Legal Solutions Team
Fabrizio Maimeri, ABI
Kurt Dittrich, Linklaters
Bojan Fras, Žurić i partneri

Summary document on a Law Regulating Securitization in Croatia

This document represents a summary of the legal work performed by the team of legal experts. The purpose of this document is to be discussed at the Steering Committee meeting in August in Zagreb. It describes basic legal foundations for the future Croatian Securitization Law

Macro-problems

0. The purpose of securitization is to transfer the creditor's default risk to the market (investors) and/or refinancing

The primary motivation for banks to enter into securitizations generally is regulatory capital relief. Other originators (e.g. corporate originators, public sector) may be interested merely in obtaining capital. With respect to methods of attaining those goals, two approaches are possible. They are further reflected in two possible approaches to define securitization:

A. The definition of securitization should include only such structures where securities are issued, and consequently the provisions of the securitization law should not apply to those sales that do not involve an issuance of securities. In these latter cases, the transaction should be assimilated to factoring and not securitization.

B. The definition of securitization should leave flexibility for all types of financing structures, whether or not these include the issuance of securities. In this case, the language of the statutory definition of securitization should refer to the purposes of securitization: (i) transfer of risk, (ii) financing and/or (iii) refinancing.

A decision on the definition of "securitization" should be taken by the Steering Committee having in mind the degree of development of Croatian financial and legal system. It may further be considered to define the term "securities". However, this may not be necessary as Securities Market Law

contains definition of securities – the Securitization Law could possibly define which securities could be issued in securitization.

1. Who may be the originators of securitization transactions?

The scope of persons that may originate securitization transactions should not be limited by law. Consequently, any entity that is not explicitly prohibited to act as seller may be the originator in a securitization.

2. Which types of assets may be objects of securitization?

The underlying assets of securitization transactions are often receivables and thus receivables certainly must be capable of being securitized. Furthermore, it would be useful to include other types of assets provided that this is permissible under other Laws.

3. What kinds of receivables should be qualified for sale?

Any kind of receivables should be capable of being securitized, provided that other laws do not prohibit the transfer of such receivables. Generally, such restrictions on assignment of receivables are contained in the Croatian Obligations Law. Under the Law, administrative receivables (e.g. taxes, customs), personal alimonies, health or pension insurance, and immaterial personal damages may not be assigned. Furthermore, if the parties to a contract stipulated that the receivables may not be assigned, receivables arising out of that contract may not be assigned either. It is not necessary to reflect these limitations in the Securitization Law.

If the Steering Committee takes the view that any of the above receivables should be subject of securitizations, the proper place to permit assignment of such receivables would be amendment of laws that provide for restrictions on assignment of such receivables. However, it may alternatively be considered to permit by the Securitization Law assignment of certain, clearly specified receivables that are otherwise not assignable exclusively for the purposes of securitization.

4. What legal form should the buyer of receivables (securitization vehicle) have?

Comparative practice suggests two basic approaches for the legal form of buyers of receivables, i.e., special purpose vehicles (SPV) (Anglo-Saxon

approach) or closed-end investment funds (French approach). Experience at the international level leads us to favor the Anglo-Saxon approach, which is considered more efficient by the markets and more appealing abroad. However, both models may be applied cumulatively, thereby allowing maximum flexibility for legal form of SPV.

An SPV as a purchasing vehicle is the simplest form, however, the technicalities associated with the separation of assets in this vehicle are more complex. Funds may be more suitable from the asset separation point of view. However, a separate fund management company is required which seems more burdensome and costly. Therefore, the Law may allow company structure and securitization fund structure.

Any type of SPV as described above should have an addition to its name in the form of an abbreviation that identifies it as a securitization vehicle. The Law should not impose an obligation to use exclusively Croatian SPVs, i.e. privileges applying to Croatian SPVs should apply to foreign SPVs alike. Furthermore, the Law should not limit the use of other vehicles (e.g. trusts) that may become available in the future.

5. Should the pool of securitized assets be separated from other assets?

The pool of securitized assets is reserved for satisfaction of claims by the owners of the securities, i.e., the investors and to the extent possible the other creditors of the SPV related to the transaction. For this reason, the pool of securitized assets should be separated from other assets of the SPV. In case of a company SPV, separation shall be achieved by a statutory lien (statutory pledge over securitized assets) for the benefit of the investors and (to the extent possible) the other creditors of the SPV related to the transaction (in each case excluding other creditors not related to the transaction). The means of securing the claims of general creditors of SPV that relate to securitization transaction require a separate consideration before or during the law-drafting exercise, for which it would be necessary to obtain information as to the way how/when/by whom such creditors are being paid in a standard securitization practice. In the case of a fund SPV, separate legal personalities of the fund and the management company will be used to achieve separation.

