Code of Practice on Confidentiality and Professional Conduct

20 December 2012

To: All Employees of the National Treasury Management Agency (excluding those assigned to the National Asset Management Agency)

All Parts of this Code of Practice should be read carefully. If there is anything you do not understand, please contact the Compliance Officer.

This Code of Practice (the “Code”) applies to all employees of the National Treasury Management Agency (the “NTMA”), excluding those who are assigned to the National Asset Management Agency (NAMA). The Code sets out the agreed standards of principles and practice in relation to confidentiality, conflicts of interest, insider dealing, market manipulation, and personal account transactions. The Code underscores the NTMA’s commitment to the highest standards of conduct and has been prepared to assist employees in understanding their duties, rights and obligations. Employees are required to be familiar with its contents.

While it is not possible for a set of rules or guidelines to provide for all situations that may arise, employees are expected to ensure that all their activities are governed by the ethical standards reflected in this Code. If an employee is in any doubt with regard to this Code or its application in any given situation, the precise circumstances of the situation should be notified immediately to the Compliance Officer before any action is taken that could breach this Code.

Employees should note that a breach of this Code is unacceptable conduct which will be investigated and dealt with in accordance with the disciplinary procedures set out in the NTMA Staff Handbook. Serious breaches of this Code could result in disciplinary action up to and including dismissal.

1There is a separate Code of Practice & Professional Conduct for employees of the NTMA who are assigned to NAMA.
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PART I : CONFIDENTIALITY

1.1 Legal and Fiduciary Obligations of Confidentiality

Each employee of the NTMA has legal and ethical obligations of confidentiality in respect of information obtained while carrying out his or her duties whether for the NTMA including the State Claims Agency (SCA) and NewERA, the National Pensions Reserve Fund Commission (NPRF), the National Development Finance Agency (NDFA), or the National Asset Management Agency (NAMA). There are a number of specific legislative provisions prohibiting employees of the NTMA from disclosing information obtained in the course of their work without proper consent. However, employees should note that, quite apart from their statutory duty to maintain confidentiality, they each owe a common law duty of fidelity to the NTMA, which includes an obligation of confidentiality, as well as an ethical and fiduciary obligation not to use confidential information other than for the purpose it was intended and not to use the information for their own personal benefit or gain.

The specific legislative provisions that employees of the NTMA should be aware of in respect of their duties are:

1.1.1. National Treasury Management Agency Act, 1990 (the “NTMA Act”)

All employees of the NTMA are subject to section 14(1) of the the National Treasury Management Agency Act, 1990 which imposes a statutory duty not, without the consent of the NTMA, to disclose any information obtained while carrying out their duties as employees of the NTMA. This prohibition applies indefinitely to all employees of the NTMA, including former employees. Contravention of Section 14 constitutes a criminal offence.

For the purpose of the "consent of the NTMA" exception, the NTMA has adopted broadly the same test as that contained in the Official Secrets Act (see Section 1.1.5) and therefore permitted disclosures of information are those which are made in the course of and in accordance with your duties as an employee of the NTMA. In cases of doubt you should consult with your business unit head or the Compliance Officer.
1.1.2. National Pensions Reserve Fund Act, 2000 (the “NPRF Act”)

Employees of the NTMA involved in the performance of duties on behalf of the NPRF are subject to section 13(1) of the NPRF Act which places employees under a statutory duty not to disclose confidential information obtained while performing duties as an employee of the NTMA in its capacity as Manager of the NPRF unless duly authorised by the NPRF Commission to do so. This prohibition applies indefinitely to NTMA staff performing duties for the NPRF, including former employees. Contravention of Section 13 constitutes a criminal offence.

For the purposes of Section 13, “confidential information” includes:

a. information that is expressed by the Commission to be confidential, either as regards particular information or as regards information of a particular class or description; and

b. proposals of a commercial nature or tenders submitted to the Commission by contractors, consultants or any other person.

1.1.3. National Development Finance Agency Act, 2002 - 2007 (the “NDFA Act”)

Employees of the NTMA involved in the performance of duties on behalf of the NDFA are subject to section 18 (1) of the NDFA Act, which provides that an employee of the NTMA shall not disclose confidential information obtained while performing or as a result of having performed duties under the NDFA Act unless duly authorised by the NDFA to do so. This prohibition applies indefinitely to NTMA staff performing duties for the NDFA, including former employees. Contravention of Section 18(1) constitutes a criminal offence.

Section 18(4) of the NDFA Act provides that confidential information includes:

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2 This is wider than just the employees of the NPRF Unit and includes all NTMA employees performing duties for the NPRF including those employed in support functions.

