



AN BILLE FÁN nGNÍOMHAIREACHT NÁISIÚNTA UM BAINISTÍOCHT SÓCMHAINNÍ 2009
NATIONAL ASSET MANAGEMENT AGENCY BILL 2009

EXPLANATORY MEMORANDUM

The Explanatory Memorandum does not form part of the Bill and does not purport to be a legal interpretation.

Purposes of the Bill

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

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

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

PART 1

PRELIMINARY

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

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

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

Section 3 — Regulatory functions not affected provides that the Act does not prevent the performance by the Governor of the Central Bank, the Central Bank or the Financial Regulator of any of their functions in relation to a credit institution or other authorised or regulated person in the State or any of their obligations under the treaties governing the European Communities or the ESCB Statute.

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

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

Section 6 — Expenses of Minister and NTMA provides that any expenses incurred by the Minister in the administration of the Act will be paid out of moneys provided by the Oireachtas. Any expenses incurred by the NTMA under the Act, and in relation to preparatory work carried out in respect of NAMA since 7 April 2009, will be paid out of the Central Fund and the growing produce of that Fund.

Section 7 — Offences provides for instances where an offence is committed under the Act. These include instances where a person provides false or inaccurate information to NAMA and where a person fails to comply with certain of his or her obligations under the Act, including, intentionally withholding information from NAMA in breach of an obligation to provide that information. This section also makes provision for related matters, including the penalties for committing an offence under the section.

PART 2

NATIONAL ASSET MANAGEMENT AGENCY

CHAPTER 1: ESTABLISHMENT, FUNCTIONS AND POWERS

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

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

Section 10 — Purposes of NAMA provides that the purposes of NAMA will be to contribute to the achievement of the purposes of the Act by acquiring from participating institutions such eligible assets as is appropriate, dealing expeditiously with those assets and protecting or enhancing their value. This section also provides that, so far as possible, NAMA will, as expeditiously as possible, obtain the best achievable financial return for the State.

Section 11 — Functions of NAMA provides that in order to achieve its purposes, NAMA will perform the following functions: (i) acquire such eligible bank assets from participating institutions as it considers necessary or desirable, (ii) hold, manage and realise acquired bank assets, (iii) perform such other functions, related to the management or realisation of acquired bank assets as the Minister directs pursuant to the Act and (iv) take all steps necessary or expedient to protect, enhance or realise the value of acquired bank assets. This section also provides that NAMA will act in a transparent manner to the extent that to do so is consistent with the proper, efficient and effective discharge of its functions.

Section 12 — Powers of NAMA provides that NAMA has all powers necessary or expedient for, or incidental to, the achievement of its purposes and the performance of its functions. This section goes on to specify certain specific powers of NAMA.

Section 13 — Minister's powers to issue guidelines to NAMA provides that the Minister may issue guidelines to NAMA and, where such guidance relates to issues falling within the remit of the Governor of the Central Bank, the Minister will consult with the Governor of the Central Bank.

Section 14 — Minister's powers of direction provides that the Minister may give directions in writing to NAMA concerning the achievement of the purposes of the Act.

Section 15 — No shadow or de facto directorship provides that the Minister, NAMA and certain other specified persons will not be taken (only because of discharging a function under the Act) to be a shadow or a *de facto* director nor a person discharging managerial responsibilities of any participating institution or of any debtor, guarantor or surety in relation to an acquired bank asset or any associated debtor.

Section 16 — Prevention of corruption provides that the provisions of the Prevention of Corruption Acts 1889 to 2001 apply to every officer of NAMA and the Chief Executive Officer of NAMA and other members of the Board. This section also provides that any gift or other advantage received by any person who performs functions for NAMA is presumed, unless the contrary is proved, to be given and received corruptly if it is received from (or on behalf of) any debtor or associated debtor of an eligible bank asset.

Section 17 — Liability of NAMA provides that NAMA is not liable in damages in relation to any act omitted to be done by it in the performance of its functions.

CHAPTER 2: MEMBERSHIP OF BOARD AND RELATED MATTERS

Section 18 — Functions of Board provides that there will be a Board of NAMA. This section also specifies the functions of the Board which include, among others, ensuring that the functions of NAMA are performed effectively and efficiently and setting the strategic objectives and targets of NAMA.

Section 19 — Membership of Board provides that the Board will consist of seven members appointed by the Minister and, as *ex officio* members, the Chief Executive Officer of NAMA and the Chief Executive of the NTMA. Members will be appointed only if they have expertise and experience at a senior level in one or more of certain specified areas including, amongst others, finance and economics, law, valuation and risk management. Within three months of appointment, each member of the Board will provide the Minister with a tax clearance certificate.

Section 20 — Term of office of appointed members provides that the term of office of an appointed member of the Board is five years save that, of the first appointed members, the Minister will appoint two members for a term of office of three years and three members for a term of office of four years. No appointed member is eligible to serve more than two consecutive terms of office.

Section 21 — Remuneration, etc., of appointed members provides that the Minister will determine the level of remuneration of appointed members and their entitlement to reimbursement for expenses. This section also provides that an appointed member holds office on such terms as determined by the Minister at the time of appointment.

Section 22 — How appointed members cease to hold office establishes the circumstances where an appointed member of the Board ceases to be a Board member. The section also provides for resignation of appointed members of the Board. The Minister may remove an appointed member from the Board (and the Chairperson from his or her position as chairperson) in certain circumstances set out in this section. When an appointed member of the Board ceases to be a Board member, they are also deemed to have resigned from any directorship of a NAMA group entity.

Section 23 — How ex-officio members cease to be Board members establishes the circumstances where an *ex-officio* member of the Board ceases to be a Board member. When an *ex-officio* member ceases to be a Board member, they are also deemed to have resigned from any directorship of a NAMA group entity.

Section 24 — Filling of casual vacancies, etc. provides that the Minister may appoint a person to fill a vacancy that arises on the Board because of the death, resignation, retirement, disqualification or removal from office of a previously appointed member of the Board. In these circumstances, the Minister may also appoint a person to act temporarily as a member of the Board.

Section 25 — Nomination and remuneration, etc., of Chairperson provides that the Minister will nominate one of the appointed members of the Board as the Chairperson. The Chairperson will hold this office for a term of five years. A person can hold the office of

Chairperson for a maximum of two terms only. This section also makes provision for the nomination of a person to fill a vacancy that arises in the office of the Chairperson because of the death, resignation, retirement, disqualification or removal from office of the Chairperson.

Section 26 — Meetings of Board provides that the Board will hold such meetings as are necessary for the performance of its functions and also provides for related matters such as quorum, voting and the chairing of meetings *etc.*

Section 27 — Electronic Meetings provides that the Board may hold meetings by use of electronic communications.

Section 28 — Resolutions by circulation of copies provides that the Board may pass a resolution without a meeting where all of the Board members entitled to vote are given notice of the resolution and a majority of those members sign a document stating that they are in favour of the resolution.

Section 29 — Seal of NAMA, etc. provides that NAMA will have a seal. This section also provides for the terms of authentication of the seal, the status of the seal and certain other matters relating to the execution of contracts and instruments.

Section 30 — Disclosure of interests provides that each member of the Board must disclose any pecuniary or other beneficial interest he or she has in, and which is material to, a matter that falls to be considered by the Board. This section also sets out the procedures to be followed in the event that any member of the Board (including the Chairperson) has such an interest and provides for related matters.

Section 31 — Audit Committee, credit committee and risk-management committee provides that the Board must establish an audit committee, a credit committee and a risk-management committee. The section also provides for the constitution of these committees and, in the case of the audit committee, provides that of its total of six members there will be two members appointed by the Minister who are not members of the Board. The members of the credit committee and the risk-management committee can be either members of the Board or officers of NAMA but at least two members of each committee must be members of the Board. The section also provides for related matters.

Section 32 — Other committees provides that the Board may establish advisory committees and other committees and sub-committees. Any such committee may include persons who are not members of the Board but a majority of the members of a committee must be members of the Board. The section also provides for related matters.

Section 33 — Indemnification of members of Board and officers of NAMA, etc. provides that each member of the Board, each member of a committee, each officer of NAMA, a director of a NAMA group entity and a member of the staff of the NTMA is, where the Board is satisfied that each such person has discharged their functions in good faith, indemnified against all actions or claims in relation to the discharge of their functions. The Board shall not be prevented from revoking an indemnity, or recovering payment pursuant to an indemnity, from a person subsequently found to have carried out his or her duties in bad faith.

Section 34 — Codes of practice provides that NAMA will prepare codes of practice in relation to certain matters including, amongst others, the conduct of officers of NAMA and servicing standards for acquired bank assets. Each such code of practice is subject to the Minister's approval.

