necessary for the performance of its functions.

(2) The Board shall hold its first meeting on the establishment day or as soon as is practicable after that day.

(3) The quorum for a meeting of the Board is 5, or, if there is a vacancy in the Board, 4 while the vacancy exists.

(4) A meeting held while there is a vacancy in the Board is validly held notwithstanding the vacancy, so long as there is a quorum.

(5) At a meeting of the Board—

(*a*) if the Chairperson is present, he or she shall preside over the meeting, and

(*b*) if the Chairperson is not present or the office of Chairperson is vacant, the appointed members present shall choose one of themselves to preside over the meeting.

(6) At a meeting of the Board each member present has a vote and any question on which a vote is required in order to establish the Board's view on the matter shall be determined by a majority of votes of members present and voting on the question. In the case of an equal division of votes, the Chairperson or other member presiding over the meeting has an additional casting vote.

(7) Subject to this Act, the Board shall regulate, by standing orders or otherwise, its procedure and business.

Electronic meetings.

27.— (1) In addition to meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time. Such a meeting is referred to in this section as an "electronic meeting".

(2) A member of the Board who participates in an electronic meeting is taken for all purposes to have been present at the meeting.

(3) The Board may establish procedures for electronic meetings (including recording the minutes of such meetings) in its standing orders.

Resolutions by circulation of copies.

28.— (1) The Board may pass a resolution without a meeting being held if—

(*a*) all of the members entitled to vote on the resolution are given notice of the resolution, and

(*b*) a majority of them sign a document containing a statement that they are in favour of the resolution in the document.

(2) A resolution referred to in *subsection (1)* may be passed by the members or some of them signing separate copies of the document referred to in *paragraph (1) (b)* if the date and time of each signature is indicated on the document.

(3) A resolution passed in accordance with this section is taken to have been passed at the time when a majority of members entitled to vote on the resolution have signed, or have signed copies of, the document referred to in *paragraph (1) (b)*.

Seal of NAMA, etc.

29.— (1) The Board shall, as soon as possible after the establishment day, provide NAMA with a seal.

(2) The seal of NAMA shall be authenticated by the signature of any 2 members of the Board or in any other way that the Board resolves.

(3) Judicial notice shall be taken of the seal of NAMA. A document purporting to be an instrument made by, and sealed with the seal of, NAMA, and purporting to be authenticated in accordance with *subsection (2)*, shall be received in evidence and be taken to be such an instrument unless the contrary is shown.

(4) The Board may, as the Board thinks fit, delegate the authority to enter into a contract or instrument that, if entered into by an individual, would not be required to be under seal.

Disclosure of interests.

30.— (1) If a member of the Board has a pecuniary interest or other beneficial interest in, and material to, a matter that falls to be considered by the Board—

(*a*) he or she shall disclose to the other members of the Board the nature of his or her interest in advance of any consideration of the matter,

(*b*) he or she shall not influence nor seek to influence a decision to be made in relation to the matter,

(*c*) he or she shall take no part in any consideration of the matter,

(*d*) he or she shall absent himself or herself from the meeting or that part of the meeting during which the matter is discussed, and

(*e*) he or she shall not vote or otherwise act on a decision relating to the matter.

(2) If a member discloses an interest pursuant to *subsection (1)*, the disclosure shall be recorded in the minutes of the meeting of the Board or otherwise duly recorded. The Board may, at its discretion, refer to the disclosure in NAMA's quarterly report.

(3) If a member of the Board fails to disclose an interest pursuant to *subsection (1)*, and with that member present the Board makes a decision on the matter, a contract entered into by NAMA in consequence of the decision is not, by reason only of that fact, invalid or unenforceable.

(4) If a member of the Board fails to disclose an interest pursuant to *subsection (1)*, and with that member present the Board makes a decision on the matter, the decision is not invalid if the Board subsequently reconsiders the matter without that member present and confirms the decision. If the Board does so, the decision shall be taken to have always been valid.

(5) If at a meeting of the Board a question arises as to whether or not a course of conduct, if pursued by a Board member, would constitute a failure by him or her to comply with *subsection (1)*, the Chairperson or member of the Board presiding over the meeting may determine the question. The Chairperson's or presiding member's decision is final. If such a question arises in relation to the Chairperson or person presiding over a meeting, he or she shall retire from the chair and the question shall be determined by majority vote of the remaining Board members. In either case particulars of the determination shall be recorded in the minutes of the meeting.

(6) If the Minister is satisfied that a member of the Board has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that member from office.

(7) The Board shall issue guidelines as to what constitutes an interest for the purposes of this section having regard to the definitions in the Ethics in Public Office Act 1995.

Register of Board members' interests.

31.— (1) As soon as practicable after the establishment day, NAMA shall prepare a Register of Members' Interests.

(2) By 31 January in each year—

(*a*) each member of the Board, each officer of NAMA who has been directed by the Board to do so and each director of each NAMA group entity shall give

notice to NAMA of all of his or her registrable interests (within the meaning given by the Ethics in Public Office Act 1995), and

(*b*) NAMA shall ensure that each registrable interest so notified is entered in the Register of Members' Interests.

(3) Part VI of the Ethics In Public Office Act 1995 applies in relation to a contravention of *subsection (2)* as that Part does in relation to a contravention of Part IV of that Act.

Audit committee, credit committee, finance committee and risk-management committee.

32.— (1) As soon as practicable after the establishment day, the Board shall establish 4 committees, and shall (subject to *subsection (2)*, in the case of the audit committee) appoint members to them, as follows:

(*a*) an audit committee;

(*b*) a credit committee;

(*c*) a finance committee;

(*d*) a risk-management committee.

(2) There shall be 6 members of the audit committee. The Minister shall appoint 2 members from among qualified persons who are not members of the Board, and shall determine the terms of their service on the Committee, including removal and resignation. The Board shall appoint the other 4 members from among the members of the Board.

(3) The Board shall not appoint the Chairperson or an *ex-officio* member of the Board as a member of the audit committee.

(4) The members of the credit committee, the finance committee and the risk-management committee shall be members of the Board or officers of NAMA. At least 2 members of each of those committees shall be members of the Board.

(5) A member of a committee (other than a member of the audit committee appointed by the Minister) established under *subsection (1)* serves on the committee concerned on such terms (including term of office, removal and resignation) as the Board determines.

(6) The Board shall determine the terms of reference and procedures of each committee established under *subsection (1)*.

(7) With the approval of the Minister, NAMA, from its own resources, may remunerate a member of the audit committee who is not a member of the Board.

(8) The Board may dissolve a committee established under *subsection (1)*. If the Board dissolves such a committee, the Board shall re-establish that committee as soon as practicable.

(9) *Sections 27* and *28* apply in relation to a committee established under *subsection (1)*.

(10) *Section 30* applies in relation to a member of a committee established under *subsection (1)* who is not a member of the Board. For the purposes of that application—

(*a*) references to members of the Board shall be construed as references to members of the committee,

(*b*) references to the Board shall be construed as references to the committee, and

(*c*) guidelines made for the purposes of *section 30 (7)* apply with the modifications set out in *paragraphs (a)* and *(b)*.

Other committees.

33.— (1) The Board may establish—

(*a*) such advisory committees as it considers necessary or desirable to advise it in the performance of its functions, and

(*b*) such other committees and sub-committees as it considers necessary or expedient,

and may appoint members to such a committee as it considers necessary.

(2) A committee established under *subsection (1)* may include persons who are not members of the Board, but a majority of the members of such a committee shall be members of the Board.

(3) A member of a committee established under *subsection (1)* shall serve on the committee on such terms (including term of office, removal and resignation) as the Board determines.

(4) The Board shall determine the terms of reference and procedures of a committee established under *subsection (1)*.

(5) With the approval of the Minister, NAMA, from its own resources, may remunerate a member of a committee established under *subsection (1)* who is not a member of the Board.

(6) *Sections 27* and *28* apply in relation to a committee established under *subsection (1)*.

(7) *Section 30* applies in relation to a member of a committee established under *subsection (1)* who is not a member of the Board. For the purposes of that application—

(*a*) references to members of the Board are to be construed as references to members of the committee,

(*b*) references to the Board are to be construed as references to the committee, and

(*c*) guidelines made for the purposes of *section 30 (7)* apply with the modifications set out in *paragraphs (a)* and *(b)*.

Indemnification of members of Board and officers of NAMA, etc.

34.— (1) This section applies to the following persons:

(*a*) each member of the Board;

(*b*) each member of a committee established under *section 32* or *33* ;

(*c*) each officer of NAMA;

(*d*) a director of a NAMA group entity;

(*e*) a member of the staff of the NTMA.

(2) Where the Board is satisfied that a person to whom this section applies has discharged the functions appropriate to that person in relation to the functions of NAMA in good faith, NAMA shall indemnify that person against all actions or claims however they arise in relation to the discharge by that person of those functions.

(3) The Board shall not be prevented from revoking an indemnity granted to, or recovering any payment made pursuant to such an indemnity from, a person who is subsequently found to have carried out his or her duties in bad faith.

Codes of practice.

35.— (1) Within 3 months after the establishment day, NAMA shall prepare codes of practice for approval by the Minister in relation to the following matters:

(*a*) the conduct of officers of NAMA;

(*b*) servicing standards for acquired bank assets;

(*c*) risk management, including with regard to debtors;

(*d*) disposal of bank assets;

(*e*) the manner in which NAMA is to take account of the commercial interests of credit institutions that are not participating institutions;

(*f*) any other matter in relation to which the Minister directs NAMA to prepare a code of practice.

(2) A code of practice referred to in *subsection (1) (a)* shall set out—

(*a*) what constitutes misconduct in office for the purposes of *section 43*,

(*b*) the procedures for the investigation of an officer of NAMA suspected of misconduct, and

(*c*) the procedures for the suspension of such an officer from his or her duties for misconduct in office.

(3) After a code of practice is approved by the Minister, every person to whom it applies shall have regard to and be guided by that code in the performance of his or her functions and in relation to any other matters to which the code relates.

(4) If in the opinion of the Minister adequate provision has not been made in a code of practice drawn up by NAMA under *subsection (1)*, the Minister may—

(*a*) direct NAMA to modify the code of practice, or

(*b*) substitute his or her own code of practice.

(5) NAMA shall publish a code of practice, issued under this section as approved by the Minister, on the NAMA website.

Application of certain provisions of this Chapter to directors of NAMA group entities.

36.— (1) With the modifications set out in *subsection (2)*, the following provisions of this Chapter apply in relation to directors of NAMA group entities:

(*a*) *subsections (1)*, *(2)*, *(3)* and *(4)* of *section 22*;

(*b*) *section 30*.

(2) The modifications referred to in *subsection (1)* are—

(*a*) references to an appointed member shall be read as references to the director concerned,

(*b*) references to the Board of NAMA, or to members of that Board, shall be read as references to the directors of the NAMA group entity concerned, and

(*c*) the reference to NAMA in *section 30 (3)* shall be read as a reference to the NAMA group entity concerned.

Chapter 3

Chief Executive Officer

Appointment of first Chief Executive Officer.

37.— (1) The Minister, after consultation with the Chief Executive of the NTMA and the Chairperson of NAMA, shall appoint as the first Chief Executive Officer of NAMA a person who is, in the Minister's opinion, suitably qualified.

(2) A person shall not be appointed under *subsection (1)* if he or she is disqualified from being appointed to the Board.

(3) Upon appointment as Chief Executive Officer, the person so appointed shall be appointed as a member of the staff of the NTMA if he or she is not already such a member. The term of office, remuneration, allowances and other terms and conditions (including the provision of superannuation benefits) of appointment of the Chief Executive Officer shall be determined in accordance with sections 7(2) and 8 of the National Treasury Management Agency Act 1990.

(4) The Chief Executive Officer is not a civil servant within the meaning of the Civil Service Regulation Act 1956.

Chief Executive Officer's functions.

38.— (1) The Chief Executive Officer shall manage and control generally the administration and business of NAMA and the staff assigned to it, and shall perform any other functions conferred on him or her by or under this Act or by the Board.

(2) The Chief Executive Officer is responsible to the Board for the performance of his or her functions and the implementation of NAMA's strategic targets and objectives.

(3) Such of the functions of the Chief Executive Officer as he or she may from time to time specify, with the consent of the Board, may be performed by an officer or officers of NAMA authorised by the Chief Executive Officer for that purpose. A reference in a provision of this Act to the Chief Executive Officer includes any officer so authorised.

(4) The functions of the Chief Executive Officer may be performed during his or her absence or when the position of Chief Executive Officer is vacant by an officer of NAMA designated for that purpose by the Board. A reference in a provision of this Act to the Chief Executive Officer includes any officer so designated.

(5) The Chief Executive Officer is the person who is accountable for the purposes of the Comptroller and Auditor General (Amendment) Act 1993.

Resignation of Chief Executive Officer.

39.— The Chief Executive Officer may resign his or her office by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.

Removal of Chief Executive Officer from office.

40.— (1) The Chief Executive Officer ceases to hold that office if he or she—

(*a*) is adjudicated bankrupt,

(*b*) makes a composition or arrangement with creditors,

(*c*) is convicted of an indictable offence in relation to a company,

(*d*) is convicted of an offence involving fraud or dishonesty, or

(*e*) is disqualified or restricted from being a director of a company.

(2) The Minister may remove the Chief Executive Officer from office by reasonable notice in writing if—

(*a*) in the Minister's opinion, the Chief Executive Officer—

(i) is not adequately performing his or her functions, whether because of incapacity through illness or injury or otherwise,

(ii) has contravened *section 30* or *31* , or

(iii) has committed misconduct specified in the written notice,

(*b*) in the Minister's opinion, a material conflict of interest has arisen in relation to the Chief Executive Officer, or

(*c*) his or her removal appears to the Minister to be necessary or expedient for the effective performance by NAMA of its functions.

(3) If the Chief Executive Officer dies, resigns, retires, becomes disqualified or is removed from office, the Board, after consulting the Minister and the Chief Executive of the NTMA, shall appoint another person to fill the vacancy so occasioned.

(4) An appointment pursuant to *subsection (3)* may be for all or a specified part of the term of office of the person replaced.

(5) In the circumstances mentioned in *subsection (3)*, and without prejudicing the Board's powers under that subsection, the Board may appoint a person to perform the duties of the Chief Executive Officer temporarily. The duration of such an appointment, and the terms under which the person appointed holds that office, shall be as the Board determines at the time of appointment.

Chapter 4

NAMA's Relationship with NTMA

NTMA to provide resources to NAMA.

41.— (1) The NTMA shall provide NAMA with such business and support services and systems as the Board determines, acting upon the recommendation of the Chief Executive Officer of NAMA and after consultation with the Chief Executive of the NTMA, to be necessary or expedient for NAMA to perform its functions under this Act.

(2) Where the NTMA is unable for any reason to provide business and support services or systems referred to in *subsection (1)*, the NTMA, as agent of NAMA, may procure such services or systems as are necessary.

NTMA to provide staff to NAMA.

42.— (1) The NTMA shall assign so many of its staff to NAMA as the Board determines, upon the recommendation of the Chief Executive Officer of NAMA, after consultation with the Chief Executive of the NTMA, to be necessary for the performance by NAMA of its functions under this Act.

(2) Before employing or otherwise engaging a person to be assigned to NAMA under *subsection (1)*, the NTMA shall ascertain to its satisfaction that the person—

(*a*) is of good character and has not been convicted of any offence likely to render him or her unfit or unsuitable to perform the duties that the person is required to undertake or is likely to be required to undertake,

(*b*) has not been disqualified or restricted from acting as a director under the Companies Acts, and

(*c*) has no material conflict of interest, whether actual or potential.

(3) Before the NTMA assigns a member of its staff to NAMA under *subsection (1)*, the NTMA shall ensure that he or she provides a statement of his or her interests, assets and liabilities to the Chief Executive Officer of NAMA and the Chief Executive of the NTMA in a form that the NTMA specifies.

(4) NAMA shall reimburse the NTMA for the costs incurred by the NTMA in consequence of its assigning staff to NAMA under this section.

Suspension of officers of NAMA.

43.— The Chief Executive Officer of NAMA, after consultation with the Chief Executive of the NTMA, may suspend, on such terms and conditions as he or she thinks fit, an officer of NAMA from his or her duties as such an officer if—

(*a*) the officer has been convicted at any time of—

(i) an offence of theft, fraud or dishonesty, or

(ii) any other offence that the Chief Executive Officer considers likely to render him or her unfit or unsuitable to perform his or her duties,

(*b*) the officer is restricted or disqualified from acting as a director under the Companies Acts,

(*c*) the officer—

(i) is not adequately performing his or her functions, whether because of incapacity through illness or injury or otherwise, or

(ii) has committed misconduct in relation to his or her duties as an officer of NAMA,

(*d*) in the Chief Executive Officer's opinion, a material conflict of interest in relation to his or her duties as an officer of NAMA has arisen in relation to the officer, or

(*e*) the officer's suspension appears to the Chief Executive Officer to be necessary or expedient for the effective performance by NAMA of its functions.

Chapter 5

Contracted Service Providers

Power to engage service providers, etc.

44.— (1) Without prejudice to the powers of NAMA under *section 12* or otherwise, NAMA may engage the services of any expert adviser or other service provider where NAMA considers it necessary or expedient to do so in connection with the performance of its functions.

(2) Without prejudice to the generality of *subsection (1)*, NAMA may engage a person (including a credit institution that is not a participating institution) to manage or dispose of acquired bank assets as it thinks fit on such terms and conditions as it thinks fit.

(3) The services that NAMA may engage an expert adviser or service provider to provide include relevant services (within the meaning given by *section 128*).

(4) In performing its functions under this Act, in particular in relation to the development of land, NAMA may take account of the resources available to it from the National Building Agency or any other appropriate State agency.

Professional standards and audit.

45.— In contracts for the provision of services to NAMA by expert advisers and service providers, NAMA shall seek to ensure that each expert adviser or service provider—

(*a*) operates to the highest standards of honesty and fairness and with due skill, care, prudence and diligence in conducting its business activities under the mandate given to it so as to promote the best interests of NAMA,

(*b*) effectively employs the resources and procedures that are necessary for the proper performance of such business activities,

(*c*) makes every effort to avoid or manage conflicts of interest and to declare any such conflict (actual or potential) to NAMA,

(*d*) complies with any regulatory regime to which it is subject,

(*e*) permits NAMA to engage auditors to carry out an audit of the books, accounts and other financial statements of the expert adviser or service provider so far as they relate to the services performed for NAMA, and

(*f*) is obliged to co-operate fully in such audits.

PART 3

Finance, Planning, Accountability and Reporting

Financing arrangements, expenses and advances from Central Fund.

46.— (1) The expenses incurred by NAMA or a NAMA group entity in the performance of NAMA's functions under this Act shall be charged on and paid out of funds at the disposal of NAMA and the NAMA group entities.

(2) The Minister may advance to NAMA or a NAMA group entity such sums of money as are necessary for the performance of its functions from the Central Fund or the growing produce of that Fund on such terms and conditions (including as to repayment of principal and interest) as he or she determines.

(3) *Subsection (2)* does not affect NAMA's borrowing powers.

Financing arrangements — Minister may issue debt securities.

47.— (1) The Minister may, whenever and so often as he or she thinks fit, create and issue such debt securities that he or she specifies by order, charged on the Central Fund or the growing produce of that Fund and ranking *pari passu* with debt securities issued by the Minister under section 54 of the Finance Act 1970—

(*a*) bearing interest at such rate as he or she thinks fit, or no interest,

(*b*) for such cash or non-cash consideration or deferred consideration as he or she thinks fit, and

(*c*) subject to such terms and conditions as to repayment, repurchase, cancellation and redemption or any other matter as he or she thinks fit.

(2) When the Minister issues securities under this section he or she shall specify which of the following is the purpose of the issue:

(*a*) the financing of the general operations of NAMA and NAMA group entities;

(*b*) the providing of consideration for the acquisition of bank assets.

(3) Securities issued under this section shall be used only for the purpose specified under *subsection (2)*.

Financing arrangements — NAMA, etc., may issue debt securities.

48.— (1) NAMA or a NAMA group entity may, whenever and so often as it thinks fit, create and issue debt securities—

(*a*) bearing interest at such rate as it thinks fit, or no interest,

(*b*) for such cash or non-cash consideration or deferred consideration as it thinks fit, and

(*c*) subject to such terms and conditions as to repayment, repurchase, cancellation and redemption or any other matter as it thinks fit.

(2) When NAMA or a NAMA group entity issues debt securities under this section NAMA or the NAMA group entity shall specify which of the following is the purpose of the issue:

(*a*) the financing of the general operations of NAMA or the NAMA group entity, as the case may be;

(*b*) the providing of consideration for the acquisition of bank assets.

(3) The Minister may guarantee debt securities issued by NAMA or a NAMA group entity under this section.

(4) Securities issued under this section shall be used only for the purpose specified under *subsection (2)*.

Financing arrangements — NAMA, etc., may issue subordinated debt securities.

49.— (1) NAMA or a NAMA group entity may, whenever and so often as it thinks fit, create and issue subordinated debt securities of such class or type as it specifies—

(*a*) bearing interest at such rate as it thinks fit, or no interest,

(*b*) for such cash or non-cash consideration or deferred consideration as it thinks fit, and

(*c*) subject to such terms and conditions as to repayment, subordination, repurchase, cancellation or redemption or any other matter as it thinks fit.

(2) Subordinated debt securities issued under this section shall be used only for the purpose of providing part of the consideration for the acquisition of bank assets in accordance with *section 92*.

(3) To the extent that the terms and conditions of the subordinated debt securities (including the terms of subordination) are referenced to or based on a measure of financial performance, the measure shall be the financial performance of NAMA in totality and not any part or parts of the acquired portfolio.

(4) Subordinated debt securities may be subject to different terms and conditions for different classes or types of those securities.

(5) The total amount of subordinated debt securities issued under this section shall not exceed 5 per cent of the aggregate total portfolio acquisition value. Such securities will be issued to the participating institutions *pro rata*.

Financing arrangements — limits on borrowings.

50.— (1) NAMA may, from time to time, exercise its power to borrow, with or without the guarantee of the Minister, such sums of money as are required for the performance of its functions under this Act.

(2) The Minister may guarantee the repayment by NAMA or a NAMA group entity of the principal of any sum borrowed by NAMA or the NAMA group entity or the payment of interest on that sum or the repayment of both principal and interest.

(3) The aggregate of the principal of all sums outstanding for purposes other than the provision of consideration for the acquisition of bank assets shall not exceed €5,000,000,000 or such other amount that the Minister specifies by order for the purposes of this subsection.

(4) The aggregate of the principal of all debt securities issued to enable the provision of consideration for the acquisition of bank assets shall not exceed €54,000,000,000 or such other amount as the Minister may specify by order for the purposes of this subsection.

(5) Where the Minister proposes to make an order under *subsection (3)* or *(4)*—

(*a*) he or she shall cause a draft of the proposed order to be laid before Dáil Éireann, and

(*b*) he or she shall not make the order unless and until a resolution approving of the draft has been passed by Dáil Éireann.

(6) Within 30 working days after any issue of debt securities under *section 47*, *48* or *49* , the Minister shall lay before each House of the Oireachtas a statement giving details of the securities.

Application of Borrowing Powers of Certain Bodies Act 1996.

51.— Section 5 of the Borrowing Powers of Certain Bodies Act 1996 does not apply to the giving of guarantees, letters of credit or other similar instruments by NAMA or a NAMA group entity.

Financing arrangements — treasury services.

52.— The NTMA shall provide NAMA with treasury services and advice in connection with debt securities, any borrowings of NAMA and debt securities issued by NAMA or a NAMA group entity, and for any other purpose and in connection with the provision of such treasury services, may enter into transactions of a normal banking nature with any person, as agent of NAMA.

Annual statements.

53.— (1) NAMA shall—

(*a*) for the financial year 2010, before 1 July 2010, and

(*b*) for each subsequent financial year 3 months before the commencement of it,

prepare a statement that complies with *subsection (3)*, and submit the statement to the Minister.

(2) The Minister shall cause copies of each statement to be laid before each House of the Oireachtas not later than—

(*a*) in the case of 2010, 30 November 2010, and

(*b*) in the case of a statement for any other financial year, one month after the beginning of the subsequent financial year.

(3) A statement submitted to the Minister under *subsection (1)* shall specify—

(*a*) the proposed objectives of NAMA's activities and those of each NAMA group entity for the financial year concerned,

(*b*) the proposed nature and scope of the activities to be undertaken,

(*c*) the proposed strategies and policies for achieving those objectives, and

(*d*) the uses to which it is proposed to apply NAMA's resources and those of each NAMA group entity.

(4) The Minister may omit from a copy of a statement laid before the Oireachtas under *subsection (2)* any matter that would disclose confidential information. If the Minister omits such matter from such a copy, he or she shall insert in its place a statement that matter has been omitted and a general description of the omitted matter.

Annual accounts.

54.— (1) NAMA shall keep, in the form that the Minister directs, proper and usual accounts of money received and expended by it and of all financial transactions undertaken in the performance of its functions.

(2) The accounts shall include a separate account of the administration fees and expenses incurred by NAMA and of each NAMA group entity in the performance of its functions.

(3) The accounts shall include—

(*a*) a list of all debt securities issued for the purposes of this Act,

(*b*) a list of debt securities issued to and redeemed by each participating institution,

(*c*) a list of all advances made to NAMA from the Central Fund,

(*d*) a list of all advances made by NAMA and each NAMA group entity,

(*e*) a list of all asset portfolios held by NAMA and each NAMA group entity, and the book valuation placed on each portfolio, and

(*f*) a list of Government support measures, including any guarantees, received by NAMA and each NAMA group entity,

and may include any other information that the Minister considers appropriate.

Quarterly reports.

55.— (1) Every 3 months NAMA shall make a report (referred to in this Act as a "quarterly report") to the Minister of its activities and the activities of each NAMA group entity.

(2) The first quarterly report shall be for the period ending on 31 March 2010 and shall be submitted to the Minister on or before 30 June 2010. Each subsequent quarterly report shall be for the period ending on a 30 June, 30 September, 31 December or 31 March, and shall be submitted to the Minister within 3 months after the end of the relevant quarter.

(3) The Minister shall cause copies of a quarterly report to be laid before each House of the Oireachtas, and shall send a copy of the report to a Committee (or a subcommittee of such a Committee) appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) to examine matters relating to NAMA.

(4) A quarterly report shall be in the form, and shall include information regarding the matters, that the Minister directs.

(5) In a quarterly report, NAMA shall report on its compliance with—

(*a*) any guideline issued by the Minister under *section 13*, and

(*b*) any direction given by the Minister under *section 14*.

(6) A quarterly report shall include the following information for the relevant quarter:

(*a*) the number of all loans outstanding and the condition of those loans, categorised as between performing and non-performing loans;

(*b*) non-performing loans categorised as to the degree of default, distinguishing where default has occurred on capital payment as well as interest payments;

(*c*) the number of loans being foreclosed or otherwise enforced during the relevant quarter;

(*d*) the number of cases where liquidators and receivers have been appointed in the relevant quarter;

(*e*) a list of all legal proceedings (except any proceeding in relation to which a rule of law prohibits publication) commenced by NAMA and each NAMA group

entity in relation to bank assets during the quarter, setting out for each proceeding—

(i) its title,

(ii) the parties to the proceeding, and

(iii) the reliefs sought by NAMA or the NAMA group entity concerned;

(*f*) a schedule of any finance raised by NAMA and each NAMA group entity in the relevant quarter;

(*g*) sums recovered from property sales in the relevant quarter;

(*h*) other income from interest-bearing loans owned by NAMA and each NAMA group entity;

(*i*) an abridged balance sheet of the assets and liabilities of NAMA and each NAMA group entity;

(*j*) a complete schedule of income and expenditure of NAMA and each NAMA group entity in the relevant quarter;

(*k*) an updated schedule of all information described in *subsections (2)* and *(3)* of *section 54*;

(*l*) any other matter directed by the Minister.

Other reports to Minister.

56.— (1) The Minister may require NAMA to report to him or her, at any time and in any format that the Minister directs, on any matter, including—

(*a*) the performance of its functions under this Act, and

(*b*) any information or statistics relating to the performance of its functions.

(2) NAMA shall comply with a requirement of the Minister under *subsection (1)*.

(3) The content of a report provided to the Minister under this section may be taken to be confidential information.

(4) A reference in *subsection (1)* to the performance of the functions of NAMA includes the performance of those functions by a NAMA group entity.

Audit of accounts by Comptroller and Auditor General.

57.— (1) NAMA and each NAMA group entity shall submit its accounts to the Comptroller and Auditor General for audit within 2 months after the end of the financial year to which they relate, and the Comptroller and Auditor General shall—

(*a*) if he or she is satisfied that the accounts represent a true and fair view of the state of the affairs of NAMA or the NAMA group entity concerned, so certify, or

(*b*) otherwise qualify the accounts.

(2) NAMA shall present a copy of the accounts of NAMA and each NAMA group entity as audited to the Minister as soon as may be and the Minister shall cause a copy of the audited accounts to be laid before each House of the Oireachtas.

Accountability to Committee of Public Accounts.

58.— (1) The Chairperson, and the Chief Executive Officer, shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

(*a*) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record or account subject to audit by the Comptroller and Auditor General that NAMA or a NAMA group entity is required by or under an enactment to prepare,

(*b*) the economy and efficiency of NAMA and each NAMA group entity in its use of the resources made available to it under this Act,

(*c*) the systems, procedures and practices employed by NAMA and each NAMA group entity for evaluating the effectiveness of its operations, and

(*d*) any matter affecting NAMA or any NAMA group entity referred to in—

(i) any special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or

(ii) any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in any of *paragraphs (a)* to *(c)*) that is laid before Dáil Éireann.

(2) In appearing before a Committee referred to in *subsection (1)*, the Chief Executive Officer appears as an accountable person and not as an accounting officer.

(3) The Chairperson and the Chief Executive Officer, in giving evidence under *subsection (1)*, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Appearances before another Oireachtas Committee.

59.— (1) The Chairperson and the Chief Executive Officer of NAMA shall, if requested to do so by a Committee (or a subcommittee of such a Committee) appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) to examine matters relating to NAMA—

(*a*) attend before that Committee, and

(*b*) provide that Committee with such information as it requires.

(2) The Chairperson and the Chief Executive Officer, in giving evidence under *subsection (1)*, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Repayment to Central Fund to redeem debt.

60.— (1) NAMA or a NAMA group entity shall repay any funds advanced to it by the Minister out of the resources available to NAMA and the NAMA group entities from time to time.

(2) NAMA may, from time to time, after consultation with the Minister—

(*a*) use any surplus funds of NAMA to redeem and cancel debt securities issued under this Act, and

(*b*) transfer any surplus funds remaining after that redemption to the Central Fund.

(3) The assets of NAMA and of any NAMA group entity at the eventual dissolution of NAMA will be transferred to the Minister or paid into the Exchequer as the Minister directs.

PART 4

Designation of Credit Institutions as Participating Institutions and Designation of Eligible Bank Assets

Chapter 1

Designation of Participating Institutions

Definition (*Chapter*).

61.— In this Chapter "group", in relation to a credit institution, means—

(*a*) the credit institution,

(*b*) its subsidiaries, if any, and

(*c*) any entity of which it is a subsidiary.

Applications for designation as participating institution.

62.— (1) A credit institution may apply to the Minister, within 60 days (or such longer period that the Minister prescribes by order under this subsection) after the establishment day, for it and its subsidiaries to be designated as participating institutions. A credit institution that applies under this subsection shall include all of its subsidiaries in the application (including those that it has requested be excluded from designation).

