



**Comptroller and Auditor General  
Special Report**

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**NAMA's management and disposal of the  
Project Nantes loans**



# Report of the Comptroller and Auditor General

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## NAMA's management and disposal of the Project Nantes loans

I have, in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act 1993, carried out an examination of the National Asset Management Agency's acquisition and management of certain loans and their subsequent disposal through a loan sale called Project Nantes.

This report was prepared on the basis of information, documentation and explanations obtained from the National Asset Management Agency (NAMA). NAMA and the Department of Finance were asked to review and comment on the draft report. I have taken into account, as appropriate, the comments received.

References to any third parties (named or otherwise) are incidental to the purposes of assessing NAMA's discharge of its functions. Consequently, the report should not be read as constituting any comment, opinion or judgment in respect of any third party.

I hereby submit my report for presentation to Dáil Éireann in accordance with Section 11 of the Act.



**Seamus McCarthy**  
**Comptroller and Auditor General**

18 December 2019



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## Summary

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## Summary

The National Asset Management Agency (NAMA) was established in 2009 to acquire property-related loans from Irish financial institutions to assist in their stabilisation. NAMA was to hold and manage the loans temporarily, and dispose of them so as to obtain the best achievable financial return.<sup>1</sup>

During 2018, concerns were raised with the Committee of Public Accounts of Dáil Éireann and with the Office of the Comptroller and Auditor General about the sale by NAMA in 2012 of certain loans, to a Luxembourg-based company, Clairvue-Nantes Luxco SARL (Clairvue). The concerns raised about the loan sale, which was referred to by NAMA under the code name Project Nantes, were around

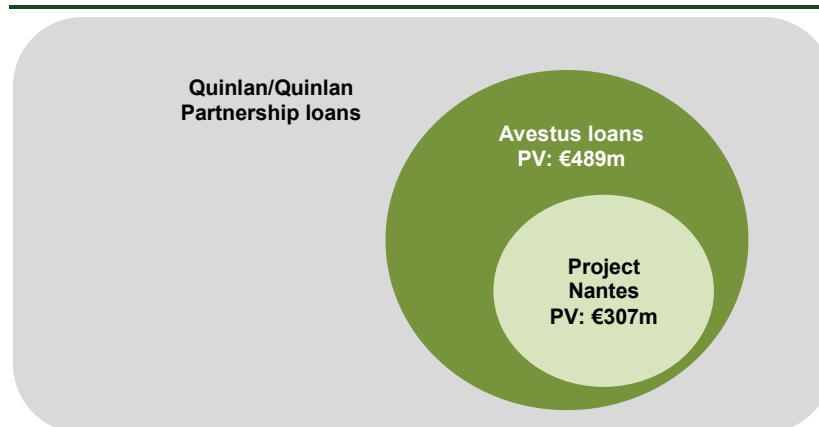
- the adequacy of the process used by NAMA when selling the Project Nantes loans
- the price achieved for the loans
- whether the sale had breached statutory restrictions on the sale by NAMA of bank assets.

The Comptroller and Auditor General decided to carry out an examination of NAMA's acquisition, management and disposal of the loans in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act 1993.

### Acquisition of the loans by NAMA

The Project Nantes loans were part of a bigger portfolio of loans being managed by a firm of investment managers called Avestus Capital Partners (Avestus). Avestus was formed in March 2010 by four principals of the previous five-person Quinlan Partnership (the QP partners). It took on the asset management business and staff of the Quinlan Partnership, but the Quinlan Partnership remained liable to repay the loans. When NAMA acquired the Avestus loans in 2010, they were classified as part of a larger Quinlan debtor connection (see Figure 1).<sup>2</sup>

**Figure 1 Loan portfolio relationships, par debt at acquisition**



<sup>1</sup> Section 10, National Asset Management Agency Act 2009.

<sup>2</sup> The scope of the Avestus loan portfolio was defined in NAMA's correspondence with the PAC (in 2018). See Appendix A.

Source: NAMA. Analysis by the Office of the Comptroller and Auditor General.

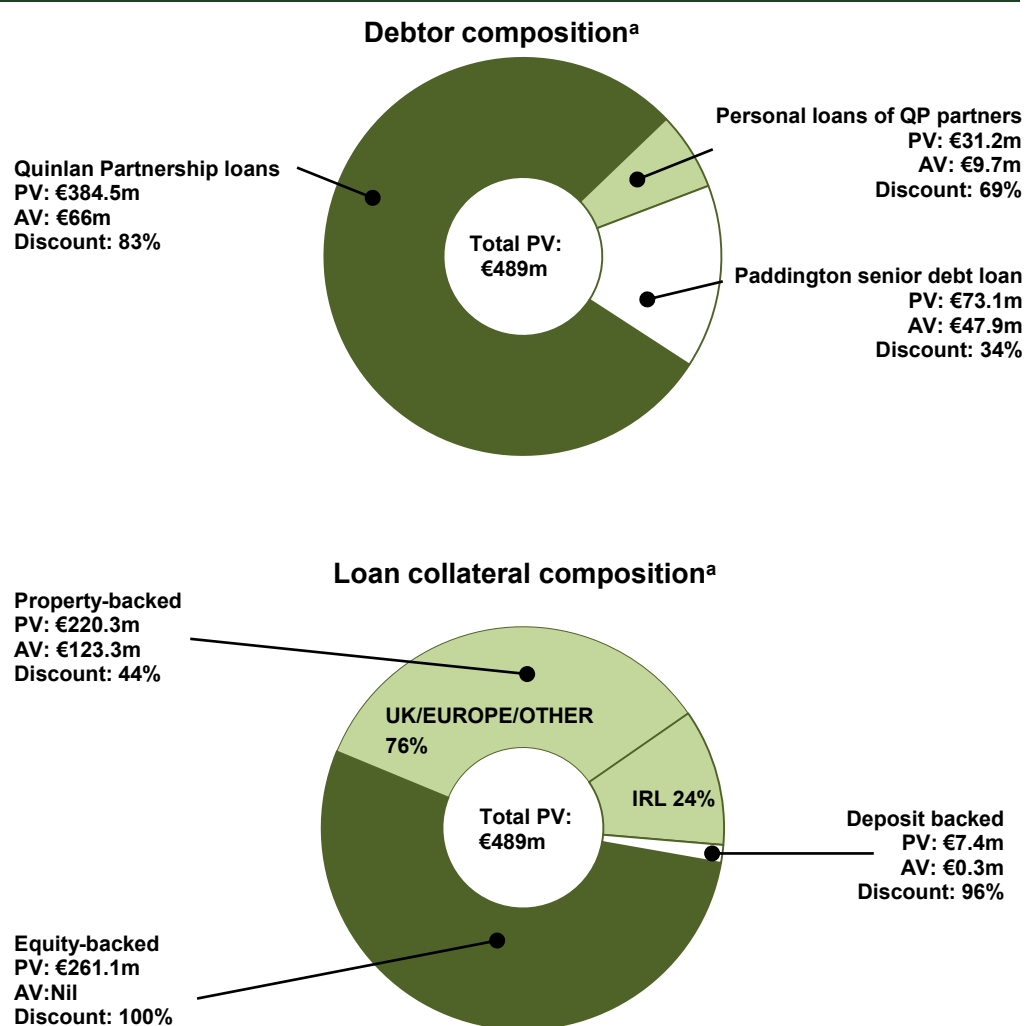
Note: a PV = par value of loans at acquisition by NAMA.

The Avestus loan portfolio acquired by NAMA comprised a total of 165 separate loans, with a combined par value at acquisition of €489 million.<sup>1</sup> The portfolio comprised

- loans with a par value of €220 million backed by a first charge on property collateral
- loans backed by an equity interest in property/developments with a par value of €261 million<sup>2</sup> and
- two 'deposit-backed' loans with a par value of €7.4 million.

The collateral behind the property-backed loans was widely geographically dispersed. Around a quarter was located in Ireland (see Figure 2). The rest was located in a range of European countries and in the US. A substantial part of the equity-backed loans was related to properties located in other European countries.

**Figure 2 Composition of the Avestus loans at acquisition (2010)**



1 Par value refers to the full amount owed by the borrower based on the original terms and conditions with the participating institutions and without taking account of any discount applied by NAMA when acquiring the loan.

2 Figure 2.3 (page 21) presents an explanation of equity-backed loans.

Source: NAMA. Analysis by Office of the Comptroller and Auditor General.

Key: PV = par value at acquisition

AV = acquisition value

Discount % = the effective discount imposed by NAMA on participating institutions

Note: a Acquisition values shown are inclusive of a foreign exchange adjustment which reduced NAMA's cost of acquisition by 1%.

The Avestus loans were acquired in line with NAMA's standard acquisition policies and procedures, including property and loan valuations. NAMA paid €123.6 million for the loans — an average discount of 75%. All the equity-backed loans were acquired at an effective nil value, reflecting NAMA's general view that returns on such loans were highly uncertain.

### NAMA's management of the Avestus loans

NAMA's standard operating model required debtor connections to submit business plans, setting out how they proposed to discharge their debt to NAMA.

In February 2011, the QP partners submitted a business plan to NAMA in relation to the Quinlan Partnership loans, which was subsequently generally referred to as the 'Avestus business plan'. For planning purposes, NAMA linked another property-backed loan secured on an office development in Paddington, London, with the Quinlan Partnership loans. NAMA identified two potential options for working out that loan portfolio. These were

- a medium to long-term mixed process of 'sell and hold' along the lines proposed in the Avestus business plan, or
- a short-term option involving completion of asset sales already in progress combined with an immediate refinancing of the remaining loans.

A paper presented to the NAMA Board in July 2011 favoured the short-term refinancing option so long as a target level of proceeds (€125.5 million) was achieved from holding and disposal of the assets. This target was based on NAMA's then estimated cost of acquisition of the loans i.e. €100.7 million, and expected advances of additional credit to Avestus of €4.2 million (i.e. a total of €104.9 million). The NAMA Board formally approved the strategy outlined in the paper.

NAMA has confirmed that it informed Avestus of the repayment target it aimed to achieve, and that Avestus had six months to meet the target. Despite the importance of this exchange of information, NAMA did not document the communication process, or put its proposal in writing to Avestus. As a result, there is no record of the scope of the proposal put to Avestus, in terms of the loans included in the offer.

### Proceeds of the Avestus loans

NAMA realised a total of €204.1 million in disposal and non-disposal<sup>1</sup> proceeds from the whole Avestus loan portfolio. Taking account of the €123.6 million<sup>2</sup> acquisition cost, and a further €12.7 million advanced by NAMA, the total outlay on the loans was €136.3 million. As a result, NAMA achieved an overall cash surplus of €67.8 million on the Avestus portfolio. NAMA's internal rate of return on the whole portfolio was 29%.

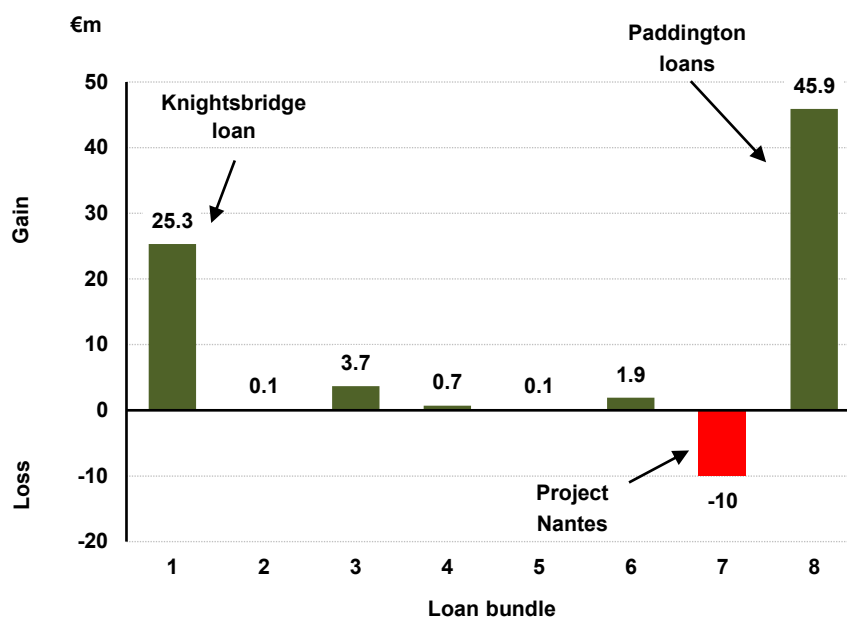
NAMA has stated that given the acquisition value for the Avestus loans of €123.6 million, it is strongly of the view that the value of the proceeds it received was the best commercial outcome achievable at that time and implemented in full the NAMA Board approved strategy of disposing of the whole Avestus connection and not different parts on a piecemeal basis.

The Avestus loans were disposed of or settled in eight transactions/loan bundles.<sup>3</sup> The gains/losses generated for each block are summarised in Figure 3. There was a significant loss only in the case of Project Nantes.

1 Non-disposal proceeds include rent, service charges, interest payments, etc.

2 The July 2011 Board paper had underestimated the acquisition cost by almost €23 million, mainly due to the omission of certain loans and a significant error in the acquisition value of one loan.

3 The bundles refer to assets disposed of at the same time to the same purchaser. Further detail is provided at Appendix B.

**Figure 3 Avestus loans cash outturn, 2010 to 2013**

Source: NAMA. Analysis by the Office of the Comptroller and Auditor General.

### ***Windfall gain of €25 million (loan 1)***

One of the equity-backed loans in the Avestus portfolio accounted for €51 million or 10.5% of the par value at acquisition. This was acquired by NAMA at an effective nil acquisition cost. Before the loan transferred to NAMA on 1 November 2010, the related property located in Knightsbridge, London had been sold. NAMA received €25.3 million in respect of the equity interest in the loan. This represented a windfall gain for NAMA.

The residual balance on the loan was transferred to Clairvue with the Project Nantes loans.

### ***Loan write-off of €6.1 million (loan 2)***

Loan 2 was secured on a Quinlan Partnership equity holding attached to a substantial development property in Dublin. The senior debt on the property was a loan to a different NAMA debtor, also acquired by NAMA. NAMA acquired loan 2 for €1. At the time, the par value of the loan was €6.1 million.

The related property was sold in April 2011, and the proceeds of the sale were credited to the senior loan debtor. None of the proceeds were available to repay the Avestus equity-backed loan. Nevertheless, the Avestus loan was written off by NAMA. Subsequently, for the purposes of the repayment target, NAMA treated the loan as having been repaid in full.

### ***Other loan transactions (loans 3 to 6)***

Other loans in the Avestus portfolio were resolved through a number of Avestus-managed property sales in the second half of 2011 (loans 3 to 5) or full repayment of the par debt (loan bundle 6). In these cases, NAMA broke even or made small gains.

The outstanding balances on loans 3 and 4 were subsequently written off by NAMA. The outstanding balance on loan 5 transferred to Clairvue with the Project Nantes loans.

### ***Gain of €46 million from holding loans (loan bundle 8)***

NAMA paid almost €48 million for the Paddington senior debt loan, when the related property was 29% let. It also acquired a QP partner's equity-backed loan related to the property, for which it effectively paid nothing. In October 2011, NAMA agreed in principle to a proposal from third-party investors introduced by Avestus who were willing to refinance the senior loan for €55 million. In early 2012, NAMA became aware of additional leases that had been signed with new tenants bringing the occupancy level to around 62%, and significantly increased the value of the property. NAMA decided to change its strategy and to retain both loans. Ultimately, NAMA advanced a further €10.3 million to meet fit-out and other costs. When the finished development was sold in mid-2013, NAMA realised a total of €104.1 million on the two loans. The resulting cash surplus on the Paddington loans was €45.9 million.

### **The Project Nantes loan sale**

The bundle of residual loans included in the Project Nantes sale was mixed, comprising loans related to properties in Ireland, the UK and a wide range of other European states. The types of property included hotels, offices, and retail, industrial and residential units. While the bulk of the portfolio comprised Quinlan Partnership loans, personal loans of the QP partners were also included in the sale. The personal loans had a par value at acquisition of €28.7 million, for which NAMA paid €9.3 million. This payment comprised €9 million paid for property-related loans and €0.3 million paid for 'deposit-backed' loans.

### ***Avestus offer***

In August 2011, Avestus informed NAMA that it had sourced a firm which was interested in acquiring the remaining Avestus debt from NAMA. This firm was identified as Clairvue Capital Partners (Clairvue), a private equity firm based in San Francisco.

In October 2011, Clairvue submitted a schedule of loans it proposed to acquire and made an offer of €29 million for the loans, subject to completion of its due diligence. A month later, NAMA agreed to grant 'exclusivity' to Clairvue in relation to the loan sale until the end of January 2012. A sale was agreed between the parties in January 2012, for a price of €26.67 million. The main reason for the reduction (of €2.3 million) from the initial Clairvue offer was NAMA's decision to retain the equity-backed loan related to the Paddington property.

### ***NAMA's sales process***

Securing independent current asset valuations prior to any disposals, along with a competitive marketing process, are the normal strategies for ensuring financial returns are maximised. Where a competitive process is not being followed, independent current valuations become particularly important.

The Minister for Finance approved a code of practice for NAMA's disposal of bank assets in July 2010. This required NAMA to obtain current independent appraisals of bank assets prior to disposal. The requirement for pre-sale asset valuations was reiterated in NAMA's own loan sales policy, which was approved by the NAMA Board on 8 September 2011.<sup>1</sup>

In the case of the Project Nantes loan sale in January 2012, NAMA did not seek current valuations of the loans or of the underlying property collateral, and did not pursue a competitive sales process.

<sup>1</sup> NAMA's loan sale policy states that "in accordance with the NAMA code of practice on the disposal of bank assets, the loan sale advisor (or a third party appointed to work with the advisor) must provide a desktop valuation of each of the assets to be sold".

### **Sales price**

Absent the assurance that would have been provided by independent current asset valuations and a competitive process, the repayment target set by the Board is significant. NAMA had informed Avestus of the overall repayment target, and agreed adjustments to the target with Avestus as assets were sold or withdrawn. As a result, the residue of the repayment target became NAMA's price for the Project Nantes loans.

