

16 September 2015

Daithí McKay MLA
Chairperson
The Committee for Finance and Personnel
The Northern Irish Assembly
Parliament Buildings
Belfast

Dear Mr McKay,

I acknowledge receipt of Mr McAteer's letter of 10 September.

Cerberus recognises the important statutory role of the Committee for Finance and Personnel ('the Committee') and its oversight of the Department of Finance and Personnel. As a responsible corporate citizen, we wish to provide appropriate assistance to the Committee while respecting the constraints under which it operates.

We are familiar with the Committee's terms of reference and understand that other agencies (including the police) have opened investigations that impact on issues of interest to the Committee. We note that the Committee has acknowledged the risks of inadvertently prejudicing the on-going criminal investigation and underlying fairness in any court proceedings.

We have also followed the public proceedings of the Committee. We note the position adopted by the Law Society of Northern Ireland and officials from DFP when they appeared before the Committee. Plainly, they were alive to the proper scope of what they might say to the Committee. Unlike them Cerberus is a private commercial entity rather than a professional regulator or an arm of government operating under the vigilant eye of the Committee. Nevertheless, we believe that we must act with care to ensure that we do not jeopardise the criminal or judicial process, nor the lawful interests of others, such as the borrowers with whom we have contractual relationships.

We further note that a recent witness was Mr Gareth Graham. You will recall that our solicitors in Belfast wrote to you before he appeared before the Committee about court proceedings between Cerberus and companies in which Mr Graham has an interest. The burden of our concern was (and remains) the integrity of the judicial process. While we are anxious to correct the record, and address the inaccurate statements that were made during this testimony, we have accepted our legal advice that the High Court in Belfast is the proper forum for the dispute with Mr Graham.

In the light of all of these factors and the constraints upon the Committee, Cerberus believes we can best assist the Committee by way of written submission. Cerberus has therefore prepared the attached submission, which we are advised lawfully addresses the issues that are germane to the Committee. The submission is provided *in lieu* of sending a representative to the Committee on 23 September 2015. We are confident that the Committee will find our submission beneficial to its deliberations.

Yours sincerely,

Liam Strong
Chief Executive
Cerberus European Capital Advisors

Written Submission to the Committee for Finance and Personnel

1 Introduction and overview

1.1 This Submission is made on behalf of Cerberus European Capital Advisors LLP and its affiliates (collectively, "Cerberus").

1.2 This Submission is intended to assist the Committee for Finance and Personnel (the "**Committee**") by providing information:

1.2.1 regarding Cerberus' work and role within the Northern Ireland economy following the acquisition of the Project Eagle portfolio from NAMA pursuant to the Committee's request in its letters to Cerberus of 28 April and 10 September 2015; and

1.2.2 relating to the sales process of the Project Eagle portfolio relevant to the Committee's consideration of the third bulleted point of its Terms of Reference issued on 23 July 2015. (Cerberus does not have information relevant to the remainder of the Committee's stated objectives.)

1.3 By way of summary, the key points on which Cerberus is able to assist the Committee are as follows:

1.3.1 The Project Eagle portfolio was acquired from NAMA in June 2014 by a Cerberus affiliate formed for the purposes of the Project Eagle transaction.

1.3.2 Cerberus is a well respected and responsible investor with extensive experience of managing real estate portfolios in Europe. It has a twenty-year track record of successfully restructuring distressed real estate loans, supporting improvements to the underlying assets and working cooperatively with its borrowers.

1.3.3 Through its investment in the Project Eagle loan portfolio and other investments unrelated to Project Eagle, Cerberus is pleased to have been able to contribute to the recovery of the commercial real estate market and positive economic developments in Northern Ireland.

1.3.4 Across all of its investments in non-performing loan portfolios, Cerberus aims to treat every borrower consistently and fairly.

1.3.5 Resolution strategies have been completed or are in process in respect of over 96% of the unpaid principal debt on the Project Eagle portfolio. To date, Cerberus has written off, or agreed to write off, approximately £1.87 billion of the debt, and Cerberus anticipates that if the resolution strategies are completed as currently contemplated an additional £1 billion of the unpaid principal balances will be forgiven.

1.3.6 Cerberus is deeply concerned by the allegations and inferences that have been made before this Committee, in the Irish Parliament and the media, related to the Project Eagle sales process.

1.3.7 Cerberus acquired the Project Eagle portfolio following a structured sales process, overseen by Lazard (the respected investment bank), which it believes was conducted with full integrity. Cerberus understands that its bid was the highest by a considerable margin.

