Independent Legal Panel
Boris Porobija, Porobija & Porobija
Željka Rostaš Blaženković, Porobija & Porobija

Republic of Croatia
Ministry of Finance
Mr. Ante Žigman, State Secretary

Zagreb, 25 August 2006

Dear Sirs,

Ref: Summary document on a Law Regulating Securitization in Croatia

1 Introduction

The Ministry of Finance and the Croatian Banking Association had agreed that the banking sector establishes a working group to assess the legal and regulatory framework requirements to undertake securitization transactions on assets of Croatian originators. The intent was to use that market based assessment as an important input for the drafting of a securitization law.

Legal Solutions Team (hereinafter: the "LST") consisting of two international and one Croatian lawyer conducted the legal exploration work, such work being summarized and presented to the Steering Committee (hereinafter: the "SC") in the Summary document on a Law Regulating Securitization in Croatia (hereinafter: the "Summary document").

To enhance the likelihood that this market-based legal exploration work be effective for policy purposes, the Ministry of Finance, HANFA and other authorities (hereinafter collectively referred to as: "Croatian Authorities") wished to avail themselves of independent legal advice throughout the process. Given the high potential of this public-private project for the development of Croatia's financial market, Convergence together with the EBRD decided to support this request, by hiring Mr. Boris Porobija and Ms. Željka Rostaš Blaženković, being Croatian lawyers, designated by the authorities. Mr. Boris Porobija and Ms. Željka Rostaš Blaženković, form the Independent Legal Panel (hereinafter: "ILP") whose responsibility is to review the legal exploration work conducted by the LST and to make an independent opinion on the reports prepared by the LST. In fulfilling its task, the ILP reviewed the Summary document, analysed the statements and conclusions presented therein and produced this document containing general and specific comments, views and recommendations related to such statements and conclusions of the LST.

2 Content

This Report is comprised of two parts: (i) General Overview, containing introductory remarks regarding securitization in general and a securitization within the context of the Croatian law including a general opinion of ILP about the Summary document, and (ii) Specific Information containing (x) basic recommendations regarding the issues that, in the opinion of ILP, need further analysis and comment by LST, and (y) detailed comment on each point of the Summary document, such comments being part of a draft letter (attached to this Report) to be sent by SC to LST.

3 General Overview

Securitization being a method of transferring risk from one party (originator) to the other party (investors), through capital market transactions, in most cases by issuing and sale of debt securities (asset backed securities or ABS) whose cash flows and performance are entirely dependent on the performance of the underlying portfolio of the assets sold by the originator, is one of most innovative and rapidly growing financial market sector. Notwithstanding that, it is also an area where markets and structures, as well as related legal, accounting and tax frameworks are often fragmented, thus resulting in a number of legal uncertainties and insufficient transparency.

Therefore, the acknowledgement of the Croatian Authorities and the Croatian Banking Association about the benefits of having secure and transparent rules contained in a well-structured comprehensive regulatory framework, with a view to enhance legal certainty and transparency of the securitisation transactions, thus introducing into Croatian financial and legal practice use of securitisation techniques, is certainly to be very much welcomed and supported.

Summary document and a document prepared by Arhivanalitika d.o.o., being a project co-ordinator, clearly shows that structuring of the comprehensive regulatory framework for securitization transactions is connected with very extensive and complex analysis of various legal areas relevant from the perspective of securitization transactions.

Also, both of the said documents clearly outline extraordinary effort put in by all the participants during the preparation of the documents and especially in the course of identification and understanding of all the elements that are important in the terms of securitization procedure, through a detailed analysis of the various relevant areas of the Croatian legal system, consideration of foreign experience and applicable solutions, and their potential application in the Republic of Croatia. In addition to this, some relevant aspects that are more or less specific to the Croatian legal system, were also considered.

In the forthcoming period, however, further extensive deliberations and consultations between the members of LST and the Croatian Authorities will be necessary i.e. within the working groups that are in charge of specific areas that need to be governed by the Securitization Law (and/or other laws and regulations) with a view of providing a final definition of issues, taking a final position on certain legal issues including making decisions on the principles by which individual areas should by governed. It is the forthcoming phase of the Project, a phase which should produce final versions of the bases for the preparation of the Draft Securitization Law, which will

require all members of the working groups and LST to put in their best efforts. We believe that the Summary document, completed by deliberations and answers to the questions additionally raised by ILP herein, provides an adequate basis for the preparation of a quality and all-comprehensive Draft Securitization Law. It is therefore essential for this SC that the LST issues a revised version of the Summary document where it shall reach a final opinion on each matter discussed, also based on the comments set out in the Draft letter attached hereto.

