Ireland: Securitisation

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

For a full list of jurisdictional Q&As visit [here](#)
1. **How active is the securitisation market in your jurisdiction? What types of securitisations are typical?**

The registration/reporting requirements of the Central Bank of Ireland (the “Central Bank”) in relation to special purpose entities uses the term ‘SPV’ in a specific way (see our response to question 3). As such, we will use the more general term ‘special purpose entity’ (‘SPE’) throughout, unless either the term SPV or FVC (both defined in our response to question 3) is more appropriate in the context.

Ireland is a leading and popular jurisdiction for the incorporation of SPEs for the purpose of structured finance and securitisation transactions.

As of the end of Q3 2019, there are 2,493 SPEs incorporated in Ireland holding €851 billion in assets. These include 1,138 euro area financial vehicle corporations (“FVCs”) holding €491 billion worth of assets. This represents 26.5% of euro area FVCs and 24% of euro area FVC assets and is the 2nd highest number of euro area FVCs and the highest level of euro area FVC assets. This is indicative of the levels of securitisation activity occurring in, or through, Ireland.

An FVC is essentially an entity which is set up for the purpose of carrying our securitisation activity, for the purposes of Regulation (EU) No 1075/2013 (ECB/2013/40) (the “FVC Regulation”).

Across the broader SPE data-set for Ireland, it is shown that sponsors from the UK (29.3%) and the US (23.8% - which has been growing in importance over recent years) generate the highest levels of activity in Ireland. Next highest is Ireland itself (15.3% – Irish sponsors tend to be either Irish banks or subsidiaries of UK or US asset managers operating through branches), with France (4.9%), Greece (4.7%), Russia (4.2%), Germany (2.7%), Belgium (1.7%), Luxembourg (1.3%), Spain (1.2%) and the Netherlands (1.2%) also generating activity levels worth of mention. This is indicative of the international characteristic of securitisation activity occurring in, or through, Ireland.

Irish FVCs are engaged in a broad range of securitisation activities. According to the most recently available statistical release (Q3 2019) for from the Central Bank, FVC activity was highest by total assets in the ‘other’ category, followed by collateralised loan obligations (“CLOs”) and residential mortgage backed securities (“RMBS”). Unfortunately, the Central Bank’s statistics do not break out the assets in this ‘other’ category. However, other securitisation activities which are specifically identified as using Ireland include collateralised debt obligations (“CDOs”), asset backed commercial paper (“ABS”), commercial mortgage backed securities (“CMBS”), corporate ABS and consumer ABS.

The consistently high levels of activity means that securitisation transactions are supported by a highly developed network of experienced professionals and service providers, including
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. This is consistent with the EU’s favourable view of, and encouragement for, a properly regulated securitisation sector. The EU considers securitisation to be an important element of properly functioning financial markets because it facilitates the diversification of funding sources and allocation of risk across the EU’s financial system.

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 generally well suited to international financial transactions. This, together with a robust and commercially sophisticated court system and fully independent financial services regulator, the Central Bank, provides predictability and dependability to market participants and underpins Ireland’s status as a leading and popular jurisdiction for securitisation activity.

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

The main legislation regulating securitisation transactions in Ireland is the General Framework (see our response to question 3). Other than the General Framework, and Section 110 (defined in our response to question 21), Ireland has enacted no specific primary domestic legislation designed to govern the conduct of securitisation transactions.

In this regard, beyond any restrictions provided under the General Framework, there are no additional prohibitions imposed under Irish law on the types of asset which can be securitised. This is demonstrated by the broad range of foreign and domestic assets which are regularly securitised using Irish SPEs (some of which are outlined in our response to question 1).

This overall flexibility and lack of a prescriptive regime of restrictions in relation to what assets can be securitised under Irish law, is reflected in the Section 110 regime. Section 110 comprises a specially designed tax regime for structured finance and securitisation transactions carried out in, or through, Ireland. Section 110 is a tax designation, which can be elected by SPEs. It is designed to make SPEs engaging in these transactions, which elect this status, as tax neutral and efficient as possible.

