

Proposal for

NATIONAL ASSET MANAGEMENT

AGENCY BILL 2009

For public consultation purposes only

NATIONAL ASSET MANAGEMENT AGENCY BILL 2009

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

Section

1. Short title and commencement.
2. Purposes of this Act.
3. Regulatory functions not affected.
4. Interpretation.
5. Regulations.
6. Expenses of Minister and NTMA.
7. Offences.

PART 2 NATIONAL ASSET MANAGEMENT AGENCY

Chapter 1 Establishment, Functions and Powers

8. Establishment day.
9. Establishment of NAMA.
10. Purposes of NAMA.
11. Functions of NAMA.
12. Powers of NAMA.
13. Minister's power to issue guidelines to NAMA.
14. Minister's powers of direction.
15. No shadow or *de facto* directorship.
16. Prevention of corruption.

Chapter 2 Membership of Board and Related Matters

17. Functions of Board.
18. Membership of Board.
19. Term of office of appointed members.
20. Remuneration, etc., of appointed members.
21. How appointed members cease to hold office.
22. How *ex-officio* members cease to be Board members.
23. Filling of casual vacancies, etc.

National Asset Management Agency Bill 2009
For public consultation purposes only

24. Appointment and remuneration, etc., of Chairperson.
25. Meetings of Board.
26. Electronic meetings.
27. Resolutions by circulation of copies.
28. Seal of NAMA, etc.
29. Disclosure of interests.
30. Committees to be established by Board.
31. Advisory committees.
32. Indemnification of members of Board and officers of NAMA, etc.
33. Codes of practice.

Chapter 3 Chief Executive Officer

34. Appointment of Chief Executive Officer.
35. Chief Executive Officer's functions.
36. Resignation of Chief Executive Officer.
37. Removal of Chief Executive Officer from office.

Chapter 4 NAMA'S Relationship with NTMA

38. NTMA to provide resources to NAMA.
39. NTMA to provide staff to NAMA.
40. Suspension of officers of NAMA.
41. Guidelines in relation to staff conduct.

Chapter 5 Contracted Service Providers

42. Power to engage expert advisers and service providers.
43. Professional standards and audit.

PART 3 FINANCE, PLANNING, ACCOUNTABILITY AND REPORTING

44. Financing arrangements and expenses.
45. Annual statements.
46. Annual accounts.
47. Annual reports.
48. Other reports to Minister.
49. Audit of accounts by Comptroller and Auditor-General.
50. Accountability to Committee of Public Accounts.
51. Appearances before another Oireachtas Committee.
52. Repayment to Central Fund to redeem debt.

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

Chapter 1
Designation of Participating Institutions

- 53. Application for designation as participating institution.
- 54. Capacity of participating institutions that apply for designation.
- 55. Designation of participating institutions.

Chapter 2
Designation of Eligible Bank Assets

- 56. Eligible bank assets.
- 57. Dealings by credit institutions with eligible bank assets after application for designation as participating institutions.

PART 5
VALUATION METHODOLOGY

- 58. Determination of acquisition values—valuation methodology.
- 59. Regulations as to adjustment factors, etc.

PART 6
ACQUISITION OF BANK ASSETS AND RELATED MATTERS

Chapter 1
Acquisition of Bank Assets

- 60. Participating institutions to provide information about eligible bank assets.
- 61. Production of documentation, books and records for inspection.
- 62. Provision of information and explanations, etc.
- 63. Decision about acquisition of eligible bank assets.
- 64. NAMA to prepare acquisition schedule.
- 65. Amendment of acquisition schedule.
- 66. Effect of service of acquisition schedule.
- 67. Effect of service of acquisition schedule in relation to foreign assets.
- 68. Payment for bank assets.
- 69. Clawback of overpayments.
- 70. No dealings with bank assets after service of acquisition schedule.
- 71. Books, records and title documents of participating institutions.
- 72. Objection to inclusion of bank asset in acquisition schedule.
- 73. Regulations, etc., relating to terms and conditions for acquisition schedule.
- 74. Notice to debtors, etc., of acquisition of bank assets.

- 75. NAMA to notify participating institutions of practical completion of acquisition process.
- 76. Dispute over total portfolio acquisition value.

Chapter 2 Effects of Acquisition of Bank Assets

- 77. Construction of certain references to NAMA.
- 78. NAMA to have rights of creditors after acquisition of bank assets.
- 79. Enforcement of certain representations, undertakings and obligations.
- 80. Acquisition of bank assets not to affect conditions, etc.
- 81. NAMA to be notified of certain matters.
- 82. Acquisition of bank assets not to render NAMA liable for wrongs by participating institutions.
- 83. Rights of others not affected by vesting of bank assets, etc.
- 84. NAMA not required to register certain instruments, etc.
- 85. NAMA may give certificate in relation to bank assets held.
- 86. NAMA may give certain directions in relation to bank assets.
- 87. Effect of acquisition of bank assets on certain other rights.
- 88. Minister's power to modify application of *section 87*

PART 7 REVIEW OF DECISIONS RELATING TO ACQUISITION

Chapter 1 Expert Reviewer

- 89. Appointment and functions of expert reviewer.
- 90. Procedure of expert reviewer.
- 91. Objections to inclusion of bank assets in acquisition schedules.
- 92. Materials, etc., to be made available to expert reviewer.
- 93. Opinion of expert reviewer.
- 94. Confirmation by Minister of transfer, etc.
- 95. Costs.

Chapter 2 Valuation Panel

- 96. Appointment of valuation panel.
- 97. Procedure of valuation panel.

Chapter 3 Review of Valuations

- 98. Objection to value placed on bank assets acquired from participating institution.
- 99. Dispute over total portfolio acquisition value.
- 100. Material, etc., to be made available to valuation panel.
- 101. Function of valuation panel.
- 102. Minister's determination of total portfolio acquisition value.

National Asset Management Agency Bill 2009
For public consultation purposes only

- 103. Withdrawal of dispute.
- 104. Costs of review of valuations.

Chapter 4 Relationship between NAMA and Participating Institutions

- 105. Participating institutions to act in utmost good faith.
- 106. Breach of representation or statutory requirements.
- 107. Servicing of acquired bank assets by participating institutions.
- 108. Other servicing arrangements.
- 109. NAMA may give directions about certain bank assets not acquired.
- 110. Additional payment on servicing of bank assets.
- 111. Participating institutions to indemnify NAMA.
- 112. Conduct of legal proceedings in relation to acquired bank assets.

PART 8 POWERS OF NAMA IN RELATION TO ASSETS

Chapter 1 General Powers of NAMA in Relation to Assets

- 113. Definitions (*Part 8*).
- 114. NAMA's powers to dispose of assets.
- 115. Power to discharge prior charge.
- 116. Power of entry to protect value or condition of land or buildings.
- 117. Certain instruments by NAMA to be taken to be deeds.
- 118. Overreaching for protection of purchasers.
- 119. Effect of certain assurances of land.
- 120. Certain receivers not obliged to sell property, etc.

Chapter 2 Statutory Receivers

- 121. Definition (*Chapter 2*).
- 122. NAMA's power to appoint statutory receivers.
- 123. Powers of statutory receivers.
- 124. Statutory receiver to be agent of chargor, etc.
- 125. Appointment of liquidator or examiner to companies whose assets are under control of statutory receiver.
- 126. Statutory receiver not obliged to sell property, etc.
- 127. Application of section 29(1) of Companies Act 1990 to certain transactions by statutory receivers.

Chapter 3 Vesting Orders

- 128. Application to Court.
- 129. Vesting orders.

National Asset Management Agency Bill 2009
For public consultation purposes only

- 130. Compensation.
- 131. Effect of vesting order.
- 132. Title of purchaser not impeachable.

Chapter 4 Compulsory Acquisition of Land

- 133. Definitions (*Chapter 4*).
- 134. Compulsory acquisition of land, etc.
- 135. Application to Court for acquisition order.
- 136. Initial notice of acquisition.
- 137. Maps, plans and books to be deposited.
- 138. Consideration by Court of objections.
- 139. Acquisition order.
- 140. NAMA's power to take possession.
- 141. Determination of compensation.
- 142. Court may make compulsory acquisition transfer order.
- 143. Form and effect of compulsory acquisition transfer order.
- 144. Service of notices.

Chapter 5 General Powers in Relation to Land

- 145. Notice to be given to NAMA of certain dealings in land, etc.
- 146. Set-off of compensation.

Chapter 6 Powers in Relation to Development of Land

- 147. Application (*Chapter 6*).
- 148. Development of land.
- 149. NAMA to have certain contractual rights of land developers.
- 150. Designs and planning documents for land development.
- 151. Limitation of right to renewal of certain business tenancies.

PART 9 LEGAL PROCEEDINGS

Chapter 1 Legal Proceedings commenced before 30 July 2009

- 152. Application (*Chapter 1*).

National Asset Management Agency Bill 2009
For public consultation purposes only

- 153. Effect of acquisition, etc., of bank assets on legal proceedings—participating institution plaintiff, etc.
- 154. Effect of acquisition of bank assets on legal proceedings—NAMA may issue execution of judgment.
- 155. Effect of acquisition of bank assets on legal proceedings where participating institution not plaintiff.

Chapter 2
Legal Proceedings Commenced after 30 July 2009

- 156. Application (*Chapter 2*).
- 157. Damages to be only remedy for certain claims.

Chapter 3
All Legal Proceedings relating to NAMA

- 158. Application (*Chapter 3*).
- 159. Costs.
- 160. Evidence—amount of debt due.
- 161. Evidence—application of Bankers' Books Evidence Act 1879.
- 162. Limitation of power to grant injunctive relief.
- 163. Limitation of judicial review.
- 164. Limitation of certain rights of appeal to the Supreme Court.
- 165. *Lites pendentes* to have no effect, etc.

PART 10
USE OF INFORMATION

- 166. Definition (*Part 10*).
- 167. Duty of confidentiality, etc., not contravened by provision of information or production of documents and books for inspection.
- 168. Duty of confidentiality, etc., not contravened by provision of information to or production of documents and books for inspection by potential purchaser.
- 169. Obligation to provide information, etc., to NAMA extends to provision to adviser.
- 170. Operation of Data Protection Acts 1988 and 2003.
- 171. Disclosure of confidential information.
- 172. Obligation to pass certain information to law-enforcement authorities.
- 173. Disclosure by regulatory authorities.

PART 11
CONDUCT OF PARTICIPATING INSTITUTIONS

- 174. Directions in relation to conduct of participating institutions.
- 175. Reporting by participating institutions.
- 176. Restructuring plans.

National Asset Management Agency Bill 2009
For public consultation purposes only

177. Compliance with directions.

PART 12
MISCELLANEOUS

178. Avoidance of certain transactions.
 179. Provision of tax information to NAMA.
 180. NAMA not to make payments in certain circumstances.
 181. NAMA exempt from certain taxes.
 182. Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008.
 183. NAMA not to be taken to be carrying on banking business, etc.
 184. Certain charges and securities not invalidated.
 185. Nothing done under Act to be reorganisation or winding up measure.
 186. Operation of certain provisions of the Land Registration Rules 1972 to 2008.

PART 13
REVIEW OF NAMA

187. Review of NAMA.

PART 14
AMENDMENT AND MODIFICATION OF OTHER ENACTMENTS

188. Operation of certain provisions of Companies Act 1963.
 189. Operation of certain provisions of Companies (Amendment) Act 1983.
 190. Amendment of Companies Act 1963.
 191. Amendment of Companies (Amendment) Act 1990.
 192. Amendment of Finance Act 1970.
 193. Amendment of Landlord and Tenant (Amendment) Act 1980.
 194. Amendment of National Treasury Management Agency Act 1990.
 195. Amendment of Stamp Duties Consolidation Act 1999.
 196. Amendment of Taxes Consolidation Act 1997.
 197. Amendment of Value-Added Tax Act 1972.

SCHEDULE 1
POWERS OF STATUTORY RECEIVERS

SCHEDULE 2
AMENDMENTS OF OTHER ACTS

Part 1
Amendment of Companies Act 1963

Part 2
Amendment of Companies (Amendment) Act 1990

Part 3
Amendment of Finance Act 1970

Part 4
Amendments of Landlord and Tenant (Amendment) Act 1980

Part 5
Amendments of National Treasury Management Agency Act 1990

Part 6
Amendment of Stamp Duties Consolidation Act 1999

Part 7
Amendments of Taxes Consolidation Act 1997

Part 8
Amendments of Value-Added Tax Act 1972

ACTS REFERRED TO

Acquisition of Land (Assessment of Compensation) Act 1919	9 & 10 Geo. 5, c.57
Agricultural Credit Act 1978	1978, No. 2
Asset Covered Securities Act, 2001	2001, No. 47
Bankers' Books Evidence Act 1879	42 & 43 Vict. c. 11
Bills of Sale (Ireland) Acts 1879 and 1883	
Capital Gains Tax Acts	
Central Bank Act 1942	1942, No. 22
Civil Service Regulation Act 1956	1956, No. 46
Central Bank Act 1971	1971, No. 24
Central Bank Act 1997	1997, No. 8
Companies Act 1963	1963, No. 33
Companies (Amendment) Act 1983	1983, No. 13
Companies (Amendment) Act 1990	1990, No. 27
Companies Act 1990	1990, No. 33
Companies Acts	

National Asset Management Agency Bill 2009
For public consultation purposes only

Competition Act 2002	2002, No. 14
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Consumer Credit Act 1995	1995, No. 24
Conveyancing Act 1634	10 Chas. 1, sess. 2, c.3
Conveyancing Act 1881	44 & 45 Vic., c. 41
Corporation Tax Acts	
Credit Institutions (Financial Support) Act 2008	2008, No. 18
Data Protection Acts 1988 and 2003	
European Communities Act 1972	1972, No. 27
European Parliament Elections Act 1997	1997 No. 2
Exchequer and Audit Departments Act 1866	29 & 30 Vict., c. 39
Exchequer and Audit Departments Act 1921	11 & 12 Geo. 5, c. 52
Family Home Protection Act 1976	1976, No. 27
Finance Act 1970	1970, No. 14
Industrial and Commercial Property (Protection) Act 1927	1927, No. 16
Insurance Act 1936	1936, No. 45
Investment Intermediaries Act 1995	1995, No. 11
Land and Conveyancing Law Reform Act 2009	2009, No. 27
Lands Clauses Consolidation Act 1845	8 & 9 Vict. c.18
Landlord and Tenant (Amendment) Act 1980	1980, No. 10
Local Government Act 2001	2001, No. 37
Markets in Financial Instruments and Miscellaneous Provisions Act 2007	2007, No. 37
National Treasury Management Agency Act 1990	1990, No. 18
Patents Act 1992	1992, No. 1
Planning and Development Acts 2000 to 2007	
Prevention of Corruption Acts 1889 to 2001	
Registration of Deeds and Title Acts 1964 and 2006	
Registration of Deeds and Title Act 2006	2006, No. 12
Registration of Title Act 1964	1964, No. 16
Stamp Duties Consolidation Act 1999	1999, No. 31
Statutory Instruments Act 1947	1947, No. 44
Taxes Consolidation Act 1997	1997, No. 39
Trade Marks Act 1996	1996, No. 6
Unit Trusts Act 1990	1990, No. 37
Value-Added Tax 1972	1972, No. 22

NATIONAL ASSET MANAGEMENT AGENCY BILL 2009

Draft of

B I L L

entitled

An Act to address a serious threat to the economy and to the systemic stability of credit institutions in the State generally by providing, in particular, for the establishment of a body to be known as the National Asset Management Agency for the purposes of—

- (a) the acquisition by that Agency of certain assets from certain persons to be designated by the Minister for Finance,
- (b) effecting the expeditious and efficient transfer of those assets to that Agency,
- (c) the holding, managing and realising of those assets by that Agency (including the collection of interest and capital due, the taking or taking over of collateral where necessary and the provision of funds where appropriate),
- (d) the performance by that Agency of such other functions, related to the management or realisation of those assets, as provided in this Act or as directed by the Minister,
- (e) the facilitation of restructuring of credit institutions of systemic importance to the economy, and
- (f) the taking by that Agency of all steps necessary or expedient to protect, enhance and better realise the value of assets transferred to it,

to provide for the valuation of the assets concerned and the review of any such valuation, to give the National Asset Management Agency certain powers and other functions in respect of land or an interest in land acquired by that Agency, including powers relating to the development of land, to provide for the issuing of debt securities by that Agency in the performance of its functions under this Act, to provide for certain legal proceedings relating to assets acquired by that Agency and to provide for related matters.

National Asset Management Agency Bill 2009
For public consultation purposes only

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY

Short title and commencement.

1.—(1) This Act may be cited as the National Asset Management Agency Act 2009.

(2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Purposes of this Act.

2.—The purposes of this Act are—

- (a) to address the serious threat to the economy and the stability of credit institutions in the State generally and the need for the maintenance and stabilisation of the financial system in the State, and
- (b) to address the compelling need—
 - (i) to resolve the financial crisis and achieve a recovery in the economy,
 - (ii) to protect the State's interest in respect of the guarantees issued by the State pursuant to the Credit Institutions (Financial Support) Act 2008 and underpin the steps taken by the Government in that regard,
 - (iii) to protect the interests of taxpayers,
 - (iv) to 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 and underpin the effect of Government support measures in relation to that sector,
 - (vii) to facilitate the availability of credit in the financial markets of the State,
 - (viii) to resolve, in an expeditious and efficient manner, the problems created by the financial crisis.

Regulatory functions not affected.

3.—Nothing in this Act prevents the performance by the Governor or the Regulatory Authority of functions in relation to any credit institution or other person authorised or regulated in the State, or affects any obligation arising under the treaties governing the European Communities.

Interpretation.

4.—(1) In this Act—

“acquire”, in relation to a bank asset, shall be construed in accordance with *subsections (2) and (4)*;

“acquired bank asset” means a bank asset that NAMA has acquired, or in which NAMA has acquired an interest;

“acquired portfolio”, in relation to a participating institution, means all the bank assets acquired by NAMA from the participating institution and any of its subsidiaries that are also participating institutions, up to the time of the service by NAMA on the participating institution of a practical completion notice;

“acquisition schedule” has the meaning given by *section 64*;

“acquisition value”, in relation to a bank asset, means the value determined by NAMA in accordance with *section 58*;

“annual report” means NAMA’s annual report to the Minister required by *section 47*;

“appointed member”, in relation to the Board, has the meaning given by *section 18*;

“associated debtor” has the meaning given by *section 56*;

“bank asset” includes—

- (a) a credit facility and any security for it,
- (b) every other right arising directly or indirectly in connection with a credit facility, including—
 - (i) a contract to which the participating institution is a party or in which it has an interest,
 - (ii) a benefit to which the participating institution is entitled, and
 - (iii) any other asset in which the participating institution has an interest.
- (c) every other asset in the ownership of a participating institution; and
- (d) an interest in a bank asset referred to in any of *paragraphs (a) to (c)*;

“benefit” includes—

- (a) any certificate of title, solicitor’s undertaking, valuation report, insurance report, quantity surveyor’s report, project monitor report, technical adviser report or any other report, certificate or document issued to a participating institution or upon which a participating institution is entitled to rely in connection with an eligible asset,
- (b) an instruction, order, direction, bond, opinion, search, enquiry, declaration, consent, notice, power of attorney, authority or right given to, held by or issued for the benefit of, directly or indirectly, a participating institution in connection with an eligible bank asset, and
- (c) a benefit arising under or in connection with any insurance or assurance policy or payment direction relating to an eligible bank asset;

“Board” means the Board of NAMA appointed under *Chapter 2 of Part 2*;

“Central Bank” means the Central Bank and Financial Services Authority of Ireland;

“Chairperson” means the appointed member nominated under *section 24*;

“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 a right of set-off, and
- (c) an undertaking by or agreement of any person (including a solicitor) to give or create a security interest in property;

“company” means—

- (a) a company within the meaning of the Companies Acts, or
- (b) a body established under the laws of a state other than the State and corresponding to a body referred to in *paragraph (a)*;

“Committee of Public Accounts” means the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General;

“confidential information” has the meaning given by *section 171*;

“Court” means the High Court;

“credit institution” has the same meaning as it has in the Central Bank Act 1997;

“credit facility” includes every kind of financial accommodation (including a loan facility, a line of credit, a hedging or derivative facility, bond, letter of credit, guarantee facility, invoice discounting or 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 debtors or associated debtors, whether alone or together with another person or persons and whether as part of a syndicate or otherwise and whether or not the credit facility is considered to be a non-performing asset;

“credit facility documentation” in connection with a credit facility means the documents, contracts, instruments and agreements containing or evidencing the terms or conditions applicable to, or that otherwise govern or regulate, any aspect of that credit facility or any associated arrangement or transaction entered into in connection therewith, including any document issued or entered into by any person that directly or indirectly creates or provides or is expressed to create or provide any security, guarantee or surety or other benefit or collateral in connection with that credit facility or the associated arrangement or transaction;

“debtor” means a person who is or was indebted to a participating institution under or in connection with a credit facility;

“debt security” means a bond or similar financial instrument;

“designated bank asset” means a bank asset specified in an acquisition schedule that has been served on a participating institution in accordance with *section 64*;

“development land” means land (wherever situated and regardless of its zoning or its status under the Planning and Development Acts 2000 to 2007 or any other enactment)—

- (a) in, on, over or under which works or structures were or are to be constructed,
- (b) where it was intended to carry out such works, or
- (c) where it was intended to make a material change in the use of the land;
- (d) which was intended to be sold at a profit and which was capable of development;

“eligible bank asset” has the meaning given by *section 56*;

“establishment day” means the day appointed by the Minister under *section 8* to be the establishment day;

“financial year”, in relation to NAMA, means—

- (a) the period commencing on the establishment day and ending on 31 December 2010, and
- (b) thereafter, the period of 12 months ending on 31 December in any year;

“functions” includes powers and duties, and references to the performance of functions includes, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

“Governor” has the same meaning as in the Central Bank Act 1942;

“guarantor” means a person who has entered into a guarantee (whether or not including an indemnity) in connection with a bank asset;

“interest”, in relation to a bank asset, means—

- (a) the whole or any part or fraction of the bank asset, or
- (b) any other estate, right, title or interest, whether legal or beneficial of or in the bank asset;

“land” includes tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land;

“legal proceedings” includes any form of binding dispute resolution, and in particular includes arbitration;

“local authority” has the same meaning as in the Local Government Act 2001;

“Minister” means the Minister for Finance;

“NAMA” means National Asset Management Agency, and in *Parts 4 to 9* has a meaning affected by *subsection (5)*;

“NAMA group entity” means—

- (a) a company that would be a subsidiary of NAMA (within the meaning given by section 155 of the Companies Act 1963) if NAMA were a company,
- (b) a body corporate incorporated outside the State corresponding to a company referred to in paragraph (a), and

- (c) any other body corporate and any trust, partnership or arrangement for the sharing of profits and losses, joint venture, association, syndicate or other arrangement established by NAMA for the purpose of performing any of its functions under this Act;

“NAMA wholly owned subsidiary” means a company or body corporate that has no members other than NAMA or a nominee of NAMA;

“non-performing”, in relation to a bank asset or an interest in a bank asset, means—

- (a) in the course of being foreclosed or otherwise enforced,
- (b) principal or interest or both are in arrears,
- (c) interest is being capitalised or otherwise deferred,
- (d) there is evidence that payments are not being met,
- (e) there is evidence that covenants are not being complied with, or
- (f) there is evidence that other obligations are not being complied with;

“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 39* who is designated as an officer by the Chief Executive Officer of NAMA;

“participating institution” means a credit institution, or the subsidiary of a credit institution, designated by the Minister under *section 55* as a participating institution;

“performing asset” means a bank asset that is not a non-performing asset;

“prescribed” means prescribed by the Minister by regulations;

“principal private residence”, means the principal private residence of a chargor or a guarantor or surety as respects the credit facility concerned, and includes land which that person has for his or her own occupation and enjoyment with that residence as its garden or grounds up to an area (exclusive of the dwelling house) not exceeding one acre;

“Regulatory Authority” has the same meaning as in the Central Bank Act 1942;

“security” includes—

- (a) a charge,
- (b) a guarantee,
- (c) an undertaking given by, or with the agreement of, a person (including a solicitor) to give or create a security interest in or over any asset,
- (d) a debenture, a bill of exchange, a promissory note, a guarantee, an indemnity and any other means of securing—
 - (i) the payment of a debt, whether present or future, or

- (ii) the discharge or performance of an obligation or liability, whether actual or contingent,

by any person or persons, and

- (e) any other agreement or arrangement having a similar effect;

“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;

“tax clearance certificate” has the meaning given by whichever of section 1094 or 1095 of the Taxes Consolidation Act 1997 applies in the particular case;

“total portfolio acquisition value” means the total of all the acquisition values for the acquired portfolio of a participating institution and any of its subsidiaries that are also participating institutions;

“transfer”, in relation to a bank asset, shall be construed in accordance with *subsections (3) and (4)*;

“valuation methodology” means the valuation methodology specified in *section 58* and regulations made pursuant to *section 59*.

(2) A reference in this Act to acquisition, in relation to a bank asset, includes—

- (a) any form of legal or beneficial transfer, including a vesting by operation of law,
- (b) a deemed succession by operation of law,
- (c) a synthetic transfer,
- (d) a risk transfer,
- (e) the imposition of a trust,
- (f) the creation of a trust interest,
- (g) a novation,
- (h) an assignment,
- (i) an assumption,
- (j) sub-participation and sub-contracting, and
- (k) any other form of transfer, acquisition, assumption or vesting recognised by the law applicable to the bank asset.

(3) A reference in this Act to the transfer to NAMA of a bank asset shall be construed as a reference to the acquisition by NAMA of the bank asset.

(4) A reference in this Act to the transfer by NAMA to another person of any asset shall be construed as reference to the acquisition by that other person of that asset.

(5) A reference in this Act to NAMA shall where the context so admits or requires be taken to include a reference to a NAMA wholly owned subsidiary or a NAMA group entity as the case requires.

(6) Where a NAMA wholly owned subsidiary or a NAMA group entity is specified in an acquisition schedule as the acquiring entity in relation to a bank asset, or where a bank asset has been transferred to a NAMA wholly owned subsidiary or a NAMA group entity, a reference to NAMA in *Parts 4 to 10, 12 and 14* shall be construed as a reference to the NAMA wholly owned subsidiary or NAMA group entity, as the case may be.

Regulations.

5.—(1) The Minister may make regulations to do anything that appears necessary or expedient for bringing this Act into operation.

(2) Where a provision of this Act requires or authorises the Minister or NAMA to make regulations, such regulations—

- (a) may make different provision for different circumstances or cases, and
- (b) may contain such incidental, consequential or transitional provisions as the Minister or NAMA, as the case may be, considers necessary or expedient for the purposes of the regulations.

Expenses of Minister and NTMA.

6.—(1) The expenses incurred by the Minister in the administration of this Act shall be paid out of money provided by the Oireachtas.

(2) The expenses incurred by the NTMA under this Act shall be paid out of the Central Fund and the growing produce of that Fund.

