

Proposal for

NATIONAL ASSET MANAGEMENT AGENCY BILL 2009

(subject to approval by the European Commission)

**AID TO NAMA BILL DISCUSSION DOCUMENT
FOR PUBLIC CONSULTATION PURPOSES ONLY**

Purposes of the Bill

The objective of this Bill is to address a serious threat to the economy and to the systemic stability of credit institutions in the State generally by providing for the establishment of a statutory body to be known as the National Asset Management Agency (NAMA). NAMA's purposes include:

- (a) acquiring certain assets from certain persons designated by the Minister;
- (b) effecting the expeditious and efficient transfer of those assets to NAMA;
- (c) holding, managing and realising those assets;
- (d) performing such other functions relating to the management or realisation of those assets as provided for in the Act or as directed by the Minister;
- (e) facilitating restructuring of credit institutions of systemic importance to the economy; and
- (f) taking all steps necessary or expedient to protect, enhance and better realise the value of assets transferred to NAMA.

This Act also provides for (i) the valuation of assets transferring to NAMA and the review of any such valuation (ii) the giving to NAMA of certain powers and functions in respect of land, or an interest in land, acquired by NAMA (iii) the issuing of debt securities by NAMA in the performance of its functions under the Act, (iv) matters regarding certain legal proceedings relating to assets acquired by NAMA and (v) other related matters.

Provisions of the Bill

**PART 1
PRELIMINARY AND GENERAL**

Section 1 - Short title and commencement provides for the short title of the Bill and for its commencement on the day or days that the Minister by order appoints.

Section 2 - Purposes of this Act provides that the purposes of the Act are to address the serious threat to the economy and to the stability of credit institutions in the State and the need to maintain and stabilise the financial system in the State. This section also states as the purpose of the Act the addressing of numerous compelling needs of the State including the need to:

- (i) resolve the financial crisis and achieve a recovery in the economy;

- (ii) protect the State's interest in respect of the guarantees issued under the Credit Institutions (Financial Support) Act 2008;
- (iii) protect the interests of taxpayers;
- (iv) facilitate restructuring of credit institutions of systemic importance to the economy;
- (v) to remove uncertainty about the valuation and location of certain assets of credit institutions of systemic importance to the economy;
- (vi) to restore confidence in the banking sector;
- (vii) to facilitate the availability of credit in the financial markets of the State; and
- (viii) to resolve in an expeditious and efficient manner the problems created by the financial crisis.

Section 3 – Regulatory functions not affected provides that the Act does not prevent the performance by the Governor or Financial Regulator of any of their functions or any of their obligations under the treaties governing the European Communities.

Section 4 - Interpretation is a standard interpretation section, defining terms used in the Bill.

Section 5 - Regulations provides that the Minister may make regulations to do anything that appears necessary or expedient to bring the Act into operation.

Section 6 - Expenses of Minister and NTMA provides that any expenses incurred by the Minister in the administration of the Act will be paid out of moneys provided by the Oireachtas. Any expenses incurred by the NTMA under the Act and, in relation to NAMA and in preparation for the Act, since 7 April 2009 will be paid out of the Central Fund.

Section 7 - Offences provides that any person that intentionally does not comply with its obligations under section 171(2) commits an offence. This section also makes provision for related matters, including the liability of persons committing an offence under the section.

PART 2

NATIONAL ASSET MANAGEMENT AGENCY

CHAPTER 1: ESTABLISHMENT, FUNCTIONS AND POWERS

Section 8 - Establishment day provides that the Minister will by order appoint a day as the day when NAMA is to be established.

Section 9 - Establishment of NAMA establishes NAMA as a statutory body on the establishment day.

Section 10 - Purposes of NAMA provides that the purposes of NAMA will be to contribute to the achievement of the purposes of the Act by acquiring eligible bank assets from participating institutions, dealing with the assets acquired by it expeditiously and protecting or enhancing their long-term economic value and, in so far as possible, NAMA will, as expeditiously as possible, obtain the best achievable financial return for the State.

Section 11 – Functions of NAMA provides that in order to achieve its purposes, NAMA will perform the following functions: (i) acquire eligible bank assets from participating institutions, (ii) hold, manage and realise assets, (iii) perform such other functions, related to the management or realisation of the bank assets NAMA has acquired, as are directed by the Minister and (iv) take all steps necessary or expedient to protect, enhance or realise the value of bank assets NAMA has acquired including the disposal of loans for the best achievable price, securitising or refinancing portfolios of loans, holding, realising and disposing of security and repaying any sums it borrows. NAMA will carry out any other activities required pursuant to the Act. The Minister may by order confer additional functions on NAMA.

Section 12 – Powers of NAMA provides that NAMA has all powers necessary or expedient for, or incidental to, the achievement of its purposes and the performance of its functions. This section goes on to specify certain specific powers of NAMA including, amongst others, the ability to provide equity capital and credit facilities and to enforce any security, guarantee or indemnity.

Section 13 - Minister's power to issue guidelines to NAMA provides that the Minister may, after consultation with the Governor of the Central Bank, issue guidelines in writing to NAMA for any purpose relating to NAMA's functions under the Act. In its annual report, NAMA will report on its compliance with any such guidelines.

Section 14 - Minister's powers of direction provides that the Minister may give directions in writing to NAMA concerning the achievement of the purposes of the Act. In its annual report, NAMA will report on its compliance with any such directions.

Section 15 – No shadow or de facto directorship provides that the Minister, NAMA and certain other specified persons will not be regarded as a shadow or a *de facto* director nor a person discharging managerial responsibilities of any participating institution or of any debtor, guarantor or surety in relation to any bank asset that NAMA has acquired or any associated debtor.

Section 16 – Prevention of corruption provides that the provisions of the Prevention of Corruption Acts 1889 to 2001 apply to every officer of NAMA and the Chief Executive Officer of NAMA and other members of the Board.

CHAPTER 2: MEMBERSHIP OF BOARD AND RELATED MATTERS

Section 17 – Functions of Board provides that there will be a Board of NAMA. This section also specifies the functions of the Board which include, among others, setting the strategic objectives and targets to be met by NAMA and taking all reasonable steps available to achieve those targets.

Section 18 – Membership of Board provides that the Board will consist of 7 members appointed by the Minister and, as *ex officio* members, the Chief Executive Officer of NAMA and the Chief Executive of the NTMA. Members will be appointed only if they have expertise and experience at a senior level on one or more of certain specified areas including, amongst others, finance and economics, law, valuation and risk management. Within 3 months of appointment, each member of the Board will provide the Minister with a tax clearance certificate.

Section 19 – Term of office of appointed members provides that the term of office of an appointed member of the Board is 5 years save that, of the first appointed members, the Minister will appoint 2 members for a term of office of 3 years and 3 members for a term of office of 4 years. No appointed member is eligible to serve more than 2 consecutive terms of office.

Section 20 – Remuneration, etc., of appointed members provides that the Minister will determine the level of remuneration of appointed members and their entitlement to reimbursement for expenses.

Section 21 – How appointed members cease to hold office establishes the circumstances where an appointed member of the Board ceases to be a Board member. The section also provides for resignation of appointed members of the Board. The Minister may remove an appointed member from the Board under certain circumstances set out in this section.

Section 22– How ex-officio members cease to be Board members establishes the circumstances where an *ex-officio* member of the Board ceases to be a Board member. When an *ex-officio* member ceases to be a Board member, they are also deemed to have resigned from any directorship of any NAMA group entity or any NAMA wholly owned subsidiary.

Section 23 – Filling of casual vacancies, etc. provides that the Minister may appoint a person to fill a vacancy that arises on the Board because of the death, resignation, retirement, disqualification or removal from office of a previously appointed member of the Board.

