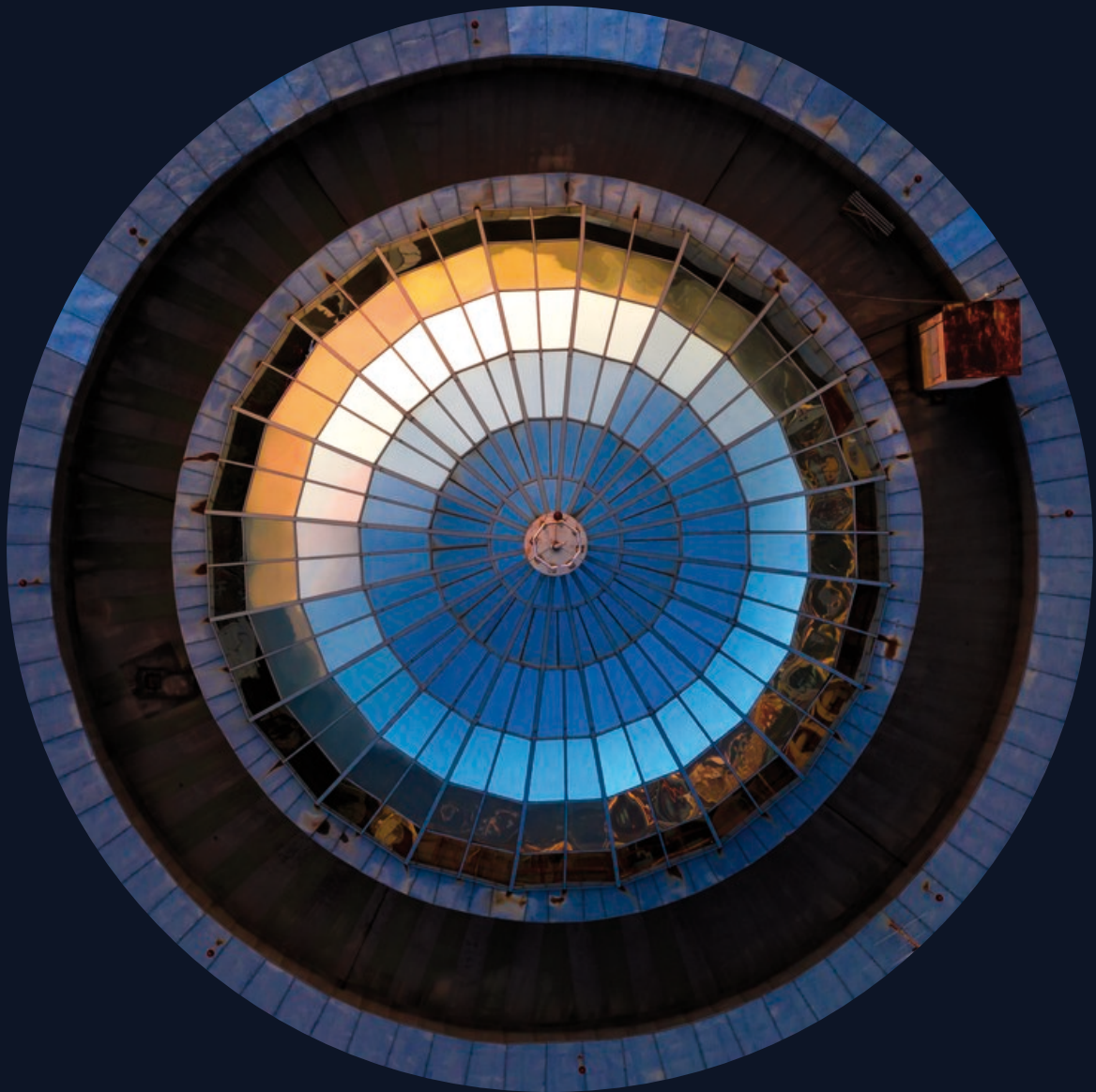


Ogier in Ireland
Structured Finance



Ogier

Who we are

We advise originators, issuers, arrangers and managers on a full range of finance and capital markets transactions.



