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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

In order to create an enforceable debt obligation of the obligor to the seller:

(a) it is not necessary that the sale of goods or services is evidenced by a formal receivables contract. An enforceable debt obligation may be created orally or in writing;

(b) an invoice alone may operate as sufficient evidence of an enforceable debt obligation; and

(c) the behaviour of parties may be used to determine the existence of a contract implied on the basis of dealings between parties.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

The Consumer Credit Act 1995 (as amended) (the "**CCA**"), the European Communities (Consumer Credit Agreements) Regulations 2010 (as amended) (the "**CCA Regulations**", together with the CCA, the "**CCA Rules**") and The European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (which came into operation in Ireland on 21 March 2016) regulate consumer credit agreements in Ireland.

The European Union (Consumer Mortgage Credit Agreements) Regulations 2016 apply to new: (i) credit agreements secured by a charge, a mortgage or by another comparable security used in an EEA Member State on residential immovable property or secured by a right related to residential immovable property, and where the person to whom the credit is provided is a consumer; and (ii) credit agreements, the purpose of which is to acquire or retain property rights in land or in an existing or projected building, and where the person to whom the credit is provided is a consumer, entered into on or after 21 March 2016, and should be taken into account in considering what consumer protections are available to consumers in Ireland.

The CCA rules do not limit rates of interest on consumer credit, loans or other kinds of receivables. However, it is noteworthy that if the cost of credit is considered excessive, it may not be enforceable. A "credit institution" (as defined under the CCA) is required to notify the Central Bank of Ireland (the "**CBI**") of any increase in its charges to consumers. The CBI has the power to instruct the credit institution to refrain from imposing the increase in charges.

In Ireland, there is no statutory right to interest on late payments in consumer transactions. In commercial transactions, a statutory right to interest on late payments does exist.

Consumers may cancel receivables if the consumer credit agreement the receivables were purchased under does not comply with the CCA Rules. In addition, under The European Union (Consumer Mortgage Credit Agreements) Regulations 2016, a consumer has a right to discharge fully or partially their obligations under a credit agreement prior to the expiry of that agreement and is entitled to a reduction in the total cost of the credit to the consumer (such reduction consisting of the interest and the costs for the remaining duration of the contract). Furthermore, under The European Union (Consumer Mortgage Credit Agreements) Regulations 2016, a consumer may be entitled to compensation where justified for possible costs directly linked to the early repayment.

Other noteworthy rights of consumers include:

(i) Rights against unfair contractual clauses – the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (the "**UTCC**").

(ii) Protections in dealing with regulated entities – the Consumer Protection Code of the CBI.

(iii) Protections against unfair commercial practices – the Consumer Protection Act 2007.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

As with all governments and government agencies worldwide,

there is a possibility that sovereign immunity may affect the enforceability of receivables contracts in Ireland.

Irish governmental bodies and agencies are subject to the Prompt Payment of Accounts Act 1997. Under the Prompt Payments of Accounts Act 1997, Irish governmental bodies and agencies have a statutory obligation to pay monies due to their suppliers within 45 days of receipt of an invoice or delivery of the goods or services.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

Receivables contracts entered into on or after 17 December 2009 (contracts entered into prior to 17 December 2009 are governed by the Contractual Obligations (Applicable Law) Act 1991, pursuant to which the Rome convention on the law applicable to contractual obligations (the "**Rome Convention**") was implemented in Ireland) are governed by Regulation (EC) 593/2008 of 17 June 2008 ("**Rome I**").

Rome I contains specific provisions regarding certain classes of contract, which determine the applicable law in the absence of an express choice of law in such contracts. In respect of contracts that do not clearly fall within the scope of any of these specific provisions (receivables contracts are not specifically provided for), the applicable law is determined by reference to the jurisdiction where the party required to effect the characteristic performance of the contract has his habitual residence.

If the applicable law cannot be determined by reference to the foregoing, the contract shall be governed by the law of the country with which it is most closely connected.

Notwithstanding the above considerations, Rome I provides that if the circumstances of the case are such that the contract is manifestly more closely connected to another country other than that determined in accordance with the above, then the laws of that other country shall apply.

The applicable law of contracts that fall outside the remit of Rome I will be determined by reference to the parties' intentions under the principles of Irish common law. If such intentions cannot be established, the applicable law will be the law with which the contract is most closely connected. A part of a contract may be separable, in order to render such part governable by the law of another country with which it has a closer connection.