There are a number of requirement which an SPE which decides to elect Section 110 status has to comply with, in order to avail of this special tax treatment. 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 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 and its interaction with Section 110, again the general restriction on owning/holding real estate applies. In addition, interests in asset (e.g. mortgage loan receivables or shares) which derive their value directly or indirectly from Irish real estate, need very careful, case by case, consideration and structuring under Section 110 SPE.

See our response to question 21 for more detail on Section 110.

In addition, it is worthy of note that the Securitisation Regulation prohibits, with very limited exceptions, re-securitisations where at least one of the underlying exposures being re-securitised is a securitisation position.

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

The legislative framework generally governing securitisations in Ireland consists of a series of EU regulations (which are directly effective in Ireland) and a supplemental Irish implementing measure (in the form of a statutory instrument). We refer to these as the “General Framework”.

There are also mandatory 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 that may apply, depending on the specific characteristics of the securitisation – such as whether the securitisation SPE is a Section 110 vehicle eligible for preferential tax treatment, whether it is issuing debt securities and/or entering into derivative contracts and/or whether the securitised portfolio includes Irish loan obligations such as mortgages. We refer to these as the “Specific Framework”.

The General Framework

The EU regulations that apply primarily across all securitisations are:

1. Regulation (EU) 2017/2402 (the “Securitisation Regulation”) which 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 resecuritisation (subject to some limited exceptions); and a set of criteria for simple, transparent and standardised securitisation (“STS”). The Securitisation Regulation is covered in detail elsewhere in this guide.

2. Regulation (EU) 2017/2401 (the “CRR Amendment Regulation”), amending Regulation (EU) 575/2013 (the “Capital Requirements Regulation”). This 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 which are now covered by the Securitisation Regulation and introduces a preferential regulatory capital treatment regime for positions held in STS.

These regulations are directly effective in Ireland.

In terms of secondary legislation, the Irish 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”) supplements the Securitisation Regulation by:

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, it is the Pensions Authority that 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
3. Setting out detailed criminal and administrative sanctions in case of contravention of the 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 as (i) an Irish resident FVCs or (ii) Irish resident Section 110 companies (“SPV”), are required to register with, and report quarterly data to, the Central Bank. These requirements are grounded in:

1. The FVC Regulation.


The registration and reporting requirements under this legislation should not be construed as a requirement to obtain an authorisation or license from the Central Bank any other regulatory body to carry out a securitisation. Their 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 and the form of quarterly reports.

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, or not, 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 case by case basis to determine which registration and reporting requirements 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

As referred to in our response to question 2, most Irish SPEs involved in a securitisation will elect to be treated under Section 110 to obtain tax neutral treatment. See our response to question 21 for more detail on Section 110.

Securitisation is inherently complex and each transaction is different. As such each structure needs to be considered carefully on a case by case basis. Beyond the General Framework and the Reporting Framework described above, a non-exhaustive list of other EU and Irish legislation that may be relevant, and should be typically be considered is set out below:

- 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 (formerly called the Irish Stock Exchange), 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 is comprised of the Prospectus Regulation, together with its regulatory and implementing technical standards; any European Securities and Markets Authority (‘ESMA’) guidance and Q&As; 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 Global Exchange Market (‘GEM’), which is an exchange regulated market and multilateral trading facility operated by Euronext Dublin), a prospectus (for the purposes of the Prospectus Regulation) will not be required. However, an offering document which is compliant with the Euronext Rule Book in relation to GEM will be required. And the rule book will
otherwise need to be complied with, as applicable.

- 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 is comprised of the Market Abuse Regulation and Directive 2014/57/EU, together with their regulatory and implementing technical standards; any ESMA guidance and Q&As; 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.