"We engaged with the team in Ireland in respect of a financing with a tight deadline. They were very responsive, assisting quickly and efficiently."
Client feedback, 2023

Ogier is a full service legal and professional services firm with particular expertise in financial services and capital markets.

Our Structured Finance team in Ireland provides commercially driven, solutions-based advice to clients executing debt capital markets and structured finance transactions in and from Ireland. We draw on expertise from our Tax, Investment Funds and Regulatory teams, and work closely with Ogier Global's corporate and fiduciary professionals to support clients with the formation and administration of asset finance, debt issuance and securitisation vehicles.

Our practice focus is broad and includes CLOs, RMBS, CMBS, trade receivables, auto loans, synthetic securitisations and general ABS structures.

Our dedicated debt listings team acts as listing agent for a wide variety of debt securities on Euronext Dublin, the Vienna Stock Exchange, the Luxembourg Stock Exchange, the International Stock Exchange and other listing venues.

The firm practices the laws of BVI, Cayman, Guernsey, Ireland, Jersey and Luxembourg. Ogier has 13 offices throughout Europe, the Caribbean, the Middle East and Asia, with approximately 1,200 employees and more than 120 partners worldwide.

Our approach

We develop relationships with our clients to understand their business needs and drive transactions to achieve the desired results.

Our objectives include helping our clients with the legal issues that might arise on transactions and working with all parties involved to promptly resolve those in the most effective and cost-efficient way.

We understand the need to limit and manage risk for our clients and we work to facilitate those aims.

We also support our clients with in-house training, seminars and briefings and, as a firm, we use technology to offer streamlined solutions.

Our services

Bringing together legal, fiduciary and listings expertise, our team is well placed to deliver integrated solutions.

Ogier's Structured Finance team works closely with our Corporate and Fiduciary and Listing teams, offering integrated services for originators, issuers, managers and investors across a wide variety of structures and asset classes.

We assist clients with:

- CLOs and warehouse transactions
- CMBS
- RMBS
- s110 companies issuing profit participating notes
- SRT/CRT
- trade receivables
- auto loans
- synthetic securitisations
- loan origination
- repackaging
- structured products, derivatives, securities servicing and prime brokerage
- regulatory advice including compliance with EU Securitisation Regulation, EMIR, SFTR, Financial Collateral Directive, credit servicing and credit reporting
- ETP/ETC
- digital assets, custody and trading