Errors and poor analysis by NAMA meant that the residual repayment target for the Project Nantes loans was significantly lower than it should have been. NAMA did not identify that the €9.4 million it had paid the banks for the property-backed personal debts of the QP partners had not been built into the Board-approved refinancing target. NAMA also failed to see that the acquisition value of one of the loans underpinning the target had been understated by €16.1 million. Had the full scope of the loan portfolio been consistently and accurately reflected in the original repayment target, the residual target to be achieved through the Project Nantes loan sale would have been of the order of €56 million i.e. about €29 million more than was achieved in the sale.

Had NAMA set a higher repayment target for the Project Nantes loans, there is no guarantee that a sale could have been concluded at that higher price. Where a competitively based market price for the Project Nantes loans could have been struck cannot now be known. Nevertheless, it is difficult to conclude that NAMA secured the best possible price for the sale of the Project Nantes loans.

Without a contemporaneous asset valuation and a competitive sales process, there is no basis to conclude that NAMA achieved the best possible financial outturn from the Project Nantes loan sale.

### **Compliance with section 172 of the NAMA Act**

The requirements of section 172 (3) of the NAMA Act 2009 (the NAMA Act) prohibits NAMA from selling a property to a debtor (or an associated debtor, as defined in the NAMA Act) who is in default in relation to any loan acquired by NAMA. However, this restriction is limited, and does not apply to the sale by NAMA of a loan/loans.

Notwithstanding the limitations of application of section 172, NAMA required those purchasing loans to make a declaration confirming that the purchaser was not connected to the debtor whose loans it was purchasing.

Clairvue and the QP partners separately made the declarations required by NAMA. In addition, Clairvue disclosed to NAMA the nature of the fee and performance-related compensation arrangements Avestus had with Clairvue, including arrangements for a number of the QP partners to redeem personal loans at a future date. NAMA stated that it considered those arrangements at the time, and considered they were an acceptable part of the transaction that did not impact on NAMA.

NAMA has stated that it was not made aware of the appointment of one of the directors in Avestus (not a NAMA debtor) as a director of Clairvue. However, following recent enquiries with Clairvue, NAMA has concluded that the appointment did not result in Clairvue becoming a connected person of the QP partners or of Avestus Capital Partners.

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## **NAMA's management and disposal of the Project Nantes loans**

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# 1 Introduction

**1.1** During 2018, concerns were raised with the Dáil Éireann Committee of Public Accounts (PAC) and with the Office of the Comptroller and Auditor General about the sale by NAMA in 2012 of certain loans, to a Luxembourg-based company, Clairvue-Nantes Luxco SARL<sup>1</sup> (Clairvue). The concerns raised about the loan sale, referred to by NAMA as Project Nantes, were generally around

- the adequacy of the process used by NAMA when selling the loans
- the price achieved for the loans
- whether the sale had breached the requirements of section 172 (3) of the NAMA Act 2009 (the NAMA Act), which prohibits NAMA from selling a property to a debtor or a connected person, as defined in the NAMA Act, who is in default in relation to any NAMA loan.

**1.2** In a sequence of correspondence, the PAC asked NAMA about the concerns that had been raised.<sup>2</sup> In its replies, NAMA's main assertions in relation to the Project Nantes disposal were

- The Project Nantes loans were part of a bigger portfolio of loans, called the Avestus loans.
- The par debt of the Avestus loans at acquisition was €489 million.
- In July 2011, the Board approved a specific cash sum as a recovery target for the Avestus loans.<sup>3</sup>
- Total proceeds from the Avestus loans amounted to around €200 million, and were well in excess of the recovery target set by the NAMA Board.
- The Project Nantes sale gave rise to no conflicts of interest within the meaning of the Section 172 provisions of the NAMA Act.

**1.3** Independently of the PAC enquiries, the Office of the Comptroller and Auditor General made enquiries of NAMA about the Project Nantes loans. Following review of the documentation and information initially provided by NAMA, the Comptroller and Auditor General decided to carry out an examination of NAMA's acquisition, management and disposal of the loans, as provided for in Section 9 of the Comptroller and Auditor General (Amendment) Act 1993.

**1.4** References in this report to any third parties (named or otherwise) are incidental to assessing NAMA's discharge of its functions. Consequently, the report should not be read as constituting any comment, opinion or judgment in respect of any third party.

1 SARL — société à responsabilité limitée.

2 The correspondence is summarised in Appendix A.

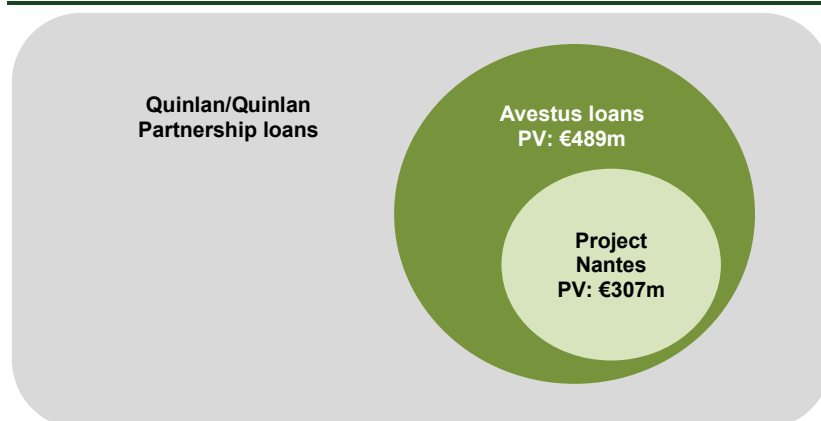
3 The recovery target amount was not disclosed in the correspondence.



## 2 Acquiring and connecting the loans

- 2.1** NAMA's general strategy to manage the loans it acquired was to organise them by reference to 'debtor connections' i.e. grouping connected loans on the basis of what was considered by NAMA to be a cohesive and easier to manage bundle. Over 800 debtor connections were each given a unique identifying number by NAMA. After it acquired loans, NAMA asked each defined debtor connection to submit detailed business plans setting out how the debtor proposed to pay the debt due. Many of the borrowers had debts with a number of the NAMA participating institutions (and in many cases, with other non-NAMA banks).<sup>1</sup>
- 2.2** On acquisition, NAMA classified the various loans that subsequently became the Avestus loans as part of what was known as the Quinlan/Quinlan Partnership connection.
- 2.3** The Quinlan Partnership was established in 1989 and managed properties and investments on behalf of private and institutional clients. The Quinlan Partnership comprised five individuals up to July 2009 when one partner resigned.<sup>2</sup> In March 2010, Avestus Capital Partners LLC (Avestus) was formed comprising the remaining four partners in the Quinlan Partnership (hereafter, the QP partners) and five members of the senior management team of the Quinlan Partnership. Avestus took on the asset management business and staff of the Quinlan Partnership, but the loans remained the debts of the Quinlan Partnership and of the QP partners.
- 2.4** Avestus was not a NAMA debtor and was never formally created as a debtor connection. However, NAMA has stated that from a case management perspective, the Avestus 'connection' was always considered separately, to the extent possible given the overlap of some assets with those of the Quinlan connection. The relationship between the various loan portfolios is summarised in Figure 2.1.

**Figure 2.1 Loan portfolio relationships, and par debt at acquisition**



<sup>1</sup> The institutions participating in NAMA were AIB, Bank of Ireland, Anglo Irish Bank, the Educational Building Society and the Irish Nationwide Building Society.

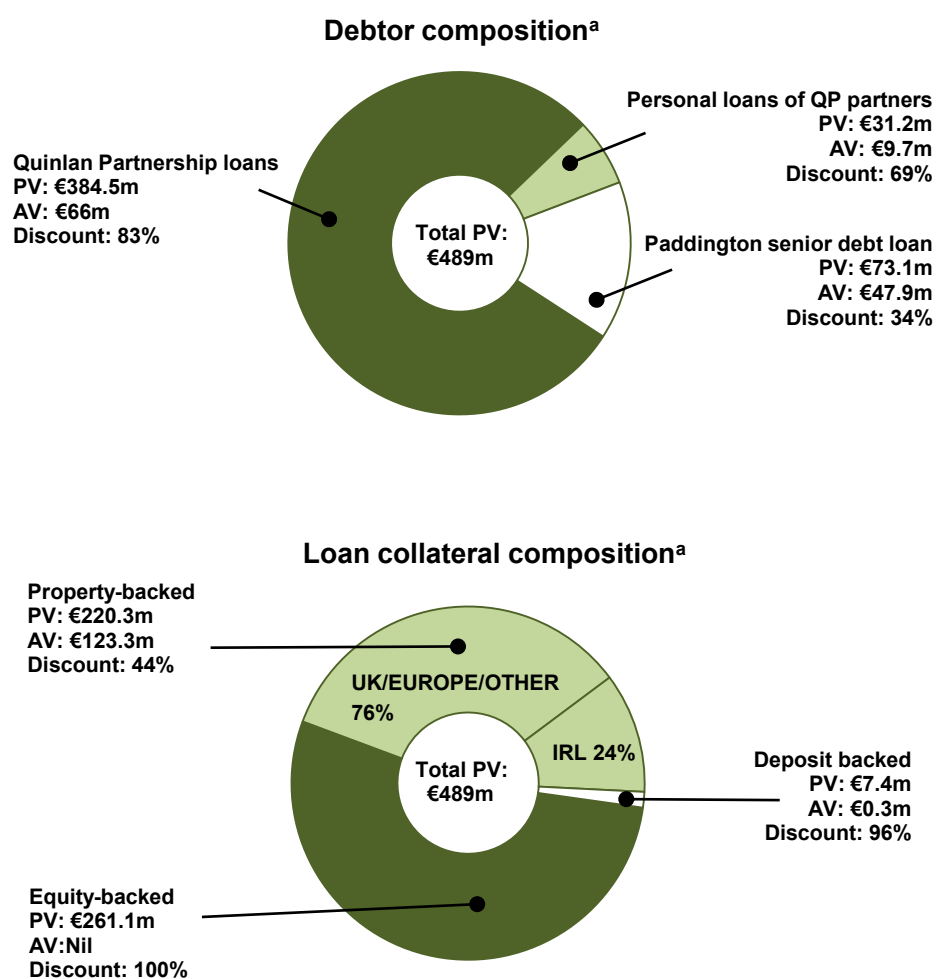
<sup>2</sup> This was before NAMA was established.

Source: NAMA. Analysis by the Office of the Comptroller and Auditor General.

Note: a PV = par value of loans at acquisition by NAMA

- 2.5** The Avestus loan portfolio, as subsequently defined by NAMA,<sup>1</sup> comprised 165 separate loans in 42 loan packs.<sup>2</sup> The loans were secured by a mix of property-backed assets, equity-backed property loans and deposit-backed loans (see Figure 2.2).<sup>3</sup> The collateral behind the property-backed loans was widely geographically dispersed. Around a quarter was located in Ireland (see Figure 2.2). The rest was located in a range of European countries and in the US. A substantial part of the equity-backed loans was related to properties located in other European countries. The property collateral associated with the loans included development property, commercial property (office blocks, industrial buildings, retail and hotels) and some residential loans.

**Figure 2.2 Composition of the Avestus loans at acquisition by NAMA (2010)**



<sup>1</sup> The scope of the Avestus loans was defined by NAMA in its 2018 correspondence with the PAC.

<sup>2</sup> In some cases, the same collateral was provided by a borrower for more than one loan. Loans with the same collateral were valued together and referred to as a 'loan pack'. Throughout this report, the term 'loan' refers to both individual loans and/or loan packs.

<sup>3</sup> A listing of the loans is presented Appendix B.

Source: NAMA. Analysis by Office of the Comptroller and Auditor General.

Key: PV = par value at acquisition

AV = acquisition value

Discount % = the effective discount imposed by NAMA on participating institutions

Note: a Acquisition values shown are inclusive of a foreign exchange adjustment which reduced NAMA's cost of acquisition by 1%.

**2.6** Overall, the Avestus loans comprised

- Quinlan Partnership loans with a combined par value of €384.5 million
- personal loans to the QP partners as individuals, with a combined par value of €31.2 million
- a loan of €73.1 million to a company (Quinlan Private Paddington Holdings SARL), that was not a debt of either the Quinlan Partnership or the Avestus partners. This loan is discussed in more detail in Chapter 4.

**2.7** NAMA acquired the loans from the participating institutions at different discounts to the par value, related to the nature of the loan security.

- €261 million of the loans were equity-backed (see Figure 2.3). NAMA paid the participating institutions only a nominal €1 for each of these loans — in effect, a 100% discount on the par value.
- €220 million were property-secured loans, with an acquisition value of €123.3 million — an average discount of 44%.
- €7.4 million of the loans were secured on deposit accounts. NAMA paid €0.3 million for these loans — a discount of 96%.

**Figure 2.3 Equity-backed property loans**

Certain property investors operated by creating 'geared investments' i.e. investments partially funded by senior debt secured on the property, and partially by funds from equity investors. Geared investments provide an opportunity for high returns for equity investors when property prices rise, but carry the risk of high losses if property values fall.

One typical model involved buying a property that was initially funded completely by debt, comprising

- senior debt from a bank secured on the property, to fund between 50% and 80% of the investment, and
- the balance funded by an 'equity bridge loan', also from a bank, taken out by the 'principal' investors.

The principal investors subsequently sold the 'equity' in the investment to third-party private investors, and used the sales proceeds to repay the equity bridge loans.

In some instances, not all of an equity bridge loan was replaced by third-party equity investors — either the principal investors wished or were required to co-invest alongside other investors; or debt that could not be sold to equity investors remained with the principal investors by default.

The value of these subordinated equity holdings depended on a surplus being available after senior debt on an investment was repaid. NAMA took the general view that the realisation of any surplus from equity-backed loans was highly uncertain. As a consequence, it valued all the equity-backed loans it acquired at zero.

Source: Analysis by the Office of the Comptroller and Auditor General

**2.8** NAMA followed its standard methodology for acquisition of the Avestus loans.<sup>1</sup>

- The equity-backed loans were, in effect, second charges on the related investment properties. In some cases, NAMA also acquired the associated senior debt. In other cases, the senior debt secured on the related properties was held by banks other than those participating in the NAMA scheme. NAMA has stated that as a result it had no control over the timing of the disposal of the underlying properties for those loans, and that any value attaching to the equity holdings was very uncertain.
- All the property-backed loans were valued on the basis of the assessed value of the collateral properties as at November 2009.
- All of the loans were valued and acquired with effect from agreed dates, but continued to be managed for a period by the participating institutions, until they were formally transferred to NAMA.<sup>2</sup> NAMA charged interest on the loans from the agreed dates and any income received — repayments, rents, management fees, etc. — between the loan valuation date and the loan transfer date accrued to NAMA. Transfer to NAMA of all but two of the Avestus loans was completed by December 2010.<sup>3</sup>

<sup>1</sup> NAMA's general loan acquisition process is set out in C&AG Special Report 76, *NAMA — Acquisition of Bank Assets*, October 2010.

<sup>2</sup> For each tranche of loans it took on, NAMA set a loan valuation date at which loan balances were agreed with the participating banks and confirmed in the due diligence process.

<sup>3</sup> Loan 7.7 and one of the loans in 7.8.

***Disposal of Knightsbridge loan***

**2.9** Anglo Irish Bank had advanced various loans related to an office development in Knightsbridge London: a senior debt loan collateralised by the property; and an equity-back loan (loan 1) with a par value of €51.4 million which transferred to NAMA in November 2010 at nominal consideration, in line with its general policy. The property had been sold in June 2010, and the senior debt had been cleared. There was a significant surplus available for the equity investors, but not enough to clear the full loans. Because it completed the acquisition at a cost of €1, NAMA received a €25.3 million windfall gain in respect of this loan (see Figure 2.4).

**Figure 2.4 Windfall gain from an equity-backed loan (loan 1)<sup>a</sup>**

The par debt on an equity-backed loan related to an office development in Knightsbridge, London at the loan valuation date (31 March 2010, the effective acquisition date) was €51.4 million. A legal certificate for the loan drawn up by the NAMA legal adviser as part of the acquisition due diligence process noted that the information provided by the participating institution (Anglo Irish Bank) had indicated that there was no value attributable to the loan.

In October 2010, prior to the loan transferring to NAMA, Anglo Irish Bank provided supplementary information to NAMA as part of the continuing due diligence process. It pointed out that the office development had been sold on 21 June 2010. Following redemption of the senior debt and payment of costs, an amount of around £116 million was available for distribution to the equity investors, and a total of €24.5 million in respect of the Quinlan Partnership share had been repaid to Anglo Irish Bank in tranches in June and August 2010. A further payment was due to be repaid at a future date. That later payment amounted to just over €800,000.

The proceeds of the sale totalling €25.3 million were transferred to NAMA.

The par debt balance on the equity-backed loan after these payments was €26.1 million.

NAMA paid €1 for the loan. The loan transferred to NAMA on 1 November 2010 as part of a bulk transfer of loans prior to completion of due diligence. Acquisition of the loan was finalised on 17 January 2011.

The loan secured on the property (the senior debt) was also held by Anglo Irish Bank and had been due to transfer to NAMA. It did not transfer following the sale of the property.

Under the NAMA loan valuation process, Anglo Irish Bank could have appealed the value attributed to its loans by providing further evidence. NAMA has stated that notwithstanding the additional evidence provided by Anglo Irish Bank in September 2010, Anglo Irish Bank did not request a loan price adjustment.

Source: Analysis by Office of the Comptroller and Auditor General

Note: a The numbering of the Avestus loans is that used in Appendix B.

## Conclusions

- 2.10** NAMA did not formally designate an Avestus debtor connection, or assign a unique debtor connection number for the Avestus loans. The de facto 'Avestus connection' debt comprised a total of 165 separate loans, with a combined par value at acquisition of €488.8 million. NAMA paid €123.6 million for the loans — an average discount of 75%.
- 2.11** The Avestus loans were acquired in line with NAMA's standard acquisition policies and procedures.
- 2.12** Loan 1, an equity-backed loan accounting for 10.5% of the par value of the Avestus loans, was acquired by NAMA with effect from 31 March 2010, at an effective nil acquisition cost. The related property was sold before the loan transferred to NAMA on 1 November 2010, and NAMA received a windfall gain of €25.3 million.