- Regulation (EU) No 648/2012, the European Market Infrastructure Regulation (EMIR), together with their regulatory and implementing technical standards; any ESMA guidance and Q&As; 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.
- Investment Intermediaries Act 1995 (as amended).
- Companies Act 2014 (as amended).
- Directive 2011/61/EU, the Alternative Investment Fund Managers Directive (“AIFMD”), implemented in Ireland by SI No 257/2013 (European Union (Alternative Investment Fund Managers) Regulations 2013) (as amended) (the “AIFM Regulations”). The AIFM Regulations require all alternative investment funds (“AIFs”) to have a designated alternative investment fund manager (“AIFM”) with responsibility for portfolio and risk management. Typically securitisation SPEs are not designed to be AIFs – but whether or not an SPE risk being caught by the definition would need to be assessed on a case-by-case basis.
- Regulation (EU) 2016/679 (“GDPR”), the Irish Data Protection Acts 1988 to 2018 and SI No 336 of 2011 (the ePrivacy Regulations) with respect to personal data held by an SPE, whether in relation to underlying obligors or its members, officers or agents. See our response to question 19.

Where securitisation transactions using Irish SPEs do not involve the purchase of Irish assets (which is the case for a significant percentage of securitisations using Irish SPEs), then generally authorisation or license from the Central Bank any other regulatory body to carry out a securitisation.

However, if the securitisation does involve the purchase of Irish assets, then a number of additional rules and regulations may be applicable. As above, each structure needs to be
considered carefully on a case by case basis. A non-exhaustive list of EU and Irish legislation that may be relevant, and should typically be considered, is as follows:

- The Central Bank Act 1997 (as amended by the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 and Consumer Protection (Regulation of Credit Servicing Firms) Act 2018), established a regulatory which applies to “credit servicing firms” and the activity of “credit servicing.”

These are aimed at ensuring that consumers and SMEs whose loans are purchased by entities that were otherwise unregulated by the Central Bank will continue to have the same safeguards they had prior to sale. In particular, the Central Bank’s statutory codes of conduct, including its Code of Conduct on Mortgage Arrears and the Consumer Protection Code.

There is an exemption available for a ‘securitisation special purpose entity’ where:

a) the securitisation SPE was established by or on behalf of the owner of credit as part of the securitisation arranged by or on behalf of that owner of credit;

b) the owner of credit retains the legal title to the credit so assigned or otherwise disposed of; and

c) the originator, sponsor or original lender of the securitisation is required to retain on an ongoing basis a material net economic interest in the securitisation of not less than 5 per cent.

The exemption may be useful in certain circumstances. But will need to be considered carefully on a case by case basis.

- The Consumer Credit Act 1995 (as amended). This act applies to the provision of credit to consumers, including housing/mortgage loans.
develop a more transparent, efficient and competitive internal market, through consistent, flexible and fair credit agreements relating to residential immovable property, while promoting sustainable lending and borrowing and financial inclusion, and hence providing a high level of consumer protection.

- The Code of Conduct on Mortgage Arrears (as amended). This code governs the management by lenders of mortgage arrears and pre-arrears in respect of a borrower’s principal dwelling house or sole residential property in Ireland. It requires a number of actions to be taken by a lender before seeking repossession, including putting in place a mortgage arrears resolution process, agreeing alternative payment arrangements if appropriate, and complying with strict requirements on communication with borrowers.

- The Consumer Protection Code 2012 (as amended). This code sets out how lending institutions must deal with personal consumers, who are defined as natural persons acting outside his/her business, trade or profession, and with consumers, who are natural persons or groups of natural persons acting for personal and/or business purposes or incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body is not a member of a group of companies having a combined turnover of greater than the said €3 million). The arrears handling provisions (in addition to certain other provisions) of the Consumer Protection Code do not apply to a mortgage loan to which the Code of Conduct on Mortgage Arrears applies, but it could apply to a mortgage not in respect of a primary residence, including a buy to let mortgage loan.

- The European Communities (Unfair Terms in Consumer Contracts) Regulations 1995, 2000, 2013 and 2014. These regulations enable consumers (defined as natural persons acting for purposes outside of their business) to challenge a term in an agreements for the supply of services (including loans to consumers and related collateral) on the basis that it is “unfair”, within the meaning of the regulations, and therefore not binding. If successful, the challenged terms would be unenforceable.