CHAPTER 3: CHIEF EXECUTIVE OFFICER

Section 35 — Appointment of Chief Executive Officer provides that the Minister, after consultation with the Chief Executive of the NTMA and the Chairperson of NAMA, will appoint a Chief Executive Officer of NAMA and also makes provision for the position and status of the Chief Executive Officer.

Section 36 — Chief Executive Officer's functions provides that the Chief Executive Officer will manage and control generally the administration and business of NAMA and the staff assigned to NAMA and will carry out any of the other functions conferred on him or her by the Act or the Board. This section also provides for the delegation of the Chief Executive Officer's functions. The Chief Executive Officer will be an accountable person for the accounts of NAMA.

Section 37 — Resignation of Chief Executive Officer provides that the Chief Executive Officer may resign his or her position by letter.

Section 38 — Removal of Chief Executive Officer from office provides for the circumstances in which the Chief Executive Officer ceases to hold that office and in which the Minister may remove the Chief Executive Officer. This section also provides that, in the event that the Chief Executive Officer dies, retires or is removed from Office, the Minister may nominate another a person to fill the vacancy. This section also makes provision for related matters.

CHAPTER 4: NAMA'S RELATIONSHIP WITH NTMA

Section 39 — NTMA to provide resources to NAMA provides that the NTMA will provide NAMA with, or procure for NAMA, such business and support services and systems as the Board determines, acting upon the recommendation of the Chief Executive Officer of NAMA and after consultation with the Chief Executive of the NTMA, are necessary or expedient for NAMA to perform its functions under the Act.

Section 40 — NTMA to provide staff to NAMA provides that the NTMA will assign such number of its staff to NAMA as the Board determines, acting upon the recommendation of the Chief Executive Officer of NAMA after consultation with the Chief Executive of the NTMA, to be necessary for NAMA to perform its functions under the Act. Before a person is employed or otherwise engaged to be assigned to NAMA, the NTMA will ensure that the person provides a statement of his or her interests, assets and liabilities; the purpose of this is to try to prevent a conflict of interest. The section also makes provision for related matters.

Section 41 — Suspension of officers of NAMA provides for the circumstances where the Chief Executive Officer of NAMA, after consultation with the Chief Executive of the NTMA, may suspend an officer of NAMA, on such terms and conditions as he or she thinks fit.

Section 42 — Power to engage service providers etc. provides that NAMA may engage the services of any expert adviser or other service provider where NAMA considers it necessary or expedient to do so in connection with the performance of its functions. In performing its functions, in particular in relation to development land, NAMA may take into account the resources available to it from the National Building Agency or any other appropriate State agency.

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

PART 3

FINANCE, PLANNING, ACCOUNTABILITY AND REPORTING

Section 44 — Financing arrangements, expenses and advances from Central Fund provides for the financing of NAMA's operations and governs the power of the Minister to advance funds to NAMA or a NAMA group entity for the performance of NAMA's functions.

Section 45 — Financing arrangements — Minister may issue debt securities provides that, in order to finance NAMA's operations or to provide consideration for the acquisition of bank assets, the Minister may create and issue debt securities charged on the Central Fund or the growing produce of that Fund.

Section 46 — Financing arrangements — NAMA, etc., may issue debt securities provides that NAMA or a NAMA group entity may create and issue debt securities, and that the Minister may guarantee such debt securities, in order to finance the operations of NAMA and the NAMA group entity or to provide consideration for the acquisition of bank assets.

Section 47 — Financing arrangements — NAMA, etc., may issue subordinated debt securities provides that NAMA or a NAMA group entity may create and issue subordinated debt securities up to an amount specified by the Minister by order. Any subordinated debt securities so issued may only be used for the purpose of providing part of the consideration for the acquisition of bank assets. Since subordinated debt can be subject to requirements that NAMA has sufficient funds to repay all senior securities issued this section can be used to establish a risk sharing system with participating institutions.

Section 48 — Financing arrangements — limits on borrowings provides that NAMA may exercise its power to borrow such sums of money as are required for the performance of its functions under the Act, with or without the guarantee of the Minister. NAMA's limit on borrowing, other than for the purpose of providing consideration for the acquisition of bank assets, is €5 billion or such other amount specified by the Minister by order. This section also provides that the maximum amount of debt securities that may be issued for the purpose of providing consideration for bank assets will not exceed an amount specified by the Minister by order.

Section 49 — Application of Borrowing Powers of Certain Bodies Act 1996 provides that 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 issued by NAMA or a NAMA group entity.

Section 50 — Financing arrangements — treasury services provides that the NTMA will provide NAMA with treasury services and advice in connection with debt securities, any borrowings of NAMA and debt securities issued by NAMA or a NAMA group entity and, in connection with such services, may enter into transactions of a normal banking nature as an agent of NAMA.

Section 51 — Annual forecasting statements provides that NAMA will for each financial year prepare and submit to the Minister a statement specifying certain matters including, amongst others, the proposed objectives of NAMA for the financial year concerned and the proposed strategies and policies for achieving those objectives. Each annual statement will be laid before both Houses of the Oireachtas.

Section 52 — Annual accounts provides that NAMA will keep proper accounts, in a form directed by the Minister. It also provides a list of certain information to be included in the annual accounts including, for example, a list of all debt securities issued for the purpose of the Act.

Section 53 — Bi-annual reports provides that, every six months, NAMA will make a report to the Minister of its activities, in a form directed by the Minister. This section also provides a list of certain information to be included in such a report. Each bi-annual report will be laid before both Houses of the Oireachtas and a copy will be sent to an Oireachtas Committee (or sub-committee) to examine matters relating to NAMA.

Section 54 — Other reports to Minister provides that the Minister may require NAMA to report to him or her on any matter, including those specified in the section. The content of any such report will be taken to be confidential information.

Section 55 — Audit of accounts by Comptroller and Auditor General provides that NAMA must submit its accounts to the Comptroller and Auditor General for audit within four months after the end of the financial year to which they relate. The audited accounts will be laid before both Houses of the Oireachtas.

Section 56 — Accountability to Committee of Public Accounts provides that the Chairperson and the Chief Executive Officer of NAMA will, whenever required by the Committee of Dáil Éireann established to examine and report to Dáil Éireann on the accounts and reports of the Comptroller and Auditor General, give evidence to that committee on the matters specified in this section.

Section 57 — Appearances before another Oireachtas Committee provides for the attendance of the Chairperson and the Chief Executive Officer of NAMA before a committee (or a sub-committee) appointed by either or both Houses of the Oireachtas to examine matters relating to NAMA.

Section 58 — Repayment to Central Fund to redeem debt provides that NAMA or a NAMA group entity, will repay any funds advanced to it by the Minister out of its own resources from time to time. NAMA may after consultation with the Minister use any surplus

funds to redeem and cancel debt securities issued under the Act and transfer any surplus funds remaining after that redemption to the Central Fund. The section also provides that the assets of NAMA and of any NAMA group entity at the eventual dissolution of NAMA 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

Section 59 — Definition (Chapter 1) is a standard interpretation section, defining terms used in this Chapter.

Section 60 — Applications for designation as participating institution provides that a credit institution may apply to the Minister within 30 days of the establishment day, or such shorter or longer period prescribed by order by the Minister, for it and its subsidiaries to be designated as participating institutions. An application shall include the credit institution and all of its subsidiaries, although a credit institution may include in the application a request to exclude particular subsidiaries from designation. The section also requires that where an applicant institution is a subsidiary its parent company must undertake to provide information or do anything else required to enable the Minister to consider the application. This section also provides for related matters.

Section 61 — Effect of application for designation, etc. provides that by making an application for designation as a participating institution, the applicant credit institution and all of its subsidiaries will be taken to undertake and will be bound to comply with the provisions of the Act and any regulations made under it.

Section 62 — Information, etc., to be provided in support of application for designation provides that an applicant credit institution must provide, and may be directed to procure that its subsidiaries provide any information that the Minister requires to consider the application for designation as a participating institution. This section also provides that the Minister may direct that any information provided by an applicant credit institution be certified as accurate and complete and also provides for related matters.

Section 63 — Capacity of applicant credit institutions, etc. provides that an applicant credit institution and each of its subsidiaries will be taken to have, and always to have had, the power and capacity to apply for and become a participating institution, to warrant the information provided by it to NAMA and to indemnify NAMA in relation to certain specified matters. This section also provides that an applicant credit institution and each of its subsidiaries will be taken to have, and always to have had, the power and capacity to engage in any of the activities specified in the section including, for example, the provision of credit facilities.

Section 64 — Dealings by applicant credit institutions, etc., with eligible assets after application for designation provides for the manner in which an applicant credit institution and each of its subsidiaries will deal with all of their eligible bank assets until the Minister has made, or is taken to have made, a decision on the application.

