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IRISH GOVERNMENT SHOWS CONTINUED SUPPORT FOR THE STRUCTURED FINANCE MARKET

The Irish Government continued to show its support for the ever expanding Irish structured finance market by including three positive measures in the Irish Investment Funds, Companies and Miscellaneous Provisions Act 2006 (the Act) which was signed into law on 24th December 2006. The budget speech delivered by the Minister for Finance in December 2006 also contained positive stamp duty developments. These developments are as follows:

The Increased Capacity of Irish Private Companies

A private company can now issue bonds to the public if the issue falls within certain offer exemptions. The most likely applicable exemption is where the bonds issued by the Irish private company have a minimum denomination of at least €50,000 (which is usually the case for non-retail offerings to avoid the provisions of the Transparency Directive). If this is not the case, another exemption may be available.

Using a private company rather than a public limited company (PLC) has the following advantages:

1. the minimum number of shareholders is 1;
2. the minimum issued share capital is €1 (the requirement for a PLC is €40,000) and no trading certificate is required, meaning an Irish SPV can be fully incorporated and ready to start trading in five working days; and
3. for US Federal income tax purposes, we understand that a private company is not "per se" corporate under the US check the box rules which may have advantageous tax consequences for certain US investors.

Reduced Prospectus Liability for Guarantors (including Monoline Insurers)

The Act also reduces the statutory liability of guarantors for the contents of a Prospectus. Before the Act was passed, a guarantor of a bond transaction listed on the Irish Stock Exchange had liability for the contents of the entire Prospectus. However, the Act now states that guarantors will only have liability for statements included in, or

information omitted from, the Prospectus that relate to the guarantor or the guarantee. This will be particularly relevant to monoline insurers who commonly “wrap” structured finance transactions.

Prospectus where such information was not prepared for the purpose of inclusion in the Prospectus. This will be particularly relevant for LPN structures that use an Irish SPV.

Experts Reports in Prospectuses

The Act has reduced the circumstances in which it is necessary to obtain the consent of an expert to the inclusion in a Prospectus of a report prepared by such expert. In particular, in most transactions it will no longer be necessary under Irish law to obtain the consent of an auditor to the inclusion of historical financial information in a

Stamp Duty

The Irish Minister for Finance announced the abolition of stamp duty on the creation and transfer of mortgages and charges. This should be confirmed in the Finance Act 2007, but is in place already for practical purposes. While the tax cost was small in any event, this will further ease administration and costs for SPVs.

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