3 This is wider than just the employees of the NDFA Unit and includes all NTMA employees performing duties for the NDFA including those employed in support functions.
a. information that is expressed by the Board of the NDFA, any appropriate Minister or the Minister for Finance to be confidential, either as regards particular information or as regards information of a particular class or description;

b. commercial information in relation to contractors, consultants, providers of finance or any other person;

c. proposals of a commercial nature or tenders submitted to the NDFA by contractors, consultants or any other person.

1.1.4 National Asset Management Agency Act 2009 (the “NAMA Act”)

Employees of the NTMA involved in the provision of support services to the National Asset Management Agency (NAMA) are subject to Section 202(2) of the NAMA Act, which provides that:

“except as otherwise provided or authorised by this section (S202) or another enactment, a person shall not, unless authorised by NAMA, a NAMA group entity or the NTMA or authorised or obliged by law to do so, disclose information that he or she knows is confidential information, or use, to the direct or indirect advantage of himself or herself or of another person (other than NAMA, a NAMA group entity or the NTMA), confidential information that he or she obtained”

while an officer of NAMA or a staff member of the NTMA or otherwise performing duties on behalf of NAMA or the NTMA. For the purpose of Section 202, “it shall be presumed, unless the contrary is shown, that a person knew that information was confidential information, if that person reasonably ought to have known that it was confidential information.” This prohibition applies indefinitely to NTMA staff providing services to NAMA, including former employees. Contravention of Section 202(2) constitutes a criminal offence.

Section 202(1) of the NAMA act provides that confidential information includes:

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4 Note: there is a separate Code of Practice for NTMA staff who are “officers” of NAMA.
(a) information relating to the commercial or business interest of a participating institution or of a person who is or has been in a relationship with a participating institution,
(b) information that is subject at law or in equity to a duty of confidentiality,
(c) information that, if it were contained in a document, would have the result that a person could not be compelled to disclose the document in evidence,
(d) information the disclosure of which would tend to place NAMA, a NAMA group entity or the NTMA at a commercial disadvantage, or
(e) information about proposal of a commercial nature and tenders submitted to NAMA, a NAMA group entity or the NTMA.

1.1.5 Official Secrets Act, 1963

Employees of the NTMA are holders of a "public office" within the meaning of the Official Secrets Act 1963, the expression "public office" for this purpose being exceptionally wide.

Section 4 of the Official Secrets Act prohibits holders of a “public office” from communicating any "official information" to anyone unless authorised to do so or in the course of and in accordance with their duties as a holder of public office and they are obliged to take reasonable care to avoid any such communication. "Official information" includes any document or information in virtually any form (extending to film, tapes or any other recording medium) which is secret or confidential or is expressed to be either.

Contravention of the Official Secrets Act is a criminal offence. The prohibition against any communication of official information applies in perpetuity (including after employment with the NTMA ceases).

1.1.6 The Data Protection Acts 1988 and 2003 (the “DPA”)

The DPA deal with privacy issues arising from the collection and maintenance of personal automated data i.e. information held on computers and other electronic formats and personal data contained in manual records. The purpose of the DPA is to protect personal information about individuals and to impose standards on the obtaining and processing of personal data. Personal data is “data relating to a living
individual who is or can be identified either from the data or from the data in conjunction with other information”.

The NTMA is required to comply with the DPA, including its provisions regarding the processing and handling of personal data. Relevant provisions include a requirement that personal data be used only for the purpose for which it was collected, and that it must be kept securely and never disclosed to third parties who have no right of access to it. Employees most likely to be handling and processing personal data include those employed in the H.R. Unit, NAMA and the SCA. From time to time, however, employees assigned to other business units may find themselves handling personal data e.g. as part of the recruitment process, performance appraisal process or in respect of anti-money laundering checks.

The NTMA and NAMA are data controllers for the purposes of the DPA. Section 2(1)(d) of the DPA imposes obligations on data controllers to process personal data entrusted to them in a manner that respects the rights of data subjects to have their data processed fairly and data controllers are under a specific obligation to take appropriate measures to protect the security of such data including ensuring that it is not put at risk of unauthorised disclosure, loss, destruction or alteration. In July 2010 the Data Protection Commissioner (DPC), who is responsible for ensuring compliance by data controllers with the provisions of the DPA, introduced a code of practice in relation to personal data security breaches. It contains a number of action points that must be put into immediate effect in the event of a personal data security breach, including in certain circumstances the requirement to make a report to the DPC within two business days of the breach being identified. It is therefore absolutely vital that data security breaches are notified to the NTMA’s Data Protection Officer as soon as they are identified. The NTMA’s Compliance Officer is the Data Protection Officer for the purposes of the Data Protection Acts.