### 3 NAMA's strategy for the loans

- 3.1 The QP partners submitted business plans to NAMA in February 2011 setting out how they intended to repay their debts. Separate business plans were submitted for the Quinlan Partnership loans (subsequently referred to as the Avestus business plan), and for the partners' personal debts (personal business plans). An executive summary in the Avestus plan stated that it was submitted by the QP partners, and that Avestus would execute the plan under the direction of the QP partners.

#### Independent business review

- 3.2 Independent consultants appointed to review the business plans reported to NAMA on 3 June 2011. The independent review report outlined two strategic options available to NAMA.
- **Support the proposed Avestus business plan**, which envisaged disposal of property assets and realisation of some of the equity holdings over the period 2011 to 2015, in order to reduce the Avestus debt to NAMA.
  - Pursue an **orderly short-term wind down** of the portfolio, either through a process of consent with the partners or by way of enforcement. However, the report noted that pursuit of a wind-down would be complex and difficult, given the nature of the assets under management and the complex structure used to hold assets.
- 3.3 The independent reviewers noted that the individual personal business plans and the Avestus business plan needed to be dealt with in a linked process. However, the financial projections presented by the reviewers covered only the Quinlan Partnership loans and did not include the partners' personal debts.
- 3.4 The terms of reference of the independent review noted that it had been agreed that "the property valuations performed to date by NAMA" were to be relied on for the purposes of the review. Those property valuations, as at November 2009, were used as a basis for acquiring the loans.
- 3.5 Separately, under the heading "caveats on valuations and property matters", the independent reviewers stated that "we have relied upon the information provided by the borrowers (i.e. the QP partners), and have not independently verified the accuracy of the valuations outlined and applied in the business plan ..... We have not, as agreed with NAMA project team, taken on property advisers to advise on property valuations of NAMA or the borrower".

#### Consideration by NAMA Credit Committee — June 2011

- 3.6 The NAMA Credit Committee considered the Avestus business plan and the independent business review report at its meeting of 21 June 2011.<sup>1</sup> The loan portfolio considered by the Credit Committee included the senior debt on the Paddington property (loan 8.2) — this loan had not been included in the Avestus business plan or in the analysis undertaken for the independent review.<sup>2</sup> The minutes of the Credit Committee meeting record that NAMA Portfolio Management outlined two possible strategies for the portfolio

1 The Committee members present were two NAMA Board members, the CEO and four senior NAMA executives.

2 NAMA's portfolio management unit included the Paddington loan as one of the Avestus loans because it had not been reflected in any other NAMA business plans.

- adopt a mixed 'sell and hold' disposal strategy, involving a disposal of all of the property collateral within the portfolio by June 2012, with the exception of the Paddington property or
- an immediate refinancing of the whole portfolio for €125.5 million.

**3.7** The possible refinancing of the portfolio for €125.5 million appears to have been communicated to or discussed with the QP partners by NAMA officials on 24 June 2011, but NAMA has no contemporaneous record of the substance of the communication or discussion.<sup>1</sup>

### Consideration by the NAMA Board — July 2011

**3.8** At its meeting on 6 July 2011, the Board was presented with a paper entitled *Avestus Connection Business Plan Review*. The paper was drawn up by NAMA Portfolio Management, with comments from both NAMA Credit and Risk and NAMA Lending divisions.<sup>2</sup>

**3.9** The Board paper noted a number of risks to realising the loan proceeds projected in the Avestus business plan, especially for the equity-backed loans where related senior debt had been provided by non-NAMA banks. NAMA identified as a key risk that those other banks could seek judgment against any one of the QP partners. Given the 'joint and several' basis to the equity loans, this could lead to the recoverability of the equity debt being zero.

**3.10** On the other hand, the Board paper noted that if NAMA agreed to the refinancing option, it could be walking away from potential upside for some loans, in particular in relation to the office and retail development in Paddington (loans 8.1 and 8.2). It pointed out that, given the high quality of that property and the significant potential incremental value from attracting new tenants, the optimum strategy would be to hold the property until 2015, and that earlier disposal of the loans by NAMA would allow whoever acquired the loans to benefit from the expected upside.

**3.11** The Board paper also stated that the QP partners had given full co-operation to NAMA to date, and that Avestus had reduced its overheads and personnel costs. The paper recommended that further reductions in overheads should be sought.

### Further advances to Avestus

**3.12** The Board paper also noted that the partners had made significant repayments to the participating institutions, including from the sale of the Knightsbridge property (loan 1). The partners had also met interest payments on the loans transferred to NAMA from personal cash resources but anticipated that they would be unable to continue doing so through the life of the business plan and would require NAMA to fund three capital calls in 2011, totalling €4.2m.

- One loan (loan 7.11, with a par value at acquisition of €28.2 million and a nominal acquisition value of €1) was attached to an 8.8% share of the equity in a property fund being managed by Avestus. The business plan noted that to continue as manager of the fund, Avestus would have to meet calls for further investment of around €2.1 million, including €1.7 million in 2011. If Avestus was unable to meet the capital calls, the management fee income could be under threat, and its continuation in business would be in doubt.

<sup>1</sup> The date of 24 June 2011 was referred to in an October 2011 email from a NAMA portfolio manager to QP partners. A diary entry of the portfolio manager also indicates that there was a meeting between Avestus and the portfolio manager on 24 June 2011.

<sup>2</sup> An extract of the paper is at Appendix C. A version of the paper had previously been presented to the Credit Committee on 21 June 2011.

- Another equity-backed loan (loan 7.14, with a par value at acquisition of €12.2 million and a nominal acquisition value of €1) was secured on a 16.21% holding in a retail and office property in a European country. The paper noted that in order to maximise the return, it was necessary to let the remaining vacant space. Avestus' share of the required funding to make space lettable would be €1.3 million.
- Loans 8.1 and 8.2 related to the Paddington office/retail development which was not fully let. The paper noted that supporting the capital call (€1.2 million in 2011) would protect the QP partners' equity position. The Avestus business plans projected a surplus available for the equity holders in 2015.

### **Recommendation to the Board**

- 3.13** The paper to the Board recommended that NAMA should pursue "either a refinance of the (Avestus) connection in 2011 or a 'sell and hold' disposal strategy".
- 3.14** In the event of a refinancing, the paper proposed a minimum refinancing target of €125.5 million (see Figure 3.1). This was based on the following formula
- recovery of the amount NAMA expected to pay for the loans (loan acquisition value), plus 15%, and
  - recovery of double the value of any funds advanced by NAMA, plus 15%.

**Figure 3.1 Repayment target**

	€ million
Loan acquisition value	100.7
Further capital calls	4.2
Required return on capital calls	4.2
15% overall return	16.4
<b>Target required repayment</b>	<b>125.5</b>

Source: NAMA Board paper July 2011 (for further detail see Appendix C)

- 3.15** The Board paper noted that Avestus had recently agreed the sale of two properties in London and New York with NAMA's approval. These related to loans 3 and 4. It was proposed that the proceeds from these sales would count towards meeting the repayment target.<sup>1</sup>

### **Board decision**

- 3.16** The minutes of the Board meeting of 6 July 2011 record that

*After careful consideration, the Board resolved to approve the Portfolio Management, and Credit and Risk strategy for the Avestus connection and the recommendation of the Credit Committee as set out in the document. The Board further resolved to authorise the CEO to implement the resolution of the Board.*

<sup>1</sup> €34 million of prior receipts in 2010 and 2011 did not count towards achievement of the repayment target.

### *Scope of the repayment target*

- 3.17** There is a challenge in tracking NAMA's analysis and decision-making in respect of the Avestus loans because of the portfolio changes between the various relevant records. This is compounded by a number of significant errors.
- 3.18** The paper presented to the Board stated that the overall acquisition par value for the Avestus loans was €399 million, and that NAMA estimated the loan acquisition value would be around €101 million. These figures were less than the actual acquisition amounts.
- There was a difference of around €90 million between the par value stated in the Board paper (€399 million) and the par value of all the Avestus loans acquired (€489 million). The difference is mainly accounted for by
    - omission of the par value of the personal loans of the QP partners (par value €31.2 million)
    - omission of an equity-backed loan (loan 7.10) (par value €32.2 million) and
    - inclusion of the Knightsbridge loan (loan 1) at its estimated residual par debt (€26.1 million i.e. after deduction of the windfall gain), rather than the par value at the acquisition date of €51.4 million.
  - The actual acquisition cost of the Avestus loans was €123.6 million, but the paper to the Board stated it was an estimated €100.7 million. The difference of almost €23 million is mainly accounted for by
    - omission of the amount NAMA paid to the participating institutions for the QP partners' personal loans (€9.7 million) and
    - an understatement of €16.1 million in the acquisition value of loan 7.1
    - over estimation of the loan acquisition values for other loans, while due diligence was underway — the final acquisition values were around €2.9 million lower (including as a result of currency movements).
- 3.19** Figure B1 in Appendix B sets out details of the actual and Board paper values.

### *Omission of personal loans*

- 3.20** The paper presented to the Board did not refer to the personal loans of the QP partners that had been acquired by NAMA.<sup>1</sup> These included property-backed loans for which NAMA paid €9.4 million, and so called 'deposit-backed' loans for which NAMA paid €0.3 million. Had these been included in the required repayment calculation set out in the Board paper, the repayment target would have been increased by €11.2 million (i.e. €9.7 million plus 15%).
- 3.21** Loan 7.10 (par debt €32.2 million), and loans 6 and 7.19 (par debt €1.4 million and €8.7 million respectively) were also omitted from mention in the paper for the Board, but since these were equity-backed and being acquired at nil cost, they would not have affected the repayment target.

<sup>1</sup> See Appendix C. The paper to the Board did, however, list non-NAMA debts of the QP partners.

- 3.22** NAMA has stated that the partners' personal loans were not excluded when the repayment target was set. It said that, while the personal loans were not included in the key financial tables presenting the basis for the setting of the €125.5 million repayment target, they were considered and summarised in the July 2011 Board paper. NAMA added that the Board set a repayment target for the Avestus connection as a whole and there is no interpretation other than that this included all of the connection loans, including the personal loans.
- 3.23** NAMA has also stated that certain property-backed personal loans of the QP partners were secured against personal dwellings owned jointly with other parties.<sup>1</sup> NAMA stated that this would have impacted the capability of realising the full market value of some of the underlying collateral, and that this matter was highlighted in the July 2011 Board paper.<sup>2</sup>

#### *Underestimate of loan acquisition value*

- 3.24** The acquisition value for one loan (loan 7.1) was significantly understated in the Board paper. The loan was secured on two investment properties in Dublin, an office block and an industrial property. The total par debt on the loan at acquisition was €35.3 million, apportioned as follows
- office block — 84.63% (c. €29.9 million)
  - industrial property — 15.27% (c. €5.4 million).

NAMA's due diligence process for the loan was completed in April 2010. Based on that analysis, NAMA paid the bank €18.1 million for the loan — a discount of almost 49%. The two properties generated a sizeable rental income stream for NAMA, of the order of €2 million a year.<sup>3</sup>

- 3.25** The analysis presented to the Board in July 2011 included the industrial property and attributed to it an estimated loan acquisition value of €2 million. In contrast, the office property was mistakenly treated as if it were an equity-backed loan, with a zero acquisition value. This resulted in the understatement of the loan acquisition value for the portfolio, with a knock-on impact on the proposed target for recovery.

- 3.26** If the correct acquisition value for this loan had been included in the calculation of the debt repayment target set by the Board for the Avestus loans, the target would have been €18.5 million higher (i.e. €16.1 million x 1.15).

- 3.27** NAMA has acknowledged that the acquisition value of loan 7.1 should have been €18.1 million and not €2 million as set out in the Board paper. It stated that the portion of the loan relating to the office property was mistakenly categorised as equity-backed by the independent business reviewer, and was consequently attributed a zero acquisition value. NAMA replicated the financial information from the independent business review in the paper for the Board, without identifying the error.

1 NAMA paid €1.7 million to acquire personal loans secured on personal dwellings. Regular repayments were made to NAMA in respect of these loans.

2 The examination team has been unable to identify any such reference in the Board paper.

3 From acquisition (April 2010) to final disposal of the loans to Clairvue in February 2012, NAMA received €3.65 million in non-disposal income in respect of this loan. NAMA stated that the office block was a single let to a tenant with the lease due to expire on 25 March 2013 and it was understood that the tenant did not intend to renew the lease at expiry.

*Loans with Irish property collateral*

- 3.28** In relation to the understatement of the acquisition value of loan 7.1, and some of the partners' personal loans, NAMA has also pointed out that the collateral in question was property assets located in Ireland, and that the value of these had declined significantly between November 2009 — the reference date for valuing property collateral for loans acquired by NAMA — and December 2011 when the Project Nantes sale was being negotiated. NAMA did not seek fresh asset valuations in advance of the sale.
- 3.29** In response to the findings of this examination, NAMA (in 2019) commissioned independent valuations, as at December 2011, of some of the Avestus loan collateral properties in Ireland.<sup>1</sup>
- In respect of loan 7.1, the two collateral properties had been valued by NAMA at acquisition at €13.73 million (i.e. November 2009 valuation).<sup>2</sup> The valuers (in 2019) estimate that at December 2011, the properties would have been worth €8.25 million — a drop in value of 40% in two years.
  - Eight Irish properties that were collateral for the QP partners' personal loans were valued by NAMA at €3.9 million as at November 2009, for loan acquisition purposes. The 2019 valuations commissioned by NAMA estimated that the value of those properties in December 2011 would have been €3.02 million. This represents a decline of 23.6% from the November 2009 valuations.

<sup>1</sup> NAMA has not provided evidence of fresh valuations of loan collateral property in locations other than Ireland, or of valuations of loans secured on equity holdings.

<sup>2</sup> The November 2009 property valuation is not the same as the acquisition value of a loan. The loan valuations took account of all projected cashflows including uplifts to the property market value and expected rental income.

<sup>3</sup> NAMA has pointed out that the Portfolio Management and other staff who were directly involved in working on the debtor connection in 2011 and early 2012 had all left NAMA by April 2013.

*Nature of repayment target*

- 3.30** The paper from NAMA Portfolio Management to the Board proposed that “.... the partners are provided a repayment target of €125.5 million .... in essence this is a refinance of the total debt for €125.5 million”. NAMA treated this as a fixed repayment target to be achieved within six months of the July 2011 Board meeting.
- 3.31** NAMA has stated that on 24 June 2011, it met with representatives of Avestus and communicated that the NAMA Credit Committee had recommended a repayment target of €125.5 million for approval by the NAMA Board. NAMA has also stated that Avestus was advised of a fixed repayment target amount, not of the basis on which it was calculated.
- 3.32** Because the meeting on 24 June 2011 was not documented by NAMA, and there was no written proposal to Avestus, there is no record of what the actual offer to Avestus was, what conditions applied, or the scope of the offer.<sup>3</sup>

## Conclusions

- 3.33** The QP partners submitted a business plan for the Quinlan Partnership loans to NAMA, along with individual business plans for their respective personal loans. NAMA's analysis of the business plans, as documented in the 'Avestus connection' paper for the Board meeting in July 2011 comprehended the Quinlan Partnership loans and the senior debt on the Paddington development. It did not refer to the personal loans.
- 3.34** The Board paper identified two main options for working out the portfolio: a short-term option involving completion of asset sales already in progress, combined with a refinancing of the residual loans; or a medium to long-term process of 'sell and hold' along the lines proposed in the business plans.
- 3.35** The paper presented to the NAMA Board in July 2011 favoured the short-term refinancing option so long as a target level of proceeds (€125.5 million) was achieved. This target was greater than the amount NAMA expected to pay for the loans included in the portfolio (i.e. €100.7 million) plus the amount NAMA expected to advance to the borrowers in 2011 (i.e. €4.2 million). The target was a gross proceeds amount to be achieved from the portfolio, rather than being expressed as a target surplus, or target rate of return.
- 3.36** The loan acquisition values used in setting the repayment target of €125.5 million for the Avestus loans did not take account of the QP partners' property-backed personal loans and, due to an error in loan classification, significantly understated the acquisition value of one loan. If these had been incorporated consistent with the methodology set out in the Board paper, the repayment target would have been about €29 million higher.
- 3.37** NAMA informed Avestus of the €125.5 million repayment target it aimed to achieve and which cash received by NAMA would contribute to meeting the target. It appears that Avestus was given six months to meet the target amount. Despite the importance of this exchange of information, NAMA did not document the communication process, or put its proposal in writing to Avestus. There is no record of the scope of the proposal put to Avestus, in terms of the loans included in the offer.





## 4 The proceeds of the loans

### 4.1 This chapter reviews

- the overall proceeds and rates of return for the loans
- NAMA's implementation of the Board decision of July 2011, including the outturn on the asset/loan disposal against the Board-approved repayment target of €125.5 million.

### Loan proceeds and rates of return

**4.2** NAMA acquired all of the Avestus loans from the participating banks for €123.6 million.<sup>1</sup> In order to protect its interests in a number of the loans, NAMA advanced funding totalling €12.7 million to Avestus to meet commitments and cash calls, bringing its total investment in the portfolio to €136.3 million.

**4.3** NAMA received proceeds of €204.1 million (see Figure B2 in Appendix B). This comprised €188.6 million in disposal receipts, and €15.5 million in non-disposal receipts. As a result, NAMA secured a cash surplus of €67.8 million on the loans.

**4.4** The internal rate of return (IRR)<sup>2</sup> achieved by NAMA for the Avestus portfolio as a whole is estimated at 29%.

**4.5** The cash surplus and the high IRR can be attributed to the loans on two developments, both located in London (see Figure 4.1). There were

- the equity-backed loan related to the Knightsbridge office development, for which NAMA paid €1 but received windfall gains of €25.3 million (loan 1)
- the loans on the Paddington development (loans 8.1 and 8.2) which realised a cash surplus of €45.9 million.

