A jurisdictional guide to SPVs: why, how and where to consider for your business needs

Introduction

The use of special purpose vehicles (SPVs) has increased in recent years as businesses seek new levels of efficiency and security. Creating entities that are separate from a parent company can isolate risk, protect assets and help attract investors.

Many businesses establish SPVs as simple holding companies, while others use them to house and administer securitised assets such as mortgage-backed loans. SPVs are a crucial component in everything from aviation leasing deals and insurance-linked investments to structured-finance and real-estate transactions. There are many things SPVs can be used for. Some are routine, others deeply complex.

Establishing and administering SPVs, however, is not without challenges. Whether they're established as public or private companies, SPVs face a range of reporting and compliance obligations.

Where you set up an SPV is an important consideration. Tax treatments differ between jurisdictions, as can the cost and speed of incorporation. Not every economy supports SPV creation, and those that do have differing rules and regulations. Some jurisdictions have specialist experience in setting up and administering SPVs for particular purposes.

The bottom line is that SPVs are hugely useful corporate vehicles. As separate legal entities, they allow businesses to experiment with riskier transactions, clear assets from balance sheets and raise fresh capital.

In this guide we use our years of experience to highlight these benefits and look at SPV creation and maintenance in five key jurisdictions. We'll describe the process of setting up an SPV and the factors to take into consideration before selecting a third-party partner. In short, we'll help you cut through the complexity of establishing and using SPVs.

" The popularity of SPVs is not difficult to fathom. They're extremely useful vehicles for isolating financial risk or ring-fencing assets, among other potential purposes. Couple that with the relative ease of incorporation and it's obvious why their use has grown significantly over the last decade. "

Kevin Butler, Ocorian Head of Capital Markets – EMEA

CHAPTER 1

Why use an SPV?

At its simplest, an SPV is as it's name suggests – a vehicle to house a special financial endeavour – i.e. a separate entity set up for a specific purpose. That might be to undertake projects, hold a particular asset or create a securitised financial product, to name just three.

SPVs are created whenever companies need a separate legal entity. They can be established as an off-balance-sheet solution that isolates financial risk from the parent company.

The challenges around SPVs tend to centre on the regulations governing their incorporation and use. These can change over time, creating an administrative burden and the potential for non-compliance.

Many economies don't accept SPVs at all, while those that do have regulations that differ quite widely. Some jurisdictions have established themselves as specialists in the establishment and management of SPVs for specific purposes.

Jurisdictions have different strengths and it's worth taking time to consider which of the key SPV markets best fits your corporate vehicle.

Here are four key reasons for setting up an SPV:

1 Isolating financial risk

By setting up an SPV, companies isolate risk. SPVs are separate legal entities with their own assets and liabilities, distinct from the parent company.

2 Creating a bankruptcy remote structure

As separate legal entities, SPVs are generally "bankruptcy remote", which means they can carry on operating even if the parent company fails.

3 Facilitating a structured-finance transaction

SPVs are used to attract equity and debt investors through securitisation. They are also commonly used in property deals and joint ventures.

4 Raising capital

SPVs are used to raise capital for future projects, ring-fencing this cash for a specific purpose.

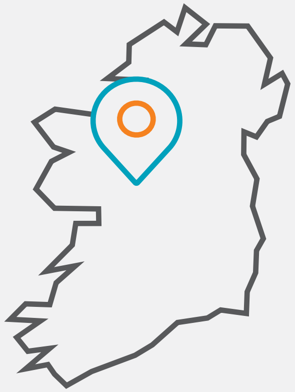
CHAPTER 2

Where to set up your SPV: Ireland

It's estimated there are over 4,000 SPVs in Ireland, holding in excess of €1.1 trillion in assets, and the number is growing. While SPVs are established in Ireland for a range of purposes, the country has become the European hub for SPVs that hold collateralised loan obligations (CLOs). These are collateralised corporate loans issued as debt to investors.

In 2023, SPVs for aircraft leasing vehicles grew by 22%, for CLOs by 21% and for credit funds by 12%. US and UK sponsors are responsible for nearly two-thirds of Irish-domiciled SPVs.

