



**National Asset
Management Agency**

Code of Practice - Servicing Standards for Acquired 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 provision 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) (b) of the Act, is to declare publicly how NAMA intends to manage servicing standards for acquired 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 The aim of this Code is to clarify, for the benefit of key stakeholders / stakeholder groups, NAMA's management of servicing standards for acquired 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.

- 1.5 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 servicing standards for acquired 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.
- 1.6 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 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 servicing standards for acquired bank assets (Servicing Standards).

In furtherance of the purpose of dealing with acquired assets to obtain the best achievable financial return for the State, NAMA will manage the provision of relevant services for all acquired assets.

2.2 Code of Practice for Debtors

There is a code of practice for risk management, including with regard to debtors that sets out principles that relate to how NAMA intends to deal with Debtors in a reasonable manner in pursuing its commercial objectives to protect the interests of taxpayers.

2.3 Servicing the acquired bank assets

The business model adopted by NAMA is to have a core staff to control and manage acquired bank assets. NAMA will direct the administration of acquired bank assets by the Participating Institutions. The acquired bank assets will continue to be administered and serviced by the Participating Institutions acting as primary servicers. In addition, NAMA may retain another service provider to deliver loan administration services.

NAMA has and will utilise its rights under the Act to direct Participating Institutions and may enter into contracts with other service providers. At all times NAMA will operate in accordance with the Act and all applicable laws.

NAMA has under Section 131 of the Act directed the Participating Institutions to comply with minimum standards of service to include:

- a) NAMA's right to audit the services
- b) Security and business continuity planning

- c) Regulatory compliance including (but not limited to) data protection & anti-money laundering
- d) Compliance with the Act and applicable law; and
- e) Service levels including remedies for defective services.

The NAMA direction to the Participating Institutions sets out the servicing standards for acquired bank assets. The direction is commercially sensitive. It deals with a range of servicing functions which include but are not limited to:

- a) Collection of monies due to NAMA in the normal course of business;
- a) Calculation of interest and fees due to NAMA;
- b) The advancement of further credit to an existing Debtor as a means to support them as part of an agreed recovery plan;
- c) The maintenance of records of receipts and balances due to NAMA;
- d) The provision of statements of amounts due to NAMA;
- e) Responding to requests from NAMA and Debtors ;
- f) The maintenance of documents and records supporting the loan agreements;
- g) Following up on delinquencies and missed payments of amounts owing to NAMA;
- h) Ensuring compliance by the Debtor with the terms of the loan agreements;
- i) Updating of records for any variation in the terms of the original loan (such as the principal sum owed; the timing of repayments; the loan structure; or any covenants attached to the loan);and
- j) Any other function that would assist in the management of acquired bank assets or that may be requested by NAMA:
- k) To provide for timescales for enforcement measures to be taken.

2.4 Mutual Responsibilities of NAMA and Primary Servicers

The mutual responsibilities of NAMA and Primary Servicers are set out in the servicing direction and include:

- a) Agreed Governance Structure:
Dealing with impediments, service defects and improvement programmes.
- b) Costs:
Subject to European Commission approval, NAMA will pay a fee to the Participating Institutions in respect of the cost of servicing. As provided in Section 134 of the Act, with the consent of the Minister, NAMA may enter into arrangements with a Participating Institution that may provide for the inclusion of performance fees.
- c) Breach of Servicing Standards

If a Participating Institution fails to comply, in NAMA's view, with any obligation under the Act such non compliance will be pursued against that Participating Institution, including seeking damages. NAMA may, at any time, direct the Participating Institution to cease to provide relevant services.

d) NAMA will not be bound by oral communications except where confirmed in a formal letter written by an authorised officer of NAMA.

2.5 Maintenance of licences, compliance with applicable laws

Each Participating Institution will ensure that it, and each of its subsidiaries, obtains and maintains all licences and consents that it requires to service the acquired bank assets and that it, and each of its subsidiaries, complies with the terms of the licences and consents and at all times acts in compliance with applicable laws.

2.6 NAMA owned income and assets held in trust

Any cash or asset received by a Participating Institution as a result of the servicing of the bank assets will be held on trust for NAMA and will be accounted for to NAMA as NAMA directs. The amounts held by the Participating Institution do not and will not, under any circumstances, form part of the Participating Institutions' assets.

2.7 Participating Institutions to assist other service providers

Where NAMA has arranged for a loan to be serviced by a service provider other than the Participating Institution from which the bank asset was acquired, the Debtor, in accordance with the Act, will be obliged to deal with the new service provider. The original Participating Institution will do all such things that NAMA requires to facilitate the provision of service by the new service provider.

2.8 Participating Institutions to assist Master Servicer

NAMA will retain a Master Servicer to aggregate loan data and manage cash receipts from the primary servicers and report to NAMA on the status of its loan portfolio. The Participating Institution, acting as NAMA's primary servicer will cooperate and supply all relevant information on acquired bank assets to the Master Servicer.

2.9 Participating Institutions shall have experienced competent staff

The Participating Institution, acting as NAMA's primary servicer will utilise experienced, competent staff in the servicing of acquired bank assets. NAMA has directed that the Participating Institution will ensure that the staff servicing acquired bank assets on NAMA's behalf are not the same staff as were involved in the relationship management prior to NAMA's acquisition of those assets.

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 2009

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 21st December 2009 being 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.

Master Servicer

means NAMA's appointed servicer provider for data management, reconciliation and aggregation services

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 has not been 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

means 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.

Written communication

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