

July 26, 2005

CHART FOR MR. BORIS POROBIJA AND MS. ŽELJKA ROSTAŠ-BLAŽEKOVIC

Re: Croatian Securitization Project – Comparison of Laws. The present chart has been prepared by Andrea Calvi, an Italian lawyer supporting the EBRD and Convergence work in the Croatian Securitization Project. This chart is for information purpose only and may not be relied upon as legal advice. The sections on German and Croatian laws have not been reviewed by German or Croatian lawyer, respectively, and are based exclusively on documents provided by professionals involved in the Croatian Securitization Project.

ITEM	ITALY	GERMANY	CROATIAN RESTRICTIONS
LAW	Law No. 130 of 30 April 1999, (the “Law 130/1999”). Specific law provisions have been enacted with reference to securitization transactions involving public real estate assets or social security receivables where the originator qualifies as a public entity.	Germany has not enacted a specific securitization law but has amended a number of specific laws to support securitisation.	
FORM OF SPV	There is no precise definition: SPV can be formed as a joint stock company, partnership limited by shares or limited liability company. Minimum share capital: €120,000 for joint stock companies and partnership limited by shares, €10,000 for limited liability companies.	In most German securitizations foreign SPVs are used (Ireland, Jersey, Cayman Islands, Luxembourg and The Netherlands). Since recently, German limited liability companies (EUR 25,000 share capital) have been used as SPVs. The shares of the company are held by three foundations (orphan structure).	
SUBFORM OF SPV	A single-issuer SPV and also a multiple-issuer	Multi-Issuer SPVs have not yet been used in	

	<p>conduit. In case of such a multi-conduit, each portfolio must be segregated from the others and no creditors other than the noteholders may bear rights on the relevant portfolio (Art. 3(1)(2) of Law 130/1999).</p>	<p>Germany. In principle, there should be no observations against such companies on the basis of contractual ringfencing structures (limited liability clauses).</p>	
SUB-PARTICIPATION	<p>Law 130/1999 applies also to sub-participation transactions (Article 7(a)). In such case the originator does not assign any receivable to the SPV. The latter employed the money raised by the issuance of certain securities in order to grant a financing to the originator. The financing is linked to a determined bulk of receivables of the originator towards certain debtors. Such receivables are segregated in favor of the SPV. The originator refunds the loan exclusively with the sums paid by the indicated debtors. Accordingly, for the satisfaction of the rights incorporated in the securities issued by the SPV, the noteholders may not take a legal action against the SPV, since the latter does not hold any asset. However, the SPV may take a legal action against the originator except if the prospectus provides that the noteholders has a claim directly against the originator.</p>	<p>Subparticipations are not specifically regulated in Germany but are widely used. Recently, subparticipations have been employed in distressed debt transactions.</p>	
CLOSE-END FUNDS	<p>Law 130/1999 applies also to assignment of receivables to close-end funds (Article 7(b)). In such case the unitholders subscribe the fund's units that represent the fund's portfolio, instead of securities incorporating a credit <i>vis-à-vis</i> the SPV. Close-end funds are regulated in detail by separate provisions.</p>	<p>There is separate fund legislation in Germany (not referring to ABS SPVs). In particular in the case of managed CDOs it needs to be thoroughly assessed whether a structure qualifies as an investment fund.</p>	

<p>SYNTHETIC SECURITIZATION</p>	<p>Although the possibility to execute a synthetic securitization (on point see Bank of Italy rulings in <i>Bollettino di Vigilanza</i> of December 2001, p. 13) is commonly accepted, it is debated whether Law 130/1999 (which does not mention such type of transaction) should apply to it. According to legal scholars, if the originator, instead of assigning a bulk of receivables to the SPV, enters into a credit default swap agreement in order to transfer to the SPV the credit risk related to such receivables, Law 130/1999 may be analogically applied for such part of the transaction which has common patterns with a proper securitization transaction. Credit derivatives are regulated in detail in Bank of Italy regulations only with reference to banking transactions. Credit derivatives referring to receivables held by a third party (Reference Entity) do not qualify as securitization transactions.</p>	<p>Synthetic securitization has played a dominant role in past years in Germany with respect to bank securitizations. In particular, KfW's PROMISE and PROVIDE platforms have been widely used. There are no specific rules regarding synthetic securitizations. Whether or not a transaction leads to regulatory capital relief will be regulated in the Solvency Ordinance (implementing Basel II rules) which is currently in draft form.</p>	
<p>SPV REGISTRATION PROCEDURE (SPECIAL LICENSES)</p>	<p>The SPV must be registered as a financial intermediary and enrolled in the special register of financial companies held by the Bank of Italy.</p>	<p>No specific requirements – General requirements for establishing GmbHs apply.</p>	
<p>CONTENT OF CONSTITUTIONAL DOCUMENTS (BY-LAWS)</p>	<p>Law 130/1999 provides that SPVs' exclusive corporate purpose is the execution of one or more securitization transactions. Directors must fulfill certain legal requirements relating to background and experience as well as professional honorability.</p>	<p>Articles of association.</p>	

