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Ireland

SECURITISATION

Contributing firm

Mason Hayes & Curran

Daragh O'Shea

Partner, Head of Debt Capital Markets & Structured Finance | doshea@mhc.ie

Marc Wilkinson

Senior Associate, Debt Capital Markets & Structured Finance | mwilkinson@mhc.ie

Niamh Caffrey

Partner, Tax and Structuring | ncaffrey@mhc.ie

Frank Flanagan

Partner, Insolvency | fflanagan@mhc.ie

This country-specific Q&A provides an overview of securitisation laws and regulations applicable in Ireland.

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IRELAND
SECURITISATION

1. How active is the securitisation market in your jurisdiction? What types of securitisations are typical?

Ireland is a leading and popular jurisdiction for the incorporation of SPEs for the purposes of structured finance and securitisation transactions. Irish SPEs are used to issue and list debt securities and to acquire portfolios of assets.

As of the end of Q3-2020, there were 2,709 Irish resident special purpose entities ("**SPEs**"), holding €859.2 billion ("**bn**") in assets (a rise of €8.8 bn, year on year). This includes 1,206 Financial Vehicle Corporations ("**FVCs**"), holding €438 bn worth of assets (a rise of €20.1bn / +5.3%, year on year). Ireland accounts for 27% of FVCs in the euro area and 21.6% of euro area FVC assets. The AFME figure for Ireland, in respect of outstandings by country (excluding CLO / CDO volumes) for Q3-2020, is €26.5 bn. This is indicative of the level, and international characteristic, of securitisation activity being carried out in, or through, Ireland.

The Central Bank of Ireland (the "**Central Bank**") uses the term 'SPV' in a specific way in the context of its registration and data reporting requirements in relation to 'special purpose entities'. See our response to question 3 for more detail on these requirements. In that context an "**SPV**" is an Irish resident Section 110 company (i.e. for the purposes of section 110 of the Irish Taxes Consolidation Act, 1997 ("**Section 110**")). See our response to question 2 and question 21 for more detail on Section 110. An FVC is an entity set up for the purpose of carrying out securitisation activity, as defined in Regulation (EU) No 1075/2013 (ECB/2013/40) (the "**FVC Regulation**"). In the answers which follow, we will use the more general terms 'special purpose entity' / 'SPE', unless either the term SPV or FVC is more appropriate in the context.

Irish FVCs are engaged in a broad range of securitisation activities. According to the most recently available statistical release (Q3 2020) from the Central Bank, FVC activity was highest, by total assets, in the collateralised loan obligations ("**CLOs**") category, followed by the 'other' category, residential mortgage backed securities ("**RMBS**"), corporate assets backed securities ("**ABS**") and asset backed commercial paper ("**ABCP**").

Entities issuing asset backed securities were responsible for much of the growth in FVC assets in 2020. Italian bank-sponsored entities issued €13.2bn of new securities backed by corporate loans, while Greek-bank sponsored entities issued €9.6bn of securities backed by consumer loans. This is part of an underlying trend of SPEs holding loans originated by euro area banks, which has seen such holdings rise to €83.9bn, from €23bn in Q3 2018.

The sustained high levels of securitisation activity in Ireland (even during the COVID-19 pandemic), means that the securitisation sector and industry are supported by a highly developed network of experienced professionals and service providers, including legal, tax, accounting, nominee directors and corporate services companies.

In addition, Ireland's common law/Anglo-Saxon legal tradition, coupled with its EU and euro membership – including full incorporation of the rules and regulations comprising the EU's capital markets and financial services framework – makes it very well suited to international financial transactions. This, together with a robust and commercially sophisticated court system and a fully independent financial services regulator (i.e. the Central Bank), provides predictability and dependability to market participants and underpins Ireland's status as a leading and popular jurisdiction for securitisation activity.

At the macro level, Irish government policy is highly supportive of securitisation as a method of financing. This is reflected in the legal, regulatory and tax regime and the government's responsiveness to requests for legislative innovation from this business sector. In this regard, Irish policy is consistent with the EU's favourable view of securitisation (see also our response to questions 22).

2. What assets can be securitised (and are there assets which are prohibited from being securitised)?

The legislative framework regulating securitisation transactions in Ireland is the General Framework (see our response to question 3 for more detail). Other than the General Framework, Ireland has enacted no specific or standalone, domestic legislative framework aimed at regulating the conduct of securitisation transactions. As such, beyond any restrictions provided by the General Framework, there are no additional prohibitions imposed under Irish law on the types of asset which can be securitised.

This overall flexibility and lack of a prescriptive regime of restrictions on the types of asset which can be securitised under Irish law is reflected in the Section 110 regime. Section 110 is a specially designed tax regime for securitisation transactions carried out in, or through, Ireland. Section 110 is a tax designation and treatment, which can be elected by SPEs. It is designed to make SPEs engaging in these transactions, which elect Section 110 status, as tax neutral and efficient as possible. A Section 110 election is not mandatory (although it is generally advisable due to the tax benefits) and is in no way equivalent to a requirement to obtain an authorisation or license from the Central Bank (or any other regulatory body).

In order to elect Section 110 status and avail of this special tax treatment, there are a number of requirements that a company must comply with. Amongst these is the requirement that it holds and/or manages 'qualifying assets'. This is integral to compliance with Section 110. Qualifying assets include:

- Shares, bonds and other securities.
- Futures, options, swaps, derivatives and similar instruments.
- Invoices and all types of receivables.
- Obligations evidencing debt (including loans and deposits).
- Leases and loan and lease portfolios.
- Hire purchase contracts.
- Acceptance credits and all other documents of title relating to the movement of goods.
- Bills of exchange, commercial paper, promissory notes and all other kinds of negotiable or transferable instruments.
- Carbon offsets.
- Contracts for insurance and contracts for reinsurance.
- Commodities dealt in on a recognised commodity exchange.
- Plant and machinery.

Section 110 treatment is overwhelmingly adopted by Irish SPEs involved in domestic or international securitisation transactions. The flexibility of Section 110 in relation to asset classes is a key attraction for market participants choosing to use Ireland as a platform for securitisation transactions. In this regard, the broad scope of qualifying assets is an important attribute of the legislation.

The notable limitation under Section 110, in terms of asset class, is that it does not allow for the direct ownership/holding of real estate assets by a Section 110 SPE. This can often be structured around – more readily if the underlying real estate assets are not Irish real estate assets. In relation to Irish real estate, the general Section 110 restriction on the direct ownership/holding applies. In addition, interests in assets (e.g. mortgage loan receivables or shares) which derive their value, directly or indirectly, from Irish real estate need careful, case by case, consideration and structuring under Section 110. See our response to question 21 for more detail on Section 110.

3. What legislation governs securitisation in your jurisdiction? What transactions fall within the scope of this legislation?

The general legislative framework governing securitisations in Ireland consists of the EU regulations, related regulatory and implementing technical standards and European Securities and Markets Authority ("**ESMA**") guidance which, collectively, form of the EU's securitisation regime. This regime is directly effective in Ireland. It is supplemented by an Irish domestic implementing measure in the form of a statutory instrument, discussed below. We refer to these as the "***General Framework***".

