

NAMA Legislation

The purposes of NAMA are set out in section 10 of the Act and include:

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

- (a) the cost to the Exchequer of acquiring bank assets and dealing with acquired bank assets,
- (b) NAMA's cost of capital and other costs, and
- (c) any other factor which NAMA considers relevant to the achievement of its purposes.

Section 11 of the Act assigns a function to NAMA of acquiring eligible bank assets, it is worth noting that this provision does not require that NAMA acquire these assets at the lowest possible price. Indeed the Legislation is clear that NAMA will acquire the eligible bank assets at an enhanced "long term economic value" rather than at the market value which then pertained. Section 84(5) of the Act required that NAMA would not acquire an eligible bank asset where the long term economic value determined in respect of the bank asset was less than the market value of that asset.

Part 5 of the Act sets out a valuation methodology whereby an acquisition value for eligible bank assets is determined. This is the value at which those assets were acquired by NAMA, in accordance with the framework determined by the Oireachtas. This framework was supplemented by regulations made by the Minister for finance, which regulations were subject to annulment by a resolution of the Oireachtas. A draft of the regulations was made available to the Oireachtas during the consideration of the NAMA Bill.

Part 7 chapter 2 of the Act provided for an independent review of the acquisition value of the portfolio of assets acquired by NAMA, this was available on a portfolio basis rather than on the basis of an individual asset. This review process was not pursued by any participating institution.

NAMA therefore acquired assets from the participating institutions at a value above the then market value. For this reason State Aid approval was required from the European

Commission, the acquisition of these assets by NAMA was an aid from the State to the institutions concerned.

An individual borrower was not affected by the acquisition value of their loans. The amount outstanding and owing on the loans remained the same. Had the acquisition values been revealed this would have conferred an advantage on property developers whose loans had been acquired by NAMA in their dealings with NAMA, since they would have been able to determine the point at which NAMA would move into profit in respect of their loans and would have sought to use this information in framing their negotiations with NAMA.

The Oireachtas determined that NAMA would be independent in the performance of its functions. Section 221 provided for an offence of “lobbying NAMA”, whereby the making of representations to NAMA on behalf of another was rendered a criminal offence. Section 202 of the Act created a criminal offence of disclosing confidential information which applies to the staff and officers of NAMA.

Although NAMA is operationally independent it is responsible to the Minister and to the Oireachtas in the performance of its functions. NAMA is required, pursuant to section 53(3) to produce annual statements which are laid before the Oireachtas, with the possibility of confidential information being redacted. NAMA is also required, under section 55, to make a quarterly report to the Minister which is also laid before the Oireachtas. NAMA is also required to produce annual accounts which are audited by the C & AG and NAMA is accountable to the PAC and to the joint Oireachtas committee on finance who can call NAMA to appear, such invitations can not be refused. Finally NAMA is required to provide a report to the Minister on specific matters if requested by the Minister and is subject to direction of the Minister concerning the achievement of the purposes of the NAMA Act and can be issued with guidelines from the Minister for the purposes of the act. (section 13 & 14).