(3) The expenses incurred by the NTMA in relation to NAMA since 7 April 2009 shall be paid out of the Central Fund and the growing produce of that Fund.

Offences.

7.—(1) A person on whom an obligation is imposed under *section 171(2)* and who intentionally does not comply with the obligation commits an offence.

(2) A credit institution that commits an offence under *section 171(2)* is liable—

- (a) on summary conviction, to a fine not exceeding €5,000, or

(b) on conviction on indictment, to a fine not exceeding €1,000,000.

(3) A person other than a person referred to in *subsection (2)* who commits an offence under *section 171(2)* is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 3 years or both.

PART 2

NATIONAL ASSET MANAGEMENT AGENCY

CHAPTER 1

ESTABLISHMENT, FUNCTIONS AND POWERS

Establishment day.

8.—The Minister shall by order appoint a day as the establishment day for the purposes of this Act.

Establishment of NAMA.

9.—(1) There is established, on the establishment day, a body to be known as the National Asset Management Agency (in this Act referred to as “NAMA”), to perform the functions assigned to it by this Act.

(2) NAMA shall be a body corporate with perpetual succession. NAMA has power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(3) Except where otherwise provided by this Act, NAMA is independent in the performance of its functions under this Act.

Purposes of NAMA.

10.—(1) NAMA’s purposes shall be to contribute to the achievement of the purposes specified in *section 2* by—

- (a) the acquisition of such eligible bank assets from participating institutions as is appropriate,
- (b) dealing with the assets acquired by it expeditiously, and
- (c) protecting or otherwise enhancing the long-term economic value of those assets, in the interests of the State.

(2) So far as possible, NAMA shall, expeditiously and consistently with the achievement of the purposes specified in *subsection (1)*, obtain the best achievable financial return for the State having regard to—

- (a) the cost to the Exchequer of acquiring bank assets and dealing with acquired bank assets,
- (b) NAMA's cost of capital and other costs,
- (c) any guidelines or directions by the Minister under *section 13* or *14*, and
- (d) any other factor which NAMA considers relevant to the achievement of its purposes.

Functions of NAMA.

11.—(1) In order to achieve its purposes, NAMA shall perform the following functions:

- (a) acquire eligible bank assets from participating institutions as provided for in *Part 6*;
- (b) hold, manage and realise assets (including the collection of interest, principal and capital due, the taking or taking over of collateral where necessary and the provision of funds where appropriate);
- (c) perform such other functions, related to the management or realisation of bank assets that it has acquired, as are directed by the Minister in accordance with *section 14*;
- (d) take all steps necessary or expedient to protect, enhance or realise the value of bank assets that it has acquired, including—
 - (i) the disposition of loans or portfolios of loans to the market for the best achievable price,
 - (ii) the securitisation or refinancing of portfolios of loans thereby refinancing all or parts of the acquired portfolio and redeeming some or all of the Government securities or Government guaranteed securities, and
 - (iii) holding, realising and disposing of security;
- (e) repay any sums that it borrows;
- (e) perform such other activities as are required by or under this Act.

(2) The Minister may confer on NAMA, by order, such additional functions connected with the functions for the time being of NAMA as he or she thinks fit, subject to such conditions (if any) as may be specified in the order.

(3) An order under this section may contain such incidental, supplemental and consequential provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

Powers of NAMA

12.—(1) NAMA has all powers necessary or expedient for, or incidental to, the achievement of its purposes and performance of its functions.

(2) Without prejudice to the generality of *subsection (1)*, NAMA may—

- (a) provide equity capital and credit facilities on such terms and conditions as NAMA thinks fit,
- (b) borrow or raise or secure the payment of money in any manner, including by issuing debentures, debenture stocks, bonds, obligations and debt securities of any kind, and charge and secure any instrument so issued by trust deed or otherwise—
 - (i) on the undertaking of NAMA or on any particular property and rights, present or future, of NAMA, or
 - (ii) in any other manner,
- (c) initiate or participate in any enforcement, restructuring, reorganisation, scheme of arrangement or other compromise,
- (d) enter into contract options and other derivative financial instruments (including in currencies other than the currency of the State), whose purposes include—
 - (i) to eliminate or reduce the risk of loss arising from changes in interest rates, currency exchange rates or other factors of a similar nature,
 - (ii) to eliminate or reduce the costs of raising funds or borrowing or the cost of other transactions carried out in the ordinary course of business, or
 - (iii) increasing return on investment,
- (e) guarantee, with or without security, the indebtedness and performance of obligations of others (whether or not NAMA receives any consideration for, or direct or indirect advantage from, the giving of the guarantee),
- (f) draw, accept and negotiate negotiable instruments,
- (g) distribute assets in specie to the Minister or to his or her nominee,
- (h) accept any security, guarantee, indemnity or surety,
- (i) enter into contracts of insurance, and insure and self-insure in respect of any of its activities and property,
- (j) enforce any security, guarantee or indemnity,
- (k) compromise any claim,
- (l) open and maintain bank accounts, including accounts in currencies other than the currency of the State, and carry out necessary banking transactions,
- (m) form or acquire a NAMA wholly owned subsidiary (including one that is a company formed outside the State) for the purpose of performing any of its functions,

- (n) form or take an interest in a NAMA group entity (including a company formed outside the State) for the purpose of performing any of its functions,
- (o) form, or take an interest in, a company (including a company formed outside the State) as a holding company in relation to companies referred to in *paragraph (n)* for the purpose of performing any of its functions,
- (p) give security for any debt, obligation or liability of any company referred to in *paragraph (m)* or *(n)*,
- (q) enter into a partnership or joint venture for the purpose of performing any of its functions,
- (r) establish a trust or participate in a trust as trustee or beneficiary,
- (s) borrow or lend debt securities, including, but not limited to, equity and debt instruments,
- (t) acquire and dispose of property,
- (u) purchase by agreement bank assets that are not eligible bank assets where in NAMA's opinion it is necessary to do so in the interests of the proper performance of its functions,
- (v) invest its funds as the Board determines,
- (w) vest property in any other person on behalf of or for the benefit of NAMA with or without declaring a trust in NAMA's favour in that other person,
- (x) sell or dispose of the whole or any part of the property or investments of NAMA, either together or in portions, for such consideration and on such terms as it sees fit,
- (y) discharge any debt, obligation or liability,
- (z) hold any licence,
- (aa) make any planning application in relation to land, and intervene in any planning application made by another person,
- (ab) make any application to develop minerals on land,
- (ac) undertake development for the purpose of realising the full value of any asset,
- (ad) engage, from time to time, such consultants and advisers and other service providers as are necessary or expedient for the performance of its functions,
- (ae) without prejudice to the powers of any court in that behalf, determine that particular information, or information of a particular kind, in the possession of NAMA is information that falls within any of *paragraphs (a) to (e)* of *section 171(1)*,
- (af) carry on any business that NAMA considers can be conveniently carried on in connection with any of its functions or is calculated directly or indirectly to

enhance the value of or facilitate the realisation of or render profitable any of NAMA's property or rights,

- (ag) benefit from any carbon credits acquired by it, and
- (ah) do all such other things as the Board considers incidental to, or conducive to the attainment of, any of NAMA's functions under this Act.

(3) NAMA or a NAMA group entity may, from time to time, with the approval of the Minister, borrow, with or without the guarantee of the Minister, such sums of money (including money in a currency other than the currency of the State) as it determines is required for the performance of its functions under this Act.

(4) Section 5 of the Borrowing Powers of Certain Bodies Act 1996 does not apply to the giving of guarantees, letters of credit or other similar instruments by NAMA or a NAMA group entity.

(5) NAMA may carry out any of its functions and exercise any of its powers—

- (a) within, or anywhere outside, the State,
- (b) alone or in conjunction with others, and
- (c) by or through an agent, NAMA wholly owned subsidiary, NAMA group entity, contractor, factor, or trustee.

(6) NAMA may use its seal outside the State.

(7) NAMA may exercise any of its powers for the benefit of a NAMA wholly owned subsidiary or NAMA group entity.

(8) Nothing in this section authorises NAMA, when carrying out any function or exercising any power in any place, to act otherwise than in compliance with the law of that place.

(9) Except where otherwise provided by this Act, NAMA may carry out its functions without the consent of any other person or authority notwithstanding any other enactment.

Minister's power to issue guidelines to NAMA.

13.—(1) The Minister, after consultation with the Governor, may issue guidelines in writing to NAMA in connection with any of its functions under this Act.

(2) In performing its functions under this Act, NAMA shall have regard to any guidelines issued by the Minister under this section.

(3) In its annual report, NAMA shall report on its compliance with any guideline issued by the Minister under this section.

Minister's powers of direction.

14.—(1) The Minister may give a direction in writing to NAMA concerning the achievement of the purposes of this Act.

(2) NAMA shall comply with a direction given by the Minister under this section.

(3) In its annual report, NAMA shall report on its compliance with any direction given by the Minister under this section.

No shadow or *de facto* directorship.

15.—(1) When discharging a function under this Act, none of the persons mentioned in *subsection (2)* shall be taken, only because of discharging that function, to be a shadow director (within the meaning given by section 27(1) of the Companies Act 1990) nor a *de facto* director nor a person discharging managerial responsibilities of—

- (a) any participating institution,
- (b) any person that is a debtor, guarantor or surety in relation to a bank asset that NAMA has acquired, or
- (c) any person that is an associated debtor of any person referred to in *paragraph (b)*.

(2) The persons are—

- (a) the Minister,
- (b) NAMA,
- (c) any appointed member of the Board,
- (d) the Chief Executive Officer of NAMA,
- (e) an officer of NAMA,
- (f) the NTMA,
- (g) any employee of the NTMA,
- (h) the Chief Executive of the NTMA,
- (i) the Governor,
- (j) a director of the Central Bank,
- (k) an employee of the Central Bank,
- (l) a member of the Regulatory Authority,
- (m) in so far as *subsection (1)* relates to a discharge of managerial responsibilities, a NAMA wholly owned subsidiary,
- (n) a director of a NAMA wholly owned subsidiary,

- (o) in so far as *subsection (1)* relates to a discharge of managerial responsibilities, a NAMA group entity,
- (p) a director of a NAMA group entity, and
- (q) an officer of, a consultant or advisor to, or a person employed by or under or acting on behalf of any person, body or authority mentioned in *paragraphs (a) to (p)*.

(3) For the purposes of this section a *de facto* director is a person who is determined to have occupied the position of director to a company although not formally or validly appointed to the position.

Prevention of corruption.

16.—To avoid doubt, 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

Functions of Board.

17.—(1) There shall be a Board of NAMA, whose functions are as follows:

- (a) to ensure the functions of NAMA are performed effectively;
- (b) to set the strategic objectives and targets to be met by NAMA;
- (c) to ensure that appropriate systems and procedures are in place to achieve NAMA’s targets and objectives;
- (d) to take all reasonable steps available to it to achieve those targets and objectives.

(2) The Board may delegate any part of its functions under *subsection (1)* as it sees fit.

(3) For the purposes of the Board exercising its functions under *subsection (1)*, the Board may provide for the performance of any matter by an officer of NAMA.

(4) In performing its functions, the Board shall act in utmost good faith with care, skill and diligence.

Membership of Board.

18.—(1) 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.

(2) Subject to *subsections (3) to (5)*, the Minister shall appoint a person to be an appointed member only if, in the opinion of the Minister, the person has expertise and experience at a senior level in one or more of the following:

- (a) finance and economics;
- (b) law;
- (c) accountancy and auditing;
- (d) public administration;
- (e) credit management;
- (f) project finance;
- (g) construction and property development;
- (h) property management and sale;
- (i) valuation;
- (j) urban and land planning;
- (k) banking and investment;
- (l) insolvency and restructuring;
- (m) risk management.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a member of the European Parliament is disqualified from appointment as an appointed member of the Board while he or she is so entitled or is such a representative.

(4) A person who is a member of a local authority is disqualified from appointment as a member.

(5) A member of the Board shall, not later than 3 months after appointment, furnish to the Minister a tax clearance certificate.

(6) The Minister shall, so far as is practicable and having regard to relevant experience, ensure an equitable balance between men and women in the composition of the Board.

Term of office of appointed members.

19.—(1) Subject to *subsection (2)*, the term of office of an appointed member is 5 years.

(2) Of the first appointed members, the Minister shall appoint 2 members for a term of office of 3 years and 3 members for a term of office of 4 years.

(3) Subject to *subsection (4)*, an appointed member whose period of office expires by the passage of time is eligible for re-appointment as such a member.

(4) An appointed member is not eligible to serve for more than 2 consecutive terms of office.

Remuneration, etc., of appointed members.

20.—(1) An appointed member shall be paid such remuneration and such allowances in reimbursement of expenses incurred as the Minister from time to time determines.

(2) An appointed member holds office on such terms (other than the payment of remuneration and allowances for expenses incurred) as the Minister determines at the time of the member's appointment.

How appointed members cease to hold office.

21.—(1) An appointed member ceases to be such a member if he or she—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence in relation to a company,
- (d) does not furnish a tax clearance certificate as required by *section 18*,
- (e) is convicted of an offence involving fraud or dishonesty, or
- (f) is disqualified or restricted from being a director of a company.

(2) If an appointed member—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a member of the European Parliament,
- (c) is regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority,

he or she thereupon ceases to be an appointed member.

(3) An appointed member may at any time resign his or her membership by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.

(4) The Minister may remove an appointed member on reasonable notice in writing at any time from membership of the Board if—

- (a) in the Minister’s opinion, the member—
 - (i) has become incapable through illness or injury of performing his or her functions,
 - (ii) has contravened *section 29*, or
 - (iii) has committed misconduct specified in the written notice,
- (b) in the Minister’s opinion, a serious conflict of interest has arisen in relation to the member, or
- (c) his or her removal appears to the Minister to be necessary or expedient for the effective performance by NAMA of its functions.

How *ex-officio* members cease to be Board members.

22.—(1) An *ex-officio* member of the Board ceases to be a member if he or she—

- (a) ceases to be the Chief Executive Officer of NAMA or the Chief Executive Officer of the NTMA, as the case may be,
- (b) is adjudicated bankrupt,
- (c) makes a composition or arrangement with creditors,
- (d) is convicted of an indictable offence in relation to a company,
- (e) is convicted of an offence involving fraud or dishonesty, or
- (f) is disqualified or restricted from being a director of a company.

(2) If an *ex-officio* member of the Board —

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a member of the European Parliament,
- (c) is regarded, pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority,

he or she thereupon ceases to be an *ex-officio* member.

(3) An *ex-officio* member of the Board, upon the expiry of his or her office, shall also be deemed to have resigned from any directorship of any NAMA group entity or NAMA wholly owned subsidiary.

Filling of casual vacancies, etc.

23.—(1) If an appointed member dies, resigns, retires, becomes disqualified or is removed from office, the Minister may appoint a person to fill the vacancy so occasioned. The person so appointed shall be appointed in the same manner as, and for the remainder of the term of office of, the member whose death, resignation, retirement, disqualification or removal occasioned the vacancy.

(2) Subject to this Act, NAMA may act notwithstanding one or more vacancies among the members of the Board.

Appointment and remuneration, etc., of Chairperson.

24.—(1) The Minister shall nominate one of the appointed members as Chairperson.

(2) The Chairperson holds that office for 5 years or until the end (whether by the passage of time, resignation or removal under *section 21*) of his or her term of office as an appointed member, whichever is the earlier.

(3) A person may hold the office of Chairperson for 2 terms only, whether or not the terms are consecutive.

(4) The Chairperson may at any time resign that office (with or without also resigning as an appointed member) by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.

(5) The Minister may determine that the Chairperson shall be paid additional remuneration or allowances on account of his or her responsibilities as Chairperson.

Meetings of Board.

25.—(1) The Board shall hold such meetings as are necessary for the performance of its functions.

(2) The Board shall hold its first meeting on the establishment day or as soon as is practicable after that day.

(3) The quorum for a meeting of the Board is 5, or, if there is a vacancy in the Board, 4 while the vacancy exists.

(4) A meeting held while there is a vacancy in the Board is validly held notwithstanding the vacancy, so long as there is a quorum.

(5) At a meeting of the Board—

(a) if the Chairperson is present, he or she shall preside over the meeting, and

National Asset Management Agency Bill 2009
For public consultation purposes only

- (b) if the Chairperson is not present or the office of chairperson is vacant, the appointed members present shall choose one of themselves to preside over the meeting.

(6) At a meeting of the Board each member present has a vote and any question on which a vote is required in order to establish the Board's view on the matter shall be determined by a majority of votes of members present and voting on the question. In the case of an equal division of votes, the Chairperson or other member presiding over the meeting has a additional casting vote.

(7) Subject to this Act, the Board shall regulate, by standing orders or otherwise, its procedure and business.

Electronic meetings.

26.—(1) In addition to meeting with all participants physically present, the Board may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time. Such a meeting is referred to in this section as an “electronic meeting”.

(2) A member of the Board who participates in an electronic meeting is taken for all purposes to have been present at the meeting.

(3) The Board may establish procedures for electronic meetings (including recording the minutes of such meetings) in its standing orders.

Resolutions by circulation of copies.

27.—(1) The Board may pass a resolution without a meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution in the document.

(2) A resolution referred to in *subsection (1)* may be passed by the members or some of them signing separate copies of the document referred to in that subsection if the date and time of each signature is indicated on the document concerned.

(3) A resolution passed in accordance with this section is taken to have been passed at the time on which the last member signs.

Seal of NAMA, etc.

28.—(1) The Board shall, as soon as possible after the establishment day, provide NAMA with a seal.

(2) The seal of NAMA shall be authenticated by the signature of any 2 members of the Board.

(3) Judicial notice shall be taken of the seal of NAMA. A document purporting to be an instrument made by and sealed with the seal of NAMA, and purporting to be authenticated in accordance with *subsection (2)*, shall be received in evidence and be taken to be such an instrument unless the contrary is shown.

(4) In the case of a contract or instrument that, if entered into by an individual, would not be required to be under seal, the Board may delegate the authority to enter into such a contract or instrument as the Board thinks fit.

Disclosure of interests.

29.—(1) If a member has a pecuniary interest or other beneficial interest in, and material to, a matter that falls to be considered by the Board—

- (a) he or she shall disclose to the other members of the Board the nature of his or her interest in advance of any consideration of the matter,
- (b) he or she shall not influence nor seek to influence a decision to be made in relation to the matter,
- (c) he or she shall take no part in any consideration of the matter,
- (d) he or she shall absent himself or herself from the meeting or that part of the meeting during which the matter is discussed, and
- (e) he or she shall not vote or otherwise act on a decision relating to the matter.

(2) If a member discloses an interest pursuant to *subsection (1)*, the disclosure shall be recorded in the minutes of the meeting of the Board or otherwise duly recorded. The Board may, at its discretion, refer to the disclosure in NAMA's annual report.

(3) If a member of the Board fails to disclose an interest pursuant to *subsection (1)*, and with that member present the Board makes a decision on the matter, a contract entered into by NAMA in consequence of the decision is not, by reason only of that fact, invalid as against NAMA.

(4) If a member of the Board fails to disclose an interest pursuant to *subsection (1)*, and with that member present the Board makes a decision on the matter, but the Board subsequently reconsiders the matter without that member present and confirms its previous decision, the non-disclosure does not invalidate the latter decision.

(5) If at a meeting of the Board a question arises as to whether or not a course of conduct, if pursued by a person, would constitute a failure by him or her to comply with *subsection (1)*, the Chairperson or member of the Board presiding over the meeting may determine the

question. The Chairperson's or Board member's decision is final, and if such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(6) If the Minister is satisfied that a member of the Board has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that member from office.

(7) The Board shall issue guidelines as to what constitutes an interest for the purposes of this section having regard to the definitions in the Ethics in Public Office Act 1995.

Committees to be established by Board.

30.—(1) As soon as practicable after the establishment day, the Board shall establish 3 committees, and appoint members to them, as follows:

- (a) an audit committee;
- (b) a credit committee;
- (c) a risk committee.

(2) The Board may establish advisory committees under section 31, and such other committees and sub-committees as it considers necessary or expedient.

(3) There shall be 6 members of the audit committee. The Minister shall appoint 2 members from amongst qualified persons who are not members of the Board. The remaining members of the audit committee shall be members of the Board.

(4) The Board shall not appoint the Chairperson or an *ex-officio* member of the Board as a member of the audit committee.

(5) The members of the credit committee and the risk committee shall be members of the Board or officers of NAMA. At least 2 members of each of those committees shall be members of the Board.

(6) A member of a committee established under *subsection (1)* or *(2)* holds office on such terms (including term of office, removal and resignation) as the Board determines.

(7) The Board shall determine the terms of reference and procedures of each committee.

(8) With the approval of the Minister, NAMA, from its own resources, may remunerate a member of the audit committee who is not a member of the Board.

(9) The Board may dissolve a committee required by *subsection (1)*, or any committee established under *subsection (2)*.

Advisory committees.

31.—(1) The Board may establish such advisory committees as it considers necessary or desirable to advise it in the performance of its functions.

(2) An advisory committee may include persons who are not members of the Board, but a majority of the members of an advisory committee shall be members of the Board.

(3) A member of a committee established under this section holds office on such terms (including term of office, removal and resignation) as the Board determines.

(4) The Board shall determine the terms of reference and procedures of an advisory committee.

(5) With the approval of the Minister, NAMA, from its own resources, may remunerate a member of an advisory committee who is not a member of the Board.

Indemnification of members of Board and officers of NAMA, etc.

32.—(1) This section applies to the following:

- (a) each member of the Board;
- (b) each officer of NAMA;
- (c) a director of a NAMA wholly owned subsidiary;
- (d) a director of a NAMA group entity;
- (e) a member of the staff of the NTMA.

(2) A person to whom this section applies is indemnified in relation to anything done or omitted in the performance or purported performance or exercise of any of NAMA's functions or powers under this Act, unless it is proved that the act or omission was in bad faith.

Codes of practice.

33.—(1) Within 3 months after the establishment day, NAMA shall prepare codes of practice for approval by the Minister to govern the following matters:

- (a) the conduct of officers of NAMA;
- (b) servicing standards for acquired bank assets;
- (c) cooperation between participating institutions and State agencies;
- (d) risk management, including with regard to debtors;
- (e) disposition of bank assets;
- (f) any other matter as directed by the Minister.

(2) After a code of practice is approved by the Minister, every person to whom it applies shall have regard to and be guided by that code in the performance of his or her functions and in relation to any other matters to which the code relates.

(3) If in the opinion of the Minister adequate provision has not been made in a code of practice drawn up by NAMA under *subsection (1)*, the Minister may require modifications to be made to the code of practice or substitute his own code of practice.

(4) NAMA shall publish a code of practice, issued under this section as approved by the Minister, on the NAMA website.

CHAPTER 3

CHIEF EXECUTIVE OFFICER

Appointment of Chief Executive Officer.

34.—(1) The Minister, after consultation with the Chief Executive of the NTMA and the Chairperson of NAMA, shall appoint as Chief Executive Officer of NAMA a person who is, in the Minister's opinion, suitably qualified.

(2) A person shall not be appointed under *subsection (1)* if he or she is disqualified from being appointed to the Board.

(3) Upon appointment as Chief Executive Officer, the person so appointed shall be appointed as a member of the staff of the NTMA if not already such a member. The term of office, remuneration, allowances and other terms and conditions (including the provision of superannuation benefits) of appointment of the Chief Executive Officer shall be determined in accordance with section 7(2) and section 8 of the National Treasury Management Agency Act 1990.

(4) The Chief Executive Officer is not a civil servant within the meaning of the Civil Service Regulation Act 1956.

Chief Executive Officer's functions.

35.—(1) The Chief Executive Officer shall manage and control generally the administration and business of NAMA and the staff assigned to it, and shall perform any other functions conferred on him or her by or under this Act or by the Board.

(2) The Chief Executive Officer is responsible to the Board for the performance of his or her functions and the implementation of NAMA's strategic targets and objectives.

(3) Such of the functions of the Chief Executive Officer as he or she may from time to time specify, with the consent of the Board, may be performed by an officer or officers of NAMA authorised by the Chief Executive Officer for that purpose. A reference in a provision of this Act to the Chief Executive Officer includes any officer so authorised.

(4) The functions of the Chief Executive Officer may be performed during his or her absence or when the position of Chief Executive Officer is vacant by an officer of NAMA designated for that purpose by the Board. A reference in a provision of this Act to the Chief Executive Officer includes any officer so designated.

(5) The Chief Executive Officer is the officer accountable for the appropriation accounts of NAMA for the purposes of the Exchequer and Audit Departments Act 1866, the Exchequer and Audit Departments Act 1921 and the Comptroller and Auditor General (Amendment) Act 1993.

Resignation of Chief Executive Officer.

36.—The Chief Executive Officer may resign his or her office by letter addressed to the Minister. The resignation takes effect on the date specified in the letter or when the Minister receives the letter, whichever is the later.

Removal of Chief Executive Officer from office.

37.—(1) The Chief Executive Officer ceases to hold that office if he or she—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence in relation to a company,
- (d) is convicted of an offence involving fraud or dishonesty, or
- (e) is disqualified or restricted from being a director of a company.

(2) The Minister may remove the Chief Executive Officer from office by reasonable notice in writing if—

- (a) in the Minister's opinion, the Chief Executive Officer—
 - (i) has become incapable through illness or injury of performing his or her functions,
 - (ii) has contravened *section 29*, or
 - (iii) has committed misconduct specified in the written notice,
- (b) in the Minister's opinion, a serious conflict of interest has arisen in relation to the Chief Executive Officer, or
- (c) his or her removal appears to the Minister to be necessary or expedient for the effective performance by NAMA of its functions.

CHAPTER 4

NAMA'S RELATIONSHIP WITH NTMA

NTMA to provide resources to NAMA.

38.—(1) The NTMA shall provide NAMA with 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, to be necessary or expedient for NAMA to perform its functions under this Act.

(2) Where the NTMA is unable for any reason to provide business and support services or systems referred to in *subsection (1)*, the NTMA, as agent of NAMA, may procure such services or systems as are necessary.

NTMA to provide staff to NAMA.

39.—(1) The NTMA shall assign so many of its staff to NAMA as the Board determines, upon the recommendation of the Chief Executive Officer of NAMA, after consultation with the Chief Executive of the NTMA, to be necessary for the performance by NAMA of its functions under this Act.

(2) Before a person is assigned to NAMA under *subsection (1)*, the NTMA shall ascertain to its satisfaction that the person—

- (a) is of good character and has not been convicted of any offence likely to render him or her unfit or unsuitable to perform the duties that the person is required to undertake or is likely to be required to undertake,
- (b) has not been disqualified or restricted from acting as a director under the Companies Acts, and
- (c) has no material actual or potential conflict of interest.

(3) Before the NTMA assigns a member of its staff to NAMA under *subsection (1)*, the NTMA shall ensure that the member provides a statement of his or her interests, assets and liabilities to the Chief Executive Officer of NAMA and the Chief Executive of the NTMA in a form that the NTMA specifies.

Suspension of officers of NAMA.

