



**AN BILLE FÁN nGNÍOMHAIREACHT NÁISIÚNTA UM
BAINISTÍOCHT SÓCMHAINNÍ (LEASÚ), 2011
NATIONAL ASSET MANAGEMENT AGENCY
(AMENDMENT) BILL 2011**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

1. Definition.
2. Amendment of section 2 of Principal Act.
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4. Amendment of section 10 of Principal Act.
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7. Insertion of new section 49A of Principal Act.
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11. Amendment of section 87 of Principal Act.
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13. Amendment of section 92 of Principal Act.
14. Amendment of section 98 of Principal Act.
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16. Insertion of new Part 6A of Principal Act.
17. Insertion of new sections 146A and 146B of Principal Act.
18. Amendment of section 225 of Principal Act.

[No. 9 of 2011]

19. Insertion of new section 225A of Principal Act.

20. Short title and collective citation.

ACTS REFERRED TO

National Asset Management Agency Act 2009

2009, No. 34

Taxes Consolidation Act 1997

1997, No. 39



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(AMENDMENT) BILL 2011**

BILL

entitled

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A BILL TO AMEND THE NATIONAL ASSET MANAGEMENT AGENCY ACT 2009 TO MAKE PROVISION FOR THE NATIONAL ASSET MANAGEMENT AGENCY TO ACQUIRE CERTAIN BANK ASSETS EXPEDITIOUSLY; TO MAKE CONSEQUENTIAL AMENDMENTS TO THAT ACT; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

15 **1.**—In this Act “Principal Act” means the National Asset Management Agency Act 2009. Definition.

2.—Section 2 of the Principal Act is amended as follows: Amendment of section 2 of Principal Act.

(a) by the substitution in paragraph (a) of “State,” for “State, and”;

20 (b) by the substitution of the following subparagraph for paragraph (b)(viii):

“(viii) to contribute to the social and economic development of the State.”;

25 (c) by the insertion of the following word and paragraph after paragraph (b):

“and

30 (c) to assist in the achievement of the purposes set out in paragraphs (a) and (b) in the context of the National Recovery Plan 2011-2014 and the European Union/International Monetary Fund Programme of Financial Support for Ireland.”.

3.—Section 4(1) of the Principal Act is amended— Amendment of section 4 of Principal Act.

(a) by the substitution of the following definition for the definition of “acquisition schedule”:

“ ‘acquisition schedule’ shall be construed in accordance with section 87, 89 or 111J, as the case requires;”,

(b) by the substitution of the following definition for the definition of “acquisition value”: 5

“ ‘acquisition value’ means—

(a) in relation to a Part 6A eligible bank asset, the value determined in accordance with section 111I, and 10

(b) in relation to any other bank asset, the value determined by NAMA in accordance with the valuation methodology;”,

(c) in the definition of “designated bank asset”, by the substitution of “section 87, 89 or 111J” for “section 87 or 89”, 15 and

(d) by the insertion of the following definitions after the definition of “officer of NAMA”:

“ ‘Part 6A eligible bank asset’ has the meaning given by section 111E(1); 20

‘Part 6A participating institution’ means a participating institution whose participation in the acquisition of bank assets by NAMA under Part 6A has been approved by the Minister under section 111C;”.

Amendment of section 10 of Principal Act.

4.—Section 10(2) of the Principal Act is amended by the insertion of the following paragraph after paragraph (a): 25

“(aa) the obligations imposed by or incurred pursuant to Part 6A.”.

Amendment of section 11 of Principal Act.

5.—Section 11(1) of the Principal Act is amended by—

(a) the substitution in paragraph (d)(iii) of “security;” for “security.”, and 30

(b) the insertion of the following paragraph after paragraph (d):

“(e) acquire, in accordance with Part 6A, all Part 6A eligible bank assets and supervise the management of those assets by the participating institutions concerned under servicing arrangements.”. 35

Amendment of section 49 of Principal Act.

