



NTMA Compliance

NAMA PROTECTED DISCLOSURES POLICY

Version: 9.0

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NAMA PROTECTED DISCLOSURES POLICY

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1 INTRODUCTION

The purpose of this Policy is to promote principles of good corporate governance by providing for the reporting and addressing of concerns about possible relevant wrongdoing as described below. This policy affirms the commitment of the National Asset Management Agency (“NAMA”) to creating a workplace culture that encourages the making of protected disclosures and provides protection for disclosers.

NAMA has adopted procedures (the “Procedures”) for the making of disclosures by reporting persons and dealing with those disclosures for the purposes of Section 21 of the Protected Disclosures Act 2014, as amended (the “Protected Disclosures Act”), which was amended to transpose the obligations of Directive (EU) 2019/1937, (the “EU Whistleblowing Directive”). These Procedures are available on the Intranet or on request from Compliance@ntma.ie.

This Policy is without prejudice to any mandatory reporting requirements which may apply as a matter of law (including those referred to in section 4 of this Policy). For the purposes of this Policy the making of any Disclosure is a voluntary matter for a reporting person. However, reporting persons should be aware that the NAMA Anti-Fraud Policy¹ requires that any suspicion of fraud must be reported.

Please note that this Policy may be amended from time to time at the discretion of NAMA. Such amendments will be notified to reporting persons at that time.

2 SCOPE

This Policy applies to all reporting persons of NAMA. In this Policy, a “reporting person” is a person who comes within the definition of a reporting person in the Protected Disclosures Act, which is set out in Appendix 1. This includes, in each case, whether current or former:

- all persons employed by the National Treasury Management Agency (“NTMA”) under a contract of employment, whether permanent, part-time or fixed-term, and assigned to NAMA (NAMA Officers);
- consultants, contractors, other persons engaged under a contract for services, secondees, interns, casual workers, agency workers, work experience students and suppliers
- members of the Board and Committees (whether executive or non-executive);
- volunteers and unpaid trainees; and
- a person who acquires information on a ‘relevant wrongdoing’ (as defined in the Protected Disclosures Act) during a recruitment process or other pre-contractual process.

This Policy is without prejudice to a reporting person's rights to disclose information as provided for under Section 14 of the National Treasury Management Agency Act 1990 (as amended) and Sections 202 and 222 of the National Asset Management Agency Act, 2009, as applicable.

¹ The NAMA Anti-Fraud Policy and other NTMA Policies, such as the NTMA Dignity and Respect Policy, and other Procedures referenced within this Policy are published internally within the NAMA and/or NTMA, as appropriate.

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Grievances about interpersonal conflicts between a reporting person and another worker that only affect the reporting person do not come within the scope of this Policy and will be addressed under the NTMA's Dignity and Respect Policy or the NTMA's Grievance Procedure, as appropriate. However, if any such complaint relates to a relevant wrongdoing (as described below), NAMA may consider that complaint to come within the scope of this Policy

For NAMA Officers, i.e. NTMA employees assigned to NAMA, any concerns relating to terms and conditions of employment are outside the scope of this Policy and should be addressed under the NTMA's Grievance Procedure.

If a reporting person is uncertain as to whether something is within the scope of this Policy, he or she should seek advice from the NTMA Compliance Unit.

3 RESPONSIBILITIES

3.1 NAMA Audit Committee

- (a) Ownership of this Policy, insofar as it relates to the functions of NAMA, and oversight of its implementation with regard to these functions.
- (b) Oversight of investigations and following the appropriate steps once a Disclosure is made.

3.2 Chairperson of NAMA Audit Committee

- (a) To receive Disclosures from the NTMA Head of Compliance or the Nominated Person (as defined in the Procedures) and to liaise with the NTMA Head of Compliance to ensure that such Disclosures are properly evaluated and investigated.

3.3 External Contact Person for Disclosures ("Nominated Person")

- (a) To receive Disclosures from a reporting person who does not wish to raise an issue internally and to make a written report to the Chairperson of the NAMA Audit Committee on the reporting person's behalf.

3.4 NTMA Head of Compliance

- (a) To act as a central repository for all Disclosures on behalf of NAMA.
- (b) To evaluate all such Disclosures and to determine the nature and scope of any necessary investigation and to advise the NAMA Audit Committee of Disclosures made within its remit.

3.5 Line Managers

- (a) To receive Disclosures from their direct reports and report such Disclosures to the NTMA Head of Compliance without delay.

4 DISCLOSURES OF RELEVANT WRONGDOING

A “**Disclosure**” is the disclosure of relevant information within the meaning of the Protected Disclosures Act. This is information which, in the reasonable belief of the reporting person making the disclosure (in this Policy, the “reporting person”), tends to show one or more relevant wrongdoings and which information came to the attention of the reporting person in connection with his or her assignment to NAMA or engagement by or with NAMA. The term “reasonable belief” does not mean that the belief has to be correct. The reporting person may be mistaken in their belief, so long as their belief was based on reasonable grounds.