Section 24 – Appointment and remuneration, etc., of Chairperson provides that the Minister will nominate one of the appointed members of the Board as the Chairperson. The Chairperson will hold this office for a term of 5 years. A person can hold the office of Chairperson for a maximum of 2 terms only.

Section 25 – Meetings of Board provides that the Board will hold such meetings as are necessary for the performance of its functions and also provides for related matters such as quorum, voting and the chairing of meetings etc.

Section 26 – Electronic Meetings provides that the Board may hold meetings by use of electronic communications.

Section 27 – Resolutions by circulation of copies provides that the Board may pass a resolution without a meeting where all of the Board members that are entitled to vote sign a document stating that they are in favour of the resolution.

Section 28 – Seal of NAMA, etc. provides that NAMA will have a seal. This section also provides for the terms of authentication and status of the seal.

Section 29 – Disclosure of interests provides that each member of the Board must disclose any pecuniary or other beneficial interest he or she has in, and which is material to, a matter that falls to be considered by the Board. This section also sets out the procedures to be followed in the event that any member of the Board has such an interest and provides for related matters.

Section 30 – Committees to be established by Board provides that the Board will establish an audit committee, a credit committee and a risk committee. The section also provides for the constitution of these committees and, in the case of the audit committee, provides that of its 6 members there will be 2 members appointed by the Minister who are not members of the Board. The section also provides that the members of the credit committee and the risk committee can be either members of the Board or officers of NAMA but at least 2 members of each committee must be members of the Board. Additionally, the Board may establish other committees. The section also provides for related matters.

Section 31 – Advisory committees provides that the Board may establish advisory committees to advise it. An advisory committee may include persons who are not members of the Board but a majority of the members of an advisory committee will be members of the Board.

Section 32 – Indemnification of members of Board and officers of NAMA, etc. provides that each member of the Board and each officer of NAMA, a director of a NAMA wholly owned subsidiary, a director of a NAMA group entity and a member of the staff of the NTMA is indemnified in relation to anything done or omitted to be done by them in the performance or the exercise of any of NAMA's functions or powers under the Act, unless such act or omission is proved to have been done, or omitted, in bad faith.

Section 33 – Codes of practice provides that NAMA will prepare codes of practice to govern certain matters including, amongst others, the conduct of officers of NAMA and servicing standards for acquired bank assets. Each such code of practice is subject to the Minister's approval. This section also makes provision for related matters.

CHAPTER 3: CHIEF EXECUTIVE OFFICER

Section 34 – Appointment of Chief Executive Officer provides that the Minister, after consultation with the Chief Executive of the NTMA and the Chairperson of NAMA, will appoint a Chief Executive Officer of NAMA and also makes provision for the position and status of the Chief Executive Officer.

Section 35 – Chief Executive Officer’s functions provides that the Chief Executive Officer will manage and control generally the administration and business of NAMA and the staff assigned to NAMA and will carry out any of the other functions conferred on him by the Act or the Board. This section also provides for the delegation of the Chief Executive Officer’s powers. The Chief Executive Officer will be the officer accountable for the accounts of NAMA.

Section 36 – Resignation of Chief Executive Officer provides that the Chief Executive Officer may resign his or her position by letter.

Section 37 – Removal of Chief Executive Officer from office provides for the circumstances in which the Chief Executive Officer ceases to hold that office and in which the Chief Executive Officer may be removed.

CHAPTER 4: NAMA’S RELATIONSHIP WITH NTMA

Section 38 – NTMA to provide resources to NAMA provides that the NTMA will provide NAMA with, or procure for NAMA, 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, are necessary or expedient for NAMA to perform its functions.

Section 39 – NTMA to provide staff to NAMA provides that the NTMA will assign such number of its staff to NAMA as the Board determines, acting upon the recommendation of the Chief Executive Officer of NAMA after consultation with the Chief Executive of the NTMA, to be necessary for NAMA to perform its functions. Before a person is assigned to NAMA, the NTMA will ensure that the person provides a statement of his or her interests, assets and liabilities; the purpose of this is to try to prevent a conflict of interest. The section also makes provision for related matters.

Section 40 – Suspension of officers of NAMA provides for the circumstances where the Chief Executive Officer of NAMA, after consultation with the Chief Executive of the NTMA, may suspend an officer of NAMA.

Section 41 – Guidelines in relation to staff conduct provides that NAMA will, after consultation with the NTMA, draw up guidelines on misconduct and procedures for investigation and suspension of any officer of NAMA. These guidelines are subject to approval of the Minister and will be submitted to the Minister for approval no later than three months after the establishment of NAMA.

CHAPTER 5: CONTRACTED SERVICE PROVIDERS

Section 42 – Power to engage expert advisers and service providers provides that NAMA may engage the services of any expert adviser or other service provider it considers necessary or expedient in connection with the performance of its functions. In performing its functions, NAMA may take into account the resources available to it from the National Building Agency or any other appropriate State agency.

Section 43 – Professional standards and audit provides that, in contracts for the provision of services to NAMA, NAMA will seek to ensure that each expert adviser or service provider operates to the highest standards. This section also provides for related matters so that, for example, NAMA is entitled to engage auditors to carry out an audit of the books, accounts and other financial statements of the expert adviser or service provider in so far as they relate to the services performed by NAMA.

PART 3
FINANCE, PLANNING, ACCOUNTABILITY AND REPORTING

Section 44 – Financing arrangements and expenses provides for the financing of NAMA’s operations and governs the power of NAMA and a NAMA group entity to borrow with and without the guarantee of the Minister. This section also provides that the aggregate limit on the borrowing of funds guaranteed by the Minister will be €10 billion or any lesser amount that the Minister prescribes.

Section 45 – Annual statements provides that NAMA will, before 1 July 2010 and 3 months before the commencement of each subsequent financial year, prepare in respect of that financial year a statement specifying certain matters including, amongst others, the proposed objectives of NAMA for the financial year concerned and the proposed strategies and policies for achieving those objectives. Each annual statement will be laid before both Houses of the Oireachtas.

Section 46 – Annual accounts provides that NAMA will keep proper accounts, in a form directed by the Minister. It also provides a list of information to be included in the annual accounts including, for example, a list of all debt securities issued by NAMA.

Section 47 – Annual reports provides that NAMA will, not later than 6 months after the end of each financial year, make a report to the Minister of its activities during the financial year. Each annual report will be laid before both Houses of the Oireachtas.

Section 48 – Other reports to Minister provides that the Minister may require NAMA, and any NAMA group entity, to report to him or her on any matter, including those specified in the section. The content of any such report will be deemed to be confidential information.

Section 49 – Audit of accounts by Comptroller and Auditor-General provides that NAMA must submit its accounts to the Comptroller and Auditor General for audit within 4 months after the end of the financial year to which they relate. The audited accounts will be laid before both Houses of the Oireachtas.

Section 50 – Accountability to Committee of Public Accounts provides that the Chief Executive Officer and the Chairperson will, whenever required by the Committee of Dáil Éireann established to examine and report on the appropriation accounts and reports of the Comptroller and Auditor General, attend and give evidence to that Committee on the matters specified in this section.

Section 51 – Appearances before another Oireachtas Committee provides for the attendance of the Chairperson and the Chief Executive Officer of NAMA before a committee appointed by either or both Houses of the Oireachtas to examine matters relating to NAMA.

Section 52 – Repayment to Central Fund to redeem debt provides that NAMA, or a subsidiary of NAMA, will repay any funds advanced to it by the Minister out of its own resources from time to time. NAMA may after consultation with the Minister use any surplus funds to redeem and cancel debt securities issued under this Act, after which any remaining surplus funds will be credited to the Central Fund. The section also provides that the assets of NAMA at its dissolution will be transferred to the Minister or paid into the Exchequer.

