

## National Asset Management Agency (NAMA)

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### Abstract

When the aftermath of the September 2008 collapse of Lehman Brothers burst a long-running real estate bubble in Ireland, it triggered a banking crisis. In spite of various responses by the Irish government, the financial viability of Ireland's banks (as well as the government's fiscal position) continued to deteriorate in early 2009 (Bacon 2009, 8-9). The Irish government attributed the problem to impaired real estate assets sitting on bank balance sheets and created the National Asset Management Agency (NAMA), a majority privately owned asset management company (AMC), to remove these assets from the banks (Carroll and Dodd 2012, 8-9). From its establishment under the NAMA Act on December 21, 2009, NAMA purchased assets with a face value of approximately €77.4 billion for €31.7 billion (Oireachtas Inquiry 2016, PDF Page 315). As of December 31, 2018, it had disposed of all but €2.3 billion of these assets. NAMA was considered one of the best performing AMCs of the era and enjoyed an expansive legal mandate, but it was not sufficient to solve Ireland's economic woes (Cas and Peresa 2016, 25) (Sibley 2017, PDF Page 3). Although NAMA was still operating as of 2019, it was projected to wind down in 2021 and yield a profit of €4 billion (Cas and Peresa 2016, 16) (NAMA 2019, 9-10) (NAMA Second Progress Report 2018, 19).

**Key Words:** Asset Management Corporation, Bad Banks, Real Estate, Ireland, Guarantee, Housing Policy

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# National Asset Management Agency

## At a Glance

In late 2008, uncertainty stemming from the Global Financial Crisis (GFC) burst the real estate bubble supporting Ireland's economy and triggered a banking crisis ([IMF 2015](#), 18, 51). Between September 2008 and April 2009, the Irish government responded with blanket guarantees, bank recapitalizations, and bank nationalization, but the financial credibility of the banks (as well as the government's fiscal position) continued to deteriorate ([Bacon 2009](#), 3). Government analysts traced the credibility problem to the impaired assets related to real estate populating the balance sheets of Ireland's largest banks ([Cas and Peresa 2016](#), 7) ([Carroll and Dodd 2012](#), 8). On April 7, 2009 the government recommended that Ireland establish a centralized majority privately owned asset management company, the National Asset Management Agency (NAMA), to remove these assets from the balance sheets and persuade the market that its banks were adequately capitalized ([Carroll and Dodd 2012](#), 8-9). NAMA would then manage and dispose of these assets, aiming to optimize returns for the Irish public ([Cas and Peresa 2016](#), 38).

Ireland established NAMA on December 21, 2009 under the National Asset Management Agency Act 2009 ([Oireachtas 2009](#)). NAMA eventually purchased assets with a face value of approximately €74.4 billion for €31.7 billion by issuing government guaranteed securities ([Oireachtas Inquiry 2016](#), PDF Page 315) ([NAMA Annual Report 2010](#), PDF Page 17) ([NAMA Progress Report 2014](#), PDF Page 9). Although NAMA did not prevent Ireland from requiring an EU-IMF Programme that began in November 2010, NAMA disposed of all but €2.3 billion in remaining assets by the end of 2018 and projected that it would return over €4 billion in profit to the taxpayers by the anticipated end of its life in 2021 ([NAMA Annual Report 2018](#), 8-11) ([NAMA End of Year Review 2018](#), 2).

## Summary Evaluation

The effectiveness of NAMA at stabilizing the Irish economy is uncertain. The consensus seems to be that NAMA was effective at performing the functions asset management companies are expected to perform ([Schoenmaker 2015](#), 2). As a whole, NAMA was considered one of the more well-developed European asset management companies of the GFC era ([Moody's Investors Service 2015](#)). However, NAMA was not enough to solve Ireland's financial problems ([Sibley 2017](#), PDF Page 3). The program remained politically unpopular, having to grapple with the combination of a perceived transparency problem

## Summary of Key Terms

**Purpose:** To stabilize the Irish banking sector and restore "the flow of credit [...] while minimizing the risk to the taxpayer" ([NAMA 2009](#), 1)

<b>Important Dates</b>	April 7, 2009 (Announcement), December 21, 2009 (Start of operations) (First transfer took place between March 29, 2010 and May 10, 2010)
<b>Date of Last Asset Disposal</b>	N/A (€2.3 billion in assets remaining as of December 31, 2018)
<b>Type of Assets</b>	Land and property development loans as well as any assets related to such loans
<b>Asset Strategy</b>	Long term asset management
<b>Asset Management Structure</b>	Centralized entity
<b>Ownership Structure</b>	Public-private ownership (majority private)
<b>Program Size</b>	Could issue up to €54 billion to purchase assets
<b>Usage</b>	Assets with a face value of €74.4 billion purchased for €31.7 billion
<b>Outcome</b>	Projected surplus of over €4 billion at program termination
<b>Notable Features</b>	Unprecedented legal authority, hedged risk of overvaluation with claw back mechanism, off-balance sheet SPV structure

and early delays that further aggravated a sense of uncertainty (Williams 2014, 139) (Boland 2016) (Oireachtas Inquiry 2016, PDF Page 315-318).

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<b>Economic Context: Ireland, 2009</b>	
<b>GDP</b>	\$236.961 billion in 2009 <i>Source: IMF WEO</i>
<b>GDP per capita</b>	\$52,114.14 in 2009 <i>Source: IMF WEO</i>
<b>Sovereign credit rating (5-year senior debt)</b>	<i>As of Q2, 2009</i> Fitch: A- Moody's: Aa1 (negative outlook) S&P: AA+ (negative outlook) <i>Source: Bloomberg</i>
<b>Size of banking system</b>	\$ 42.7 trillion in total assets in 2009 <i>Source: WB's Global Financial Development Database</i>
<b>Size of banking system as a percentage of GDP</b>	177.851% in 2009 <i>Source: WB's Global Financial Development Database</i>
<b>Size of banking system as a percentage of financial system</b>	100% (No data for nonbank financial institutions' assets to GDP) (%) <i>Source: WB's Global Financial Development Database</i>
<b>5-bank concentration of banking system</b>	Of commercial banks in your country, 58.23% of total deposits was held by the five largest banks at the end of 2009 <i>Source: WB's Global Financial Development Database</i> Of commercial banks in your country, 72.69% of total assets was held by the five largest banks at the end of 2009 <i>Source: WB's BRSS</i>
<b>Foreign involvement in banking system</b>	35.0% of total banking assets in 2009 <i>Source: WB's Global Financial Development Database</i>
<b>Government ownership of banking system</b>	7.27% of the Irish banking system's assets were in banks that were government-controlled (e.g., where government owned 50% or more equity) at the end of 2009 <i>Source: WB's BRSS</i>
<b>Existence of deposit insurance</b>	90% of deposits, with a maximum payout of \$27,777.78 (€20,000) <i>Source: World Bank Deposit Insurance Dataset, exchange rate from IMF's IFS</i>

# I. Overview

## Background

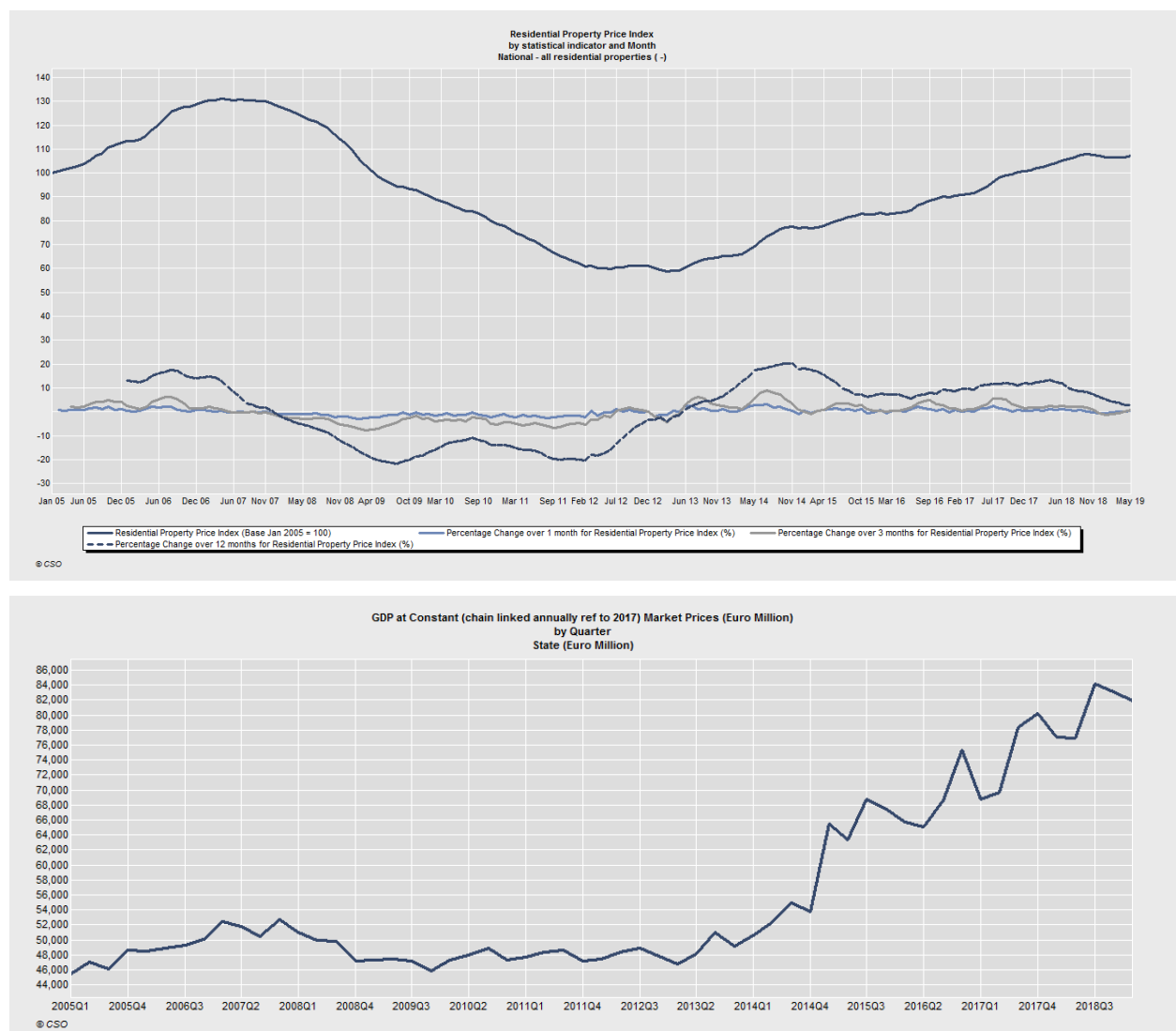
At the outbreak of the Global Financial Crisis (GFC), Ireland had a domestic banking sector that was four times the size of its GDP, an open economic model, and bank governance (as well as bank risk management) that was perceived as poor ([Cas and Peresa 2016](#), 10) ([Carroll and Dodd 2012](#), 115-117). Although the economy had revolved around a real estate bubble for several years, the government was widely seen as fiscally prudent (having maintained years of balanced budgets and over a decade of surpluses) ([IMF 2015](#), PDF Page 84). However, its relatively small economy depended on tax receipts structured around a set of pro-cyclical taxes that the Governor of the Central Bank of Ireland later said in 2010 “could leave it [Ireland] vulnerable to a sudden crippling turnaround in the deficit and a rapid accumulation of debt” ([Honohan 2010](#), 2). These factors contributed to the GFC’s early and intense impact on the Irish economy after the fall of Lehman Brothers in September 2008. As liquidity disappeared and the property values buttressing the Irish economy collapsed, GDP shrunk rapidly in 2008 and 2009.

As the crisis began to spread, the government of Ireland sought to stem the contagion by announcing an ~€440 billion blanket guarantee (over double Ireland’s GDP) of virtually all the liabilities of large domestic banks (See Figure 3) on September 30, 2008 (called the Credit Institutions Financial Support Scheme (CIFS)) ([New Bagehot 2019](#)).<sup>2</sup> However, the world gradually realized that these banks might have a solvency problem, not just a liquidity problem, as Anglo Irish Bank was nationalized amid record losses on January 15, 2009 ([Schoenmaker 2015](#), 10) ([Honohan 2009](#), 1-2).

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<sup>2</sup> The six participating banks were Allied Irish Banks (AIB), Bank of Ireland (BOI), Anglo Irish Bank (ANGLO), Educational Building Society (EBS), Irish Life & Permanent (IL&P), and Irish Nationwide Building Society (INBS)

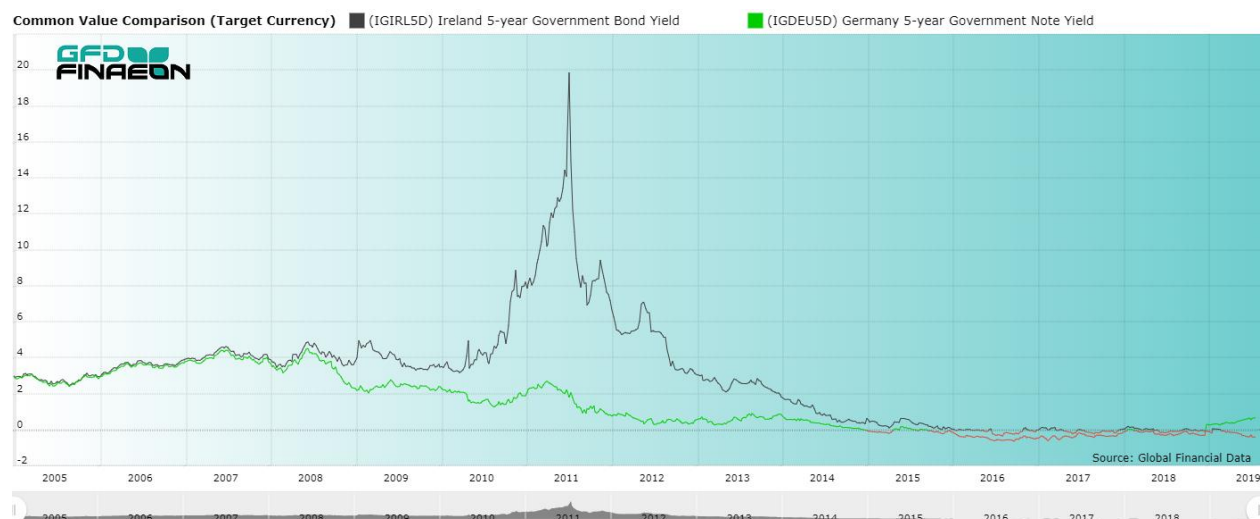
Figure 1: Republic of Ireland Property and GDP Data from 2005 to 2019



Uncertainty regarding the six banks' potential losses continued to grow ([Oireachtas Inquiry 2016](#), PDF Page 32-32) ([Schoenmaker 2015](#), 10). This uncertainty began to weigh on the sovereign ([IMF 2015](#), 51-52). In response, the Irish government nationalized Anglo Irish Bank, Ireland's third largest bank, then injected €3.5 billion into Allied Irish Bank (AIB) and €3.5 billion into Bank of Ireland in early 2009 ([Schoenmaker 2015](#), 10-11) ([Quigley 2010](#), 353). This kept Ireland's domestic banks alive, but the multiplying number of impaired real estate assets on their balance sheets made raising capital from the private sector impossible, which in turn damaged their ability to make loans) ([Quigley 2010](#), 353). On the ground, these impaired real estate assets materialized in the form of incomplete developments and

numerous properties in a legal limbo between default and foreclosure ([Williams and Nedovic-Budic 2016, 9](#)).<sup>3</sup>

Figure 2: Irish sovereign bond yields diverging from the European baseline (Germany) during the Global Financial Crisis



Policymakers believed the impaired real estate assets were toxic to the banks and would continue to rattle the markets until the losses associated with the assets became clear. In March 2009, Economist and Special Advisor to the government’s National Treasury Management Agency (NTMA), Peter Bacon, proposed that the government solve the problem by creating a “bad bank,” an asset management company that would “carve out [the relevant] impaired assets from [...] the domestic banks” ([Cas and Peresa 2016, 10](#)) ([Bacon 2009a, 31-34](#)) ([NAMA Business Plan 2010, 7](#)). On April 7, 2009 the Minister for Finance announced that the Irish government would establish a “National Asset Management Agency [...] to address the issue of asset quality in the banking system” ([Lenihan 2009, 6-7](#)). The following day, the government released the proposal ([Bacon 2009](#)). The Irish government then held public consultations on draft legislation during the August recess of the Oireachtas, Ireland’s parliament ([Connolly 2017, 8](#)). These consultations resulted in the National Asset Management Agency Act 2009 (the NAMA Act), which was introduced in the Oireachtas on September 8, 2009 and pre-notified to the EC on September 29, 2009 ([National Asset Management Agency Act 2009 2009](#)) ([European Commission February 26, 2010, 1](#)). In the Oireachtas, the NAMA Act passed by a narrow margin on October 15, 2009 following a debate that involved an all-night session of the House ([Connolly 2017, 12](#)). It was then signed into law by the Prime Minister on November 22, 2009, formally established via a statutory instrument on December 21, 2009 ([S.I. No. 547 2009](#)), and notified to the EC for approval under EU guidelines on impaired asset relief for banks as well as compliance with EU State

<sup>3</sup> This was exacerbated by the fact that the Irish legal system for collecting on real estate collateral/dealing with residential mortgages in arrears was “characterised by difficulties in collateral realisation and numerous court adjournments” (See [Cas and Peresa 2016](#))



aid rules on December 23, 2009 (National Asset Management Agency Act 2009 2009) (Oireachtas 2009) (European Commission February 26, 2010, 22, 34). The EC approved NAMA on February 26, 2010, but required that the valuation and transfer of each tranche of assets to NAMA had to be notified to and reviewed by the EC (European Commission February 26, 2010, 34). The Minister for Finance and the Board of NAMA also fleshed out NAMA's features through numerous statutory instruments, guidelines, directions, and Codes of Practice over NAMA's first few years (Oireachtas 2009) (National Asset Management Agency (Conferral Of Additional Function) Order 2010) (National Asset Management Agency (Determination Of Long-Term Economic Value Of Property And Bank Assets) (Amendment) Regulations 2010).

Figure 3: Major Financial Institutions based in Ireland as of 2008

Institution Name	Total Assets (billions of Euros)	Market Share	Notable public stake as of NAMA's start	Foreign Owned	CIFS Participant	NAMA Participant (and NAMA Applicant)	Liquidated under IBRC Act 2013
Bank of Ireland	194.1	26.5%	€3.5 bn in preference shares	N	Y	Y	N
Allied Irish Banks	179.5	24.5%	€3.5 bn in preference shares	N	Y	Y	N
Anglo Irish Bank	88.5	12.1%	100%	N	Y	Y	Y
Irish Life & Permanent	74.3	10.1%	N/A	N	Y	N	N
Bank of Scotland	54.1	7.4%	N/A	Y	N	N	N
Ulster Bank	48.7	6.6%	N/A	Y	N	N	N
National Irish Bank	28.2	3.8%	N/A	Y	N	N	N
EBS	21.4	2.9%	N/A	N	Y	Y	N
KBC	21.1	2.9%	N/A	Y	N	N	N
INBS	14.4	2.0%	N/A	N	Y	Y	Y
ACCBank	8.4	1.2%	N/A	Y	N	N	N

Source: European Commission Brussels, 26.2.2010 C(2010)1155 final, Page 3; 2009 Annual Reports of the aforementioned banks

## Program Description

The purpose of NAMA itself was to stabilize the Irish banking sector and restore “the flow of credit [...] while minimizing the risk to the taxpayer” ([Lenihan 2009](#), 6-7). The government of Ireland created NAMA using the National Asset Management Agency Act 2009 (the NAMA Act) ([European Commission February 26, 2010](#), 1-2). The purpose of the NAMA Act was sixfold:

- Crystallize losses related to certain assets on the balance sheets of systemically important organizations (Ireland’s largest domestic banks),
- “[R]emove uncertainty about the [...] location” of those assets, improve the availability of credit in Ireland,
- Protect “the State’s interest in respect of the guarantees issued by the State pursuant to the Credit Institutions (Financial Support) Act 2008,”
- Protect taxpayers, facilitate “the restructuring of credit institutions of systemic importance to the economy,”
- Restore “confidence in the banking sector and...underpin the effect of Government support measures in relation to that sector”;
- Contribute to Ireland’s socio-economic development ([Cas and Peresa 2016](#), 29) ([Lenihan 2018](#), 17).