Section 65 — Designation of participating institutions provides that the Minister may, after consultation with the Governor of the Central Bank and the Financial Regulator, designate an applicant credit institution as a participating institution. In designating an applicant credit institution as a participating institution, the Minister has to be satisfied of a number of matters including, for example, that the applicant credit institution is systemically important to the financial system in the State, that the acquisition of bank assets from that applicant credit institution or its subsidiaries is necessary to achieve the purposes of the Act set out in section 2 and that the credit institution has complied with all of its obligations under the Act. The designation of a credit institution as a participating institution operates to designate as participating institutions all of its subsidiaries, except any subsidiary that is specifically excluded by the Minister. The Minister is taken to have refused an application for designation as a participant institution if the credit institution is not so designated within three months of its application.

Section 66 — Obligations of participating institutions provides for certain obligations of participating institutions, including the obligation that a designated participating institution will cooperate promptly and fully with NAMA in its due diligence process and that it will provide such services as are directed by NAMA in connection with an acquired bank asset.

CHAPTER 2: DESIGNATION OF ELIGIBLE BANK ASSETS

Section 67 — Eligible bank assets provides that the Minister may, after consulting with NAMA, the Governor of the Central Bank and the Financial Regulator, prescribe by regulation classes of bank asset as classes of eligible bank assets. Without limiting this general power, classes of eligible bank assets may include, for example, credit facilities issued, created or provided by a participating institution in respect of purchasing, exploiting or developing development land.

Section 68 — Meaning of “associated debtor” in this Act describes the concept of an “associated debtor” for the purpose of the Act.

Section 69 — Dealings by participating institutions with eligible bank assets provides for the manner in which a participating institution will deal with its eligible bank assets until it has been served with a completion notice or NAMA otherwise directs.

PART 5

VALUATION METHODOLOGY

Section 70 — Interpretation (Part 5) is a standard interpretation section, defining terms used in this Part.

Section 71 — Determination of acquisition values — valuation dates, etc. provides that NAMA may specify one or more dates or events by reference to which the market value of a bank asset, a type of bank asset, a property or a type of property is to be determined.

Section 72 — Determination of acquisition values — guidelines, etc. provides that NAMA may adopt guidelines or rules for the purpose of the determination of values.

Section 73 — Acquisition values provides that the acquisition value of a bank asset is its long-term economic value as determined by NAMA. The section also provides that NAMA may, after

consultation with the Minister and subject to any relevant regulations issued by the Minister, determine that a particular bank asset or class of bank assets should have an acquisition value equal to its market value or a value (between its long-term economic value and its market value) that NAMA considers appropriate in the circumstances.

Section 74 — Determination of long term economic values provides that NAMA will determine the long-term economic value of a bank asset having regard to certain matters specified in this section including, for example, the market value of the property and the market value of the bank asset.

Section 75 — Market values provides that, in determining the market value of property or a bank asset, NAMA may take into account, amongst other things, certain matters specified in this section including, for example, the market value already determined by NAMA of another similar property or bank asset.

Section 76 — Regulations in relation to certain reports provides that the Minister may make regulations prescribing reports or classes of reports concerning factors or matters relevant to the valuation of property.

Section 77 — Regulations as to adjustment factors, etc. provides that the Minister may make regulations prescribing the adjustment factors to be taken into account in determining the long-term economic value of a bank asset, property or a class of property. This section also provides for related matters.

PART 6

ACQUISITION OF BANK ASSETS AND RELATED MATTERS

CHAPTER 1: ACQUISITION OF BANK ASSETS

Section 78 — Applicant credit institutions and participating institutions to provide information about eligible bank assets provides that NAMA may direct an applicant credit institution or a participating institution to provide NAMA with information about each of its bank assets (and, in the case of an applicant credit institution, those of its subsidiaries) in a specified manner or form. When providing the relevant information, the credit institution or participating institution concerned will, if it is of the opinion that a bank asset is not an eligible bank asset and if it wishes to object to the proposed acquisition of that asset, state its opinion, the reason for it and that it objects to the acquisition of the bank asset. NAMA may direct that any such information provided is certified as accurate and complete. This section also makes provision for related matters.

Section 79 — Production of documentation, books and records for inspection provides that an applicant credit institution or a participating institution will produce to NAMA (or will procure that its subsidiaries so produce), if NAMA requests, the credit facility documentation, books and records kept in connection with any eligible bank asset and will provide facilities for inspection. There is also provision for NAMA to apply to the High Court for an order directing the credit institution, participating institution or subsidiary to provide such documentation, books or records or to provide facilities for such inspection, as the case requires.

Section 80 — Provision of information and explanations, etc. provides that an applicant credit institution or a participating institution will provide (or will secure that its subsidiaries provide) any information and explanations requested by NAMA on certain matters, including matters relevant to the acquisition of the bank asset. There is also provision for NAMA to apply to the High Court for an order directing the applicant credit institution, subsidiary or participating institution to secure the provision of the explanation or information.

Section 81 — Decision about acquisition of eligible bank assets provides that NAMA may acquire an eligible bank asset of a participating institution where NAMA considers it necessary or desirable to do so having regard to the purposes of the Act and in particular the resources available to the Minister. This section also sets out a number of factors that NAMA may take into account in reaching its decision including, for example, whether the security is adequate or has been perfected. NAMA is not obliged to acquire any particular, or any, eligible bank asset at all of a participating institution. This section provides that NAMA will not acquire a bank asset, notwithstanding that it is an eligible bank asset, where it determines that the long-term economic value of the property comprised in the security for a credit facility is less than the market value of the property.

Section 82 — NAMA to identify eligible bank assets for acquisition provides that NAMA will identify such of the eligible bank assets of a participating institution as NAMA proposes to acquire. For the purpose of identifying eligible bank assets, NAMA may consult with the participating institution concerned but is not obliged to do so. If the participating institution does not consider an identified bank asset to be an eligible bank asset and objects to its acquisition, NAMA may agree not to acquire it or may continue with the proposed acquisition and refer the matter to the expert reviewer.

Section 83 — NAMA may specify general terms and conditions of acquisition provides that NAMA may specify the terms and conditions that are generally to apply to the acquisition of eligible bank assets. This section also provides that NAMA may amend or vary these terms and conditions in an acquisition schedule.

Section 84 — NAMA to prepare acquisition schedule provides that when NAMA has identified an eligible bank asset of a participating institution that NAMA proposes to acquire, and has determined the acquisition value of that asset, NAMA will serve on the institution an acquisition schedule setting out the details of the acquisition as provided in the section. NAMA may nominate a NAMA group entity to acquire a bank asset identified for acquisition. The date of acquisition will be at least 28 days after the date the relevant acquisition schedule is served.

Section 85 — Errors or omissions in proposed acquisition schedules provides that a participating institution may apply to NAMA in writing for the correction of an obvious error or omission in an acquisition schedule.

Section 86 — Amendment of acquisition schedule provides that NAMA may, after service of an acquisition schedule but before the earliest acquisition date specified in the acquisition schedule, revoke the acquisition schedule or amend it in any way.

Section 87 — Effect of service of acquisition schedule provides that the service of an acquisition schedule on a participating institution

operates by virtue of the Act to effect the acquisition by NAMA, or the specified NAMA group entity, of each bank asset specified in the acquisition schedule on the date specified in the acquisition schedule and subject to the terms and conditions provided in the acquisition schedule. Service of an acquisition schedule does not, however, effect the acquisition by NAMA, or the specified NAMA group entity, of a bank asset if (i) before the acquisition date for the bank asset, the participating institution gives notice that it did not consider the bank asset to be an eligible bank asset and that it objected to its acquisition and (ii) on the acquisition date (a) the Minister has not confirmed the inclusion of the bank asset in the acquisition schedule or (b) NAMA has amended the acquisition schedule to remove the bank asset or (c) NAMA has amended or revoked the acquisition schedule.

Section 88 — Effect of service of acquisition schedule in relation to foreign bank assets makes specific provision for the acquisition of foreign bank assets by NAMA by providing that (a) if the law governing the transfer or assignment of a foreign bank asset permits the transfer or assignment of that asset, the participating institution will, if NAMA so directs, do everything required by law to effect the transfer or assignment or (b) if the relevant foreign law does not permit the transfer or assignment of the foreign bank asset, the participating institution will, if NAMA so directs, do all that the participating institution is permitted to do under that law to assign to NAMA the greatest interest possible in the foreign bank asset and hold the asset as the trustee of NAMA. The section further provides that a participating institution must immediately upon being so directed by NAMA execute and deliver to NAMA any document that NAMA considers necessary or desirable to ensure that there is an effective acquisition by NAMA or a NAMA group entity of the interest specified in the relevant acquisition schedule. This section also makes provision for related matters.