6.—Section 49 of the Principal Act is amended by—

(a) the substitution in subsection (3) of “Subject to subsection (3A), to the extent” for “To the extent”, and 40

(b) the insertion of the following subsection after subsection (3):

“**(3A)** In assessing financial performance for the purposes of subsection (3), Part 6A eligible bank assets shall not be included.”.

7.—The Principal Act is amended by the insertion of the following section after section 49:

Insertion of new section 49A of Principal Act.

“Subordinated debt — acquisition of Part 6A eligible bank assets. 49A.—(1) For the purpose of providing part of the consideration for the acquisition of Part 6A eligible bank assets, NAMA or a NAMA group entity may, whenever and so often as it thinks fit, create and issue subordinated debt securities of such class or type as it specifies—

(a) bearing interest at such rate as it thinks fit, or no interest,

(b) for such cash or non-cash consideration or deferred consideration as it thinks fit, and

(c) subject to such terms and conditions as to repayment, subordination, repurchase, cancellation or redemption or any other matter as it thinks fit.

(2) Subordinated debt securities issued under this section shall be used only for the purpose mentioned in subsection (1).

(3) To the extent that the terms and conditions of the subordinated debt securities (including the terms of subordination) are referenced to or based on a measure of financial performance, the measure shall be the financial performance of all Part 6A eligible bank assets acquired from the Part 6A participating institution concerned.

(4) Subordinated debt securities may be subject to different terms and conditions for different classes or types of those securities.

(5) The total amount of subordinated debt securities issued to a Part 6A participating institution under this section shall be 9.9 per cent of the total acquisition value of all Part 6A eligible bank assets acquired from the Part 6A participating institution.”.

8.—Section 54(3) of the Principal Act is amended by the substitution of the following paragraphs for paragraph (e):

Amendment of section 54 of Principal Act.

“(e) a list of all acquired portfolios (other than acquired portfolios composed of Part 6A eligible bank assets) held by NAMA and each NAMA group entity, and the book valuation placed on each portfolio,

(ea) a list of all asset pools (within the meaning given by section 111K(1)) held by NAMA and each NAMA group entity, and the book valuation placed on each such pool, and”.

Amendment of section 55 of Principal Act.

9.—Section 55 of the Principal Act is amended by— 5

(a) in subsection (6) by the substitution of “Subject to subsection (7), a quarterly” for “A quarterly”, and

(b) the insertion of the following subsection after subsection (6):

“(7) NAMA may exclude information in relation to Part 6A eligible bank assets from a quarterly report.”. 10

Insertion of new section 72A of Principal Act.

10.—The Principal Act is amended by the insertion of the following section after section 72:

“Limit on application of this Part. 72A.—Nothing in this Part applies in relation to Part 6A eligible bank assets.”. 15

Amendment of section 87 of Principal Act.

11.—Section 87 of the Principal Act is amended by the insertion of the following subsection after subsection (7):

“(8) Nothing in this section applies in relation to a bank asset notified to NAMA in accordance with section 111E as a Part 6A eligible bank asset.”. 20

Amendment of section 90 of Principal Act.

12.—Section 90(1) of the Principal Act is amended by the substitution of “section 87, 89 or 111J,” for “section 87 or 89,”.

Amendment of section 92 of Principal Act.

13.—Section 92(2) of the Principal Act is amended by the insertion of “or 49A” after “section 49”.

Amendment of section 98 of Principal Act.

14.—Section 98 of the Principal Act is amended by the insertion of the following subsection after subsection (1): 25

“(1A) Nothing in subsection (1) authorises a person to dispute the acquisition value determined by NAMA for a Part 6A eligible bank asset. An acquisition value determined for a Part 6A eligible bank asset in accordance with section 111I is final.”. 30

Amendments of section 101 of Principal Act.

15.—Section 101 of the Principal Act is amended—

(a) in subsection (1)(b), by the insertion of “subject to subsection (1A),” before “no such representation”, and

(b) by the insertion of the following subsection after subsection (1): 35

“(1A) Subsection (1)(b) does not apply in relation to a Part 6A eligible bank asset.”.

Insertion of new Part 6A of Principal Act.