Further information on employees’ obligations under the DPA can be accessed on the NTMA’s Intranet site (the “Intranet”). In particular, you are required to read and comply with the NTMA’s Data Protection Policy and related procedures which are available on the Intranet. Queries regarding the statutory requirements and the NTMA’s Data Protection policy and procedures may be raised with the Compliance Officer.
1.2 Disclosure of Information – Practical Guidance

The nature of the NTMA’s activities may result in employees becoming privy to confidential information (whether or not amounting to "official information" under the Official Secrets Act or “confidential information” as defined under the NPRF Act, the NDFA Act and NAMA Act) either in documents or through verbal communication.

Employees shall treat all information obtained through their employment with the NTMA as confidential unless there is clear and unambiguous evidence, instruction or indication to the contrary. Specifically, information relating to the NTMA including the SCA and NewERA, NPRF, NDFA, NAMA, the State or any organs of the State or State bodies (including without limitation information relating to transactions, dealings, financial, budgetary or commercial matters), whether or not such information relates directly to the NTMA or any of its businesses, to which employees become privy by virtue of their employment with the NTMA and which is not in the public domain is to be treated as confidential.

Employees must only use confidential information for the lawful and proper performance of their duties. Confidential information may only be communicated to other persons within the NTMA who understand that it is to be kept confidential and on a "need to know" basis in order for them to perform their duties and should never be discussed outside the NTMA.

Employees may not, without authorisation, release information in respect of any aspect of the NTMA’s activities to any third party, including news media. Approval of the NTMA must be sought prior to publishing any information, articles, books or letters or giving any lectures or interviews relating to or potentially relating to the activities of the NTMA.

Employees are expected to act professionally and exercise due care at all times in the storage and transmission of mail and documents and the disposal of records, whether electronic or paper.

Confidential information belonging to or in the possession of the NTMA (or any of its businesses) must never be used by an NTMA employee for personal benefit or gain or to advance any personal or private interests, or be communicated for any such purpose to any person within or outside the NTMA.
PART II : CONFLICTS OF INTEREST

In order to maintain public confidence in the NTMA, employees of the NTMA must be seen at all times to be beyond reproach in the area of actual, potential or perceived conflict of interest situations. It is also important that employees of the NTMA act, and be seen to act, objectively and independently. To this end, employees should ensure that they comply with their statutory obligations with regard to actual and potential conflicts and to the principles set out in this Part. In addition, employees should comply with any policies, procedures and guidance issued by the NTMA with regard to conflicts of interest.

2.1 Legal and Fiduciary Obligations

Each employee of the NTMA has a fiduciary obligation not to put himself or herself in a position in which his or her personal interest would conflict with, or appear to conflict with, his or her duty to the NTMA. For example, a possible conflict situation could arise if an employee, or a member of his or her family, had interests or received personal benefits that made it difficult to perform his or her duties objectively and impartially.

In addition, employees who are involved in the performance of duties for the NPRF or the NDFA and employees to whom the Ethics in Public Office Act 1995 (as amended by the Standards in Public Office Act 2001)(the “Ethics Acts”) applies are subject to specific legislative provisions in relation to conflicts of interest.

The specific legislative provisions that apply are :

2.1.1 National Pensions Reserve Fund Act, 2000

Ongoing Obligation to Disclose Interests:
Section 12 of the NPRF Act provides that where an employee of the NTMA has a pecuniary interest or other beneficial interest in, and material to, any matter which falls to be considered by either the NPRF Commission, the NTMA or a committee of the NPRF Commission, he or she must:

a. disclose to the NPRF Commission, NPRF Committee or the NTMA (as relevant) the nature of his or her interest in advance of any consideration of the matter;
b. neither influence nor seek to influence a decision to be made in relation to the matter;

c. take no part in any consideration of the matter; and where relevant,

d. absent himself or herself from the meeting or that part of the meeting during which the matter is discussed;

e. not vote on a decision relating to the matter.

Section 12(5) of the NPRF Act provides that where the NTMA is satisfied that an employee of the NTMA has contravened this provision, the NTMA shall decide the appropriate action to be taken (including dismissal).

Section 12(7) of the NPRF Act provides that the NPRF Commission shall issue and publish guidelines as to what constitutes an “interest” for the purpose of Section 12. The NPRF Commission has adopted the same definition as “registrable interest” under the Ethics Acts.