Section 89 — Payment for bank assets provides that as soon as may be after the service of an acquisition schedule (or amended acquisition schedule), NAMA will notify the Minister and the NTMA of the amount payable to the participating institution for the bank assets to be acquired. The Minister will ensure that a sufficient amount of debt securities are available to make the anticipated payment. On the date of acquisition, NAMA or the relevant NAMA group entity will, as appropriate, transfer or issue debt securities or subordinated debt securities, to the participating institution in an amount that is equal to the acquisition value of the bank asset. This section also makes specific provision for the acquisition of foreign bank assets, in particular providing that payment will be made on the acquisition date but that NAMA may withhold all or part of the acquisition value of a foreign asset until the participating institution concerned has met its obligations under section 88.

Section 90 — Clawback of overpayments provides that if a participating institution receives in error from NAMA or a NAMA group entity an amount that is more than the amount due to the participating institution, or receives any other amount to which it is not entitled, the participating institution must repay an amount that is equal to the overpayment and any accrued interest on it.

Section 91 — Dealings with bank assets after service of acquisition schedule until date of acquisition provides that after the service of an acquisition schedule on a participating institution and until the date of acquisition of a bank asset, the participating institution will continue to hold and manage each bank asset specified in the schedule and will not make nor permit the making of any change in

the bank asset concerned without NAMA's written consent and will notify NAMA in writing of any change in each bank asset concerned.

Section 92 — Books, records and title documents of participating institutions provides that NAMA may direct a participating institution from which it has acquired a bank asset to deliver to it all of its books and records and other documents in relation to the bank asset concerned and to provide any information or explanation that NAMA requires in relation to such books, records and documents. This section also makes provision for NAMA to apply to the High Court for an order directing the participating institution to comply with the direction.

Section 93 — Notice to debtors, etc., of acquisition of bank assets provides that within 60 days after the acquisition of a bank asset from a participating institution, the participating institution will make reasonable efforts to notify each debtor and other parties in relation to the credit facility concerned of the acquisition of the bank asset by NAMA or the relevant NAMA group entity. This section also provides that NAMA is not liable for any failure or delay in such notification.

Section 94 — NAMA to notify participating institution of completion of acquisition process provides that when NAMA has served on a participating institution one or more acquisition schedules that specify all of the bank assets that NAMA has acquired or at the time proposes to acquire from the participating institution, NAMA will serve a notice (a 'completion notice') in writing of that fact. NAMA will not serve any further acquisition schedules on a participating institution after service of that completion notice unless the Minister prescribes further classes of eligible bank assets.

Section 95 — Dispute over acquisition value provides that if a participating institution wishes to dispute an acquisition value, it will do so solely in accordance with this section and sections 118 and 119. This section also provides that, separately, 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.

CHAPTER 2: EFFECTS OF ACQUISITION OF BANK ASSETS

Section 96 — NAMA to have rights of creditors after acquisition of bank assets provides that after NAMA or a NAMA group entity acquires a bank asset, subject to section 98 of the Act any exclusion of obligations and liabilities from the acquisition set out in the acquisition schedule, NAMA and the NAMA group entity each have and may exercise all the rights and powers and are bound by all of the obligations (save any excluded obligations and liabilities) of the participating institution from which the bank asset was acquired. This section also provides that the participating institution ceases to have those rights and obligations except to any extent to which the Act provides otherwise. This section also provides for related matters.

Section 97 — Exercise of certain rights of set-off provides that where a participating institution has a right of set-off in relation to a bank asset, the participating institution must inform NAMA in writing of the existence of that right. In the event of the exercise of the right of set off by a participating institution, the participating institution will pay an amount equal to the set-off amount to NAMA or the relevant NAMA group entity concerned. In the event of the exercise of a right of set-off by a debtor, the participating institution will pay an amount equal to the set-off amount to NAMA or the NAMA group entity concerned.

Section 98 — Enforcement of certain representations, etc provides that if, in relation to a bank asset that NAMA or a NAMA group entity has acquired, it is alleged that any representation etc, was made in favour of the debtor or another person by the participating institution or on its behalf, the terms of which are not disclosed to NAMA and which would affect a creditor's rights in relation to the asset, the representation etc. is not enforceable against NAMA or the NAMA group entity, is only enforceable (if at all) against the participating institution and cannot be relied upon by NAMA or a NAMA group entity against a debtor. Any claim made will give rise only to a remedy in damages or other relief that does not in any way affect the bank asset (or any property the subject of any security for the bank asset), the acquisition of the bank asset or the interest of NAMA or the NAMA group entity in the bank asset.

Section 99 — Acquisition of bank assets not to affect conditions, etc. provides that after a bank asset is acquired by NAMA or a NAMA group entity, the terms and conditions of the bank asset are unchanged. This section also makes provision to avoid contracts being frustrated.

Section 100 — Acquisition of bank asset not to give rise to cause of action, etc. provides that no cause of action lies or is maintainable against NAMA or any NAMA group entity by reason solely of the acquisition of a bank asset.

Section 101 — NAMA to be notified of certain matters provides that if within one year after NAMA or a NAMA group entity acquires a bank asset, the participating institution from which the asset was acquired is notified or becomes aware of any significant actual or proposed dealing, event or circumstance in relation to the bank asset that would adversely affect the bank asset, or the rights, obligations or liabilities of NAMA or the NAMA group entity in relation to it, the participating institution will notify NAMA of the dealing, event or circumstances without delay.

Section 102 — Acquisition of bank assets not to render NAMA liable for wrongs by participating institutions provides that nothing in the Act will render NAMA or a NAMA group entity liable for any legal or equitable wrong committed by a participating institution. The section also provides that no legal proceedings will be brought against NAMA or a NAMA group entity in relation to any such wrong, however, a person will be able to seek a remedy in damages from the participating institution concerned.

Section 103 — Rights of others not affected by acquisition of bank assets, etc. provides that nothing in the Act relieves NAMA or a NAMA group entity of any obligation, at law or in equity except to the extent that the Act specifically provides otherwise.

Section 104 — NAMA not required to register certain instruments, etc. provides that where a bank asset has been acquired by NAMA or a NAMA group entity, NAMA or the relevant NAMA group entity is not required to become the registered owner of any security that is part of the bank asset under certain specified enactments, but will notwithstanding have the rights of a mortgagee and the powers and rights of the registered owner of a charge.

Section 105 — NAMA, etc., may give certificate in relation to bank assets held provides that NAMA or a NAMA group entity may certify under seal that it holds a bank asset specified in the certificate. The certificate will be admissible in any proceedings as evidence of the matters set out in it.

Section 106 — NAMA, etc., may give certain directions in relation to bank assets provides for the giving of directions by NAMA (or a NAMA group entity) in relation to a bank asset that NAMA or a NAMA group entity has acquired, to a participating institution and, where the terms and conditions of a bank asset entitle NAMA to do so, to third parties that hold an interest in a bank asset on behalf of others.

Section 107 — Effect of acquisition of bank assets on certain other rights deals with instruments to which participating institutions, subsidiaries and others are party or in which they have an interest. Commercial instruments may provide for their termination or other consequences where the ownership in assets etc. of one of the contracting parties changes. This section provides that specified consequences for such instruments will not, without the express consent of NAMA, arise by virtue of certain actions or events including, for example, any entity becoming a participating institution.

Section 108 — Minister's power to modify application of section 107 provides that the Minister may, where he or she thinks it appropriate, by order reduce the effect of the restriction provided for in section 107 in relation to a particular case or a particular class of cases where the effect of the section would be unduly onerous, or cause undue unfairness or undue hardship and where, in all circumstances, it is appropriate to do so.

PART 7

REVIEW OF DECISIONS RELATING TO ACQUISITION

CHAPTER 1: EXPERT REVIEWER

Section 109 — Appointment and functions of expert reviewer provides for the appointment by the Minister of a suitably qualified person as the expert reviewer for the purposes of this Chapter.

Section 110 — Procedure of expert reviewer provides that the Minister may make regulations providing for the procedures of an expert review. Subject to any regulations made by the Minister, the expert reviewer will determine procedures for dealing with certain matters including, for example, the form and type of submissions made to the expert reviewer.

Section 111 — Objections to proposed acquisition of bank assets provides that a participating institution may object to the proposed acquisition of a bank asset pursuant to section 78 of the Act.

Section 112 — Materials, etc., to be made available to expert reviewer provides that, where an objection is referred to the expert reviewer, a participating institution will provide to the expert reviewer and NAMA all material on which it bases its objection and any comments it may have within a prescribed period. This section also provides that NAMA will make available all the material available to it when making its decision and any comments it may have on the objection, within a prescribed period to the expert review and participating institution. The participating institution and NAMA will each be allowed an opportunity to respond to the other's material and comments. This section also makes provision for related matters.

Section 113 — Opinion of expert reviewer provides that the expert reviewer will advise the Minister within the period specified as to whether he or she is of the opinion that the bank asset is or is not an eligible bank asset.

Section 114 — Confirmation by Minister of acquisition, etc. provides that, following consideration of the advice of the expert reviewer, the Minister will either, within the time specified, by order confirm that the bank asset may be acquired by NAMA or direct NAMA not to acquire the asset.