It is recommended that all private contracts which serve to structure the transaction contain limited recourse / no petition clauses. The validity and

effectiveness of such clauses should be explicitly acknowledged by the Law.

If Croatian authorities decide to enact a special Law on Winding-Up/Bankruptcy Credit (Financial) Institutions, this may be an opportunity to address any insolvency / bankruptcy remoteness problems related to securitizations in this Law directly.

6. Should the special purpose vehicle be an intermediary subject to supervision?

Whether an SPV should be subject to supervision is a particularly difficult issue. The decision on whether and to what extent the SPV should be supervised depends on the essential tension between (A) the requirement of simplicity of the securitization transaction and (B) the impact that the SPV's conduct may have on the securitization transaction and third parties, including the ultimate debtors of the assigned receivables.

(A) Financial stability controls of the special purpose vehicle in the strict sense may not be justified as this is a typical investor/lender risk. Furthermore, in most jurisdictions SPVs are neither licensed nor supervised. Complexities in forming and running a securitization vehicle may deter originators from performing securitization in Croatia as too complex and too costly.

(B) However, special purpose vehicles are financial intermediaries, albeit in an absolutely peculiar sense. For this reason one may take the view that the SPV should be supervised in a special way (going further than a mere licensing).

In any event, licensing and/or limitation of representation of the SPV, if any, should not cause delays and/or increase costs in structuring and performing the transaction. If the regulation of SPVs will be costly or lead to significant time delays in the structuring process, market participants will use alternative jurisdictions. Furthermore, Croatia will soon be forced to introduce unconditional liberalization of capital market transactions as a part of its EU convergence process anyway.

7. Must securitization transactions be subject to control by the financial market supervisory authority?

The rating of the securities makes them attractive for the market; this is why it may be left to the arranger/originator to decide, whether or not transactions should be rated. Securitizations are generally rated anyway.

When the securities are placed on the regulated market to be offered to retail customers (public placement), the typical precautions of that market must be applied, including a rating. Private placements may not require a mandatory rating, but disclosure standards should be high (e.g. the risk related to future receivables should be disclosed to investors).

As a matter of principle, the legal framework should favor reasonable disclosure requirements in view of what market participants perceive to be feasible at reasonable cost. The EU Prospectus Directive should be applied as a guiding principle with as minimum as possible additional regulation, if any.

It should be considered that international markets are very much in favor of easy procedures. This is why jurisdictions like Jersey, Ireland and Luxembourg are so successful. It should also be taken into account that Croatia will soon introduce the unconditional liberalization of capital transactions as a part of its EU convergence process, which will introduce freedom of choice of superior jurisdictions. To compete with those successful jurisdictions, any procedures should be "simple" in order to pave the way for securitization transactions.

The competence of the supervisory authority derives from its traditional role as securities' market regulator. The Law should provide for appropriate extension of the competences of the Croatian Financial Services Supervision Agency (HANFA) having regard to the reasonable regulatory cost principle as described above.

8. Do the types of securities to be issued have to be determined in advance?

The Securitization Law should not regulate the types of securities to be issued in securitizations. It should also not limit the types of securities that may be issued in securitizations. The nature of the issued securities, which

can certainly be qualified in any number of ways, should be freely established by the arranger/originator in view of the given situation and should include the possibility to issue various tranches of securities.

Amendments to the Law on Securities' Markets should recognize issues in different tranches (which are generally rated differently in view of their risk/return profile). It should be noted that first loss pieces (tranches with the highest risk/return profile) are often not rated.

Structural problems

9. What is the structure of the law?

The Securitization Law must establish principles without minutely defining the rules. The Law should be detailed to the extent required to maintain conceptual consistency and to implement the necessary rules (the "Golden Middle Approach"). Furthermore, obstacles under existing regulation as to e.g. data protection, registration of collateral and taxes have to be addressed in the Law.