(2) An applicant credit institution may include in its application a request to exclude particular subsidiaries from designation, and shall give reasons for any requested exclusion.

(3) An application under *subsection (1)* shall be in the form that the Minister directs. The Minister may direct that different forms shall be used for that purpose by different credit institutions.

(4) The Minister may direct an applicant credit institution to provide, as part of its application, a certificate, supported by a statutory declaration, in relation to it and all of its subsidiaries collectively, jointly by the chief executive officer and chief financial officer of the applicant credit institution—

(*a*) that since 30 July 2009, it and each of its subsidiaries has dealt in the way required by *section 66 (1)* with such of its bank assets as the Minister specifies, or if to any extent it has not done so, the extent to which it has not done so, and

(*b*) that the information in the application is accurate and complete.

(5) An applicant credit institution that is a subsidiary shall furnish an undertaking by its parent company to provide any information and do anything else required of the parent company or any other member of its group to enable the Minister to consider the application. The Minister is not obliged to consider an application by a subsidiary if no such undertaking is given.

(6) An applicant credit institution shall undertake to obtain all necessary consents, in accordance with any applicable law including the consents of all its subsidiaries (including subsidiaries that it has requested be excluded from designation) and any necessary consent of any other member of its group. The Minister may consider the relevant application whether or not he or she has evidence that any relevant consent has been obtained and is not required to seek evidence of any such consent.

(7) An applicant credit institution may make an application under this section notwithstanding that at the time of the application it has not yet received any or all of the necessary consents.

Effect of application for designation, etc.

63.— (1) By making an application under this Chapter the applicant credit institution and all of its subsidiaries shall be taken to undertake, subject to any prohibition in any applicable law, to comply with the provisions of this Act (including this Act as amended from time to time) and of any regulations made under it (including any regulations made designating further classes of bank assets as eligible bank assets), so far as those provisions apply to it as an applicant or participating credit institution. As and from the making of the application they shall be bound to comply with that undertaking.

(2) The service of a notice on, or any communication with, an applicant credit institution is for all purposes effective as service of the notice on, or communication with, every subsidiary of the credit institution.

Information, etc., to be provided in support of application for designation.

64.— (1) An applicant credit institution shall provide any information, explanation, books, documents and records that the Minister requires to consider the application, and in particular shall provide any information, explanation, books, documents and records that the Minister considers necessary to enable him or her to make a decision in relation to the matters set out in *section 67 (2)*.

(2) The Minister may direct an applicant credit institution to procure that any of its subsidiaries provides the information, explanation, books, documents and records referred to in *subsection (1)* in relation to the subsidiary.

(3) The Minister may direct an applicant credit institution that any information provided by the credit institution or any of its subsidiaries under *subsection (1)* or *(2)* is to be certified as accurate and complete jointly by the chief executive officer and chief financial officer of the credit institution.

(4) An applicant credit institution shall, in a certificate under *subsection (3)*, disclose in utmost good faith all matters and circumstances in relation to the credit institution or any subsidiary that might materially affect, or might reasonably be expected to materially affect, the Minister's decision in relation to the matters mentioned in *subsection (2)* of *section 67* (except *paragraph (b) (iv)* of that subsection).

Capacity of applicant credit institutions, etc.

65.— (1) An applicant credit institution and each of its subsidiaries shall be taken to have, and always to have had, as part of its functions and objects, the power and capacity to—

(*a*) apply for designation as, and become, a participating institution pursuant to this Act,

(*b*) warrant the truth, accuracy and completeness of the information supplied to NAMA in relation to bank assets, and

(*c*) indemnify NAMA in relation to—

(i) any breach of such a warranty, or

(ii) any claim or obligation under *section 135*.

(2) An applicant credit institution and each of its subsidiaries shall be taken to have, and always to have had, as part of its functions and objects, the power and capacity to engage in the following activities in so far as they relate to its designated bank assets:

(*a*) the provision of credit facilities;

(*b*) the entering into of joint venture, partnership, co-ownership, shareholder or other similar agreements;

(*c*) the entering into of contracts (including contracts in a currency other than the currency of the State) whose purpose or one of whose purposes is—

(i) to eliminate or reduce the risk of loss arising from changes in interest rates, currency exchange rates or from other factors of a similar nature, or

(ii) to eliminate or reduce the costs of raising funds or borrowing or the cost of other transactions carried out in the ordinary course of business;

(*d*) the entering into of contracts to increase the return on an investment (including a credit facility);

and shall be taken to have and always to have had, as part of its functions and objects, the power to engage in any other transaction in so far as it relates to the acquisition of designated bank assets by NAMA.

(3) Nothing in this section limits the liability of an applicant credit institution or subsidiary to any person based on a transaction beyond its powers. However, any claim based on such a transaction—

(*a*) is enforceable only against the applicant credit institution or subsidiary and not against NAMA or any NAMA group entity, and

(*b*) gives rise to a remedy in damages only.

Dealings by applicant credit institutions, etc., with eligible bank assets after application for designation.

66.— (1) An applicant credit institution and each of its subsidiaries shall, until the Minister makes or is taken to have made a decision on the application—

(*a*) administer, service and deal with all of its eligible bank assets in the same manner as, and with the same level of professional skill, care and diligence as, a prudent lender acting reasonably would so administer, service and deal, and

(*b*) so act in relation to those bank assets in good faith having regard to the purposes of this Act.

(2) An applicant credit institution and each of its subsidiaries shall not without the prior written approval of NAMA—

(*a*) deal with any of its eligible bank assets otherwise than in the ordinary course of its business,

(*b*) deal with any of its eligible bank assets in such a way as to prejudice or impair NAMA's prospective interests or priorities in relation to such a bank asset,

(*c*) compromise, release, vary or relinquish any claim or otherwise take or omit to take any action if its doing so could reduce, lessen or impair any security, right, obligation, ranking or priority held or enjoyed, directly or indirectly, in connection with such a bank asset, or

(*d*) amend or vary any contract relating to such a bank asset unless contractually obliged to do so.

(3) NAMA may issue guidelines or policy statements in relation to the kinds of transactions that it is likely to be prepared to approve under *subsection (2)*.

Designation of participating institutions.

67.— (1) The Minister, after consultation with the Governor F12**[**...**]**, may designate an applicant credit institution as a participating institution if the credit institution has applied under *section 62* to be so designated.

(2) The Minister shall not designate an applicant credit institution as a participating institution unless he or she is satisfied that—

(*a*) the applicant credit institution is systemically important to the financial system in the State,

(*b*) the acquisition of bank assets from the applicant credit institution or its subsidiaries is necessary to achieve the purposes of this Act, having regard to—

(i) support that—

(I) is available to,

(II) has been received by, or

(III) in normal commercial circumstances might reasonably be expected, or might reasonably have been expected, to be or to have been available to,

the applicant credit institution or its subsidiaries from the State, any other Member State or a member of the group of the applicant credit institution,

(ii) the financial situation and stability of the applicant credit institution and its subsidiaries,

(iii) the financial situation and stability of the applicant credit institution's group in the event that bank assets are not acquired from the applicant credit institution or its subsidiaries, and

(iv) the resources available to NAMA and the Minister,

and

(*c*) the applicant credit institution has complied with all of its applicable obligations under this Act.

(3) The designation of an applicant credit institution as a participating institution operates to designate as participating institutions all of its subsidiaries except any subsidiary excluded under *subsection (6)*.

(4) Designation (including designation of a subsidiary in accordance with *subsection (3)*) has effect notwithstanding the absence of any necessary consent to the relevant application. Designation of a subsidiary does not prejudice any rights that the subsidiary may have against the relevant applicant credit institution.

(5) Before deciding whether to designate an applicant credit institution as a participating institution, the Minister, having consulted the F13**[**Central Bank**]**, may direct that specified due diligence and stress testing of the applicant credit institution or any member of its group be carried out.

(6) If the Minister designates an applicant credit institution as a participating institution, he or she may exclude any subsidiary of the applicant credit institution from designation on any condition that he or she specifies, if he or she is satisfied that the subsidiary should not be designated.

(7) Where the Minister has specified a condition under *subsection (6)* in relation to the exclusion of a subsidiary of an applicant credit institution, and there is a failure to comply with the condition, the Minister may, by written notice to the applicant credit institution and the subsidiary, designate the subsidiary as a participating institution as at and from the date of the notice or a later date that the Minister specifies in the notice.

(8) If the Minister has not designated a credit institution as a participating institution within 3 months after its application under *section 62*, the Minister is taken to have refused the application.

Annotations

Amendments:

F12 Deleted (1.10.2011) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 6, S.I. No. 469 of 2010.

F13 Substituted (1.10.2011) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 7, S.I. No. 469 of 2010.

Obligations of participating institutions.

68.— (1) A participating institution shall—

(*a*) when making a report, or providing information, books, records or an explanation, whether or not in answer to a request from NAMA or the Minister, make full disclosure in utmost good faith of matters relevant to the making of a decision by NAMA whether or not to acquire a bank asset or the determination of its acquisition value,

(*b*) co-operate promptly and fully (including by way of supplying information, books, records and explanations to NAMA in response to any request by NAMA) with NAMA in its due diligence processes in relation to bank assets being considered for acquisition,

(*c*) provide such services (including relevant services within the meaning given by *section 128*) as NAMA directs in connection with an acquired bank asset, in accordance with any terms and conditions that NAMA specifies,

(*d*) comply with any direction given by the Minister or NAMA in relation to the performance of the participating institution's obligations under this Act,

(*e*) comply with such monitoring of lending and balance sheet management as the Minister in consultation with the F14**[**Central Bank**]** directs, and

(*f*) comply with any other requirement that the Minister specifies to achieve an effective acquisition of bank assets by NAMA.

(2) A participating institution shall provide such information, explanations, books, documents and records as the Minister requires to perform his or her functions under this Act.

(3) A participating institution shall be taken to have consented to any disclosure of information under *section 205*.

Annotations

Amendments:

F14 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 8, S.I. No. 469 of 2010.

Chapter 2

Designation of Eligible Bank Assets

Eligible bank assets.

69.— (1) The Minister may, after consultation with F15**[**NAMA and the Governor**]**, and considering the purposes of NAMA and the resources available to the Minister, prescribe, by regulation, classes of bank asset as classes of eligible bank asset.

(2) The classes of bank assets prescribed under *subsection (1)* may include—

(*a*) credit facilities issued, created or otherwise provided by a participating institution—

(i) for the purpose, whether direct or indirect and whether in whole or in part, of purchasing, exploiting or developing development land,

(ii) where the security connected with the credit facility is or includes development land,

(iii) where the security connected with the credit facility is or includes an interest in a company engaged in purchasing, exploiting or developing development land,

(iv) where the credit facility is directly or indirectly guaranteed by a company referred to in *subparagraph (iii)*,

(v) directly or indirectly to a debtor who has provided security referred to in *subparagraph (ii)* or *(iii)*, or

(vi) directly or indirectly to a person who is an associated debtor of a debtor to whom a credit facility described in any of *subparagraphs (i)* to *(iii)* has been provided,

(*b*) credit facilities and classes of credit facilities (other than credit facilities referred to in *paragraph (a)*) relating to debtors or associated debtors of participating institutions (or classes of debtors or associated debtors of participating institutions) where the total amount of indebtedness in respect of such facilities is such that, in the opinion of the Minister, acquisition by NAMA is necessary for the purposes of this Act,

(*c*) other rights arising directly or indirectly in connection with a credit facility described in *paragraph (a)* or *(b)* including—

(i) a contract to which the participating institution is a party or in which it has an interest,

(ii) a benefit to which the participating institution is entitled, and

(iii) any other asset in which the participating institution has an interest,

(*d*) bank assets associated with bank assets specified in *paragraphs (a)* and *(b)*, and

(*e*) any other class of bank asset of a participating institution the acquisition of which the Minister is of opinion, after consultation with the Commission of the European Communities, is necessary for the purposes of this Act.

(3) In forming an opinion for the purpose of *subsection (2) (b)*, the Minister may take into account—

(*a*) the total number of credit facilities or classes of credit facilities provided by the participating institution to those debtors and associated debtors or classes of debtors and associated debtors, and

(*b*) the aggregate indebtedness of debtors and associated debtors or classes of debtors or associated debtors referred to in *subsection (2) (b)* owed to any other participating institution.

(4) A bank asset that is in a class prescribed under *subsection (1)* is referred to in this Act as an "eligible bank asset".

(5) A class of bank asset prescribed under *subsection (1)* shall be taken not to include a credit facility that entered a participating institution's balance sheet after 31

December 2008. For the avoidance of doubt, where a credit facility entered a participating institution's balance sheet on or before 31 December 2008, but security was taken for the credit facility after that date, and the credit facility is otherwise an eligible bank asset, the credit facility is an eligible bank asset.

(6) Notwithstanding *subsection (5)*, a bank asset in a prescribed class is an eligible bank asset if, in the opinion of NAMA, the related credit facility entered a participating institution's balance sheet on or before that date even if renegotiated or refinanced after that date. For the purposes of determining whether a credit facility entered a participating institution's balance sheet on or before 31 December 2008, NAMA may take into account the terms of any renegotiation, restructuring or refinancing of a credit facility effected after 31 December 2008.

Annotations

Amendments:

F15 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 9, S.I. No. 469 of 2010.

Editorial Notes:

E7 Power pursuant to section exercised (23.12.2009) by *National Asset Management Agency (Designation of Eligible Bank Assets) Regulations 2009* (S.I. No. 568 of 2009).

Meaning of " associated debtor " in this Act.

70.— (1) For the purposes of this Act, a person is an "associated debtor" of a debtor if the person—

(*a*) is or was at any time directly or indirectly indebted or otherwise obligated to a participating institution under or in connection with a credit facility, and

(*b*) is or was at any time—

(i) a body corporate that was a subsidiary of, or a related company (within the meaning given by section 140(5) of the Companies Act 1990) to, the debtor,

(ii) a nominee of the debtor, including a person who may or does in fact act at the express or implied direction or instruction of the debtor or another associated debtor of the debtor,

(iii) acting in the capacity of trustee of a declared or undeclared trust the beneficiaries of which include (directly or indirectly)—

(I) the debtor,

(II) a person referred to in *subparagraph (ii)*, or

(III) a body corporate controlled by the debtor or a person referred to in that subparagraph,

(iv) in partnership, within the meaning of the laws of any relevant place, with the debtor, in relation to a bank asset which at the time of the partnership was, or subsequently became, of a class of bank assets prescribed under *section 69 (1)*,

(v) a body corporate of which the debtor is the sole member, or

(vi) a body corporate controlled by the debtor,

or

(*c*) a member of any other class of person prescribed by the Minister for the purposes of this subsection.

(2) For the purposes of *subsection (1)(b)(vi)*, a body corporate shall be taken to be controlled by a debtor if the debtor is (whether alone or together with any one or more of the persons mentioned in *subparagraphs (i)* to *(v)* of *subsection (1)(b)*, and whether directly or indirectly)—

(*a*) interested in one-quarter or more of the equity share capital of the body, or

(*b*) entitled to exercise or control the exercise of one-quarter or more of the voting powers at any general meeting of the body.

(3) In *subsection (2)*—

(*a*) "equity share capital" has the same meaning as it has in section 155 of the Companies Act 1963, and

(*b*) the reference to voting power exercised by a debtor includes voting power exercised by a nominee of the debtor or another body corporate which that debtor controls.

(4) Section 54 of the Companies Act 1990 applies for the purpose of determining, for the purposes of *subsection (2)*, whether a person holds an interest in shares.

Dealings by participating institutions with eligible bank assets.

71.— (1) A participating institution shall, until it has been served with a completion notice or NAMA directs otherwise—

(*a*) administer, service and deal with all of its eligible bank assets in the same manner as, and with the same level of professional skill, care and diligence as, a prudent lender acting reasonably would so administer, service and deal, and

(*b*) so act in relation to those bank assets in good faith having regard to the purposes of this Act.

(2) A participating institution shall not without the prior written approval of NAMA—

(*a*) deal with any of its eligible bank assets otherwise than in the ordinary course of its business,

(*b*) deal with any of its eligible bank assets in such a way as to prejudice or impair NAMA's prospective interests or priorities in relation to such a bank asset,

(*c*) compromise any claim or release, vary, relinquish or otherwise take or omit to take any action if its doing so could reduce, lessen or impair any security, right, obligation, ranking or priority held or enjoyed, directly or indirectly, in connection with such a bank asset, or

(*d*) amend or vary any contract relating to such a bank asset unless contractually obliged to do so.

(3) NAMA may issue guidelines or policy statements in relation to the kinds of transactions that it is likely to be prepared to approve under *subsection (2)*.

PART 5

Valuation Methodology

Interpretation (*Part 5*).

72.— (1) In this Part "property" means property that is the subject of the security for a credit facility that is a bank asset.

(2) In this Part:

(*a*) a reference to the market value of property is a reference to the estimated amount that would be paid by a willing buyer to a willing seller in an arm's-length transaction after proper marketing (where appropriate) where both parties act knowledgeably, prudently and without compulsion,

(*b*) a reference to the market value of a bank asset is a reference to the estimated amount that would be paid by a willing buyer to a willing seller in an arm's-length transaction after proper marketing (where appropriate) where both parties act knowledgeably, prudently and without compulsion,

(*c*) a reference to the long-term economic value of property is a reference to the value, as determined by NAMA in accordance with this Part, that it can reasonably be expected to attain in a stable financial system when the crisis conditions prevailing at the passing of this Act are ameliorated and in which a future price or yield of the property is consistent with reasonable expectations having regard to the long-term historical average, and

(*d*) a reference to the long-term economic value of a bank asset is a reference to the value, as determined by NAMA in accordance with this Part, that it can reasonably be expected to attain in a stable financial system when the crisis conditions prevailing at the passing of this Act are ameliorated.

Determination of acquisition values — valuation dates, etc.

73.— (1) NAMA may specify a date or event by reference to which the market value of a bank asset or type of bank asset or property or type of property is to be determined.

(2) Under *subsection (1)* NAMA may specify different dates or events for any or any type of bank assets or property.

(3) Under *subsection (1)* NAMA may specify a date before the coming into operation of this Act.

(4) The specification of a date or event under *subsection (1)* has effect for the determination of a market value for any purpose under this Act (including for the purposes of *Chapter 2* of *Part 7*).

Determination of acquisition values — guidelines, etc.

74.— NAMA may, for the purpose of determination of values in accordance with this Part, adopt such guidelines or rules as it considers necessary for efficiency or consistency.

Acquisition values.

75.— (1) Subject to *subsection (2)* and any regulations made by the Minister under *subsection (3)*, the acquisition value of a bank asset is its long-term economic value as determined by NAMA.

(2) NAMA may, if it considers it appropriate after consultation with the Minister, and subject to any regulations made by the Minister under *subsection (3)*, having regard to—

(*a*) the purposes of this Act,

(*b*) the expected date of acquisition of the bank asset concerned,

(*c*) the type of bank asset,

(*d*) the laws of the European Communities governing State aid, and

(*e*) any other relevant matter affecting valuation,

determine that the acquisition value of a bank asset shall be—

(i) its market value, or

(ii) a value (between its long-term economic value and its market value) that NAMA considers appropriate in the circumstances, having regard to the matters specified in *paragraphs (a)* to *(e)*.

(3) The Minister may make regulations for the purposes of the application of *subsection (2)*. For that purpose the Minister shall have regard to the factors set out in *paragraphs (a)* and *(c)* to *(e)* of *subsection (2)*.

Annotations

Editorial Notes:

E8 Power pursuant to section exercised (3.03.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010* (S.I. No 88 of 2010), as amended (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 16(11) and sch. 3 part 8 par. 43, S.I. No. 469 of 2010 and (22.10.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) (Amendment) Regulations 2010* (S.I. No. 504 of 2010).

E9 Previous affecting provision: power pursuant to section exercised (21.12.2009) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2009* (S.I. No. 546 of 2009); subsequently revoked (3.03.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010* (S.I. No 88 of 2010), reg. 10.

Determination of long-term economic values.

76.— (1) NAMA shall determine the long-term economic value of a bank asset having regard to the following:

(*a*) the market value of the property;

(*b*) the market value of the bank asset;

(*c*) the long-term economic value of the property;

(*d*) the long-term economic value already determined by NAMA, in accordance with the valuation methodology, of any other similar property or bank asset;

(*e*) any report prescribed under *section 78* that is reasonably available to NAMA when it carries out the valuation of the particular property or bank asset,

in accordance with—

(i) any regulations made by the Minister under *section 79*, and

(ii) the laws of the European Communities governing State aid.

(2) Notwithstanding any other provision of this Act or any regulations made under it—

(*a*) the long-term economic value determined by NAMA for a parcel of land shall not exceed the market value of the parcel by more than such fraction as the Minister may determine by regulations for the purposes of this paragraph,

(*b*) the total long-term economic value of all land held as security in an acquired portfolio shall not exceed the total market value of that land by such fraction as the Minister may determine by regulations for the purposes of this paragraph,

(*c*) NAMA may determine that, with regard to any particular class of property, or in the particular circumstances applicable to a parcel of land, its long-term economic value shall not exceed its market value, and

(*d*) the long-term economic value of a bank asset shall be calculated on the basis of net present value methodology.

Annotations

Editorial Notes:

E10 Procedure for determining long-term economic value of property and bank assets pursuant to section prescribed (3.03.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010* (S.I. No. 88 of 2010); as amended (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 16(11) and sch. 3 part 8 par. 43, S.I. No. 469 of 2010 and (22.10.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) (Amendment) Regulations 2010* (S.I. No. 504 of 2010).

E11 Previous affecting provision: procedure for determining long-term economic value of property and bank assets pursuant to section prescribed (21.12.2009) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2009* (S.I. No. 546 of 2009); revoked (3.03.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010* (S.I. No. 88 of 2010), reg. 10.

Market values.

77.— (1) In determining the market value of property, NAMA may take into account—

(*a*) any value that the participating institution concerned submits as being, in its opinion, the market value of the property,

(*b*) any report prescribed under *section 78* that is reasonably available to NAMA when it carries out the relevant valuation, and

(*c*) the market value already determined by NAMA of another similar property.

(2) In determining the market value of a bank asset NAMA may take into account—

(*a*) any value that the participating institution concerned submits as being, in its opinion, the market value of the bank asset,

(*b*) the market value already determined by NAMA of any other similar bank asset,

(*c*) the creditworthiness of the debtor or obligor concerned,

(*d*) the performance of that asset, and

(*e*) the market value of property determined by NAMA under *subsection (1)*.

Regulations in relation to certain reports.

78.— The Minister may make regulations prescribing reports or classes of reports (including reports prepared before the commencement of this Act) concerning factors or matters relevant to the valuation of property or of property of a particular type or in specific locations or with specific features or benefits, including—

(*a*) zoning,

(*b*) availability of utilities,

(*c*) availability of similar property in similar locations,

(*d*) historic value of property in particular locations, and

(*e*) recent valuations of similar property in similar locations.

Regulations in relation to determination of values.

79.— (1) The Minister may make regulations relating to the determination by NAMA of the long-term economic value, or the market value, of a bank asset or a class of bank asset or a property or a class of property, including the matters that NAMA shall or may derive, use, apply or take into account for those purposes.

(2) In making regulations for the purposes of *subsection (1)*, the Minister shall have regard to the laws of the European Communities governing State aid and any relevant guidance issued by the Commission of the European Communities, and may have regard, and may include such provisions relating, to such of the following as he or she thinks appropriate:

(*a*) with reference to the long-term economic value of property—

(i) the extent to which the price or yield of such property has deviated from the long-term historical average,

(ii) supply and demand projections by reference to the type of asset and its location,

(iii) macroeconomic projections for growth in the gross domestic product and for inflation or deflation,

(iv) demographic projections,

(v) land and planning considerations (including national, regional or local authority development or spatial plans) that may exert an influence on the future value of the asset concerned,

(vi) analyses presented by the Minister for the Environment, Heritage and Local Government on the extent to which existing land zoning and planning permissions granted and in force meet or exceed projected growth requirements,

(vii) analyses presented by the Dublin Transportation Office or any national transport authority of existing and future transport planning and the associated supply and demand projections for land use,

(viii) any analysis by the Minister for Communications, Energy and Natural Resources in relation to the potential rise in energy and other costs due to the long-term decline in non-renewable resources,

(ix) the specification, for the purposes of the determination of the long-term economic value of particular parcels of land, of a fraction by which the long-term economic value determined by NAMA shall not exceed the market value of each such parcel,

(x) the specification, for the purposes of the determination of the long-term economic value of all land held as security in acquired portfolios, of a fraction, by which the long-term economic value of that land shall not exceed its total market value;

(*b*) with reference to the long-term economic value of bank assets—

(i) the long-term economic value of property,

(ii) the net present value of the anticipated income stream associated with bank assets of that kind,

(iii) in the case of rental property, current and projected vacancy rates,

(iv) loan margins,

(v) an appropriate discount rate to reflect NAMA's cost of funds plus a margin that represents an adequate remuneration to the State that takes account of the risk in relation to the bank assets acquired by NAMA,

(vi) the mark-to-market value of any derivative contracts associated with bank assets of that kind,

(vii) any ancillary security such as personal guarantees and corporate assets, and

(viii) fees reflecting the costs of loan operation, maintenance and enforcement;

(*c*) such other matters that he or she considers relevant to the long-term economic value or market value of property or bank assets including—

(i) matters to be derived, used, applied, taken into account or not taken into account;

(ii) the values to be attributed to any matters or the adjustments to be made in or by virtue of their application;

(iii) the data, criteria, information, rules and methodology that may be used or applied in determining the value or application of any matters or in deriving any matters to be used or applied;

(iv) the use of the net present value methodology in determining the value of any property or bank asset;

(v) the appropriate discount rate to reflect NAMA's cost of funds plus a margin that represents an adequate remuneration to the State that takes account of the risk in relation to the acquired bank assets to be applied in determining the net present value of a cash flow;

(vi) the specification, for the purposes of attribution and application across all bank assets, or all bank assets of a particular class, of a standard discount rate, to be attributed to or applied in the calculation of each bank asset, or each bank asset of the particular class, as the case may be, acquired by NAMA, which in the opinion of the Minister is necessary or appropriate to provide for enforcement costs, due diligence costs and other relevant costs incurred or likely to be incurred by NAMA over its lifetime in the discharge of its functions;

(vii) the extension of the maturity date of any bank asset for such period as NAMA considers appropriate after its actual maturity to allow a reasonable period for its management and enforcement;

(viii) the types or classes of property in respect of which the market value shall be deemed to be the long-term economic value.

(3) Every regulation made under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

Annotations

Editorial Notes:

E12 Power pursuant to section exercised:

- (22.10.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) (Amendment) Regulations 2010* (S.I. No. 504 of 2010).
- (3.02.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010* (S.I. No. 88 of 2010), as amended (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 16(11) and sch. 3 part 8 par. 43, S.I. No. 469 of 2010 and (22.10.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) (Amendment) Regulations 2010* (S.I. No. 504 of 2010).

E13 Previous affecting provision: power pursuant to section exercised (21.12.2009) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2009* (S.I. No. 546 of 2009); revoked (3.03.2010) by *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010* (S.I. No. 88 of 2010), reg. 10.

PART 6

Acquisition of Bank Assets and Related Matters

Annotations

Modifications (not altering text):

C5 Additional functions conferred on NAMA (22.10.2010) by *National Asset Management Agency (Conferral of Additional Function) Order 2010* (S.I. No. 505 of 2010).

2. NAMA has, in addition to its functions set out in the National Asset Management Agency Act 2009 (No. 34 of 2009), the additional function of taking, in accordance with Part 6 of that Act, all necessary steps to acquire, as expeditiously as possible, such eligible bank assets from such participating institutions as it considers necessary or desirable for achieving the purposes of the Act, subject to such amended or varied terms or conditions as it thinks fit.

Chapter 1

Acquisition of Bank Assets

Applicant credit institutions and participating institutions to provide information about eligible bank assets.

80.— (1) NAMA may direct an applicant credit institution or a participating institution to provide NAMA with information, in the form directed by NAMA, about each of its bank assets, and (in the case of an applicant credit institution) each bank asset of each of its subsidiaries, that may be an eligible bank asset. In the case of a participating institution, such a direction has effect as a direction to provide that information about the bank assets of the participating institution and each of its subsidiaries that is also a participating institution.

(2) In particular, NAMA may require the provision of information about the debtors, associated debtors, guarantors and sureties concerned and the enforceability and marketability of the security associated with each such bank asset.

(3) When an applicant credit institution or participating institution provides information about bank assets under *subsection (1)* or *(2)*, it shall, if it is of the opinion that a bank asset is not an eligible bank asset, state that fact, that it objects to the acquisition of the bank asset, and the reason for the opinion. If an applicant credit institution or a participating institution wishes to object to the proposed acquisition of a bank asset, it shall do so in that way and the objection shall be dealt with in accordance with *Chapter 1* of *Part 7* .

(4) In a direction under *subsection (1)*, NAMA may require that the information concerned is to be provided in a particular specified manner or form, including by way of tranches described by reference to debtors, associated debtors, security or in any other way.

(5) NAMA may direct an applicant credit institution or a participating institution that any information provided by the applicant credit institution, any of its subsidiaries or the participating institution under *subsection (1)* or *(2)* is to be certified as accurate and complete jointly by the chief executive officer and chief financial officer of the applicant credit institution or participating institution.

(6) An applicant credit institution or participating institution shall, on request by NAMA, provide NAMA with a report or a certificate or both, in the form directed by NAMA, about—

(*a*) any of its bank assets, or those of a subsidiary, that may be eligible bank assets, or

(*b*) any information relevant to the determination of the terms of acquisition (including the acquisition value) of any such bank asset.

(7) An applicant credit institution or a participating institution shall, in a report or certificate under *subsection (5)* or *(6)*, disclose in utmost good faith all matters and circumstances in relation to each bank asset concerned that might materially affect, or might reasonably be expected to materially affect, NAMA's decision to acquire the bank asset or the determination of its acquisition value.

(8) Notwithstanding any legal or contractual restriction, NAMA and a NAMA group entity may disclose to each other any information, or any report, certificate or other document, that either one obtains in connection with the performance of any of its functions.

Production of documentation, books and records for inspection.

81.— (1) An applicant credit institution or a participating institution shall, if NAMA so requests, produce to NAMA for inspection the credit facility documentation, books and records kept in connection with any eligible bank asset. The applicant credit institution or participating institution shall give NAMA such facilities for inspecting and taking copies of the contents of any such documentation, book or record as NAMA requires.

(2) NAMA may direct an applicant credit institution or a participating institution to procure that any of its subsidiaries—

(*a*) produces to NAMA for inspection the credit facility documentation, books and records kept in connection with any eligible bank asset, and

(*b*) gives NAMA such facilities for inspecting and taking copies of the contents of any such documentation, book or record as NAMA requires.

(3) If an applicant credit institution, participating institution or subsidiary is required under *subsection (1)* or *(2)*—

(*a*) to produce documentation or a book or record in connection with a bank asset to NAMA, or

(*b*) to provide facilities to NAMA to inspect or take copies of the contents of any such documentation, book or record,

and fails to do so, NAMA may apply to the Court, on notice to the credit institution or participating institution for an order directing the credit institution, participating institution or subsidiary to produce the documentation, book or record, or provide the facilities, as the case requires.

(4) The Court may make an order pursuant to the application under *subsection (3)* if the Court is satisfied that the production of the documentation, book or record, or the provision of the facilities sought is reasonably necessary to enable NAMA to perform any of its functions under this Act. The Court may make any interlocutory order (including a mandatory order) that it considers necessary in the circumstances.