16.—The Principal Act is amended by the insertion of the following Part after Part 6:

Acquisition of certain categories of eligible bank assets

5 Definition — 111A.—In this Part ‘category’ means a category
‘category’. of Part 6A eligible bank asset specified for a Part
6A participating institution by the Minister under
section 111F.

10 Application 111B.—(1) This Act applies to the acquisition
(Part 6A). of bank assets under this Part, except to the extent
that this Part provides otherwise. Nothing in this
Part shall be construed as limiting the obligations
of a participating institution pursuant to Part 6.

15 (2) Without limiting the generality of subsection
(1), the acquisition of a bank asset under this
Part is the acquisition of the bank asset for the
purposes of this Act.

(3) Nothing in this Part shall be construed as
affecting NAMA’s powers in relation to the
acquisition of any eligible bank assets under Part
6.

20 Application by 111C.—(1) A participating institution may
participating apply, on behalf of itself and its subsidiaries, to
institutions. the Minister within 15 days after the coming into
operation of this section, to participate in the
acquisition by NAMA of eligible bank assets
under this Part.

25 (2) The Minister shall approve the participation
of a participating institution and its subsidiaries in
the acquisition by NAMA of eligible bank assets
under this Part if he or she is satisfied that such
participation is necessary for the achievement of
the purposes of this Act.

30 (3) If the Minister approves the participation
by a participating institution and its subsidiaries in
the acquisition by NAMA of eligible bank assets
under this Part, the Minister shall so notify the
participating institution and NAMA in writing.

35 (4) The approval of a participating institution’s
participation in the acquisition of bank assets by
NAMA under this Part also has effect as approval
of the participation of any subsidiary of the partici-
pating institution included in the designation of
the participating institution under section 67, and
a reference to a Part 6A participating institution
in a provision of this Part includes any such sub-
45 subsidiary of the institution.

50 Specification 111D.—(1) When NAMA receives a notifi-
of dates. cation under section 111C of the approval of a par-
ticipating institution and its subsidiaries, NAMA
shall specify for that institution a date or dates on
which the value of the Part 6A eligible bank assets
of it and its subsidiaries is to be determined.

(2) NAMA shall notify a Part 6A participating institution of the date or dates specified for it and its subsidiaries under subsection (1).

Obligation of Part 6A participating institution to notify NAMA of Part 6A eligible bank assets.

111E.—(1) Subject to subsections (2) and (3), an eligible bank asset of a Part 6A participating institution is a Part 6A eligible bank asset if— 5

(a) it is an eligible bank asset that includes a credit facility referred to in Regulation 2(a)(i) of the National Asset Management Agency (Designation of Eligible Bank Assets) Regulations 2009 (S.I. No. 568 of 2009), and 10

(b) the amount outstanding on foot of the credit facility concerned (according to the books of the Part 6A participating institution concerned) as at the date determined for the Part 6A participating institution under section 111D is €20,000,000 or less. 15

(2) A bank asset that comprises a credit facility that entered the balance sheet of the Part 6A participating institution concerned after 31 December 2008 is not a Part 6A eligible bank asset. 20

(3) For the avoidance of doubt, where a credit facility entered a Part 6A participating institution's balance sheet on or before 31 December 2008 and the bank asset concerned is otherwise an eligible bank asset, the bank asset is a Part 6A eligible bank asset even if— 25

(a) security was taken for the credit facility after that date, or 30

(b) the credit facility was renegotiated or refinanced after that date.

(4) For the purposes of determining whether a credit facility entered a Part 6A participating institution's balance sheet on or before 31 December 2008, the terms of any renegotiation, restructuring or refinancing of a credit facility effected after 31 December 2008 may be taken into account. 35

(5) A Part 6A participating institution shall, as soon as practicable after receiving notifications under sections 111C and 111D— 40

(a) determine all of the Part 6A eligible bank assets held by it and its subsidiaries, and 45

(b) notify NAMA, in accordance with section 111G, of all the Part 6A eligible bank assets held by it and its subsidiaries.