4 Specific Information

4.1 Data protection rules

Data protection and (bank) secrecy rules seem to represent securitization constraints in a number of jurisdictions. Several Croatian laws deal with the data protection rules, and it seems that currently the biggest obstacle for assignment of the receivables owed by the consumers poses the Consumers Protection Law, as it requires explicit approval of the consumer for the related data transfer. Due to the significance of this issue, the LST should further discuss it with representatives of the Croatian regulator, investigate the relevant regulations and practice in other jurisdictions and propose the solution as to how to address this constraint by foreseeing explicit provisions in the Securitization Law dealing therewith.

4.2 Bankruptcy remoteness

Bankruptcy remoteness of the SPV is one of the main requirements for a successful securitization. Therefore, addressing in the Securitization Law various features for achieving the highest possible degree of the "bankruptcy remoteness" of SPV seems to be one of priorities. LST should, among others, closely consider encouraging non-voidability of arm's length assignment of receivables (including future receivables), recognizing no petition and limited recourse clauses, preventing bankruptcy manager of the originator from interfering with cash flows arising from the securitized assets, preventing the cash flows related to the securitized assets to be part of the bankruptcy estate of the originator (right of separation for the benefit of SPV), recognizing the right of the SPV to unilaterally change/terminate collection arrangements with originator immediately following the opening of bankruptcy procedure of the originator, etc.

4.3 Tax treatment

Among the issues that need to be considered and adequately addressed in the Securitization Law and/or the relevant tax law, or alternatively opined by the Tax Authority, are the withholding tax, value added tax and permanent establishment triggered by a securitization transaction involving a non-Croatian SPV.

4.4 Recharacterization risk

LST should further consider how to mitigate and address in the Securitization law a risk that a particular securitisation transaction will not be recognized as a true sale, but rather be interpreted as a loan granted to the originator by the SPV and secured by the receivables.

4.5 Scope of application of national law

Conflict of law issues which may affect validity and/or enforceability of assignment of receivables, as well as legal uncertainty as to which rules of national law apply to which aspects and participants of a securitization structure containing one or more foreign elements, are certainly a concern requiring additional analysis by the LST in order for such issues to be adequately addressed in the Securitization Law.

4.6 Shareholder(s) of the SPV

Further consideration will be advisable in order for the LST to take a definite view as to whether the Securitization Law should address the issue of the SPV's shareholders in the first place, or a decision as to who could be the SPV's shareholder should be made by the transaction participants in each particular case.

4.7 Servicing

ILP is of opinion that further consideration of a relation between (i) the right to enforce a claim and realize the security interest and (ii) the right to the receivable and the related security interest should be made. In case those are to be considered inseparable, the issue how the servicer would collect the securitized receivables once they become subject to enforcement procedure or a dispute seems to be an important aspect of the servicing activities to be further analysed.

4.8 Banking accountancy and capital adequacy issues

There is a substantial number of issues in the area concerning regulatory framework for securitization, which normally falls within the remit of the Croatian National Bank (hereinafter: the CNB), such as application of the obligatory marginal reserve requirement, reporting securitization transactions to the CNB, influence of securitization transactions on capital adequacy, etc. We think that the majority of the issues should be solved the soonest possible and it is to be expected that these issues would not be regulated by the Securitization Law, but relevant secondary legislation of the CNB.

4.9 Asset-backed commercial paper conduits

ABCP conduits are specialised companies that finance the assets of one or more sellers through revolving issuance of short-term commercial papers. They are typically established by commercial banks and finance companies to enable them to obtain regulatory capital relief. European commercial paper market has experienced a significant growth of ABCP share in total CP market. Thus, it would be advisable the LST to further investigate the issues related to this type of transactions and address the conclusions in the Summary document.

4.10 Covered bonds

Summary document has not addressed the covered bonds (sometimes also known as *pfandbriefe*) being a full recourse debt instruments and fixed income securities issued in the European Union

that are backed by high-quality assets such as mortgages and public sector loans. Since the covered bonds have emerged as the most important segment of privately issued bonds on Europe's capital markets and today there are active covered bond markets in almost 20 different European jurisdictions with a strong expectation that the covered bond market will continue to grow, we believe the LST should in the context of the Securitization Law address this segment as well.

4.11 Subparticipation

As an alternative to assignment, subparticipation may be used in securitization transactions. Subparticipation basically consists of an obligation of the originator to transfer all proceeds under a pool of receivables without transferring the receivables themselves to the SPV. Certain jurisdictions (e.g. Italy) have specific provisions in the securitization law addressing subparticipation, while other jurisdictions (e.g. Germany) recognize such transactions without having specific provisions dealing therewith. Therefore, it would be advisable to kindly ask the LST to consider this issue and include its conclusions in the revised Summary Document.