(5) If the Court is satisfied that for reasons of commercial confidentiality a hearing under this section should be conducted otherwise than in public, the Court may so order.

(6) Subject to the privilege against self-incrimination, a document, book or record produced by a person in answer to a request or order under this section is admissible in evidence.

Provision of information and explanations, etc.

82.— (1) An applicant credit institution or a participating institution shall provide any information and explanations requested by NAMA in relation to the matters referred to in *sections 80* and *81* or any other matter relevant to the acquisition of a bank asset, and shall also secure that an officer or staff member of the applicant credit institution or participating institution shall provide an explanation of any such information, documentation, book or record, including an explanation of any apparent omission from the information, documentation, book or record.

(2) NAMA may direct an applicant credit institution or participating institution to procure that any of its subsidiaries provides the information or explanations referred to in *subsection (1)* in relation to the bank assets of the subsidiary.

(3) If an applicant credit institution or participating institution is required to secure that an officer or staff member of the applicant credit institution, subsidiary or participating institution provides an explanation or information under this section, and fails to do so, NAMA may apply to the Court, on notice to the applicant credit institution or participating institution, for an order directing the applicant credit institution, subsidiary or participating institution to secure the provision of the explanation or information.

(4) The Court may make an order referred to in *subsection (3)* if the Court is satisfied that the provision of the explanation or information sought is reasonably necessary to enable NAMA to make a decision whether to acquire the bank asset concerned or determine its acquisition value. The Court may make any interlocutory order (including a mandatory order) that it considers necessary in the circumstances.

(5) If the Court is satisfied that for reasons of commercial confidentiality a hearing under this section should be conducted otherwise than in public, the Court may so order.

(6) Subject to the privilege against self-incrimination, information provided by a person in answer to a request or order under this section is admissible in evidence.

Obligations to co-operate and act in good faith, etc.

83.— (1) If a person who is a debtor, associated debtor, guarantor or surety of a credit facility has been notified that the credit facility is an eligible bank asset, the person shall co-operate and shall, in good faith, promptly furnish to the participating institution such information relating to the eligible bank asset concerned as the participating institution requests for the purposes of its compliance with a requirement or direction under *section 80*, *81* or *82* .

(2) If a person referred to in *subsection (1)* fails to comply with a requirement of that subsection, the participating institution concerned may apply to the Court, on notice to the person, for an order directing the person to comply with the requirement in any way specified in the order, and shall notify NAMA that it has done so.

(3) The Court may make an order (including a mandatory order) under *subsection (2)* if the Court is satisfied that the compliance sought is reasonably necessary to enable the participating institution concerned to comply with the requirement or

direction under *section 80*, *81* or *82* . The Court may make any interlocutory order that it considers necessary in the circumstances.

(4) If the Court is satisfied that for reasons of commercial confidentiality a hearing under this section should be conducted otherwise than in public, the Court may so order.

(5) Subject to the privilege against self-incrimination, a document, book or record produced by a person in answer to a request or order under this section is admissible in evidence.

(6) If a participating institution suffers loss as a result of a debtor, guarantor or surety failing to comply with an obligation under *subsection (1)*, the debtor, guarantor or surety shall be liable in damages to the participating institution.

Decision about acquisition of eligible bank assets.

84.— (1) NAMA may acquire an eligible bank asset of a participating institution if NAMA considers it necessary or desirable to do so having regard to the purposes of this Act and in particular the resources available to the Minister. NAMA is not obliged to acquire any particular, or any, eligible bank asset of such an institution on any grounds.

(2) For the avoidance of doubt, NAMA may acquire, from a participating institution, performing or non-performing eligible bank assets.

(3) For the avoidance of doubt, NAMA may, subject to *Chapter 1* of *Part 7* , take steps to acquire an eligible bank asset even though the participating institution concerned has indicated in information provided to NAMA under *section 80* that it does not consider the bank asset to be an eligible bank asset and that it objects to its acquisition.

(4) Without prejudice to the generality of *subsection (1)*, NAMA may, in deciding whether to acquire a particular eligible bank asset, take into account—

(*a*) whether any security that is part of the bank asset is adequate,

(*b*) whether any security that is part of the bank asset has been perfected,

(*c*) the value of that security,

(*d*) whether the relevant credit facility documentation is defective or incomplete,

(*e*) whether the participating institution concerned or any other person has engaged in conduct concerning the bank asset that is or could be prejudicial to the position of NAMA,

(*f*) whether the participating institution has complied with its contractual and legal obligations and its obligations under this Act in relation to the bank asset, or its eligible bank assets generally,

(*g*) whether in NAMA's opinion the participating institution has advanced a sufficient quantum of the credit facility concerned,

(*h*) the quality of the title to any property held as security that is part of the bank asset,

(*i*) any applicable legal, regulatory or planning requirement that has not been complied with in relation to development land held as security that is part of the bank asset,

(*j*) any association with another bank asset of a participating institution,

(*k*) the performance of the bank asset,

(*l*) any matter disclosed in any due diligence carried out by the participating institution or NAMA,

(*m*) the type of other eligible bank assets (whether of the participating institution or any other participating institution) that NAMA has acquired or proposes to acquire, and whether not acquiring the particular eligible bank asset concerned would contribute to the achievement of the purposes of this Act, and

(*n*) any other matter that NAMA considers relevant.

(5) Where NAMA determines that the long-term economic value of the property comprised in the security for a credit facility that is an eligible bank asset is less than the market value of the property, NAMA shall not acquire the bank asset.

NAMA to identify eligible bank assets for acquisition.

85.— (1) NAMA shall identify such of the eligible bank assets of a participating institution as NAMA proposes to acquire.

(2) NAMA may, for the purposes of identifying eligible bank assets that it proposes to acquire, consult with the participating institution concerned, but is not obliged to do so. The participating institution shall co-operate expeditiously with NAMA in any such consultation.

(3) If a participating institution has stated in information provided under *section 80* that it does not consider a particular bank asset that NAMA proposes to acquire to be an eligible bank asset and that it objects to its acquisition, NAMA may—

(*a*) agree not to acquire the bank asset, or

(*b*) continue with the proposed acquisition and refer the matter to the expert reviewer.

(4) If NAMA proposes to continue with a proposed acquisition in accordance with *subsection (3) (b)*, NAMA shall notify the participating institution concerned of that fact as soon as may be.

(5) NAMA shall inform the participating institution of its proposed timetable for the acquisition of the eligible bank assets identified for acquisition. The timetable may specify that identified bank assets will be acquired on different dates.

NAMA may specify general terms and conditions of acquisition.

86.— (1) NAMA may, from time to time, specify the terms and conditions that are to apply generally to the acquisition of eligible bank assets.

(2) The terms and conditions specified under *subsection (1)* may include the following warranties:

(*a*) a warranty (which may be subject to any legal reservation approved by NAMA in a particular case) that the security for the relevant bank asset is enforceable;

(*b*) a warranty that any land that is the security for the bank asset has good and marketable title;

(*c*) a warranty that the facts in the participating institution's report in relation to the bank asset are complete and accurate;

(*d*) a warranty that any certificate provided in relation to the bank asset is accurate and complete;

(*e*) any other warranty customarily included in transactions for the purchase of bank assets.

(3) In relation to any particular acquisition NAMA may amend or vary the terms and conditions specified under *subsection (1)* as it thinks fit, but if it does so, it shall set out the amendment or variation in the relevant acquisition schedule.

NAMA to prepare acquisition schedule.

87.— (1) When NAMA has identified an eligible bank asset of a participating institution that NAMA proposes to acquire, and has determined the acquisition value of that asset, NAMA shall serve on the institution a schedule (referred to in this Act as an "acquisition schedule").

(2) NAMA may nominate a NAMA group entity as the entity that is to acquire a bank asset identified for acquisition.

(3) An acquisition schedule shall set out for each eligible bank asset to be acquired—

(*a*) a statement of the eligible bank asset and the interest to be acquired,

(*b*) a statement of any obligations or liabilities excluded from the acquisition,

(*c*) the acquisition value,

(*d*) details of how the acquisition value was calculated,

(*e*) any obligations, additional to those imposed by this Act, to be imposed on the participating institution after the acquisition that are to take effect after the acquisition,

(*f*) the date of acquisition, and

(*g*) if the eligible bank asset is not to be acquired by NAMA itself, the NAMA group entity that will acquire it.

(4) In addition to the matters required by *subsection (3)*, NAMA may set out in an acquisition schedule any other matter (including any terms and conditions) that it considers necessary in the particular case.

(5) For the avoidance of doubt, an acquisition schedule may specify any number of particular eligible bank assets.

(6) For the avoidance of doubt, NAMA may serve more than one acquisition schedule on a participating institution.

(7) The date of acquisition of a designated bank asset shall be at least 28 days after the relevant acquisition schedule is served on the participating institution concerned unless NAMA specifies a shorter period in the acquisition schedule.

Errors or omissions in proposed acquisition schedules.

88.— A participating institution may apply to NAMA in writing for the correction of an obvious error or omission in an acquisition schedule. An application under this section is not an objection for the purposes of *section 80* and *section 114*.

Amendment of acquisition schedule.

89.— (1) After service of an acquisition schedule on a participating institution, but before the earliest acquisition date specified in the acquisition schedule, NAMA may—

(*a*) revoke the acquisition schedule, or

(*b*) amend the acquisition schedule in relation to the bank asset in any way.

(2) Without prejudice to the generality of *subsection (1) (b)*, NAMA may amend an acquisition schedule in any of the following ways:

(*a*) to omit or add a bank asset;

(*b*) to alter the description of such an asset;

(*c*) to alter the acquisition date of such an asset;

(*d*) to alter the acquisition value of such an asset;

(*e*) to alter any of the terms and conditions of the acquisition schedule;

(*f*) to correct an obvious error or omission.

(3) When NAMA has amended an acquisition schedule (in this subsection called the "original acquisition schedule"), NAMA shall serve an amended acquisition schedule on the participating institution. Where NAMA does so, the amended acquisition schedule has effect in place of the original acquisition schedule.

(4) When NAMA has revoked an acquisition schedule, NAMA shall serve on the participating institution a notice of the revocation. The revoked acquisition schedule is of no effect from the date of that service.

(5) References in this Act to an acquisition schedule include an acquisition schedule that has been amended in accordance with this section.

Effect of service of acquisition schedule.

90.— (1) Subject to *subsection (7)*, the service of an acquisition schedule on a participating institution in accordance with *section 87* or *89* operates by virtue of this Act to effect the acquisition of each bank asset specified in the acquisition schedule by NAMA or the specified NAMA group entity, on the date of acquisition specified in the acquisition schedule as the date of acquisition of the bank asset, notwithstanding that the consideration for the acquisition has not been paid.

(2) The acquisition of a bank asset pursuant to *subsection (1)* is subject to the terms and conditions set out in the acquisition schedule and any general terms and conditions specified by NAMA under *section 86 (1)* except to any extent that the acquisition schedule excludes or modifies such specified terms and conditions.

(3) Unless otherwise provided in an acquisition schedule, where an eligible bank asset is acquired, every relevant contract is deemed to be assigned to NAMA or the specified NAMA group entity, as the case may be.

(4) In *subsection (3)* "relevant contract" means a contract—

(*a*) relating to the bank asset,

(*b*) to which the participating institution is a party or in which it has an interest, and

(*c*) the existence of which has been disclosed to NAMA in writing.

(5) Unless otherwise provided in an acquisition schedule, where an eligible bank asset is acquired, NAMA or the specified NAMA group entity, as the case may be, becomes entitled to the benefit of—

(*a*) any certificate of title, solicitor's undertaking, warranty, valuation, report, certificate or document issued to the participating institution or upon which the participating institution is entitled to rely in connection with the asset,

(*b*) an instruction, order, direction, bond, opinion, search, enquiry, declaration, consent, notice, power of attorney, authority or right given to, held by or issued for the benefit of, directly or indirectly, the participating institution in connection with the asset, and

(*c*) any other benefit arising under or in connection with any insurance or assurance policy or payment direction relating to the asset.

(6) Subject to *section 91*, *subsections (1)*, *(3)* and *(5)* have effect in relation to a bank asset notwithstanding—

(*a*) any legal (including contractual) or equitable restrictions on the acquisition of the bank asset or any part of it,

(*b*) any legal or equitable restriction, inability or incapacity relating to or affecting any matter referred to in the acquisition schedule (whether generally or in particular) or any requirement for a consent, notification, authorisation, licence or document to similar effect (by whatever name and however described), in each case,

(*c*) any insignificant or immaterial error or any obvious error, or

(*d*) any provision of any enactment to the contrary.

(7) The service of an acquisition schedule on a participating institution in accordance with *sections 87* and *89* does not have the effects mentioned in *subsections (1)*, *(3)* and *(5)* in relation to a bank asset if—

(*a*) notwithstanding that the participating institution stated in information provided under *section 80* that it did not consider the bank asset to be an eligible bank asset, and that it objected to its aquisition NAMA decided under *section 85 (3)* to take steps to acquire the bank asset, and

(*b*) on the acquisition date—

(i) the Minister has not confirmed the inclusion of the bank asset in the acquisition schedule in accordance with *section 117*, or

(ii) NAMA—

(I) has amended the acquisition schedule to remove the bank asset from the acquisition schedule, or

(II) has revoked the acquisition schedule in accordance with *section 89* or *121* .

Effect of service of acquisition schedule in relation to foreign bank assets.

91.— (1) In this Part—

"foreign bank asset" means a bank asset in which the transfer or assignment of any right, title or interest that NAMA proposes to acquire is governed in whole or in part by the law of a state (including the law of a territorial unit of a state) other than the State;

"foreign law", in relation to a foreign bank asset or a transaction in relation to a foreign bank asset means the law of a state other than the State.

(2) In this section, where a bank asset is to be acquired by a NAMA group entity, a reference to NAMA in this section (but not in *sections 92* and *93* as applied by *subsection (10)*) shall be construed as a reference to the NAMA group entity.

(3) To the extent that a bank asset proposed to be acquired by NAMA is or includes a foreign bank asset—

(*a*) if the law governing the transfer or assignment of the foreign bank asset permits the transfer or assignment of that asset, the participating institution shall if NAMA so directs do everything required by law to give effect to the acquisition, or

(*b*) if the relevant foreign law does not permit the transfer or assignment of the foreign bank asset, the participating institution shall if NAMA so directs do all that the participating institution is permitted to do under that law to assign to NAMA the greatest interest possible in the foreign bank asset.

(4) A participating institution, to the extent that a foreign bank asset is one to which *subsection (3) (b)* applies—

(*a*) is subject to duties, obligations and liabilities as nearly as possible corresponding to those of a trustee in relation to that bank asset, and

(*b*) shall hold the bank asset for the benefit and to the direction of NAMA,

in each case subject to the nature of, and the terms and conditions of the acquisition of, the foreign bank asset.

(5) *Subsection (3)* applies in so far as the service of an acquisition schedule would not, of itself, as a matter of foreign law, operate to give effect to the acquisition of a foreign bank asset or otherwise effect or achieve the result referred to in that subsection in relation to such a bank asset.

(6) Without prejudice to *subsection (4)*, a participating institution shall, immediately upon being so directed by NAMA to do so, execute and deliver to NAMA any contract, document, agreements, deed or other instrument that NAMA considers necessary or desirable to ensure that there is effected a binding acquisition by NAMA or the NAMA group entity concerned, under the applicable law, of the interest specified in the relevant acquisition schedule. NAMA may issue more than one direction under this subsection in connection with a foreign bank asset.

(7) A trust, duty, obligation or liability created or constituted by this section shall not be taken to constitute a security.

(8) A participating institution shall comply with any direction of NAMA in relation to any duty, obligation or liability under this section.

(9) A participating institution shall obtain, make, maintain and comply with any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration that is necessary in the State and in any other place in connection with ensuring the legality and enforceability of any act, matter or thing referred to in this section.

(10) *Sections 92* and *93* apply with any necessary modifications in relation to a foreign bank asset.

Payment for bank assets.

92.— (1) As soon as may be after the service on a participating institution of an acquisition schedule (or after service of an amended acquisition schedule or a decision under *section 117* or *121* to confirm or continue with an acquisition schedule, as the case may be), NAMA shall notify the Minister and the NTMA of the amount payable to the participating institution as the acquisition value of the bank assets to be acquired.

(2) The Minister shall ensure that debt securities to an amount sufficient to allow the payment of the consideration payable under the acquisition schedule (other than any part of the consideration provided by an issue of subordinated debt securities under *section 49*) are issued.

(3) On the date of acquisition of a bank asset, NAMA or the NAMA group entity that acquired the bank asset shall transfer or issue to the participating institution concerned debt securities, or debt securities and subordinated debt securities, equal to the acquisition value of the bank asset.

(4) *Subsections (1)*, *(2)* and *(3)* have effect in relation to a bank asset even if at the relevant time the total portfolio acquisition value is the subject of an objection.

(5) Subject to *subsection (6)*, in the case of the acquisition of a foreign bank asset (within the meaning given by *section 91*), on the date of acquisition, NAMA or the NAMA group entity concerned shall transfer or issue to the participating institution concerned debt securities, or debt securities and subordinated debt securities, equal in value to the acquisition value of the bank asset.

(6) In the case of the acquisition of a foreign bank asset (within the meaning given by *section 91*), NAMA or the NAMA group entity concerned may withhold all or part of the acquisition value of a foreign bank asset until satisfied that the participating institution concerned has met its obligations under *section 91*.

Clawback of overpayments.

93.— (1) If a participating institution receives from NAMA or a NAMA group entity an amount in exchange for acquired bank assets that is more than is due to the participating institution under this Act, or receives any other amount from NAMA or a NAMA group entity to which it is not entitled, the institution shall repay to NAMA—

(*a*) in the case of overpayment of an amount due for the acquisition of bank assets, an amount equal to the overpayment and any accrued interest on it within the period that NAMA determines, or

(*b*) in any other case, an amount equal to the overpayment and any accrued interest on it within the period that NAMA determines.

(2) A certificate issued by NAMA under its seal as to the amount of an overpayment referred to in *subsection (1)* is admissible as evidence of the amount of that overpayment.

Dealings with bank assets after service of acquisition schedule until date of acquisition.

94.— After the service of an acquisition schedule on a participating institution, until the date of acquisition for each bank asset specified in the acquisition schedule, the participating institution—

(*a*) shall continue to hold and manage each bank asset concerned in accordance with *section 71*,

(*b*) shall not make nor permit the making of any change to the bank asset concerned without NAMA's written consent, and

(*c*) shall notify NAMA in writing of any change in the bank asset concerned of which the participating institution is aware.

Books, records and title documents of participating institutions.

95.— (1) Where NAMA has acquired a bank asset, NAMA may direct the participating institution from which the bank asset was acquired—

(*a*) to deliver to NAMA all its books and records in relation to the bank asset concerned and any documents of title that it holds for any property that is subject to a security that is part of the bank asset, and

(*b*) to provide any information or explanation that NAMA requires in relation to those books, records and documents.

(2) A participating institution shall comply with a direction under *subsection (1)*.

(3) Where NAMA directs a participating institution under *subsection (1)* to deliver to NAMA books, records or documents in relation to a bank asset, the participating institution shall also secure that any officer, employee or agent of the participating institution who is able to do so provides an explanation of any such book, record or document, including an explanation of any apparent omission from such a book, record or document.

(4) If a participating institution is subject to a direction under *subsection (1)* and does not comply with the direction, NAMA may apply to the Court, on notice to the participating institution, for an order directing the institution to comply with the direction.

(5) The Court may make an order (including a mandatory or interlocutory order) under *subsection (4)* if the Court is satisfied that the production of the book, record, document or explanation, the provision of the facilities sought is reasonably necessary to enable NAMA to perform any of its functions under this Act.

(6) Where NAMA so directs, a participating institution shall retain custody, on behalf of NAMA, of any book, record, document or document of title referred to in this section subject to the giving of an accountable trust receipt or on other terms that NAMA directs.

Notice to debtors, etc., of acquisition of bank assets.

96.— (1) Within 60 days after the acquisition of a bank asset from a participating institution, the participating institution shall make reasonable efforts to notify each debtor, associated debtor, guarantor or surety in relation to the credit facility concerned of the acquisition of the bank asset by NAMA or the relevant NAMA group entity.

(2) Where there has been failure or delay in notifying a person in accordance with *subsection (1)*—

(*a*) neither NAMA nor the relevant NAMA group entity is liable for any such failure or delay,

(*b*) the acquisition is valid notwithstanding any such failure or delay, and

(*c*) no objection may be raised by any debtor, associated debtor, guarantor or surety to NAMA's or the relevant NAMA group entity's acquisition of the bank asset concerned based on any such failure or delay.

NAMA to notify participating institutions of completion of acquisition process.

97.— (1) When NAMA has served on a participating institution one or more acquisition schedules that specify all the bank assets that NAMA has acquired or at the time proposes to acquire from the participating institution, NAMA shall serve on the participating institution a notice in writing of that fact (in this Act referred to as a "completion notice").

(2) A completion notice shall specify—

(*a*) all the bank assets (being bank assets that are eligible bank assets at the time of service of the completion notice) that NAMA has acquired or proposes to acquire from the participating institution concerned,

(*b*) the acquisition value determined by NAMA for each such bank asset, and

(*c*) the total value for those assets.

(3) NAMA shall not serve any further acquisition schedules on a participating institution after service of a completion notice on the institution unless the Minister prescribes further classes of eligible bank assets.

Dispute over acquisition value.

98.— (1) If a participating institution wishes to dispute an acquisition value, it shall do so solely in accordance with this section and *sections 121* and *122*.

(2) A participating institution may apply to NAMA in writing for the correction of an obvious error in relation to the value of a bank asset in an acquisition schedule. An application under this subsection is not an objection or dispute for the purposes of *sections 121* and *122* .

Chapter 2

Effects of Acquisition of Bank Assets

NAMA to have rights of creditors after acquisition of bank assets.

99.— (1) After NAMA or a NAMA group entity acquires a bank asset, and subject to *section 101* and any exclusion of obligations and liabilities from the acquisition set out in the acquisition schedule—

(*a*) NAMA and the NAMA group entity each have and may exercise all the rights and powers, and subject to this Act is bound by all of the obligations, of the participating institution from which the bank asset was acquired in relation to—

(i) the bank asset,

(ii) the debtor concerned and any guarantor, surety or other person concerned,

(iii) any receiver, liquidator, or examiner concerned, and

(iv) the Official Assignee in Bankruptcy,

and

(*b*) the participating institution ceases to have those rights and obligations except to any extent to which this Act provides otherwise.

(2) The reference in *subsection (1)* to the rights, powers or obligations of a participating institution in relation to a bank asset is a reference to the rights, powers or obligations, as the case may be—

(*a*) derived from the bank asset, and

(*b*) arising under any law or in equity or by way of contract.

(3) In particular, NAMA and the NAMA group entity may each—

(*a*) take any action, including court action, that the participating institution could have taken to protect, perfect or enforce any security, right, interest, obligation or liability,

(*b*) realise any security that the participating institution could have realised,

(*c*) call up any guarantee that the participating institution could have called up,

(*d*) participate to the same extent as the participating institution could have participated in any resolution, workout, restructuring, arrangement, reorganisation, scheme or insolvency proceeding in relation to the bank asset, and

(*e*) exercise any powers conferred by any document that forms part of the bank asset of reviewing or amending any term or condition of any part of the bank asset.

Exercise of certain rights of set-off.

100.— (1) If a participating institution has a right to set off a claim owing by it to a debtor against a claim owing by the debtor to it in relation to a bank asset, and NAMA or a NAMA group entity acquires the bank asset, the right is taken to continue in existence as between the participating institution and the debtor as if the bank asset had not been acquired and—

(*a*) the participating institution shall inform NAMA in writing of the existence of the right,

(*b*) if NAMA so directs—

(i) the claims shall be set off as if they were mutual claims when and to the extent that the right of set-off would have become exercisable or would have arisen if there had been no acquisition, and

(ii) the claims shall be taken to have been discharged to the extent of that set-off,

and

(*c*) if the claims are so discharged, the participating institution shall, as soon as may be, pay an amount equal to the amount of the set-off to NAMA or the NAMA group entity concerned.

(2) If a debtor exercises, or is taken to have exercised, a set-off of a claim made by a participating institution against an acquired bank asset, the participating institution shall, as soon as may be, pay an amount equal to the amount of the set-off to NAMA or to the NAMA group entity concerned.

(3) In this section—

(*a*) a reference to a right of set-off includes a right of combination of accounts and any similar right, and

(*b*) a reference to a claim includes a direct or contingent obligation.

(4) Upon and following the acquisition of a bank asset from a participating institution by NAMA or a NAMA group entity, for the purposes only of the set-off pursuant to *subsection (1)* the claims shall be taken to be mutual for the purposes of paragraph 17(1) of the First Schedule to the Bankruptcy Act 1988.

Enforcement of certain representations, etc.

101.— (1) If in relation to a bank asset that NAMA or a NAMA group entity has acquired—

(*a*) it is alleged that a representation was made to, a consent was given to, an undertaking was given to, or any other obligation was undertaken (by agreement or otherwise) in favour of, the debtor or another person by the participating institution from which the bank asset was acquired or by some person acting or claiming to act on its behalf,

(*b*) no such representation, consent, undertaking or obligation was disclosed to NAMA in writing, before the service on the participating institution of the relevant acquisition schedule,

(*c*) the records of the participating institution do not contain a note or memorandum in writing of the terms of any such representation, consent, undertaking or obligation or do not contain a record of any consideration paid in relation to any such representation, undertaking or obligation, and

(*d*) the representation, consent, undertaking or obligation, if made, given or undertaken, would affect the creditor's rights in relation to the bank asset,

then that representation, consent, undertaking or obligation—

(i) is not enforceable, and cannot be relied on, by the debtor or any other person against NAMA or the NAMA group entity,

(ii) is enforceable, and can be relied on, by the debtor or any other person, if at all, only against a person other than NAMA or a NAMA group entity, and

(iii) is not enforceable, and cannot be relied on, by NAMA or the NAMA group entity against the debtor.

(2) A claim based on a representation, consent, undertaking or obligation referred to in *subsection (1)* gives rise only to a remedy in damages or other relief that does not in any way affect the bank asset, its acquisition, or the interest of NAMA or the NAMA group entity or (for the avoidance of doubt) any property the subject of any security that is part of such a bank asset.

(3) The Court shall not make an order under *section 182* in relation to a claim to enforce a representation, undertaking or obligation referred to in *subsection (1)*.

Acquisition of bank assets not to affect conditions, etc.

102.— (1) Subject to the provisions of this Act, after a bank asset is acquired by NAMA or a NAMA group entity, the terms and conditions of the bank asset are unchanged.

(2) Where the documentation for a credit facility forming part of a bank asset that has been acquired by NAMA or a NAMA group entity refers to a reference rate of interest that is set by the participating institution concerned but is no longer available, the documentation shall continue to be construed as though it referred to—

(*a*) that participating institution's reference rate for credit facilities of that type, or

(*b*) at NAMA's discretion, another reference rate specified by NAMA.

(3) Where by reason of the acquisition by NAMA or a NAMA group entity of a bank asset, compliance with, or the operation of, a term or condition of the bank asset is no longer, in the opinion of NAMA, reasonably practicable, NAMA may, by notice in writing, change that term or condition. The new term or condition shall be as nearly as possible equivalent to the original term or condition.

(4) For the avoidance of doubt, the acquisition by NAMA or a NAMA group entity of a bank asset under this Act does not affect any relief or remedy to which the participating institution would otherwise be entitled.

Acquisition of bank assets not to give rise to cause of action, etc.

103.— No cause of action lies or is maintainable against NAMA or any NAMA group entity by reason solely of the acquisition of a bank asset by NAMA or a NAMA group entity.

NAMA to be notified of certain matters.

104.— If within one year after NAMA or a NAMA group entity acquires a bank asset, the participating institution from which the bank asset was acquired is notified or becomes aware of any significant dealing, event or circumstance or significant proposed or potential dealing, event or circumstance in relation to the bank asset that would adversely affect the bank asset or the rights (including priority), obligations or liabilities of NAMA or the NAMA group entity in relation to it, the participating institution shall notify NAMA of the dealing, event or circumstance without delay.

Acquisition of bank assets not to render NAMA liable for wrongs by participating institutions.

105.— (1) Nothing in this Act renders NAMA or a NAMA group entity liable for any breach of contract, misrepresentation, breach of duty, breach of trust or other legal or equitable wrong committed by a participating institution.

(2) No legal proceedings shall be brought against NAMA or a NAMA group entity in relation to any legal or equitable wrong referred to in *subsection (1)*.

(3) Nothing in this Act deprives any person of a remedy in damages against a participating institution in relation to a legal or equitable wrong referred to in *subsection (1)*.

Rights of others not affected by acquisition of bank assets, etc.

106.— Nothing in this Act relieves NAMA or a NAMA group entity of any obligation, at law or in equity, except to any extent to which this Act specifically provides otherwise.

NAMA not required to register certain instruments, etc.

107.— (1) Where a bank asset has been acquired by NAMA or a NAMA group entity—

(*a*) notwithstanding anything in any Act listed in *subsection (2)* or any other Act that provides for the registration of assets, security or details of them, NAMA or the NAMA group entity is not required to become registered as owner of any security that is part of the bank asset,

(*b*) notwithstanding sections 62 and 64 of the Registration of Title Act 1964, NAMA or the NAMA group entity has, in relation to any such charge, the powers of a mortgagee under a mortgage by deed, even though NAMA or the NAMA group entity is not registered as owner of any such charge,

(*c*) NAMA or the NAMA group entity has the powers and rights conferred on the registered owner of a charge by the Registration of Title Act 1964.

(2) The Acts referred to *subsection (1) (a)* are the following:

(*a*) the Bills of Sale (Ireland) Acts 1879 and 1883;

(*b*) the Industrial and Commercial Property (Protection) Act 1927;

(*c*) the Companies Act 1963;

(*d*) the Registration of Deeds and Title Acts 1964 and 2006;

(*e*) the Agricultural Credit Act 1978;

(*f*) the Patents Act 1992;

(*g*) the Trade Marks Act 1996;

(*h*) the Taxes Consolidation Act 1997.

(3) For the purposes of an Act referred to in *subsection (1) (a)*, an acquisition schedule has effect in relation to a bank asset as a deed registered on the date of acquisition of the bank asset concerned.

(4) For the purposes of an Act referred to in *subsection (1) (a)*, the registration in relation to an acquired bank asset of a participating institution has effect for all purposes as a registration of NAMA or the NAMA group entity concerned.

(5) Nothing in this section prevents NAMA or a NAMA group entity from registering any interest capable of registration.

(6) Nothing in this section has the effect of relieving NAMA or a NAMA group entity from any obligation under a relevant foreign law.

(7) Sections 23 and 25 of the Registration of Title Act 1964 do not apply to NAMA or a NAMA group entity.

(8) Where a NAMA group entity acquires a bank asset from NAMA or another NAMA group entity, the provisions of this section also apply to the first-mentioned NAMA group entity.

NAMA, etc., may give certificates in relation to bank assets held.

108.— (1) NAMA or a NAMA group entity may certify under its seal or common seal, as the case requires, that NAMA or the NAMA group entity holds a bank asset specified in the certificate.

(2) A document purporting to be a certificate issued in accordance with *subsection (1)*—

(*a*) shall be taken to be such a certificate, and to have been certified under the seal of NAMA or the NAMA group entity, as the case may be, unless the contrary is proved, and

(*b*) is conclusive as to the matters set out in it.

NAMA, etc., may give certain directions in relation to bank assets.