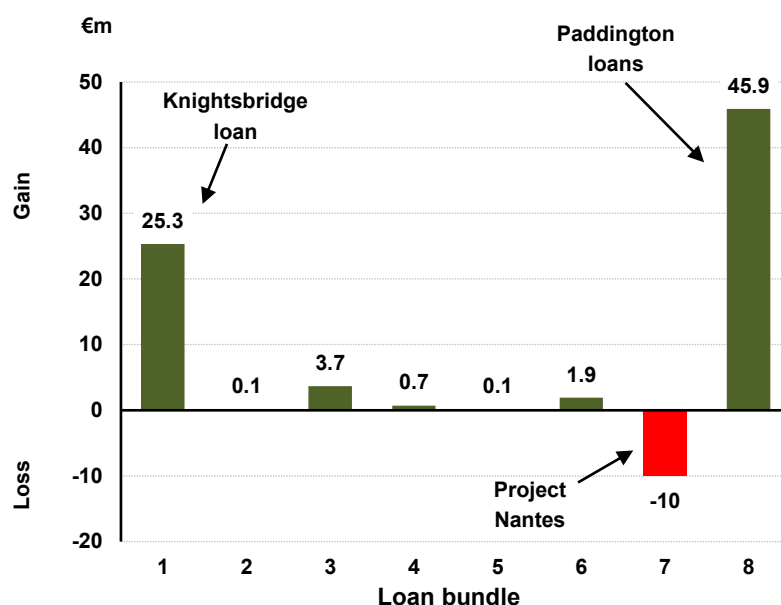
Together, these two London properties yielded NAMA cash surpluses totalling €71.2 million.

**4.6** NAMA paid the participating institutions €46.2<sup>3</sup> million to acquire the Project Nantes loans, and advanced a further €2.4 million to Avestus in respect of some of the loans. NAMA's proceeds from the loans totalled €38.6 million comprising €11.9 million in non-disposal receipts in 2010/2011 and €26.7 million in disposal receipts. NAMA incurred an overall cash loss of €10 million on the loans sold in Project Nantes. The rate of loss was 19%.

<sup>1</sup> The final loan acquisition value for all but two loans was determined by November 2011, when NAMA's due diligence process was substantially completed. The final acquisition value for the remaining two loans was finalised in early 2012.

<sup>2</sup> The internal rate of return is defined as the discount rate which, when applied to the cash flows of a project, produces a net present value of nil.

<sup>3</sup> Loan acquisition values totalling €47.3 million, net of currency gains exchange of €1.1 million.

**Figure 4.1 Avestus loans cash outturn, 2010 to 2013**

Source: Office of the Comptroller and Auditor General

## Disposal of loans

- 4.7** Rather than the short-term refinancing of all the outstanding loans proposed in the Board paper, NAMA pursued different disposal strategies in relation to the loans comprehended by the repayment target.

### *Loan 2 — equity-backed*

- 4.8** Loan 2 (par debt of €6.1 million at acquisition) was secured on a Quinlan Partnership equity holding attached to a substantial development property in Dublin. NAMA paid a nominal €1 for the loan. The senior debt for the property was a loan to a different NAMA debtor, which also transferred to NAMA.
- 4.9** The related property was sold in April 2011, and the net sales proceeds were credited in full to the senior loan debtor. None of the proceeds were available to repay loan 2, which was written off by NAMA as part of the disposal of the asset.
- 4.10** The report of the independent business reviewer (3 June 2011) states that “the borrowers (QP partners) have stated to us that NAMA have agreed that all loan obligations relating to the original deposit paid by the borrowers will be/have been cancelled as part of the wider disposal transaction”.
- 4.11** The July 2011 Board paper states that the Avestus partners had co-operated with NAMA in relation to the property sale. The paper stated that the QP partners had relinquished their interest in the property “knowing that there would be a ‘nuisance value’ to their non co-operation”. The paper noted that as “an act of good faith”, the QP partners had given up their interest without seeking confirmation from NAMA as to the treatment of the equity-backed loan of €6.1 million.
- 4.12** However, for the purposes of the Avestus repayment target, NAMA treated the loan as having been repaid in full.

### ***Loans 3 and 4 — property-backed***

- 4.13** During the second half of 2011, ongoing open-market sales by Avestus of two properties were completed with NAMA's agreement. These related to office property in London and New York. The proceeds available to NAMA from these sales amounted to €32.1 million in total. These were treated as contributions to the repayment target.

### ***Loan 5 — property-backed***

- 4.14** Loan 5 related to a residential property in Co. Dublin. NAMA paid €429,000 for this loan (a write-down of 61% on the par value of the loan) and received €45,000 in non-disposal proceeds. The net proceeds from the sale of the property, in late 2011, amounted to €407,000. The property was not openly marketed.
- 4.15** In August 2012, NAMA became aware that one of its former staff members was the purchaser of the property related to loan 5.<sup>1</sup> NAMA commissioned a review of the transaction by its internal auditors. The review was published by NAMA.<sup>2</sup>

### ***Residual loan balances, loans 1 to 5***

- 4.16** Following the property disposals for loans 1 to 5, NAMA no longer held any collateral for the loan balances that remained outstanding. NAMA dealt with the residual balances of the loans 1 to 5 in different ways.
- For loan bundles 2, 3 and 4, NAMA wrote off the remaining balances on the par debt — these totalled around €17 million, comprising €6.1 million for loan 2, around €6 million (£5.3 million) for loan 3 and around €5 million (\$6.8 million) for loan 4.
  - The outstanding balances on the par debt for the other two loans transferred to Clairvue in Project Nantes — €26.1 million (loan 1) and €0.8 million (loan 5).

### ***Loan bundle 6 — equity-backed***

- 4.17** Loan bundle 6 comprised three personal loans with a total par value at acquisition of €1.4 million. The loans were secured on a number of equity holdings, for which NAMA paid a negligible price. NAMA received a total of €1.9 million in respect of these loans. The loans were paid off in full prior to the Project Nantes sale.

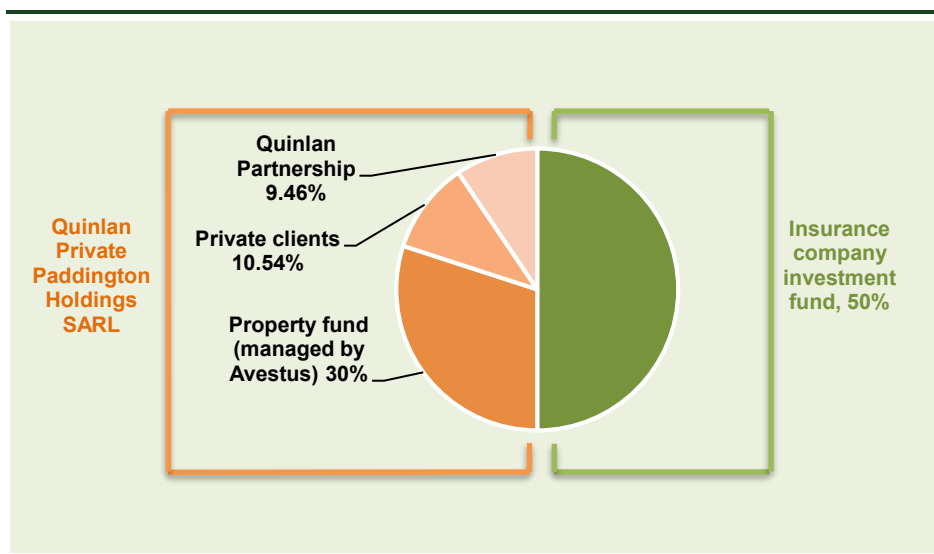
### ***Loan bundle 8 — the Paddington loans***

- 4.18** After they were notified of the NAMA repayment target, Avestus proposed to NAMA that the senior debt related to an office development located in Paddington, London (loan 8.2), would be refinanced by a third-party bank. At acquisition by NAMA, the loan had a par value of €73 million, for which NAMA paid €47.9 million.
- 4.19** NAMA's acquisition valuation (November 2009) of the whole Paddington development was £97.1 million (around €114 million). The development was a 50/50 joint venture, which started in 2007, between a Quinlan company — Quinlan Private Paddington Holdings SARL (QPPH) — and an investment fund managed by a major insurance company.<sup>3</sup> The Quinlan Partnership itself held a beneficial interest of 9.46% in the Paddington property, related to an equity-backed loan (loan 8.1), which had a par value at acquisition of €5.4 million (see Figure 4.2).

<sup>1</sup> NAMA has pointed out that the former staff member was a case manager on the Avestus connection, employed in the portfolio management unit.

<sup>2</sup> The review is available on NAMA's website. The review noted that no evidence was found that the sale had taken place at under value. The review also noted that at the time of the transaction, NAMA had no policy requirement to openly market the property.

<sup>3</sup> The joint venture took the form of a trust referred to as a Jersey Property Unit Trust.

**Figure 4.2 Paddington office and retail development investment structure**

Source: Analysis by the Office of the Comptroller and Auditor General

- 4.20** The July 2011 Board paper noted that the senior Paddington debt was 'outside of Avestus' i.e. it was not a liability of either the Quinlan Partnership or of the QP partners, and that NAMA had decided to include the debt in its own strategy for the Avestus connection because the loan had not been reflected in any other debtor's business plans.
- 4.21** When NAMA acquired the Paddington loans, just 29% of the property<sup>1</sup> was let (to a single tenant), and there was consequently significant potential for enhancing the value of the property through further lettings.
- 4.22** In April 2011, a further 10% of the Paddington building was let to a second tenant. This implies there was a significant increase in the value of the property.
- 4.23** In the July 2011 Board paper, in the context of considering the 'sell and hold' option for the portfolio as a whole, NAMA's Credit and Risk function noted that its projections for the Paddington loans indicated that the full senior debt (around €73 million) could be repaid and that around €2 million could be realised on the equity-secured loan if the Paddington property was held until 2015. In the event of an earlier sale, the value to NAMA would be lower due to the vacancies at the property as well as the general marketability of a 50% joint venture interest. The paper stated that the investment fund which held the other 50% was expected to seek to dispose of their share when the property was fully let (expected to be no earlier than 2015) and that NAMA should consider this also as the most appropriate disposal date for its interest.
- 4.24** Nevertheless, the Paddington loan was included in the portfolio on which the repayment target was based.
- 4.25** NAMA's disposal strategy for its interest in the Paddington property evolved between July 2011, when the Board set the repayment target, and July 2013 when the property was sold. Over that period, NAMA was close to disposing of the loan on two occasions. Each time, information about new lettings at the property caused NAMA to halt the refinancing (the first time) and the loan sale (the second time).

<sup>1</sup> The total net internal floor area of the property was 24,020 m<sup>2</sup>.

- 4.26** In October 2011, NAMA agreed in principle to a proposal from third-party investors introduced by Avestus who were willing to refinance the Paddington senior debt for €55 million. Shortly before the refinancing deal was due to be finalised in January 2012, NAMA became aware of a new tenancy lease for 22.5% of the property. NAMA then commissioned a valuation, which estimated the overall value of the property had risen to £164 million (around €195 million). As a result, NAMA changed its strategy to disposal of the QPPH 50% interest by way of a loan sale, through which it expected to achieve proceeds of €75 million.
- 4.27** Because of the improved expectations for the Paddington development, NAMA also decided in January 2012 to withdraw the related equity-backed loan from the proposed Project Nantes loan sale. Even though NAMA had only paid €1 for the equity-backed loan, it agreed to allow Clairvue to reduce its then offer for the loans by €2.1 million as a consequence of the withdrawal.
- 4.28** The planned Paddington loan sale was due to be completed in late March 2012. Shortly before, NAMA became aware of a further new lease for the development, with a consequent further increase in the property value. As a result, NAMA withdrew from the loan sale. NAMA advanced further funds to QPPH to allow it to meet its obligations, and charged €1.93 million in loan arrangement fees.
- 4.29** A NAMA strategic credit review in September 2012 estimated that the value of the Paddington property had increased to around £180 million (€214 million), reflecting the additional lettings. NAMA decided to continue funding its share of fit-out and other costs and to change strategy to a sale of the finished property, in conjunction with the investment fund holding the other 50%.
- 4.30** In January 2013, NAMA charged QPPH a further €1.86 million in loan arrangement fees.
- 4.31** The Paddington property was sold in July 2013. NAMA received sales proceeds of €100.3 million to clear the senior debt loan and loan arrangement fees,<sup>1</sup> and €3.8 million towards the equity-backed loan.

### The Project Nantes loan sale

- 4.32** In August 2011, Avestus informed NAMA that it had sourced a firm which was interested in acquiring most of the remaining Avestus debt from NAMA. This firm was identified as Clairvue Capital Partners, a private equity firm based in San Francisco.
- 4.33** On 21 October 2011, Clairvue wrote to NAMA setting out terms under which it, or a related entity, offered to acquire “the equity bridging financing and other debt from NAMA that currently encumbers the interests owned collectively and individually by the partners which comprise the Quinlan Partnership interests”. The loans of interest to Clairvue were listed in an attached schedule.

<sup>1</sup> By the sale date, the par value of the Paddington senior debt loan had increased to €96.5 million, including €10.3 million of advances by NAMA and interest charges of €13.1 million. The loan arrangement fees amounted to a further €3.8 million.

**4.34** The schedule of loans that Clairvue proposed included

- the equity-backed loan that had been omitted from the Board paper (loan 7.10)
- the personal loans of the QP partners that had not been included in the July 2011 Board paper
- the residual debt on loans 1, 3, 4 and 5.<sup>1</sup>

**4.35** The Clairvue letter stated that, based on its initial assessment of the loans and subject to confirmatory due diligence, it was prepared to offer NAMA total consideration of €29 million for the loans.**4.36** On 4 November 2011, Clairvue wrote to NAMA reducing its offer by €235,000 to €28.765 million, subject to final due diligence.**4.37** On 23 November 2011, NAMA and Clairvue signed an agreement which granted exclusivity to Clairvue until the end of January 2012 in relation to the purchase of the loans, to allow Clairvue to complete its due diligence process. NAMA undertook not to engage with any other potential purchaser during this period.**4.38** NAMA has pointed out that some proposals in the Clairvue October 2011 letter were unacceptable e.g. proposals that NAMA pay Clairvue's legal and underwriting expenses up to €250,000, and that NAMA indemnify Clairvue in respect of certain matters. These proposals were not included in the November signed agreement.***Offer compared to repayment target*****4.39** In January 2012, NAMA's Portfolio Management sought approval of the NAMA CEO and the Head of Credit and Risk to continue with the sale of the loans to Clairvue. The proposal noted that NAMA Board approval had been to allow the partners six months (to 31 December 2011) to achieve a debt repayment target of €125.5 million. The paper noted that Avestus had been seeking to achieve the repayment target in a number of ways

- by way of asset sales, non-disposal receipts and 'personal contributions' — the paper noted that proceeds totalling €45 million had been achieved<sup>2</sup>
- refinancing of the Paddington senior loan for €55 million
- a residual loan sale (Project Nantes) at €28.5 million.

**4.40** Cumulatively, these would amount to receipts of €128.5 million i.e. €3 million more than the repayment target of €125.5 million. The proposal to the CEO and the Head of Credit and Risk stated that Avestus had requested an extension of the time to allow them to meet the target, and that this request had been declined. The paper also pointed out that NAMA now expected a separate sale of the Paddington loan to realise €75 million.**4.41** The paper proposed the sale of the Project Nantes loans for €26.67 million, noting that the sales price agreed in November 2011 (i.e. €28.765 million) had been reduced by €2.1 million<sup>3</sup> because NAMA was retaining the equity-backed Paddington loan (loan 8.1) "in order to incentivise the QP partners to maximise the disposal value of the shareholding in this asset".

<sup>1</sup> The residual debt on loan 2 had been written off in April 2011.

<sup>2</sup> Avestus identified €39.2 million of cash payments in 2011 as being eligible to contribute to meeting the repayment target. In addition, they included a notional €6.1 million of disposal receipts in respect of the equity-backed interest in a property in Dublin (loan 2).

<sup>3</sup> In an email to NAMA on 13 January 2012, Clairvue stated that it was willing to proceed on the basis that the revised purchase price, after deducting Clairvue's allocation to Paddington, would be €26.67 million (i.e. its offer of 4 November 2011 less €2.1 million).

- 4.42** An assessment by NAMA's Credit and Risk function contained in the January 2012 paper noted that the Project Nantes loans predominantly related to equity-bridge facilities and residual debt on assets already sold and for which there was no security other than personal recourse to the borrowers. It stated that repayment on these loans was expected to be limited, particularly in the short-term, with no repayment expected on the equity-bridge loans forecast before 2014. The assessment noted that the partners were exposed to significant personal recourse under the loans, but that there was also a risk that another lender could seek to enforce against any one of the partners which would have a subsequent impact on NAMA debt recovery. Significantly the assessment also stated that the Clairvue offer for the loans equated to their acquisition value and that retention of the loans was unlikely to lead to a better outcome for NAMA.
- 4.43** On that basis, the paper recommended agreement to the sale of the loans to Clairvue. The proposal was approved by the NAMA CEO and by the Head of Credit and Risk. The sale was completed in early February 2012 for €26.67 million. At the time, the NAMA debt on the property-back loans was €44.7 million.<sup>1</sup> The difference implies a loss on sale of €18 million.

#### ***Failure to obtain fresh asset valuations***

- 4.44** The Minister for Finance approved a code of practice for NAMA's disposal of bank assets on 5 July 2010. This required NAMA to obtain current independent appraisals of bank assets prior to disposal. The requirement for pre-sale independent appraisal of assets was reiterated in NAMA's own loan sales policy, which was approved by the NAMA Board on 8 September 2011.<sup>2</sup> This required a desktop valuation of each asset prior to sale.
- 4.45** Despite the requirement in the code of practice, fresh independent asset valuations were not undertaken prior to the Project Nantes loan sale.
- 4.46** NAMA has stated that the general approach it took was to treat asset valuations less than six months old as current valuations for decision-making purposes. It pointed out that, because the process to review the Avestus business plan<sup>3</sup> had been completed around the July 2011 Board decision, there was not a requirement for a fresh valuation because the deal for the Project Nantes loan sale was agreed within six months (i.e. in January 2012).
- 4.47** NAMA has also pointed out that the consideration paid by Clairvue followed completion of a due diligence process. NAMA's view is that, in arriving at their offer, Clairvue would have formed their own opinion of the market value of the underlying collateral, and consequently, Clairvue's offer is evidence of the best price achievable in the market at the time.

<sup>1</sup> The NAMA debt on the equity-backed loans was zero.