Section 115 — Costs provides for the payment of the costs of a review under this Chapter. This section provides, in particular, that costs of a review under this Chapter will be payable by a participating institution where the Minister confirms under section 114 that a bank asset may be acquired by NAMA in accordance with the acquisition schedule.

CHAPTER 2: REVIEW OF VALUATIONS

Section 116 — Appointment of valuation panel provides that there will be a valuation panel to adjudicate on disputes referred to it by NAMA under section 119 and further provides that the Minister may appoint up to 12 members of the valuation panel who have relevant expertise or specialist knowledge.

Section 117 — Procedure of valuation panel provides that the Minister may make regulations providing for the procedure of the valuation panel and any matters relating to a review to be carried out. This section also empowers the valuation panel to provide for procedures to deal with certain specified matters including, for example, the form and type of submission to be made.

Section 118 — Objection to value placed on bank assets acquired from participating institution provides that if, after service of the acquisition schedule, a participating institution objects to the acquisition value of a bank asset, it will, within the prescribed period, serve on NAMA a notice in writing of its objection invoking the provisions of this Chapter. On receipt of a notice, NAMA may remove the bank asset concerned from the acquisition schedule, revoke the acquisition schedule or continue with the acquisition in accordance with the schedule. This section also provides that, where NAMA continues with an acquisition and where the other requirements under section 119 are met, the participating institution may dispute the total portfolio acquisition value, but it is not entitled to dispute any valuation of NAMA (including a total portfolio acquisition value) other than in accordance with this Chapter.

Section 119 — Dispute over total portfolio acquisition value provides that if, after service of a completion notice, a participating institution wishes to dispute the total portfolio acquisition value, it will within the prescribed period, serve notice of this only if it is of the opinion that the aggregate market value of the acquired portfolio exceeds the total portfolio acquisition value and if the participating institution has served one or more notices under section 118 in relation to bank assets comprising at least 12.5% (by value) of the total portfolio acquisition value. Upon receipt of the notice, NAMA will refer it to the valuation panel for review. The service of notice by a participating institution does not affect the acquisition by NAMA of the bank asset concerned.

Section 120 — Material, etc., to be made available to valuation panel provides that a participating institution that has served notice under

section 119 will, within the prescribed period provide the valuation panel and NAMA with all of the material on which its dispute is based and any comments it may wish to make regarding the disputed total portfolio acquisition value. NAMA is also required to provide all the information it had when it determined each acquisition value concerned and any comments it may wish to make on the dispute, also within a prescribed period. This section also provides that NAMA and the participating institution will be allowed an opportunity to respond to the other's materials and comments.

Section 121 — Review by valuation panel provides that the function of the valuation panel is to review whether the aggregate market value of an acquired portfolio is correct, in accordance with the test set out in this section. The valuation panel will advise the Minister of its determination within the prescribed period, including of the aggregate market value, and the reasons for it.

Section 122 — Minister's determination provides for the Minister's consideration of the valuation panel's advice and provides that the Minister may either confirm the aggregate market value as advised by the valuation panel or, if he or she considers that the advice is wrong, remit the matter to the valuation panel, setting out the reasons for doing so. Where the Minister confirms that the aggregate market value of the acquired portfolio is greater than the total portfolio acquisition value as determined by NAMA, the Minister will direct NAMA to compensate the participating institution the difference calculated in accordance with this section (whether in the form of further consideration or by the return of bank assets or a combination of both), save that the amount of compensation payable is to be no greater than the amount by which the total portfolio acquisition value as determined by NAMA is less than the aggregate market value of the acquired portfolio. This section also provides for related matters.

Section 123 — Withdrawal of dispute provides that a participating institution may withdraw a notice served under section 119.

Section 124 — Costs of review of valuations provides for the payment of the costs of a review under this Chapter. This section provides, in particular, that costs of a review under this Chapter will be payable by a participating institution unless the Minister's determination under section 122 entitles the participating institution to compensation.

PART 8

RELATIONSHIP BETWEEN NAMA AND PARTICIPATING INSTITUTIONS

Section 125 — Definition (Part 8) is a standard interpretation section, defining terms used in this Part.

Section 126 — Participating institutions to act in utmost good faith provides that each participating institution must act in utmost good faith in its dealings with the Minister and NAMA, NAMA group entities, their agents, the expert reviewer and the valuation panel.

Section 127 — Breach of statutory requirements provides that a participating institution that fails to comply with any obligation under the Act is liable to NAMA in damages in addition to any other consequences under the Act.

Section 128 — Servicing of acquired bank assets by participating

institutions provides that a participating institution from which NAMA or a NAMA group entity acquires a bank asset will continue to service the bank asset and the participating institution must comply with directions given by NAMA or a NAMA group entity in respect of servicing such an asset. This section also provides for related matters, including that NAMA will reimburse the participating institution in respect of the agreed cost of such service.

Section 129 — Other servicing arrangements provides that, where NAMA has made arrangements for the provision of services in respect of an acquired bank asset, then the terms of the bank asset will be taken to require that any debtor, *etc.* in respect of that bank asset deal with the service provider. This section also makes provision for related matters.

Section 130 — NAMA may give directions about certain bank assets not acquired provides that where NAMA or a NAMA group entity has acquired a bank asset, NAMA may direct the participating institution from which the bank asset was acquired to deal in a specified way with any part of the bank asset not acquired.

Section 131 — Additional payment on servicing of acquired bank assets provides that, with the Minister's consent, NAMA may agree on an arrangement in relation to the servicing of acquired bank assets with a participating institution.

Section 132 — Participating institutions to indemnify NAMA provides that if so directed, a participating institution will indemnify NAMA or a NAMA group entity and each of their officers against any liability or loss arising, and regardless of any default on the part of NAMA or a NAMA group entity, in relation to certain specified matters. This section also provides that, where the High Court determines that a third party owns a bank asset and, as a result, NAMA or a NAMA group entity is obliged to transfer that bank asset or pay damages, the participating institution will indemnify NAMA or the NAMA group entity against that liability and all losses suffered by it. This section also provides for related matters.

Section 133 — Participating Institutions to be agent of subsidiaries, etc. provides that a participating institution is for all purposes of the Act the agent of each other legal entity in its group.

PART 9

POWERS OF NAMA IN RELATION TO ASSETS

CHAPTER 1: DEFINITIONS

Section 134 — Definitions (Part 9) is a standard interpretation section, defining terms used in this Part.

CHAPTER 2: GENERAL POWERS OF NAMA IN RELATION TO ASSETS

Section 135 — Interpretation (Chapter 2) provides that a reference in this Chapter to NAMA shall be construed in relation to a bank asset acquired by a NAMA group entity as a reference to either NAMA or the NAMA group entity unless the contrary intention appears.

Section 136 — NAMA's powers to dispose of bank assets provides NAMA may transfer, assign, convey, sell or otherwise dispose of an

acquired bank asset to any person despite certain specified restrictions on disposal.

Section 137 — Power to discharge prior charge provides that where an acquired bank asset is secured by a charge, but the charge is a second or subsequent charge, NAMA may redeem or discharge any prior charge in accordance with its terms.

Section 138 — Power of entry to protect value or condition of land or buildings provides that where an acquired bank asset is secured by a charge over land and the land or any building or structure on it has been abandoned or has fallen into disrepair *etc.* then NAMA may apply to the District Court for an entry and maintenance order. This section also makes provision for related matters.

Section 139 — Certain instruments by NAMA to be taken to be deeds provides that any interest which NAMA has in land can be conveyed by an instrument under seal of NAMA or the common seal of the NAMA group entity concerned that is expressed to convey that interest (in whole or in part) and that this will extinguish the interest of any other chargee or mortgagee of the land, other than a chargee that has priority to the interest of NAMA and has not been redeemed or discharged. Where the interest of a chargee or mortgagee is extinguished by this section, their interest attaches in the same order or priority, to the proceeds of sale rather than against the land or to a purchaser of the land from NAMA.

Section 140 — Overreaching for protection of purchasers provides that a conveyance by NAMA to a purchaser of a legal estate or legal interest in land overreaches any equitable interest in the land, whether or not the purchaser has notice of the equitable interest. Where an equitable interest is overreached it attaches to the proceeds of sale. Certain savers and exceptions are provided in the event of agreements to the contrary, interests arising by virtue of equitable mortgages and other specified exemptions.

Section 141 — Effect of certain assurances of land provides that an assurance of charged land or a right or interest in charged land before the acquisition by, or vesting in, NAMA of the relevant charge (whether or not the land was charged at the date of the assurance) will be taken to have created, for the benefit of the charged land, a right over any land retained by the grantor that it was reasonable to assume was within the contemplation of the parties at the date of the grant, or would have been in contemplation at that time if they had adverted to the matter.