5 Conclusion

Summary document offers a catalogue of a number of issues to be addressed in the Draft Securitization Law and other relevant laws and regulations in order to provide secure and transparent rules for the securitisation market with a view to enabling financial market participants' use of securitisation techniques. In order to entirely achieve such a goal, the Summary document should be supplemented as described under item 4. above and item 2. of attached draft letter to be sent to the LST.

When analysing the relevant issues, discussing potential solutions and drafting the supplemented Summary document, LST and the relevant panels should aim to contribute the creation of the draft law that would both (i) offer necessary flexibility for establishing securitisation transactions in the course of practicable procedures and at reasonable costs, as well as (ii) establish legal environment offering investor protection, risk control and safe and transparent conduct of securitization activities.

Kind regards,

Boris Porobija

Željka Rostaš Blažeković

Enclosure:

1. *Draft letter to be sent by the SC to the LST*

DRAFT

Republic of Croatia
Ministry of Finance
Mr. Ante Žigman, State Secretary

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

Zagreb, __ 2006

Dear Sirs,

Ref: Opinion of the Steering Committee on the Summary document on a Law Regulating Securitization in Croatia

On behalf of the Steering Committee I would like to thank you for all you efforts and contribution in drafting the Summary document on a Law Regulating Securitization in Croatia (hereinafter: the Summary document). Steering Committee on its meeting held in Zagreb on 30 August 2006, reviewed, analysed and discussed both the Summary document and the comments on the Summary document prepared by the Independent Legal Panel consisting of Mr. Boris Porobija, Porobija & Porobija and Ms. Željka Rostaš Blažeković, Porobija & Porobija.

Summary document and a document prepared by Arhivanalitika d.o.o., being a project co-ordinator, clearly shows that structuring of the comprehensive regulatory framework for securitization transactions is connected with very extensive and complex analysis of various legal areas relevant from the perspective of securitization transactions.

Also, both of the said documents clearly outline extraordinary effort put in by all the participants during the preparation of the documents and especially in the course of identification and understanding of all the elements that are important in the terms of securitization procedure, through a detailed analysis of the various relevant areas of the Croatian legal system, consideration of foreign experience and applicable solutions, and their potential application in the Republic of Croatia. In addition to this, some relevant aspects that are more or less specific to the Croatian legal system, were also considered.

In the forthcoming period, however, further extensive deliberations and consultations between the members of LST and the Croatian Authorities will be necessary i.e. within the working groups that are in charge of specific areas that need to be governed by the Securitization Law (and/or other laws and regulations) with a view of providing a final definition of issues, taking a final position on certain legal issues including making decisions on the principles by which individual

areas should by governed. It is the forthcoming phase of the Project, a phase which should produce final versions of the bases for the preparation of the Draft Securitization Law, which will require all members of the working groups and LST to put in their best efforts. We believe that the Summary document, completed by deliberations and answers to the questions additionally raised by ILP herein, provides an adequate basis for the preparation of a quality and all-comprehensive Draft Securitization Law. It is therefore essential for this SC that the LST issues a revised version of the Summary document where it shall reach a final opinion on each matter discussed, also based on the comments set out in this letter below.

1 Securitization specific issues to be further considered

1.1 Data protection rules

Data protection and (bank) secrecy rules seem to represent securitization constraints in a number of the jurisdictions. Several Croatian laws deal with the data protection rules, and it seems that currently the biggest obstacle for assignment of the receivables owed by the consumers poses the Consumers Protection Law, as it requires explicit approval of the consumer for the related data transfer. Due to the significance of this issue, the LST should further discuss it with representatives of the Croatian regulator, investigate the relevant regulations and practice in other jurisdictions and propose the solution as to how address this constraint by foreseeing explicit provisions in the Securitization Law dealing therewith.

1.2 Bankruptcy remoteness

Bankruptcy remoteness of the SPV is one of the main requirements for a successful securitization. Therefore, addressing in the Securitization Law various features for achieving the highest possible degree of the "bankruptcy remoteness" of SPV seems to be one of priorities. LST should, among others, closely consider encouraging non-voidability of arm's length assignment of receivables (including future receivables), recognizing no petition and limited recourse clauses, preventing bankruptcy manager of the originator from interfering with cash flows arising from the securitized assets, preventing the cash flows related to the securitized assets to be part of the bankruptcy estate of the originator (right of separation for the benefit of SPV), recognizing the right of the SPV to unilaterally change/terminate collection arrangements with originator immediately following the opening of bankruptcy procedure of the originator, etc.

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Among the issues that need to be considered and adequately addressed in the Securitization Law and/or the relevant tax law, or alternatively opined by the Tax Authority, are the withholding tax, value added tax and permanent establishment triggered by a securitization transaction involving a non-Croatian SPV.