<sup>2</sup> NAMA's loan sale policy states that "in accordance with the NAMA code of practice on the disposal of bank assets, the loan sale advisor (or a third party appointed to work with the advisor) must provide a desktop valuation of each of the assets to be sold".

<sup>3</sup> The review of the Avestus business plan explicitly states that, by agreement with NAMA, it relied on NAMA's acquisition valuations. See paragraph 3.5.

- 4.48** A key factor in establishing the market value of an asset is proper marketing, including allowing sufficient time for the asset to be brought to the attention of an adequate number of market participants.<sup>1</sup> In the case of Project Nantes, the loan sale was non-competitive, and Clairvue knew that there was no other bidder. Furthermore, the residual amount of proceeds required from the Project Nantes loan sale in order to achieve NAMA's repayment target was known to Avestus, who had introduced Clairvue to NAMA.

### *Analysis of loan sale proposal*

- 4.49** NAMA originally derived the repayment target of €125.5 million as an amount to be sought in the event of a refinancing of the entire Avestus portfolio. As the disposal strategy changed, and individual loans (or loan bundles) were disposed of separately, NAMA divided the target into corresponding values. For example, when NAMA decided to hold on to the senior debt loan on the Paddington development (loan 8.2), it adjusted the repayment target by €55 million.
- 4.50** A further adjustment of the repayment target in the amount of €2.1 million was made when the Paddington related equity-backed loan (loan 8.1) was withdrawn from the Project Nantes sale. The amount of the deduction was proposed by Clairvue. This loan had been acquired by NAMA for €1, and so it had not contributed to the setting of its target.
- 4.51** The analysis of receipts and the required adjustments to the repayment target resulted in the recommendation by NAMA Portfolio Management of the acceptance of the Clairvue offer of €26.7 million. However, NAMA's analysis of the offer was defective in a number of respects.
- There is no evidence that NAMA reconciled Clairvue's schedule of loans to the loans covered by NAMA's repayment target. As a result, NAMA did not identify the understatement of the NAMA acquisition cost for loan 7.1 (€16.1 million) in the July 2011 Board paper, or the fact that the QP partners' personal debts (acquired by NAMA at a cost of €9.7 million) were included in the Clairvue loan sale proposal. These loans had a combined acquisition value of €26 million that was not reflected in NAMA's calculation of the repayment target.
  - NAMA's analysis attributed €45 million of prior asset sales and non-disposal receipts to contributing to meeting the target. This included a notional €6.1 million of disposal receipts in respect of the equity-backed interest in a property in Dublin (loan 2). Consequently, the prior receipts figure was overstated, and should have been €39.2 million.
  - NAMA's analysis incorrectly stated that the Clairvue offer equated to the loans' acquisition value.<sup>2</sup> In fact, the loans proposed for sale to Clairvue included property-secured loans (loans 7.1 to 7.8) with an acquisition value of €47 million.<sup>3</sup> NAMA had also provided €2.4 million to fund capital calls in respect of two of the equity-backed loans, in order to protect future receipts. Accordingly, the cost to NAMA of the loans included in the Project Nantes sale was €49.4 million. The Clairvue offer was 54% of that value.

<sup>1</sup> Source: *International Valuation Standards 2017*, International Valuation Standards Council.

<sup>2</sup> Statement included in the January 2012 Portfolio Management review. NAMA stated that it is unable to provide a reason for the statement and that the portfolio manager, who has left NAMA, could not provide any clarity.

<sup>3</sup> At the time of disposal to Clairvue, the NAMA debt (acquisition value plus interest less payments) of the property-backed loans was €44.7 million.



- 4.52** When the Board-approved repayment target of €125.5 million is adjusted for these errors and the changes to the disposal strategy, the adjusted repayment target is €55.6 million — i.e. €28.9 million more than was received from Clairvue (Figure 4.3).

**Figure 4.3 Adjustment of NAMA's repayment target for the Avestus loans**

	€m	€m
Repayment target set by the NAMA Board		125.5
Disposal and non-disposal receipts in 2011 <sup>a</sup>		(39.2)
<b>Portfolio changes</b>		
Withdrawal of Paddington loans — senior debt	(55.0)	
Withdrawal of Paddington loans — equity loan	(2.1)	
Addition of value — partners' personal loans (€9.7m plus 15%)	<u>11.2</u>	(45.9)
<b>Corrections</b>		
Acquisition value of loan 7.1 understated in July 2011 Board paper (€16.1m plus 15%)	18.5	
Final acquisition values of property-backed loans included in July 2011 Board paper (€2.9m plus 15%) <sup>b</sup>	<u>(3.3)</u>	<u>15.2</u>
<b>Adjusted repayment target</b>		<b>55.6</b>
Loan sale to Clairvue Nantes		<u>(26.7)</u>
<b>Shortfall</b>		<b>(28.9)</b>

Source: Analysis by the Office of the Comptroller and Auditor General

- Notes:
- a NAMA figures include €6.1 million for disposal receipts related to loan 2. This has been excluded from the examination calculation because there was no such receipt.
  - b The final acquisition values of the loans were €2.9 million lower than the provisional valuation figures in the Board paper. This included an adjustment of €1.2 million arising from foreign exchange differences between loan transfer and when NAMA's due diligence was completed.

## Conclusions

- 4.53** NAMA realised a total of €204.1 million in disposal and non-disposal proceeds from the whole Avestus loan portfolio. Taking account of the €123.6 million acquisition cost, and €12.7 million advanced by NAMA to support Avestus, total outlay on the loans was €136.3 million. As a result, NAMA achieved an overall cash surplus of €67.8 million on the portfolio. NAMA's internal rate of return on the whole portfolio was 29%.
- 4.54** The windfall gain of €25.3 million on the Knightsbridge loan and surplus of €45.9 million on the Paddington loans amounted to a surplus of €71.2 million. NAMA incurred a significant loss on the sale of the loans included in Project Nantes.
- 4.55** NAMA has a statutory obligation to obtain the best achievable financial return on the loans it acquired from the participating banks. Securing independent current asset valuations prior to any asset disposals, and competitive marketing of the assets, are the normal strategies for ensuring financial returns are maximised.
- 4.56** Where a competitive process is not being followed, independent current asset valuations become particularly important. Current independent appraisals of the value of assets prior to disposal was a requirement on NAMA in a code of practice approved by the Minister for Finance in July 2010, and this principle was endorsed by the NAMA Board in its own loan sale policy adopted in September 2011.

- 4.57** In the case of the Project Nantes loan sale in January 2012, NAMA did not seek current valuations of the loans or of the underlying property collateral, and did not pursue a competitive sales process. The fact that Clairvue undertook a due diligence process provides no assurance that the price they offered for the loans reflected the full market value of the loans.
- 4.58** Absent the assurance that would have been provided by independent current asset valuations and a competitive process, the repayment target set by the Board is significant. NAMA had informed Avestus of the overall repayment target, and agreed adjustments to the target as assets were sold or withdrawn. NAMA correctly identified the emerging value in the Paddington development, changed its disposal strategy for the related loans and adjusted the repayment target appropriately. The residue of the repayment target became NAMA's price for the Project Nantes loans.
- 4.59** Errors and poor analysis by NAMA meant that the residual repayment target for the Project Nantes loans was significantly lower than it should have been. NAMA did not identify that the €9.4 million it had paid the banks for the property-backed personal debts of the QP partners<sup>1</sup> had not been built into the Board-approved refinancing target. NAMA also failed to see that the acquisition value of one of the loans underpinning the target had been understated by €16.1 million. Had the full scope of the loan portfolio been consistently and accurately reflected in the original repayment target, the residual target to be achieved through the Project Nantes loan sale would have been of the order of €56 million i.e. about €29 million more than was achieved in the sale.
- 4.60** Had NAMA set a higher repayment target for Project Nantes, there is no guarantee that a sale could have been concluded at that higher price. Where a competitively based market price for the Project Nantes loans could have been struck cannot now be known. Nevertheless, it is difficult to conclude that NAMA secured the best possible price for the sale of the Project Nantes loans.
- 4.61** Without a contemporaneous asset valuation and a competitive sales process, there is no basis to conclude that NAMA achieved the best possible financial outturn from the Project Nantes loan sale.

<sup>1</sup> The personal loans also included 'deposit-backed' loans acquired by NAMA at a cost of €0.3 million.

## 5 Restrictions on acquiring NAMA assets

**5.1** One of the concerns raised in the correspondence about Project Nantes was whether the loan sale had breached the requirements of section 172(3) of the NAMA Act, which prohibits NAMA from selling property to a debtor or to a person connected to a debtor who is in default in relation to any loan acquired by NAMA. This concern was raised in the context of the appointment of one of the partners in Avestus (not a QP partner) as a director of Clairvue, the company which purchased the Project Nantes loans.

**5.2** This chapter reviews

- the section 172(3) provisions
- declarations made in respect of the Project Nantes loan sale by Clairvue, and by the debtors i.e. four partners of the Quinlan Partnership (the QP partners)
- correspondence between Clairvue and the QP partners that was disclosed to NAMA, which outlined the planned role of Avestus in the management of the portfolio following the sale
- correspondence between NAMA, the QP partners and Clairvue Nantes in 2018 about the 2012 declarations.

### Section 172 provisions

**5.3** Section 172 of the NAMA Act prohibits a person who is a debtor, or who is connected in a prescribed manner to a debtor, who is in default in relation to a NAMA asset from acquiring from NAMA any asset in relation to which the default has occurred.<sup>1</sup>

**5.4** The section 172 prohibition is limited and applies to

- a sale by NAMA itself, but not to a sale by a NAMA debtor or by a receiver appointed by NAMA
- the sale of a property or interest in a property but not to the sale of a loan
- the sale to a debtor (or connected person) of a property specifically securing a loan where the debtor is in default.

**5.5** Section 70 of the NAMA Act defines six categories of persons connected to a debtor. Five of these categories of person are specified in Section 172 (3) when it sets out the categories of persons prohibited from acquiring certain assets in sales by NAMA. The one category of person not included in the provisions of Section 172 is 'a person in partnership with' a NAMA debtor, in relation to a loan which at the time of the partnership or subsequently became a loan acquired by NAMA.

**5.6** Legally, the section 172 provisions did not arise in relation to Project Nantes because it was a sale of loans, rather than a sale of property. Accordingly, there is no evidence of a breach of those requirements.

<sup>1</sup> The relevant part of section 172 is set out in Appendix D. Relevant connected persons are defined in that section, and in section 70 of the Act. (See Appendix D)

## Project Nantes declarations

- 5.7** Notwithstanding the statutory limitations of section 172, NAMA sought to apply a condition for all asset sales which it had the power to approve, requiring a formal declaration that the purchaser was not connected to the debtor whose loans/property they were purchasing.
- 5.8** In a letter to NAMA dated 26 January 2012, Clairvue and its parent Clairvue Capital Partners LLC (Clairvue Capital) stated in relation to the potential acquisition of the Project Nantes loan portfolio that
- neither Clairvue nor Clairvue Capital was a person connected to the QP partners
  - the consideration to be paid pursuant to the loan sale agreement between NAMA and Clairvue comprised the entire consideration being paid
  - neither the QP partners nor any person connected with the QP partners would receive, either directly or indirectly, any equity or profit share deriving from any equity position in the loans, or the assets (or their proceeds) which were secured by the portfolio
  - neither the QP partners, nor any person connected with the QP partners within the scope of Section 172(3) of the NAMA Act, would receive any shareholding or equity interest or any other form of equity or profit share deriving from any equity position in either Clairvue or in any entity having control of Clairvue.
- 5.9** A letter in similar terms was sent to NAMA by the QP partners.
- 5.10** In relation to post-sale arrangements for the loans/investments, the letters to NAMA also stated that
- It had been agreed that the QP partners would fund all future capital calls in relation to loan 7.11.<sup>1</sup> At a date to be agreed in the future, Clairvue would write off any remaining balance on the loan.
  - Avestus would receive annual management fees, such fees reducing as the underlying assets were sold.
  - Avestus would receive performance-related compensation (to be calculated at a later date), once minimum return thresholds had been achieved.<sup>2</sup>
  - Clairvue would grant two of the QP partners (named) an option to redeem loans on their principal dwellings on performance-related terms.
- 5.11** NAMA stated that these post-sale arrangements were considered by it at that time, and were considered to be an acceptable part of the transaction that did not impact on NAMA as they related to post-sale completion matters, and they were not arrangements on which NAMA could exert control once the new owners assumed control.

<sup>1</sup> This loan had a par value of €28.2 million when it was acquired by NAMA. In 2011, NAMA had provided €825,000 to fund capital calls in relation to this loan.

<sup>2</sup> The letter did not specify the minimum return thresholds.

## 2018 correspondence

- 5.12** On 4 October 2018, NAMA wrote to Clairvue, and to the four QP partners seeking clarification as to why the appointment of an Avestus partner as a director of Clairvue had not been brought to its attention in the 2012 declaration letters.
- 5.13** In a reply dated 16 October 2018, the four QP partners stated, inter alia, that Avestus had agreed to a request from Clairvue to provide an employee to act as a director of Clairvue. No additional fees, performance-related compensation, rewards or other remuneration (that is, in addition to those disclosed in the 2012 letter) were paid to the QP partners, the Avestus partner or to Avestus in relation to the director role. They stated that as the appointment of the Avestus partner as a director of Clairvue did not result in Clairvue becoming a connected person of the QP partners, or of Avestus, and as the appointment was made in the course of provision of management services by Avestus, there was no need to include a specific reference to the appointment in the 2012 letter.
- 5.14** NAMA also received a reply from Clairvue, dated 23 October 2018. The content of this letter was broadly similar to the letter of 16 October 2018 from the four QP partners.
- 5.15** On 26 October 2018, NAMA wrote to the QP partners asking why it was considered appropriate to make some disclosures in its 2012 letter but not to make any reference to the appointment of an Avestus partner as a director of Clairvue. The letter also asked the QP partners to confirm that neither the director of Clairvue (the Avestus partner) nor any of the QP partners
- received or had (or at present receive or hold) any entitlement to any form of shareholding or ownership or equivalent interest (or any form of option in respect of any of these), including the right to receive dividends, in or from Clairvue
  - held (or at present hold) any form of loan arrangement, whether directly or held on their behalf, that could entitle them to any form of payments in the form of loan repayments from Clairvue.
- 5.16** The QP partners replied that it was thought appropriate to disclose details of the management fees, the performance-related compensation and the other undertakings agreed between Clairvue and the QP partners in the 2012 confirmation letter. Accordingly, the Avestus management arrangement was disclosed, but the mechanics were not. The reply also provided the confirmations requested by NAMA.
- 5.17** On 21 December 2018, NAMA requested the same confirmations from Clairvue. Clairvue provided these in a letter dated 8 January 2019.

## Conclusions

- 5.18** Based on the information available to the examination team, there is no reason to believe that there was any infringement of section 172 of the NAMA Act.
- 5.19** Notwithstanding the statutory limitations, NAMA sought to apply the principles of section 172 to asset sales it controlled, by requiring those purchasing loans to make declarations confirming that the purchaser was not connected to the debtor whose loans it was purchasing.
- 5.20** Clairvue and the QP partners (the debtors) made the declarations required by NAMA. They also disclosed to NAMA the fee and performance-related compensation arrangements Avestus had with Clairvue, as well as the arrangements for a number of the QP partners to redeem loans on their principal dwellings at a future date. NAMA accepted these arrangements would be part of the Project Nantes transaction.
- 5.21** When concerns were raised about the appointment to the Board of Clairvue of an Avestus partner (who was not one of the QP partners and not a NAMA debtor), NAMA made relevant enquiries and concluded that the appointment did not result in Clairvue becoming a connected person within the terms of section 172 of the QP partners.

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## **NAMA's views**

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## NAMA's views

The bottom line in regard to this portfolio of loans is that NAMA achieved a recovery of €210 million on loans for which NAMA paid €123.6 million — an excess of €86 million, around 70% over acquisition value.

NAMA is strongly of the view that achieving €210 million\* overall for the Avestus connection — in excess of NAMA Board's July 2011 total repayment target of €125.5 million or the restated target of €151.8 million — was the best commercial outcome achievable at that time.

NAMA achieved an IRR of 28.6% across the portfolio of debtor loans that were acquired for €123.6 million. The IRR for all the loans included in Project Nantes loans since acquisition was 42.5%.

A core element of the OCAG analysis is that the residual repayment target for the Nantes loans was significantly lower than it should have been. NAMA acknowledges that an inadvertent misclassification of loans resulted in the acquisition price on which the Board based its target recovery being understated by €22.9 million and that consequently, (and on the assumption that the Board would have used the same approach to setting its target figure), that the target figure would have increased by €26.3 million.

NAMA notes the C&AG states in his report that "it is difficult to conclude that NAMA secured the best possible price for the sale of the Project Nantes loans", but also acknowledges "Had NAMA set a higher repayment target for Project Nantes, there is no guarantee that a sale could have been concluded at that higher price".<sup>1</sup>

This is an important qualification. Setting a target price is never a guarantee that the target will be realised — commercial reality dictates that the purchaser will take his own view of what an asset or loan is worth. This is illustrated by instances where guide prices advised by professional valuation firms to NAMA in advance of launch have not been achieved on the open market.

The achievement of the repayment target has to be considered in the context of the market value of the underlying property collateral and the ability to realise that market value.

- The Irish real estate indices were down 33% in the period from November 2009 until disposal. This resulted in a significant fall in the value of the loans included in the Project Nantes loan sale in that period.
- NAMA has provided the OCAG with independent valuations, recently commissioned by NAMA, demonstrating a fall of €6.5 million in the market value of the Irish properties included in Project Nantes. Therefore, it is reasonable to assume that €6.5 million of the OCAG's calculated €10 million cash shortfall\*\* is directly attributable to a decline in the market values leaving at most a residual shortfall (if the 2010 cash receipts continue to be excluded) of €3.5 million.

<sup>1</sup> Paragraph 4.60.

\* €6 million was received through the sale of a building (loan 2).

\*\* This excludes cashflows received on loans 1 and 5.