> "There's complexity around the wider obligations of these vehicles that companies have to be aware of as regulations evolve, so on-the-ground expertise is essential," says Padraic Doherty, managing director of Ocorian's Ireland office. "The plus side in Ireland is that industry bodies – the Irish Debt Securities Association is one – work closely with the government and are very proactive in flagging up issues and helping the industry find ways to deal with them."



Five reasons to choose Ireland for your SPV:

- Ireland is a highly regarded centre for international finance, with a legal framework based on common law and well-established rules around the creation and maintenance of SPVs. Its membership of the EU and OECD give security, certainty and reassurance to investors, making it a key location for debt-issuing SPVs.
- Ireland has an extensive network of double-taxation agreements and offers special tax treatment for qualifying SPVs. If the SPV qualifies as a Section 110 company, it may be structured to be tax neutral.
- Irish SPVs are incorporated as either private companies limited by shares, public limited liability companies or designated activity companies (DACs). Most are DACs, which are especially popular for securitisation and structured-finance transactions. DACs can be established to meet Section 110 requirements.
- As a major financial centre, Ireland has a well-developed infrastructure of specialist service providers. This includes directors, advisors, listing agents and trustees. There is a wide network of legal and tax specialists, and a thriving ecosystem of entity administrators.
- Incorporating an SPV in Ireland is fast and efficient. It is commonly completed in three to five working days and relevant documents can be submitted online. The costs of incorporation are low.

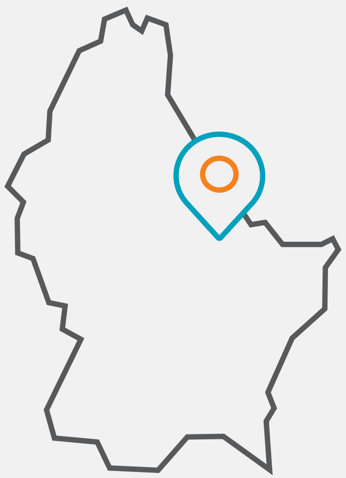
As elsewhere, Irish SPVs must be mindful of wider anti-money-laundering (AML), know your customer (KYC) and credit reporting regulations.

CHAPTER 3

Where to set up your SPV: Luxembourg

Luxembourg is one of the world's great financial centres and a gateway to European markets. Since the country's dedicated securitisation law came into force in 2004, over 1,000 securitisation vehicles and thousands of related compartments – which ring fence different assets and liabilities – have been set up in Luxembourg. Luxembourg accounts for 29% of the euro area's financial vehicle corporations – SPVs that handle securitisation transactions.

"Incorporating an SPV in Luxembourg is generally straightforward, but there can be delays, especially when it comes to banking," says Luis Rebelo, Ocorian's head of capital markets in Luxembourg. "Here, an experienced service provider with local relationships can help smooth the process. A good provider will also help entities stay compliant with the spider's web of EU regulations, which can be daunting for overseas businesses."



Five reasons to choose Luxembourg for your SPV:

Luxembourg's securitisation law makes the country an attractive choice for structured-finance transactions, offering legal certainty alongside flexibility. One major benefit of the law is the ability to create compartments within an SPV. The law is regularly updated to reflect evolving market conditions.

Luxembourg has a wide network of double-taxation agreements. While securitisation vehicles are subject to corporate income tax and municipal business tax, in practice SPVs benefit from a tax regime that aims to achieve tax neutrality. There's no withholding tax or VAT on Luxembourg SPVs.

A highly supportive government, combined with the country's reputation for political and economic stability, has made Luxembourg the European hub for a significant number of international corporations and banks. Luxembourg's financial power is a major draw for companies wanting to raise investment capital.

While SPVs can be created as nearly any kind of company, in practice they're usually set up as public limited liability (SA) or private limited liability (SARL) companies. The SA is considered the structure of choice for larger companies, while the SARL is more suited to mid-sized businesses and investments.

SPV incorporation is relatively fast and efficient, typically taking between five and 10 days. The main challenge is stringent KYC requirements. The need for these deep screenings has reduced the appetite of banks for securitisation business in Luxembourg and opening a bank account can take a number of weeks.

CHAPTER 4

Where to set up your SPV: Cayman Islands

The Cayman Islands is a major centre for SPVs, especially those used to facilitate structured-finance and asset-based finance transactions. It's by far the most popular choice for US CLOs.