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LST should further consider how to mitigate and address in the Securitization Law a risk that a particular securitisation transaction will not be recognized as a true sale, but rather be interpreted as a loan granted to the originator by the SPV and secured by the receivables.

1.5 Scope of application of national law

Conflict of law issues which may affect validity and/or enforceability of assignment of receivables, as well as legal uncertainty as to which rules of national law apply to which aspects and participants of a securitization structure containing one or more foreign elements, are certainly a concern requiring additional analysis by the LST in order for such issues to be adequately addressed in the Securitization Law.

1.6 Shareholder(s) of the SPV

Further consideration will be advisable in order for the LST to take a definite view as to whether the Securitization Law should address the issue of the SPV's shareholders in the first place, or a decision as to who could be the SPV's shareholder should be made by the transaction participants in each particular case.

1.7 Servicing

ILP is of opinion that further consideration of a relation between (i) the right to enforce a claim and realize the security interest and (ii) the right to the receivable and the related security interest should be made. In case those are to be considered inseparable, the issue how the servicer would collect the securitized receivables once they become subject to enforcement procedure or a dispute seems to be an important aspect of the servicing activities to be further analysed.

1.8 Banking accountancy and capital adequacy issues

There is a substantial number of issues in the area concerning regulatory framework for securitization, which normally falls within the remit of the Croatian National Bank (hereinafter: the CNB), such as application of the obligatory marginal reserve requirement, reporting securitization transactions to the CNB, influence of securitization transactions on capital adequacy, etc. We think that the majority of the issues should be solved the soonest possible and it is to be expected that these issues would not be regulated by the Securitization Law, but relevant secondary legislation of the CNB.

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1.10 Covered bonds

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that are backed by high-quality assets such as mortgages and public sector loans. Since the covered bonds have emerged as the most important segment of privately issued bonds on Europe's capital markets and today there are active covered bond markets in almost 20 different European jurisdictions with a strong expectation that the covered bond market will continue to grow, we believe the LST should in the context of the Securitization Law address this segment as well.

1.11 Subparticipation

SC understands that as an alternative to assignment, subparticipation may be used in securitization transactions. Subparticipation basically consists of an obligation of the originator to transfer all proceeds under a pool of receivables without transferring the receivables themselves to the SPV. Certain jurisdictions (e.g. Italy) have specific provisions in the securitization law addressing subparticipation, while other jurisdictions (e.g. Germany) recognize such transactions without having specific provisions dealing therewith. SC kindly asks the LST to consider this issue and include its conclusions in the revised Summary Document.

2 Detailed comments on the Summary document

Macro-problems

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

LST suggested two possible approaches with respect to defining the securitization and consequently the scope of the Securitization Law. As further suggested by the LST, a decision as to which approach to accepted when drafting the Law should be made by the SC having in mind the degree of development of Croatian financial and legal system.

SC is of opinion that the members of the LST should discuss and analyze further argumentation for each of these two approaches, having in mind both the comparative experiences of other foreign jurisdictions and financial markets, as well as development of Croatian financial and legal system. The aim of such analysis of the LST would be to adopt a unanimous view as to which of the aforementioned two approaches would be more acceptable in the context of drafting the Securitization Law, and in particular why would the approach preferred by the LST be more acceptable. SC should also be informed by the LST as to implications of the preferred approach to drafting the Securitization Law. When analyzing the aforementioned issue, the LST should in particular answer what would be the difference between the securitization transactions, on one hand, and the factoring transactions, on the other hand, in case the issue of securities would not be a mandatory step in the securitization structure.

In case the LST is of opinion that the synthetic securitization transactions should also be regulated by the Securitization Law, it would be advisable for the LST to answer whether such transactions should be permissible to any category of entities or should they be limited to banks and other regulated entities (e.g. insurance companies).

LST analysis should also address the issue of (re)defining the term "securities". Namely, the LST

should clearly state whether any new definition would be needed from the perspective of (i) obligation of the Republic of Croatia to harmonize its laws and regulations with EU regulations, or (ii) international securitization market practice. If the answer to any of the aforementioned questions is positive, the LST should briefly outline the main characteristics of such new definition of securities.

2.1 Who may be the originators of securitization transactions?

As the securitization objectives (e.g. regulatory capital relief, financing, improving solvency or ratings, etc.) vary by type of originators, there seems to be no particular reason to exclude any potential originator from taking benefit from this type of transactions.

However, SC kindly asks LST to clarify words "any entity that is not explicitly prohibited to act as seller may be the originator in a securitization". In particular, LST should provide examples of legal grounds on which an entity could be explicitly prohibited to act as seller and examples, if any, of such entities in the context of (i) Croatian and (ii) foreign laws.