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

In the absence of overriding mandatory provisions of law applying, Irish courts should give effect to such a choice of law.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

As discussed above, under Rome I, the parties to a contract may freely choose the applicable law of their contract. Such choice would usually only be overridden if it was contrary to public policy or certain overriding mandatory provisions of law. The principles of Irish common law apply to contracts outside the scope of Rome I. Nonetheless, such principles will generally recognise the parties' right to choose the governing law of their contract and would only seek to displace such choice in exceptional circumstances.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

Subject to certain exceptions, no. Irrespective of the law governing the receivable(s), the parties to the receivable(s) sale/purchase agreement are permitted to select the law of any country to govern the agreement. Typically, however, the parties will select the law governing the majority of the receivables as the law to govern the sale/purchase agreement. Transactions involving the sale/purchase of receivables governed by various different laws can comprise a single receivables sale/purchase agreement with a split governing law clause or multiple receivables sale/purchase agreements.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

Yes, the Irish courts should recognise such a sale as being effective.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

Section 2, and questions 3.1 and 3.4 are applicable here. Additionally, under Rome I and the Rome Convention, laws other than the governing law of the receivables sale/purchase

agreement may be taken into account in certain circumstances. An example of this is where an Irish law-governed contract will be performed in a place other than Ireland; in such circumstances, the Irish courts may apply certain provisions of the law of the country where performance is to take place (where non-application of such provisions would render the contract unlawful in that country).

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

Section 2, and questions 3.1 and 3.3 are applicable here. Under Rome I and the Rome Convention, where there is an express choice of law by the parties to such an agreement, the Irish courts should recognise the choice of law and assess the validity of the contract in accordance with the law chosen by the parties. Nevertheless, certain principles of Irish law, such as Irish public policy or if the sale has not been made in good faith, cannot be dis-applied and to the extent the parties' chosen law conflicts with those principles the Irish courts may not apply the parties' chosen law. Furthermore, the Irish courts will not give effect to a choice of law if to do so would contravene the provisions of Rome I and/or the Rome Convention.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

Yes. See section 2, and questions 3.1, 3.3 and 3.4, which are applicable here.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

Yes; see section 2, and questions 3.1, 3.3, 3.4 and 3.5, which are applicable here.

It should be noted that, as regards sections 2 and 3, at the date hereof, we are not aware of any circumstances, concerning the laws of England as the governing law of a Receivables Contract/Purchase Agreement, that would give rise to an Irish court holding that such choice violates Irish public policy.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

The most common method of selling receivables in Ireland is by way of assignment (which can be legal or equitable). Other methods that can be used are novation (which transfers both the rights and obligations), a trust over the receivables or sub-participation.

An outright sale of receivables is generally described as a "sale", "a true sale", a "transfer" or an "assignment". Often the term "assignment" indicates a transfer of rights but not obligations and the term "transfer" usually connotes a transfer of rights and obligations. The phrase "security assignment" is generally used to distinguish between a transfer by way of security and an outright transfer.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

A sale of receivables by way of legal assignment is perfected by the delivery in writing of a notice of the sale by the assignor. The assignment must be: (i) in writing under the hand of the assignor; (ii) contain details of the whole of the debt; and (iii) be absolute and not by way of charge. If an assignment does not meet this criterion, it will most likely be characterised as an equitable assignment and any subsequent assignment that does meet these requirements will take priority. The notice of assignment is often achieved through the delivery of customary "hello" letters to the borrowers.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Transfers of promissory notes and other negotiable instruments are perfected by way of delivery or delivery and endorsement.

Mortgage loans and their related mortgages are generally transferred by way of assignment. In order to effect a full legal assignment of the mortgage, a transfer must be registered with the Land Registry (if the land is registered) or Registry of Deeds (if the land is unregistered).

Section 8 details specific regulatory requirements relating to consumer loans. Under the CCA Regulations (should they apply), a consumer should be provided with notice of the transfer of their loan unless the original lender will continue to service the loan. Pursuant to the CPC, a regulated entity (which includes a credit servicing firm – see section 8) must provide two months' notice to the consumer of their loans being transferred.

Marketable debt securities in bearer form can be transferred by delivery and endorsement and, if in registered form, by registration of the transferee in the relevant register. Dematerialised marketable securities held in a clearing system may be transferred by debiting the clearing system account of the purchaser.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

No. However, in order for a legal sale to be effected, written notice must be provided to the obligor.

The absence of notice has the following implication:

(i) the assignment will only be equitable;
(ii) obligors can discharge their debts by paying the seller;
(iii) obligors may set-off claims against the seller even if they accrue after the assignment;
(iv) a subsequent assignee without notice of the prior assignment would take priority over the claims of the initial purchaser; and
(v) the purchaser cannot sue the obligor in its own name, but must join the seller as co-plaintiff.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

There are no requirements as to the form of the notice; however, it should be clear and state that from the date thereof the obligor should pay the assignee. There is no specific period during which notices should be delivered and notices may be provided following the commencement of insolvency proceedings. The notices should apply only to specific receivables.

