



**National Asset  
Management Agency**

# **Code of Practice - Disposal of Bank Assets**

**This Code of Practice was approved by the Minister of Finance on 5th day of July 2010.**

# 1. Scope and Objectives of the Code of Practice

- 1.1 This document is designed to fulfil NAMA's obligation under section 35(1) of the National Asset Management Agency Act 2009 (the "Act") to publish certain codes of practice. In the event of any conflict between the Act and this code of practice, the Act will take precedence. Terms used in this Code have the same meaning as terms defined in the Act.

NAMA has statutory powers, including those set out in Section 12 of the Act, to manage loans and assets, and to conduct its affairs, in a way that best serves its objectives as defined in Section 10 of the Act. NAMA may be subject to guidelines and directions from the Minister as set out in Section 13 and 14 of the Act. NAMA will act at all times to obtain the best achievable financial return for the State.

- 1.2 NAMA is responsible for managing a portfolio of loans and assets which it has acquired under the provisions of the Act. These include two categories:
- a) NAMA-managed – key credit decisions and relationship management carried out by NAMA with loan administration carried out by the participating institutions to facilitate the efficient management of the portfolio.
  - b) Participating Institution-managed – relationship management and loan administration carried out by Participating Institutions within NAMA parameters and credit decisions conducted by a Delegated Authority hierarchy with NAMA oversight.
- 1.3 The purpose of this Code of practice, pursuant to section 35 (1)(d) of the Act, is to declare publicly how NAMA intends to manage the disposal of bank assets, both in respect of loans and assets under its direction and control (both NAMA-managed and Participating Institution-managed), and generally in relation to its operations and performance.
- 1.4 This Code does not cover the disposal of property and assets other than bank assets. NAMA confirms that the disposal of property and other assets will be subject to the provisions of the Code of Conduct for the Governance of State Bodies (2009).
- 1.5 The aim of this Code is to clarify, for the benefit of key stakeholders / stakeholder groups, NAMA's management of the disposal of bank assets

in achieving NAMA's purposes as set out in Section 10 of the Act and the purposes of the Act generally as set out in Section 2 of the Act. Key stakeholders include:

- Taxpayers
- Government / Minister
- Debtors
- Participating Institutions
- Non-Participating Institutions
- Other Creditors
- Service Providers.

A reference to stakeholders means anyone who has reasonable material commercial or public policy interests in NAMA's operations and activities.

- 1.6 This Code of Practice, approved by the Minister of Finance, serves to codify the manner in which NAMA's legal powers and functions shall be exercised by the Board, in this case pertaining to the disposal of bank assets. As such, it may be changed from time to time by the Board subject to approval by the Minister. The Board will review this Code at least annually and submit such revisions as it considers appropriate to the Minister for approval.
- 1.7 In accordance with Section 35(3) of the Act, NAMA will have regard to the Code and be guided by it.

## **2. Key Principles**

### **2.1 Priority of objectives**

NAMA's purposes are defined in Section 10 of the Act including the objective to protect and enhance the value of acquired bank assets in the interests of the State and contributing to the achievement of the objectives in Section 2 of the Act, having regard to guidelines and directions from the Minister as provided for in Section 13 and 14 of the Act.

This Code of Practice applies to all aspects of NAMA's decisions and actions which relate to the disposal of bank assets.

### **2.2 Authority & Responsibility for Disposal of Bank Assets**

The Board of NAMA has overall responsibility for the custody, safekeeping, access to and disposal of all NAMA assets. The Board will establish bank asset disposal strategy with appropriate procedures and delegations of authority inline with best international practice and the Code of Practice for the Governance of State Bodies.

The NAMA Chief Executive Officer is responsible for ensuring that the process for disposal of bank assets, complies with the Board's broader strategy and procedures on the disposal of bank assets.

### **2.3 Procedures for Disposal of Bank Assets**

The NAMA Board will establish and define disposal procedures for the disposal of bank assets consistent with its bank asset disposal strategy.

Such procedures will include:

- a) A current independent appraisal will be obtained for each bank asset prior to disposal.
- b) For larger value or more complex bank assets in excess of €100m in value, two independent appraisals will be sought.

The Board will assess and decide on all potential disposals under consideration in accordance with approved NAMA policies and procedures.

## 2.4 Methods and Timing of Disposal of Bank Assets

Under Section 12 of the Act, NAMA has various powers in relation to the disposal of bank assets.

The principal methods of disposal are as follows:

- a) Sale by NAMA directly - NAMA may sell certain bank assets to other financial institutions or other third parties.
- b) Sale by an appointed agent(s) - NAMA may appoint agents to sell bank assets on its behalf.
- c) Sale by tender - NAMA may decide to sell bank assets using a tender mechanism.
- d) Any other disposal mechanism that NAMA considers appropriate - these are varied but NAMA may decide to securitise its bank assets or utilise any other financial mechanism that may be appropriate,

The appropriate timing and method of the disposal of bank assets will be determined by the Board of NAMA in line with its bank asset disposal strategy with the objective of realising the best achievable price.

## **Glossary**

### **(terms defined in the Act have the same meaning as the Act)**

#### **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.

#### **Adviser**

means an entity that provides professional services to NAMA.

#### **Associated Debtor**

has the meaning given by *section 70* of the Act

*Section 70 ‘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.’*

#### **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, and
- (e) an interest in a bank asset referred to in any of *paragraphs (a) to (d)*.

### **Board**

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

Section 19 '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.'

### **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.

### **Creditor**

means a Participating Institution who extends credit to a person under a legal contract.

### **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 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.

### **Delegated Authority**

means authority obtained from another such as NAMA.

### **Enforcement Action**

means actions taken to recover debts This may include the exercise of security but is not necessarily limited to legal action.

**Establishment Day**

means the day appointed by the Minister under section 8 of the Act.

**Guarantor**

means a person who has entered into a guarantee or indemnity in connection with a bank asset.

**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.

**NTMA**

means the National Treasury Management Agency.

**Officer of NAMA**

means—

(a) the Chief Executive Officer of NAMA, and

(b) any person assigned to NAMA in accordance with *section 42* of the Act.

**Participating Institution**

means a Credit Institution that has been designated by the Minister under *section 67* of the Act, including any of its subsidiaries that is not excluded under that section.

**Risk Management**

means a process of identification, analysis and either acceptance or mitigation of uncertainty.

**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
- (j) any other agreement or arrangement having a similar effect.

**Service Provider**

an entity that provides outsourced services to NAMA.

**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.

**Tender**

means requesting formal proposals from prospective purchasers.

**Written communication**

means communication in writing including by letter, facsimile, and/or email.