Employees’ obligations in respect of the disclosure of interests under the NPRF Act are in addition to and not in replacement of their disclosure of interests obligations under the Ethics Acts as set out in section 2.1.3. In order to meet the standard required by the Ethics Acts, all disclosures of interest must be in writing.


*Ongoing Obligation to Disclose Interests:*  
Section 17(1) of the NDFA Act provides that where an employee of the NTMA has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Board of the NDFA or by the NDFA itself, he or she shall:

a. disclose to the Board or, as the case may be, the CEO (of the NDFA) the nature of his or her interest in advance of any consideration of the matter;

b. neither influence nor seek to influence a decision to be made in relation to the matter;

c. take no part in any consideration of the matter and:
(i) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed, and

(ii) not vote on a decision relating to the matter.

Section 17(2) of the NDFA Act defines beneficial interest as follows:

a. If he or she or any connected person or any nominee of his or her or any connected person, is a member or director of a company or any other body which has a beneficial interest in, or material to, a matter referred to in Section 17(1),

b. If he or she or any connected person is in partnership with or is in the employment of a person who has a beneficial interest in, or material to such matter,

c. If he or she or any connected person is a party to any arrangement or agreement (whether or not enforceable) to which such a matter relates, or

d. Any connected person has a beneficial interest in, or material to, such a matter,

where connected person means:

(i) The person’s spouse, civil partner, parent, brother, sister or child, or

(ii) A person with whom the person is co-habiting.

Section 17(8) of the NDFA Act provides that where the Chief Executive of the NTMA is satisfied that an employee of the NTMA has contravened Section 17(1), the Chief Executive of the NTMA shall decide the appropriate action to be taken.

Employees’ obligations in respect of the disclosure of interests under the NDFA Act are in addition to and not in replacement of their disclosure of interests obligations under the Ethics Acts as set out in section 2.1.3. In order to meet the standard required by the Ethics Acts, all disclosures of interest must be in writing.
**Prohibition on Certain Communications:**
In addition, the NDFA Act contains a specific provision in respect of a situation where an employee of the NTMA might find themselves being improperly approached with a view to influencing him or her in the consideration of any matter that falls to be considered or decided by the NDFA. Section 19 of the NDFA Act provides that a person who communicates with an employee of the NTMA for the purpose of influencing improperly his or her consideration of any matter which falls to be considered or decided by the NDFA is guilty of an offence. If the employee is of the opinion that a communication may be in contravention of Section 19, he or she must not entertain the communication and must inform the Chairperson of the NDFA Board in writing of the substance of such communication and the Chairperson of the NDFA Board must acknowledge in writing the receipt of such information.

**Code of Conduct for the Management of Conflicts of Interest:**
Section 3A of the NDFA Act provides for the NDFA to draw up a code of conduct based on best practices so as to ensure good corporate governance in the performance of its functions in relation to public private partnership arrangements. Pursuant to section 3A of the NDFA Act the NDFA has drawn up a Code Of Conduct for the Management of Conflicts of Interest which sets out procedures to address any conflicts of interest, inter alia, that may arise in the NDFA and how they are to be managed. All employees of the NTMA who perform duties on behalf of the NDFA must also comply with the NDFA’s Code of Conduct for the Management of Conflicts of Interest.

2.1.3 **The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 (collectively, the “Ethics Acts”)**

Certain employees of the NTMA are holders of “designated positions of employment” for the purposes of the Ethics Acts. These include employees holding a position equivalent to a principal officer (general service grade/Class B PRSI) in the Civil Service.

**Annual Statement of Interests:**
A person occupying a “designated position of employment” is required *inter alia* to furnish annually a statement of his or her own registrable interests, and those
interests, of which the person has actual knowledge, of his or her spouse, civil
partner, child or child of his or her spouse, which could materially influence the
person in or in relation to the performance of the functions of the position by reason
of the fact that such performance could so affect those interests as to confer on or
withhold from the person or the spouse, civil partner or child a substantial benefit.
Where no registrable interests exist, a nil statement is recommended. The statements
must be furnished to the NTMA Compliance Officer.

**Ongoing Obligation to Disclose Interests:**
Additionally, persons holding a designated position of employment are required to
furnish a statement in writing of the facts in which an official function falls to be
performed and the person has actual knowledge that he or she or a connected
person (as defined in the Ethics Acts) has a material interest in a matter to which the
function relates. A material interest is defined in the Ethics Acts to include a
situation where the consequence or effect of the performance by or a decision made
by the person in exercise of a function of his or his position may be to confer on or
withhold from the person or a connected person a significant benefit without also
conferring it on or withholding it from persons in general or a class of persons which
is of significant size having regard to all the circumstances and of which the person
or the connected person is a member.

