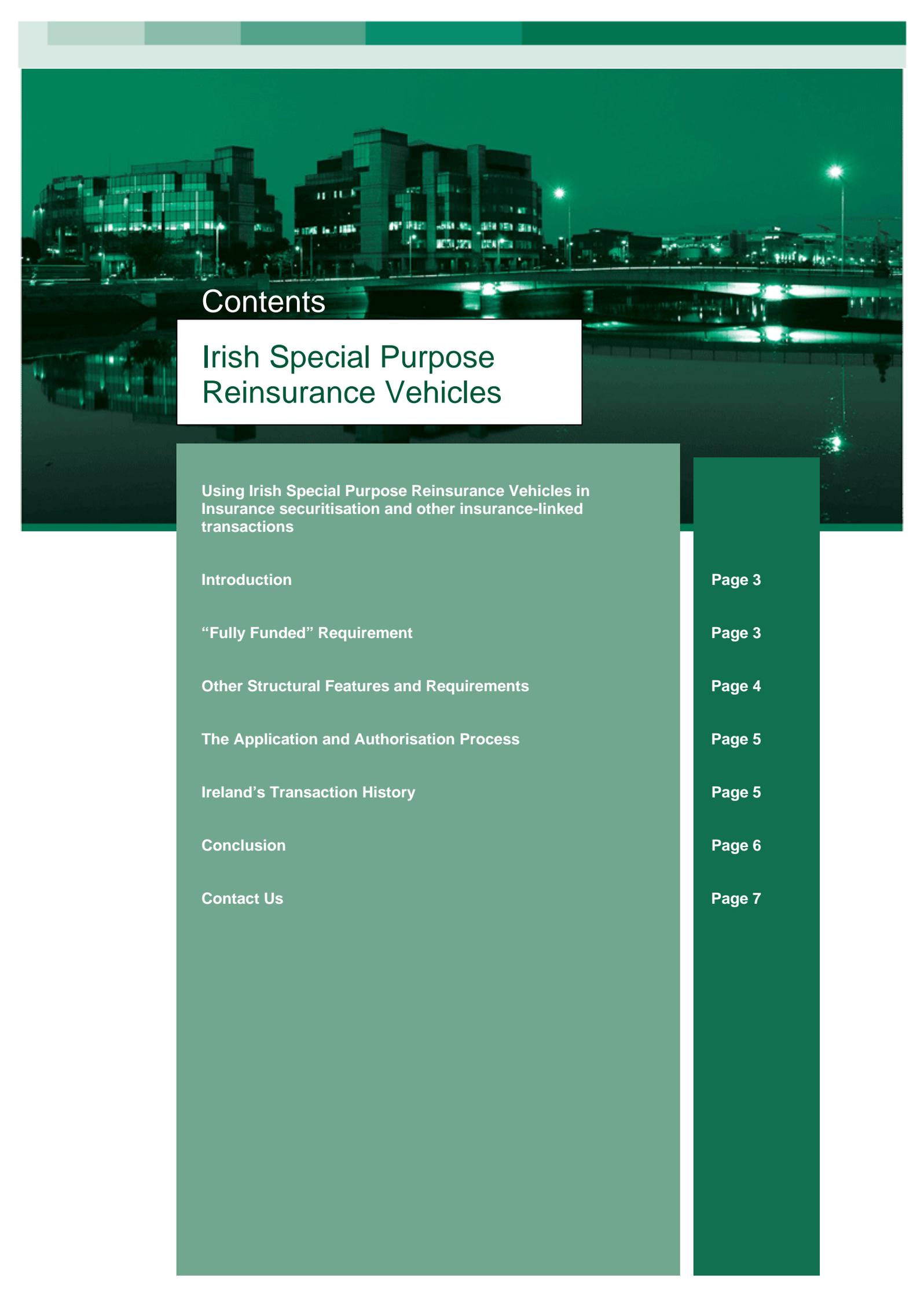


Irish Special
Purpose
Reinsurance
Vehicles

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IRISH SPECIAL PURPOSE REINSURANCE VEHICLES

Introduction

The Reinsurance Directive was implemented into Irish law by the European Communities (Reinsurance) Regulations 2006 (the “Regulations”), which came into effect on 15th July, 2006. This made Ireland the first EU country to implement the Reinsurance Directive. In furtherance of government and industry initiatives to continue to enhance the innovative legal and tax regime upon which Ireland has built its reputation as a premier jurisdiction for the establishment of special purpose vehicles for a variety of securitisation, repackaging, risk transfer and other structured finance transactions, the Regulations incorporate a bespoke regulatory and authorisation regime for special purpose reinsurance vehicles (SPRVs).

One of the significant benefits of the Regulations is the discretion that is given to the Irish Financial Services Regulatory Authority (the “Financial Regulator”) to prescribe capitalisation requirements for SPRVs that are lower than those prescribed for regular reinsurance entities. The Financial Regulator’s practice, as outlined in its June 2007 Paper in relation to SPRVs, is to not impose capital requirements on SPRVs in excess of the amount required to ensure that they are “fully funded” in accordance with the requirements of the Regulations.