The elaboration of certain issues which require detailed regulation can be deferred to the regulatory authorities having jurisdiction over the various segments of the market. Whether or not certain issues or aspects of securitization require such secondary legislation should be determined by the Law. Thus, regulations should only address the matters indicated by the Law and not on a general basis, in order to avoid the proliferation of administrative measures that could generate confusion. To avoid this, in addition to defining the issues subject to secondary regulation, the Law should also, to the extent possible, define/limit the scope of that regulation.

10. What should be the terms and conditions for sale?

The Law should aim to achieve:

- to allow for the sale of a pool of receivables (including future receivables);
- to make it easy to enforce the sale of receivables against the debtor of the assigned receivable and third parties (but recognizing the rights of such parties);
- to permit the transfer of guarantees or other collateral pertaining to the sold receivable.

For the transfer of a pool of receivables the concept of *universitas rerum* may be used. Sales of future receivables will have to be addressed specifically in the Law.

The rights of the debtors of the sold receivables must be preserved, i.e. the debtors should be informed of the sale and assignment. Individual notification of debtors is costly and burdensome. However, it minimizes legal risks. The Law could also provide for a joint notification of debtors by means of e.g. public announcement in the official gazette or in the daily

press. The notification should result in the debtor loosing his defenses and objections against the originator that may arise after the notification. However, the debtor shall not lose after the notification the defenses and objections (including set-off) towards the new creditor that may have arisen against the originator before the notification has been made.

Data protection issues should be specifically addressed in the Law. European practice shall be used as a guiding principle (German coding model as specified in Circular 4/97 of the German Financial Supervisory Authority and/or Italian model as specified in Garante per la Protezione dei dati personali Newsletter 2-8 April 2001). The new Law on Credit Institutions should specifically address secrecy problem related to securitization in order to facilitate securitization transactions.

The registration of collateral (ancillary rights) needs to be addressed in the Law according to the principles as set out in a document summarizing consultations with authorities.

Any solution in relation to the issues above has to be designed under the principle that the final debtor's legal position / rights (subject to the above) do not change after a securitization is implemented.

11. The equity base of the special purpose vehicle

Because the special purpose vehicle, as its name suggests, serves only to channel the pool of receivables from the originator to the special purpose vehicle and to (indirectly) issue securities as well as because the individual phases of the operation are carried out by service providers on behalf of the SPV on the basis of contractual agreements (§ 27), there is no reason why this company should have a predetermined amount of capital or equity.

12. What happens if the special purpose vehicle becomes insolvent?

Insolvency of the SPV is a very remote possibility as securitizations are generally structured in a way to make this event very unlikely. The bankruptcy regime which is regulated by general Bankruptcy Law applies to SPVs as well. If the Croatian authorities decide to enact a special Law on Winding-Up / Bankruptcy of Credit (Financial) Institutions, this could be an opportunity to address insolvency / bankruptcy remoteness problems related to securitizations in this Law directly. Until then it is not legally possible to entirely prevent bankruptcy of the SPV company. However, the

statutory lien over the securitized assets and other contractual provisions (e.g. limited recourse / no petition clauses, role for bondholders representative etc.) minimize the need for legislative intervention regarding the bankruptcy of the SPV.

13. How are conflicts of interest handled?

The Law should not specifically address potential conflicts of interests. However, although ideally any potential conflicts, e.g. between originator and SPV, should be disclosed to the market and the regulator, such disclosure may be associated with difficulties regarding the definition of the conflict, i.e. what circumstances constitute the conflict that has to be disclosed. Principally, any such conflicts (if defined as such by the law) must be disclosed in the prospectus or in the plan of activity, whichever applies.

14. How transparent should the transaction be?

The special purpose vehicle and/or the originator must either prepare a plan of activity that describes the content of the transaction in detail; this plan represents the minimum degree of transparency and disclosure required, provided that if securities are placed with retail investors, this obligation will include preparation of a prospectus in accordance with general rules. Alternatively, EU standards should apply without a need for additional disclosure requirements; investors will be protected by disclosure in the prospectus. With respect to bank-originators upcoming Basel II rules do already contain a number of regulations as to transparency requirements of securitizations so that it should not be necessary to add further rules.

The following two issues will have to be discussed on a technical level: (i) is a short prospectus for private placements needed in case of a securitization of future receivables (it may be impossible to determine the value of such receivables precisely). It should however be taken into account that investors in private placements may not need additional protection as they are sophisticated investors anyway. On the other hand a short prospectus may be necessary due to the possible defense of investors that the value of assets was not determinable in such cases; (ii) some specific provisions as to information requirements in the prospectus may be needed due to specifics of securitization transactions (e.g. the SPV as issuing entity has no history of financial reports; however, data about the underlying assets should be available).