109.— (1) This section applies, without prejudice to any other provision of this Act or any right arising at law, to a bank asset that NAMA or a NAMA group entity has acquired, the terms and conditions of which entitle the participating institution from which NAMA or the NAMA group entity acquired it to give directions to a third party that holds an interest in the bank asset on behalf of others.

(2) In relation to a bank asset to which or in relation to which this section applies—

(*a*) NAMA or a NAMA group entity may give directions to the third party concerned to realise any security, enforce any guarantee or surety or do any other act or thing in relation to the bank asset, or

(*b*) if the third party is not incorporated in the State, but is a subsidiary of an entity that is incorporated in the State, NAMA or a NAMA group entity may direct the entity concerned to secure compliance by the subsidiary with a direction to do any of the things mentioned in *paragraph (a)*.

(3) Where a direction is given under *subsection (2) (a)*, then the third party shall be under an equivalent obligation to comply with the direction as if the direction had been given by the participating institution from which the bank asset concerned was acquired.

(4) Where a direction is given under *subsection (2) (b)*, then the entity shall be under an obligation to secure the compliance of the subsidiary but only to the extent that the subsidiary would be bound to comply with a direction given under *paragraph (a)* of *subsection (2)* if the subsidiary were incorporated in the State.

Effect of acquisition of bank assets on certain other rights.

110.— (1) In this section "relevant instrument" means an agreement, licence, document, security, obligation or other instrument (other than the Credit Institutions (Financial Support) Scheme 2008 (S.I. No. 411 of 2008)) (or an instrument entered into under that Scheme) to which any of the following is a party or by which any of the following is bound or in which any of the following has an interest:

(*a*) a participating institution;

(*b*) a subsidiary of such an institution;

(*c*) any body corporate in which a participating institution or any of its subsidiaries has any interest.

(2) Any provision in a relevant instrument that would (apart from this subsection) cause any of the consequences specified in *subsection (3)* to follow by virtue of—

(*a*) the enactment of this Act,

(*b*) any entity becoming a participating institution,

(*c*) the provision of any information to NAMA by an applicant credit institution or a participating institution pursuant to this Act,

(*d*) the acquisition of a bank asset by NAMA or a NAMA group entity under this Act,

(*e*) any disposition by NAMA or a NAMA group entity of any acquired bank asset, or

(*f*) any other thing done or authorised to be done under, pursuant to or resulting from any provision of this Act,

is of no effect, without the express consent of NAMA, except to any extent to which the Minister provides otherwise by order under *section 111*.

(3) The consequences referred to in *subsection (2)* are the following:

(*a*) the creation of an obligation;

(*b*) the suspension or extinction (however described, and whether in whole or in part) of a right or an obligation or the becoming subject to a right or an obligation;

(*c*) the termination of the relevant instrument concerned or a right or obligation under it;

(*d*) a right becoming exercisable to terminate or modify the relevant instrument or a right or obligation under it;

(*e*) an amount becoming due and payable or capable of being declared due and payable;

(*f*) any other change in the amount or timing of any payment falling to be made or due to be received by any person;

(*g*) a right becoming exercisable to withhold, net or set off any payment;

(*h*) the occurrence of an event giving rise to a default or breach of a right or obligation;

(*i*) a right becoming exercisable not to advance any amount;

(*j*) an obligation arising to provide or transfer a deposit or collateral;

(*k*) a right of transfer or assignment of the asset that is stated to be exercisable only once or for a limited number of times;

(*l*) a right to enforce a guarantee, indemnity or security interest (however described);

(*m*) the triggering of any mandatory prepayment;

(*n*) any obligation to return collateral or its equivalent;

(*o*) the cancellation of any obligation to advance any amount or to provide credit or a contingent instrument;

(*p*) legal proceedings becoming maintainable to enforce the relevant instrument, to any extent that such proceedings would not have been maintainable had the bank asset not been acquired or had any other thing done or matter arising by virtue of or in connection with this Act not been done or not arisen, as the case may be;

(*q*) any other right or remedy (whether or not similar in kind to those referred to in *paragraphs (a)* to *(o)*) arising or becoming exercisable;

(*r*) the termination or modification of an obligation to provide a service or product.

(4) In making an order referred to in *subsection (2)*, the Minister shall have regard to—

(*a*) the consequences specified in *subsection (3)* so far as they are relevant,

(*b*) the matters set out in *subsection (2)*, and

(*c*) the likely impact of the proposed order on any of the matters specified in *section 2*, and on NAMA's ability to perform its functions under this Act.

Minister's power to modify application of *section 110*.

111.— (1) In this section "relevant instrument" has the same meaning as in *section 110*.

(2) If the Minister is satisfied that in the special circumstances of—

(*a*) a particular case, or

(*b*) a particular class of cases,

the effect of *section 110* would be unduly onerous or would cause undue unfairness or undue hardship, and that it is appropriate in all the circumstances to do so, he or she may by order provide that, notwithstanding anything in that section, a provision in a relevant instrument that provides for a consequence mentioned or referred to in that section has effect to the extent specified in the order.

(3) An order under *subsection (2)*—

(*a*) may make provision in relation to the effect of a provision—

(i) in a particular relevant instrument,

(ii) in relevant instruments of a particular class,

(iii) on rights held under a relevant instrument by—

(I) a particular person, or

(II) a particular class of person,

or

(iv) on rights held under relevant instruments of a particular class by—

(I) a particular person, or

(II) a particular class of person,

(*b*) in the case of an order that makes provision in relation to relevant instruments of a particular class, may specify the class by reference to any common characteristic of the instruments concerned,

(*c*) in the case of an order that makes provision in relation to rights held by a particular class of persons, may specify the class by reference to any common characteristic of the persons concerned, and

(*d*) may be expressed to have retrospective effect to a date falling after 30 July 2009.

(4) If the Minister considers that an order under *subsection (2)* contains matter that is commercially sensitive, he or she may direct—

(*a*) that the obligations in relation to the order under section 3(1) of the Statutory Instruments Act 1947 are to be taken to be satisfied by the printing, sending to the institutions mentioned in section 3(1)(*a*) of that Act, publication and sale of a version of the order from which the commercially sensitive matter is omitted, or

(*b*) if the preparation of such a version would be impracticable, or would result in the version being seriously misleading, that the order is exempt from the operation of section 3(1) of that Act.

(5) A version of an order prepared in accordance with a direction given by the Minister under *subsection (4) (a)* shall indicate that matter has been omitted from the version of the order and the general nature of that matter.

(6) A direction given by the Minister under *subsection (4)* shall be published in *Iris Oifigiúil* as soon as practicable.

(7) Evidence of a direction given by the Minister under *subsection (4)* may be given by the production of a copy of *Iris Oifigiúil* purporting to contain the direction.

PART 7

Review of Decisions Relating to Acquisition

Chapter 1

Expert Reviewer

Appointment and functions of expert reviewer.

112.— (1) The Minister may appoint as the expert reviewer for the purposes of this Chapter a suitably qualified person who, in the Minister's opinion, has the experience necessary to perform the functions conferred on the expert reviewer under this Chapter.

(2) The terms and conditions of the appointment of the expert reviewer (including remuneration and reimbursement for expenses incurred) shall be as the Minister determines at the time of appointment.

(3) The functions of the expert reviewer are to review the objections referred to him or her under *section 85 (3)* and to advise the Minister in accordance with *section 116*.

(4) Without prejudice to *subsection (3)*, the expert reviewer may, if he or she thinks that it is appropriate to do so, conduct the review of all or some of the objections from a participating institution on the basis of a sample of the bank assets that were the subject of objections referred to him or her under *section 85 (3)* and if he or she does so, the advice to the Minister under *section 116* shall be based on that sample and shall be as valid, for all purposes of this Chapter, as if it had been based on a review of each bank asset that was the subject of an objection.

Procedure of expert reviewer.

113.— (1) The Minister may make regulations providing for the procedures of the expert reviewer.

(2) Subject to any regulations made by the Minister under *subsection (1)*, the expert reviewer shall determine, in his or her sole discretion, procedures for—

(*a*) the form and type of submissions to be made to the expert reviewer,

(*b*) the means by which confidential information will be protected from public disclosure, and

(*c*) the performance of any of the expert reviewer's functions.

Objections to proposed acquisition of bank assets.

114.— A participating institution may object to the proposed acquisition of a bank asset only as provided for in *section 80*.

Materials, etc., to be made available to expert reviewer.

115.— (1) A participating institution shall provide to the expert reviewer and to NAMA, no later than 7 days after NAMA notifies the participating institution under *section 85 (4)*, all the material on which it bases its objection and any comments it may wish to make regarding the objection.

(2) For the purposes of the expert reviewer's review of NAMA's decision to acquire a bank asset, NAMA shall make available to the expert reviewer and the participating institution concerned, no later than 7 days after NAMA refers the objection to the expert reviewer under *section 85 (3) (b)*, all the material that was before NAMA when it made its decision and any comments it may wish to make on the objection.

(3) NAMA and the participating institution shall each be allowed an opportunity to respond to the other's material and comments, and shall furnish any such responses to the expert reviewer and to the participating institution or NAMA, as the case may be, no later than 4 days after that material and those comments have been made available.

(4) The expert reviewer may request NAMA or a participating institution to provide additional information in relation to a bank asset that NAMA proposes to acquire. NAMA or a participating institution shall comply with any such request without delay.

Opinion of expert reviewer.

116.— (1) In forming his or her opinion, the expert reviewer shall take into account the material, comments, responses and any additional information provided by the participating institution and NAMA under *section 115*.

(2) The expert reviewer shall advise the Minister, no later than 5 days after receiving the material, comments, responses and information under *section 115*, whether he or she is of the opinion that the bank asset is or is not an eligible bank asset.

(3) The Minister may, if he or she considers that to do so is warranted by exceptional circumstances, specify a longer period within which the expert reviewer is to provide advice under *subsection (2)*.

Confirmation by Minister of acquisition, etc.

117.— (1) The Minister shall, in accordance with the advice of the expert reviewer under *section 116* in relation to a bank asset, and no later than 5 days after receipt of that advice—

(*a*) confirm that the bank asset may be acquired by NAMA, or

(*b*) direct NAMA not to acquire the bank asset on the grounds that it is not an eligible bank asset.

(2) The Minister shall send copies of his or her confirmation or direction under *subsection (1)* to NAMA and to the participating institution concerned.

Costs.

118.— (1) The costs of a review under this Chapter are payable as follows:

(*a*) in a case where the Minister's decision is one referred to in *section 117 (1) (a)*, the costs of both parties are payable by the participating institution; and

(*b*) in any other case, neither of the parties pays costs and each of the parties bears its own costs.

(2) If a participating institution withdraws an application for the review under this Chapter, it is liable for the costs incurred up to the time of the withdrawal unless NAMA agrees otherwise.

(3) If NAMA and the participating institution concerned cannot reach agreement on costs, the costs of the review shall be determined by a Taxing Master of the Court. For that purpose, the Taxing Master has all the functions for the time being conferred on him or her under any enactment or in any rules of court (with any necessary modifications) in relation to the taxation of costs to be paid by one party to another in proceedings before the Court.

(4) The Taxing Master may direct that the costs of all reviews under this Chapter in relation to a participating institution shall be dealt with together after the service on the participating institution of a completion notice.

Chapter 2

Review of Valuations

Appointment of valuation panel.

119.— (1) There shall be a valuation panel to adjudicate on disputes referred to it by NAMA under *section 122 (3)*.

(2) The valuation panel shall consist of persons that the Minister appoints to be members of it. The Minister may determine how many members there shall be, but there shall not be more than 12 members.

(3) The Minister shall appoint a person as a member of the valuation panel only if the Minister is of the opinion that the person has relevant expertise or specialist knowledge.

(4) Without prejudice to the generality of *subsection (3)*, a person has relevant expertise or specialist knowledge if he or she is qualified, or has experience at a senior level, in any one or more of the following:

(*a*) finance and economics;

(*b*) law;

(*c*) accountancy and auditing;

(*d*) public administration;

(*e*) project finance;

(*f*) construction and land development;

(*g*) property management and sale;

(*h*) valuation;

(*i*) urban and land planning;

(*j*) banking and investment;

(*k*) insolvency and restructuring.

(5) The terms and conditions of appointment (including remuneration and reimbursement of expenses incurred) of a member of the valuation panel shall be as the Minister determines.

Procedure of valuation panel.

120.— (1) The Minister may make regulations providing for the procedure of the valuation panel and any matters relating to the review to be carried out.

(2) Subject to any regulations made by the Minister under *subsection (1)*, the valuation panel shall determine, in its sole discretion, procedures for—

(*a*) the form and type of submissions to be made to the valuation panel,

(*b*) the means by which confidential information will be protected from public disclosure, and

(*c*) the performance of any of the valuation panel's functions.

(3) Without prejudice to *subsection (1)*, the valuation panel may, if it thinks that it is appropriate to do so, conduct a review of the valuation of an acquired portfolio on the basis of a sample of the bank assets in the acquired portfolio concerned and if it does so, the advice to the Minister under *section 124* shall be based on that sample and shall be as valid, for all purposes of this Chapter, as if it had been determined in relation to all the assets in the acquired portfolio.

Objection to value placed on bank assets acquired from participating institution.

121.— (1) If, after the service on a participating institution of an acquisition schedule, a participating institution objects to the acquisition value specified in that schedule in relation to a bank asset, the participating institution shall serve on NAMA a notice in writing of its objection invoking the provisions of this Chapter within 14 days after the service on it of the acquisition schedule.

(2) On receipt of a notice under *subsection (1)*, NAMA may—

(*a*) remove the bank asset concerned from the relevant acquisition schedule,

(*b*) revoke the acquisition schedule, or

(*c*) continue with the acquisition in accordance with the acquisition schedule.

(3) NAMA shall notify the participating institution as soon as may be of its decision under *subsection (2)*.

(4) Where NAMA continues with an acquisition in accordance with the acquisition schedule concerned, the participating institution may dispute only the total portfolio acquisition value and may do so only as provided for and in accordance with *section 122*, and is not otherwise entitled to dispute the valuation of any particular acquired bank asset.

(5) A participating institution is not entitled to challenge any valuation of NAMA including a total portfolio acquisition value, other than in accordance with this Chapter.

Dispute over total portfolio acquisition value.

122.— (1) If, after service of a completion notice on a participating institution, the participating institution wishes to dispute the total portfolio acquisition value, it shall do so only if—

(*a*) it is of the opinion that the aggregate market value of the acquired portfolio exceeds the total portfolio acquisition value, and

(*b*) it has served a notice or notices under *section 121* in relation to acquired bank assets comprising at least 12.5 per cent by value of the total portfolio acquisition value.

(2) A participating institution that wishes to dispute the total portfolio acquisition value shall serve on NAMA a notice in writing, in the form (if any) that the Minister prescribes by regulation, no later than 14 days after the service of the relevant completion notice, specifying the reasons for its opinion.

(3) If a participating institution serves notice under *subsection (2)*, NAMA shall refer the dispute to the valuation panel for review.

(4) The service of notice by a participating institution under *subsection (2)* does not affect the acquisition by NAMA of the bank assets concerned.

Material, etc., to be made available to valuation panel.

123.— (1) A participating institution that has served a notice under *section 122 (2)* shall provide to the valuation panel and to NAMA, no later than 28 days after service of the relevant completion notice, all the material on which its dispute is based and any comments it wishes to make regarding the disputed total portfolio acquisition value.

(2) For the purposes of the valuation panel's review, NAMA shall make available to the valuation panel and the participating institution concerned, no later than 28 days after service on it of the relevant notice under *section 122 (2)*, the information on which NAMA based its determination of the market value of bank assets in the acquired portfolio concerned and any comments it wishes to make on the dispute.

(3) NAMA and the participating institution shall each be allowed an opportunity to respond to the other's material and comments, and shall furnish any such responses, no later than 7 days after that material and those comments have been made available,

to the valuation panel and to the participating institution or NAMA, as the case may be.

(4) The valuation panel may request NAMA or a participating institution to provide additional information in relation to the total portfolio acquisition value of the acquired portfolio concerned. NAMA or a participating institution shall comply with any such request without delay.

(5) The valuation panel shall take into account the material, comments, responses and any relevant additional information provided by the participating institution and NAMA.

Review by valuation panel.

124.— (1) The function of the valuation panel is to review whether the aggregate market value of an acquired portfolio is correct. In carrying out that review, the test to be applied by the valuation panel is whether the participating institution concerned has established, as a matter of probability, and taking into account the degree of expertise and specialist knowledge possessed by NAMA, and taking the process as a whole, that the determination of the aggregate market value was vitiated by a serious and significant error or a series of such errors.

(2) For the avoidance of doubt, for the purposes of a review under *subsection (1)*, the market value of an acquired bank asset is its market value as at the date or event specified by NAMA under *section 73*.

(3) The valuation panel shall advise the Minister of its determination, including of the aggregate market value, and the reasons for it.

(4) The panel shall give its advice to the Minister in relation to a dispute under *section 122* no later than 90 days after receiving the material, comments, responses and any additional information under *section 123*, or a longer period specified by the Minister by notice in writing, if he or she considers that to do so is warranted by exceptional circumstances.

Minister's determination.

125.— (1) The Minister shall consider the advice of the valuation panel under *section 124* in relation to the acquired portfolio concerned and shall, no later than 28 days after receipt of that advice—

(*a*) confirm the aggregate market value of the acquired portfolio as advised by the valuation panel, or

(*b*) if the valuation panel's determination of the aggregate market value is greater than the total portfolio acquisition value and he or she considers that the advice of the valuation panel is wrong in a material respect, remit the matter to the valuation panel for reconsideration setting out his or her reasons for doing so.

(2) Where the Minister remits the matter to the valuation panel under *subsection (1) (b)*, *subsections (4)* and *(5)* of *section 123* and *section 124* apply to the reconsideration with any necessary modifications.

(3) The Minister shall send copies of his or her determination under *subsection (1)* to NAMA and to the participating institution concerned.

(4) Where the Minister confirms that the aggregate market value of the acquired portfolio is greater than the total portfolio acquisition value as determined by NAMA, the Minister shall direct NAMA to compensate the participating institution by, at NAMA's option, doing either of the following (or both in any combination)—

(*a*) returning to the participating institution bank assets equal in value to the difference between the total portfolio acquisition value determined by NAMA and the aggregate market value determined by the Minister, or

(*b*) giving further consideration to the participating institution (in the form of cash, securities or Government-guaranteed securities or in any other form that NAMA considers appropriate) equal to the difference referred to in *paragraph (a)*.

(5) The amount of compensation payable to a participating institution under *subsection (4)* is to be no greater than the amount by which the total portfolio acquisition value determined by NAMA is less than the aggregate market value of the portfolio as confirmed by the Minister.

(6) The value of a bank asset to be returned under *subsection (4) (a)* is its acquisition value.

(7) The payment for, or transfer of, bank assets under *subsections (4)* to *(6)* is subject to the laws of the European Communities governing State aid.

Withdrawal of dispute.

126.— A participating institution may withdraw a notice served under *section 122* at any time before the Minister sends a copy of his or her determination to it under *section 125* in relation to the review of the total portfolio acquisition value of the acquired portfolio concerned.

Costs of review of valuations.

127.— (1) The costs of a review under this Chapter are payable by the participating institution concerned unless the Minister's determination under *section 125* entitles the participating institution to compensation under that section.

(2) If a participating institution withdraws a notice under *section 126*, it is liable for the costs incurred up to the time of the withdrawal unless NAMA agrees otherwise.

(3) If NAMA and the participating institution concerned cannot reach agreement on costs, the costs of the review shall be determined by a Taxing Master of the Court. For that purpose, the Taxing Master has all the functions for the time being conferred on him or her under any enactment or in any rules of court (with any necessary modifications) in relation to the taxation of costs to be paid by one party to another in proceedings before the Court.

PART 8

Relationship between NAMA and Participating Institutions

Definition (*Part 8*).

128.— In this Part "relevant service" includes management, administration, restructuring and enforcement services in relation to bank assets, including any activity specified as part of a direction by NAMA or an arrangement or agreement to which NAMA or a NAMA group entity is a party.

Participating institutions to act in utmost good faith.

129.— (1) A participating institution shall act in utmost good faith at all times in its dealings with the Minister, NAMA, NAMA group entities, their agents, the expert reviewer and the valuation panel pursuant to this Act.

(2) A participating institution shall inform the Minister, NAMA and any NAMA group entity concerned of any fact or thing that may impede—

(*a*) the achievement of the purposes of this Act,

(*b*) the performance by the Minister of his or her functions, or NAMA of its functions, under this Act, or

(*c*) the fulfilment by the participating institution of its obligations under this Act.

(3) If a participating institution identifies such an impediment the participating institution shall take all reasonable steps to address the impediment in a manner that best furthers the achievement of the purposes of the Act.

Breach of statutory requirements.

130.— A participating institution that fails to comply with any obligation under this Act is liable to NAMA and any NAMA group entity concerned in damages in addition to any other consequence of the failure under this Act.

Servicing of acquired bank assets by participating institutions.

131.— (1) For the purposes of this section, in the event of a conflict between—

(*a*) a direction by NAMA, and

(*b*) a term of an arrangement or agreement to which NAMA or a NAMA group entity is a party in relation to the provision of a relevant service,

then a direction by NAMA, a term of such an arrangement and a term of such an agreement shall have effect in that order of priority.

(2) The participating institution from which NAMA or a NAMA group entity has acquired or intends to acquire a bank asset shall, until NAMA or the NAMA group entity directs otherwise, continue to perform relevant services in respect of the bank asset. NAMA or the NAMA group entity shall reimburse the participating institution in respect of the agreed cost of such service.

(3) NAMA may direct a participating institution to perform a relevant service in connection with a bank asset that NAMA or a NAMA group entity has acquired or intends to acquire from that participating institution or any other participating institution. NAMA or the NAMA group entity shall reimburse the participating institution for the agreed cost of such service.

(4) A direction under *subsection (3)*—

(*a*) may require a participating institution to enter into an arrangement or agreement that includes an obligation to provide access for and permit the use by NAMA or a NAMA group entity of facilities, books, records and systems, and

(*b*) may require a participating institution concerned to provide a relevant service for the benefit of a NAMA group entity.

(5) NAMA may at any time amend, suspend or revoke a direction pursuant to this section.

(6) A participating institution shall—

(*a*) comply with a direction, and any amendment, suspension or revocation of a direction, pursuant to this section, and

(*b*) ensure that any subsidiary to which such a direction extends also complies with it.

(7) A participating institution shall ensure that it and each of its subsidiaries—

(*a*) obtains and maintains in effect any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration required (in the State or in any other place) in connection with the provision of the services required by a direction pursuant to this section, and

(*b*) complies with the terms and conditions of, and any requirement of or under any law in relation to, any such authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

(8) NAMA may give a debtor, associated debtor, guarantor or surety in relation to a bank asset in which NAMA or a NAMA group entity has acquired an interest, or any other person, notice of any direction given pursuant to this section. However, NAMA and the NAMA group entity are not liable to any debtor, associated debtor, guarantor or surety or any other person for failure to give such a notice.

(9) Any receivable or other amount received or recovered by a participating institution pursuant to the performance by it of a relevant service shall be held by that participating institution on trust absolutely for and to the order of NAMA or a NAMA group entity, as the case may be, and any amount so held shall be accounted for to NAMA or the NAMA group entity as NAMA from time to time directs. A trust constituted by this subsection—

(*a*) does not form part of the assets of the participating institution whether for the purposes of laws generally applicable to winding up, reorganisations, liquidations or otherwise,

(*b*) is effective for all purposes, and

(*c*) shall not be taken to constitute or create a security.

Other servicing arrangements.

132.— (1) Where in relation to an acquired bank asset NAMA or a NAMA group entity has arranged with a service provider other than the participating institution from which the bank asset was acquired for the provision of relevant services in respect of an acquired bank asset, then—

(*a*) the terms of the bank asset shall be taken to require each debtor, associated debtor, guarantor or surety in respect of a bank asset to deal with the service provider concerned,

(*b*) NAMA or the NAMA group entity may give such a debtor, associated debtor, guarantor or surety notice of any arrangement for the provision of a relevant service in respect of that bank asset, and

(*c*) NAMA and the NAMA group entity concerned are not liable to any such debtor, associated debtor, guarantor or surety or any other person for failure to give such a notice.

(2) Where NAMA or a NAMA group entity has arranged with a service provider for the provision of relevant services in respect of a bank asset that has been acquired or is to be acquired by NAMA or the NAMA group entity, the participating institution from which the bank asset is to be or was acquired shall do all such acts or things that NAMA or the NAMA group entity directs to facilitate the provision by the service provider of those relevant services.

NAMA may give directions about certain bank assets not acquired.

133.— (1) Where NAMA or a NAMA group entity has acquired a bank asset from a participating institution NAMA may, for the furtherance of the achievement of its purposes under this Act, direct the participating institution to deal in a specified way with any part of the bank asset not acquired, being a way in which the participating institution may lawfully deal, or has the authority to deal, with the bank asset or part.

(2) A participating institution shall comply with a direction by NAMA under *subsection (1)*.

Additional payment on servicing of acquired bank assets.

134.— (1) With the consent of the Minister, NAMA or a NAMA group entity may agree with a participating institution on an arrangement in relation to the servicing of acquired bank assets.

(2) Without prejudice to the generality of *subsection (1)*, an arrangement referred to in that subsection may provide for—

(*a*) an adjustment to the total portfolio acquisition value,

(*b*) performance fees, and the reimbursement of costs and expenses, on terms approved by the Minister, or

(*c*) any combination of the things mentioned in *paragraphs (a)* and *(b)*.

Participating institutions to indemnify NAMA.

135.— (1) If NAMA so directs, a participating institution shall indemnify NAMA or a NAMA group entity and each of their officers against any liability or loss (however arising, and regardless of any default on the part of NAMA or a NAMA group entity)—

(*a*) arising from any error, omission or misstatement in any information, explanation, instrument, document, record, book or certificate provided to NAMA or the NAMA group entity by or on behalf of the participating institution,

(*b*) in respect of any claim, award, payment or damages which NAMA or the NAMA group entity becomes liable to pay to any person by reason of the operation of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) where the liability arises in connection with a cause of action accruing before the relevant acquisition date (or any proportion of the liability or loss is attributable to a period before the relevant acquisition date) including any claim made by or on behalf of such a person that relates to an act or omission of the participating institution in connection with that person's employment before the acquisition date, and

(*c*) in respect of any redundancy payment, or any other severance payment, paid by NAMA or the NAMA group entity, or that NAMA or the NAMA group entity is ordered to pay, to any person whose employment transfers to NAMA or the NAMA group entity by reason of the operation of those Regulations and whose employment is terminated by NAMA or the NAMA group entity by reason of redundancy.

(2) Where the Court determines ownership of a bank asset in favour of a third party and as a result NAMA or a NAMA group entity is obliged to transfer the bank asset to the third party or pay damages in lieu, the participating institution shall indemnify NAMA or the NAMA group entity against that liability and all losses suffered by it.

(3) The Court and any other court or tribunal in which legal proceedings are brought in respect of a matter referred to in *subsection (1)* shall not make NAMA or a NAMA group entity a party to the proceedings in any capacity where the liability is that of the participating institution.

(4) If NAMA or a NAMA group entity so directs, and without prejudice to *section 105*, a participating institution shall indemnify NAMA or the NAMA group entity and its officers against any liability or loss in respect of a legal or equitable wrong referred to in that section.

Participating institutions to be agent of subsidiaries, etc.

136.— (1) A participating institution is for all purposes of this Act the agent of each other legal entity in its group with full power to bind each other such entity.

(2) The service of a notice on, or any communication with, a participating institution referred to in *subsection (1)* is for all purposes of this Act effective as service of the notice on, or communication with, any other entity in the participating institution's group.

(3) In this section "group", in relation to a participating institution, means—

(*a*) the participating institution,

(*b*) any subsidiary of the participating institution, and

(*c*) any entity of which the participating institution is a subsidiary.

PART 9

Powers of NAMA in Relation to Assets

Chapter 1

Definitions

Definitions (*Part 9*).

137.— In this Part—

"charged land" means land that is subject to a charge that is part of an acquired bank asset;

"convey" and "conveyance" have the same meanings respectively as in the Land and Conveyancing Law Reform Act 2009, and "con veyed" shall be construed accordingly;

"vesting order" means an order under *section 153*.

Chapter 2

General Powers of NAMA in Relation to Assets

Interpretation (*Chapter 2*).

138.— For the purposes of this Chapter, a reference in this Chapter to NAMA shall be construed, in relation to a bank asset that has been acquired by a NAMA group entity, as a reference to either NAMA or the NAMA group entity unless the contrary intention appears.

NAMA's powers to dispose of bank assets.

139.— NAMA may validly transfer, assign, convey, sell on or otherwise dispose of an acquired bank asset to any person notwithstanding—

(*a*) any restrictions on such a disposal at law or in equity,

(*b*) any contractual requirement, or any requirement under any enactment, for the consent of, for notice to, or for a document from, any person to such a disposal, or

(*c*) any provision of any enactment that would otherwise prohibit or restrict such a disposal.

Power to discharge prior charge.

140.— Where an acquired bank asset is secured by a charge (including a charge that is a collateral security), but the charge is a second or subsequent charge, NAMA may redeem or discharge any one (or more) of the prior charges in accordance with its terms.

Power of entry to protect value or condition of land or buildings.

141.— (1) Where an acquired bank asset is secured by a charge over land (including a charge that is a collateral security), and any one or more of the following paragraphs applies:

(*a*) the land or any building or structure on it has been abandoned;

(*b*) the land is or has become overgrown;

(*c*) the land or any building or structure on it is or has become infested with vermin;

(*d*) any building or structure on the land has fallen, or there is a serious risk of the building or structure falling, into disrepair;

(*e*) the land or any building or structure on it is at risk from trespassers or vandalism;

then NAMA may apply to a judge of the District Court for the time being assigned to the District Court district in which any part of the land concerned is situated, on notice to the owner and any occupier of the land, for an order (in this section referred to as an "entry and maintenance order") authorising it to enter (by force, if the order so provides) upon the land or any building or structure on it for any one or more of the following purposes:

(i) to fence or otherwise secure the boundary of the land;

(ii) to clear the land of overgrown vegetation;

(iii) to clear or treat the land or any building or structure on it in a manner designed to remove vermin;

(iv) to repair or make secure any building or structure on the land.

(2) NAMA shall serve a copy of an application under *subsection (1)* on every person it knows to have an interest in the relevant land.

(3) The District Court may make an order in accordance with an application under *subsection (1)* and if it does so shall specify the period, being not greater than 6 months beginning on the date of the order, for which the order shall have effect.

(4) NAMA shall give each owner and, where the relevant land is occupied, each occupier of the relevant land at least 24 hours' notice of its intention to enter on the land or any building or structure on it under the authority of an entry and maintenance order.

(5) An entry and maintenance order does not authorise forcible entry on the land, building or structure concerned unless the order expressly so provides.

(6) If NAMA enters on land or a building or structure under the authority of an entry and maintenance order, NAMA shall not be taken to be a mortgagee in possession of the land or any building or structure on it.

(7) Any cost, expense or liability that NAMA incurs pursuant to this section—

(*a*) is a debt due under the bank asset concerned, and

(*b*) is recoverable from the debtor, associated debtor, guarantor or surety concerned,

and the repayment of any such cost, expense or liability stands secured against the land.

Certain instruments by NAMA to be taken to be deeds.