NAMA was a statutory body<sup>4</sup> that had three functions:

- identify and expeditiously buy eligible “impaired assets” from participating credit institutions (referred to as “participating institutions”);
- protect (and enhance if possible) the value of those assets in the interest of, and finally get the “best possible achievable financial return” for, the Republic of Ireland; and
- recover all taxpayer payments for the assets as well as “whatever [NAMA] invests to enhance property assets underlying those” assets ([NAMA Annual Report 2010](#), PDF Page 17).

Although it operated “under the aegis of” the National Treasury Management Agency (NTMA), the Irish government agency that was responsible for managing the government’s assets and liabilities ([NTMA 2019](#)),<sup>5</sup> the NAMA Act gave the agency “all powers necessary for, or incidental to, the achievement of its purposes and the performance of its functions”<sup>6</sup>

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<sup>4</sup> On a regulatory level, NAMA wasn’t classified as a bank and various parts of Irish competition law didn’t apply to it ([Lenihan 2018](#), PDF Page 129)

<sup>5</sup> NTMA provided (or procured) business, support, and IT services and systems to NAMA in addition to staff that would serve as “officers” within NAMA. However, those chosen to help staff NAMA had to conform to the requirements for Members related to disclosure and eligibility for acting as a director of a company outlined in the NAMA Act ([Lenihan 2018](#), PDF Page 46-47)

<sup>6</sup> For more detail on the difference between NAMA’s purposes, the purposes of the NAMA Act, and NAMA’s functions, see the NAMA Act’s preambulatory clauses/recitals section, Section 10 of the Act, and Section 11 of the Act.

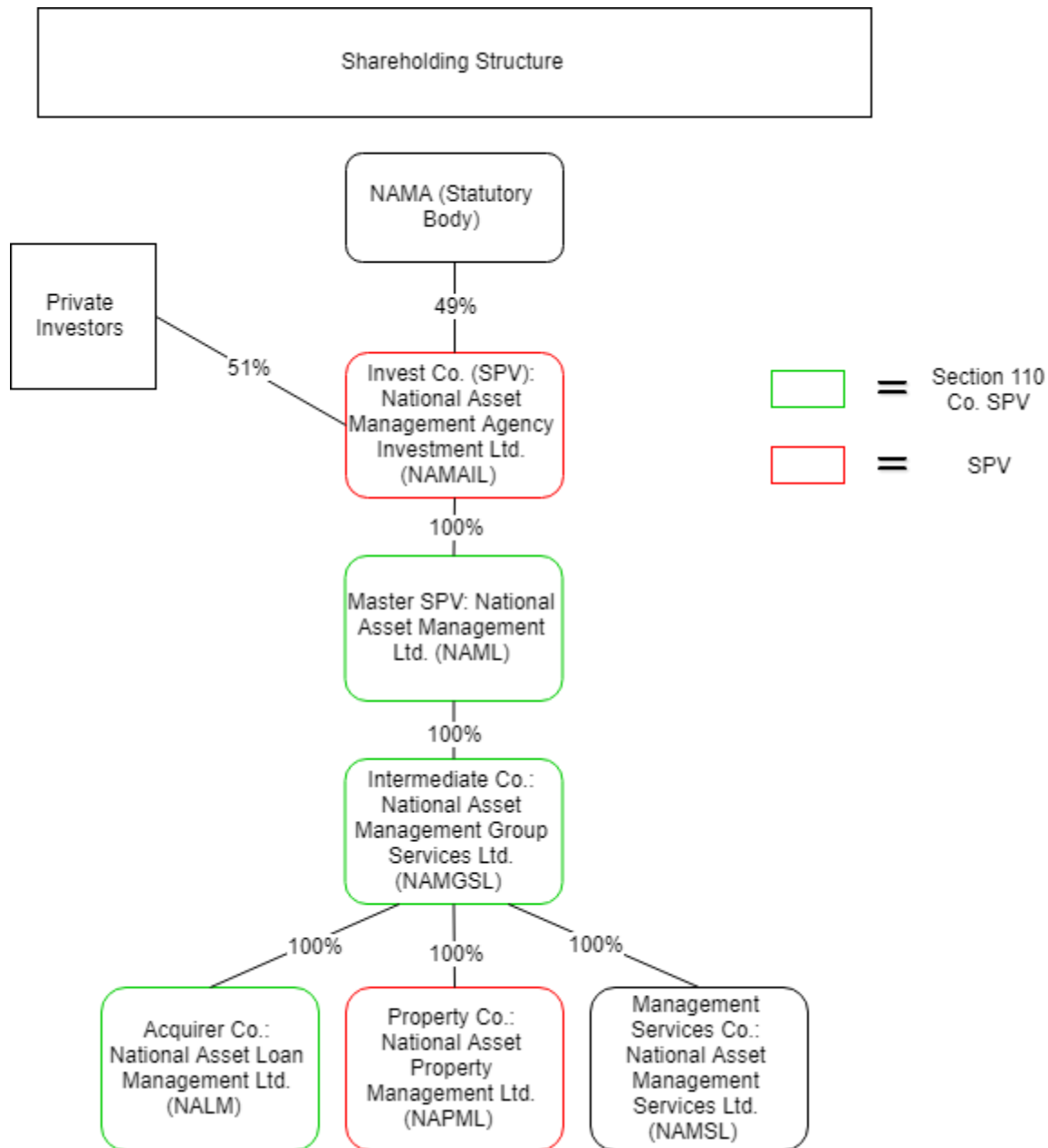
so long as its activities did not violate the laws of any jurisdiction and its property development activities had regard to “proper planning and sustainable development as expressed in Government policy and in any relevant regional planning guidelines [...] and development plans” (Lenihan 2018, 26, 40)

As can be seen in Figure 4, NAMA primarily operated through a combination of Section 110 special purpose vehicles (SPVs)<sup>7</sup> (which enjoyed a tax advantage) and non-Section 110 Irish SPVs, which kept NAMA’s liabilities off of the government’s balance sheet (Cas and Peresa 2016, 31-32). The parent SPV (National Asset Management Agency Investment Ltd., called NAMAIL or the Invest Co.) had an initial capitalization of €100 million and was 51% owned by private investors and 49% owned by NAMA (Micheál 2010, 7-8).

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<sup>7</sup> In some of the literature, these SPVs with special tax status are referred to as Section 110 SPVs (because they were created under Section 110 of Ireland’s Taxes Consolidation Act 1997). All references to SPVs in this paper, unless indicated otherwise, are Section 110 SPVs.

Figure 4: NAMA's Corporate Structure



Source: NAMA March 31, 2010 Section 55 Quarterly Report

### Governance

NAMA was governed using a nine member (seven member plus two ex-officio members) Board that (Braakman and Forster 2011, 15) ensured "the functions of NAMA are [were] performed effectively [...] set the strategic objectives and targets to be met by NAMA; and [...] ensure[d] that appropriate systems and procedures are [were] in place to achieve

NAMA's targets and objectives and to take all reasonable steps available to it to achieve those targets and objectives" (Carroll and Dodd 2012, 191). In general, members of the Board served five-year terms and could not serve more than two consecutive terms ([Lenihan 2018](#), PDF Page 31).

NAMA's statute required that it prepare and publish (on its website) codes of practice that outlined various elements of its operations<sup>8</sup>, which would then be approved (or modified/sent back for revision in cases where the Minister did not approve of them) by the Minister for Finance ([Lenihan 2018](#), PDF Page 38).

The EC decision, the National Asset Management Agency 2009 Act, and the regulations put forward under said Act subjected NAMA to several forms of additional oversight. While the Minister of Finance enjoyed oversight over NAMA through NAMA's requirement that it issue annual statements and accounts to them ([Lenihan 2018](#), PDF Page 50-52), the Oireachtas had oversight over NAMA through the requirement that NAMA issue period reports on its activities, subject itself to auditing reports, and by bringing NAMA's executives before legislative committees ([Lenihan 2018](#), PDF Page 50-53).

The EC maintained external oversight through the requirements that NAMA report to the EC every six months on restructuring plans and the functioning of the program, report to the EC and Irish competition authorities each year on the "use of NAMA's post acquisition powers", and notify the EC of each tranche of assets' valuation/transfer ([Micheál 2010](#), 33-34).

NAMA had a mandate to operate "in a transparent manner [...] to the extent that to do so is [was] consistent with the proper and efficient and effective discharge of" its functions ([Lenihan 2018](#), PDF Page 31). However, NAMA also had to work with stakeholders across multiple legal jurisdictions while attempting to secure the best possible return for the taxpayer from its assets.<sup>9</sup> Its operations reflect this tension. For example, a large portion of NAMA's information was categorized as "confidential information" under the NAMA Act and therefore was not available to the public ([Lenihan 2018](#), PDF Page 110).

### **Funding Source and Estimated Returns**

NAMA could fund itself by issuing debt securities for the purchase of assets or could be funded through the actions of the Minister for Finance or the actions of private sector investors (Carroll and Dodd 2012, 231-241). The Minister for Finance could issue debt securities or lend money to NAMA from the government's Central Fund (Carroll and Dodd 2012, 231-241). NTMA provided NAMA with "treasury services and advice" in connection with these actions ([Lenihan 2018](#), PDF Page 50).

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<sup>8</sup> Namely, the "conduct of officers of NAMA [(which also defined what constituted misconduct in office)] [...] servicing standards for acquired bank assets [...] [,] risk management, including with regard to debtors [...] [,] disposal of bank assets [...] [,] and any other matter in relation to which the Minister directs NAMA to prepare a code of practice" (Carroll and Dodd 2012, 222-223)

<sup>9</sup> For examples see cases like [SHELBOURNE NORTH WATER STREET CORPORATION v. NATIONAL ASSET MANAGEMENT AGENCY, et al.](#)

There was a €54 billion cap on the amount of debt that NAMA could use for acquiring bank assets and a €5 billion principal cap on the amount of debt NAMA could have outstanding for all other purposes. While the NAMA Act allowed NAMA to pay up to 5% of the consideration cost (the cost of acquiring assets) by issuing subordinated debt ([Lenihan 2018](#), PDF Page 49) NAMA would pay for the other 95% of the consideration cost using state guaranteed debt securities (later referred to as NAMA's senior bonds) ([NAMA Brief Guide 2010](#), 2). The subordinated debt carried an "interest rate linked to the Irish 10 year Government Bond Yield" while the interest rate of the guaranteed debt securities was set at the six-month Euribor ([NAMA Acquisition of Bank Assets 2010](#), 24).

## Application Process

Once NAMA was established (on December 21, 2009) "[a]ny credit institution, including Irish subsidiaries of foreign credit institutions," that wished to participate had 60 days (until February 19, 2010) to apply ([Micheál 2010](#), 3).<sup>10</sup> The five applicants were five of Ireland's major domestic banks (and the related subsidiaries) ([Williams 2014](#), 143).<sup>11</sup> Within three months of receiving an application, the Minister for Finance, after consultation with the Governor of the Central Bank and the Financial Regulator, determined if an applicant would become a participant based on its systemic importance, financial position and compliance with all NAMA obligations ([Lenihan 2018](#), PDF Page 56-58).

Ireland's Financial Regulator<sup>12</sup> and the Minister for Finance could require participants to produce any such report it considered necessary for monitoring compliance ([Lenihan 2018](#), PDF Page 120). After consultations with the Governor of the Central Bank and the Financial Regulator, the Minister for Finance could require participants to produce Restructuring Plans and/or business plans by a certain time ([Lenihan 2018](#), PDF Page 119-122). With approval from the Minister for Finance, the Financial Regulator, could also issue directions to participants that would restrict balance sheet growth, the ability of participants to conduct mergers or acquisitions, or require balance sheet reduction, so long as the purpose of the direction was to achieve the purposes of the NAMA Act ([Lenihan 2018](#), PDF Page 119).

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<sup>10</sup> To emphasize, the participation in the program was voluntary (See [Cerruti and Neyens 2016](#), 39)

<sup>11</sup> Allied Irish Banks (AIB), Bank of Ireland (BOI), Anglo Irish Bank (ANGLO), Irish Nationwide Building Society (INBS), and Educational Building Society (EBS) participated. Irish Life & Permanent (IL&P) Bank did not participate, despite being one of the larger banks in Ireland. IL&P was heavily exposed to the real estate industry (and was dependent on wholesale funding like the others), but 85% of its assets comprised residential mortgages rather than commercial developments (See page 34 of <https://inquiries.oireachtas.ie/banking/wp-content/uploads/2016/01/BINAMACoreBook43.pdf>)

<sup>12</sup> The Financial Regulator, alternatively the Irish Financial Services Regulatory Authority, was Ireland's single financial regulator. It existed beneath the Central Bank of Ireland until October 2010, when its functions were officially absorbed by the Central Bank of Ireland and the Financial Regulator dissolved (See "Financial regulation", Citizens Information, Citizens Information Board, [https://www.citizensinformation.ie/en/consumer\\_affairs/financial\\_services/financial\\_products/financial\\_regulator.html](https://www.citizensinformation.ie/en/consumer_affairs/financial_services/financial_products/financial_regulator.html))

## Identifying Eligible Assets

The Minister for Finance defined eligible bank assets as “all loans issued for the purchase, exploitation or development of land as well as loans either secured or guaranteed by land” and “some of their associated commercial loans,” as well as “financial contracts between a debtor and a participating bank [...] that relate in whole or in part to acquired loans” (i.e. derivatives) (NAMA Acquisition of Bank Assets 2010, 32). Upon being admitted into the NAMA program, participants would identify all their “eligible bank assets” for NAMA using a set of standardized templates outlining legal due diligence, information about current market value of collateral, etc. (NAMA Acquisition of Bank Assets 2010, 9-13). NAMA also based its determination of whether an asset was eligible on “borrower relationship level impairment” rather than asset level impairment (Micheál 2010, 5).<sup>13</sup>

NAMA then determined which eligible assets it would acquire. In its October 13, 2009 Draft Business Plan, NAMA estimated that there were eligible assets with an initial book value of ~€77 billion available, but that their current market value was approximately €47 billion, and that NAMA would pay €54 billion in consideration for the assets based on an estimate of their long-term economic value (NAMA Business Plan 2009, 7).

## Valuation and Transfer

Participants would give NAMA additional due diligence reports and other information necessary for valuing the assets as well as the assets’ underlying security (NAMA Acquisition of Bank Assets 2010, 13). After having appointed experts review the information for completeness, NAMA transferred the information to a panel of loan valuers.<sup>14</sup> The panel then used the discounted cash flow models determined by the government to calculate the current market value of the underlying property and assets as of November 30, 2009 as well as the “Long Term Economic Value” of the underlying property and assets, which involved a

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<sup>13</sup> “Borrower relationship level impairment” refers to analysis looking at the extent that liabilities under various loans born by individual borrower were larger than the value of its underlying assets first instead of looking at the loans from an institution-by-institution point of view, which would ignore situations where one institution was not impaired (because they may have held a first lien mortgage) while multiple other institutions which had given the borrower things like a second mortgage or a line-of-equity were impaired. (See [http://ec.europa.eu/competition/state\\_aid/cases/234489/234489\\_1086237\\_117\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/234489/234489_1086237_117_2.pdf))

<sup>14</sup> For most of the loans (those related to borrowers that did not hold the top 150 largest positions in NAMA) experts were likely drawn from participants, who were to set up specialized divisions that would “assess and value the loans to be transferred” (Frank Connolly NAMA Land. 2017. Page 14-15). NAMA’s panel for valuing the loans was composed of personnel from Alvarez and Marsal, Ernst and Young, FTI Consulting Ltd, PricewaterhouseCoopers, and UHY Hacker Young LLP (See [https://web.archive.org/web/20151016162759/https://www.nama.ie/fileadmin/user\\_upload/documents/Procurement/ContractAwardLoanAssocValServices.pdf](https://web.archive.org/web/20151016162759/https://www.nama.ie/fileadmin/user_upload/documents/Procurement/ContractAwardLoanAssocValServices.pdf)). NAMA relied on Societe Generale Securities Services (SGSS) for external experts on valuing derivatives associated with the loans (See <https://web.archive.org/web/20151016152359/https://www.nama.ie/about-us/our-work/procurement/>). For the underlying real estate, NAMA appointed seven different five-organization-panels, each corresponding to a certain geography (See [https://web.archive.org/web/20151016162740/https://www.nama.ie/fileadmin/user\\_upload/documents/Procurement/ContractAwardRealEstatePanel.pdf](https://web.archive.org/web/20151016162740/https://www.nama.ie/fileadmin/user_upload/documents/Procurement/ContractAwardRealEstatePanel.pdf)).



0-25% adjustment to the loan's value (NAMA Acquisition of Bank Assets 2010, 10). However, the end result of this adjustment, the aggregate long-term economic value calculated for all land valued in connection to a given participant's portfolio could not exceed the market value by more than 20% (NAMA Acquisition of Bank Assets 2010, 10).

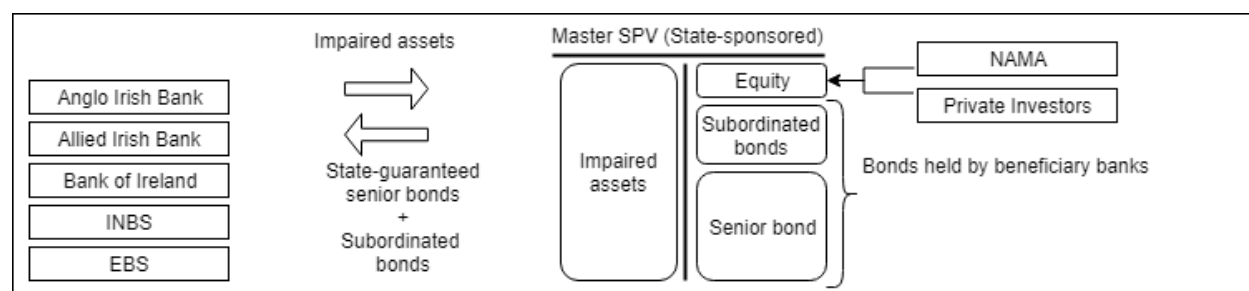
Once the panel of loan valuers arrived at a valuation, NAMA grouped the assets based on their shared relationships with a given borrower rather than by bank and sorted them into tranches for transfer (each tranche would contain all of the loans related to a certain set of borrowers across multiple participant institutions) (NAMA Acquisition of Bank Assets 2010, 13). Each additional tranche contained a larger number of borrowers with smaller positions. NAMA determined a transfer schedule for each tranche and provided it to the relevant participants (NAMA Acquisition of Bank Assets 2010, 13). This transfer schedule set down the assets that NAMA would acquire from the relevant participant and the consideration price NAMA would pay, which would be "the lower of the amount owed by the borrower and the loan's long-term economic value" (NAMA Acquisition of Bank Assets 2010, 13). Within 20 days of providing the participants with the transfer schedule, the assets would be transferred to NAMA (Lenihan 2018, PDF Page 74-75).