PART 4
DESIGNATION OF CREDIT INSTITUTIONS AS PARTICIPATING INSTITUTIONS AND
DESIGNATION OF ELIGIBLE BANK ASSETS

CHAPTER 1: DESIGNATION OF PARTICIPATING INSTITUTIONS

Section 53 – Application for designation as participating institution provides that a credit institution may apply to the Minister within 28 days of the establishment day, or such longer period prescribed

by order by the Minister, for it and all of its subsidiaries to be designated as participating institutions. This section also provides for related matters in respect of that application.

Section 54 – Capacity of participating institutions that apply for designation provides that a participating institution will be taken to have the power and capacity to apply for and become a participating institution and to warrant the information provided by it to NAMA. This section also provides that the participating institution will be taken to have the power and capacity to engage in any of the transactions specified in the section including, for example, the provision of credit facilities, in so far as they relate to designated bank assets of the participating institution and relevant subsidiaries.

Section 55 – Designation of participating institutions provides that the Minister, after consultation with the Governor of the Central Bank and the Financial Regulator, may designate a credit institution as a participating institution. In designating a credit institution as a participating institution, the Minister has to be satisfied that the credit institution is systemically important to the financial system in the State and that the acquisition of eligible bank assets from that credit institution is necessary to achieve the purposes of the Act. The designation of a credit institution includes all of its subsidiaries, except any subsidiary that is specifically excluded by the Minister. This section also makes provision for related matters, including matters arising following designation of a participating institution including, for example, the requirement that a designated institution will cooperate promptly and fully with NAMA in its due diligence process.

CHAPTER 2: DESIGNATION OF ELIGIBLE BANK ASSETS

Section 56 – Eligible bank assets provides that the Minister may, after consulting with NAMA, the Governor of the Central Bank and the Financial Regulator, prescribe classes of bank asset as eligible bank assets. Without limiting this general power, classes of eligible bank assets may include, for example, credit facilities granted in respect of development land.

Section 57 – Dealings by credit institutions with eligible bank assets after application for designation as participating institutions provides for the manner in which a participating institution, an applicant credit institution or other person on whose behalf an application to become a participating institution has been made will deal with all of its eligible bank assets.

PART 5 VALUATION METHODOLOGY

Section 58 – Determination of acquisition values – valuation methodology provides that the acquisition value of a bank asset is its long-term economic value determined by NAMA. The section also provides that the long-term value of a bank asset is to be calculated in the manner set out in this section and in accordance with relevant regulations issued by the Minister and European state aid rules. NAMA may, after consultation with the Minister and subject to any relevant regulations issued by the Minister, determine that particular bank assets should have an acquisition value equal to their current market value or other intermediate value not exceeding the long-term economic value. This section also makes provision for related matters.

Section 59 – Regulations as to adjustment factors, etc. provides that the Minister may make regulations providing for adjustment factors to be taken into account in determining the long-term economic value of a bank assets and the property comprised in the security for a credit facility that is a bank asset.

PART 6
ACQUISITION OF BANK ASSETS AND RELATED MATTERS

CHAPTER 1: ACQUISITION OF BANK ASSETS

Section 60 – Participating institutions to provide information about eligible bank assets provides that a participating institution will, once directed, provide NAMA with information about each of its bank assets (in particular, about the enforceability and marketability of the security associated with each such bank asset) that may be an eligible bank asset. NAMA may direct that any such information provided is certified as accurate. This section also provides that NAMA may request a participating institution to provide a report or certificate about any of its eligible bank assets and, in such a report or certificate, the participating institution will disclose in utmost good faith all matters and circumstances in relation to each bank asset that might materially affect NAMA’s decision to acquire the bank asset or the valuation of it. NAMA and a NAMA group entity may disclose to each other information obtained.

Section 61 – Production of documentation, books and records for inspection provides that a participating institution will, if required to do so, produce to NAMA for inspection the credit facility documentation, books and records kept in connection with any eligible bank asset. There is also provision for NAMA to apply to the Court for an order directing the institution to provide such documentation, books or records or to provide the facilities for such inspection, as the case requires.

Section 62 – Provision of information and explanations, etc. provides that a participating institution will provide information and explanations on matters relevant to the acquisition of the bank asset and shall also ensure that an officer or staff member will provide an explanation of any matters disclosed in information or credit facility documentation, books or records provided to NAMA. There is also provision for NAMA to apply to the Court for an order directing the institution to secure the provision of the explanation.

Section 63 – Decision about acquisition of eligible bank assets provides that NAMA may acquire an interest in an eligible bank asset where NAMA considers it necessary or desirable to do so. This section also sets out a number of factors that NAMA may take into account in reaching its decision including, for example, whether the security is adequate or has been perfected. This section also provides that NAMA is not obliged to acquire any particular, or any, eligible bank assets or interests at all of a participating institution.

Section 64 – NAMA to prepare acquisition schedule provides that NAMA will identify eligible bank assets of a participating institution that it proposes to acquire and indicate a timetable for the proposed acquisition. NAMA may, for the purpose of identifying the eligible bank assets that it proposes to acquire, consult with the participating institution concerned, but is not obliged to do so. When NAMA has identified the eligible bank assets that it proposes to acquire and has determined the acquisition value for each of those bank assets, NAMA will serve on the institution an acquisition schedule or schedules setting out the details of the acquisition as provided in the section. The date of acquisition of a designated eligible bank asset will be at least 28 days after the acquisition schedule is served, unless NAMA specifies a shorter period.

Section 65 – Amendment of acquisition schedule provides that NAMA may, after the date of service of an acquisition schedule but before the acquisition date, revoke the acquisition schedule or amend it.

Section 66 – Effect of service of acquisition schedule provides that the service of an acquisition schedule on a participating institution operates to transfer to NAMA each bank asset specified in the acquisition schedule on the date of acquisition specified in the acquisition schedule and subject to the terms and conditions provided for in regulations made by the Minister. This section also provides that operation of this section is not affected by the participating institution serving notice that it objects to

the value placed on individual bank assets or dispute the total portfolio acquisition value. Service of an acquisition schedule does not, however, transfer to NAMA a bank asset if (i) before the date of acquisition the participating institution gives notice of objection of the inclusion of the bank asset in the acquisition schedule and (ii) on the date of acquisition the Minister has not confirmed the inclusion in the acquisition schedule or NAMA has removed the asset from the acquisition schedule or revokes the acquisition schedule.

Section 67 – Effect of service of acquisition schedule in relation to foreign assets makes specific provision for the acquisition of foreign assets by NAMA by providing that (a) if the law governing the transfer is the law of the State, the acquisition is valid, binding and enforceable, (b) if the law governing the transfer is foreign law and that law permits the transfer, the participating institution will do everything necessary to effect the transfer and, upon completion, will be deemed to have effected the transfer in accordance with the acquisition schedule and (c) if the law governing the transfer is foreign law and that law does not permit the transfer, the participating institution will do all that is permitted to transfer to NAMA the greatest interest possible in the asset and that interest will be deemed to have transferred in accordance with the acquisition schedule. The section further provides that a participating institution must immediately upon being so directed by NAMA take such steps and execute and deliver such documents to ensure that there is a binding and enforceable transfer to NAMA, as a matter of applicable foreign law, of the foreign asset. This section also provides for related matters.

Section 68 – Payment for bank assets provides that as soon as possible after the service of an acquisition schedule (or amended acquisition schedule), NAMA will notify the Minister and the NTMA of the amount payable to the participating institution concerned and, within 28 days after the service of the acquisition schedule, either the Minister will issue debt securities to NAMA or to the NAMA group entity which is to acquire the bank assets concerned or NAMA, or relevant NAMA group entity, may issue debt securities to the participating institution, in each case, equal to the value of the amount payable for the bank assets. On the date of acquisition, NAMA or the relevant NAMA group entity will transfer the issued debt securities to the participating institution. This section also makes specific provision for the payment for foreign bank assets, in particular providing that payment will be made on the later of either (i) the acquisition date or (ii) the date on which the participating institution has met its obligations under the Act.

