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**A PRACTICAL GUIDE TO AN EFFECTIVE  
NATIONAL AMC**

**MARCH 2005**

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## **ABSTRACT**

Lingering Non-performing loans (NPLs) continue to hamper development and sustained growth in many developing countries. Significant levels of Non-performing loans have led several governments around the world to take direct action through the establishment of National Asset Management Companies. The expectations for the National AMCs have been great, but their results have been mixed. The decision to create a National AMC has often been made without due consideration of what it will take to ensure success. The primary purpose of the National AMC generally has been the reduction of non-performing loans and to minimize the cost to taxpayers, and in this way often functions much like a large “Bad bank”. . The secondary purposes, whether industry revitalization, financial institution recapitalization or other have not always been as clear thus often resulting in unclear goals. There often appears to have been a lack of adequate attention to the enabling environment, infrastructure, governance and operation of the potential AMC. This may help to account for the mixed results of their operation. This "guide" attempts to look beyond the decision to have an AMC and focuses on items important to the potential success of the AMC. It looks to assist the decision makers by providing issues for consideration in such areas as goals, expectations, enabling environment (including special powers), operations and asset management.

## **ACKNOWLEDGMENT**

Acknowledgement to all the friends and colleagues with whom I have worked over the years who have shared their experiences and frustrations in working with Asset Management Companies. Thank you to the World Bank Peer Reviewers, Ernesto Aguirre, Adviser in the Financial Sector Operations and Policy Group and Kiatchai Sopastienphong, Senior Financial Sector Specialist, South Asia Region. A thanks to friends and colleagues at Thailand’s FRA and TAMC, Malaysia’s Danaharta and Indonesia’s IBRA who over the past years have also shared their experiences in dealing with the management and disposition of assets and a thank you to Michael Markels, Former Principal Financial Sector Specialist of the World Bank Bangkok office, Renuka Vongviriyatham, Financial Sector Specialist, Bangkok, Robert Liu, Adviser World Bank , Takashi Miyahara, Former World Bank Financial Sector Specialist (currently at Ministry of Finance Japan), and Sameer Goyal, World Bank Senior Financial Sector Specialist, for their observations and comments.

# A PRACTICAL GUIDE TO A NATIONAL AMC

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## INTRODUCTION: A PRACTICAL GUIDE TO A NATIONAL AMC

Since the on set of the Asian Financial crisis in 1997, there has been considerable debate over the value of Asset Management Companies (AMC) in addressing the large level of non-performing loans (NPLs) following upheavals in the financial sector. While AMCs in general have been the subject of these discussions, National AMCs “NAMC” rather than institution specific AMCs have been the focus of much of the attention. NAMCs generally have taken the form of asset disposition or corporate debt restructuring agencies. Studies have been conducted which report that for the most part the NAMC designed to facilitate debt restructuring has not been a great success and there has been limited success for the national asset disposition agency.<sup>1</sup> Looking beyond these conclusions however, provides us with an opportunity to explore possible reasons why the NAMCs did not succeed. Could items such as organizational structure, operational guidelines, and conducive operating environment or needed pre-conditions be the keys to a successful NAMC ? Could one explanation for the lack of success of the NAMC be that it has been more an issue of structure, organization and environment than the basic ability of a NAMC to perform successfully. Exploring these areas may provide a path for governments still determined to have a NAMC to do so more successfully.

*Success of an NAMC may be an issue of organization, structure and environment*

Governments have been faced with the dilemma of taking action and striving for a speedy resolution through a NAMC or permitting individual institutions to work out their own problems in the hopes that they will do so equally as quickly. The establishment of a NAMC raises a host of issues and concerns. Each country must weigh its own situation and desired results against the various risks. Governments have found that when faced with a systemic crisis, although perhaps desiring a private solution to the problems, often are forced to consider the creation of a NAMC. The debate as to which approach (institution specific or NAMC) and under what circumstances is best is not the subject of this paper. This paper is meant to serve as a guide for Governments who have already decided to have a NAMC and want to address the various organizational and policy issues that might improve its chances of success.

Various arguments are often raised to support the creation of the NAMC. The following are the most common:

The creation of a single organization can eliminate the conflicts that inevitably arise among creditors (including failed institutions and state owned enterprises SOEs), it can eliminate multiple and conflicting discussions with

*Arguments in favor of a NAMC*

<sup>1</sup> Klingebiel, D (2000), “Use of Asset Management Companies in the Resolution of Banking Crisis-Cross Country Experience,” *Policy Research Working Paper No. 2284* (The World Bank, Washington)

debtors that can often result in a lack of real progress toward a comprehensive debt restructuring.

A consolidated creditor position may significantly strengthen the bargaining power of the creditors in dealing with debtors, thus speeding up the resolution of Nonperforming loans (NPLs).

The country's specialized expertise and skills in restructuring, which often are limited, and the collection of defaulted and troubled assets can be brought together and used more effectively in one organization than in many.

In countries where SOEs make up a large number of the debtors, NAMCs may present an opportunity for the government to address the social and labor consequences of real debt workouts and liquidations.

Operational economies of scale can be achieved thus reducing operating costs.

Open financial institutions can focus attention on customer services, performing loans and lending rather than on troubled loans.

Having lent money, bankers may be reluctant to enter into real debt restructuring because the issue can become too personal; the NAMC can eliminate this impediment.

Asset types can be grouped more effectively, which can facilitate the recovery on the assets as well as potential restructuring of a particular industry.

The NAMC can serve to help the government expedite privatizing a bank that prospective purchasers would reject with high levels of NPLs.

The NAMC can provide government with a transparent mechanism for using fiscal support to reduce the level of NPLs in the system.

Finally, where the legal system for loan recovery is weak, the NAMC can reduce the level of NPLs rapidly, if provided special powers which help it to overcome obstacles.

There are also arguments against creating a NAMC:

The Government is generally less equipped than the private sector to address business problems and the necessary governmental bureaucratic processes as well as restrictions on decision making can further hinder the process, not speed it up.

<p><i>Arguments against the NAMC</i></p>
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There is a tremendous risk to the taxpayers who may have to cover the cost, especially if the creation of the NAMC is a backdoor recapitalization of private financial institutions (see below in pricing), or if the NAMC has not been effective in accomplishing its mission.

Since the NAMC is publicly funded, their use of public funds to acquire impaired assets can be a drain on the government's budget.

Removing loans from financial institutions can weaken the borrower/lender relationship which may result in the loss of knowledge about the debtor, stop or significantly slow the servicing of loans and reduce the ultimate recovery.

If most troubled debts are removed from the financial institutions, there is a risk that these important skills will not adequately be developed in the institutions where they will ultimately be needed;

The removal of non-performing loans, absent change in the institution, can enable the institution with the financial capacity to generate additional bad loans. Such new loans may be used simply to hide problems or to support debtors connected to the owners of the institutions or non-viable SOEs. This could hurt viable financial institutions and businesses that are then faced with competing against the entities receiving preferential treatment.

There is a risk that political pressure will be used to influence decisions, either directed to specific assets or the portfolio as a whole, which removes the business judgment and replaces it with political expediency; depending on the political motivations and the push to restructure debts or to save inefficient SOEs at any cost.

Moral hazard may be created for banks, borrowers and the government and the credit culture may be weakened further.

Finally, staff of the NAMC may see this as an opportunity for long term employment and view it as a permanent institution which may slow the work.

As is generally the case however, being armed with the knowledge of the potential risks associated with the NAMC should permit those who still want to move forward with an opportunity to do so by preemptively addressing the potential problems.

<p><i>Use the knowledge of the risks to create opportunity</i></p>
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The issue of debt overhang in the banking system is not new. The ability to speedily reduce this debt overhang has a significant impact on the successful restructuring and strengthening of the banking system itself and potentially the economy as a whole. Ideally one would see a reduction in the level of NPLs through successful debt and corporate restructurings as well as asset dispositions. Countries that have addressed either the debt overhang issue or corporate restructuring, but not both at the same time generally have not been particularly successful in resolving the overall problem. The

debtors of the banks often reflect the condition of the real sector (including SOEs) and thus it is important that the real sector is addressed at the same time as the problems in the banking sector. This becomes somewhat critical to the banks that look to earn their way out of at least part of the problem as well as to the economy as a whole. Failing to address both issues simultaneously can result in a stalemate of sorts. That is, the banks, while loaded down with a high level of NPLs will be carefully monitoring their capital and need for loan provisioning and thus reluctant to aggressively restructure debts and recognize losses or to make new loans and thus further increase their risk. At the same time many debtors may themselves be reluctant to admit losses or the need to reorganize their businesses. There can be a general failure to understand that many companies with excessive levels of debt do not add to the economy as a whole. If more money is lent to them without the necessary business restructuring it often fails to make them viable and generally adds to the problem and increases the cost.

It has been reported that in excess of 112 episodes of banking crisis in over 93 countries have taken place since the late 1970's.<sup>2</sup> With the passage of time, considerable interest has been shown in the use of a NAMC as one of the tools in resolving banking problems and addressing restructuring in the real sector. This paper focuses on conditions that potentially impact the ability of the NAMC to be successful. While many of the same factors should be considered in setting up a private AMC, this paper limits its scope to the NAMC since it will be the public at large who ultimately will benefit or be harmed by its operations.

## **ORGANIZATIONAL AND POLICY ISSUES FOR CONSIDERATION**

Careful consideration should be given to the organizational and policy issues discussed in this paper. Each country is unique and each circumstance that gives rise to banking problems also are unique, but the lessons of past NAMCs suggest that the success or failure of the NAMC can generally be brought back to one or more of the organizational or policy issues discussed herein. Many of the items fall into the category of common sense, but it is often the most obvious issue that is missed.

The following section presents a package of issues that should be considered collectively rather than individually:

### **The Establishment of Clear Goals for the NAMC**

The NAMC can play an important role in restructuring the financial sector and a contributing role in the restructuring of businesses and SOEs. Unfortunately, as seen by past experience, the NAMC can also become a warehouse for bad assets and thus

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<sup>2</sup> Caprio, G. and D. Klingebiel (1999), "Episodes of Systemic and Boarderline Financial Crises", Memo, The World Bank, Washington, D.C. Added to this would be the recent events in Argentina and Turkey.



contribute little to economic recovery.<sup>3</sup> Many forces, including politicians, debtors, banks, labor etc., often put pressure on the NAMC which if not properly addressed can result in it becoming a debt warehouse even though that was not one of the original intentions. It can serve to stall needed corporate restructuring by failing to take prompt action. The result can be a slower recovery or slower development. It can even add to the growing debt burden of the country.

A clearly defined mission and clear objectives and goals are essential in setting up and managing the NAMC.<sup>4</sup> The mission should be clearly stated in the enabling law. Knowing what results are desired will facilitate the identification of potential impediments and necessary steps to take, making quick action possible. In setting the goals it should be remembered that responding quickly to distressed assets generally results in higher recoveries and better debt restructurings. Delays increase cost and make the ultimate restructuring more difficult and more risky, as the debtor and possibly even the collateral continue to deteriorate. These delays can have a detrimental impact on the recovery or development of the economy as a whole.