The statement of a material interest must be provided in writing to the NTMA
Compliance Officer. This requirement applies whether or not the interest has already
been disclosed in the annual statement of registrable interests.

In such cases where a material interest does arise, the function must not be
performed unless there are compelling reasons to do so. If this is the case, a
statement of those compelling reasons must be provided to the NTMA Compliance
Officer. Employees performing services for the NPRF and/or the NDFA should note
that in cases where a material interest arises, notwithstanding the provisions of the
Ethics Acts, the higher standard required by the NPRF Act and the NDFA Act will
apply i.e. employees will be required to take no part in any consideration of the
matter, not vote on a decision relating to the matter and to recuse themselves from
any meeting/part of meeting at which the matter is discussed.
There is deemed to be included in the terms of employment under which a person holds a designated position of employment a requirement that the person shall comply with the appropriate sections of the Ethics Acts.

2.2 Disclosure of Conflicts of Interest - General Obligations

Whether or not the foregoing legislative provisions apply to you, if you should find yourself in a position of actual or potential conflict of interest, where there may be a perception of bias or where your impartiality in carrying out your duties may be potentially effected, you should immediately disclose the existence of the conflict of interest in writing to your business unit head and to the Compliance Officer.

Persons to whom the Ethics Acts apply must in all situations comply with the provisions contained therein which deal with conflicts of material interests (see 2.1.3. above) and should note that compliance with the provisions of the NPRF Act and the NDFA Act which deal with conflicts of interests does not remove from the person his or her statutory duties under the Ethics Acts.

Appropriate action where an actual or potential conflict of interest arises may include a requirement that employees cease wholly or in part to be involved in the matter giving rise to such conflict. Examples of matters that should be disclosed include:

a) Any conflict, or potential conflict of interest arising by virtue of any interest, shareholding, business or professional relationship or other possible conflict of interest an employee has with any individual, firm, company or other entity from which the NTMA purchases or may purchase supplies, works or services or with which the NTMA has any other dealings; and

b) Any interest of an employee’s immediate family which could involve such a conflict of interest.

2.3 Political Activities and Company Directorships

The terms and conditions of each employee’s contract of employment provide that he or she must not engage in any activity that could give rise to a conflict of interest or that may be detrimental to the activities or the reputation of the NTMA.
Similarly, for these reasons employees may not be a member of, or otherwise involved with, a political party or other political organisations or movements.

The primary duty of loyalty of employees is to the NTMA and any activities that conflict with this duty are prohibited. Any company directorships which you now hold or are invited to hold at a future date must be disclosed to your business unit head who will in turn advise the Human Resources Unit. The holding of all such directorships is subject to the consent of the NTMA. The Chief Executive of the NTMA has the discretion to decide which directorships an employee of the NTMA may be allowed on an individual basis. However, as a broad yardstick, it should be anticipated that requests for consent will be declined, particularly in the case of directorships of companies engaged in the financial services industry. The position with respect to partnerships, joint ventures, business relationships or other similar roles will be the same as for company directorships.

2.4 **Personal Benefits**

Employees of the NTMA must comply with the NTMA’s Gifts and Hospitality Policy, which may be accessed on the Intranet.

2.5 **Conflicts of Interests between Business Units**

The previous sections focussed on personal conflicts i.e between employees’ own personal interests and the duties they owe to the NTMA. This section addresses another type of conflict situation that could arise in the performance of the duties and obligations of employees.

A conflict of interest could arise where the NTMA has potentially conflicting duties to two or more parties. In this instance all parties on whose behalf the NTMA is acting must be treated fairly and professionally and on no account must confidential information relating to one party be disclosed to or used for the benefit of another party or for any personal gain on the part of either any employee or the NTMA.

Due to the range of the NTMA’s activities it is possible that actual or potential conflicts of interest may arise. It is the responsibility of senior management within the NTMA to ensure that actual or potential conflicts of interest that could arise,
including those that may arise within a business unit, are kept under review on an ongoing basis and that appropriate controls are implemented as and when required to ensure that any such conflicts that arise are managed appropriately.