A notice (or "hello letter") in respect of consumer loans should adhere to requirements set out in the CPC (e.g., as to certain required consumer-facing statements) and any other CBI requirements set out from time to time.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

It is likely that the wording in the first two formulations above would prevent the transfer of receivables without the consent of the obligor.

Under the third formulation, it is likely that an Irish court would find that the seller has an implicit authority to transfer its rights under the agreement without the consent of the obligor.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

Restrictions on the assignment of receivables or the "seller's rights" are generally enforceable in Ireland. If a contract is silent on assignability, the seller is generally free to assign their rights. If an assignment were effected in breach of a contractual provision, despite being ineffective between the seller, purchaser and obligor, it will not invalidate the assignment between the seller and purchaser. The seller may be required to hold on trust any monies received from the obligor for the purchaser.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

The sale document must identify the receivables to be sold with sufficient clarity so that they are identifiable and distinguishable from other receivables owned by the seller. Details of the obligor's name and the underlying contract should be sufficient, though particular care should be taken when acquiring non-performing loans, given the requirement to evidence the transfer and current ownership of the debt when enforcing it (and borrower challenges in this area). The receivables being sold do not have to share objective characteristics. The sale of all receivables the seller has, or the sale of all receivables other than some, is unlikely to sufficiently identify the transferring receivables.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

Recharacterisation risk exists in Ireland, along with consequential risk that a sale found to be a security arrangement is void against a liquidator and creditors of the seller due to a failure to register any registrable security interest.

However, there is a recent upper Irish court decision that, in broad terms, endorsed established English case law and principles on questions of true sale and recharacterisation (e.g., Re: *George Inglefield and Welsh Development Agency*). The decision held that in the absence of the contract being held to be a "sham" (which is a serious allegation to make), the nature of the contract is determined by the objective terms and their legal effect, rather than the subjective intention of the parties or the economic effect of the arrangement. That said, a general right to repurchase (save for usual reasons such as asset ineligibility) or rights to participate in the profits of the purchasers or the assets will be problematic to the analysis and all such terms of the contract need to be closely considered.

Under Sections 443 (Power of Court to Order the Return of Assets Improperly Transferred), 604 (Unfair Preferences) and 608 (Power of Court to Order Return of Assets which have been Improperly Transferred) of the Irish Companies Act 2014 (as amended) (the "**CA 2014**") sale transactions may also be vulnerable, particularly on the insolvency of the seller.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

The seller and purchaser may agree to continuous sales of receivables whereby receivables will be automatically assigned to the purchaser upon coming into existence.

See question 6.5 regarding the effect of an insolvency of the seller on an agreement to assign a receivable not yet in existence.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

Yes. Such an agreement is treated as an agreement to assign and gives rise to an equitable assignment upon the receivable coming into existence.

See question 6.5 on the effect of an insolvency of the seller on an agreement to assign a receivable not yet in existence.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Related security is generally transferable in the same manner as the receivable itself. As discussed in question 4.3, the transfer of certain types of security may require additional formalities.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

Generally speaking, an obligor's right of set-off exists until the obligor receives a notice of assignment. If the cross-debt arose before the obligor's receipt of the notice, the right of set-off will survive receipt of the notice. If an obligor's rights were terminated due to notice or some other action, it would be unlikely that the seller or purchaser would be liable to the obligor for damages.

In respect of consumer loans, the CCA provides that where the creditor's or owner's rights under an agreement are assigned to a third person, the consumer is entitled to plead against the third person any defence that was available to him against the original creditor, including set-off.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

Methods typically used in Ireland to extract residual profit from special purpose vehicles include:

- a subordinated or equity class of note or loan;
- paying the seller fees;
- paying deferred purchase price or consideration to the seller for the receivables purchased; and/or
- making repayments or interest payments to the seller in respect of subordinated loans granted by the seller.

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

Where an outright sale is intended, it is not customary in Ireland to take a back-up security interest over the seller's ownership interest in the receivables and the related security. It is not uncommon, however, for a seller to create a trust over its interest in the receivables in favour of the purchaser. This offers the

purchase a degree of secondary protection should the validity of the sale be questioned.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

See question 5.1.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

The most common form of security taken over receivables in Ireland is a mortgage or a charge.

