

## CONTENTS

<b>Introduction</b>	<b>1</b>
<b>Application and Authorisation</b>	<b>2</b>
<b>“Fully Funded” Requirement</b>	<b>2</b>
<b>Other Requirements</b>	<b>2</b>
<b>Taxation</b>	<b>3</b>
<b>Conclusion</b>	<b>3</b>
<b>Further Information</b>	<b>3</b>

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.

## IRISH SPECIAL PURPOSE RE-INSURANCE VEHICLES

### Introduction

Ireland as a jurisdiction is uniquely positioned to facilitate structured reinsurance finance transactions through authorised special purpose vehicles. This is of particular interest to clients at present given the recent contraction of capacity in the traditional reinsurance market. Moreover, the legislative framework in Ireland is established under European Union law thereby better facilitating transactions involving other member states.

Article 46 of the EU Reinsurance Directive (the “Directive”) provides that where a Member State decides to allow the establishment within its territory of a special purpose reinsurance vehicle (“SPRV”) it must require prior official authorisation thereof and lay down conditions under which the activities of the SPRV are carried on.

This regime was implemented into Irish law by the European Communities (Reinsurance) Regulations 2006 (the “Regulations”), which came into effect on 15 July 2006, making Ireland the first EU country to implement the Directive. The Regulations create a comprehensive framework for the authorisation and supervision of SPRV’s in Ireland.

The prompt implementation of the Directive builds upon Ireland’s trusted reputation as a leading jurisdiction in which to establish special purpose vehicles (SPVs) for structured financing transactions. The basis for this reputation is an attractive taxation regime which includes an extensive double tax treaties and a variety of withholding tax exemptions. In addition to the tax benefits, a supportive legal and regulatory framework and highly-regarded infrastructure of professional advisers and service providers have all contributed to the success of the structured finance industry in Ireland. For further detail, please see our Structured Finance Guide: *Establishing Special Purpose Vehicles in Ireland - For Structured Finance Transactions* at [www.arthurcox.com/publications/](http://www.arthurcox.com/publications/).

In furtherance of Ireland’s commitment to remaining an attractive jurisdiction for the global reinsurance industry, the Irish Financial Regulator has been given supervisory powers under the Regulations that are appropriate in the context of the type of business and risk involved within the reinsurance sector. The benefits of the discretion retained by the Financial Regulator in applying the Regulations is particularly

relevant in the context of the capital requirements of the SPRV and means that the Financial Regulator can prescribe capital requirements for SPRV's that are lower than those prescribed for general reinsurance undertakings. This is discussed further below.

## Application and Authorisation

The decision whether to grant or refuse an application to establish an SPRV rests with the Irish Financial Services Regulatory Authority (the "Financial Regulator"). In a paper published in June 2007 the Financial Regulator published guidelines (the "Guidelines") setting out the requirements for such applications.

The application must be in writing and be accompanied by details of the SPRV's officers and constitutional documents as well as an explanation as to how the SPRV will be fully funded and a description of the proposed reinsurance arrangements to be entered into by the SPRV. Pursuant to the Guidelines issued by the Financial Regulator, the necessary supporting documentation will typically include an actuarial review of the underlying business, the prospectus or other offering document in relation to any securities to be issued and the rating agencies' pre-sale reports (if applicable), details of outsourcing and servicing agreements and details of the directors, management and capital structure of the SPRV.

Helpfully, the Guidelines also state that the Financial Regulator may discuss specific issues with the applicant directly in order to expedite the application process and to date the Financial Regulator has been very open to meeting with applicants to discuss new transactions and to explore various structuring possibilities. This efficient attitude means that where a comprehensive and complete application is made, it is possible to obtain authorisation within a relatively short period.

## "Fully Funded" Requirement

As noted above the Financial regulator has exercised some discretion in prescribing the capital requirements of the SPRVs. Given the limited nature of an SPRV's business, the Guidelines state that the Financial Regulator must simply be satisfied that the SPRV is fully funded.