In addition, as referred to in our response to question 2, most Irish SPEs involved in a securitisation will make the Section 110 election, in order to be eligible for preferential tax treatment. Accordingly, the Section 110 regime will be relevant. See our response to question 2 and question 21 for more detail on Section 110.

There are also mandatory data reporting requirements prescribed under both EU regulations and Irish statute, which will vary depending on how the securitisation is categorised under certain statutory definitions. We refer to these as the "***Reporting Framework***".

Finally, there is other EU and Irish legislation which is not specific to the regulation/conduct of securitisation transactions, but which may apply depending on the specific characteristics of the securitisation. These include situations where the securitisation SPE issues debt securities which are the subject of an offer to the public and/or are admitted to trading on a stock exchange in Ireland. The other major regulatory driver is the nature of the assets comprised in the securitised portfolio, which themselves may be subject to a regulatory regime e.g. Irish residential mortgage loans. We refer to these as the "***Specific Framework***".

The General Framework

Other than the General Framework, Ireland has enacted no other specific or standalone, domestic legislative framework aimed at regulating the conduct of securitisation transactions.

The EU's securitisation regime consists primarily of (i) Regulation (EU) 2017/2402 (the "**Securitisation Regulation**"); (ii) Regulation (EU) 575/2013 (the "**Capital Requirements Regulation**"), as amended by Regulation (EU) 2017/2401 (the "**CRR Amendment Regulation**") and (iii) related regulatory and implementing technical standards and official guidance. This regime is directly effective in Ireland and began to apply as of 1 January 2019.

The EU's securitisation regime is covered in detail elsewhere in this guide, so we do not go into it in detail here. Very briefly, it is generally understood that the regime applies to entities which are (i) supervised in the EU pursuant to specified EU financial services legislation or (ii) established in the EU.

The Securitisation Regulation applies to all securitisation products and includes a limitation on the sale of securitisation positions to retail clients, rules on due diligence and risk retention, transparency requirements, credit granting criteria, a general ban on re-securitisation (subject to some limited exceptions), and a set of criteria for simple, transparent and standardised securitisation ("**STS**"). The Capital Requirements Regulation, as amended by the CRR Amendment Regulation, prescribes, among other things, how credit institutions and investment firms should calculate their credit risk. The CRR Amendment Regulation deleted some parts of the Capital Requirements Regulation and introduces a preferential regulatory capital treatment regime for positions held in STS.

The Irish domestic implementing measure is a statutory instrument, SI No 656 of 2018 (European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018) (the "**Irish Securitisation SI**"). The Irish Securitisation SI supplements the Securitisation Regulation by (amongst other things):

1. designating the Central Bank as the 'competent authority' responsible, in most instances, for ensuring compliance with the Securitisation Regulation in Ireland. In relation to institutions for occupational retirement provision, the Pensions Authority is the competent authority for ensuring compliance with the due diligence requirements of the Securitisation Regulation;
2. setting out a requirement for originators, sponsors and securitisation special purpose entities located in Ireland to notify the Central Bank of securitisations (public or private) (see our response to question 9 for more detail); and
3. setting out detailed criminal and administrative sanctions in case of contravention of the relevant EU and Irish regulations (see our response to question 13 for more detail).

The Irish Securitisation SI is designed to supplement, rather than augment or expand the scope of, the Securitisation Regulation.

The Reporting Framework

SPEs which are classified as either (i) an Irish resident FVC or (ii) an Irish resident SPV, are required to register with, and report quarterly data to, the Central Bank. These requirements are grounded in:

1. The FVC Regulation.
2. The Central Bank Acts 1942-2018.

The registration and reporting requirements under this legislation are in no way equivalent to a requirement to obtain an authorisation or license from the Central Bank (or any other regulatory body). The primary purpose is data gathering at an Irish and European level.

The Central Bank sets out the practice and procedure for compliance with the requirements, including the registration form, the form of quarterly reports and the time limit within which the registration must be made.

The specific registration and reporting requirements will vary depending on whether the SPE is categorised as an FVC or an SPV. The definitions of 'FVC' and 'securitisation', which are applicable to determining whether an SPE is an FVC are set out in the FVC Regulation (not the Securitisation Regulation). A Section 110 SPE which is not categorised as an FVC is categorised as an SPV.

As referred to above, 'FVC' and 'securitisation' are both specifically defined in the FVC Regulation. In addition, 'securitisation' is separately defined in the Securitisation Regulation. The combined effect of the definitions of 'FVC' and 'securitisation' under the FVC Regulation means that the securitisation activity of FVCs is more narrowly defined than securitisation under the definition of 'securitisation' in the Securitisation Regulation. Thus each securitisation transaction involving an Irish SPE needs to be analysed on a case by case basis to determine which registration and reporting requirements (SPV or FVC) apply. The Central Bank has published FAQ and guidance document on its website for determining whether an SPE is an FVC or an SPV based on its activity, funding sources and ownership structure.

The Specific Framework

In addition to the General and Reporting Frameworks outlined above, there may also be other specific regulatory regimes (EU and Irish specific) that will apply, depending on the specific characteristics of the securitisation and the parties involved. Each transaction is different and securitisation, as a financing structure, is inherently complex. Securitisation is used across a wide variety of asset classes, originators, sponsors, investors and jurisdictions. This means that each transaction needs to be analysed individually. Typically, due to the international/cross-border nature of the market, and the sophistication of the investor base, the laws and regulations of several jurisdictions will be relevant to and will need to be considered in any one transaction.

Many Irish and non-Irish incorporated securitisation SPEs opt to have their debt securities listed/admitted to trading on one of the markets operated by Euronext Dublin (formerly called the Irish Stock Exchange). In particular, the regulated market of Euronext Dublin or its Global Exchange Market ("**GEM**"). The regulated market of Euronext Dublin is an exchange that is authorised and functions as a 'regulated market' in accordance with the EU's MiFID II regime. GEM is an exchange regulated market and multilateral trading facility operated by Euronext Dublin in accordance with the EU's MiFID II regime. The Euronext group has over 42,000 bonds listed, representing 90 countries around the world and is ranked the #1 stock exchange for bond listings.

If the SPE issues debt securities which are (i) offered to the public in Ireland or (ii) admitted to trading on the regulated market of Euronext Dublin, a prospectus which is compliant with the Regulation (EU) 2017/1129 (the "**Prospectus Regulation**") regime will need to be drawn up and approved by Central Bank (as the competent authority in Ireland under that regime).

The regime consists of the Prospectus Regulation, together with its regulatory and implementing technical standards; any ESMA guidance; Chapter 1 (Public offers of securities) of Part 23 of the Irish Companies Act 2014; SI No 380 of 2019 (European Union (Prospectus) Regulations 2019) (as amended); Part 5 (Prospectus Requirements) of SI No 366 of 2019 (Central Bank (Investment Market Conduct) Rules 2019) (as amended) (the "**Investment Market Conduct Rules**") and Central Bank guidance. The Euronext rule book will also need to be complied with.

If the SPE issues debt securities which (i) can avail of one of the public offer (or other) exemptions under the Prospectus Regulation and (ii) will not be admitted to trading on the regulated market of Euronext Dublin (e.g. because the securities are unlisted or because they are listed/admitted to trading on Euronext Dublin's GEM, a prospectus (for the purposes of the Prospectus Regulation) will not be required. However, listing particulars which are compliant with the Euronext rule book in relation to GEM will be required. And the Euronext rule book will otherwise need to be complied with, as applicable.

