

Statement by Minister for Finance on the

NAMA legislation draft paper

The Minister for Finance, Mr Brian Lenihan, TD, today published the draft text of proposed legislation for the National Asset Management Agency (NAMA), which is being established on a statutory basis to deal with the negative impact on the economy resulting from deficiencies in the asset quality in the banking system. On its publication the Minister stated:

“I am publishing the proposed legislation in draft format today so that Deputies, Senators and the public can have an opportunity to consider it prior to its formal publication as a Bill in September. The Dáil will return on 16 September 2009 to commence debate on the published actual Bill in the context of a wider debate on the future of our financial sector. The publication of the draft text today will facilitate an informed debate at that time.”

The Minister outlined the context in which the Bill is being published:

“The Irish financial system has been greatly challenged by the very significant downturn in the global and domestic economy, by events in the international financial markets, and by the excessive lending during the property boom here at home. These issues are so serious that they require concerted, determined and ambitious action by the Government to ensure the protection of our economy and the welfare of our people. We must address the health and stability of our banking system – to ensure that the credit required by the economy is provided and that people’s savings are protected.

There is nothing in the proposed Bill that will provide a ‘bail-out’ for borrowers, whether builders, developers or otherwise. Anyone who owes money before NAMA continues to owe it, and is expected to repay the full amount of the debt.

The Government has decided to adopt the proposed approach based on the advice it has received domestically, the advice of institutions such as the IMF, and also the example of other countries taking similar steps. The Government is convinced this response will ensure the safety, stability and capacity of the Irish banking system, all of which are key to supporting our economy.”

How will NAMA work?

Step 1

NAMA will buy loans from the participating banks at a significant discount – these loans will be from the riskiest part of the bank portfolios, the land and development loans, as well as certain associated loans.

This will take these riskier loan classes away from the balance sheets of the banks concerned and make the banks safer and more secure for depositors and investors.

Step 2

NAMA will pay the banks concerned for these loans. It will do so on the basis of valuations carried out by experts and in accordance with pre-defined valuation methodology. The banks' book value of the loans will not be a factor and the banks will have to recognise a loss on their books at the time of the transfer for the difference between the book value and the amount paid by NAMA.

The payment for the loans will be in the form of Government securities and/or guaranteed securities, and the principles of the valuation methodology are set out in the draft legislation and the Minister will be making detailed regulations based on these principles. The valuation methodology along with all other State aid aspects of the NAMA initiative will be subject to approval of the EU commission.

This method of payment will ease pressures on the banks arising from the tighter liquidity conditions that have prevailed for the past year or so, giving them access to cash or near-cash assets in place of the much less liquid property loan assets they had before. Again, this will make for more stable and secure financial institutions, better able to lend and support the domestic economy

Step 3

NAMA will manage these loans, either directly or indirectly, so as to obtain the best achievable return from them. In the meanwhile, it will collect interest due and pursue debts so as to ensure its own income stream and to recoup the Government investment over time.

NAMA in effect puts itself in the place of the bank that originated the loan, and will have all the same rights to pursue debts, where necessary. Borrowers who continue to meet their contractual obligations, of course, have no reason to worry – their rights are fully protected.

What will NAMA look like?

It is intended that NAMA will be a separate body with its own Board appointed by the Minister for Finance, with staffing resources and management services provided by the National Treasury Management Agency (NTMA). It will have all necessary commercial powers of a financial asset management company to establish subsidiaries, to operate through agents, to buy and sell assets, to manage loans and work with borrowers, and to take full and determined action in relation to debts owed.

NAMA itself will maintain a streamlined organisational structure and will outsource work as appropriate. However, it will have complete control of the assets and will make all the major decisions in regard to them.

How much assets will be transferred?

A lot of preparatory work has been taking place in regard to NAMA, and the indications are that the level of assets which will have to transfer is in the range indicated in the Supplementary Budget in

April. Until the valuations are actually carried out we will not have final information on the exact amount that NAMA will pay, but there will be significant discounts on the book values at which these assets are carried on the banks' Balance Sheets.

What are the next steps?

The legislation will be brought to the Oireachtas in September with a view to ensuring a proper debate and an expeditious passage of the legislation. In the interim, close collaboration will continue with the European Commission in relation to State Aid approval. Consultations will also be undertaken with the European Central Bank.

At a practical level, preparations will continue in relation to preparing the organisational and legal structure of NAMA, and ensuring that all the necessary steps are taken for the commencement of asset transfers later this year. It is intended that assets will transfer in tranches, starting with the loans of the largest borrowers.

