

Arthur Cox is one of Ireland's leading law firms. It comprises 300 lawyers including 98 partners. The firm's principal office is located in Dublin and we also have offices in Belfast, London and New York. The practice of the firm encompasses all aspects of corporate, business and finance law.

A large number of lawyers in our Corporate tax and Banking Departments advise on an extensive range of structured finance transactions including securitisations, repackagings, CDOs, LPNs, covered bonds, tier 1 instruments and derivative and other structured products and the establishment of hedge funds. The firm acts for originators, arrangers, issuers, trustees and rating agencies. Arthur Cox advised the originator on the establishment of the first securitisation of Irish mortgage assets which was completed in 1995. More recently, the firm has advised on the first ever CMBS of Irish properties.

NEW ECB REPORTING REQUIREMENTS FOR IRISH SPVs

From the end of this month, the European Central Bank ("ECB") will require many categories of special purpose vehicles ("SPVs") established in the Eurozone for domestic and international structured finance transactions to notify the relevant national central bank (In Ireland, the Central Bank of Ireland (the "ICB")) of their existence as "financial vehicle corporations" ("FVCs"). Beginning with the period ending 31 December 2009, all Irish FVCs must report extensively to the ICB in relation to their end-of-quarter outstanding liabilities and quarterly financial transactions and write-offs/write-downs of their assets and liabilities. Reports must be submitted within 17 working days of the end of the quarter to which they relate and many service providers, arrangers and originators consider that it will be impossible to collate information in the required manner. At the same time, the ECB may impose significant financial penalties on FVCs that default in their notification or reporting obligations. Accordingly, it is important for transaction parties engaged with Eurozone SPVs and the SPVs themselves immediately to consider whether the entity is liable to notify its existence as an FVC and if so, what can be done to ameliorate unworkable reporting requirements flowing from FVC status.

The notification and reporting requirements are set out in ECB Regulation (EC) No 24/2009 (ECB/2008/30) (the "**Regulation**") linked at:

http://www.cnb.cz/m2export/sites/www.cnb.cz/en/statistics/money_and_banking_stat/mbs_international_documents/download/ECB_2008_30_en.pdf.

The requirements apply throughout the Eurozone, but are likely to affect structured financings in The Netherlands, Luxembourg and Ireland most given their popularity as SPV jurisdictions. Much has already been written about the lack of clarity surrounding the ambit of the Regulation generally, but there are particular problems with gauging its effect in Ireland since, in common with much European Community legislation, there is frequent use (without further definition) of general language that seeks to convey concepts that have no exact counterpart in the English language or in common-law legal systems. With a view to resolving that lack of clarity, Arthur Cox, together with the other leading law firms in the Irish Securitisation Forum (the "**Instructing Group**"), retained Senior Counsel to advise on whether SPVs established in Ireland involved in certain types of activity should be considered as carrying out "securitisation transactions" under the Regulation and therefore be liable to notify as FVCs.

Whilst entities engaged in some categories of transaction clearly fall within the definition of FVC, with others the position is either more ambiguous or it is unlikely that they will be considered FVCs. For example, it is certainly not the case that all entities that are considered securitisation companies for tax in Ireland¹ also qualify as FVCs under the Regulation. Broadly, there are four categories of company that might fall outside the ambit of the Regulation:

1. SPVs that are financed solely by way of loans or derivatives;
2. issuers that could be brought into the originator's insolvency by reason of ownership/control (e.g. 100% subsidiaries);
3. SPVs that use the proceeds of the relevant debt instruments merely to make an advance under a loan agreement (e.g. LPN structures) or to enter into certain types of fully funded swap agreement; and
4. issuers that are not considered to be "insulated from the risk of bankruptcy or any other default" of the originator.

Accordingly, Irish SPVs and their counterparties may wish to consider seeking legal advice on a case-by-case basis to assist in determining whether notification is required under the Regulation. Moreover, in common with other members of the Instructing Group, we have recommended that SPVs reserve their position when notifying the ICB of their status as FVCs.

Finally, the Regulation provides the ICB with the discretion to grant derogations to FVCs from the reporting requirements in a number of circumstances. These include where data can be

derived from other statistical, public or supervisory data sources - for example servicer reports published through a regulatory news service. However, the ICB has indicated that it does not currently foresee granting derogations of this kind. It may be necessary to wait and see what approach is taken by national central banks in other Eurozone jurisdictions, particularly The Netherlands and Luxembourg before the position here becomes more certain. Nevertheless, we would urge industry participants to continue to lobby both the ECB and the ICB in relation to the difficulties of complying with the Regulation's reporting requirements. We believe that this should be done with a view to establishing a workable platform for the reporting of relevant information on securitisation transactions to the Eurosystem.

Further Information

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Please note that this memorandum is a general summary of developments and is not a complete statement of the law. Specific legal advice should be obtained before taking action.

¹ Entities that are "qualifying companies" under section 110 of the Taxes Consolidation Act 1997 (as amended).

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