Alongside the transfer, NAMA's Master SPV would issue government guaranteed securities worth 95% of the price it intended to pay for acquiring the relevant assets and perpetual unguaranteed subordinated debt (effectively equity) worth 5% of the price it intended to pay for acquiring the relevant assets. The Acquirer Co. would then purchase the assets by using these securities (See Figure 5) (Carroll and Dodd 2012, 212-217) (Boudghene and Maes 2012, 789). The participating institution could then use the government guaranteed securities as collateral to obtain cash from the European Central Bank and redeem the subordinated debt based on NAMA's financial performance (NAMA Acquisition of Bank Assets 2010, 13).

Before the NAMA Act of 2009 was passed, NAMA estimated the first transfers would begin by December 2009 (NAMA Business Plan 2009, 26), though by February 2010, EC documents estimated that transfers wouldn't begin until the end of February 2010 (Micheál 2010, 2). During their initial approval of NAMA, the EC estimated that NAMA would complete the transfers approximately seven months after the EC authorization, placing the expected date of the last transfer somewhere in late September 2010 (Micheál 2010, 2). NAMA revised its estimate for this end-date several times between 2009 and 2011, having initially estimated that purchases would take less than a year (Micheál 2010, 25).



Figure 5: NAMA's Operating Model



Source: Boudghene and Maes 2012, 789

## Asset Management

Upon acquiring its assets, NAMA would require each relevant borrower to produce a business plan that outlined the borrower's financial position and strategy for repayment (NAMA Management of Loans 2012, 20). NAMA (or, where NAMA delegated portions of this task, a participant) would review the business plan and could work with the borrower to decide how the assets would be managed (Carroll and Dodd 2012, 696, 700-701, 717). This process might result in an agreement, a term sheet, an MOU, or a number of other instruments that could contain terms setting down "a new repayment schedule, restructuring or revision of the loans and/or a program of early disposal" (Carroll and Dodd 2012, 696). Alternatively, this process could also result in NAMA enforcing against a borrower (Carroll and Dodd 2012, 699).

NAMA expected to delegate asset management duties for the vast majority of its assets to its participants (Connolly 2017, 14-15), and manage the assets related to the "largest 100/150 borrowers" itself (NAMA Business Plan 2009, 28). NAMA intended to monitor these large borrowers directly and leave the administration of their loans with the participants (NAMA Business Plan 2009, 28). For the rest of the borrowers, the participants would handle much of the monitoring and administrative duties, but ultimately submit information on the borrower's performance history and the level of impairment of their loans to NAMA for oversight (NAMA Business Plan 2009, 28).

## Disposal Strategy and Timeline

NAMA estimated that it would manage the assets it acquired for 7-10 years, but (NAMA Brief Guide 2010, 2) NAMA and the EC did not envision when NAMA would start disposing of assets or when said disposals would conclude (beyond NAMA's expected December 21, 2020 termination date) (Lenihan 2018, PDF Page 130-131). NAMA's draft business plan did not contain a disposal policy, but its policy as of June 2010 was to "reflect market conditions in its decision as to whether to sell individual properties with the goal of disposing of assets in a phased and orderly manner" and "not engage in any speculative hoarding of assets" (NAMA Business Plan 2010, 11). Beyond this, the NAMA Act specified two approaches to disposal. One was conventional disposal "in the market for the best achievable price" (Carroll and

Dodd 2012, 796). The other involved the securitization or refinancing of loans (Carroll and Dodd 2012, 796).

## **Powers**

NAMA enjoyed extensive powers to carry out its mandate, having been provided with “all the powers necessary or expedient for, or incidental to the achievement of its purposes and the performance of its functions” under the NAMA Act (NAMA Progress Report 2014, 15). The Act also specified a number of NAMA’s powers, which included but were not limited to modified legal procedures, an ability to conduct compulsory land acquisitions, and a capacity to unilaterally amend loans (Micheál 2010, 9-10). NAMA also could compel applicants and participants to provide NAMA with information that it deemed relevant with the ability to enforce the disclosure of information through the High Court (Carroll and Dodd 2012, 490).

As part of its submissions to the EC, the Irish government committed to restrict its use of many of these powers. The powers in question tended to be those that circumvented or modified law related to real estate and creditor-debtor relations (Micheál 2010, 18-19).

## **Coordination with other Programs**

NAMA’s operations were coordinated with two other Irish government programs. First, NAMA was coordinated with a set of capital injections for participating institutions (NAMA Business Plan 2009, 9). Second, under its mandate “to contribute to the social and economic development of the state,” NAMA coordinated with various social policies by disposing of certain properties through sales to “public bodies and [...] local authorities or housing associations for social housing” (NAMA Progress Report 2014, 12).

## **Outcomes**

### **Initial Implementation and Fleshing out the Program (2009-2011)**

Five banks ultimately applied for (and were approved for) participation in NAMA: Bank of Ireland (BOI), Allied Irish Banks (AIB), Anglo Irish Banking Corporation Ltd (ANGLO), Irish Nationwide Building Society (INBS), and Educational Building Society (EBS). All of these banks were covered by the 2008 blanket guarantee program (NAMA Progress Report 2014, 22). During (and after) this application period, NAMA conducted due diligence on its largest borrowers, but realized that due diligence (and thus the asset purchase process) would take significantly longer than initially anticipated (NAMA Progress Report 2014, 20-21). NAMA’s external auditor attributed this to problems with the documentation quality of NAMA’s participants (NAMA Progress Report 2014, 20-21).

After obtaining approval from the EC in early 2010, NAMA finally began transferring assets (NAMA Progress Report 2014, 20-21). The process proceeded as follows in Figure 6.

Figure 6: Tranche Data

Tranche	Date of First Purchase	Date of Final Purchase	Date of EC Approval	Price Paid by NAMA for Loans (€ billions)	Average Discount Percentage (Haircut)
Tranche 1	March 29, 2010	May 10, 2010	August 2010	3, 7.5	51%
Tranche 2	July 2010	August 23, 2010	November 29, 2010	5.3	56%
Tranches 3-9 (the “bulk” tranche)	July-September 2010	March 2012	July 29, 2014	18.9	60%
Total	March 29, 2010	March 2012	July 29, 2014	31.7	57%

Source: European Commission State Aid Decisions Cases N725/2009, N331/2010, N529/2010, and 2014/N

Certain notable borrowers began litigation against NAMA almost immediately after the NAMA Act passed (Connolly 2017, 12). Some developers contested NAMA’s attempts to acquire assets that were arguably performing (Supreme Court of Ireland 2010, 15-16, 43). NAMA remained active in litigation throughout this period (Connolly 2017, 34-42).

According to newspapers of record and interviews with property developers during a 2016 parliamentary inquiry, from NAMA’s April 8, 2009 announcement until the first transfers of assets began in late March 2010, there was “a complete lack of liquidity” and industries related to property development “absolutely stopped” (Oireachtas Inquiry 2016, PDF Page 315-318) (Oliver and O’Hora 2010). A number of property developers appeared not to know what the impact of NAMA on the property market would be (Oireachtas Inquiry 2016, PDF Page 315-318) (Oliver and O’Hora 2010).

On March 26, 2010, NAMA issued a statutory instrument that attempted to improve the availability of credit in Ireland (one of the purposes of the NAMA Act) by creating the foundations for the Minister for Finance’s Credit Review Office (Credit Review Office 2015) (S.I. No. 127 2010, 2). This statutory instrument set down guidelines to help encourage access to liquidity for borrowers “who have the capacity to service their loans [...] for business purposes” (S.I. No. 127 2010, 2). These guidelines created a procedure that allowed small and medium enterprises (SMEs) to get a government Credit Review Office to review a

decision by a participant to refuse credit<sup>15</sup> to or restructure the credit facilities of the SME (S.I. No. 127 2010, 3).

As NAMA grappled with larger than expected haircuts and non-performing loans in May 2010, the Head of Treasury presented a paper stating that “in the short-term, up to October 2010, NAMA was likely to require additional funding of up to €250 million” and accordingly recommended that NAMA adopt an additional funding strategy (NAMA Acquisition of Bank Assets 2010, 46-47). Upon receiving a suggestion from the Head of Treasury, NAMA resolved its short-term funding problems by requesting that the Minister for Finance approve a €250 million loan from the Central Fund “to create a [temporary] liquidity buffer” until NAMA implemented more long term funding strategies (NAMA Acquisition of Bank Assets 2010, 46-47). The Head of Treasury suggested that NAMA achieve this by two borrowing programs that would each net a maximum of €2.5 billion for NAMA (NAMA Acquisition of Bank Assets 2010, 46-47). One program, called the ECP programme, would issue Euro Commercial Paper (ECP) with maturities of less than one year to help fund a liquidity buffer (NAMA Acquisition of Bank Assets 2010, 46-47). The other program, to be called the Euro Medium Term Note (EMTN), would issue Euro Commercial Paper with one to two year maturities to finance various NAMA projects (NAMA Acquisition of Bank Assets 2010, 46-47). However, NAMA did not end up issuing any paper under these programs and repaid its €250 million loan from the Central Fund on October 27, 2010 (NAMA Annual Report 2010, PDF Page 30-32).

In June 2010, data from the first tranche of assets indicated that NAMA’s assumptions (as well as estimates provided by banks to NAMA) related to loan-to-value (LTV) ratios and income producing loans continued to be overly optimistic (NAMA Business Plan 2010, 4). NAMA responded with the release of its first official business plan on June 30, 2010 (NAMA Business Plan 2010, 4). This June 30 plan set down new projections based on multiple scenarios and relied on less optimistic (taking the first tranche to be representative of NAMA’s remaining assets) assumptions about the quality of NAMA’s assets (NAMA Business Plan 2010, 25). This plan also made a number of changes to NAMA’s operations and elaborated several of its policies.

### **Operational Changes**

- NAMA indicated that it would only manage the largest 100 debtors directly, but did not discount the possibility of adding to that number (NAMA Business Plan 2010, 9)
- NAMA decided that it would acquire its participants’ €14 billion in derivatives associated with its acquired loans (which primarily took the form of interest rate swaps and were mostly owned by the already nationalized Anglo Irish Bank) (NAMA Annual Report 2011, 40) (Clerkin 2010), a substantial number of which were non-

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<sup>15</sup> There were effectively two kinds of refusal: constructive refusal (no decision within 15 working days or terms/conditions of the facility were too onerous) and normal refusal (letter saying that the credit facility had been refused) (See 2010-03-26 SI Guidelines under NAMA 2009 regarding lending practices and procedures.pdf PP. 2 <http://www.irishstatutebook.ie/eli/2010/si/127/made/en/pdf>)

performing, for €0 (NAMA Annual Report 2011, 32) (NAMA Business Plan 2010, 20) (Foxe 2018)<sup>16</sup>

- NAMA would exclusively offer certain properties to public sector bodies at its independently appraised “minimum reserve price” for four weeks (“subject to a definite decision, contract and closing period of 90 days”) before accepting offers from the larger market<sup>17</sup> (NAMA Business Plan 2010, 13)
- NAMA would pay an allowance to a number of developers and NAMA would receive greater control over the collection of rental income from debtors by no longer delegating the collection of said income to developers (NAMA Management of Loans 2012, 72)

### **Elaborated Policies**

- NAMA’s Board set targets for paying down NAMA’s debt fully by 2019,<sup>18</sup> in line with its goal of collecting funds owed by all debtors “to the greatest extent feasible” (NAMA Business Plan 2010, 10)
- NAMA would advance additional funds to debtors on a risk adjusted basis as needed “to preserve or enhance property or complete developments which make economic sense” (NAMA Business Plan 2010, 10, 26)
- NAMA would foreclose on debtors that “are not in a position to service their debts and are not considered to be viable in the context of the debtor business plan process” (NAMA Business Plan 2010, 8)
- NAMA would only collaborate with debtors that were being “realistic in terms of asset funding and of the lifestyle implications for them of NAMA support,” and accepted “close monitoring” by NAMA (NAMA Business Plan 2010, 8)

### **NAMA began Asset Disposals**

By the end of December 2010 NAMA had already sold around €400 million in assets, but “recorded an overall loss of” €1.2 billion since its establishment (NAMA Annual Report 2010, PDF Page 15). As NAMA implemented its June 30, 2009 Business Plan, the debtor business plan process was changed to result in agreements with NAMA where the debtor would commit to reduce its debt by 25% by 2013 and to adhere to “a schedule of additional repayments at various stages over a period of up to eight years” (NAMA Annual Report 2010, PDF Page 23). In return, NAMA would help the business restructure the debt into three

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<sup>16</sup> However, there does not seem to be enough information to decisively conclude why NAMA paid nothing for these derivatives.

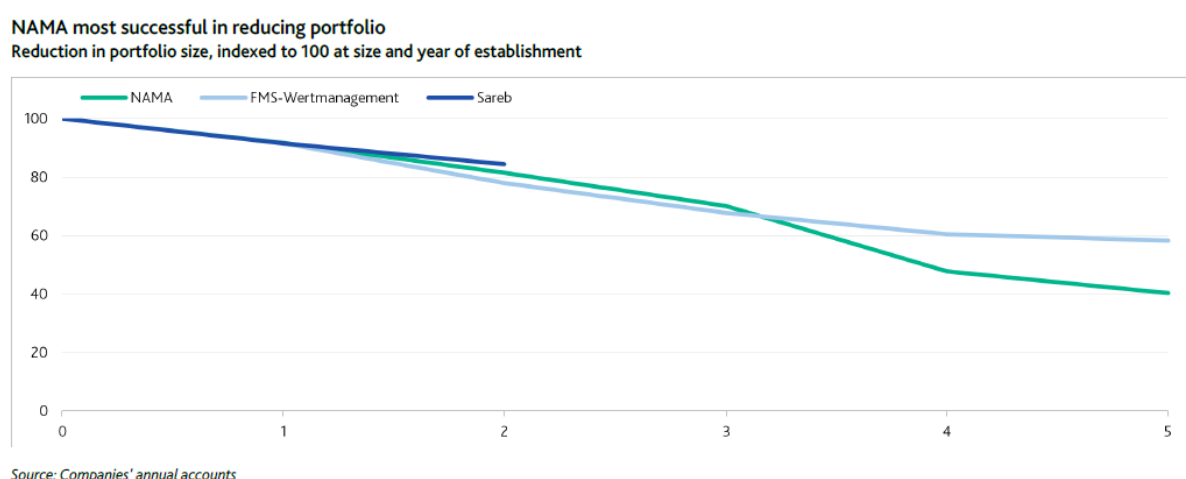
<sup>17</sup> The “minimum reserve price,” is a term of art in the Irish real estate market defined as “the lowest price that the vendor is prepared to accept for the property” was a determined through an independent appraisal (See NAMA Business Plan 2010 and A word to the wise, September 22, 2011, The Irish Times, Pat Igoe, <https://www.irishtimes.com/life-and-style/homes-and-property/a-word-to-the-wise-1.606309>)

<sup>18</sup> 25% paid by 2013, 40% paid by 2015, 80% paid by 2017, 95% paid by 2018, and 100% paid by 2019.

different loans<sup>19</sup>, sometimes containing profit-sharing provisions tied to the business plan's various milestones" ([NAMA Annual Report 2010](#), PDF Page 23).

In 2011, asset sales related to NAMA began to accelerate (see Figure 7) ([NAMA Annual Report 2012](#), PDF Page 16-17). There was €3.6 billion in asset sales, NAMA began to report a yearly profit, and NAMA redeemed €1.3 billion of its senior bonds ([NAMA Annual Report 2012](#), PDF Page 16-17). The organization conducted due diligence on the vast majority of the assets it had acquired and began intensifying its efforts to assess debtor business plans, a stepping stone on the way to asset management and disposal ([NAMA Annual Report 2011](#), PDF Page 12). NAMA finished valuing its assets in March 2012 ([NAMA Progress Report 2014](#), PDF Page 20).

**Figure 7: Comparing the Disposal Rate of Three Western European Bad Banks**



Source: [Moody's Investors Service 2015](#)

As the European economic environment continued to deteriorate in mid-2011 and Ireland progressed through an EU-IMF financial assistance program, NAMA began reorganizing its operations from a focus on asset acquisition to a focus on asset management and disposal ([NAMA Annual Report 2012](#), PDF Page 13) ([European Commission 2019](#)). Among the first of NAMA's actions in this process was the decision to begin outlining and implementing terms for selling its loans as packages to larger investors ([NAMA Second Progress Report 2018](#), 50).

### Asset Management and Disposal Operations (2012 to 2019)

In March 2012, NAMA revised its business plan again as part of a "reorganisation of functions" ([NAMA Progress Report 2014](#), PDF Page 16) ([NAMA Annual Report 2012](#), PDF Page

<sup>19</sup> The first of these loans would be an interest bearing debt bearing an interest rate of the six month Euribor plus 2.5% (See [NAMA Annual Report 2010](#), PDF Page 23). The second of these would be a "non-interest bearing debt [...] with a back-end fee of up to 25% payable to NAMA" (See [NAMA Annual Report 2010](#), PDF Page 23). The third of these would be debt bearing an interest rate of "up to 4%" above Euribor" arising from "new loans advanced for working capital and capital expenditure" (See [NAMA Annual Report 2010](#), PDF Page 23).



15). The revised plan changed the projected redemption date from 2019 to 2020, decreased the 2014-2016 debt redemption targets by around €3 billion (to €8 billion), and changed the €13 billion 2017-2019 debt redemption target into a 2017-2020 debt redemption target of around €16 billion ([NAMA Progress Report 2014](#), PDF Page 27). It also consolidated several departments into two integrated divisions (the new Asset Management and Asset Recovery divisions) and added a commitment to “recover all State costs over the projected ten-year life of NAMA without recourse to further borrowing, meeting all of its future commitments out of its own resources, over the shortest possible time span” ([NAMA Progress Report 2014](#), PDF Page 16) ([NAMA Annual Report 2012](#), PDF Page 51).

In April, NAMA decided to revise its enforcement of Section 172 of the NAMA Act ([NAMA Second Progress Report 2018](#), 48). Section 172 prohibited “any interest in property held as security for loans acquired by NAMA from being sold back to defaulting debtors, or persons acting on behalf of defaulting debtors” ([Houses of the Oireachtas 2019](#)). NAMA provided for exceptions to it on a case-by-case basis when the application of the policy conflicted with NAMA’s goal of “achieving the best financial return” ([NAMA Second Progress Report 2018](#), 48). In the following months, NAMA also introduced several smaller initiatives focused on providing vendor finance for commercial property and deferred payment mortgages for accessible housing ([NAMA Second Progress Report 2018](#), 59).

NAMA was drawn into the collapse of Anglo Irish Bank and INBS in 2013. Between 2009 and late 2010, the Irish government realized that the larger than expected haircuts would severely damage the participants, some of which the Irish government de facto owned (INBS and Anglo Irish Bank) as a result of capital injections ([Murphy 2013](#), 274-275). In the case of INBS, first tranche discounts of up to 70% depleted the bank’s regulatory capital, forcing the government to state “publicly that it did not have a future as a stand-alone entity ” ([Murphy 2013](#), 274-275). Anglo and INBS were then forced to merge to become the Irish Bank Resolution Corporation (IBRC) following a July 1, 2011 order from the High Court requested by the Minister for Finance ([Central Bank of Ireland 2015](#)). IBRC continued its business until February 11, 2013, when the Irish government implemented the Irish Bank Resolution Corporation Act 2013 ([Oireachtas Inquiry 2016](#), PDF Page 322) ([Oireachtas Inquiry 2016a](#), PDF Page 12).<sup>20</sup> Under this act, IBRC entered special liquidation ([Oireachtas Inquiry 2016a](#), PDF Page 12). The government decided that NAMA would receive any commercial and residential loans that “remained unsold after the special liquidators had completed a loan valuation and sales process” ([NAMA Second Progress Report 2018](#), 22). The Minister for Finance then facilitated this by ordering NAMA to acquire a loan facility between IBRC and the Central Bank of Ireland secured by a “floating charge over certain IBRC assets” ([NAMA Second Progress Report 2018](#), 22) using National Asset Resolution Limited (NARL), NAMA’s newly created subsidiary ([NAMA Second Progress Report 2018](#), 22). NAMA paid for this facility by issuing €12.9 billion in government guaranteed bonds via a subsidiary and subsequently supported this arrangement by providing the Special Liquidator with a working capital lending facility ([NAMA Second Progress Report 2018](#), 22). However, by April

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<sup>20</sup> Which was signed by the President on February 7, 2013 ([Oireachtas Inquiry 2016a](#), PDF Page 12)

2014 the Special Liquidators announced that were able to generate enough revenue from their asset sales to pay its debt to NAMA; the Special Liquidators fully repaid the debt on October 21, 2014 ([NAMA Second Progress Report 2018](#), 22).<sup>21</sup> No IBRC assets were ultimately transferred to NAMA.