Cayman operates a light-touch regulatory regime and has wide experience as an SPV market. Businesses can draw on a large and mature service-provider ecosystem. The Islands' legal system is based on English common law and its political system on the English parliamentary model. With an engaged and business-friendly government, Cayman is a stable and well-regarded environment for the incorporation of SPVs.

"The Cayman Islands offers a wide range of benefits for SPVs, such as the tax neutrality, legal certainty and the flexibility required to make them tax efficient and operationally viable," says Kareem Robinson, head of capital markets at Ocorian in the Cayman Islands. "Businesses should be aware of the new focus on compliance, which makes setting up an SPV a little more complicated than it once was, so local expertise is essential."

Five reasons to choose the Cayman Islands for your SPV:

The Cayman Islands is a tax-neutral jurisdiction, with no income tax, capital gains tax or withholding tax levied on SPVs. What's more, SPV owners can apply to the government for a tax exemption certificate that ensures tax neutrality for 20 years.

The Cayman Islands operates a robust and creditor-friendly regulatory framework, proportionate to the sophisticated nature of its investors and the low-risk status of most SPV transactions. The majority of SPVs are incorporated as Cayman Islands exempted companies, which offer a high degree of flexibility.

Substance requirements have been reinforced in recent years to comply with international standards. SPVs must have a registered office or agent in the Cayman Islands and one director has to act as an AML officer. These measures have brought Cayman into line with other international jurisdictions.

Creating an SPV is straightforward and can usually be completed in two to five business days, but there's a 24-hour express service. No regulator approval is required, so after incorporation SPVs can launch at any time.

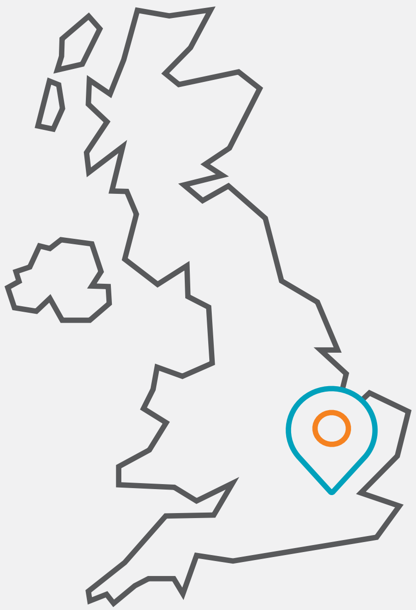
As an established financial centre, the Cayman Islands has a deep pool of service providers, including directors, share trustees, major international banks and experienced legal advisors.

CHAPTER 5

Where to set up your SPV: UK

The UK is not a mass market for SPV creation, but the country's reputation for high standards of corporate governance and transparency has given it significant niche appeal. In particular, it attracts SPVs for more complex, high-risk transactions involving multiple counterparties. These are often private-debt securitisation deals. Many involve real estate or infrastructure. A UK SPV is considered a robust vehicle for ring-fencing risk.

" Some countries have turned SPV creation into something of a cottage industry," says Nick Bland, head of client services for Ocorian UK. "That's not the case with the UK, which is more of a specialist jurisdiction. The SPVs we see tend to be more complex and involve counterparties who want the reassurance of the country's reputation for good and transparent governance alongside legal and regulatory certainty. "



Five reasons to choose the UK for your SPV:

SPVs can be formed as any company type in the UK, but are most commonly a private company limited by shares (Ltd) or a public limited company (Plc). Plc SPVs are mostly used for offering securities to the public. Online filing means SPVs can be incorporated within 24 hours.

London has been financing global trade since the 17th century and the City of London remains the largest foreign-exchange centre in the world. The London Stock Exchange is considered the world's most international market for the trading of primary and secondary equity, and debt securities.

Company law in the UK is fair, robust and far-reaching in parts. The comprehensiveness of these laws is one of the reasons why the UK is an attractive option for clients who want to advertise their commitment to transparency and compliance.

The UK legal system is based on common law and is considered business-friendly and flexible. It tends to evolve quickly with the needs of business. There are tax exemptions for securitised debt and compliant organisations have access to the UK's extensive network of double-tax treaties.

The UK sits in a central time zone. This makes it easier to trade with markets in both the global East and West.