142.— (1) In relation to any land in which NAMA has an interest, whether legal or beneficial, an instrument under seal of NAMA or the common seal of the NAMA group entity concerned that is expressed to convey that interest or any part of that interest in the land concerned to another person shall be taken for all purposes to be a deed of conveyance of the land executed under seal by the owner of the interest in the land concerned.

(2) An instrument referred to in *subsection (1)* extinguishes the interest of any other chargee or mortgagee in the land concerned other than a charge that has priority to the interest of NAMA concerned and has not been redeemed or discharged under *section 140*.

(3) Where the interest of a chargee or mortgagee in land is extinguished by the operation of this section the interest attaches to the proceeds of the sale concerned.

(4) Where the interests of more than one chargee or mortgagee are extinguished by the operation of this section the interests so extinguished attach to the proceeds of the sale concerned in the same order of priority as those interests had before the extinguishment.

Overreaching for protection of purchasers.

143.— (1) Subject to *subsection (2)*, a conveyance by NAMA (including a conveyance by way of an instrument referred to in *section 142*) to a purchaser of a legal estate or legal interest in land overreaches any equitable interest in the land so that the equitable interest ceases to affect that estate or interest, whether or not the purchaser has notice of the equitable interest.

(2) *Subsection (1)* does not apply to an equitable interest—

(*a*) to which the conveyance is expressly made subject,

(*b*) that arises by virtue of an equitable mortgage related to the land concerned,

(*c*) that, before the conveyance, is registered against the land in the Registry of Deeds or the Land Registry, or

(*d*) that—

(i) in the case of an interest in registered land, is a burden of a kind referred to in section 72(1)(*j*) of the Registration of Title Act 1964, or

(ii) in the case of an interest in unregistered land, would take effect as such a burden if the land were registered land.

(3) Where an equitable interest is overreached under this section it attaches to the proceeds arising from the conveyance, and effect shall be given to it accordingly.

(4) NAMA shall discharge any obligations under *subsection (3)* as soon as is practicable.

(5) For the avoidance of doubt, overreaching in accordance with *subsections (1)* and *(2)* has effect in relation to land that is or includes a person's principal private residence.

(6) In this section "equitable mortgage" means a mortgage created by—

(*a*) the deposit of documents of title relating to the legal estate or legal interest in the land concerned, or

(*b*) an undertaking by a solicitor to hold the documents of title relating to the legal estate or legal interest in the land concerned in trust for a credit institution and which undertaking, where applicable, has been registered as a charge under section 99 or 111 of the Companies Act 1963.

Effect of certain assurances of land.

144.— An assurance of charged land or a right or interest in charged land before the acquisition by, or vesting in, NAMA of the relevant charge (whether or not the land was charged at the date of the assurance) shall be taken to have created, for the benefit of the charged land, any easement or *profit à prendre* over any land retained by the grantor of the assurance that it is reasonable to assume, in the circumstances of the case, was within the contemplation of the parties at the date of the assurance as being included in it, or would have been within that contemplation at that time if they had adverted to the matter.

Certain receivers not obliged to sell property, etc.

145.— (1) A receiver of the rents and profits of property appointed by NAMA pursuant to its powers as a chargee of the property is not obliged to sell the property at any particular time or at all, but is accountable for all profits and other monetary benefits arising directly from possession of the property.

(2) A receiver appointed to the property of a company by NAMA in its capacity as a creditor of the company is not obliged to sell any property of the company at any particular time or at all, but is accountable for all profits and other monetary benefits arising directly from possession of the property of the company.

Powers of NAMA to enforce securities, etc.

146.— The enforcement of a security by NAMA is not subject to the restrictions in the Conveyancing Act 1881 or the Land and Conveyancing Law Reform Act 2009.

Chapter 3

Statutory Receivers

NAMA's power to appoint statutory receivers.

147.— (1) Where any of the following occurs under the terms of an acquired bank asset:

(*a*) a power of sale becomes exercisable;

(*b*) a power to appoint a receiver becomes exercisable;

then NAMA may appoint any person, including an officer of NAMA, as a statutory receiver of the property the subject of the bank asset.

(2) NAMA may remove a statutory receiver and may appoint a new statutory receiver in the place of a statutory receiver removed.

(3) The appointment of a statutory receiver is not subject to the restrictions in the Conveyancing Act 1881 or the Land and Conveyancing Law Reform Act 2009 on the appointment of a receiver.

(4) NAMA may fix the remuneration of a statutory receiver. A maximum rate imposed by law (including that specified in section 24(6) of the Conveyancing Act 1881 or prescribed by regulations under section 108(7) of the Land and Conveyancing Law Reform Act 2009) does not apply.

(5) NAMA's power to appoint a statutory receiver under this Chapter does not affect any powers to appoint a receiver pursuant to any contractual power in any bank asset acquired by NAMA.

(6) The powers of NAMA under this section are exercisable by NAMA (and only by NAMA) in relation to a bank asset held by a NAMA group entity.

Powers of statutory receivers.

148.— (1) A statutory receiver has the powers, rights and obligations that a receiver has under the Companies Acts, and the powers, rights and obligations specified in *Schedule 1* .

(2) In *Schedule 1* a reference to a secured asset is, in relation to a particular statutory receiver, a reference to land or property that is subject to a charge or other security that is included in the bank asset pursuant to which the statutory receiver was appointed.

(3) Where a charge provides for a receiver appointed under it to have any power in addition to those referred to in *subsection (1)*, a statutory receiver appointed in relation to the property subject to the charge also has that additional power. However, a statutory receiver exercising any such additional power is taken to do so by virtue

of his or her appointment under this Chapter and is not bound by any restriction on its exercise specified in the charge.

(4) A statutory receiver is not subject to the restrictions on the powers of a receiver in the Conveyancing Act 1881 or the Land and Conveyancing Law Reform Act 2009.

(5) The enforcement of a security by a statutory receiver is not subject to the restrictions in the Conveyancing Act 1881 or the Land and Conveyancing Law Reform Act 2009.

(6) Section 100(2) of the Land and Conveyancing Law Reform Act 2009 does not apply to the exercise of a power of sale by NAMA or a statutory receiver.

(7) A statutory receiver, in selling property the subject of a charge in favour of NAMA, shall exercise all reasonable care to obtain the best price reasonably obtainable for the property at the time of sale.

(8) If joint statutory receivers are appointed, each one severally may exercise any power or carry out any function of a statutory receiver.

Statutory receiver to be agent of chargor, etc.

149.— (1) A statutory receiver shall be taken to be the agent of the chargor for all purposes.

(2) The chargor is solely responsible for the remuneration, contracts, engagements, acts, omissions, defaults and losses of a statutory receiver and for liabilities incurred by a statutory receiver. NAMA does not incur any liability (either to the chargor or to any other person) by reason of the appointment of a statutory receiver or for the actions or inactions of a statutory receiver.

(3) A statutory receiver shall be taken to have been irrevocably appointed as an attorney of the chargor (with full powers of substitution and delegation) and to have the authority in the chargor's name, on the chargor's behalf and as the chargor's act and deed, to—

(*a*) sign, seal, execute, deliver and perfect and do all deeds, instruments, acts and things that the chargor could do or ought to do pursuant to any bank asset that has been acquired by NAMA or a NAMA group entity,

(*b*) generally in the chargor's name and on the chargor's behalf exercise all or any of the powers, authorities and discretions—

(i) conferred by any enactment, or the common law or pursuant to any agreement forming part of any acquired bank asset, or

(ii) that NAMA or the statutory receiver thinks fit for carrying into effect a sale, lease, charge, mortgage or dealing by NAMA, the relevant NAMA group entity concerned or the statutory receiver,

and

(*c*) generally to use the chargor's name in the exercise of any power, authority or discretion conferred on a statutory receiver.

Appointment of liquidator or examiner to companies whose assets are under control of statutory receiver.

150.— (1) Notwithstanding any provision of the Companies (Amendment) Act 1990, the appointment of an examiner to a company whose assets or any part of them are under the control of a statutory receiver does not—

(*a*) displace the statutory receiver or affect his or her powers, authority or agency,

(*b*) prevent the statutory receiver from enforcing any security held by NAMA or a NAMA group entity, or

(*c*) cause the de-crystallisation of any charge created as a floating charge over assets that are under the control of the statutory receiver.

(2) The appointment of a liquidator to a company whose assets or any part of them are under the control of a statutory receiver does not displace the statutory receiver and does not affect his or her powers, authority and agency.

Statutory receiver not obliged to sell property, etc.

151.— A statutory receiver is not obliged to sell a charged property at any particular time or at all, but is accountable for all profits and other monetary benefits arising directly from possession of the property.

Chapter 4

Vesting Orders

Application to Court.

152.— (1) NAMA may apply to the Court for a vesting order if—

(*a*) an acquired bank asset includes a charge over land,

(*b*) the chargee's power of sale has become exercisable, and

(*c*) NAMA forms the view that it is unlikely that the sum secured by the charge can be recovered by a sale within 3 months after the application.

(2) An application under *subsection (1)* shall, where there is a charge secured over the land concerned that has priority to the charge referred to in *paragraph (a)* of that subsection, contain an undertaking by NAMA to discharge that charge in accordance with *section 154*.

(3) An application under *subsection (1)* shall be supported by an affidavit to which is exhibited evidence—

(*a*) as to the price likely to be realised, within 3 months after the application, by a sale of the land concerned, and

(*b*) of any other interests in the land, including any prior charge referred to in *subsection (2)*.

(4) NAMA shall serve notice of the application on—

(*a*) the chargor concerned,

(*b*) any chargee (whether prior or subsequent), and

(*c*) any guarantor of the relevant credit facility.

(5) NAMA shall publish a notice of an application for a vesting order in at least one daily newspaper circulating generally in the State.

(6) The Court shall set down an application under *subsection (1)* for preliminary hearing, at which it shall give directions for the taking of accounts in relation to the credit facility concerned. At the preliminary hearing the Court may stay the proceedings if a subsequent chargee wishes to offer to redeem in full the charge held by NAMA or a NAMA group entity.

(7) At a preliminary hearing under *subsection (6)*, the Court may direct that notice of the application shall be given to any other person.

(8) The Court may, in any application under this Chapter where it seems to the Court appropriate to do so, direct that evidence be given on affidavit. The Court may deal with the application summarily on consideration of any affidavits presented to it.

Vesting orders.

153.— (1) If the Court is satisfied, after considering the accounts and other relevant matters, that—

(*a*) it is unlikely that the sum secured by the charge would be recovered were the land to be sold within 3 months after the application, and

(*b*) there is no reasonable prospect of the chargor redeeming the charge concerned,

the Court shall make an order (in this Part referred to as a "vesting order") vesting in NAMA, or a NAMA group entity nominated by NAMA, the interest of the chargor, subject to any undertaking under *section 152 (2)*, in the land concerned.

(2) If the Court makes a vesting order, the Court shall also—

(*a*) determine the amount likely to be realised were the land to be sold within 3 months after the application, and

(*b*) make an order for possession of the land concerned in favour of NAMA or the nominated NAMA group entity.

Annotations

Editorial Notes:

E14 Value Added Tax (VAT) treatment of a transfer of ownership of goods effected by vesting order made in accordance with section prescribed (1.11.2010) by *Value-Added Tax Consolidation Act 2010* (31/2010), s. 16(1), commenced as per s. 125.

Prior chargee's right to payment.

154.— (1) In this section "value" means the amount determined by the court under *section 153 (2) (a)*.

(2) Where the Court makes a vesting order in relation to land that is subject to a charge that is either prior to, or ranks equally with, that held by NAMA or the NAMA group entity concerned, the Court shall also order NAMA or the NAMA group entity—

(*a*) if there is only one such chargee, to pay to that chargee whichever is the lesser of the amount secured by its charge and the value, or

(*b*) if there is more than one such chargee, to pay to each such chargee, in the order of their priority, whichever is the lesser of—

(i) the amount secured by its charge, and

(ii) the value or the remainder of the value, as the case requires.

Effect of vesting order.

155.— (1) Notwithstanding any other enactment or rule of law, a vesting order—

(*a*) extinguishes the chargor's equity of redemption in the land concerned,

(*b*) vests title to the land in NAMA or the NAMA group entity nominated by NAMA for that purpose,

(*c*) extinguishes the interest in the land of any other chargee, and

(*d*) satisfies the requirements of the Land Registration Rules 1972 to 2008.

(2) The extinguishing of the interest of a chargee by *subsection (1) (c)* does not extinguish the debt secured by the charge concerned. However, a payment ordered to be made under *section 154 (2)* shall be applied in reduction of the debt secured by the relevant charge.

(3) The debt or debts owed by the chargor to NAMA or the NAMA group entity shall be reduced by the extent, if any, to which the value (within the meaning given by *section 154*) of the charged land exceeds the amount paid under that section.

(4) NAMA shall cause a vesting order to be sent to the Property Registration Authority under the Registration of Title Act 1964 and the Registration of Deeds and Title Act 2006. The Property Registration Authority shall cause NAMA or the nominated NAMA group entity, as the case requires, to be registered as owner of the land in accordance with the order.

(5) For the avoidance of doubt, the making of a vesting order in relation to land does not impose on NAMA or any NAMA group entity any obligation to sell the land within any particular period or at all.

Title of purchaser not impeachable.

156.— (1) The title of a purchaser from NAMA or a NAMA group entity of land in relation to which NAMA has obtained a vesting order is not impeachable on the ground of any irregularity in the vesting order or any irregularity or impropriety in the obtaining of it.

(2) No purchaser from NAMA or a NAMA group entity, and no subsequent purchaser, of land referred to in *subsection (1)* is either required or entitled to raise any requisition or make any objection on title specific to the vesting order.

Chapter 5

Compulsory Acquisition of Land

Definitions (*Chapter 5*).

157.— (1) In this Chapter—

"acquisition order" means an order under *section 163*;

"compulsory transfer order" means an order under *section 167*;

"initial notice" means a notice referred to in *section 160*.

(2) In this Chapter—

(*a*) a reference to charged land includes land in relation to which a vesting order has been made, and

(*b*) a reference to the nominated NAMA group entity in relation to land is a reference to the NAMA group entity nominated by NAMA under *section 163 (1)* in relation to the land.

NAMA's powers to acquire land compulsorily.

158.— (1) NAMA may compulsorily acquire land if in its opinion it is necessary to do so—

(*a*) to enable NAMA to perform the functions referred to in *section 10 (1) (b)* and *(c)*,

(*b*) to enable a building constructed on charged land to be used or enjoyed for the purpose for which it was developed, or

(*c*) to enable NAMA or a NAMA group entity to vest in a prudent and experienced purchaser good and marketable title to charged land but only if the land sought to be acquired is only of material benefit to the owner in so far as it affects the use or development of charged land.

(2) In addition, NAMA may compulsorily acquire land where—

(*a*) the land is owned by a person who is a debtor, associated debtor, guarantor or surety in relation to an acquired bank asset, and that person is in material default of his or her obligations to NAMA or a NAMA group entity and the default has caused, or is likely to cause, NAMA or the NAMA group entity substantial loss,

(*b*) the land was intended to form part of a security in relation to a credit facility provided by a participating institution but was not included in the security through an error or omission, or

(*c*) a debtor, associated debtor, guarantor or surety in relation to an acquired bank asset is using or intends to use his or her ownership of the land to materially impede the disposition, at a fair and reasonable price, of land by NAMA or a NAMA group entity.

(3) NAMA may compulsorily acquire land only if it has first made a reasonable attempt to acquire the land by agreement.

Application to Court for acquisition order.

159.— (1) If NAMA proposes to compulsorily acquire any land, NAMA shall apply to the Court for an order (in this Chapter called an "acquisition order") authorising it to acquire the land.

(2) The application under *subsection (1)* shall be accompanied by the maps, plans and books of reference to be deposited in accordance with *section 161*.

Initial notice of acquisition.

160.— (1) NAMA shall publish a notice (in this Chapter called the "initial notice"), in the form (if any) prescribed by the Minister by regulations, of an application under *section 159* in a daily newspaper circulating in the State generally.

(2) NAMA shall serve a copy of an initial notice on every person who appears to NAMA to have an estate or interest in the land concerned, so far as it is reasonably practicable to ascertain those persons. However, failure to serve an initial notice on every such person does not invalidate the acquisition order concerned.

(3) An initial notice—

(*a*) shall include a statement that persons claiming an estate or interest in the land concerned have the right to lodge with the Court, within 21 days after the publication of the notice, an objection to the making of an acquisition order in relation to the land, and

(*b*) shall specify the times and places where the maps, plans and books of reference deposited in accordance with *section 161* can be inspected.

Maps, plans and books to be deposited.

161.— (1) NAMA shall cause maps, plans and books of reference to be deposited in accordance with this section.

(2) The maps and plans shall be sufficient in quantity and character to show the land at an adequate scale.

(3) The books of reference shall so far as practicable contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of the land that is proposed to be acquired.

(4) The maps, plans and books of reference shall be deposited at such place or places as NAMA considers suitable and shall remain so deposited for at least 21 days after publication of the initial notice. While so deposited, they shall be open to inspection, free of charge, between 10 o'clock in the morning and 4 o'clock in the afternoon on every day except Saturdays, Sundays and public holidays.

Consideration by Court of objections.

162.— (1) A person claiming an estate or interest in land in relation to which an initial notice has been published and served may lodge with the Court, within 21 days after the publication of the initial notice, an objection to the making of an acquisition order in relation to the land, setting out the grounds on which the objection is based.

(2) In determining an application by NAMA under this Chapter, the Court shall consider any objection lodged with the Court in accordance with *subsection (1)*.

(3) The Court is not obliged to consider any objection—

(*a*) that is not lodged within the period allowed by *subsection (1)*, or

(*b*) that does not show on its face the objector's estate or interest in the land concerned.

(4) In considering an objection under *subsection (1)*, the Court shall have regard to the nature of the objector's estate or interest in the land.

Acquisition order.

163.— (1) If no objection to NAMA's application is lodged with the Court within the period referred to in *section 162 (1)*, the Court shall make an order authorising NAMA or a NAMA group entity nominated by NAMA to acquire the land concerned compulsorily in accordance with the terms of its application.

(2) If an objection to NAMA's application is lodged with the Court within the period referred to in *section 162 (1)* the Court shall make an order referred to in *subsection (1)* if the Court is satisfied that—

(*a*) one of the following applies:

(i) NAMA has reasonably formed the opinion referred to in *section 158 (1)*;

(ii) a condition set out in *section 158 (2)* is satisfied;

(*b*) NAMA has complied with the obligation in *section 158 (3)*, and

(*c*) it is just and equitable to make the order.

(3) The Third Schedule to the Housing Act 1966 applies to an acquisition order subject to the following modifications:

(*a*) references to a sum of money shall be construed as references to the equivalent sum in euro;

(*b*) references to a housing authority or an authority shall be construed as references to NAMA;

(*c*) references to the Minister shall be construed as a reference to the Court in the exercise of its functions under this Chapter;

(*d*) the omission of Article 4, paragraphs (1) to (4) of Article 5 and Article 5(5)(*d*).

Notice to treat.

164.— (1) Where an acquisition order has been made, NAMA may serve a notice (referred to as a notice to treat) on every owner, lessee and occupier of the land (except tenants for a month or a shorter period).

(2) A notice to treat—

(*a*) shall state that NAMA is willing to treat for the purchase of the several interests in the land, and

(*b*) shall require each owner, lessee and occupier—

(i) to state within a specified period (not less than one month from the date of service of the notice to treat) the exact nature of the interest in respect

of which he or she claims compensation and details of the compensation claimed, and

(ii) if NAMA so requires, to distinguish separate amounts of that compensation in such manner as NAMA specifies in the notice to treat and show how each such amount is calculated.

(3) A notice to treat served under *subsection (1)* shall be taken to be a notice to treat for the purposes of the Acquisition of Land (Assessment of Compensation) Act 1919.

NAMA's power to take possession.

165.— (1) At any time after the making of an acquisition order and before conveyance or ascertainment of price, NAMA or the NAMA group entity nominated by NAMA under *section 163 (1)* may, subject to *subsection (2)*, enter on and take possession of the land to be acquired.

(2) NAMA or the nominated NAMA group entity referred to in *subsection (1)* shall not enter on or take possession of land under this section without giving any occupier or owner of the land at least 14 days' notice in writing of its intention to do so.

Determination of compensation.

166.— (1) The amount of the price to be paid by NAMA for land shall, in default of agreement, be fixed under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.

(2) Section 63 and sections 69 to 79 of the Lands Clauses Consolidation Act 1845 apply to the price and, subject to *sections 167* and *169* of this Act, to the land acquired. For the purpose of the application of those sections a reference to the promoters of an undertaking shall be construed as a reference to NAMA.

(3) If NAMA or a NAMA group entity exercises its power of entry under *section 165*, NAMA is liable to pay compensation as if the provisions of the Lands Clauses Acts (within the meaning given by the Schedule to the Interpretation Act 1937) relating to entry on lands had been complied with and to pay interest upon that compensation from the date of entry at the rate applicable to compulsory purchase orders by local authorities in accordance with the provisions of the Housing Act 1966.

Court may make compulsory transfer order.

167.— (1) Where NAMA or a NAMA group entity has entered on and taken possession of land in accordance with *section 165* and the Court is satisfied that—

(*a*) the several estates or interests in the land have not been conveyed or transferred to NAMA or the nominated NAMA group entity,

(*b*) it is necessary, in connection with the purposes for which NAMA has been authorised to acquire the land compulsorily, that the acquisition of the land should be completed, and

(*c*) NAMA has made an offer in writing to each person having an estate or interest in the land who has furnished sufficient particulars of that estate or interest to enable NAMA to make an offer for it,

then the Court may make an order (in this Chapter referred to as a "compulsory transfer order") vesting the land in NAMA or the nominated NAMA group entity subject to any terms and conditions that the Court thinks fit.

(2) After the Court makes a compulsory transfer order, NAMA shall within 7 days after having received notification from the Court of the making of the order—

(*a*) publish in a newspaper circulating in the area of the land to which the order relates a notice stating that the order has been made, describing the land and naming a place where a copy of the order may be seen at all reasonable times, and

(*b*) serve on every person appearing to NAMA to have an estate or interest in the land a notice that the order has been made and the effect of the order.

NAMA to inform Revenue Commissioners if certain liabilities exist.

168.— Where NAMA becomes aware, before the making of a compulsory transfer order, that a person from whom an estate or interest in the land is to be transferred by the order is subject to a liability for estate duty, succession duty or inheritance tax, NAMA shall notify the Revenue Commissioners of the Court's intention to make the order.

Form and effect of compulsory transfer order.

169.— (1) A compulsory transfer order shall have attached to it a map of the land to which it relates.

(2) A compulsory transfer order vests in NAMA or the NAMA group entity nominated by NAMA under *section 163 (1)* the land specified in it in fee simple free from encumbrances and all estates, rights, titles and interests of whatever kind (other than any public right of way) with effect from a date (not earlier than 21 days after the making of the order) specified in the order.

(3) NAMA shall cause a compulsory transfer order to be sent to the Property Registration Authority under the Registration of Title Act 1964 and the Registration of Deeds and Title Act 2006. The Property Registration Authority shall cause NAMA or the nominated NAMA group entity referred to in *section 163 (1)* to be registered as owner of the land in accordance with the order.

Effect of compulsory acquisition without compulsory transfer order.

170.— (1) Upon the completion of a compulsory acquisition otherwise than by compulsory transfer order, all private rights of way and all rights of laying down, erecting, continuing or maintaining pipes, sewers, drains, wires or cables on, under or over the land concerned (together with the property in those pipes, sewers, drains, wires or cables) and all other rights or easements in or relating to the land shall (except so far as otherwise agreed by NAMA or the NAMA group entity nominated by NAMA under *section 163 (1)* and the person entitled to the right) vest in NAMA or the nominated NAMA group entity without any conveyance or transfer.

(2) A person who suffers loss by the vesting, by virtue of *subsection (1)*, of a right or property is entitled to be paid compensation by NAMA.

(3) Compensation payable by virtue of *subsection (2)* shall be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.

Service of notices.

171.— (1) A notice under this Chapter may be served on a person by sending it by registered post in an envelope addressed to him or her at his or her usual or last known address.

(2) If for any reason the envelope cannot be so addressed, it may be served on the person for whom it is intended by—

(*a*) sending it by registered post in an envelope addressed to "the occupier" without stating his or her name, at the land to which the notice relates, or

(*b*) affixing a copy of the notice prominently on the land.

Chapter 6

General Powers in Relation to Land

Limitations on certain dealings in land, etc.

172.— (1) If a person owns charged land and—

(*a*) the person—

(i) owns other land (in this subsection referred to as the "relevant land") or holds an option to acquire such land, or

(ii) holds an interest in other land, or an option to acquire such an interest,

and

(*b*) unless the relevant land, the interest or the option were owned or held (as the case requires) by NAMA, the charged land would be unable to realise its full value for development, sale, leasing or any other use,

the person shall not deal with the relevant land, the interest or the option without giving reasonable written notice to NAMA.

(2) A dealing in contravention of *subsection (1)* is voidable at NAMA's option except against a person who has in good faith and for value acquired an interest in the land concerned.

(3) A person who is the debtor in relation to an acquired bank asset, who is a person referred to in any of *subparagraphs (i)*, *(ii)*, *(iii)*, *(v)* or *(vi)* of *section 70(1)(b)* or who is a person on whose behalf the debtor or the person referred to in one of those subparagraphs acts as a nominee or trustee in relation to an acquired bank asset shall not, if any of those persons is in default in relation to any acquired bank asset, acquire from NAMA or a NAMA group entity, any legal or beneficial interest in property comprised in the security forming part of any acquired bank asset in relation to which the default has occurred.

(4) The Minister may, if in the opinion of the Minister it is necessary to do so having regard to the purposes of this Act and, in particular, to the interests of taxpayers and the nature and extent of the default, make regulations—

(*a*) prohibiting or restricting the acquisition by a person who is in a prescribed class of debtors, or of persons directly or indirectly connected to debtors, of any legal or beneficial interest in property comprised in the security forming part of any acquired bank asset or any acquired bank asset of a prescribed class of acquired bank assets, where the debtor concerned is in material default of any payment obligation to NAMA or a NAMA group entity for which a satisfactory arrangement to remedy the default has not been made, and

(*b*) prescribing the requirements which such persons would be required to meet in order to acquire property comprised in the security forming part of any acquired bank asset or any acquired bank asset of a specified class of acquired bank assets from NAMA or a NAMA group entity.

(5) A draft of every regulation proposed to be made under *subsection (4)* shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House.

Set-off of compensation.

173.— Where a person is indebted to NAMA or a NAMA group entity (whether under an acquired bank asset or otherwise) the amount of any compensation payable by NAMA or any other payment due by NAMA or a NAMA group entity to that person under this Act may, without prejudice to any other right of set-off arising as a matter of law, be applied towards satisfaction of the debt due to NAMA or the NAMA group entity.

Chapter 7

Powers in Relation to Development of Land

Interpretation (*Chapter 7*).

174.— For the purposes of this Chapter, a reference in this Chapter to NAMA shall be construed, in relation to a bank asset that has been acquired by a NAMA group entity, as a reference to either NAMA or the NAMA group entity unless the contrary intention appears.

Application (*Chapter 7*).

175.— This Chapter applies where an acquired bank asset includes a charge over development land and—

(*a*) the Court has made a vesting order in relation to the land, or

(*b*) the chargee's power of sale has become exercisable, or

(*c*) a statutory receiver has been appointed.

Development of land.

176.— (1) Where this Chapter applies, NAMA may enter into an agreement (including an agreement with the person who was the debtor in relation to the bank asset concerned) for the purpose of developing the land.

(2) NAMA's objective in entering into an agreement under *subsection (1)* shall be the orderly development of the land concerned to secure the best return reasonably possible.

NAMA to have certain contractual rights of land developers.

177.— (1) Where this Chapter applies, NAMA has, without prejudice to any rights arising at law, the same rights as the participating institution and the debtor and any associated debtor, guarantor or surety in relation to the acquired bank asset concerned in relation to any breach of contract or obligation (including defective design or workmanship in any building or other structure constructed or to be constructed, or works to be carried out, on, in or under the land concerned). All such rights shall be taken to have been assigned to NAMA by the acquisition by NAMA of the bank asset, subject to—

(*a*) any obligations or liabilities of the participating institution under the relevant bank asset, and

(*b*) any exclusion of obligations and liabilities from the acquisition set out in the relevant acquisition schedule.

(2) Where under *subsection (1)* NAMA acquires a right in relation to any breach of contract or obligation, NAMA may, by certificate under its seal, confer that right on another person.

Designs and planning documents for land development.

178.— (1) Where—

(*a*) this Chapter applies, and

(*b*) there is an agreement with a person in relation to the development of the land concerned,

then—

(i) the person shall deliver to NAMA, on demand, a copy of the agreement (and, if under the agreement any design, plan or other document has been prepared for the purposes of the development of the land, a copy of the design, plan or other document prepared), and

(ii) NAMA may elect to continue, in accordance with its terms, the agreement (with or without entering into a further agreement with the person) as it thinks fit and if it does continue the agreement, NAMA shall assume the rights and obligations under that agreement.

(2) Where an agreement referred to in *subsection (1) (b)* creates a lien over any design, plan or document prepared for the purposes of the development, the lien is void as against NAMA, without prejudice to the claim underlying the lien.

(3) Without prejudice to *subsection (1) (b) (ii)*, where an agreement referred to in *subsection (1) (b)* confers a right to do so on a participating institution, NAMA may direct the participating institution to assign the agreement to NAMA and when NAMA does so, the participating institution shall comply with the direction.

(4) Where an agreement referred to in *subsection (1) (b)* is assigned to NAMA in accordance with a direction under *subsection (3)*, or NAMA makes an election under *subsection (1) (b) (ii)*, NAMA is not liable for any breach of the agreement that occurs, or liability that arises, before the assignment or the election to continue the agreement.

(5) Where a participating institution cannot assign to NAMA any licence that it holds, then NAMA, at its option, shall, by virtue of this section, be taken to hold a licence from the person referred to in *subsection (1) (b)*—

(*a*) authorising the reproduction, making available, adaptation, distribution and use by NAMA of any intellectual property of the person in any drawings, designs, plans or other documents referred to in that subsection, and

(*b*) authorising NAMA to grant a sub-licence of that licence.

(6) Where a licence held by a participating institution—

(*a*) does not authorise the reproduction, making available, adaptation, distribution and use by the participating institution of any intellectual property of the person referred to in *subsection (1) (b)* in any drawings, designs, plans or other documents referred to in that subsection, or

(*b*) does not authorise the participating institution to grant a sub-licence of the licence,

then, at its option, NAMA shall, by virtue of this section, be taken to hold a licence from the person authorising it to do the things mentioned in *paragraphs (a)* and *(b)*.

(7) Nothing in this section deprives a person of—

(*a*) fair and reasonable remuneration for work already done, or

(*b*) a fair and reasonable licence fee in relation to a licence referred to in *subsection (5).*

Limitation of right to renewal of certain business tenancies.

179.— Section 16 of the Landlord and Tenant (Amendment) Act 1980 does not apply in relation to a tenancy (other than a renewal of an existing tenancy) granted by NAMA or a NAMA group entity of a tenement (within the meaning given by section 5 of that Act) unless NAMA or the NAMA group entity specifies otherwise in writing.

PART 10

Legal Proceedings

Chapter 1

Interpretation

Interpretation (*Part 10*).

180.— In this Part:

"Court" means the High Court;

"court" includes an arbitrator;

"defendant" includes a respondent in arbitration proceedings;

"plaintiff" includes an applicant in arbitration proceedings.

Chapter 2

Legal Proceedings Commenced on or after 30 July 2009

Application (*Chapter 2*).