2.2 Which types of assets may be objects of securitization?

LST should elaborate which other types of assets, other than receivables in strict sense, would be assets suitable for securitization.

Consequently, further detailed analysis should be made in order to understand what additional provisions should be included in the Securitization Law in order for it to be applicable to securitization of the assets other than receivables in strict sense.

Please also see item 2.10 hereof in part related to the future receivables.

2.3 What kinds of receivables should be qualified for sale?

It would be very useful for SC if the LST would clearly identify which specific provisions of Croatian laws and regulations present obstacles for securitization of the receivables mentioned in the Summary document.

In addition, the SC should be further presented with LST's views as to whether securitization of any of such receivables should be explicitly allowed and what would be reasons for that. It would be useful if the LST could provide SC with information about any securitization transaction where e.g. social security receivables or taxes have been securitized and positive and negative implications of such transactions.

If in the opinion of the LST any of the aforementioned receivables should explicitly be allowed to be securitized, the SC would further need to know whether such securitization would need to be subject to certain specific rules and, if yes, whether such rules should be included in the Securitization Law itself, some other laws or in by-laws.

LST should provide further clarification whether, if the parties to a contract stipulated that the receivables may not be assigned, such receivables (i) would not be assignable at all and thus any

assignment thereof would be invalid or (ii) would still be assignable, but without any legal effect towards the debtor.

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

In order for the SC to be able to consider the dual structure mentioned in the Summary document, it would be very helpful if the LST could provide additional information about terms and conditions under which each of those two features would be used, i.e. whether it would depend on the decision of the transaction participants about what type of SPV to use in a particular transaction, or would the Securitization Law prescribe that.

Should the LST consider appropriate that securitization may (also) be perfected through a fund, SC would need further information (i) about the form of such fund, i.e. whether such fund would be open- or closed-ended fund, (ii) whether this type of fund would be a specific category of fund exclusively dedicated to securitization transactions and exclusively regulated by the Securitization Law, or would it be part of a category of funds regulated by the Investment Funds Law.

SC understands that some jurisdictions (i.e. Italy and Luxembourg) recognize such dual structure and it would be very useful if the LST could provide detailed information on relevant regulations and their practical implications.

It further remains to be answered whether any type of SPV should be subject to capital adequacy requirements and other rules applying to financial institutions.

In case the Securitization Law would envisage the use of a non-Croatian SPV, LST should suggest to which aspects of the transaction the Croatian Securitization Law would remain (mandatorily) applicable. SC believes that the extent of application of the Law should also be clearly prescribed for transactions where foreign law would govern the assignment agreement and/or the securities would be issued abroad. LST should make detailed analysis of those aspects of the multi-jurisdictional securitization transactions and the way to properly address such issues in the Securitization Law.

2.5 Should the pool of securitized assets be separated from other assets?

SC kindly asks the LST to further consider who would hold the security interest created for the benefit of the investors (statutory and/or contractually created security interest). Namely, as the Croatian law does not recognize the concept of the security trustee otherwise recognized by common law jurisdictions, where the trustee holds the security interest on behalf of the SPV creditors (i.e. noteholders), it seems reasonable that the LST further consider whether the Securitization Law should contain provisions introducing the institute of the security trustee in the Croatian law, or whether this issue could be dealt with differently. In addition, if in the opinion of the LST the Law should contain specific provisions on the security trustee, it remains to be answered who would be entitled to act as the security trustee and under what terms and conditions (licensing/capital requirement/etc.).

Having in mind that the decision with respect to the nature of the SPV has still not been taken,

and thus it is not certain that the SPV would indeed be considered as credit (financial) institution, it seems to the SC that enacting of a special Law on Winding-Up/Bankruptcy Credit (Financial) Institutions would not necessarily be appropriate for addressing any bankruptcy remoteness problems related to securitizations.

Notwithstanding that, even if that law would be the right place to address those issues, the LST should provide a very detailed analysis of various features appropriate for providing bankruptcy remoteness of the SPV, in order that necessary actions for including relevant provisions in such law could be timely undertaken.

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

LST should extend its analysis by addressing the principles of advisable scope of (i) licensing, (ii) supervising and (iii) reporting.

Having in mind that provisions of the Securities Market Law regarding the approvals for issuing securities would apply to the securities issued in the course of securitization transaction, LST should further consider whether any amendments to the Securities Market Law or special provisions in the Securitization Law would be necessary, in order to adequately address specific information characteristic for securitization. Moreover, LST should also provide an information whether the current stock exchange regulations could appropriatelly address particularities of securitization transactions or certain amendments thereto would be needed as well.

