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Arthur Cox is one of Ireland's leading law firms. It comprises 300 lawyers including 90 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.

Arthur Cox was the No.1 Irish Legal Adviser, by value, to European Capital Markets in the Thomson Financial European Capital Markets Review 2006.

Arthur Cox Listing Services Limited is the leading Irish listing agent for the listing of debt securities on the Irish Stock Exchange.

ELIGIBILITY CRITERIA FOR ASSET BACKED REPO TRANSACTIONS WITH THE EUROPEAN CENTRAL BANK

Introduction

Many asset backed securities and other structured securities are used by investors as repo eligible assets for repo transactions with the ECB and national central banks, especially in the current market conditions. In certain cases, arrangers and sponsors of issuing platforms are subscribing securities themselves and making them the subject of repurchase transactions with the ECB or national central banks.

There are a number of criteria that must be satisfied for an underlying asset to be considered eligible for repo transactions and that should be considered when deciding on the jurisdiction of an SPV and the listing of asset backed deals.

Eligibility Criteria for Asset Backed Securities

The Eurosystem (i.e. the ECB and the national central banks of the euro area and, therefore, the Central Bank of Ireland where the issuer is Irish or listing is in Ireland) assesses the eligibility of asset backed securities¹ against the following criteria.

Type of Asset

An ABS must have:

- (a) a coupon that cannot result in a negative cash flow. In addition, the coupon should be one of the following; (i) a zero coupon; (ii) a fixed rate coupon; or (iii) a floating rate coupon linked to an interest rate reference. The coupon may be linked to a change in the rating of the issuer itself. Furthermore, inflation-indexed bonds are also eligible.

¹ other than covered bank bonds

This feature must be maintained until the redemption of the obligation. A debt instrument may not afford rights to the principal and/or the interest that is subordinated to the rights of holders of other debt instruments of the same issuer.

The cash-flow-generating assets backing the asset backed securities must:

- (b) be legally acquired in accordance with the laws of a Member State from the originator or an intermediary by the securitisation special purpose vehicle in a manner which the Eurosystem considers to be a “true sale” that is enforceable against any third party, and be beyond the reach of the originator and its creditors, including in the event of the originator’s insolvency; and
- (c) not consist, in whole or in part, actually or potentially, of credit-linked notes or similar claims resulting from the transfer of credit risk by means of credit derivatives.

Within a structured issue, in order to be eligible, a tranche (or sub-tranche) may not be subordinated to other tranches of the same issue. A tranche (or sub-tranche) is considered to be non-subordinated vis-à-vis other tranches (or sub-tranches) of the same issue, and is “senior” if, in accordance with the priority of payment applicable after the delivery of an enforcement notice, as set out in the offering circular, that tranche (or sub-tranche) is given priority over other tranches or sub-tranches in respect of receiving payment (principal and interest), or is last in incurring losses in relation to underlying assets.

The Eurosystem reserves the right to request from any relevant third party (such as the issuer, the originator or the arranger) any clarification and/or legal confirmation that it considers necessary to assess the eligibility of asset backed securities.

Credit Standards

The asset must meet high credit standards. The high credit standards are assessed using Eurosystem credit assessment framework (“ECAF”) rules for marketable assets.

Place of Issue

The ABS must be deposited/registered (issued) in the European Economic Area (“EEA”) with a central bank or with a central securities depository which fulfils the minimum standards established by the ECB.

Settlement Procedures

The ABS must be transferable in book-entry form. It must be held and settled in the euro area through an account with central banks or with a Securities Settlements Systems (“SSS”) that fulfils the standards established by the ECB.

Acceptable Markets

The ABS must be admitted to trading on a regulated market as defined in the Directive 2004/39/EC of the European Parliament and of the Council of 21st April 2004 on markets in financial instruments, or traded on certain non-regulated markets as specified by the ECB.

