



Northern Ireland
Assembly

Research and Information Service Briefing Note

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NIAR 066-16

Aidan Stennett

Regulation of Cerberus: supplementary

1 Introduction

The following paper, in response to a query by the Committee for Enterprise, Trade and Investment, is supplementary to NIAR 033-16 “Regulation of Cerberus and Capita Asset Services”. This paper specifically examines how a firm, which is not authorised in by the Financial Conduct Authority or the Prudential Regulation Authority in the UK, may operate in Northern Ireland.

There are six main findings of this paper:

- According to the Financial Conduct Authority Handbook the activities of a *‘lender or owner under the [credit] agreement’* may be excluded from the regulated activities of debt adjusting, debt counselling, debt collecting, and debt administration.
- The Financial Conduct Authority has confirmed it is possible for an unauthorised firm who owns a debt to contract out activities on that debt (such as collecting and administration) to an authorised third party.
- Cerberus has appointed Capita Asset Services (Ireland) Limited to provide local servicing in relation to the Project Eagle loan book.

- Capita Asset Services (Ireland) Limited is registered in the UK Financial Services Registry, by way of European Economic Area inward passporting, which allows firms regulated by other Member States to operate in the UK.
- Capita Asset Services (Ireland) Limited is regulated by the Central Bank of Ireland and has an authorisation to provide credit servicing and insurance/reinsurance mediation.
- According to the Financial Services Register, however, Capita Asset Services (Ireland) Limited's 'Passport In' provides for 'Insurance Mediation or Reinsurance Mediation'.

Based on the above, the detail provided below, it is not immediately apparent on what basis Cerberus European Services Ltd and its third party associated company Capita Asset Services (Ireland) Limited is operating under in Northern Ireland. As such, the Committee may wish to seek clarification from the Financial Conduct Authority on this point.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

2 Regulation

In April 2014 the National Asset Management Agency announced the sale, subject to contract, of the Project Eagle portfolio of loans to *'affiliates of Cerberus Capital Management LP'*.¹ The sale was concluded on 20 June 2014.² Cerberus Capital Management LP is a limited partnership incorporated in the United States³ and registered with the US Securities and Exchange Commission.⁴

Subsequently, in December 2014, Cerberus purchased a portfolio of Ulster Bank real estate loans from the Royal Bank of Scotland, 20% of which were secured by assets in Northern Ireland.⁵

A branch of Cerberus European Services Ltd was opened in Belfast. The company itself was established in February 2013 as an *'in-house servicing platform to supervise the process of managing loans, to work closely with third-party servicers and operating partners and to supervise business plans'*.⁶

¹ The National Asset Management Agency, NAMA Announces the sale of Northern Ireland loan portfolio (04 April 2014)

<https://www.nama.ie/about-us/news/news-detailed-view/news/nama-announces-sale-of-northern-ireland-loan-portfolio/>

² The National Asset Management Agency, NAMA announces completion of Portfolio Eagle loan sale (20 June 2014)

<https://www.nama.ie/about-us/news/news-detailed-view/news/nama-announces-completion-of-portfolio-eagle-loan-sale/>

³ Confirmed in respective accounts, see: Cerberus European Servicing Limited, Annual Report and Consolidated Financial Statements for year ended 31 December 2014 (p3) <http://nia1.me/2ys>; and Cerberus European Capital Advisors, Annual Report and Financial Statement for year ended 31 December 2014 (p3) <http://nia1.me/2yt>

⁴ U.S. Securities and Exchange Commission, Investment Adviser Public Disclosure, Registration and Reporting Status, Cerberus Capital Management LP (access 26 January 2016) <http://nia1.me/2yw>

⁵ Cerberus European Capital Advisors LLP, letter to the Committee for Finance and Personnel (16 September 2015)

<http://www.niassembly.gov.uk/globalassets/documents/finance/inquiries/nama/16-september-2015---correspondence-from-cerberus.pdf>

⁶ *Ibid*

As noted in NIAR 33-16, Cerberus European Servicing Ltd is not registered with either the Financial Conduct Authority (FCA) or the Prudential Regulation Authority (PRA). Annex 1 provides a summary of regulated activities associated with debt and exceptions to these regulated activities.