40.—The Chief Executive Officer of NAMA, after consultation with the Chief Executive of the NTMA, may suspend an officer of NAMA from his or duties as such an officer if—

- (a) the officer has been convicted at any time of—
 - (i) an offence of theft, fraud or dishonesty, or
 - (ii) any other offence that the Chief Executive Officer considers likely to render him or her unfit or unsuitable to perform his or her duties,

National Asset Management Agency Bill 2009

For public consultation purposes only

- (b) the officer is restricted or disqualified from acting as a director under the Companies Acts,
- (c) the officer may be guilty of misconduct in relation to his or her duties as an officer of NAMA, or
- (d) a material conflict of interest has arisen in relation to that officer.

Guidelines in relation to staff conduct.

41.—(1) NAMA shall, after consultation with the NTMA, draw up guidelines setting out—

- (a) what constitutes misconduct in office for the purposes of *section 40*,
- (b) the procedures for the investigation of any officer of NAMA suspected of misconduct, and
- (c) the procedures for the suspension from his or her duties for misconduct in office.

(2) The guidelines shall be submitted to the Minister for approval no later than 3 months after the establishment day and shall come into operation when approved by the Minister.

(3) NAMA shall disseminate the guidelines among its officers.

CHAPTER 5

CONTRACTED SERVICE PROVIDERS

Power to engage expert advisers and service providers.

42.—(1) 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.

(2) Without prejudice to the generality of *subsection (1)*, NAMA may engage a person (including a credit institution that is not a participating institution) to manage or dispose of acquired bank assets as it thinks fit on such terms and conditions as it thinks fit.

(3) The services that NAMA may engage a service provider to provide include relevant services (within the meaning given by *section 107*).

(4) In performing its functions under this Act, in particular in relation to developing land, NAMA may take account of the resources available to it from the National Building Agency or any other appropriate State agency.

Professional standards and audit.

43.—In contracts for the provision of services to NAMA by expert advisers and service providers, NAMA shall seek to ensure that each expert adviser or service provider—

- (a) operates to the highest standards of honesty and fairness and with due skill, care, prudence and diligence in conducting its business activities under the mandate given to it so as to promote the best interests of NAMA,
- (b) effectively employs the resources and procedures that are necessary for the proper performance of such business activities,
- (c) makes every effort to avoid or manage conflicts of interest and to declare such conflict (actual or potential) to NAMA,
- (d) complies with any regulatory regime to which it is subject, and
- (e) permits NAMA to engage auditors to carry out an audit of the books, accounts and other financial statements of the expert adviser or service provider so far as they relate to the services performed for NAMA.

PART 3

FINANCE, PLANNING, ACCOUNTABILITY AND REPORTING

Financing arrangements and expenses.

44.—(1) The expenses incurred by NAMA or a NAMA group entity in the performance of NAMA's functions under this Act shall be charged on and paid out of funds at the disposal of NAMA or the wholly owned subsidiary concerned.

(2) The Minister may advance to NAMA or a NAMA group entity such sums of money as are necessary for performance of its functions from the Central Fund or the growing produce of that Fund on such terms and conditions (including as to repayment of principal and interest) as he or she determines.

(3) NAMA or a NAMA group entity may, from time to time, with the approval of the Minister, borrow, with or without the guarantee of the Minister, such sums of money (including money in a currency other than the currency of the State) as it determines is required for the performance of its functions under this Act.

(4) The aggregate of the principal of all sums borrowed with the guarantee of the Minister (exclusive of debt securities borrowed from the Minister or NTMA, debt securities issued by NAMA or a NAMA group entity to provide consideration for the acquisition of bank assets or other borrowing from the NTMA or Minister) shall not exceed €10,000,000,000 or a lesser amount that the Minister prescribes.

(5) For the purposes of this Act and to enable the Minister to provide consideration for the acquisition of bank assets and the operations of NAMA or a NAMA group entity, the Minister may, whenever and so often as he or she thinks fit, create and issue debt securities charged on the Central Fund or the growing produce thereof and ranking *pari passu* with debt securities issued by the Minister under section 54 of the Finance Act 1970—

- (a) bearing interest at such rate as he or she thinks fit, or no interest,
- (b) for such cash or non-cash consideration or deferred consideration as he or she thinks fit, and
- (c) subject to such terms and conditions as to repayment, repurchase, cancellation and redemption or any other matter as he or she thinks fit.

(6) The NTMA shall provide NAMA with treasury services and advice in connection with the debt securities issued under *subsection (4)*, any borrowings of NAMA and debt securities issued by NAMA or a NAMA wholly owned subsidiary or NAMA group entity, and for any other purpose and in connection with provision of such treasury services, may enter into transactions of a normal banking nature with any person, as agent of NAMA.

Annual statements.

45.—(1) NAMA shall, before 1 July 2010 for the financial years 2010 and 3 months before the commencement of each subsequent financial year for that financial year prepare in respect of that financial year, a statement that complies with *subsection (3)*, and submit the statement to the Minister.

(2) The Minister shall cause copies of each statement to be laid before each House of the Oireachtas, but not later than—

- (a) in the case of 2010, November 2010, and
- (b) in the case of a statement for any other financial year, one month after the beginning of the subsequent financial year.

(3) A statement submitted to the Minister under subsection (1) shall specify—

- (a) the proposed objectives of NAMA's activities for the financial year concerned,
- (b) the proposed nature and scope of the activities to be undertaken,
- (c) the proposed strategies and policies for achieving those objectives, and
- (d) the uses to which it is proposed to apply NAMA's resources.

(4) The Minister may omit from a copy of a statement laid before the Oireachtas under *subsection (2)* any matter that would disclose confidential information. If the Minister omits such matter from such a copy, he or she shall insert in its place a statement that matter has been omitted and a general description of the omitted matter.

Annual accounts.

46.—(1) NAMA shall keep, in the form that the Minister directs, proper and usual accounts of money received and expended by it and of all financial transactions undertaken in the performance of its functions.

(2) The accounts shall include a separate account of the administration fees and expenses incurred by NAMA and of each NAMA group entity in the performance of its functions.

(3) The accounts shall include—

- (a) a list of all debt securities issued by NAMA for the purposes of this Act,
- (b) a list of debt securities issued to and redeemed by each participating institution,
- (c) a list of all advances made to NAMA from the Central Fund,
- (d) a list of all advances made by NAMA and each NAMA group entity,
- (e) a list of all asset portfolios held by NAMA and each NAMA group entity, and the book valuation placed on each portfolio, and
- (f) a list of Government support measures, including any guarantees, received by NAMA and each NAMA group entity,

and may include any other information that the Minister considers appropriate.

Annual reports.

47.—(1) Not later than 6 months after the end of each financial year, beginning with the financial year ending 2010, NAMA shall make a report (in this Act referred to as an “annual report”) to the Minister of its activities during the financial year concerned.

(2) The Minister shall cause copies of an annual report to be laid before each House of the Oireachtas.

(3) An annual report shall be in the form, and shall include information regarding the matters, that the Minister directs.

Other reports to Minister.

48.—(1) The Minister may require NAMA and any NAMA group entity, to report to him or her, at any time and in any format that the Minister directs, on any matter, including—

- (a) the performance of its functions under this Act, and
- (b) any information or statistics relating to the performance of the functions of NAMA or the NAMA group entity, as the case may be.

(2) NAMA or the NAMA group entity concerned shall comply with a requirement of the Minister under *subsection (1)*.

(3) The content of a report provided to the Minister under this section shall be deemed to be confidential information.

Audit of accounts by Comptroller and Auditor-General.

49.—(1) NAMA shall 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.

(2) NAMA shall present a copy of the accounts as audited to the Minister as soon as may be and the Minister shall cause a copy of the audited accounts to be laid before each House of the Oireachtas.

(3) The Minister may omit from a copy of accounts laid before the Oireachtas under *subsection (2)* any matter that would disclose confidential information. If the Minister omits such matter from such a copy, he or she shall insert in its place a statement that matter has been omitted and a general description of the omitted matter.

Accountability to Committee of Public Accounts.

50.—(1) The Chief Executive Officer and the Chairperson shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record or account subject to audit by the Comptroller and Auditor General that NAMA is required by or under an enactment to prepare,
- (b) the economy and efficiency of NAMA and each NAMA group entity in its use of the resources made available to it under this Act,
- (c) the systems, procedures and practices employed by NAMA and each NAMA group entity for evaluating the effectiveness of its operations, and
- (d) any matter affecting NAMA and each NAMA group entity referred to in any special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in any of *paragraphs (a) to (c)*) that is laid before Dáil Éireann.

(2) The Chief Executive Officer and the Chairperson, in giving evidence under *subsection (1)*, shall not—

- (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy, or

- (b) produce to the Committee a specified document in which the Chief Executive Officer or the Chairperson questions or expresses an opinion on the merits of any such policy or such objectives.

Appearances before another Oireachtas Committee.

51.—(1) The Chairperson and the Chief Executive Officer of NAMA shall, if requested to do so by a Committee (or a subcommittee of such a Committee) appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) to examine matters relating to NAMA—

- (a) attend before that Committee, and
- (b) provide that Committee with such information as it requires.

(2) The Chief Executive Officer and the Chairperson, in giving evidence under *subsection (1)*, shall not—

- (a) question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy, or
- (b) produce or send to a Committee a specified document in which the Chief Executive Officer or the Chairperson questions or expresses an opinion on the merits of any such policy or such objectives.

Repayment to Central Fund to redeem debt.

52.—(1) NAMA or a subsidiary of NAMA shall repay any funds advanced to it by the Minister out of its own resources from time to time.

(2) NAMA may from time to time, after consultation with the Minister, use any surplus funds of NAMA to redeem and cancel debt securities issued under this Act.

(3) Any surplus remaining after redemption of debt securities under *subsection (2)* shall be credited to the Central Fund.

(4) The assets of NAMA and of any NAMA wholly owned subsidiary at its eventual dissolution will be transferred to the Minister or paid into the Exchequer as the Minister directs.

PART 4

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

CHAPTER 1

DESIGNATION OF PARTICIPATING INSTITUTIONS

Application for designation as participating institution.

53.—(1) A credit institution may apply to the Minister, within 28 days (or such longer period that the Minister prescribes by order under this subsection) after the establishment day, for it and its subsidiaries to be designated as participating institutions. A credit institution that applies under this subsection shall include all of its subsidiaries in the application.

(2) An application under *subsection (1)* shall be in the form that the Minister directs. The Minister may direct different forms to be used for that purpose by different credit institutions.

(3) A credit institution applying under *subsection (1)* shall as part of its application certify that since 30 July 2009 it has dealt with its eligible assets in accordance with *section 57*.

(4) A credit institution that applies to be designated under *subsection (1)* is responsible for obtaining the consent of all its subsidiaries to their inclusion in the application. NAMA is not required to seek evidence of such consent.

Capacity of participating institutions that apply for designation.

54.—(1) A participating institution has and shall be taken always to have had, as part of its functions and objects, the power and capacity to—

- (a) apply for designation as, and become, a participating institution pursuant to this Act, and
- (b) warrant the truth, accuracy and completeness of the information supplied to NAMA in relation to such bank assets and indemnify NAMA in respect of a breach of such a warranty.

(2) A participating institution has and shall be taken always to have had, as part of its functions and objects, the power and capacity to engage in the following transactions in so far as they relate to any designated bank asset of the participating institution and relevant subsidiaries:

- (a) provide credit facilities;
- (b) enter into joint venture, partnership, co-ownership, shareholder or other similar agreements;

- (c) enter into contracts (including contracts in a currency other than the currency of the State) whose purpose or one of whose purposes is—
 - (i) to eliminate or reduce the risk of loss arising from changes in interest rates, currency exchange rates or from other factors of a similar nature, or
 - (ii) to eliminate or reduce the costs of raising funds or borrowing or the cost of other transactions carried out in the ordinary course of business;
- (d) engage in any contracts to increase the return on an investment (including a credit facility),

and has and shall be taken always to have had, as part of its functions and objects, the power to engage in any other transaction in so far as it relates to the transfer of designated bank assets to NAMA.

(3) Nothing in this section shall limit the liability of a participating institution to any person based on a transaction alleged to have been beyond the powers of the participating institution but any such claim is enforceable only against the participating institution and not against NAMA, any NAMA wholly owned subsidiary or NAMA group entity and gives rise to remedy in damages only against the participating institution.

Designation of participating institutions.

55.—(1) The Minister, after consultation with the Governor and the Regulatory Authority, may designate a credit institution as a participating institution if the credit institution has applied under *section 53* to be so designated and the Minister is satisfied that—

- (a) the credit institution is systemically important to the financial system in the State, and
- (b) the acquisition of eligible bank assets from the credit institution is necessary to achieve the purposes of this Act, having regard to —
 - (i) support available to, or received by, the credit institution from the State, any other Member State or a member of the group of the credit institution,
 - (ii) the financial situation of the credit institution, and
 - (iii) the resources available to the Minister.

(2) The designation of a credit institution under *subsection (1)* includes all of its subsidiaries other than any subsidiary that the Minister excludes from designation.

(3) If the Minister has not designated an applicant as a participating institution within 3 months after its application, the Minister is taken to have refused the application.

(4) After designation, a participating institution shall—

National Asset Management Agency Bill 2009
For public consultation purposes only

- (a) when making a report, or providing information, whether or not further to a request from NAMA or the Minister, make full disclosure of matters relevant to the making of a decision by NAMA whether or not to acquire the bank asset or determination of the acquisition value determined for it,
 - (b) at all times act reasonably and in its utmost good faith in its dealings with the Minister, NAMA and its agents, the valuation panel and the expert reviewer,
 - (c) cooperate promptly and fully (including by way of supplying information and explanations to NAMA in response to any request by NAMA) with NAMA in its due diligence processes in relation to bank assets being considered for acquisition,
 - (d) provide such services (including relevant services within the meaning of section 109) as NAMA may direct in connection with an acquired bank asset, in accordance with any terms and conditions that NAMA may specify,
 - (e) comply with any direction given by the Minister or NAMA in the performance of its obligations under this Act,
 - (f) comply with any other requirements that the Minister or NAMA specifies to achieve the effective designation of the participating institution or an effective transfer of bank assets to NAMA.
- (5) For the purposes of this section “group”, in relation to a credit institution, means—
- (a) the credit institution,
 - (b) any subsidiary of the credit institution, and
 - (c) any entity of which the credit institution is a subsidiary within the meaning of the section referred to in *paragraph (b)*.

CHAPTER 2

DESIGNATION OF ELIGIBLE BANK ASSETS

Eligible bank assets.

56.—(1) The Minister may, after consultation with NAMA, the Governor and the Regulatory Authority, and considering the purposes of NAMA and the resources available to the Minister, prescribe classes of bank asset as classes of eligible bank asset, including—

- (a) credit facilities issued, created by or otherwise provided by a participating institution directly or indirectly—
 - (i) for the purpose, in whole or in part, of purchasing, exploiting or developing development land,
 - (ii) where the security connected with the credit facility is in whole or in part development land,

- (iii) where the security in whole or in part consists of an interest in a company engaged in purchasing, exploiting or developing development land,
 - (iv) where the credit facility is guaranteed by a company referred to in *subparagraph (iii)*,
 - (v) to a debtor who has provided security referred to in *subparagraph (ii)* or *(iii)*, or
 - (vi) to a person who is an associated debtor of a debtor to whom a credit facility described in any of *subparagraphs (i) to (iii)* has been provided,
- (b) credit facilities and classes of credit facilities (other than credit facilities referred to in *paragraph (a)*) in respect of debtors or associated debtors of participating institutions (or classes of debtors or associated debtors of participating institutions) where the total amount of indebtedness in respect of such facilities to a participating institution is such that, in the opinion of the Minister, acquisition by NAMA is necessary for the purposes of this Act,
- (c) other rights arising directly or indirectly in connection with a credit facility described in *paragraphs (a)* or *(b)* including—
- (i) a contract to which the participating institution is a party or in which it has an interest,
 - (ii) a benefit to which the participating institution is entitled, and
 - (iii) any other asset in which the participating institution has an interest,
- (d) bank assets associated with bank assets specified in *paragraphs (a)* and *(b)*, and
- (e) any other class of bank asset the acquisition of which, in the opinion of the Minister, is necessary for the purposes of this Act.

(2) The Minister in forming an opinion for the purpose of *subsection (1)(b)*, may take into account—

- (a) the total number of credit facilities or classes of credit facilities provided by the participating institution to those debtors and associated debtors or classes of debtors and associated debtors, and
- (b) the aggregated indebtedness of those debtors and associated debtors or classes of debtors or associated debtors owed to any other participating institution.

(3) A bank asset that is in a class prescribed under this section is referred to in this Act as an “eligible bank asset”.

(4) A class of bank asset prescribed under *subsection (1)* shall be taken not to include any bank asset that entered a participating institution’s balance sheet after 31 December 2008.

(5) Notwithstanding *subsection (4)*, a bank asset in a prescribed class is an eligible bank asset if, in the opinion of NAMA, it entered a participating institution's balance sheet on or before that date even if renegotiated or refinanced after that date. For the purposes of determining whether a bank asset entered a participating institution's balance sheet on or before 31 December 2008, NAMA may take into account the terms of any renegotiation, restructuring or refinancing of a bank asset effected after 31 December 2008.

(6) For the purposes of this Act, a person is an "associated debtor" of a debtor if the person—

- (a) is or was at any time directly or indirectly indebted or otherwise obligated to a participating institution under or in connection with a credit facility or any security, and
- (b) is or was at any time—
 - (i) a body corporate that was a subsidiary of, or a related company (within the meaning given by section 140(5) of the Companies Act 1990) to, the debtor;
 - (ii) a nominee of the debtor, including a person who may or does in fact act on an express or implied direction or instruction of the debtor or another associated debtor;
 - (iii) acting in the capacity as the trustee of a declared or undeclared trust the beneficiaries of which include (directly or indirectly)—
 - (I) the debtor,
 - (II) a person referred to in *subparagraph (iii)*, or
 - (III) a body corporate controlled by the debtor or a person referred to in that subparagraph,
 - (iv) in partnership, within the meaning of the laws of any applicable place, with the debtor,
 - (v) a body corporate of which the debtor is the sole member,
 - (vi) a body corporate controlled by the debtor, or
- (c) a member of any other class of person prescribed by the Minister for the purposes of this subsection.

(7) For the purposes of *subparagraphs (vi)* of *subsection (6)(b)*, a body corporate shall be taken to be controlled by a debtor if the debtor is (whether alone or together with any one or more of the persons mentioned in *subparagraphs (i)* to *(v)* of *subsection (6)(b)*, and whether directly or indirectly)—

- (a) interested in one-third or more of the equity share capital of the body, or
- (b) entitled to exercise or control the exercise of one-third or more of the voting powers at any general meeting of the body.

(8) In *subsection (7)*—

- (a) “equity share capital” has the same meaning as it has in section 155 of the Companies Act 1963, and
- (b) the reference to voting power exercised by a debtor includes voting power exercised by another body corporate which that debtor controls.

(9) Section 54 of the Companies Act 1990 applies for the purpose of determining, for the purposes of *subsection (7)*, whether a person holds an interest in shares.

Dealings by credit institutions with eligible bank assets after application for designation as participating institutions.

57.—(1) A participating institution, a credit institution which has applied to become a participating institution or person in respect of whom an application to become a participating institution has been made, shall, until it has been served with a practical completion notice—

- (a) administer, service and deal with all of its eligible bank assets in the same manner as, and with the same level of professional skill, care and diligence as, a prudent lender acting reasonably would so administer, service and deal, and
- (b) so act in relation to those bank assets in good faith having regard to the purposes of this Act.

(2) A participating institution, a credit institution which has applied to become a participating institution or person in respect of whom an application to become a participating institution has been made, shall not without the prior written approval of NAMA—

- (a) deal with any of its eligible bank assets otherwise than in the ordinary course of its business,
- (b) deal with any of its eligible bank assets in such a way as to prejudice or impair NAMA’s prospective interests or priorities in relation to such a bank asset,
- (c) compromise any claim or release, vary, relinquish or otherwise take or omit to take any action that could reduce, lessen or impair any security, right, obligation, ranking or priority held or enjoyed, directly or indirectly, in connection with such a bank asset, or
- (d) amend or vary any contract relating to such a bank asset unless contractually obliged to do so.

PART 5

VALUATION METHODOLOGY

Determination of acquisition values—valuation methodology.

58.—(1) In this section—

National Asset Management Agency Bill 2009
For public consultation purposes only

- (a) a reference to the current market value of the property comprised in the security for a credit facility that is a bank asset is a reference to the estimated amount that would be paid between a willing buyer and a willing seller in an arm's-length transaction where both parties acted knowledgeably, prudently and without compulsion,
- (b) a reference to the current market value of a bank asset is a reference to the estimated amount that would be paid between a willing buyer and a willing seller in an arm's-length transaction where both parties acted knowledgeably, prudently and without compulsion,
- (c) a reference to the long-term economic value of the property comprised in the security for a credit facility that is a bank asset is a reference to the value that the property can reasonably be expected to attain in a stable financial system when current crisis conditions are ameliorated and in which a future price or yield of the asset is consistent with reasonable expectations having regard to the long-term historical average, and
- (d) a reference to the long-term economic value of a bank asset is a reference to the value that it can reasonably be expected to attain in a stable financial system when current crisis conditions are ameliorated.

(2) Subject to *subsection (4)*, the acquisition value of a bank asset is its long-term economic value as determined by NAMA.

(3) NAMA shall determine the long-term economic value of a bank asset by reference to the following:

- (a) the current market value of the property comprised in the security for the credit facility that is the bank asset at a date specified by NAMA;
- (b) the current market value of the bank asset, at a date specified by NAMA, by reference to market rates and accepted market methodology;
- (c) the long-term economic value of the property referred to in *paragraph (a)* at the date referred to in that paragraph,

in accordance with—

- (i) *subsection (6)*,
- (ii) the regulations made by the Minister under *section 59*, and
- (iii) the rules in relation to State aid made by the Commission of the European Communities.

(4) NAMA may, if it considers it appropriate after consultation with the Minister, and subject to any regulations made by the Minister under *subsection (5)*, having regard to—

- (a) the purposes of this Act,

- (b) the expected date of acquisition of the bank asset concerned,
- (c) the type of bank asset,
- (d) the rules in relation to State aid made by the Commission of the European Communities, and
- (e) any other relevant matter affecting valuation,

determine that the acquisition value to be assigned to particular bank assets or class of bank assets shall be—

- (i) their current market value, or
- (ii) a greater value (not exceeding their long-term economic value) that NAMA considers appropriate in the circumstances.

(5) The Minister may make regulations for the purposes of the application of *subsection (4)*. For that purpose the Minister shall have regard to—

- (a) the purposes of this Act,
- (b) the expected dates of acquisition of bank assets,
- (c) the type of bank assets,
- (d) the rules in relation to State aid made by the Commission of the European Communities, and
- (e) any other relevant matter that affects valuation.

(6) In determining the acquisition value of a bank asset under *subsection (2)* or *(4)*, NAMA shall have regard to the following:

- (a) any value that the participating institution concerned submits as being, in its opinion, the current market value of the property comprised in the security for the credit facility that is the bank asset;
- (b) the acquisition value already determined in accordance with the valuation methodology of another similar bank asset;
- (c) the credit worthiness of the debtor or obligor concerned;
- (d) the performance history of the debtor or obligor in respect of that asset;
- (e) any reports furnished to NAMA in relation to the matters specified in *subsection (7)* whether prepared before or after the commencement of this Act.

(7) The Minister may make regulations providing for the taking into account by NAMA, in determining the acquisition value of a bank asset, of any report of an expert (whether prepared before or after the commencement of this Act) concerning factors or matters relevant to the determination of the value of property or property of a particular type or in specific locations or with specific features or benefits, including—

- (a) zoning,
- (b) availability of utilities,
- (c) availability of similar property in similar locations,
- (d) historic value of property in particular locations, and
- (e) recent valuations of similar property in similar locations.

Regulations as to adjustment factors, etc.

59.—(1) The Minister may make regulations providing for the adjustment factors to be taken into account in determining the long-term economic value of a bank asset and the property comprised in the security for a credit facility that is a bank asset.

(2) In making regulations under *subsection (1)*, the Minister may have regard—

- (a) to the rules in relation to State aid and any relevant guidance issued by the Commission of the European Communities, and
- (b) in relation to the determination of the long-term economic value of the property comprised in the credit facility that is a bank asset, to—
 - (i) the extent to which the price or yield of the asset has deviated from the long-term historical average,
 - (ii) supply and demand projections by reference to the type of asset and its location,
 - (iii) macroeconomic projections for growth in the gross domestic product and for inflation,
 - (iv) demographic projections,
 - (v) land and planning considerations (including national, regional or local authority development or spatial plans) that may exert an influence on the future value of the asset concerned,
 - (vi) analyses presented by the Minister of the Environment, Heritage and Local Government on the extent to which existing land zoning and planning permissions granted and in force meet or exceed projected growth requirements, and
 - (vii) analyses presented by the Dublin Transport Office and the National Transport Authority of existing and future transport planning and the associated supply and demand projections for land use.
- (c) in relation to the determination of the long term economic value of bank assets, to—
 - (i) the long-term economic value of the property comprised in the security for a credit facility that is a bank asset,
 - (ii) the net present value of the anticipated income stream associated with the loan asset,

- (iii) in the case of rental property, current and projected vacancy rates,
 - (iv) loan margins,
 - (v) an appropriate discount rate to reflect NAMA's cost of funds plus a margin that represents an adequate remuneration to the State that takes account of the risk in relation to the bank assets acquired by NAMA,
 - (vi) the mark-to-market value of any derivative contracts associated with the bank asset,
 - (vii) any ancillary security such as personal guarantees and corporate assets, and
 - (viii) fees reflecting the costs of loan operation, maintenance and enforcement, and
- (d) any other matter that he or she considers relevant.

(3) Every regulation made under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

PART 6

ACQUISITION OF BANK ASSETS AND RELATED MATTERS

CHAPTER 1

ACQUISITION OF BANK ASSETS

Participating institutions to provide information about eligible bank assets.

60.—(1) A participating institution shall, as soon as may be after having been directed by NAMA to do so, provide NAMA with information, in the form requested by NAMA, 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 the information is to be provided in tranches described by reference to debtors, associated debtors, security or in any other way.

(2) NAMA may direct a participating institution that any information provided by a participating institution under *subsection (1)* is to be certified as accurate jointly by the chief executive officer and chief financial officer of the participating institution.

(3) A participating institution shall, on request by NAMA, provide NAMA with either a report or a certificate or both, in the form required by NAMA, about any of its eligible bank

assets or any information relevant to the acquisition value to be placed on any of its eligible bank assets, as NAMA directs.

(4) A participating institution shall, in a report or certificate under *subsection (3)*, disclose in utmost good faith all matters and circumstances in relation to each bank asset concerned that might materially affect either NAMA's decision to acquire the bank asset or the value that NAMA places on it.