In addition to the General Framework, the Reporting Framework and legislation relating to listing/publicly offering debt securities, a non-exhaustive list of other EU and Irish legislation that may be relevant, and should be typically be considered is set out below:

- Where the SPE has issued debt securities which are admitted to trading on Euronext Dublin's regulated market, it will also be necessary to comply with the Directive 2004/109/EC (as amended) (the "**Transparency Directive**") regime. Where the securities are admitted to trading on GEM, this regime does not apply.

The regime consists of the Transparency Directive, together with its regulatory and implementing technical standards; any ESMA guidance; Chapter 4 (Transparency requirements regarding issuers of securities admitted to trading on certain markets) of Part 23 of the Irish Companies Act 2014; SI No 277 of 2007 (Transparency (Directive 2004/109/EC) Regulations, 2007) (as amended); Part 2 (Transparency Requirements) of the Investment Market Conduct Rules and Central Bank guidance.

- Where the SPE has issued debt securities which are admitted to trading on Euronext Dublin's regulated market or GEM, the SPE will also need to comply with the Regulation (EU) No 596/2014 (the "**Market Abuse Regulation**") regime.

The regime consists of the Market Abuse Regulation and Directive 2014/57/EU, together with their regulatory and implementing technical standards; any ESMA guidance; Chapter 2 (Market Abuse) of Part 23 of the Irish Companies Act 2014; SI No 349 of 2016 (European Union (Market Abuse) Regulations, 2016); Part 3 (Market Abuse Requirements) of the Investment Market Conduct Rules and Central Bank guidance.

- Directive 2014/65/EU ("**MIFID II**"), the Markets in Financial Instrument Directive, and Regulation (EU) No 600/2014, the Markets in Financial Instrument Regulation ("**MiFIR**"), implemented in Ireland by SI No 375/2017 (European Union (Markets in Financial Instruments) Regulations 2017) (as amended).
- Regulation (EU) No 648/2012, the European Market Infrastructure Regulation ("**EMIR**") , together with related regulatory and implementing technical standards; any ESMA guidance; as implemented in Ireland by SI No 443/2014 (European Union (European Markets Infrastructure) Regulations 2014) (as amended), for SPEs that enter into derivative contracts.
- Central Bank Acts 1942 to 2019.
- Investment Intermediaries Act 1995 (as amended).

For each securitisation, careful consideration must also be given to the nature of the assets which are to be securitised and any regulatory regime that may be applicable to that asset class. If the securitisation involves the purchase of Irish assets, then a number of additional rules and regulations may be applicable. For example, if the securitisation involves the purchase of a regulated Irish asset class, such as Irish residential mortgage loans, a detailed regulatory analysis will need to be carried out to determine which of the regulations will continue to apply and any other regulations which will apply, once the portfolio of assets has been transferred from the originator to the SPE as part of the securitisation.

Where a securitisation transaction using Irish SPEs does not involve the purchase of a regulated Irish asset class (which is the case for a significant percentage of securitisations using Irish SPEs), using an Irish SPE to carry out a securitisation should not trigger a requirement to obtain an authorisation or license from the Central Bank (or any other regulatory body). That said, a full regulatory analysis may need to be carried out in any other relevant jurisdiction(s).

4. Give a brief overview of the typical legal structures used in your jurisdiction for securitisations and key parties involved.

Securitisations are complex, high-value transactions. They involve multiple parties, numerous interlinked documents and, usually, several jurisdictions. As outlined in our response to question 1, Ireland is a leading and popular jurisdiction for the incorporation of SPEs for the purposes of structured finance and securitisation transactions. Irish SPEs are used to issue and list debt securities and to acquire portfolios of assets.

A typical securitisation in Ireland is structured as an off-balance sheet securitisation. This involves the isolation of a portfolio/pool of exposures (e.g. a portfolio of loans or other receivables) often (though not exclusively) through a 'true sale' acquisition by the SPE from the originator. The acquired portfolio/pool of exposures provides the SPE with an isolated cash flow which is capable of being modelled. This cash flow is used to repay interest and principal on debt securities issued by the SPE to fund the acquisition of the portfolio/pool of exposures.

Irish SPEs which issue debt securities in the context of securitisations are typically structured so as to be an insolvency/bankruptcy remote orphan company. This means legally and structurally insulating an SPE from insolvency procedures to as high a degree as possible.

The intention is that no creditor, other contractual counterparty or the SPE itself is able to initiate insolvency proceedings in respect of the SPE. An important step to achieving this is including 'non-petition' and 'limited-recourse' provisions in most transaction documents. Non-petition means that counterparties are restricted from initiating insolvency/winding-up proceedings against the SPE. Limited-recourse means that any enforcement action can only be carried out against the securitised portfolio/pool of exposures. More information on the legal formalities of implementing an insolvency/bankruptcy remote structure is set out in our response to question 15.

Establishing the SPE as an orphan company helps to establish off-balance sheet treatment and to ensure that the SPE is not affiliated with the originator (or its group). The orphan structure involves ensuring that the entire issued share capital of the SPE is held by a nominee. The nominee executes a declaration of trust for the benefit of a charitable purpose in relation to the share capital held by it. The nominee shareholder(s) is usually a specialist corporate services provider.

Many Irish and non-Irish incorporated securitisation SPEs opt to have their debt securities listed/admitted to trading on one of the markets operated by Euronext Dublin, in particular, the regulated market of Euronext Dublin or GEM. The regulated market is an exchange that is authorised and functions as a 'regulated market' in accordance with the EU's MiFID II regime. GEM is an exchange regulated market and multilateral trading facility operated by Euronext Dublin in accordance with the EU's MiFID II regime. The Euronext group has over 42,000 bonds listed, representing 90 countries around the world and is ranked the #1 stock exchange for bond listings.

While Euronext Dublin is very popular for listing debt securities issued by Irish SPEs, it is not a requirement that such debt securities are listed there. An Irish SPE could opt to list its debt securities at another exchange as long as it complies with Irish company law, the law applicable to the listing of securities in the jurisdiction in which the exchange is located, any applicable public offer and marketing laws and the rules of the exchange in question.

SPEs involved in Irish securitisations are generally incorporated under the Companies Act 2014 (see our response to question 14 for the main types of corporate entities used and certain restrictions that apply) and structured to comply with Section 110 (see our responses to question 2 and question 21 for more detail on Section 110).

As mentioned above, a typical legal structure for implementing a securitisation is by means of a 'true sale'. The most common method of achieving a 'true sale' is by assignment (legal or equitable) of the portfolio/pool of exposures from the originator to the SPE (more information on achieving a 'true sale' and the legal formalities of implementing an assignment is set out in our response to question 17).

Other less commonly used methods of sale include (i) a declaration of trust over the portfolio/pool of exposures or their proceeds, (ii) sub-participation or (iii) novation. These options tend to be considered if there is an issue with an assignment of the underlying portfolio/pool of exposures e.g. if the receivables contain a restriction on assignment.

Securitisations may also be achieved synthetically. A synthetic securitisation uses a derivative contract to allow the SPE to obtain exposure to the portfolio/pool of exposures without the need for the transfer of the assets/receivables from the balance sheet of the originator.