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

SC kindly asks the LST to advise whether special provisions addressing disclosure standards applicable to the securities issued in securitization transaction should be included in the Securitization Law, or the Securities Market Law should be amended so as to adequately cover this issue.

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

In connection to the different types of securities to be potentially used in a securitization transaction, LST should further consider different withholding tax treatment of the interest payable on (i) bonds and (ii) other types of securities, pursuant to the Profit Tax Law, and whether any amendments to the profit Tax Law would be advisable in order not to discriminate debt securities other than bonds.

Structural problems

2.9 What is the structure of the law?

Approach suggested by the LST seems reasonable, however, it would be advisable if the Summary document would be supplemented so as to contain a list of (i) main principles, (ii) other very important issues that LST advises should be specifically addressed in the Securitization Law and (iii) purely technical issues to be further elaborated by way of secondary regulations.

LST should further consider pros and cons for leaving certain issues necessary from the perspective of securitization transactions to be regulated by other relevant laws, i.e. amendments to such laws. Namely, it is important to take into consideration whether such strategy could result in discrepancies in wording and interpretation of such different laws, which may further lead to legal uncertainties.

2.10 What should be the terms and conditions for sale?

LST should further address the issue of definition of "future receivables", securitization thereof and the status thereof in case of insolvency of the originator.

When considering the issue of future receivables, LST should answer which categories should be taken into account, i.e. (i) receivables from existing contracts not yet performed (future contracted receivables), (ii) receivables from expected future contracts (future uncontracted receivables); and/or (iii) future cash flows, i.e. cash receipts where the payment of the cash is contemporaneous with the contract (e.g. motorway toll).

With respect to future flows LST should further take a definite view whether the sale of future receivables or future cash flows to the SPV could be enforced, especially following the insolvency of the originator and whether the Securitization Law should contain explicit provisions addressing that issue.

SC kindly asks LST to elaborate principles of registration of transfer of collateral (ancillary rights) that are supposed to be addressed in the Law.

The LST should particularly address (i) the issue of transfer of fiduciary ownership as a collateral, bearing in mind views of certain commentators considering fiduciary ownership as non-ancillary right, (ii) the issue of automatic transfer of not only real rights such as pledge/mortgage, but also of all other clauses benefiting the creditor, such clauses not being directly and necessarily linked to the secured (assigned) receivables (e.g. automatic transfer of general enforcement clause contracted in the pledge agreement that secures the assigned receivables), (iii) the issue of transfer of certain collaterals such as promissory notes, guarantees, etc. that are not automatically transferred to a new creditor together with the assigned receivables.

SC would further kindly ask LST to provide additional information and views on concept of securitization register, such concept being used in some jurisdictions (e.g. Greece).

Since, generally speaking, the data protection rules may turn to be one of the main constraints for securitization, LST should provide additional information about the data protection principles contained in the aforementioned documents and the co-relation of such principles and existing Croatian data and secrecy protection rules. Summary document should be further supplemented as to provide comprehensive overview of constraints of currently existing legal framework and the relevant solutions suggested by the LST.

2.11 The equity base of the special purpose vehicle

Approach taken by the LST seems reasonable. SC would also be interested to know the views of the LST as to the share capital of the securitization fund management company.

2.12 What happens if the special purpose vehicle becomes insolvent?

SC understands that the bankruptcy remoteness issues in securitization transactions are one of the most important for the overall success of each such transaction. Therefore, LST is kindly asked to (re)consider whether addressing those issues in the special Law on Winding-Up/Bankruptcy of Credit (Financial) Institutions would be an acceptable approach, especially having in mind that (i) at this stage it is not yet decided that the SPV would be considered as credit (financial) institution and thus subject to that law, (ii) it is not sure when that law is supposed to be enacted and (iii) it is uncertain if such law could appropriately cover the mentioned issue. Therefore, as an alternative to the suggested approach, LST should provide additional information on how could the Securitization Law recognize and enhance "bankruptcy remoteness" of SPV.

2.13 How are conflicts of interest handled?

First part of the LST proposal appears to be in contradiction to the second part thereof. SC would appreciate if the additional consideration on how to deal with conflicts of interest issue would be reflected in the Summary document.

2.14 How transparent should the transaction be?

SC believes the Summary document should be further supplemented as to provide comprehensive additional information on how issue mentioned under (i) of Clause 14 of the Summary document is addressed in other European jurisdictions. With respect to (ii), please see under 2.6 above

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

In SC's view, the material should be further upgraded as to elaborate to what extent the issue of the risk transfer, being with and without recourse to the originator, should be addressed in the Securitization Law.

