

Ireland's National Asset Management Agency  
From: Seelig, Steven A. [REDACTED]  
Sent: 25 August 2009 15:07  
To: Kinsella, Sean  
Cc: Nolan, Ann; Cardiff, Kevin; O'Sullivan, Stephen  
Subject: RE: Ireland's National Asset Management Agency

Attachments: Technical Comments on the August Version of the NAMA  
Legislation.doc

Dear Sean,

Thank you for sending me the latest draft of the NAMA legislation. As you requested I have reviewed it and offer the following comments:

Overall, it looks pretty good. That is not to say that there will not be considerable debate about the role of NAMA and the anticipated cost to the taxpayers (notwithstanding the future tax on banks). Given the heavy focus on land in the latter part of the draft, I would not be surprised to see some efforts to add restrictions on land use, or alternatively requirements for specific uses, added. In the U.S., during the political debates an affordable housing restriction was added as well as restrictions on sales that would harm values in certain states. Politically this is something that you should be aware of.

I have attached some technical comments and suggestions. Please remember that some of these may result from my unfamiliarity with Irish law.

Thank you for giving me the opportunity to be of assistance. Please feel free to contact me if you wish to discuss any of the points in the note or any other matters.

Sincerely,

Steve

Steven A. Seelig  
Advisor  
Monetary and Capital Markets Department  
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## Technical Comments on the August Version of the NAMA Legislation

Steven Seelig

- **Section 1. Para. (2)** is ~~excellent~~ and should allow you to avoid the problems experienced by other countries!!
- **Section 4.** It appears that the definition of "bank asset" does not include "real estate owned" by the bank. This would include properties that the bank had previously foreclosed or taken in lieu of foreclosure. In the same section, "principal private residence" is defined as the principal private residence of a charger .... This seems like an awkward definition whereby the term is being defined by itself.
- **Section 10 (2).** You need to recognize that the inclusion of NAMA's cost of capital, which presumably will be lower than that of the private market, introduces a potential bias in favor of holding assets since the NPV of any asset will be higher using a government cost of capital than the NPV calculated using a market rate. Moreover, NAMA's cost of capital, given the government guarantee, will not reflect the risks associated with the cash flows of the underlying assets. Therefore, you might wish to add a paragraph requiring NAMA to either use market rates in its decision process or adjust the NAMA cost of capital to reflect the risk associated with the specific assets.
- **Section 12.** Unless I missed them, I would include the power to initiate litigation and the power to issue guarantees and warranties.
- **Section 46.** Somewhere in the discussion of the annual accounts there should be a definition of the fiscal year. (Even a statement saying that it is the same as the government is common.) Also, while the requirements in the section are designed around government reporting and management information for the Minister, I suggest that NAMA should have to prepare an annual balance sheet as well. The law also should specify the accounting standard that NAMA should use in preparing its financial statements.

- **Section 59 (2) (c).** The drafting of the determination of "long term economic value of bank assets" is masterful. It is both sufficiently specific and sufficiently vague to allow appropriate flexibility. I hope you can retain this language.
- **Section 59 (3).** I assume that this has been introduced to gain political support for the bill but it does introduce another opportunity for legislators to make significant changes to NAMA's operations.
- **Section 69 (1) (a)** In case there is a lag before this is recognized, don't you want NAMA to also "clawback" interest on the funds owed it?
- **Section 70.** The bank should also be required to notify NAMA of any changes in the balance due on the acquisition date, either resulting from payments by the borrower or as a result of accrued interest or penalties specified in the loan agreement.
- **Section 71.** In addition to the items listed, NAMA will need the ability to require servicing data on each asset in a form specified by NAMA.
- **Section 86 (2).** You may wish to consider adding a paragraph (c) that covers loan participations where the lead bank is a foreign bank that is not a subsidiary of an Irish bank.
- **Section 187 (2).** What happens to the assessment? Does the Minister make it public? Is it issued to parliament?