### 2.5.1 Chinese Walls

Where there is potential for conflicts of interest to arise between or within business units, it is important that steps are taken to avoid them where possible and where they cannot be avoided to put arrangements in place to manage those conflicts. One such arrangement is a “Chinese Wall”, which involves the implementation of controls and procedures to restrict the flow of sensitive information between different business areas or within a specific business area on a strict “need to know” basis. The NTMA’s Chinese Walls arrangements include restricted access to certain office areas and centralised control of access to servers and databases, which is managed by the NTMA’s IT Unit.

Where specific access controls are in place to certain office areas, access is restricted to staff assigned to or directly involved in ongoing work with the relevant business unit. Employees are required to respect these access restrictions and those assigned to the restricted business units should to be vigilant in ensuring that access points are locked when the office area is unoccupied and where access is password controlled, under no circumstances should the password be shared with anybody outside of the business unit.

As set out in Section 1.2, employees of the NTMA are obliged to use the information they receive in the course of their work only for the purposes for which it is obtained and are prohibited from communicating any such information to any other business unit except where strictly necessary for the lawful and proper performance of their duties. This restriction on the disclosure of information also applies to areas within the same business unit, where an actual or potential conflict of interest has been identified within the business unit. Particular care should be taken not to pass on information or documents to persons who do not have systems access to the data concerned, without getting consent to do so from your line manager.

From time to time insider lists may be maintained in certain business units, in respect of information of a market sensitive nature which is being handled by the business unit. Only persons whose names are on the insider list may be provided with the restricted information.
Employees must also comply with specific policies or procedures regarding conflicts of interest that may be implemented within their business unit. One such procedure is the NDFA’s Code of Conduct for the Management of Conflicts of Interest, which requires actual or potential conflicts of interest arising between the NDFA and other business units and between different functional areas within the NDFA itself, to be recorded in its Conflict of Interest Register together with the agreed course of action to manage such conflicts appropriately.

2.5.2 Controls on Information

In order to safeguard confidential information and, where relevant, personal data, all employees should comply with the following best practice irrespective of whether the Chinese Wall referred to in 2.5.1 applies directly to them:-

a) All commercially sensitive or confidential documents should be locked in desks or filing cabinets when not being actively used and they should not be left on desks overnight;

b) Access to such documents should be restricted to essential personnel;

c) Access to confidential information maintained on the NTMA’s databases or computer systems should be restricted to essential personnel;

d) The number of copies made of any such documents should be kept to the minimum required for the business purpose and circulated only as essential on "strictly private and confidential" terms. When no longer required, additional copies should be shredded;

e) Confidential documents that are to be destroyed must be shredded;

f) Code names should be used for highly sensitive transactions;

g) Caution should be exercised in conversations (however informal) to avoid the inadvertent disclosure of information. In this connection, care should be taken in public places such as pubs, restaurants, lifts, on public transport and in the shared areas in Treasury Building.
PART III: MARKET ABUSE

The following is a summary of the legal framework which applies to transactions and activities involving financial instruments, including the conduct of market abuse. The laws which govern behaviour in relation to the buying and selling of financial instruments apply to all persons, however, employees of the NTMA who have access to “inside” or “confidential” information regarding financial instruments and the issuers of such instruments are particularly affected and must be aware of the rules that apply.

A breach of the laws or rules against market abuse is separate from the NTMA rules pertaining to personal account transactions and may result in the imposition of criminal and civil penalties separate from those that may be imposed as a result of a disciplinary proceeding conducted by the NTMA.

3.1 Regulatory Framework

The Market Abuse Directives were transposed into Irish law by the Market Abuse (Directive 2003/6/EC) Regulations 2005 (the “2005 Market Abuse Regulations”) and Part 4 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005 (collectively the “Market Abuse Rules”). The Market Abuse Rules apply to financial instruments admitted to trading on a regulated market or those where a request for admission to trading has been made. The main purpose of this legislation is to increase standards for market integrity in the securities market. The scope of the offence of “insider dealing” was expanded and a new offence for “market manipulation” was introduced. Insider dealing with respect to financial instruments not covered by the Market Abuse Rules continues to be governed by Part V of the Companies Act 1990 (e.g. securities listed on unregulated markets such as the Irish Enterprise Exchange (IEX)).

“Insider dealing” is the use of “inside information” to buy or sell financial instruments to which the information relates. It is also covers the disclosure of “inside information” to any other person, unless the disclosure is done in the normal course of the exercise of the person’s employment, profession or duties. The new offence of “market manipulation” includes the carrying out of certain abnormal transactions that give false or misleading signals to the market or artificially fixing prices. Other elements of the offence include transactions or orders to trade using
fictitious devices and spreading information (including rumours) that give false or misleading signals.