Goals for a NAMC should fully recognize the needs of the particular situation facing the country. It is not wise simply to copy the goals of another country's NAMC in an effort to produce the same or similar results. The NAMC should be designed to meet the specific needs of the nation. Once clear goals have been set, a strategy should be crafted, and this involves a number of choices and issues:

Will participation be open to both private and state owned financial institutions, will it be open to SOEs and will the participation be voluntary or mandatory?

*Strategic Considerations  
for the success of the  
NAMC*

Will participation be limited to failed financial institutions, or will open institutions be permitted to participate?

Should banks who participate in the sale of assets to the NAMC be subjected to a restructuring program?

Will the NAMC be limited to a single round of asset purchases?

How will the NAMC deal with asset resolution. Should it sell the assets quickly (before or after debt restructuring), manage them or will it simply hold them?

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<sup>3</sup> See the Resolution and Collection Corporation of Japan which was given mixed directions on its work, no real target for the completion of its work and appears to have been barred from reselling assets at a loss. As a result it became a warehouse.

<sup>4</sup> Generally there have been three main types of NAMCs, Rapid Asset Disposition which seek to maximize recoveries and minimize costs, Asset Management agencies that seek to maximize recoveries through restructured deals and to assist distressed debtors and Warehouses.

Should the NAMC be limited to certain types of assets arising from particular sectors or industries?

Should the NAMC take all non-performing assets or only assets that are above or below a stated monetary amount?

Should the NAMC be limited to collateralized assets, or also non-collateralized assets?

What country-specific cultural matters should be considered, and how should they be weighed against the need for asset resolution and recovery?

Can the NAMC gain sufficient political acceptance so as to be able to perform?

Typically NAMCs are assigned the task of reducing the overall number of non-performing loans in the system through restructurings and /or asset dispositions as a means to minimizing the cost to taxpayers and to clear the stock of NPLs and supporting bank rehabilitation. Restructuring that results in some immediate payment as well as asset sales also can be used to recycle funds, reducing the immediate need for additional government funding. NAMCs also have been assigned responsibility to combine debt restructuring with specific industry restructuring and employment stimulation.<sup>5</sup> These responsibilities when added to minimizing the cost to taxpayers can conflict with one another and can lead to difficulty in achieving the desired results. Although generally not desirable, not surprisingly NAMCs have also been used for the purpose of cleaning up the balance sheets of financially weak institutions, especially those deemed by government to be strategically important or “too big to fail”, or SOEs through a less than transparent recapitalization. This method of recapitalization can assist SOEs and financial institutions by bolstering their capital.

<p><i>Keep the goals of the NAMC simple</i></p>
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Sometimes confusion can arise when the NAMC recapitalizes financial institutions and attempts to bring them to an acceptable level of regulatory capital. It is not advisable that the NAMC be used as a substitute for a strong regulator/supervisor of financial institutions. Supervisory agencies are responsible for the stability and soundness of the sector and should be held accountable for their actions or lack thereof. Creation of the NAMC should not interfere with existing institutional arrangements for banking regulation and supervision. A clear and well established coordination between the NAMC and other concerned agencies should be established. It is best if the NAMC is

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<sup>5</sup> Pakistan in 1999/ 2000 established two organizations to assist in addressing the country’s outstanding NPLs. The Corporate and Industrial Restructuring Corp. (CIRC) which was to assist in the cleanup of the balance sheets of state-owned banks through acquisitions, restructuring, rehabilitation, management, disposition and realization of NPLs and other assets of banks. It also was to serve as an auction sales facility for collateral securing NPLs. The second organization, The Committee for Revival of Sick Industries Units (SIRC) has the mandate of identifying and reviving sick industrial units.

not a part of the Banking Regulator and to the extent it is not limited to assets of failed institutions, should also not be a part of any deposit insurance/safety net organization.

Caution is advised in recapitalization of financially weak institutions in that it can serve as a means of rewarding poor banking practices including insider lending. Governments must be careful to avoid such a recapitalization unless they have ensured that the weaknesses that contributed to the problems have been adequately addressed; to do otherwise may result in the recapitalization simply being one of a series of recapitalizations over the next decade, significantly increasing the cost.

It is important to remember the link between the NPLs at the banks and the needed restructuring at the borrowers. This is often ignored as the focus concentrates on reducing the number of NPLs in the system and providing some debt relief to borrowers. Debt and corporate restructuring are not easy tasks. Items related to organization, corporate governance, skills, among other items discussed herein become increasingly critical to the ultimate results. Debtors, both private and state owned, generally can be divided into at least three groups: (i) potentially viable debtors who can become solvent in a short period of time and thus are capable of making payments to creditors and are deemed to be viable in the long term, (ii) debtors whose viability and repayment ability are questionable, but may survive on their own or may survive if merged with others and (iii) debtors who are not viable for a number of reasons, including the fact that the business within which they operate may not be viable in the long term. Making these distinctions among debtors and assigning them to one of the groups is a difficult task. Ideally this is a task best left to the private sector. Ultimately it will be the market that decides the winners and losers among the debtors as decisions are made on future lending (absent government lending or directed lending) and on-going business relationships (absent cross ownership protections), to go against this reality may prolong the process and increase the cost.

<p><i>NAMC's restructuring role</i></p>
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It should be noted that the third group generally adds no value to the debt restructuring process or the economy. Often their continued existence may create an unfair business atmosphere as good businesses try to compete with businesses not paying their financial obligations. This is often the case when weak SOEs are supported financially or through preferential contracts as it hurts private firms and worse yet, it discourages private sector development. In addition, if this is permitted to go on for an extended period of time, the incentive to repay by other obligors can be lost. All of this needs to be considered in deciding the future of each asset as well as the goals and structure of the NAMC.

Considerable care should be given to avoiding conflicting goals. Although at times conflicting goals may, through necessity, have to be a part of the operation, they should be recognized and addressed in advance so that the functions of the NAMC can be carried out and the results measured. To the extent possible, policy makers should attempt to prioritize the conflicts so that staff can function without undue delay. Policymakers frequently wish to reduce the level of NPLs but at the same time do not wish to sell assets in the secondary market or that staff of the debtors be laid off from

their jobs.<sup>6</sup> Generally this is not possible and can prevent the NAMC from functioning to its fullest ability in a reasonable period of time. This does not mean that the sale of assets is the only method of resolution or that wholesale layoffs of employees by the NAMC are desirable. Asset sales should however, be one of the tools available in resolving NPLs. In addition, the sale of assets can help to create a secondary market which will facilitate banking going forward.

## A Healthy Credit Culture

A significant rise in the level of non-performing loans can have an impact on the country's credit and repayment culture. Delay in the enforcement of collection not only minimizes but also suggests to the borrower that there are advantages to defaulting. This may be interpreted by borrowers as encouragement to default since they see others doing it at no cost or harm to themselves.

*Credit Culture  
Considerations*

The government should be a leader in preventing this to happen, both as an obligor itself and as owner or manager of assets. The government should quickly address assets that come into its control either in state institutions, intervened financial institutions or assets transferred to a NAMC. The government and all government entities, including state owned enterprises should pay their obligations (interest on bonds, guarantees, general obligations, contracts for goods and services etc.) in a timely fashion. To do otherwise sends a mixed signal to the population which can be interpreted by other obligors as suggesting that "if the government does not have to pay its obligations in a timely manner, why should I?"

*Government  
should be a  
leader*

When debt levels of prospectively good borrowers are extremely high and not likely to be supported by earnings consideration is often given to loan workouts that result in reductions in the amount owing. Considerable care should be taken in the development of any scheme which results in forgiveness of debt without some degree of penalty to the debtor. The "penalty" can take many forms such as closing or restructuring the business, replacing some or all of management etc. While it may be desirable from the standpoint of continued employment not to take some of these steps, the lack of action can cause considerable harm to the system. If debt forgiveness without cost or penalty is given to a defaulting borrower, what might this say to the borrower who has been paying? Will forgiveness of debt reward the defaulter and place the performing competitor at a competitive disadvantage? Finally, how does a country prevent borrowers from assuming that the next time there is an economic downturn or difficulties in a sector that it pays to default because of the expectation of debt forgiveness or government bailout?

It should be noted that if there is a perception that a NAMC is a "win" for defaulting debtors or weak institutions, this can adversely impact viable financial institutions. Debtors and managers of insolvent institutions might feel this way if traditionally the

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<sup>6</sup> As to the issue of laying off employees, in the long run, excess employees or employees of failing businesses are often better served through properly funded redundancy or retraining programs than being retained at artificially protected companies.

government has not been active in collection or supervisory efforts or if they see that political influence might protect them. Further, debtors may see this as an opportunity to buy time suspecting that the government as the manager of a NAMC will be very slow to act. Thus, other debtors may feel there is benefit to being a non-performing loan may stop performing. This could hurt viable institutions and further damage the credit culture in the near and long term.

## **Which Institutions will Participate and What Assets are to be Brought into the NAMC and at What Price?**

Initial decisions must be made on which institutions will participate in the NAMC and whether that participation will be voluntary or mandatory. If participation is voluntary or if not all institutions are invited to participate, consideration should be given to establishing an inter-creditor agreement to ensure full cooperation of creditors not participating who may be essential in a debtor restructuring.<sup>7</sup> Should the NAMC be limited to assets of failed institutions, or should the NAMC be available to open institutions (private and state owned)? The goals that have been set will, to a large extent, determine the types of assets that should be transferred to the NAMC. Various issues are raised when considering which assets are to be included. Generally assets of failed and government owned institutions are initially left to a government entity to resolve, but this should not preclude private sector participation in the process. The private sector is generally better prepared to address the issues related to management of assets and ultimately, through market forces, to decide the survivors based upon business rather than political considerations.

<p><i>Participation in NAMC, (assets/ institutions)</i></p>
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### ***Types of Assets***

The total number and types of assets to be brought into the NAMC will very much be decided by the goals that have been established. The most common assets are non-performing loans, but the types of assets can be defined by industry, debt size, whether collateralized or not, in a judicial proceeding and so forth. As seen in the Klingebiel article (footnote 1), NAMCs designed to address real estate loans, for example, seem to have a greater chance of success than those assigned a significant mix of business, personal and industrial loans. For a new NAMC, consideration might be given to initially narrowly defining the assets to be transferred. This would provide the NAMC with an opportunity to develop its skill base without overburdening it or otherwise increasing the risk to the taxpayers. The pool of assets can be increased later, once the NAMC has proven to be capable of performing and producing the desired results. This also limits the potential harm that might result if the NAMC is not successful. However, to the extent the NAMC has been created as a vehicle for the recapitalization of undercapitalized banks, limiting the transfer of assets may not be possible.

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<sup>7</sup> This is particularly important when there are multiple creditors, especially if some of the secured creditors are not participating in the scheme and yet assets pledged are essential to the workout and the viability of the debtor going forward.

For the NAMC that has been given the task of not only debt restructuring but also industry revitalization, it is helpful, in advance of asset transfers, to have clearly identified the specific industries selected for revitalization. Once again, this decision should be tied to the objectives. If there is a real desire to revitalize industry, there must be a recognition that should there be over capacity in the industry that some of the debtors may have to be merged and/or they may not survive. This decision making process is difficult enough for the market, but it is particularly difficult as well as potentially problematic for the government owned NAMC. There is a risk that the wrong industry participants will be selected to survive and an equally strong possibility that government will interfere in the decision making process. However, if no selection process is involved in the restructuring, the country can almost be assured that in the not too distant future some of these debtors will return to non-performing status. For these reasons it is extremely difficult to expect a NAMC to revitalize industry. If industry revitalization is deemed necessary, it might be more effective to establish a separate organization and not confuse industry revitalization with debt restructuring.