The Regulations define "fully funded" as:

- "(a) in relation to an SPRV reinsurance contract that specifies an aggregate limit, means that -
- (i) the market value of the assets as held in trust or as otherwise held under the terms of the contract by or on behalf of the SPRV for the benefit of the counterparty to the contract, or
  - (ii) the value of a letter of credit established by or on behalf of the SPRV for the benefit of the counterparty,
- equals or exceeds that limit, and
- (b) in relation to an SPRV reinsurance contract that does not specify an aggregate limit, means that -
- (i) the market value of the assets, as held in trust or as otherwise held under the terms of the contract by or on behalf of the SPRV for the benefit of the counterparty to the contract, or
  - (ii) the value of a letter of credit established by or on behalf of the SPRV for the benefit of the counterparty,
- equals or exceeds the projected economic reserve requirements of the SPRV under the contract as determined from time to time on an actuarial basis."

## Other Requirements

- In terms of structural requirements, the special purpose transaction should generally be segregated into a separate vehicle bankruptcy remote from the cedant. Any contracts involving the SPRV should also contain standard non-recourse and non-petition provisions. The Guidelines

specifically state that any debt securities issued to finance the vehicle should be non-recourse, in that payments due under the their terms of issuance should be the obligation of the SPRV only, and in the event of default the noteholders will not have recourse to the assets of the cedant. Finally, the applicant should be in a position to demonstrate to the Financial Regulator that the cedant, and its Regulators, are aware of the nature of the securitisation transaction and the SPRV.

- The SPRV must have in place policies and procedures to monitor and report to the board of directors counterparty credit risk and to exercise the contractual remedies available to the SPRV as set out in the various agreements. This is to ensure that the requisite remedial actions are taken when triggers are hit.
- The Guidelines from the Financial Regulator also highlight the need for sound corporate governance and stress that both the board of directors and the persons involved in the day to day management and operation of the SPRV must be competent and of good repute. The latter should have a demonstrable and relevant track record in the management of insurance and reinsurance risk. In addition, the Financial Regulator requires the promoter of a SPRV or a suitably qualified independent third party service provider to provide a minimum of infrastructural support to the SPRV to carry out the administrative functions of the SPRV and to ensure tax and regulatory compliance of the SPRV and to report on such matters to the board of directors.

## Taxation

An SPRV should be taxed in the same manner as any other SPV established in Ireland, i.e. under the favourable Section 110 regime. With this regime, it would be expected that the SPRV would not be required to generate any profit for tax purposes, but if any were left, it would be subject to tax at 25%. It would be contemplated however that profit would be extracted by way of subordinated debt, or profit participating debt, or perhaps by swap or servicing fee, all of which should be a tax deductible expense for the SPRV.

As an Irish resident company, it should be able to avail of Ireland's tax treaty network where relevant.

## Conclusion

The fact that Ireland was the first European country to transpose the Directive highlights Ireland's commitment to retaining it's reputation as a leading jurisdiction for the reinsurance industry. The high level of co-operation between the Department of Finance, the Financial Regulator and the international reinsurance industry have produced a set of Regulations which provide a balanced framework and should ensure that the handful of reinsurance structured finance transactions completed to date can be built upon whilst the capital markets are becoming a more important source of underwriting capacity.

## Further Information

For further information please contact:

**Richard Ambery**, Partner (Capital Markets)  
Arthur Cox  
Tel: +353 1 618 0501  
[richard.ambery@arthurcox.com](mailto:richard.ambery@arthurcox.com)

**Caroline Devlin**, Partner (Tax)  
Arthur Cox  
Tel: +353 1 618 0585  
[caroline.devlin@arthurcox.com](mailto:caroline.devlin@arthurcox.com)

February 2009

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.

# ARTHUR COX

---

## DUBLIN

Earlsfort Centre  
Earlsfort Terrace  
Dublin 2  
Ireland

T: +353 1 618 0000  
F: +353 1 618 0618

[mail@arthurcox.com](mailto:mail@arthurcox.com)  
[www.arthurcox.com](http://www.arthurcox.com)

## BELFAST

Capital House  
3 Upper Queen Street  
Belfast BT1 6PU  
Northern Ireland

T: +44 28 9023 0007  
F: +44 28 9023 3464

## LONDON

12 Gough Square  
London EC4A 3DW  
England

T: +44 20 7832 0200  
F: +44 20 7832 0201

## NEW YORK

300 Park Avenue  
17th Floor  
New York NY 10022  
USA

T: +1 212 705 4288  
F: +1 212 572 6499