181.— (1) The provisions of this Chapter apply in relation to legal proceedings commenced on or after 30 July 2009 by a person who is a debtor, associated debtor, guarantor or surety in relation to a bank asset, or a participating institution in connection with a bank asset if the bank asset is specified (whether at the commencement of the proceedings or afterwards) in an acquisition schedule.

(2) The provisions of this Chapter apply in relation to legal proceedings referred to in *subsection (1)* on and from the time at which the bank asset concerned is specified in an acquisition schedule.

Damages to be only remedy for certain claims.

182.— (1) Subject to *subsection (2)*, a claim to which this Chapter applies gives rise only to a remedy in damages or other relief that does not in any way affect the bank asset, its acquisition, or the interest of NAMA or the NAMA group entity or (for the avoidance of doubt) any property the subject of any security that is part of such a bank asset.

(2) A person may apply for an order that the person may apply for a remedy other than or in addition to that permitted by *subsection (1)* in relation to a claim to which this Chapter applies.

(3) An application for an order mentioned in *subsection (2)* shall be made only by leave of the Court. An application for such leave may be made *ex parte*.

(4) Leave shall not be granted to apply for an order under *subsection (2)* unless the Court is satisfied that the application raises a substantial issue for the Court's determination and—

(*a*) the application for leave is made to the Court within 30 days after the later of—

(i) the notification by the participating institution to the relevant debtor, associated debtor, guarantor or surety under *section 96*, and

(ii) the accrual of the cause of action in respect of which the legal proceedings arose,

or

(*b*) the Court is satisfied that—

(i) there are substantial reasons why the application was not made within that period, and

(ii) it is just and equitable in all the circumstances to grant leave having regard to the interests of any affected person.

(5) If the Court grants leave to apply for an order under *subsection (2)*, the applicant shall serve on NAMA the order granting leave and the application.

(6) The Court shall make an order under *subsection (2)* if and only if the Court is satisfied that if the applicant's claim were established, damages would not be an adequate remedy.

(7) For the avoidance of doubt, this Chapter applies to proceedings in being at the time of specification in an acquisition schedule of a relevant bank asset.

(8) Nothing in this section prevents a party—

(*a*) defending proceedings *in rem* in respect of a bank asset instituted against it by NAMA, a NAMA group entity, a participating institution or a statutory receiver, in a manner which might affect the bank asset, its acquisition by NAMA or a NAMA group entity or any property the subject of any security, or

(*b*) in the defence of such proceedings, making any claim in relation to such a bank asset.

(9) Nothing in the section affects the operation of the Family Home Protection Act 1976.

Chapter 3

Legal Proceedings Generally

Application (*Chapter 3*).

183.— This Chapter applies in relation to all legal proceedings—

(*a*) to which NAMA or a NAMA group entity is or becomes a party,

(*b*) relating to a designated bank asset or acquired bank asset, or

(*c*) otherwise relating to NAMA.

Conduct of legal proceedings in relation to acquired bank assets.

184.— (1) Where NAMA or a NAMA group entity is a party to any legal proceedings affecting an acquired bank asset, the participating institution from which the bank asset was acquired shall, without prejudice to any other obligation arising under this Act, if NAMA or the NAMA group entity so requests, provide NAMA or the NAMA group entity with any assistance reasonably required by NAMA or the NAMA group entity for the purpose of the proceedings, including—

(*a*) the provision of documents or information,

(*b*) the making available of witnesses, and

(*c*) the provision of evidence by affidavit or otherwise.

(2) A participating institution has, and shall be taken always to have had, as part of its functions and objects, the power and capacity to give the assistance required by *subsection (1)*.

Effect of acquisition, etc., of bank assets on legal proceedings — participating institution plaintiff, etc.

185.— (1) If legal proceedings were in being in relation to a bank asset immediately before the time when it was acquired under this Act, and the participating institution concerned was a plaintiff in those proceedings, those proceedings shall continue. After the bank asset is acquired, NAMA or the NAMA group entity concerned may elect to be substituted for the participating institution, in its capacity as plaintiff, in the proceedings.

(2) If NAMA or a NAMA group entity is substituted under *subsection (1)*, subject to this section it assumes all of the rights and obligations in relation to the relevant proceedings that the participating institution had immediately before that time, other than the obligations in relation to the defence of or liability for any counterclaim or

cross-claim. The participating institution has full rights in relation to, and is solely liable for any remedy awarded in relation to, any such counterclaim or cross-claim.

(3) Notwithstanding *subsection (1)*, where NAMA or a NAMA group entity is substituted under *subsection (1)*, the participating institution remains a party to the proceedings as defendant or respondent to any counterclaim or cross-claim in the proceedings.

(4) Where NAMA or a NAMA group entity is substituted under *subsection (1)*—

(*a*) the court may order the participating institution to make discovery or answer interrogatories as if it were still a party to the proceedings, and

(*b*) NAMA or the NAMA group entity shall not be ordered to make discovery or answer interrogatories unless the court considers it necessary to do so for any special reason in the interests of justice.

(5) Notwithstanding *subsection (1)*, an election by NAMA or a NAMA group entity to be substituted under *subsection (1)* does not render NAMA or the NAMA group entity liable in relation to any counterclaim or cross-claim, or claim to set off, in those proceedings.

(6) Where NAMA or a NAMA group entity has elected to be substituted under *subsection (1)*, NAMA or the NAMA group entity shall as soon as may be file a notice in the court concerned of the election and shall serve a copy of the notice on the participating institution and each other party to the proceedings. No amendment to the proceedings is to be required.

(7) Where NAMA or a NAMA group entity is substituted under *subsection (1)*, without prejudice to any application for costs by the participating institution against any person other than NAMA or a NAMA group entity, the participating institution continues to be liable for—

(*a*) its own costs in the proceedings before the substitution of NAMA or the NAMA group entity as a party and any potential costs liability incurred to other parties to the proceedings as a result of the participating institution being a party to the proceedings before that substitution, and

(*b*) any subsequent costs that it may incur in any capacity in which it remains a party to the proceedings.

(8) A party to legal proceedings referred to in this section is not entitled to join NAMA or a NAMA group entity as a party to the proceedings.

(9) The provisions of this section apply with any necessary modifications to arbitration proceedings.

Effect of acquisition of bank assets on legal proceedings — NAMA, etc., may enforce judgment.

186.— (1) Where a participating institution has obtained judgment in legal proceedings in relation to an acquired bank asset, the judgment so obtained shall be taken to have been assigned to NAMA or the NAMA group entity concerned.

(2) NAMA or the NAMA group entity concerned may enforce a judgment referred to in *subsection (1)* by any means (including by issuing execution). In particular, NAMA or the NAMA group entity may apply for a judgment mortgage pursuant to the judgment.

Effect of acquisition of bank assets on legal proceedings where participating institution not plaintiff.

187.— (1) If the participating institution from which NAMA or a NAMA group entity acquires a bank asset is, at the time of acquisition of the bank asset, a party (otherwise than as plaintiff) in legal proceedings in relation to the bank asset, the participating institution remains a party to the proceedings in the same capacity.

(2) NAMA or a NAMA group entity may elect to become a party to any legal proceedings referred to in *subsection (1)*. In a case where the participating institution has brought a counterclaim NAMA or the NAMA group entity may at its election be substituted for the participating institution as counterclaimant but does not become liable in respect of the claim.

Conduct of proceedings.

188.— If NAMA or a NAMA group entity elects not to be substituted for a participating institution in relation to legal proceedings, or elects only to be substituted as plaintiff under *section 185*—

(*a*) the participating institution shall conduct the proceedings with all due vigour in a way that protects the interests of NAMA and the NAMA group entity and in accordance with any directions given by NAMA or the NAMA group entity, and

(*b*) NAMA or the NAMA group entity may at its election join the proceedings as a notice party.

Costs.

189.— (1) At the conclusion of each interlocutory application in any legal proceedings to which this Chapter applies, the court concerned shall make orders as to costs in respect of the application and, having received submissions from the parties as to the levels of those costs, the court shall measure those costs.

(2) Costs measured under *subsection (1)* shall be enforceable against the party directed to pay those costs. If the party fails to discharge those costs within 30 days of the court order measuring those costs, the court may on the application of any party to the proceedings or of its own motion impose terms as to the continuation of the proceedings pending the discharge of the costs.

Evidence — amount of debt due.

190.— In any proceedings for the recovery by NAMA or a NAMA group entity of money, a certificate in writing under the seal of NAMA or the common seal of the NAMA group entity that a specified sum of money was owing to NAMA or the NAMA group entity at the date of the certificate by a specified person on a specified account is, at any time within one month after the date of the certificate, evidence that the sum specified in the certificate is and remains owing to NAMA or the NAMA group entity by the person and on the account specified in the certificate.

Evidence — application of Bankers' Books Evidence Act 1879.

191.— (1) In this section "Act of 1879" means the Bankers' Books Evidence Act 1879.

(2) Where—

(*a*) a copy of an entry in a bankers' book (within the meaning given by section 9(2) of the Act of 1879) falls to be produced in evidence,

(*b*) the book is in the custody or under the control of NAMA or a NAMA group entity, and

(*c*) an officer of NAMA or a NAMA group entity gives evidence (orally or by affidavit) that—

(i) he or she truly believes that the book or record was kept in the ordinary course of the bank's business, and

(ii) the book is in the custody or under the control of NAMA or the NAMA group entity,

then the requirement for proof in section 4 of the Act of 1879 shall be taken to have been satisfied.

(3) The Act of 1879 has effect in relation to the books and records of NAMA or a NAMA group entity as if—

(*a*) NAMA or the NAMA group entity were a bank,

(*b*) references to bankers' books in that Act were to the ordinary books and records of NAMA or the NAMA group entity, and

(*c*) references in that Act to an officer of a bank were references to an officer of NAMA or the NAMA group entity.

Limitation of power to grant injunctive relief.

192.— (1) Where injunctive relief is sought on an interim or interlocutory basis in proceedings to which this Chapter applies—

(*a*) to compel NAMA or a NAMA group entity to take or refrain from taking any action, or

(*b*) to compel any other person to take or refrain from taking any action where the relief if granted would adversely affect NAMA or a NAMA group entity,

the Court shall have regard, in determining whether to grant such relief, to the public interest.

(2) In considering the public interest, the Court shall have regard to—

(*a*) the purposes of this Act, and

(*b*) the importance of permitting NAMA to discharge its functions in an expeditious and efficient manner.

(3) Unless the Court is satisfied that not granting injunctive relief would give rise to an injustice, the Court shall not grant such relief where a remedy in damages would be available to the person who seeks that relief.

(4) For the purposes of *subsection (3)*, the possibility that the action against which injunctive relief is sought would or might result in a person being declared bankrupt or ordered to be wound up or otherwise adversely affected is not, of itself, sufficient to establish that not granting such relief would give rise to an injustice.

Limitation of judicial review.

193.— (1) Leave shall not be granted for judicial review of a decision under this Act unless—

(*a*) either—

(i) the application for leave to seek judicial review is made to the Court within one month after the decision is notified to the person concerned, or

(ii) the Court is satisfied that—

(I) there are substantial reasons why the application was not made within that period, and

(II) it is just, in all the circumstances, to grant leave, having regard to the interests of other affected persons and the public interest,

and

(*b*) the Court is satisfied that the application raises a substantial issue for the Court's determination.

(2) The Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the maker of the decision with such directions as the Court thinks appropriate or necessary.

(3) This section applies to NAMA and a NAMA group entity in the same manner as it applies to any other applicant for judicial review of a decision under or pursuant to this Act.

Limitation of certain rights of appeal to the Supreme Court.

194.— (1) The determination of the Court of an application for leave to apply for judicial review, of an application for judicial review, of an application for leave to apply for an order, or an application for an order, under *section 182*, is final and no appeal lies from the decision of the Court to the Supreme Court in either case, except with the leave of the Court.

(2) The Court shall grant leave under *subsection (1)* only if that Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

F16**[** (2A) On an appeal from a determination of the Court in respect of an application referred to in *subsection (1),* the Supreme Court—

(*a*) has jurisdiction to determine only the point of law certified by the Court under *subsection (2)*, and to make only such order in the proceedings as follows from that determination, and

(*b*) shall, in determining the appeal, act as expeditiously as possible consistent with the administration of justice. **]**

(3) This section does not apply to a determination of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

Annotations

Amendments:

F16 Inserted (21.12.2010) by *Credit Institutions (Stabilisation) Act 2010* (36/2010), s. 75 and sch. 1 part 5, S.I. No. 623 of 2010.

Lites pendentes to have no effect, etc.

195.— Where NAMA or a NAMA group entity has acquired a bank asset, a *lis pendens*, caution or inhibition registered on or after 30 July 2009 shall be of no effect against NAMA, a NAMA group entity or a person who acquires that bank asset from NAMA or a NAMA group entity, even if it is registered against the title to any registered land that forms part of the bank asset unless the party registering it has secured or secures an order under *section 182 (2)*.

PART 11

Use of Information

Definition (*Part 11*).

196.— In this Part "adviser" includes an investment adviser, an investment banker, a property valuer, a solicitor, an accountant and an auditor and any staff member or employee of, and any agent or other person acting on behalf of, an adviser.

Deemed consent to disclosure of information.

197.— A participating institution shall be taken for all purposes to have consented to the disclosure of information in accordance with this Part.

Duty of confidentiality, etc., not contravened by provision of information or production of documents and books for inspection.

198.— (1) Disclosure by a credit institution to NAMA or the NTMA of information or records about a bank asset, or about any person connected with a bank asset, made on or after 30 July 2009, does not contravene any duty of confidentiality to which the credit institution or any other person is subject.

(2) The production by a person to NAMA, a NAMA group entity or the NTMA of a document that a person could not have been compelled to produce to a court on the grounds of legal professional privilege does not constitute a waiver of that privilege from production in relation to the document.

Duty of confidentiality, etc., not contravened by provision of information to, or production of documents and books for inspection by, potential purchasers.

199.— (1) The disclosure of information or a book, document or record in relation to a bank asset by NAMA or a NAMA group entity to a potential purchaser or to such a purchaser's agent or adviser does not contravene any duty of confidentiality to which NAMA or the NAMA group entity would otherwise be subject.

(2) The production of any book, document or record under *subsection (1)* that NAMA or a NAMA group entity could not have been compelled to produce to any court on the grounds of legal professional privilege does not constitute a waiver of that privilege.

(3) NAMA or a NAMA group entity may disclose confidential information to a participating institution, but only if to do so is necessary for the identification of bank assets, for the purposes of NAMA's making a decision whether or not to acquire bank assets, or for the proper management of acquired bank assets.

Obligation to provide information, etc., to NAMA, etc., extends to provision to advisers.

200.— An obligation under this Act of a person to provide information to NAMA or a NAMA group entity, to produce a book, document or record to NAMA or a NAMA group entity, or to provide facilities for the inspection of or taking copies from a book, document or record also has effect as an obligation of the person to provide such information, produce such a book, document or record or provide such facilities to an agent or adviser acting on behalf of NAMA or the NAMA group entity.

Operation of Data Protection Acts 1988 and 2003.

F17**[201.** (1) For the avoidance of doubt, an obligation on a credit institution or any other person under this Act to disclose information to NAMA, a NAMA group entity or the NTMA extends to personal data within the meaning of the Data Protection Regulation.

(2) In this section, 'Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016[37] on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).**]**

Annotations

Amendments:

F17 Substituted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 212, S.I. No. 174 of 2018.

Disclosure of confidential information.

202.— (1) In this Act "confidential information" means—

[37] OJ No. L 119, 4.5.2016, p.1

(*a*) information relating to the commercial or business interests of a participating institution or of a person who is or has been in a relationship with a participating institution,

(*b*) information that is subject at law or in equity to a duty of confidentiality,

(*c*) information that, if it were contained in a document, would have the result that a person could not be compelled to disclose the document in evidence,

(*d*) information the disclosure of which would tend to place NAMA, a NAMA group entity or the NTMA at a commercial disadvantage, or

(*e*) information about proposals of a commercial nature and tenders submitted to NAMA, a NAMA group entity or the NTMA.

(2) Except as otherwise provided or authorised by this section or another enactment, a person shall not, unless authorised by NAMA, a NAMA group entity or the NTMA or authorised or obliged by law to do so, disclose information that he or she knows is confidential information, or use, to the direct or indirect advantage of himself or herself or of another person (other than NAMA, a NAMA group entity or the NTMA), confidential information that he or she obtained—

(*a*) while a member of the Board,

(*b*) while an officer of NAMA or a staff member of the NTMA or otherwise performing duties on behalf of NAMA or the NTMA,

(*c*) as a result of a disclosure to him or her permitted by *subsection (5) (d)* or *section 199 (3)*, or

(*d*) in the course of the provision (including the provision by another person) of a service to NAMA or the NTMA.

(3) A reference in *subsection (2)* to the disclosure or use of information includes the disclosure or use of a document containing the information.

(4) For the purposes of this section, it shall be presumed, unless the contrary is shown, that a person knew that information was confidential information, if that person reasonably ought to have known that it was confidential information.

(5) Nothing in *subsection (2)* prevents the disclosure of information—

(*a*) to NAMA or a NAMA group entity, the NTMA or the Minister,

(*b*) in the course of giving evidence before a court or tribunal having the power to examine witnesses on oath,

(*c*) in the course of giving evidence before a House of the Oireachtas or a Committee of either or both such Houses, or

(*d*) to an agent of NAMA, a NAMA group entity, the NTMA or the Minister.

(6) Notwithstanding *subsection (2)*, it is not an offence for a person, acting in good faith, to disclose confidential information to—

(*a*) the Garda Síochána,

(*b*) the Revenue Commissioners,

(*c*) the Director of Corporate Enforcement,

(*d*) the Competition Authority,

F18**[**(*e*) the Central Bank,**]**

(*f*) any other body (whether within the State or not) responsible for the detection or investigation of criminal offences, or

(*g*) any other body (whether within the State or not) responsible for the detection or investigation of contraventions of law (whether of the State or not) relating to taxation, companies, the regulation of financial services, or competition,

where that information gives rise to a reasonable suspicion that a participating institution, an employee or agent of a participating institution, a debtor in respect of a bank asset acquired by NAMA or a NAMA group entity or an employee or agent of such a debtor may have—

(i) committed a criminal offence, or

(ii) contravened a law relating to taxation, companies, the regulation of financial services, or competition.

Annotations

Amendments:

F18 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 10, S.I. No. 469 of 2010.

Obligation to pass certain information to law-enforcement authorities.

203.— Where NAMA has reason to suspect that—

(*a*) a participating institution may have committed a criminal offence, or

(*b*) a participating institution may have contravened a law relating to taxation, companies, the regulation of financial services, or competition,

then NAMA shall report the information that leads it to form that suspicion to—

(i) the Garda Síochána,

(ii) the Revenue Commissioners,

(iii) the Director of Corporate Enforcement,

(iv) the Competition Authority,

F19**[**(*v*) the Central Bank,**]**

(vi) any other body (whether within the State or not) responsible for the detection or investigation of criminal offences, or

(vii) any other body (whether within the State or not) responsible for the detection or investigation of contraventions of law (whether of the State or not) relating to taxation, companies, the regulation of financial services, or competition,

as the case appears to it to require.

Annotations

Amendments:

F19 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 11, S.I. No. 469 of 2010.

Provision of information to Revenue Commissioners.

204.— (1) In this section—

"relevant person" means a debtor, associated debtor, guarantor, surety or chargor and includes a connected person (within the meaning given by section 10 of the Taxes Consolidation Act 1997) in relation to a debtor, associated debtor, guarantor, surety or chargor;

"tax" has the meaning given by section 960A of the Taxes Consolidation Act 1997.

F20**[**(2) Notwithstanding any provision of this Act or any other enactment—

(*a*) NAMA shall make available to the Revenue Commissioners details of each eligible bank asset,

(*b*) where the Revenue Commissioners require any information or documents, relating to any eligible bank asset or such other matters as may be necessary for the purposes of the performance of their duties, then they may require NAMA to provide such information as is in the possession or control of NAMA or of which it has knowledge, and such documents as are in the possession or control of NAMA or to make such documents available for inspection,

(*c*) the Revenue Commissioners may, for the purposes of the performance of their functions under Part 42 of the Taxes Consolidation Act 1997 and any regulations made under that Part, seek from NAMA information in relation to a named relevant person, and

(*d*) where NAMA is in possession of, or has knowledge of, information or has possession or control of documents referred to in paragraph (*b*) or (*c*), NAMA shall provide such information and documents to, or make such documents available for inspection by, the Revenue Commissioners. **]**

(3) Notwithstanding any other enactment, the Revenue Commissioners shall disclose to NAMA information in relation to a named relevant person that, in the opinion of the Revenue Commissioners or of NAMA, is required by NAMA for the purposes of the performance of its functions under this Act, and that is in the possession of the Revenue Commissioners, or of which the Revenue Commissioners have knowledge.

Annotations

Amendments:

F20 Substituted (3.04.2010) by *Finance Act 2010* (5/2010), s. 154, commenced on enactment.

Disclosure by regulatory authorities.

205.— (1) The Minister, the Governor and the F21**[**Central Bank**]** may, in accordance with applicable law, disclose to each other any information that any of them receives concerning a participating institution or any of its subsidiaries. The recipient shall treat any information disclosed pursuant to this section as confidential.

(2) Disclosure under *subsection (1)* is subject to the requirements of—

(*a*) the treaties governing the European Communities, and

(*b*) the ESCB Statute.

(3) In *subsection (1)* "information" includes information relating to a period before the participating institution concerned was designated under *section 67* as a participating institution.

(4) The Governor and the F22**[**Central Bank**]** may use information disclosed to either of them under *subsection (1)* in the performance of their functions.

Annotations

Amendments:

F21 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 12, S.I. No. 469 of 2010.

F22 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 13, S.I. No. 469 of 2010.

PART 12

Conduct of Participating Institutions

Annotations

Editorial Notes:

E15 Part included in definition of "designated enactments" for purposes of *Central Bank Act 1942* (22/1942) by *Central Bank Act 1942* (22/1942), s. 2(1) and sch. 2 part 1 item 36, as substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 14(1) and sch. part 1 items 6 and 82, S.I. No. 469 of 2010.

Directions in relation to conduct of participating institutions.

206.— (1) The F23**[**Central Bank**]**, may, with the approval of the Minister, give a direction to a participating institution in order to achieve the purposes of this Act, as specified in *section 2*.

(2) A direction under *subsection (1)* may—

(*a*) restrict balance sheet growth,

(*b*) restrict the institution's ability to take over other credit institutions,

(*c*) require balance sheet reduction, or

(*d*) restrict or require consolidation and merger of participating institutions.

Annotations

Amendments:

F23 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11 item 14, S.I. No. 469 of 2010.

Reporting by participating institutions.

207.— (1) The F24**[**Central Bank**]** may direct a participating institution in writing to make any report that the F24**[**Central Bank**]** considers necessary to monitor the institution's compliance with its obligations under or by virtue of this Part.

(2) A direction under *subsection (1)* shall specify the information to be provided in the report and the period within which the report shall be submitted to the F24**[**Central Bank**]**.

(3) A participating institution that is directed to make a report under *subsection (1)* shall comply with the direction.

(4) The Minister may direct the F24**[**Central Bank**]** to require such other reports from a participating institution as the Minister considers necessary.

(5) The Minister may make regulations providing for the making by participating institutions of periodic reports, the frequency and form of such reports and the matters that such reports shall address.

(6) If the Minister makes regulations under *subsection (5)*, the matters prescribed may include liquidity requirements, capital ratios, asset quality, risk exposures and funding costs.

Annotations

Amendments:

F24 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11, S.I. No. 469 or 2010.

Restructuring plans.

208.— (1) The Minister, after consultation with the Governor and the F25**[**Central Bank**]**, may direct a participating institution to draw up or amend, within a specified period, a restructuring plan for the purposes of this Act.

(2) A participating institution that is given a direction under *subsection (1)* shall submit a draft of the restructuring plan for the Minister's approval within the period specified in the direction.

(3) The Minister, after consultation with the Governor and the F25**[**Central Bank**]**, may direct a participating institution to amend a draft restructuring plan in a specified respect. The direction shall specify a period within which the participating institution is required to do so.

(4) A participating institution that is directed under *subsection (3)* to amend a draft restructuring plan shall do so within the period specified in the direction.

(5) If the Minister approves a draft restructuring plan, the participating institution concerned shall put the plan into effect in accordance with a timetable directed by the Minister.

(6) The Minister, after consultation with the Governor and the F25**[**Central Bank**]**, may direct a participating institution to submit to the Minister a business plan in accordance with this section.

(7) A participating institution that is given a direction under *subsection (6)* shall submit a draft of the business plan for the Minister's approval within the period specified in the direction.

(8) The Minister, after consulting with the Governor and the F25**[**Central Bank**]**, may direct a participating institution to amend a draft business plan submitted to the Minister under *subsection (7)* in accordance with the direction.

(9) A participating institution that is directed to amend a draft business plan under *subsection (8)* shall comply with the direction within the period specified in the direction.

(10) A participating institution shall take all reasonable steps to ensure that any draft business plan submitted to the Minister accurately contains all relevant information. If the Minister approves a draft business plan, the participating institution shall take all reasonable steps to implement that plan.

(11) The Minister shall not approve a restructuring plan or business plan that does not comply with the law of the State and of the European Communities relating to competition and with the laws of the European Communities governing State aid.

Annotations

Amendments:

F25 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11, S.I. No. 469 of 2010.

Compliance with directions.

209.— (1) Where the F26**[**Central Bank**]** is of the opinion that a participating institution has not complied with a direction under this Part, the F26**[**Central Bank**]** may apply to the Court for an order that the institution comply with the direction.

(2) On hearing an application under *subsection (1)*, the Court may order the participating institution concerned to comply with the relevant direction or refuse the application, as it thinks fit.

(3) An application under *subsection (1)* shall be made summarily.

(4) When dealing with an application under *subsection (1)* the Court may make any interim or interlocutory order it considers appropriate.

(5) The Court shall not deny interim or interlocutory relief referred to in *subsection (4)* solely on the basis that the F26**[**Central Bank**]** would not suffer any damage if the relief were not granted pending conclusion of the proceedings.

(6) If the Court is satisfied that for reasons of commercial confidentiality a hearing under this section should be conducted otherwise than in public, the Court may so order.

Annotations

Amendments:

F26 Substituted (1.10.2010) by *Central Bank Reform Act 2010* (23/2010), s. 15(11) and sch. 2 part 11, S.I. 469 of 2010.

Guidelines regarding lending practices.

210.— (1) The Minister may issue guidelines—

(*a*) regarding lending practices and procedures to facilitate the availability of credit to classes of borrowers or potential borrowers including small and medium sized enterprises, and

(*b*) relating to the review of decisions of participating institutions to refuse credit facilities.

(2) The Minister shall cause a copy of guidelines issued under *subsection (1)* to be laid before each House of the Oireachtas as soon as practicable.

(3) A participating institution shall comply with any guidelines issued under *subsection (1)*.

Annotations

Editorial Notes:

E16 Power pursuant to section exercised:

- (15.10.2013) by *National Asset Management Agency Act 2009 (Section 210) Amending Guidelines 2013* (S.I. No. 374 of 2013), in effect as per art. 2.

• (9.07.2011) by *National Asset Management Agency Act 2009 (Section 210) Amending Guidelines 2011* (S.I. No. 354 of 2011), in effect as per art. 2.
• (26.03.2010) by *Guidelines Issued Under Section 210(1) of the National Asset Management Agency Act 2009 Regarding Lending Practices and Procedures and Relating to the Review of Decisions of Participating Institutions to Refuse Credit Facilities* (S.I. No. 127 of 2010), as amended (9.07.2011) by *National Asset Management Agency Act 2009 (Section 210) Amending Guidelines 2011* (S.I. No. 354 of 2011), art. 3, in effect as per art. 2.

E17

PART 13

Miscellaneous

Avoidance of certain transactions.

211.— (1) Where, on the application of NAMA or a NAMA group entity, it is shown to the satisfaction of the Court that—

(*a*) an asset of a debtor or associated debtor, guarantor or surety was disposed of, and

(*b*) the effect of the disposition was to defeat, delay or hinder the acquisition by NAMA or a NAMA group entity of an eligible bank asset, or to impair the value of an eligible bank asset or any rights (including a right to damages or any other remedy, a right to enforce a judgment and a priority) that NAMA or the NAMA group entity would have acquired or increased a liability or obligation but for that disposition,

the Court may declare the disposition to be void if in the Court's opinion it is just and equitable to do so.

(2) In deciding whether it is just and equitable to make a declaration under *subsection (1)*, the Court shall have regard to the rights of any person who has in good faith and for value acquired an interest in the asset the subject of the disposition.

(3) Nothing in this section affects the operation of section 14 of the Conveyancing Act 1634 or section 74(4)(*a*) of the Land and Conveyancing Law Reform Act 2009.

Provision of tax information to NAMA.

212.— (1) In this section "the Capital Gains Tax Acts" and "the Corporation Tax Acts" have the respective meanings given by section 1(2) of the Taxes Consolidation Act 1997.

(2) Where shares in a company are acquired by—

(*a*) NAMA,

(*b*) a company referred to in section 616(1)(*g*) of the Taxes Consolidation Act 1997, or

(*c*) a NAMA group entity,

and, as a consequence of the acquisition, the provisions of the Capital Gains Tax Acts, the Corporation Tax Acts or the Stamp Duties Consolidation Act 1999 as amended or extended impose a charge to tax or duty on the company by virtue of a clawback of a relief, the person from whom the shares are acquired shall inform NAMA, the acquiring company or the NAMA group entity of the charge and the amount of tax or duty due.

NAMA, etc., not to make payments in certain circumstances.

213.— (1) In this section—

"the Acts" has the meaning given by section 1095 of the Taxes Consolidation Act 1997;

"Collector-General" has the meaning given by section 2(1) of the Taxes Consolidation Act 1997;

"outstanding tax", in relation to a relevant person, means any obligation on the relevant person arising under the Acts in relation to the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the Acts;

"relevant person" means a debtor, associated debtor, guarantor, surety or chargor and includes a connected person (within the meaning given by section 10 of the Taxes Consolidation Act 1997) in relation to a debtor, associated debtor, guarantor, surety or chargor.

(2) This section applies where in the exercise of any of its functions under this Act, NAMA or a NAMA group entity is obliged to pay an amount of money to a relevant person.

(3) Where this section applies, NAMA or the NAMA group entity concerned shall not make any payment to a relevant person until—

(*a*) the relevant person delivers to NAMA, or to a person authorised by NAMA, a valid tax clearance certificate issued to the relevant person by the Collector-General, or

(*b*) the Collector-General has confirmed to NAMA, following a request from NAMA, that it has no objection to the making of a payment to the relevant person.

(4) Where a relevant person is unable to produce a valid tax clearance certificate to NAMA because of any outstanding tax and NAMA or a NAMA group entity is obliged to pay an amount of money to the relevant person, the relevant person may issue a notice in writing to NAMA or the NAMA group entity directing it to forward to the Collector-General—

(*a*) where the amount of money is greater than the outstanding tax, an amount of money equal to the amount of the outstanding tax, or

(*b*) where the amount of money is equal to or less than the outstanding tax, that amount of money.

(5) On receipt by the Collector-General of an amount of money paid by NAMA or a NAMA group entity pursuant to *subsection (4)*, the Collector-General shall notify the relevant person.

NAMA exempt from certain taxes.

214.— Income and gains arising to NAMA shall be exempt from income tax, corporation tax and capital gains tax.

Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008.