Section 69 – Clawback of overpayments provides that if a participating institution receives in error from NAMA an amount that is more than the amount due to the participating institution, the institution must repay an amount that is equal to the overpayment.

Section 70 – No dealings with bank assets after service of acquisition schedule provides that after the service of an acquisition schedule on a participating institution, the participating institution will continue to manage each bank asset specified in the schedule and will not make nor permit the alteration of a bank asset concerned without NAMA's written consent until the acquisition date and will notify NAMA in writing of any change in each bank asset concerned.

Section 71 – Books, records and title documents of participating institutions provides that NAMA may direct a participating institution from which it has acquired a bank asset to deliver to NAMA, or as otherwise directed, all of its books and records and other documents in relation to the bank asset concerned. Where so directed, the participating institution will also ensure that an officer, employee or agent will provide an explanation of any such book, record or document provided (or of any apparent omission). This section also makes provision for NAMA to apply to the High Court for an order directing the institution to deliver the book or record or to secure that an officer or staff member provides the explanation sought, as the case requires.

Section 72 – Objection to inclusion of bank asset in acquisition schedule provides that if a participating institution wishes to object to the inclusion of a bank asset in an acquisition schedule, it will do so in accordance with section 91. This section also provides that a participating institution

may request, and NAMA may implement, the correction of an obvious error in an acquisition schedule.

Section 73 – Regulations, etc., relating to terms and conditions for acquisition schedule provides that NAMA may, with the consent of the Minister, prescribe by regulations the terms and conditions which may be contained in an acquisition schedule, including regulations in respect of the warranties that participating institutions are to provide.

Section 74 – Notice to debtors, etc., of acquisition of bank assets provides that as soon as possible after the acquisition of a bank asset from a participating institution by NAMA, the participating institution will make reasonable efforts to notify each debtor, etc of the acquisition of the bank asset by NAMA. This section also provides that NAMA is not liable for any failure or delay in such notification.

Section 75 – NAMA to notify participating institution of practical completion of acquisition process provides that when NAMA has served on a participating institution acquisition schedules that specify all of the bank assets that NAMA has acquired or proposes to acquire from the participating institution, NAMA will serve a notice (a ‘practical completion notice’) in writing of that fact. NAMA will not serve any further acquisition schedules on a participating institution after service of a practical completion notice.

Section 76 – Dispute over total portfolio acquisition value provides that if a participating institution wishes to dispute the total portfolio acquisition value, it will do so in accordance with sections 98 and 99. This section also provides that a participating institution may request, and NAMA may implement, the correction of an obvious error in an acquisition schedule.

CHAPTER 2: EFFECTS OF ACQUISITION OF BANK ASSETS

Section 77 – Construction of certain references to NAMA provides for the construction of certain references in this Chapter, including that that certain references to NAMA in this Chapter are to be construed as references to a NAMA group entity.

Section 78 – NAMA to have rights of creditors after acquisition of bank assets provides that after NAMA acquires a bank asset, NAMA has and may exercise all the rights and powers and is subject to all of the obligations (save any excluded obligations and liabilities) that the participating institution from which the bank asset was acquired had in relation to the bank asset and the debtor or any guarantor, surety, receiver, other person, liquidator or examiner concerned. This section also provides that the participating institution ceases to have those rights and obligations. This section also provides for related matters, including rights in relation to set-off or combination of accounts exercisable by, or for the benefit of, NAMA.

Section 79 – Enforcement of certain representations, undertakings and obligations provides that if, in relation to a bank asset that NAMA has acquired, it is alleged that any representation etc, was made, given or undertaken in favour of the debtor or another person by the participating institution or some person on its behalf, the terms of which are not disclosed to NAMA or noted in writing (or in respect of which there is no record of any consideration paid) and which would affect a creditor’s rights in relation to the asset, the representation etc., is enforceable, if at all, only against the participating institution and gives rise to a remedy in damages only.

Section 80 – Acquisition of bank assets not to affect conditions, etc. provides that after a bank asset is acquired by NAMA, the terms and conditions of the bank asset are unchanged. This section also makes provision to avoid contracts being frustrated.

Section 81 – NAMA to be notified of certain matters provides that after a bank asset is transferred to NAMA, if the participating institution from which the asset was acquired is notified or becomes

aware of any significant actual or proposed dealing, event or circumstance in relation to the bank asset that would adversely affect the bank asset or NAMA's rights, obligations or liabilities in relation to it, the participating institution will notify NAMA of the dealing, event or circumstances without delay.

Section 82 – Acquisition of bank assets not to render NAMA liable for wrongs by participating institutions provides that nothing in the Act will render NAMA, a NAMA wholly owned subsidiary or a NAMA group entity liable for any legal or equitable wrong committed by a participating institution. The section also provides that no legal proceedings will be brought against any such parties in relation to any legal or equitable wrong committed by a participating institution.

Section 83 – Rights of others not affected by vesting of bank assets, etc. provides that nothing in the Act relieves NAMA and a NAMA group entity of any obligation, at law or in equity except to the extent the Act specifically provides otherwise.

Section 84 – NAMA not required to register certain instruments, etc. provides that where a bank asset has been acquired by NAMA or a NAMA group entity, NAMA or the relevant NAMA group entity will become the registered owner of that bank asset without having to become registered under certain specified enactments.

Section 85 – NAMA may give certificate in relation to bank assets held provides that NAMA or a NAMA group entity may certify under its seal that NAMA holds a bank asset specified in the certificate. The certificate will be admissible in any proceedings as evidence of the document and matters mentioned in the document.

Section 86 – NAMA may give certain directions in relation to bank assets provides for the giving of directions by NAMA, in relation to a bank asset that NAMA has acquired, to a participating institution and, where the terms and conditions of a bank asset entitle NAMA to do so, to third parties.

Section 87 – Effect of acquisition of bank assets on certain other rights deals with instruments to which participating institutions, subsidiaries and others are party or in which they have an interest. Commercial instruments may provide for their termination or other consequences where the ownership in assets etc. of one of the contracting parties changes. This section provides that specified consequences for such instruments will not, without the express consent of NAMA, arise by virtue of certain actions or events including, for example, any entity becoming a participating institution.

Section 88 – Minister's power to modify application of section 87 provides that the Minister may, where he thinks it appropriate, by order reduce the effect of the restriction provided for in section 87 where the effect of the section would be unduly onerous, or cause undue unfairness or undue hardship.

PART 7

REVIEW OF DECISIONS RELATING TO ACQUISITION

CHAPTER 1: EXPERT REVIEWER

Section 89 – Appointment and functions of expert reviewer provides for the appointment of a suitably qualified person as the expert reviewer for the purposes of this Chapter. This section also provides for related matters.

Section 90 – Procedure of expert reviewer provides that, subject to any regulations made by the Minister, the expert reviewer will determine procedures for dealing with certain matters including, among others, the form and type of submissions made to the expert reviewer.

Section 91 – Objections to inclusion of bank assets in acquisition schedules provides that if a participating institution objects to the inclusion of a bank asset in an acquisition schedule, the

participating institution will only do so on the ground that the bank asset is not an eligible bank asset. The participating institution must give written notice within 7 days of receipt of the acquisition schedule. On receipt of notice, NAMA will either remove the bank asset from the schedule, revoke the asset schedule or continue with the acquisition in accordance with the acquisition schedule and refer the objection to the expert reviewer.

