

*“From Tiger to Eagle”  
The Story of NAMA*

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# *In the beginning . . .*

In 2008, Ireland experienced an economic collapse, largely brought about by a failure of its banking sector. This has been referred to as the death of the 'Celtic Tiger' (Gardiner, 1994). The banking sector had become hopelessly exposed to the property market (especially commercial property development) and the resultant property bubble began its spectacular burst in April 2008. In response, the government agreed to terms (with entities including the IMF and ECB) that allowed it to bail out the banks. Another key element of the bail out plan was to 'remove' the bad debts from the bank's accounts, by transferring them to a new 'bad bank' - ie. NAMA - The National Assets Management Agency.

# *Death of a Tiger*

Reigling & Watson (2010) have attributed Ireland's banking collapse to a 'plain vanilla property bubble' compounded by an excessive concentration of lending to the commercial property sector.

Kelly (2009) has also identified a boom in bank lending as a major contributory factor to Ireland's banking crisis.

A further contributory factor was the adoption of a neo-liberal, noninterventionist, 'light-touch' approach to banking regulation (Neary, 2008).

Hosier M (2015). I've attributed the collapse of the Irish economy to the actions of 'An Unholy Trinity' of lawyers, bankers and property developers.

The Troika. In November 2010, the Government of Ireland sought relief from 'The Troika' (The IMF, ECB and EU Commission) in the form of a €67.5 billion bailout (The total figure required was €113 billion, the remaining sum of €45.5 billion being borrowed from the National Pension Fund, the UK, Denmark and Sweden). This is equivalent to borrowing the sum of €23,299 on behalf of every person in the state.

Prior to seeking the bailout, the Government of Ireland had unsuccessfully tried to stabilise the banking sector by allocating 32.5% of GDP to it, and by implementing a programme of bank nationalisation.

# *NAMA -*

## *An Irish Solution to an Irish Problem*

In April 2009, the Government of Ireland established the National Assets Management Agency (NAMA) to remove toxic property assets from the banks' books.

NAMA was brought to life via the enactment of the NAMA Act 2009.

# Purpose

NAMA Act 2009, Section 2. The purposes of this Act are—

(a) to address the serious threat to the economy and the stability of credit institutions in the State generally and the need for the maintenance and stabilisation of the financial system in the State, and

(b) to address the compelling need—

(i) **to facilitate the availability of credit in the economy of the State,**

(ii) to resolve the problems created by the financial crisis in an expeditious and efficient manner and achieve a recovery in the economy,

(iii) to protect the State's interest in respect of the guarantees issued by the State pursuant to the Credit Institutions (Financial Support) Act 2008 and to underpin the steps taken by the Government in that regard,

(iv) **to protect the interests of taxpayers,**

(v) to facilitate restructuring of credit institutions of systemic importance to the economy,

(vi) **to remove uncertainty about the valuation and location of certain assets of credit institutions of systemic importance to the economy,**

(vii) to restore confidence in the banking sector and to underpin the effect of Government support measures in relation to that sector, and

(viii) **to contribute to the social and economic development of the State.**

# *Functions*

Section 11 (1) In order to achieve its purposes, NAMA shall perform the following functions:

(a) **acquire, in accordance with Part 6 , such eligible bank assets from participating institutions as it considers necessary or desirable for achieving its purposes;**

(b) **hold, manage and realise acquired bank assets** (including the collection of interest, principal and capital due, the taking or taking over of collateral where necessary and the provision of funds where appropriate);

(c) perform such other functions, related to the management or realisation of acquired bank assets, as the Minister directs pursuant to section 14 ;

(d) **take all steps necessary or expedient to protect, enhance or realise the value of acquired bank assets,** including—

(i) **the disposal of loans or portfolios of loans in the market for the best achievable price,**

(ii) the securitisation or refinancing of portfolios of loans, and

(iii) holding, refinancing, realising and disposing of any relevant security.

# *NAMA: Outside the Remit of the Central Bank of Ireland!!!*

Section 216 (1) Except pursuant to the provisions mentioned or referred to in subsection (2), **neither NAMA nor a NAMA group entity shall be taken to be providing a service or carrying on an activity which would require it to be authorised or regulated by the Central Bank.**

(2) The provisions referred to in subsection (1) are:

(a) Irish market abuse law, as defined in section 29(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 ;

(b) Irish prospectus law, as defined in section 38(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 ;

(c) transparency (regulated markets) law, as defined in section 19(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2006 ;

(d) regulations made under section 6A of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 if in those regulations the Minister declares that those regulations apply for the purposes of this section;

(e) any other provision that the Minister by regulation from time to time declares to apply to NAMA or a NAMA group entity.



*But ... Property Developers can't buy  
back their old assets ..*

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- Section 172 (3) A person who is the debtor in relation to an acquired bank asset, who is a person referred to in any of subparagraphs (i), (ii), (iii), (v) or (vi) of section 70 (1)(b) or who is a person on whose behalf the debtor or the person referred to in one of those subparagraphs acts as a nominee or trustee in relation to an acquired bank asset shall not, if any of those persons is in default in relation to any acquired bank asset, acquire from NAMA or a NAMA group entity, any legal or beneficial interest in property comprised in the security forming part of any acquired bank asset in relation to which the default has occurred.