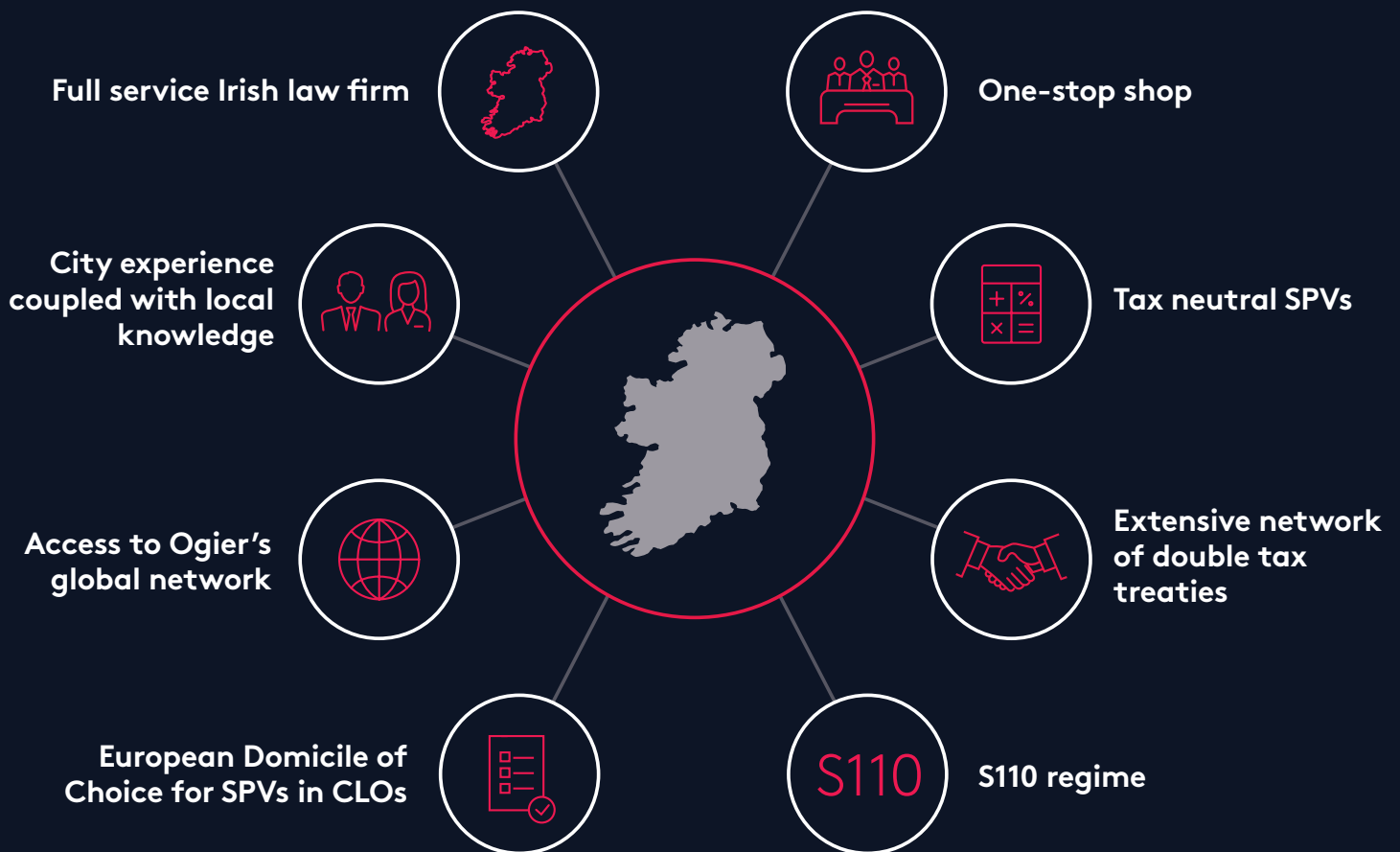
"Richard Kelly stood out to me for the approach that he championed. Richard consistently provided pragmatic solutions. Richard was also extremely personable and responsive, always responding quickly even out of hours."

Legal 500 EMEA, 2024



"Always on hand to provide solutions."
Client feedback on partner Laura Holtham, 2023

Structured Finance in Ireland



Why Ireland for structured finance?

Ireland is the leading European jurisdiction for the establishment of special purpose vehicles (SPVs) for securitisation and structured finance transactions.

Irish SPVs are used in multiple different financing transactions including, CLOs, CMBS, RMBS, ABS, SRT/CRT, repackaging, loan origination, ETP/ETC programmes, fund financing, aircraft leasing and insurance/reinsurance transactions. There are more than 3,400 SPVs in Ireland with over €1 trillion in assets, representing over a quarter of the European market by assets.

For over 30 years, Ireland has provided a consistent, predictable and responsive legal and tax framework, allowing it to develop the infrastructure and expertise necessary for the global securitisation and structured finance industry.

Main benefits of establishing SPVs in Ireland

- Leading EU jurisdiction for SPV establishment
- Experienced and efficient native English-speaking service providers
- OECD/EU jurisdiction with broad double tax treaty network
- Common law legal system, similar to the UK and US
- Favourable tax regime resulting in no tax leakage
- Cost effective services including:
 - No requirement for minimum retained profit
 - Competitive legal, tax, corporate administration and audit fees

SPV corporate form

Irish SPVs are generally incorporated as a form of private limited company called a designated activity company (**DAC**), or a public limited company (**PLC**).

DACs can be incorporated with a minimum share capital of €1 while a PLC must have a minimum share capital of €25,000 (though this share capital can be used to be pay transaction costs). A DAC can generally be incorporated in no more than five working days while a PLC will usually take up to two weeks. In addition, a PLC must apply for a certificate to commence trading before it undertakes any business.

A DAC will be suitable where the investor base is limited to:

- investors subscribing for securities in minimum denominations of at least €100,000
- certain "qualified investors" (including financial institutions)
- fewer than 150 persons (not including qualified investors)

Where this is not the case (for example, a large-scale public offer to retail investors), a PLC must be used.