A mortgage involves assigning the title of an asset by way of security for the discharge of the secured obligations. In the context of receivables, the rights of the purchaser (such as the right to receive payment) are generally assigned upon the condition that such rights will be re-assigned to the purchaser on redemption or discharge of its secured obligations. There are principally two types of mortgage: a legal mortgage; and an equitable mortgage. A legal mortgage is created when the assignment is: (i) perfected by the delivery of notice to the obligor(s) of the relevant receivables in accordance with the requirements of Section 28(6) of the Supreme Court of Judicature (Ireland) Act 1877 (the "**Judicature Act**"); (ii) in writing under the hand of the assignor; (iii) in respect of the whole debt; and (iv) absolute and not by way of charge. In circumstances where the assignment does not fulfil these requirements, it will likely take effect as an equitable assignment. Until an equitable mortgage has been perfected by notice to the obligor(s), the assignee's security will be subject to prior equities and will rank behind a later assignment (in circumstances where the later assignee has no notice of the earlier assignment and has itself given notice to the obligor(s)).

A charge involves the creation of an encumbrance over assets. There are two types of charges: a fixed charge; and a floating charge. In the context of receivables, a fixed charge would attach to specific receivables on creation, whilst a floating charge would "float" over a class of present and future assets and would remain dormant until some further step is taken by or on behalf of the charge holder, a "crystallisation event". Prior to the occurrence of a crystallisation event, the class of assets over which a floating charge has been granted can continue to be managed in the ordinary course of the chargor's business. Upon a crystallisation event occurring, the floating charge attaches to the particular class of the chargor's assets and the charge effectively becomes a fixed charge. The distinguishing factor between a fixed and floating charge is the level of control over the receivable/asset that the chargee has. Irish courts will look at the substance of the security created as opposed to how it is described/named in determining one from the other.

Where an Irish company creates security over certain types of assets such as receivables (i.e., it creates a "registrable charge" for the purposes of the CA 2014), it is required to register short particulars of such security within 21 days of its creation with the Irish Registrar of Companies (the "**RoC**"). Failure to register a registrable charge within 21 days of its creation will result in the security interest being void against the liquidator and any creditors of the chargor. An unregistered charge will still be valid as against the chargor, provided the chargor is not in liquidation.

Securities created over: (i) cash; (ii) money credited to an account of a financial institution, or any other deposits; (iii) shares, bond or debt instruments; (iv) units in collective investment undertakings or money market instruments; or (v) claims and rights (such as dividends or interest) in respect of anything referred to in (ii) to (iv) above, are not registerable charges. Whilst "cash" has not been defined in the CA 2014, it is defined in the European Communities (Financial Collateral Arrangements) Regulations 2010 (as amended) (the "**FCR**") as "money credited to an account" or a claim for the repayment of money.

The priority of registerable charges is determined by the date/time of receipt by the RoC of a filed charge rather than the date of creation.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

Where the purchaser is a foreign company and the receivables are situated in Ireland, the security created will not be subject to the requirement to register with the RoC in order to perfect the security.

Where the purchaser is an Irish company, details of the security will be subject to the requirement to register with the RoC, regardless of whether or not the receivables are located in Ireland.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

Security over contractual rights under insurance policies is created by way of a mortgage, whereby the policyholder assigns the benefit by way of security to the assignee.

Security over mortgage or consumer loans is generally created by way of a mortgage or charge. An equitable mortgage is usually created over the mortgage securing a mortgage loan.

The type of security over marketable debt securities (including promissory notes) depends on whether the securities are bearer or registered, certificated (existing in physical form), immobilised or dematerialised and/or directly-held or indirectly-held.

Directly held and registered certificated debt securities are usually secured by legal mortgage (by entry of the mortgage on the relevant register) or by equitable mortgage or charge (by security transfer or by agreement for transfer or charge).

Bearer debt securities are usually secured by way of mortgage or pledge (by delivery together with a memorandum of deposit) or charge (by agreement to charge).

Indirectly held certificated debt securities are usually secured by legal mortgage (by transfer, either to an account of the mortgagee at the same intermediary or by transfer to the mortgagee's intermediary or nominee via a common intermediary) or by equitable mortgage or charge (by agreement of the intermediary to operate a relevant securities account in the name of the mortgagor containing the debt securities to the order or control of the chargee).

Security over shares, bonds or debt instruments have been specifically excluded from the requirement to register security.

If the security interest constitutes a "security financial collateral arrangement", the FCR applies.

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

A validly constituted trust over collections received by the seller in respect of sold receivables should be recognised under Irish law.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Irish law recognises the concept of money held in a bank account in escrow. Security may be taken over a bank account in Ireland and is typically taken by way of a charge or security assignment.

Where a depositor grants security over a credit balance in favour of a bank at which the credit balance is held, security can only be achieved by way of a charge.