MANAGEMENT COMPANY OF SPV (ONLY IF SPV IS ESTABLISHED AS A FUND)	Applicable in the event of assignment of receivables to close-end funds: as a general rule, funds are exclusively managed by dedicated joint stock companies denominated <i>società di gestione del risparmio</i> ("SGR").	[Not applicable]	Applicable in case of close-end funds.
AUTHORIZATION AND REGISTRATION OF MANAGEMENT COMPANY OF SPV	SGR are registered with the Bank of Italy and bear a minimum capital of €1,000,000.	GmbH's are registered with the local court (as a matter of company law).	Applicable in case of close-end funds.
TRUSTEE	A trustee may not be the assignee of a bulk of receivables under Law 130/1999. Italy has recognized the concept of trust as a legal entity through the ratification of the Aja Convention, but it is widely debated under what terms an Italian trust may be created. Italian law does however accept contractual trust relationship where security interests are granted to a non-Italian trustee and held by the trustee outside Italy for certain beneficiaries. A security interest arrangement over the assigned receivables is not strictly necessary in an Italian-law securitization as "separation" applies (see relevant item below).	German law does not know the concept of trust as a legal entity. It does however accept contractual trust relationship where security interests are granted to a trustee and held by the trustee for certain beneficiaries. Such structures are in principle bankruptcy remote.	Trusts are not recognized by Croatian Law.
ORIGINATORS	Law 130/1999 does not provide restrictions: originators may be both corporate entities and banks. Special laws apply to public entities (see item "Law" above).	No restrictions.	
ASSIGNMENT OF ASSETS	Existing and future receivables (only monetary claims – it is questionable whether Law 130/1999 is applicable to repackaging transaction).	Generally, all receivables (including defaulting or non-performing loans) are eligible for true sale securitizations. Future rights or claims can be assigned or pledged under an <i>in rem</i> agreement	

	<p>The only prerequisite: transfer of receivables must be published in the Official Gazette of the Republic of Italy (the transfer is perfected against originator, assigned debtors, and third party creditors and is enforceable and effective from the day of publication).</p> <p>As an exception, transfer of receivables against a public entity must be executed by notary deed and expressly accepted by the debtor (that is, the public entity).</p>	<p>prior to such rights or claims coming to existence (but such transfers will not stand up in bankruptcy if the receivables only come into existence after the originator's bankruptcy).</p> <p>An assignment may be made without a notification of the debtor. In case of such "silent" assignment the debtor has the benefit of certain debtor protection rights. Upon notification of an assignment to the debtor of the assigned claim, the debtor is generally restricted from any set off against the assigned claim (for the future). No requirement for registration or other filing duties apply.</p>	
COVERED BONDS	<p>Pursuant to Article 7-bis of Law 130/1999, as enacted in 2005, those provisions of such law which regulate the separation of assets, assignment of receivables, tax and accounting, and claw back also apply to transactions whereby certain banking receivables (such as mortgage loans) are, for example, assigned to companies dedicated to the purchase of such receivables and paid by the latter through a loan granted by the same assigning banks. The Bank of Italy has not yet issued the implementing regulations on covered bonds and no transactions have been executed yet.</p>	<p>The German Pfandbrief has been the role model for the establishment of covered bond laws and structures elsewhere. Pfandbriefe may be issued by specifically licensed banks. These banks hold a so-called cover stock which contains specific assets (mortgage loans up to 60% LTV or public credits). This cover stock must be 102% of the issued Pfandbriefe and, in the case of the originator's insolvency, serves primarily as cover for the holders of the Pfandbriefe. Further requirements apply.</p>	
IDENTIFICATION OF ASSETS	<p>Existing or future receivables are transferred in bulk. What is intended to be transferred is not a single receivable but a set of them identifiable by some common characteristics, such as asset class, client type, etc.</p>	<p>German assets are transferred strictly on an asset by asset basis. Assets must be clearly identified in the transfer contract. Receivables must be identifiable on the basis of the assignment agreement.</p> <p>Such assignment would fail if the assignor had disposed of such rights or claims before or without being the creditor of such rights or claims</p>	