A “**relevant wrongdoing**” can be the occurrence (past or on-going) or likely occurrence of any of the following²:

- (a) commission of an offence (such as fraud, corruption, bribery, theft, money laundering or lobbying NAMA as defined in Section 221 of the NAMA Act);
- (b) a failure to comply with any legal obligation other than one arising under the contract of employment of the person making the disclosure, e.g. failure to comply with public procurement legislation, market abuse, insider dealing, ethics legislation, anti-money laundering and terrorist financing legislation or the legislation governing NAMA;
- (c) a miscarriage of justice;
- (d) the endangering of the health and safety of any individual;
- (e) damage to the environment;
- (f) unlawful or improper use of funds or resources of a public body³ or other public money;
- (g) an act or omission by or on behalf of a public body which is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement⁴;
- (h) a “breach”, as defined in Art 5.1 of the Whistleblowing Directive, i.e. that a breach of European Union law in any of the following areas has occurred, is occurring or is likely to occur: public procurement; financial services, products and markets, and prevention of money laundering and terrorist financing; product safety and compliance; transport safety; protection of the environment; radiation protection and nuclear safety; food and feed safety, animal health and welfare; public health; consumer protection; protection of privacy and personal data, and security of network and information systems; the financial interests of the European Union and/or the internal market; or
- (i) the concealment or destruction of information tending to show any of the above matters listed at (a) to (h).

Where a reporting person wishes to make a Disclosure under this Policy, such Disclosure should be made in accordance with the procedures set out in the Protected Disclosures Act, as summarised in the Procedures. Reporting persons are encouraged to make the Disclosure

² The matters listed at (a) to (i) (inclusive) are included in Section 5(3) of the Protected Disclosures Act.

³ A public body for this purpose (and in (g)) includes NAMA.

⁴ This subsection relates to the past or on-going occurrence of the relevant act or omission, and not a likely occurrence of the act or omission.

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as promptly as practicable and, as a general rule, within 6 months of the reporting person becoming aware of the relevant information.

Reporting persons should note that a Disclosure may not constitute the discharge of any statutory reporting obligations imposed on them. For example, it does not discharge:

- (a) the obligation on NAMA under Section 203 of the NAMA Act to pass information to law-enforcement authorities where it believes a participating institution may have committed a criminal offence or contravened a law relating to taxation, companies, the regulation of financial services or competition.
- (b) the obligations under section 221 of the NAMA Act of a person who believes that they have been communicated with in contravention of the prohibition on lobbying to report details in relation to same to a member of the Garda Síochána.
- (c) the obligations of a person under Section 19 of the Criminal Justice Act 2011 to disclose information to a member of the Garda Síochána, which he or she knows or believes might be of material assistance in preventing the commission of a relevant offence⁵ or securing the apprehension, prosecution or conviction of a person for a relevant offence.

Any queries relating to any of his or her statutory reporting obligations, should be raised with the NTMA Compliance Unit.

Disclosures will be managed in accordance with the Procedures. Where a report is not considered a Disclosure as defined in this Policy, the individual making the report will be so advised and other options in relation to the matter reported may be discussed.

Other Options for Disclosures

There are other options for Disclosure provided for under the Protected Disclosures Act which may also be applicable to the reporting person. See Appendix 2 for further details. Before a Disclosure is made to any external person or body by a reporting person, they are encouraged to seek advice from the Nominated Person mentioned above.

It is important to note, however, that while a reporting person need only have a reasonable belief as to a relevant wrongdoing to make a Disclosure through the channels set out in the Procedures, if they are considering making a Disclosure to an external person or body, different and potentially stringent requirements apply (depending to whom the Disclosure is made) in order for that Disclosure to benefit from the protections set out in the Protected Disclosures Act and set out in Section 5 of this Policy.

5 PROTECTION OF REPORTING PERSONS

Each Disclosure will be treated seriously and will be considered on its own facts. The motivation of a reporting person in making a Disclosure is irrelevant when determining whether or not it is a disclosure protected by the Protected Disclosures Act. The reporting person

⁵ As defined in section 3 of the Criminal Justice Act 2011. Relevant offences include certain offences relating to banking, investment of funds and other financial activities, company law, money laundering and terrorism, theft and fraud, bribery and corruption, consumer protection and criminal damage to property.

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making the Disclosure will not be asked to prove anything and a reporting person should not pursue his or her own investigations in this regard.