A decision also needs to be made concerning appropriate action on related loans. This can be an issue when open banks are involved in managing the NAMC or its assets. Care must be given so as not to place the assets held by the NAMC at a disadvantage compared to the remaining or related loans held by another financial institution, or for the NAMC to ignore the rights of other creditors.<sup>8</sup> Should groups of loans be transferred even if they do not all fall into the defined qualified group because doing so would facilitate the negotiations and restructuring? How can this be facilitated? Can specific assets of non-participating creditors be brought into the process (NAMC) so as to further facilitate the restructuring? What incentives will such creditors have to participate? The resolution of some credits may be facilitated if assets of institutions not participating in the NAMC can be brought into the specific workout situation. Creditors may be enticed to participate in individual credit workouts if the NAMC has been given powers not available to them. They may view these “special powers” as enhancing the chances of a workout or other quick resolution and thus increasing their potential recovery.

### ***Pricing Issues***

One of the most important and often difficult issues to address for policy makers in establishing the NAMC is setting the price at which assets are transferred. While one would hope the values would be readily apparent, it should be noted that bankers and borrowers have incentives to conceal the real value or recovery potential once an asset has become a problem. Although establishing a price can be difficult, it is not impossible. The price at which assets are transferred from institutions (including private open institutions) can potentially have serious implications for the sector as well as the

<p><i>Difficult issues and risks in pricing assets</i></p>
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<sup>8</sup> This can happen when the NAMC is entering into a loan workout that includes a reduction in the amount of debt. This reduction could result in an increased recovery for non participating creditors that are in a junior position. Likewise the NAMC should not ignore the rights of other creditors by attempting to void their secured positions or to give the NAMC a more senior position in the recovery on assets of the debtors which it did not already have.

viability of the NAMC. In both instances, negative implications can be significantly diminished if assets are transferred at fair value or at a minimum in a very transparent manner. This will also serve to better protect the interests of the taxpayers.

A clear and realistic pricing process should be developed and applied consistently in the transfer of assets from institutions (open and closed). Failing to do this results in the risk that the pricing of transferred assets rewards the weakest institutions. If one goal is to recapitalize weak institutions through the transfer of assets, conditions for the assistance should be given careful consideration. Should the price be in excess of real market value the institution essentially is being rewarded for not addressing its problems in a realistic manner by providing it with a bonus. The bonus consists of funds transferred from taxpayers to banks and bank shareholders. Institutions and managers that have been more aggressive in addressing their problems and have been more realistic in the recognition of the potential losses from their assets and thus have been realistically attempting to provision for the losses are penalized. Transfers at above market value can bring about several perverse results: (i) the weaker institutions receive free or low cost capital and thus enjoy a competitive advantage over other institutions in the system; (ii) the message being sent to the more diligent institutions is that it is okay to ignore your problems as the government will find a way to bail you out at potentially no cost to the owners and possibly the managers of the institution. The moral hazard to the system is great because policymakers need to be concerned about how bankers will react the next time there are problems in the system. Will they respond as businessmen or will they wait for the next bailout; (iii) such transfers may eliminate the potential role of Government in bringing about needed changes at the financial institutions which might be available if there were simply a direct recapitalization (iv) prices of assets in the market could be easily distorted hurting the rest of the system; and (v) one must consider that absent some protective measures the burden of this bonus will be placed on the taxpayers.

Failing to establish a realistic transfer price also can adversely affect the ability of the NAMC to reach its established goals. If the transfer price is above the realistic market value, it will be very difficult for the NAMC to take action (either restructuring or disposition) without being blamed for incurring the resulting losses. This reality creates considerable delay of action, a lack of decision-making and the risk that the NAMC will become nothing more than a warehouse. Addressing this issue at the time of the transfer of assets helps to protect the staff of the NAMC from undue criticism and may assist in the public perception that the NAMC has added value to the recovery effort. It facilitates the work of the NAMC if assets transferred at above market value are re-evaluated immediately upon transfer using realistic assumptions. Care must also be given to setting an adequate transfer price. If the transfer price is set at a level which is below market then there may be little motivation for the NAMC to maximize returns. The staff instead may look to the purchase/transfer price and establish this as a benchmark for recovery. This may lead staff to declare victory by claiming a profit at any recovery above the purchase price, even if the debtor actually had the ability to pay more, which would have assisted in offsetting the overall cost to the taxpayer. This puts at risk the integrity of the institution and increases the chance of corruption in the workout process and fraud in the loan workout.

When considerable doubt exists as to the market value, consideration could be given to a loss/profit share or indemnification arrangement in the transfer of assets. However, this should not be a substitute for a realistic pricing process as the implications and potential hazards remain the same. The loss share concept should really be used as a protective measure for taxpayers not an excuse for excessively high transfer prices or otherwise bailing out weak institutions at no cost to their managers and owners. The profit share concept also can be used to protect participating institutions when they feel that the transfer price has been set at an unreasonably low level.

As a continuation of the cleanup of bad debts following the Asia Financial Crisis of the late 1990s, Thailand established the Thai Asset Management Company (TAMC). It followed a loss share arrangement in acquiring assets. The process used involved three steps, the first 20% loss on NPLs from nominal book value were 100% absorbed by the banks; on the next 20% the loss was shared equally between TAMC and the bank; all further losses were the responsibility of TAMC. If there were profits resulting from the disposition of assets after costs, the bank and TAMC split the first 20% of profit any remaining profit belonged to the bank. While this was an interesting approach designed to encourage banks to participate, it was difficult to implement in that it required complex computer tracked accounting.

Sweden, faced with mounting NPLs desired to address the problem aggressively, but was also faced with the issue of transfer pricing. A decision was made to set a fixed price equal to a fixed proportion of the book value of the asset. This process was fast, and eliminated delays and to a degree, disagreements. This creative process worked in Sweden, but it is not without potential problems in that some assets are likely to have been incorrectly priced and participating institutions who are allowed to select which assets to transfer have an incentive to only transfer their worst assets.

To the extent that one of the goals of the NAMC is the recapitalization of banks, a number of issues should be considered and addressed before moving forward. This method of recapitalization is generally viewed as weakening the financial system for the reasons discussed above. It is, however, understandable that some governments may feel it best to financially strengthen existing institutions rather than run the risk that they would fail or that they would have to nationalize too many private institutions. In doing this, governments generally may find it necessary to acquire assets at above market prices. This puts at risk the ability of the NAMC to perform its job and could harm the credit culture. If a higher than market value is used for the transfer, careful consideration might be given to having the banks indemnify the NAMC for losses associated with their specific assets. This has a couple of benefits, it may reduce the risk to the taxpayer and it recognizes the specific institution's losses so as not to punish those institutions that have more accurately reflected the value of their assets. It also takes away some of the moral hazard that the owners might unduly benefit from the transaction.

<p><i>Recapitalization through pricing of transferred assets</i></p>
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In addition to the issue of pricing, one question that must be addressed is when the payment will be received by the institution. Should the transfer price of the assets be paid



at the time of transfer to the NAMC, or upon realization on the assets. Should the payment be in cash, or government bonds, and if payment is through bonds, will they be marketable, will they be interest bearing, or zero coupon. These questions all raise issues associated with the fiscal budget of the country and considerable attention should be given to the needs of the sector in relation to the economy as a whole.

Addressing the issue of loss recognition should be clearly spelled out. The Supervisor should have already required loss recognition and loan loss provisioning which should have been reflected in the books of the bank. Since this is not always the case, consideration might be given as to when the individual institutions will be required to recognize the losses on the assets transferred to the NAMC. Should it be on the day of transfer based upon the transfer price, or the day the NAMC actually concludes its work on the asset and a loss is clearly established. Either method for timing loss recognition can have unintended results and should be carefully considered. While it might be desirable to recognize the losses at the time of transfer, this may have unintended results if the purpose for the transfer was a recapitalization of the bank. It could cause a bank losses at a time it may not be able to generate sufficient earnings to offset the loss, and it may be unable to recapitalize through the markets. Delaying the loss recognition until the work of the NAMC is completed on the assets however, could potentially result in the NAMC becoming a warehouse since there may be too much emphasis on delaying the loss recognition.

## **Realistic Expectations and Timeframe for Recoveries to Accomplish the Goals**

Setting realistic expectations for recoveries is essential. These expectations should be fully disclosed and progress of the NAMC reported on a regular basis. This is a difficult task as there will often be competing desires, such as not adversely impacting market prices while at the same time resolving debts as quickly as possible, maximizing recoveries and minimizing the cost to taxpayers. Establishing realistic expectations can be difficult if the transfer of the assets has been at an artificially high price for it would be realistic to expect that there may be a delay in the work of the NAMC. There could easily exist a “wait until the economy recovers or there is sufficient economic growth” attitude. Setting targets for recoveries is of value in assessing the ultimate success of the NAMC, but must be done taking into considerations the competing desires, the possible lack of a supportive legal enforcement regime as well as the speed with which the desired results are to be accomplished.

<p><i>Realistic Expectations for the NAMC</i></p>
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Establishing timeframes (albeit flexible ones) by which the NAMC’s performance can be judged is often critical to its operation. This provides the government, the public, management and staff with an expectation that can be measured and followed. Failing to do so or failing to hold management adequately accountable can result in the NAMC becoming a long-term employment opportunity for its staff who see little benefit to aggressively performing their jobs. In setting the timeframes, equal consideration should be given to the original cause of the problem, but equal weight should be given to the

original cause of the problem and how long the problem has already existed as well as the environment and infrastructure under which the NAMC will operate.

One potentially can fall victim to the desire to wait until the economy has improved or the level of sustained growth is such that the problem goes away on its own before taking action in the hope that this will maximize recoveries. In setting a realistic timeframe one should consider the time value of money, lost opportunity costs, cost of maintaining the assets on the books and the cost of staffing the NAMC so as not to be falsely lulled into believing that full recovery of principal ten years down the road equates to success. In setting these timeframes and expectations, one should also keep in mind that the methods used for asset resolution (workouts, foreclosures and sales) need to be considered in setting goals.

### **Needed Political Support**

There is often a direct correlation between the NAMC's ability to reach its goals and the level of political support it enjoys. Having the political will to move forward is often one of the most critical elements for the potential success of the NAMC. Recognition of this element will greatly facilitate decision-making and provide the necessary support for the on going difficult decisions that may have to be made. If the necessary political will to ensure success does not exist, it is best to abandon the concept of a NAMC as it is likely that if created it will fail to reach its goals, it will disappoint the citizens and the markets and only add to the problems and cost rather than be a part of the solution.

<p><i>Impact of Political will on the NAMC</i></p>
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One of the most difficult aspects confronting the political element will be the need for an honest and accurate assessment of the problem and a willingness to recognize it. Failing to do this puts at risk the measures taken to correct the problems in that they potentially will, by design, fail to address the full extent of the problem. This paper does not address the many structural issues confronting the financial system as a whole which may often need to simultaneously be addressed.