(5) Where a participating institution is a subsidiary of another participating institution, the requirements of this section shall be taken to have been met if that other institution provides either a consolidated report, or a certificate that meets the requirements of this section, or both, with regard to the participating institution and its eligible bank assets.

(6) Notwithstanding any legal or contractual restriction, NAMA and a NAMA group entity may disclose to each other any information, or any report, certificate or other document that either one obtains in connection with the performance of any of its functions.

Production of documentation, books and records for inspection.

61.—(1) A participating institution shall, if NAMA or a person acting on NAMA's behalf so requests, produce to NAMA for inspection the credit facility documentation, books and records kept in connection with any eligible bank asset. The participating institution shall give to NAMA such facilities for inspecting and taking copies of the contents of any such documentation, book or record as NAMA requires.

(2) Where a participating institution is a subsidiary of another participating institution, the requirements of this section will be taken to be met if that other institution complies with *subsection (1)* on behalf of the participating institution.

(3) If—

(a) a participating institution is required by *subsection (1)*—

- (i) to produce documentation or a book or record in connection with a bank asset to NAMA, or
- (ii) to provide facilities to NAMA to inspect or take copies of the contents of any such documentation, book or record, and

(b) it or the other institution mentioned in *subsection (2)* fails to do so,

NAMA may apply to the Court, on notice to the participating institution or that other institution, for an order directing the participating institution or that other institution to produce the documentation, book or record, or provide the facilities, as the case requires.

(4) The Court may make an order referred to in *subsection (3)* if the Court is satisfied that the production of the documentation, book or record, the provision of the facilities or the

explanation sought is reasonably necessary to enable NAMA to make a decision as to whether to acquire an interest in the bank asset concerned, or the acquisition value to be placed on it.

(5) A document, book or record produced by a person in answer to a request or order under this section may be used in evidence against the person in any proceedings whatsoever.

(6) If the court is satisfied that for reasons of commercial confidentiality a hearing under this section should be conducted otherwise than in public, the court may so order.

Provision of information and explanations, etc.

62.—(1) A participating institution shall provide any information and explanations requested by NAMA in relation to the matters referred to in *sections 60* and *61* or any other matter relevant to the acquisition of a bank asset, and shall also secure that an officer or staff member of the participating institution or other institution shall provide an explanation of any such information, documentation, book or record, including an explanation of any apparent omission from the information, documentation, book or record.

(2) If a participating institution or other institution is required to secure that an officer or staff member provide an explanation of information, documentation or a book or record or an entry in a book or record, and fails to do so, NAMA may apply to the Court, on notice to the participating institution or other institution, for an order directing that participating institution or other institution to secure the provision of the explanation.

(3) The Court may make an order referred to in *subsection (2)* if the Court is satisfied that the provision of the explanation sought is reasonably necessary to enable NAMA to make a decision whether to acquire the bank asset concerned.

(4) Information provided by a person in answer to a request or order under this section may be used in evidence against the person in any proceedings whatsoever

(5) If the court is satisfied that for reasons of commercial confidentiality a hearing under this section should be conducted otherwise than in public, the court may so order.

Decision about acquisition of eligible bank assets.

63.—(1) NAMA may acquire an interest in an eligible bank asset of a participating institution if NAMA considers it necessary or desirable to do so, and is not obliged to acquire any particular, or any, eligible bank asset or interest of such an institution.

(2) In deciding whether to acquire a particular eligible bank asset or interest in a bank asset NAMA may take into account—

- (a) whether the security that is part of the interest is adequate,

National Asset Management Agency Bill 2009

For public consultation purposes only

- (b) whether any security that is part of the interest has been perfected,
- (c) the economic value of that security,
- (d) whether the relevant credit facility documentation is defective or incomplete,
- (e) whether the participating institution concerned or any other person has engaged in conduct concerning the interest or eligible bank asset that is or could be prejudicial to the position of NAMA,
- (f) whether the participating institution has complied with its contractual and legal obligations and its obligations under this Act in relation to the interest or eligible bank asset, or its eligible bank assets generally,
- (g) whether in NAMA's opinion the participating institution has advanced a sufficient quantum of the agreed credit facility,
- (h) the quality of the title to any property held as security that is part of the interest,
- (i) any applicable legal, regulatory or planning requirement that has not been complied with in relation to any proposed development,
- (j) an association with another bank asset of a participating institution,
- (k) the performance of the bank asset,
- (l) any matter disclosed in any due diligence carried out by or on behalf of the participating institution or NAMA, and
- (m) any other matter that NAMA considers relevant.

NAMA to prepare acquisition schedule.

64.—(1) NAMA shall identify eligible bank assets of a participating institution that NAMA proposes to acquire and indicate a timetable for the proposed acquisition of those assets.

(2) NAMA may, for the purposes of identifying eligible bank assets that it proposes to acquire, consult with the participating institution concerned, but is not obliged to do so. The participating institution shall cooperate with NAMA in any such consultation.

(3) When NAMA has identified eligible bank assets of a participating institution that NAMA proposes to acquire, and has determined the acquisition value of each of those assets, NAMA shall serve on the institution a schedule or schedules (each of which is referred to in this Act referred to as an “acquisition schedule”) setting out for each eligible bank asset—

- (a) a statement of the eligible bank asset to be acquired,
- (b) a statement of any obligations or liabilities excluded from the acquisition,
- (c) the acquisition value,
- (d) the calculation for the acquisition value,

- (e) any obligations to be imposed on the participating institution after the acquisition,
- (f) the date of acquisition, and
- (g) if the eligible bank asset is not to be acquired by NAMA itself, the NAMA group entity that will acquire it.

(4) An acquisition schedule may contain any other matter and terms and conditions that NAMA thinks fit.

(5) To avoid doubt, an acquisition schedule may specify—

- (a) a particular eligible bank asset,
- (b) any number of particular eligible bank assets, or
- (c) all the eligible bank assets of the participating institution.

(6) For the avoidance of doubt—

- (a) NAMA need not identify at the same time all the eligible bank assets of a participating institution that it proposes to acquire, and
- (b) NAMA may serve more than one acquisition schedule on a participating institution.

(7) The date of acquisition of a designated eligible bank asset shall be at least 28 days after the acquisition schedule is served on the participating institution concerned unless NAMA specifies a shorter period.

(8) The Minister may by regulations provide for—

- (a) matters relating to the interests that transfer to NAMA, and
- (b) where the participating institution is to remain the legal owner of eligible bank assets, the terms and conditions of the trusts upon which it shall hold it for NAMA.

Amendment of acquisition schedule.

65.—(1) After service of an acquisition schedule on a participating institution, but before the acquisition date for a bank asset specified in the acquisition schedule, NAMA may—

- (a) revoke the acquisition schedule, or amend it to omit the bank asset or substitute a different bank asset, or
- (b) otherwise amend the acquisition schedule in relation to the bank asset.

(2) Without prejudice to the generality of *subsection (1)(b)*, NAMA may amend an acquisition schedule in any of the following ways:

- (a) to alter the description of an eligible bank asset;
- (b) to alter the acquisition date of such an asset;
- (c) to alter the acquisition value of such an asset;
- (d) to alter any of the terms and conditions of the acquisition schedule;
- (e) to correct an error or omission.

(3) When NAMA has amended an acquisition schedule, NAMA shall serve on the participating institution an amended acquisition schedule. Where NAMA does so, the amended acquisition schedule has effect in place of the original acquisition schedule.

(4) When NAMA has revoked an acquisition schedule, NAMA shall serve on the participating institution a notice of the revocation and when it does so, the acquisition schedule is of no effect from the date of that service.

Effect of service of acquisition schedule.

66.—(1) Subject to *subsection (5)*, the service of an acquisition schedule on a participating institution in accordance with *section 64* or of an amended acquisition schedule in accordance with *section 65* operates to transfer each bank asset specified in the acquisition schedule or amended acquisition schedule to NAMA on the date of acquisition specified in the acquisition schedule or amended acquisition schedule as the date of acquisition of the bank asset.

(2) The transfer of a bank asset pursuant to *subsection (1)* is subject to terms and conditions provided for in regulations made by the Minister.

(3) The operation of *subsection (1)* in relation to a bank asset is not affected by any notice served by the participating institution concerned under *section 98 or 99*.

(4) *Subsection (1)* has effect in relation to a bank asset notwithstanding—

- (a) any legal (including contractual) or equitable restrictions on the date of acquisition of the bank asset or any part of it,
- (b) any restriction, inability or incapacity relating to or affecting any matter referred to in the acquisition schedule (whether generally or in particular) or any requirement for a consent, notification, authorisation, licence or document to like effect (by any name or howsoever described), in each case arising by virtue of law, in equity or in any other way,
- (c) any insignificant or immaterial error or any obvious error, or
- (d) any provision of any enactment to the contrary.

(5) The service of an acquisition schedule on a participating institution in accordance with *section 64* does not transfer to NAMA a bank asset specified in the acquisition schedule on the acquisition date specified in the acquisition schedule in relation to the bank asset if—

- (a) before the date of acquisition, the participating institution concerned gives notice under *section 91* in relation to the bank asset, and
- (b) on the date of acquisition—
 - (i) the Minister has not confirmed the inclusion of the bank asset in the acquisition schedule in accordance with *section 94*, or
 - (ii) NAMA has removed the asset from the acquisition schedule or revokes the acquisition schedule in accordance with *section 91*.

Effect of service of acquisition schedule in relation to foreign assets.

67.—(1) In this section—

“foreign asset” means a bank asset—

- (a) in which any right, title or interest, or
- (b) any dealing or transaction involving or connected with it,

is governed in whole or in part by the law of a state other than the State (including the law of a territory of such a State);

“foreign law”, in relation to a foreign asset or a transaction in respect of a foreign asset means the law of a state other than the State.

(2) References in this section to a bank asset of a participating institution, or a nominee of it, include references to—

- (a) any receivable of the institution or its nominee and any right or benefit in connection with a receivable controlled by the institution or nominee, and
- (b) any money or cash equivalent instrument in any currency received or recovered by, or held to the order of or otherwise controlled by, the institution or nominee in connection therewith.

(3) This section shall apply in relation to each foreign asset that is included in an acquisition schedule.

(4) To the extent that a bank asset specified in an acquisition schedule is a foreign asset—

- (a) if the law governing the transfer of the foreign asset is the law of the State, then the transfer shall be valid and binding in all respects,
- (b) if the law governing the transfer of the foreign asset is a foreign law and that law permits the transfer of that asset, the participating institution shall do everything necessary to effect the transfer and on completion of the transfer the foreign

asset shall be deemed to have transferred in accordance with the acquisition schedule, or

- (c) if foreign law does not permit the transfer of the foreign asset, the participating institution shall do all that it is permitted to do under foreign law to transfer to NAMA the greatest interest possible in the foreign asset (including the full beneficial interest) and that interest shall be deemed to have transferred in accordance with the acquisition schedule.

(5) A participating institution shall—

- (a) to the extent that a foreign asset is one to which *subsection (4)(c)* is applicable—
 - (i) undertake such duties, obligations and liabilities as nearly as possible corresponding to those of a trustee in relation to that bank asset, and
 - (ii) hold that bank asset for the benefit and to the direction of NAMA,
 and
- (b) to the extent that a foreign asset comprises a liability, discharge the liability in accordance with its terms (where applicable, on behalf of NAMA),

in each case—

- (i) having regard and subject to the form of, and terms and conditions of the acquisition of, that foreign asset, and
- (ii) with effect from the acquisition date specified in the acquisition schedule in relation to the foreign asset, until completion of all aspects of the transfer referred to in *subsection (4)* having become effective as a matter of foreign law or such other earlier or later date as NAMA may direct.

(6) *Subsection (7)* applies in so far as the service of an acquisition schedule would not, of itself, as a matter of foreign law, operate to effect a transfer of a foreign asset or otherwise effect or achieve the results or legal state of affairs referred to in *subsection (4)* in relation to that bank asset.

(7) Without prejudice to *subsection (4)* a participating institution shall, immediately upon being so directed by NAMA to do so, take such steps and execute and deliver to NAMA or its nominees such contracts, documents, agreements, deeds and instruments as NAMA deems necessary or desirable to ensure that there is effected a binding and enforceable transfer to NAMA as a matter of foreign law of such interest or interests as NAMA deems appropriate in a foreign asset, each such transfer to take effect on such terms and conditions and from such date as NAMA may direct (not being a date earlier than the date that would have applied if the foreign asset referred to in the transfer schedule had been a bank asset that is not a foreign asset). NAMA may issue more than one direction under this subsection in connection with any foreign asset.

- (8) Each trust, duty, obligation and liability created or constituted by this section—
- (a) shall (to the extent that the law of the State is applicable or relevant) be valid, binding and enforceable for all purposes as a matter of law, and
 - (b) shall be not be taken to constitute or create security.

(9) Each duty, obligation and liability imposed by this section shall also take effect as if created by a binding and enforceable contract between the relevant participating institution and NAMA.

(10) A participating institution shall comply with any direction of NAMA in respect of any duty, obligation and liability under this section.

(11) A participating institution shall, and shall ensure that its subsidiaries shall, obtain, make, maintain and comply with any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration that is necessary in the State and in any other place in connection with procuring the legality and enforceability of any act, matter or thing referred to in this section or that NAMA otherwise deems necessary or desirable.

(12) *Sections 68 and 69* apply with any necessary modifications in relation to a foreign asset.

Payment for bank assets.

68.—(1) As soon as possible after the service on a participating institution of an acquisition schedule (or after service of an amended schedule or a decision under *section 94*, as the case may be), NAMA shall notify the Minister and the NTMA of the amount payable to the participating institution concerned as the acquisition value of the bank assets specified in the acquisition schedule.

- (2) Within 28 days after the service of the acquisition schedule—
- (a) the Minister shall issue to NAMA, or the NAMA group entity that acquired the bank assets concerned, debt securities, or
 - (b) NAMA or a NAMA group entity may issue debt securities to the participating institution,

to the value of the total of the acquisition value for the bank assets acquired pursuant to the acquisition schedule or amended acquisition schedule.

(3) On the date of acquisition of a bank asset, NAMA, or the NAMA group entity subsidiary which acquired the bank asset concerned, shall transfer or issue to the participating institution concerned debt securities issued under *subsection (2)* equal to the acquisition value of the bank asset.

(4) *Subsections (1), (2) and (3)* have effect in relation to a bank asset even if at the relevant time—

- (a) the inclusion of the bank asset in the acquisition schedule is the subject of an objection under *section 72*, or
- (b) the total portfolio acquisition value is at the time the subject of a dispute under *section 98* or *99*.

(5) In the case of the acquisition of a foreign asset (within the meaning given by *section 67*), NAMA shall transfer to the participating institution concerned debt securities representing the acquisition value of the foreign asset on the later of—

- (a) the acquisition date, and
- (b) the date on which NAMA is satisfied that the participating institution has met any obligations required of it.

(6) In the case of the acquisition of a foreign asset (within the meaning given by *section 67*), NAMA may, in accordance with regulations made under *section 73*, withhold all or part of the debt securities relating to a foreign asset until satisfied that the participating institution concerned has met the obligations required of it.

Clawback of overpayments.

69.—(1) If a participating institution receives from NAMA an amount in exchange for acquired bank assets that is more than is due to the participating institution under this Act, or receives any other amount from NAMA to which it is not entitled, the institution shall repay to NAMA—

- (a) in the case of overpayment of an amount due for the acquisition of bank assets, an amount equal to the overpayment (in accordance with a determination by the Minister under *section 102*) within the period that NAMA determines, or
- (b) in any other case, an amount equal to the overpayment within the period that NAMA determines.

(2) A certificate as to the amount of an overpayment referred to in *subsection (1)* issued by NAMA is admissible as evidence of the amount of that overpayment.

No dealings with bank assets after service of acquisition schedule.

70.—After the service of an acquisition schedule on a participating institution, the participating institution—

- (a) shall continue, until the acquisition date for each bank asset specified in the acquisition schedule, to manage each bank asset concerned as specified in *section 57*,

- (b) until that date for each such bank asset, shall not make nor permit the making of any change to the bank asset concerned without NAMA's written consent, and
- (c) until that date for each such bank asset, notify NAMA in writing of any change of which the participating institution is aware in the bank asset concerned.

Books, records and title documents of participating institutions.

71.—(1) Where NAMA has acquired a bank asset, NAMA may direct the participating institution from which the bank asset was acquired to deliver to NAMA or a nominee all its books and records in relation to the bank asset concerned and any documents of title that it holds for any property that is subject to a security that is part of the bank asset.

(2) A participating institution shall comply with a direction under *subsection (1)*.

(3) Where NAMA directs a participating institution to deliver to NAMA or a nominee books, records or documents in relation to a bank asset, the participating institution shall also secure that any officer, employee or agent of the participating institution who is able to do so shall provide an explanation of any such book, record or document, including an explanation of any apparent omission from such a book or record.

(4) If a participating institution is directed under *subsection (1)* to deliver a book, record or document in relation to a bank asset to NAMA or a nominee, or is required under *subsection (3)* to secure that an officer or staff member provides an explanation of anything in such a book, record or document and fails to do so, NAMA may apply to the Court, on notice to the participating institution, for an order directing the institution to deliver the book, record or document to NAMA or the nominee, or to secure that an officer or staff member provides the explanation sought, as the case requires.

(5) Where NAMA so directs, a participating institution shall retain custody of any book, record or document or document of title referred to in this section subject to such accountable trust receipt or other terms governing that custody on behalf of NAMA as NAMA directs.

Objection to inclusion of bank asset in acquisition schedule.

72.—(1) If a participating institution wishes to object to the inclusion of a bank asset in an acquisition schedule or if applicable, an amended acquisition schedule, it shall do so in accordance with *section 91*.

(2) A participating institution may apply to NAMA in writing for the correction of an obvious error in an acquisition schedule. If NAMA corrects the relevant acquisition schedule in accordance with the application, the matter need not be referred to the expert reviewer.

Regulations, etc., relating to terms and conditions for acquisition schedule.

73.—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 regarding the designated bank assets, including—

- (a) a warranty that the security for the relevant bank asset is enforceable,
- (b) any land that is the security for the bank asset has good marketable title,
- (c) a warranty that the facts in the participating institution's report in relation to the bank asset are complete and accurate,
- (d) a warranty that any certificate provided in respect of the bank asset is accurate, and
- (e) such other warranties as are customarily included in transactions for the purchase of bank assets.

Notice to debtors, etc., of acquisition of bank assets.

74.—(1) As soon as possible after the acquisition of a bank asset from a participating institution by NAMA, the participating institution shall make reasonable efforts to notify each debtor, any associated debtor and any guarantor or surety of the debtor, and any other person that NAMA directs, of the acquisition of the bank asset by NAMA.

(2) NAMA is not liable for any failure or delay in notifying any person under *subsection (1)* and no objection may be raised by any debtor, associated debtor, guarantor or surety to NAMA's acquisition of the bank asset concerned.

NAMA to notify participating institutions of practical completion of acquisition process.

75.—(1) When NAMA has served on a participating institution acquisition schedules that specify all the bank assets that NAMA has acquired or proposes to acquire from the participating institution, NAMA shall serve on the participating institution a notice in writing of that fact (in this Part referred to as a "practical completion notice").

(2) A practical completion notice shall specify—

- (a) all the bank assets that NAMA has acquired or proposes to acquire from the participating institution concerned,
- (b) the acquisition value determined by NAMA for each such bank asset, taking into account any adjustment made to that value in accordance with this Act, and
- (c) the total portfolio acquisition value for that acquired portfolio, taking into account any adjustment made to that value in accordance with this Act.

(3) NAMA shall not serve any further acquisition schedules on a participating institution after service of a practical completion notice.

Dispute over total portfolio acquisition value.

76.—(1) If a participating institution wishes to dispute the total portfolio acquisition value, it shall do so in accordance with *sections 98 and 99*.

(2) A participating institution may apply to NAMA in writing for the correction of an obvious error as to the value of a bank asset in an acquisition schedule. If NAMA corrects the acquisition schedule in accordance with the application, the matter need not be referred to the valuation panel.

CHAPTER 2

EFFECTS OF ACQUISITION OF BANK ASSETS

Construction of certain references to NAMA.

77.—(1) A reference in this Chapter to a right, power, duty, liability, or obligation of NAMA in relation to a bank asset that has been acquired by NAMA is to be construed, in relation to a bank asset that has been acquired by a NAMA group entity, as a right, power, duty, liability, or obligation of both NAMA and the NAMA group entity, as the case may be.

(2) A right or power referred to in *subsection (1)* may be exercised by either NAMA or the NAMA group entity concerned.

NAMA to have rights of creditors after acquisition of bank assets.

78.—(1) After NAMA acquires a bank asset and subject to any exclusion stated in the acquisition schedule of obligations and liabilities from the acquisition—

- (a) NAMA has and may exercise all the rights and powers, and is, subject to this Act, subject to all of the obligations of the participating institution from which the bank asset was acquired had in relation to—
 - (i) the bank asset,
 - (ii) the debtor concerned and any guarantor, surety or other person concerned, and
 - (iii) any receiver, liquidator, examiner concerned,
 and
- (b) the participating institution ceases to have those rights and obligations.

(2) The reference in *subsection (1)* to the rights and powers that the participating institution concerned had in relation to a bank asset is a reference to the rights and powers—

- (a) derived from the bank asset, including any amendment or variation of it, and
- (b) arising under any law or in equity or arising by way of contract,

and includes any rights referred to in *subsections (3) and (5)*.

(3) NAMA is entitled to the benefit of any right of set-off held by the participating institution against any person whether under the credit facility relating to the bank asset concerned or any other right of set-off and is entitled to exercise such right as if the transfer of the relevant bank asset had not occurred, by directing the participating institution to pay an amount equal to the benefit of the right of set off to NAMA to meet any obligation of that other person to NAMA, whether actual or contingent. The participating institution shall exercise the right of set-off only for the benefit of NAMA which right shall be exercisable at direction of NAMA.

(4) In particular, NAMA may—

- (a) take any action, including court action, that the participating institution could have taken to protect, perfect or enforce any security, right, interest, obligation or liability,
- (b) realise any security that the participating institution could have realised,
- (c) call up any guarantee that the participating institution could have called up,
- (d) participate to the same extent as the participating institution could have participated in any resolution, workout, restructuring, arrangement, reorganisation, scheme or insolvency proceeding in relation to the bank asset, and
- (e) exercise any powers conferred by any document that forms part of the bank asset of reviewing or amending any term or condition of any part of the bank asset.

(5) NAMA may direct a participating institution to exercise any such right of set-off or combination of accounts and to account to NAMA for that exercise. Any money received by a participating institution in the course of exercising any such right shall not be taken to be an asset of the participating institution. The participating institution shall exercise the right only for the benefit of NAMA, which right is exercisable at the direction of NAMA.

Enforcement of certain representations, undertakings and obligations.

79.—If in relation to a bank asset that NAMA has acquired—

- (a) it is alleged that a representation was made to, an undertaking was given to, or any other obligation was undertaken in favour of the debtor or another person concerned by the participating institution from which the bank asset was acquired or by some person acting or claiming to act on its behalf,
- (b) no such representation, undertaking or obligation was disclosed to NAMA,
- (c) the records of the participating institution do not contain a note or memorandum in writing of the terms of any such representation, undertaking or obligation or do not contain a record of any consideration paid in respect of any such representation, undertaking or obligation, and

- (d) the representation, undertaking or obligation, if made, given or undertaken, would affect the creditor's rights in relation to the bank asset,

then that representation, undertaking or obligation—

- (i) is enforceable by the debtor or any other person, if at all, only against the participating institution, and
- (ii) gives rise only to a remedy in damages.

Acquisition of bank assets not to affect conditions, etc.

80.—(1) Subject to *section 79*, after a bank asset is acquired by NAMA, the terms and conditions of the bank asset are unchanged.

(2) Where credit facility documentation forming part of a bank asset that has been acquired by NAMA refers to a reference rate of interest that is set by the participating institution concerned but is no longer available, the documentation shall continue to be construed as though it referred to—

- (a) that participating institution's reference rate for credit facilities of that type, or
- (b) at NAMA's discretion, another reference rate specified by NAMA.

(3) Where by reason of the acquisition by NAMA of a bank asset, compliance with, or the operation of, a term or condition of the bank asset is no longer, in the opinion of NAMA, reasonably practicable, NAMA may, by notice in writing, change that term or condition, so long as that new term or condition is as nearly as possible equivalent to the original term or condition.

NAMA to be notified of certain matters.

81.—After a bank asset is transferred to NAMA, if the participating institution from which the bank asset was acquired is notified or becomes aware of any significant dealing, event or circumstance or significant proposed or potential dealing, event or circumstance in relation to the bank asset that would adversely affect the bank asset or NAMA's rights (including its priority), obligations or liabilities in relation to it, the participating institution shall notify NAMA of the dealing, event or circumstance without delay.

Acquisition of bank assets not to render NAMA liable for wrongs by participating institutions.

82.—(1) Nothing in this Act renders NAMA, a NAMA wholly owned subsidiary or a NAMA group entity liable for any breach of contract, misrepresentation, breach of duty, breach of trust or other legal or equitable wrong committed by a participating institution.

(2) No legal proceedings shall be brought against NAMA, a NAMA wholly owned subsidiary or a NAMA group entity in relation to any legal or equitable wrong referred to in *subsection (1)*.

(3) Nothing in this Act deprives any person of any remedy against a participating institution in respect of a legal or equitable wrong referred to in *subsection (1)*.

Rights of others not affected by vesting of bank assets, etc.

83.—Nothing in this Act relieves NAMA or a NAMA group entity of any obligation, at law or in equity, in the exercise of its rights under this Act, except to any extent to which this Act specifically provides otherwise.

NAMA not required to register certain instruments, etc.

84.—(1) Where a bank asset has been acquired by NAMA or a NAMA group entity—

- (a) notwithstanding anything in the Bills of Sale (Ireland) Acts 1879 and 1883, the Industrial and Commercial Property (Protection) Act 1927, the Agricultural Credit Act 1978, the Companies Act 1963, the Registration of Deeds and Title Acts 1964 and 2006, the Patents Act 1992, the Trade Marks Act 1996, the Taxes Consolidation Act 1997 or any other Act, that provides for the registration of assets, security or details of them, NAMA is not required to become registered as owner of any security that is part of the bank asset,
- (b) notwithstanding sections 62 and 64 of the Registration of Title Act 1964, NAMA has, in relation to any such charge, the powers of a mortgagee under a mortgage by deed, even though NAMA or the NAMA group entity concerned is not registered as owner of any such charge,
- (c) NAMA has the powers and rights conferred on the registered owner of a charge by the Registration of Title Act 1964.

(2) For the purposes of any Act mentioned or referred to in *subsection (1)(a)*, an acquisition schedule has effect in relation to a bank asset as a deed registered on the acquisition date.

(3) For the purposes of any Act mentioned or referred to in *subsection (1)(a)*, a registration in relation to an acquired bank asset of a participating institution has effect for all purposes as a registration of NAMA or the NAMA group entity concerned.

(4) Nothing in this section prevents NAMA or a NAMA group entity from registering any interest capable of registration.