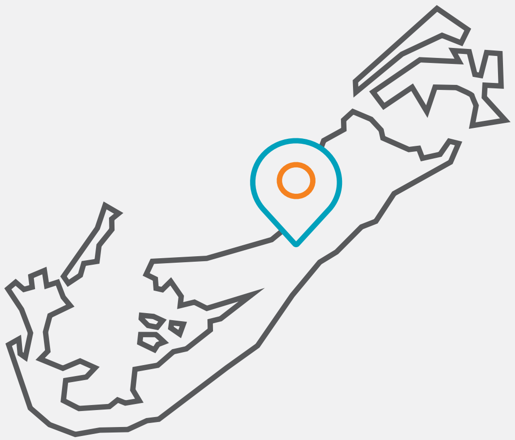
CHAPTER 6

Where to set up your SPV: Bermuda

While Bermuda can and does establish and administer SPVs for a wide range of purposes, it has become known as a centre for SPVs that house insurance-linked securities. These structures are designed to allow insurance or reinsurance companies to transfer risk from their balance sheets to capital markets, while offering diversity for investors. Local legislation has evolved to facilitate this kind of vehicle, making Bermuda the world's largest market for insurance-linked transactions.

The island has other specialities, including thriving SPV markets for shipping, aircraft and container leasing transactions.

" In terms of regulation and tax, there's not much between setting up an SPV in Bermuda and another jurisdiction like Cayman," says Sherman Taylor, head of capital markets at Ocorian in Bermuda." The difference is really around specialism. In Bermuda we're seen as the specialists in insurance-linked securities, alongside asset-based leasing deals. We have developed the expertise and talent on the island to facilitate these kinds of transactions. "



Five reasons to choose Bermuda for your SPV:

Insurance-linked securities are a growing asset class, allowing investors in public markets and private equity to diversify their portfolios. They are not without risk, but returns can be good. Current stock market volatility means insurance-linked securities are a major driver of new SPV incorporations in Bermuda.

With insurance-linked transactions, the SPV sits between insurance business and investors, issuing both the security and the contract. Managing and maintaining the SPV to everybody's satisfaction takes specialist knowledge and Bermuda is a world leader in the field.

Legislation on the island is designed to facilitate these transactions. Regulators have found the right balance between protecting participants and making SPV regulation proportionate and easy to use. The regulator is sympathetic to the needs of the industry.

Rules around SPVs are split into two groups: more robust rules offering EU levels of protection for riskier transactions, such as those involving commercial insurance companies; and simplified rules for transactions with less risk. With their qualified, accredited investor base, insurance-linked securities fall into the second category.

SPVs are generally set up as exempted companies and are not subject to tax. The government has guaranteed that Bermuda-based SPVs will not be taxed until at least 2035, and that date may eventually get pushed further into the future.

CHAPTER 7

Location matters: comparing jurisdictions

Which SPV jurisdiction is right for you? It depends on factors like your own location, the purpose of your SPV and (if applicable) the preferences of your investor base. But each jurisdiction also has its own rules and obligations that should be taken into consideration. This table lets you compare the main features of five key SPV markets.

Setting up an SPV

The details of setting up an SPV differ between jurisdictions. Nevertheless, in almost all cases establishing your SPV will require these steps:

1 Name your SPV

This generally requires reserving the name with the relevant authority. In some jurisdictions, naming conventions have to be followed (like use of Limited or Ltd in the title). In others, incorporation can't be completed until the name has been registered.

2 Make key appointments

You'll need at least one director and one shareholder. You may need a company secretary.

3 Prepare your company details

Take advice from legal and tax experts and decide on the structure your company will take. Rent a registered office or contract a registered agent. It's common at this point to engage the services of a third-party administrator with jurisdictional knowledge.

4 Draft legal documents

Draft necessary documents in conjunction with your legal advisor. That might include a Memorandum of Association, Articles of Association and an Operating Agreement.

5 Register

Pay any registration fee and register your SPV with the relevant authority. This can usually be done more quickly and cheaply online.