		(no bona fide acquisition of receivables).	
RESTRICTIONS	Pursuant to Article 1260 of the Italian Civil Code, a creditor may assign its claim only if the claim is not strictly personal, the transfer is not forbidden by law or the claim's assignability is not contractually restricted.	A claim cannot be validly assigned under German law if: (i) the assignment of the claim would change its content (personal claims), (ii) the claim could no be attached, (iii) the claim is not assignable as a matter of law, (iv) the assignability of a claim is contractually restricted.	Restrictions on assignment of receivables are contained in the Croatian Obligation Law.
SEPARATION	Pursuant to Article 3(3) of Law 130/1999, the assets subject to securitization transactions shall be considered as separate from both SPV's assets and those assets related to other securitization transactions; therefore, the sums paid by the assigned debtors shall be exclusively employed for the satisfaction of the rights incorporated in the securities issued by the SPV and related fees and expenses. Accordingly, the creditors' actions are not allowed unless the rights incorporated in the securities are satisfied. Vice versa, SPV's own assets (in practice, company's capital) are not expressly protected against assigned debtors' actions and, hence, legal scholars debate as to whether recourse against SPV is admissible (to the best of our knowledge, it never occurred in practice)	Separation of assets in German structures is achieved by assigning and transferring all assets of the SPV to a trustee on the basis of a trust agreement. Trustee holds these assets on behalf of the creditors of the SPV and enforces the assets in certain situations. Enforcement proceeds are distributed to the creditors in a pre-agreed order (waterfall). In principal, if the Trustee becomes insolvent the assets can be separated from the Trustee's estate.	
DOCUMENTATION FOR ASSIGNMENT AND ISSUANCE	The assignment agreement is governed by contract law, which may be chosen by the parties (in most cases Italian law). Irrespective of the chosen law, Law 130/1999 applies on the perfection requirements of the assignment of Italian-law receivables (see relevant item	Sale and Assignment agreement, Servicing Agreement, notes and subscription agreement as well as ancillary documentation. Generally no further form requirements (except, e.g. for book entry mortgages where notarization and registration with the local court is required unless	

	above). Offering circulars addressed to the international markets are in many cases governed by a foreign law (mainly English law) and securities held outside Italy (e.g. Euroclear).	the newly established refinancing register is used).	
SERVICER	Only banks or financial entities enrolled in the special register of financial companies held by the Bank of Italy may perform servicing activities.	Pursuant to German Act on Rendering Legal Advice, any person collecting the assigned receivables must be in possession of a valid and effective collection license. If the originator acts as servicer it is exempted from such requirement.	
DATA PROTECTION	The Italian data protection authority authorizes simplified arrangements concerning information and consent (" <i>Informativa Semplificata</i> "), through publications in the Official Gazette of the Republic of Italy or local newspapers about the assignment of receivables in bulk through a securitization transaction instead of single information to all assigned debtors.	<p>The requirements of banking secrecy, data protection laws and license requirements have to be complied with.</p> <p>Banking Secrecy: Pursuant to Section 2(1) of the general terms and conditions of the German banking act, a bank is required to keep secret client-related data of which it receives knowledge. Circular 4/97 issued by BaFin established guidelines for ABS transactions for compliance with banking secrecy. The customer must either (i) give its consent to any disclosure of personal data in connection with an ABS transaction in order not to violate banking secrecy, or (ii) the originating bank itself conducts the servicing activities and in its insolvency the servicing is transferred to another EU or EEA credit institution and/or (bb) only such data necessary to facilitate the in rem transfer and any appropriate legal proceedings (sachgerechte Rechtsverfolgung) of the receivable is transferred in encoded form and the key for decoding is vested with a neutral third party (e.g., a notary or a credit institution). Although these requirements are not binding for the civil courts, there will be good arguments that</p>	

		<p>the transfer of loan receivables is in compliance with banking secrecy rules if such structure is employed. Data protection laws should generally be interpreted accordingly.</p> <p>A breach of banking secrecy could particularly result in damage claims of the debtor (but according to the prevailing legal view in Germany should not result in the invalidity of the assignment).</p> <p>Data protection laws: the Federal Data Protection Act provides for the protection of data relating to natural persons. The personal data may be transferred if the transfer is required in the interest of the transferor and does not prejudice the interest of the individuals.</p>	
COLLATERAL UNDERLYING ASSIGNED RECEIVABLES	<p>The benefit of any guarantee or security interest guaranteeing or securing repayment of the assigned receivables is automatically transferred to and perfected with the same priority in favor of the SPV without the need for any formality or registration. This also applies in case of mortgage loans portfolios because it removes the need to register the assignment on the mortgage entry at the land registry.</p>	<p>German law differentiates between accessory and non accessory collateral. While the latter must be separately transferred accessory collateral (pledges (Pfandrechte), accessory mortgages (Hypotheken)) automatically follows the assigned receivable secured by it.</p> <p>Notarisation and registration requirements do only apply with respect to mortgages and share pledges.</p>	
SECURITIES	<p>Pursuant to Article 2(1) of Law 130/1999, the securities issued qualify as financial instruments and are treated as such (Legislative Decree No. 58 of 24 February 1998 on financial intermediation applies). Law 130/1999 does not expressly contemplate the issuance of different tranches of securities, but it is not read as prohibiting it. The market</p>	<p>General principles apply.</p> <p>Several tranches of a bond issue qualify as separate securities.</p>	<p>The Law on Securities' Markets does not allow the issuance of different tranches of securities.</p>