At some point in this period, NAMA finished disposing of most of its non-Irish assets; an audit report noted that “NAMA's principal focus from 2014 to 2020 will be in Ireland, where it has projected that almost 60% of property disposal receipts will arise during that period” ([NAMA Progress Report 2014](#), 17). NAMA had accelerated its asset disposal timeline, adjusting its “internal targets for cash generation and debt redemption” accordingly ([NAMA Second Progress Report 2018](#), 15). During this process, NAMA packaged and sold a number of its loans related to property outside of the Republic of Ireland. One package associated with NAMA's remaining loans in Northern Ireland that was sold in 2014, Project Eagle, accounted for most of NAMA's losses in 2014 (in which NAMA itself made a loss) ([C&AG 2016](#), 9). Various political figures soon began to make allegations of corruption, triggering parliamentary inquiries and criminal investigations continuing from 2015 through 2019 ([BBC 2015](#)) ([Brennan 2018](#)).

In spite of this, NAMA first became profitable (after impairment charges and taxes) in 2011, broke even (in the aggregate) near the end of 2014, and started rapidly accumulating gains through 2018 ([NAMA Second Progress Report 2018](#), 25).

## Overall Outcomes

NAMA purchased 90% of the assets that it initially identified as eligible (over 12,000 loans from 780 “debtor connections”) between the beginning of its operations and March 2012 ([NAMA Progress Report 2014](#), 9) ([NAMA Section 227 Review 2014](#)). These assets had a face value of €74.4 billion, over 40% of Ireland's GDP and 9.3% of Ireland's banking assets while the 10% of eligible assets that NAMA ultimately did not purchase had a face value of around €9.2 billion ([Cas and Peresa 2016](#), 14) ([NAMA Progress Report 2014](#), 9).<sup>22</sup> For the eligible assets that it did purchase, NAMA paid €31.8 billion in consideration to its five participating banks (€30.2 billion in State-guaranteed senior bonds and €1.6 billion in subordinated bonds) across two distinct tranches and one “bulk” tranche (See Figure 6), resulting in realized losses of €42.6 billion or 57% of the face value of the assets transferred and motivating the Irish government to shore up bank balance sheets with significant capital injections in 2010-2011 ([NAMA Progress Report 2014](#), 9) ([Cussen and Lucey 2011](#), 6).<sup>23</sup>

<sup>21</sup> NARL earned NAMA €164 million in profit during its operations

<sup>22</sup> NAMA's decision for €2.6 billion of these was due to “a number of factors including the scale of debtors' exposure to land and development relative to their total exposure” ([Oireachtas Inquiry 2015](#), PDF Page 8). NAMA decided not to acquire the other €6.6 billion because of a government decision to “not acquire loans from Allied Irish Banks and Bank of Ireland where a borrower's total exposure was less than €20 million” ([NAMA Progress Report 2014](#), 19).

<sup>23</sup> In 2010, the Irish government injected €25.3 billion into Anglo Irish Bank, €3.7 billion into AIB, €5.4 billion into INBS, €0.875 billion into EBS, nationalized EBS as well as INBS, and restructured ANGLO and INBS ([Cussen and Lucey 2011](#), 6)



Although NAMA conducted some asset sales as early as 2010, NAMA did not accelerate its asset sale operations until 2011. In 2011, the organization completed €3.6 billion in asset sales, began to report a yearly profit, and redeemed €1.25 billion of its senior bonds (NAMA Annual Report 2012, 15).

NAMA revised its policy on how many of its 780 borrowers would be managed directly multiple times, increasing the number from 100 (NAMA Business Plan 2010, 9) to somewhere between 180 and 210 from 2010 until 2014 (NAMA Second Progress Report 2018, 37) (NAMA Annual Report 2010, 22) (NAMA Annual Report 2011, 12). In late 2015, NAMA decided to manage all of its borrowers directly, after it conducted loan sales that “significantly reduced the number of debtor connections” (NAMA Second Progress Report 2018, 37). Alongside this change, NAMA moved from a policy of aggressively pursuing debtors to de-emphasizing these asset searches and multi-jurisdictional court cases. For example, one journalist said that “The government had promised that Nama would pursue debtors to “the ends of the earth,” but later recalled that “in 2017 Michael Noonan, then finance minister, said that the chance of the state recovering the full €74 billion owed on the loans was “lost in the financial crisis” (O’Donoghue 2019).

NAMA also advanced €3.3 billion for capital expenditure in the land and development sector from its establishment through 2018 (NAMA Annual Report 2018, 15). On October 13, 2017, NAMA redeemed the last of its senior debt and announced that it “expected to redeem €1.6 billion of subordinated debt by its first call date in March 2020” (End of Year Review 2018) (NAMA 2017). By the end of 2018, NAMA generated approximately €44 billion in funds from its assets, had €2.3 billion in remaining assets, and was projecting that it would return over €4 billion in profit to the taxpayers by the end of its life (Humphries 2019) (NAMA Annual Report 2018, 11) (End of Year Review 2018).

NAMA’s staff grew from just over 100 employees in 2010 to 370 by year-end 2014 (NAMA Second Progress Report 2018, 19) (NAMA Section 53 Statement for 2019 2018, 9-10). By the end of 2016, NAMA had approximately 300 employees, with a goal to further reduce staff in connection with a wind-down strategy and redundancy scheme introduced by NAMA in 2015.

Even after NPLs were transferred to NAMA, Ireland’s NPL percentage of gross loans in the banking sector continued to increase. The NPL ratio only peaked at 31.8% or €85.3 billion in Q4 2013, more than two years after loans were transferred to NAMA (Sibley 2017).

NAMA reckoned with competing mandates that became more visible as “an acute shortage of supply [...] occurred in many areas throughout the country” (NAMA 2015, 13) (Kennedy, Gerard, and Stuart 2016, 1-3). It began to officially emphasize its housing programs in 2016, with media stating this was because NAMA had decided that “the disposal of assets would be a less prominent part of its activities in 2017 because of the progress it had made in reducing its portfolio” (O’Dwyer 2016). From this point, NAMA’s largest department was its “residential delivery unit” and the organization committed to delivering 20,000 residential housing units by the end of 2020” (O’Dwyer 2016). By 2017, the Ireland’s Prime Minister

was “examining the possibility of repurposing Nama to develop lands on behalf of the state, to step in where the private sector has failed” amid a “chronic shortage of homes and property prices again rising rapidly” ([Beesley 2017](#)). Eventually, in early 2018, the Irish government established Home Building Finance Ireland (HBFI), which would “provide competitive loans to builders” from a \$750 million Ministry of Finance fund and be “staffed by employees seconded from the National Asset Management Agency [...] [as] an attempt to make sure that the new agency has enough expertise and skill and that staff can be allocated in tandem with the demand for lending from developers” ([Bray 2018](#)).

In December 2015, in response to NAMA’s pivot toward housing programs, five “Irish property developers lodged a complaint with the [European] Commission alleging that Ireland has granted unlawful State aid to and through the operation of NAMA ([European Commission 2018](#), 2). The developers alleged that the “alleged State guarantee and the alleged extraordinary post-acquisition powers granted to NAMA, as well as the alleged tax exemptions of NAMA” constituted new and/or unlawful aid ([European Commission 2018](#), 34). They also asserted that “the alleged aid to real estate developers through NAMA, the alleged access to confidential information by NAMA, the alleged relationships of NAMA with local authorities and government departments, and the alleged indirect acquisitions of land at steep discounts by NAMA” constituted State aid within the meaning of Article 107(1)” of the Treaty on the Functioning of the European Union (TFEU) ([European Commission 2018](#), 4, 34). The European Commission responded with a January 25, 2018 ruling that the measures addressed by the first set of allegations were “existing” and thus did “not constitute new nor unlawful aid” ([European Commission 2018](#), 34). The ruling also rejected the developers’ arguments pertaining to Article 107(1) of the TFEU ([European Commission 2018](#), 34).

However, this was not NAMA’s last interaction with the European Commission over state aid issues. In late 2018 NAMA’s Board determined that it was “likely that the Agency will still retain a small number of residual loans by the end of its expected end date of 2021” ([Section 227 Review 2019](#), 7-8). This was reportedly because the loans in question were either “subject to ongoing legal actions” or were “secured by residential development sites that have the potential to deliver a significant value uplift beyond 2021” ([Section 227 Review 2019](#), 7-8).<sup>24</sup> The Shareholding and Financial Advisory Division of Ireland’s Department of Finance recommended that NAMA continue its operations “for a limited period in order to manage out the residual loans so as to optimise their value,” extending NAMA’s lifetime ([Section 227 Review 2019](#), 7-8). Following a formal notification to the European Commission on June 20, 2019 requesting that NAMA’s lifespan be extended “beyond 2021 to the end of December 2025,” the European Commission determined that it would not “raise objections to the new aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b)” of the TFEU. In connection with the decision, the government of Ireland attempted to assure the European Commission that NAMA would “continue not having a distortive effect on the market” and thus proposed to make the following commitments

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<sup>24</sup> NAMA’s assets related to the various housing programs would have conceivably been in the latter category.

regarding “its powers and activities in the period beyond 2021” (European Commission 2019, 1-2, 14):

- NAMA would not alter or expand its mandate;
- NAMA would dispose of “its residual residential loans before the end of December 2025” and “be dissolved by that date subject to outstanding litigation”;
- Ireland would “not introduce any changes to the NAMA Act 2009 which requires NAMA to act commercially and deal expeditiously with the remaining assets while protecting or otherwise enhancing the value of those assets in the interests of the State”;
- NAMA would “not provide new development funding for its remaining assets for the period beyond end December 2021”;
- NAMA would “continue to act as a Market Economy Operator with regard to the management and disposal of its post-2021 residual portfolio”
- Ireland would “continue to submit yearly reports on the use of certain powers under the NAMA Act 2009 to the EU Commission and the Competition and Consumer Protection Commission, as provided for in paragraph 74(vii) of the 2010 Decision.”
- Ireland “would submit an annual report to the EU Commission providing an update on the progress that NAMA has made towards deleveraging its residual portfolio [...] every year from 2021 until NAMA’s dissolution”;
- NAMA and Ireland would not “issue any additional State guaranteed NAMA bonds” (European Commission 2019, 6-8).

On July 26, 2019, the Minister for Finance stated that NAMA can remain operating through 2025, extending it from 2021 as previously projected (O’Halloran 2019).

## II. Key Design Decisions

1. **The government of Ireland chose NAMA, a centralized, asset management approach rather than an asset guarantee approach, because of concerns about placing additional contingent liabilities on the government balance sheet**

While advising the NTMA, economist Peter Bacon proposed that policymakers address the capital adequacy problems of Irish banks using an “Asset Management Approach” (which became NAMA) rather than an “Asset Guarantee approach” (which encompassed asset guarantee as well as asset insurance schemes) or a continuation of Ireland’s “bank recapitalisation programme” (Oireachtas Inquiry 2016, PDF Page 313-316) (Bacon 2009, 4-5). The government immediately rejected the third option as the “do nothing” option that “would not address the liquidity shortage or promote new lending” and “would increase the risk of sovereign default” (Oireachtas Inquiry 2016, PDF Page 313). Although Bacon conceded that an “Asset Guarantee approach” had the advantage of “no money upfront from government; no write down in banks’ balance sheet assets,” the increasing uncertainty (as

well as the increasingly negative market response) related to the ~€440 billion CIFS guarantee increased the government's borrowing costs as "the credit rating of sovereign Ireland [...] [became] inextricably bound up with the issue of Irish banks capital adequacy" (Bacon 2009, 4-5). "[T]he Department of Finance, the Central Bank, the Financial Regulator, and the NTMA" became convinced that the "Asset Management Approach" made up for the fact that it would increase the government deficit and impose write downs on banks that could "adversely impact equity investors and may require them to recapitalize" because the Asset Management approach would (Bacon 2009, 4-5):

- immediately "deal with the impaired property loans on the books" of the institutions covered by CIFS, which Bacon said "needed to be removed from the institutions before lending in the economy could resume"
- "improve liquidity by giving the institutions collateral in the form of Government bonds that could be used to access ECB funding"
- create "greater impartiality for working out problem loans," which "might break 'crony capitalist' connections that otherwise impede efficient transfers of assets from powerful enterprises" and "address public suspicion regarding the relationships between the banks and developers"
- have "limited regulatory capital requirements in respect of losses on impaired loans," which could allow it to "manage the assets without the focus on impairment disclosure that the banks face"
- allow the banks something akin to a fresh start that would "allow management time to be refocused on rebuilding strength particularly in core retail businesses and maintaining their deposit bases" (Oireachtas Inquiry 2016, PDF Page 315).

## **2. NAMA was coordinated with several rounds of capital injections and stress tests, but was not announced alongside these activities**

The announcement and creation of NAMA in 2009 did not initially appear to be coordinated with other programs. By the time that NAMA was established, the government had nationalized ANGLO and also injected capital into ANGLO, AIB, and BOI (Cussen and Lucey 2011, 6). However, policymakers knew NAMA's activities would force the participants to realize significant losses and subsequently recapitalize when these losses were revealed in the Central Bank of Ireland's late-March 2010 stress test projecting the "needed capital amount by end-2012 that would ensure that the bank[s] would satisfy the Central Bank's chosen core capital adequacy thresholds" (known as the Prudential Capital Assessment Review (PCAR)) (Honohan 2015, 2) (Honohan 2012, 3) (Honohan 2010, 3) (NAMA Frequently Asked Questions 2009, 10-11). As the potential losses on bank balance sheets soared and NAMA moved toward beginning its operations, it appeared that the government might have been coordinating its capital injections with NAMA's asset purchase operations (See Figure 8 for the capital injections and restructuring in question) (Honohan 2012, 3-5). Although this would (theoretically) crystallize the banks' losses quickly, policymakers had to coordinate on the fly, as they did not know the size of the haircuts that NAMA's asset valuations would impose on the participants (Honohan 2015, 2) (Honohan 2012, 3) (Honohan 2010, 3) (NAMA Frequently Asked Questions 2009, 10-11). In response, policymakers in 2010 injected €25.3 billion into Anglo Irish Bank, €0.9 billion into EBS, €5.4 billion into INBS, and €3.7 billion into Allied Irish Banks (See Figure 8), hoping that the new capital could fill the capital holes exposed by NAMA (Cussen and Lucey 2011, 83).

It is also important to note that these capital injections were not required for these domestic banks to participate in NAMA. For foreign owned banks in Ireland, the government requested that they be recapitalized using funds from their parent companies before requesting funding from the government for recapitalization (Cerruti and Neyens 2016, 110). That being said, none of the foreign owned banks in Ireland requested government funding or applied to NAMA.

Figure 8: Major Irish Government Actions in Banking Sector

Pre-Establishment of NAMA		Within a year of the establishment of NAMA	
Date	Action	Date	Action
2008-09-30	€352 billion blanket guarantee	2010	ANGLO capital injections (€25.3 billion)
2009-01-15	Nationalization of ANGLO	2010	Nationalizations of INBS and EBS
2009-02-11	BOI capital injection (€3.5 billion)	2010	EBS capital injection (€0.875 billion)
2009-02-11	AIB capital injection (€3.5 billion)	2010	INBS capital injection (€5.4 billion)
2009-06	ANGLO capital injection (€4.0 billion)	2010	INBS capital injection (€5.4 billion)
		2010	Restructuring (eventual merger) of ANGLO and INBS
		2010	AIB capital injection (€3.7 billion)

Source: Report of the Joint Committee of Inquiry into the Banking Crisis Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013, Volume 1, Chapter 8, 2016; Treatment of Special Bank Interventions in Irish Government Statistics, Cussen and Lucey, Central Bank of Ireland, 2011; Memorandum for Government Recapitalisation of the Banking System, February 11, 2009 (See <http://opac.oireachtas.ie/AWDData/Library3/Banking/BIDOFCoreBook20.pdf#page=049>); Patrick Honohan: Recapitalisation of failed banks – some lessons from the Irish experience, September 7, 2012 (See <https://www.bis.org/review/r120907j.pdf#page=03>)

### 3. The Republic of Ireland gave NAMA extensive legal authority using the NAMA Act

After the April 7, 2009 announcement of NAMA, the government drafted the NAMA Act to grant NAMA any authority “necessary for, or incidental to, the achievement of its purposes and the performance of its functions.” The government introduced a draft version of the NAMA Bill on July 30, 2009, which was revised and eventually became the NAMA Act when the Taoiseach (Ireland’s prime minister) signed it into law on November 22, 2009 in spite of



substantial public opposition (National Asset Management Agency Act 2009). NAMA was seen as having a broad legal mandate (Cas and Peresa 2016, 25). The Minister for Finance also buttressed NAMA's authority with a bevy of statutory amendments between 2009 and 2013 (NAMA Amendments 2019). As a result, NAMA was protected from a variety of types of liability and had special rights during legal proceedings, reflecting policymakers' concern that "litigation might hinder the achievement of NAMA's objectives" (Carroll and Dodd 2012, 1203-1204) (Lenihan 2018, 103-108)

These rights and protections included, but were not limited to the following examples:

- If an entity tried to enforce a "representation, consent, undertaking or obligation" related to an asset acquired (or to be acquired) by NAMA without disclosing said "representation, consent, undertaking or obligation" to NAMA before NAMA had delivered an acquisition schedule to the relevant participant, where the records of the participant "do not contain a note or memorandum in writing of the terms of any such representation, undertaking or obligation," and where such a "representation, consent, undertaking or obligation" would affect NAMA's rights in relation to the assets in question, then NAMA would be immune from such an enforcement (Lenihan 2018, 73-74)
- If an asset acquired by NAMA were secured by a charge, then NAMA could redeem or discharge any charges on an acquired asset with a higher priority than NAMA (Lenihan 2018, 89-90)
- NAMA could void certain transactions that "hinder the acquisition or impair the value of an eligible bank asset" (Carroll and Dodd 2012, 1204)
- For certain claims, the NAMA Act restricted the remedies available to damages and the power of the courts to "grant injunctive relief" (Carroll and Dodd 2012, 1205)
- NAMA could join certain legal proceedings "in lieu of or in addition to" participants (Carroll and Dodd 2012, 1206).

NAMA not only took on all of the powers over assets and debtors that its participants enjoyed before NAMA acquired them, but it also had the power to issue directions to participating institutions (that the participating institutions were required to obey) to deal with any unacquired portion of an asset that NAMA had acquired (for example, the title to an asset in situations where NAMA acquired a derivative that captured the proceeds of such asset) from said institution in any way specified by NAMA (Lenihan 2018, 87).