- Furthermore, a certain number of the personal loans were secured against private dwelling houses that were owned jointly with other parties who were not NAMA debtors. Consequently, this would have impacted the capability of realising the full market value of some of the underlying collateral; a matter highlighted in the July 2011 Board paper.<sup>1</sup>

NAMA operates on a commercial basis. The decision for example to change the strategy on the Paddington property clearly demonstrates the commercial basis under which NAMA operates. By changing strategy on the Paddington asset, a cash outturn of €104 million was achieved by NAMA — nearly double that projected at €55 million in July 2011.

Based on stressed Eurozone and Irish market conditions at the time, meaning loan purchasers would likely discount the cashflows by at least 20%, NAMA are of the firm view that the best value was achieved by the Project Nantes loans selling for €26.7 million.

### Surplus achieved

NAMA is strongly of the view that achieving €210 million overall for the Avestus connection — in excess of NAMA Board's July 2011 total repayment target of €125.5 million or the restated target of €151.8 million — was the best commercial outcome achievable at that time. It implemented in full the July 2011 NAMA Board approved strategy of disposing of the whole Avestus connection and not different parts on a piecemeal basis.

Project Nantes was one constituent part of the achievement of the Board-approved aggregate repayment target set for the entire debtor connection in July 2011.

The achievement of €210 million represents a cash surplus of €74\* million over the total acquisition value (including advances) of €136.4 million. An internal rate of return of +28.6% was achieved across the whole Avestus portfolio. This compares favourably to the Board's target of 15% over acquisition value for the whole portfolio. This surplus was realised at a time when the Irish property market had declined at least 33% from the November 2009 valuation date.

The economic context in which the Project Nantes loan sale occurred needs to be taken into account when analysing the transaction. The Eurozone was in crisis in mid-2011, bond yields were high and Ireland was in the early stages of the Troika bailout.

### Board approved strategy

The repayment target was set at a total connection level for Avestus and not at an individual transaction/asset level. Focusing on the Project Nantes loan sale on a stand-alone basis, in isolation from all other constituent parts, is not consistent with the Board-approved strategy. Any other interpretation implies that there was an expectation by the NAMA Board that a 15% return could have been achieved at that time on each asset, including Irish assets where the market had fallen by at least 33% since acquisition. This would have clearly been unrealistic and certainly was not the expectation of the Board.

<sup>1</sup> The examination team has been unable to identify a basis for this statement.

\* This €74 million includes €6.1 million of the sale of an asset by another NAMA debtor connection, for which NAMA allowed a benefit to the Avestus connection. The OCAG has excluded the €6.1 million from their analysis.

In setting the strategy for the entire Avestus debtor connection, the Board considered all options, informed inter alia by specific references in the Board paper to the significant risks to the ability of NAMA to achieve the best possible return and to the appropriateness of using a 20% discount rate. So informed, the Board set the challenging objective of achieving a return of 15% over and above the aggregate estimated total acquisition value within a six-month time frame. Utilising a revised target of €151.8 million, this objective was surpassed by €58 million by achieving €210 million.

One of the core objectives of the Board approval was the exit of the entire Avestus connection from NAMA as there was significant risk that other third-party creditors could initiate action against the Avestus debtors. Such action would likely have seriously undermined NAMA's capacity to maximise the return on these assets. Thus, having set the overall total aggregate repayment target, the NAMA Board did not specify how it was to be achieved, and indeed there was no commercial reason to do so. Therefore, provided Avestus met or exceeded the Board approved aggregate total repayment target, they were free to adopt a variety of strategies, including the sale of secured properties and/or a refinancing of the residual loans, as long as the whole Avestus connection exited NAMA.

The approved decision to proceed with completing the loan sale of the residual debt in January 2012, together with the change in disposal strategy for the Paddington asset, was a commercial decision approved by the relevant delegated authority on the basis that the loan sale represented the best outcome for NAMA at the time of disposal. Together with the forecast proceeds in January 2012 of at least €75 million from the Paddington asset, the completion of the loan sale ensured that the connection would achieve €45 million in excess of the restated repayment target of €151.8 million at the earliest opportunity and exit NAMA in line with the Board approved strategy. In 2010, €31 million in additional cash was generated across the Avestus loans.

Table A shows the summary cash outcome for the Avestus loans.

**Table A — Summary cash outcome**

	Summary cash outcome	OCAG position Figure 4.3 — draft report €'m	NAMA view January 2012 — projected outcome €'m	NAMA view Actual outcome 2010 – 2013 €'m
i)	Restated repayment target (Note 1)	-151.8	-151.8	-151.8
ii)	Disposal and non-disposal receipts in 2011 / 2012	39.2	42.5	42.5
iii)	Cash received on disposal of asset recorded under another debtor	0.0	6.1	6.1
iv)	Paddington loans — senior debt	55.0	75.0	104.1
	Paddington loans — equity loan	2.1		
v)	Loan sale to Clairvue Nantes	26.7	26.7	26.7
vi)	Surplus / (Shortfall) not including cash received in 2010 over restated repayment target of €151.8m	28.9	-1.5	27.6
vii)	2010 cash receipts	30.9	30.9	30.9
viii)	Surplus over restated repayment target of €151.8m	2	29	58
ix)	Total cash generated since inception (Sum ii, iii, iv, v and vii)	154	181	210
x)	Surplus over 1) acquisition cost of €123.6m and 2) advances of €12.8m — total €136.4m	18	45	74

Note 1: Restated repayment target = €125.5m + €11.2m + €18.5m - €3.3m (based on Figure 4.3 OCAG report)

Table A shows that the achievement of €210 million represents a cash surplus of €74 million over the total acquisition value plus advances totalling €136.4 million. This was realised at a time when the Irish property market had declined at least 33% from the November 2009 valuation date.

The main difference between the position set out in the report's Figure 4.3 adjustment of Avestus repayment target and NAMA's view (see Table A) relates to the selection of the appropriate date from which to assess the contribution of the disposal of the Paddington asset to the achievement of the repayment target:

- OCAG analysis uses the projected cashflows of €55 million from July 2011.
- In January 2012, when final approval was provided by NAMA to proceed with the Project Nantes loan sale, NAMA projections indicated cash proceeds of €75 million from the sale of the Paddington asset.
- NAMA generated €104 million cash from the sale of the Paddington asset, nearly double that projected at €55 million in July 2011.

### Repayment analysis

Based on the estimated loan acquisition value of €100.7 million used in the July 2011 Board paper, NAMA approved a repayment target of €125.5 million for the Avestus connection. Based on the final loan acquisition value of €123.6 million, only determined in 2012, the restated aggregate total repayment target would have been €151.8 million, a difference of €26.3 million. The estimate of a shortfall of €28.9 million (see Figure 4.3) in relation to the Avestus repayment target is incorrect and overstates the amount by €2.6 million.

When total cash receipts since acquisition on all the loans included in Project Nantes are taken into account, NAMA actually achieved a cash surplus of €15.3 million as disposal receipts of €25.3 million were achieved in relation to the Knightsbridge loan (loan 1). By OCAG excluding the cash receipts from loan 1, a cash shortfall of €10 million is incorrectly implied relative to the loan acquisition value of the Project Nantes loans.

This implied cash shortfall (with which we disagree as it excludes the 2010 Knightsbridge receipts of €25.3 million) has in either case to be considered in the context of the significant fall in the value of the underlying Irish collateral in the period from November 2009 until disposal in January 2012. The Irish real estate indices were down 33% in that period.

### Asset valuations — targets do not guarantee outcomes

Of course, any comparison to seeking a return based on an acquisition value is not an indication of the market value of the asset(s) at the time of disposal and does not take account of the 33% decrease in the valuation of the Irish property assets since the property valuation date of 30 November 2009 used in the acquisition valuation models.

Based on the independent valuations of the Irish properties included in Project Nantes carried out recently by valuers commissioned by NAMA, and on the same basis as the 30 November 2009 valuations, there was a fall of close to €6.5 million since the November 2009 valuation. The €6.5 million fall in the market value of the Irish properties was outside of the control of NAMA.

Therefore, it is reasonable to assume that €6.5 million of the OCAG implied €10 million cash shortfall is directly attributable to a decline in the market values leaving at most a residual shortfall (if the 2010 cash receipts continue to be excluded) of €3.5 million.

The Code of Practice relating to NAMA's disposal of bank assets, approved by the Minister for Finance in July 2010, required NAMA to obtain current independent appraisals of bank assets prior to disposal. The independent business plan review produced by an independent third party in June 2011 assessed the projected cashflows from the debtor's loan portfolio and no further analysis was deemed necessary to comply with the Code.

### Other considerations

A certain number of the QP partners' personal loans were secured against private dwellings that were owned jointly with other parties who were not NAMA debtors. Consequently, this would have impacted the capability of realising the market value of the underlying collateral.

The personal loans were always included as part of the loan sale transaction between NAMA and Clairvue — this is factually clear in the loan offer by Clairvue in October 2011 and through the interactions by NAMA with Clairvue.

The July 2011 Board paper sets out that time is "the greatest risk to the repayment of NAMA's debt". It is clear in the Board paper that the potential cashflows projected from the portfolio loans in the independent business review were highlighted to the NAMA Board. However, on the risk-adjusted basis, the recommendation to the Board noted that, based on a discount rate of 20% (deemed to be the most appropriate rate given the risks), the recommended strategy of a short-term exit offered, on balance, a better risk adjusted return.

### Discount rate

The discount rate of 20% (referenced in the July 2011 Board paper) is appropriate on the basis that in July 2011, when the Board approved the fixed aggregate repayment target, the (risk-free) rate for five year Irish bond yields was greater than 17% (17.35% on 13 July 2011). Thus, any third party purchaser at that time including Clairvue, would have discounted the Project Nantes loan cashflows by at least 17.35%.

The projected cashflows from the loans sold as part of Project Nantes shows a present value of €28.3 million when applying a 20% discount rate. This equates to an implied difference of €1.6 million when compared with the actual cash of €26.7 million received from the Project Nantes loan sale to Clairvue. This calculation excludes the unsecured projected cashflows which comprised second charges on equity loans. These were attributed a nominal value during the loan acquisition process and would have been assigned a similarly nominal value by any loan purchaser at the time of the loan sale in 2011.

Based on stressed Eurozone and Irish market conditions at the time meaning loan purchasers would likely discount the cashflows by at least 20%, NAMA are of the firm view that the best value was achieved by the Project Nantes loans selling for €26.7 million.

### **Alleged infringement of Section 172**

It is noted in Section 5 of the report that one of the concerns (indeed we believe the first concern) raised in correspondence about Project Nantes was whether the loan sale had breached the requirements of Section 172 (3) of the NAMA Act.

NAMA notes the conclusion in the report that there is no reason to believe that there was any infringement of Section 172. NAMA has also corresponded with the PAC on this aspect.

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## Appendices

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## Appendix A

### Correspondence between the PAC and NAMA about Project Nantes, October/November 2018

In a sequence of correspondence in October/November 2018, the Committee of Public Accounts (PAC) asked NAMA a number of questions arising from concerns that had been raised about its sale of loans to the Luxembourg-based Clairvue-Nantes Luxco SARL. (Other issues were raised by the PAC with NAMA at the same time.) The full correspondence is published on the PAC's website. The following extracts set out the queries and responses from NAMA relevant to the loan sale, which was code named Project Nantes.

PAC query (and reference)	NAMA's response
Was the [Project Nantes] loan sale off market? If so, what explanation can NAMA offer as to why the loans were not openly marketed. (PAC32-I-1074, 1 October 2018)	The loan sale was one constituent part of the [NAMA] Board-approved higher refinancing target which was set for the debtor connection.  Having set the target, NAMA did not specify how it was to be achieved. Therefore, provided Avestus met or exceeded the Board approved target, it was free to adopt a variety of monetisation strategies, including the sale of the secured properties and/or a refinancing of the loans. (NAMA letter, 10 October 2018)
Why was there no publicity following the loan sale, from either Avestus or Clairvue? (PAC32-I-1074, 1 October 2018)	The refinancing target and exit strategy agreed with Avestus was a confidential arrangement between the debtor and NAMA. (NAMA letter, 10 October 2018)
Can NAMA confirm the portfolio was sold for €26.6 million, with a par value of €352 million? (PAC32-I-1074, 1 October 2018)	NAMA confirms that the residual portfolio was sold for €26.6m, with a par value of €352m. The cash realised by the loan sale was only one constituent part of the overall cash amount received from the acquired Avestus loan and security realisations. The total amount of cash received by NAMA from the overall debtors' acquired loans was a multiple of the residual loan sale. (NAMA letter, 10 October 2018)

PAC query (and reference)	NAMA's response
<p>The Members request</p> <ul style="list-style-type: none"> <li>• a comprehensive reply in respect of the par value of €352 million and what was achieved</li> <li>• confirmation whether the portfolio was sold for €26.6 million.</li> </ul> <p><i>(PAC32-I-1115, 23 October 2018)</i></p>	<p>NAMA wishes to point out that Project Nantes was only one of a number of separate transactions involving the debtor connection. Overall, the connection's par debt was €489m on acquisition by NAMA. This included some €260m of debt categorised as equity-backed loans which had been advanced to the connection by the participating institutions i.e. these loans were secured not by property collateral but by intangible assets (such as personal guarantees) which had no tangible value. NAMA did not pay the participating institutions any consideration for these €260m equity-backed loans. Thus, only €229m of the €489m par debt acquired was secured by tangible property assets with a realisable market value.</p> <p>The debtor connection agreed to initiate a programme of asset sales and debt refinancing so as to maximise recovery for NAMA. As part of that programme, NAMA set a recovery target for the connection. Ultimately, total proceeds of approximately €200m were realised from loan, property and other loan security realisations. As part of the disposal programme, a loan sale of debt with a par value of €352m, designated Project Nantes, realised proceeds of €26.6m. This transaction included €241m (€260m at acquisition) in equity-backed loans (for which NAMA had not paid consideration) and €111m par debt secured by assets. Therefore, the €26.6m realised for Project Nantes related to par debt loans of €111m (part of the original acquired property-secured par debt of €229m).</p> <p>Thus, in total, proceeds of approximately €200m were realised from the asset sales and loan sale/refinancing, equating to a recovery of 87% of the original acquired property-secured par debt of €229m. The proceeds realised were well in excess of the recovery target set by NAMA for the connection and the acquisition value paid by NAMA to the participating institutions.</p> <p><i>(NAMA letter, 8 November 2018)</i></p>

PAC query (and reference)	NAMA's response
<p>Please provide a note on NAMA's review of Section 172 declaration in relation to Project Nantes and possible conflicts of interest. (PAC32-I-1074, 1 October 2018; PAC32-I-1115, 23 October 2018)</p>	<p>NAMA is undertaking a legal review and will revert to the Committee in due course. (NAMA letter, 10 October 2018)</p> <p>NAMA has been investigating this matter. As part of this, NAMA undertook a review of the written confirmations and warranties in respect of section 172(3) of the NAMA Act 2009, which were provided by the borrowers and purchaser at the time of the loan sale in 2012. These confirm that the borrower and purchaser were compliant with the requirements of section 172(3) of the NAMA Act 2009. Following enquiries raised by NAMA, it has been established that the party who has been identified as a director of the purchaser entity was not a NAMA debtor.</p> <p>NAMA wishes to be helpful to the Committee but is required by law to operate by reference to the prohibitions on disclosure of confidential debtor information set out in sections 99 and 202 of the NAMA Act. For that reason, NAMA considers that it is constrained from disclosing details relating to the assets securing the connection's debt or details relating to the confidential arrangement reached with the connection. (NAMA letter, 8 November 2018)</p>

PAC query (and reference)	NAMA's response
<p>Members request a note on whether there is any connection between the person referenced in the correspondence and a NAMA debtor. (PAC32-I-1177, 20 November 2018)</p>	<p>We have appended to this letter a detailed legal analysis.<sup>1</sup></p> <p>In summary, the legal analysis concludes that the acquisition of these loans by a company, of which the person concerned is one of five directors, was not a contravention of Section 172(3) of the NAMA Act 2009. Neither was the transaction in any way 'illegal' ... The written confirmations obtained at NAMA's request from both the debtor and the loan purchaser entity serve to verify the position and were received by NAMA prior to completion of the Project Nantes loan sale in early February 2012.</p> <p>As regards providing copies of the confirmations, there is no difficulty providing these to the C&amp;AG and, indeed, we have already done so, along with copies of our recent correspondence and the responses we received. But we do not propose to share them otherwise, as they refer to persons and entities by name.</p> <p>(NAMA letter, 29 November 2018)</p>

<sup>1</sup> The text of this analysis note follows table.

## The following is the text of the legal analysis appended to NAMA's letter of 29 November 2018 to the PAC

### Legal analysis of Project Nantes Loan Sale under Section 172(3) of the NAMA Act 2009

In our letter of 8 November 2018, we explained that, having investigated the matter in the context of Section 172(3) of the NAMA Act 2009, we are satisfied that the person identified as a director of the purchaser entity is not a NAMA debtor. In its letter of 20 November 2018, the Committee queried whether "...there is any connection between the person referenced in the correspondence and a NAMA debtor."

### Meaning of "Connection" for purposes of Section 172(3) of the NAMA Act 2009

The legislative requirement under Section 172(3) of the NAMA Act 2009 is clear in how it defines the scope of both (a) the types of assets that are contemplated by the section, and (b) what constitutes a '**connection**', in the sense of the kind of relationship which the purchaser has with the debtor who owned the property interest in question. Without such clarity, Section 172 would be unworkably vague and open to many different interpretations. This would give rise to uncertainty that would render it difficult – if not impossible – for NAMA to participate in transactions with a view to carrying out its functions and fulfilling its statutory purposes. It may be helpful to the Committee to explain this legislative scope by reference to how Section 172(3) is worded:

#### (a) Types of Assets

Section 172(3) prohibits the acquisition by certain categories of persons (see (b) below) from NAMA or any NAMA group entity of "**...any legal or beneficial interest in property comprised in the security forming part of any acquired bank asset in relation to which the default occurred.**" Firstly, this prohibition concerns property transactions (as opposed to loan sales) in which NAMA or a NAMA group entity is selling its legal or beneficial interest in a secured property. Secondly, the prohibition extends to properties being sold where a default has occurred under the loan(s) secured on that property. If no default has occurred (e.g. if the loan is performing within its terms), the prohibition does not apply.