Section 142 — Certain receivers not obliged to sell property, etc. provides that neither a receiver of the rents and profits of property appointed by NAMA nor a receiver appointed to the property of a company by NAMA is obliged to sell any property at any particular time, or at all, but that such receiver is accountable for all profits and other monetary benefits arising directly from possession of the property.

Section 143 — Powers of NAMA to enforce securities, etc. provides that the enforcement of a security by NAMA is not subject to the restrictions in the Conveyancing Act 1881 or the Land and Conveyancing Law Reform Act 2009.

CHAPTER 3: STATUTORY RECEIVERS

Section 144 — NAMA's power to appoint statutory receivers provides that NAMA may appoint a person as a statutory receiver

of property subject to the charge where specified defaults arise. The powers of NAMA under this section are exercisable by NAMA (and only by NAMA) in relation to a bank asset held by a NAMA group entity.

Section 145 — Powers of statutory receivers provides that a statutory receiver has the powers, rights and obligations that a receiver has under the Companies Acts, those specified in Schedule 1 and any additional powers provided for in a charge. This section also provides for related matters.

Section 146 — Statutory receiver to be agent of chargor, etc. provides that a statutory receiver will be taken to be the agent of the chargor for all purposes. This section also provides for related matters.

Section 147 — Appointment of liquidator or examiner to companies whose assets are under control of statutory receiver provides that the appointment of an examiner or liquidator to a company whose assets (or part of them) are under the control of a statutory receiver does not (i) displace the statutory receiver or affect his or her powers, authority or agency (ii) prevent the statutory receiver from enforcing any security held by NAMA or a NAMA group entity or (iii) cause the de-crystallisation of any charge created as a floating charge over assets that are under the control of the statutory receiver.

Section 148 — Statutory receiver not obliged to sell property, etc. provides that a statutory receiver is not obliged to sell a charged property at any time or at all but is accountable for all profits and monetary benefits arising directly from possession of property.

CHAPTER 4: VESTING ORDERS

Section 149 — Application to Court provides that NAMA may apply to the High Court for a vesting order in the circumstances specified. This section also provides for related matters.

Section 150 — Vesting orders provides that the High Court, if it is satisfied that (i) it is unlikely that the sum secured by a charge over land acquired by NAMA could be recovered were the land to be sold within three months after the application and (ii) there is no reasonable prospect of the chargor redeeming the charge concerned, will make a vesting order which will vest in NAMA, or a NAMA group entity nominated by NAMA, the interest of the chargor. Where the High Court makes such a vesting order, it will also make an order for possession of the land concerned in favour of NAMA.

Section 151 — Prior chargee's right to payment provides that where the High Court makes a vesting order in relation to land that is subject to a charge prior to that held by NAMA or the NAMA group entity concerned, the High Court will also order NAMA or the NAMA group entity, in the event of one chargee, to pay to that chargee the lesser of the amount secured by its charge and the value (as defined) or, if there is more than one other chargee, pay to each such chargee, in the order of their priority, the lesser of the amount secured by its charge and the value (as defined) or the remainder of the value (as the case requires).

Section 152 — Effect of vesting order provides that a vesting order extinguishes the chargor's equity of redemption in the land concerned, vests title to the land in NAMA or the relevant NAMA group entity, extinguishes the interest in the land of any other chargee (subject to payment in accordance with section 151, as

appropriate) and satisfies the requirements of the Land Registration Rules 1972-2008.

Section 153 — Title of purchaser not impeachable provides that the title of a purchaser of land from NAMA or a NAMA group entity, where a vesting order for the land purchased was obtained by NAMA, is not impeachable on the ground of any irregularity in the vesting order or irregularity or impropriety in obtaining it. No purchaser from NAMA or a NAMA group entity and no subsequent purchaser is required or entitled to raise any requisition or make any objection on title specifically to the vesting order.

CHAPTER 5: COMPULSORY ACQUISITION OF LAND

Section 154 — Definitions (Chapter 5) is a standard interpretation section, defining terms used in this Chapter.

Section 155 — NAMA's powers to acquire land compulsorily provides that NAMA may compulsorily acquire land if in its opinion it is necessary to do so for the reasons specified in this section. In addition, NAMA may compulsorily acquire land in particular circumstances specified in this section. NAMA may only compulsorily acquire land if it has first made a reasonable attempt to acquire the land by agreement.

Section 156 — Application to Court for acquisition order provides that NAMA may apply to the High Court for an acquisition order authorising it to compulsorily acquire land.

Section 157 — Initial notice of acquisition provides that NAMA will publish a notice (the "initial notice") of an application in a daily newspaper in the form (if any) prescribed by the Minister by regulations. The section also provides that NAMA will, so far as is reasonably practicable, serve a copy of the initial notice on every person who appears to NAMA to have an interest in the land concerned. This is intended to allow the holder of an interest the opportunity to object to the proposed acquisition.

Section 158 — Maps, plans and books to be deposited provides that NAMA will cause maps etc. to be deposited for inspection for the specified period at such place or places as NAMA considers suitable.

Section 159 — Consideration by Court of objections provides that a person claiming an estate or interest in land may lodge an objection with the High Court within 21 days after publication of the initial notice. The High Court will consider and determine any objection to the application of NAMA.

Section 160 — Acquisition order provides for the circumstances in which the High Court will make an order authorising NAMA, or a NAMA group entity nominated by NAMA, to compulsorily acquire land. This section in particular provides that where there is an objection to an order to compulsorily acquire land an order will only be made if the High Court is satisfied that it is just and equitable to make the order.

Section 161 — Notice to treat provides that where an acquisition order has been made, NAMA may serve a notice on every owner, lessee and occupier of the land (except tenants for a month or shorter period) stating that NAMA is willing to treat for the purchase of interests in land. This section also provides for related matters.

Section 162 — NAMA's power to take possession provides that, at any time after the making of an acquisition order and before the conveyance or ascertainment of price, NAMA or the nominated NAMA group entity may enter on and take possession of the land to be acquired or otherwise exercise its rights under this section upon giving the occupier of the land at least 14 days' written notice of its intention to do so.

Section 163 — Determination of compensation provides that the amount of compensation to be paid by NAMA for land will in default of agreement be fixed under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919. This section also provides for related matters.

Section 164 — Court may make compulsory transfer order provides that where NAMA or a NAMA group entity has entered on and taken possession of land and the High Court is satisfied that the several estates or interests in the land have not been conveyed or transferred to NAMA or the nominated NAMA group entity, that it is necessary in connection with the purpose for which NAMA requires the land that the acquisition of the land should be completed and that NAMA has made an offer in writing to each person having an estate or interest in the land, then the High Court may make a compulsory transfer order vesting the land in NAMA or the nominated NAMA group entity subject to any terms and conditions that it sees fit. This section also makes provision for related matters.

Section 165 — NAMA to inform Revenue Commissioners if certain liabilities exist provides that where NAMA becomes aware before the making of a compulsory transfer order that a person from whom an estate or interest in land to be transferred by the order is subject to a liability for estate duty, succession duty or inheritance tax, NAMA will notify the Revenue Commissioners of the High Court's intention to make the order.

Section 166 — Form and effect of compulsory transfer order provides for the form of a compulsory transfer order. This section also provides that the effect of the compulsory transfer order is to vest the specified land or relevant right in NAMA or the nominated NAMA group entity on a date specified in the order (which is at least 21 days after the making of the order).

Section 167 — Effect of compulsory acquisition without compulsory transfer order provides that upon the completion of a compulsory acquisition otherwise than by compulsory transfer order, all rights or easements in or relating to the land will (except so far as otherwise agreed) vest in NAMA without any conveyance or transfer. A person who suffers loss by the vesting of such a right or property is entitled to be paid compensation by NAMA determined in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919.

Section 168 — Service of notices provides for the service of notices for the purposes of this Chapter.

CHAPTER 6: GENERAL POWERS IN RELATION TO LAND

Section 169 — Limitation on certain dealings in land, etc. provides that a person, who owns charged land and who also owns or holds an interest in (or has an option to acquire) other land or an interest therein, will not deal with that other land, interest or option without giving reasonable written notice to NAMA where the charged land would be unable to realise its full value unless the relevant land, or interest or option was owned or held by NAMA. Any dealing in

contravention of this section is voidable at NAMA's option. This section also provides that a person who is the debtor in relation to an acquired bank asset, or an associated debtor of such a person, will not acquire property comprised in security forming part of that bank asset or any other acquired bank asset that has been realised by NAMA or a NAMA group entity if the debtor or associated debtor has defaulted on any debt it owes to NAMA or the NAMA group entity.

Section 170 — Set-off of compensation provides that where a person is indebted to NAMA or a NAMA group entity, any amount of compensation or other amount payable by NAMA or a NAMA group entity to that person may be applied towards satisfaction of the debt due to NAMA or the NAMA group entity.