As outlined in the table, the activities of a *'lender or owner under the [credit] agreement'* are *'excluded from the regulated activities of debt adjusting, debt counselling and debt collecting'*, and this is also true of debt administration. Within this, a *'lender'* is defined in the PRA and FCA hand books as:

- The person providing credit under a credit agreement; or
- A person who exercises, or has the right to exercise, the rights and duties of a person who provided credit under such an agreement.⁷

An *'owner'* in this context is defined as:

- An owner which owns an asset pool and issues a guarantee to pay from that asset pool claims attached to a regulated covered bond in the event of a failure of the issuer of that bond.
- The person who bails or, in Scotland, hires goods under a consumer hire agreement; or
- A person who exercises, or has the right to exercise, the rights and duties of a person who bailed or, in Scotland, hired goods under a consumer hire agreement.⁸

Furthermore, the Financial Conduct Authority has confirmed it is possible for an unauthorised firm who owns a debt to contract out activities on that debt (such as collecting and administration) to an authorised third party.⁹ In evidence provided to the Committee for Finance and Personnel Cerberus explicitly state that they have used third party providers in relation to their activities in Northern Ireland. They state:

*In Northern Ireland, Cerberus has appointed Capita to provide local servicing in respect of the Project Eagle loan book. Cerberus European Servicing Ltd interviewed and selected each individual from Capita responsible for servicing the loans, with a view to ensuring the quality of the services provided by Capita in relation to each loan.*¹⁰

With regard to the enforcement, the firm stated:

*Where enforcement has been necessary, Cerberus has appointed experienced local insolvency practitioners to act on its behalf.*¹¹

⁷ The Financial Conduct Authority, FCA Handbook, PERG 2.8 Exclusions to particular regulated activities
<https://www.handbook.fca.org.uk/handbook/PERG/2/8.html>

⁸ *Ibid*

⁹ Correspondence with the FCA 09 February 2016

¹⁰ Cerberus European Capital Advisors LLP, letter to the Committee for Finance and Personnel (16 September 2015)
<http://www.niassembly.gov.uk/globalassets/documents/finance/inquiries/nama/16-september-2015---correspondence-from-cerberus.pdf>

¹¹ *Ibid*

Bell and Company have provided a list of the Cerberus affiliates and third party companies they have been working with in their dealings with Cerberus. Please note, Bell and Company has agreed to provide further information on 'Promontoria' subsidiary companies that they have been working with. This was not, however, available at the time of writing. Bell and Company have had noted four Cerberus affiliate companies: Cerberus European Servicing Ltd; Cerberus European Servicing Advisors (Ireland) Limited; Promontoria (Aran) Limited; and Seaconview Limited. None of these firms are registered on the Financial Services Register.¹²

Significantly, however, Bell and Company note that they have also interacted with Capita Asset Services (Ireland) Limited, with the company operating in the capacity of an instructed advisor. This firm is registered as a Republic of Ireland firm. It is, however, registered on the Financial Services Register. This is on the basis of European Economic Area 'Inward Passporting'. This is defined by the FCA as follows:

A firm authorised in an EEA [European Economic Area] state can offer certain products or services in the UK and other EEA states if it has the relevant passport. In most cases the firm will still be regulated by its home-state regulator'.¹³

Capita Asset Services (Ireland) Limited's ultimate regulator is the Central Bank of Ireland, who has provided it with authorisation to provide credit servicing defined as:

Firms that are authorised firms are authorised under Part V of the Central Bank Act, 1997 as amended by the Consumer Protection (Regulation of Credit Servicing Firms) Act, 2015 to provide credit servicing, or Firms that have notified the Central Bank that they wish to avail of the transitional provisions provided for under Section 34F of the Central Bank Act, 1997.¹⁴

They are also authorised to act as an insurance and reinsurance intermediary.¹⁵

According the Financial Services Register, however, Capita Asset Services (Ireland) Limited's 'Passport In' provides for '*Insurance Mediation or Reinsurance Mediation*'.¹⁶ The same entry does not suggest that the company's credit servicing permission has been 'passport in'. As a result it is not immediately apparent on what basis Cerberus European Services Ltd and its third party associated company Capita Asset Services (Ireland) Limited is operating under in Northern Ireland As such, the Committee may wish to seek clarification from the Financial Conduct Authority on this point.