(5) Sections 23 and 25 of the Registration of Title Act 1964 do not apply to NAMA.

NAMA may give certificate in relation to bank assets held.

85.—(1) NAMA or a NAMA group entity may certify under its seal or common seal, as the case requires, that NAMA holds a bank asset specified in the certificate.

(2) A document purporting to be a certificate issued in accordance with *subsection (1)* shall, unless the contrary is shown, be admissible as proof of the document and the matters mentioned in it.

NAMA may give certain directions in relation to bank assets.

86.—(1) This section applies to a bank asset that NAMA has acquired, or in relation to a bank asset the terms and conditions of which entitle NAMA to give directions to a third party that holds an interest on behalf of others.

(2) In relation to a bank asset to which or in relation to which this section applies—

- (a) NAMA may give directions to the participating institution or third party concerned to realise any security, enforce any guarantee or surety or do any other act or thing in relation to the bank asset, or
- (b) if the participating institution or third party concerned is not incorporated in the State, but is a subsidiary of a credit institution that is incorporated in the State, NAMA may direct the credit institution to secure compliance by the subsidiary with any direction given to the participating institution.

Effect of acquisition of bank assets on certain other rights.

87.—(1) In this section “relevant instrument” means an agreement, licence, document, security, obligation or other instrument (other than the Credit Institutions (Financial Support) Scheme 2008 (S.I. No. 411 of 2008) (or an instrument entered into under that Scheme) to which any of the following is a party or by which any of the following is bound or in which any of the following has an interest:

- (a) a participating institution;
- (b) a subsidiary of such an institution;
- (c) any body corporate in which a participating institution or any of its subsidiaries has any interest.

(2) Any provision in a relevant instrument that would (apart from this subsection) cause any of the consequences specified in *subsection (3)* to follow by virtue of—

- (a) the enactment of this Act,
- (b) any entity becoming a participating institution,

- (c) the provision of any information to NAMA by a participating institution, or a credit institution that has applied under *section 53* for designation as a participating institution, pursuant to this Act,
- (d) the acquisition of a bank asset by NAMA under this Act,
- (e) any disposition by NAMA of any acquired bank asset,
- (f) any other thing done or authorised to be done pursuant to or resulting from any provision of this Act,

is of no effect, without the express consent of NAMA, except to any extent to which the Minister provides otherwise by order under *section 88*.

(3) The consequences referred to in *subsection (2)* are the following:

- (a) the creation of an obligation;
- (b) the suspension or extinction (however described, and whether in whole or in part) of a right or an obligation or the becoming subject to a right or an obligation;
- (c) the termination of the relevant instrument concerned or a right or obligation under it;
- (d) a right becoming exercisable to terminate or modify the instrument or a right or obligation under it;
- (e) an amount becoming due and payable or capable of being declared due and payable;
- (f) any other change in the amount or timing of any payment falling to be made or due to be received by any person;
- (g) a right becoming exercisable to withhold, net or set off any payment;
- (h) the occurrence of an event giving rise to a default or breach of a right or obligation;
- (i) a right becoming exercisable not to advance any amount;
- (j) an obligation arising to provide or transfer a deposit or collateral;
- (k) a right of transfer or assignment of the asset that is stated to be exercisable only once or for another limited number of times;
- (l) a right to enforce a guarantee, indemnity or security interest (however described);
- (m) the triggering of any mandatory prepayment;
- (n) any obligation to return collateral or its equivalent;
- (o) the cancellation of any obligation to advance any amount or to provide credit or a contingent instrument;

- (p) legal proceedings becoming maintainable to enforce the instrument, to any extent that such proceedings would not have been maintainable had the bank asset not been acquired or had any other thing done or matter arising by virtue of or in connection with this Act not been done or not arisen, as the case may be;
- (q) any other right or remedy (whether or not similar in kind to those referred to in *paragraphs (a) to (o)*) arising or becoming exercisable;
- (r) the termination or modification of an obligation to provide a service or product.

Minister’s power to modify application of *section 87*.

88.—(1) In this section “relevant instrument” has the same meaning as in *section 87*.

(2) If the Minister is satisfied that in a particular case or cases the effect of *section 86* is in all the circumstances unduly onerous, or causes undue unfairness or undue hardship, and that it is appropriate in all the circumstances to do so, he or she may by order provide that, notwithstanding anything in that section, a provision in a relevant instrument that provides for a consequence mentioned or referred to in *section 87* has effect to the extent specified in the order.

(3) An order under *subsection (2)*—

- (a) may make provision in relation to the effect of a provision in—
 - (i) a particular relevant instrument,
 - (ii) relevant instruments of a particular kind, or
 - (iii) rights held under a relevant instrument, or relevant instruments of a particular kind, by a particular person or a particular class of persons,
- (b) in the case of an order that makes provision in relation to relevant instruments of a particular kind, may specify the kind by reference to any common characteristic of the instruments concerned,
- (c) in the case of an order that makes provision in relation to rights held by a particular class of persons, may specify the class by reference to any common characteristic of the persons concerned, and
- (d) may be expressed to have retrospective effect to a date falling after 30 July 2009.

(4) If the Attorney General considers that an order under *subsection (2)* contains matter that is commercially sensitive, he or she may direct—

- (a) that the obligations in relation to the order under section 3(1) of the Statutory Instruments Act 1947 are to be taken to be satisfied by the printing, sending to the institutions mentioned in section 3(1)(a) of that Act, publication and sale of a version of the order from which the commercially sensitive matter is omitted, or

- (b) if the preparation of such a version would be impracticable, or would result in the version being seriously misleading, that the order is exempt from the operation of section 3(1) of that Act.

(5) A version of an order prepared in accordance with a direction given by the Attorney General under *subsection (4)(a)* shall indicate that matter has been omitted from the version of the order and the general nature of that matter.

(6) A direction given by the Attorney General under *subsection (4)* shall be published in *Iris Oifigiúil* as soon as practicable.

(7) Evidence of a direction given by the Attorney General under *subsection (4)* may be given by the production of a copy of *Iris Oifigiúil* purporting to contain the direction.

PART 7

REVIEW OF DECISIONS RELATING TO ACQUISITION

CHAPTER 1

EXPERT REVIEWER

Appointment and functions of expert reviewer.

89.—(1) The Minister may appoint a suitably qualified person as the expert reviewer for the purposes of this Chapter who, in the Minister's opinion, has the experience necessary to perform the functions conferred on the expert reviewer under this Chapter.

(2) The terms and conditions of the appointment of the expert reviewer (including remuneration and reimbursement for expenses incurred) shall be as the Minister determines at the time of appointment.

(3) The functions of the expert reviewer are to review the objections referred to him or her under *section 91* and to advise the Minister in accordance with *section 93*.

Procedure of expert reviewer.

90.—Subject to any regulations that the Minister may make, the expert reviewer shall determine, in his or her sole discretion, procedures for—

- (a) the form and type of submissions to be made to the expert reviewer,
- (b) the means by which confidential information will be protected from public disclosure, and
- (c) the performing of any of the expert reviewer's functions.

Objections to inclusion of bank assets in acquisition schedules.

91.—(1) If a participating institution objects to the inclusion of a bank asset in an acquisition schedule, served on the institution under *section 64* or, if applicable, an amended acquisition schedule served on the institution under *section 65*, the participating institution shall do so only on the ground that the bank asset is not an eligible bank asset.

(2) A participating institution that wishes to object under *subsection (1)* shall give notice in writing to NAMA setting out the reasons for objection to the inclusion of a bank asset in an acquisition schedule, within 7 days after service on it of the acquisition schedule or amended acquisition schedule, as the case may be. A notice given after that period ends is of no effect.

(3) As soon as may be after receipt of the notice under *subsection (2)*, NAMA shall —

- (a) remove the bank asset from the acquisition schedule,
- (b) revoke the acquisition schedule, or
- (c) continue with the acquisition in accordance with the acquisition schedule and refer the objection to the expert reviewer for review, including any comments on the reasons specified in the notice.

(4) NAMA shall as soon as may be notify the participating institution of its decision under *subsection (3)*.

Materials, etc., to be made available to expert reviewer.

92.—(1) A participating institution shall provide to the expert reviewer and to NAMA, no later than 7 days after NAMA refers the objection to the expert reviewer under *subsection(3)(c)* of *section 91*, all the material on which it bases its objection and any comments it may wish to make regarding the objection.

(2) For the purposes of the expert reviewer’s review of NAMA’s decision to acquire a bank asset, NAMA shall make available to the expert reviewer and the participating institution concerned, no later than 7 days after NAMA refers the objection to the expert reviewer under *subsection(3)(c)* of *section 91*, all the material that was before NAMA when it made its decision and any comments it may wish to make on the objection.

(3) NAMA and the participating institution shall be afforded an opportunity to respond to the other’s material and comments, and shall furnish any such responses to the expert reviewer and to the participating institution or NAMA, as the case may be, no later than 4 days after that material and those comments have been made available.

(4) The expert reviewer may request NAMA or a participating institution to provide additional information in relation to a bank asset that NAMA proposes to acquire. NAMA or a participating institution shall comply with any such request without delay.

Opinion of expert reviewer.

93.—(1) In forming his or her opinion, the expert reviewer shall take into account the material, comments, responses and any additional information provided by the participating institution and NAMA under *section 92*.

(2) The expert reviewer shall advise the Minister, no later than 5 days after receiving the material, comments, responses and information under *section 92* whether he or she is of the opinion that the bank asset is not an eligible bank asset.

(3) The Minister may, if he or she considers that to do so is warranted by exceptional circumstances, specify a later date on which the expert reviewer is to provide advice under *subsection (2)*.

Confirmation by Minister of transfer, etc.

94.—(1) The Minister shall consider the advice of the expert reviewer under *section 93* in relation to a bank asset and shall, no later than 5 days after receipt of that advice—

- (a) confirm, if satisfied that the bank asset is an eligible bank asset, that the bank asset is acquired by NAMA in accordance with the acquisition schedule,
- (b) direct NAMA to amend the acquisition schedule, or
- (c) direct NAMA to revoke the acquisition schedule.

(2) The Minister shall send copies of his or her decision under *subsection (1)* to NAMA and to the participating institution concerned.

Costs.

95.—(1) The costs of a review under this Chapter are payable by the participating institution concerned if the Minister's decision is one referred to in *paragraph (a)* of *section 94(1)*.

(2) If a participating institution withdraws an application for the review of the eligibility of an asset, it is liable for the costs incurred up to the time of the withdrawal unless NAMA agrees otherwise.

(3) If NAMA and the participating institution concerned cannot reach agreement on costs, the costs of the review shall be determined by a Taxing Master of the Court and, for that purpose, the Taxing Master concerned shall have shall in relation to any such determination, have (with any necessary modifications) all the functions for the time being conferred on him or her under any enactment or in any rules of court in relation to the taxation of costs to be paid by one party to another in proceedings before the Court.

CHAPTER 2

VALUATION PANEL

Appointment of valuation panel.

96.—(1) There shall be a valuation panel to adjudicate on disputes referred to it by NAMA under *section 72* and *section 76*.

(2) The valuation panel shall consist of such, and such numbers of (not exceeding 12) persons as the Minister determines and appoints to be members of it.

(3) The Minister shall appoint a person as a member of the valuation panel only if the Minister is of the opinion that the person has relevant expertise or specialist knowledge.

(4) The terms and conditions of appointment (including remuneration and reimbursement of expenses incurred) of a member of the valuation panel shall be as the Minister determines.

Procedure of valuation panel.

97.—(1) The Minister may make regulations providing for the procedure of the valuation panel.

(2) Subject to the regulations made by the Minister under *subsection (1)*, the valuation panel shall determine, in its sole discretion, procedures for—

- (a) the form and type of submissions to be made to the valuation panel,
- (b) the means by which confidential information will be protected from public disclosure, and
- (c) the performing of any of the valuation panel's functions.

(3) The valuation panel may limit a review of the valuation of a total portfolio asset valuation to a sample of the assets in the acquired portfolio concerned.

CHAPTER 3

REVIEW OF VALUATIONS

Objection to value placed on bank assets acquired from participating institution.

98.—(1) If, after the service on a participating institution of an acquisition schedule, a participating institution objects to the acquisition value specified in that schedule in respect of a bank asset, the participating institution shall serve on NAMA a notice in writing of its objection within 14 days after the service on it of the acquisition schedule or amended acquisition schedule, as the case may be.

(2) On receipt of a notice under *subsection (1)*, NAMA shall do one or more of the following:

- (a) remove the bank asset the subject of the dispute from the acquisition schedule;
- (b) revoke the acquisition schedule;
- (c) continue with the acquisition in accordance with the acquisition schedule.

(3) Where NAMA continues with an acquisition in accordance with the acquisition schedule concerned, the participating institution may dispute the total portfolio acquisition value in accordance with *section 99*.

Dispute over total portfolio acquisition value.

99.—(1) If, after service of the practical completion notice on a participating institution, the participating institution wishes to dispute the total portfolio acquisition value, it shall do so only if—

- (a) it is of the opinion that the total portfolio acquisition value of the bank assets specified in acquisition schedules served on the participating institution is incorrect having regard to the current market value of the bank assets, and
- (b) it has served a notice or notices under *section 98* in respect of acquired bank assets comprising at least 12.5 percent by value of the total portfolio acquisition value.

(2) A participating institution that wishes to dispute the total portfolio acquisition value shall serve on NAMA a notice in writing, in such form if any as may be prescribed, no later than 14 days after the service of the practical completion notice under *section 75*, specifying the reasons for its opinion under *subsection (1)*.

(3) If a participating institution serves notice under *subsection (2)*, NAMA shall refer that notice to the valuation panel for review in accordance with *section 100*.

(4) The giving of notice by a participating institution under *subsection (2)* does not affect the acquisition by NAMA of the bank assets concerned.

Material, etc., to be made available to valuation panel.

100.—(1) A participating institution that has served a notice under *section 99* shall provide to the valuation panel and to NAMA, no later than 28 days after service of the practical completion notice, all the material on which its dispute is based and any comments it may wish to make regarding the disputed total portfolio acquisition value.

(2) For the purposes of the valuation panel's review, NAMA shall make available to the valuation panel and the participating institution concerned, no later than 28 days after service on it of the relevant notice under *section 99(2)*, all the information that NAMA had before it

when it determined each acquisition value concerned and any comments it may wish to make on the dispute.

(3) NAMA and the participating institution shall be afforded an opportunity to respond to the other's material and comments, and shall furnish any such responses, no later than 7 days after that material and those comments have been made available, to the valuation panel and to the participating institution or NAMA, as the case may be.

(4) The valuation panel may request NAMA or a participating institution to provide additional information in relation to the total portfolio acquisition value of the acquired portfolio concerned. NAMA or a participating institution shall comply with any such request without delay.

(5) The valuation panel shall take into account the material, comments, responses and any additional information provided by the participating institution and NAMA.

Function of valuation panel.

101.—(1) The function of the valuation panel is to review the total portfolio acquisition value specified for an acquired portfolio by NAMA, having regard to the current market value, in accordance with *section 58* as determined in accordance with this Act.

(2) For the avoidance of doubt, for the purposes of a review of a total portfolio acquisition value, the value of an acquired bank asset is its value as at the date specified by NAMA.

(3) If the valuation panel considers that a total portfolio acquisition value is correct having regard to the current market value, as determined in accordance with *section 58*, it shall so advise the Minister.

(4) If the valuation panel considers that a total portfolio acquisition value is incorrect having regard to the current market value, as determined in accordance with *section 58*, it shall advise the Minister of the total portfolio acquisition value that in the panel's opinion is correct having regard to the valuation methodology.

(5) When advising the Minister under this section, the valuation panel shall set out the reasons for its opinion.

(6) The panel shall give its advice to the Minister in relation to a dispute under *section 99* no later than 90 days after receiving the material, comments, responses and any additional information under *section 100*.

(7) The Minister may, if he or she considers that to do so is warranted by exceptional circumstances, specify a later date on which the valuation panel is to provide advice under this section.

Minister's determination of total portfolio acquisition value.

102.—(1) The Minister shall consider the advice of the valuation panel under *section 101* in relation to the portfolio concerned and shall, no later than 28 days after receipt of that advice—

- (a) confirm the total portfolio acquisition value of the acquired portfolio as advised by the valuation panel, or
- (b) if he or she considers that the advice of the valuation panel is wrong in a material respect, remit the matter to the valuation panel for reconsideration setting out his or her reasons for doing so.

(2) The Minister shall send copies of his or her determination under *subsection (1)* to NAMA and to the participating institution concerned.

(3) Where the Minister's determination is that the total portfolio acquisition value (as determined by NAMA) should be increased, but the current market value of the portfolio concerned is not greater than the acquisition value of the portfolio, no adjustment shall be made to the total portfolio acquisition value regardless of the basis on which that value was determined.

(4) Subject to *subsection (3)*, where the Minister's determination is that the total portfolio acquisition value of the acquired portfolio (as determined by NAMA) should be increased, the Minister may direct NAMA to compensate the participating institution by, at NAMA's option doing either of the following (or both in any combination)—

- (a) returning to the participating institution bank assets equal in value to the difference between the total portfolio acquisition value determined by NAMA and the total portfolio acquisition value determined by the Minister, or
- (b) giving further consideration (in the form of cash, securities or Government guaranteed securities or any other form that NAMA determines) equal to the difference referred to in *paragraph (a)*.

(5) The amount of compensation payable to a participating institution under this section is not to be greater than the amount by which the total portfolio acquisition value is less than the current market value of the portfolio as determined by the Minister under *subsection (1)*.

(6) Where the determination by the Minister results in a decrease in the total portfolio acquisition value as determined by NAMA, the participating institution shall repay the overpayment in accordance with *section 69*.

(7) The value of a bank asset to be returned under *subsection (5)(a)* is its acquisition value.

(8) Where the Minister remits the matter to the valuation panel under *subsection (1)(b)*, *subsections (4) and (5) of section 100* and *section 101* apply to the reconsideration with any necessary modifications.

(9) The payment for, or transfer of, bank assets under *subsections (3) to (6)* is subject to Article 87 of the Treaty establishing the European Community.

Withdrawal of dispute.

103.—A participating institution may withdraw a notice served under *section 99* at any time before the Minister sends a copy of his or her determination to it under *section 102* in relation to the review of the total portfolio acquisition value.

Costs of review of valuations.

104.—(1) The costs of a review under this Chapter are payable by the participating institution concerned unless the Minister's determination under *section 102* entitles the participating institution to compensation under that section.

(2) If a participating institution withdraws a notice under *section 103*, it is liable for the costs incurred up to the time of the withdrawal unless NAMA agrees otherwise.

(3) If NAMA and the participating institution concerned cannot reach agreement on costs, the costs of the review shall be determined by a Taxing Master of the Court and, for that purpose, the Taxing Master concerned shall in relation to any such determination, have (with any necessary modifications) all the functions for the time being conferred on him or her under any enactment or in any rules of court in relation to the taxation of costs to be paid by one party to another in proceedings before the Court.

CHAPTER 4

RELATIONSHIP BETWEEN NAMA AND PARTICIPATING INSTITUTIONS

Participating institutions to act in utmost good faith.

105.—(1) A participating institution shall act in utmost good faith at all times in its dealings with the Minister and NAMA and their agents pursuant to this Act and shall inform the Minister and NAMA of any fact or thing that may impede—

- (a) the achievement of the purposes of this Act,
- (b) the performance by the Minister of his or her functions, or NAMA of its functions, under this Act, or
- (c) the fulfilment by the participating institution of its obligations under this Act.

(2) If such an impediment is identified the relevant participating institution shall take all reasonable steps to address that impediment in a manner that best furthers the achievement of the purposes of the Act.

Breach of representation or statutory requirements.

106.—A participating institution that fails to comply with a requirement specified in *section 55* or a representation given to NAMA pursuant to a provision of this Act is liable to NAMA in damages in addition to any other consequence of the failure under this Act.

Servicing of acquired bank assets by participating institutions.

107.—(1) In this section “relevant service” includes management, administration, restructuring and enforcement services in relation to bank assets, including any activity specified as part of a direction, arrangement or agreement.

(2) For the purposes of this section, in the event of a conflict between any of a direction, an arrangement and an agreement, a direction, an arrangement and an agreement, have effect in that order of priority.

(3) The participating institution from which NAMA has acquired or intends to acquire a bank asset shall, until such time as NAMA directs otherwise, continue to perform relevant services in respect of the bank asset.

(4) NAMA may direct a participating institution to perform a relevant service in connection with a bank asset that NAMA has acquired or intends to acquire from the participating institution.

(5) A direction under *subsection (4)*—

- (a) may require a participating institution to enter into an arrangement or agreement including providing access for and use by NAMA and its nominee and their respective agents and advisers of facilities, books, records and systems, and
- (b) may require the provision of a relevant service for the benefit of a person other than NAMA.

(6) NAMA may at any time amend, suspend or revoke a direction pursuant to this section.

(7) A participating institution shall—

- (a) comply with a direction, and any amendment, suspension or revocation of a direction, under this section, and
- (b) ensure that any subsidiary to which such a direction extends also complies with it.

(8) A participating institution shall ensure that it and each of its subsidiaries—

- (a) obtains and maintains in effect any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration required (in the State or in any other place) in connection with the provision of the services required by a direction under this section, and
- (b) complies with the terms and conditions of, and any requirement of or under any law in relation to, any such authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

(9) NAMA may give a debtor, guarantor or surety in relation to a bank asset in which NAMA has acquired an interest, or any other person, notice of any direction given pursuant to this section. NAMA has no liability to any debtor, guarantor or surety or to any other person for failure to give any such notice.

(10) Any receivable or other amount received or recovered by a participating institution pursuant to the performance by it of a relevant service shall be held by that participating institution on trust absolutely for and to the order of NAMA or a NAMA group entity, as the case may be, and any amount so held shall be accounted for to NAMA or its nominee as NAMA from time to time directs. A trust constituted by this subsection—

- (a) does not form part of the assets of the participating institution whether for the purposes of laws generally applicable to winding up, reorganisations, liquidations or otherwise,
- (b) is effective for all purposes, and
- (c) shall be deemed not to constitute or create a security interest of any kind.

Other servicing arrangements.

108.—(1) Where, in relation to a bank asset that has been acquired by NAMA, NAMA has arranged with a service provider for the provision of relevant services in respect of a bank asset, then—

- (a) the terms of the bank asset shall be taken to require each debtor, associated debtor, guarantor or surety in respect of a bank asset to deal with the service provider arranged by NAMA, as the case requires,
- (b) NAMA may give any such debtor, associated debtor, guarantor or surety notice of any arrangement for the provision of a relevant service in respect of that bank asset, but nothing in this Act shall oblige NAMA to give any such notice, and
- (c) NAMA shall have no liability to any debtor, associated debtor, guarantor or surety or to any other person for failure to give any such notice.

(2) Where in relation to a bank asset that has been acquired or is intended to be acquired by NAMA, NAMA has arranged with a service provider for the provision of relevant services in

respect of a bank asset, then the participating institution from which the bank asset is or was acquired shall do all such acts or things as NAMA may direct or require to facilitate the assumption by the service provider of the relevant services in respect of that bank asset.

NAMA may give directions about certain bank assets not acquired.

109.—(1) Where NAMA has acquired a bank asset from a participating institution it may direct the participating institution to deal with any part of the bank asset not acquired or any related bank asset not acquired in a specified way.

(2) A participating institution shall comply with a direction by NAMA under *subsection (1)*.

Additional payment on servicing of bank assets.

110.—(1) With the consent of the Minister, NAMA may agree with a participating institution on an arrangement in relation to the servicing of bank assets.

(2) Without prejudice to the generality of *subsection (1)*, an arrangement referred to in that subsection may provide for—

- (a) an adjustment to the total portfolio acquisition value,
- (b) performance fees, on terms approved by the Minister, or
- (c) profit sharing, on terms approved by the Minister.

Participating institutions to indemnify NAMA.

111.—(1) If NAMA or a NAMA group entity so directs, a participating institution shall indemnify NAMA or the NAMA group entity and its officers against any liability or loss—

- (a) arising from any error, omission or misstatement in any information or certificate provided to NAMA or the NAMA group entity by or on behalf of the participating institution,
- (b) in respect of any claim, award, payment or damages which NAMA or the NAMA group entity becomes liable to pay to any person by reason of the operation of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) where the liability arises in connection with a cause of action occurring prior to the relevant date of transfer (or as the case may be any proportion of such liability is attributable to a period prior to the date of transfer) including but not limited to any claim made by or on behalf of such a person which relates to any act or omission of the participating institution in connection with that person's employment prior to the date of transfer, and
- (c) in respect of any redundancy payment, or any other severance payment, paid by NAMA or NAMA group entity, or that NAMA or the NAMA group entity is ordered to pay, to any person whose employment transfers to NAMA or the

NAMA group entity by reason of the operation of those Regulations and whose employment is terminated by NAMA or the NAMA group entity by reason of redundancy.

(2) Where the Court determines ownership of a bank asset in favour of a third party and as a result NAMA or a NAMA group entity is obliged to transfer the bank asset to the third party or pay damages in lieu, the participating institution shall indemnify NAMA or the NAMA group entity against that liability.

(3) The Court and any other court or tribunal in which legal proceedings are brought in respect of a matter referred to in *subsection (1)* shall not make NAMA or a NAMA group entity a party to the proceedings in any capacity where the liability is that of the participating institution and an enforceable remedy can be obtained from that participating institution.

(4) If NAMA or a NAMA group entity so directs, and without prejudice to *section 82*, a participating institution shall indemnify NAMA or the NAMA group entity and its officers against any liability or loss in respect of a legal or equitable wrong referred to in that section.

Conduct of legal proceedings in relation to acquired bank assets.

112.—Where NAMA is a party to any legal proceedings affecting an acquired bank asset, the participating institution from which the bank asset was acquired shall, if NAMA so requests, provide NAMA with any assistance reasonably required by NAMA, for the purpose of the proceedings including—

- (a) the provision of any documents or information,
- (b) the making available of any witnesses, and
- (c) the provision of any evidence by way of affidavit or otherwise.

PART 8

POWERS OF NAMA IN RELATION TO ASSETS

CHAPTER 1

GENERAL POWERS OF NAMA IN RELATION TO ASSETS

Definitions (*Part 8*).

113.—In this Part—

“charged land” means land that is subject to a charge;

“convey” and “conveyance” have the same meanings, respectively, as in the Conveyancing Act 1881 and the Land and Conveyancing Law Reform Act 2009;

“good and marketable title” means a title commensurate with prudent standards of current conveyancing practice in the State;

“vesting order” means an order under *section 129*.

NAMA’s powers to dispose of assets.

114.—NAMA may transfer, assign, sell on or otherwise dispose of any acquired bank assets (including any credit facility) to any person notwithstanding—

- (a) any restrictions on such a disposal at law or in equity,
- (b) any contractual requirement or any requirement under any enactment for the consent of, notice to or document from any person to such a disposal, or
- (c) any provision of any enactment prohibiting or restricting such a disposal.

Power to discharge prior charge.