Specification
of categories,
etc.

111F.—(1) The Minister shall specify, for each Part 6A participating institution, categories of eligible bank asset held by the Part 6A participating institution for the purposes of the valuation of those bank assets.

(2) The specification of a category of eligible bank asset under subsection (1) shall be by reference to—

(a) the geographical location of any land over which a security has been granted for an eligible bank asset, and

(b) the extent (expressed as a percentage) to which the development of that land has been completed.

(3) For the avoidance of doubt, the Minister may specify different categories for different Part 6A participating institutions.

(4) When the Minister notifies a Part 6A participating institution under section 111C(3), he or she shall also notify the Part 6A participating institution and NAMA of the categories he or she has specified for the Part 6A participating institution under subsection (1).

Requirements
as to
notification of
Part 6A
eligible bank
assets.

111G.—(1) A notification under section 111E(5) shall set out—

(a) a description of each Part 6A eligible bank asset, including at least—

(i) the borrower's name,

(ii) the loan reference number,

(iii) the currency in which the relevant credit facility is denominated,

(iv) a statement of the category of the Part 6A eligible bank asset, and

(v) whether the Part 6A eligible bank asset is a foreign bank asset (within the meaning given by section 91(1)),

and

(b) the amount outstanding on foot of the credit facility (according to the books of the Part 6A participating institution concerned), in the currency in which the credit facility is denominated, as at the date determined for the Part 6A participating institution under section 111D.

(2) A notification under section 111E(5) shall be certified as complete and accurate by the chief executive officer of the participating institution concerned.

(3) If a person who certifies a notification referred to in subsection (1) does so without taking reasonable steps to ensure that the notification is complete and accurate he or she commits an offence and is liable—

(a) on summary conviction, to a Class A fine or imprisonment for a term not exceeding 6 months or both, or

(b) on conviction on indictment, to an unlimited fine or imprisonment for a term not exceeding 2 years or both.

(4) If a person who certifies a notification referred to in subsection (1) does so knowing or believing that the notification is inaccurate or incomplete he or she commits an offence and is liable—

(a) on summary conviction, to a Class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to an unlimited fine or imprisonment for a term not exceeding 10 years or both.

(5) A person who is concerned in the preparation of a notification referred to in subsection (1) who takes, or deliberately fails to take, any step with the intention that the notification will be rendered inaccurate or incomplete commits an offence and is liable—

(a) on summary conviction, to a Class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to an unlimited fine or imprisonment for a term not exceeding 10 years or both.

(6) For the purposes of this section and any proceedings in relation to an offence under subsection (3), (4) or (5), the inclusion, in a notification under section 111E(5), of an asset in a category other than the category to which it properly belongs shall not be taken to render the notification inaccurate or incomplete unless the effect is that the acquisition value of the asset is increased.

(7) The Part 6A participating institution from which a Part 6A eligible bank asset is acquired shall indemnify NAMA against any liability or loss (however arising and regardless of any default on

the part of NAMA or a NAMA group entity) arising from any defect, error, omission or misstatement in a notification under section 111E(5).

(8) Sections 84 and 85 do not apply in relation to bank assets notified to NAMA in accordance with section 111E as Part 6A eligible bank assets.

NAMA to acquire all Part 6A eligible bank assets of Part 6A participating institution.

111H.—(1) Subject to subsections (2) and (3), NAMA shall acquire, in accordance with this Part, all the Part 6A eligible bank assets of each Part 6A participating institution notified to NAMA in accordance with section 111E.

(2) If in relation to a relevant contract (within the meaning, subject to subsection (4), of section 90(4)) that would, but for this subsection, be taken to have been assigned to NAMA by the operation of section 90(3), NAMA is satisfied that in all the circumstances it would not be reasonable, or that it would be unjust, for the relevant contract to be assigned to NAMA, NAMA shall so notify the Part 6A participating institution concerned and the relevant contract shall be taken not to have been assigned to NAMA.

(3) NAMA may give a notification under subsection (2) to a Part 6A participating institution at the time of serving the relevant schedule under section 111J or at any later time.

