



Code of Practice - Disposal of Bank Assets

The Code of Practice was first approved by the Minister of Finance on the 5th July 2010, with this updated version approved by the Minister for Finance on the 26th July 2021

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. Historically, these included three categories:

- a) **NAMA - managed** – key credit decisions and relationship management carried out by NAMA with loan administration carried out by the participating institutions and/or third party loan servicers 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.
- c) **Third party - managed** – relationship management and loan administration carried out by a third party loan servicer under a service agreement with NAMA oversight

- 1.3 Since December 2015, all acquired bank assets are NAMA managed (as defined in 1.2 above) with loan administration carried out by a number of third party loan servicers. 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 and generally in relation to its operations and performance.

1.4 This Code of Practice 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 Practice for the Governance of State Bodies (2016)*.

1.5 The aim of this Code of Practice 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
- 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 has established a bank asset disposal strategy with appropriate procedures and Delegated Authority in line 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 has established procedures for the disposal of bank assets consistent with its bank asset disposal strategy. Such procedures include, *inter alia*:

- a) The formation through a public procurement process of panels of experienced loan sales advisors from whom an appointment may be made when a potential loan sale transaction is approved by Delegated Authority;
- b) The requirement that loans being sold may or may not be subject to open marketing depending on the circumstances; and
- c) Final decisions on loans sales and how they are being conducted to be made by the appropriate Delegated Authority within NAMA.

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 that are defined in the Act have the same meaning in this Code and terms not defined below have the meaning given to them in 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.

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.

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 decision making authority obtained from another such as eg the NAMA Board.

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; 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 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
- i) any other agreement or arrangement having a similar effect.

Service Provider

means an entity that provides outsourced services to NAMA and includes professional advisers and third party loan servicers retained by NAMA to provide loan administration services in respect of acquired assets.

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.