In circumstances where the security constitutes a "security financial collateral arrangement" over "financial collateral" within the meaning of FCR, those regulations apply.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

Generally, the bank where the secured account is held is provided with notice of the creation of security over the account and that it should, amongst other things, upon being notified that the security has become enforceable, act in accordance with the instructions of the secured party. It is recommended that an acknowledgment of such notice is obtained from the bank; however, failure to obtain such acknowledgment will not undermine the security granted to the secured party. Where such notice of creation of the security has been properly delivered to the bank and the secured party subsequently enforces its security, the bank should follow the instructions of the secured party with respect to all cash standing to the credit of (or flowing into) the secured account until the secured obligations are fully discharged and the bank has been notified that the account is no longer encumbered.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

Any charge over a cash bank account that permits the chargor access to the funds prior to enforcement is likely to be categorised by an Irish court as a floating charge, even if the security is stated to be a fixed charge. In order to be categorised as a fixed, charge it would be necessary for restrictions on the chargor's ability to utilise the funds in the relevant account. The consequences of this distinction in a post-enforcement scenario are set out in question 5.3 above.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

If the sale of the receivables from the seller to the purchaser was a "true sale", the appointment of an insolvency official to the seller should not affect the purchaser's rights under the receivables.

The appointment of a liquidator or an examiner to an insolvent Irish company imposes an automatic stay of action against the entity. In respect of the appointment of an examiner, the initial period of protection is 70 days, which can be extended up to 100 days. During the protection period, no proceedings for the winding-up of the company may be commenced or resolution for winding-up passed in relation to the company. Furthermore, no action may be taken to realise or enforce any security granted by the company, without the consent of the examiner. Creditors may not enforce their claims, whether by issuing court proceedings or enforcing security.

If the sale of the receivables was not a true sale, the receivables might be determined to be the property of the seller. In such an instance, the purchaser may be deemed a secured party of the seller and any appointment of an insolvency official (as described above) might impede the transfer of the receivables to the purchaser.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

Where there is a legal assignment of the receivables to the purchaser, an insolvency official will not have the ability to interfere in the purchaser's rights over the receivables (unless there has been a fraudulent preference or an improper transfer of assets).

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

The commencement of insolvency proceedings can result in antecedent transactions being challenged by the insolvency

official under a number of different statutory provisions, including the following:

- Unfair preference: The creation of security and the making of a payment to a creditor prior to being placed in an insolvent liquidation can be set aside, where the debtor company carried out the transaction with the intention of benefitting one creditor (or any guarantor of the debt due to that creditor) over the other creditors. The preference can be set aside if it occurred within six months preceding the liquidation (or two years if the beneficiary of the transaction is a related party).
- Improper transfer: If the company's assets have been improperly transferred (i.e., with the effect of perpetrating a fraud), the High Court can order assets to be returned if it considers it just and equitable to do so.

A floating charge created within 12 months before the commencement of its winding-up may be invalid (except to the extent of monies advanced or paid or the actual price or value of the goods or services sold or supplied to the company), unless it is proved that the company, immediately after the creation of the charge, was solvent. Where the floating charge is created in favour of a related party, the period of 12 months is extended to two years.

If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, the purchaser will be considered a related party. If a parent company of the seller guarantees the performance by the seller of its obligations under contracts with the purchaser, the question of whether or not the purchaser would be considered a related party depends on the relationship between the purchaser and the seller.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

An Irish court has the power to "pierce the corporate veil" and make orders consolidating assets of the insolvent company with another company if there are equitable grounds to do so. An Irish court will only rarely do this.

The assets and liabilities of the purchaser could be pooled with the assets and liabilities of the seller, on the application of the insolvency official, if the purchaser was itself being wound up and Irish High Court were to make an order that the purchaser and the seller are related companies (e.g., if the purchaser is owned by the seller) and should be wound up as if they were one company. However, pooling orders are seldom made in Ireland – typically only in the context of an insolvency and where the business of the two companies in question have been so intermingled that they are not readily identifiable from each other.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

If the sale of the receivables had been concluded and the purchase price had been received by the seller, the insolvency proceedings related to the seller would have no impact on such transfer.

If the sale had not been included and the purchase price not received by the seller, the purchaser would be an unsecured creditor of the seller (depending on how indebted the seller had become to the purchaser).

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

Limited recourse provisions are enforceable as a matter of Irish law. If the limited recourse provisions are included in every document the debtor signs and the provisions are adhered to, it should not be possible for the debtor to be declared insolvent on the basis of an inability to pay its debts as they fall due.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

The European Union Securitisation Regulation (EU) 2017/2042 (as amended pursuant to Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021) (the "**Securitisation Regulation**") came into force in January 2019. The Irish supplementing legislation to the Securitisation Regulation was implemented at the same time and is entitled The European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018 (the "**Irish Regulations**").

The Securitisation Regulation and Irish Regulations only regulate a "securitisation" as defined in the Securitisation Regulation. Other transactions that do not meet this definition are not regulated *per se* in Ireland.