(4) For the purposes of the application of section 90 to the acquisition of a Part 6A eligible bank asset, subsection (4)(c) of that section shall be disregarded.

Determination of acquisition value of Part 6A eligible bank assets.

111I.—(1) Notwithstanding Part 5, the acquisition value of a Part 6A eligible bank asset is the value determined in accordance with this section.

(2) The acquisition value of a Part 6A eligible bank asset is the amount outstanding on foot of the credit facility (according to the books of the Part 6A participating institution concerned), as at the date determined for the Part 6A participating institution under section 111D, after applying the appropriate discount determined under subsection (3).

(3) NAMA shall, with the approval of the Minister, determine a discount rate for each category of Part 6A eligible bank asset of each Part 6A participating institution by reference to—

- (a) the discount applied by NAMA in respect of comparable bank assets previously acquired by NAMA from the Part 6A participating institution, and
- (b) any adjustments to that discount rate determined by the Minister in accordance with subsection (5).

(4) The determination of a discount rate under subsection (3) shall be made in accordance with the laws of the European Union governing State aid and any relevant guidance issued by the European Commission. 5

(5) For the purposes of subsection (3)(b), the Minister, after consulting with NAMA, may, if he or she considers it appropriate to do so, determine adjustments to be made to the discount rate for a category of Part 6A eligible bank asset justified by— 10

(a) any increased likelihood of repayment, without recourse to the relevant security over land, in relation to credit facilities comprised in Part 6A eligible bank assets in comparison to that in relation to comparable bank assets previously acquired under Part 6 from the same participating institution, and 15

(b) the fact that enforcement and due diligence costs will not be borne by NAMA in relation to bank assets acquired under this Part. 20

(6) The determination of the acquisition value of a Part 6A eligible bank asset by NAMA under this section is final, subject only to the correction of any obvious error pursuant to section 98(2). 25

(7) In this section ‘comparable bank asset’ in relation to a Part 6A eligible bank asset means a bank asset that is not a Part 6A eligible bank asset but in relation to which— 30

(a) any land that is a security for any relevant credit facility is in the geographical location by reference to which the relevant category was specified, and 35

(b) any development on such land has been completed to the extent by reference to which the relevant category was specified.

NAMA to prepare Part 6A acquisition schedule.

111J.—(1) NAMA shall serve on each Part 6A participating institution a schedule (referred to in this section as a ‘Part 6A acquisition schedule’) or schedules setting out the Part 6A eligible bank assets of a specified category that will be acquired from the Part 6A participating institution. 40 45

(2) NAMA may nominate a NAMA group entity as the entity that will acquire a Part 6A eligible bank asset.

(3) A Part 6A acquisition schedule shall set out— 50

- (a) a statement of each Part 6A eligible bank asset to be acquired, and the interest in each that is to be acquired,
- (b) the total acquisition value determined for those Part 6A eligible bank assets,
- (c) the date of acquisition of those Part 6A eligible bank assets, and
- (d) if any eligible bank asset is not to be acquired by NAMA itself, the NAMA group entity that will acquire it.

(4) In addition to the matters required by subsection (3), NAMA may set out in a Part 6A acquisition schedule any other matter (including any terms and conditions) that it considers necessary in the particular case.

(5) References in Part 6 of this Act to an acquisition schedule include a Part 6A acquisition schedule unless the contrary intention appears.

(6) The acquisition of a Part 6A eligible bank asset pursuant to a Part 6A acquisition schedule also vests in NAMA (or the NAMA group entity that acquired the Part 6A eligible bank asset) any eligible bank asset of a kind referred to in subparagraph (d) or (g) of Regulation 2 of the National Asset Management Agency (Designation of Eligible Bank Assets) Regulations 2009 (S.I. No. 568 of 2009) that is related to the Part 6A eligible bank asset.

(7) An eligible bank asset that is taken to have been vested in NAMA or a NAMA group entity pursuant to subsection (6) shall be taken to have been specified in the relevant Part 6A acquisition schedule and acquired accordingly.