Will this have broader implications for the banking sector?

The Minister noted that it is clear that an intervention of this scale in the banking market is bound to have considerable implications both for the institutions individually and for the broader structure of the banking system. The Minister said that these implications are being considered and may, as indicated earlier, include implications for capital requirements. These matters will form part of the broader context in which the NAMA legislation will be discussed and debated in September. The Minister added that "the next few weeks will give market participants, public representatives and the public themselves an opportunity to digest the very detailed and comprehensive legislation that I have had prepared over the recent months. I intend that there will be a well-informed, broad-ranging debate on the financial system in September, that will aim to set the tone and direction for public policy for the coming years. I expect that all who participate in that debate will do so in a balanced and thoughtful way, having regard to the scale of our national difficulties and the necessity to address them carefully and comprehensively."

What are the principal features of the draft Bill?

The principal features of the draft Bill include:

- NAMA will buy the appropriate assets of the participating institutions. The price will not be the book value of the loans but will include an appropriate write down which the participating institutions will have to reflect in their books.
- NAMA will purchase the assets through the issue to the banks of Government securities and/or guaranteed securities issued by NAMA. The replacing of property related loans with Government bonds will strengthen the balance sheets of the banks and this will increase their capacity to access liquidity in the financial markets and, if necessary, through Eurosystem liquidity operations.
- The principles of the valuation methodology are set out in the draft legislation and the Minister will be making detailed regulations based on these principles. The methodology will recognise that the current market for property backed loans and the underlying assets are very illiquid and will not require the banks to accept 'fire-sale' values. But nor will it be guided in its pricing by the property prices and expectations regarding property prices that underpinned the original lending decision. It will aim to set a reasonable price having regard to a longer term perspective on the property market. The valuation methodology and indeed the scheme as a whole will require EU State Aid approval.
- NAMA will set the price it is prepared to pay for assets.
- In acquiring loans, NAMA will have all necessary powers to carry out full due diligence and acquire all necessary information.
- Participating institutions are obliged to act in good faith and comply with appropriate directions from NAMA.
- NAMA will have all the powers necessary to purchase, hold, and dispose of assets and if necessary complete developments with a view to achieving an optimum return to the State.

- NAMA will be accountable to the Oireachtas in the usual manner. The agency will report to the Minister and reports will be laid before the Oireachtas. NAMA accounts will be subject to audit by the C&AG.
- Various legislative exemptions and variances have been provided to enable NAMA to complete its work as efficiently as possible.
- To deal with the danger that persons might seek to impede NAMA's operations in particular ways NAMA has been provided with very limited powers to obtain property or interests compulsorily.
- Where litigation arises in respect of NAMA's operations, provisions have been made to ensure this does not unduly obstruct NAMA's efficient operations and such litigation proceeds without delay.
- NAMA will be provided with powers necessary to enforce the security on loans, including the appointment of statutory receivers and to be vested with ownership of the underlying asset where appropriate.
- The issue of the set off of tax by the banks against losses will be addressed by the Minister in the publication of the Bill in September.

The Minister for Finance is interested to hear the views of all on these draft provisions.

Participating Institutions

Institutions may apply to the Minister to be designated as participating institutions. The draft text includes objective and non-discriminatory criteria which must be taken account of for designation and these include systemic importance to the State, other State supports available to the institution, maintenance of financial stability and facilitating the flow of credit to the economy. In volunteering for participation, an institution will be required to confirm that it will accept the designation of eligible assets by NAMA and will accept the NAMA valuation of those assets.

Eligible Loan Assets

Eligible assets for transfer to NAMA will include the land and development books and associated loans. Associated loans will be those loans which are not in the land and development category but which are held by individuals/companies that also have land and development exposures or the borrower may be a systemic risk to the financial system. Associated loans will take account of cross collateralisation and other associated loan exposures of borrowers.

Valuation

Valuations by NAMA will be consistent with EU Commission guidelines and will be based on the current market value of the underlying collateral, adjusted to reflect a longer term economic value which the underlying asset could reasonably be expected to attain. Detailed regulations on how the long term economic value is to be calculated are being drawn up by the Minister and will be published in September. The principal factors to be taken into account in the Regulations are provided for in the draft legislation. There will be an opportunity for institutions to seek a review of the price paid, and any review will be carried out by a valuation panel which will report to the Minister. But NAMA will not be required to take any asset and if appropriate it can refuse to take assets.

Ends

30 July, 2009