

NAMA Guidance Note:

Assessment of a debtor/receiver proposal for a reduction in rent on an upward-only commercial lease.

Objectives of the Guidance Note

This Guidance Note is designed to encourage debtors (or receivers who act as agent of the debtor) who are landlords of business premises, in respect of which NAMA has acquired the loan on the underlying property, to consider ameliorating rents on Irish properties that are in excess of the current prevailing market levels in certain cases where tenants prove that the level of the rent threatens the continued viability of the business, and where a rent review is not otherwise due or the rent has not previously been reduced at the request of the tenant.

NAMA has to date, following application by either the debtor or receiver, approved a number of rent changes whereby rent has been revised downwards for a defined period at the request of the tenant in cases where there were demonstrable trading difficulties threatening the continued viability of the business.

NAMA's acquired loan portfolio includes loans with respect to Irish investment property valued at €9.25 billion. NAMA does not have direct ownership of this property, and therefore cannot of its own volition effect a rent review process or reduction in rent. This guidance note is designed to facilitate a mutually agreeable process between the landlord owning the property (albeit as security for a NAMA loan) and the tenant.

In making decisions under this Guidance Note, NAMA will have regard to its statutory obligation to protect and enhance the value of the loans acquired by it so that it obtains the best achievable financial return for the Irish taxpayer.

Scope of the Guidance Note

This Guidance relates to NAMA's internal credit assessment of rent reduction applications by a NAMA debtor\receiver:

- where a tenant entered into an arm's length lease of a business premises prior to 28 February 2010¹ which is subject to upward only rent reviews and;
- who is now, due to economic conditions and through no fault of his own, financially distressed and;
- for whom it can be demonstrated that the current rent payable under the existing lease poses a real and immediate threat to the viability of their business;
- where the tenant and the NAMA debtor\receiver are of the view that a temporary rent reduction is likely to be the major factor in determining whether the tenants business survives; and;
- where the tenant agrees to provide all reasonable evidence to demonstrate the business case that a rent reduction will ensure the survival of the business and the maintenance of full or part time jobs.

This Guidance applies only to business leases entered into prior to 28 February 2010. Any rent reduction approved by NAMA will be initially for a 12 month period and be subject to annual review. This Guidance is not designed to accrue benefits to a tenant who may be in a position to bear the burden of rent due under existing contractual

¹ 1 Republic of Ireland only.

arrangements because they are part of a Group with profitable trading outlets in and outside of Ireland.

In certain instances the case for a rent reduction may be enhanced where it can be shown that a wider benefit will accrue to NAMA's loan security by the continued trading by the tenant seeking the relief e.g. where the use and/or service offered is considered essential to the maintenance of an appropriate tenant mix in a shopping centre.

Disclosure Requirements

The debtor/receiver must ensure that there is on-going full disclosure, by the tenant seeking relief, of relevant financial information relating to the viability of the tenant's business. This disclosure obligation continues during the period of the reduced rent. In order to make the credit assessment, the following information should be sought by the debtor\receiver and submitted to NAMA (or a Participating Institution or Service Provider, as appropriate):

- Cash flow for forthcoming year on a monthly basis reflecting the contracted rent payable by the tenant (the clearance of arrears in full over the period should be anticipated).
- Cash flow for period to the next break or lease expiry date on a quarterly basis if less than 3 years remaining and an annual basis thereafter.
- Unaudited management accounts of the tenant for the past 12 months to include a P&L and cash flow.
- Audited financial statements for the previous three years.
- Details of tax obligations to include VAT returns for the past six returns and copies of the last personal income tax returns of the individuals / corporate tax returns.

- Where a lease obligation has been guaranteed by a corporate body, a suite of financial information to include the above financial information should be included.
- Where a lease obligation has been personally guaranteed, a sworn statement of affairs should be submitted by the tenant in the NAMA format (available on the NAMA website).
- Projected cash flows and latest available accounts regarding the tenant's other trading locations.

Assessment Criteria

Items which may impact on NAMA's credit assessment will include:

- Repayment of loans to the director / proprietor/tenant over the past three years.
- Significant change in the levels of stock on hand to reflect a reduced cash position.
- Significant movements in personal bank account balances.
- Whether there is a relationship between the debtor/receiver and the tenant seeking relief
- The extent to which the tenant is currently in breach of covenant including the covenant to pay rent; and
- Any reduction in the current rent which has been agreed in the 12 months preceding the effective date of the rent reduction request to the NAMA debtor/receiver

- The lease for which relief is sought must be for a minimum period of 5 years and have at least 2 years unexpired before either a break clause or lease expiry date.

Other Considerations

- The new rent approved by NAMA should be the greater of, the rent negotiated between the parties, or the now current market rent.
- Independent valuation should be sought to ascertain the current market rent. The debtor's\receiver's valuation or the tenant's valuation should not be accepted without this independent verification.
- The valuer should be from the NAMA valuation panel and have knowledge of the property type and location.
- Where the premises securing credit facilities are part of the security in relation to a consortium or syndicate loan and where NAMA is one of a number of financial institutions (some of which may not be Irish) then the views of the other syndicate bank members must be taken into account and the rules of the syndicate adhered to.