There are a large number of parties involved in a securitisation. These include:

- Originator. The originator is the entity responsible for creating, or assembling, the pool of receivables which will be sold to, acquired by, the SPE.
- Issuer. This is typically an insolvency/bankruptcy remote orphan Section 110 SPE. It acquires the pool of receivables from the originator and issues the debt securities to fund the payment to the originator for the acquisition.
- Investors/noteholders. The investors/noteholders purchase the debt securities from the issuer. By doing this, the investors/noteholders gain exposure to the underlying of pool of receivables.
- Arranger. Its role is to organise and structure the transaction. It will also often have a significant role in finding the investors/noteholders to sell the debt securities will be sold.
- Trustee (bond and security). Its role is: (i) to hold the benefit of the covenants under the debt securities on behalf of the investors/noteholders; and (ii) to hold the benefit of any security granted in favour of the investors/noteholders and other secured parties over the pool of receivables. It represents the investors/noteholders and other secured parties in the transaction.
- Paying agent. It makes payments of interest and principal on the debt securities.
- Servicer. Its role is to ensure the underlying receivables continue to be collected and administered. Often this role is carried out by the originator or one of its group.
- Investment/collateral manager. If the pool of receivables is designed to be dynamic, an investment manager will be appointed to provide related services in relation to the pool.
- Swap provider. Its role is to enter into a swap contract with the issuer to provide hedging to the transaction in relation to e.g. interest rates and/or currency movement risks.
- Credit rating agencies. Their role is to rate the debt securities to indicate whether the issuer has the ability to pay interest and principal.
- Stock exchange. Its role it to list/admit to trading the debt securities on one of its exchanges.
- Corporate services provider. Its role is to perform the administrative functions of the issuer
- Lawyers and accountants.

5. Which body is responsible for regulating securitisation in your jurisdiction?

The Irish Securitisation SI designates the Central Bank as the 'competent authority' responsible, in most instances, for ensuring compliance with the Securitisation Regulation in Ireland. The Central Bank is responsible for ensuring compliance with the Securitisation Regulation's requirements in respect of:

- Due diligence
- Risk retention
- Transparency
- Ban on resecuritisation
- Credit granting criteria

The Pensions Authority is the 'competent authority' with responsibility for ensuring compliance by institutions for occupational retirement provision, with the due diligence requirements in the Securitisation Regulation.

6. Are there regulatory or other limitations on the nature of entities that may participate in a securitisation (either on the sell side or the buy side)?

The Securitisation Regulation, which is directly effective in Ireland, expressly sets out requirements in relation to the entities that can participate in a securitisation in Ireland. Neither the Irish Securitisation SI, nor any guidance or documentation provided by the Central Bank, expressly augments or expands on these requirements.

Insurers and re-insurers, alternative investment fund managers, UCITS and UCITS management companies, banks and investment firms which are regulated by the Central Bank, will be subject to Central Bank's role as competent authority under the Securitisation Regulation, in which role it is responsible for enforcing the requirements of the Securitisation Regulation in respect of those entities. The Pensions Authority will have a similar role in relation to due diligence requirements under the Securitisation Regulation in respect of institutions for occupational retirement provision.

7. Does your jurisdiction have a concept of "simple, transparent and comparable" securitisations, following the BCBS recommendations?

The Securitisation Regulation, which is directly effective in Ireland, expressly establishes the concept of, and regime applicable to, simple, transparent and standardised securitisations. Neither the Irish Securitisation SI, nor any guidance or documentation provided by the Central Bank, expressly augments or expands on these requirements.

8. Does your jurisdiction distinguish between private and public securitisations?

This conceptual distinction is generally used and understood in the securitisation industry and is expressly recognised in Commission Delegated Regulation (EU) 2020/1224 and Commission Implementing Regulation (EU) 2020/1225 (which are the regulatory and implementing technical standards in accordance with Article 7(3) and (4) of the Securitisation Regulation).

In this context, a "public" securitisation is one where a prospectus has to be drawn up pursuant to the Prospectus Regulation. By contrast, a "private" securitisation is one where a prospectus does not have to be drawn up. ESMA's document titled 'Questions and Answers on the Securitisation Regulation' also acknowledges the distinction. The EU' securitisation regime is directly effective in Ireland. As such, this conceptual distinction will be recognised and apply in Ireland.

Neither the Irish Securitisation SI nor any guidance or documentation provided by the Central Bank, expressly addresses the private / public distinction. Nor do they expressly augment or expands on these requirements.

9. Are there registration, authorisation or other filing requirements in relation to securitisations in your jurisdiction (either in relation to participants or transactions themselves)?

Where a securitisation transaction using Irish SPEs does not involve the purchase of a regulated Irish asset class (which is the case for a significant percentage of securitisations using Irish SPEs), using an Irish SPE to carry out a securitisation should not trigger a requirement to obtain an authorisation or license from the Central Bank (or any other regulatory body). See our response to question 3 for more detail.

The Irish Securitisation SI imposes an obligation on originators, sponsors and securitisation SPEs to notify specified information to the Central Bank for securitisations making their first issuance after 1 January 2019. The notification must be made within fifteen (15) working days from the issue of securities and must include:

1. The International Securities Identification Number (ISIN) of the securitisation.
2. Whether the notifying party is an originator, sponsor or securitisation SPE.
3. The name and registered address of the person required to comply with a requirement under the Securitisation Regulation where it provides a discretion as to who (the originator, sponsor or securitisation SPE) should comply with that requirement.
4. The name, registered office, corporate status, and Legal Entity Identifier (LEI) of the notifying party and the originator, sponsor and securitisation SPE, except where any of those entities is the notifying party.

This notification is additional to the transparency/disclosure requirements in Article 7 of the Securitisation Regulation. Making the notification does not, in itself, satisfy or substitute for compliance with Article 7.

In relation to Irish SPEs which make the Section 110 election, there is a requirement to notify the Irish Revenue Commissioners within 8 weeks from an SPE's first acquisition of qualifying assets. A Section 110 election is not mandatory (although it is generally advisable due to the tax benefits) and is in no way equivalent to a requirement to obtain an authorisation or license from the Central Bank (or any other regulatory body). See our response to question 2 and question 21 for more detail on Section 110.

SPEs which are categorised as Irish resident FVCs are required to register with, and to report quarterly data to, the Central Bank. SPEs which are not categorised as FVCs, but which are Irish resident Section 110 companies, must also register and report quarterly, under a (similar but) separate requirement. The Central Bank sets out the practice and procedure for compliance with the requirements, including the registration form, the form of quarterly reports and the time limit within which the registration must be made. The registration and reporting requirements under this legislation are in no way equivalent to a requirement to obtain an authorisation or license from the Central Bank (or any other regulatory body). See our response to question 3 for more detail on these requirements.