CHAPTER 7: POWERS IN RELATION TO DEVELOPMENT OF LAND

Section 171 — Interpretation (Chapter 7) provides that a reference in the Chapter to NAMA shall be construed in relation to a bank asset acquired by a NAMA group entity as a reference to either NAMA or the NAMA group entity unless the contrary intention appears.

Section 172 — Application (Chapter 7) provides that this Chapter will apply where NAMA has acquired a bank asset that includes a charge over development land and (i) the High Court has made a vesting order in relation to the land or (ii) NAMA or the NAMA group entity concerned in its capacity as chargee has power under the charge concerned to develop the land.

Section 173 — Development of land provides that, where this Chapter applies, NAMA may enter into an agreement for the purpose of developing land to secure the best return reasonably possible.

Section 174 — NAMA to have certain contractual rights of land developers provides that, where this Chapter applies, without prejudice to any rights arising at law, NAMA has the same rights as the participating institution and any debtor, *etc.* in relation to the acquired bank asset in respect of any breach of contract or obligation relating to land (including any defective design or workmanship in a building or other structure).

Section 175 — Designs and planning documents for land development provides that, where this Chapter applies, and there is an agreement with a person in relation to the development of land, then the person will deliver to NAMA, on demand, a copy of the agreement with any designs, plans or other documents prepared for the purposes of the development of the land concerned and NAMA may either continue the agreement or terminate it as it thinks fit. This section also makes provision for related matters.

Section 176 — Limitation of right to renewal of certain business tenancies provides that section 16 of the Landlord and Tenant (Amendment) Act 1980 does not apply in relation to a new business tenancy granted by NAMA or a NAMA group entity of a tenement unless NAMA or the NAMA group entity specifies otherwise in writing.

PART 10

LEGAL PROCEEDINGS

CHAPTER 1: INTERPRETATION

Section 177 — Interpretation (Part 10) is a standard interpretation provision, defining terms used in this Part.

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

Section 178 — Application (Chapter 2) provides that this Chapter applies to legal proceedings commenced on or after 30 July 2009 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 specified in an acquisition schedule.

Section 179 — Damages to be only remedy for certain claims provides that the only remedy for any claim to which this Chapter applies is damages or other relief that does not in any way affect the bank asset (or any property the subject of any security for the bank asset), the acquisition of the bank asset or the interest of NAMA or the NAMA group entity. A person may, however, apply to the High Court for an order that the person may apply for a remedy other than, or in addition to, damages. The High Court will only grant leave to bring an application if it is satisfied that the application raises a substantial issue for the High Court's determination and if the application is made within a prescribed period or there are substantial reasons why it was not made within that period and it is just and equitable to grant the relief. The High Court will only make an order on the application if the court is satisfied that damages would not be an adequate remedy. This section also makes provision for related matters.

CHAPTER 3: LEGAL PROCEEDINGS GENERALLY

Section 180 — Application (Chapter 3) provides that this Chapter applies to all legal proceedings (i) to which NAMA or a NAMA group entity is or becomes a party, (ii) relating to a designated or acquired bank asset acquired or (iii) otherwise relating to NAMA.

Section 181 — Conduct of legal proceedings in relation to acquired bank assets provides that where NAMA (or a NAMA group entity) is a party to any legal proceedings affecting an acquired bank asset, the participating institution from which the bank asset was acquired will, without prejudice to any other obligation arising under the Act, if NAMA requests, provide NAMA with any assistance reasonably required by NAMA for the purpose of the proceedings.

Section 182 — Effect of acquisition, etc., of bank assets on legal proceedings — participating institution plaintiff, etc. provides that NAMA (or NAMA group entity) may elect to be substituted for the participating institution in proceedings (including arbitration proceedings) taken by a participating institution in respect of bank assets acquired under the Act, where those legal proceedings were commenced before the acquisition of the bank asset. If NAMA is so substituted, NAMA will assume all of the rights and obligations of the participating institution in relation to those proceedings, other than in relation to the defence of or liability for any counterclaim or cross-claim. Participating institutions will still be involved in respect of any counterclaim, cross-claim, discovery and interrogatories and

they would continue to be liable for certain costs. This section also makes provision for related matters.

Section 183 — Effect of acquisition of bank assets on legal proceedings — NAMA, etc., may enforce judgment provides that NAMA may enforce judgments made in favour of a participating institution in relation to acquired bank assets.

Section 184 — Effect of acquisition of bank assets on legal proceedings where participating institution not plaintiff provides that if a participating institution is, at the time of the acquisition by NAMA (or a NAMA group entity) of a bank asset, a party (otherwise than as a plaintiff) in legal proceedings in relation to the bank asset it remains a party to the proceedings in the same capacity. NAMA may elect to become a party to such proceedings. Where the participating institution has brought a counterclaim, NAMA may also elect to be substituted for the participating institution as counterclaimant but will not become liable in respect of the claim.

Section 185 — Conduct of proceedings provides that where NAMA (or a NAMA group entity) elects not to be substituted for a participating institution in proceedings, or elects only to be substituted as plaintiff, the participating institution will conduct proceedings in a way that protects the interests of NAMA and in accordance with any directions given by NAMA and NAMA may join proceedings as a notice party.

Section 186 — Costs provides that at the conclusion of each interlocutory application in any legal proceedings to which this chapter applies, the court concerned will make orders as to costs and measure those costs. Costs will be enforceable against the party directed to pay the costs and if they are not paid within 30 days of the court order, the court may, on the application of any party to the proceedings or of its own motion, impose terms as to the continuation of the proceedings pending payment of the costs.

Section 187 — Evidence — amount of debt due provides that in any proceedings for the recovery by NAMA (or a NAMA group entity of money), a certificate in writing under the seal of NAMA that a specified sum of money was owing to NAMA is, at any time within one month after the date of the certificate, evidence that the sum specified in the certificate is and remains owing to NAMA by the person and on the account specified in the certificate.

Section 188 — Evidence — application of Bankers' Books of Evidence 1879 provides that a copy of an entry in a bankers' book may be produced in evidence where the book is in the custody or under the control of NAMA or a NAMA group entity and an officer of NAMA or such entity gives evidence (orally or by affidavit) of such custody or control and that he or she truly believes that the book or record was kept in the ordinary course of the bank's business.

Section 189 — Limitation of power to grant injunctive relief provides that where an injunction is sought on an interim or interlocutory basis to compel NAMA (or a NAMA group entity) to take or refrain from taking any action or any other party to take or refrain from taking any action where the relief, if granted, would adversely affect NAMA, the High Court will have regard, in determining whether to grant such relief, to the public interest. In considering the public interest, the High Court will have regard to the purposes of the Act and the importance of permitting NAMA to

discharge its functions in an expeditious and efficient manner. This section also provides for other matters to be considered by the Court.

Section 190 — Limitation of judicial review provides for the circumstances (including timescales) in which leave to seek judicial review of a decision under this Act may be sought and given.

Section 191 — Limitation of certain rights of appeal to the Supreme Court provides that the determination of the High Court of an application for leave to appeal for judicial review, of an application for judicial review, or an application for an order under section 179 is final. This section also provides that no appeal lies from the decision, except with the leave of the High Court and also provides for other related matters.

Section 192 — Lites pendentes to have no effect, etc. provides that where NAMA or a NAMA group entity has acquired a bank asset, then no *lis pendens*, caution or inhibition registered on or after 30 July 2009 will be of effect against NAMA, a NAMA group entity or any transferee of that bank asset.

PART 11

USE OF INFORMATION

Section 193 — Definition (Part 1) is an interpretation section, defining the term “advisor”.

Section 194 — Deemed consent to disclosure of information provides that for a deemed consent to the disclosure of information by a participating institution in accordance with this Part.

Section 195 — Duty of confidentiality, etc., not contravened by provision of information or production of documents and books for inspection provides that disclosure by a credit institution to NAMA or the NTMA of information about a bank asset or any person connected with a bank asset made on or after 30 July 2009, does not breach any duty of confidentiality to which the credit institution or any other person is subject.

Section 196 — Duty of Confidentiality, etc., not contravened by provision of information or production of documents and books for inspection provides that disclosure of information or a book, document or record in relation to a bank asset by NAMA (or a NAMA group entity) to a potential purchaser or to such a purchaser’s agent or adviser does not breach any duty of confidentiality to which NAMA is subject.

Section 197 — Obligation to provide information, etc., to NAMA, etc., extends to provision to advisers provides that an obligation of a person under the Act to provide information or to produce a book, document or record to NAMA (or a NAMA group entity) or to provide facilities for the inspection of or taking copies from a book, document or record has effect as an obligation to provide the same to an agent or adviser acting on behalf of NAMA.

Section 198 — Operation of Data Protection Acts 1988 and 2003 provides that an obligation on a credit institution or any other person under the Act to disclose information to NAMA, a NAMA group entity or the NTMA extends to personal information within the meaning of the Data Protection Acts 1988 and 2003.