In order to ensure that the SPV remains bankruptcy remote, the SPV will generally be established as an "orphan." This is achieved by having the shares of the SPV held by an Irish registered share trustee who will declare a trust over the

shares in the company for general charitable purposes. By ensuring the bankruptcy remoteness of the SPV, the SPV's assets should not be at risk from the insolvency of a parent entity.

The SPV will generally require independent Irish-resident directors, company secretarial services and a registered office in Ireland. Ogier Global, our Corporate and Fiduciary services arm, is well positioned in Ireland to provide these services together with good standing services applicable to all Irish domiciled SPVs, such as preparing the financial statements and Irish tax compliance filings.

Offering of securities

Investors in Irish SPVs will typically invest by acquiring interest bearing debt securities (often called "notes") issued by the Irish SPV. An offer of securities with a minimum denomination of at least €100,000, an offer to "qualified investors" and an offer to fewer than 150 persons (not including qualified investors) will be considered a non-public offer. Non-public offers do not require any prior regulatory approvals.

Regulation (EU) 2017/1129 (**the Prospectus Regulation**) applies whenever securities are offered to the public or admitted to trading on a regulated market in the EU, such as the Main Securities Market of Euronext Dublin. Where the Prospectus Regulation applies, the

SPV must prepare a formal prospectus in relation to the securities and apply to the Central Bank of Ireland for approval of the prospectus. Once approved the prospectus can be “passport” throughout the EU for public offers and/or admission to trading on regulated markets.

Investment management

There is no requirement for an investment manager to be authorised in Ireland when providing investment management services to a Section 110 SPV so long as:

- it has an EU authorisation to provide investment management services on a cross-border basis, or
- its head or registered office is outside of the EU, it has no branch in Ireland, it only provides investment services to non-consumers in Ireland, it is authorised in its home jurisdiction and that jurisdiction has certain cooperation/information-sharing arrangements with the Central Bank of Ireland.

Taxation of Irish SPVs - Section 110

Ireland is an onshore EU jurisdiction and a member of the Organisation for Economic Co-operation and Development (OECD). Many clients opt to use on-shore SPVs in their transaction structures, but when doing so they must undertake careful structuring and planning in order that the desired tax position, for both the SPV and the investors, is achieved.

Section 110 of the Taxes Consolidation Act 1997 of Ireland provides for a special tax treatment

to apply to certain “qualifying” SPVs (commonly known as Section 110 companies or S110s). A qualifying SPV must comply with certain requirements, including:

- it must be tax resident in Ireland
- it must acquire financial assets or enter into swaps or other legally enforceable arrangements with a market value of at least €10,000,000 on the first day it commences business

The list of financial assets which may be acquired is broad and includes:

- shares, bonds and other securities
- futures, options, swaps, derivatives and similar instruments
- obligations evidencing debt (including loans and deposits)
- leases and loan and lease portfolios
- commodities
- plant and machinery

Section 110 SPVs are subject to tax as if the SPV was a trading company. Therefore, the SPV can avail of a tax deduction in respect of any interest expense incurred in acquiring the qualifying assets. Section 110 SPVs are typically funded by issuing debt securities designed to accrue interest equal to the income received on the qualifying assets acquired using the proceeds of the issuance. As the SPV’s interest expense will generally equal its income, the SPV will typically be profit (and therefore tax) neutral. Any incidental profits not paid out by way of interest will be subject to corporation tax at a rate of 25%.

Qualifying SPVs must notify the Irish Revenue Commissioners of their existence, but no special tax rulings or authorisations are required in Ireland for the SPV to achieve Section 110 tax neutral status.

Irish taxation generally

Income tax for investors

There is a domestic Irish exemption from income tax for interest paid by an Irish SPV to a person who is resident in an EU Member State or another territory with which Ireland has a double tax treaty (each a “relevant territory”). If this domestic exemption does not apply there is a longstanding practice where no income tax liability will be pursued in respect of persons who are not resident in Ireland and are not otherwise subject to tax in Ireland and do not seek to obtain a repayment of tax for other taxed income from Irish sources.