	applies different tranches.		
RATING	The securitization transactions must be rated when the securities are offered to retail investors (Article 2(4) of Law 130/1999).	No mandatory rating requirement.	
PROSPECTUS	Pursuant to Article 2(2)(3) of Law 130/1999, the SPV must issue a prospectus also if the securities are offered to professional investors. In such latter case, the SPV is required to include in the prospectus only the specific information set out in Article 2(3), that are strictly related to the securitization transaction. Instead, if the securities are offered to retail investors, the Italian provisions on the solicitation of public saving, including those on prospectus requirements, apply.	General principles apply. In addition there are specific disclosure requirements relating to ABS (in conformity with the Prospectus Directive). Requirements as to Prospectus depend largely on the stock exchange where the Notes are listed.	
TAX TREATMENT	The basic tax treatment of securitized instruments will be at par with corporate bonds. The income (interests and other proceeds) of the investors in securitization transactions is taxable at a fixed rate of 12.5% (substitute tax) if the securities have the maturity longer than 18 months. If the securities have the maturity shorter than 18 months than Italian withholding tax of 27% applies on interest paid to investors. Foreign investors domiciled in countries with which Italy has a double tax avoidance treaty are exempt. Transfer of receivables for securitization purposes is VAT exempt. The Bank of Italy prescribes that assets and liabilities of SPVs should be recorded off-balance sheet. Due to its off-balance sheet treatment all revenues of SPV and interest	The transfer of receivables from the originator to SPV might be subject to VAT and the transferee of a trade receivable might be held liable for VAT not duly paid by the originator. According to a statement by the tax authorities, both risks are largely avoided when the originator retains the servicing function. The same applies to collection services rendered by the originator to the SPV. With respect to securitizations of receivables (other than certain bank receivables) the SPV may become subject to trade tax. Trade tax is an income-related tax levied in addition to corporate tax the tax base of which is, inter alia, formed, by half of the long term interest payable by the relevant company.	

	<p>payable on securities issued by SPV are not included in the calculation of taxable income of SPV. Servicing fees are not subject to any withholding or substitution tax but will be included in the calculation of taxable income of the Servicer. Servicing fees are, however, subject to VAT (20%) in case a third party provides services of enforcement and recovery through legal procedures and management of underlying collateral.</p>	<p>If an ABS structure qualifies as an investment fund special rules as to taxation apply.</p>	
<p>BANKRUPTCY REMOTENESS AND INSOLVENCY</p>	<p>Payments made by the assigned debtors are not subject to bankruptcy claw back rules and therefore do not fall within the scope of the Italian Bankruptcy Law; transfers of receivables are subject to claw back actions but with a significant reduction of the terms provided by Article 67 of the Bankruptcy Law (the 1 year term will be reduced to a 6 month term and the 6 month term will be reduced to a 3 month term).</p>	<p>Any transaction may under certain circumstances be challenged by an insolvency administrator pursuant to Article 129-147 of the German Insolvency Code within hardening periods ranging from 1 month up to 10 years prior to or after the application for the opening of an insolvency proceeding.</p>	<p>The bankruptcy regime which is regulated by general Bankruptcy Law applies to SPVs. It is not legally possible to entirely prevent bankruptcy of the SPV company.</p>
<p>ACCOUNTING</p>	<p>Law 130/1999 provides for specific accounting rules in connection with, among others, transferred assets and underlying collateral (specifically, decreases in value of such assets may directly be imputed in the reserves).</p>	<p>The German association of German accountants has released principles applying to true sale securitization which basically describe the requirements as to a transfer of credit risk (which is required to achieve a true sale).</p>	
<p>SCOPE OF APPLICATION OF NATIONAL LAW</p>	<p>No specific international private law rules apply with respect to securitization transactions as such. In cross-border transactions, a question arises as to whether Law 130/1999 is deemed applicable to securitization transactions related to Italian law receivables (and, generally, Italian originators) and Italian-incorporated SPVs.</p>	<p>No specific international private law rules apply with respect to securitization transactions.</p>	

	However, some legal scholars discuss whether Italian law is also applicable where a non-Italian SPV is used.		
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