Section 92 – Materials, etc., to be made available to expert reviewer provides that, where an objection is referred to the expert reviewer, a participating institution will provide to the expert reviewer and NAMA all material on which it bases its objection and any comments it may wish to make regarding the objection and also provides for related matters. This section also provides that NAMA and the participating institution will be afforded an opportunity to respond to the other's material and comments.

Section 93 – Opinion of expert reviewer provides that the expert reviewer will advise the Minister within the period specified as to whether he or she is of the opinion that the bank asset is or is not an eligible bank asset.

Section 94 – Confirmation by Minister of transfer, etc. provides that, following consideration of the advice of the expert review, the Minister will either, within the time specified, by order confirm that the bank asset is acquired by NAMA in accordance with the acquisition schedule or direct NAMA to amend the acquisition by omitting the bank asset or direct NAMA to revoke the acquisition schedule.

Section 95 – Costs provides for the payment of the costs of a review under this Chapter. Costs become payable after the event. This section provides, in particular, that costs of a review under this Chapter will be payable by a participating institution where the Minister confirms under section 94 that a bank asset is acquired by NAMA in accordance with the acquisition schedule.

CHAPTER 2: VALUATION PANEL

Section 96 – Appointment of valuation panel provides that there will be a valuation panel to adjudicate on disputes referred to it by NAMA under *section 72* and *section 76* and further provides that the Minister may appoint up to 12 members of the valuation panel who have relevant expertise or specialist knowledge.

Section 97 – Procedure of valuation panel provides that the Minister may make regulations providing for the procedure of the valuation panel. This section also empowers the valuation panel to provide for procedures to deal with certain specified matters.

CHAPTER 3: REVIEW OF VALUATIONS

Section 98 – Objection to value placed on bank assets acquired from participating institution provides that if, after service of the acquisition schedule, a participating institution objects to the acquisition value of a bank asset, it will, within 14 days of receipt of the acquisition schedule, serve on NAMA a notice of its objection. On receipt of a notice, NAMA may remove the disputed bank asset from the acquisition schedule, revoke the acquisition schedule and/or continue with the acquisition in accordance with the schedule. This section also provides that, where NAMA continues an acquisition, the participating institution may dispute the total portfolio acquisition value.

Section 99 – Dispute over total portfolio acquisition value provides that if, after service of a practical completion notice, a participating institution wishes to dispute the total portfolio acquisition value, it will within 14 days of receipt of the practical acquisition notice, serve notice of this and it will only do so if it is of the opinion that the total portfolio acquisition value is incorrect having regard to the current market value of the acquired portfolio and if it has served one or more notices under section 98 in respect of such amount of assets as comprises at least 12.5% (by value) of the total portfolio acquisition value. Upon receipt of the notice, NAMA will refer it to the valuation panel for review.

Section 100 – Material, etc., to be made available to valuation panel provides that a participating institution that has served notice under section 99 will, within 28 days of the service of such notice, provide the valuation panel and NAMA with all of the material on which its dispute is based and any comments it may wish to make regarding the disputed total portfolio acquisition value. NAMA is also required to provide all the information it had before it determined each acquisition value concerned and any comments it may wish to make on the dispute, within 28 days of receipt of such notice. This section also provides that NAMA and the participating institution will be afforded an opportunity to respond to the other's materials and comments.

Section 101 – Function of valuation panel provides that the function of the valuation panel is to review the total portfolio acquisition value specified for an acquired portfolio within 90 days of receipt of materials and comments (or such longer period as the Minister specifies) and to advise the Minister whether it considers that value to be correct or incorrect. This section also provides that, where the valuation panel consider the value to be incorrect, it shall advise the Minister of what it considers to be the correct value.

Section 102 – Minister's determination of total portfolio acquisition value provides for the Minister's consideration of the valuation panel's advice and states that the Minister may either confirm the portfolio acquisition value as advised by the valuation panel or, if he considers that the advice is wrong, remit the matter to the valuation panel, setting out his reasons for doing so. Where the Minister determines that the value should be increased, this section provides that the Minister may direct NAMA to compensate the participating institution to the amount of the appropriate difference as calculated under the section (whether in the form of further consideration or by the return of bank assets or both), save where the current market value is not greater than the acquisition value in which case no further amount is payable. Where the Minister determines the value should be decreased, the participating institution will repay the overpayment. This section also provides for related matters.

Section 103 – Withdrawal of dispute provides that a participating institution may withdraw a notice served under section 99.

Section 104 – Costs of review of valuations provides for the payment of the costs of a review under this Chapter. Costs become payable after the event. This section provides, in particular, that costs of a review under this Chapter will be payable by a participating institution unless the Minister's determination under section 102 entitles the participating institution to compensation.

CHAPTER 4: RELATIONSHIP BETWEEN NAMA AND PARTICIPATING INSTITUTIONS

Section 105 – Participating institutions to act in utmost good faith provides that each participating institution must act in utmost good faith in its dealings with the Minister and NAMA and their agents. This section also provides that participating institutions will inform the Minister and NAMA of any impediment to the purposes of the Act, etc, and take all reasonable steps to resolve any such impediment and also provides for related matters.

Section 106 – Breach of representation or statutory requirements provides that a participating institution that fails to comply with a requirement specified in *section 55* or a representation given to NAMA is liable to NAMA in damages in addition to any other consequences under the Act.

Section 107 – Servicing of acquired bank assets by participating institutions provides that a participating institution from which NAMA acquires a bank asset will continue to service the bank asset and the participating institution must comply with directions given by NAMA in respect of servicing an asset. This section also provides for related matters.

Section 108 – Other servicing arrangements provides that, where NAMA has made arrangements for the provision of services in respect of a bank asset, then the terms of the bank asset will be taken to

require any debtor, etc. in respect of that bank asset to deal with the service provider. This section also makes provision for related matters.

Section 109 – NAMA may give directions about certain bank assets not acquired provides that where NAMA has acquired a bank asset, NAMA may direct the participating institution from which the bank asset was acquired to deal with any part of the bank asset not acquired or any related asset in a specified way.

Section 110 – Additional payment on servicing of bank assets provides that, with the Minister's consent, NAMA may agree on an arrangement in relation to the servicing of bank assets with a participating institution.

Section 111 – Participating institutions to indemnify NAMA provides that if so directed by NAMA or a NAMA group entity, a participating institution will indemnify NAMA or the NAMA group entity and its officers against any liability or loss arising in relation to certain specified matters. This section also provides that, where the High Court determines that a third party owns a bank asset and, as a result, NAMA or a NAMA group entity is obliged to transfer that bank asset or pay damages, the participating institution will indemnify NAMA or the NAMA group entity against that liability. This section also provides for related matters.

Section 112 – Conduct of legal proceedings in relation to acquired bank assets provides that where NAMA is a party to any legal proceedings affecting an acquired bank asset, the participating institution from which the bank asset was acquired will, if NAMA so requests, provide assistance reasonably required for the purpose of the proceedings including the provision of documents and information, the making available of witnesses and the provision of evidence.

PART 8 POWERS OF NAMA IN RELATION TO ASSETS

CHAPTER 1: GENERAL POWERS OF NAMA IN RELATION TO ASSETS

Section 113 – Definition is a standard interpretation section, defining terms used in this Part.

Section 114 – NAMA's powers to dispose of assets provides NAMA may transfer, assign, sell or otherwise dispose of any acquired bank assets (including any credit facility) to any person despite certain specified restrictions on disposal.

Section 115 – Power to discharge prior charge provides that where NAMA has acquired a bank asset that is secured by a charge, but the charge is a second or subsequent charge, NAMA may redeem or discharge any prior charge in accordance with its terms.

Section 116 – Power of entry to protect value or condition of land or buildings provides that where NAMA has acquired a bank asset that is, or is secured by, a charge over land and the land or any building or structure on it has been abandoned or has fallen into disrepair *etc.* then NAMA may apply to the District Court for an entry and maintenance order. This section also makes provision for related matters.