Both (i) and (ii) above are considered to be technical issues that can be resolved in the drafting phase if the Steering Committee agrees.

15. What are the issues associated with transfer of risk in securitization transaction?

Whether or not the risk of default of certain receivables has been removed from the originator is decisive for (i) the originator's balance sheet, and (ii) in case of bank originators, own funds relief. With respect to (i) one may consider inserting special rules into the Law to conform to the Croatian accounting standards; to the extent that Croatian originators apply international accounting principles there is no room for further rules. With respect to (ii) upcoming Basel II will result in detailed rules; the Croatian National Bank may want to impose interim rules.

As far as rating agencies are concerned, criteria applied by them are largely published and some specific details are known to international market participants. As the balance sheet treatment of securitizations may have tax consequences the Tax Administration should take a view.

Some Laws (e.g. Luxembourg) contain definitions of the term "risk transfer". A commercial and legal definition of risk transfer in securitizations may be appropriately defined in the Law in order to avoid a risk of re-qualification of the risk transfer into a general insurance activity that in essence also deals with the disposition of risk.

16. What are the differences between the sale of simple receivables and the sale of revolving receivables?

In a revolving transaction there are successive sales of receivables on set dates, using the amounts collected on the matured receivables to purchase the new receivables. A repeated sale of receivables may be accompanied by a repeated issuance of securities. There is no need to insert a specific provision in the law regarding these structures unless there are other legal provisions which render this type of securitization invalid. This assessment is of a technical nature and should be dealt with by the legal drafting team.

17. What securities are issued by the special purpose vehicle?

The securities issued on the basis of a pool of receivables do not have to be qualified in advance (§ 8). Generally, several tranches are issued, at increasing rates of interest (and risk), up to the riskiest tranche (the first loss tranche). This tranche is generally subscribed either by an institutional investor (e.g. mutual or hedge funds) or by the originator itself.

Croatian Law does not envisage an issuance of different tranches of bonds. This triggers a potential legal uncertainty with respect to the treatment of these different tranches of bonds. To remove this legal uncertainty, two approaches are possible. The first one is to regulate different tranches of securities in forthcoming amendments of the Securities Market Law. The second is to treat different tranches of securities as separate securities, in which case no particular legislative regulation would be needed. The latter approach is taken by most jurisdictions. It may be helpful to clarify in the Law that with respect to all these tranches (constituting separate bonds) only one prospectus is needed.

18. What are the servicing activities and who can perform such activities?

Servicing activities generally include collecting the receivables and enforcing due debts and may extend to handling consequent cash flows according to pre-agreed waterfall provisions, dealing with security instruments, paying investors etc. (the latter activities are hereinafter referred to as "cash administration").

The usefulness of having a servicer subject to supervision is clear. Such supervision must ensure that a professional service is performed properly by parties who have the economic capacity to deal with any problems that might arise in connection with that service. Furthermore, this represents a crucial service on which the issuer’s ability to discharge its obligations to the bondholders depends. Having that in mind, there are reasons to impose limitations on persons who can act as servicers, and for reserving the servicing activities to banks and financial intermediaries monitored by supervisory authorities.

On the other hand, it is in the general interest of the originator to retain the servicing of the receivables. In international practice, originators are

generally allowed to continue the collection and enforcement of the sold receivables. In some cases, it is even technically impossible to separate servicing (or at least collecting the receivables) from the originator (e.g. collection of road tolls in case the originator is a road company). In other cases, servicing should be conducted by the originator (e.g. bank) in order to allow for a "silent" sale and assignment. So, at minimum, there should be an option for originators to continue the servicing of the sold receivables (whereas cash administration (as defined above) may be outsourced to financial institutions). Reserving the servicing activities to supervised financial intermediaries may create an oligopoly which will represent an unnecessary and costly burden and may limit the attractiveness of the Croatian legal environment.

The Steering Committee should decide on who can perform servicing and/or cash administration functions.