115.—Where NAMA has acquired a bank asset that is secured by a charge (including a charge that is a collateral security), but the charge is a second or subsequent charge, NAMA may, regardless of whether a vesting order has been made in relation to the land, redeem or discharge any one (or more) of the prior charges in accordance with its terms.

Power of entry to protect value or condition of land or buildings.

116.—(1) Where NAMA has acquired a bank asset that is, or is secured by, a charge over land (including a charge that is a collateral security), and any one or more of the following paragraphs applies:

- (a) the land or any building or structure on it has been abandoned;
- (b) the land is or has become overgrown;
- (c) the land or any building or structure on it is or has become infested with vermin;
- (d) any building or structure on the land has fallen, or there is a serious risk of the building or structure falling, into disrepair;
- (e) the land or any building on it is at risk from trespassers or vandalism;

then NAMA may apply to a judge of the District Court for the time being assigned to the District Court district in which any part of the land concerned is situated, on notice to the owner and occupier of the land, for an order (in this section referred to as an “entry and maintenance order”) authorising it to enter (by force, if the order so provides) upon the land or any building or structure on the land for any one of more of the following purposes:

- (i) to fence or otherwise secure the boundary of the land;
- (ii) to clear the land of overgrown vegetation;
- (iii) to clear or treat the land or any building or structure on it in a manner designed to remove vermin;
- (iv) to repair or make secure any building or structure on the land.

(2) NAMA shall serve a copy of an application under *subsection (1)* on every person it knows to have an interest in the relevant land.

(3) The District Court may make an order in accordance with an application under *subsection (1)* and if it does so shall specify the period, being not greater than 6 months beginning on the date of the order, for which the order shall have effect.

(4) NAMA shall give to each of the owner and occupier of occupied land at least 24 hours' notice of its intention to enter on the land under the authority of an entry and maintenance order.

(5) An entry and maintenance order does not authorise forcible entry to the land, building or structure concerned unless the order expressly so provides.

(6) If NAMA enters on land or a building or structure under the authority of an entry and maintenance order, NAMA is not taken to be a mortgagee in possession of the land or any building or structure on it.

(7) Any cost, expense or liability that NAMA incurs pursuant to this section is—

(a) a debt due under the bank asset concerned,

(b) recoverable from the debtor, associated debtor, guarantor or surety concerned,

and the repayment of any such cost, expense or liability stands secured against the land.

Certain instruments by NAMA to be taken to be deeds.

117.—(1)As respects any land in which NAMA has an interest, whether legal or beneficial, an instrument under the seal of NAMA that is expressed to convey that interest or any part of that interest in the land concerned to another person shall be taken for all purposes to be a deed of conveyance of the land executed under seal by the owner of the interest in the land concerned.

(2) An instrument referred to in *subsection (1)* extinguishes the interest of any other chargee or mortgagee in the land concerned other than a charge which has priority to the interest of NAMA and has not been redeemed or discharged under *section 115*.

(3) Where the interest of a chargee or mortgagee in land is extinguished by reason of this section the interest attaches to the proceeds of the sale concerned and effect shall be given to it accordingly.

(4) Where the interests of more than one chargee or mortgagee are extinguished by reason of this section the interests so extinguished attach to the proceeds of the sale concerned in the same order of priority as those interests had prior to such extinguishment.

Overreaching for protection of purchasers.

118.—(1) Subject to *subsection (2)*, a conveyance by NAMA (including a conveyance by way of an instrument referred to in *section 117*) to a purchaser of a legal estate or legal interest in land overreaches any equitable interest in the land so that the equitable interest ceases to affect that estate or interest, whether or not the purchaser has notice of the equitable interest.

(2) *Subsection (1)* does not apply to an equitable interest—

- (a) to which the conveyance is expressly made subject,
 - (b) which arises by virtue of an equitable mortgage related to the land concerned,
 - (c) which, prior to the date of the conveyance, is registered against the land in the Registry of Deeds or the Land Registry, or
 - (d) which is a burden of any description referred to in section 72(1) of the Registration of Title Act 1964.
- (3) Where an equitable interest is overreached under this section it attaches to the proceeds arising from the conveyance and effect shall be given to it accordingly.

(3) For the avoidance of doubt, where the equitable interest concerned is in land that includes a principal private residence, that overreaching takes effect unless it falls within *paragraph (a), (b) or (c)* of *subsection (2)* or is a burden of any description referred to in section 72(1) (other than paragraph (j) thereof) of the Registration of Title Act 1964.

(4) In this section “equitable mortgage” means a mortgage created by—

- (a) the deposit of documents of title relating to the legal estate or legal interest in the land concerned, or
- (b) an undertaking by a solicitor to hold the documents of title relating to the legal estate or legal interest in the land concerned in trust for a credit institution and which undertaking, where applicable, has been registered as a charge under section 99 of the Companies Act 1963.

Effect of certain assurances of land.

119.—An assurance of land or a right or interest in charged land before the transfer to, or vesting in, NAMA of the relevant charge shall be taken to have created, for the benefit of the charged land, any easement or *profit à prendre* over any land retained by the grantor of the assurance that it is reasonable to assume, in the circumstances of the case, was within the contemplation of the parties at the date of the assurance as being included in it, or would have been within that contemplation at that time if they had adverted to the matter.

Certain receivers not obliged to sell property, etc.

120.—(1) A receiver of the rents and profits of property appointed by NAMA pursuant to its powers as a chargee of the property is not obliged to sell the property at any particular time or at all, but is accountable for all profits and other monetary benefits arising directly from possession of the property.

(2) A receiver appointed to the property of a company by NAMA in its capacity as a creditor of the company is not obliged to sell any property of the company at any particular time or at all, but is accountable for all profits and other monetary benefits arising directly from possession of the property of the company.

(3) Section 29(1) of the Companies Act 1990 does not apply in relation to an arrangement for the acquisition of a non-cash asset if the arrangement involves the disposition of a company's assets by a receiver appointed to the property of a company by NAMA.

CHAPTER 2
STATUTORY RECEIVERS

Definition (Chapter 2).

121.—In this Chapter and in *Schedule 1* “statutory receiver” means a receiver appointed by NAMA pursuant to *section 122*.

NAMA’s power to appoint statutory receivers.

122.—(1) Where any of the following occurs under the terms of a bank asset that has been acquired by NAMA:

- (a) a power of sale arises;
- (b) a power of sale becomes exercisable;
- (c) a power to appoint a receiver becomes exercisable;

then NAMA may appoint any person, including an officer of NAMA as a statutory receiver of the property subject to the bank asset.

(2) NAMA may remove a statutory receiver and may appoint a new statutory receiver in the place of a statutory receiver removed.

(3) NAMA may fix the remuneration of a statutory receiver. A maximum rate imposed by law (including that specified in section 24(6) of the Conveyancing Act 1881 or prescribed by regulations under section 108(7) of the Land and Conveyancing Law Reform Act 2009) does not apply.

(4) NAMA's power to appoint a statutory receiver under this Chapter does not affect any powers to appoint a receiver pursuant to any contractual power in any bank asset acquired by NAMA.

Powers of statutory receivers.

123.—(1) A statutory receiver has the powers, rights and obligations that a receiver has under the Companies Acts, and the powers, rights and obligations specified in *Schedule 1*.

(2) Where a charge provides for a receiver appointed under the charge to have any power additional to those referred to in *subsection (1)*, a statutory receiver also has that additional power. However, a statutory receiver exercising any such additional power is taken to do so by virtue of his or her appointment under this Chapter and is not bound by any restriction on its exercise specified in the charge.

(3) A statutory receiver is not subject to the restrictions on the powers of a receiver in the Conveyancing Act 1881 or the Land and Conveyancing Law Reform Act 2009.

(4) A statutory receiver, in selling property the subject of a charge in favour of NAMA, shall exercise all reasonable care to obtain the best price reasonably obtainable for the property as at the time of sale.

(5) If joint statutory receivers are appointed, each one severally may exercise any power or carry out any function of a statutory receiver.

Statutory receiver to be agent of chargor, etc.

124.—(1) A statutory receiver shall be taken to be the agent of the chargor for all purposes.

(2) The chargor is solely responsible for the remuneration, contracts, engagements, acts, omissions, defaults and losses of a statutory receiver and for liabilities incurred by a statutory receiver. NAMA does not incur any liability (either to the chargor or to any other person) by reason of the appointment of a statutory receiver or for the actions or inactions of a statutory receiver.

(3) A statutory receiver shall be taken to be an irrevocably appointed attorney of the chargor (with full powers of substitution and delegation) and to have the authority in the chargor's name, on the chargor's behalf and as the chargor's act and deed, to—

- (a) sign, seal, execute, deliver and perfect and do all deeds, instruments, acts and things that the chargor could do or ought to do pursuant to any bank asset that has become vested in NAMA,
- (b) generally in the chargor's name and on the chargor's behalf exercise all or any of the powers, authorities and discretions conferred by any enactment, or the common law or pursuant to any agreement forming part of any bank asset

acquired by NAMA or which NAMA or the statutory receiver thinks fit for carrying into effect a sale, lease, charge, mortgage or dealing by NAMA or the statutory receiver, and

- (c) generally to use the chargor's name in the exercise of any power, authority or discretion conferred on a statutory receiver.

Appointment of liquidator or examiner to companies whose assets are under control of statutory receiver.

125.—Notwithstanding section 6(1) of the Companies (Amendment) Act 1990, the appointment of a liquidator or examiner to a company whose assets (or any 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.

Statutory receiver not obliged to sell property, etc.

126.—A statutory receiver is not obliged to sell a charged property at any particular time or at all, but is accountable for all profits and other monetary benefits arising directly from possession of the property.

Application of section 29(1) of Companies Act 1990 to certain transactions by statutory receivers.

127.—Section 29(1) of the Companies Act 1990 does not apply in relation to an arrangement for the acquisition of a non-cash asset if the arrangement involves the disposition of a company's assets by a statutory receiver.

CHAPTER 3

VESTING ORDERS

Application to Court.

128.—(1) NAMA may apply to the Court for a vesting order if—

- (a) NAMA has acquired a credit facility that is secured by a charge over land, (including a charge that is a collateral security for the credit facility),
- (b) the chargee's power of sale has become exercisable, and
- (c) NAMA forms the view that it is unlikely that the sum secured by the charge can be recovered by sale within a reasonable period.

(2) An application under *subsection (1)* shall, where there is a charge secured over the land concerned that has priority to the credit facility referred to in *paragraph (a)* of that subsection, contain an undertaking by NAMA to discharge that charge under *section 115*.

(3) An application under *subsection (1)* shall be supported by an affidavit to which is exhibited evidence—

- (a) as to the price likely to be realised in the immediate future by a sale of the land concerned, and
- (b) of any other interests in the land, including any prior charge referred to in *subsection (2)*.

(4) NAMA shall serve notice of the application on—

- (a) each chargor concerned,
- (b) any chargee (whether prior or subsequent), and
- (c) any guarantor of the relevant credit facility.

(5) NAMA shall publish a notice of an application for a vesting order in at least one daily newspaper circulating generally in the State.

(6) The Court shall set down an application under *subsection (1)* for preliminary hearing, at which it shall give directions for the taking of accounts in relation to the credit facility concerned. At the preliminary hearing the Court may stay the proceedings if a subsequent chargee wishes to offer to redeem in full the charge transferred to NAMA.

(7) At a preliminary hearing under *subsection (6)*, the Court may direct that notice of the application shall be given to any other person.

Vesting orders.

129.—(1) On considering the accounts and other relevant matters the Court, if it is satisfied that—

- (a) it is unlikely that the sum secured by the charge can be recovered by sale within a reasonable period, and
- (b) there is no reasonable prospect of the chargor redeeming the charge concerned and no reasonable prospect of a sale of the land concerned at a price sufficient to redeem that charge,

then the Court shall, subject to *subsection (3)*, make an order (in this Act referred to as a “vesting order”) vesting in NAMA all the interest of the chargor, subject to any undertaking under *section 128(2)*, in the land concerned.

(2) If the Court makes a vesting order, the Court shall also make an order for possession of the land concerned in favour of NAMA.

(3) Where the land concerned includes a principal private residence, a vesting order takes effect only to the extent that it does not affect that principal private residence.

Compensation.

130.—(1) Where—

- (a) the Court makes a vesting order,
- (b) there is another chargee of the land concerned, and
- (c) the value of the land at the time the order is made, as determined by the Court, exceeds the sum secured against the asset,

then the Court shall also order that compensation be paid to—

- (i) each other chargee (and, if more than one other chargee, each such chargee in the order of their priority so far as the excess referred to in paragraph (c) allows), and
- (ii) if that excess is more than is required to repay all chargees, the chargor.

(2) The amount that is payable as compensation pursuant to an order under *subsection (1)* shall not exceed the amount of the excess referred to in *subsection (1)(c)*.

(3) In making an order under *subsection (1)* the Court shall have regard to—

- (a) any surplus equity acquired by NAMA in the land concerned in excess of the total of—
 - (i) the amount secured by its charge, and
 - (ii) any costs or expenses likely to be incurred in realising the security,
- (b) the value of the security of any other chargee and the interest of the chargor, having regard to the value of the land and the value of the security of any chargees that rank in priority to it, and
- (c) the amount, if any, that is likely to have been paid to the chargee or chargor if the land had been sold and the proceeds of sale paid to the chargee and chargor in the order of their priority.

Effect of vesting order.

131.—(1) Notwithstanding any other enactment or rule of law, a vesting order—

- (a) extinguishes the mortgagor's equity of redemption in the land concerned,
- (b) vests title to the land in NAMA,
- (c) extinguishes the interest in the land of any other chargee, and
- (d) satisfies the requirements of the Land Registration Rules 1972 to 2008.

(2) A vesting order shall not affect NAMA's rights under *section 115*.

(3) The extinguishing of the interest of a chargee by *subsection (1)(c)* does not extinguish the debt secured by the charge concerned but the compensation ordered to be paid under *section 130(1)(c)(i)* shall be applied in reduction of that debt.

(4) NAMA shall cause a vesting order to be sent to the Property Registration Authority under the Registration of Title Act 1964 and the Registration of Deeds and Title Act 2006. The Property Registration Authority shall cause NAMA to be registered as owner of the land in accordance with the order.

(5) A debtor shall be entitled to information as to the lands to which the vesting order concerned relates but the borrower is not entitled to have access to the acquisition schedule or the terms and conditions contained in that schedule.

(6) For the avoidance of doubt, the making of a vesting order in relation to land does not impose on NAMA any obligation to sell the land within any particular period or at all.

Title of purchaser not impeachable.

132.—(1) The title of a purchaser from NAMA of land in relation to which NAMA has obtained a vesting order is not impeachable on the ground of any irregularity in the vesting order or any irregularity or impropriety in the obtaining of it.

(2) No purchaser from NAMA and no subsequent purchaser of land referred to in *subsection (1)* is either 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

Definitions (*Chapter 4*).

133.—(1) In this Chapter—

“acquisition application” mean an application referred to in *section 136*;

“acquisition order” means an order under *section 139*;

“charged land” means land that is subject to a charge that is part of an acquired bank asset;

“initial notice” means a notice referred to in *section 136*;

“relevant right” means an easement or right over land or a water right;

“vesting order” means an order under *section 142*.

(2) In the case of the compulsory acquisition of an easement or right over land or a water right, a reference in this Chapter to the land that is to be acquired shall be construed as a reference to the land or water over which the easement or right is to be exercised.

Compulsory acquisition of land, etc.

134.—(1) NAMA may apply to compulsorily acquire land or a relevant right if in its opinion it is necessary to do so—

- (a) because in NAMA’s opinion the sale of the charged land or alternatively the sale of the charged land at a fair and reasonable price would be materially impeded,
- (b) because in NAMA’s opinion the acquisition of the land or relevant right is necessary to achieve the scale and type of development that in NAMA’s opinion is most advantageous to the charged land, or
- (c) there exists a material impediment to NAMA vesting good and marketable title to the charged land in a prudent and experienced purchaser necessary to enable such a purchaser to use the charged land for its intended use or purpose, and the land or relevant right sought to be acquired would, in the opinion of NAMA, resolve the impediment concerned.

(2) The process for the compulsory acquisition of an easement or right over land or a water right under this Chapter is the same as the process for the compulsory acquisition of land, with any necessary changes.

(3) NAMA shall exercise its powers under this Chapter only for the performance of its functions as specified in *section 11*.

Application to Court for acquisition order.

135.—(1) If NAMA proposes to compulsorily acquire any land NAMA shall apply to the Court for an order, in this Act referred to as an “acquisition order”, authorising it to acquire the land.

(2) The application shall be accompanied by the maps, plans and books of reference to be deposited in accordance with *section 137*.

Initial notice of acquisition.

136.—(1) NAMA shall publish a notice (in this Chapter referred to as the “initial notice”), in the prescribed form, of an application under *section 135* in a daily newspaper circulating in the State generally. NAMA shall serve a copy of the notice on every person who appears to NAMA to have an estate or interest in the land, so far as it is reasonably practicable to ascertain those persons.

(2) An initial notice—

- (a) shall include a statement that persons claiming an estate or interest in the land concerned have the right to lodge with the Court, within 21 days after the

publication of the notice, an objection to the making of an acquisition order in relation to the land; and

- (b) shall specify the times and places where the maps, plans and books of reference deposited in accordance with *section 137* can be inspected.

(3) A person claiming an estate or interest in the land concerned may lodge with the Court, within 21 days after the publication of the initial notice, an objection to the making of an acquisition order in relation to the land.

Maps, plans and books to be deposited.

137.—(1) NAMA shall cause maps, plans and books of reference to be deposited in accordance with this section.

(2) The maps and plans shall be sufficient in quantity and character to show the land at an adequate scale.

(3) The books of reference shall contain the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of the land that is proposed to be acquired.

(4) The maps, plans and books of reference shall be deposited at such place or places as NAMA, with the consent of the Court, considers suitable and shall remain so deposited for at least 21 days. While so deposited, they shall be open to inspection, free of charge, between ten o'clock in the morning and four o'clock in the afternoon on every day except Saturdays, Sundays and public holidays.

Consideration by Court of objections.

138.—(1) The Court shall consider and determine any objection to the application of NAMA lodged with the Court in accordance with *section 136(3)*.

(2) The Court is not obliged to consider any such objection not lodged within the period allowed by *section 136(3)*.

(3) The Court is not obliged to consider any objection that does not show on its face the objector's estate in the land concerned.

(4) In considering any objection, the Court shall have regard to the nature of the objector's estate or interest in the land and whether in all the circumstances it is just and equitable to make the order.

Acquisition order.

139.—(1) If no objection to NAMA's application is lodged with the Court within the period referred to in *section 136(3)* or the Court rejects any objection lodged within that period, the

Court shall make an order authorising NAMA to acquire the land concerned compulsorily in accordance with the terms of its application or subject to any modifications that the Court specifies in the order.

(2) The Court shall make an acquisition order only if it is satisfied that—

- (a) without the acquisition of the land or right concerned NAMA would be unable to recover its outlay (that is, all sums paid or invested by NAMA) in respect of the bank asset secured by the land charged or to minimise losses in connection with it,
- (b) the acquisition of the land is necessary to achieve the scale and type of development to which the charged land is best suited, or
- (c) there exists a material impediment to NAMA vesting good and marketable title to the charged land in a prudent and experienced purchaser necessary to enable such a purchaser to use the charged land for its intended use or purpose, and the land or relevant right sought to be acquired would resolve the impediment concerned.

(3) The Court shall not make an order under this section if it is satisfied that there would be a serious risk of injustice if it did so.

NAMA’s power to take possession.

140.—(1) At any time after the making of an acquisition order and before conveyance or ascertainment of price, NAMA may, subject to *subsection (2)*, enter on and take possession of the land to be acquired.

(2) NAMA shall not enter on or take possession of land or exercise a right under this section without giving the occupier of the land at least 14 days’ previous notice in writing of its intention to do so.

Determination of compensation.

141.—(1) The amount of the price to be paid by NAMA for any land acquired pursuant to an acquisition order to the persons having estates or interests in the land or for any right acquired pursuant to an acquisition order to the persons having estates or interests in the land that is to be subject to the right, shall, in default of agreement, be fixed under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.

(2) Sections 69 to 79 of the Lands Clauses Consolidation Act 1845 apply to the price and, subject to *sections 142 and 143*, to the land or right acquired. For the purpose of the application of those sections a reference to the promoters of an undertaking shall be construed as a reference to NAMA.

Court may make compulsory acquisition transfer order.

142.—(1) Where NAMA has entered on and taken possession of land in accordance with *section 140* and the Court is satisfied that—

- (a) the several interests in the land have not been conveyed or transferred to NAMA,
- (b) it is necessary, in connection with the purposes for which NAMA has been authorised to acquire the land compulsorily, that the acquisition of the land should be completed, and
- (c) NAMA has made an offer in writing to each person having an interest in the land who has furnished sufficient particulars of his or her interest to enable NAMA to make an offer for that interest,

then the Court may make an order (in this Chapter referred to as a “compulsory acquisition transfer order”) vesting the land in NAMA.

(2) Where the Court or NAMA becomes aware, before the making of the compulsory acquisition transfer order, that the land to be acquired by the order is subject (whether alone or in conjunction with other land) to a charge for estate duty, succession duty or inheritance tax, the Court or NAMA, as the case may be, shall inform the Revenue Commissioners of the Court’s intention to make the order.

(3) After the Court makes a compulsory acquisition transfer order, NAMA shall within 7 days after having received notification from the Court of the making of the order—

- (a) publish in a newspaper circulating in the area of the land to which the order relates a notice stating that the order has been made, describing the land and naming a place where a copy of the order may be seen at all reasonable times, and
- (b) serve on every person appearing to NAMA to have an interest in the land a notice stating the fact of such an order having been made and the effect of the order.

Form and effect of compulsory acquisition transfer order.

143.—(1) A compulsory acquisition transfer order shall be in the prescribed form and shall have attached to it a map of the land to which it relates.

(2) A compulsory acquisition transfer order vests—

- (a) the land specified in it in NAMA in fee simple free from encumbrances and all estates, rights, titles and interests of whatever kind (other than any public right of way) , or
- (b) such other relevant right as the Court may specify,

with effect from a specified date not earlier than 21 days after the making of the compulsory acquisition transfer order.

(3) NAMA shall cause a compulsory acquisition transfer order to be sent to the Property Registration Authority under the Registration of Title Act 1964 and the Registration of Deeds and Title Act 2006. The Property Registration Authority shall cause NAMA to be registered as owner of the land or relevant right in accordance with the order.

Service of notices.

144.—(1) A notice under this Chapter may be served on a person by sending it by registered post in an envelope addressed to him or her at his or her usual or last known address.

(2) If for any reason the envelope cannot be so addressed, it may be served on the person for whom it is intended by sending it by registered post in an envelope addressed to “the occupier” without stating his or her name, at the land to which the notice relates.

CHAPTER 5

GENERAL POWERS IN RELATION TO LAND

Notice to be given to NAMA of certain dealings in land, etc.

145.—(1) If a person owns land (in this subsection referred to as the “charged land”) that is subject to a charge that forms part of an acquired bank asset, and—

- (a) the person—
 - (i) owns or holds an option to purchase other land (in this subsection referred to as the “relevant land”), or
 - (ii) holds an interest or an option to acquire an interest (in this subsection referred to as the “relevant interest”) in, other land,

and

- (b) unless the relevant land or the relevant interest were owned or held (as the case requires) by NAMA, the charged land would be unable to realise its full value for development, sale, leasing or any other use,

the person shall not deal with the relevant land, the interest or the option without giving reasonable written notice to NAMA.

(2) A dealing in contravention of *subsection (1)* is voidable at NAMA’s option.

Set-off of compensation.

146.—Where a person is indebted to NAMA under any bank asset acquired by NAMA or otherwise, the amount of any compensation payable by NAMA or any other payment due by NAMA to that person may be applied towards satisfaction of the debt due to NAMA.

National Asset Management Agency Bill 2009

For public consultation purposes only

CHAPTER 6
POWERS IN RELATION TO DEVELOPMENT OF LAND

Application (Chapter 6).

147.—This Chapter applies where—

- (a) NAMA has acquired a bank asset that includes a charge over land,
- (b) there is an agreement for the development of the land, and
- (c) either—
 - (i) the Court has made a vesting order in relation to the land, or
 - (ii) NAMA in its capacity as chargee has power under the charge concerned to develop the land.

Development of land.

148.—(1) Where this Chapter applies, NAMA may enter into an agreement (including an agreement with the person who was the debtor in relation to the bank asset concerned) for the purpose of developing the land.

(2) NAMA's objective in entering into an agreement under *subsection (1)* shall be the orderly development of the land concerned to secure the best return reasonably possible.

NAMA to have certain contractual rights of land developers.

149.—(1) Where this Chapter applies, NAMA has the same rights as the participating institution and the debtor and any associated debtor, guarantor or surety in relation to the bank asset concerned in relation to defective design or workmanship in any building or other structure constructed or to be constructed on the land concerned and all such rights are deemed to be assigned to NAMA.

(2) Where under *subsection (1)* NAMA acquires a right in relation to defective design or workmanship, NAMA may, by certificate under its seal, confer that right on another person.

Designs and planning documents for land development.

150.—(1) Where—

- (a) this Chapter applies, and
- (b) in relation to the development of the relevant land, an agreement provides for the engagement of a design professional, development professional (such as an architect, planner, surveyor, or structural engineer) or a building, engineering or like contractor),

then—

- (i) the development professional, design professional or building, engineering or like contractor shall deliver to NAMA, on demand, a copy of the relevant agreement with any designs, plans or other documents prepared for the purposes of the development of the land concerned, and
- (ii) NAMA may either continue the agreement or terminate it (with or without entering into a further agreement with the development professional, design professional and/or the building, engineering or like contractor) as it thinks fit.

(2) Where an agreement referred to in *subsection (1)(b)* creates a lien in favour of the development professional, design professional or building, engineering or like contractor concerned over any design, plan or document prepared for the purposes of the development, the lien is void as against NAMA, without prejudice to the claim underlying the lien.

(3) Where an agreement referred to in *subsection (1)(b)* confers a right on a participating institution, NAMA may require the participating institution to assign that right to NAMA.

(4) Where the rights of a participating institution under an agreement referred to in *subsection (1)(b)* are assigned to NAMA under *subsection (3)*, or NAMA makes a demand under *subsection (1)(b)(ii)*, NAMA is not liable for any breach of the agreement by the participating institution or any debtor that occurs before the assignment.

(5) Where the participating institution is not empowered or does not have the right to assign any licence held by it to NAMA or any such licence is inadequate NAMA shall, by virtue of this section, be taken to hold a licence from any development professional, design professional, building, engineering or like contractor referred to in *subsection (1)*—

- (a) authorising the reproduction, making available, adaptation, distribution and use by NAMA of any intellectual property of the development professional, design professional, building, engineering or like contractor in any drawings, designs, plans or other documents referred to in that subsection, and
- (b) authorising NAMA to grant a sub-licence of that licence.