The foregoing, coupled with the existing attractions of the Irish securitisation tax regime - which includes an extensive double tax treaty network; tax neutrality through the tax deductibility of a wide range of expenses incurred by securitisation vehicles including certain service fees and funding costs of profit participating debt; and the variety of withholding tax exemptions in relation to payments of interest by the SPV – has made Irish SPRVs a popular choice for insurance securitisation and other insurance-linked transactions for both the life and non-life sectors. What follows is a general overview of the SPRV regulatory regime.

For further information on the general securitisation regime in Ireland please see our “Securitisation” brochure.

“Fully Funded” Requirement

As mentioned above, given the limited nature of an SPRV’s business, the Financial Regulator’s primary concern in terms of capital requirements is to ensure that the SPRV is “fully funded”.

The Regulations define “fully funded” as:

“(a) in relation to a SPRV 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 a SPRV 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 Structural Features and Requirements

In addition to the “fully funded” requirement, the Financial Regulator’s SPRV Paper stipulates that contracts relating to the SPRV should contain market-standard limited recourse and non-petition provisions. It is also generally a requirement that the SPRV be a bankruptcy remote vehicle that is separate from the cedant.

In terms of recourse of the noteholders, the documentation must make clear that payments due under the terms of the issuance of the notes are obligations of the SPRV only and, in the event of a default, the noteholders will not have any recourse to the assets of the cedant.

The applicant must also demonstrate to the Financial Regulator that the cedant (and its Regulators) are aware of the nature of the transaction and the SPRV.

The Financial Regulator also places significant emphasis on corporate governance and the good repute of the persons involved in the day to day management and operation of the SPRV. In addition to demonstrating that such persons have the appropriate track record in the management of insurance and reinsurance risk, the Financial Regulator will also expect the promoter, or a suitably qualified independent third party service provider, to provide infrastructural support to the SPRV to carry out the administrative functions of the SPRV; to ensure tax and regulatory compliance of the SPRV and to report to the board of directors of the SPRV in relation to such matters.

The SPRV must also have policies and procedures in place to monitor and report counterparty credit risk to the board of directors of the SPRV and to exercise the contractual

remedies available to the SPRV (as set out in the various agreements) so that, for example, the requisite remedial action can be taken when triggers are hit.

The Application and Authorisation Process

The decision to grant or refuse an application for a SPRV authorisation rests with the Financial Regulator. Its guidelines set out the requirements for such applications.

Firstly, the application must be in writing and must contain an explanation as to how the SPRV will be fully funded together with a description of the proposed reinsurance arrangements to be entered into by the SPRV. In terms of the supporting documentation to be provided, this typically includes an actuarial review of the underlying business, the prospectus or other offering document, the rating agencies pre-sale report (if applicable), details of outsourcing and servicing agreements and details of the directors, management and capital structure of the SPRV.

To date, the Financial Regulator has been very amenable to meeting with promoters to discuss new transactions and to explore various structuring possibilities. The authorisation process since the introduction of the Regulations has proven to be very efficient and, where the written application is comprehensive in terms of addressing the relevant structural and other requirements, and includes all other relevant information and supporting documents, it has been possible to obtain authorisation within a very short timeframe.

Ireland's Transaction History

Historically, non-regulated (i.e. non-SPRV) Irish SPVs have frequently been used for life settlement and premium financing transactions. The introduction of a specific regime for Irish SPRVs now also makes Ireland an attractive domicile for a variety of other life and non-life transactions.

For a number of years, Ireland has been a popular jurisdiction from which to issue CAT bonds and, in 2007, Dillon Eustace advised on the first such transaction using an Irish SPRV since the implementation of the Reinsurance Directive. The transaction was a US\$220 million participating note issuance by an Irish SPRV (Sector Re) as part of a securitisation of catastrophe and aviation risk for the world's leading global reinsurer.

Ireland has also become increasingly popular for life insurance securitisation, particularly for US insurers who are attracted by the favourable tax treaty which can eliminate U.S. federal premium taxes, and there has been a number of both "embedded value" and "Triple – X" reserve financing transactions in recent years.

In terms of the former, Dillon Eustace advised Swiss Re on the ALPS II transaction. The transaction was a securitisation of future profits from a portfolio of US life insurance policies,

which allowed Swiss Re to release value from its in-force business. It is anticipated that this type of business will be increasingly attractive for life insurers with the implementation of Basel II.

In terms of Triple-X transactions, examples of Irish transactions include the Orkney and Ballantyne Re vehicles. Here again, Ireland has proved attractive for US life insurers who have been required, since 2002, to hold substantial reserves for term life insurance under what is known as Regulation Triple-X. Securitisation using an Irish SPRV has shown to be a very effective option for such insurers as the alternatives (e.g. reinsurance with a non-US insurer secured with a letter of credit or qualifying collateral held in trust) present capacity and cost constraints.

Conclusion

Ireland's early implementation of the Reinsurance Directive highlights its commitment to the reinsurance industry. The cooperation between the Department of Finance, the Financial Regulator and the international reinsurance industry in drafting the Regulation and implementing the Directive underline the desire to develop this asset class to ensure Ireland's continued international prominence as a domicile for securitisation. The approach in terms of drafting the Regulations has been a very pragmatic one where the Financial Regulator has been given supervisory powers that are commensurate with the type of business and the relevant risks involved. The experience to date in terms of the practical application of these provisions has been a very positive one.

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