NAMA will seek to protect the identity of a reporting person making the Disclosure. The identity of a reporting person will not be disclosed without their consent, save where the Disclosure is reasonably considered necessary for the purpose of the receipt of, transmission of or follow up on a Disclosure, as required under the Protected Disclosures Act. However, in certain other circumstances, it may be necessary to disclose the identity of a reporting person without first obtaining their consent, for example where disclosure of the identity is required by law. If this arises, the reporting person will be informed before their identity is disclosed unless exceptional circumstances exist, for example, where informing them would jeopardise a related investigation or legal proceedings. If a reporting person is concerned that their identity is not being protected, he or she should notify the NTMA Head of Compliance, or the Nominated Person as set out in Section 5 of the procedures, who will assess and take appropriate action where necessary.

The Protected Disclosures Act provides, and NAMA will seek to ensure, that a reporting person will not be penalised as a result of making a Disclosure in accordance with the Protected Disclosures Act, provided that he or she reasonably believes that a relevant wrongdoing has occurred, is occurring, or is likely to occur.

The Protected Disclosures Act defines “penalisation” to mean any direct or indirect act or omission that affects a reporting person, which occurs in a work-related context, is prompted by the making of a report and causes, or may cause, unjustified detriment to a worker, and in particular includes:

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion or withholding of promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) coercion, intimidation or harassment or ostracism,
- (f) discrimination, disadvantage or unfair treatment,
- (g) injury, damage or loss,
- (h) threat of reprisal
- (i) withholding of training,
- (j) a negative performance assessment or employment reference,
- (k) failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment,
- (l) failure to renew or early termination of a temporary employment contract,

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- (m) harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- (n) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry,
- (o) early termination or cancellation of a contract for goods or services,
- (p) cancellation of a licence or permit; and
- (q) psychiatric or medical referrals.

A reporting person who believes they have suffered penalisation/detrimental treatment or is concerned about possible penalisation or reprisals should contact the NTMA Chief People Officer and/or the Head of Compliance. If the NTMA Chief People Officer is contacted by a reporting person in relation to any penalisation or detrimental treatment (actual or possible), he/she will promptly inform the NTMA Head of Compliance, who will then assess/investigate such matter and take appropriate action where necessary.

NAMA, in conjunction with the NTMA, reserves the right to initiate disciplinary action in respect of NAMA Officers in accordance with the NTMA Disciplinary Procedure in certain circumstances, including but not limited to where any individual is found to have victimised, bullied, harassed or penalised another reporting person or colleague for making a Disclosure.

Where a Disclosure is made in accordance with the policy, but the allegation is not subsequently upheld by an investigation, no action will be taken against the reporting person and they will be protected from any penalisation where the Disclosure was based on a reasonable belief. However, reporting persons should also be aware that where a reporting person knowingly reported false information, they may not be entitled to the protections under the Protected Disclosures Act and they may be subjected to action, including disciplinary action, in this regard. In addition, the making of a Disclosure does not necessarily confer any protection or immunity on a reporting person in relation to any involvement he or she may have had in the relevant wrongdoing. Furthermore, in general, where a Disclosure is made during an investigation, disciplinary or other process, the Disclosure should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a Disclosure.

6 ANNUAL REPORTS

NAMA will prepare and publish an annual report in accordance with Section 22 of the Protected Disclosures Act, as amended.

7 POLICY REVIEW

This Policy will be reviewed annually by the NAMA Board or more frequently as NAMA considers appropriate.

8 Personal Data and GDPR

NAMA is subject to the requirements of the General Data Protection Regulation (“GDPR”).

All NAMA Staff are responsible for processing and managing Personal Data in accordance with the requirements of the GDPR and in accordance with NAMA’s Data Protection Policy and NAMA’s Data Protection Procedures.

Queries should be addressed to the NAMA Data Protection Officer.

APPENDIX 1

Section 3 of the Protected Disclosures Act states:

3. (1) In this Act—

“**Breach**” means an act or omission:

(a) that is unlawful and to which one or more of the following subparagraphs applies:

1. the act or omission falls within the scope of the Union acts set out in the Annex that concern the following areas:

- i. public procurement;
- ii. financial services, products and markets, and prevention of money laundering and terrorist financing;
- iii. product safety and compliance;
- iv. transport safety;
- v. protection of the environment;
- vi. radiation protection and nuclear safety;
- vii. food and feed safety and animal health and welfare;
- viii. public health;
- ix. consumer protection;
- x. protection of privacy and personal data, and security of network and information systems;

2. the act or omission affects the financial interests of the Union as referred to in Article 325 of the Treaty on the Functioning of the European Union and as further specified in relevant Union measures; or

3. the act or omission relates to the internal market, as referred to in Article 26(2) of the Treaty on the Functioning of the European Union, including breaches of Union competition and State aid rules, as well as breaches relating to the internal market in relation to acts which breach the rules of corporate tax or to arrangements the purpose of which is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law; or;

that defeats the object or purpose of the rules in the Union acts and areas paragraph (a)