Where an Irish SPE enters into security over its assets (most typically over the underlying pool of receivables in favour of the investors/noteholders) in connection with a securitization, the security will generally need to be registered at Ireland's Companies Registration Office ("**CRO**") in accordance with the procedures described in Section 409 of the Companies Act 2014. A Form C1 should be filed in the CRO within 21 days of creating the security. This registration requirement applies whether the assets are located in Ireland or abroad. However, it is not required for certain excluded asset classes (e.g. security over cash deposits or shares). The registration will establish the priority of the security and preserve its enforceability. Priority will be determined by the date and time of receipt by the Registrar of a fully filed charge submission. The date of the security document does not determine its priority. Failure to register the security within the 21 days has the effect of making it void against a liquidator of the company and any creditor of the company. In addition, the money secured by it shall immediately become payable.

In addition, there are general filing requirements for companies registered in Ireland under the Companies Act 2014 (as amended), such as annual returns and filing accounts.

10. What are the disclosure requirements for public securitisations?

As outlined in our response to question 8, a 'public' securitisation is one where a prospectus has to be drawn up pursuant to the Prospectus Regulation.

The Securitisation Regulation sets out the disclosure requirements for public securitisations – i.e. where a prospectus has been drawn up – and, by contrast, for 'private' securitisations i.e. where no prospectus has been drawn up. The disclosure requirements in the Securitisation Regulation are supplemented by the requirements set out in Commission Delegated Regulation (EU) 2020/1224 and Commission Implementing Regulation (EU) 2020/1225 (which are the regulatory and implementing technical standards in accordance with Article 7(3) and (4) of the Securitisation Regulation). The Securitisation Regulation is directly effective in Ireland. As such, these requirements will be recognised and apply in Ireland.

Neither the Irish Securitisation SI, nor any guidance or documentation provided by the Central Bank, expressly augments or expands on these requirements, although note the notification requirement under the Irish Securitisation SI referred to in our response to question 9.

The SPE will also need to comply with the EU and Irish domestic capital markets legislation as relevant. For example, as outlined in our response to question 3, where the SPE issues debt securities which are admitted to trading on a market (regulated or otherwise) in Ireland (usually the regulated market of Euronext Dublin or

GEM), the SPE will also need to comply with the disclosure requirement under the Prospectus Regulation, Transparency Directive (only applicable in relation to the issues via a regulated market) and Market Abuse Regulation regimes. It will also need to comply with any disclosure/ongoing obligations under the rules of any exchange on which its securities are listed/admitted to trading.

11. Does your jurisdiction require securitising entities to retain risk? How is this done?

The Securitisation Regulation regime, which is directly effective in Ireland, expressly sets out requirements in relation to risk retention which apply to orignators, sponsors or original lenders. Neither the Irish Securitisation SI, nor any guidance or documentation provided by the Central Bank, expressly augments or expands on these requirements.

12. Do investors have regulatory obligations to conduct due diligence before investing?

The Securitisation Regulation regime, which is directly effective in Ireland, expressly sets out due diligence requirements in relation to institutional investors. Neither the Irish Securitisation SI, nor any guidance or documentation provided by the Central Bank, expressly augments or expands on these requirements.

13. What penalties are securitisation participants subject to for breaching regulatory obligations?

The Irish Securitisation SI is designed to supplement, rather than augment or expand the scope of, the Securitisation Regulation. One of the key ways in which it does this is by detailing the powers of the Central Bank regarding enforcement and the imposition of sanctions in case of a breach of the Securitisation Regulation or the Irish Securitisation SI.

Contravention notices

The Irish Securitisation SI specifies that the Central Bank has the power to issue a contravention notice to an originator, sponsor, original lender or securitisation SPE for the purpose of ensuring compliance with, or preventing an infringement of, the EU or Irish regulations. The Central Bank may also issue a similar notice to direct resubmission of details that are considered erroneous or incomplete and which had originally been made available to the securitisation repository.

Enforcement in relation to financial service providers

The Central Bank may appoint an assessor to investigate a contravention of the EU or Irish regulations, and impose sanctions for a breach. Sanctions for an adverse assessment include:

- An order to cease and desist from repetition of the contravening conduct.
- A public statement identifying the entity responsible and the nature of the breach.
- A restriction on any person who is responsible for a prescribed contravention, from exercising management functions in an originator, sponsor or securitisation SPE.
- The imposition of financial penalties.

For regulated financial service providers, sanctions pursuant to the Central Bank’s Administrative Sanctions Procedure are also an option.

In applying the sanctions, the Central Bank must consider the extent to which the breach is intentional or results from negligence. Criminal sanctions may also be imposed where false or misleading information is provided to the Central Bank under the EU or Irish regulations.

14. Are there regulatory or practical restrictions on the nature of securitisation SPVs?

Where a securitisation transaction using Irish SPEs does not involve the purchase of a regulated Irish asset class (which is the case for a significant percentage of securitisations using Irish SPEs), using an Irish SPE to carry out a securitisation should not trigger a requirement to obtain an authorisation or license from the Central Bank (or any other regulatory body). See our response to question 3 for more detail.

Typically an SPE established to carry a securitisation in Ireland is organised as a limited liability company, incorporated under the Companies Act 2014, which elects to be treated as a Section 110 company. The principal types of company under the Companies Act 2014 are (i) private limited companies (“**LTDs**”), (ii) designated activity companies (“**DACs**”) and (iii) public limited companies (”**PLCs**”).

Any of these can be used for a securitisation. In practice, DACs are the most common form of company used for a securitisation SPE.

LTDs are not commonly used because they are (generally) restricted from offering securities to the public (subject to certain carve outs, which align with some of the public offer exemptions in the Prospectus Regulation) *and* from having their securities admitted to trading or listed on any market (regulated or otherwise).

DACs are the most commonly used form of company. DACs are also (generally) restricted from offering securities to the public (subject to the same carve out as LTDs), however they can apply to have their debt securities admitted to trading or listed on any market, regulated or otherwise if it is:

- an offer of debt securities addressed solely to qualified investors;
- an offer of debt securities addressed to fewer than one-hundred and fifty (150) persons, other than qualified investors;
- an offer of debt securities addressed to investors who acquire securities for a total consideration of at least €100,000 per investor, for each separate offer;
- an offer of debt securities whose denomination per unit amounts to at least €100,000; or
- an offer of debt securities with a total consideration in the EU of less than €100,000, which shall be calculated over a period of twelve (12) months.

PLCs are permitted to offer securities to the public and to have their securities admitted to trading or listed on any market (regulated or otherwise). PLCs are used for retail offerings i.e. where the public offer exemptions above are not appropriate.

15. How are securitisation SPVs made bankruptcy remote?

There is no specially designed regime in the area of insolvency or bankruptcy law in Ireland that applies to securitisation transactions. This means that Irish SPEs engaged in securitisation transactions are subject to the general insolvency and bankruptcy laws of Ireland. That said, well-established structures are commonly used to help insulate the SPE from insolvency processes and from the originator.

The steps that are taken to achieve “insolvency remoteness” include:

  - Including “non-petition” clauses in transaction documents and agreements between the SPE and third parties. These prohibit creditors and other contractual parties from taking legal action or commencing insolvency proceedings against the SPE.
  - Including “limited recourse” clauses in transaction documents. These are used to limit the liability of the SPE to a creditor and other contractual counterparties and to restrict their recourse, in an enforcement action, to the assets that the SPE actually holds and over which the counterparty has security. Limited recourse provisions are effective as a matter of Irish law.
  - Granting security over all the SPE’s assets in favour of the security trustee for the SPE’s secured creditors, thereby dis-incentivising third parties from commencing insolvency proceedings against the SPE (as the assets validly the subject of such security will not, with some very limited exceptions, be available to satisfy the claims of unsecured creditors).
  - Placing restrictions on the SPE that prevent it from incurring any liabilities outside those contemplated by that securitisation by, amongst other things:

– ensuring that it does not have employees, contractors or office space;

– prohibiting it from borrowing other than as contemplated by the securitisation; and

– providing originator indemnities as regards administration and litigation costs.