19. How is surplus cash flow handled and allocated?

The special purpose vehicle might receive greater than expected amounts from the sold debtors so that, once the operation is concluded and all the installments of the issued securities are extinguished, a certain amount of liquidity is left over. This raises the problem of allocating that surplus. The allocation of any such surplus may be regulated by contract, prospectus or other by other transaction-documents. For transactions where the parties did not regulate these issues, the Law could provide which party is entitled to any such surplus. The prevailing view was that it should be the originator. Unless the Law provides otherwise, the surplus would belong to the shareholders of a company SPV and of a closed-end fund or to investors in case of an open-end fund.

20. How are the subscribers of the securities organized?

Given that the issuance of securities which are backed by assets is the principle activity of the securitization vehicle, there is arguably a need to give to the subscribers of securities some control rights over the operations of the SPV. It is preferable to envisage an organization for the subscribers of the securities (bondholders' meeting and joint - fiduciary - representative). Events in which the fiduciary representative and bondholders' assembly would be authorized to act and the scope of their authorities must be carefully considered and provided by the Law. In the

case of several tranches of bonds the votes of the senior investors should generally prevail.

Problems of Application

21. How are the expenses of the operation recovered?

The costs for carrying out the operation are borne principally upon its inception, in other words, when the special purpose vehicle has acquired the receivables. This poses the problem of the coverage of the costs of the operation at that time. Such costs can either be paid by the originator or the upfront of the costs must be derived from the income on the securitized receivables.

There are two opposing views as to limits on expenses. One view is clearly based on the preference that some limit should be imposed to protect investors. Another view is based on internationally accepted waterfall solutions: there are no limits (except these are explicitly agreed in the contract) as the exact amount of expenses cannot be anticipated while the criteria for expenses' determination are disclosed to investors in the prospectus / documentation.

The Steering Committee should decide whether to impose legal limits on costs.

22. Securitization of assets that can be sold only according to specific procedures.

Generally, a sale of assets from the originator to the SPV should be as simple as possible. However, within the group of assets capable of being securitized, there may be certain types of receivables the assignment of which may be done only in accordance with some specific procedure (like the receivables of the State or government agencies). Such procedures may be incompatible with the streamlined and efficient ones proposed for sale of a pool of receivables. Two solutions with respect to the securitization of such assets seem possible. The first one is to modify the Law and exempt securitizations from complying with these burdensome procedures. The second is to leave it to the market whether it wants to proceed with the securitization of such receivables not withstanding such burdensome procedures.

The Steering Committee should decide on the general approach to this problem.

23. Can the sold receivables be sold yet another time?

Because the pool of receivables (and relative amounts) is posted as security in favor of the bondholders, there are reasons to provide that the special purpose vehicle cannot sell the receivables or can only sell the receivables when this is advantageous for the bondholders.

However, this matter still needs to be discussed: if investors' interests are generally safeguarded by contract and other legal provisions, there is no need to regulate this in the Law as this may lead to some inflexibility for future structures.

In a number of securitizations it is currently discussed whether receivables should – under certain circumstances – be sold in auction proceedings. This should be left to the contractual arrangements and not be regulated in the Law. Although restrictions on sale may also not be in line with international accounting principles, irrespective of this, there may be views that the bondholders should have some clearance or similar right in respect of such further sale.

24. Must the amounts held by the servicer be separated from its other assets?

While the special purpose vehicle should ensure that a full separation of the pool of receivables according to the limits described in § 5 is granted, the servicer must separate the collected amounts in the same way. This will regularly be set forth in the transaction documents. If no such clause is envisaged, they will be credited on an account registered at the bank in the name of the special purpose vehicle or the servicer, in the latter case without any specific distinction with respect to other servicer's assets. This "commingling risk" is usually resolved by (contractual) trust arrangements. Since trusts are not recognized by Croatian laws yet, the need for this separation will have to be dealt with by an alternative solution (e.g. a separate bank account which is subject to bankruptcy remote pledge and to which the debtors will pay). This will however trigger operational issues – for example, whether all debtors will have to pay to a new account when

the securitization starts and thus whether they will have to be notified accordingly. How exactly the Law should reduce this commingling risk on the operational level remains to be discussed when drafting the Law.

25. Should a "single operation" or a "multi-operation" special purpose vehicle be set up?

The question is whether or not a special purpose vehicle must be set up for a single securitization operation and be wound up when it is concluded, or if it can simultaneously act as the special purpose vehicle of several originators and manage different pools of receivables. Any of these options can be considered equally valid.