- The Consumer Protection Act 2007. This act contains general prohibitions on unfair, misleading, aggressive and prohibited commercial practices. The act applies to all Irish law governed consumer contracts.

Finally a securitisation SPE which provides credit may be required to register as a “Schedule 2 firm” with the Central Bank anti-money laundering purposes; and to submit detailed data on the performance of its loan portfolio to the Central Credit Register maintained by the Central Bank under the Credit Reporting Act 2013 (as amended).

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, Irish SPEs are frequently used for such transactions.

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 or loans or other
receivables) often (though not exclusively) through a ‘true sale’ acquisition by the SPE from
the originator. The acquisition of the 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.

Insolvency/bankruptcy remoteness, 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 against
the SPE. An important step to achieving this is including ‘non-petition’ and ‘limited-recourse’
provisions is 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 16.

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 executed a declaration of trust in relation to the share for the benefit
of a charitable purpose. The nominee shareholder(s) is usually a specialist corporate services
provider.

In respect of Irish SPEs, the debt securities are frequently listed/admitted to trading on one
of the markets operated by Euronext Dublin. In particular, its regulated market or the GEM.
The regulated market is an EU regulated market. GEM is an exchange regulated market and
multilateral trading facility operated by Euronext. While Euronext Dublin is very popular for
listing debt securities issued by Irish SPEs, it is not a requirement that 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 and the law applicable to the listed securities/public offers
in the jurisdiction of location and the rules of such other exchange. In

addition, a non-Irish SPE, involved in a securitisation transaction could decide to list its
shares there, even if the SPE is not incorporated in Ireland.

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).
The typical legal structure used for implementing a securitisation of receivables in Ireland is by means of a ‘true sale’ of the receivables from the originator to the SPE, which will then holds the receivables and issues debt securities to fund the purchase of the receivables.

The most common method of achieving the ‘true sale’ is by assignment (legal or equitable) of the receivables 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 a declaration of trust over the receivables or their proceeds, sub-participation or novation. These latter tend to be considered if there is an issue with an assignment of the underlying receivables 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 pool of assets/receivables 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 (typically a Section 110 SPE).** This is the 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/SPE. By doing this, the investors/noteholders gain exposure to the underlying pool of receivables.
- **Arranger.** Its role is to organise and structure the transaction. It will also often have a significant role in ensuring that investors/noteholders are found to whom to sell the debt securities.
- **Trustee (bond and security).** Its role is to hold the benefit of the covenants under the debt securities on behalf of the investors/noteholders and 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 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/SPE 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 securities to indicate whether the SPE has the ability to pay interest and principal.

Stock exchange. Its role is 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 SPE.

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 entities that can participate in a securitisation in Ireland must meet the criteria set out in the Securitisation Regulation. The Securitisation Regulation is covered in detail elsewhere in this guide.

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.

Carrying out securitisation transactions does not generally trigger a requirement to obtain an authorisation or license from the Central Bank or any other regulatory body, merely by virtue of carrying out a securitisation. However, it should be noted that where the underlying pool of securitised assets consists of Irish residential mortgage or consumer loans, the servicing of
those loans is a regulated activity (see our response to question 3).

GDPR and data protection regulations may be also be applicable. See our response to question 19.

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

The Securitisation Regulation 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 this concept or regime. As the Securitisation Regulation is the key element of the General Framework governing securitisations in Ireland, this concept and regime will be recognised and apply in Ireland.

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

Neither the Irish Securitisation SI nor any guidance or documentation provided by the Central Bank, expressly addresses the private / public distinction. In addition, the Securitisation Regulation also does not expressly define “private” and “public” securitisations.

That said, these concepts are generally used and understood in the securitisation industry and are expressly recognised in the draft regulatory and implementing technical standards drawn up by ESMA 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, while 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 these concepts.

As the Securitisation Regulation regime is the key element of the General Framework applying to securitisations in Ireland, the distinction will be recognised and apply in Ireland.