- Appointing one or more directors (independent of the originator) whose vote(s) are required to pass a board resolution to place the SPE into insolvency proceedings.
- Ensuring the SPE is operated on a solvent basis.
- Ensuring the SPE is operated separately from the originator.

The sponsor of the securitisaiton will want the transaction to be classified as insolvency remote by the rating agencies in order that debt securities issued by the SPE can obtain as high a credit rating (and therefore bear a lower rate of interest) as possible.

16. What are the key forms of credit support in your jurisdiction?

Credit enhancement and liquidity support are key features of securitisation transactions in Ireland, improving the credit risk profile of any debt securities issued as part of securitisation.

Having reviewed a number of recent securitisation transactions in Ireland, common credit enhancement strategies include:

- Over-collateralisation: this involves the originator transferring underlying assets of a greater aggregate value than the consideration provided by the SPE, this enables a cushion against non-payments.
- Subordinated tranches: the senior tranches will be credit enhanced by providing that the senior tranche holders will have priority over junior tranche holders for payment and that the junior tranche holders do not have rights to receive payment, enforce claims, or accelerate debt against the SPE until the holders of the senior tranches have been paid.
- Excess spread: the income on the underlying assets is greater than the fixed coupon of the securities.
- Cash reserve account: this is an account where the excess spread is deposited, any losses are paid out of the account and the excess spread is again redirected to replenish it.
- Letters of credit, insurance or guaranteed liquidity facilities: these involve an external creditworthy source contracting to make payments in respect of the securities if the SPE is unable to pay amounts due.

17. How may the transfer of assets be effected, in particular to achieve a 'true sale'? Must the obligors be notified?

As outlined in our response question 4, a typical securitisation in Ireland would be structured as an off-balance sheet securitisation. This involves the isolation of a portfolio/pool of exposures (e.g. a portfolio or loans or other receivables) often (though not exclusively) through a 'true sale' acquisition by the SPE from the originator.

The most common method of achieving the 'true sale' of Irish law receivables is by assignment (legal or equitable) of the receivables from the originator to the SPE. The sale by assignment is essentially the preferred Irish law method of transferring the rights and benefits (but not the obligations) associated with the receivables from the originator to the SPE. It could also be referred to, in more general terms, simply as a 'sale', a 'transfer' or an 'assignment'.

Section 28(6) of the Supreme Court of Judicature (Ireland) Act, 1877 ("**Section 28(6)**") provides for the assignment of choses in action, including receivables. In order to obtain a perfected legal assignment in compliance with Section 28(6), the requirements of that section must be complied with are as follows:

1. the assignment must be of a debt or other legal chose in action i.e. a receivable;
2. the assignment must be an absolute assignment (and not merely by way of charge);
3. the assignment must be in writing under the hand of the assignor/seller (i.e. originator); and
4. express notice in writing of the assignment must be given to the underlying debtor.

If any of the Section 28(6) requirements are not complied with, the assignment will likely constitute an equitable assignment.

In addition (i) the assignment must be of the entire debt/legal chose (part only cannot be legally assigned) and (ii) it must be a present debt/legal chose (future debts/legal choses are not assignable at law). If this is not the case, the assignment will (also) likely constitute an equitable assignment.

The assignment of future debts/legal choses is not uncommon in Ireland. However, an assignment of future debts/legal choses cannot take effect as a legal assignment, as the debt does not exist when the assignment is entered into. Rather, it takes effect as an equitable assignment. This does not prevent the assignment being converted to a legal assignment in due course.

The major benefit of a fully perfected compliant legal assignment, is that the assignor/seller drops out of the picture altogether. The assignee/purchaser (i.e. the securitisation SPE) will then have full legal title to the debt/legal chose and direct recourse to the underlying debtor to sue for the debt without any need to join in the assignor/seller.

The effect of an equitable assignment, in practice, is similar to a fully compliant/perfected Section 28(6) assignment. However, under an equitable assignment, it is likely that the assignor/seller will need to be joined into an action against the debtor. Other than that, an equitable assignment binds the assignor/seller and is effective to transfer the beneficial interest in the debt/legal chose from the assignor/seller to assignee. A legal or equitable assignment is capable of affecting a true sale.

The defining differences of a fully compliant/perfected Section 28(6) assignment are (i) there should be no need to join in (i.e. involve) the assignor/seller in an enforcement action against the debtor and (ii) it is very difficult for a third party to acquire enforceable rights to the debt/legal chose from the assignor.

In securitisation transactions involving Irish receivables (particularly for mortgage loans), an equitable assignment (achieved by omitting the notice to the underlying obligors referred to at point (4) above) is commonly used to transfer financial assets to the issuer, as it is capable of affecting a true sale. The notice is not served unless and until there is a specified trigger event, such as a default by the assignee. This avoids needing to notify the underlying mortgagor/borrower at the time the securitisation is originally set up.

Until the obligor is given notice in writing of such an assignment it operates as an equitable assignment. Once the obligor is notified in writing, the assignment becomes a legal assignment and the assignee becomes entitled to sue in its own name.

In relation to the serving of a notice on the underlying debtor, there is no requirement that notice must be given at the time of the assignment or within a given time limit. Notice can be given at any time by either the assignor/seller or assignee/purchaser. Until notice is given, the assignment is an equitable assignment.

Any delay in giving notice, does not affect the legal validity of the assignment itself. But, until done, the assignee/purchaser is exposed to a number of potential disadvantages, as follows:

(i) underlying debtors can exercise any rights of set off against the assignee/purchaser, even if they accrue after the date of the assignment;

(ii) the assignee/purchaser may not sue for the debt in its own name, but must instead join the assignor/seller as co-plaintiff in the action;

(iii) the underlying debtor can pay off the debt to the assignor/seller and claim a good discharge of its debt. In such circumstances, the assignee/purchaser must rely on the assignor/seller to pass on the payment to it;

(iv) if the assignor/seller was to execute a legal assignment to a third party, who was a bona fide purchaser for value without notice, the third party may give notice in writing under Section 28(6) and its interest as bona fide purchaser of the legal estate for value would rank ahead of the equitable assignee/purchaser's interest. Accordingly, a person who takes an equitable assignment is, in theory, exposed to a possible fraud of the part of the assignor/seller; and

(v) the debt may be extinguished by other means between the date of the written assignment and the date of the giving of the notice to the debtor.

An acknowledgement is not required in order for the assignment to be compliant with the Section 28(6) criteria. This is an evidential step in order to put beyond doubt the fact of receipt by the counterparty of the notice.

There are a range of other methods that are less commonly used, usually if an assignment is not possible. These include: a declaration of a trust over the receivables, or over the proceeds of the receivables; a sub-participation; or a novation. A novation of receivables (i.e. transferring both the rights and obligations in respect of the receivables) is rarely used as it requires the obligor, the seller and the purchaser to all join into the novation agreement.