The Securitisation Regulation requires certain due diligence, risk retention and reporting obligations with respect to a securitisation to be complied with by institutional investors, originators, sponsors, original lenders and SSPEs (as each such term is defined therein). In addition, the Irish Regulations require an Irish originator, sponsor and/or SSPE (as applicable) to notify the CBI of a securitisation not later than 15 working days after the first issue of securities of that securitisation.

The CBI has powers to supervise and enforce compliance with the Securitisation Regulation and the Irish Regulations.

Where the CBI suspects negligent or intentional contraventions of the Securitisation Regulation or the Irish Regulations, it may appoint an assessor to investigate and make determinations. As such, each SSPE should seek reasonable assistance covenants from relevant deal counterparties in the transaction documents to facilitate compliance with its obligations in such a scenario. Similarly, the costs of an SSPE in complying with its obligations should be provided for in the transaction documents as appropriate.

Additionally, Section 110 of the Taxes Consolidation Act 1997 (the "**TCA**") facilitates the structuring of securitisations and other structured transactions by allowing for the special tax treatment of Irish companies that meet the conditions set out in Section 110 TCA ("**Section 110 Companies**"). See section 9 for further details.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

The establishment of special purpose entities for securitisation transactions is not specifically provided for under Irish law; however, where it is envisaged that a company will issue listed debt securities, it must be a designated activity company ("**DAC**") under the CA 2014 (or a PLC if offering the securities to retail investors). Section 110 Companies are unregulated entities and as such there is no regulatory authority responsible for regulating securitisation transactions in Ireland (other than as noted above in respect of the Securitisation Regulation). For further information, see section 9.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

Ireland is an attractive jurisdiction in which to establish companies to effect securitisation transactions for both Irish and non-Irish assets. Globally, investors and market participants are familiar with the well-established legal framework that exists in Ireland for such transactions. The tax regime applicable, and tax treatment afforded, to Section 110 Companies is a key advantage of using Ireland. Furthermore, Ireland provides an efficient listing mechanism for debt securities. The Irish Stock Exchange plc, trading as Euronext Dublin, has extensive experience in listing specialist debt securities and delivers a turnaround time of maximum three working days.

Ireland has a recognised infrastructure with experienced professionals, corporate administrators, auditors, lawyers and other service providers.

Another advantage to establishing a Section 110 Company in Ireland is that debt securities issued by such a company can, once the CBI has approved the relevant offering document, be accepted throughout the EU for public offers and/or admission to trading on regulated markets under the EU Prospectus Regulation.

A Section 110 Company is generally incorporated in Ireland under the CA 2014 as a DAC, being a private company limited by shares; for retail offerings, a PLC must be used.

Section 110 Companies are generally structured as orphan entities, the shares of which are held by a professional share trustee on trust for charitable purposes.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

Yes, an Irish court should give effect to such provision in the context of a securitisation transaction.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

Whilst there is little authority in Irish law, an Irish court should give effect to such provision in the context of a securitisation transaction. It is possible, however, that an Irish court would deal with a winding-up petition even if it were presented in breach of a non-petition clause. This is because a party may have a statutory or constitutional right to take legal action against the purchaser or such other person, which may not be contractually disapplied.

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

Yes, an Irish court should give effect to such provision in the context of a securitisation transaction. Certain creditors are preferred in an Irish insolvency, and so may rank in priority to the security trustee and the application of the security enforcement proceeds in that regard, but an insolvency official should not be able to challenge the application of the remaining balance in accordance with the post-enforcement priority of payments.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

Irish directors have statutory and common law duties that as directors they must adhere to. The Irish courts should recognise most agreed board governance matters, subject to those limitations. Any limitation or restriction on a director's ability to bring insolvency proceedings may be invalid as a matter of public policy or incompatible with certain statutory duties of the directors.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

Yes. See question 7.3 for further details.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

This will depend on the nature of the acquired receivables. Certain consumer and SME receivables fall within the scope of the Irish credit servicing regime pursuant to Part V of the Central Bank Act, 1997 (as amended).

As well as borrower-facing loan administration, the scope of regulated activities includes: (a) the holding of legal title to relevant loans; and (b) the managing or administering of the relevant loans, including by (i) determining the overall strategy for the management and administration of a portfolio of Relevant Loans, or (ii) maintaining key control over key decisions relating to such portfolios.

A regulated credit servicer must be appointed to each of these functions, unless they are being carried by or on behalf of certain other regulated persons such as credit institutions.

There is also a safe harbour for an SPV issuer engaged in certain forms of primary and secondary securitisations of such loans. The securitisation must be risk-retention compliant under the relevant EU rules and an exempted person must hold legal title to the portfolio.

Other forms of compliance may attract, for example, where the underlying obligors under a credit agreement are consumers, a purchaser is required to comply with consumer protection regulations and data protection rules and regulations under the GDPR.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

No. However, see questions 8.1 and 8.4.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

GDPR came into effect in Ireland on 25 May 2018. It strengthened the data protection rights of individuals and imposed strict obligations on businesses, banks and other bodies when holding and processing personal data.