The Main Market of the Irish Stock Exchange is a regulated market and, therefore, acceptable. To be admitted to trading on the Main Market of the ISE under Directive 2003/71/EC (the “Prospectus Directive”) securities must have a minimum maturity of 12 months. Money market instruments with a maturity of less than 12 months are excluded from the definition of “securities” under the Prospectus Directive.

However, the ISE have listed a European Commercial Paper (“ECP”) programme on the regulated market (the GPB Eurobond Finance Plc (GAZPROM) programme) even though ECP does not fall under the remit of the Prospectus Directive. It seems that while money market instruments cannot be approved under the Prospectus Directive, the ISE still has the capacity (under private treaty) to admit securities to trading on the regulated market.

Type of Issuer/Guarantor

The ABS may be issued or guaranteed by central banks, public sector entities, private sector entities, or international or supranational institutions. An ABS² issued by a credit institutions is only eligible if admitted to trading on a regulated market.

² other than covered bank bonds

Place of Establishment of the Issuer/Guarantor

One point in particular to note is that the issuer of ABS must be established in the EEA. Therefore, securities issued by SPVs located in tax haven jurisdictions will not qualify as eligible assets for ECB repo purposes.

The guarantor must be established in the EEA. International or supranational institutions are eligible issuers/guarantors irrespective of their place of establishment.

Currency of Denomination

The ABS must be denominated in Euro.

Assessment of Securities and the ECB's List of Eligible Marketable Assets

The ECB establishes, maintains and publishes a list of eligible marketable assets.

It is usually the central bank in the jurisdiction where securities are listed which assesses whether securities are eligible assets for repo purposes. The Central Bank of Ireland is responsible for reporting eligible assets listed on the Irish Stock Exchange to the ECB. It is an automatic process between the ISE and Central Bank and there are no separate application forms. In relation to timing, once a deal is listed on the ISE, the criteria test is applied to the notes by the Central Bank. Should the listed notes meet the criteria, they are automatically added to the ECB eligible list. Assets are considered eligible when their inclusion in the list of eligible assets has been

published by the ECB on its website. The updated lists are made public each day on the ECB website.

Summary

In summary, if there is an intention to repo notes on an ABS transaction in accordance with the ECB rules:

- You will need an EEA SPV. For further information please see our publication:

“Structured Finance Guide: Establishing Special Purpose Vehicles in Ireland - For Structured Finance Transactions”

under ‘Capital Markets’ at:

<http://www.arthurcox.com/publications/>

- You will need a central bank to review the ECB eligibility criteria that is fully aware of the issues, such as the Central Bank of Ireland, on a transaction (whether with an Irish SPV or not) with a listing on a regulated market such as the Irish Stock Exchange. Unusually, the ISE will allow for listing of shorter dated money market instruments. For further information please see our publication:

“Arthur Cox Listing Services Listing Guide: Specialist Debt Securities - Admission to trading on the Irish Stock Exchange”

under ‘Capital Markets’ or ‘Listing Services’ at: <http://www.arthurcox.com/publications/>

Key Contacts

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Richard joined Arthur Cox in May 2007 as partner following a secondment to the Office of General Counsel at Merrill Lynch International from the law firm, Paul Hastings. He qualified at Freshfields and has worked exclusively in the area of structured finance and securitisation at a number of City of London firms, including Clifford Chance. Richard has acted for arrangers, originators, credit enhancement providers, servicers and rating agencies across a wide variety of asset classes and jurisdictions and on whole business securitisations. In recent years, Richard has focused on the CMBS market; a topic on which he speaks and publishes articles regularly.

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Cormac is a partner in our Capital Markets Group. Prior to joining Arthur Cox, Cormac worked at Clifford Chance and Sidley Austin. He has advised on a wide variety of securitisation and other structured finance transactions for many different originators and arrangers. His experience includes RMBS, CMBS, corporate loans, trade receivables and whole-business securitisations. He has also advised on the establishment of commercial paper conduits in Europe and the US and the establishment of structured investment vehicles. He also advises on a range of financial regulatory issues and derivative transactions for Irish financial institutions.

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