## *What happened the 'bad loans' acquired by NAMA?*

NAMA CEO Brendan McDonagh acknowledged that the 'vast majority' (over 90%) over NAMA's portfolio of bad banking debts had been acquired by Private Equity Funds, such as US based Blackstone and Cerberus Capital Management. Whereas two thirds of NAMA's portfolio was comprised of Irish assets, the majority of the remainder consisted of UK and Northern Ireland based assets (Bodkin 2014).

# *Eagle Rising ...*

The sale of NAMA's Northern Ireland portfolio has given rise to controversy in both Ireland and the UK, in particular, Northern Ireland (NI). Known as Project Eagle, the sale of the NI portfolio to Cerberus for €1.24 billion in 2014 has been the subject of accusations of fraud and corruption.

**According to the Comptroller & Auditor General, NAMA incurred a net loss of £478 million from NI debtor asset sales in 2014, most of which related to Project Eagle.**

**Project Eagle has been the subject of investigation by the National Crime Agency (UK).** (It has also been the subject of investigations by the following bodies: the Finance Committee of the NI Assembly, Police Service of NI, the Garda Bureau of Fraud Investigation and the NI Law Society. Individuals associated with Project Eagle have also been the subject of complaints to the Standards in Public Office Commission (Ire) and the Gardai.)

# *Eagle falling . . .*

‘Peter Robinson has rejected allegations that he was to benefit from a massive property deal in Northern Ireland, and has said he will go before a committee investigating the claims. Jamie Bryson, a high profile loyalist blogger and flag protester, told a Stormont Inquiry today that Mr Robinson was among five people to receive a share of a "success fee" linked to the £1.2bn sale of assets owned by NAMA. In a statement on his website this afternoon, Mr Robinson said: **"I repeat, I neither received, expected to receive, sought, nor was I offered a single penny as a result of the NAMA sale. The allegations made today lack credibility and can have no evidential basis.**

In evidence given to the finance committee at Parliament Buildings in Belfast this afternoon, Mr Bryson made a series of explosive allegations and said his sources included "whistleblowers".

The fee was to be paid into an off-shore account controlled by Ian Coulter, a former managing partner of Belfast-based law firm Tughans, the committee heard. He said: "This was a success fee that was to be paid in to a dormant Danske Bank account in the Donegal Square West branch [in Belfast] and from there it was transferred to an off-shore account." There were to be a number of beneficiaries to this fee and I will refer to them simply as person A, person B, person C, person D and person E. I can now tell this committee without fear of contradiction that person A is Mr Peter Robinson MLA, person B is [developer] Mr Andrew Creighton, person C is [accountant] Mr David Watters, person D is [former NAMA adviser] Mr Frank Cushnahan and person E is [solicitor] Ian Coulter.”

(RTE, 2015. <https://www.rte.ie/news/2015/0923/729761-northern-ireland-politics/>)

# *Eagle lands?*

- A 78-year-old man (Frank Cushnahan) is to be charged with one count of the offence of fraud, contrary to Section 1 of the Fraud Act 2006 involving a failure to disclose information between 1st April 2013 and 7th November 2013.
- The 78-year-old and a 49-year-old man (Ian Coulter) are also to be jointly charged with one count of fraud, contrary to Section 1 of the Fraud Act 2006 involving a false representation made on or around the 3rd April 2014.
- The 49-year-old man is to be further charged with:
  - One count of fraud, contrary to Section 1 of Fraud Act 2006 involving a false representation made on or around 11th September 2014;
  - One count of fraud, contrary to Section 7 of the Fraud Act 2006 involving making an article in connection with a fraud on or about 13th August 2014;
  - Two counts of the offence of concealing criminal property, contrary to Section 327 of the Proceeds of Crime Act 2002 involving concealing, disguising or transferring criminal property between the 15th September 2014 and 1st December 2014. (PPS)

# *No Trial Date Yet ...*

In January 2022, Mr Frank Cushnahan (80 years old), a former member of NAMA's Northern Ireland advisory committee and Mr Ian Coulter (50 years old) a solicitor, and former head of one of Northern Ireland's leading Law Firms, Tughans, were formally arraigned on the aforementioned fraud charges. **Both men have denied all charges.** A trial date has yet to be announced.

(McBride, S 2023). Last September, it was reported that the lawyer for one of the accused had 'pulled out' from the trial, and that it would be delayed for at least a year as a result.

**Note Article 6 (1) ECHR.** In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established by law.

# *Meanwhile back in Dublin ...*

Ms Susan Gilvarry is the Sole Member(!) of Ireland's 'Commission of Investigation (NAMA)'. On 2 July 2024, an 18th interim report was published which has requested an extension until 31 October 2024 for the publication of her final report.

Last year, it was reported that; "...the decision not to seek assistance or advice from senior counsel in the long-running investigation into the Nama scandal was "exceptional" when compared to similar investigations, the lawyer heading the investigation has said ... Susan Gilvarry, the sole member of the commission of investigation, suggested that its work had been slowed down by efforts to "limit legal fees incurred" (Irish Legal News, 9/2/23).

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