NAMA had the power to access information on its borrowers from tax authorities as well as any necessary information on its acquired assets from the government's Land Registry (Lenihan 2018, 119) (Cerruti and Neyens 2016, 109). The NAMA Act provided NAMA with the "compulsory right of purchase", the right to petition the Court for vesting orders, and the ability to appoint a statutory receiver to a participant's assets (Cerruti and Neyens 2016, 109). All three of these powers allowed NAMA to increase its control over the relevant asset (and potentially its underlying property) (Property Registration Authority 2014). The first two of these powers also helped NAMA in its effort to avoid fire sales; the former was similar to the eminent domain powers enjoyed by authorities in the United States, which made it

less costly in time and money to acquire distressed assets and the latter converted NAMA's security interest in the underlying collateral into outright ownership (Carroll and Dodd 2012, 1064-1165) (McNulty 1912, 639). The power to appoint a statutory receiver allowed NAMA to appoint a receiver to take possession of the collateral securing its assets with unprecedented powers within Irish creditor-debtor law (Carroll and Dodd 2012, 1073-1075). This power became NAMA's favored tool for "pursuing unco-operative debtors" (Carroll and Dodd 2012, 1073-1075). In a similar vein, NAMA could also circumvent Irish creditor debtor law through its ability to receive payments from insolvent borrowers "in preference to and ahead of other such creditors" (Cerruti and Neyens 2016, 109).

#### **4. The Republic of Ireland structured the NAMA Act to comply with European Commission rules and obtained approval for NAMA's operations at multiple points**

The NAMA Act had to comply with European state aid rules (Cahill and O'Donnell 2010, 31). As NAMA would constitute state aid, NAMA could only be compatible with the EU's internal market if it met the criteria for asset relief measures established in the *Communication from the Commission on the Treatment of Impaired Assets in the Community Banking Sector* of February 25, 2009 (better known as the Impaired Asset Communication and the IAC) for compatibility with EC state aid rules (Communication from the Commission 2009, 26-29) (Cas and Peresa 2016, 20).

These criteria pertained to the following aspects of the program:

- "Transparency and disclosure requirements"
- "burden sharing between the State, shareholders and creditors"
- "aligning incentives for beneficiaries with public policy objectives"
- "principles for designing asset-relief measures in terms of eligibility, valuation and management of impaired assets"
- "the relationship between asset relief, other government support measures and the restructuring of banks" (Communication from the Commission 2009, 2)

The EC found NAMA to be consistent with State aid criteria. However, when on February 26, 2010, the EC approved the establishment of NAMA, it required NAMA to submit each of NAMA's asset transfers (and the corresponding valuation) to the EC for review (Cas and Peresa 2016, 20-21) (Micheál 2010).

#### **5. The government of Ireland decided to create NAMA as a majority private-owned entity because of concerns about placing additional contingent liabilities on the government balance sheet**

If NAMA ended up on the government's balance sheet there was an increased possibility that "Irish [...] [deficit] levels could be artificially distorted as a result of loan foreclosures" on loans with collateral located in Ireland " (Cussen and Lucey 2011, 14-15). Eurostat regulations mandated that the Master SPV that owned NAMA's assets (NAMAIL) needed to



have majority private ownership to not be on the government balance sheet and enjoy a government guarantee at the same time ([Cussen and Lucey 2011](#), 14-15).

To fulfill this requirement, NAMA conducted much of its operations through an Irish SPV created by NAMA called National Asset Management Agency Investment Ltd. (Called NAMAIL or the Invest Co.) ([Cas and Peresa 2016](#), 37-41). Invest Co. was a public-private partnership with initial capital of €100 million. Three sets of private investors (Irish Life & Permanent, New Ireland Assurance (Bank of Ireland Group), and “a group of clients of Allied Irish Banks’ Investment Managers”) held a 51% stake and NAMA held a 49% stake with veto power over strategic decisions ([Micheál 2010](#), 2) ([Cas and Peresa 2016](#), 18, 37-40). Beneath this SPV were three Section 110 SPVs, which enjoyed special tax status, and two conventional Irish SPVs (See Figure 4) ([NAMA Acquisition of Bank Assets 2010](#), 123) ([NAMA Second Progress Report 2018](#), 61).<sup>25</sup>

Invest Co. created (and owned a 100% stake in) a Section 110 SPV called National Asset Management Ltd. (also known as the Master SPV) ([NAMA Acquisition of Bank Assets 2010](#), 124). The Master SPV then owned a subsidiary Section 110 SPV called National Asset Management Group Services Ltd. (the Intermediate Co.) ([NAMA Acquisition of Bank Assets 2010](#), 124). Finally, the Intermediate Co. owned three functional subsidiaries: a Section 110 SPV known as National Asset Loan Management Ltd. (the Acquirer Co.), a conventional Irish SPV known as National Asset Property Management Ltd. (the Property Co.), and a conventional Irish SPV known as National Asset Management Services Ltd. (the Management Services Co.) ([NAMA Acquisition of Bank Assets 2010](#), 124).

Together, the companies functioned as follows: The Acquirer Co. directly received the proceeds of these assets (which included any income from interest on the loans) and initiated enforcement proceedings against the borrowers of the loans as needed ([NAMA Acquisition of Bank Assets 2010](#), 124). As the Acquirer Co. could not “carry on any activities ancillary to holding and managing the loans,” it sold the properties it acquired from enforcement proceedings to the Property Co. for zero consideration upfront ([NAMA Acquisition of Bank Assets 2010](#), 124). The Property Co. then managed these properties “in accordance with the strategies adopted by the Board of NAMA,” and used its property management profits to pay corporation taxes ([NAMA Acquisition of Bank Assets 2010](#), 124). The Property Co. would eventually dispose of the assets and pay the resulting proceeds to the Acquirer Co. as delayed consideration ([NAMA Acquisition of Bank Assets 2010](#), 124). The Acquirer Co.’s after tax proceeds then flowed back up through the other SPVs to the Master SPV, which paid a performance-based dividend to Invest Co.’s private investors and then paid any remaining surplus to NAMA ([NAMA Acquisition of Bank Assets 2010](#), 124). Finally, NAMA paid the surplus it received from the Master SPV to the Exchequer ([NAMA Acquisition of Bank Assets 2010](#), 124).

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<sup>25</sup> NAMA wanted to reduce the tax liability of its subsidiaries because NAMA’s exemption from “income tax, corporation tax and capital gains tax” under Section 214 of the NAMA Act did not apply to subsidiaries (See [NAMA Second Progress Report 2018](#), 18)

In order to limit the benefits (as well as the losses) that NAMA's private sector shareholders were subject to, NAMA placed a cap on possible annual return (loss) to private investors (its 51% private shareholders) of 10% above (below) "the Irish government 10 year bond yield at the time it is declared [...] to be paid at maturity", with remaining profits (losses) going to NAMA ([Braakman and Forster 2011](#), 17).

Meanwhile, the Management Services Co. handled the expenses, tax administration, and financial operations of these companies ([Carroll and Dodd 2012](#), 212-213).

This private ownership legal structure was based on a French program called Société de Financement de l'Économie Française (SFEF), which used a majority privately owned vehicle to issue government guaranteed debts and lend the proceeds to French financial institutions in need of liquidity because NAMA had to consider the "accounting guidelines issued by Eurostat on 15 April 2009 [...] on the statistical recording of public interventions to support financial institutions and financial markets during the financial crisis," which "were clarified in a further release in September 2009" ([Cussen and Lucey 2011](#), 12)

The Eurostat regulation also required that NAMAIL be "of a temporary duration," "created solely to deal with the financial crisis," and not be "expected to incur losses" ([Cussen and Lucey 2011](#), 13) By 2016, these Eurostat rules changed, placing asset management companies like NAMA on the government balance sheet if the company's funding structure had a government guarantee, even if the AMC is privately owned ([Cas and Peresa 2016](#), 32). However, it is not clear how much a difference this would have made to NAMA's operations, as ratings companies classified NAMA as part of the Irish sovereign's balance sheet and the Irish government had to enter an EC-IMF program at the end of 2010 regardless ([European Commission 2019a](#)) ([Cullinan and Beers 2010](#)).

NAMA's SPV structure and use of profit participation loan (PPL) agreements also allowed NAMA to pay almost no taxes ([NAMA Second Progress Report 2018](#), 18). Under such agreements, the Section 110 SPVs would pay interest on the PPLs dependent on its profitability ([NAMA Second Progress Report 2018](#), 18). However, due to a number of changes in the tax law in 2016, NAMA restructured the Acquirer Co. into a "regular trading company" when the PPL tax deduction was restricted ([NAMA Second Progress Report 2018](#), 18).

NAMA was structured as a statutory corporation (not a bank) and was governed using a nine-person Board. The composition of NAMA's Board was as follows:

- Seven members appointed by the Minister for Finance
- Two ex-officio members appointed by the Minister for Finance
  - The CEO of NAMA (appointed by the Minister for Finance in consultation with the Chief Executive of the NTMA)
  - The Chief Executive of the NTMA ([Lenihan 2018](#), 30-31, 39)

Additionally, NAMA was subject to various anti-corruption acts and a number of other anti-corruption related provisions ([Carroll and Dodd 2012](#), 190) ([Lenihan 2018](#), 29). The NAMA

Act made lobbying NAMA, defined broadly, a legal offence (Carroll and Dodd 2012, 187). This provision also penalized people who believed that they received a communication that constituted lobbying under the NAMA Act, but did not report the details of the communication to the Garda (police) promptly. The NAMA Act also contained provisions that appeared to protect whistle-blowers ([Lenihan 2018](#), 120-124).

NAMA was provided with staff, “human resources, IT and market risk analysis” services<sup>26</sup> by its parent, the National Treasury Management Agency (NTMA) ([Cas and Peresa 2016](#), 44).<sup>27</sup> NAMA expected to have around 100 employees (Connolly 2017, 1-2), but grew to a “team of over 200 people with specialist skills in property, banking, finance, law and related disciplines” ([Williams 2014](#), 145) This number does not include the various people managing NAMA’s €13 billion exposure to smaller debtors within its five participating banks, which was approximately 500 employees ([About NAMA 2014](#), 2). For staff and contractors involved in asset management, NAMA drew on “many former development companies and former banking interests” ([Williams 2014](#), 145) Until around 2014, NAMA’s staff enjoyed bonuses linked to the amount of revenue employees brought into NAMA ([Cerruti and Neyens 2016](#), 36, 113-114). A change in this policy, and NAMA’s March 2012 reorganization from asset purchase and valuation to asset management, caused NAMA to lose critical staff ([NAMA Annual Report 2012](#), 13). Anticipating NAMA’s eventual winding-down, NAMA implemented a voluntary redundancy program in 2015, which NAMA’s Chief Executive described as “helpful to date in stemming the volume of staff departures at a time when an uncontrolled exodus would have been seriously damaging to our business” ([NAMA Annual Report 2015](#), 11). Nevertheless, NAMA did not appear to have remedies for retaining “specialist staff,” which NAMA believed could be easily poached by the recovering private sector ([NAMA Annual Report 2015](#), 11).

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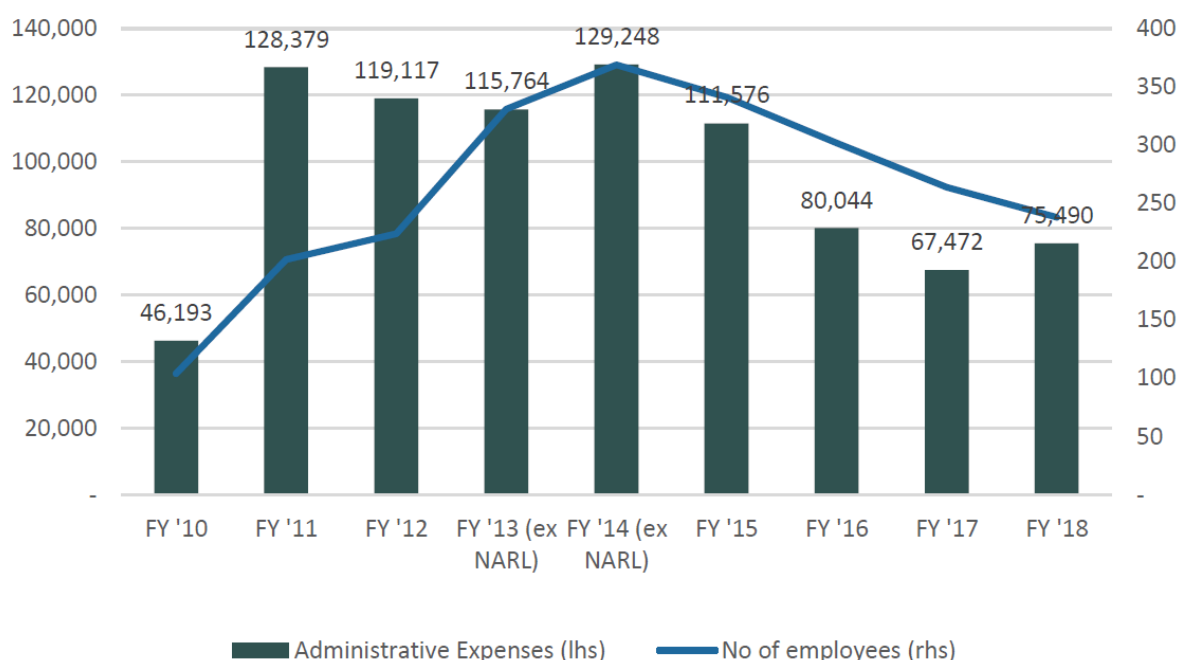
<sup>26</sup> Over time NAMA developed an extensive IT interface that included a public database of “NAMA-related properties in receivership in Ireland, Northern Ireland and Great Britain” (See [NAMA Annual Report 2018](#), 72)

<sup>27</sup> NTMA was “reimbursed by NAMA for the costs of these services” (See [Cas and Peresa 2016](#), 44). Although the NTMA was the organization in charge of issuing and managing Irish government debt, it was not formally part of the Ministry of Finance (See [Linehan 2012](#), 6-11) As a result, NTMA did not have to be staffed by civil servants (although it’s chief was to be appointed by the Minister for Finance) and could pay its employees a salary that was similar to those in the private sector while cutting down the amount of bureaucracy required for decision-making(as well as hiring) (Ibid.). The NTMA was also the institution in charge of managing the national pension fund (Ibid.).

**Figure 9: NAMA Staffing Numbers**

Date	Number of Staff	Staff Losses
January 2010	7	N/A
July 2010	54	N/A
December 2010/January 2011	100	N/A
March 2011	125	N/A
June 2011	145	N/A
September 2011	180	N/A
December 2011/January 2012	202	“10% of our staff”
March 2012	214	
December 2012	224	
January 2013	224	29
December 2013	331	
January 2014	331	67
December 2014	369	
January 2015	369	50 (under a redundancy program)
December 2015	341	
January 2016	341	N/A
December 2016	302	
January 2017	302	N/A (41 resignations were expected under a redundancy program)
December 2017	264	
January 2018	264	N/A (at least 8 resignations were expected under a redundancy program)
December 2018	238	

Source: NAMA Annual Reports 2010-2018

**Figure 10: Administration Expenses and Employee Numbers**

Source: Ministry of Finance Section 227 review of NAMA, 2019

## 6. NAMA was formally subject to extensive oversight by multiple stakeholders

NAMA had significant accountability to the Minister for Finance, the Oireachtas, and the EC. As for the two former groups, NAMA had to submit annual reports to the Minister for Finance, keep accounts in a form specified by the Minister for Finance, produce quarterly reports for the Minister for Finance (that would then be passed on to the Oireachtas), produce reports at the behest of the Minister for Finance, submit to audit by the Comptroller and Auditor General, and be accountable to the legislative Dail Eireann Committee of Public Accounts (PAC) (Carroll and Dodd 2012, 105). NAMA's Chairperson and CEO were required to report to other committees in the Oireachtas that had been appointed to "examine matters related to NAMA" (Lenihan 2018, 47). Although NAMA was required to "act in a transparent manner in carrying out its functions," it only had to do so to the extent that it was "consistent with proper and efficient and effective discharge" of its functions (Carroll and Dodd 2012, 159-163). The Minister for Finance further limited this transparency provision by choosing not to classify NAMA as an organization subject to Ireland's Freedom of Information Acts (Carroll and Dodd 2012, 159-163). As for the EC, NAMA had to report to the EC every six months on its participating banks' restructuring plans and the functioning of the program (Micheál 2010, 18-19). NAMA also had to report to EC's and the Republic of Ireland's competition authorities each year on the "use of NAMA's post acquisition powers" (Micheál 2010, 18-19).

Operationally, NAMA enjoyed a significant amount of independence because the Minister for Finance only appeared to intervene in NAMA on a limited basis (Carroll and Dodd 2012, 179).<sup>28</sup> The Minister for Finance was able to control NAMA using several tools. Under the NAMA Act, the Minister for Finance could issue binding written guidelines and directions to NAMA. While NAMA would have to “have regard to any guidelines issued by” the Minister for Finance for accomplishing the purposes of the NAMA Act, NAMA would be required to comply with written directions from the Minister of Finance “concerning the achievement of the purposes of this Act” (Lenihan 2018, 28). The Minister could also determine which organizations could participate in NAMA, which assets would count as eligible assets, and have the final say over whether a “particular asset may be acquired” as well as the “total value of a portfolio of assets to be acquired from a participating institution” in cases where the participants filed a dispute with NAMA through the use of statutory instruments (Carroll and Dodd 2012, 172). The structure of NAMA’s Board, in which seven of its nine members and NAMA’s CEO were appointed by the Minister for Finance, also granted the Minister for Finance a significant amount of power over the organization (Lenihan 2018, 30-31, 39).

In practice, as of 2019, the Minister for Finance issued six directions and twelve statutory instruments under the NAMA Act (Lenihan 2018, 30-31, 39). The Minister for Finance also issued four directions under the IBRC Act in 2013 (Carroll and Dodd 2012, 179). There were only three events where the Minister of Finance used these to become visibly involved in NAMA’s day-to-day operations. The first was when the Minister for Finance put forward two statutory instruments and a direction requiring NAMA to expedite its asset acquisition process (eliminating the tranche system) (Lenihan 2010) (S.I. No. 504 2010) ) (S.I. No. 505 2010). The others were two operations related to the IBRC; one of the directions under the NAMA Act and all four directions under the IBRC Act ordered NAMA to support the special liquidation of IBRC in various capacities (Legislation).

## 7. Communications

NAMA officials appeared on radio programs to explain the organization’s activities and supplied anonymous as well as official information to papers (Carswell 2010) (Irish Independent 2012). NAMA did not have a constituency in the banking or property development industry, with its Chairman stating in the 2010 Annual Report that “I do not believe that any other State Agency has come into being with a potential client base – those in banking and property development - whose enthusiasm for it was so lukewarm” (NAMA Annual Report 2010, 10).

When NAMA was first proposed, the Irish government did not promote NAMA as a guaranteed cure for the economy’s woes and very much presented the NAMA scheme as a work in progress. Government officials communicated that the potentially large (and

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<sup>28</sup> However, University College Dublin economist Karl Whelan argued that the Minister for Finance strained NAMA’s independence when he ordered that NAMA acquire a loan facility between IBRC and the Central Bank of Ireland to limit the damage of IBRC’s special liquidation in April 2012. (See [NAMA Second Progress Report 2018](#), 22). (See [Whelan 2012](#)).



uncertain) cost of NAMA's purchases and the make-up of Ireland's sovereign bond holders could have negative impact on Ireland's fiscal situation (Houses of the Oireachtas May 2009). However, it seemed to hedge those concerns by stating that "The income streams from the NAMA assets will mitigate the cost to the Exchequer of servicing the additional debt and the proceeds from their eventual sale will accrue to NAMA and the Exchequer (Houses of the Oireachtas May 2009)."