The legislation that creates the NAMC should reflect the political commitment. It can place a number of requirements on the NAMC to address some of the concerns raised by politicians and the public. This was true of the Resolution Trust Corporation (RTC) in the United States. However, the requirements, must be realistic and provide for a sufficient degree of flexibility to permit the work to proceed. To solidify political support, some of the requirements placed on the RTC addressed the management and disposition of assets. The RTC was required by law to dispose of assets in a manner that:

Maximized returns and minimized losses/costs to the taxpayers;

Considered the impact on local real estate and financial markets and tried to minimize any negative impact of its activities;

Maximized the availability and affordability of residential property for low- and moderate- income families;

Utilized the private sector in the asset resolution and disposition work; and

Recognized the importance of certain historic or environmentally important properties.

Addressing these types of concerns in establishing the NAMC may greatly assist in building the political will and support that will be needed to ensure a chance of success. The types of issues that are likely to be of concern are generally well known. Discussions with as many interested parties as possible could further the effort of identifying and addressing (to the extent possible) the concerns that might later be expressed thus providing the NAMC with a greater chance at success.

### **Adequate Capital to Operate**

The initial funding for the NAMC must be sufficient to permit the organization to acquire all of the desired assets. Depending on the goals, the NAMC may have to acquire much of the NPLs at weak financial institutions as well as much of the outstanding debt of particular debtors in order to better effectuate a restructuring of the debt and or the debtor. The start-up costs must be looked at carefully as one of the potential tradeoffs for setting up the NAMC. The four biggest start-up costs will be asset acquisition, facilities, staff and information systems. An additional cost is incurred if assets are to be acquired at a price above true market value. The NAMC must have the ability to absorb costs associated with writing assets down to their true value in the course of asset resolution.

<p><i>Addressing the capital needs of the NAMC</i></p>
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The NAMC must be adequately funded. An under funded NAMC is no more effective in debt restructuring than an under funded financial institution. Generally, its ongoing operational funding can come from its operational recoveries. Expenses associated with collection should be charged to the individual assets so as to facilitate better asset, recovery, cost and loss tracking. This should be the case whether the NAMC is dealing with assets from intervened open institutions or state owned enterprises.

Some agreement may need to be reached on the general operating expenses and the allocation of those expenses to the NAMC's portfolio. It would be desirable that an accounting be available per institution or SOE of the costs and recoveries associated with asset work performed by the NAMC. These costs can be direct, or based upon a percentage of the assets transferred. Both allocations present some difficulties which should be addressed up front. This is particularly helpful in avoiding issues, which might later arise in a loss/profit sharing arrangement. Consideration should also be given to the allocation of operational costs as the NAMC winds down its operations. Otherwise this cost may have to be absorbed by the few remaining assets. This division of general operating costs should be done per institution/SOE portfolio in the NAMC even if assets are acquired with no recourse. Such allocation and tracking will assist in the evaluation of portfolios and guide for future decisions on asset work.

The NAMC may need funds available to provide short term limited support to restructured debtors. The need for short term capital support should not be confused with the debtors' need for new equity; most debtors will not need more debt. At times following a debt restructuring the debtor will need funds to resume or continue operations (working capital). This becomes more complicated if multiple creditors are involved, including creditors who are not participating in the NAMC, as the question will be raised as to whose funds are at risk with any new lending. Although it might be desirable for the institutions whose assets are the subject of the workout to provide the new capital, this may not always be possible. It may be necessary to bring in a new lender or for the NAMC to assume that role on a temporary basis (especially if one of the roles of the NAMC is to revitalize industries). If this is necessary, the new lender (even if the NAMC) should be provided protection, for example, by receiving a priority position for the new lending. This will require inter-creditor agreements. Lending by the NAMC to debtors should be the exception not the norm. The NAMC should not be considered as a long-term member of the financial community; if it is, it runs the risk of never achieving its goals.

*Funding needs  
of debtors*

If funding is not otherwise available to the restructured debtor it may be a reflection of the market's assessment of the quality of the restructuring as well as the debtors' ability to pay. It also could reflect the poor capital condition of the financial sector and institutions' adversity to risk. As there are signs of improvement in the economy, this newly performing loan should be sold to one of the on-going financial institutions. These institutions should be better equipped to service the credit and potentially can benefit from the addition of the then performing loan to their portfolios.

## **Enabling Environment (Legal/Judicial) for the NAMC**

### *Laws*

In conjunction with strengthening the banking system and the creation of a NAMC, a strong and consistent definition of default and its ramifications might be considered and applied within the legal system. This should be consistent for loan loss provisioning for financial institutions as well as for the potential actions of the NAMC. This should cause an institution to consider early on in the process the need and ability to take an active role in working with a borrower who appears to be headed into problems and provides a realistic threat to the recalcitrant borrower thus encouraging them to act. This is important so as to prevent borrowers from assuming that the collection process will take so long that they need not worry for years. Care must be given in looking to amend laws in this area that there be a balance between the needs of creditors to enforce the lending and collateral contracts and the needs and rights of borrowers.

*Do the laws support  
the needed actions  
of the NAMC ?*

The NAMC needs to be able to act quickly to resolve or liquidate assets. It needs a strong legal environment with adequate laws for its organizational and operational needs. The NAMC must, like all creditors, have a degree of credible pressure it can exert on debtors. Prior to the creation of the NAMC all of the obstacles to potentially meeting goals/mandate should be identified. A review may be necessary to determine what is

needed to overcome the potential impediments to debt resolution. This information is generally available through discussions with similar institutions who have faced the same challenges on a regular basis. It is also available through comparison of insolvency, foreclosure and related laws used in other countries.<sup>9</sup> This may be followed by difficult decisions concerning how to address the potential deficiencies in the current laws. An attorney familiar with the country's laws should conduct a review of the existing laws which are likely to impact the ability of the NAMC to properly fulfill its functions.<sup>10</sup> Contract, bankruptcy, insolvency, foreclosure, tax, commercial, and corporate. Laws found to be lacking or weak should be enacted or amended.. Such action will help the NAMC, as well as the general community of lenders and borrowers.

### ***Judiciary***

Because the laws must be applied and implemented, and not just on the books, a review of the ability and capacity of the judiciary is in order. This can be a delicate issue, as there will be a continuing need to recognize the necessary independence of the judiciary. The judiciary should participate in the review process.

<i>Is the Judiciary up to the challenge?</i>
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An effective legal system is one which provides parties timely resolution of legal actions. This becomes even more essential when there has been a downturn in the economy and an increase in the number of matters passing through the legal and judicial systems. The judiciary also must be viewed as credible, as fair to all parties, as beyond influence in its actions and decisions, and as free from cronyism and corruption. Assistance to the judiciary is generally available through a number of judicial groups around the world.<sup>11</sup>

In addition, there may be a need to augment the judiciary to support the expected increase in legal matters. This can be done by establishing a temporary court to handle commercial matters and/or by temporarily adding additional judges to the system and insuring that all judges have adequate training in commercial and insolvency matters.

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<sup>9</sup> Franks, Julian R.; Nyborg, Kjell G.; Torous, Walter N. (1996) "A Comparison of US, UK, and German Insolvency Codes", *Financial Management* v25, n3 (Autumn 1996): 86-101. See also Insolvency Law Database at legal databases ([www.worldbank.org/legal/](http://www.worldbank.org/legal/))

<sup>10</sup> The newly crafted insolvency ROSC (available from the World Bank and IMF) could provide a good assessment of the current insolvency regime and the basis for any changes needed to support the NAMC.

<sup>11</sup> Contact can be made with individual judges in countries for additional information. Groups such as the American Bankruptcy Institute and the American Bar Association and similar groups can also be a resource of information. See also ([www.worldbank.org/legal/](http://www.worldbank.org/legal/)) at Regions & Themes

### *Special Powers*

Looking to the stated objectives of the NAMC will provide a guide for the review of all measures necessary to better insure the success of the NAMC. As this process is undertaken, obstacles may be identified in the legal or regulatory environment. If changes to general laws and regulations are needed but can not forthcoming, the result may be that the NAMC is not in a position to fully function in relation to its mandate. Consideration might be given to providing the NAMC with extraordinary powers needed to overcome the obstacles and thus better ensuring that it can accomplish its task.

*The NAMC's possible need for "Special Powers"*

Governments looking to an NAMC as one of the tools to resolve problems in the financial sector are often coming to the conclusion that the ability of the NAMC to resolve matters quickly, reducing costs to taxpayers and maximizing recoveries, may require extraordinary powers. Therefore with increasing frequency governments are adding special powers to the tools available to the NAMC<sup>12</sup>. Such special powers for NAMCs might include special provisions for asset acquisition, debt restructuring, information collection and indemnification of staff. It should be noted that the use of special powers does not have to be limited to creditors. Viable debtors also may benefit from special provisions (for example, the appointment of a special administrator may move a debtor's plan forward more quickly). Countries that have not granted the NAMCs with special powers tend to be those that already have a strong legal environment that permits resolution of such matters in a reasonable timeframe. Special powers, if given, should be temporary in nature and carefully monitored to prevent abuse. Appropriate checks and balances against abuse should be in place. If used properly, such powers can remind all participants in the financial sector of their responsibilities and thus strengthen the credit culture, which may have been damaged by slow enforcement of contracts and/or a weak legal environment.

### **Operational Issues**

Many operational issues need to be addressed. These include ownership, independence, accountability and governance, term of operation, organizational structure, management and staffing, and information systems. This section addresses each of these in turn.

#### *Ownership*

The ownership structure of the NAMC should be clearly addressed if assets are to be transferred from open institutions. NAMCs tend to be publicly owned so the operating policies can track the desires of the government, but at the same time they need to operate on commercial principles, relying heavily on the private sector for its expertise. The NAMC probably should be government owned so as to facilitate a single direction in its operation and minimize conflicting policies.

*Who will own the NAMC ?*

<sup>12</sup> See attached annex "Objectives and Special Powers of National AMCs" prepared by Michael Markels, Senior Financial Sector Specialist and Renuka Vongviriyatham, Research Analyst, The World Bank, Bangkok, Thailand

Mixing ownership between the Government and private institutions raises several issues such as: whether the private institution will actually have adequate capital to permit it to fund its share of the NAMC as well as how to address concerns over confidentiality and potential conflicts of interest. Generally each private institution already has the ability to establish its own AMC or workout unit, and thus there is little need or benefit to mixing the ownership which might only serve to further complicate the ability of the NAMC to perform its functions in a timely manner. The concerns of private banks may be addressed through loss indemnification and sharing as well as profit sharing on assets. This does not however, prevent the use of equity investment partnerships vehicles which can play a role in the disposition of some of the assets of the NAMC. The equity partnership can introduce incentive structures that may not be possible in a government organization and thus may also speed the disposition process.

The transfer of ownership of assets from an open institution must be looked at very carefully to ensure that it does not significantly increase the cost of operations for the NAMC. Consideration also should be given to the necessary transfer documentation related to the assets as well as the ability to transfer assets currently pending court actions. A mechanism should be established for the transfer of title to the assets in a way that avoids having to change each document related to them and avoids payment of transfer tax or recording fee. If these fees and other complications are a potential risk, the enabling legislation for the NAMC should waive or address them in another manner.