1.3.8 Cerberus is committed to high ethical standards in the conduct of its business. Cerberus is satisfied that no improper or illegal payments have been made by Cerberus or any of its affiliates in connection with the Project Eagle portfolio and Cerberus did not direct or authorise anyone to make any such payments on its behalf. To Cerberus' best knowledge, no improper or illegal payments have been made on its behalf in connection with the Project Eagle portfolio.

1.4 These aspects are explained in further detail below.

2 Cerberus' investment strategy

2.1 Cerberus is a private investment firm based in New York City with affiliate and advisory offices across the United States, Asia and Europe. With approximately \$29 billion under management, Cerberus manages funds and accounts for many of the world's most respected investors. Cerberus invests globally in four main areas: private equity, middle market lending, real estate and distressed securities and assets.

2.2 Cerberus has been a leading investor in loan portfolios for over twenty years in the Americas, Asia and Europe. Cerberus' investment strategy often focuses on the acquisition of non- or sub- performing loans, which are secured by real estate.

2.3 Cerberus has extensive knowledge of managing commercial and residential real estate portfolios in Europe. It has an active presence in key markets across Europe and has completed over seventy deals across the continent in the past four years, acquiring loans and assets in the United Kingdom, Denmark, Spain, Germany, Italy, France and other countries.

2.4 In February 2013, Cerberus established Cerberus European Servicing Ltd as an in-house servicing platform to supervise the process of managing loans and asset portfolios, to work closely with third-party servicers and operating partners and to supervise business plans.

2.5 At the time of considering the acquisition of the Project Eagle portfolio, Cerberus had no investment history in real estate in Northern Ireland or the Republic of Ireland. Its decision to invest was not undertaken lightly but following careful research and investigation into the local economies in those jurisdictions. Cerberus made an investment in excess of £1.2bn, in circumstances where it has become one of the largest lenders in a relatively small market. The transaction was not a simple acquisition of an asset but has, as anticipated, resulted in substantial ongoing involvement in the local markets, including detailed resolution activities and negotiations with borrowers.

2.6 With investment comes responsibility and Cerberus takes its responsibilities as an investor and lender very seriously. When investing in a particular jurisdiction, understanding the local market is key, both in pricing the transaction and formulating a bid, and also in developing the longer-term strategy for management of the assets. By acting in accordance with local, cultural practice, as well as within the framework of local laws, Cerberus enhances the possibility of having positive relationships with borrowers and other local stakeholders.

2.7 When considering an investment of this nature, particularly as a new entrant to the local real estate market, Cerberus is naturally keen to understand whether local government and other stakeholders are receptive to the idea of Cerberus entering their market and ensure that they understand Cerberus' investment strategy and how it will conduct its business after the deal has closed.

- 2.8** As part of its due diligence into the Northern Ireland economy and ongoing liaison with the stakeholders in the jurisdiction, Cerberus has had contact (to varying extents) with a number of Northern Irish politicians, including the First Minister, Peter Robinson, the Deputy First Minister, Martin McGuinness, the then Minister of Finance and Personnel, Simon Hamilton, the then Minister of Enterprise, Trade and Investment, Arlene Foster and Nigel Dodds, the Deputy Leader of the Democratic Unionist Party. These interactions involved senior Cerberus representatives including in some instances the Chairman of Cerberus Global Investments, former Vice President of the United States Dan Quayle. The substantive discussions prior to the acquisition focused on Cerberus' approach to the investment and its intentions as regards management of the portfolio after acquisition and the potential benefits it could offer to the Northern Irish economy.
- 2.9** Cerberus prepared a letter to be presented to the Northern Irish Executive prior to the submission of its bid to provide an indication of Cerberus' long-term investment and operational considerations in the event that it was successful in acquiring the Project Eagle portfolio from NAMA. For example, Cerberus stated its intent to use qualified local advisors, consultants, contractors and suppliers to the extent available at a competitive market price. Cerberus indicated that, following a successful acquisition, it intended to enter into discussions with borrowers with a view to negotiating consensual resolutions to the loans, for example debt forgiveness, write offs or restructuring of borrowers' obligations in exchange for borrowers' cooperation in the timely and fair resolution to the loan. Cerberus also indicated that it would be willing to waive guarantees for cooperative borrowers who agreed to execute a mutually agreeable resolution plan. As explained in greater detail below, since acquiring the Project Eagle portfolio, Cerberus has followed through on those stated intentions. For example, Cerberus has generated additional business opportunities for local service providers, engaged with borrowers to resolve connections on a consensual basis, written off a considerable portion of the principal unpaid debt and released a number of personal guarantors from their commitments. Cerberus has already reached agreed solutions for the vast majority of borrowers in the Project Eagle portfolio.