Several other key themes echoed throughout NAMA's communications. One was that NAMA was that NAMA was definitively not a bailout for developers or a bad bank. Government statements referred to NAMA as an "asset management agency" rather than as a "bad bank," with the Taoiseach claiming that NAMA "is not a bad bank model [...] because it obviously takes in all loans, including performing loans" (Houses of the Oireachtas May 2009a). The word "bailout" only seemed to appear when NAMA was being discussed in the Oireachtas or in simplified NAMA documents (which may have been aimed at the general public) like the three-page "The National Asset Management Agency: A Brief Guide" (NAMA Brief Guide 2010) (Houses of the Oireachtas May 2009a).

Although NAMA publicly emphasized its commitment to transparency early on in its life, references to transparency (beyond transparency in its procurement process) in official communications largely disappeared after 2010 (NAMA Annual Report 2010, 9-10) (NAMA Annual Report 2012, 56) (NAMA Annual Report 2013, 49) (NAMA Annual Report 2018, 67).

Another theme in NAMA's communications is best expressed by the statement "NAMA is not the problem, it is merely cleaning up a problem that was created by others" (McDonagh 2010, 3-4). Officials tended to describe what NAMA would do using words like "cleansing" and "crystallising" losses (McDonagh 2010, 3-4). NAMA would act in a commercial manner, but would not hesitate to put pressure on the banks and borrowers. For example, NAMA asserted that it would only providing funding to developers "where it will make commercial sense" and criticized the banks by stating that NAMA's operations had "revealed a troubling picture of poor loan documentation, of assets not properly legally secured and of inadequate stress-testing of borrowers and loans — all born of a mindless scramble to funnel lending into one sector at considerable pace and of a reckless abandonment of basic principles of credit risk and prudent lending" (McDonagh 2010, 3-4).

#### **8. NAMA did not have a specified size and funded itself, but its size was limited by a €54 billion cap on debt securities it could use to purchase assets and a €5 billion cap on borrowings for other purposes**

There was no cap on the face value of the assets NAMA would purchase, but the NAMA Act allowed the organization to issue up to €54 billion in debt securities for the purchase of assets before asking the government for permission to spend additional funds (Carroll and Dodd 2012, 234-238). This number was arrived at by estimating the long-term value of the assets expected to be eligible for transfer to NAMA, with €47 billion of this figure representing the then-current market value of the assets and the remaining €7 billion determined by applying a number of statutory uplift factors (related to the expected default

rate, the proportion of performing loans, etc.) ([NAMA Business Plan 2009](#), 31). NAMA ultimately funded its purchases by issuing €30.2 billion in state-guaranteed senior bonds usable as collateral in the Eurosystem and €1.6 billion in subordinated bonds. Minister for Finance Brian Lenihan said that the purpose of these subordinated bonds was that they “put [...] the bank at risk if NAMA were to lose money [...] without giving them an upside in relation to its gains” ([Houses of the Oireachtas September 2009](#)).

The terms of the senior bonds included (but were not limited to) the following ([NAMA 2011](#))<sup>29</sup>:

- Principal and Interest guaranteed by The Minister for Finance of Ireland
- Maximum Amount Outstanding: €51,300,000,000
- Currency: Euro, Sterling, or US Dollars
- Issue Date: March 26, 2010 (Carroll and Dodd 2012, 234-238).
- Maturity: March 1, 2011 (it is uncertain whether all the senior debt would be rolled over annually)
- Interest Rate (paid semi-annually on March 1 and September 1):
  - For Euro denominated Notes: 6 month Euribor
  - For Dollar denominated Notes: 6 month LIBOR
  - For Sterling denominated Notes: 6 month LIBOR ([NAMA 2011](#))

The architects of the senior bonds appear not to have anticipated that the six month Euribor rate might decrease to the extent that the bonds bore a negative interest rate. If the notes carried a negative interest rate, they could not be used as collateral with the ECB and which would therefore make it more difficult for their holders to fulfill “their regulatory liquidity requirements” ([Noonan 2015](#)). When the six month Euribor rate declined to 4.9 basis points in late July 2015, the Minister for Finance began to worry that a negative interest rate was a significant possibility. In response, the Minister directed NAMA to “take appropriate steps to ensure that in the event that the 6 month Euribor is negative a negative rate will not apply to the Notes and, in so far as possible, to ensure that these notes remain eligible as collateral for Eurosystem monetary policy operations” ([Noonan 2015](#)).

The terms of the subordinated bonds included (but were not limited to) the following ([NAMA 2010](#)):

- Aggregate Nominal Amount and Issue Price: 5% of the total acquisition value of the acquired portfolio of each participating institution (€1.6 billion)

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<sup>29</sup> This information is from the March 1, 2011 circular, but the 2011 issuance was in substantially the same form as the 2010 issuance (with exception of the fact that the 2011 issuance “may be physically settled at maturity at the option of the Issuer upon not less than 20 business days’ notice to holders by issuing a new Note on the same terms as the existing Note” while the 2010 issuance could be “physically settled at maturity at the option of the Issuer upon not less than 10 business days’ notice (See *NAMA: The Law Relating to the National Asset Management Agency*. 2012. Page 234-235. Dodd, Stephen and Carroll, Cian and [NAMA 2011](#))



- Currency: Euro
- Issue Date: March 26, 2010 (Carroll and Dodd 2012, 234-238)
- Interest Rate: 10-year Irish Government bonds rate as of March 26, 2010 (the first issue date) plus 75 basis points, paid annually starting March 1, 2011 if the Board of the Issuer determines the Issuer is “achieving objectives” related to NAMA’s financial performance<sup>30</sup>(Carroll and Dodd 2012, 234-238) (NAMA Annual Report 2018, 44).
- First Call Date: March 1, 2020
- Term: Perpetual

NAMA funded its operations (outside of consideration for asset purchases) through up to €5 billion in borrowing from the government, but also received €51 million from the various private organizations investing in NAMA’s SPV (Micheál 2010, 8) (Cas and Peresa 2016, 37). In practice, NAMA was able to sustain itself using funds generated by its operations after it repaid €299 million in loans from the Central Fund by February 2011 (NAMA Annual Report 2011, 15-16) (McDonagh 2013, 3-4).

**9. NAMA possessed a clawback feature that enabled it to tax participants to cover any aggregate losses it ultimately suffered.**

NAMA enjoyed a law-sharing claw back provision, where if NAMA ended up with a loss, the NAMA Act provided for the imposition of a tax on its participants (which did have its own restrictions) to make up the loss. The EC pointed to this tool as one of NAMA’s two “risk-sharing-mechanisms,” but the feature was controversial during NAMA’s design (Micheál 2010, 16). NAMA’s (pre-establishment) interim CEO Brendan McDonagh and the future Minister for Finance Brian Lenihan argued against the measure during debates on Peter Bacon’s initial NAMA proposal (Houses of the Oireachtas May 2009b). According to them, “the appropriate place to impose the levy would be finance legislation rather than the NAMA legislation [because] it might have an effect on the valuation of the assets to be transferred” as the clawback essentially represented “an unpriced option in terms of what the clawback would be in the future” (Houses of the Oireachtas May 2009b). Although similar loss sharing features might have been controversial when put forward in other countries, legislators adopted the provision in response to “voters’ anger over the rising cost of the bank bailout and simultaneous fiscal tightening” and the provision ceased to be particularly newsworthy soon after (Gumuchian 2010).

**10. Any credit institution could apply to NAMA, but the Minister would ultimately decide which applicants were eligible**

Once NAMA was established (on December 21, 2009) “[a]ny credit institution, including Irish subsidiaries of foreign credit institutions,” that wished to participate had 60 days (Until February 19, 2010) to apply. All five applicants were Irish banks and their subsidiaries that

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<sup>30</sup> Until NAMA achieved these objectives, the subordinated bonds would serve as a loss-bearing liability held by participants.

were covered by the Irish government’s blanket guarantee (Micheál 2010, 4). That being said, the fact that NAMA started collecting information from some of these banks in mid-2009 raises questions as to why the NAMA Act set down a 60-day application period (NAMA Acquisition of Bank Assets 2010, 33). This may have been because the government requested that foreign banks subsidiaries in Ireland be recapitalized using funds from their parent companies before requesting funding from the government (however, this became a moot point because no foreign bank subsidiaries applied to participate in NAMA and a similar requirement did not exist for the other domestic banks) (Cerruti and Neyens 2016, 110). Within three months of receiving an application, the Minister, after consultation with the Governor of the Central Bank and Regulatory Authority, determined if an applicant would become a participant based on three factors (Micheál 2010, 4, 37-38) (Lenihan 2018, 46-47):

- Systemic importance of the applicant, which was determined using a standardized rubric (Micheál 2010, 37) (NAMA Acquisition of Bank Assets 2010, 107)
- Available Ministry of Finance resources and the financial position of the applicant
- Compliance with NAMA Act obligations, which included but what was not limited to:
  - Including all of its subsidiaries in its application to the Minister for Finance (Lenihan 2018, 54)
  - Providing any “information, explanation, books, documents and records that the Minister” required (Lenihan 2018, 55)
  - Certifying in “utmost good faith [...] all matters and circumstances [...] that might materially affect [...] the Minister’s decision” on an institution’s application (Lenihan 2018, 55)
  - Limiting a number of business actions (like dealing with eligible assets outside the ordinary course of business) it could take without “prior written approval of NAMA” before NAMA acquired its eligible (Lenihan 2018, 56)

Although the initial proposals that led to NAMA recommended that the program be mandatory, the government opted for a voluntary approach (Lenihan 2018, 54). This was because the various recapitalization undertaken by the government had already resulted in “significant public ownership of the Irish banking system,” although these stakes were only in ANGLO, AIB, and BOI at the time of NAMA’s establishment (Cerruti and Neyens 2016, 110).

**11. The original act defined eligible assets broadly, but the Minister of Finance limited the program to loans and contracts related to (whether related to the acquisition of or merely secured by) development land (Cas and Peresa 2016, 37).**

Any “bank asset” (a catch-all term used by the writers of the NAMA Act to refer to any “security related to a credit facility” as well as any credit facility) designated by the Minister for Finance was an eligible asset for purchase by NAMA. The Minister for Finance ultimately defined eligible bank assets as “all loans issued for the purchase, exploitation or development of land as well as loans either secured or guaranteed by land” and “some of their associated commercial loans,” as well as “financial contracts between a debtor and a participating bank [...] that relate in whole or in part to acquired loans” ([Micheál 2010](#), 4) ([NAMA Acquisition of Bank Assets 2010](#), 32) ([Oireachtas Inquiry 2016](#), PDF Page 316). NAMA only acquired eligible assets from its participants and decided which assets it would purchase at its discretion (Carroll and Dodd 2012, 234-238) ([NAMA Annual Report 2018](#), 349-350, 374-390). For efficiency reasons, all transferred loans from AIB, Anglo Irish Bank, and Bank of Ireland had to be at least €5 million; NAMA’s Board later increased the figure to €20 million for assets held by AIB and Bank of Ireland ([Oireachtas Inquiry 2016](#), PDF Page 316).

## **12. NAMA had a detailed valuation procedure for its assets**

NAMA’s valuation procedures were intended to crystallize the uncertain value of its assets while limiting the damage that the resulting haircuts would impose on its participants by paying the long term economic value for the assets (which would be higher than the current market value) (Carroll and Dodd 2012, 417). NAMA began collecting information for due diligence and constructing its valuation processes by May 2009, months before the NAMA Act passed or NAMA was formally established ([NAMA Acquisition of Bank Assets 2010](#), 33). The NAMA Act allowed for NAMA to purchase assets at the current market value or at any price between the current market value and the long term economic value so long as NAMA consulted with the Minister for Finance (Carroll and Dodd 2012, 421-422). However, all of NAMA’s valuations and acquisitions ultimately took place at long term economic value, which NAMA defined for assets as “the value, as determined by NAMA, that it can reasonably be expected to attain in a stable financial system when the crisis conditions prevailing at the passing of the Act are ameliorated” and for property as “the value, as determined by NAMA, that it can reasonably be expected to attain in a stable financial system when the crisis conditions prevailing at the passing of the Act are ameliorated and in which a future price or yield of the property is consistent with the reasonable expectation having regard to the long-term historical average” (Carroll and Dodd 2012, 421-422). NAMA defined the “long-term” as between January 1, 1985 and December 31, 2005, indicating that NAMA places the Irish property market as only having been overvalued starting January 1, 2006 (Carroll and Dodd 2012, 432). NAMA constructed the long term economic value by observing the current market value of the asset and the assets’ collateral as of November 30, 2009 (rather than the current market value at the time of the purchase), applying an uplift factor based on the projected increase in the collateral’s value and a discount based on “the extent to which a participating bank has secured its legal right to realise the underlying security” to a

discounted cash flow valuation methodology approved by the EC (NAMA Acquisition of Bank Assets 2010, 23).<sup>31</sup>

### **13. NAMA possessed another clawback feature that enabled it to get back any amount it was determined to have overpaid for assets**

NAMA's creators integrated a valuation claw back provision (which the 2009 IAC mentioned as a potential tactic) (Communication from the Commission 2009, 12) into the organization. If NAMA determined that it overvalued an asset that it purchased, NAMA would claw back the amount that it overpaid from the participants (the NAMA Act did provide for participants to claw back value from NAMA in cases of underpayment through a "Valuation Panel" procedure, but it is not clear whether these reverse claw backs were widely used) (Micheál 2010, 17) (Lenihan 2018, 81-84). NAMA would determine that it overvalued an asset by way of:

- EC decisions on proper loan valuation procedures;
- due diligence conducted after the expedited valuation and purchase of an asset;
- realization that it had made a mistake in applying its valuation procedures; or
- the rectification of incorrect (or incomplete) information that NAMA received while initially valuing the assets (Carroll and Dodd 2012, 568-569).

### **14. NAMA conducted its asset purchases using a tranche system that was revised due to time constraints created by substantial operational problems within NAMA's participants**

Once the panel of loan value experts arrived at a valuation, NAMA grouped the assets based on their shared relationships with a given borrower (rather than by bank) and sorted them into tranches for transfer, with each additional tranche containing a larger number of borrowers and smaller positions (the author of this piece hypothesizes that NAMA's designers carved up the assets into tranches because they anticipated that the scale of documentation processing to value loans dramatically outstripped NAMA's capacity if valuation was to be conducted all at once) (NAMA Acquisition of Bank Assets 2010, 13).<sup>32</sup> NAMA determined a transfer schedule for each tranche and provided it to the relevant participants. The transfer schedule included the assets that NAMA would acquire from the relevant participant and the consideration price NAMA would pay, which would be "the

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<sup>31</sup> The EC did not specifically require the use of DCF. The 2009 IAC instead merely stated that "the Commission would consider a transfer value reflecting the underlying long-term economic value of the assets on the basis of underlying cash flows and broader time horizons as an acceptable benchmark indicating compatibility of the aid amount as the minimum necessary" (See Micheál 2010). Additionally, the EC noted that NAMA's DCF approach and the calculation of long-term economic value was appropriate "to the extent that the discount rate and in particular the margin added to the risk-free rate is viewed as adequate" (Micheál 2010).

<sup>32</sup> The 2010-02-26 European Commission state aid decision said that "It is [was] anticipated that the first tranche will include the 10-15 largest borrower exposures across all participating institutions" (Micheál 2010, 10).

lower of the amount owed by the borrower and the loan's long-term economic value" ([NAMA Acquisition of Bank Assets 2010](#), 13).

NAMA's original intention was to value and purchase the first tranche immediately, which would contain the largest exposures, and then do the same for a new tranche every 30 days until an expected completion date of June or July 2010 ([Houses of the Oireachtas October 2009](#)) ([Houses of the Oireachtas November 2009](#)). However, these 30-day and mid-year goals proved overly optimistic. Although NAMA aimed to finish purchasing its assets by the end of 2010, NAMA ultimately had to revise this end date several times between 2009 and 2011 ([NAMA Acquisition of Bank Assets 2010](#), 34) because of issues in its participants that included multiple MIS systems, poor data management infrastructure, paper records, "unreliable key performance metrics [...] [and] [p]oor data collection capacity" ([Oireachtas Inquiry 2016](#), PDF Page 58).

On September 30, 2010, the Minister for Finance requested that NAMA finish transferring assets as soon as possible and announced that "all remaining NAMA transfers should be completed in one single tranche for each of the participating banks" ([NAMA Acquisition of Bank Assets 2010](#), 34). The Minister for Finance then issued a direction and two statutory instruments on October 22, 2010, which incorporated this goal into NAMA's governing documents. The direction and one of these statutory instruments added an additional function (and processes for fulfilling said function) to NAMA: take "all necessary steps to acquire" eligible bank assets from participants" as expeditiously as possible" ([Lenihan 2018](#), 61). The other statutory instrument amended the March 3, 2010 statutory instrument dealing with the calculation of the "Long-Term Economic Value of property and Bank Assets" ([S.I. No. 504 2010](#), 2). After consulting with NAMA's Board and the EC, the Minister for Finance also requested that NAMA table its acquisition of loans from AIB and BOI where the borrower's exposure was less than €20 million, shrinking the number of eligible assets that NAMA intended to acquire to around €73.4 billion ([NAMA Acquisition of Bank Assets 2010](#), 34). On November 28, 2010 however, Ireland's Financial Regulator issued a statement reversing course: NAMA would now acquire all of AIB and BOI's exposures (including those less than €5 million) ([PCAR 2011](#), 2). The Financial Regulator's statement was codified in the National Asset Management Agency (Amendment) Bill 2011, but the Bill was never passed and the reversal was never implemented ([Carroll and Dodd 2012](#), 11-12).

NAMA accordingly began an accelerated transfer of most of the assets in its remaining tranches (three through nine) between October and December 2010 ([NAMA Annual Report 2011](#), 20) ([NAMA Progress Report 2014](#)). NAMA would use the new valuation process "for purposes of expedited acquisitions" to calculate the amount of consideration NAMA would give to participants during this accelerated transfer ([S.I. No. 504 2010](#), 3).<sup>33</sup> Once NAMA acquired these assets, it would conduct more detailed due diligence, produce a final long-term economic value for the assets, and revise its consideration cost accordingly ([S.I. No. 504](#)

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<sup>33</sup> In NAMA's 2011 Annual Report, its CEO noted that "we had little information on the underlying collateral from the participating institutions" when they acquired the assets in tranches three through nine (See [NAMA Annual Report 2011](#), 12)

2010, 3).<sup>34</sup> NAMA would not finish purchasing the remaining €3.4 billion in assets and conducting due diligence on assets purchased after the fourth tranche until March of 2012 ([European Commission 2014, 1](#)). By that point, NAMA had purchased a total of €74.4 billion in assets for €31.7 billion, leaving the participants with an average haircut of 57% ([Oireachtas Inquiry 2016, PDF Page 98, 317](#)). The EC officially approved these transfers on July 29, 2014 ([European Commission 2014, 1](#)).

**15.NAMA had a long-term strategy for managing its assets, but did not have an organizational sunset date**

Once the loans moved onto NAMA's balance sheet, NAMA began managing the assets and preparing for its exit. NAMA anticipated that it would conduct 7-10 years of asset management and then terminate itself. NAMA was not created with a sunset date; NAMA was to continue operating until its Board decided the organization should be wound down ([Carroll and Dodd 2012, 86-87](#)). NAMA intended to recover about half of its investment through "partial or full restructurings, including by supporting debtors" and the "other half [of its investment] by disposals (consensual and enforced)" ([Cas and Peresa 2016, 42](#)).

**16.NAMA's exit and disposal strategies were determined based on due diligence conducted on its borrowers**

Once NAMA had acquired an asset, it effectively took the position of the participating institution who had originally held the assets ([Carroll and Dodd 2012, 689](#)). NAMA used this legal leverage (the ability to "take enforcement against borrowers in default") to motivate borrowers to submit business plans to NAMA ([Carroll and Dodd 2012, 690](#)). However, NAMA itself did not take ownership of (and thus did not directly dispose of) much property ([NAMA Management of Loans 2012, 76](#)).