This Part summarises the main legal obligations that arise in respect of market abuse (insider dealing and market manipulation).

### 3.2 Summary of Legal Obligations in respect of Insider Dealing

In broad terms, the 2005 Market Abuse Regulations make it a criminal offence for a person who is in possession of “inside information” to:

- a) deal or try to deal in such financial instruments – (Regulation 5(1)),
- b) disclose inside information to any other person – (Regulation 5(2)(a))
- or
- c) recommend or induce another person to deal in such financial instrument (Regulation 5(2)(b)),

where “inside information” is defined as information of a precise nature concerning a financial instrument which has not been made public, and which, if it were made public, would be likely to have a significant effect on the price of the financial instrument or on the price of related derivative financial instruments.

Employees should note that the 2005 Market Abuse Regulations apply to “financial instruments” which are traded on a regulated exchange (or those where a request for admission to trade has been made). The definition of “financial instruments” includes a very broad range of securities and not just company shares as might commonly be thought to be the case. “Financial Instruments”, as defined in Regulation 2(1) of the 2005 Market Abuse Regulations, include:

- (a) transferable securities;
- (b) units in collective investment undertakings;
- (c) money-market instruments;
- (d) financial futures contracts, including equivalent cash-settled instruments;
- (e) forward interest rate agreements;
(f) interest-rate, currency and equity swaps;

(g) derivatives on commodities;

(h) any other instrument admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made; and

(i) options to acquire or dispose of any instrument falling into any of paragraphs (a) to (h) of this definition, including equivalent cash-settled instruments in particular options on currency and on interest rates.

3.3 Summary of Legal Obligations in respect of Market Manipulation

Regulation 6(1) of the 2005 Market Abuse Regulations provides that “a person shall not engage in market manipulation”, where market manipulation means:

(a) transactions or orders to trade -

   (i) which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or

   (ii) which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level,

unless the person who entered into the transactions or issued the orders to trade establishes that the person’s reasons for so doing are legitimate and the transactions or orders to trade, as the case may be, conform to accepted market practices on the regulated market concerned,

(b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance, or

(c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the
dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

While all employees of the NTMA should be aware of their obligations under Regulation 6 (1) of the 2005 Market Abuse Regulations, it is particularly relevant to employees of the NTMA who are working in market-interfacing roles e.g. employees of the Debt Management Unit and the NPRF Unit.

The Market Abuse Regulations do not apply to transactions carried out in pursuit of monetary, exchange rate or public debt management policy by, among others, the NTMA. However, the NTMA prohibits employees from engaging in any conduct that constitutes market manipulation within the meaning of the Regulations while dealing on behalf of the NTMA.

3.4 **Particular Points to Note**

- Government bonds and other listed debt instruments are captured above under the definition of “transferable securities” and therefore fall within the scope of the 2005 Market Abuse Regulations. While the Market Abuse Regulations do not apply to transactions carried out in pursuit of monetary, exchange rate or public debt management by the NTMA, the use of inside information by NTMA employees relating to such transactions for personal gain would fall within the scope of the 2005 Market Abuse Regulations.

- Financial instruments need not have been issued to fall within the scope of the 2005 Market Abuse Regulations. The Regulations intentionally catch securities “for which a request for admission to trading on a regulated market in a Member State has been made”, since it is at the lead-in stage that people are most likely to be in possession of inside or price sensitive information.

- The 2005 Market Abuse Regulations also apply to dealings in financial instruments whose value depends on any of the financial instruments listed in 3.2 above (e.g. derivative products such as contracts for difference and equity options).
• Dealing in the financial instruments listed in section 3.2 or related derivative products does not have to take place on a regulated market. Thus, for instance, the scope of the 2005 Market Abuse Regulations includes over the counter (OTC) trading in financial instruments and derivative products listed on a regulated market.

• Regulation 5(1) of the 2005 Market Abuse Regulations not only applies to acquiring or disposing of financial instruments for one’s own account but also to “trying to acquire or dispose of” financial instruments and not just for one’s own account but also for the account of a third party, directly or indirectly. Thus,

(i) the transaction does not actually have to go through to completion for an offence to be committed;
(ii) the transaction does not have to be for your own account;
(iii) where an intention to generate a profit or gain is involved, there will be a clear case of insider dealing activity, but such an intention is not essential to the offence. The intention might, for example, be to avoid or offset a loss. The mere fact of dealing or attempting to deal in financial instruments, coupled with possession of inside information, is enough to bring you within the prohibition.