18. In what circumstances might the transfer of assets be challenged by a court in your jurisdiction?

In relation to an originator, which is incorporated in Ireland under the Companies Act 2014, and which is selling/transferring receivables to an SPE, it is unlikely that the sale of the assets would be set aside on the insolvency of the originator if the sale was on arms' length terms for fair value and the originator was solvent at the time of the sale.

An Irish insolvency official appointed over such an originator should therefore not be able to prohibit the SPE exercising its ownership rights over the receivables unless one of the following provisions of the Companies Act 2014 applies: Section 443 (power of court to order the return of assets improperly transferred, in receivership), Section 608 (the equivalent in liquidation) or Section 604 (unfair preferences).

Borrowers have sought to challenge the validity of assignments and the correct party to bring proceedings in many cases. None of these has proved effective except where the relevant loan was actually omitted from a schedule to the documents, in error.

It should also be considered that in circumstances where a transaction is expressed to be a sale and the sale agreement (and other documents) purports to be a sale of the assets, but this is not reflected in practical terms between the parties, an Irish court could recharacterise such a transaction as a secured loan rather than a true sale. In order to determine whether a transaction constitutes a true sale as opposed to a secured loan, the court will look at the substance of the transaction as a whole, including the economic features, but there will be an exclusion of the intentions of the parties. In *Kearns v Dilleen* [1997] 3 IR 287, there was a statement to the effect that:

"in construing the substance of those transactions the courts do not look to the intention behind the transaction but to the form in which the transaction takes place and to the rights and duties imposed by the transaction itself"

There is a paucity of Irish case law.

In one case a liquidator sought to recharacterise a sale as secured lending, on the basis that the security could be voided for lack of registration. Costs were awarded against the liquidator personally although the costs element is the subject of an appeal to the Supreme Court.

In *Bank of Ireland v ETeams International Limited* [2019] IECA 145), the Court of Appeal endorsed the principles applied by the English courts, starting with Re: George Inglefield [1933] Ch.1. The court held that:

(i) The correct approach is for the court to construe the entire document with a view to ascertaining its meaning and substance.

(ii) The presence, or absence, of the passing of risk or the existence of recourse are not sufficient.

19. Are there data protection or confidentiality measures protecting obligors in a securitisation?

Where the portfolio of assets consists of Irish loans, the underlying loan documents provide for broad contractual provisions to allow the disclosure of information to purchasers and prospective purchasers and institutions.

In recent years, all standard terms and conditions used by banks in Ireland that we are aware of, including the Banking and Payment Federation of Ireland standard conditions, make provision for data transfers as part of securitisation schemes. Additionally, to the extent that what is assigned are loans originated by banks, the assignee will be fixed with the banker's common law duty of confidence that arose from the original relationship.

Notwithstanding these contractual provisions, due consideration must be given to data protection laws. The main legislation regulating data protection in Ireland is GDPR supported by the Irish Data Protection Acts 1988 to 2018. These laws apply to personal data relating to natural persons. Under the GDPR data controllers must comply with the seven data protection principles and also take appropriate technical and organisational measures to ensure the security of the processing. Any processing must also be based on one of the lawful grounds specified in the GDPR. Personal data should not be transferred outside of the European Economic Area unless the data exporter puts in place appropriate safeguards.

Individuals have various rights in respect of their personal data, including the right to access the information held about them and the right to have incorrect or inaccurate data rectified. Data must also be deleted if there is no longer a good reason to hold it.

20. Is the conduct of credit rating agencies regulated?

Regulation (EC) no 1060/2009 on credit rating agencies (the "**CRA Regulation**"), as amended by (amongst others) Regulation (EU) No 513/2011 (known as "**CRA II"**), Regulation (EU) No 462/2013 (known as **CRA III**) and the Securitisation Regulation, together with its regulatory and implementing technical standards, is directly effective in Ireland.

Also applicable are the associated Irish statutory instrument SI No 247/2010 (European Communities (Credit Rating Agencies) Regulations, 2010) (which incorporates Articles 22, 19 and 36 of the CRA Regulation into Irish law) and SI No 399/2015 (European Communities (Credit Rating Agencies) (Civil Liability) Regulations 2015) (which incorporates Article 35a of CRA III into Irish law and allows an issuer/investor to make a civil claim for damages against a CRA in specific circumstances).

This regime sets out a regulatory framework for credit rating agencies ("**CRAs**") based in the EU. The regime requires that CRAs be registered with, and supervised by the ESMA, avoid conflicts of interest and apply sound rating methodologies.

In relation to securitisation, a key requirement of this regime is that CRA3 requires, among other things, that issuers or related third parties intending to solicit a credit rating of a structured finance instrument, appoint at least two credit rating agencies to provide credit ratings independently of each other.

21. Are there taxation considerations in your jurisdiction for originators, securitisation SPVs and investors?

Ireland has a special tax regime, comprised in Section 110, which provides a tax neutral regime for securitisation transactions. A broad range of transactions are permitted including synthetic asset securitisations, whole business securitisations, loan origination and other structured finance transactions. The types of assets which qualify under this regime include financial assets such as shares, bonds, other securities, invoices, receivables, loans, derivatives, certain traded commodities, plant and machinery (including, aircraft) and carbon offsets. Where a Section 110 company holds such assets and meets certain conditions, it will be a "qualifying company" for the purposes of the Section 110 regime.

Originators

There are a number of tax considerations which an originator will consider in the context of choosing a location for a securitisation, including transfer taxes (stamp duty in Ireland), value added tax ("**VAT**"), and withholding tax on payments.

Generally, originators can transfer non-Irish assets/portfolios to a Section 110 company free from Irish stamp duty. Certain Irish assets (such as debts or loan capital) may also be transferred free from Irish stamp duty where a specific exemption applies. Generally, from a VAT perspective, the transfer of assets will follow the normal rules, so transfers of financial assets should be exempt from VAT, and transfers of assets such as aircraft will be taxable or zero rated depending on the circumstances.

Importantly, originators can retain an interest in the SPE in a manner which does not result in any tax leakage for the Section 110 company. Generally, this is done through the holding of profit participating notes by a company which is tax resident in the EU (including Ireland) or in a country with which Ireland has signed a double tax treaty ("**DTT**") (of which there are currently seventy-four (74)) provided the income is taxed in that jurisdiction. Certain anti-tax avoidance rules apply where the originator controls the SPE or holds an interest of more than 20% in the SPE and has a significant influence over the Section 110 company. The potential application of these new rules should be considered in each case.

Also, from 2020, it is noteworthy that a Section 110 company will need to comply with the Irish transfer pricing regime (based on the OECD guidelines).

Securitisation SPE

A Section 110 company is subject to Irish corporation tax on its profits and gains at 25%. However, under the regime taxable profits are calculated in the same manner as a financial trading company so a broad range of revenue expenses are tax deductible (provided incurred wholly and exclusively for the purposes of the business). In addition, a deduction is available for profit participating interest (i.e. results dependent or excessive rate) or profit extraction payments in certain circumstances. Generally, this will apply where the interest payment is subject to tax in the hands of the owner in the EU or a country with which Ireland has signed a DTT. It can also apply where the loan note is listed on a recognised stock exchange and where the holder holds a stake of 20% or less (directly or indirectly) and does not have a significant influence (directly or indirectly). These rules need to be considered in detail in each case.

