



Code of Practice - Risk Management Including With Regard To Debtors

**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 30th June 2019**

1. Scope and Objectives of the Code of Practice

- 1.1 This document is designed to fulfill 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 will act at all times to obtain the best achievable financial return for the State.
- 1.2 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.
- 1.3 NAMA is responsible for managing a portfolio of loans and assets which it has acquired under the provision 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 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 third party loan servicer under a service agreement with NAMA oversight.
- 1.4 Since December 2015, all acquired bank assets are NAMA managed (as defined in 1.3 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)(c) of the Act, is to declare publicly how NAMA intends to manage risk, including in relation to debtors, both in respect of loans and assets under its direction and control and generally in relation to its operations and performance.

- 1.5 The aim of this Code is to clarify, for the benefit of key stakeholders, how NAMA shall discharge its duties in the area of Risk Management to achieve its 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 identified include:

- Taxpayers
- Government / Minister for Finance
- Debtors
- Participating Institutions
- Non-Participating Institutions
- Service Providers
- Investment Partners

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

- 1.6 NAMA has a Risk Governance Framework, Risk Appetite Statement and Enterprise Risk Policy, to which reference should be made on risk related matters.

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 risk management including with regard to debtors. 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.

NAMA is subject to the *Code of Practice for the Governance of State Bodies (2016)* as it relates to risk management.

NAMA has published a Code of Practice relating to the servicing standards of acquired bank assets.

- 1.7 In accordance with Section 35(3) of the Act, NAMA will have regard to the Code and be guided by it.

2. Application of the Code

This Code of Practice applies to all aspects of NAMA's decisions and actions which relate to risk management.

For the purposes of this Code:

Risk Management is the process of identification, analysis and either acceptance or mitigation of uncertainty.

Risk Framework encompasses the governance, policies, process and infrastructure established for the purposes of managing all material risk to which NAMA is exposed.

2.1 Credit Risk

Credit Risk is a measure of the degree of uncertainty with regard to the extent to which loans will be repaid, or otherwise discharged, through enforcement of security, and / or the timing of such repayment or discharge.

NAMA's primary role is to manage the acquired loan portfolio which at the present time¹ is expected to run off over a 7 to 10 year timeframe so as to obtain the best achievable financial return for the State. However, as with a financial institution, the management of these loans has a significant bearing on their subsequent credit performance.

Such management actions, which accordingly give rise to a need for explicit credit risk consideration, include but are not limited to:

- a) New money – extending further credit to an existing Debtor as a means to support them as part of an agreed recovery plan;
- b) Loan restructuring – varying the terms of the acquired loan; and
- c) Enforcement and recovery – exercising rights under the loan contracts, such as vesting, sale or enforcement of guarantees, with a view to enhancing NAMA cash flows relative to what could be expected under the loan agreement itself.
- d) Investment Ventures –where a NAMA group entity invests

¹ Note: the estimated timeline is from the date of original publication of the Code in 2010

along with a third party in a separate entity, which is set up to achieve a particular purpose or objective, ultimately with a view to maximising NAMA's return.

Other credit risks arise which are not directly related to the performance of underlying Debtor obligations, but which nonetheless require explicit Credit Risk Management. These include:

- a) Counterparty credit risk on derivatives - the risk that a financial institution with whom NAMA has entered into or otherwise acquired derivative contracts, for the purposes of hedging currency or interest rate risk, is unable to honour its obligations under those contracts; and
- b) Settlement risk - where a contract involves the two-way exchange of assets, such as in the case of a foreign exchange contract, the risk that other party fails to settle.

2.2 **Business Risks**

NAMA is exposed to various types of business risks which may impact on its financial and operational performance.