3 Cerberus' work and role within the Northern Irish economy

- 3.1** Cerberus notes with interest that the commercial and real estate markets in Northern Ireland have shown significant signs of recovery over the past year. The media and industry analysts and commentators have noted that the aggregate value of transactions in these sectors in Northern Ireland in 2014 was almost £500 million, which marked almost a three-fold increase over the aggregate value of transactions in 2013. Over £126 million has been invested in Northern Ireland by investors in the period between January and May 2015 (excluding debt financing), with up to £500 million expected by year end.
- 3.2** Through its investment in the Project Eagle and other loan portfolios with assets in Northern Ireland, Cerberus is pleased to have been able to contribute to these positive developments, both for individual borrowers and the economy in Northern Ireland.
- 3.3** At the time of Cerberus' acquisition of the Project Eagle portfolio in June 2014, the unpaid principal balance (UPB) was approximately £4.3 billion. Cerberus has to date written off or agreed to write-off approximately £1.87 billion of borrower debt (as well as the release of associated personal guarantees), representing more than 43% of the UPB. Since Cerberus' acquisition some 430 assets from the portfolio have been sold or refinanced (representing just over half of the assets acquired). The properties sold include Central

Belfast assets to be refurbished to enhance the availability of the city's office and leisure stock as well as key residential sites which are going through the planning process with local developers and which are expected to increase local construction activity. Cerberus has witnessed improvements in investor confidence and liquidity. For example, new investors have been involved in refinancing of Project Eagle loans, and bidding in relation to assets connected with the Project Eagle portfolio. Key Northern Irish commercial and residential developers are also now active again as a result of exposures within the Project Eagle portfolio being refinanced and borrowers within the portfolio are trading among themselves. Cerberus anticipates the amount of borrower debt written off in relation to the Project Eagle portfolio will increase to approximately £2.9 billion if resolution strategies are completed as currently contemplated.

- 3.4** Subsequent to its acquisition of the Project Eagle portfolio, Cerberus successfully bid for a portfolio of Ulster Bank's real estate loans from the Royal Bank of Scotland in December 2014. The portfolio had a UPB of approximately EUR5.6 billion and consisted of approximately 1,300 borrower groups, over 6,200 loans with around 5,400 properties. More than 75% of the loan balance was secured by assets in the Republic of Ireland and about 20% in Northern Ireland. In 2015, Cerberus acquired a portfolio of loans from Ulster Bank. This portfolio had a UPB of approximately £1.2 billion and consisted of 116 borrower groups, over 830 loans with around 680 properties, over 85% of which are in Northern Ireland.
- 3.5** Cerberus' ownership of the Project Eagle and other loan portfolios has created employment in Northern Ireland and the Republic of Ireland both through the staffing of its affiliated office in Belfast and by generating additional business for other local service providers in Belfast and Dublin and is also continuing to stimulate growth of the local economy in a number of sectors (including professional services, development and construction).
- 3.6** Currently, Cerberus European Servicing Ltd or its affiliates are advising on portfolios in Denmark, the Netherlands, Spain, Germany, Italy, Sweden, Great Britain, Northern Ireland and the Republic of Ireland. Across all of its investments in distressed real estate debt, Cerberus aims to treat every borrower fairly and consistently. As part of that objective, Cerberus implements substantially the same process for its engagement with borrowers across all of its portfolios and across applicable jurisdictions, subject to local customs, laws and regulations.
- 3.7** 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. Each borrower is encouraged to submit a business plan and has a number of opportunities to meet with and engage with Cerberus and Capita with the aim of achieving a consensual plan for each loan. The process for determining a resolution strategy for a loan typically takes a minimum of several months. Meetings are regularly conducted with borrowers to discuss resolution options and progress since Cerberus acquired the Project Eagle portfolio.
- 3.8** Typically, and where possible, Cerberus' preferred outcome is to keep the owners and tenants in place, establish a true value for the property, stabilise the asset and deliver true value for shareholders, owners and tenants. Across Cerberus' non-performing loan portfolios, the vast majority of outcomes are achieved without recourse to litigation.