(6) Nothing in this section deprives a development professional, design professional or building, engineering or like contractor of—

- (a) fair and reasonable proper remuneration for work already done, or
- (b) a fair and reasonable licence fee in relation to a licence referred to in *subsection (3)*.

Limitation of right to renewal of certain business tenancies.

151.—Section 16 of the Landlord and Tenant (Amendment) Act 1980 does not apply in relation to a tenancy (other than a renewal of an existing tenancy) granted by NAMA of a

tenement (within the meaning given by section 5 of that Act) unless NAMA specifies otherwise in writing.

PART 9 LEGAL PROCEEDINGS

CHAPTER 1 LEGAL PROCEEDINGS COMMENCED BEFORE 30 JULY 2009

Application (*Chapter 1*).

152.—The provisions of this Chapter apply, in relation to legal proceedings in relation to designated bank assets or acquired bank assets if the legal proceedings were commenced before 30 July 2009.

Effect of acquisition, etc., of bank assets on legal proceedings—participating institution plaintiff, etc.

153.—(1) If legal proceedings were in being in relation to a bank asset immediately before the time when it was acquired by NAMA, and the participating institution concerned was a plaintiff, or in a capacity corresponding to that of a plaintiff, in those proceedings, those proceedings shall continue. After the bank asset becomes vested in NAMA, subject to *subsections (2) and (3)*, NAMA may elect to—

- (a) be, in accordance with this section, substituted for the participating institution as a party to the proceedings, and
- (b) assume some or all of the rights and obligations in relation to those proceedings that the participating institution had immediately before that time.

(2) Notwithstanding *subsection (1)*, where NAMA has elected to be substituted for a participating institution in legal proceedings the participating institution shall be taken to continue to be a party to those proceedings—

- (a) for the purposes of discovery and the answering of interrogatories, and
- (b) if NAMA so directs, as respondent to any claim in those proceedings.

(3) Notwithstanding *subsection (1)*, an election by NAMA to be substituted for a participating institution in legal proceedings does not render NAMA liable in relation to any counterclaim or cross-claim, or claim to set off, in those proceedings.

(4) Where NAMA has elected to be substituted for a participating institution as a party to legal proceedings under *subsection (1)*, NAMA shall as soon as practicable file a notice in the Court or tribunal concerned of the election and shall serve a copy of the notice on the

participating institution and each other party to the proceedings. No amendment to the proceedings is to be required.

(5) Without prejudice to any application or action for costs by the participating institution against any person other than NAMA, where NAMA has elected to be substituted for a participating institution as a party to legal proceedings under *subsection (1)*, the participating institution continues to be liable for—

- (a) any damages awarded pursuant to any counterclaim or cross-claim,
- (b) its own costs in the proceedings before the substitution of NAMA as a party and any potential costs liability incurred to other parties to the proceedings as a result of the participating institution being a party to the proceedings before the substitution of NAMA as a party, and
- (c) any subsequent costs that it may incur in any capacity in which it remains a party to the proceedings.

(6) A party to legal proceedings referred to in this section is not entitled to join NAMA as a party to the proceedings.

(7) No cause of action lies or is maintainable against NAMA solely by reason of NAMA's acquisition of a bank asset under this Act.

(8) No cause of action lies or is maintainable against NAMA for the recovery of damages in respect of any injury to a person, any damage to property or any other loss alleged to have been caused or contributed to by a failure to perform any of the functions conferred on NAMA.

(9) For the avoidance of doubt, the right and entitlement of a participating institution to continue legal proceedings is not affected by this section in the absence of any election by NAMA.

(10) For the avoidance of doubt, the transfer to NAMA of a bank asset under this Act shall not affect any relief or remedy to which the participating institution would otherwise be entitled.

Effect of acquisition of bank assets on legal proceedings—NAMA may issue execution of judgment.

154.—Where a participating institution has obtained judgment in legal proceedings in relation to a bank asset that has been acquired by NAMA under this Act, the judgment so obtained shall be deemed to assigned to NAMA and NAMA may enforce the judgment by any means (including by issuing execution). In particular, NAMA may apply for a judgment mortgage pursuant to the judgment.

Effect of acquisition of bank assets on legal proceedings where participating institution not plaintiff.

155.—(1) If the participating institution from which NAMA acquires a bank asset is, at the time of acquisition of the bank asset, a party (otherwise than as plaintiff or in a capacity corresponding to that of a plaintiff) in legal proceedings in relation to the bank asset, the participating institution remains party to the proceedings in the same capacity.

(2) NAMA may elect to become a party to any legal proceedings referred to in *subsection (1)*. In a case where the participating institution has brought a counterclaim NAMA may at its election be substituted for the participating institution as counterclaimant.

(3) For the avoidance of doubt, the transfer to NAMA of a bank asset under this Act does not affect any relief or remedy to which the participating institution would otherwise be entitled.

CHAPTER 2

LEGAL PROCEEDINGS COMMENCED ON OR AFTER 30 JULY 2009

Application (*Chapter 2*).

156.—(1) The provisions of this Chapter apply in relation to legal proceedings—

- (a) commenced on or after 30 July 2009, and
- (b) by a person who is a debtor, associated debtor, guarantor or surety in relation to a bank asset, or a participating institution,

in connection with a bank asset if the bank asset is, or is later, specified in an acquisition schedule.

(2) The provisions of this Chapter apply in relation to legal proceedings referred to in *subsection (1)* on and from the time at which the bank asset concerned is specified in the acquisition schedule concerned.

(3) *Sections 153 to 155* also apply to legal proceedings to which this Chapter applies.

Damages to be only remedy for certain claims.

157.—(1) Without prejudice to *section 79*, a claim to which this Chapter applies gives rise only to a remedy in damages and not to any remedy affecting—

- (a) the bank asset or the acquisition by NAMA of the bank asset, or
- (b) any property the subject of any security,

unless the Court orders otherwise.

(2) An application for an order under *subsection (1)* shall be made only by leave of the Court. An application for such leave may be made *ex parte*.

(3) Leave shall not be granted to apply for an order under *subsection (1)* unless—

- (a) either—
 - (i) the application for leave is made to the Court no later than 30 days after notification to the person concerned of the matter that gives rise to the necessity to apply for leave, or
 - (ii) the Court is satisfied that—
 - (I) there are substantial reasons why the application was not made within that period; and
 - (II) it is just in all the circumstances to grant leave having regard to the interests of any affected person,
- (b) the Court is satisfied that the application raises a substantial issue for the Court's determination, and
- (c) subject to *subsection (4)*, the applicant—
 - (i) undertakes to the Court to discharge any damages which may be suffered by NAMA as a result of being prevented from dealing in the bank asset during the period between the successful application for leave to apply for an order under *subsection (1)* the securing of a Court order under *subsection (1)* and the successful defence by NAMA of litigation in relation to the bank asset, and
 - (ii) produces to the Court adequate security in respect of that undertaking.

(4) Notwithstanding *subsection (3)(c)*, the court may grant leave under *subsection (3)* where the court is not satisfied as to a matter referred to in *subparagraph (i)* or *(ii)* of *paragraph (c)* of that subsection if the court is satisfied that it is necessary in the interests of justice to grant leave.

(5) If the Court grants leave to apply for an order under *subsection (1)*, the applicant shall serve on NAMA the order granting leave and the application.

(6) The Court may make an order under *subsection (1)* only if—

- (a) having heard all the parties—
 - (i) the Court is satisfied as to the matter referred to in *subsection (3)(b)*, and
 - (ii) the Court is satisfied that the public interest is outweighed by the applicant's interest,
- (b) the applicant has given the undertaking required by *subsection (3)(c)(i)*, and

- (c) subject to *subsection (7)*, the Court is satisfied that the security provided by the applicant pursuant to *subsection (3)(c)(ii)* is adequate.

(7) Notwithstanding *subsection (6)(c)*, the court may make an order under *subsection (1)* where the court is not satisfied that the security provided by the applicant pursuant to *subsection (3)(c)(ii)* is adequate if the court is satisfied that it is necessary in the interests of justice to make the order.

- (8) In considering the public interest under *subsection (6)*, the Court shall have regard to—
- (a) the purposes of this Act,
 - (b) the desirability of certainty in relation to the acquisition by NAMA of bank assets, and
 - (c) the desirability of having bank assets that NAMA has acquired managed and moved back into the private economy in a timely and efficient manner to enable normal economic operations to resume.

(9) If legal proceedings to which this Chapter applies are in being before the designation or acquisition of a bank asset the subject of those proceedings, from the date of that designation or acquisition the court may grant a remedy only in accordance with *subsection (1)*.

(10) Nothing in this section prevents a party defending proceedings *in rem* in respect of a bank asset instituted against it by NAMA, a participating institution or a statutory receiver, in a manner which might affect the bank asset or its transfer to NAMA or any property the subject of any security.

(11) For the purposes of *subsection (6)*, the possibility that the action against which relief is sought would or might result in a person being declared bankrupt or ordered to be wound up or otherwise adversely affected is not, of itself, sufficient to outweigh the public interest.

(12) Nothing in the section affects the operation of the Family Home Protection Act 1976.

CHAPTER 3

ALL LEGAL PROCEEDINGS RELATING TO NAMA

Application (*Chapter 3*).

158.—This Chapter applies in relation to all legal proceedings relating to NAMA.

Costs.

159.—(1) At the conclusion of each interlocutory application in any legal proceedings relating to NAMA, the Court shall make orders as to costs in respect of the application and,

having received submissions from the parties as to the levels of those costs, the Court shall measure those costs.

(2) Costs measured under *subsection (1)* shall be enforceable against the party directed to pay those costs. If the party fails to discharge those costs within 30 days of the Court order measuring those costs, 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 the discharge of the costs.

Evidence—amount of debt due.

160.—In any proceedings for the recovery by NAMA of money owing to NAMA for principal, interest, or otherwise in respect of any bank asset transferred to, or loan or advance made by, NAMA, a certificate in writing purporting to be sealed with the seal of NAMA stating that a specified sum of money was owing to NAMA at the date of the certificate by a specified person on account of a specified loan or advance is, at any time within one month after the date of the certificate and without proof of the seal of NAMA or of the due affixing of it to the certificate, evidence until the contrary is proved that the sum specified in the certificate is and remains owing to NAMA by the person and on the account specified in the certificate.

Evidence—application of Bankers’ Books Evidence Act 1879.

161.—(1) In this section “Act of 1879” means the Bankers’ Books Evidence Act 1879.

(2) Where—

- (a) a copy of an entry in a bankers’ book (within the meaning given by section 9(2) of the Act of 1879) falls to be produced in evidence,
- (b) the book is in the custody or under the control of NAMA, and
- (c) an officer of NAMA gives evidence (orally or by affidavit) that—
 - (i) he or she truly believes that the book or record was kept in the ordinary course of the bank’s business, and
 - (ii) the book is in the custody or under the control of NAMA,

then the requirement for proof in section 4 of the Act of 1879 shall be taken to have been satisfied.

(3) The Act of 1879 has effect in relation to the books and records of NAMA as if—

- (a) NAMA were a bank,
- (b) references to bankers’ books in that Act were to the ordinary books and records of NAMA, and

- (c) references in that Act to an officer of a bank were references to an officer of NAMA.

Limitation of power to grant injunctive relief.

162.—(1) Where injunctive relief is sought on an interim or interlocutory basis to prevent NAMA or any other party from taking any action, the Court shall have regard, in determining whether to grant such relief, to the public interest.

(2) In considering the public interest, the Court shall have regard to—

- (a) the purposes of this Act,
- (b) the desirability of certainty in relation to the acquisition by NAMA of bank assets, and
- (c) the desirability of having bank assets that NAMA has acquired managed and moved back into the private economy in a timely and efficient manner to enable normal economic operations to resume.

(3) Unless the Court is satisfied that not granting injunctive relief would give rise to an injustice, the Court shall not grant such relief where a remedy in damages would be available to the person who seeks that relief.

(4) For the purposes of *subsection (3)*, the possibility that the action against which injunctive relief is sought would or might result in a person being declared bankrupt or ordered to be wound up or otherwise adversely affected is not, of itself, sufficient to establish that not granting such relief would give rise to an injustice.

Limitation of judicial review.

163.—(1) Leave shall not be granted for judicial review regarding any matter to which this Act applies unless—

- (a) either—
 - (i) the application for leave to seek judicial review is made to the Court within one month after the decision is notified to the person concerned, or
 - (ii) the Court is satisfied that—
 - (I) there are substantial reasons why the application was not made within that period, and
 - (II) it is just, in all the circumstances, to grant leave, having regard to the interests of other affected persons,
- and
- (b) the Court is satisfied that the application raises a substantial issue for the Court's determination.

(2) The Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the maker of the decision with such directions as the Court thinks appropriate or necessary.

(3) This section applies to NAMA in the same manner as it applies to any other applicant for judicial review of a decision under or pursuant to this Act.

Limitation of certain rights of appeal to the Supreme Court.

164.—(1)The determination of the High Court of an application for leave to apply for judicial review, of an application for judicial review, of an application for leave to apply for an order under *section 157*, or of an application for an order under *section 157*, is final and no appeal lies from the decision of the High Court to the Supreme Court in either case, except with the leave of the High Court.

(2) The High Court shall grant leave under *subsection (1)* only if that Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(3) This section does not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

Lites pendentes to have no effect, etc.

165.—Where NAMA has acquired a bank asset, a *lis pendens*, caution or inhibition registered on or after 30 July 2009 shall be of no effect against NAMA or against any person who acquires that bank asset from NAMA, even if it is registered against the title to any registered land that forms part of the bank asset unless the party seeking to register it has secured an order under *section 157* or is defending proceedings referred to in *section 157*.

PART 10

USE OF INFORMATION

Definition (*Part 10*).

166.—In this Part “adviser” includes an investment adviser, an investment banker, a property valuer, a solicitor, an accountant and an auditor and any staff member or employee of, and any agent or other person acting on behalf of, an adviser.

Duty of confidentiality, etc., not contravened by provision of information or production of documents and books for inspection.

167.—(1)Disclosure to NAMA or the NTMA or an adviser or agent acting on behalf of NAMA or the NTMA of information or records about a bank asset, or about any person

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

(2) The production to NAMA or the NTMA by a person of a document that a person could not have been compelled to produce to a court on the grounds of legal professional privilege does not constitute a waiver of that privilege from production in relation to the document.

Duty of confidentiality, etc., not contravened by provision of information to or production of documents and books for inspection by potential purchaser.

168.—(1) Disclosure of any book, document or record in relation to a bank asset by or on behalf of NAMA to a potential purchaser or its advisers does not contravene any duty of confidentiality to which NAMA would otherwise be subject.

(2) The production of any book, document or record under *subsection (1)* that NAMA could not have been compelled to produce to any court on the grounds of legal professional privilege does not constitute a waiver of that privilege.

Obligation to provide information, etc., to NAMA extends to provision to adviser.

169.—An obligation under this Act of a person to provide information to NAMA, to produce a book, document or record to NAMA, or to provide facilities for the inspection of or taking copies from a book, document or record also has effect as an obligation of the person to provide such information, produce such a book, document or record or provide such facilities to an adviser acting on behalf of NAMA.

Operation of Data Protection Acts 1988 and 2003.

170.—To avoid doubt, an obligation on a credit institution or any other person under this Act to disclose information to NAMA or the NTMA extends to personal information, within the meaning of the Data Protection Acts 1988 and 2003.

Disclosure of confidential information.

171.—(1) In this Act “confidential information” means—

- (a) information relating to the commercial or business interests of a participating institution or of a person who is or has been in a relationship with a participating institution,
- (b) information that is subject at law or in equity to a duty of confidentiality,
- (c) information that, if it were contained in a document, would have the result that a person could not be compelled to disclose the document in evidence,
- (d) information the disclosure of which would tend to place NAMA or the NTMA at a commercial disadvantage, and
- (e) information about proposals of a commercial nature and tenders submitted to NAMA or the NTMA by contractors, consultants or any other person.

(2) Except as otherwise provided or authorised by this section or another enactment, a person shall not, unless authorised by NAMA or the NTMA or authorised or obliged by law to do so, disclose information that he or she knew was confidential information, or use, to the direct or indirect advantage of himself or herself or of another person (other than NAMA, a NAMA wholly owned subsidiary or the NTMA), that he or she obtained—

- (a) while a member of the Board,
- (b) while an officer of NAMA or the NTMA or otherwise performing duties on behalf of NAMA or the NTMA,
- (c) as a result of a disclosure to him or her permitted by *subsection (6)(d)*, or
- (d) in the course of the provision (including the provision by another person) of a service to NAMA or the NTMA.

(3) A reference in *subsection (2)* to the disclosure or use of information includes the disclosure or use of a document containing the information.

(4) For the purposes of this section, it shall be presumed, unless the contrary is shown, that a person knew that information was confidential information, if that person reasonably ought to have known that it was confidential information.

(5) Nothing in *subsection (2)* prevents the disclosure of information—

- (a) to NAMA or a NAMA group entity, the NTMA or the Minister,
- (b) in the course of giving evidence before a court or tribunal having the power to examine witnesses on oath,
- (c) in the course of giving evidence before the Oireachtas, or
- (d) to an agent.

(6) It shall not be an offence contrary to *subsection (2)* if a person, in good faith, discloses confidential information to—

- (a) the Garda Síochána,
- (b) the Revenue Commissioners,
- (c) the Director of Corporate Enforcement,
- (d) the Competition Authority, or
- (e) the Regulatory Authority,

where that information gives rise to a reasonable suspicion that a participating institution, an employee or agent of a participating institution, a debtor in respect of a bank asset acquired by NAMA or an employee or agent of such a debtor may have—

- (i) committed a criminal offence, or

- (ii) contravened a law relating to taxation, companies, the regulation of financial services, or competition.

Obligation to pass certain information to law-enforcement authorities.

172.—Where NAMA has reason to suspect that—

- (a) a participating institution may have committed a criminal offence, or
- (b) a participating institution may have contravened a law relating to taxation, companies, the regulation of financial services, or competition,

NAMA shall report the information that leads it to form that suspicion to—

- (i) the *Gárda Síochána*,
- (ii) the Revenue Commissioners,
- (iii) the Director of Corporate Enforcement,
- (iv) the Competition Authority,
- (v) the Regulatory Authority,
- (vi) any other body, whether within the State or not, responsible for the detection or investigation of criminal offences, or
- (vii) any other body (whether within the State or not) responsible for the detection or investigation of contraventions of law (whether of the State or not) relating to companies, the regulation of financial services, or competition,

as the case appears to it to require.

Disclosure by regulatory authorities.

173.—(1) Subject to the requirements of the Treaties governing the European Communities (within the meaning of the European Communities Act 1972) and the Statute of the European System of Central Banks and of the European Central Bank, and in accordance with applicable law, the Minister, the Governor and the Regulatory Authority may disclose to each other any information that any of them receives concerning a participating institution or any of its subsidiaries.

(2) The designation of a credit institution as a participating institution is subject to the condition that the institution consents to—

- (a) any disclosure of information under this section, and
- (b) provide such information as the Minister requires to perform his or her functions under this Act.

The information disclosed shall be treated as confidential.

(3) In *subsections (1) and (2)* “information” includes information relating to a period before the participating institution concerned was designated under *section 55* as a participating institution.

(4) The Governor and the Regulatory Authority may use information disclosed to either of them under *subsection (1)* in the performance of their functions.

PART 11

CONDUCT OF PARTICIPATING INSTITUTIONS

Directions in relation to conduct of participating institutions.

174.—(1) The Regulatory Authority, may, with the approval of the Minister, give a direction to a participating institution in order to achieve the purposes of this Act, as specified in *section 2*.

(2) A direction under *subsection (1)* may —

- (a) restrict balance sheet growth,
- (b) restrict the institution’s ability to take over other credit institutions,
- (c) require balance sheet reduction, or
- (d) restrict or require consolidation and merger of participating institutions.

Reporting by participating institutions.

175.—(1) The Regulatory Authority may direct a participating institution in writing to make any report that the Regulatory Authority considers necessary to monitor the institution’s compliance with its obligations under or by virtue of this Part.

(2) A direction under *subsection (1)* shall specify the information to be provided in the report and the period within which the report shall be submitted to the Regulatory Authority.

(3) A participating institution that is directed to make a report under *subsection (1)* shall comply with the direction.

(4) The Minister may direct the Regulatory Authority to require such other reports from a participating institution as he or she may consider necessary.

(5) The Minister may make regulations providing for the making by participating institutions of periodic reports, the frequency and form of such reports and the matters that such reports shall address. The matters shall include liquidity requirements, capital ratios, asset quality, risk exposures and funding costs.

Restructuring plans.

176.—(1) The Minister, after consultation with the Governor and the Regulatory Authority, may direct a participating institution to draw up or amend, within a specified period, a restructuring plan to ensure compliance with the purposes of this Act.

(2) A participating institution that is given a direction under *subsection (1)* shall submit a draft of the restructuring plan for the Minister's approval within the period specified in the direction.

(3) The Minister shall not approve a restructuring plan that does not comply with the law of the State and of the European Communities relating to competition and with the law of the European Communities relating to State aid.

(4) The Minister, after consultation with the Governor and the Regulatory Authority, may direct a participating institution to amend a draft restructuring plan in a specified respect. The direction shall specify a period within which the participating institution is required to do so.

(5) A participating institution that is directed under *subsection (4)* to amend a draft restructuring plan shall do so within the period specified in the direction.

(6) If the Minister approves a draft restructuring plan, the participating institution concerned shall put the plan into effect in accordance with a timetable directed by the Minister.

(7) The Minister, after consultation with the Governor and the Regulatory Authority, may direct a participating institution to submit to the Minister a business plan in accordance with this section.

(8) A participating institution that is given a direction under *subsection (7)* shall submit a draft of the business plan for the Minister's approval within the period specified in the direction.

(9) The Minister, after consulting with the Governor and the Regulatory Authority, may direct a participating institution to amend a draft business plan submitted to the Minister under *subsection (7)* in accordance with the direction.

(10) A participating institution that is directed to amend a draft business plan under *subsection (9)* shall comply with the direction within the period specified in the direction.

Compliance with directions

177.—(1) Where the Regulatory Authority is of the opinion that a participating institution has not complied with a direction, the Regulatory Authority may apply to the Court for such order as may be appropriate, to compel compliance with the direction.

(2) The Court may, as it thinks fit, on the hearing of the application under *subsection (1)*, make an order compelling compliance with the direction or refuse the application.

(3) An order compelling compliance shall stipulate a reasonable period for the participating institution to comply with the direction.

(4) An application for an order under *subsection (1)* shall be by motion and the Court when dealing with the matter may make such interim or interlocutory order as it considers appropriate.

(5) The Court shall not deny any interim or interlocutory relief referred to in *subsection (4)* solely on the basis that the Regulatory Authority may not suffer any damage if such relief were not granted pending conclusion of the proceedings.

(6) An application for an order under *subsection (1)* may include an application for an order to pay to the Regulatory Authority such amount, by way of financial penalty, as the Regulatory Authority may propose as appropriate in the light of the non-compliance.

(7) In deciding on such an application, the Court shall decide the amount (if any) of the financial penalty which should be payable and—

- (a) shall not be bound by the amount proposed by the Regulatory Authority, and
- (b) shall consider the circumstances of the non-compliance, including—
 - (i) its duration,
 - (ii) the submissions of the Regulatory Authority on the appropriate amount, and
 - (iii) any excuse or explanation for the non-compliance.

PART 12

MISCELLANEOUS

Avoidance of certain transactions.

178.—(1) Where, on the application of NAMA, it is shown to the satisfaction of the Court that—

- (a) any asset of any debtor or associated debtor, guarantor or surety was disposed of by way of conveyance, transfer, charge, security, loan, trust or in any other way, by act or omission, directly or indirectly, and
- (b) the effect of the disposition was to defeat, delay or hinder the acquisition by NAMA of an eligible bank asset, or to impair the value of an eligible bank asset or any rights (including priorities) that NAMA would have acquired or increased a liability or obligation but for that disposition,

then, the Court may, if in the Court's opinion it is just and equitable to do so, declare the disposition to be void.

(2) In deciding whether it is just and equitable to make a declaration under *subsection (1)*, the Court shall have regard to the rights of any person who has in good faith and for value acquired an interest in the asset the subject of the disposition.

(3) Nothing in this section affects the operation of section 14 of the Conveyancing Act 1634 or section 74(4)(a) of the Land and Conveyancing Law Reform Act 2009.

Provision of tax information to NAMA.

179.—(1) In this section “the Capital Gains Tax Acts” and “the Corporation Tax Acts” have the respective meanings given by section 1(2) of the Taxes Consolidation Act 1997.

(2) Where shares in a company are acquired by—

- (a) NAMA,
- (b) a company referred to in section 616(1)(g) of the Taxes Consolidation Act 1997, or
- (c) a NAMA group entity,

and, as a consequence of the acquisition, the provisions of the Capital Gains Tax Acts, the Corporation Tax Acts or the Stamp Duties Consolidation Act 1999 as amended or extended impose a charge to tax or duty on the company by virtue of a clawback of a relief, the person from whom the shares are acquired shall inform NAMA or the acquiring company of such charge and the amount of tax or duty due.

NAMA not to make payments in certain circumstances.

180.—(1) In this section—

“the Acts” has the meaning given by section 1095 of the Taxes Consolidation Act 1997;

“Collector-General” has the meaning given by section 2(1) of the Taxes Consolidation Act 1997;

“outstanding tax”, in relation to a relevant person, means any obligation arising under the Acts in relation to—

- (a) the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the Acts, and
- (b) the delivery of any returns to be made under the Acts;

“relevant person” means a debtor, guarantor, surety or chargor and includes a connected person (within the meaning given by section 10 of the Taxes Consolidation Act 1997) in relation to a debtor, guarantor, surety or chargor.

(2) This section applies where in the exercise of any of its functions under this Act, NAMA is obliged to pay an amount of money to a relevant person.

(3) Where the circumstances referred to in *subsection (2)* arise, NAMA shall not make any payment to a relevant person until—

- (a) the relevant person delivers to NAMA, or to a person authorised by NAMA, a valid tax clearance certificate issued to the relevant person by the Collector-General, or
- (b) NAMA has sought and received a direction from the Collector-General that it is in order to make a payment to the relevant person.

(4) Where a relevant person is unable to produce a valid tax clearance certificate to NAMA because of any outstanding tax and NAMA is obliged to pay an amount of money to the relevant person, the relevant person may issue a notice in writing to NAMA directing NAMA to forward to the Collector-General—

- (a) where the amount of money is greater than the outstanding tax, an amount of money equal to the amount of the outstanding tax, or
- (b) where the amount of money is equal to or less than the outstanding tax, that amount of money.

(5) On receipt by the Collector-General of an amount of money paid by NAMA pursuant to *subsection (4)*, the Collector-General shall notify the relevant person.

NAMA exempt from certain taxes.

181.—(1) Income and gains arising to NAMA shall be exempt from income tax, corporation tax and capital gains tax.

(2) For the purposes of section 36 of the Taxes Consolidation Act 1997, debt securities issued by or on behalf of NAMA are deemed to be debt securities issued subject to the condition that the interest on those debt securities shall be paid without deduction of tax.

Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008.

182.—(1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to the acquisition by NAMA of bank assets under this Act.

(2) Section 7 of the Credit Institutions (Financial Support) Act 2008 does not apply with respect to the acquisition by NAMA of bank assets under this Act.

NAMA not to be taken to be carrying on banking business, etc.

183.—(1) Except in respect of the provisions in *subsection (2)*, NAMA, a NAMA wholly owned subsidiary and a NAMA group entity shall not 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.

(2) The provisions referred to in *subsection (1)* are:

- (a) Irish market abuse law, as defined in section 29(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;
- (b) Irish prospectus law, as defined in section 38(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005;
- (c) transparency (regulated markets) law, as defined in section 19(1) of the Investment Funds Companies and Miscellaneous Provisions Act, 2006;
- (d) regulations made under section 6A of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 if in those regulations the Minister declares that those regulations apply for the purposes of this section;
- (e) any other provision that the Minister by regulation from time to time declares to apply to NAMA, to a NAMA wholly owned subsidiary or a NAMA group company.

Certain charges and securities not invalidated.

184.—A charge or security that secures a bank asset that has been transferred to NAMA is not invalidated or rendered void or voidable as against NAMA—

- (a) by section 60, 99, 100, 101, 286 or 288 of the Companies Act 1963,
- (b) by section 29, 31 or 139 of the Companies Act 1990,
- (c) on the grounds that it was *ultra vires*,
- (d) by reason of the fact that the provider may not have been able to pay its debts as they fell due at the time the security was issued or that the directors of that provider ceased to have the power to create that security,
- (e) by reason of any argument that the grant of the security was not duly authorised by the grantor or was not for the benefit of the grantor, or

- (f) by reason that the consent of a party required for the creation of such security was not obtained.

Nothing done under Act to be reorganisation or winding up measure.

185.—Nothing done under this Act constitutes a reorganisation or winding-up measure for the purposes of—

- (a) the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004), or
- (b) the European Communities (Reorganisation and Winding-up of Insurance Undertakings) Regulations 2003 (S.I. No. 168 of 2003).

Operation of certain provisions of the Land Registration Rules 1972 to 2008.

186.—(1) Notwithstanding anything in the Land Registration Rules 1972 to 2008, an officer of NAMA, a adviser acting on behalf of NAMA or a person nominated in writing by the Chief Executive Officer of NAMA may inspect and take copies of any document filed in the Registry on a dealing or transaction with the property of any person.

(2) This section only applies to documents relevant to an acquired bank asset.

(3) A person who seeks to inspect or take a copy of a document pursuant to *subsection (1)* shall produce to the Property Registration Authority evidence that he or she is a person authorised under that subsection to do so.

PART 13

REVIEW OF NAMA

Review of NAMA.

187.—(1) The Minister may at any time require NAMA to report to him or her regarding progress with regard to NAMA's functions.

(2) After 5 years the Minister shall assess the extent to which NAMA has made progress toward achieving its overall objectives and whether continuation of NAMA is necessary having regard to the purposes of this Act.

PART 14

AMENDMENT AND MODIFICATION OF OTHER ENACTMENTS

Operation of certain provisions of Companies Act 1963.

188.—(1) Sections 99, 100 and 101 of the Companies Act 1963 do not apply in relation to a security relating to an acquired bank asset.

(2) A reference to a company in section 60(1) or 72(1) of the Companies Act 1963 shall be taken not to include a NAMA group entity.

(3) Section 286 of the Companies Act 1963 shall not be taken to invalidate or render void a payment made to NAMA or to another person at NAMA's direction.

Operation of certain provisions of Companies (Amendment) Act 1983.

189.—A reference to a company in section 41(1), or subsection (1) or (3) of section 45, of the Companies (Amendment) Act 1983 shall be taken not to include a NAMA wholly owned subsidiary.

Amendment of Companies Act 1963.

190.—The Companies Act 1963 is amended as specified in *Part 1 of Schedule 2*.

Amendment of Companies (Amendment) Act 1990.

191.—The Companies (Amendment) Act 1990 is amended as specified in *Part 2 of Schedule 2*.

Amendment of Finance Act 1970.

192.—Section 54 of the Finance Act 1970 is amended as specified in *Part 3 of Schedule 2*.

Amendment of Landlord and Tenant (Amendment) Act 1980.

193.—The Landlord and Tenant (Amendment) Act 1980 is amended as specified in *Part 4 of Schedule 2*.

Amendment of National Treasury Management Agency Act 1990.

194.—The National Treasury Management Agency Act 1990 is amended as specified in *Part 5 of Schedule 2*.

Amendment of Stamp Duties Consolidation Act 1999.

195.—The Stamp Duties Consolidation Act 1999 is amended as specified in *Part 6 of Schedule 2*.

Amendment of Taxes Consolidation Act 1997.

196.—The Taxes Consolidation Act 1997 is amended as specified in *Part 7 of Schedule 2*.

Amendment of Value-Added Tax Act 1972.

197.—The Value-Added Tax 1972 is amended as specified in *Part 8 of Schedule 2*.

SCHEDULE 1

POWERS OF STATUTORY RECEIVERS

Section 123

1. To take immediate possession of, get in and collect any secured asset or any part of it in respect of which he or she is appointed and to make such demands and take such proceedings as may seem expedient for that purpose, and to take possession of the secured assets over which he or she is appointed with like rights;
2. To sell, realise or otherwise dispose of property.
3. To carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying any business of the chargor in any manner he or she thinks fit;
4. To appoint and discharge managers, officers, agents, professional advisers, consultants, servants, workmen, employees and others for the purposes specified in this Schedule upon such terms as to remuneration or otherwise as he or she thinks fit and to remove any person so appointed to any such position by the chargor;
5. To raise and borrow money or incur any other liability, either unsecured or on the security of any secured asset either in priority to NAMA's security or otherwise and generally on any terms and for whatever purpose he or she thinks fit;
6. To grant rights, options or easements over, dispose of, convert into money and realise any secured asset by public auction or private contract and generally in any manner and on any terms he or she thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period he or she thinks fit. Fixtures, plant and machinery may be severed and sold separately from the property containing them without the consent of the chargor;
7. To let, hire, lease, licence or grant any interest in any secured asset for any term and at any rent (with or without a premium) he or she thinks fit and to vary the terms, surrender or accept a surrender of any lease or tenancy of any secured asset on any terms which he or she thinks fit (including the payment of money to a lessee or tenant on a surrender);
8. Where the chargor is a company to require the chargor, or require the directors of the chargor, to make calls conditionally or unconditionally upon the shareholders of the chargor in respect of any uncalled capital of the chargor and enforce payment of any call so made by action (in the name of the chargor or the statutory receiver as he or she may think fit) or otherwise;
9. To sell or assign all or any of the book debts in respect of which he or she is appointed in such manner, and generally on such terms and conditions, as he or she thinks fit;

10. To exercise in respect of any secured asset all voting or other powers or rights in such manner as he or she thinks fit;
11. To purchase or acquire any land or any interest in or right over land;
12. To exercise on behalf of the chargor, and without the consent of or notice to the chargor, all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the secured assets;
13. To exercise on behalf of the chargor and in the name of the chargor all powers and rights of the chargor relevant to effecting and necessary to effect the registration in the Land Registry of any fixed or specific charge created on any registered land, of the crystallisation of any floating charge or his or her appointment as statutory receiver;
14. To settle, adjust, refer to arbitration, allow time for payment, compromise and arrange any claim, contract, account, dispute, question or demand with or by any person who is or claims to be a creditor of the chargor or relating in any way to any secured asset;
15. To bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in his or her own name and in the name of the chargor in relation to any secured asset which he or she thinks fit;
16. To give a valid receipt for any money and execute any assurance or thing that may be necessary or desirable for realising any secured asset;
17. To form a subsidiary of the chargor, arrange for any such subsidiary to trade or cease to trade as he or she sees fit, in his or her capacity as shareholder and transfer to that subsidiary any secured asset and sell or otherwise dispose of any such subsidiary;
18. To delegate his or her powers;
19. To appoint managers, officers, servants, workmen and agents for the purpose of exercising his or her powers at such salaries, for such periods and on such terms as he or she determines;
20. To enter into, abandon, perform, repudiate, rescind, vary or cancel any contracts as he or she may think expedient;
21. To lend money or advance credit to any customer of the chargor;
22. To make substitutions of, or improvements to, the chargor's plant and machinery as he or she thinks fit;
23. To effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurances required to be maintained under any security document or loan facility agreement entered into by the chargor which has been transferred to NAMA;
24. To make any election for value-added tax purposes that he or she thinks fit;

25. To run the tax affairs of the chargor in any manner that he or she thinks fit;
26. To conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions required by law or by NAMA or otherwise and comply with all lawful orders and directives of all authorities regarding environmental laws;
27. To take all steps necessary to effect any registration, renewal, application or notification that he or she thinks fit to maintain in force or protect any intellectual property;
28. To redeem any prior security interest and to settle and pass the accounts to which that security interest relates. Any accounts so settled and passed are conclusive and binding on the chargor, and any money so paid shall be taken to be an expense properly incurred by him or her;
29. To effect any repair or insurance and do any other act which the chargor might do in the ordinary conduct of its business to protect or improve any secured asset;
30. To commence and complete any building operation, and to complete any building operation already begun by the chargor or any other person;
31. To arrange for or provide any service proper for the efficient use or management of the secured assets;
32. To apply for and maintain any planning permission, building regulation approval or any other authorisation;
33. To do all other acts and things which he or she may consider desirable or necessary for realising any secured asset or incidental or conducive to any of the rights, powers or discretions conferred on a statutory receiver;
34. To exercise in relation to a secured asset all the rights, powers and authorities that he or she could exercise if he or she were the absolute beneficial owner of the secured asset.
35. To use the name of the chargor when exercising any of the rights, powers or discretions conferred on him or her;
36. To use the chargor's seal;
37. To do all acts and to execute in the name and on behalf of the chargor any deed, receipt or other document;
38. To draw, accept, make or endorse any bill of exchange or promissory note in the name of and on behalf of the chargor;
39. To make any payment which is necessary or incidental to the performance of his or her functions;
40. To rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the chargor and to receive dividends, and to accede to the trust deeds for the creditors of any such person;

41. To change the location of the chargor's registered office.

SCHEDULE 2
AMENDMENTS OF OTHER ACTS

PART 1
AMENDMENT OF COMPANIES ACT 1963

Section 190

Item	Provision amended	Amendment
1	Section 216	<p>After subsection (1), insert—</p> <p style="padding-left: 40px;">“(2)The court shall not make an order for the winding up of a company unless—</p> <p style="padding-left: 80px;">(a) the court is satisfied that the company is not an obligor in relation to a bank asset that has been transferred to the National Asset Management Agency, or</p> <p style="padding-left: 80px;">(b) if the company is such an obligor—</p> <p style="padding-left: 120px;">(i) a copy of the petition has been served on that Agency, and</p> <p style="padding-left: 120px;">(b) the court has heard that Agency in relation to the making of the order.</p> <p style="padding-left: 40px;">(3) In subsection (2) ‘bank asset’ has the same meaning as in the <i>National Asset Management Agency Act 2009</i>.”.</p>

PART 2
AMENDMENT OF COMPANIES (AMENDMENT) ACT 1990

Section 191

Item	Provision amended	Amendment
1	section 2	<p>After subsection (4), insert—</p> <p style="padding-left: 40px;">“(5)The court shall not make an order under this section unless—</p> <p style="padding-left: 80px;">(a) the court is satisfied that the company is not an obligor in relation to a bank asset that has been transferred to the National Asset Management Agency, or</p> <p style="padding-left: 80px;">(b) if the company is such an obligor—</p> <p style="padding-left: 120px;">(i) a copy of the petition has been served on that Agency, and</p> <p style="padding-left: 120px;">(b) the court has heard that Agency in relation to the making of the order.</p> <p style="padding-left: 40px;">(6) In subsection (5) ‘bank asset’ has the same meaning as in the <i>National Asset Management Agency Act 2009</i>.”.</p>

PART 3
AMENDMENT OF FINANCE ACT 1970

Section 192

Item	Provision amended	Amendment
1	Section 54	<p>After subsection (7D), insert—</p> <p>“(7E) The Minister—</p> <p style="padding-left: 40px;">(a) may engage in such transactions of a normal banking nature with any person as he or she considers appropriate—</p> <p style="padding-left: 80px;">(i) in connection with the performance of his or her functions under the <i>National Asset Management Agency Act 2009</i>, and</p> <p style="padding-left: 80px;">(ii) for the purpose of the better management of any indebtedness incurred by the Minister under that Act,</p> <p style="padding-left: 40px;">and</p> <p style="padding-left: 40px;">(b) may for the purpose of those transactions issue such funds from the Exchequer as he or she considers appropriate.</p> <p>The expenses and other costs incurred by the Minister in connection with or arising out of those transactions shall be charged on the Central Fund or the growing produce of that Fund.”.</p>

PART 4
AMENDMENTS OF LANDLORD AND TENANT (AMENDMENT) ACT 1980

Section 193

Item	Provision amended	Amendment
1	section 17(2)(a)(v)	Substitute “management, or” for “management.”.
2	section 17(2)(a)	<p>After subparagraph (v), insert—</p> <p style="padding-left: 40px;">“(vi) the landlord (being the National Asset Management Agency) will require possession, within 5 years after the termination of the existing tenancy, for any purpose for which that Agency is entitled to acquire (by purchase or otherwise) property under the <i>National Asset Management Agency 2009</i>.”.</p>

PART 5

AMENDMENTS OF NATIONAL TREASURY MANAGEMENT AGENCY ACT 1990

Section 194

Item	Provision amended	Amendment
1		<p>After section 4A, insert—</p> <p>“4B.—(1) The Agency shall have all powers necessary or expedient for the performance of any function conferred on it by the <i>National Asset Management Agency Act 2009</i>.</p> <p>(2) The performance by the Agency of a function under the <i>National Asset Management Agency Act 2009</i> is not a function of the Agency under this Act.”.</p>
2	Section 12	<p>After subsection (3), insert—</p> <p>“(4)The audited accounts prepared in pursuance of this section shall include a record of any expenses incurred by the Agency in the performance of functions under the <i>National Asset Management Agency Act 2009</i>.”.</p>
3	Schedule 1	<p>After paragraph (ge), insert—</p> <p>“(gf) section 54(7E) (inserted by the <i>National Asset Management Agency Act 2009</i>) of the Finance Act 1970;”;</p>
4	Schedule 1	<p>After paragraph (t), insert—</p> <p>“(u) section ... of the <i>National Asset Management Agency Act 2009</i>.”;</p>

PART 6

AMENDMENT OF STAMP DUTIES CONSOLIDATION ACT 1999

Section 195

Item	Provision amended	Amendment
1		<p>After section 108A, insert—</p> <p>“National Asset Management Agency. 108B.—(1)(a) In this section—</p> <p>‘acquired bank asset’ and ‘participating institution’ have, respectively, the meanings given by section 4(1) of the <i>National Asset Management Agency Act 2009</i>;</p> <p>‘the Minister’ means the Minister for Finance;</p> <p>‘NAMA’ means the National Asset Management Agency;</p>

National Asset Management Agency Bill 2009
For public consultation purposes only

‘NAMA-subsiary’, in relation to an instrument referred to in subsection (2), means a body corporate which at the time of execution of the instrument is associated with NAMA in accordance with the provisions of section 79.

- (b)(i) Where NAMA directly owns any part of the ordinary share capital, within the meaning of section 79, of another body corporate (in this paragraph referred to as the ‘first body corporate’), then NAMA shall be deemed to be associated with the first body corporate in accordance with the provisions of section 79.
- (ii) Where the first body corporate is associated, directly or indirectly, with another body corporate (hereinafter referred to as the ‘second body corporate’) in accordance with the provisions of section 79, then NAMA shall be deemed to be associated with the second body corporate in accordance with the provisions of section 79.

(2) Stamp duty shall not be chargeable under or by reference to any Heading in Schedule 1 on an instrument—

- (a) for the sale, transfer, lease or other disposition of any property, asset or documentation to NAMA or a NAMA subsidiary by NAMA, a NAMA-subsiary or a participating institution,
- (b) for the transfer, to a NAMA subsidiary or a participating institution, of debt securities issued by the Minister in connection with section 68 or 100 of the *National Asset Management Agency Act 2009*, and
- (c) for the transfer or other disposition to NAMA or a NAMA-subsiary of any property in settlement or part settlement of an acquired bank asset.

(3) Section 12(2) shall not apply to an instrument to which subsection (2) applies.

(4) This section applies as respects instruments executed on or after the establishment day (within the meaning of section 4 of the *National Asset Management Agency Act*

National Asset Management Agency Bill 2009

For public consultation purposes only

2009).”

PART 7

AMENDMENTS OF TAXES CONSOLIDATION ACT 1997

Section 196

Item	Provision amended	Amendment
1	Section 172A(1)(a), definition of “relevant distribution”,	In subparagraph (i) (II), substitute “Commission,” for “Commission, or”;
2	Section 172A(1)(a), definition of “relevant distribution”	After subparagraph (i)(III), insert— “(IV) the National Asset Management Agency, or a company referred to in section 616(1)(g), and”.
3		After section 230A, insert—
		“NAMA profits exempt from corporation tax. 230AA. —Notwithstanding any provision of the Corporation Tax Acts, profits arising to the National Asset Management Agency shall be exempt from corporation tax.”.

Item	Provision amended	Amendment
4	Section 246(3)	<p>After paragraph (e), insert—</p> <p>“(ea) interest paid to—</p> <ul style="list-style-type: none"> (i) the National Asset Management Agency or a company referred to in section 616(1)(g), (ii) the State acting through the National Asset Management Agency or by a company referred to in section 616(1)(g), or (iii) the National Treasury Management Agency by the National Asset Management Agency or through a company referred to in section 616(1)(g), <p>(eb) interest paid by—</p> <ul style="list-style-type: none"> (i) the National Asset Management Agency, (ii) a company referred to in section 616(1)(g), or (iii) the State acting through the National Asset Management Agency, or through a company referred to in section 616(1)(g), <p>to a person who, by virtue of the law of a relevant territory, is resident for the purposes of tax in the relevant territory, except, in a case where the person is a company, where such interest is paid to the company in connection with a trade or business which is carried on in the State by the company through a branch or agency,”.</p>
5	Section 256(1), definition of “relevant deposit”, paragraph (a)	<p>After subparagraph (iiic), insert—</p> <p>“(iiid) the National Asset Management Agency,</p> <p>(iiie) the State acting through the National Asset Management Agency,”.</p>

Item	Provision amended	Amendment
6	Section 495(10)	<p>Substitute—</p> <p>“(10) Subject to section 507, the company shall not at any time in the relevant period—</p> <ul style="list-style-type: none"> (a) control (or together with any person connected with it control) another company or be under the control of another company (or of another company and any person connected with that other company) unless such control is exercised by the National Asset Management Agency, or by a company referred to in section 616(1)(g), or (b) be a 51 per cent subsidiary of any company other than the National Asset Management Agency or a company referred to in section 616(1)(g), or itself have a 51 per cent subsidiary, <p>and no arrangements shall be in existence at any time in that period by virtue of which the company could fall within paragraph (a) or (b).”.</p>
7	Section 616(1)	<p>Insert after paragraph (f):</p> <p>“(g) Notwithstanding paragraph (b)—</p> <ul style="list-style-type: none"> (i) a company (in this paragraph referred to as the ‘first-mentioned company’) shall be an effective 75 per cent subsidiary of the National Asset Management Agency where that Agency directly owns any part of the ordinary share capital of that company, and (ii) any other company which is an effective 75 per cent subsidiary of the first-mentioned company or such other company shall be an effective 75 per cent subsidiary of the National Asset Management Agency.”,
8	Section 623(2)	<p>Substitute “Subject to subsection (2A), this section applies where—” for “This section applies where—”.</p>

Item	Provision amended	Amendment
9	Section 623	<p>After subsection (2), insert—</p> <p>“(2A)(a) This section does not apply to a bank asset where that asset is acquired on or after the establishment day by—</p> <p style="padding-left: 40px;">(i) NAMA, or</p> <p style="padding-left: 40px;">(ii) a company to which section 616(1)(g) relates from that Agency or a company to which that paragraph relates.</p> <p style="padding-left: 40px;">(b) In this subsection ‘bank asset’, ‘establishment day’, ‘NAMA’, ‘NAMA wholly owned subsidiary’ and ‘NAMA group entity’ have the same meanings, respectively, as they have in the <i>National Asset Management Agency Act 2009</i>”.</p>
10	Section 730D(2)(b)(v)	Delete “or”.
11	Section 730D(2)(b)(vi)	After “Court,” insert “or”.
12	Section 730D(2)(b)	<p>After subparagraph (vi), insert—</p> <p style="padding-left: 40px;">“(vii) the National Asset Management Agency,”.</p>
13	Section 730E(3)(e)(v)	Delete “or”.
14	Section 730E(3)(e)(vi)	After “Court,” insert “or”.
15	Section 730E(3)(e)	<p>After subparagraph (vi), insert—</p> <p style="padding-left: 40px;">“(vii) the National Asset Management Agency,”.</p>
16	Section 730E(3)(f)	Substitute “paragraph (e)” for “subparagraph (i) to (v), or (vi) of paragraph (e)”.
17	Section 739D(6)	<p>After paragraph (k), insert—</p> <p style="padding-left: 40px;">“(ka) is the National Asset Management Agency and has made a declaration to that effect to the investment undertaking,”.</p>

Item	Provision amended	Amendment
18	Section 980	<p>After subsection (11), insert—</p> <p>“(12) The enforcement of a debt security by NAMA or by a company to which section 616(1)(g) relates does not constitute consideration for the purposes of this section.</p> <p>(13) Subsection (9) does not apply to NAMA or to a company to which section 616(1)(g) relates.</p> <p>(14) This section does not apply to a disposal by a company that would be a company to which section 616(1)(g) relates if the reference in that section to a 75 percent subsidiary were a reference to a 51 percent subsidiary.</p> <p>(15) For the purposes of this section, the enforcement of a debt security by NAMA or by a company to which section 616(1)(g) relates shall not be treated as a disposal of an asset.”.</p>
19	Schedule 13	<p>After paragraph 173, insert—</p> <p>“174. The National Asset Management Agency or a company to which section 616(1)(g) relates.”.</p>
20	Schedule 15, Part 1	<p>After paragraph 42, insert—</p> <p>“43. The National Asset Management Agency.”.</p>

PART 8

AMENDMENTS OF VALUE-ADDED TAX ACT 1972

Section 197

Item	Provision amended	Amendment
1	section 4B(2)	Substitute “Subject to subsections (3), (5), (7) and (8)” for “Subject to subsections (3), (5) and (7)”.
2	section 4B(5)	Substitute “Subject to subsection (8), where a taxable person” for “Where a taxable person”.

3	section 4B(7)	<p>Insert after paragraph (b)—</p> <p>“(c) Where a relevant supply is a supply of immovable goods to which this subsection would apply, the recipient and any NAMA entity shall be treated thereafter, for the purposes of this subsection in respect of those immovable goods, as if it were a person connected (within the meaning of section 7A) to the person who developed those immovable goods.</p> <p>(d) In this subsection and in subsection (8)— ‘NAMA’ has the meaning assigned to it by the <i>National Asset Management Agency Act 2009</i>; ‘NAMA entity’ means a person or a body of persons to which NAMA is connected within the meaning of section 7A; ‘relevant supply’ has the meaning assigned to it by section 8(1C);”.</p>
4	section 4B	<p>Insert after subsection (7)—</p> <p>“(8) (a) Where a relevant supply occurs and where that supply would otherwise be exempt in accordance with subsection (2) the recipient may opt to tax that supply (in this subsection referred to as an ‘option for taxation’), and where that option is exercised, tax shall, notwithstanding subsection (2), be chargeable on that supply, and in that case subsection (5) shall not apply. The option for taxation shall not apply to relevant supplies that are exempt in accordance with section 4(9) or subsection (2) or (6)(b) of section 4C.</p> <p>(b) The option for taxation shall be deemed to be exercised by the recipient in relation to a relevant supply which would otherwise be exempt in accordance with paragraphs (b), (c), (d) and (e) of subsection (2).”.</p>

5	section 8	<p>insert after subsection (1B)—</p> <p>“(1C) (a) Where a relevant supply occurs then the recipient shall in relation to that supply be an accountable person and shall be liable to pay the tax chargeable in relation to that supply as if that recipient made that supply of goods in the course or furtherance of business.</p> <p>(b) Where paragraph (a) applies the supplier shall not be accountable for or liable to pay the tax in relation to the relevant supply.</p> <p>(c) In this subsection—</p> <p>‘NAMA’ has the meaning assigned to it by the National Asset Management Agency Act 2009;</p> <p>‘NAMA entity’ means a person or body of persons to which NAMA is connected within the meaning of section 7A;</p> <p>‘relevant supply’ means a supply of goods being a transfer of ownership of goods effected by a vesting order made in accordance with section 129 of the <i>National Asset Management Agency Act 2009</i>;</p> <p>‘recipient’ in relation to a relevant supply means NAMA and any NAMA entity;</p> <p>‘supplier’ in relation to a relevant supply means the chargor referred to in section ... of the <i>National Asset Management Agency Act 2009</i>.”</p>
6	section 12(1)(a)(iic)	substitute “section 4B(6)(a), 4(8) or 8(1C)” for “section 4B(6)(a) or 4(8)”

7	section 12E	<p>insert after subsection (9)—</p> <p>“(9A) (a) Subsection (9) shall not apply where—</p> <ul style="list-style-type: none"> (i) a connected supply occurs and the seller enters into a written agreement with the purchaser to the effect that that purchaser shall be responsible for all obligations under this section in relation to the capital good from the date of the supply or transfer of that capital good, as if— <ul style="list-style-type: none"> (I) the total tax incurred and the amount deducted by that seller in relation to that capital good were the total tax incurred and the amount deducted by that purchaser, and (II) any adjustments required to be made under this section by that purchaser were made, and (ii) the seller issues a copy of the capital good record in respect of the capital good referred to in subparagraph (i) to the purchaser. <p>(b) Where paragraph (a) applies the purchaser shall be responsible for the obligations referred to in paragraph (a)(i) and shall use the information in the copy of the capital good record issued by the seller in accordance with paragraph (a)(ii) for the purposes of calculating any tax chargeable or deductible in accordance with this section in respect of that capital good by that purchaser from the date on which the supply or transfer referred to in paragraph (a)(i) occurs.</p> <p>(c) In this subsection—</p> <p>‘connected supply’ means a supply or transfer of a capital good which is a supply or transfer on which a seller would, but for the application of this subsection be obliged to calculate an amount of tax due in accordance with subsection (9);</p> <p>‘purchaser’ means the person to whom the supply or transfer referred to in subsection (9) is made;</p> <p>‘seller’ means the capital goods owner referred to in subsection (9) who makes the supply or transfer of the capital good referred to in that subsection.”.</p>
---	-------------	---