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

Carrying out securitisation transactions does not generally trigger a requirement to obtain an authorisation or license from the Central Bank or any other regulatory body, merely by virtue
of carrying out a securitisation. However, it should be noted that where the underlying pool of securitised assets consists of Irish residential mortgage or consumer loans, the servicing of those loans is a regulated activity (see our response to question 3).

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 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 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 EU Securitisation Regulation. Making the notification does not, in itself, satisfy or substitute for compliance with Article 7.

As also explained in our response to question 3, 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.

For an Irish SPE which enters into security (most typically over the underlying pool of receivables in favour of the investors/noteholders) in connection with a securitisation transaction, a filing will need to be made at Ireland’s Companies Registration Office (“CRO”) in order to register the security. The registration is required to establish the priority of the security and to preserve its enforceability. In relation to mortgages and charges in Ireland, priority will be determined by the date and time of receipt by the Registrar of a fully filed charge submission. The date of creation of the deed of charge does not determine its priority. Details of mortgages or charges created by a company must be delivered to the CRO within twenty-one (21) days of the creation of the charge or of notice to create the charge. Failure to register the charge twenty-one (21) days has the effect of making the charge void against a liquidator of the company and any creditor of the company.
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. In due course, the disclosure requirements in the Securitisation Regulation will be supplemented by the requirements set out in the draft regulatory and implementing technical standards drawn up by ESMA in accordance with Article 7(3) and (4) of the Securitisation Regulation.

   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.

   As the Securitisation Regulation regime is the key element of the General Framework applying to securitisations in Ireland, the requirements set out there will be recognised and apply in Ireland.

   As outlined in our response to question 3, the SPE will also needs to comply with the Prospectus Regulation, Transparency Directive (only applicable in relation to the issues via a regulated marker) and Market Abuse Regulation regimes. It will also need to comply with 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 expressly sets out requirements in relation risk retention which apply to originators, 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. As the Securitisation Regulation regime is the key element of the legislative framework, the requirements set out there will be recognised and apply in Ireland.

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

   The EU Securitisation Regulation regime expressly sets out due diligence requirements for institutional investors.
Neither the Irish Securitisation SI nor any guidance or documentation provided by the Central Bank, expressly augments or expands on these requirements. As the Securitisation Regulation regime is the key element of the General Framework applying to securitisations in Ireland, the requirements set out there will be recognised and apply in Ireland.

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?**

Irish SPEs carrying out securitisation transactions are not generally required to obtain an
authorisation or license from the Central Bank or any other regulatory body, merely by virtue of carrying out a securitisation.

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. 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. DACs are the most commonly used form of company.

LTDs are not commonly used because they are (generally) restricted from offering securities to the public (subject to certain carve outs, based on 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
- 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.

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 needs to comply with the Prospectus Regulation, Transparency Directive (only applicable in relation to the issues via a regulated marker) and Market Abuse Regulation regimes. It will also need to comply with the rules of any exchange on which its securities are listed/admitted to trading.
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 agreements between the SPE and third parties that prohibit the contractual parties from commencing insolvency procedures against the SPE.
- Including “limited recourse” wording in all significant transaction documents to restrict the recourse of a counterparty who takes enforcement action in respect of the SPE’s assets, 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.
- Ensuring the SPE is operated on a solvent basis.
- Ensuring the SPE is operated separately from the originator.
- 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.
- Placing restrictions on the SPE that prevent it from incurring any liabilities outside those contemplated by that securitisation by, amongst other things:
  1. ensuring that it does not have employees, contractors or office space;
  2. prohibiting it from borrowing other than as contemplated by the securitisation; and
  3. providing originator indemnities as regards administration and litigation costs.

The sponsor of the securitisation 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. The requirements of Section 28(6) 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).

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 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.

As such, 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.