“**contract of employment**” means contract of service or apprenticeship, whether express or implied, and (if express) whether oral or in writing

“**employee**” has the meaning given by section 1 of the Unfair Dismissals Act 1977 and includes an individual who is deemed to be an employee by virtue of subsection (2) (a);

“**facilitator**” means a natural person who assists, in a confidential manner, a reporting person in the reporting process in a work-related context

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“feedback” means the provision to a reporting person of information on the action envisaged or taken as follow-up and on the reasons for such follow-up

“person concerned” means a natural or legal person who is referred to in a report as a person to whom the relevant wrongdoing is attributed or with whom that person is associated

“reporting person” means a worker who makes a report in accordance with the Act

“worker” means an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and includes:

- (a) an individual who is or was an employee,
- (b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- (c) an individual who works or worked for a person in circumstances in which—
 - i. the individual is introduced or supplied to do the work by a third person, and
 - ii. the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- (d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- (e) an individual who is or was a shareholder of an undertaking,
- (f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including nonexecutive members,
- (g) an individual who is or was a volunteer,
- (h) an individual who acquires information on a relevant wrongdoing during a recruitment process,
- (i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to above),
- (j) an individual who is deemed to be a worker by virtue of subsection (2)(b),

and any reference to a worker being employed or to employment shall be construed accordingly.

APPENDIX 2

Other options for disclosure pursuant to the Protected Disclosures Act 2014

The Protected Disclosure Act allows reporting persons to make a Disclosure to persons other than their employer in certain circumstances as set out below.

1. Other responsible person

Where the reporting person reasonably believes that the wrongdoing relates to the conduct of a person other than NAMA, or to something for which that other person has legal responsibility, then the reporting person can make Disclosure to that other person.

2. A prescribed person

Certain persons are prescribed by law to receive protected disclosures. This includes the heads or senior officials of a range of statutory bodies. A reporting person may make a Disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed. However, the Protected Disclosure Act also provides an additional requirement in this case. The reporting person must believe that the information disclosed, and any allegation contained in it, are substantially true. A list of prescribed persons and a description of matters that can be reported to them is available here:

<https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/>.

3. A Minister of the Government

Where a reporting person is or was employed in a public body, the reporting person may make a Disclosure to the Minister on whom any function relating to the public body is conferred or imposed by or under any enactment. The Minister with primary statutory functions in respect of NAMA is the Minister for Finance. In order to make a Disclosure to the Minister, the reporting person must reasonably believe that the information contained in the report and any allegation contained in it are true.

In order to make a Disclosure to the Minister, one or more of the following conditions must be met:

- i. The reporting person must have previously made a disclosure of substantially the same information to NAMA or, the Nominated Person (as set out in Procedures), a prescribed person or the Office of the Protected Disclosures Commissioner in the manner set out in the Protected Disclosures Act but no feedback has been provided to the reporting person in response to the report within the timeframes for follow-up specified in this Policy or, where feedback has been provided, the reporting person reasonably believes that there has been no follow up or that there has been inadequate follow up;
- ii. the reporting person must have a reasonable belief that the NAMA Chief Executive Officer is personally complicit in the relevant wrongdoing they wish to report; or
- iii. the Disclosure contains information about a reporting person reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to

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the public interest, such as where there is an emergency situation or a risk of irreversible damage.

On receipt of the Disclosure, the Minister will refer the matter to the Protected Disclosures Office in the Office of the Protected Disclosures Commissioner.

4. A legal adviser

The Protected Disclosures Act allows a Disclosure to be made by a reporting person in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

5. Alternative external disclosures

As noted in Section 6, it is preferable in most circumstances to make the Disclosure to NAMA, including for these purposes the Nominated Person and, if that is not appropriate, to use one of the options at 1 to 4 above. The Protected Disclosures Act allows the reporting person to make the Disclosure to another party but this is subject to stringent requirements in order for it to qualify as a protected disclosure under the Protected Disclosures Act. For example:

- i. the reporting person must reasonably believe that the information disclosed in the report, and any allegation contained in it, are substantially true; and
- ii. either:
 - a. the reporting person must have previously made a disclosure of substantially the same information to an employer, prescribed person or Minister but no appropriate action was taken within the specified period; or
 - b. the worker must reasonably believe that:
 - I. the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage, or
 - II. if they were to make a report to a prescribed person, or Minister there is a risk of penalisation, or there is a low prospect of the relevant wrongdoing being effectively addressed.

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APPENDIX 3 - Definitions

GDPR terms

NAMA Officer	Any employee of the NTMA who is assigned to NAMA in accordance with section 42 of the NAMA Act 2009.
NAMA Staff	All NAMA Officers and members of NAMA's Board and its committees.
NQA	NAMA Quality Assurance
Personal Data	Any information that can be used to identify a living individual. Please refer to the NAMA Data Protection Procedures for further detail.