- 3.9 Prior to the acquisition by Cerberus of the Project Eagle portfolio, enforcement proceedings had been commenced by NAMA for 23% of the UPB, relating to 19 of the 57 borrower connections in the portfolio. Accordingly, Cerberus' options were limited in respect of these elements of the portfolio and it was required to step into NAMA's shoes with respect to these borrowers.
- 3.10 Excluding those connections enforced by NAMA, Cerberus has reached an agreed resolution with its borrower connections without the need for litigation in the vast majority of situations, representing over 85% of the UPB on the remaining portfolio. The agreed resolutions include discounted payoffs, settlement and sell down or combinations thereof or renewed performance under the original or a restructured loan.
- 3.11 In circumstances where it has not been possible to agree a plan, Cerberus' agents have needed to commence enforcement proceedings in relation to 10% of the total UPB. Cerberus has also enforced or is in the process of enforcing a small number of personal guarantees where it has not been possible to reach agreement. Where enforcement has been necessary, Cerberus has appointed experienced local insolvency practitioners to act on its behalf. Three connections are currently subject to litigation. As the Committee will no doubt understand, it would be inappropriate for Cerberus to comment on the detail of those cases, or indeed of any other individual situation.
- 3.12 At the present time, a resolution has been completed or is underway in respect of over 96% of the UPB on the Project Eagle portfolio, representing 52 of the 57 borrower connections in the portfolio.

4 Acquisition of the Project Eagle portfolio

- 4.1 The Project Eagle portfolio was acquired from NAMA in June 2014 by a Cerberus affiliate formed for the purposes of acquiring the Project Eagle portfolio.
- 4.2 Cerberus notes from the testimony of Frank Daly before the Committee of Public Accounts in Dublin on 9 July 2015 (the "**PAC Hearing**") that, at a meeting on 12 December 2013, the NAMA board decided that the Project Eagle portfolio should be openly marketed as part of a competitive process. Mr Daly also explained that Lazard (the investment bank engaged by NAMA to oversee the sales process) engaged with nine potential purchasers during the first quarter of 2014. Cerberus does not have information that would assist the Committee as to the involvement of those other potential purchasers.
- 4.3 In early February 2014, Cerberus was invited by Lazard to participate in a competitive auction process for the acquisition of the Project Eagle portfolio. Cerberus submitted its bid on 1 April 2014, which was accepted on 3 April 2014. Cerberus' bid was higher than the reserve price published by NAMA. Cerberus understands from the statements of Mr Brendan McDonagh before the PAC Hearing that it was the highest bidder by a considerable margin and the only bidder to have met or exceeded the reserve price. Cerberus believes that the structured sales process overseen by Lazard was conducted with full integrity.
- 4.4 Cerberus is deeply concerned by the allegations and inferences that have been made recently before this Committee, in the Irish Parliament and the media, related to the Project Eagle sales process. Cerberus understands that those allegations and inferences (made subsequent to Cerberus' acquisition of the portfolio) centre on the conduct of a former managing partner of the law firm Tughans, in particular with regard to an alleged misappropriation of monies by that partner. Cerberus has no first hand information

regarding the partner's actions following receipt of the monies or Tughans' treatment of those funds (aside from having been provided with a copy of Tughans' account of the matter given to the Northern Irish Law Society). Cerberus notes that speculation and inference with regard to third parties will be cleared up in connection with the NCA's pending investigations, and other related investigations.

- 4.5** Cerberus engaged Brown Rudnick LLP (a well-known and respected, US-based, international law firm) as one of its advisers to provide legal and strategic advice in connection with Cerberus' proposed acquisition of the Project Eagle portfolio. With Cerberus' knowledge, Brown Rudnick retained Tughans (a well respected Northern Irish law firm) to supplement their work. The terms of Brown Rudnick's engagement by Cerberus included payment on a success fee only basis. Brown Rudnick agreed to share the success fee with Tughans. The involvement of Brown Rudnick, their involvement of Tughans (and their respective payments on a success fee basis) were known to NAMA in advance of Cerberus being selected as the preferred bidder and its acquisition of the Project Eagle portfolio.
- 4.6** Cerberus is committed to high ethical standards in the conduct of its business. This commitment is and always has been a paramount component of the group's culture. Cerberus is satisfied that no improper or illegal payments have been made by Cerberus or any of its affiliates in connection with the Project Eagle portfolio and Cerberus did not direct or authorise anyone to make such payments on its behalf. To Cerberus' best knowledge, no improper or illegal payments have been made on its behalf in connection with the Project Eagle portfolio.
- 4.7** Brown Rudnick and Tughans provided express confirmation to Cerberus that no fee, commission or other remuneration or payment was payable to any current or former Board member of NAMA, any current or former member of the Executive of NAMA, or any current or former member of an advisory committee of NAMA, in connection with any aspect of Cerberus' participation in the tender process. To the best of Cerberus' knowledge that was and remains true.
- 4.8** In accordance with its commitment to high ethical standards, Cerberus welcomes any investigation into any concerns involving Cerberus' acquisition of the Project Eagle portfolio.