### ***Independence***

The NAMC should be independent in its daily activities subject to legislation and general governmental direction. It may function best if left to follow commercial standards in its operation. Clear prohibitions against political and other interference should be established. It should be both free of political pressure and seen as being free of influence in its decision making. This may be difficult to achieve in some countries but adds considerably to the credibility, operation, and results of the organization. Steps may need to be taken to ensure this independence and should be factored into the design and creation of the NAMC. This concern as well as how to address it are very country specific, but should not be ignored. One effective method is to require that the NAMC keep a log of all contacts made by politicians and persons acting on their behalf concerning asset specific discussions and that the log be submitted to the government and the public on a set schedule. This provides a very transparent disclosure.

<p><i>Will the NAMC be free to do its job?</i></p>
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### ***Accountability and Governance***

Accountability, governance<sup>13</sup>, and transparency are all essential for the credibility and potential success of the NAMC. The organization needs to be accountable to the citizens of the country and should be required to report its actions. Preferably there would be a set schedule for reports in addition to reporting on actions taken at various meetings. The NAMC will need to justify its actions and results. Once again, various models are possible. The reporting can be done annually through a formal report and quarterly through less formal reports. An annual audited statement is needed as well. All of these disclosures add to the transparency of the NAMC. The governance structure and issues applicable to the NAMC will be impacted by the often conflicting objectives assigned to it as well as its often limited life-cycle.

***Ensuring  
governance and  
accountability***

Internal controls will be essential. NAMCs will handle a large number of assets and their portfolio of assets may dwarf the size of many other financial organizations within the country. The staff will handle a number of sensitive and important documents related to verification of indebtedness and the establishment of collateral interests. Internal controls provide management with reasonable assurance that its programs are executed effectively and efficiently. They help to prevent waste, fraud and abuse. They also minimize the misappropriation of assets and provide assurance that the financial statements are reliable. Systems should be established that minimize the risk of error and wrongdoing. Establishing checks and balances so that no one individual controls multiple functions is helpful. The need for internal controls is equally strong for work performed by internal staff as well as outside contractors.

### ***Fixed Term of Operations***

Many countries have limited the life of the NAMC<sup>14</sup>, viewing its existence as temporary in nature due to unusual circumstances and thus provided in the enabling legislation for a “sunset” (defined life) date. It should not be viewed as a permanent organization or there is a real risk that the goals will never be attained. It is important that the sunset date be realistic based upon set goals. It may be helpful to establish regular targets (albeit flexible ones) and to have a clear back up plan for the disposition or management of the assets should the NAMC fail to meet its targets or its sunset date. Such knowledge and planning give staff further incentive to perform rather than hoping there is a chance the organization will become permanent. In this regard, it may be necessary to set up an extra incentive program that provides extra compensation to those employees who remain performing until the sunset date.

***The life of the  
NAMC***

<sup>13</sup> Governance guidelines are available from OECD shareholders and state owned enterprises which clearly address transparency, accountability, communications and prioritized objectives.

<sup>14</sup> Indonesia’s IBRA, Malaysia’s Danharta, Thailand’ FRA and The United States’ RTC all had sunset dates.



## ***Organization***

The organizational structure of the NAMC should be designed in keeping with its functions and goals. It also should provide for the separation of duties to ensure sufficient checks and balances to prevent abuse.

## ***Board of Directors***

The NAMC should have business and organizational plans that reflect its mandate. In this regard, consideration needs to be given to the composition of its Board of Directors. It is recommended that the members of the Board be selected from a group of individuals who have relevant backgrounds in such areas as banking, asset management, law, corporate management or accounting. The Board must have authority to make decisions and therefore it is also helpful to include in its make up relevant stakeholders. Countries have taken various approaches in addressing this issue. Consideration might be given to a broad-based membership on the Board. Generally the Ministry of Finance is one of the members since it must constantly monitor the overall potential cost to the government and the taxpayers.

***The need for checks and balances***

In order to improve effectiveness and ensure the integrity of governance, members of the governing body need to understand the organization's activities and the environment under which it will operate. They should be subject to the same ethics rules as managers and staff and be subject to a "fit-and-proper" test. To the extent possible they should be free from conflicts of interest and be required to report all potential conflicts, and be required to recuse themselves from decisions which may directly or indirectly impact them, their families, business partners or close associates.

The Board should set out the duties and responsibilities of the Board, management and staff as clearly as possible. This ensures that those responsible for the governance of the operation are aware of their responsibilities.

## ***Committees and Advisory Bodies***

Governance of the operations can be enhanced through the use of advisory bodies and committees.

Special advisory bodies made up of industry representatives or others with a direct interest can add value to the operation. Participation on the committee can be voluntary and need not be full time. Attention must be given to potential conflicts of interest and confidentiality over information which might be shared. This group can serve as an advisory board or could also serve as an oversight board providing market guidance in the operation of the NAMC.

An independent audit committee whose role will be to review the books of the NAMC as well as sampling of transactions should be established. This independent

***Importance of the audit committee***

review provides one of the necessary checks and balances which should protect taxpayers interest and helps to maintain the needed credibility and integrity of the organization. Consideration also might be given to having an independent investigative body review the operations of the NAMC and investigate allegations of irregularity and fraud.

## *Management and Staff*

### *Professional Management and Staff*

Management and staffing cover a range of issues, including characteristics and experience of staff, indemnification of and other protections for staff, rules of ethics and conduct for staff. This section addresses each of these in turn.

<i>The importance of skilled staff</i>
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The NAMC should be professionally managed by recognized business leaders rather than politicians and their associates. The management of the organization will help to set the tone of the NAMC as well as the pace of its operations. To be effective, it must be credible and be seen as unbiased. Like any organization, management and staff must have sufficient authority, responsibility, and accountability to accomplish the job set out for the NAMC.

The NAMC will need strong, experienced staff whose skills meet the needs of the organization. Consideration should be given to temporarily transferring some staff from the institutions (open or closed) whose assets will be received thus ensuring continuity in the handling of the most important assets. Care is required in this regard, and an independent review of the asset work may be beneficial. Consideration also might be given to asking international banks around the world to lend their highly qualified national bankers to the organization for a couple of years.

The NAMC must not be restricted in its ability to pay salaries comparable to other financial institutions. It must have the ability to tap the market for technical, accounting, legal and other expert support. The skills needed are likely to be in high demand. They generally are not going to be available in a governmental organization and thus the need that staff compensation be market based. The compensation structure also might provide for possible incentive pay provisions for results exceeding expectations and targets. Incentive pay structures are good for temporary organizations, but much care needs to be given to their design so as to prevent fraud and abuse.

Some NAMCs have had a mandate to use private sector contractors in the performance of their job. That issue should be considered and addressed based upon the needs of the NAMC as well as the availability of skills in the private sector. Private sector participation is highly desirable, providing expertise, experience, and a market approach. <sup>15</sup> If private sector contractors are to be used, decisions will need to be made as to how

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<sup>15</sup> Sweden's Securum established in 1992 is touted as a successful NAMC as it completed its job more quickly than anticipated and is credited with saving the Government a great deal of money in

they will be hired and how the process will be made fair to all who might be interested. Potential breaches of confidentiality and self-dealing should be considered and addressed in advance of any hirings.

### *Indemnification and Other Protections for Staff*

As part of corporate governance, employees of government agencies historically have been held individually responsible and accountable for their actions. It has been noted however, that this potential burden on the employee reduced the available pool of applicants, and resulted in impediments to performance. Many observers now feel that management and staff should be provided some form of indemnification for acts taken in the legitimate performance of their duties. This protection is needed in order to encourage staff to perform their jobs under what will be difficult circumstances. This indemnification should be limited to acts within the scope of their delegated authority and normal course of business. The indemnification should specifically exclude acts of gross negligence, abuse, fraud, self-dealing or other criminal acts.

### *Rules of Ethics and Conduct*

Clearly stated operational, Board, managerial and staff-conduct rules are needed and must be strictly and timely enforced. To protect the NAMC's reputation, policies and procedures should be implemented to avoid conflicts of interest and even the appearance of conflicts. To the extent contractors are used, similar rules should be made a part of their contracts. In addition to the conflict of interest, these rules should clearly address confidentiality and the purchase of assets under the control of the NAMC.

### *Information Systems*

#### *General*

To be effective, information systems must be reliable, accurate and comprehensive, and they must provide a reasonable level of security and confidentiality. Information management systems that process information quickly will be very valuable to the NAMC in the course of its daily operations as well as in the public disclosure of information concerning its operations. The ability to collect, track and analyze information such as asset recoveries, restructurings, sales and projections is important. It enables the NAMC and the financial industry to better predict recovery values on various types of assets and enables the government to recognize which industries or businesses are likely to be restructured successfully or forced into liquidation.

<p><i>Information needs and data tracking</i></p>
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addressing the failing banks. Some of the credit goes to the rapidly improved real estate market, but credit also goes to the Government's appointment of private sector businessmen to run it.

### *Files*

Good information concerning the debtor is essential to any debt restructuring. Files from a failed institution may be lacking in many of the necessary items required to review the history of the asset. The lack of adequate information makes the work related to these assets more difficult and more expensive, forcing the NAMC to recreate the files. A standard format for asset files at the NAMC is needed to facilitate audits, internal reviews and reassignments of staff.

Assets acquired from open institutions probably will have better files, and it is highly recommended that an established operating procedure for the identification of file data and file format be required before an asset is accepted into the NAMC. In addition, transfers of assets from open institutions should require that the institutions cooperate in providing information and assisting in the future as necessary.

### *Debtor Information*

The data that is provided by debtors in the process of making debt-restructuring decisions must be reliable. Some debtors, knowing that their institution has failed, may not be totally forthright in providing information as they hope that the lack thereof will benefit them in the negotiation process. Although some may be able to provide audited financial statements, not everyone will be able to do so. Further, accounting standards may or may not be properly followed and the information provided to the accountant/auditor may or may not be reliable.

<p><i>Make debtors responsible for accuracy of data</i></p>
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It is recommended that the burden of honestly providing information concerning assets, cash flow and any asset transfer over the past few years be placed directly with the debtor, guarantor and in the case of state owned enterprises, the managers. The US (FDIC/RTC) was successful in adding language to its workout agreements based upon legislation that made it a criminal offense to knowingly deceive the authorities in the course of a loan workout. Further, language was provided that could result in the workout being reversed and the full amount pre-workout loan (less the application of what had been paid) being due in the event it became clear that false information had been provided. This included the failure to fully disclose assets as well as fraudulent transfers and hiding of assets. This tool is especially effective when the ability and the will to enforce it are present. It is not too surprisingly that it is often the competitor, neighbor, jilted lover or ex-spouse who reports the false information.

## **ASSET MANAGEMENT AND RESOLUTION GUIDELINES**

Having established an organizational structure and enabling environment, the NAMC is ready to pursue the real purpose: addressing the NPLs. Consistent with the goals that have been set, guidelines for the management and resolution of assets are needed. These guidelines should be of value not only in providing direction for staff, but also in providing a degree of insulation from those seeking special favors in the treatment of their NPLs. Established policies are helpful to staff. The NAMC should have a process

for expediting approval and implementation of good workout plans. It should have a process for attracting strategic investors and equity funds to support the viable debtors and for connecting debtors needing short-term capital with potential lenders.

Decisions will need to be made as to the general direction of the work of the NAMC. This work can take several different directions: rapid asset disposition, workout (with accompanying capital needs of the debtors) and other avenues of resolution. It also can involve corporate restructuring and revitalization and the rationalization of industries and businesses, resulting in additional support for those viewed as potentially viable and foreclosure for others. Although listed as distinct directions, they do not have to be exclusive and can even be compatible at times.