If the borrower in question was a major borrower (as defined by NAMA), they submitted a "realistic business plan which set out their current assets and liabilities" to NAMA within three months of joining the scheme ([Micheál 2010, 18](#)) ([Williams 2014, 145](#)). Upon analyzing the business plan, NAMA then proposed (and negotiated) short term and long term repayment strategies with the borrower ([Williams 2014, 145](#)). NAMA ultimately developed five types of strategies:

- Full Restructuring: Borrower goes through a full refinancing with new terms and conditions
- Partial Restructuring: Nearly the same as "Full Restructuring" but "did not result in new loan agreements." Instead, they set down the terms for borrower compliance in "Connection management agreements (CMAs)."
- Support: Borrower received financial support from NAMA on the condition that it "implement a number of milestones in relation to debt reduction"

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<sup>34</sup> After adjustments, NAMA realized its final valuation was around €0.5 billion more than its provisional valuation and paid the banks the difference (See [NAMA Progress Report 2014, 20](#))



- Consensual Disposal: Large scale asset sale by the borrower over a “relatively short-term horizon”
- Enforcement: Although this was only deployed when the debtor was not cooperative or the debtor could not demonstrate viability, this strategy involved NAMA enforcing the debts using whatever legal powers it had at its disposal (NAMA Second Progress Report 2018, 38)

If NAMA and the borrower could agree on a strategy, NAMA and borrower collaborated on making the arrangement feasible, potentially involving, but not limited to debt restructurings and write offs that the borrower would present to NAMA in a “request for support” (Williams 2014, 145) If these negotiations failed (or if collaboration failed to make the agreement feasible), NAMA asked for full repayment from borrower, threatening enforcement proceedings (Williams 2014, 145).

If the borrower in question was not a major borrower, the participants would provide asset management services, but the “credit decisions [...] [were] made by NAMA and NAMA [...] [was] represented in each of the banking units” (Williams 2014, 145). These borrowers would have the relevant participant submit information on their financial performance to NAMA (NAMA Business Plan 2009, 28). Then, NAMA would sort borrowers based on their “level of their exposure, [...] creditworthiness and [...] level of impairment,” and prioritize the larger and more impaired borrowers for assessment under the procedure for major borrowers “as a matter of urgency” (NAMA Business Plan 2009, 28).

During NAMA’s 2011 due diligence and business plan assessment process, NAMA appeared to change its procedure for assessing the business plans of debtors managed by NAMA’s participants. Instead of only analyzing business plans at the debtor level, NAMA began to accept business plans at the “debtor connection, debtor or loan level depending on the individual characteristics of each case.” NAMA also changed this procedure by adopting a system, which NAMA called a “credit grading matrix,” for grading debtors on a combination of debtor performance and expectations of debtor recovery, although NAMA would not fully implement the system until 2012 (NAMA Annual Report 2012, 28) (NAMA Annual Report 2011, 26-27, 127).

On November 25, 2010, in line with NAMA’s attempt to expedite its asset purchases during late 2010, NAMA put forward a more “streamlined” version of its “Debtor Business Plan Requirements,” which replaced the original business plan for most debtors (NAMA Annual Report 2010, 23) (Debtor Business Plan Version 2 2010). The original, which NAMA described as requiring “detailed and comprehensive information” was ultimately only used for “major debtors with complex corporate structures and whose loans transferred as part of the first three tranches” (NAMA Annual Report 2010, 23).

Ultimately, NAMA seemed to have a preference for disposing of its assets by sale “on the open market by private treaty, public auction, public tender and sealed bid” (private treaty is essentially the same as a private contract) (EBS 2017) (Cas and Peresa 2016, 40-41). NAMA frequently chose to package large numbers of related loans (typically after improving the



underlying collateral) and selling them to large institutional investors (Cas and Peresa 2016, 25).

Another feature of NAMA's disposal strategy was how NAMA dealt with the potential conflict between NAMA's purpose and NAMA's functions (as outlined in the NAMA Act). While NAMA's functions gave the organization a commercial primary mandate (to realize the best value for the assets), NAMA's purposes encompassed the stabilization of the banking system, improving liquidity, and contributing to social and economic development (Lenihan 2018, 16-17). In practice, NAMA chose to focus on its primary mandate. However, NAMA did conduct numerous operations related to social and economic development. This included a rent abatement program for tenants of NAMA borrowers and the demolition of "unfinished housing estates" (more popularly known as "ghost estates") (NAMA Second Progress Report 2018, 59-61). In response to the tight credit markets of 2012, NAMA created a vendor finance program for properties held by NAMA borrowers and receivers in Ireland and the UK (NAMA Second Progress Report 2018, 59). NAMA committed up to €2 billion over four years for the program in May 2012, which would fund up to 75% of the purchase of properties by making medium term loans to new investors (NAMA Second Progress Report 2018, 59) (Vendor Finance 2014). However, NAMA only provided €384 million under the facility by the end of 2016 (NAMA Second Progress Report 2018, 59). NAMA looked to "Ireland's exit from the Troika programme [the IMF program it entered in the last quarter of 2010], the recovery in the Irish economy in recent years, increased investment in Ireland by international investors and the wider availability of capital provided by international and debt providers" as well as "the introduction of Irish REITs as an alternative investment mechanism" as an explanation of the limited demand for the program (Vendor Finance 2014).

In 2012, NAMA also introduced the Deferred Payment Initiative for residential property purchases (NAMA Second Progress Report 2018, 61) (NAMA Deferred Payment Initiative 2014). In the program, buyers would pay 80% of the price upfront and would pay no additional amount if "after five years, the value of the house has fallen by 20% or more relative to its original purchase price" (NAMA Deferred Payment Initiative 2014) (NAMA Second Progress Report 2018, 61). In cases where, after five years, "the value of the house has fallen by less than 20% or has increased, the amount ultimately payable will be the lesser of the value of the house or the original purchase price" (NAMA Deferred Payment Initiative 2014). The program stopped accepting participants in May 2014, having only assisted in the purchase of 103 properties (NAMA Second Progress Report 2018, 61).

#### **17. Using the NAMA Act, NAMA developed a small organization that facilitated the flow of credit to SMEs by way of a Credit Review Office**

On March 26, 2010, NAMA issued a statutory instrument that attempted to improve the availability of credit in Ireland (one of the purposes of the NAMA Act) by creating the foundations for the Minister for Finance's Credit Review Office (S.I. 127 2010, 2) (Credit Review Office 2015). This statutory instrument set down guidelines to help encourage access to liquidity for viable borrowers "who have the capacity to service their loans [...] business

purposes ([S.I. 127 2010](#), 2). These guidelines created a procedure for small and medium enterprises (SMEs) to get the government to review a decision by a participant to refuse credit<sup>35</sup> to or restructure the credit facilities of the SME so long as it adhered to the following restrictions:

1. The refusal could not have been because providing the credit facility would conflict with EU State Aid rules
2. The credit facility application could not have been for over €250,000 (later €500,000 and then €3 million)
3. The credit facility application could not have been for less than €1,000
4. The Borrower in question had to have received the refusal before the S.I. was issued (2010-03-26)

The statutory instrument also empowered a group of government appointed Credit Reviewers to investigate the lending policies of participants and issue reports to the Minister for Finance on whether such policies were adequate ([S.I. 127 2010](#), 2-4). However, the Credit Reviewers would only mediate the dispute between the borrower and the participant once the borrower had exhausted “any credit appeal mechanisms available within the participating institution concerned.” Once this happened, the borrower then had to send a request within ten working days of “being notified of the refusal” to the Credit Reviewers, who then investigated the case. The statutory instrument required the Credit Reviewers to carry out the process as quickly and with as little formality as possible ([S.I. 127 2010](#), 2-4).

Once the Credit Reviewers looked at all of the necessary information and had each side issue comments on the evidence furnished by their opponents, the Credit Reviewer would either support the refusal, ask the participant to grant the credit facility, or recommend another “appropriate” arrangement ([S.I. 127 2010](#), 5). The participant institutions covered the quarterly costs of the program “in proportion to the number of applicants for review of decisions of the” participant less the application fees provided by the applicant.

### III. Evaluation

The EC broadly praised NAMA, stating that “By using a centralised asset protection scheme, banks effectively reduced the burden of legacy assets and strengthened their deleveraging and recapitalisation process” ([Oireachtas Inquiry 2016](#), PDF Page 325). It continued on to say that NAMA’s assets were “clearly defined, limited in size and relatively easy to sell,” which helped NAMA manage and dispose of its assets ([Oireachtas Inquiry 2016](#), PDF Page 325). Additionally, the European Commission noted that NAMA’s profitability also benefitted “from having part of its asset portfolio located in the UK and especially London, as this allowed for significant sales before 2013 as property prices in the UK market started

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<sup>35</sup> There were effectively two kinds of refusal: constructive refusal (no decision within 15 working days or terms/conditions of the facility were too onerous) and normal refusal (letter saying that the credit facility had been refused) (See [S.I. 127 2010](#), 2)

recovering earlier (around 2010) ([Cas and Peresa 2016](#), 25). NAMA then was able to add value to its properties and benefit from the Irish property market's recovery beginning in 2013 ([Cas and Peresa 2016](#), 25).

Charles Enoch of the IMF lamented the impact of a "lack of a universally accepted methodology for the valuation of assets," which he said "led to a protracted process whereby bank book values were repeatedly discounted, prolonging uncertainty, delaying normalization of bank funding, and undermining the credibility of the process" (Enoch 2013).

A review of three GFC-era asset management companies (AMCs) by the EC billed NAMA as a success story. It pointed out NAMA as having been "the most advanced of the three" AMCs when it came to asset sales, but argued that this was related to NAMA's macroeconomic situation and the fact that NAMA's assets were homogeneous, yet spread across multiple real estate markets ([Cas and Peresa 2016](#), 8, 25). The review also commended NAMA for its tendency to sell its loans as "large packages to institutional investors," describing it as a tactic that helped NAMA enhance the value of its assets ([Cas and Peresa 2016](#), 25). The paper continues, writing that NAMA's expansive legal powers improved its ability to conduct speedy asset disposals and "ensure income generation from rentals" ([Cas and Peresa 2016](#), 25). With the ability to accelerate disposals of its impaired assets, NAMA was able to help "develop a functioning secondary market for distressed assets by sending a price signal" ([Cas and Peresa 2016](#), 32). However, it also noted that NAMA may have been less successful if it "had acquired Irish residential mortgage loans" and that NAMA's practice of "adding value" to its assets "could potentially distort the ordinary functioning of the commercial property market" ([Cas and Peresa 2016](#), 30-31). Additionally, it asserted that NAMA's practice of "Combining original goals with additional socio-economic activities" could deter NAMA from its "primary mandate" as well as contribute to "conflicting objectives" ([Cas and Peresa 2016](#), 31). Perhaps most importantly, the paper noted that NAMA had to be accompanied by other initiatives to repair the financial sector and that post-crisis regulatory changes would render the lessons to be learned from NAMA less relevant in future ([Cas and Peresa 2016](#), 31-32). As for the first point, NAMA's actions were not able to prevent Ireland from continuing to suffer a "very high NPL ratio" and "subdued [...] lending to the private sector" ([Cas and Peresa 2016](#), 31-32). NAMA's own annual report from 2010 buttresses this point:

For a period, it perhaps had been reasonable to anticipate that NAMA on its own could have fixed the banking system, if the problem had been confined to the loan categories designated for NAMA. However, the sheer scale of the banks' problems, which went far beyond the land and development and associated loans within NAMA's mandate and which only emerged after NAMA's work had begun, meant that [the] initial expectation was not realisable ([NAMA Annual Report 2010](#), 8-9).

As for the second point, due to changes in the Eurostat rules, majority privately owned AMCs like NAMA are now included as part of its government's general balance sheet, thus making

them difficult to implement when governments are financially constrained ([Cas and Peresa 2016](#), 32).

The point of view of two analysts from the German Federal Statistical Office was that the “initial impact of its [NAMA’s] operations on general government’s deficit and debt” was effectively nil, thus making it “more advantageous [...] in comparison to the German liquidation sub-agencies” ([Braakman and Forster 2011](#), 18) However they also believed this advantage would be “to a large extent reduced by later government payments” that happened when the Irish government had to inject capital into a number of the participating banks to keep them in compliance with “international equity standards” once the participating banks recognized NAMA’s haircuts on their balance sheets ([Braakman and Forster 2011](#), 18-19).

A 2015 paper from Professor Dirk Schoenmaker of Erasmus University Rotterdam also praised NAMA, writing that it “serves as an international example of successful management of bad assets” ([Schoenmaker 2015](#), 2). In stark contrast to a World Bank study authored by Caroline Cerruti and Ruth Neyens, Schoenmaker argued that NAMA’s decision to purchase assets at November 30, 2009 values was a prudent one ([Cerruti and Neyens 2016](#), 111).<sup>36</sup> He accepts NAMA’s view that the purchase date “protected the banks from any further deterioration of the Irish property market” that would’ve come as a result of the 25-30 percent decline in property values after November 30, 2009 ([Cerruti and Neyens 2016](#), 111) ([Schoenmaker 2015](#), 13). However, he also lamented that the government did not implement a proposal to have NAMA acquire “smaller commercial real estate loans”, popularly known as “NAMA II” ([Schoenmaker 2015](#), 13). Schoenmaker also stated that external asset management may have helped resolve Ireland’s stock of non-performing mortgages faster, “but the ECB made such schemes financially unattractive as it limited ECB funding to banks only, excluding resolution vehicles” like NAMA ([Schoenmaker 2015](#), 17).

A World Bank study authored by Caroline Cerruti and Ruth Neyens gave NAMA a mixed review ([Cerruti and Neyens 2016](#), 111-114). They praised NAMA’s asset management structure as “offering the benefits of creating economies of scale in administering workouts, expediting loan resolution with specific expertise, and breaking “crony capitalist” connections between banks and developers.” They noted that NAMA’s clear commercial mandate, transparency and independence, “efficiency in managing the assets,” and good property mix allowed for NAMA’s “strong performance,” but did not substantially focus on NAMA’s other mandates (such as its ability to promote social and economic development). They also complemented NAMA for following through on “two key principles [...]: no fire sales and no hoarding” and for professionalizing the Irish real estate market through its loan packaging program. However, they also argued that the uplift NAMA applied to assets when calculating their long term economic value (ultimately an average of 8.3%) and the choice to value the assets as of November 30, 2009 caused NAMA to overpay for its assets (with NAMA subsequently clawing back the difference). They note several other areas where NAMA could

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<sup>36</sup> That being said, a 2013 debate in the Oireachtas suggests that NAMA maintained the November 30, 2009 reference date due to the “regimental” requirements of calculating EU state aid ([McDonagh 2013a](#)).

have improved. Specifically, they attribute NAMA's loss of "critical staff" to NAMA's failure to maintain its program of linking bonuses with cash generation. Similar to Schoenmaker, they also lament that NAMA's lack of purview over non-land and non-development loans kept it from fully cleaning up the Irish banking system, but do not go as far as to say that NAMA should have been involved with these other loans.

This perspective, in which NAMA was an effective program, but by no means a panacea for Ireland's problems, is similarly reflected by the Deputy Governor of the Central Bank of Ireland in a September 22, 2017 speech ([Sibley 2017](#), 3). He stated that NAMA was part of the solution, but "was by no means the silver bullet some people may think for resolving Irish NPLs overall, as SME and mortgage loans remained a serious and growing problem." As evidence, he pointed to the fact that NPLs "only peaked in Ireland in Q4 2013, with an NPL ratio of 31.8%, more than two years after loans were transferred to NAMA."

The government's 2016 *Report of the Joint Committee of Inquiry into the Banking Crisis* (the *Report*) provided the opinions of NAMA's external auditor, the Comptroller & Auditor General (C&AG). C&AG argued that NAMA chose a poor way to operationalize its mandate to seek "the best achievable financial return," deciding to measure it through NAMA's ability to redeem debt instead of some kind of "expected or target rate of return" ([Oireachtas Inquiry 2016](#), PDF Page 326-328). C&AG also criticized NAMA for its failure to realize its "anticipated rental income" in 2011 ([Oireachtas Inquiry 2016](#), PDF Page 326-328). However, the C&AG also conceded that even though the losses crystallized by NAMA "contributed significantly to the level of financial support required by the banking sector from the State," NAMA ultimately was able to remove a considerable element of the prevailing uncertainty about the credit institutions' financial position in the aftermath of the banking crisis" ([Oireachtas Inquiry 2015](#), 9).

The 2016 *Report* itself criticized the government for the one-year lag between NAMA's 2009 announcement and NAMA's first transfers, saying that the lag caused "considerable uncertainty and difficulty for some developers, as they were caught in a 'no man's land' between their financial institutions and a NAMA not yet formally established" ([Oireachtas Inquiry 2016](#), PDF Page 328). It went on to note that NAMA had negative effects on a number of the property developers who were "borrowers" in the program. Although the report conceded that NAMA's practice of acquiring good assets in addition to bad assets from the participants allowed NAMA "to get more value from individual borrowers," it damaged the reputation of at least one borrower of a participating institution in the process ([Oireachtas Inquiry 2016](#), PDF Page 318, 328).

NAMA was evaluated negatively in various left-leaning segments of Irish society as well as in the media. One reason for this was that NAMA socialized losses related to the financial crisis while supporting banks that ultimately still had to be bailed out and sometimes wound down ([Williams 2014](#), 142). Journalist Frank Connolly criticized the organization for "failing to obtain the best return for the Irish people [...] by seeking to offload the properties as rapidly as possible" while allowing for a revolving door between NAMA's staff, NAMA's executives, and the property development industry (Connolly 2017, 1-2). This point of view



was echoed in one statement from the 2016 *Report* that “[NAMA] acted more as a debt collection agency than as a property value maximising entity” after receiving a recommendation from the troika to “accelerate NAMA receipts” ([Oireachtas Inquiry 2016](#), PDF Page 324). Critics also faulted NAMA for a perceived lack of transparency in its operations as well as for leaking confidential information ([Williams 2014](#), 139). These criticisms tended to revolve around alleged malpractice by NAMA in its valuation and sale of large portfolios to institutional investors, resulting in a comprehensive investigation by the C&AG in August 2016 ([C&AG 2016](#), 9) ([Houses of the Oireachtas 2016](#)). Finally, in March 2016, a *Financial Times* article reported that developers blamed NAMA “at least partly, for Ireland’s acute housing shortage” ([Boland 2016](#)). When NAMA pivoted its activities toward property development, it also encountered criticism from the press. Stephen Dodd, a commentator on the NAMA Act 2009, questioned the legal basis of NAMA’s shift toward property development and the provision of affordable housing. Stephen Dodd, a commentator on the NAMA Act 2009, later questioned the legal basis of NAMA’s shift toward property development and the provision of affordable housing. Dodd argued that “There is no authority for policy initiatives such as the use of Nama property for social housing unless they generate the optimal financial return compared to alternative uses” ([Dodd 2012](#)).<sup>37</sup> Despite the negative press, media reports acknowledge that NAMA seemed pretty good at clearing NPLs and that non-participating banks were similarly criticized for selling off assets to foreign “vulture funds” ([Moore 2018](#)).

NAMA’s initial April 2009 proposal prompted support in the Irish media, but this support wavered by the time the NAMA Bill was introduced at the end of the summer (Mercille 2015, 66-69). Although government officials and NAMA’s personnel consistently reiterated that NAMA was not a bailout and that the purpose of the organization was to clear the toxic assets off of bank balance sheets to allow for lending, “NAMA soon became perceived in the public consciousness as the agency through which the government put the interests of the banks ahead of the interests of its people” (Murphy 2011, 21). It was difficult for the public to understand what exactly NAMA did and how NAMA would eventually help lending start again.<sup>38</sup> These problems were so significant that the NAMA Act was only able to pass by a majority of four votes after a debate involving all night meetings of the legislature (Connolly 2017, 12). In spite of statements in NAMA’s press materials responding to discussions of NAMA’s confidentiality policy and of NAMA employee salaries, public perceptions of NAMA did not appear to improve over time ([NAMA Annual Report 2010](#), 10) ([NAMA Annual Report 2011](#), 14).