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

LST is kindly asked to provide information whether current Croatian law contains provisions that would render sale of revolving receivables invalid or would otherwise impose constraints for such sale, and generally, what kind of issues should be covered by the Law with respect to the revolving receivables and revolving transactions.

2.17 What securities are issued by the special purpose vehicle?

Please see comments under item 2.8 above.

2.18 What are the servicing activities and who can perform such activities?

SC understands that in any securitized transaction servicing represents an important link between the investors and the debtors and the quality of assets servicing can influence great deal the performance of the assets and on the securities they secure.

LST suggested two opposite approaches as to which legal entities could provide servicing activities. Having in mind the importance of this issue for the securitization procedure, SC expects LST to adopt a unanimous view with respect to which of these two approaches would be more favorable in the context of Croatian legal and market practice.

In addition, if the LST suggests the first approach to be more acceptable, in our view, the material should be further supplemented in order to provide analysis of the following issues: (i) which entities, apart from the banks would be entitled to provide servicing activities; (ii) to what extent would the Securitization Law or any other law prescribe principles and/or certain minimum standards of providing such services; (iii) would the servicing activities be considered as one of the financial services being subject to licensing requirement; (iv) whether the law should allow for a possibility that some of the activities making part of the servicing activities are rendered by different service providers.

In our opinion, the Summary document lacks consideration of the legal nature of the scope of activities to be provided by the servicer, in particular whether any of these activities could be considered as providing legal advice and thus be reserved for the attorneys at law only. It seems that this issue has been raised in certain jurisdictions, as well as in Croatian court practice. In addition, the LST should also consider how would the servicer enforce the SPV's claims against the defaulting debtor in an enforcement procedure (or in related dispute), i.e. in whose name and for whose account the servicer would conduct such proceedings.

One of the main risks connected with servicing activities is a commingling risk. LST should supplement the Summary document, so as to provide analysis on how to mitigate and manage that risk in a securitization transaction.

2.19 How is surplus cash flow handled and allocated?

SC is interested to know whether allocation of surplus cash flow is usually addressed in the securitization regulations in other jurisdictions and, if yes, which transaction participant is usually entitled to such proceeds. SC believes the Summary document lacks reasons why it is suggested the originator should be entitled to surplus cash flow and why the proposed solution differ from the solution that would otherwise apply in case of allocating surplus funds in ordinary company. It would be recommendable the Summary Documet to also include consideration of relevant legal/tax/accountancy implications of such solution, and in particular whether such solution could have any (detrimental) effect to the complete transfer of economic risk/rewards which may be necessary from the perspective of removal of receivables from the originator's balance sheet (i.e. derecognition).

2.20 How are the subscribers of the securities organized?

The organization of the bondholders and their representative towards the issuer seem to be issues not related solely to the securitization transactions, but rather the issues also arising in connection to other (long-term) debt securities. Therefore, LST should further advise whether these issue should be addressed in the Securitization Law, or in the Securities Market Law.

Problems of Application

2.21 How are the expenses of the operation recovered?

LST should take a unanimous view as to what would be preferable solution for this issue and whether, as a matter of principle, it is necessary/advisable that the Securitization Law deals with these kinds of issues in order to protect the investors or for any other reason.

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

Further elaboration by the LST, as to examples of particular receivables and related specific procedures that are referred to under item 22 of the Summary document, is necessary in order for the SC to consider this issue.

2.23 Can the sold receivables be sold yet another time?

Under Croatian law, the sale of receivables being subject to pledge does not have any impact on the security interest created on such sold receivables. Therefore, LST should further elaborate the need to address and how to address the above issue in the Securitization Law.

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

SC understands that one of the noteworthy aspects of securitization transactions is certainly a commingling risk and thus the Securitization Law should provide for provisions being able to adequately mitigate such risk.

With respect to the abovementioned bankruptcy remote pledge solution, LST should further consider whether the fact that the account to which the debtors would have to pay funds would be subject to statutory pledge created for the benefit of the SPV, would actually imply that the funds are owned by the servicer. It would be advisable if the LST would further consider whether the commingling risk could be managed if the Law would contain explicit provision stating that (i) any collected proceeds shall be deposited to a separate bank account, (ii) such collected proceeds shall not make part of the servicer's assets or its liquidation/bankruptcy estate, and they may not be subject to enforcement for satisfaction of the servicer's debts, and that (iii) the servicer shall at all times act and dispose with the collected amounts only in accordance with the SPV's instructions.

In any case, in the opinion of the SC, the Summary document should be further upgraded as to provide basic principles on how to adequately deal with the commingling risk.

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

SC would appreciate the LST to include in the Summary document argumentation for and against (if any) both solutions. It would also be useful if the LST would provide (i) additional information about solutions implemented in other European jurisdictions, and (ii) its views with respect to a possibility to envisage both options in the Securitization Law, in order not to impose unnecessary restrictions to any future securitization transaction.