GDPR does not apply to the data of corporations and only applies to that of natural persons. In some instances (such as in an RMBS securitisation) there might be the transfer of residential mortgages from a seller to the SPV. If this was the case, certain transaction documents might refer to the specific residential mortgages that are being transferred. It is normal for the names and personal details of such natural persons to be anonymised or not included in the transaction documents at all. It would not be normal to inform an obligor of a securitisation and therefore it would not be possible to obtain a waiver of confidentiality.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

If the obligors are consumers, a bank acting as purchaser will need to comply with the terms of its authorisation and all applicable codes of conduct/advertising rules as well as Irish consumer protection laws. These include the CCA Rules, UTCC and the CPC.

Please see question 1.2 for details of what is required under the CCA Rules.

The UTCC contains a non-exhaustive list of terms that will be deemed "unfair". It includes terms that try to exclude/limit the legal liability of a seller in the event of the death of, or personal injury to, a consumer due to an act or omission by the seller, or, require any consumer who fails to fulfil his obligation to pay a disproportionately high compensation. Unfair terms of a contract will not be binding on a consumer. A term will be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations under the agreement to the detriment of the consumer.

The CPC imposes various obligations on all regulated entities dealing with customers in Ireland to act honestly, fairly and professionally and with due skill, care and diligence in the best interests of their customers and to avoid conflicts of interest, while there are additional codes of conduct imposed by the CBI in respect of mortgage arrears, SME loans and other specific asset classes.

These codes are applied to securitisation transactions where the credit servicing regime in question 8.1 applies, via the medium of the credit servicing firm who is obliged to comply with them.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

This jurisdiction does not have such legislation at present.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

Yes, in respect of securitisation transactions that are in scope of the Securitisation Regulation. In such cases, the originator, sponsor or original lender (each as defined in the Securitisation Regulation) of a securitisation is required to retain on an ongoing basis a material net economic interest in the securitisation of not less than 5%. Such holding is required to comply with one of the methods prescribed in the Securitisation Regulation (e.g., "horizontal" first loss position or "vertical slice" position).

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

The EBA recently closed its consultation on the draft regulatory technical standards ("**RTS**") with respect to risk retention requirements pursuant to the EU Securitisation Regulation. To date, the market has been operating on the basis of draft RTS

dating from 2018, which the EBA submitted to the European Commission but were never finally adopted. The new draft RTS are substantively based on the 2018 draft RTS but contain some additional nuances that the market will need to digest. For example, the provisions in relation to compliance with the "sole purpose" test for limb (b) originators contain subtle changes in language. However, this amendment is not anticipated to be material and overall will affirm the principles-based approach for originators in complying with this test.

In recent months, there have been a number of recent legislative developments that will impact licensing requirements for originators. In July 2021, the Irish government published the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021, which extends the Irish retail credit licensing regime to any currently unregulated providers of consumer hire-purchase, consumer hire (e.g. PCP car finance) and consumer indirect credit provision, such as the emerging point of sale lending sector. While this bill is still undergoing parliamentary scrutiny, it is expected to be prioritised and enacted later this year. In addition, with the publication of Directive (EU) 2021/2167 of the European Parliament and of the Council on 8 December 2021 on credit servicers and credit purchasers, it is anticipated that certain amendments will be made to the Irish credit servicing regime to reflect its provisions. Finally, Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020, which establishes an EU regulatory regime for crowdfunding service providers, has been transposed into Irish law, pursuant to the European Union (Crowdfunding) Regulations 2021 (S.I. No.702 of 2021). The CBI has been appointed as the competent Irish authority and has recently published materials outlining the authorisation process applicable to crowdfunding service providers operating in Ireland.

Investors are increasingly seeking to invest in companies that have the capabilities to both achieve and maintain strong financial and Environmental, Social, and Governance ("**ESG**") performance. ESG and sustainable finance is an area that is continuously evolving and growing to meet the expectations of a wide number of stakeholders, including shareholders, policymakers, regulators and central banks. Within the EU and Ireland, new regulatory frameworks are being introduced to address and support the European Commission's revised Action Plan on Sustainable Finance and the Renewed Sustainable Finance Strategy. This includes the Taxonomy Regulation, the Sustainable Finance Disclosure Regulation (the "**SFDR**") and the Low Carbon Benchmark Regulation. For example, the SFDR requires collateral and asset managers to disclose the manner in which sustainability risks are integrated into their investment decisions, and the assessment results concerning sustainability risks' likely impacts on the returns of the financial products they make available.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

Tax at the standard rate of Irish income tax (currently 20%) is required to be withheld from payments of Irish-source yearly interest. However, it is generally possible to structure a securitisation transaction in Ireland such that payments are not subject to Irish withholding tax.