#### (b) Categories of Persons

Section 172(3) specifically identifies categories of persons who are prohibited from acquiring the types of assets referred to in (a) above. These are as follows, with capitalised terms having the definitions used in the NAMA Act:

1. Any person who is a Debtor in relation to NAMA Acquired Bank Assets.
2. **Associated Debtors** who fall within (i), (ii), (iii), (v) or (vi) of **Section 70(1)(b)** of the NAMA Act 2009, being:
  - (i) a subsidiary of or related company to the Debtor;
  - (ii) a nominee of the Debtor, including a person who may or does act at the express or implied direction or instruction of the Debtor or another Associated Debtor of the Debtor;
  - (iii) a person who acts as a trustee of a trust, the beneficiaries of which include (directly or indirectly) the Debtor, a nominee of the Debtor per (ii) above, or a company controlled by the Debtor or a person referred to in (ii) above;

- (v) a company of which the Debtor is the sole member; or
- (vi) a company controlled by the Debtor.

3. Any person on whose behalf any person falling within (i) or (ii) above acts as a nominee or trustee in relation to an Acquired Bank Asset.

The prohibition does not extend, for example, to family members of the debtor who owned the property, or to persons having any kind of business relationship with that debtor, unless they fall into any of the categories 1 to 3 above.

### **Analysis of Project Nantes Transaction for Section 172(3) of the NAMA Act 2009**

Turning to the question the Committee has raised, this requires an analysis of the factual position relating to the Project Nantes loan sale.

In relation to (a) above – “Type of Assets” – the Project Nantes transaction was a loan sale and not a sale of property by NAMA or a NAMA group entity.

As regards the categories of persons who were parties to the transaction, NAMA is aware that the person identified as a director of the purchaser entity acted as a director of at least eight different companies during 2011 and 2012. All of this is a matter of public record, with the information available from annual returns filed with the Companies Registration Office.

Company filings in Luxembourg also show that the person concerned became, in late December 2011, a director of the purchaser entity (a Luxembourg company) for the Project Nantes loans. The filings also show that acts of that entity require the approval of at least two directors, one from each of two categories, A and B. The person concerned was initially a Category A director as at end December 2011, but became a Category B director in January 2012. At no point did he alone have the sole ability to control the acts or decisions of the entity in question.

It is a fact that none of the companies of which the person was a director are NAMA debtors and neither was the purchaser entity of the Project Nantes loans. With regard to Avestus Capital Partners Limited, NAMA is aware that this company has performed asset management services for the Quinlan Partnerships and that some of its directors are partners in those partnerships. The Quinlan Partnerships are the borrowers under the Project Nantes loans, with each of the individual partners being liable for the repayment of these loans; it is a fact that the person concerned is not, however, a partner in the Quinlan Partnerships. Neither is he a NAMA borrower on an individual basis, whether alone or with others. Again, neither is Avestus Capital Partners Limited a NAMA debtor. All of these statements accurately reflect the factual position at the time of the Project Nantes loan sale.

### **Written Confirmations/Warranties**

Notwithstanding the factual position outlined above, NAMA also obtained written confirmations/ warranties from the partners (who were NAMA debtors) in the Quinlan Partnerships and the purchaser entity in January 2012, just prior to completion of the Project Nantes loan sale. The warranties and confirmations are to the following effect:

- (a) the loan purchaser entity is not a person connected to the Quinlan Partnership, such as would fall within the scope of Section 172(3) of the NAMA Act 2009;

(b) the consideration to be paid pursuant to the Loan Sale Agreement comprises the entire consideration being paid or passing in any form from the loan purchaser entity in respect of the purchase of the loan portfolio; and

(c) neither the partners in the Quinlan Partnership nor any persons connected with them, such as would fall within the scope of Section 172(3) of the NAMA Act 2009, will receive, directly or indirectly, any equity or profit share deriving from any equity position in the loan portfolio, the assets secured within the loan portfolio or any shareholding or interest or any form of equity or profit share deriving from any equity position in the loan purchaser entity or any entity having control of it.

In the last two months, NAMA has raised queries with both the Quinlan Partnership (debtors) and Clairvue to further clarify aspects of the confirmations provided. The responses received have confirmed the following:

- (a) The loan purchaser entity (Clairvue) requested that an employee of Avestus Capital Partners Limited be provided to act as a director. This was described as an administrative requirement to facilitate more effective management of the loans and assets.
- (b) No additional fees or equity or any form of profit share or ownership interest or any form of loan arrangements were paid or provided to the person concerned, the Quinlan Partnership or Avestus Capital Partners Limited in relation to the director role.
- (c) The loan purchaser entity was not in February 2012 (when the Project Nantes loan sale completed) and at no stage has been a person connected to the Quinlan Partnership or Avestus Capital Partners Limited and the appointment of the person concerned as a director did not alter this position.
- (d) Because the appointment of the person concerned (not a NAMA Debtor) did not change the position in any way, the Quinlan Partnership did not see a need to bring to NAMA's specific attention the appointment of the person concerned as a director of the loan purchaser entity.

### **Conclusion**

It is clear from the above that the acquisition of these loans by Clairvue, of which the person concerned is one of five directors, was not a contravention of Section 172(3) of the NAMA Act, 2009. Neither was the transaction in any way "illegal", as has been wrongly suggested.

The written confirmations obtained at NAMA's request from both the debtor and the loan purchaser entity serve to verify the legal position and were received by NAMA prior to completion of the Project Nantes loan sale in early February 2012. All such correspondence has been provided to C&AG.





## Appendix B — Schedule of the Avestus Loans

Figure B.1 Acquisition and analysis (by NAMA) of Avestus loans

Bundle <sup>a</sup>	Loan number	Loan type	Debtor <sup>b</sup>	Par debt	LAV actual	NAMA Board paper	
						Estimated LAV <sup>c</sup>	Projected advances
				€m	€m	€m	€m
1	1	Equity-backed	QP	51.4	–	–	–
2	2	Equity-backed	QP	6.1	–	–	–
3	3	Property-backed	QP	25.6	15.6	16.0	–
4	4	Property-backed	QP	18.1	13.6	13.0	–
5	5	Property-backed	P	1.1	0.4	– <sup>d</sup>	–
6	6	Equity-backed	P	1.4	–	–	–
Project Nantes loans	7.1	Property-backed	QP/O	35.3	18.1	2.0	–
	7.2	Property-backed	QP	32.2	10.4	10.0	–
	7.3	Property-backed	QP	9.7	2.3	2.3	–
	7.4	Property-backed	QP	7.5	4.3	4.0	–
	7.5	Property-backed	QP	5.1	2.9	3.0	–
	7.6	Property-backed	P	4.6	3.2	– <sup>d</sup>	–
	7.7	Property-backed	P	3.3	2.4	– <sup>d</sup>	–
	7.8	Property-backed	P	4.7	3.4	– <sup>d</sup>	–
	7.9	Equity-backed	QP	54.6	–	–	–
	7.10	Equity-backed	QP	32.2	–	–	–
	7.11	Equity-backed	QP	28.2	–	–	1.7
	7.12	Equity-backed	QP	25.5	–	–	–
	7.13	Equity-backed	QP	16.6	–	–	–
	7.14	Equity-backed	QP	12.2	–	–	1.3
	7.15	Equity-backed	QP	8.4	–	–	–
	7.16	Equity-backed	QP	6.0	–	–	–
	7.17	Equity-backed	QP	2.8	–	1.0	–
	7.18	Equity-backed	QP	1.6	–	–	–
	7.19	Equity-backed	P	8.7	–	–	–
	7.20	Deposit-backed	P	7.4	0.3	– <sup>d</sup>	–
Foreign exchange adjustment					(1.1)		
8	8.1	Equity-backed	QP	5.4	–	–	1.2
	8.2	Property-backed	O <sup>e</sup>	73.1	47.9	49.0	–
Foreign exchange adjustment					(0.1)		
Total				488.8	123.6	100.3 <sup>f</sup>	4.2
Repayment target <sup>g</sup>						€125.5m	

Source: NAMA. Analysis by the Office of the Comptroller and Auditor General.

Notes: a The bundles refer to assets disposed of at the same time to the same purchaser. Residual liabilities (after sale of collateral) of loan bundles 1 and 5 were cleared as part of Project Nantes negotiation, loan bundles 2,3 and 4 were written off and loan bundle 6 was repaid in full. The order of the bundle reflects the date of disposal.

b QP = Quinlan Partnership P = Personal O = Other

c The loan due diligence process had not completed when the figures were presented to the Board. LAV = loan acquisition value.

d Acquisition value of loan not included in NAMA's calculation.

e The borrower was a company, Quinlan Private Paddington Holdings SARL (QPPH). According to the NAMA Board paper (6 July 2011), NAMA included the loan in the Avestus loans because 'it was not included in any other business plan'.

f The July 2011 Board paper refers to a total of €100.7 million. The difference is due to rounding.

g Repayment target = (€100.7 million + (€4.2 million x 2)) x 1.15 = €125.5 million.



Figure B.2 Avestus loans – proceeds and rates of return, 2010 to 2013

Loan bundle	Loan number	Loan type	LAV actual	NAMA Advances	Non-disposal receipts <sup>a</sup>		Disposal receipts	Surplus/(loss)	Rate of return <sup>b</sup>
					2010	2011			
					€m	€m			
1	1	Equity-backed	–				25.3	25.3	N/A
2	2	Equity-backed	–		0.1			0.1	N/A
3	3	Property-backed	(15.6)		0.6	0.2	18.5	3.7	31%
4	4	Property-backed	(13.6)		0.3	0.4	13.6	0.7	3%
5	5	Property-backed	(0.4)			0.1	0.4	0.1	13%
6	6	Equity-backed	–		1.4	0.5		1.9	N/A
Project Nantes loans	7	7.1	Property-backed	(18.1)		1.5	2.1		
		7.2	Property-backed	(10.4)					
		7.3	Property-backed	(2.3)					
		7.4	Property-backed	(4.3)		0.2	0.4		
		7.5	Property-backed	(2.9)		0.2	0.3		
		7.6	Property-backed	(3.2)					
		7.7	Property-backed	(2.4)		0.2			
		7.8	Property-backed	(3.4)		0.1	0.4		
		7.9	Equity-backed	–					
		7.10	Equity-backed	–					
		7.11	Equity-backed	–	(0.8)		26.7	(10)	(19%)
		7.12	Equity-backed	–		1.9 <sup>c</sup>			
		7.13	Equity-backed	–					
		7.14	Equity-backed	–	(1.6)				
		7.15	Equity-backed	–					
		7.16	Equity-backed	–		0.3	0.5 <sup>c</sup>		
		7.17	Equity-backed	–					
		7.18	Equity-backed	–					
		7.19	Equity-backed	–			0.9		
		7.20	Deposit-backed	(0.3)		1.5	1.5		
		Foreign exchange adjustment		1.1					
8	8.1	Equity-backed	–						
	8.2	Property-backed	(47.9)	(10.3) <sup>d</sup>			104.1 <sup>d</sup>	45.9	27%
		Foreign exchange adjustment		0.1					
Total			(123.6)	(12.7)	6.4	9.1 <sup>e</sup>	188.6	67.8	29%

Source: NAMA. Analysis by the Office of the Comptroller and Auditor General.

- Note:
- a For each loan it acquired, NAMA set a date at which loan balances were agreed with the participating institutions (loan valuation date). The PIs continued to manage the loans until transfer, including collecting receipts. The benefit, or cost, of transactions between loan valuation and transfer of the loan to NAMA accrued to NAMA. €4.5 million of the 2010 non-disposal receipts were paid to NAMA for transactions in the 'valuation to transfer period'.
  - b Rates of return calculated by the Office of the Comptroller and Auditor General. A meaningful rate of return cannot be calculated for an individual loan where the acquisition value was effectively nil. The rates were calculated using the dates the loans transferred to NAMA as the acquisition date; for other transactions, the dates on which NAMA received, or paid, cash were used.
  - c These receipts were not paid over to NAMA. They were used to fund NAMA's advances for loans 7.11 and 7.14.
  - d Advances included loan arrangement fees of €3.8 million, which QPPH then paid to NAMA. These receipts are included in the €104.1 million
  - e Rounded.



## **Appendix C**

### **Extract from NAMA Board paper, for meeting on 6 July 2011**

The paper for the Board was prepared by NAMA's Portfolio Management unit. This extract is the first 11 pages of a 25-page document. The remainder of the document (not included) deals with detailed information on the asset portfolio and loan analysis.

The following redactions have been made to this extract

- locations of most of the properties related to individual loans
- personal information
- commercial information relating to non-NAMA borrowing.

#### ***Abbreviations***

PM = Portfolio Management unit, NAMA

C&R = Credit and Risk unit, NAMA

IBR = independent business review

LAV = loan acquisition value

PDH = personal dwelling house

PIs = participating institutions i.e. banks whose assets were acquired by NAMA

PIK note = Payment-in-kind loan. Interest due is paid by way of additional debt i.e. payment of the interest is deferred until the loan term ends. This type of loan is regarded as high-risk and generally has a high interest rate.

SPV = special purpose vehicle

PGs = personal guarantees



1. PM to seek reversal of all transfers and unencumbered assets must be pledged to NAMA.
2. NAMA to support the impending cash calls in 2011 and 2012
3. PM to obtain further reductions in overheads
4. PM to obtain negative pledge prevent the Avestus Partners creating any new investment funds without NAMA's approval.

## IBR 30+ PORTFOLIO MANAGEMENT FRONT SHEET

Connection – Overall Summary Exposure			
NAMA PAR Debt (excl derivatives)	€399m	NAMA Connection Id.	Avestus Capital Partners (Quinlan Private; 0006)
Derivatives Exposure	€0m	Delegated Authority	NAMA Board
NAMA PAR Debt (incl derivatives)	€399m	Nature of Business	Investment
Non-NAMA Par Debt	€4.6bn		
NAMA Debt (Cost)	Est. €101m	Total Nov'09 values	€98m
Discount %	Est. 75%		
NAMA Breakeven (Debt (loan & derivative acquisition cost), plus advances and holding costs less principal repayments and servicing (both loan and derivatives))*	€105m		

## BACKGROUND

Avestus Capital Partners is the reconstituted 'Quinlan Private'. The partnership consists of [REDACTED]

[REDACTED]

investments in Avestus are pledged to NAMA.

Avestus has assets with [REDACTED] in debt under management, partly funded by [REDACTED] from the PIs and €399m from NAMA. The value of the assets is c. [REDACTED]. Of the €399m funded by NAMA only c. €182m is asset backed with the balance (€218m) being 'equity bridges', which NAMA usually calculates at zero value. The NAMA acquisition value will be in the region of €101m.

The loan due diligence has yet to complete for Avestus. PM's calculation of the LAV for the equity bridges at zero is consistent with the calculation of LAVs on connections where the due diligence has completed with the exception of a site in [REDACTED] where the LAV has been calculated at €2.3m.

Summary of Avestus Debt (€m)	Ireland	Europe	UK	US	Par Debt	LAV (Est.)
Property Backed	18	42	104	18	182	98.4
Equity Bridging Debt (Subordinate)	15	143	59	-	217	2.3
<b>Total NAMA</b>	<b>33</b>	<b>185</b>	<b>162</b>	<b>18</b>	<b>399</b>	<b>101</b>

The Property Backed debt is secured against the following 7 properties. Excluding 2 Kingdom St. Paddington, London, the equity debt is totally unrelated to the 'property backed' debt.

Property	Type	Status	(€m) Asset Backed Debt	(€m) Estimated LAV*	(€m) PM's Estimated Current Realisation
[REDACTED]	Hotel	[REDACTED]	39	10	10
[REDACTED]	Office	[REDACTED]	77	49	48
[REDACTED]	Office	[REDACTED]	28	16	18
[REDACTED]	Office	[REDACTED]	18	13	13
[REDACTED]	Office	[REDACTED]	12	7	5
[REDACTED]	Retail Site	[REDACTED]	3	1	1
[REDACTED]	Ind.	[REDACTED]	5	2	1
<b>Total</b>			<b>182</b>	<b>98</b>	<b>96</b>

\*Excludes [REDACTED] site – LAV €2.3m. Total LAV is €100.7m



## IBR 30+ PORTFOLIO MANAGEMENT FRONT SHEET

The Avestus business plan & the IBR attributed the €77m senior debt attached to 2 Kingdom St. Paddington as being NAMA debt outside of the Avestus connection. PM has included it in the Avestus business plan as it has not been reflected in other NAMA business plans. Avestus control 9.46% of the equity in 2 Kingdom St. Paddington.

As per the Avestus business plan the **'Equity Bridging'** opening debt for 2011 and estimated closing debt after interest is rolled up, but before capital calls, to 2014 is as follows:

Equity Backed Par Debt €m	Open 2011	Yr End 2011	Yr End 2012	Yr End 2013	Yr End 2014	Cash Flow
	€56	€59	€62	€65	€69	(€13)
	€30	€31	€33	€30	€30	(€0)
	€27	€28	€29	€30	€32	(€5)
	€26	€24	€25	€25	€27	(€1)
	€17	€18	€19	€19	€20	(€3)
	€15	€14	€14	€10	€10	€4
	€13	€14	€15	€8	€9	€4
	€10	€10	€9	€10	€11	(€1)
	€6	€0	€0	€0	€0	€6
	€5	€7	€9	€10	€11	(€5)
	€3	€3	€4	€2	€3	€1
	€3	€3	€4	€4	€4	(€1)
	€2	€2	€2	€2	€2	(€0)
	€2	€2	€1	€1	€1	€1
	€2	€2	€2	€2	€2	(€0)
	€1	€1	€1	€1	€1	€0
<b>Total Equity Backed Debt</b>	<b>€218</b>	<b>€219</b>	<b>€227</b>	<b>€219</b>	<b>€231</b>	<b>(€13)</b>

site with LAV of €2.3m

PM has calculated the current NAMA breakeven at €105m, being LAV of €101m plus €4.2m in capital calls in 2011. Of the €399m included in the Avestus business plan €63m was identified in the / Quinlan Partnerships business plan. For completeness this debt is also reflected in this paper as collectively the Avestus partners have a controlling interest in the investments.