Some continued to consider NAMA to be a bailout for developers. This was because there was a perception that NAMA sold loans back to developers at a discount. The fact that NAMA

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<sup>37</sup> Dodd also was critical of some of NAMA’s actions related to IBRC. In Dodd’s opinion, the government’s March 2011 order that NAMA “provide a short-term loan of €3.06 billion to IBRC (formerly Anglo Irish Bank)” to prop the ailing bank up blurred NAMA’s separation from politics ([Dodd 2012](#)). Dodd believed that such separation was essential to preventing the kind of difficulties experienced by Mexico and Indonesia’s AMCs ([Dodd 2012](#)).

<sup>38</sup> As exemplified by this parody song that appeared on Irish radio in September 2009 ([YouTube 2009](#))

apparently facilitated what the Public Accounts Committee called an “unacceptable” a lack of “systematic and routine verification of section 172 declarations,” which are supposed to keep developers from repurchasing their former properties from NAMA at a discount, did not help NAMA shake this sentiment (Larkin 2019). According to Social Democrat TD Catherine Murphy, “the public expectation was that someone would not be able to buy back their loans at a discount” (The Irish Examiner 2019). However, the fact that the vast majority of NAMA’s sales were of loans rather than property meant that section 172, was largely irrelevant (The Irish Examiner 2019).

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## V. Key Program Documents

## Summary of Program

- The National Asset Management Agency A Brief Guide 30th March 2010 (NAMA Guide 2010) – Fact sheet from NAMA explaining the scheme as it began its first purchases.  
<https://www.nama.ie/uploads/documents/NAMABriefGuide30March2010.pdf>
- REPORT of the Joint Committee of Inquiry into the Banking Crisis Houses of the Oireachtas Chapter 9: Establishment, Operation and Effectiveness of NAMA (2016)– Oireachtas report describing the features and roll-out of NAMA through 2016.  
<https://inquiries.oireachtas.ie/banking/wp-content/uploads/2016/01/02106-HOI-BE-Report-Volume1.pdf> Pages 311-238
- DRAFT NAMA BUSINESS PLAN (October 13, 2009)– NAMA’s initial operating plan (put forward before passage of the NAMA Act).  
[https://www.nama.ie/uploads/documents/Business\\_Plan\\_13OCT09.pdf](https://www.nama.ie/uploads/documents/Business_Plan_13OCT09.pdf)
- NAMA BUSINESS PLAN 30th JUNE 2010 – NAMA’s revised operating plan incorporating lessons from the Tranche 1 purchases.  
<https://www.nama.ie/uploads/documents/NamaBusinessPlan30June2010.pdf>

## Implementation Documents

- National Asset Management Agency Act 2009 (November 22, 2009)– Legislation granting NAMA its legal powers and outlining NAMA’s functions.  
<https://data.oireachtas.ie/ie/oireachtas/act/2009/34/eng/enacted/a3409.pdf>
- Subject: State aid N725/2009 – Ireland Establishment of a National Asset Management Agency (NAMA): Asset relief scheme for banks in Ireland (European Commission February 26, 2010)– Initial compliance and oversight mechanisms for the European Commission as it relates to NAMA.  
[http://ec.europa.eu/competition/state\\_aid/cases/234489/234489\\_1086237\\_117\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/234489/234489_1086237_117_2.pdf)
- NAMA Debtor Business Plan Requirements (March 15, 2010)– Instructions for the borrowers related to NAMA’s assets regarding the business plans NAMA required the aforementioned debtors to produce. These requirements were comprehensive and were later used only for larger borrowers.  
<https://www.nama.ie/uploads/documents/NAMADebtorBusinessPlanRequirements.pdf>
- NAMA Debtor Business Plan Datapack (June 1, 2010)– Excel sheet containing a template for all of the information NAMA required from borrowers for valuing underlying property.  
<https://www.nama.ie/uploads/documents/NAMABusinessPlanDatapack.xls>



- Subordinated Bonds Term sheet (March 24, 2010)– *Term sheet outlining the details of the subordinated bonds that partially funded NAMA’s purchases and would pay interest if NAMA met unspecified financial milestones.*  
<https://www.nama.ie/uploads/documents/NAMADebtorBusinessPlanRequirements.pdf>
- Business Plan Version 2 – Issue Date 25th November 2010 (November 25, 2010) – *Streamlined template for borrower information that replaced the March 15, 2010 requirements.*  
<https://www.nama.ie/uploads/documents/Business Plan V2 Template 25November 2010.doc>
- Debtor Business Plan Version 2 - Guidance Note (November 25, 2010) – *Directions for filling out the Business Plan Version 2 template.*  
<https://www.nama.ie/uploads/documents/Business Plan V2 Template 25November 2010.doc>
- Statement of Affairs Borrower Template Declaration (November 25, 2010) – *Additional template and declaration of compliance for borrowers participating in NAMA’s business plan evaluation process. This document works with the Guidance Note and the Business Plan Version 2.*  
<https://web.archive.org/web/20101226030801/http://www.nama.ie/Publications/2010/Statement of Affairs Borrower Template Declaration.doc>
- NAMA Cashflow Model (NAMACashflowModel2003.xls) (December 13, 2010)– *Excel formula sheet for calculating business’ discounted cash flow. The document is extremely comprehensive and appeared to be the work of external consultants. The document was also expected to work with the November 25, 2010 templates.*  
<https://web.archive.org/web/20110602020939/http://www.nama.ie/Publications/2011/NAMACashflowModel2007.xlsm>
- NAMA Information Pack (NAMAInfoPack2007.xls) (Approximately December 26, 2010)– *Streamlined excel sheet containing a template for all of the information NAMA required from borrowers for valuing underlying property.*  
<https://web.archive.org/web/20101226030801/http://www.nama.ie/Publications/2010/NAMA Information Pack 2007 Version.xlsm>
- National Asset Management Limited Senior Notes guaranteed by the Minister for Finance (June 22, 2011)– *Term sheet outlining the details of the senior bonds that funded 95% of NAMA’s purchases and would pay interest if NAMA met unspecified financial milestones.* <https://www.nama.ie/uploads/documents/SeniorNoteOfferingCircular.pdf>



- NAMA Cashflow Model (NAMACashflowModel2003.xls) (Final Version) (September 6, 2011)– *Finalized version of a formula sheet for calculating business' discounted cash flow. The document is extremely comprehensive and appeared to be the work of external consultants. The document was also expected to work with the November 25, 2010 templates.*  
[https://web.archive.org/web/20111017094154/http://www.nama.ie/download/debtor\\_documentation/NAMACashflowModel2007.xlsm](https://web.archive.org/web/20111017094154/http://www.nama.ie/download/debtor_documentation/NAMACashflowModel2007.xlsm)
- Subject: State aid SA.38562 (2014/N) – Ireland Transfer of the last tranches (from tranches 3 to 9) of assets to NAMA (European Commission July 29, 2014)– *European Commission state aid decision approving of NAMA's valuation and purchase procedures for its last tranche of purchases (the bulk tranche).*  
[http://ec.europa.eu/competition/state\\_aid/cases/252347/252347\\_1584913\\_91\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/252347/252347_1584913_91_2.pdf)

## Legal/Regulatory Guidance

- ECB GUIDING PRINCIPLES FOR BANK ASSET SUPPORT SCHEMES (February 25, 2009) (Treasury 2009a)– *ECB guidance on the design of asset purchase operations.*  
<https://www.ecb.europa.eu/pub/pdf/other/guidingprinciplesbankassetsupportschemesen.pdf?6cb425eab03277be839055e5bb6b7e4b>
- Subject: Preliminary view on the ESA95 accounting treatment of the National Asset Management Agency (NAMA) and related majority privately owned SPV (Eurostat October 16, 2009) – *Regulatory guidance on how NAMA's operations will be reflected on the national balance sheet.*  
<https://ec.europa.eu/eurostat/documents/1015035/2993714/Irish-letter-19-10-2009.pdf/e0b0ece9-3abe-482b-ba4d-964cb82c8879>
- National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2010 (S.I. No. 88 of 2010) – *Regulation revising the processes for valuing NAMA's assets and the underlying property, which followed discussions with the European Commission on appropriate discount rates.*  
<http://www.irishstatutebook.ie/eli/2010/si/88/made/en/print>
- National Asset Management Agency (Designation of Eligible Bank Assets) Regulations 2009 (S.I. No. 568 of 2009) (December 23, 2009)– *Regulation designating what assets were eligible, which was in line with the recommended eligible assets in the NAMA Bill.*  
<http://www.irishstatutebook.ie/eli/2009/si/568/made/en/pdf>
- S.I. No. 546 of 2009 National Asset Management Agency (Determination Of Long-Term Economic Value Of Property And Bank Assets) Regulations 2009 (December 21, 2009)– *Regulation setting down the processes and key terms for valuing NAMA's assets as well as the underlying property.*  
<http://www.irishstatutebook.ie/eli/2009/si/546/made/en/pdf>

- S.I. No. 547 of 2009: National Asset Management Agency Act 2009 (Establishment Day) Order 2009 (December 21, 2009)– *Regulation formally setting the date of NAMA's establishment.* <http://www.irishstatutebook.ie/eli/2009/si/568/made/en/pdf>
- S.I. No. 127 of 2010 Guidelines Issued Under Section 210(1) Of The National Asset Management Agency Act 2009 Regarding Lending Practices And Procedures And Relating To The Review Of Decisions Of Participating Institutions To Refuse Credit Facilities (March 26, 2010)– *Regulation specifying the powers and initial operating processes for the Credit Review Office.* <http://www.irishstatutebook.ie/eli/2010/si/127/made/en/pdf>
- Direction Concerning the Issuance of Government Guaranteed Debt by NAMA (May 14, 2010)– *Direction (order) from the Minister for Finance that placed the price of all short-term government guaranteed NAMA debt in a band linked to the price of securities issued by the Housing Finance Agency. It also set up a similar band for the price of NAMA debt with a maturity of over 1 year relating to the price of Irish government bonds of similar maturities.* [https://www.nama.ie/fileadmin/user\\_upload/documents/Legislation/S14\\_Direction\\_14th\\_May\\_2010.pdf](https://www.nama.ie/fileadmin/user_upload/documents/Legislation/S14_Direction_14th_May_2010.pdf)
- S.I. No. 505 of 2010 National Asset Management Agency (Conferral Of Additional Function) Order 2010 (October 22, 2010) – *Regulation setting the stage for the bulk asset purchase by adding the speedy acquisition of assets to NAMA's list of functions.* [https://www.nama.ie/fileadmin/user\\_upload/documents/Legislation/S14\\_Direction\\_14th\\_May\\_2010.pdf](https://www.nama.ie/fileadmin/user_upload/documents/Legislation/S14_Direction_14th_May_2010.pdf)
- The Minister for Finance directs the Agency to expedite the acquisition of remaining loans from the participating institutions (October 22, 2010) – *Order from the Minister for Finance for NAMA to consolidate its outstanding tranches of assets to be acquired into a single "bulk" tranche.* [https://www.nama.ie/fileadmin/user\\_upload/documents/Legislation/NAMADirectionUnderSection14.pdf](https://www.nama.ie/fileadmin/user_upload/documents/Legislation/NAMADirectionUnderSection14.pdf)
- S.I. No. 504 of 2010 National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) (Amendment) Regulations 2010 (October 22, 2010) – *Regulation providing for an expedited method for valuing eligible assets and the underlying property. This facilitated the late 2010 bulk transfer of assets.* [https://www.nama.ie/fileadmin/user\\_upload/documents/Legislation/NAMADirectionUnderSection14.pdf](https://www.nama.ie/fileadmin/user_upload/documents/Legislation/NAMADirectionUnderSection14.pdf)

## Press Releases/Announcements

- Financial Statement of the Minister for Finance Mr Brian Lenihan, T.D. 7 April 2009 – Speech by the Minister of Finance announcing measures that include the first mention of NAMA.  
[budget.gov.ie/Budgets/2009Supp/FinancialStatement.aspx](http://budget.gov.ie/Budgets/2009Supp/FinancialStatement.aspx)
- Proposal for a National Asset Management Agency (NAMA) (April 8, 2009) – Initial proposal and justification for NAMA.  
[https://www.nama.ie/fileadmin/user\\_upload/NAMASummary.pdf](https://www.nama.ie/fileadmin/user_upload/NAMASummary.pdf)
- National Asset Management Agency - First Loan Transfers (March 30, 2010) – Press release announcing its first asset purchases and describing their book value, consideration value, and discount rate.  
<https://www.nama.ie/news/nama-commences-loan-transfers-from-participating-institutions>
- National Asset Management Agency - First Bank of Ireland Loans Transfer (April 2, 2010) – Press release announcing the completion of NAMA’s asset purchases related to the first tranche of Bank of Ireland assets.  
<https://www.nama.ie/news/nama-acquires-first-bank-of-ireland-loans>
- National Asset Management Agency - First AIB Loans Transfer (April 6, 2010) – Press release announcing the completion of NAMA’s asset purchases related to the first tranche of AIB assets. <https://www.nama.ie/news/nama-completes-transfer-of-first-tranche-of-loans-from-aib>
- National Asset Management Agency - Tranche 2 Loans Transfer Begin (July 19, 2010) – Press release announcing the beginning of NAMA’s asset purchases related to the second tranche of assets. <https://www.nama.ie/news/nama-completes-second-tranche-of-loan-transfers-from-aib-bo-i-inbs-and-ebs>
- NAMA completes transfer of second tranche of loans from Anglo Irish (August 23, 2010) – Press release announcing the successful transfer of the ANGLO assets in the second tranche. This completed NAMA’s second tranche asset purchase program. <https://www.nama.ie/news/nama-completes-transfer-of-second-tranche-of-loans-from-anglo-irish>
- Ed Sibley: Non-performing loans – the Irish perspective on a European problem Speech by Mr Ed Sibley, Deputy Governor of the Central Bank of Ireland, at the second annual conference of the ESRB, Frankfurt am Main (September 22, 2017)– Academic speech outlining the development of Ireland’s not performing loans problem. It includes a number of details relevant to the extent that NAMA ameliorated the problem. <https://www.bis.org/review/r170929a.pdf>

## Reports

- Key Tranche 1 Data (May 10, 2010) – Presentation outlining the surprising results from the first tranche of asset purchases.  
<https://www.nama.ie/uploads/documents/NAMATranche1.pdf>
- Nama Business Plan (June 30, 2010) – Presentation outlining NAMA's first official business plan (how NAMA intended to operate) as well as the results of NAMA's first tranche.  
<https://www.nama.ie/uploads/documents>NamaBusinessPlan30June2010.pdf>
- NAMA QUARTERLY REPORT (Section 55 NAMA Act 2009) (June 30, 2010) – NAMA's second quarterly financial report of its activities from its establishment to June 30, 2010.  
<https://www.nama.ie/uploads/documents/Section55QuarterlyReport30June2010.pdf>
- Comptroller and Auditor General Special Report National Asset Management Agency Acquisition of Bank Assets October 2010 (October 7, 2010) – First major oversight report by NAMA's official external auditor, the Comptroller and Auditor General of the Republic of Ireland (C&AG).  
<https://www.nama.ie/uploads/documents/SpecialReportNAMAACquisitionOfBankAssetsOct2010.pdf>
- NAMA one year later – A Lombard Street Research Report for the Construction Industry Federation November 2010 NAMA – a flawed idea and a failure (November 2010) – Privately commissioned report on NAMA from the point of view of the Construction Industry Federation. The report is critical of NAMA and it appears to be for advocacy purposes.  
[https://namawinelake.files.wordpress.com/2010/12/nama\\_one\\_year\\_later\\_final.pdf](https://namawinelake.files.wordpress.com/2010/12/nama_one_year_later_final.pdf)
- Treatment of Special Bank Interventions in Irish Government Statistics (2011) – Paper coming from the Central Bank of Ireland and Ireland's Central Statistics Office that analyzes how the various guarantees, nationalizations, capital injections, and asset purchases interacted with Irish and European sovereign debt accounting rules.  
<http://2011.isiproceedings.org/papers/450228.pdf>
- Initial Evaluation of NAMA Operations (December 6, 2011) – Pro-bono high-level (management consulting style) analysis of NAMA's early operations. Some of its findings contributed to NAMA's 2012 reorganization.  
<https://www.nama.ie/uploads/documents/LetterandReportToTheMinisterforFinance6December2011.pdf>

- Comptroller and Auditor General Special Report National Asset Management Agency Management of Loans (February 2012)– *Report from NAMA's official external auditor on the development (as well as the implementation) of NAMA's loan management processes. It also offers a survey of the assets in NAMA's portfolio.* [https://www.nama.ie/uploads/documents/SpecialReportC\\_AG.pdf](https://www.nama.ie/uploads/documents/SpecialReportC_AG.pdf)
- Patrick Honohan: Recapitalisation of failed banks – some lessons from the Irish experience (September 7, 2012)– *Speech-cum-academic paper with a useful description of the recapitalizations preceding and following NAMA's asset purchases. It also provides a useful outline of the impact of NAMA's initially overly optimistic performance estimates for its portfolio.* <https://www.bis.org/review/r120907j.pdf>
- Comptroller and Auditor General Special Report National Asset Management Agency Progress Report 2010 – 2012 (April 2014)– *Report from NAMA's official external auditor on NAMA's overall performance over its first three years.* [https://www.nama.ie/uploads/documents/NAMAProgressReport\\_2010-2012.pdf](https://www.nama.ie/uploads/documents/NAMAProgressReport_2010-2012.pdf)
- Stabilising and Healing the Irish Banking System: Policy Lessons (January 12, 2015)– *Short academic paper giving commentary on Ireland's overall crisis response. There's a particularly relevant section looking at the potential (but rejected) expansion of NAMA.* [https://www.imf.org/external/np/seminars/eng/2014/ireland/pdf/Schoenmaker\\_IrishBanking.pdf](https://www.imf.org/external/np/seminars/eng/2014/ireland/pdf/Schoenmaker_IrishBanking.pdf)
- 'Bad Banks' in Ireland, Spain and Germany: Diverging Fortunes (October 27, 2015)– *Report from Moody's comparing and contrasting the performance of SAREB, NAMA, and FMS. The report paints NAMA in a particularly positive light.* <http://www.politico.eu/wp-content/uploads/2015/10/MoodysBad-Banks.pdf>
- What Makes a Good 'Bad Bank'? The Irish, Spanish and German Experience (May 24, 2016)– *Report from European Commission analysts putting together best practices from three public asset management companies implemented within the European Commission during the GFC. It also contains a useful discussion of changing Eurostat regulations and the growing relevance of the BRRD to the operation of such companies.* <http://documents.worldbank.org/curated/en/293361467996695247/pdf/105984-PUB-PUBDATE-5-24-16-PUBLIC.pdf>
- Comptroller and Auditor General Special Report National Asset Management Agency Second Progress Report (June 29, 2018)– *Report from NAMA's external auditor on the longer-term implementation of NAMA and its progress toward winding down its operations.* <https://www.audit.gov.ie/en/Find-Report/Publications/2018/Special-Report-102-National-Asset-Management-Agency-Second-Progress-Report.pdf>

- NAMA Annual Reports for 2010-2018 – *Section of NAMA's website containing its annual reports and accompanying presentations for 2010 to 2018.*  
<https://www.nama.ie/publications/annual-reports>