26. Is the sale by several originators to the same special purpose vehicle possible?

Since securitization presumes a large pool of receivables in view of the costs involved sometimes a single originator may be unable to sell the necessary critical mass, and thus may contact other originators to do so. This solution does not have to be regulated by the primary law.

27. What regulations for different types of contracts for securitization transactions are necessary?

Legislative action does not seem necessary to regulate the content of contracts of securitization transactions, since the international market has become accustomed to types of agreements used in securitizations, and because most contracts are to some extent standardized. It remains to be discussed if an exception from this principle will be required as regards the Annex to assignment contracts for the purpose of efficient collateral registration, if required, pursuant to provisions in other regulations. This should be regarded as a technical matter which does not contradict the international standardization principle as specified above.

28. What rules govern bankruptcy?

It is necessary to avoid the operation being prejudiced by subsequent insolvency of the originator (which would jeopardize the sale and assignment), because this would have serious consequences on the bondholders. It seems possible that the assignment of future receivables by an originator could be subject to a "cherry picking" right of the bankruptcy

administrator in case that certain future claims were to be assigned after commencement of bankruptcy proceeding with the respect to the originator. The entire assignment of future receivables could, at least hypothetically, be challenged by the bankruptcy administrator if he could prove that the assignment was made to the detriment of general creditors. This applies in accordance with the general bankruptcy regulation. If Croatian authorities decide to enact a special Law on Winding-Up Credit (Financial) Institutions, this problem may be dealt with specifically by this new Law. It remains to be discussed further how to minimize the risk of "cherry picking" under existing regulations.

The risk of insolvency of receivables' debtors is a risk that is generally accepted by investors.

29. What tax relief is possible?

While in many countries there are tax incentives for securitization, securitizations should in principle be tax neutral. It is of utmost importance for the Tax Administration to issue guidelines at the time when the Law is enacted. Given similarities of the Croatian and German tax systems it is recommended to follow German practice.

30. Minimum size of transaction

A minimum size of transactions may be considered to be included in the Law at regulators' request. We do not recommend this since such minimal size is not known in other jurisdictions. Also, fixed costs of the transaction and multi-seller structures represent market solutions to the size problem. If such provision is going to be considered, (i) a careful numeric analysis should be performed in order not to raise the minimum bar too high (and hamper feasible market transactions), (ii) there should be proof that the minimum size provision may prevent abuses beyond other security/supervisory provisions described elsewhere in this document.

31 Variable interest rate "problem"

Many loan contracts in Croatia assume a variable interest rate which is not linked to some benchmark rate (e.g. ZIBOR, EURIBOR), but is set according to interest rate policy of the originator (lender). Usually, the interest rate policy is an internal act which is subject to periodic assessment and changes by the Management Board of the originator. If not regulated,

this problem may be interpreted as an obstacle for the securitization of such loan portfolios. We do not recommend solving this problem in the Law. There is an accepted international practice as to such types of securitization as specified in the Annex. So this issue should be dealt with in consultations with the central bank at the level of by-laws.

Annex
Solution for administratively variable interest rates: TIM

International practice is summarized under abbreviation “TIM” (Threshold Interest Margin). Securities issued are floating rate notes, usually libor based, which change monthly or quarterly. The loans are sold to SPV with servicing retained by originator. The power to set interest rates now rests with SPV. The SPV then delegates the power to set rates via power of attorney back to originator (now servicer). It is recommended that assignment contract uses the concept of “lender”. The power of attorney permits the servicer (“lender”) to set the rates without specific constraints but subject to an obligation to make a “TIM Advance” in circumstances when the servicer sets the rates below SPV’s cost of funds. The amount of TIM Advance is equal to present value of the difference between interest rate on loans and SPV’s cost of funds (including risk cost i.e. cost of bad debts). If present value is positive, no TIM Advance is required. If negative, the servicer accepts the obligation to make up the difference.

Originators in Europe have successfully argued that this mechanism should have no regulatory, accounting or tax implications. Advance can be set up as a loan or simply an outright payment. Ideally, it is set up to be tax deductible for the servicer (when paid) and taxable on receipt by the SPV, maintaining tax neutrality of the overall transaction.

In case of bankruptcy of servicer / lender, several legal solutions are under investigation. If the right to set the rates shifts back to SPV, it can set the rates under condition that the rates do not depart substantially from market average, or it can shift this right to another lender who has the same type of loans in its credit portfolio. It will be considered whether these provisions should be regulated by the Law or by the central bank’s regulations.