Such business risks include but are not limited to:

- a) Asset and liability management (ALM) risk – the risk of financial loss as a result of movements in financial market factors (e.g. interest rates and exchange rates);
- b) Commercial risk – the risk that NAMA's objectives and actions in managing loans and assets, or the value or performance of those loans and assets, may be adversely affected through the commercial or other actions of other entities (such as Non-Participating Institutions);
- c) Market asset risk – the risk that the value and / or yield of an underlying loan security, pursuant to an enforcement action, and pending any sale of such security, may fall as a result of the deteriorating market conditions;
- d) Operational risk - risk arising from a failure in NAMA's day-to-day business operations including e.g. fraud, physical or environmental risks; risks of loss of value to real assets due to physical damage or financial claims;
- e) Regulatory risk - risk that NAMA's ability to discharge its

functions in an efficient manner is restricted by laws and regulations, including those in foreign jurisdictions; or that NAMA fails to adhere to such laws and regulations;

- f) Reputational risk – risk that adverse publicity regarding NAMA's business practices or conduct, whether valid or not, cause disruption in NAMA's ability to deliver against its intended performance and objectives;
- g) Service provider risk – risk of an operational failure or financial loss as a result of a failing by a supplier (including the Master Servicer, third party loan servicers, professional advisers, other outsourced service providers and infrastructure suppliers); and
- h) Tax and legal risk, including litigation risk – risk of possible financial loss as a result of:
 - i. an action by an external party.
 - ii. legal unenforceability of contracts and security.
 - iii. adverse legal judgements
 - iv. non-conformance with tax law
 - v. breach of the General Data Protection Regulation.

3. Key Principles

3.1 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.

3.2 Debtors will be treated in a reasonable manner

In discharging its responsibilities to the taxpayer, NAMA, acting commercially, intends to deal with Debtors in a reasonable manner, but recognising Debtors' corresponding obligations to NAMA as described in section 3.3 (Mutual responsibilities). In particular:

- a) Under the terms of its mandate and powers including those set out in Section 12 of the Act, NAMA has an interest in facilitating, where prudent, the continuation of the ongoing commercial activities of viable Debtors and other stakeholders, and will endeavour to act accordingly;
- b) Respecting Debtors' confidentiality and protection of Debtors' personal data except where disclosure is required by law or in the event of legal pursuit of the Debtor by NAMA to ensure discharge of the debt;
- c) NAMA will endeavour to deal with stakeholders reasonably, vis à vis other peers / competitors in similar circumstances;
- d) Pricing decisions, particularly of new money and restructuring arrangements will be on a risk-adjusted basis consistent with NAMA's commercial objectives;
- e) NAMA will put a process in place to assess each Debtor's business plan to evaluate whether it is economically viable. NAMA will meet with the Debtors that are economically viable and review their proposed business plan to assess the extent to which NAMA may facilitate the ongoing commercial activity of such Debtor and ongoing support from NAMA;
- f) NAMA will operate an internal credit and risk framework

which will define standard aspects of the credit assessment process that will be applied by NAMA to all Debtors. However, the credit decision process will be determined on a case-by-case basis and as such any credit decision will reflect the commercial circumstances of an individual business case from time-to-time.

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

3.3 Mutual obligations

NAMA acknowledges its contractual obligations with respect to Debtors. In fulfilling its objectives as defined in Section 10 of the Act, NAMA will require full and timely cooperation from its Debtors.

NAMA will outline its requirements to facilitate a commercial interaction to exist between NAMA and its Debtors. These requirements are likely to include appropriate access to key personnel and advisers and the provision by the Debtor, of full and accurate information on a timely basis to NAMA or its agents. Where a Debtor does not, in NAMA's opinion, comply with these responsibilities, this will have a bearing on NAMA's decisions and courses of action.

NAMA expects prompt and cooperative engagement from Debtors and their representatives and advisers. This includes the provision of financial and other information (including all loans) on the Debtor's personal and business interests. Where NAMA requests the provision of information from Debtors, NAMA will specify a response time.

3.4 Decision making process

NAMA operates a strong corporate governance framework including delegated authorities from the Board of NAMA to the Chief Executive Officer.

3.5 Risk Management

NAMA operates within a Risk Governance Framework and a Risk Appetite Statement and Enterprise Risk Policy is in place. The Board has established a risk management committee. It is responsible for defining an appropriate risk management framework.