Part 6A reports. 111K.—(1) In this section ‘asset pool’ means the collection of all the Part 6A eligible bank assets acquired from a particular Part 6A participating institution.

(2) On each 30 June and 31 December after the acquisition of Part 6A eligible bank assets from a Part 6A participating institution, the Part 6A participating institution shall make a report to NAMA in respect of its activities in relation to the management of the asset pool during the previous 6 months. The report shall be in the form, and shall contain the information, that NAMA directs.

(3) NAMA shall conduct sample audits in relation to the matters contained in the reports received from the Part 6A participating institution concerned before making a report to the Minister under subsection (2).

(4) On each 30 September and 31 March NAMA shall make a report (referred to in this

section as a ‘Part 6A report’) to the Minister in relation to the acquisition and management of each asset pool.

(5) A Part 6A report shall be in the form that the Minister directs. 5

(6) In a Part 6A report NAMA shall include the following information in relation to each asset pool for the relevant 6 months:

(a) the number of bank assets in the asset pool and an assessment of the performance of each; 10

(b) an assessment of the extent to which those bank assets are in default in respect of capital payment;

(c) an assessment of the extent to which those bank assets are in default in respect of both interest and capital payment; 15

(d) an assessment of the extent to which receivers or liquidators have been appointed in respect of those bank assets; 20

(e) an assessment of the extent to which enforcement action has been taken against those bank assets; 25

(f) the income received by NAMA in respect of the asset pool;

(g) the book valuation of the asset pool.

(7) A Part 6A report may include any other matter that the Minister directs in the particular case. 30

(8) The Minister shall cause copies of a Part 6A report to be laid before each House of the Oireachtas, and shall send a copy of the report to a committee (or a subcommittee of such a committee) appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) to examine matters relating to NAMA.”. 35 40

Insertion of new sections 146A and 146B of Principal Act.

17.—The Principal Act is amended by the insertion of the following sections in Chapter 2 of Part 9 after section 146:

“Legal costs in relation to Part 6A eligible bank assets, etc.

146A.—(1) The Part 6A participating institution or subsidiary from which a Part 6A eligible bank asset is acquired— 45

(a) shall pay all costs arising out of or connected with any action taken in

relation to the bank asset to which the Part 6A participating institution is party as plaintiff, defendant or notice party on behalf of NAMA or a NAMA group entity, or to which NAMA (or a NAMA group entity) is party as plaintiff, defendant or notice party directly, and

(b) shall indemnify NAMA in relation to any such costs.

(2) The Part 6A participating institution or subsidiary from which a Part 6A eligible bank asset is acquired shall indemnify NAMA (and any NAMA group entity) against any liability or loss (however arising and regardless of any default on the part of NAMA or a NAMA group entity) arising from any defect, error, omission or misstatement in any instrument, document, record, book or certificate, security, or title relating to or otherwise concerning such a bank asset.

(3) A reference in subsection (2) to defect, error, omission or misstatement includes (without limitation) a reference to any defect in—

(a) any credit facility documentation relevant to a Part 6A eligible bank asset, or

(b) the title to any land which forms security in respect of such a bank asset.

Exercise of certain powers by Part 6A participating institutions on NAMA's behalf.

146B.—(1) Notwithstanding section 99(1)(b), NAMA or a NAMA group entity may authorise a Part 6A participating institution or subsidiary to exercise, on NAMA's or the NAMA group entity's behalf and in NAMA's or the NAMA group entity's name, subject to such terms and conditions as NAMA or the NAMA group entity considers appropriate, any of NAMA's or the NAMA group entity's powers in relation to Part 6A eligible bank assets acquired from the participating institution or subsidiary (other than NAMA's powers under Chapter 4, 5 or 7).

(2) Nothing in subsection (1) or in any authorisation granted under that subsection affects NAMA's or the NAMA group entity's exercise of any power referred to in that subsection.”.

18.—Section 225 of the Principal Act is amended by the insertion of the following subsection after subsection (1):

Amendment of section 225 of Principal Act.