Sufficient flexibility is needed to permit a variety of methods of asset resolution. This flexibility is possible even when its primary focus is debt restructuring. Debtors need to know that debt restructuring is merely one of the tools available to the NAMC. If this message is not clear, debtors may feel that they have a negotiating advantage over the staff of the NAMC and may be less eager to reach a final agreement. Restructuring the assets and then selling them back to private commercial institutions creates a win-win situation. The debtor who is viable is given a new chance of success, the acquiring institution has a performing loan in its portfolio and potentially a long-term customer, and the NAMC reduces the size of its portfolio and recovers cash.

As the management of the NAMC focuses on the work to be done, a number of policy decisions related to the workout and disposition of assets will need to be considered. Some of them are discussed in the following paragraphs:

*How will the portfolio of assets be broken down into sub-groups?* Breaking down of the portfolio is one of the important first steps in resolving the assets. These decisions should be made whether the assets are to be restructured or sold. Generally portfolios are broken down in a number of different ways: a) asset types, b) size of asset, c) related parties and loans, d) physical location of the asset. Often it is necessary to use a combination of these divisions to reach the proper portfolio mix that promises the strongest results. The makeup of the NPLs in the financial system and more specifically the assets transferred to the NAMC is likely to determine the decision.

Once the portfolio has been separated into asset groups, how will each group be treated? Depending upon the number of assets in the portfolio of the NAMC, decisions may have to be made for dealing with different groups of assets in different ways. Small assets may require time disproportionate to the ultimate recovery and thus this needs to be taken into consideration if such loans are transferred to the NAMC. Manufacturing and industrial loans may require technical experts to assist in the evaluation of the individual company as well as the industry as a whole. Real estate assets themselves fall into a number of different categories and should be assigned to similar pools.

*How are insider loans to be treated?* It is suggested that any “insider” loans be separated from the general pool of assets and reviewed before including them in the selected groupings. Insider loans should be looked at quickly and carefully as they can deepen overall losses. Any insider loan thought to be the result of special deals, fraud or non-compliance with lending regulations should be segregated and handled by a special trained group within the NAMC. This can ensure that these assets are handled effectively and protects the NAMC from criticism when concern is expressed that these parties contributed to the problems in the sector. Other assets suspected of involving fraud also might be handled by such a special group specifically trained to deal with fraud and other criminal activity.

*Insider loans*

*What action will be taken to ensure that debtors are not stripping assets?* It is important for the debtors to know that they will be held accountable for their actions. As is the case in all debt workout situations, the sooner the debtor knows that someone has been assigned to his asset and the sooner contact is made, the less likely assets will disappear from the business. In the event assets have vanished, the NAMC should have a clearly defined process for pursuing this matter (no matter if the assets were with a private borrower or a SOE). This should be addressed even if only to send a message to the general borrowing public, that stripping, hiding or otherwise fraudulently dealing with assets will be dealt with severely.

*If a workout is possible will it involve a “Hair-cut”?* The debtor’s ability to service the debt should be determined. The analysis might suggest a need for a reduction in the outstanding loan balance. If debt forgiveness is to be considered, a clearly defined debt forgiveness policy is helpful. The policy should define parameters and provide guidelines to staff. This is a sensitive issue and one that, if not handled correctly, can contribute to moral hazard and harm credit culture. There is often a trade-off between maximizing recovery and the potential harm to the credit culture. However, debt forgiveness also may facilitate real debt and corporate restructuring. The “hair cut” should not be used to simply bail out an otherwise non-viable business.

*Debt forgiveness*

*Are debtors expected to share in the pain of debt restructuring?* Some debtors may be reluctant to recognize their responsibility in paying back the funds that were borrowed. They also may fail to recognize the real financial position of themselves or their business. This can also be an issue when dealing with outstanding obligations of SOEs in that the managers may feel no obligation for the debt repayment. The policies of the NAMC should address these issues in an effort to avoid further deterioration of the credit culture.

*How many chances at a workout should the debtor and the NAMC have?* Often, returning potentially viable assets to full productivity is a primary

*What happens if a workout is not possible*

goal. This can be facilitated through effective debt restructuring. Loan workouts should be encouraged once a determination has been made that a business can be restructured and returned to a positive cash flow. This should be done in a way that does not harm other borrowers and only after a clear business plan (for larger debtors) has been prepared and thoroughly reviewed. The restructured loan will require constant monitoring by NAMC until it is transferred back to the private sector.

Although debt workouts are desirable, they are not always possible. Some borrowers simply cannot sustain the cash flow necessary to bring about a restructuring. Others may refuse to recognize their responsibility to repay the indebtedness. To prevent the NAMC from becoming a warehouse for assets that are not restructured in a reasonable period of time, management needs to set guidelines for staff. These guidelines should spell out the effort to be devoted and the process for recommending that no further efforts be made toward a restructuring. Failing to do this puts the staff of the NAMC at a disadvantage in the negotiations and leaves the debtor with the impression that the process can continue until they receive exactly the deal they want.

## **What Other Avenues are Available to the NAMC for Realizing on the Assets?**

### ***Judicial Proceedings***

If a workout is not attained, will the assets be placed in to a judicial proceeding? What is the desired result following the judicial proceeding? What will happen with the judgment or the underlying collateral? These questions should be considered when reasonable efforts at debt restructuring have failed. The answers to the questions will help to guide the next steps in the resolution process. Will the collateral be sold? Efforts can be made to sell the collateral to those who will put it back to productive use, assuming that the business is one that can be profitable. New operators who have been able to acquire the collateral at a reasonable price should be able to put the assets back into use and operate the business in a more productive manner, creating new employment opportunities and producing goods or services of value to the economy.

### ***Asset Sales***

The issue of asset sales can present several items for consideration. When referring to asset sales, clarification may be needed as to exactly what is to be sold. In some instances it may be the loan obligation itself, in others, it could be the underlying collateral which has been acquired by the NAMC. Some governments have used the sales process as a way to rapidly reduce the total problem assets under their control. Asset sales can recycle funds needed to further the recovery, quickly return assets to productive use, and place assets back in the private sector where they can be managed best. It also can establish realistic market values, stimulate the market, and result in higher values over time, while potentially reducing the overall cost to the government.

<i>Issues associated with asset sales</i>
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Political risks which should be considered when using the sales process as the first or only avenue of asset resolution. Sudden sales into a down market can be perceived as depressing asset prices. Consideration might be given to a structured sales process which will not be viewed as “dumping” assets into the market but rather facilitates the return of assets to the private sector, while encouraging realistic pricing of assets in the market. Typically in the first few rounds of sales, bidders are reluctant to bid high prices until they have a better understanding of the potential recoveries. Determining the potential recovery may actually take some time. In the meantime there are both a risk and likelihood that the first buyers will make large profits. Some may view these large profits as unacceptable. The criticism can be reduced by establishing asset pools small enough to encourage local participation. Depending on the total number of assets as well as the desired time frame for reducing them, one also must consider that the smaller the pool of assets, the more pools are in existence and the more effort required. However, the profit expectation which will help to drive the creation of a secondary market for problem assets. As competition increases the pricing should improve.

Finally, a rather difficult issue to address is whether to permit the defaulting debtor or someone on his behalf to purchase the asset. There are perceived advantages, such as ease of transfer, potential reduction in expenses associated with the asset, especially if there was a potential claim by the debtor, and the possibility of a higher return since the debtor has a connection to the asset. The problem is one of moral hazard and the potential negative impact on credit discipline as well as the risk of NPL recurrence as debtors hope by defaulting they can reduce the debt burden and still own the asset. The moral hazard concern should not be taken lightly. If a determination is made to permit the debtor to participate in the sale, certain considerations should be given. The purchase of the asset by the debtor is not unlike a loan workout where there is a reduction in the amount owing. In the workout, one would expect to receive full financial disclosure by the debtor so a reasonable determination can be made on the debtor’s ability to pay. The same should be required so that there is available to the NAMC the right to reject the bid of the debtor. In addition, the terms of the sale contract can provide for full disclosure by all purchasers as to who the real party in interest is. In addition, a penalty clause can be included that provides in the event of the failure to fully disclose (real party or financials) that the sale can be reversed with the NAMC keeping all or a portion of the proceeds of sale. In some countries, governments have gone a step further by making it a criminal offence to have misrepresented the facts to the government owned NAMC if the NAMC relied upon the representations in going forward with the sale.

<p><i>Can the debtor participate in the asset sale?</i></p>
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If assets are going to be sold in the secondary market as part of the disposition process a number of issues should be addressed. How will the assets to be included in the sales be defined? Should it be limited only to loans not otherwise worked out or just restructured loans? Will foreclosed collateral and collateral received as part of a settlement be included in the sales process? How will the assets be sold? Will sales be pursuant to a negotiated process, an auction, equity partnership or other bidding process? Who will be permitted to participate? To ensure fairness in the process, it is important that all potential buyers/bidders be given exactly the same information.



*Once a workout has been reached, what happens to the newly performing loan? If it is to be returned to a financial institution, will the originating institution (if still open) have the first chance to buy it back. How will the price of the asset be determined? What happens if the originating institution does not want the asset, or the asset comes from a failed institution?*

## **BUILDING SUPPORT FOR THE NAMC'S OPERATIONS**

Building support for the actions of the NAMC may be more difficult than one might initially consider. It is critical to identify all of the potential stakeholders and their interests. A positive image helps the NAMC to perform. The following actions might be helpful in bringing this about:

*Support for the  
NAMC is  
critical*

Demonstrate the benefit to society and the economy of the work of the NAMC;

Be vocal and active about cost containment;

Tout success regularly;

Be honest;

Be seen as transparent and fair in the treatment of all parties;

Be sensitive to issues related to certain types of assets (historic, educational, health, environmental etc.) ;

Use the press effectively and seek opportunities to comment on issues and allegations and to explain the operation, goals and results;

Disclosure of information frequently can build confidence in the NAMC in the minds of the public and politicians.

### **Political Support**

Building and maintaining political support, in particular, may well continue from the inception of the NAMC until its sunset date. This effort will prove of value as the different players, including politicians, challenge the NAMC and its actions. In addition to legal requirements discussed earlier in this paper, building political support can be done by touting the NAMC's positive impact on the economy, emphasizing its ability to save jobs, increase the sales of assets, create and encourage businesses and reduce the number of NPLs. It is equally important to be honest about the impact of corporate and debt restructuring on employment when it is potentially negative.

## Financial Institutions Support is also Needed

The NAMC must be able to work with all financial institutions. In this regard it is important to build a level of support within the sector for its operation. The NAMC may buy assets from open institutions, or it may sell assets to institutions. The ability to cooperate will facilitate these potential actions. Further, as assets are resolved or sold into the market these activities may impact the operations of other institutions.

## Public Support is Essential

The overall strategy for addressing the assets of the NAMC is likely to be the single biggest item of concern to the public and the media. It will be essential that the strategy not change every time someone criticizes the actions taken. In the case of the media and the public, it is very important to build realistic expectations and to keep all stakeholders well informed of the progress being made. To mitigate reputational risk, the NAMC should have a clearly established procedure for addressing all stakeholders' complaints in an orderly and timely manner. Consideration might be given to establishing an office within the NAMC that is responsible for reviewing complaints and following up on issues raised by the public.