• The disclosure of inside information to another person other than in the normal course of the exercise of your employment, profession or duties, and/or recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments is an offence in itself and does not require that the other person deals or attempts to deal in order for an offence to have been committed under Regulation 5(2).

3.5 Persons to whom the 2005 Market Abuse Regulations Apply

The 2005 Market Abuse Regulations apply to all employees of the NTMA, irrespective of which business unit they work for. The specific regulatory references are as follows:

a) Regulation 5(3)(a) of the 2005 Market Abuse Regulations applies to any person who possesses inside information by virtue of:
(i) the person’s membership of the administrative, management or supervisory bodies of the issuer of the financial instrument, or

(ii) having access to the information through the exercise of the person’s employment, profession or duties.

Employees of the NTMA are covered by (i) and (ii) in respect of their potential access to inside information relating to the NTMA’s role as an issuer of bonds and other debt instruments on behalf of the State. In addition, certain employees who are involved in roles that provide them with potential access to inside information in respect of third party issuers are covered e.g. NAMA, New ERA and the NPRF Unit employees who have potential access to inside information in respect of other types of financial instruments, including company shares.

b) Employees of the NTMA are also covered by Part V of the Companies Act, 1990 in relation to securities listed on unregulated markets such as the IEX. Part V of the Companies Act, 1990 applies directly to a person appointed to, employed by or occupying a position within a body established by the Government or any Minister of the Government or by or under any statutory authority. The NTMA is such a body and the rules therefore apply directly to all employees of the NTMA.

c) Regulation 5 (3) (c) of the 2005 Market Abuse Regulations applies to any “other person who possesses the inside information concerned while the person knows, or ought to have known, that it is inside information”. The Regulations are very broadly drafted so as to capture any person who knowingly finds themselves in possession of inside information.

3.6 **Personal Account Transactions**

Employees of the NTMA must comply with the NTMA codes and rules on personal account transactions, which may be accessed on the Intranet.
3.7 **Penalties**

**Criminal Offence:** Infringement of the 2005 Market Abuse Regulations constitutes a criminal offence punishable on conviction by a fine not exceeding €10m or up to 10 years imprisonment (or both) (Section 32 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005).

**Civil Liability:** Civil liability may be imposed on any person found to have breached the 2005 Market Abuse Regulations in order to compensate any innocent party to the transaction for his or her losses and further to account to the company involved in the issue of the securities for any profit he or she made (Section 33(1) of the Investment Funds, Companies and Miscellaneous Provisions Act 2005).

**Administrative Sanctions:** The Central Bank has the power to impose administrative sanctions on any person who breaches the 2005 Market Abuse Regulations. The sanctions that may be imposed range from private and public cautions or reprimands, directions and monetary penalties up to €2,500,000 and the payment of costs of any investigation.

3.8 **Enforcement**

The Central Bank is responsible for enforcing the provisions of the 2005 Market Abuse Regulations. However, the Central Bank has delegated certain supervisory and investigative duties to the Irish Stock Exchange, which also continues to be the investigating authority for the purposes of Part V of the Companies Act 1990 in respect of unregulated markets. The Irish Stock Exchange monitors dealings and reports any suspected market abuse to the Central Bank. The 2005 Market Abuse Regulations also make provision for the exchange of information with similar authorities in respect of each regulated market on which the financial instruments are admitted to trading or are the subject of a request to be admitted to trading.

3.9 **Queries**

As these are relatively complex pieces of legislation, if you are in any doubt at all about your position, please raise any questions you may have with the Compliance Officer.
PART IV: MISCELL ANEOUS

4.1 Good Faith Reporting Policy

The purpose of this policy is to promote principles of good corporate governance by providing a procedure for reporting concerns about possible wrongdoing in matters of financial reporting or other matters that may contravene the law. The policy is intended to encourage and enable NTMA employees to raise serious concerns of suspected wrongdoing.

If an employee is unsure about whether or not an offence or other serious wrongdoing has or is being committed, or if the employee is uncomfortable about reporting an issue, the Good Faith Reporting Policy provides for a number of reporting options including making a report to the appointed external contact under the policy.

The Policy may be accessed on the Intranet.

4.2 Right to Update

The NTMA reserves the right to update, add to and/or amend the provisions of this Code, and introduce additional codes of practice, at any time.

4.3 Understanding the Code

Employees of the NTMA are expected to ensure that they read and understand this Code and all updates, additions or amendments introduced from time to time.

4.4 Captions

Captions used in this Code are for ease of reference only and shall not affect the interpretation of its provisions.