The key features of this framework are:

- a) Enterprise wide, covering all material risks to which NAMA is exposed;
- b) Defined risk tolerances and associated limits and delegated authorities;
- c) Governance arrangements which include segregation of duties and independence;
- d) Segregation of duties; including two committees of the Board to oversee risk and credit decisions;
- e) Portfolio-based with focus on both transaction level and portfolio level risk performance; and
- f) Supported by rigorous quantitative analysis - decisions at all times taken with specific regard to those risks and justified accordingly in terms of maximising expected (i.e. risk-adjusted) recovery on a discounted (i.e. Net Present Value) basis.

All material risks will be captured in the NAMA Risk Register and the Board, through the risk management committee, will monitor ongoing risk exposures and the appropriateness of actions in relation to the management of these risks.

The Board operates under delegated authority to the Chief Executive Officer of NAMA and ensures that controls within NAMA operate effectively. NAMA's Head of Audit & Risk, who reports directly to the Chief Financial Officer, has responsibility for Risk Management. NAMA will seek confirmations from Service Providers that they have appropriate procedures in place to manage the risks associated with the services they provide.

At all times NAMA will operate in accordance with the Act and all applicable laws.

3.6 No proprietary trading or transacting with financial instruments not related to the management of loans

NAMA will not undertake any proprietary trading or trading in financial instruments not related to the management of its exposures:

- a) Proprietary trading – NAMA will not participate in any proprietary speculative trading activities. The use of any market instruments are intended to be for the purpose of mitigating potential market risk associated with the management of any of its assets and liabilities.
- b) NAMA will develop policies to manage foreign exchange and interest rate risk. Such policies and delegated authorities of the NAMA Chief Executive Officer are subject to the review and approval of the Board.

3.7 Powers and rights of NAMA

NAMA has specified powers and rights under the Act. In accordance with the terms of the EU state aid approval, NAMA commits to the following:

- a) Vesting orders (section 153 of the Act)
NAMA will not use a vesting order for syndicated loans without the agreement of the other syndicate members. Similarly, for any other mortgage on the property, NAMA will get agreement of the holders of equivalent charges, in terms of ranking and priority, before using this power.
- b) Compulsory Purchase Orders (CPO – Section 158 of the Act)
NAMA will only exercise the general power to seek a compulsory purchase order contained in Section 158(1) (a) of the Act in circumstances where there are issues concerning ransom strips or access or related issues and the particular facts or the circumstances involved do not clearly fall within the terms of any of the five other situations set out in subsections (1) and (2) of section 158.

For these purposes a ransom strip is any estate or interest in or over land (as “land” is defined in the Land and Conveyancing Law Reform Act 2009) whatsoever without which, in line with good conveyancing practice in Ireland, there is a material impediment or physical impediment to the use or sale of the land for its intended use or purpose or a material impediment to the vesting good and marketable title in the land.

- c) Power to unilaterally amend contracts
NAMA will consult with the EU Commission prior to exercising

the powers under section 102(3) of the Act. Where the contract is with a Non-Participating Institution or relates to a Non-Participating Institution, NAMA will consult with the Non-Participating Institution before a term of the contract is amended.

- d) **Limitations on rights of transfer of assets**
NAMA will not exercise its powers under section 139 of the Act taking account of circumstances involving syndicated loans without the agreement of other syndicate members. Similarly, NAMA will address the position of other loans on the property and ensure the rights of holders of those loans are not degraded.

- e) **Sharing of tax information**
NAMA will not use its power to request tax information from the Revenue Commissioners available to it under section 204(3) of the Act.

- f) **Section 228(2) of the Act**
NAMA will consult with the EU Commission before invoking Section 228(2) as a defence to a claim.

- g) **Annual Report to Competition Authority and EU Commission**
NAMA will report by the 31 January each year with respect to the prior year ending 31 December on the use of its post-acquisition powers under the Act.

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.

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 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.

General Data Protection Regulation

means Regulation (EU) 2016/679 (General Data Protection Regulation) introduced on 25th May 2018 in all EU member states.

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; 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 2009, including any of its subsidiaries that has not been excluded under that section.

Risk Management

means 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 or loan management 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.

Written communication

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