Section 117 – Certain instruments by NAMA to be taken to be deeds provides that any land in which NAMA has an interest can be conveyed by an instrument under the seal of NAMA that is expressed to convey that interest (in whole or in part) and that this will extinguish the interest of any other chargee or mortgagee of the land, other than a chargee which has priority to the interest of NAMA. Where the interest of a chargee or mortgagee is extinguished, their interest attaches in the same order or priority, to the proceeds of sale rather than against the land or to a purchaser of the land from NAMA.

Section 118 – Overreaching for protection of purchasers provides that a conveyance by NAMA to a purchaser of a legal estate or legal interest in land overreaches any equitable interest in the land, whether or not the purchaser has notice of the equitable interest. Where an equitable interest is overreached it attaches to the proceeds of sale. Certain savers and exceptions are provided in the event of agreements to the contrary, interests arising by virtue of equitable mortgages and other specified exemptions.

Section 119 – Effect of certain assurances of land provides that any right or interest that existed in charged land before the transfer or vesting in NAMA of the relevant charge, will be taken to have created, for the benefit of the charged land, a right over any land retained by the grantor of the right or interest that it was reasonable to assume was within the contemplation of the parties at the date of the grant, or would have been in contemplation at that time if they had averted to the matter.

Section 120 – Certain receivers not obliged to sell property, etc. provides that neither a receiver of the rents and profits of property appointed by NAMA nor a receiver appointed to the property of a company by NAMA in its capacity as creditor is obliged to sell any property at any particular time, or at all, but that such receiver is accountable for all profits and other monetary benefits arising directly from possession of the property.

CHAPTER 2: STATUTORY RECEIVERS

Section 121 – Definition is a standard interpretation section, defining terms used in this Chapter and in Schedule 1.

Section 122 – NAMA’s power to appoint statutory receivers provides that NAMA may appoint a person as a statutory receiver of property subject to the charge where specified defaults arise.

Section 123 – Powers of statutory receivers provides that a statutory receiver has the powers, rights and obligations that a receiver has under the Companies Acts, those specified in Schedule 1 and any additional powers provided for in a charge. This section also provides for related matters.

Section 124 – Statutory receiver to be agent of chargor, etc. provides that a statutory receiver will be taken to be the agent of the chargor for all purposes. This section also provides for related matters.

Section 125 – Appointment of liquidator or examiner to companies whose assets are under control of statutory receiver provides that the appointment of a liquidator or examiner to a company whose assets (or 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.

Section 126 – Statutory receiver not obliged to sell property, etc. provides that a statutory receiver is not obliged to sell a charged property at any time or at all but is accountable for all profits and monetary benefits arising directly from possession of property.

Section 127 – Application of section 29(1) of the Companies Act 1990 to certain transactions by statutory receivers provides that section 29(1) of the Companies Act 1990 does not apply to an arrangement for the acquisition of a non-cash asset that involves the disposal of a company’s assets by a statutory receiver. This means that at the behest of the statutory receiver, assets can be acquired by or from a director or person connected to that director without the specified provisions of the Companies Act 1990 applying.

CHAPTER 3: VESTING ORDERS

Section 128 – Application to Court provides that NAMA may apply to the High Court for a vesting order in the circumstances specified. This section also provides for related matters.

Section 129 – Vesting orders provides that the High Court, if it is satisfied that (i) it is unlikely that the sum secured by the charge can be recovered by sale within a reasonable period and (ii) there is no reasonable prospect of the chargor redeeming the charge concerned or of a sale of the land concerned at a price sufficient to redeem that charge, will make a vesting order which will vest in NAMA all the interest of the chargor. Where the High Court makes such a vesting order, it will also make an order for possession of the land concerned in favour of NAMA. This section provides for a limited exception in respect of principal private residences.

Section 130 – Compensation provides that where the High Court makes a vesting order, there is another chargee of the land concerned and the value of the land at the time the order is made exceeds the sum secured against the asset, the High Court will order that compensation be paid to each other chargee and if that excess is more than required to repay the chargees, the chargor. Any compensation payable to the charger can be set off against the debts of the charger, pursuant to section 146.

Section 131 – Effect of vesting order provides that a vesting order extinguishes the mortgagor's equity of redemption in the land concerned, vests title to the land in NAMA, extinguishes the interest in the land of any subsequent chargee and satisfies the requirements of the Land Registration Rules 1972-2008. A vesting order will not effect NAMA's right to redeem or discharge prior charges pursuant to section 115. A vesting order does not extinguish the debt secured by the charge concerned but compensation ordered to be paid will reduce the debt by the appropriate amount.

Section 132 – Title of purchaser not impeachable provides that the title of a purchaser of land from NAMA, where NAMA has obtained a vesting order for the land purchased, is not impeachable on the ground of any irregularity in the vesting order or irregularity or impropriety in obtaining it. No purchaser from NAMA and no subsequent purchaser is required or entitled to raise any requisition or make any objection to the title to the asset based on the vesting order.

CHAPTER 4: COMPULSORY ACQUISITION OF LAND

Section 133 – Definitions is a standard interpretation section, defining terms used in this Chapter.

Section 134 – Compulsory acquisition of land, etc. provides that NAMA may apply to compulsorily acquire land or a relevant right if it considers it necessary in certain specified circumstances including, among others, because the sale of the charged land (or the sale of such land at a fair price) or development of the charged land, etc, would be materially impeded if the land or right concerned were not acquired. This section also provides that NAMA may only exercise its powers under the Chapter in the performance of its functions.

Section 135 – Application to Court for acquisition order provides that NAMA may apply to the Court for an acquisition order authorising it to compulsorily acquire land.

Section 136 – Initial notice of acquisition provides that NAMA will publish a notice of an application in a daily newspaper. The section also provides that NAMA will, so far as is reasonably practicable, serve a copy of the notice on every person who appears to NAMA to have an interest in the land. This is intended to enable the holder of an interest the opportunity to object to the proposed acquisition. An objection to the making of an acquisition order may be lodged with the High Court within 21 days of publication of the notice.

Section 137 – Maps, plans and books to be deposited provides that NAMA will cause maps etc. to be deposited for inspection for the specified period at such place or places as NAMA, with the consent of the High Court, considers suitable.

Section 138 – Consideration by Court of objections provides that the High Court will consider and determine any objection to the application of NAMA that is made in accordance with section 136.

Section 139 – Acquisition Order provides that if no objection is lodged with the High Court within the prescribed period or if the High Court rejects any objection lodged, the High Court will make an acquisition order authorising NAMA to compulsorily acquire the land concerned if it is satisfied of certain specified matters. This section also provides that such an order will not be made if the High Court is satisfied that there would be a serious risk of injustice if it were to make the order.

Section 140 – NAMA’s power to take possession provides that, at any time after the making of an acquisition order and before the conveyance or ascertainment of price, NAMA may enter on and take possession of the land to be acquired or otherwise exercise its rights under this section upon giving the occupier of the land at least 14 days’ written notice.

Section 141 – Determination of compensation provides that the amount of compensation to be paid by NAMA for land or any right acquired pursuant to an acquisition order will, in the absence of an agreement with the persons to whom compensation is due, be fixed under the Acquisition of Land (Assessment of Compensation) Act 1919. This section also makes provision for related matters. The provisions of section 146 apply to compensation payable, which compensation can be set off against debts owed to NAMA.

Section 142 – Court may make compulsory acquisition transfer order provides that where NAMA has entered on and taken possession of land in respect of which an acquisition order has been made and the Court is satisfied that the several interests in the land have not been conveyed or transferred to NAMA, that it is necessary that the acquisition of the land should be completed and that NAMA has made an offer in writing to each person having an interest in the land, then the Court may make a compulsory acquisition transfer order vesting the land in NAMA.