The net effect of the regime is that the securitisation company can reduce its taxable profits so that minimal taxes are payable. It is noteworthy that under the regime, transactions entered into by a Section 110 company must represent "bargains made at arm's length". However, certain profit participating interest is not subject to this rule or the general transfer pricing rules. A Section 110 company can benefit from Ireland's DTT network which should reduce or eliminate withholding taxes on income flows and capital gains in treaty jurisdictions.

Special rules exist for Section 110 companies that hold interests in certain Irish assets related to mortgages over land or shares in Irish land rich companies. These include that the Irish related real estate assets are treated as a separate trade for corporation tax purposes and, subject to certain excepted transactions, profit participating interest is not deductible.

Many Section 110 companies will be engaged in activities which are exempt from VAT, and so any VAT incurred can be a real cost depending on the circumstances. However, a specific VAT exemption applies to many management services provided to Section 110 SPEs which should reduce the overall non recoverable VAT.

Some of the other relevant tax considerations are that a Section 110 company must be managed and controlled in Ireland, its business must be limited to holding and/or managing qualifying assets and must be carried on in

Ireland. The regime also only applies to transactions above a certain size. This means that the day 1 value of qualifying assets the SPE acquires/holds must be at least €10m. There are also specific notification requirements to the Irish Revenue Commissioners which must be strictly complied with. Consideration should also be given to the potential application of the ATAD 1 & 2 rules to securitisation structures. Ireland has implemented anti-hybrid rules which apply to payments to associated companies and certain structured arrangements. A fixed ratio interest limitation rule (e.g. 30% of EBITDA) is expected to be introduced from 2022. The potential application of the DAC 6 rules, which require the mandatory disclosure of certain transactions to tax authorities, should also be considered.

Investors

Investors should be able to receive interest free from Irish withholding tax under a range of exemptions where they are tax resident in the EU or a DTT country or, where resident in a non-DTT country, where the notes are listed on a recognised stock exchange/ are quoted eurobonds (i.e. listed debt). Interest on the notes is also exempt from any residual charge to Irish tax where the exemption from withholding tax applies. There is no Irish stamp duty payable on the receipt or subsequent transfer of debt securities by investors and no VAT applies to the sale of loan notes. Investors holding an interest of more than 20% (directly or indirectly) in profit participating notes who also have a significant influence over the Section 110 company will be subject to additional requirements to demonstrate that they are taxed on that interest income to avoid the interest on the income being treated as non- deductible for the Section 110 company.

In summary, Ireland offers a very favourable tax regime for securitisation vehicles. However, the regime has a number of requirements and conditions which require careful consideration and specific tax advice in each instance.

22. To what extent does the legal and regulatory framework for securitisations in your jurisdiction allow for global or cross-border transactions?

As outlined in our response to question 1, Ireland is a leading and popular jurisdiction for the incorporation of SPEs for the purpose of structured finance and securitisation transactions. As such, the Irish securitisation market is highly international and cross border in nature. The legal, regulatory and tax regime is supportive of, and favourable to, securitisation transactions, including cross border transactions.

Irish government policy is highly supportive of securitisation as a method of financing. This is reflected in the legal, regulatory and tax regime and the government's responsiveness to requests for legislative innovation from this business sector. In this regard, Irish policy is consistent with the EU's favourable view of securitisation. The EU is committed to an efficient, transparent and rules-based securitisation market in Europe, and considers securitisation to be an important element of properly functioning financial markets, as it facilitates the diversification of funding sources and allocation of risk across the EU's financial system.

The EU's focus on securitisation was further emphasised by the fact that securitisation featured prominently in the capital markets component of the European Commission's coronavirus recovery strategy. This identified securitisation as a tool for enhancing the capacity of financial institutions to support economic recovery and proposed targeted amendments to the EU's securitisation regime, in order to encourage greater use of securitisation in relation to non-performing loans. The aim is to further encourage the use of securitisation by banks, to allow them to maintain and even enhance their capacity to lend to the real economy, in particular to small and medium sized enterprises.

23. To what extent has the securitisation market in your jurisdiction transitioned from IBORs to near risk-free interest rates?

The Irish securitisation market is highly international and cross border in nature. It therefore broadly reflects the overall global securitisation market trends and transition from IBORs to near risk-free interest rates.

We looked at a random selection of domestic Irish RMBS transactions that occurred across 2019, 2020 and 2021. These all referenced EURIBOR and all included fallback provisions that specify the trigger events for transition to a replacement rate.

EURIBOR is set by the European Money Markets Institute (the "**EMMI**") and has been subject to review and various investigations to analyse how increasing loss of confidence in interbank offered rates, including EURIBOR, could be improved. Whilst no changes to the EURIBOR methodology are expected in the short term, the EMMI has stated that it remains committed to reforming the EURIBOR quote based methodology to anchor it in transactions and adapt it to the evolving market circumstances.

24. How could the legal and regulatory framework for securitisations be improved in your jurisdiction?

As referred to above, Irish government policy is highly supportive of securitisation as a method of financing. This is reflected in the legal, regulatory and tax regime and the government's responsiveness to requests for legislative innovation from this business sector.

The key area for improvement would be that the Central Bank could develop and disseminate guidance as to its approach to implementing the EU regime, beyond what is available from ESMA. The Central Bank's website in particular does not provide a lot of information in this regard.

25. To what extent has the impact of COVID-19 changed practice and regulation in relation to securitisations in your jurisdiction?

Recognising the challenges faced by firms and market participants as a result of the COVID-19 crisis, in April 2020, the Central Bank communicated that it would allow a level of flexibility for regulated firms in certain specified areas. Many of these measures have now been allowed to lapse, details of which are set out on the Central Bank's website.

However, there was no specific change in practice, or to domestic Irish regulation, specific to securitisations as a result of the COVID-19 pandemic.

However, the European Commission has proposed a Capital Markets Recovery package as part of an EU-wide effort to combat the economic shock caused by the COVID-19 pandemic. One element of this recovery package consists of proposed amendments to the EU's securitisation regime. These are designed to address issues which have been identified as limiting the wider use of securitisation. The aim is to further encourage the use of securitisation by banks. This will allow them to maintain and even enhance their capacity to lend to the real economy, in particular to small and medium sized enterprises.

First, it was acknowledged that the current regime is not fit for purpose for the securitisation of non performing exposures ("**NPEs**"). This, in effect, discourages NPE securitisations as the market favours bilateral loan sales instead. Second, the regime in relation to STS securitisations does not cater for on-balance-sheet synthetic securitisations, which benefit from lower capital retention requirements. The proposed amendments are designed to address these limitations.

Contributors

Daragh O'Shea
Partner, Head of Debt Capital Markets & Structured Finance

doshea@mhc.ie

Marc Wilkinson
Senior Associate, Debt Capital Markets & Structured Finance

mwilkinson@mhc.ie

Niamh Caffrey
Partner, Tax and Structuring

ncaffrey@mhc.ie

Frank Flanagan
Partner, Insolvency

fflanagan@mhc.ie