“(1A) For the purposes of this section, no account shall be taken of assets acquired by NAMA under Part 6A.”.

19.—The Principal Act is amended by the insertion of the following section in Part 13 after section 225:

Insertion of new section 225A of Principal Act.

“Surcharge on participating institutions in relation to Part 6A eligible bank assets.

225A.—(1) In this section—

‘accounting period’ shall be construed in accordance with section 27 of the Taxes Consolidation Act 1997;

‘surcharge’ means the tax referred to in subsection (3); 5

‘underlying loss’ means the amount, if any, by which the aggregate of losses incurred by NAMA (including NAMA group entities) in relation to Part 6A eligible bank assets exceeds the aggregate of the profits arising to NAMA (including those entities) in relation to such bank assets in the period from the date or dates of their acquisition to the date referred to in the direction under subsection (2) or the date of the occurrence of the event so referred to. 10 15

(2) If—

(a) the Minister decides under section 227(3)(b) that the continuation of NAMA is unnecessary having regard to the purposes of that Act, the Minister shall, or 20

(b) (i) 10 years have elapsed since the establishment of NAMA,

(ii) the Minister proposes to publish or has published a Bill for NAMA’s dissolution, restructuring or material alteration, or 25

(iii) NAMA is no longer conducting activities in respect of Part 6A eligible bank assets, 30

the Minister may,

direct NAMA to prepare a report and accounts as at a date specified by the Minister or as at the date of the occurrence of an event so specified— 35

(I) showing the aggregate profits and losses arising to and incurred by NAMA (including NAMA group entities), respectively, from its activities in respect of Part 6A eligible bank assets in the period from the date of its establishment to the date or the occurrence of the event so specified, and 40

(II) duly certified by the Comptroller and Auditor General, 45

and NAMA shall send such report and accounts so certified to the Minister.

(3) Where—

- 5
- (a) the report and accounts sent to the Minister under subsection (2) disclose that an underlying loss has been incurred by NAMA (including NAMA group entities), and
 - (b) the Minister is of the opinion that such underlying loss is unlikely to be otherwise made good,

then the Minister may cause—

- 10
- (i) a provision to be included in a Money Bill, or
 - (ii) a provision to like effect to be included in any other Bill initiated in Dáil Éireann,

15 providing for the imposition of a special tax by way of a surcharge on Part 6A participating institutions from which Part 6A eligible bank assets were acquired in accordance with subsection (4).

20 (4) The aggregate tax by way of a surcharge to be imposed on Part 6A participating institutions on their respective profits (within the meaning of section 4 of the Taxes Consolidation Act 1997) if any—

- 25
- (a) shall not exceed the amount of the underlying loss, if any, incurred by NAMA (including NAMA group entities),
 - (b) shall be apportioned to each participating institution from which Part 6A eligible bank assets were acquired on the basis of the book value of the Part 6A eligible bank assets acquired from each participating institution concerned as a proportion of the total book value of Part 6A eligible bank assets acquired from all of the participating institutions,
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- 35

40 and the surcharge so apportioned shall be imposed on each institution accordingly and paid by each of them over such period and at such times as provided for by the subsequent Act giving effect to this section and to which subsection (3) relates.

45 (5) Any surcharge due to be paid by a Part 6A participating institution in accordance with subsection (4) may not exceed 100 per cent of the corporation tax, if any, due and payable by that participating institution for the accounting period or periods as the case may be, falling within the period referred to in that subsection.

50 (6) No surcharge shall become payable until either—

(a) 10 years after the passing of this Act, or

(b) NAMA is dissolved or restructured, or there is a material alteration of NAMA's functions,

whichever last occurs.

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(7) For the avoidance of doubt, a Part 6A participating institution may be made liable to pay both a surcharge under this section and a surcharge under section 225.”.

Short title and collective citation.

20.—(1) This Act may be cited as the National Asset Management Agency (Amendment) Act 2011. 10

(2) This Act and the Principal Act may be cited together as the National Asset Management Agency Acts 2009 and 2011.