Withholding tax

Unless an exemption applies, withholding tax at 20% must be deducted from interest payments made by Irish companies. However, one of two main exemptions typically apply in the context of note issuances: the “quoted Eurobond” exemption or the “qualifying person” exemption.

Double tax treaties

Ireland has a large network of double tax treaties, with 74 currently in effect. The terms of a tax treaty can typically ensure that income in respect of the qualifying assets acquired by the SPV can be received by the SPV without any withholding or other taxes in the jurisdiction of origin of the income.

VAT

The activities of Section 110 SPVs are exempt from VAT. In addition, there is no VAT chargeable on management services supplied to Section 110 SPVs and no charge to Irish VAT would generally arise for corporate administration services.

Stamp duty

No Irish stamp duty is payable on the issue or transfer of notes issued by a Section 110 SPV.

ATAD

Ireland has implemented ATAD I and II, including anti-hybrid and interest limitation rules (**ILR**). In practice, structured finance transactions tend not to be caught by these rules as most debt funded SPVs tend not to have exceeding borrowing costs. In addition orphan SPVs can generally be considered part of a "single company worldwide group" which removes also addresses any ILR concerns.

FATCA

Ireland is a party to a Foreign Account Tax Compliance Act (**FATCA**) Model 1 Intergovernmental Agreement with the US, and has implemented FATCA reporting obligations into its domestic legislation, similar to the UK. Ireland has adopted the OECD's standard for the automatic exchange of financial account information, (the Common Reporting Standard, or **CRS**) meaning financial account reporting tends to be unproblematic.

Pillar Two

Ireland has implemented the Pillar Two rules into domestic law. The rules impose a top-up tax to ensure an effective jurisdictional tax rate of 15% but only apply when the Irish SPV, or the group into which it is consolidated, has revenues in excess of €750 million for two of the previous four fiscal years.

Our team



Richard Kelly

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Richard leads Ogier's Structured Finance team in Ireland. Richard advises international and domestic clients on all aspects of structured finance, CLO ABS and other structured products. Richard also advises on debt capital markets, derivatives, repo, securities lending, prime brokerage and crypto trading transactions.



Laura Holtham

Partner
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Laura is a partner in Ogier's Banking and Finance team in Ireland. She advises financial institutions, alternative lenders, investors and borrowers on a wide range of local and international transactions. She has particular expertise in real estate finance, fund finance, structured finance and secured lending.



Eoin Hamill

Partner
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Eoin works in the Banking and Finance team in Dublin with a particular focus on advising issuers, arrangers and managers on a broad range of securitisation structures across a number of asset classes including commercial mortgages, residential mortgages, auto loans, CLOs and non-performing loans. In addition to a focus on advising securitisation issuers, Eoin has worked on a variety of real estate financing structures including loan-on-loan transactions, repos and development finance facilities.



John Perry

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John leads the tax practice in Ireland, specialising in investment management, structured finance and aviation. John was appointed as an assistant professor at Dublin City University and is a member of the Adjunct Faculty at University College Dublin. He contributes to numerous publications and has lectured on behalf of the Irish Tax Institute and the Law Society of Ireland.



Laura Blaney

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Laura acts for a wide range of financial institutions and corporate borrowers. She advises on various transaction types, including capital markets/securitisation transactions, real estate finance, fund finance, asset-based lending, cross-border lending and corporate restructuring.



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Conor specialises in debt capital markets and structured finance transactions. He advises a broad range of domestic and international clients on debt capital market transactions including CLOs, securitisations, SRTs, bond issuances and debt issuance programmes. These include euro medium-term note and commercial paper programmes, as well as trustee and agency advice.

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Corporate and Fiduciary
Consulting

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British Virgin Islands
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Guernsey
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Ogier is a professional services firm. We have three divisions:

Legal: practical advice on BVI, Cayman, Guernsey, Irish, Jersey and Luxembourg law.

Corporate and Fiduciary: corporate administration services with a strong reputation in governance and regulatory compliance.

Consulting: independent guidance on regulatory compliance.

Our network of locations also includes Beijing, Hong Kong, London, Shanghai, Singapore and Tokyo. Regulatory information can be found at ogier.com.