All the debt is effectively personal debt held by the partners and A key risk for NAMA is that the Avestus Partners are exposed in the event of other creditor banks taking court action/registering judgements against which could crystallise all joint & several obligations, including the Avestus partners, on the senior debt positions. A summary of the Avestus partners' personal details including their non-NAMA exposures and PDH's is as follows:

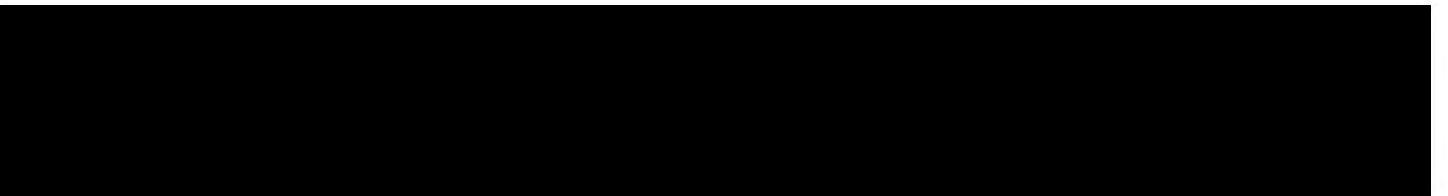
## IBR 30+ PORTFOLIO MANAGEMENT FRONT SHEET



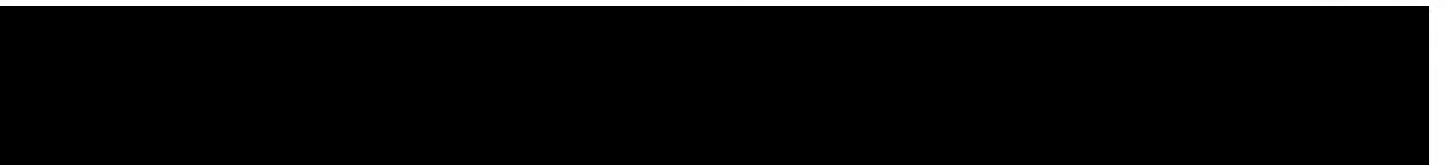
Summary of Non-NAMA Equity Bridges (Personal)		€	Guarantee Type
			Personal Loan - recourse
	Total		



Summary of Non-NAMA Equity Bridges (Personal)		€	Guarantee Type
			Personal Guarantee
			Personal Loan - recourse
			Personal Loan - recourse
			Personal Guarantee
	Total		



Summary of Non-NAMA Equity Bridges (Personal)		€	Guarantee Type
			Personal Loan - recourse
			Personal Loan - recourse
			Personal Loan - recourse
			Personal Loan - recourse
			Personal Guarantee
			Personal Loan - recourse
			Personal Loan - recourse
			Personal Loan - recourse
	Total		



Summary of Non-NAMA Equity Bridges (Personal)		€	Guarantee Type
			Personal Guarantee
			Personal Loan - recourse
			Personal Loan - recourse
			Personal Loan - recourse
			Personal Guarantee
			Personal Guarantee
	Total		



## IBR 30+ PORTFOLIO MANAGEMENT FRONT SHEET

**Partnership Equity Bridges (non-NAMA)**

Avestus Partnerships Summary of Non-NAMA Equity Bridges (Partnership)		€	Guarantee Type
			Joint and Several Recourse
			Joint and Several Recourse
			Joint and Several Recourse
			Joint and Several Recourse
			Joint and Several Recourse
			Joint and Several Recourse
			Joint and Several Recourse
			Personal Guarantee
			Personal Guarantee
			Personal Guarantee
Partnerships Liabilities			

The Avestus Partners do not anticipate that they will extinguish these guarantees in the medium term.

**Avestus Performance to Date**

The Avestus business plan as presented is consistent with NAMA policy. The partners have and continue to demonstrate their co-operation by selling assets to repay debt, by reducing personal & business overheads and changing their lifestyles to being consistent with borrowers seeking a repayment plan.

Avestus have just agreed the sale of 2 prime properties (both approved by NAMA), a super prime office property in London, 49 Grosvenor St, for £16.7m and an office in Manhattan for \$20m. [REDACTED] All funds, after sales costs, are being used for NAMA debt reduction.

Avestus has reduced overhead costs from [REDACTED] to [REDACTED] (a 79% reduction) with employees (excluding the four partners) falling from [REDACTED] at its peak to the current [REDACTED]. Personnel costs, the largest factor in the firm's cost base has fallen from [REDACTED] to [REDACTED] per annum.

The partners have met the interest payments on loans transferred to NAMA from personal cash resources. They anticipate they will be unable to continue doing so through the life of the business plan and will require NAMA to fund three capital calls in 2011 totalling €4.2m (1% of Par debt). This is justified by the partners as a mechanism to maximise debt repayment and continued use of Avestus to deal with the assets. The total funding requirement of the capital calls to 2014 is €7m. PM proposes that the capital calls are supported up to the point of repayment of the entire debt to NAMA.

**SUMMARY OF PM PROPOSAL AND KEY OUTCOMES**

While the partners have provided a business plan that is consistent with NAMA policy, PM proposes that the partners are provided a repayment target of €125.5m, calculated as:

Loan Acquisition Value -	€100.7m
Further capital calls -	€4.2m
Return on Capital Calls -	€4.2m
15% Return -	€16.4m
<b>Target Repayment</b>	<b>€125.5m</b>

In essence this is a refinance of the total debt for €125.5m.

## IBR 30+ PORTFOLIO MANAGEMENT FRONT SHEET

PM views the alternative to an early exit is a wind down of the business over time which is not necessarily within NAMA's control given that €218m of the €399m of the debt is subordinated debt (being equity bridges) which Avestus does not expect to be able to start to repay before 2013.

The likelihood is that Avestus will source the €125.5m as a PIK note from either Private Equity or a mezzanine debt provider, either will attach a coupon of c. 20%. Given the lack of appreciation of the key asset, 2 Kingdom St. Paddington until 2014/15, NAMA should expect that any return on equity will be used to meet the coupon cost attached to the €125.5m refinance. PM advises against attempting to recover from any potential upside on the subordinated debt as being a disincentive to sourcing a refinance provider.

PM proposes a strategy for Avestus to refinance out of NAMA within 6 months for the following reasons:

1. €218m of the €399m Avestus debt is equity bridging subordinated debt. The PIs have retained [REDACTED] of senior debt secured against property of which the €218m is subordinated. NAMA's return on the equity bridging is dependent on surplus proceeds following the full repayment of the senior debt. NAMA does not expect any repayment on the equity bridges before the end of 2013.
2. Supporting the business plan for an extended period may require NAMA meeting further capital calls on the equity bridges which have not yet materialised.
3. The Avestus partners have given full co-operation to NAMA to date. Evidence of this included their assistance in the sale of [REDACTED] where they relinquished their [REDACTED] interest in the property knowing there was a 'nuisance value' to their non-cooperation. As an act of good faith Avestus gave up their interest without seeking formal confirmation from NAMA as to the treatment of the €6m Avestus debt attaching to the property.
4. The Avestus sales disposal strategy is ahead of schedule. In addition to the proposed sale of the London & New York offices, Avestus have repaid [REDACTED] to the PIs since March 2010 (both the Knightsbridge Estates & Victoria Partnership transactions were approved by NAMA) and an additional [REDACTED] to equity investors of which NAMA received its share of €54m toward the repayment of debt which transferred in Tranche 1. Had the Avestus debt transferred to NAMA in Tranche 1 the sale of their interests in the Knightsbridge Estates, [REDACTED] 49 Grosvenor St. & their NY office (total repayment [REDACTED]) would have achieved a repayment of [REDACTED] of their total NAMA indebtedness ([REDACTED] in June 2010).
5. On achieving the target repayment of €125.5m, Avestus will have repaid 81% of the Par debt originally eligible for NAMA.

**[ Pages 6 to 9 of the paper have not been included  
— personal and commercial details ]**



## IBR 30+ PORTFOLIO MANAGEMENT FRONT SHEET

**Cashflows**

NPV Analysis	Debt After Cash Calls	Dec-11	Dec-12	Dec-13	Dec-14	Dec-15	NPV 5.5%	NPV 20%
PAR	(399)	41	7	33	8	99	(€247)	(€301)
LAV	(105)	41	7	33	8	99	€50	(€3)
<b>PM's Proposal</b>	<b>(105)</b>	<b>125.5</b>					<b>€21</b>	<b>€12</b>

As summarised above, the Avestus business plan provides a positive NPV of €50m using the 5.5% discount rate to 2016. However a discount rate of 20% may be more appropriate given the risks involved with this connection. The PM proposal seeking an exit before 2012 with a target repayment of €125.5m provides a NPV of €21m with the 5.5% discount rate and a NPV of €12m using the 20% discount rate.

PM views **time** as the greatest risk to the repayment of NAMA's debt. This is due [REDACTED] and the 'joint & several' guarantees on the debt. Given the uncertainty of the realising the proposed repayment of €140m from 2012 to 2015 where €46m is unsecured and the anticipated increase in value of '2 Kingdom Street' PM recommends exiting the connection within the next 6 months at an exit value of €125.5m.

**RECOMMENDATIONS AND CONCLUSIONS**

PM recommends either a refinance of the connection in 2011 or a 'sell & hold' disposal strategy.

**Refinance Strategy**

PM proposes supporting the 3 cash calls, totalling €7m of which €4.2m is due in 2011, to protect NAMA's security and assist in the re-finance of the Avestus connection out of NAMA. To assist the refinance, the Avestus connection debt should be re-structured to allow a sale of the debt by way of an outright loan note sale.

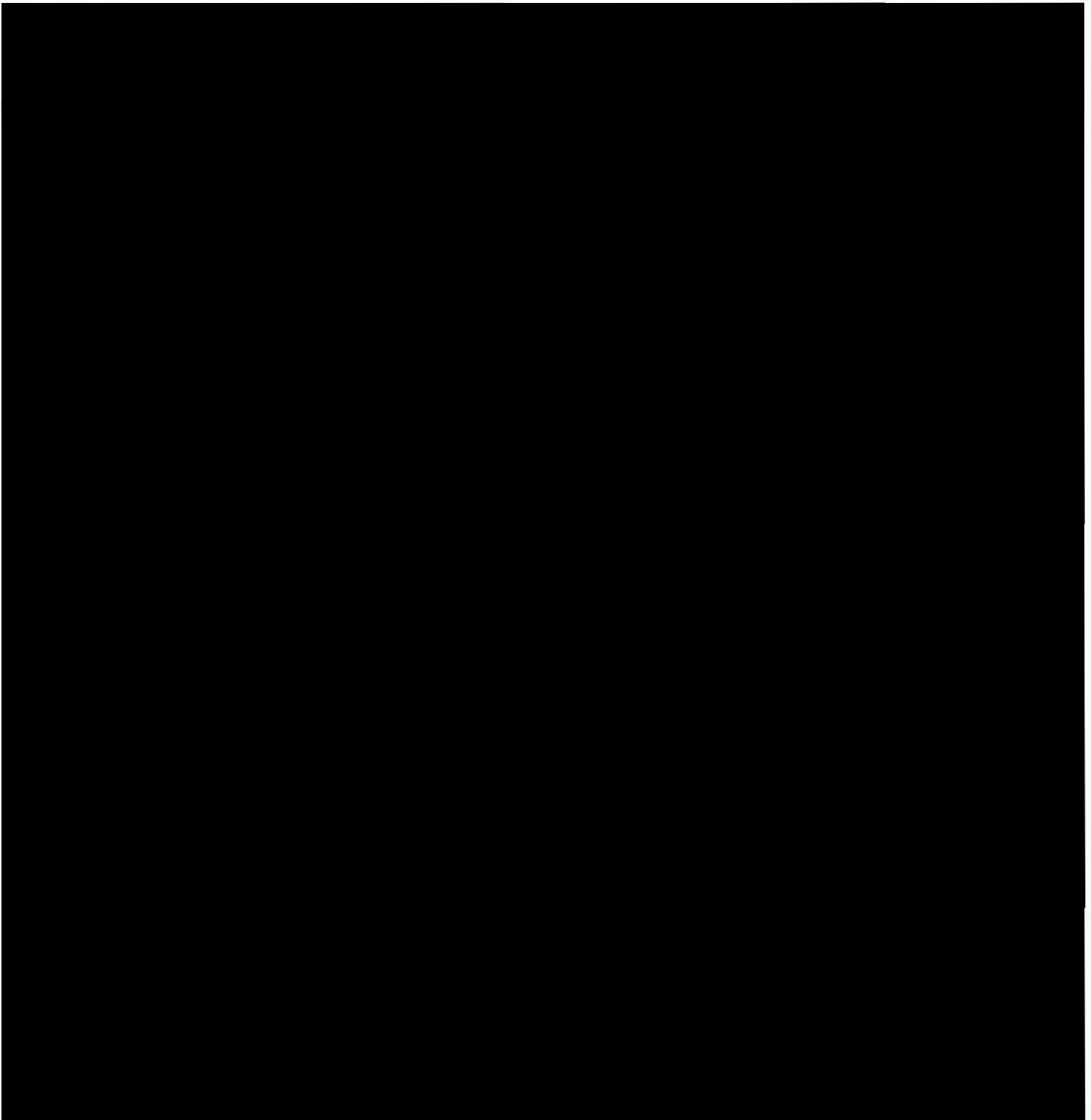
The structure of the refinance may be as follows:

1. Avestus procure an investor with sufficient cash.
2. Investor invests via an SPV.
3. Various rules set out between the investor and Avestus in advance of deal being agreed (i.e. elimination of PG's – NAMA to insist on as a condition as NAMA should limit the ability of enforcement [REDACTED] by third parties).
4. Investor acquires the loan notes from NAMA.
5. NAMA receives the cash and releases its security.

## IBR 30+ PORTFOLIO MANAGEMENT FRONT SHEET

**'Sell & Hold' Strategy**

A property disposal strategy should seek to dispose of all the property within the Avestus portfolio with the exception of [REDACTED] Paddington by June 2012. As NAMA's interest in [REDACTED] is held through a Jersey Property Unit Trust (JPUT), NAMA should perform an immediate security review and seek to align a position with [REDACTED] towards disposal. PM understands that [REDACTED] will seek to dispose of their 50% no earlier than 2015 and NAMA should consider this as the most appropriate disposal date. Any earlier sale of this asset will allow the acquirer benefit from the upside expected in 2015.







## Appendix D

### From the NAMA Act 2009 relevant to disposals of NAMA assets to NAMA debtors/associated debtors

#### *Section 172 Limitations on certain dealings in land, etc.*

- (3) A person who is the debtor in relation to an acquired bank asset, who is a person referred to in any of subparagraphs (i), (ii), (iii), (v) or (vi) of section 70 (1)(b) or who is a person on whose behalf the debtor or the person referred to in one of those subparagraphs acts as a nominee or trustee in relation to an acquired bank asset shall not, if any of those persons is in default in relation to any acquired bank asset, acquire from NAMA or a NAMA group entity, any legal or beneficial interest in property comprised in the security forming part of any acquired bank asset in relation to which the default has occurred.
- (4) The Minister may, if in the opinion of the Minister it is necessary to do so having regard to the purposes of this Act and, in particular, to the interests of taxpayers and the nature and extent of the default, make regulations
- (a) prohibiting or restricting the acquisition by a person who is in a prescribed class of debtors, or of persons directly or indirectly connected to debtors, of any legal or beneficial interest in property comprised in the security forming part of any acquired bank asset or any acquired bank asset of a prescribed class of acquired bank assets, where the debtor concerned is in material default of any payment obligation to NAMA or a NAMA group entity for which a satisfactory arrangement to remedy the default has not been made, and
  - (b) prescribing the requirements which such persons would be required to meet in order to acquire property comprised in the security forming part of any acquired bank asset or any acquired bank asset of a specified class of acquired bank assets from NAMA or a NAMA group entity.
- (5) A draft of every regulation proposed to be made under subsection (4) shall be laid before each House of the Oireachtas and the regulation shall not be made until a resolution approving of the draft has been passed by each such House. 88 NAMA's management and disposal of the Project Nantes loans

**Section 70**

- (1) For the purposes of this Act, a person is an 'associated debtor' of a debtor if the person —
- (a) is or was at any time directly or indirectly indebted or otherwise obligated to a participating institution under or in connection with a credit facility, and
  - (b) is or was at any time —

- (i) a body corporate that was a subsidiary of, or a related company (within the meaning given by section 140(5) of the Companies Act 1990) to, the debtor,
- (ii) a nominee of the debtor, including a person who may or does in fact act at the express or implied direction or instruction of the debtor or another associated debtor of the debtor,
- (iii) acting in the capacity of trustee of a declared or undeclared trust the beneficiaries of which include (directly or indirectly) —
  - (I) the debtor,
  - (II) a person referred to in *subparagraph (ii)*, or
  - (III) a body corporate controlled by the debtor or a person referred to in that subparagraph,

**Classes of persons referred  
to in section 172(3)**

- (iv) in partnership, within the meaning of the laws of any relevant place, with the debtor, in relation to a bank asset which at the time of the partnership was, or subsequently became, of a class of bank assets prescribed under Section 69 (i)

- (v) a body corporate of which the debtor is the sole member, or
- (vi) a body corporate controlled by the debtor,

or

- (c) a member of any other class of person prescribed by the Minister for the purposes of this subsection.

- (2) For the purposes of subsection (1)(b)(vi), a body corporate shall be taken to be controlled by a debtor if the debtor is (whether alone or together with any one or more of the persons mentioned in subparagraphs (i) to (v) of subsection (1)(b), and whether directly or indirectly) —
- (a) interested in one-quarter or more of the equity share capital of the body, or
  - (b) entitled to exercise or control the exercise of one-quarter or more of the voting powers at any general meeting of the body.

- (3) In subsection (2) — 89 Appendix D
  - (a) 'equity share capital' has the same meaning as it has in section 155 of the Companies Act, 1963, and
  - (b) the reference to voting power exercised by a debtor includes voting power exercised by a nominee of the debtor or another body corporate which that debtor controls.
- (4) Section 54 of the Companies Act 1990 applies for the purpose of determining, for the purposes of *subsection (2)*, whether a person holds an interest in shares.