215.— (1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to the acquisition of bank assets under this Act.

(2) Section 7 of the Credit Institutions (Financial Support) Act 2008 does not apply with respect to the acquisition of bank assets under this Act.

NAMA, etc., not to be taken to be carrying on banking business, etc.

216.— (1) Except pursuant to the provisions mentioned or referred to in *subsection (2)*, neither NAMA nor a NAMA group entity shall be taken to be providing a service or carrying on an activity which would require it to be authorised or regulated by the Central Bank.

(2) The provisions referred to in *subsection (1)* are:

(*a*) Irish market abuse law, as defined in section 29(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;

(*b*) Irish prospectus law, as defined in section 38(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;

(*c*) transparency (regulated markets) law, as defined in section 19(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2006;

(*d*) regulations made under section 6A of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 if in those regulations the Minister declares that those regulations apply for the purposes of this section;

(*e*) any other provision that the Minister by regulation from time to time declares to apply to NAMA or a NAMA group entity.

Application of laws in relation to netting agreements, etc.

217.— Nothing in this Act affects the operation of—

(*a*) the Netting of Financial Contracts Act 1995,

(*b*) the European Communities (Settlement Finality) Regulations 2008 (S.I. No. 88 of 2008),

(*c*) the European Communities (Financial Collateral Arrangements) Regulations 2004 (S.I. No. 1 of 2004), or

(*d*) regulation 30 of the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004),

in relation to an agreement to which a participating institution is a party.

Certain bank assets not invalidated.

218.— (1) An acquired bank asset is not invalidated or rendered void or voidable as against NAMA or a NAMA group entity or their successors in title—

(*a*) by section 60, 99, 100, 101, 111, 286 or 288 of the Companies Act 1963,

(*b*) by section 29, 31 or 139 of the Companies Act 1990,

(*c*) on the grounds that it was *ultra vires*,

(*d*) by reason that the provider may not have been able to pay its debts as they fell due at the time the security was given or that the directors of that provider ceased to have the power to create that security,

(*e*) by reason that the grant of the security may not have been duly authorised by the grantor or may not have been for the benefit of the grantor, or

(*f*) by reason that the consent of a party required for the creation of the security may not have been obtained.

(2) Notwithstanding section 127(4) of the Stamp Duties Consolidation Act 1999, a charge or security that secures an acquired bank asset that is required to be stamped but has not been stamped or is insufficiently stamped is not rendered inadmissible in evidence or unenforceable only by reason that it is unstamped or insufficiently stamped.

(3) *Subsection (1)* shall not affect the existing priority of any other charge.

Nothing done under Act to be reorganisation or winding-up measure.

219.— Nothing done under this Act constitutes a reorganisation or winding-up measure for the purposes of—

(*a*) the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004), or

(*b*) the European Communities (Reorganisation and Winding-Up of Insurance Undertakings) Regulations 2003 (S.I. No. 168 of 2003).

Operation of certain provisions of Land Registration Rules 1972 to 2008.

220.— (1) Notwithstanding anything in the Land Registration Rules 1972 to 2008, an officer of NAMA, an adviser acting on behalf of NAMA or a person nominated in writing by the Chief Executive Officer of NAMA may inspect and take copies of any document filed in the Land Registry on a dealing or transaction with the property of any person.

(2) This section applies only to documents relevant to an acquired bank asset.

(3) A person who seeks to inspect or take a copy of a document pursuant to *subsection (1)* shall produce to the Property Registration Authority evidence that he or she is a person authorised under that subsection to do so.

Offence of lobbying NAMA, etc.

221.— (1) Subject to *subsections (3)* and *(4)*, if a person communicates, on behalf of another person, with NAMA, a NAMA group entity or a person providing services or advice to NAMA or a NAMA group entity with the intention of influencing the making of a decision in relation to the performance of the functions of NAMA or the NAMA group entity, the person commits an offence.

(2) Without prejudice to the generality of *subsection (1)*, a reference in that subsection to a decision relating to the performance of the functions of NAMA includes a decision relating to—

(*a*) the lending of money,

(*b*) the initiation of legal proceedings,

(*c*) legal proceedings in being,

(*d*) the engagement of the services of an expert adviser or other service provider,

(*e*) any other matter that could give rise to an advantage or benefit to a person other than NAMA,

(*f*) a tender, or

(*g*) the purchase or sale of property.

(3) It is not an offence pursuant to *subsection (1)* if the communication concerned—

(*a*) is made public at the time of the communication,

(*b*) is made without an intention to benefit, or confer an advantage on, any specific person, or

(*c*) is made in the public interest.

(4) It is not an offence pursuant to *subsection (1)* if the person who makes the communication concerned—

(*a*) is acting in his or her professional capacity or in the course of his or her employment, and

(*b*) does so in that capacity.

(5) A person who believes that he or she has been communicated with in contravention of *subsection (1)* shall, as soon as may be, report—

(*a*) that the communication was made,

(*b*) the details of the communication made, and

(*c*) the name of the person who communicated with him or her,

to a member of the Garda Síochána.

(6) A person who fails to comply with *subsection (5)* commits an offence.

(7) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding €1,000 or imprisonment for a term not exceeding 6 months or both.

Protection from civil liability of persons who report certain misconduct.

222.— (1) Where a person who is an employee of a participating institution or an officer of NAMA or a director or employee of a NAMA group entity communicates his or her opinion, whether in writing or otherwise, to a member of the Garda Síochána or a member of the Board that—

(*a*) an offence under this Act or any other enactment has been or is being committed,

(*b*) any provision of this Act or any other enactment or rule of law has been or is being contravened, or

(*c*) there has been other serious wrongdoing in relation to NAMA or a NAMA group entity,

then, unless the person acts in bad faith, he or she shall not be regarded as having committed any breach of duty towards any other person, and no person shall have a cause of action against the first-mentioned person in respect of that communication.

(2) Where a person who is an employee of a participating institution, an officer of NAMA or a director or employee of a NAMA group entity communicates his or her opinion, whether in writing or otherwise, to the Minister that a direction given by the Minister under this Act has been or is being contravened, then, unless the person acts in bad faith, he or she shall not be regarded as having committed any breach of duty towards any other person, and no person shall have a cause of action against the first-mentioned person in respect of that communication.

(3) This section applies to a communication—

(*a*) that would, but for this section, constitute a breach of duty by the person who made it, or

(*b*) in respect of which another person would, but for this section, have a cause of action against the person who made it.

F27**[**(4) This section does not apply to a communication that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.**]**

Annotations

Amendments:

F27 Inserted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 24(1) and sch. 4 part 1 item 11, S.I. No. 327 of 2014.

Prohibition on penalisation.

223.— (1) In this section and in *Schedule 2* :

"employee" means—

(*a*) an employee of a participating institution,

(*b*) an officer of NAMA, or

(*c*) an employee of a NAMA group entity;

"employer" means—

(*a*) a participating institution,

(*b*) in relation to an officer of NAMA, both NAMA and the NTMA, or

(*c*) a NAMA group entity;

"penalisation" includes any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and in particular includes—

(*a*) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2005), or the threat of suspension, lay-off or dismissal,

(*b*) demotion or loss of opportunity for promotion,

(*c*) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(*d*) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), and

(*e*) coercion or intimidation.

(2) To avoid doubt, this section and *Schedule 2* have effect in relation to a person who is an officer of NAMA as if both NAMA and the NTMA were employers of the person.

(3) An employer shall not penalise or threaten penalisation against an employee for—

(*a*) making a complaint to a member of the Garda Síochána or the Minister that a provision of this Act is not being complied with,

(*b*) giving evidence in any proceedings under this Act, or

(*c*) giving notice of his or her intention to do any of the things referred to in *paragraph (a)* or *(b)*.

F28**[**(3A) Subsection (3) does not apply to the making of a complaint that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.**]**

(4) *Schedule 2* has effect in relation to an alleged contravention of *subsection (3)* and matters consequential on such a contravention.

(5) If a penalisation of an employee, in contravention of *subsection (3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2005, relief may not be granted to the employee in respect of that penalisation both under *Schedule 2* and under those Acts.

Annotations

Amendments:

F28 Inserted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 24(1) and sch. 4 part 1 item 11, S.I. No. 327 of 2014.

Editorial Notes:

E18 Redress and appeal procedures in respect of requirements in subs. (3) provided (1.10.2015) by *Workplace Relations Act 2015*, ss. 41, 44 and sch. 5 part 1 item 21, sch. 6 part 1 item 27, sch. 6 part 2 item 27, S.I. No. 410 of 2015.

E19 Subs. (3) included in definitions of "employment enactment" and "relevant enactment" (1.08.2015) by *Workplace Relations Act 2015* (16/2015), s. 2 and sch. 1 part 2 item 12, S.I. No. 338 of 2015, with the following effects:

- Authorised officers or inspectors under employment enactments deemed to be appointed under *Workplace Relations Act 2015* (16/2015), s. 26(2) and subject to termination under s. 26(4).
- Powers of inspectors for purposes of relevant enactments defined in *Workplace Relations Act 2015* (16/2015), s. 27.
- Workplace Relations Commission, an inspector or an adjudication officer authorised to disclose employer's registered number or employee's PPSN to enable Labour Court to perform functions under relevant enactments by *Workplace Relations Act 2015* (16/2015) s. 31(5).
- Power of Workplace Relations Commission and official body to disclose information to each other concerning the commission of offence under relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 32.
- Power of Workplace Relations Commission and contracting authority to disclose information to each other concerning the commission of offence under employment enactment/ relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 33.
- Powers of Minister to prosecute under relevant enactments transferred to Workplace Relations Commission and references construed by *Workplace Relations Act 2015* (16/2015), s. 37.
- Functions of EAT to hear claims under employment enactments transferred to Workplace Relations Commission and references to EAT construed by *Workplace Relations Act 2015* (16/2015) s. 66(1), (2), not commenced as of date of revision.

False statements.

224.— (1) A person who states to a member of the Garda Síochána or a member of the Board that—

(*a*) an offence under this Act or any other enactment has been or is being committed,

(*b*) a provision of this Act, a provision of any other enactment or any rule of law has been or is being contravened, or

(*c*) there has been serious wrongdoing by any person in relation to NAMA or a NAMA group entity,

knowing the statement to be false commits an offence.

F29**[**(1A) Subsection (1) does not apply to the making of a statement that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.**]**

(2) A person guilty of an offence under this section is liable—

(*a*) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(*b*) on conviction on indictment to a fine not exceeding €100,000 or imprisonment for a term not exceeding 3 years or both.

Annotations

Amendments:

F29 Inserted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 24(1) and sch. 4 part 1 item 11, S.I. No. 327 of 2014.

Surcharge on participating institutions.

225.— (1) In this section:

"accounting period" shall be construed in accordance with section 27 of the Taxes Consolidation Act 1997;

"surcharge" means the tax referred to in *subsection (3)*;

"underlying loss" means the amount, if any, by which the aggregate of losses incurred by NAMA (including NAMA group entities) exceeds the aggregate of the profits arising to NAMA (including those entities) in the period from the date of its establishment to the date referred to in the direction under *subsection (2)* or the date of the occurrence of the event so referred to.

(2) If—

(*a*) the Minister decides under *section 227 (3) (b)* that the continuation of NAMA is unnecessary having regard to the purposes of this Act, the Minister shall, or

(*b*) (i) 10 years have elapsed since the establishment of NAMA, or

(ii) the Minister proposes to publish or has published a Bill for NAMA's dissolution, restructuring or material alteration,

the Minister may,

direct NAMA to prepare a report and accounts as at a date specified by the Minister or as at the date of the occurrence of an event so specified—

(I) showing the aggregate profits and losses arising to and incurred by NAMA (including NAMA group entities), respectively, from its activities in the period from the date of its establishment to the date or the occurrence of the event so specified, and

(II) duly certified by the Comptroller and Auditor General,

and NAMA shall send such report and accounts so certified to the Minister.

(3) Where—

(*a*) the report and accounts sent to the Minister under *subsection (2)* disclose an underlying loss has been incurred by NAMA (including NAMA group entities), and

(*b*) the Minister is of the opinion that such underlying loss is unlikely to be otherwise made good,

then the Minister may cause—

(i) a provision to be included in a Money Bill, or

(ii) a provision to like effect to be included in any other Bill initiated in Dáil Éireann,

providing for the imposition of a special tax by way of a surcharge on participating institutions in accordance with *subsection (4)*.

(4) The aggregate tax by way of a surcharge to be imposed on participating institutions on their respective profits (within the meaning of section 4 of the Taxes Consolidation Act, 1997) if any—

(*a*) shall not exceed the amount of the underlying loss, if any, incurred by NAMA (including NAMA group entities),

(*b*) shall be apportioned to each participating institution on the basis of the book value of the bank assets acquired from each participating institution concerned as a proportion of the total book value of the bank assets acquired from all of the participating institutions,

and the surcharge so apportioned shall be imposed on each institution accordingly and paid by each of them over such period and at such times as provided for by the subsequent Act giving effect to this section and to which *subsection (3)* relates.

(5) Any surcharge due to be paid by a participating institution in accordance with *subsection (4)* may not exceed 100 per cent of the corporation tax, if any, due and payable by that participating institution for the accounting period or periods as the case may be, falling within the period referred to in that subsection.

(6) No surcharge shall become payable until either—

(*a*) 10 years after the passing of this Act, or

(*b*) NAMA is dissolved or restructured, or there is a material alteration of NAMA's functions,

whichever last occurs.

PART 14

Review of NAMA

Triennial review of NAMA's progress.

226.— (1) As soon as may be after 31 December 2012, and every 3 years after that while NAMA continues in existence, the Comptroller and Auditor General shall assess the extent to which NAMA has made progress toward achieving its overall objectives.

(2) The Comptroller and Auditor General shall present a copy of that report to the Minister as soon as may be and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

Review of achievement of NAMA's purposes.

227.— (1) The Minister may at any time require NAMA to report to him or her regarding progress with regard to the achievement of NAMA's purposes.

(2) The Minister shall lay a copy of a report under *subsection (1)* before each House of the Oireachtas as soon as reasonably practicable.

(3) As soon as may be after 31 December 2012, and every 5 years after that while NAMA continues in existence, the Minister—

(*a*) shall assess the extent to which NAMA has made progress toward achieving its overall objectives, and

(*b*) shall decide whether continuation of NAMA is necessary having regard to the purposes of this Act.

PART 15

Amendment and Modification of other Enactments

Operation of certain provisions of Companies Act 1963.

228.— (1) A reference to a company in section 60(1) or 72(1) of the Companies Act 1963 shall be taken not to include a NAMA group entity.

(2) Section 286 of the Companies Act 1963 shall not be taken to invalidate or render void a payment made to NAMA or to another person at NAMA's direction.

Operation of certain provisions of Companies (Amendment) Act 1983.

229.— A reference to a company in section 41(1), or subsection (1) or (3) of section 45, of the Companies (Amendment) Act 1983 shall be taken not to include a NAMA group entity.

Disapplication of section 7 of Official Languages Act 2003.

230.— Section 7 of the Official Languages Act 2003 does not apply in relation to this Act. The text of this Act shall be made available electronically in each of the official languages as soon as practicable after its enactment.

Amendment of Building Societies Act 1989.

231.— The Building Societies Act 1989 is amended as specified in *Part 1* of *Schedule 3* .

Amendment of Central Bank Act 1942.

232.— The Central Bank Act 1942 is amended as specified in *Part 2* of *Schedule 3* .

Amendment of Companies Act 1963.

233.— The Companies Act 1963 is amended as specified in *Part 3* of *Schedule 3* .

Amendment of Companies (Amendment) Act 1990.

234.— The Companies (Amendment) Act 1990 is amended as specified in *Part 4* of *Schedule 3* .

Amendment of Finance Act 1970.

235.— Section 54 of the Finance Act 1970 is amended as specified in *Part 5* of *Schedule 3* .

Amendment of Landlord and Tenant (Amendment) Act 1980.

236.— The Landlord and Tenant (Amendment) Act 1980 is amended as specified in *Part 6* of *Schedule 3* .

Amendment of National Treasury Management Agency Act 1990.

237.— The National Treasury Management Agency Act 1990 is amended as specified in *Part 7* of *Schedule 3* .

Amendment of Planning and Development Act 2000.

238.— The Planning and Development Act 2000 is amended as specified in *Part 8* of *Schedule 3* .

Amendment of Stamp Duties Consolidation Act 1999.

239.— The Stamp Duties Consolidation Act 1999 is amended as specified in *Part 9* of *Schedule 3* .

Amendment of Taxes Consolidation Act 1997.

240.— The Taxes Consolidation Act 1997 is amended as specified in *Part 10* of *Schedule 3* .

Amendment of Value-Added Tax Act 1972.

241.—F30**[**...**]**

Annotations

Amendments:

F30 Repealed (1.11.2010) by *Value-Added Tax Consolidation Act 2010* (31/2010), s.123 and sch. 8 part 1, commenced as per s. 125.

Section 148.

SCHEDULE 1

Powers of Statutory Receivers

1. To take immediate possession of, get in and collect any secured asset or any part of it in respect of which he or she is appointed and to make such demands and take such proceedings as may seem expedient for that purpose, and to take possession of the secured assets over which he or she is appointed with like rights.

2. To sell, realise or otherwise dispose of property.

3. To carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying any business of the chargor in any manner he or she thinks fit.

4. To appoint and discharge managers, officers, agents, professional advisers, consultants, servants, workmen, employees and others for the purposes specified in this Schedule upon such terms as to remuneration or otherwise as he or she thinks fit and to remove any person so appointed to any such position by the chargor.

5. To raise and borrow money or incur any other liability, either unsecured or on the security of any secured asset either in priority to NAMA's or the relevant NAMA group entity's security or otherwise and generally on any terms and for whatever purpose he or she thinks fit.

6. To grant rights, options or easements over, dispose of, convert into money and realise any secured asset by public auction or private contract and generally in any manner and on any terms he or she thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period he or she thinks fit. Fixtures, plant and machinery may be severed and sold separately from the property containing them without the consent of the chargor.

7. To let, hire, lease, licence or grant any interest in any secured asset for any term and at any rent (with or without a premium) he or she thinks fit and to vary the terms, surrender or accept a surrender of any lease or tenancy of any secured asset on any terms which he or she thinks fit (including the payment of money to a lessee or tenant on a surrender).

8. Where the chargor is a company, to require the chargor, or the directors of the chargor, to make calls conditionally or unconditionally upon the shareholders of the chargor in respect of any uncalled capital of the chargor and enforce payment of any call so made by action (in the name of the chargor or the statutory receiver as he or she may think fit) or otherwise.

9. To sell or assign all or any of the book debts in respect of which he or she is appointed in such manner, and generally on such terms and conditions, as he or she thinks fit.

10. To exercise in respect of any secured asset all voting or other powers or rights in such manner as he or she thinks fit.

11. To purchase or acquire any land or any interest in or right over land.

12. To exercise on behalf of the chargor, and without the consent of or notice to the chargor, all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the secured assets.

13. To exercise on behalf of the chargor and in the name of the chargor all powers and rights of the chargor relevant to effecting and necessary to effect the registration

in the Land Registry of any fixed or specific charge created on any registered land, of the crystallisation of any floating charge or his or her appointment as statutory receiver.

14. To settle, adjust, refer to arbitration, allow time for payment, compromise and arrange any claim, contract, account, dispute, question or demand with or by any person who is or claims to be a creditor of the chargor or relating in any way to any secured asset.

15. To bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in his or her own name and in the name of the chargor in relation to any secured asset which he or she thinks fit.

16. To give a valid receipt for any money and execute any assurance or thing that may be necessary or desirable for realising any secured asset.

17. Where the chargor is a company, to form a subsidiary of the chargor, arrange for any such subsidiary to trade or cease to trade as he or she sees fit, in his or her capacity as shareholder and transfer to that subsidiary any secured asset and sell or otherwise dispose of any such subsidiary.

18. To delegate his or her powers.

19. To appoint managers, officers, agents, professional advisers, consultants, servants, workmen, employees and others, for the purpose of exercising his or her powers at such salaries, for such periods and on such terms as he or she determines.

20. To enter into, abandon, perform, repudiate, rescind, vary or cancel any contracts as he or she thinks fit.

21. To lend money or advance credit to any customer of the chargor.

22. To make substitutions of, or improvements to, the chargor's plant and machinery as he or she thinks fit.

23. To effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurances required to be maintained under any security document or loan facility agreement entered into by the chargor which is held by NAMA or a NAMA group entity.

24. To make any election for value-added tax purposes that he or she thinks fit.

25. To run the tax affairs of the chargor in any manner that he or she thinks fit.

26. To conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions required by law or by NAMA or a NAMA group entity and comply with all lawful orders and directives of any authority under an environmental law.

27. To take all steps necessary to effect any registration, renewal, application or notification that he or she thinks fit to maintain in force or protect any intellectual property.

28. To redeem any prior security interest and to settle and pass the accounts to which that security interest relates. Any accounts so settled and passed are conclusive and binding on the chargor, and any money so paid shall be taken to be an expense properly incurred by him or her.

29. To effect any repair or insurance and do any other act which the chargor might do in the ordinary conduct of its business to protect or improve any secured asset.

30. To commence and complete any building operation, and to complete any building operation already begun.

31. To arrange for or provide any service proper for the efficient use or management of the secured assets.

32. To apply for and maintain any planning permission, building regulation approval or any other authorisation.

33. To do all other acts and things which he or she may consider desirable or necessary for realising any secured asset or incidental or conducive to any of the rights, powers or discretions conferred on a statutory receiver.

34. To exercise in relation to a secured asset all the rights, powers and authorities that he or she could exercise if he or she were the absolute beneficial owner of the secured asset.

35. To use the name of the chargor when exercising any of the rights, powers or discretions conferred on him or her.

36. Where the chargor is a company, to use the chargor's seal.

37. To do all acts and to execute in the name and on behalf of the chargor any deed, receipt or other document.

38. To draw, accept, make or endorse any bill of exchange or promissory note in the name of and on behalf of the chargor.

39. To make any payment which is necessary or incidental to the performance of his or her functions.

40. To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the chargor and to receive dividends, and to accede to the trust deeds for the creditors of any such person.

41. Where the chargor is a company, to change the location of the chargor's registered office.

SCHEDULE 2

Redress for Contravention of *section 223 (3)*

F31[*Decision under section 41 of Workplace Relations Act 2015*]

F31[1. A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention of section 223(3) shall do one or more of the following, namely—

(*a*) declare that the complaint was or, as the case may be, was not well founded,

(*b*) require the employer to take a specified course of action, or

(*c*) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all the circumstances.]

F31[*Decision of Labour Court on appeal from decision referred to in paragraph 1*]

F31[2. A decision of the Labour Court under section 44 of the Workplace Relations Act 2015, on appeal from a decision of an adjudication officer referred to in paragraph 1, shall affirm, vary or set aside the decision of the adjudication officer.]

Paragraphs 1 and 2: supplemental provisions

3.—F32**[**...**]**

Enforcement of determinations of Labour Court

4.—F32**[**...**]**

Provisions relating to winding up and bankruptcy

5. —F32**[**...**]**

Annotations

Amendments:

F31 Substituted (1.10.15) by *Workplace Relations Act 2015* (16/2015), s. 52(1) and sch. 7 part 1 ref. 27, S.I. No. 410 of 2015, subject to transitional provision in subs. (3).

F32 Repealed (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 part 1 ref. 25, S.I. No. 410 of 2015, subject to transitional provision in subs. (2).

Section 231.

SCHEDULE 3

AMENDMENTS OF OTHER ACTS

PART 1

AMENDMENT OF BUILDING SOCIETIES ACT 1989

Item	Provision amended	Amendment
1	Section 2(1)	After the definition of "society", insert— " 'special investment shares' shall be construed in accordance with section 18(1A);".
2	Section 14(6)	Substitute "With the exception of any alteration to the rules that make changes necessary to or consequential on the issue of special investment shares, an alteration" for "An alteration".
3	Section 17(3)	After paragraph (*a*), insert— "(*aa*) the acceptance of payments by way of subscription for special investment shares;".
4	Section 18(1)(*b*)(i)	After "deferred", insert ", special investment".
5	Section 18(1)	After subsection (1), insert— "(1A) Special investment shares shall be issued only to the Minister for Finance or to such other person as he or she may nominate, and that Minister may specify the terms and conditions on which special investment shares may be issued, including terms and conditions— (*a*) that entitle the holder of the shares to such voting rights on resolutions as the terms of issue provide in accordance with section 69(3A),

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		(*b*) that entitle the holder of the shares to appoint such number of directors of the society as the terms of issue provide in accordance with section 50(18), and (*c*) that the Minister for Finance considers necessary in the context of the Minister's agreement to subscribe for such shares and for the purposes of the Credit Institutions (Financial Support) Act 2008, including terms and conditions relating to— (i) the capital status and priority of the shares, (ii) the redemption, repurchase or other realisation of the shares, (iii) the dividends, if any, to be paid on the shares, and (iv) the transferability of the shares, but nothing in this Act or the society's rules shall be construed as limiting or affecting such terms and conditions, or the enforceability of, or rights arising from, such terms and conditions.".
6		After section 18, insert— "*Relationship framework*. 18A.—(1)(*a*) The Minister for Finance may from time to time— (i) specify in writing a relationship framework to govern the relationship between a building society that issues one or more special investment shares to the Minister for Finance or that Minister's nominee, and that Minister or nominee, and (ii) amend or revoke any such relationship framework. (*b*) Such a relationship framework shall recognise the separation of the building society concerned from that Minister or nominee and limit the extent of any intervention by that Minister or nominee in the conduct of the building society's business to that necessary to protect the public interest. (*c*) The relationship framework shall at all times comply with regulatory requirements. (2) The building society concerned, the Minister for Finance and any nominee of that Minister shall act in accordance with any relationship framework specified under subsection (1). (3) Parts 2 and 3 of the Competition Act 2002 shall not apply to the issue to the Minister for Finance, or that Minister's nominee, of one or more special investment shares. (4) Section 7 of the Credit Institutions (Financial Support) Act 2008 shall not apply to the issue to the Minister for Finance, or that Minister's nominee, of one or more special investment shares.".
7	Section 50(1)	Substitute "subsections (11), (16) and (18) and section 69(3A)(*c*)" for "subsections (11) and (16)".
8	Section 50	Insert after subsection (17)— "(18) Where the terms and conditions of issue so provide, a member who holds special investment shares shall be entitled, from time to time, by notice in writing to

Item	Provision amended	Amendment
		the society, to appoint such number of directors of the society as may be specified in the terms of issue of such shares, to remove any director so appointed and to replace the person removed with another person. (19) A provision in the memorandum or rules of a society shall not operate to— (*a*) prevent the appointment of directors pursuant to subsection (18), or (*b*) have the effect of requiring a director appointed by a member holding special investment shares to be a member of the society, to hold shares in or a deposit with the society or to resign or retire from office other than in accordance with subsection (18). (20) Where the terms and conditions of issue so provide, a member who holds special investment shares shall be entitled, by ordinary resolution, to remove a director before the expiration of his or her period of office notwithstanding anything in the rules or in any agreement between the society and the director.".
9	Section 69(1)(*a*)	Substitute— "(*a*) on a resolution other than a conversion resolution— (i) all the members who at the end of the last financial year of the society before the date of the meeting or the postal ballot, as the case may be, had held continuously shares to the value of not less than €125 for the preceding period of 6 months and continue to hold such shares on the voting date, and (ii) any member holding special investment shares; and".
10	Section 69(3)	Substitute "Subject to subsection (3A), on" for "On".
11	Section 69	After subsection (3), insert— "(3A) At any time when special investment shares are in issue and their terms so provide— (*a*) no resolution may be passed without the consent in writing of the member holding such shares, (*b*) where the member holding such shares votes in favour of a resolution, that resolution shall be treated for all purposes as having been passed by a majority of the members entitled to vote on such resolution, and (*c*) notwithstanding any other provision of this Act or any provision of the society's rules— (i) a resolution in writing signed by the member holding such shares shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the society duly convened and held, and (ii) a resolution mentioned in subparagraph (i), if described as a special resolution or conversion resolution, shall be deemed to be such a resolution.".
12	Section 70(2)	Substitute "Subject to section 69(3A), a resolution" for "A resolution".
13	Section 71(1)	Substitute "Subject to section 69(3A), a resolution" for "A resolution".

Item	Provision amended	Amendment
14		After section 71, insert— "*Resolutions for special investment shares*. 71A.—(1) Where a building society proposes to issue special investment shares and its board of directors in good faith forms the opinion that the issue of such shares will assist in securing the financial position of the building society, the board of directors may, notwithstanding any provision in the society's rules, propose a resolution to approve of the issue of such shares and a special resolution to alter the society's memorandum and rules to give effect to all necessary and consequential changes relating to the issue of such shares. (2) Where the resolution and special resolution mentioned in subsection (1) are to be considered at a meeting, then, notwithstanding any other provision of this Act or any provision of the rules, the board of directors of the society concerned may reduce the period of notice otherwise required to be given for the meeting to a period not shorter than 5 days, if that board is of the view that the circumstances warrant it. (3) Where the resolution and special resolution mentioned in subsection (1) are to be voted on by postal ballot, then, notwithstanding any other provision of this Act or any provision of the rules, the board of directors of the society concerned may reduce the period of notice otherwise required to a period not shorter than 5 days before the date which the board specifies as the date for the postal ballot, if that board is of the view that the circumstances warrant it.".
15	Section 73(1)(*b*)	Substitute— "(*b*) of making ineffective a demand for a poll on any such question which is made by— (i) not less than 10 members having the right to vote at the meeting, or (ii) a member holding special investment shares.".

PART 2

AMENDMENT OF CENTRAL BANK ACT 1942

Section 232.

Item	Provision amended	Amendment
1	Section 18B(2)	Delete subsection.
2		After section 18B, insert— "*Membership of Board and Regulatory Authority*. 18BA.—(1) Nothing in this Act shall be read so as to prevent any member of the Board from being a member of the Regulatory Authority. (2) Where more than half of the members of the Board are also members of the Regulatory Authority, then paragraph 2 of Schedule 1 shall apply as if it read 'A quorum for all meetings of the Board is 7'.".
3		After section 19A, insert—

Item	Provision amended	Amendment
		"*Decisions about certain issues involving Treaties governing European Communities and ESCB Statute.* 19B.— Where the Board is considering a budgetary or funding issue relating to the Bank or the Regulatory Authority that may have implications for the independence of the Bank or the performance by the Governor of the functions conferred on the Governor and the Bank by or under the treaties governing the European Communities (within the meaning given by section 1 of the European Communities Act 1972) or the ESCB Statute— (*a*) the Governor has the sole right to determine the issue, and (*b*) the Governor's decision is final.".
4	Section 25(2)	Delete subsection.
5	Section 25(3)	Delete "otherwise than by virtue of being a member of the Regulatory Authority".
6	Section 25(4)(*b*)	Substitute— "(*b*) in order to enable the Board or the Board and the Regulatory Authority to function effectively, or (*c*) in order to facilitate a restructuring of the Board and the Authority so as to enable a closer working relationship between them.".
7	Section 33E(1)	Substitute "The Regulatory Authority comprises no fewer than 8 and no more than 12 members" for "The Regulatory Authority comprises no fewer than 8 and no more than 10 members".
8	Section 33E(1)(*c*)	Substitute "no fewer than 6 and no more than 10 are persons appointed by the Minister for Finance" for "no fewer than 6 and no more than 8 are persons appointed by the Minister for Finance".
9	Section 33E	After subsection (1), insert— "(1A) Nothing in this Act shall be read so as to prevent any member of the Regulatory Authority from being a member of the Board.".
10	Section 33I	After subsection (1), insert— "(1A) Where the Minister appoints or has appointed the Governor as a member of the Authority, then nothing in this Act shall be read so as to prevent the appointment of the Governor as its Chairperson.".
11	Schedule 2, Part 1	At the end, insert— " | | *National Asset Management Agency Act 2009* Part 12 | | ".
12	Schedule 3, paragraph 5(3)(*b*)	Substitute— "(*b*) in order to enable the Regulatory Authority or the Authority and the Board to function effectively, or (*c*) in order to facilitate a restructuring of the Authority and the Board so as to enable a closer working relationship between them.".