Jurisdiction	Ireland	Luxembourg	Cayman Islands	UK	Bermuda
Specialism	All SPVs, CLOs	All SPVs, securitisation vehicles	All SPVs, CLOs and structured-finance vehicles	Private debt securitisation deals and real estate	Insurance-linked securities and shipping/aircraft/container leasing
On / offshore	On	On	Off	On	Off
Typical SPV structure	DAC	SA or SARL	Cayman Islands exempted company	Ltd or Plc	Bermuda exempted company
Typical time to incorporation	3–5 business days	5–10 business days (longer if bank account required)	2–5 business days (24 hours with express service)	Ltd: 24 hours online (up to 8 days offline) PLC: 5–15 business days	3–5 business days
Regulatory regime	Moderate	High	Low	Moderate	Low
Tax	Tax neutral for qualifying vehicles	Tax regime aims to achieve tax neutrality	Tax neutral	Tax exemptions but not tax neutral	Tax neutral
Reporting obligations	An SPV has to file accounts, undergo an annual audit and hold an AGM	An SPV has to file accounts, undergo an annual audit and hold an AGM	No mandatory requirement to file annual accounts or have an annual audit or AGM	An SPV has to file accounts, an audit requirement is subject to balance sheet size. Plc companies must hold an AGM (which can be waived)	No mandatory requirement to file annual accounts or have an annual audit or AGM
Personnel and substance	Minimum of two directors and one shareholder, plus company secretary and registered office in Ireland.	Minimum of one director and one shareholder, plus registered office or agent in Luxembourg. No company secretary required.	Minimum of two directors and one shareholder, plus registered office or agent in Cayman. No company secretary required.	Minimum of one director and one shareholder, plus a registered office in the UK. A company secretary is required for a Plc, but only recommended for a private company.	Minimum of one director and one shareholder, plus registered office in Bermuda. A company secretary is required.

Choosing your perfect SPV partner

Most companies use a third-party corporate services provider to help establish and manage SPVs.

There are a number of reasons for this. Your business may not have boots on the ground in the relevant jurisdiction and administering an SPV can be challenging without local knowledge. Even if your business has a local team, it may lack the bandwidth to take on another time-consuming task. Many companies have estates of tens or even hundreds of SPVs dotted around the globe.

A good third-party partner can reduce your administrative burden, ensure SPVs meet all compliance and reporting obligations and give in-house legal counsel time to focus on higher-value activities.

Here's what to look for in a third-party partner:

Experience

Look for a partner that has helped establish and maintain SPVs for a wide range of purposes, whether securitisation, asset segregation, risk management or something else.

Geographical coverage

Your partner should have people on the ground in the jurisdiction where you plan to establish an SPV. A global footprint is also valuable when assets or investors are based in different locations, and to horizon scan for emerging international regulations.

Service

You can reduce cost, simplify supplier management and benefit from a consistent and joined-up approach if one provider can manage the full lifecycle of your SPV. Look for a complete range of services, including SPV administration, trustee and director provision, substance and compliance.

Relationships

Your partner should have close working relationships with a range of intermediaries, including banks, legal counsel and tax advisors, and relevant local authorities.

Ocorian has the expertise you need, wherever you need it

SPVs are increasingly popular in property deals, asset-holding and leasing arrangements, and securitisation and structured-finance transactions. They're an eminently useful way for businesses to segregate assets, free up balance sheets and manage risk. They range in complexity from simple holding companies to multi-jurisdictional financing vehicles.

Companies need different SPV structures for different purposes. The nature of these vehicles matters and so does their location. Establishing the right SPV in the right place can make the SPV more efficient, cost-effective and useful.

If you need an SPV, always discuss legal and tax implications with relevant advisors, who can highlight local best practice. Expert advisors can help you steer a clear path to successful incorporation. After that, you should talk to a corporate services provider like Ocorian. Ocorian is a global provider of securitisation and SPV services, with expertise in capital markets, structured finance and securitisation. We offer a complete oversight and administration service from key jurisdictions around the world. Our dedicated local teams will take over the management of your SPV completely or fill in gaps in your in-house provision.

Working alongside your legal and tax advisors, we can help you establish the best structure in the most beneficial location for your needs. We combine wide experience with international and local knowledge, a wide network of contacts and, essentially, boots on the ground.

In short, Ocorian makes SPVs easier to set up, manage and dissolve. Contact us for more information.

Get in touch

Ocorian has teams of experts in all these jurisdictions and beyond ready to discuss any SPV management questions or needs you have.

Start a conversation with us

Contact our team

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