¹² Information provided by Bell and Company 19 February 2016

¹³ The Financial Conduct Authority, Passporting <https://www.the-fca.org.uk/passporting>

¹⁴ Central Bank of Ireland, Financial Service Provider Profile entry for Capita Asset Services (Ireland) Limited <http://registers.centralbank.ie/FirmDataPage.aspx?firmReferenceNumber=C29016>

¹⁵ *Ibid*

¹⁶ The Financial Service Register entry for Capita Asset Services (Ireland) Limited (accessed 22 February 2016) https://register.fca.org.uk/ShPo_FirmDetailsPage?id=001b000000NMRCgAAP

Annex 1: Debt-related activities requiring regulation¹⁷ and exceptions¹⁸

Regulated activity	Detail	Exceptions
Debt adjusting	<ul style="list-style-type: none"> • negotiating with the lender or owner, on behalf of the borrower or lender, terms for the discharge of debt. • taking over, in return for payments by the borrower or hirer, that person's obligation to discharge a debt; or • any similar activity with the liquidation of a debt; <p>When carried out in relation to debts due under a credit agreement or consumer hire agreements.</p>	<p>(1) Activities carried on by:</p> <ul style="list-style-type: none"> • the lender or owner under the agreement; • the supplier in relation to the credit agreement; • a credit broker who has acquired the business of the person who was the supplier in relation to the credit agreement; or • a person who would be a credit broker but for the exclusion in PERG 2.8.6CG (1) where the agreement was made in consequence of an introduction (by that person or another person) to which that exclusion applies; <p>are excluded from the regulated activities of debt adjusting, debt counselling and debt collecting.</p> <p>(2) Steps taken under, or in relation to, an agreement by any of the persons in (1) are excluded from being debt administration.</p> <p>(3) Activities carried on by a relevant energy supplier in relation to debts due under a green deal plan associated with the supplier are excluded from being debt adjusting, debt counselling, debt collecting or debt administration. A green deal plan is associated with a supplier if the payments under the plan are to be made to the supplier.</p> <p>(4) There is also an exclusion from debt adjusting, debt counselling, debt collecting and debt administration for any activity that relates to a regulated mortgage contract or a home purchase plan to the extent that the activity constitutes a regulated activity (other than only debt adjusting, debt counselling, debt collecting and debt administration), where entering into that contract as lender constitutes entering into a regulated mortgage contract or entering into that home purchase plan as provider constitutes entering into a home purchase plan.</p> <p>(5) Activities carried on by:</p> <p>(a) a barrister or advocate acting in that capacity;</p> <p>(b) a solicitor acting in the course of providing advocacy services or litigation services;</p> <p>(c) a person acting in the course of providing advocacy services or litigation services who, for the purposes of the Legal Services Act 2007, is authorised to exercise a right of audience or conduct litigation;</p> <p>are excluded from debt adjusting, debt counselling, debt collecting and debt administration. For</p>
Debt-counselling	Giving advice to a borrower about the liquidation of a debt due under a credit agreement is a regulated activity. Giving advice to a hirer about the liquidation of a debt due under a consumer hire agreement is a regulated activity.	
Debt-collecting	<ul style="list-style-type: none"> • Taking steps to procure the payment of a debt due under a credit agreement or a consumer hire agreement is a regulated activity. • Taking steps to procure the payment of a debt due under an article 36H agreement which has been entered into with the facilitation of an operator of an electronic system in relation to lending is also a regulated activity. • The activity is not a regulated activity in so far as the activity is operating an electronic system in relation to lending. 	
Debt administration	<ul style="list-style-type: none"> • Taking steps to perform duties or to exercise or to enforce rights under a credit agreement or a consumer hire agreement on behalf of the lender or owner is a regulated activity. • Taking steps to perform duties or to exercise or to enforce rights under an article 36H agreement which has been entered into with the facilitation of an operator of an 	

¹⁷ Financial Conduct Authority Handbook PERG 2.7 Activities : a broad outline <https://www.handbook.fca.org.uk/handbook/PERG/2/7.html>

¹⁸ Financial Conduct Authority Handbook PERG 2.8 Exclusions applicable to particular regulated activities <https://www.handbook.fca.org.uk/handbook/PERG/2/8.html>

	<p>electronic system in relation to lending is also a regulated activity.</p> <ul style="list-style-type: none"> • In so far as the activity is operating an electronic system in relation to lending or debt-collecting it is not also debt administration. 	<p>these purposes:</p> <p>(d) “advocacy services” means any service which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings; and</p> <p>(e) “litigation services” means any service which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide for the purpose of those proceedings or contemplated proceedings.</p> <p>(6) The exclusions relating to electronic commerce activities by an incoming ECA provider (see PERG 2.9.18 G) and for activities carried on by a local authority (see PERG 2.9.23 G) or an insolvency practitioner (see PERG 2.9.25 G) also apply to these regulated activities.</p>
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