Section 143 – Form and effect of compulsory acquisition transfer order provides for the form of a compulsory acquisition transfer order. This section also provides that the effect of the compulsory acquisition transfer order is to vest the specified land in NAMA on a specified date at least 21 days after the making of the vesting order.

Section 144 – Service of notices provides for the service of notices for the purposes of this Chapter.

CHAPTER 5: GENERAL POWERS IN RELATION TO LAND

Section 145 – Notice to be given to NAMA of certain dealings in land, etc. provides that a person, who owns land that is subject to a charge that forms part of an acquired bank asset, who also owns other land, has an option to purchase other land, holds an interest in other land or has an option to acquire an interest in other land, will not deal with that other land, interest or option without giving reasonable written notice to NAMA where the charged land would be unable to realise its full value unless the relevant land or interest was owned or held by NAMA.

Section 146 – Set-off of compensation provides that where a person is indebted to NAMA under any bank asset acquired by NAMA or otherwise, the amount of compensation or other amount payable by NAMA to that person may be applied toward satisfaction of the debt due to NAMA.

CHAPTER 6: POWERS IN RELATION TO DEVELOPMENT OF LAND

Section 147 – Application provides that this Chapter will apply where NAMA has acquired a bank asset that includes a charge over land, there is an agreement for the development of land and either the Court has made a vesting order in relation to the land or NAMA in its capacity as chargee has a power under the charge concerned to develop the land.

Section 148 – Development of land provides that, where this Chapter applies, NAMA may enter into an agreement for the purpose of developing the land to secure the best return reasonably possible.

Section 149 – NAMA to have certain contractual rights of land developers provides that, where this Chapter applies, NAMA has the same rights as the participating institution and any debtor, etc. in relation to the bank asset in respect of any defective design or workmanship in any building or structure constructed or to be constructed on the land concerned.

Section 150 – Designs and planning documents for land development provides that where this Chapter applies and, in relation to the development of land, an agreement provides for the engagement of a design professional or certain other professionals or contractors, the professional or contractor will give to NAMA, on demand, a copy of the agreement with any designs, plans or other documents prepared for the purposes of the development of the land concerned. This section also makes provision for related matters.

Section 151 – Limitation of right to renewal of certain business tenancies provides that section 16 of the Landlord and Tenant (Amendment) Act 1980 does not apply in relation to a new business tenancy granted by NAMA of a tenement unless NAMA specifies otherwise in writing.

PART 9 LEGAL PROCEEDINGS

CHAPTER 1: LEGAL PROCEEDINGS COMMENCED BEFORE 30 JULY 2009

Section 152 – Application provides that this Chapter applies to legal proceedings in relation to designated bank assets or acquired bank assets, if those legal proceedings commenced before 30 July 2009, being the date upon which the draft Bill is made public.

Section 153 – Effect of acquisition, etc., of bank assets on legal proceedings – participating institution plaintiff, etc. provides that NAMA may elect to replace a participating institution in proceedings taken by a participating institution in respect of assets that transfer to NAMA, where those legal proceedings were commenced before 30 July 2009. NAMA may assume some or all of the rights and obligations of the participating institution in relation to those proceedings. Participating institutions would still be involved in a limited sense and they remain liable for certain costs. This section also makes provision for related matters.

Section 154 – Effect of acquisition of bank assets on legal proceedings - NAMA may issue execution of judgment provides that NAMA may enforce judgements (including judgements made in favour of a participating institution) made in relation to a bank asset acquired by it.

Section 155 – Effect of acquisition of bank assets on legal proceedings – where participating institution not plaintiff provides that if a participating institution is, at the time of the acquisition by NAMA of a bank asset, a party (otherwise than as a plaintiff or in a capacity corresponding to plaintiff) in relation to the bank asset, NAMA may elect to become party to the proceedings. This section also makes provision for related matters.

CHAPTER 2: LEGAL PROCEEDINGS COMMENCED ON OR AFTER 30 JULY 2009

Section 156 – provides that this Chapter applies to legal proceedings in connection with a bank asset, from the date the bank asset is specified in an acquisition schedule, where those legal proceedings are commenced by certain persons including, for example, a debtor, participating institution, etc, on or after 30 July 2009, being the date upon which the Bill is made public.

Section 157 – Damages to be only remedy for certain claims provides that where a claim to which this Chapter applies is made, unless there is a court order to the contrary NAMA is only liable to pay compensation in monetary terms. This means that, unless the High Court orders otherwise, no remedy would affect the eligible asset or the transfer to NAMA of the eligible asset and any property the subject of any security. This section also makes provision for related matters, including safeguards.

CHAPTER 3: ALL LEGAL PROCEEDINGS RELATING TO NAMA, ETC.

Section 158 – Application provides that this Chapter applies in relation to all legal proceedings relating to NAMA.

Section 159 – Costs provides that at the conclusion of each interlocutory application in any legal proceedings relating to NAMA, the Court will make orders as to costs. Costs will be enforceable against the party directed to pay the costs and if they are not paid within 30 days of the Court order, 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 payment of the costs.

Section 160 – Evidence - amount of debt due provides that in proceedings for the recovery by NAMA of money owing to it under specified circumstances, a certificate sealed by NAMA and stating that a specified sum of money was owing to NAMA at the date of the certificate is, at any time within one month after the issuing of the certificate, evidence until the contrary is proved that the sum noted in the certificate remains owing to NAMA.

Section 161 – Evidence - application of Bankers' Books of Evidence 1879 provides that a copy of an entry in a bankers' book may be produced in evidence where the book is in the custody or under the control of NAMA and an officer of NAMA gives evidence that he/she truly believes that the book or record was kept in the ordinary course of the bank's business.

Section 162 – Limitation of power to grant injunctive relief provides that where an injunction is sought to prevent NAMA from taking an action or dealing with an asset, the High Court will have regard, in determining whether to grant such relief, to the public interest. In considering the public interest, the High Court will have regard to the purposes for which NAMA has been established, the desirability of certainty in relation to the acquisition by NAMA of bank assets and the desirability of having bank assets moved back to the private economy in a timely and efficient manner. Unless the High Court thinks that refusing an injunction would result in an injustice, it will not grant an injunction where a remedy in damages is available to the person seeking the injunction.

Section 163 – Limitation of judicial review provides that an application for leave to seek judicial review regarding any matter to which this Act applies will not be granted other than in the circumstances provided for in this section.

Section 164 – Limitation of certain rights of appeal to the Supreme Court provides that the determination of the High Court of an application for leave to appeal for judicial review, of an application for judicial review, or an application for an order under section 157 is final. This section also provides that no appeal lies from the decision, except with the leave of the High Court and also provides for other related matters.

Section 165 – Lites pendentes to have no effect, etc. provides that where NAMA has acquired an asset, then no *lis pendens*, caution or inhibition registered on or after 30 July 2009 will be of effect against NAMA or any person who acquires that asset from NAMA.

PART 10 USE OF INFORMATION

Section 166 – Definition is an interpretation section, defining terms used in this Part.

Section 167 – Duty of confidentiality, etc., not contravened by provision of information or production of documents and books for inspection provides that disclosure to NAMA or the NTMA or an adviser or agent acting on behalf of NAMA or the NTMA of information about a bank asset or any person

connected with a bank asset made on or after 30 July 2009, does not breach any duty of confidentiality to which the credit institution is subject.

Section 168 – Duty of Confidentiality, etc., not contravened by provision of information to or production of documents and books for inspection by potential purchaser provides that disclosure of any book, document or record by or on behalf of NAMA or its advisers to a potential purchaser or its advisers does not breach any duty of confidentiality to which NAMA is subject.