<p><i>Don't confuse the NAMC for a magic solution</i></p>
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## CONCLUSION

Is the NAMC an appropriate tool for governments? NAMCs recently have been viewed as the answer to debt overhang. The NAMC may help to resolve NPLs, but they generally can do little to prevent new NPLs. Although the NAMC may be one of the tools used in addressing such issues, it is not by itself the magic cure. Not all NAMCs are successful.<sup>16</sup> The NAMC can have the unintended result of further delaying the process by hiding the problem and becoming a warehouse, further exacerbating the economic and financial sector problems. The creation of a NAMC with its broad range of responsibilities raises a host of issues that need to be addressed before its potential value can be determined. It is important to consider the risks as well as the unique circumstances facing a country.

Many issues and circumstances can impact the ability of the NAMC to be an effective tool. The speed with which the NAMC can perform its duties often has a direct relationship to successful loan workouts as well as the ultimate reduction in the number of outstanding NPLs. Its ability to perform is significantly affected by the existence or lack thereof of political will. If political will is lacking or if politicians constantly interfere in its operation, the NAMC it is not likely to succeed. In the design and implementation of its programs, the NAMC needs to recognize the importance of cultural issues as well as the potential tradeoffs among political, social, religious and economic issues.

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<sup>16</sup> Klingebiel, D. (2000) at footnote 1

The government as well as the citizens must understand and be prepared to support the often painful process of reform and debt recovery if the NAMC is to achieve the intended results. A number of factors can improve its ability to be an effective tool. Defining the scope of the problem; honestly identifying problem loans and debtors (without regard to their standing in society); recognizing the nature and causes for the banking system's distress, and having a legal infrastructure and enforcement processes are all part of the elements that will help to ensure an environment in which a NAMC can operate.

Clear and realistic goals are needed to guide its performance and measure its accomplishments. Sufficient funding also is needed. The NAMC requires a highly capable staff with sufficient authority to perform their jobs. It should not be established to accomplish non-transparent goals, or it likely will fail in reaching both the stated as well as the hidden goals. It should be given considerable flexibility to address the goals and should be encouraged to be innovative and creative. Overall, the operation of the NAMC must be seen as credible, transparent and fair in its treatment of all parties.

***Do you still want a NAMC and are you really prepared to address the issues outlined herein?***

Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
			Acquisition of assets	Debt restructuring		
China	4 AMCs: CINDA, Oriental, Great Wall, Huarong	<ul style="list-style-type: none"> <li>Prevention and mitigation of financial risks;</li> <li>Improvement of asset portfolio of state-owned banks;</li> <li>Accelerating healthy development of financial system</li> <li>Maintaining the value of assets and minimizing losses</li> </ul>	<ul style="list-style-type: none"> <li>NPLs were transferred to AMCs from their parent banks at book value as part of a bank recapitalization transaction, in exchange for long-term bonds implicitly guaranteed by the MOF;</li> <li>Transfer of NPLs was restricted to loans extended before the end of 1995 the year when the Commercial Banking Law was enacted;</li> <li>The NPLs owed by nearly 600 SOEs were converted to equity, in the order of US\$40 billion.</li> </ul>	<ul style="list-style-type: none"> <li>AMCs are not granted any special legal powers. The business scope granted by the Provisional Regulations promulgated by the State Council cannot override provisions in laws enacted by the National People's Congress.</li> <li>AMCs as creditors have the right to bring legal action against a debtor;</li> </ul>		
Indonesia	IBRA	<ul style="list-style-type: none"> <li>Restructure loans that were transferred from taken over and closed banks and NPLs from recapitalized banks.</li> <li>Maximize recovery of assets, including loan assets and physical assets under the Asset Management Credit (AMC)</li> <li>Maximize the recovery of government funds</li> </ul>	<ul style="list-style-type: none"> <li>Banks mark down to zero value their transferred assets to IBRA, gov't covers banks' losses by issuing recap. bonds; IBRA accounts the transferred assets on its balance sheet at face value while the contra account is liabilities to the MOF</li> <li>Takes over rights and authority of management and shareholders in banks</li> </ul>	<ul style="list-style-type: none"> <li>Restructuring decision for one obligor owing above IDR 1 trillion (USD 105 million equivalent) must be approved by the Financial Sector Policy Committee, a team of five economic-related ministers</li> <li>Authority to execute foreclosure through the issuance of distress warrants and annul certain credit related agreements using Government Regulation/PP No. 17, extra-judicial rights</li> </ul>	<ul style="list-style-type: none"> <li>Rescheduling debt with new terms and conditions that will enable particular businesses to recover.</li> <li>Provide "haircuts" (write-off) within allowable limits on penalties, interests, and in some cases on principal.</li> <li>Convert government loan into equity or other financial apparatus such as Convertible Bonds.</li> </ul>	<ul style="list-style-type: none"> <li>Government provides protection guarantee to IBRA staff from civil suits that may arise from their decisions and policies through an amendment to the Government Regulation/PP No. 17</li> <li>Monitoring Committee established for the purpose of governance.</li> </ul>

Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
			Acquisition of assets	Debt restructuring		
		<ul style="list-style-type: none"> <li>used for guarantee scheme and bank recapitalization.</li> <li>Administer the government guarantee scheme on third party deposits</li> </ul>	<ul style="list-style-type: none"> <li>and some enterprises</li> <li>Review and/or terminate contracts that cause losses to banks</li> </ul>	<ul style="list-style-type: none"> <li>Authority to sell through public offering or direct sale</li> <li>May apply write-off on debt principal, in line with the "Haircut" policy</li> <li>Out-source the restructuring of commercial loans (Rp5-50 billion)</li> <li>Implement special crash program for Retail and SME loans (Rp &lt; 5 billion) by providing special discount (including principal) for cash settlement.</li> </ul>	<ul style="list-style-type: none"> <li>Settle debt (partially or total) with assets or cash payment.</li> </ul>	
Korea	KAMCO	<ul style="list-style-type: none"> <li>Purchase and dispose of non-performing loans acquired from financial institutions rapidly and efficiently.</li> <li>Support the normalization process of financially distressed companies.</li> <li>Maximize restructuring efficiency through early collection of public funds and minimize the use of public funds.</li> </ul>	<ul style="list-style-type: none"> <li>Asset purchase is made consistent with the restructuring agreement between KAMCO and financial institution.</li> <li>Different pricing methods are applied for each type of loan based on the objective price calculation standards (about 39% of book value all-in, or approximately market price).</li> <li>Payments are made in cash, primarily, and swapped with KAMCO bonds as alternative means</li> <li>Some assets are acquired with full</li> </ul>	<ul style="list-style-type: none"> <li>No special power in debt restructuring but follow the gov't restructuring program, the legal regime and court system. However the legal regime and court processes for debt collection have been expedited and are rapid.</li> <li>Majority of debt restructuring are done in the court; for out of the court restructuring, KAMCO follows decision made by the Corporate Restructuring Committee (approved by 75% of creditors in value)</li> <li>For restructuring of ordinary loan (very small portion), KAMCO follows its internal regulation; decision on restructuring</li> </ul>	<ul style="list-style-type: none"> <li>No special power; only follow existing legal regime</li> <li>For corporate workout programs: <ul style="list-style-type: none"> <li>- Suspension of legal action</li> <li>- Suspension of foreclosure</li> <li>- Lend working capital</li> <li>- Debt-Equity swap</li> <li>- Payment guarantee</li> <li>- Purchase discount notes (CPs).</li> </ul> </li> <li>Acquiring and selling assets subject to self-rescue plan of financially distressed companies. The proceeds are used to redeem debt in order to promote the</li> </ul>	<ul style="list-style-type: none"> <li>No provision in the KAMCO law regarding staff indemnification since most debt restructuring follows existing legal framework</li> </ul>

Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
			Acquisition of assets	Debt restructuring		
			recourse to the originating banks	made by the Board of Directors: – Authority to reduce, outstanding principal balance, reduce or forgive interest payment, reduce interest rate, extend payment maturity – Reschedule payments	financial soundness of the corporate sector. • <b>Establishing joint-venture</b> Corporate Restructuring Vehicles (CRV) with private firms.	
Malaysia	Danaharta	<ul style="list-style-type: none"> <li>Neither a rapid disposition nor a warehouse agency</li> <li>Maximize recovery value of acquired assets</li> <li>A public company, incorporated under the Company Act 1965 but given special powers (statutory vesting and special administration) to resolve NPLs by virtue of the Pengurusan Danaharta Nasional Berhad Act 1998</li> </ul>	<ul style="list-style-type: none"> <li>No compulsory powers of acquisition</li> <li>Pricing determined by professional valuers</li> <li>A carrot and stick approach used to convince banks to sell their NPLs</li> <li>Stick: those not selling NPLs to Danaharta have to write down their NPLs not sold to forced sale value (defined as 80% of the offer made by Danaharta)</li> <li>Carrot: 20:80 Profit sharing (Danaharta : Banks)</li> <li>Average discount on book value: 56%.</li> <li>Can acquire assets through statutory vestings (assignment) (same priority as selling bank but the ownership of collateral does not</li> </ul>	<ul style="list-style-type: none"> <li>Can appoint Special Administrator (SA) with consent of Oversight Committee (OC) to propose workout plan without usual court process.</li> <li>SA workout proposals reviewed by Independent Adviser (approved by the OC).</li> <li>Implementation of the workout proposal is subject to usual regulatory approvals by majority of the secured creditors (in value).</li> <li>Ability to foreclose on assets and sale through private treaty.</li> <li>Need to give 30 days notice to debtors.</li> <li>Bypass court auction process.</li> <li>Danaharta coordinates its work with the Corporate Debt Restructuring Committee (CDRC) and Danamodal through the Steering Committee</li> </ul>	<ul style="list-style-type: none"> <li>12 month moratorium from claims against debtors. Powers of debtors' directors and management suspended once SA is appointed.</li> <li>SA workout proposals include both debt and operational restructuring.</li> </ul>	<ul style="list-style-type: none"> <li>Provisions in Danaharta Act to protect its integrity and independence, including the requirement to disclose conflicts of interests and obligations of secrecy.</li> <li>Internal Audit and Compliance (IACD) Division assists the BOD, Audit Committee (AC), and management in its corporate governance</li> <li>IACD developed internal audit charter and internal audit manual, endorsed by AC and adopt the Control Self Assessment (CSA).</li> <li>Provisions in Danaharta Act to indemnify member of the board, of the OC, and staffs or agent from legal liabilities</li> <li>SA and IA are also</li> </ul>

Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
			Acquisition of assets	Debt restructuring		
			<p>change, and the Act preserves third party rights).</p> <ul style="list-style-type: none"> <li>• Selective purchase of larger loans and related party loans.</li> </ul>	<p>chaired by the Governor of Bank Negara Malaysia (BNM); CDRC was formed under BNM to facilitate debt restructuring on an orderly and expeditious process.</p>		<p>protected under the Act except willful misconduct or negligence</p>
Mexico	FOBAPROA (from 1994-1998) and IPAB (since 1999)	<ul style="list-style-type: none"> <li>• Sell assets of closed intervened banks.</li> <li>• Sell operating intervened banks</li> <li>• Maximize recovery value of assets.</li> <li>• Protect deposits.</li> </ul>	<ul style="list-style-type: none"> <li>• It acquired all kinds of non-performing assets.</li> <li>• It acquired assets at face value less provisions.</li> <li>• Assets were acquired as follows: US \$2 dollar for every US\$ 1 dollar of new capital injected into the institution by current shareholders.</li> <li>• FOBAPROA purchased NPLs with zero coupon bonds. No cash payments.</li> <li>• FOBAPROA assumed up to 80% of the losses resulting from the recovery of assets.</li> </ul>	<ul style="list-style-type: none"> <li>• Debt restructuring was made by banks and debtors; FOBAPROA or IPAB did not have legal or extraordinary powers to foster debt restructuring.</li> <li>• Banks and debtors were allowed to reach private arrangements for debt restructuring.</li> <li>• The government sponsored debt restructuring programs for mortgage credits, loans for small and medium enterprises, loans for agriculture and fishery sectors, etc.</li> <li>• Up to 80% of the costs or losses resulting from debt restructuring were assumed by the government.</li> </ul>	<ul style="list-style-type: none"> <li>• Neither FOBAPROA nor IPAB had special powers to rehabilitate debtors' businesses.</li> <li>• Special programs for debt restructuring for small debtors, which included: interest rate reductions, partial debt forgiveness, new working capital, and loan maturity extension were used by the government.</li> </ul>	<ul style="list-style-type: none"> <li>• FOBAPROA or IPAB staff did not have a special status or legal protection.</li> </ul>
Sweden (1)	Securum (1991-1997) (absorbed another restructuring agency, Retriva, in 1995)	<ul style="list-style-type: none"> <li>• Established as a stand alone restructuring/ clean-up agency for a bad bank (Nordbanken) that government later took over.</li> <li>• Securum was taken over by the Swedish government in early 1993 and given</li> </ul>	<ul style="list-style-type: none"> <li>• No special powers of acquisition.</li> <li>• Assets were transferred at book value. Assets that could be securitized were not taken over.</li> <li>• Criteria for transfer was mainly size and complexity of loan. Only loans over SEK</li> </ul>	<ul style="list-style-type: none"> <li>• No special powers.</li> <li>• However, Securum acted as lead agent in restructuring process for some cases.</li> <li>• Transferred assets that were of particular type, size, and structure, limited the amount of assets Securum had to deal with and made it a more</li> </ul>	<ul style="list-style-type: none"> <li>• No special powers.</li> </ul>	<ul style="list-style-type: none"> <li>• Private management and strong governance mechanisms ensured the agency's independence.</li> </ul>

Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
			Acquisition of assets	Debt restructuring		
		<p>equity totaling Skr24 billion (\$3 billion) to offset its debt.</p> <ul style="list-style-type: none"> <li>Securum's objective was to maximize recovery value of NPLs transferred to it and establish "best practice" in corporate restructuring for private banks</li> </ul>	<p>15 million were transferred, and they typically consisted of corporation with operations in different countries or complicated structures in terms of subsidiaries. Assets of Securum amounted to only 8% of total banking system assets.</p>	<p>manageable exercise.</p> <ul style="list-style-type: none"> <li>The type of assets facilitated restructuring. Commercial real estate were relatively easier to restructure since these were less politically sensitive (layoffs) to deal with. High concentration of the economy may also have made industrial restructuring easier.</li> </ul>		
Thailand	Thai Asset Management Corporation (TAMC)	<ul style="list-style-type: none"> <li>To facilitate debt/business restructuring for cooperative viable debtors, who would then be able to continue or restart their businesses</li> <li>To revive the national economy</li> <li>To rapidly manage distressed assets</li> <li>To minimize operating costs in dealing with the distressed assets transferred from financial institutions or their asset management companies</li> </ul>	<ul style="list-style-type: none"> <li>All claims, rights or any other obligations on transferred assets are fully transferred to TAMC.</li> <li>TAMC can assume the right of creditors in cases under legal proceeding or in accordance with judgments issued by the court.</li> <li>TAMC is exempt from all fees arising from seizure, sale by public auction or disposal of transferred assets, and any fees as specified by the law related to the transfer and receiving of assets.</li> <li>For non-viable cases, TAMC can foreclose and dispose of collateral without going through the courts.</li> </ul>	<ul style="list-style-type: none"> <li>Ability to liquidate the debtor's business without going through a court trial subject to such liquidation being under the Official Receiver.</li> <li>If the debtor or guarantor fails to cooperate with TAMC in the debt restructuring or removes, discards, conceals or hides its property, TAMC can file a petition with the Court for an order of final receivership of debtor or guarantor's property. The Court and the Official Receiver shall proceed under the bankruptcy law without delay.</li> </ul>	<ul style="list-style-type: none"> <li>No special powers except that TAMC is exempted from all Courts' fee.</li> </ul>	<ul style="list-style-type: none"> <li>TAMC is supervised by the MOF, which can assign BOT to examine TAMC.</li> <li>TAMC reports to the MOF and discloses to the public its financial statements, certified by the Office of the Auditor-General four months after the end of the fiscal year.</li> <li>Its performance and Managing Director's performance are examined by the Inspection Committee, appointed by the Board of Directors</li> <li>Indemnification of staff and employees of TAMC in the good faith performance of their jobs (except in the event of violating the law or gross negligence).</li> </ul>



Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
			Acquisition of assets	Debt restructuring		
						<ul style="list-style-type: none"> <li>Administrative Courts (against misuse of state power) do not apply to operations of TAMC nor any actions of its Board of Directors and the Executive Committee in managing the transferred assets.</li> </ul>
Thailand	Asset Management Corporation (AMC)	<ul style="list-style-type: none"> <li>To participate in FRA's auctions of assets of suspended finance companies where rehabilitation plans were not approved by the FRA. as the bidder of last resort</li> <li>The AMC's principles were to purchase assets, under internationally accepted procedures, at a fair price in line with market mechanisms.</li> <li>The AMC is not permitted to acquire bad assets from open institutions.</li> <li>The AMC is expected to manage the acquired assets to increase their value before disposal.</li> </ul>	<ul style="list-style-type: none"> <li>The AMC is exempt from any fees related to the receipt and/or transfer of assets or collateral in the performance of its duties.</li> <li>The transfer of the claims from financial institutions to the AMC and vice versa may be done without giving notice to the debtors as required under the Civil and Commercial Code. However the debtors retain their right to defend the claims of AMC.</li> </ul>	<ul style="list-style-type: none"> <li>No special powers. The AMC loan restructuring emphasized negotiation processes with debtors instead of taking them to court.</li> <li>The AMC's debt restructuring was undertaken under the following process: 1) securitize the debt ; 2) dispose of the debtors' assets; 3) convert debt to equity, extend debt repayment schedules or provide debt forgiveness.</li> </ul>	<ul style="list-style-type: none"> <li>No special powers, but AMC tried to keep debtors businesses open.</li> </ul>	<ul style="list-style-type: none"> <li>The AMC is supervised by the MOF.</li> <li>All members of the Board of Directors are appointed by the MOF</li> <li>The AMC has to report to the MOF its financial statements, certified by the Office of the Auditor-General annually and MOF shall disclose the audited statements to general public.</li> <li>No other public disclosure requirement</li> <li>No indemnification to its staff.</li> </ul>
Thailand	The Financial Sector Restructuring Authority	<ul style="list-style-type: none"> <li>The FRA's mandates were to 1) rehabilitate suspended finance</li> </ul>	<ul style="list-style-type: none"> <li>If a suspended company was unable to restructure or rehabilitate its</li> </ul>	<ul style="list-style-type: none"> <li>The FRA was set up as a rapid disposition agency not a debt restructuring agency.</li> </ul>	<ul style="list-style-type: none"> <li>In rehabilitating suspended companies, the FRA was granted</li> </ul>	<ul style="list-style-type: none"> <li>Its BOD consists of three individuals with private sector experience, appointed</li> </ul>

Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
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	(FRA)	<p>companies, 2) assist their depositors and creditors, and 3) administer the liquidation of non-viable suspended companies.</p> <ul style="list-style-type: none"> <li>After completing these mandates, the FRA was dissolved by the Council of Ministers.</li> </ul>	<p>business, the FRA was empowered to set up a Committee with the power to assume control of such company and to liquidate its assets. Such action was deemed as a resolution of a shareholder' meeting.</p> <ul style="list-style-type: none"> <li>Liquidation of the suspended company's assets was done by open bidding process or price competition as determined by the Committee.</li> <li>The Committee was empowered to appoint a liquidator.</li> <li>The FRA Decree was amended to give more protection to potential buyers of assets as follows: 1) provide for transfer of clear and unchallenged title, 2) allow an FRA general announcement in lieu of individual borrower consent, 3) prohibit set-offs subsequent to sales, and 4) ensure the right of purchasers to charge interest in accordance with the original contracts.</li> </ul>		<p>flexibility to permit 1) the acquisition of financial institution shares above the legal limit, 2) the amount of shares of financial institutions held by Thai citizens below 3/4 of their paid up capital and the number of Thai directors below 3/4 of the total number of directors, 3) the acquisition or holding of shares in a limited company or public limited company above the legal limit.</p>	<p>by the MOF, one representative each from the BOT and the MOF, and Secretary General of FRA, appointed by the MOF.</p> <ul style="list-style-type: none"> <li>Public disclosure on the results of the auctions.</li> <li>Independent third party review of the FRA.</li> </ul>

Country	Public AMC	Objective	Extraordinary Legal or Administrative Power		Power / instruments to rehabilitate debtors' business	Governance & Indemnification for employees of Public AMC
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USA	Resolution Trust Corporation	<ul style="list-style-type: none"> <li>• Maximize net present value recovery from asset management and disposition (minimize cost to the taxpayer)</li> <li>• Increase the stock of affordable housing.</li> <li>• Maximize participation of the private sector, with provisions for use of women and minority-owned businesses.</li> </ul>	<ul style="list-style-type: none"> <li>• Intervene and resolve failed Savings and Loan Institutions. Assets acquired as institutions go into receivership.</li> <li>• Considerable powers with regard to intervention of failing institutions (abrogation of certain contracts, etc.)</li> <li>• Did not purchase assets from institutions, which had not been intervened.</li> </ul>	<ul style="list-style-type: none"> <li>• Early in the process, entered into asset management contracts with private sector firms who managed (serviced and restructured loans) and sold assets singly and in pools.</li> <li>• Later in the process, expedited disposition by selling of whole loans and real estate owned, equity partnerships and securitization without using asset managers, but instead using disposition contractors.</li> <li>• Headquarters unit directly negotiated debt workouts on a relatively small number of large value accounts before they were sold.</li> <li>• No special powers granted for debt restructuring; utilized existing legal regime for bankruptcy and foreclosure.</li> <li>• Mostly real estate-based loans and collateral.</li> </ul>	<ul style="list-style-type: none"> <li>• No special powers.</li> </ul>	<ul style="list-style-type: none"> <li>• Strong governance structure with both central and regional Oversight Boards, consisting of private citizens and professionals.</li> <li>• Strong and independent "Inspector General" function provided a second level of internal control.</li> <li>• Regular oversight by the General Accounting Office, which reports to Congress (RTC was part of the Executive Branch).</li> <li>• Indemnification for actions taken in good faith and within delegated authority.</li> </ul>

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