LST should also address the issue of potentially different licensing/supervision treatment that each of such two types of SPVs may have.

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

Summary document lacks adequate consideration of the above issue which could become significant, in particular in the context of Croatian market. Therefore, the Summary document should be supplemented as to provide the SC with the LST's views on whether there are any negative implications of such structure, due to which it would be better not to allow it, and if such structure should be allowed, what kind of issues should be prescribed by the Securitization Law.

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

Whether the assignment contracts would have to include certain data and/or clauses necessary for the proper creation and perfection of the collateral seems to be a matter of other applicable laws, such as Law on Ownership and Other Material Rights, Law on Registry of the Court and Notary Public's security interest, Code of Obligations, etc.

LST should take a stand whether the Securitization Law should address any particular issue related to the contents of any of the transaction documents.

2.28 What rules govern bankruptcy?

SC agrees that the bankruptcy law issues tend to be extremely important in the context of the securitization transactions.

As already mentioned under item 1.2 above, the LST should further explore and take a definite stand as to the impact the bankruptcy of the originator may have to the assignment of receivables in general, and more particularly to the future receivables assignment.

Due to substantial similarities between Croatian and German bankruptcy law, it would be extremely helpful if the LST would undertake further analysis of German bankruptcy law and legal practice in order (i) to be able to more precisely foresee the issues that are likely to arise in case of the originator's bankruptcy and (ii) to the extent feasible, include in the Securitization Law provisions adequately addressing such situations.

2.29 What tax relief is possible?

SC is aware that a tax treatment of various aspects of the securitization transaction may influence great deal the decision whether to implement a securitization transaction in Croatia or not. Therefore, in securitization transactions, comfort should be provided as to what type of taxes are payable by the SPV, originator and debtors, and whether tax position of any of the parties involved changes (i.e. becomes more burdensome) due to securitization. In connection to the change of tax position, special consideration should be paid to the payment of withholding tax on interest payable by domestic debtors to the non-Croatian SPV and payment of VAT on interest payable to the SPV not being a bank or financial institution. In addition, multi-jurisdictional transactions create certain additional tax issues that should be considered.

Having in mind above, it is of great importance that the Summary document includes LST's consideration of (i) overall tax treatment of the securitization structures, and (ii) each particular applicable tax. LST should further expand the Summary document by providing answer to the question whether any of detected tax issues should be addressed in the Securitization Law and/or in any other applicable tax law and regulation and whether issuing of the Tax Administration guidelines dealing with tax issues arising in the context of the securitization transaction is an appropriate way of managing any relevant tax treatment risks, in particular having in mind legal nature of such guidelines.

2.30 Minimum size of transaction

LST should provide additional information as to situation in other European countries with respect to the minimum portfolio size in feasible transactions conducted there. After such analysis, additional consultations with authorities could be made in order to see what would be the final conclusion.

2.31 Variable interest rate "problem"

SC would like the LST to reconsider the issue of variable interest rate determined by the originator's decision, having in mind that (i) the position of the debtors should not change as a result of the securitization, (ii) only the receivables arising from the loan agreements are assigned and not the loan agreements themselves, and (iii) the loan agreement between the originator and each debtor will remain in force unchanged. Consequently, it may be considered that there exist no grounds for determining of the interest rates in any other manner or by any other entity (including SPV) other then contracted.

Following consideration of the above facts, the SC would appreciate to know the LST's views on necessity to include any provision related to the variable interest rate issue in the Securitization Law or any by-law.

The procedure described in Annex (TIM Advance) deals with a risk of SPV that the originator could in the future set the interest rate at the level not sufficient to cover SPV's costs. Although the suggested solution seems reasonable, the SC would like the LST to consider whether this is one of the issues to be agreed upon by the relevant participants and be included in the relevant transaction documents, or this issue should indeed be addressed in the Securitization Law or any

relevant by-law.

3 Conclusion

Summary document offers a catalogue of a number of issues to be addressed in the Draft Securitization Law and other relevant laws and regulations in order to provide secure and transparent rules for the securitisation market with a view to enabling financial market participants' use of securitisation techniques. In order to entirely achieve such a goal, the Summary document should be supplemented as described above.

When analysing the relevant issues, discussing potential solutions and drafting the revised Summary document, LST and the relevant panels should aim to contribute the creation of the draft law that would both (i) offer necessary flexibility for establishing securitisation transactions in the course of practicable procedures and at reasonable costs, as well as (ii) establish legal environment offering investor protection, risk control and safe and transparent conduct of securitization activities.

Kind regards,