Section 199 — Disclosure of confidential information provides that except as otherwise authorised by this section or another enactment, a person will not unless authorised by NAMA, a NAMA group entity, the NTMA or authorised or obliged by law, disclose or use confidential information obtained in the manner set out in this section. This section permits appropriate disclosure to law enforcement authorities. Breach of the obligations under this section may constitute a criminal offence pursuant to section 2.

Section 200 — Obligation to pass certain information to law-enforcement authorities provides that where NAMA suspects that a participating institution may have committed a criminal offence or contravened certain specified laws, NAMA is required to make a report to the relevant authorities and agencies listed in this section including, for example, the Garda Síochána, the Revenue Commissioners, the Director of Corporate Enforcement, the Competition Authority and the Financial Regulator.

Section 201 — Provision of information to Revenue Commissioners provides for the disclosure of certain information by NAMA and the Revenue Commissioners to each other.

Section 202 — Disclosure by regulatory authorities provides that, in accordance with applicable law, the Minister, the Governor of the Central Bank and the Financial Regulator may disclose to each other any information that any of them receives concerning a participating institution or any of its subsidiaries.

PART 12

CONDUCT OF PARTICIPATING INSTITUTIONS

Section 203 — Directions in relation to conduct of participating institutions provides that the Financial Regulator, with the approval of the Minister, may give a direction to a participating institution in order to achieve the purposes of the Act.

Section 204 — Reporting by participating institutions provides that the Financial Regulator may direct a participating institution in writing to make any report that the Financial Regulator considers necessary to monitor compliance with its obligations under this Part. This section also provides that the Minister may direct the Financial Regulator to require such reports and may make regulations providing for the making by participating institutions of periodic reports, specifying the frequency and form of such reports and the matters that such reports will address.

Section 205 — Restructuring plans provides that the Minister, after consulting with the Governor of the Central Bank and the Financial Regulator, may direct a participating institution to draw up or amend within a specified period a restructuring plan for the purposes of the Act. This section also provides that the Minister, after consulting with the Governor of the Central Bank and the Financial Regulator, may direct a participating institution to submit to the Minister for approval a business plan. This section also makes provision for related matters.

Section 206 — Compliance with directions provides that, where the Financial Regulator is of the opinion that a participating institution has failed to comply with a direction under this Part, the Financial Regulator may apply to the High Court for an order that the

institution comply with the direction. This section also provides for related matters.

PART 13

MISCELLANEOUS

Section 207 — Avoidance of certain transactions provides that where, on the application of NAMA or a NAMA group entity it is shown to the satisfaction of the High Court that an asset of a debtor and certain other person was disposed of and the effect of that disposal was prejudicial to NAMA or the NAMA group entity in the manner set out in this section, the High Court may declare the disposition to be void if in the High Court's opinion it is just and equitable to do so.

Section 208 — Provision of tax information to NAMA provides that where shares in a company are acquired by NAMA, a NAMA group entity or certain other specified persons and, as a consequence of that acquisition, a charge to tax by virtue of a clawback of relief is imposed, the person from whom the shares are acquired will inform NAMA or other acquiring company of the charge and the amount of tax or duty due.

Section 209 — NAMA, etc., not to make payment in certain circumstances provides that where NAMA or a NAMA group entity is obliged to pay an amount of money to a debtor or other specified person, NAMA or the NAMA group entity will not make any such payment until that person either delivers a valid tax clearance certificate issued by the Collector-General or the Collector-General confirms that he or she has no objection to the payment. This section also provides for related matters.

Section 210 — NAMA exempt from certain taxes provides that income and gains arising to NAMA or a NAMA group entity will be exempt from income tax, corporation tax and capital gains tax. Debt securities issued by NAMA or on its behalf shall be taken as issued subject to the condition that the interests on the debt securities shall be paid without deduction of tax.

Section 211 — Disapplication of certain provisions of Competition Act 2002 and Credit Institutions (Financial Support) Act 2008 provides that parts 2 and 3 of the Competition Act 2002 and section 7 of the Credit Institutions (Financial Support) Act 2008 do not apply to the acquisition by NAMA of bank assets under the Act.

Section 212 — NAMA, etc., not to be taken to be carrying on banking business etc. provides that neither NAMA or a NAMA group entity will be taken to be providing a service or carrying on an activity which would require it to be authorised or regulated by the Central Bank, except pursuant to certain provisions specified in this section.

Section 213 — Application of laws in relation to netting agreements, etc. provides that nothing in the Act affects the operation of certain provisions specified in this section in relation to an agreement to which a participating institution is a party.

Section 214 — Certain bank assets not invalidated provides that an acquired bank asset is not invalidated or rendered void, voidable or unenforceable as against NAMA or a NAMA group entity or a successor in title by virtue of certain provisions of the Companies

Acts or the operation of certain rules of law. This section also provides that a charge or security that secures an acquired bank asset that is required to be stamped, but has not been stamped or is insufficiently stamped, is not inadmissible in evidence or unenforceable only by reason that it is unstamped or insufficiently stamped.

Section 215 — Nothing done under this Act to be reorganisation or winding-up measure provides that nothing under the Act constitutes a reorganisation or winding-up measure for the purpose of the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004) or the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2003 (S.I. No. 168 of 2003).

Section 216 — Operation of certain provisions of Land Registration Rules 1972 to 2008 provides that an officer of NAMA, or an adviser of NAMA or person nominated in writing by the Chief Executive Officer of NAMA may inspect and take copies of any document relevant to an acquired bank asset filed in the Land Registry.

Section 217 — Offence of lobbying NAMA, etc. provides that, subject to certain exceptions, a person who communicates with, amongst others, NAMA and a NAMA group entity, with the intention of influencing the making of a decision in relation to the performance of the functions of NAMA or the NAMA group entity, commits an offence. This section also provides for related matters.

PART 14

REVIEW OF NAMA

Section 218 — Triennial review of NAMA's progress provides that as soon as may be after 31 December 2012 and subsequently every three years, the Comptroller and Auditor General will assess and report to the Minister on the extent to which NAMA has made progress toward achieving its overall objectives. A copy of the report will be laid before each House of the Oireachtas.

Section 219 — Review of achievement of NAMA's purposes provides that the Minister may at any time require NAMA to report to the Minister regarding progress and the achievement of NAMA's purposes and that as soon as may be after 31 December 2012, and subsequently every five years, the Minister will assess the extent to which NAMA has made progress toward achieving its overall objectives and will decide whether continuation of NAMA is necessary.

PART 15

AMENDMENT AND MODIFICATION OF OTHER ENACTMENTS

Section 220 — Operation of certain provisions of Companies Act 1963 provides that a reference to a company in section 60(1) or 72(1) of the Companies Act 1963 will be taken not to include a NAMA group entity and that section 286 of the Companies Act of 1963 will not be taken to invalidate or render void a payment made to NAMA or to another person at NAMA's direction.

Section 221 — Operation of certain provisions of Companies (Amendment) Act 1983 provides that a reference to a company in

section 41(1), or subsection (1) or (3) of section 45 of the Companies (Amendment) Act 1983 will not be taken to include a NAMA group entity.

Section 222 — Amendment of the Central Bank Act 1942 provides that the Central Bank Act 1942 is amended as specified in Part 1 of Schedule 2.

Section 223 — Amendment of the Companies Act 1963 provides that the Companies Act 1963 is amended as specified in Part 2 of Schedule 2.

Section 224 — Amendment of Companies (Amendment) Act 1990 provides that the Companies (Amendment) Act 1990 is amended as specified in Part 3 of Schedule 2.

Section 225 — Amendment of Finance Act 1970 provides that section 54 of the Finance Act 1970 is amended as specified in Part 4 of Schedule 2.

Section 226 — Amendment of Landlord and Tenant (Amendment) Act 1980 provides that the Landlord and Tenant (Amendment) Act 1980 is amended as specified in Part 5 of Schedule 2.

Section 227 — Amendment of National Treasury Management Act 1990 provides that the National Treasury Management Act 1990 is amended as specified in Part 6 of Schedule 2.

Section 228 — Amendment of Planning and Development Act 2000 provides that the Planning and Development Act 2000 is amended as specified in Part 7 of Schedule 2.

Section 229 — Amendment of Stamp Duties Consolidation Act 1999 provides that the Stamp Duties Consolidation Act 1999 is amended as specified in Part 8 of Schedule 2.

Section 230 — Amendment of Taxes Consolidation Act 1997 provides that the Taxes Consolidation Act 1997 is amended as specified in Part 9 of Schedule 2.

Section 231 — Amendment of Value-Added Tax Act 1972 provides that the Value-Added Tax Act 1972 is amended as specified in Part 10 of Schedule 2.

Schedule 1 — Powers of Statutory Receivers

Schedule 2 — Amendments of Other Acts

*An Roinn Airgeadais,
Meán Fómhair, 2009.*