In general, the sale of receivables at a discount will not result in the discount being recharacterised as interest and no Irish interest withholding tax should apply. Similarly, the deferred payment of purchase price on collection of a receivable should be treated as such and not recharacterised as interest.

There are a large number of domestic Irish exemptions available from the requirement to withhold on payments of interest, including for interest paid:

- to a bank carrying on a *bona fide* banking business in Ireland;
- to a company that is resident in an EU Member State or a country with which Ireland has signed a double tax treaty where that territory imposes a tax that generally applies to interest receivable in that territory from outside that territory;
- to a US corporation that is subject to tax in the US on its worldwide income; and
- to certain Irish entities, including Section 110 Companies, investment undertakings and certain government bodies.

In terms of securitisation transactions, debt securities issued are often listed for transferability purposes with the additional benefit being that they fall within an exemption from Irish withholding tax for quoted Eurobonds. A quoted Eurobond is a security that is issued by a company, carries a right to interest and is quoted on a recognised stock exchange.

Interest paid on such quoted Eurobonds can be paid free of Irish withholding tax, provided certain additional conditions are met.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

Securitisation companies in Ireland tend to be structured to qualify for a particular tax regime under Section 110 TCA. The taxable profits of a qualifying company under Section 110 TCA are calculated as if it is a trading entity with the result that the company can deduct funding costs, including swap payments and profit-dependent interest, provided certain conditions are met. The default position is that such companies calculate their tax returns in accordance with Irish GAAP 2004 unless the company elects otherwise.

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

Ireland imposes stamp duty on certain written documents where the document is both:

- listed in Schedule 1 to the Stamp Duties Consolidation Act 1999 (the "**SDCA**"); and

- executed in Ireland or, if executed outside Ireland, relates to property situated in Ireland or to any matter or thing done or to be done in Ireland.

A receivable that has an Irish legal *situs* may be chargeable to Irish stamp duty under these provisions. There are certain exemptions that may be relevant to the transfer of receivables, including an exemption for debt factoring and for transfers of loan capital. In addition, the transfer of receivables or other debts by way of novation should not be subject to Irish stamp duty.

9.4 Value Added Taxes. Does your jurisdiction impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

As a Member State of the EU, Ireland imposes VAT on the supply of goods and services. The standard rate of VAT in Ireland is 23%.

In general, securitisation companies in Ireland are not required to charge VAT with respect to services they provide, as those constitute VAT-exempt financial services. However, an Irish company will be required to register and account for Irish VAT where it receives non-VAT-exempt services from outside Ireland under the reverse-charge mechanism. Services such as legal, accounting, trustee and rating agent services are all taxable services for VAT purposes and would trigger the reverse-charge accounting requirements.

Whether a particular service is subject to VAT will depend on the facts and the actual service provided. In general, the sale of receivables is exempt from VAT where it does not form part of a debt factoring arrangement. Dealing in payments is also generally exempt from VAT but debt collection is a VATable service and, as such, whether collection agent services are subject to VAT will depend on the factual circumstances and terms of the documents. Where collection agent services are provided as part of a bundle of services to a securitisation company, those services are likely to be exempt from VAT as administration services.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

As set out above, where services are provided between two businesses based in different EU Member States, the reverse-charge rules apply for VAT purposes and it is the recipient of the services that is required to account for VAT in their country of establishment (under the reverse-charge provisions). If the supply of services is made by an Irish supplier to another Irish company, it is the supplier who is required to account for VAT and the tax authorities cannot pursue the recipient or purchaser of the service.

In general, Irish stamp duty is payable by the purchaser of the asset being transferred.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

A company that is not resident for tax purposes in Ireland is generally only subject to corporation tax in Ireland if it carries on a trade in Ireland through a branch, agency or permanent establishment. Non-Irish resident companies are also subject to capital gains on the disposal of certain specified Irish assets including Irish land or shares deriving their value from Irish land.

In general, a purchaser should not be considered to be trading in Ireland solely by reason of the purchase, collection and enforcement of receivables. A creditor may be liable for capital gains tax on enforcement of security and sale of an asset if that asset is within the charge to Irish capital gains tax generally, e.g., a non-resident enforcing a debt and selling Irish land.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

An Irish tax resident purchaser can claim a deduction for tax purposes in respect of a debt that is proven to the satisfaction of the Irish tax authorities to be bad. However, a tax deduction is not available for general provisions for bad debt. If an Irish resident purchaser subsequently recovers a bad debt in respect of which a tax deduction has previously been claimed, that amount will be treated as taxable income of the purchaser.

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