PART 3

AMENDMENT OF COMPANIES ACT 1963

Section 233.

Item	Provision amended	Amendment
1	Section 216	After subsection (1), insert— "(2) The court shall not make an order for the winding up of a company unless— (*a*) the court is satisfied that the company has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency or a NAMA group entity, or (*b*) if the company has any such obligation— (i) a copy of the petition has been served on that Agency, and (ii) the court has heard that Agency in relation to the making of the order. (3) In subsection (2) 'bank asset' and 'NAMA group entity' have the same respective meanings as in the *National Asset Management Agency Act 2009*.".

PART 4

AMENDMENTS OF COMPANIES (AMENDMENT) ACT 1990

Section 234.

Item	Provision amended	Amendment
1	Section 2	After subsection (4), insert— "(5) The court shall not make an order under this section unless— (*a*) the court is satisfied that the company has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency or a NAMA group entity, or (*b*) if the company has any such obligation— (i) a copy of the petition has been served on that Agency, and (ii) the court has heard that Agency in relation to the making of the order. (6) In subsection (5) 'bank asset' and 'NAMA group entity' have the same respective meanings as in the *National Asset Management Agency Act 2009*.".
2	Section 4	After subsection (6), insert— "(7) The court shall not make an order under this section unless— (*a*) the court is satisfied that the related company has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency or a NAMA group entity, or (*b*) if the related company has any such obligation— (i) a copy of the petition has been served on that Agency, and

Item	Provision amended	Amendment
		(ii) the court has heard that Agency in relation to the making of the order. (8) In subsection (7) 'bank asset' and 'NAMA group entity' have the same respective meanings as in the *National Asset Management Agency Act 2009*.".

PART 5

AMENDMENT OF FINANCE ACT 1970

Section 235 .

Item	Provision amended	Amendment
1	Section 54	After subsection (7D), insert— "(7E) The Minister— (*a*) may engage in such transactions of a normal banking nature with any person as he or she considers appropriate— (i) in connection with the performance of his or her functions under the *National Asset Management Agency Act 2009,* and (ii) for the purpose of the better management of any indebtedness incurred by the Minister under that Act, and (*b*) may for the purpose of those transactions issue such funds from the Exchequer as he or she considers appropriate. The expenses and other costs incurred by the Minister in connection with or arising out of those transactions shall be charged on the Central Fund or the growing produce of that Fund.".

PART 6

AMENDMENTS OF LANDLORD AND TENANT (AMENDMENT) ACT 1980

Section 236.

Item	Provision amended	Amendment
1	Section 17(2)(*a*)(v)	Substitute "management, or" for "management.".
2	Section 17(2)(*a*)	After subparagraph (v), insert— "(vi) the landlord (being the National Asset Management Agency) will require possession, within 5 years after the termination of the existing tenancy, for any purpose for which that Agency is entitled to acquire (by purchase or otherwise) property under the *National Asset Management Agency Act 2009*.".

PART 7

AMENDMENTS OF NATIONAL TREASURY MANAGEMENT AGENCY ACT 1990

Section 237.

Item	Provision amended	Amendment
1		After section 4A, insert— *"Further powers of NTMA.* 4B.—(1) The Agency shall have all powers necessary or expedient for the performance of any function conferred on it by the *National Asset Management Agency Act 2009*. (2) The performance by the Agency of a function under the *National Asset Management Agency Act 2009* is not a function of the Agency under this Act.".
2	Section 12	After subsection (3), insert— "(4) The audited accounts prepared in pursuance of this section shall include a record of any expenses incurred by the Agency in the performance of functions under the *National Asset Management Agency Act 2009*.".
3	Schedule 1	After paragraph (*ge*), insert— "(*gf*) section 54(7E) (inserted by the *National Asset Management Agency Act 2009*) of the Finance Act 1970;".
4	Schedule 1	After paragraph (*t*), insert— "(*u*) *section 47* of the *National Asset Management Agency Act 2009*.".

PART 8

AMENDMENT OF PLANNING AND DEVELOPMENT ACT 2000

Section 238.

Item	Provision amended	Amendment
1	Section 40(3)	Substitute "In this section and sections 42 and 42A," for "In this section and in section 42,".
2		After section 42, insert— "*Power to extend appropriate period on application of NAMA.* 42A.—(1) Notwithstanding section 42, on application by the National Asset Management Agency to it in that behalf a planning authority shall, as regards a particular permission as and from the expiry of that permission, extend the appropriate period by such additional period not exceeding 5 years as the authority considers requisite to enable the development to which the permission relates to be completed provided that each of the following requirements is complied with: (*a*) either— (i) the authority is satisfied that— (I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended, (II) substantial works were carried out pursuant to the permission during that period, and

Item	Provision amended	Amendment
		(III) the development will be completed within a reasonable time, or (ii) the authority is satisfied that— (I) there were considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially militated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission, and (II) there have been no significant changes in the development objectives in the development plan or in regional development objectives in the regional planning guidelines for the area of the planning authority since the date of the permission such that the authority would not, as a result of those changes, grant an application for permission for the development as being in material contravention of the proper planning and sustainable development of the area of the authority, (*b*) the application is in accordance with such regulations under this Act as apply to it, (*c*) any requirements of, or made under those regulations are complied with as regards the application, and (*d*) subject to subsection (7), the application is duly made prior to the end of the appropriate period. (2) (*a*) Where an application is duly made under this section to a planning authority and any requirements of, or made under, regulations under section 43 are complied with as regards the application, the planning authority shall make its decision on the application as expeditiously as possible. (*b*) Without prejudice to the generality of paragraph (*a*), it shall be the objective of the planning authority to ensure that it shall give notice of its decision on an application under this section within the period of 8 weeks beginning on— (i) in case all of the requirements referred to in paragraph (*a*), are complied with on or before the day of receipt by the planning authority of the application, that day, and (ii) in any other case, the day on which all of those requirements stand complied with. (3) A decision to extend an appropriate period shall be made once and once only under this section and a planning authority shall not further extend the appropriate period. (4) Particulars of any application made to a planning authority under this section and of the decision of the planning authority in respect of the application shall be recorded on the relevant entry in the register.

Item	Provision amended	Amendment
		(5) Where a decision to extend is made under this section, section 40 shall, in relation to the permission to which the decision relates, be construed and have effect, subject to, and in accordance with, the terms of the decision. (6) In satisfying itself under subsection (1)(*a*)(ii), a planning authority shall have regard to any guidelines issued by the Minister under section 28, notwithstanding that they were so issued after the date of the grant of permission in relation to which an application is made under this section. (7) In relation to a permission where the expiry of the appropriate period occurs during the period beginning on or after 1 January 2009 and ending on or before 31 December 2011, NAMA may make an application to extend the appropriate period— (*a*) before the expiry of the appropriate period, or (*b*) at any time during the period of 2 years beginning on the date of expiry of the appropriate period.".

PART 9

AMENDMENT OF STAMP DUTIES CONSOLIDATION ACT 1999

Section 239.

Item	Provision amended	Amendment
1		After section 108A, insert— "*National Asset Management Agency.* 108B.—(1) In this section: 'acquired bank asset', 'bank asset' and 'participating institution' have, respectively, the meanings given by section 4(1) of the Act of 2009; 'Act of 2009' means the *National Asset Management Agency Act 2009*; 'NAMA' means the National Asset Management Agency; 'NAMA-subsidiary', in relation to an instrument referred to in subsection (3), means a body corporate which at the time of execution of the instrument is associated with NAMA in accordance with the provisions of section 79. (2) (*a*) Where NAMA directly owns any part of the ordinary share capital, within the meaning of section 79, of another body corporate (in this subsection referred to as the 'first body corporate'), then NAMA shall be deemed to be associated with the first body corporate in accordance with the provisions of section 79. (*b*) Where the first body corporate is associated, directly or indirectly, with another body corporate (referred to in this paragraph as the 'second body corporate') in accordance with the provisions of section 79, then NAMA shall be deemed to be associated with the second body corporate in accordance with the provisions of section 79. (3) Stamp duty shall not be chargeable under or by reference to any Heading in Schedule 1 on an instrument—

Item	Provision amended	Amendment
		(*a*) for the sale, transfer, lease or other disposition of any property, asset or documentation to NAMA or a NAMA-subsidiary by NAMA, a NAMA-subsidiary or a participating institution, (*b*) for the transfer, to a NAMA-subsidiary or a participating institution, of securities issued in accordance with the Act of 2009 for the purposes of *section 47(2)*(*b*), *48(2)(b)* or *49* of that Act, (*c*) for the transfer to a NAMA-subsidiary by NAMA or a NAMA-subsidiary of securities issued in accordance with the Act of 2009 for the purposes of *section 47(2)(a)* or *48(2)(a)* of that Act, (*d*) for the transfer to a participating institution of a bank asset, security or other property by NAMA or a NAMA-subsidiary in connection with *section 125* of the Act of 2009, or (*e*) for the transfer or other disposition to NAMA or a NAMA-subsidiary of any property in settlement or part settlement of an acquired bank asset. (4) Section 12(2) shall not apply to an instrument to which subsection (3) applies. (5) This section applies as respects instruments executed on or after the establishment day (within the meaning of *section 4* of the Act of 2009).".

PART 10

AMENDMENTS OF TAXES CONSOLIDATION ACT 1997

Section 240.

Item	Provision amended	Amendment
1	Section 172A(1)(*a*), definition of "relevant distribution"	In subparagraph (i)(II), substitute "Commission," for "Commission, or".
2	Section 172A(1)(*a*), definition of "relevant distribution"	After subparagraph (i)(III), insert— "(IV) the National Asset Management Agency, or a company referred to in section 616(1)(*g*), and".
3		After section 230A, insert— "*NAMA profits exempt from corporation tax.* 230AA.—Notwithstanding any provision of the Corporation Tax Acts, profits arising to the National Asset Management Agency shall be exempt from corporation tax.".
4	Section 246(3)	After paragraph (*e*), insert— "(*ea*) interest paid to— (i) the National Asset Management Agency or a company referred to in section 616(1)(*g*),

Item	Provision amended	Amendment
		(ii) the State acting through the National Asset Management Agency or through a company referred to in section 616(1)(*g*), or (iii) the National Treasury Management Agency by the National Asset Management Agency or by a company referred to in section 616(1)(*g*), (*eb*) interest paid by— (i) the National Asset Management Agency, (ii) a company referred to in section 616(1)(*g*), or (iii) the State acting through the National Asset Management Agency, or through a company referred to in section 616(1)(*g*), to a person who, by virtue of the law of a relevant territory, is resident for the purposes of tax in the relevant territory, except, in a case where the person is a company, where such interest is paid to the company in connection with a trade or business which is carried on in the State by the company through a branch or agency,".
5	Section 256(1), definition of "relevant deposit", paragraph (*a*)	After subparagraph (iiic), insert— "(iiid) the National Asset Management Agency, (iiie) the State acting through the National Asset Management Agency,".
6	Section 396(1)	Substitute "Subject to section 396C, where in any accounting period" for "Where in any accounting period".
7		After section 396B, insert— "*Relief from Corporation Tax for losses of participating institutions.* 396C.—(1)(*a*) In this section— 'available losses', in relation to an accounting period of a participating institution, means losses, carried forward from preceding accounting periods, for which relief is available under section 396(1) in that accounting period or succeeding accounting periods; 'group company', for an accounting period in relation to a participating institution (in this definition referred to as the 'first-mentioned institution'), means a company which is a participating institution that has an accounting period that coincides with the accounting period of the first-mentioned institution where, throughout the accounting period of the first-mentioned institution— (*a*) the company is a subsidiary of the first-mentioned institution, (*b*) the first-mentioned institution is a subsidiary of the company, or (*c*) both the company and the first-mentioned institution are subsidiaries of a third company; 'participating institution' and 'subsidiary' have the same meanings respectively as in *section 4* of the *National Asset Management Agency Act 2009*; 'relevant amount' for an accounting period in relation to a participating institution means 50 per cent of the amount, if any, by which the aggregate of the trading

Item	Provision amended	Amendment
		income, if any, of the participating institution and its group companies for the accounting period exceeds the aggregate of the trading losses, if any, incurred by the participating institution and its group companies in that accounting period; 'relevant limit' in relation to an accounting period of a participating institution means an amount determined by the formula— $\frac{A \times B}{C}$ where— *A* is the relevant amount for the accounting period in relation to the participating institution, *B* is the aggregate amount of the trading income, if any, of the participating institution for the accounting period before any relief for available losses, and *C* is the aggregate amount of the trading income, if any, of the participating institution and its group companies for the accounting period before any relief for available losses. (*b*) For the purposes of this section— (i) an accounting period of a company coincides with an accounting period of another company if the first-mentioned accounting period begins on the same day and ends on the same day as the second-mentioned accounting period, and (ii) references to trading income or trading losses are references to trading income or trading losses, as the case may be, arising— (I) to a company resident in the State, or (II) through or from a branch or agency in the State of a company that is not so resident. (2) Where for any accounting period a participating institution makes a claim under subsection 396(1) for relief in respect of available losses incurred, or deemed under subsection (3) to have been incurred, in a trade carried on by that institution, the amount of the losses which may be set off against trading income of the trade in that accounting period shall not exceed the relevant limit of the participating institution for that period. (3) (*a*) Subject to subsection (2) and paragraphs (*b*) and (*c*), where in relation to an accounting period— (i) a participating institution has an amount of available losses (referred to in this subsection as the 'excess available losses') in respect of which it cannot obtain relief for that period, and (ii) a group company in relation to that institution, having claimed all relief under section 396(1), if any, to which it would otherwise be entitled (including by reference to other claims made under this subsection), could obtain relief, or more relief, under section 396(1) for that accounting period if some or all of the excess

Item	Provision amended	Amendment
		available losses of the participating institution were deemed to have been incurred by the group company, then, on the making of a claim in that regard by the group company, the participating institution may surrender to the group company an amount of those excess available losses that does not exceed the amount for which the group company could obtain relief for that accounting period, having claimed all other relief under section 396(1) to which it is entitled, and— (I) that group company shall be deemed for the purposes of section 396(1) to have incurred those losses and shall set off the amount so surrendered against its trading income for the accounting period, which income shall be treated as reduced by that amount, and (II) the available losses of the surrendering company shall be deemed for all purposes of the Corporation Tax Acts to be reduced by the amount surrendered. (*b*) More than one group company may make a claim under this subsection relating to the same participating institution and to the same accounting period of that institution but, whether by reference to this section or any other section of the Corporation Tax Acts or any combination thereof, relief shall not be given more than once in respect of an amount of available losses. (*c*) A claim for relief under this subsection— (i) shall be made in the return required to be made under section 951 for the accounting period of the group company which is claiming the relief, (ii) shall require the consent of the participating institution notified to the inspector in such form as the Revenue Commissioners may require, and (iii) shall be made within 2 years from the end of the accounting period to which the claim relates. (4) (*a*) Subject to subparagraph (*b*), where the inspector ascertains that any relief claimed in accordance with this section is or has become excessive, he or she may make an assessment to corporation tax under Case I of Schedule D in the amount which in his or her opinion ought to be charged. (*b*) Subparagraph (*a*) is without prejudice to the making of an assessment under section 919(5)(*b*)(iii) and to the making of all such other adjustments by means of discharge or repayment of tax or otherwise as may be required where a company has obtained too much relief. (5) This section has effect for accounting periods commencing on or after the passing of the *National Asset Management Agency Act 2009*.".
8	Section 495(10)	Substitute— "(10) Subject to section 507, the company shall not at any time in the relevant period— (*a*) control (or together with any person connected with it control) another company or be under the control of another company (or

Item	Provision amended	Amendment
		of another company and any person connected with that other company) unless such control is exercised by the National Asset Management Agency, or by a company referred to in section 616(1)(*g*), or (*b*) be a 51 per cent subsidiary of any company other than the National Asset Management Agency or a company referred to in section 616(1)(*g*), or itself have a 51 per cent subsidiary, and no arrangements shall be in existence at any time in that period by virtue of which the company could fall within paragraph (*a*) or (*b*).".
9	Section 530(1)	After the definition of "meat processing operations", insert: " 'NAMA' and 'NAMA group entity' have the same meanings, respectively, as they have in the *National Asset Management Agency Act 2009*;".
10	Section 530(1), definition of "relevant contract"	After "of employment", insert ", or a contract between NAMA and a NAMA group entity or a contract between a NAMA group entity and another NAMA group entity".
11	Section 616(1)	After paragraph (*f*), insert: "(*g*) Notwithstanding paragraph (*b*)— (i) a company (in this paragraph referred to as the 'first-mentioned company') shall be an effective 75 per cent subsidiary of the National Asset Management Agency where that Agency directly owns any part of the ordinary share capital of that company, and (ii) any other company which is an effective 75 per cent subsidiary of the first-mentioned company shall be an effective 75 per cent subsidiary of the National Asset Management Agency.".
12	Section 623(2)	Substitute "Subject to subsection (2A), this section applies where—" for "This section applies where—".
13	Section 623	After subsection (2), insert— "(2A) (*a*) This section does not apply to a bank asset where that asset is acquired on or after the establishment day by— (i) NAMA, or (ii) a company to which section 616(1)(*g*) relates from that Agency or a company to which that paragraph relates. (*b*) In this subsection 'bank asset', 'establishment day' and 'NAMA' have the same meanings, respectively, as they have in the *National Asset Management Agency Act 2009*.".
14		After section 644AA, insert— "*Treatment of profits or gains from land rezonings*. 644AB.—(1) In this section— 'basis period' has the same meaning as in section 127(1); 'company' has the same meaning as in section 4; 'construction operations', in relation to land, means operations of any of the descriptions referred to in the definition of 'construction operations' in section 530(1);

Item	Provision amended	Amendment
		'development land-use' means residential, commercial or industrial uses or a mixture of such uses; 'distribution' has the same meaning as in section 130(2); 'non-development land-use' means a land-use which is agricultural, open space, recreational or amenity use or a mixture of such uses; 'qualifying land' means land which is disposed of at any time in the course of a business, being land— (*a*) disposed of to an authority possessing compulsory purchasing powers where the Revenue Commissioners are satisfied that the disposal would not have been made but for the exercise of those powers or the giving by the authority of formal notice of its intention to exercise those powers, or (*b*) disposed of by a company referred to in section 616(1)(*g*); 'rezoning' means a change in the zoning of land in a development plan or local area plan made or varied on or after 30 October 2009 under Part II of the Planning and Development Act 2000 from non-development land-uses to development land-uses or from one development land-use to another development land-use including a mixture of such uses. (2) This section applies to— (*a*) profits or gains arising from dealing in, or developing, land in the course of a business consisting of or including dealing in or developing land which is, or is regarded as, a trade within Schedule D or part of such a trade, or (*b*) any gain of a capital nature arising directly or indirectly from the disposal of land which, by virtue of section 643, constitutes profits or gains chargeable to tax under Case IV of Schedule D, to the extent to which the profits or gains are attributable to the rezoning of that land. (3) Notwithstanding any provision to the contrary in the Corporation Tax Acts, but subject to this section, a company shall not be chargeable to corporation tax in respect of profits or gains to which this section applies and, accordingly, such profits or gains shall not be regarded as profits or gains of the company for the purposes of corporation tax. (4) Notwithstanding any other provision of the Tax Acts and subject to subsections (6) and (7), to the extent to which profits or gains of a basis period for a year of assessment consist of profits or gains to which this section applies— (*a*) those profits or gains shall be chargeable to income tax for such year at the rate of 80 per cent, and (*b*) those profits or gains shall be disregarded for all the purposes of the Tax Acts, other than those relating to the assessment, collection and recovery of income tax and of any interest or penalties on that tax. (5) (*a*) To the extent that a loss is attributable to the rezoning of land referred to in subsection (2), that loss— (i) may be carried forward and may only be deducted from or set off against the amount

Item	Provision amended	Amendment
		of profits or gains to which this section applies for any subsequent year of assessment, and (ii) in the case of a company, shall be disregarded for the purposes of the Corporation Tax Acts. (b) Any relief under this subsection shall be given as far as possible against the profits or gains for the first subsequent year of assessment and, in so far as it cannot be so given, from the profits or gains for the next year of assessment and so on for succeeding years. (6) Where an individual is chargeable to tax in accordance with subsection (4) in respect of profits or gains, the profits or gains shall not be included in reckonable income— (*a*) within the meaning of section 2(1) of the Social Welfare Consolidation Act 2005, or (*b*) within the meaning of section 1 of the Health Contributions Act 1979, for the purposes of those Acts or any regulations made under those Acts. (7) For the purposes of the Tax Acts in computing the profits or gains to which this section applies, no account shall be taken, in determining those profits or gains, of that part, if any, of profits or gains which are attributable to— (*a*) construction operations on the land, or (*b*) qualifying land. (8) Where, in order to give effect to the provisions of subsections (2), (4) and (7), an apportionment of profits and gains, amounts receivable or expenses incurred is required to be made, such apportionment shall be made in a manner that is just and reasonable. (9) Where a distribution is made by a company in part out of profits or gains to which this section applies and in part out of other profits or gains, then the distribution shall be treated as if it consisted of 2 distributions respectively made out of the profits or gains to which this section applies and out of other profits or gains. (10) So much of any distribution as has been made out of profits or gains to which this section applies shall not be regarded as income for any purpose of the Income Tax Acts or be included in reckonable income— (*a*) within the meaning of section 2(1) of the Social Welfare Consolidation Act 2005, or (*b*) within the meaning of section 1 of the Health Contributions Act 1979, for the purposes of those Acts or any regulations made under those Acts. (11) This section shall apply as respects the year of assessment 2010 and subsequent years of assessment.”.
15		After section 649A, insert— “*Windfall gains from rezonings: rate of charge*. 649B.—(1) In this section—

Item	Provision amended	Amendment
		'development land-use' means residential, commercial or industrial uses or a mixture of such uses; 'loss arising on rezoning' means a loss realised on or after 30 October 2009 on a disposal of land to the extent to which that loss is attributable solely to a decrease in the market value of the land arising on a rezoning, and which loss has not otherwise been effectively relieved; 'non-development land-use' means a land-use which is agricultural, open space, recreational or amenity use or a mixture of such uses; 'rezoning' means a change in the zoning of land in a development plan or local area plan made or varied on or after 30 October 2009 under Part II of the Planning and Development Act 2000 from non-development land-uses to development land-uses or from one development land-use to another development land-use including a mixture of such uses. 'windfall gain' means any increase in the market value of land which is attributable to rezoning. (2) This section applies to a relevant disposal, made on or after 30 October 2009, where the disposal consists of land that— (*a*) has been the subject of rezoning since its acquisition by the person making the disposal, (*b*) was acquired from a connected person and the acquisition cost for the purposes of the Capital Gains Tax Acts was other than market value, where the rezoning took place during the ownership period of either person, or (*c*) was the subject of a sequence of transfers between connected persons, if the rezoning took place during the period between the date of disposal and the latest date at which the acquisition cost, at any step in the sequence, was market value. (3) Notwithstanding section 28(3), the rate of capital gains tax in respect of a chargeable gain, being the lesser of the gain arising on the disposal and the windfall gain, accruing to a person on a relevant disposal to which this section applies shall be 80 per cent. (4) This section shall not apply to a disposal of land to which subsection (2) relates where— (*a*) the land is disposed of to an authority possessing compulsory purchasing powers, but only if the Revenue Commissioners are satisfied that the disposal would not have been made but for the exercise of those powers or the giving by the authority of formal notice of its intention to exercise those powers, or (*b*) the disposal is a disposal by a company referred to in section 616(1)(*g*), and, accordingly, the rate of capital gains tax in respect of a chargeable gain on a relevant disposal referred to in paragraphs (*a*) to (*c*) shall be the rate specified in section 28(3). (5) Notwithstanding any provision to the contrary in the Capital Gains Tax Acts, any loss accruing on any disposal shall not be deducted from a chargeable gain to which this section applies except a loss arising on a rezoning.

Item	Provision amended	Amendment
		(6) This section shall apply to relevant disposals made on or after 30 October 2009.".
16	Section 730D(2)(*b*)(v)	Delete "or".
17	Section 730D(2)(*b*)(vi)	After "Court," insert "or".
18	Section 730D(2)(*b*)	After subparagraph (vi), insert— "(vii) the National Asset Management Agency,".
19	Section 730E(3)(*e*)(v)	Delete "or".
20	Section 730E(3)(*e*)(vi)	After "Court," insert "or".
21	Section 730E(3)(*e*)	After subparagraph (vi), insert— "(vii) the National Asset Management Agency,".
22	Section 730E(3)(*f*)	Substitute "paragraph (*e*)" for "subparagraph (i) to (v), or (vi) of paragraph (*e*)".
23	Section 739D(6)	After paragraph (*k*), insert— "(*ka*) is the National Asset Management Agency and has made a declaration to that effect to the investment undertaking,".
24	Section 980	After subsection (11), insert— "(12) The enforcement of a debt security by the National Asset Management Agency or by a company to which section 616(1)(*g*) relates does not constitute consideration for the purposes of this section. (13) Subsection (9) does not apply to the National Asset Management Agency or to a company to which section 616(1)(*g*) relates. (14) This section does not apply to a disposal by a company that would be a company to which section 616(1)(*g*) relates if the reference in that section to a 75 per cent subsidiary were a reference to a 51 per cent subsidiary. (15) For the purposes of this section, the enforcement of a debt security by the National Asset Management Agency or by a company to which section 616(1)(*g*) relates shall not be treated as a disposal of an asset.".
25	Schedule 13	After paragraph 173, insert— "174. The National Asset Management Agency or a company to which section 616(1)(*g*) relates.".
26	Schedule 15, Part 1	After paragraph 42, insert— "43. The National Asset Management Agency.".

PART 11

AMENDMENTS OF VALUE-ADDED TAX ACT 1972

F33**[**...**]**

Section 241.

Annotations

Amendments:

F33 Repealed (1.11.2010) by *Value-Added Tax Consolidation Act 2010* (31/2010), s. 123 and sch. 8 part 1, commenced on enactment.

Number 34 *of* 2009

NATIONAL ASSET MANAGEMENT AGENCY ACT 2009

REVISED

Updated to 25 May 2018

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

Central Bank Acts 1942 to 2015: this Act is one of a group of Acts included in this collective citation (*Consumer Protection (Regulation of Credit Servicing Firms) Act 2015* (21/2015), s. 9(2)). The Acts in this group are:

- *Central Bank Act 1942* (22/1942)
- *Central Bank Act 1961* (8/1961)
- *Central Bank Act 1971* (24/1971)
- *Central Bank Act 1989* (16/1989), Part 2
- *Central Bank Act 1997* (8/1997), other than ss. 3, 36 to 49, 60, 64 to 68, 78 to 83 and 85
- *Central Bank Act 1998* (2/1998)
- *Euro Changeover (Amounts) Act 2001* (16/2001), ss. 5 and 9(4)
- *Central Bank and Financial Services Authority of Ireland Act 2003* (12/2003)
- *Central Bank and Financial Services Authority of Ireland Act 2004* (21/2004)
- *National Asset Management Agency* (34/2009), ss. 1(4), 232 and sch. 3 part 2
- *Central Bank Reform Act 2010* (23/2010)
- *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011)
- *Credit Union and Co-operation with Overseas Regulators Act 2012* (40/2012), ss. 36, 37, 48(2) and 56(3), Part 5 (in so far as it amends the *Central Bank Acts 1942 to 2011*), and schs. 2 and 3 (in so far as they amend *Central Bank Acts 1942 to 2011*)
- *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), other than s. 5, in so far as it relates to schs. 3 and 4, and ss. 75 to 78 , 80 to 87 and 89 to 94
- *Central Bank Act 2014* (9/2014), section 1
- *Central Bank (Amendment) Act 2015* (1/2015)
- *Consumer Protection (Regulation of Credit Servicing Firms) Act 2015* (21/2015), other than s. 8.

Act previously included in the collective citation but now repealed:

- *Central Bank Act 1964* (3/1964)

Central Bank and Financial Services Authority of Ireland Acts 1942 to 2009: this Act is one of a group of Acts included in this collective citation (*National Asset Management Agency Act 2009* (34/2009), s. 1(4)). The Acts in this group are:

- *Central Bank Acts 1942 to 2001*
- *Central Bank and Financial Services Authority of Ireland Act 2003* (12/2003)
- *Central Bank and Financial Services Authority of Ireland Act 2004* (21/2004)
- *National Asset Management Agency Act 2009* (34/2009), ss. 1(4), 232 and sch. 3 part 2

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions. A version without annotations, showing only textual amendments, is also available.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1985, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Data Protection Act 2018* (7/2018)
- *Workplace Relations Act 2015* (16/2015)
- *Protected Disclosures Act 2014* (14/2014)
- *Local Government Reform Act 2014* (1/2014)
- *Central Bank (Supervision and Enforcement) Act 2013* (26/2013)
- *Irish Bank Resolution Corporation Act 2013* (2/2013)
- *Credit Union and Co-operation with Overseas Regulators Act 2012* (40/2012)
- *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011)
- *Criminal Justice Act 2011* (22/2011)
- *Credit Institutions (Stabilisation) Act 2010* (36/2010)
- *Value-Added Tax Consolidation Act 2010* (31/2010)
- *Central Bank Reform Act 2010* (23/2010)
- *Finance Act 2010* (5/2010)
- *Central Bank Act 1942* (22/1942)

All Acts up to and including *Data Protection Act 2018* (7/2018), enacted 24 May 2018, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *European Union (Bank Recovery and Resolution) Regulations 2015* (S.I. No. 289 of 2015)
- *Protected Disclosures Act 2014 (Commencement) Order 2014* (S.I. No. 327 of 2014)
- *National Asset Management Agency Act 2009 (Section 210) Amending Guidelines 2013* (S.I. No. 374 of 2013)
- *National Asset Management Agency Act 2009 (Section 210) Amending Guidelines 2011* (S.I. No. 354 of 2011)
- *National Asset Management Agency (Conferral of Additional Function) Order 2010* (S.I. No. 505 of 2010)
- *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) (Amendment) Regulations 2010* (S.I. No. 504 of 2010)

- *Guidelines Issued Under Section 210(1) of the National Asset Management Agency Act 2009 Regarding Lending Practices and Procedures and Relating to the Review of Decisions of Participating Institutions to Refuse Credit Facilities* (S.I. No. 127 of 2010)
- *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010* (S.I. No. 88 of 2010)
- *National Asset Management Agency (Designation of Eligible Bank Assets) Regulations 2009* (S.I. No. 568 of 2009)
- *National Asset Management Agency Act 2009 (Establishment Day) Order 2009* (S.I. No. 547 of 2009)
- *National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2009* (S.I. No. 546 of 2009)
- *National Asset Management Agency Act 2009 (Commencement) Order 2009* (S.I. No. 545 of 2009)

All statutory instruments up to and including *Data Protection Act 2018 (Establishment Day) Order 2018* (S.I. No. 175 of 2018), made 24 May 2018, were considered in the preparation of this revision.