Section 169 – Obligation to provide information, etc., to NAMA extends to provision to adviser provides that an obligation of a person to provide or produce information, a book, document or record to NAMA or to provide facilities for the inspection of or taking copies of a book, document or record has effect as an obligation to provide the same to an adviser acting on behalf of NAMA.

Section 170 – Operation of Data Protection Acts 1988 and 2003 provides that an obligation on a credit institution or any other person under the Act to disclose information to NAMA or the NTMA extends to personal information within the meaning of the Data Protection Acts 1988 and 2003.

Section 171 – Disclosure of confidential information provides that except as otherwise authorised by this section or another enactment, a person will not unless authorised by NAMA or obliged by law, disclose confidential information.

Section 172 – Obligation to pass certain information to law-enforcement authorities provides that in certain circumstances including, for example, where NAMA suspects that a participating institution may have committed a criminal offence or contravened certain laws, NAMA is required to make a report to the relevant specified authorities and agencies including, for example, the Gardaí, the Revenue Commissioners, the Director of Corporate Enforcement, the Competition Authority and the Financial Regulator.

Section 173 – Disclosure by regulatory authorities provides that, subject to applicable law, the Minister, the Governor of the Central Bank and the Financial Regulator may disclose to each other any information that any of them receives concerning a participating institution or any of its subsidiaries.

PART 11

CONDUCT OF PARTICIPATING INSTITUTIONS

Section 174 – Directions in relation to conduct of participating institutions provides that the Financial Regulator, with the approval of the Minister, may give a direction to a participating institution in order to achieve the objectives of the Act.

Section 175 – Reporting by participating institutions provides that the Financial Regulator may direct a participating institution in writing to make any report that the Financial Regulator considers necessary to monitor compliance with its obligations under this Part. This section also provides that the Minister may direct the Financial Regulator to require such reports and may make regulations providing for the making by participating institutions of periodic reports, specifying the frequency and form of such reports and the matters that such reports will address.

Section 176 - Restructuring plans provides that the Minister, after consulting with the Governor of the Central Bank and the Financial Regulator, may direct a participating institution to draw up or amend a restructuring plan to ensure compliance with the objectives of this Act and also makes provision for related matters. This section also provides that the Minister, after consulting with the Governor of the Central Bank and the Financial Regulator, may direct a participating institution to submit to the Minister for approval a business plan.

Section 177 – Compliance with directions provides that, in the event that a participating institution fails to comply with a direction, the Financial Regulator may apply to the Court to compel compliance with a direction and any such application may include an application for the payment of a financial penalty for failure to comply with a direction. This section also provides for related matters.

PART 12 MISCELLANEOUS

Section 178 – Avoidance of certain transactions provides that where, on the application of NAMA, it is shown to the satisfaction of the Court that any asset of any debtor, associated debtor, guarantor or surety was disposed of and the effect of that disposal was to (i) defeat, delay or hinder the acquisition by NAMA of an eligible bank asset, (ii) impair the value of an eligible bank asset or any rights (including priorities) associated with it or (iii) increase a liability or obligation in connection with the eligible asset, then the Court may, if in the Court's opinion it is just and equitable to do so, declare the disposal void.

Section 179 – Provision of tax information to NAMA provides that where shares in a company are acquired by NAMA, a company referred to in section 616(1)(g) of the Taxes Consolidation Act, 1997 or a NAMA group entity and, as a consequence of that acquisition, the provisions of the Capital Gains Tax Acts, the Corporation Tax Acts or the Stamp Duties Consolidation Act 1999 impose a charge to tax on the company by virtue of a clawback of relief, the person from whom the shares are acquired will inform NAMA or other acquiring company of the charge and the amount of tax or duty due.

Section 180 – NAMA not to make payment in certain circumstances provides that where NAMA is obliged to pay an amount of money to a debtor, guarantor, surety or chargor, NAMA will not make any such payment until that person delivers to NAMA, or to a person authorised by NAMA, a valid tax clearance certificate issued by the Collector-General. This section also provides for related matters.

Section 181 – NAMA exempt from certain taxes provides that income and gains arising to NAMA will be exempt from income tax, corporation tax and capital gains tax.

Section 182 – Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008 provides that parts 2 and 3 of the Competition Act 2002 and section 7 of the Credit Institutions (Financial Support) Act 2008 do not apply to the acquisition by NAMA of bank assets under this Act.

Section 183 – NAMA not to be taken to be carrying on banking business etc. provides that neither NAMA, a NAMA wholly owned subsidiary nor a NAMA group entity will 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. This section also provides for related matters.

Section 184 – Certain charges and securities not invalidated provides that a charge or security that has been transferred to NAMA is not invalidated or rendered void or voidable as against NAMA by virtue of certain provisions of the Companies Acts or the operation of certain rules of law.

Section 185 – Nothing done under this Act to be reorganisation or winding up measure provides that nothing under this Act constitutes a reorganisation or winding-up measure for the purpose of the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004) or the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2003 (S.I. No. 168 of 2003).

Section 186 – Operation of certain provisions of the Land Registration Rules 1972 to 2008 provides that an officer of NAMA, or an adviser of NAMA or person nominated in writing by the Chief

Executive Officer of NAMA may inspect and take copies of any document relevant to an acquired bank asset filed in the Registry.

PART 13 REVIEW OF NAMA

Section 187 – Review of NAMA provides that the Minister may at any time require NAMA to report to the Minister regarding progress with regard to NAMA’s functions and that after 5 years the Minister will assess the extent to which NAMA has made progress toward achieving its overall objectives and whether the continuation of NAMA is necessary having regard to the purposes of the Act.

PART 14 AMENDMENT AND MODIFICATION OF OTHER ENACTMENTS

Section 188 – Operation of certain provisions of Companies Act 1963 provides that sections 99, 100 and 101 of the Companies Act 1963 do not apply in relation to a security relating to an acquired bank asset, that a reference to a company in sections 60(1) or 72(1) of the Companies Act 1963 will not be taken to include a NAMA group entity and that section 286 of the Companies Act of 1963 will not be taken to invalidate or render void a payment made to NAMA or to another person at NAMA’s direction.

Section 189 – Operation of certain provisions of Companies (Amendment) Act 1983 provides that a reference to a company in section 41(1), or subsection (1) or (3) of section 45 of the Companies (Amendment) Act 1983 will not be taken to include a NAMA wholly owned subsidiary.

Section 190 – Amendment of the Companies Act 1963 provides that the Companies Act 1963 is amended as specified in part 1 of Schedule 2.

Section 191 – Amendment of Companies (Amendment) Act 1990 provides that the Companies (Amendment) Act 1990 is amended as specified in Part 2 of Schedule 2.

Section 192 – Amendment of Finance Act 1970 provides that section 54 of the Finance Act 1970 is amended as specified in Part 3 of Schedule 2.

Section 193 – Amendment of Landlord and Tenant (Amendment) Act 1980 provides that the Landlord and Tenant (Amendment) Act 1980 is amended as specified in Part 4 of Schedule 2.

Section 194 – Amendment of National Treasury Management Act 1990 provides that the National Treasury Management Act 1990 is amended as specified in Part 5 of Schedule 2.

Section 195 – Amendment of Stamp Duties Consolidation Act 1999 provides that the Stamp Duties Consolidation Act 1999 is amended as specified in Part 6 of Schedule 2.

Section 196 – Amendment of Taxes Consolidation Act 1997 provides that the Taxes Consolidation Act 1997 is amended as specified in Part 7 of Schedule 2.

Section 197 – Amendment of Value-Added Tax Act 1972 provides that the Value-Added Tax Act 1972 is amended as specified in Part 8 of Schedule 2.

Schedule 1 – Powers of Statutory Receivers lists the powers of statutory receivers.

Schedule 2 – Amendments of Other Acts