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 (Law Society v O’Malley [1998] 1 IR 162). In Warner v Rollgreen [1975] 2 W.L.R. 816, Denning MR, speaking of a broadly equivalent English law provision stated:

“I come back, therefore, to the preliminary issue. It is stated as if it were an examination question for students. Treated as such we would decline to answer it. But it must be considered as a practical question to be read in the light of the facts of the present case. So read, the words “equitable assignee” do not mean the assignee of an equitable interest. They mean an assignee of an option in a contract, that is, of a legal chose in action, who has not
given notice in writing such as to satisfy section 136 of the Law of Property Act 1925."

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 his 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 circumstances where a transaction is expressed to be a sale and the sale agreement (and other documents) purports to effect a sale of the assets, but this does not reflect the actual agreement 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:

1. the correct approach is for the court to construe the entire document with a view to ascertaining its meaning and substance.

2. the presence or absence of the passing of risk or the existence of recourse are not sufficient.

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.

In relation to an originator, which is incorporated in Ireland under the Companies Act 2014, and which is selling/transferring receivables to an SPE, 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), Section 604 (unfair preferences) and Section 608 (power of court to order return of assets which have been improperly transferred).

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

In this Irish context, generally speaking, the underlying loan documents provide for broad contractual provisions to allow the disclosure of information to purchasers and prospective purchasers and institutions.

All standard terms and conditions used by banks in Ireland in recent years 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.

However, 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 Act 2018. These laws apply to personal data relating to natural persons. Data controllers under the GDPR must comply with obligations regarding the collection and use of personal data, which must be fair and transparent, for a specified legitimate purpose and limited to the data necessary to fulfil this purpose. It must also be based on one of the lawful grounds specified in the GDPR. Data should not be transferred outside of the European Economic Area unless adequate protection is put in place.

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?**

Yes, by Regulation (EC) No 1060/2009, as amended by Regulation (EU) No 513/2011 (known as CRA II) and Regulation (EU) No 462/2013 (known as CRA III), as further amended by the Securitisation Regulation (the “CRA Regulation”), and associated regulatory and implementing technical standards. Also applicable are the associated Irish statutory instrument SI No 247/2010 (European Communities (Credit Rating Agencies) Regulations, 2010) and SI No 399/2015 (European Communities (Credit Rating Agencies) (Civil Liability) Regulations 2015).

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, the key requirements under the CRA Regulation include that if an issuer or a related third party intends to solicit a credit rating of a securitisation instrument, it must appoint at least two CRAs to provide credit ratings independently of each other and they must consider appointing a credit rating agency which has less than 10% of total market share.

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

Ireland has a special tax regime, comprised in section 110 of the Irish Taxes Consolidation Act, 1997 (“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 st

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, from 2020, 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 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 2021. 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 also referred to in our response to question 1, the legal, tax and government policy in Ireland are supportive of, and favourable to, securitisation transactions, including cross border transactions. This is evidenced by the fact that 86% of Irish SPEs are set up on behalf of non-Irish sponsors.

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

The securitisation market in Ireland is substantially cross-border and international in nature. It therefore broadly reflects the overall global securitisation market trends and transition from IBORs to near risk-free interest rates.
From a purely Irish perspective, we looked at a number of domestic RMBS transactions that occurred during 2019. These all referenced EURIBOR and all included fallback provisions that specify the trigger events for transition to a replacement rate.

EURIBOR is not scheduled to be discontinued and, as a consequence, contracts and financial instruments referencing EURIBOR do not need to transition to a new rate, although the working group on euro risk-free rates recommends the need to include new or improved fallback provisions to reduce potential uncertainties in the event of potential disruption to EURIBOR.

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

While the Securitisation Regulation has been in force since 1 January 2019, the delayed adoption of the full suite of regulatory and implementing technical standards and more detailed regulatory guidance has created some uncertainty in relation to how to implement the new regime in practice.

Complying with the transparency requirements in the Securitisation Regulation have been a challenge, both in terms of cost and complexity, particularly in relation to private securitisation transactions due to the delayed approval of the reporting templates by ESMA and the amount of field items that need to be populated in the standardised templates.

It is also hoped that clarification will be provided in relation to the upcoming retirement of IBORs as this creates uncertainty both for legacy transactions and for securitisation positions subject to the Securitisation Regulation.